CHAPTER 459

S.B. No. 558

AN ACT

relating to food labeling requirements under the Texas Food, Drug, and Cosmetic Act.

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

SECTION 1. Subdivision (14), Section 431.002, Health and Safety Code, is amended to read as follows:

(14) "Drug" means articles recognized in the official United States Pharmacopoeia National Formulary, or any supplement to it, articles designed or intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals, articles, other than food, intended to affect the structure or any function of the body of man or other animals, and articles intended for use as a component of any article specified in this subdivision. The term does not include devices or their components, parts, or accessories. *A food for which a claim is made in accordance with Section 403(r) of the federal Act, and for which the claim is approved by the secretary, is not a drug solely because the label or labeling contains such a claim.*

SECTION 2. Section 431.060, Health and Safety Code, is amended to read as follows:

Sec. 431.060. INITIATION OF PROCEEDINGS. *(a)* The attorney general, or a district, county, or municipal attorney to whom the commissioner, an authorized agent, or a health authority reports a violation of this chapter, shall initiate and prosecute appropriate proceedings without delay.

(b) The commissioner, the commissioner's authorized agent, or the attorney general may, as authorized by Section 307 of the federal Act, bring in the name of this state a suit for civil penalties or to restrain a violation of Section 401 or Section 403(b) through (i), (k), (q), or (r) of the federal Act if the food that is the subject of the proceedings is located in this state.

(c) The commissioner, the commissioner's authorized agent, or the attorney general may not bring a proceeding under Subsection (b):

(1) before the 31st day after the date on which the state has given notice to the secretary of its intent to bring a suit;

(2) before the 91st day after the date on which the state has given notice to the secretary of its intent to bring a suit if the secretary has, not later than the 30th day after receiving notice from the state, commenced an informal or formal enforcement action pertaining to the food that would be the subject of the suit brought by the state; or

(3) if the secretary is diligently prosecuting a suit in court pertaining to that food, has settled a suit pertaining to that food, or has settled the informal or formal enforcement action pertaining to that food.

SECTION 3. Section 431.082, Health and Safety Code, is amended to read as follows:

Sec. 431.082. MISBRANDED FOOD. A food shall be deemed to be misbranded:

(a) if its labeling is false or misleading in any particular or fails to conform with the requirements of Section 431.181;

(b) if, in the case of a food to which Section 411 of the federal Act applies, its advertising is false or misleading in a material respect or its labeling is in violation of Section 411(b)(2) of the federal Act;

(c) if it is offered for sale under the name of another food;

(d) if it is an imitation of another food, unless its label bears, in prominent type of uniform size, the word "imitation" and immediately thereafter the name of the food imitated;

(e) if its container is so made, formed, or filled as to be misleading;

(f) 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, in a uniform location on the principal display panel of the label, of the quantity of the contents in terms of weight, measure, or numerical count; provided, that under this subsection reasonable variations shall be permitted, and exemptions as to small packages shall be established, by rules adopted by the board;

(g) if any word, statement, or other information required by or under the authority of this chapter 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;

(h) if it purports to be or is represented as a food for which a definition and standard of identity has been prescribed by federal regulations or rules of the board as provided by Section 431.245, 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, in so far as may be required by those regulations or rules, the common names of [~~optional~~] ingredients, other than spices, flavoring, and coloring, present in such food;

(i) if it purports to be or is represented as:

(1) a food for which a standard of quality has been prescribed by federal regulations or rules of the board as provided by Section 431.245, and its quality falls below such standard unless its label bears, in such manner and form as those regulations or rules specify, a statement that it falls below such standard; or

(2) a food for which a standard or standards of fill of container have been prescribed by federal regulations or rules of the board as provided by Section 431.245, and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as those regulations or rules specify, a statement that it falls below such standard;

(j) [~~if it is not subject to the provisions of Subsection (h),~~] unless its label bears:

(1) the common or usual name of the food, if any; and

(2) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient, *and if the food purports to be a beverage containing vegetable or fruit juice, a statement with appropriate prominence on the information panel of the total percentage of the fruit or vegetable juice contained in the food*; except that spices, flavorings, and *colors not required to be certified under Section 706(c) of the federal Act* [~~colorings~~], other than those sold as such, may be designated as spices, flavorings, and *colors* [~~colorings~~], without naming each; provided that, to the extent that compliance with the requirements of this subdivision is impractical or results in deception or unfair competition, exemptions shall be established by rules of the board;

