

House Substitute for SENATE BILL No. 261

AN ACT concerning agriculture; relating to the labeling of certain foods; prohibiting the use of identifiable meat terms on labels of meat analogs without use of proper qualifying language; amending K.S.A. 65-656 and 65-665 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 65-656 is hereby amended to read as follows: 65-656. For the purpose of this act:

(a) "Secretary" means the secretary of agriculture or the secretary's authorized representatives.

(b) "Person" means an individual, partnership, governmental entity, corporation, or association of persons.

(c) "Food" means: (1) Articles used for food or drink for humans or other animals; (2) chewing gum; and (3) articles used for components of any such article.

(d) "Drug" means: (1) Articles recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement to any of them; (2) articles intended for use in diagnosis, cure, mitigation, treatment or prevention of disease in humans or other animals; (3) articles, other than food, intended to affect the structure or any function of the body of humans or other animals; and (4) articles intended for use as a component of any article specified in paragraph (1), (2); or (3); but does not include devices or their components, parts or accessories. The term "drug" ~~shall~~ *does not* include amygdalin (laetrile).

(e) "Device," except as used in ~~subsection (j) of K.S.A. 65-657(j), subsection (f) of K.S.A. 65-665(f), subsections (c) and (o) of K.S.A. 65-669;(c) and (o) and subsection (c) of K.S.A. 65-671(c),~~ and amendments thereto, means instruments, apparatus and contrivances, including their components, parts and accessories, intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals or to affect the structure or any function of the body of humans or other animals.

(f) "Cosmetic" means: (1) Articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleaning, beautifying, promoting attractiveness or altering appearance; and (2) articles intended for use as a component of any such articles, except that such term ~~shall~~ *does not* include soap.

(g) "Official compendium" means the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, official national formulary or any supplement to any of them.

(h) "Label" means a display of written, printed or graphic matter upon the immediate container of any article; and a requirement made by or under authority of this act that any word, statement, or other information appearing on the label shall not be considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper, if any ~~there be~~, of the retail package of such article, or is easily legible through the outside container or wrapper.

(i) "Immediate container" does not include package liners.

(j) "Labeling" means all labels and other written, printed or graphic matter upon an article or any of its containers or wrappers or accompanying such article.

(k) "Advertisement" means all representations disseminated in any manner or by any means other than by labeling, for the purpose of inducing, or ~~which~~ *that* are likely to induce, directly or indirectly, the purchase of food, drugs, devices or cosmetics.

(l) "New drug" means: (1) Any drug the composition of which is such that such drug is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions

prescribed, recommended; or suggested in the labeling thereof; or (2) any drug the composition of which is such that such drug, as a result of investigations to determine its safety and effectiveness for use under such conditions, has become so recognized, but ~~which~~ *that* has not, otherwise than in such investigations, been used to a material extent or for a material time under such conditions. The term "new drug" ~~shall~~ *does not* include amygdalin (laetrile).

(m) "Contaminated with filth" applies to any food, drug, device or cosmetic not securely protected from dust, dirt, and as far as may be necessary by all reasonable means, from all foreign or injurious contaminations.

(n) "Pesticide chemical" means any substance ~~which~~ *that*, alone, in chemical combination, or in formulation with one or more other substances is a "pesticide" within the meaning of the agricultural chemicals act, K.S.A. 2-2202, and amendments thereto, and ~~which~~ *that* is used in the production, storage or transportation of raw agricultural commodities.

(o) "Raw agricultural commodity" means any food in its raw or natural state, including all fruits that are washed, colored; or otherwise treated in their unpeeled natural form prior to marketing.

(p) "Food additive" means any substance, the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food, including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting; or holding food; ~~and including~~. *"Food additive" includes* any source of radiation intended for any such use, if such substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures, or, in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience based on common use in food, to be safe under the conditions of its intended use. "Food additive" does not include: (1) A pesticide chemical in or on a raw agricultural commodity; (2) a pesticide chemical to the extent that it is intended for use or is used in the production, storage; or transportation of any raw agricultural commodity; (3) a color additive; or (4) any substance used in accordance with a sanction or approval granted prior to the enactment of the food additive amendment of 1958, pursuant to the federal act.

