

CHAPTER 454

H.B. No. 235

AN ACT

relating to confectionery that contains alcohol of not more than five percent by volume.

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

SECTION 1. Section 10, Texas Food, Drug and Cosmetic Act (Article 4476-5, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 10. A food shall be deemed to be adulterated:

(a)(1) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance the food shall not be considered adulterated under this subdivision if the quantity of the substance in the food does not ordinarily render it injurious to health; or (2)(A) if it bears or contains any added poisonous or added deleterious substance, other than one that is a pesticide chemical in or on a raw agricultural commodity, a food additive, a color additive, or a new animal drug which is unsafe within the meaning of Section 14 of this Act; or (B) if it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of Section 14(a) of this Act, or (C) if it is, or it bears or contains, any food additive which is unsafe within the meaning of Section 14(a) of this Act; provided, that where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under Section 14(a) of this Act, and such raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the residue of such pesticide chemical remaining in or on such processed food shall, notwithstanding the provisions of Section 14 of this Act and Section 409 of the Federal Act, not be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice, and the concentration of such residue in the processed food, when ready to eat, is not greater than the tolerance prescribed for the raw agricultural commodity; or (D) if it is, or it bears or contains, a new animal drug, or a conversion product of a new animal drug, that is unsafe under Section 512 of the Federal Act; or (3) if it consists in whole or in part of a diseased, contaminated, filthy, putrid, or decomposed substance, or if it is otherwise unfit for foods; or (4) if it has been produced, prepared, packed or held under unsanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered diseased, unwholesome, or injurious to health; or (5) if it is, in whole or in part, the product of a diseased animal, an animal which has died otherwise than by slaughter, or an animal that has been fed upon the uncooked offal from a slaughterhouse; or (6) if its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or (7) if it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect in accordance with Section 409 of the Federal Act.

(b)(1) If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or (2) if any substance has been substituted wholly or in part therefor; or (3) if damage or inferiority has been concealed in any manner; or (4) if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength or make it appear better or of greater value than it is; or (5) if it contains saccharin, dulcin, glucin, or other sugar substitutes except in dietary foods, and when so used shall be declared; or (6) if it be fresh meat and it contains any chemical substance containing sulphites, sulphur dioxide, or any other chemical preservative which is not approved by the United States Bureau of Animal Industry or by rules of the board.

(c) If it is, or it bears or contains, a color additive that is unsafe under Section 14(a) of this Act.

(d) If it is confectionery and:

(1) has any nonnutritive object partially or completely imbedded in it; provided, that this subdivision does not apply if, in accordance with rules of the board, the object is of practical, functional value to the confectionery product and would not render the product injurious or hazardous to health;

(2) bears or contains any alcohol, other than alcohol not in excess of *five percent by volume*. *Any confectionery that bears or contains any alcohol in excess of one-half of one percent by volume derived solely from the use of flavoring extracts and less than five percent by volume:*

(A) *may not be sold to persons under the legal age necessary to consume an alcoholic beverage in this state;*

(B) *must be labeled with a conspicuous, readily legible statement that reads, "Sale of this product to a person under the legal age necessary to consume an alcoholic beverage is prohibited";*

(C) *may not be sold in a form containing liquid alcohol such that it is capable of use for beverage purposes as that term is used in the Alcoholic Beverage Code;*

(D) *may not be sold through a vending machine;*

(E) *must be labeled with a conspicuous, readily legible statement that the product contains not more than 5 percent alcohol by volume; and*

(F) *may not be sold in a business establishment which derives less than 50 percent of its gross sales from the sale of confectioneries [~~one-half of one percent (0.5%) by volume derived solely from the use of flavoring extracts~~]; or*

(3) bears or contains any nonnutritive substance; provided, that this subdivision does not apply to a nonnutritive substance that is in or on the confectionery by reason of its use for a practical, functional purpose in the manufacture, packaging, or storage of the confectionery if the use of the substance does not promote deception of the consumer or otherwise result in adulteration or misbranding in violation of this Act; and provided further, that the board may for the purpose of avoiding or resolving uncertainty as to the application of this subdivision, adopt rules allowing or prohibiting the use of particular nonnutritive substances.

SECTION 2. 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, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed by the House on April 7, 1987, by a non-record vote; and that the House concurred in Senate amendments to H.B. No. 235 on May 26, 1987, by a non-record vote. Passed by the Senate, with amendments, on May 23, 1987, by the following vote: Yeas 21, Nays 4.

Approved June 17, 1987.

Effective Aug. 31, 1987, 90 days after date of adjournment.