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MEMORANDUM

To: The House Standing Committee on Agriculture

From: Kyle Hamilton, Assistant Revisor of Statutes

Date: January 23, 2020

Re: HB 2437

HB 2437 would amend the Kansas food, drug and cosmetic act to regulate the use of certain terms used on the labels and in the advertisements of meat analogs.

Section 1 would amend the definitions section of the act. On page 3, line 38, the current definition of “imitation” would be amended so that it would not conflict with a new, more specific, definition of imitation food that is used in Section 2. At the end of the definitions section, starting on page 5 line 4 of the bill, new definitions would be inserted for the terms “meat analog” and “identifiable meat term”. Definitions of “meat”, “meat food product”, “poultry product”, and “poultry food product” would also be inserted and would mean the same as provided in the code of federal regulations.¹

¹ 9 C.F.R. § 301.2

- Meat
 - (1) The part of the muscle of any cattle, sheep, swine, or goats which is skeletal or which is found in the tongue, diaphragm, heart, or esophagus, with or without the accompanying and overlying fat, and the portions of bone (in bone-in product such as T-bone or porterhouse steak), skin, sinew, nerve, and blood vessels which normally accompany the muscle tissue and that are not separated from it in the process of dressing. As applied to products of equines, this term has a comparable meaning.
 - (i) Meat does not include the muscle found in the lips, snout, or ears.
 - (ii) Meat may not include significant portions of bone, including hard bone and related components, such as bone marrow, or any amount of brain, trigeminal ganglia, spinal cord, or dorsal root ganglia (DRG).
- Meat food product
 - Any article capable of use as human food which is made wholly or in part from any meat or other portion of the carcass of any cattle, sheep, swine, or goats, except those exempted from definition as a meat food product by the Administrator in specific cases or by the regulations in part 317 of this subchapter, upon a determination that they contain meat or other portions of such carcasses only in a relatively small proportion or historically have not been considered by consumers as products of the meat food industry, and provided that they comply with any requirements that are imposed in such cases or regulations as conditions of such exemptions to assure that the meat or other portions of such carcasses contained in such articles are not adulterated and that such articles

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Section 2 would amend the section of the Kansas food, drug and cosmetic act that states when a food is deemed to be misbranded. Subsection (m) would state that a food would be misbranded if “it is a meat analog and: (1) Its labeling or advertisement utilizes an identifiable meat term; and (2) the labeling or advertisement does not have a disclaimer in the same font, style and size, immediately before or after the identifiable meat term, stating “this product does not contain meat.”” However, subsection (m) also states that those requirements will not apply if the food can be defined as “imitation” under subsection (c) and complies with the provisions of that subsection.

Subsection (c), starting on page 5 line 26, states that a food shall be deemed to be misbranded if “it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word, imitation, and, immediately thereafter, the name of the food imitated.” The term “imitation” would mean the same as provided in the code of federal regulations.² Under that

are not represented as meat food products. This term, as applied to food products of equines, shall have a meaning comparable to that provided in this paragraph with respect to cattle, sheep, swine, and goats.

9 C.F.R. § 381.1

- Poultry. “Poultry” means any domesticated bird (chickens, turkeys, ducks, geese, guineas, ratites, or squabs, also termed young pigeons from one to about thirty days of age), whether live or dead.
- Poultry product.
 - (i) This term means any poultry carcass or part thereof; or any product which is made wholly or in part from any poultry carcass or part thereof, excepting those exempted from definition as a poultry product in § 381.15. Except where the context requires otherwise (e.g., in paragraph (b)(42) of this section), this term is limited to articles capable of use as human food.
 - (ii) Poultry food product. This term means any product capable of use as human food which is made in part from any poultry carcass or part thereof, excepting those exempted from definition as a poultry product in § 381.15.

² 21 C.F.R. § 101.3

- (e) Under the provisions of section 403(c) of the Federal Food, Drug, and Cosmetic Act, a food shall be deemed to be misbranded if it is an imitation of another food unless its label bears, in type of uniform size and prominence, the word “imitation” and, immediately thereafter, the name of the food imitated.
 - (1) A food shall be deemed to be an imitation and thus subject to the requirements of section 403(c) of the act if it is a substitute for and resembles another food but is nutritionally inferior to that food.
 - (2) A food that is a substitute for and resembles another food shall not be deemed to be an imitation provided it meets each of the following requirements:
 - (i) It is not nutritionally inferior to the food for which it substitutes and which it resembles.
 - (ii) Its label bears a common or usual name that complies with the provisions of § 102.5 of this chapter and that is not false or misleading, or in the absence of an existing common or usual name, an appropriately descriptive term that is not false or misleading. The label may, in addition, bear a fanciful name which is not false or misleading.
 - (3) A food for which a common or usual name is established by regulation (e.g., in a standard of identity pursuant to section 401 of the act, in a common or usual name regulation pursuant to part 102 of this chapter, or in a regulation establishing a nutritional quality guideline pursuant to part

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regulation, a food is deemed to be an imitation if it is a substitute for and resembles another food but is nutritionally inferior to that food. The term “nutritionally inferior” is described in the regulation to mean a substitute that contains less protein or potassium or a lesser amount of any essential vitamin or mineral than is contained in the food being substituted. In situations when meat analogs have just as much or more of those nutrients as the meat products they are substituting, such meat analogs would not fall under the definition of “imitation” found in the federal regulation or subsection (c). They would instead be required to follow the provisions of subsection (m) and include the phrase “this product does not contain meat” on labels and in advertisements.

Subsection (n), starting on page 7, line 8, would contain a severability clause stating that if any provision of Section 2 is “held to be invalid or unconstitutional, it shall be conclusively presumed that the legislature would have enacted the remainder of this section without such invalid or unconstitutional provision.”

HB 2437 would become effective upon publication in the statute book, on July 1, 2020.

104 of this chapter), and which complies with all of the applicable requirements of such regulation(s), shall not be deemed to be an imitation.

- (4) Nutritional inferiority includes:
 - (i) Any reduction in the content of an essential nutrient that is present in a measurable amount, but does not include a reduction in the caloric or fat content provided the food is labeled pursuant to the provisions of § 101.9, and provided the labeling with respect to any reduction in caloric content complies with the provisions applicable to caloric content in part 105 of this chapter.
 - (ii) For the purpose of this section, a measurable amount of an essential nutrient in a food shall be considered to be 2 percent or more of the Daily Reference Value (DRV) of protein listed under § 101.9(c)(7)(iii) and of potassium listed under § 101.9(c)(9) per reference amount customarily consumed and 2 percent or more of the Reference Daily Intake (RDI) of any vitamin or mineral listed under § 101.9(c)(8)(iv) per reference amount customarily consumed, except that selenium, molybdenum, chromium, and chloride need not be considered.
 - (iii) If the Commissioner concludes that a food is a substitute for and resembles another food but is inferior to the food imitated for reasons other than those set forth in this paragraph, he may propose appropriate revisions to this regulation or he may propose a separate regulation governing the particular food.