(q) (1) "Color additive" means a material ~~which~~ *that*: (A) Is a dye, pigment; or other substance made by a process of synthesis or similar artifice, or extracted, isolated; or otherwise derived, with or without intermediate or final change of identity from a vegetable, animal, mineral; or other source; or (B) when added or applied to a food, drug or cosmetic, or to the human body or any part thereof, is capable, alone or through reaction with another substance, of imparting color thereto; except that such term does not include any material which has been or hereafter is exempted under the federal act.

(2) The term "color" includes black, white and intermediate grays.

(3) Nothing in this subsection shall be construed to apply to any pesticide chemical, soil or plant nutrient, or other agricultural chemical solely because of its effect in aiding, retarding or otherwise affecting, directly or indirectly, the growth or other natural physiological process of produce of the soil and thereby affecting its color, whether before or after harvest.

(r) "Imitation" means, *except for imitation food as provided in K.S.A. 65-665, and amendments thereto*, any article made in the semblance of another, consisting of similar or dissimilar ingredients

and being capable of being substituted for the imitated article without the knowledge of the consumer.

(s) "Federal act" means the federal food, drug and cosmetic act, ~~title 21 U.S.C. § 301 et seq.; 52 Stat. 1040 et seq.~~

(t) "Department" means the Kansas department of agriculture.

(u) "Distribution" means the provision of food, drug, cosmetic or device to another person and includes selling, offering for sale, giving, supplying, transporting, applying and dispensing.

(v) "Food establishment" means any place in which food is prepared, served or offered for sale or service on the premises or elsewhere. "Food establishment" does not include roadside markets that offer only whole fresh fruits, nuts and vegetables for sale. "Food establishment" includes, but is not limited to:

(1) Eating or drinking establishments, fixed or mobile restaurants, coffee shops, cafeterias, short-order cafes, luncheonettes, tea rooms, grills, sandwich shops, soda fountains, taverns, private clubs, roadside stands, industrial-feeding establishments, catering kitchens, commissaries and any other private, public or nonprofit organizations routinely serving food; and

(2) grocery stores, convenience stores, bakeries and locations where food is provided for the public with or without charge.

(w) "Food processing plant" means a commercial operation that processes or stores food for human consumption and provides food for distribution to other business entities at other locations, including other food processing plants and food establishments. "Food processing plant" does not include any operation or individual beekeeper that produces and distributes honey to other business entities if the producer does not process the honey beyond extraction from the comb.

(x) "Food vending machine" means any self-service device, ~~which~~ *that*, upon payment, dispenses unit servings of food, either in bulk or in packages. Such device shall not necessitate replenishing between each vending operation. "Food vending machine" does not include any vending machine dispensing only canned or bottled soft drinks or prepackaged food that does not require temperature control for safety.

(y) "Food vending machine company" means any person in the business of operating and servicing food vending machines.

(z) "Location" means a physical address, or absent an address, the geographical area within 300 feet of a food establishment or food processing plant. In the case of a mobile food establishment housed in a trailer, such trailer shall be considered a food establishment with its own location. In the case of a mobile food establishment that is not housed in a trailer, the equipment used for storage, preparation or offering of food shall be considered a food establishment with its own location.

(aa) "Municipality" means any city or county of this state.

(bb) "Processing" means the handling of a food, drug, cosmetic or device, including the production, manufacturing, packaging, packing and labeling of such item.

(cc) "Sample" means a small quantity of food and does not include a meal or entree.

(dd) "Storage" means holding for distribution or processing.

(ee) *"Meat analog" means any food that approximates the aesthetic qualities, primarily texture, flavor and appearance, or the chemical characteristics of any specific type of meat, meat food product, poultry product or poultry food product, but does not contain any meat, meat food product, poultry product or poultry food product.*

(ff) *"Identifiable meat term" includes, but is not limited to, terms such as meat, beef, pork, poultry, chicken, turkey, lamb, goat, jerky, steak, hamburger, burger, ribs, roast, bacon, bratwurst, hot dog, ham,*

sausage, tenderloin, wings, breast and other terms for food that contain any meat, meat food product, poultry product or poultry food product.