(k) 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 board determines to be, and by rule prescribed, as necessary in order to fully inform purchasers as to its value for such uses;

(*l*) if it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact; provided that, to the extent that compliance with the requirements of this subsection is impracticable, exemptions shall be established by rules of the board. The provisions of this subsection and Subsections (h) and (j) with respect to artificial coloring do not apply in the case of butter, cheese, and ice cream;

(m) if it is a raw agricultural commodity that is the produce of the soil and bears or contains a pesticide chemical applied after harvest, unless the shipping container of the commodity bears labeling that declares the presence of the chemical in or on the commodity and the common or usual name and the function of the chemical, except that the declaration is not required while the commodity, after removal from the shipping container, is being held or displayed for sale at retail out of the container in accordance with the custom of the trade;

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

(*o*) if it is a color additive, unless its packaging and labeling are in conformity with the packaging and labeling requirements applicable to the color additive as may be contained in regulations issued under Section 706 of the federal Act;

(p) if its packaging or labeling is in violation of an applicable regulation issued under Section 3 or 4 of the Federal Poison Prevention Packaging Act of 1970 (15 U.S.C. 1491 et seq.);

(q) if it contains saccharin, unless its label and labeling and retail display comply with the requirements of Sections 403(o) and 403(p) of the federal Act; [~~or~~]

(r) if it contains saccharin and is offered for sale, but not for immediate consumption, at a retail establishment, unless the retail establishment displays prominently, where the food is held for sale, notice that is provided by the manufacturer of the food under Section 403(o)(2) of the federal Act for consumers concerning the information required by Section 403(p) of the federal Act to be on food labels and labeling;

(s)(1) if it is a food intended for human consumption and is offered for sale, unless its label or labeling bears nutrition information that provides:

(A)(i) the serving size that is an amount customarily consumed and that is expressed in a common household measure that is appropriate to the food; or

(ii) if the use of the food is not typically expressed in a serving size, the common household unit of measure that expresses the serving size of the food;

(B) the number of servings or other units of measure per container;

(C) the total number of calories in each serving size or other unit of measure that are:

(i) derived from any source; and

(ii) derived from fat;

(D) the amount of total fat, saturated fat, cholesterol, sodium, total carbohydrates, complex carbohydrates, sugar, dietary fiber, and total protein contained in each serving size or other unit of measure; and

(E) any vitamin, mineral, or other nutrient required to be placed on the label and labeling of food under the federal Act; or

(2)(A) if it is a food distributed at retail in bulk display cases, or a food received in bulk containers, unless it has nutrition labeling prescribed by the secretary; and

(B) if the secretary determines it is necessary, nutrition labeling will be mandatory for raw fruits, vegetables, and fish, including freshwater or marine finfish, crustaceans, mollusks including shellfish, amphibians, and other forms of aquatic animal life, except that:

(3)(A) Subdivisions (1) and (2) do not apply to food:

(i) that is served in restaurants or other establishments in which food is served for immediate human consumption or that is sold for sale or use in those establishments;

(ii) that is processed and prepared primarily in a retail establishment, that is ready for human consumption, that is of the type described in Subparagraph (i), that is offered for sale to consumers but not for immediate human consumption in the establishment, and that is not offered for sale outside the establishment;

(iii) that is an infant formula subject to Section 412 of the federal Act;

(iv) that is a medical food as defined in Section 5(b) of the Orphan Drug Act (21 U.S.C. Section 360ee(b)); or

(v) that is described in Section 405, clause (2), of the federal Act;

(B) Subdivision (1) does not apply to the label of a food if the secretary determines by regulation that compliance with that subdivision is impracticable because the package of the food is too small to comply with the requirements of that subdivision and if the label of that food does not contain any nutrition information;

(C) if the secretary determines that a food contains insignificant amounts of all the nutrients required by Subdivision (1) to be listed in the label or labeling of food, the requirements of Subdivision (1) do not apply to the food if the label, labeling, or advertising of the food does not make any claim with respect to the nutritional value of the food, provided that if the secretary determines that a food contains insignificant

amounts of more than half the nutrients required by Subdivision (1) to be in the label or labeling of the food, the amounts of those nutrients shall be stated in a simplified form prescribed by the secretary;

