

ARTICLE 11
New Mexico Chile Advertising Act

25-11-1. Short title.

Chapter 25, Article 11 NMSA 1978 may be cited as the "New Mexico Chile Advertising Act".

25-11-2. Definitions.

As used in the New Mexico Chile Advertising Act:

- A. "board" means the board of regents of New Mexico state university; and
- B. "chile pepper" means the fruit from *Capsicum annuum*.

25-11-3. Unlawful advertising, labeling or selling of non-New Mexico chile.

A. It is unlawful for a person to:

(1) knowingly advertise, describe, label or offer for sale chile peppers as New Mexico chile, or to advertise, describe, label or offer for sale a product as containing New Mexico chile, unless the chile peppers or chile peppers in the product were grown in New Mexico; or

(2) knowingly advertise, describe, label or offer for sale chile peppers, or a product containing chile peppers, using the name of any city, town, county, village, pueblo, mountain, river or other geographic feature or features located in New Mexico in a misleading or deceptive manner that states or reasonably implies that the chile peppers are, or the product contains, New Mexico chile, unless the chile peppers or chile peppers in the product were grown in New Mexico.

B. The prohibitions in this section do not apply to a person whose business name, brand name or trademark was used in advertising, product descriptions, labels or offers for sale and was established prior to the effective date of the New Mexico Chile Advertising Act; provided that, on and after July 1, 2013, the person, in all advertising, descriptions and labels containing that business name, brand name or trademark, shall include in a prominent location and in a prominent typeface a disclaimer stating "NOT GROWN IN NEW MEXICO" if the product contains chile peppers that were not grown in New Mexico.

C. The prohibitions in this section do not apply to a restaurant that describes a menu item using a geographic name provided for in Paragraph (2) of Subsection A of this section; provided that the origin of any chile in the menu item is not misrepresented.

25-11-4. Administration; audit; inspection.

A. The board may:

(1) enforce and administer the New Mexico Chile Advertising Act through the New Mexico department of agriculture; and

(2) promulgate rules, in consultation with the New Mexico chile industry, necessary for the administration of the New Mexico Chile Advertising Act.

B. Sales of twenty thousand pounds or less of chile peppers per calendar year by the person that grew the chile peppers are exempt from any recordkeeping requirement that the board may establish by rule. For the purposes of this subsection, "farmers' market" means a physical retail market open to the public at which farmers sell produce.

C. The New Mexico department of agriculture through its authorized inspectors or agents is authorized to:

(1) audit the purchase and sales records of a person dealing with the sale of chile peppers or products containing chile peppers that are advertised, described, labeled or offered for sale as New Mexico chile;

(2) enter, on a business day during the usual hours of business, a store, market or other business or place for the limited purpose of inspecting the establishment's records related to chile peppers or products containing chile peppers being advertised, described, labeled or offered for sale as New Mexico chile or as containing New Mexico chile; and

(3) issue stop-sale, use or removal orders with respect to any violation of the New Mexico Chile Advertising Act.

25-11-5. Injunction.

In addition to any other remedy under law, the board may apply to the district court for an injunction, and the district court may issue a temporary or permanent injunction, or both, restraining any person from violating or continuing to violate any of the provisions of the New Mexico Chile Advertising Act or any rule promulgated pursuant to that act by the board. In issuing an injunction on the application of the board, the court shall not require a bond.

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