(gg) *"Meat" means the same as provided in 9 C.F.R. § 301.2, as in effect on January 1, 2022.*

(hh) *"Meat food product" means the same as provided in 9 C.F.R. § 301.2, as in effect on January 1, 2022.*

(ii) *"Poultry product" means the same as provided in 9 C.F.R. § 381.1, as in effect on January 1, 2022.*

(jj) *"Poultry food product" means the same as provided in 9 C.F.R. § 381.1, as in effect on January 1, 2022.*

Sec. 2. K.S.A. 65-665 is hereby amended to read as follows: 65-665. A food shall be deemed to be misbranded:

(a) If its labeling is false or misleading in any particular.

(b) If it is offered for sale under the name of another food.

(c) 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. *For the purposes of this section, "imitation" means the same as provided in 21 C.F.R. § 101.3(e), as in effect on January 1, 2022. In such definition, references to section 403(c) of the federal food, drug, and cosmetic act mean this subsection (c), and references to the commissioner mean the Kansas secretary of agriculture.*

(d) If its container is so made, formed; or filled as to be misleading.

(e) If in package form, unless it bears a label containing: (1) The name and place of business of the manufacturer, packer; or distributor; and (2) an accurate statement of the quantity of the contents in terms of weight, measure; or numerical count. Reasonable variations shall be permitted, and exemptions as to small packages shall be established, by rules and regulations prescribed by the secretary of agriculture.

(f) If any word, statement; or other information required by or under authority of this act to appear on the label or labeling is not prominently placed thereon with such conspicuousness—(, as compared with other words, statements, designs; or devices, in the labeling), and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(g) If it purports to be or is represented as a food for which a definition and standard of identity has been prescribed by regulations as provided by K.S.A. 65-663,~~—as amended and amendments thereto,~~ unless: (1) It conforms to such definition and standard;; and (2) its label bears the name of the food specified in the definition and standard, and insofar as may be required by such regulations, the common names of optional ingredients—(, other than spices, flavoring; and coloring), present in such food.

(h) If it purports to be or is represented as: (1) A food for which a standard of quality has been prescribed by regulations as provided in K.S.A. 65-663,~~—as amended and amendments thereto,~~ and its quality falls below such standard unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard; or (2) a food for which a standard or standards of fill of container has been prescribed by regulations as provided by K.S.A. 65-663,~~—as amended and amendments thereto,~~ and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such regulations specify a statement that it falls below such standard.

(i) If it is not subject to the provisions of ~~paragraph~~ *subsection (g) of this section,* unless it bears labeling clearly giving: (1) The common or usual name of the food, if any ~~there be~~; and (2) in case it is

fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings; and colorings, other than those sold as such, may be designated as spices, flavorings; and colorings, without naming each. Except that to the extent that compliance with the requirements of ~~clause paragraph (2) of this paragraph~~ is impractical or results in deception or unfair competition, exemptions shall be established by rules and regulations promulgated by the secretary.

(j) If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral; and other dietary properties as the secretary determines to be, and by regulations prescribes, as necessary, in order to fully inform purchasers as to its value for such uses.

(k) If it bears or contains any artificial flavoring, artificial coloring; or chemical preservatives, unless it bears labeling stating that fact. Except that to the extent that compliance with the requirements of ~~this paragraph subsection~~ is impracticable, exemptions shall be established by rules and regulations promulgated by the secretary.

(l) If it is a product intended as an ingredient of another food and when used according to the directions of the purveyor will result in the final food product being adulterated or misbranded.

(m) If it is a meat analog and: (1) Its labeling utilizes an identifiable meat term; and (2) the labeling does not have a disclaimer in a prominent and conspicuous font size, in close proximity to the identifiable meat term, stating one of the following: (A) "This product does not contain meat"; (B) "meatless"; (C) "meat-free"; (D) "vegan"; (E) "veggie"; (F) "vegetarian"; (G) "vegetable"; (H) "plant-based"; or (I) a disclaimer equivalent to (A) through (H), as determined by the secretary through rules and regulations. The provisions of this subsection shall not apply to a menu or menu board or to food that can be defined as "imitation" under subsection (c) and complies with the provisions of such subsection.

If any provision of this section 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.

Sec. 3. K.S.A. 65-656 and 65-665 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the SENATE, and passed that body

SENATE adopted

Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE

as amended _____

HOUSE adopted

Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.