(D) if a person offers food for sale and has annual gross sales made or business done in sales to consumers that is not more than $500,000 or has annual gross sales made or business done in sales of food to consumers that is not more than $50,000, the requirements of this subsection do not apply to food sold by that person to consumers unless the label or labeling of food offered by that person provides nutrition information or makes a nutrition claim;

(E) if foods are subject to Section 411 of the federal Act, the foods shall comply with Subdivisions (1) and (2) in a manner prescribed by the rules; and

(F) if food is sold by a food distributor, Subdivisions (1) and (2) do not apply if the food distributor principally sells food to restaurants or other establishments in which food is served for immediate human consumption and the food distributor does not manufacture, process, or repackage the food it sells;

(t) if it is a food intended for human consumption and is offered for sale, and a claim is made on the label, labeling, or retail display relating to the nutrient content or a nutritional quality of the food to a specific disease or condition of the human body, except as permitted by Section 403(r) of the federal Act; or

(u) if it is a food intended for human consumption and its label, labeling, and retail display do not comply with the requirements of Section 403(r) of the federal Act pertaining to nutrient content and health claims.

SECTION 4. Section 431.083, Health and Safety Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) *Except as provided by Subsection (c), the* [~~The~~] board shall adopt rules exempting from any labeling requirement of this chapter:

(1) small open containers of fresh fruits and fresh vegetables; and

(2) food that is in accordance with the practice of the trade, to be processed, labeled, or repacked in substantial quantities at establishments other than those where originally processed or packed, on conditions that the food is not adulterated or misbranded under the provisions of this chapter when removed from the processing, labeling, or repacking establishment.

(c) The board may not adopt rules under Subsection (a) to exempt foods from the labeling requirements of Sections 403(q) and (r) of the federal Act.

SECTION 5. Section 431.182, Health and Safety Code, is amended to read as follows:

Sec. 431.182. FALSE ADVERTISEMENT. *(a)* An advertisement of a food, drug, device, or cosmetic shall be deemed to be false if it is false or misleading in any particular.

(b) The advertising of a food that incorporates a health claim not in conformance with or defined by Section 403(r) of the federal Act is deemed to be false or misleading for the purposes of this chapter.

SECTION 6. Section 431.244, Health and Safety Code, is amended to read as follows:

Sec. 431.244. FEDERAL REGULATIONS ADOPTED AS STATE RULES. (a) A regulation adopted by the secretary under the federal Act concerning pesticide chemicals, food additives, color additives, special dietary use, processed low acid food, acidified food, infant formula, bottled water, or vended bottled water is a rule for the purposes of this chapter, unless the board modifies or rejects the rule.

(b) A regulation adopted under the Fair Packaging and Labeling Act (15 U.S.C. 1451 et seq.) is a rule for the purposes of this chapter, unless the board modifies or rejects the rule. The board may not adopt a rule that conflicts with the labeling requirements for the net quantity of contents required under Section 4 of the Fair Packaging and Labeling Act (15 U.S.C. 1453) and the regulations adopted under that Act.

(c) *A regulation adopted by the secretary under Sections 403(b) through (i) of the federal Act is a rule for the purposes of this chapter unless the board modifies or rejects the rule.*

The board may not adopt a rule that conflicts with the limitations provided by Sections 403(q) and (r) of the federal Act.

(d) A federal regulation that this section provides as a rule for the purposes of this chapter is effective:

(1) on the date that the regulation becomes effective as a federal regulation; and

(2) whether or not the department has fulfilled the rulemaking provisions of the Administrative Procedure and Texas Register Act (Article 6252–13a, Vernon's Texas Civil Statutes).

(e) [~~(d)~~] If the board modifies or rejects a federal regulation, the board shall comply with the rulemaking provisions of the Administrative Procedure and Texas Register Act (Article 6252–13a, Vernon's Texas Civil Statutes).

SECTION 7. This Act takes effect September 1, 1993.

SECTION 8. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on April 1, 1993, by a viva-voce vote; passed the House on May 21, 1993, by a non-record vote.

Approved June 9, 1993.

Effective Sept. 1, 1993.