

By: Buckley, Burrows, González of El Paso,
Bailes, Kitzman, et al.

H.B. No. 1788

Substitute the following for H.B. No. 1788:

By: Klick

C.S.H.B. No. 1788

A BILL TO BE ENTITLED

AN ACT

relating to the labeling of analogue and cell-cultured products.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter D, Chapter 431, Health and Safety Code, is amended by adding Section 431.0805 to read as follows:

Sec. 431.0805. DEFINITIONS. In this subchapter:

(1) "Analogue product" means a food product derived by combining processed plant products, insects, or fungus with food additives to approximate the texture, flavor, appearance, or other aesthetic qualities or the chemical characteristics of any specific type of egg, egg product, fish, meat, meat food product, poultry, or poultry product.

(2) "Cell-cultured product" means a food product derived by harvesting animal cells and artificially replicating those cells in a growth medium in a laboratory to produce tissue.

(3) "Close proximity" means:

(A) immediately before or after the name of the product;

(B) in the line of the label immediately before or after the line containing the name of the product; or

(C) within the same phrase or sentence containing the name of the product.

(4) "Egg" has the meaning assigned by Section 4(g), Egg Products Inspection Act (21 U.S.C. Section 1033(g)). The term

1 does not include an analogue product or a cell-cultured product.

2 (5) "Egg product" has the meaning assigned by Section
3 4(f), Egg Products Inspection Act (21 U.S.C. Section 1033(f)). The
4 term does not include an analogue product or a cell-cultured
5 product.

6 (6) "Fish" has the meaning assigned by Section 403 of
7 the federal Act (21 U.S.C. Section 343(q)(4)(E)). The term does not
8 include an analogue product or a cell-cultured product.

9 (7) "Meat" has the meaning assigned by 9 C.F.R.
10 Section 301.2. The term does not include an analogue product or a
11 cell-cultured product.

12 (8) "Meat food product" has the meaning assigned by
13 Section 1(j), Federal Meat Inspection Act (21 U.S.C. Section
14 601(j)). The term does not include an analogue product or a
15 cell-cultured product.

16 (9) "Poultry" has the meaning assigned by Section
17 4(e), Poultry Products Inspection Act (21 U.S.C. Section 453(e)).
18 The term does not include an analogue product or a cell-cultured
19 product.

20 (10) "Poultry product" has the meaning assigned by
21 Section 4(f), Poultry Products Inspection Act (21 U.S.C. Section
22 453(f)). The term does not include an analogue product or a
23 cell-cultured product.

24 SECTION 2. Section [431.082](#), Health and Safety Code, is
25 amended to read as follows:

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

1 (a) if its labeling is false or misleading in any
2 particular or fails to conform with the requirements of Section
3 431.181;

4 (b) if, in the case of a food to which Section 411 of
5 the federal Act applies, its advertising is false or misleading in a
6 material respect or its labeling is in violation of Section
7 411(b)(2) of the federal Act;

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

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

14 (d-1) if it is an analogue product of meat, a meat food
15 product, poultry, a poultry product, an egg product, or fish,
16 unless its label bears in prominent type equal to or greater in size
17 than the surrounding type and in close proximity to the name of the
18 product one of the following:

19 (1) "analogue";

20 (2) "meatless";

21 (3) "plant-based";

22 (4) "made from plants"; or

23 (5) a similar qualifying term or disclaimer
24 intended to clearly communicate to a consumer the contents of the
25 product;

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

1 (f) if in package form unless it bears a label
2 containing:

3 (1) the name and place of business of the
4 manufacturer, packer, or distributor; and

5 (2) an accurate statement, in a uniform location
6 on the principal display panel of the label, of the quantity of the
7 contents in terms of weight, measure, or numerical count; provided,
8 that under this subsection reasonable variations shall be
9 permitted, and exemptions as to small packages shall be
10 established, by department rules;

11 (g) if any word, statement, or other information
12 required by or under the authority of this chapter to appear on the
13 label or labeling is not prominently placed thereon with such
14 conspicuousness (as compared with other words, statements,
15 designs, or devices in the labeling) and in such terms as to render
16 it likely to be read and understood by the ordinary individual under
17 customary conditions of purchase and use;

18 (h) if it purports to be or is represented as a food
19 for which a definition and standard of identity has been prescribed
20 by federal regulations or department rules as provided by Section
21 [431.245](#), unless:

22 (1) it conforms to such definition and standard;
23 and

24 (2) its label bears the name of the food
25 specified in the definition and standard, and, in so far as may be
26 required by those regulations or rules, the common names of
27 ingredients, other than spices, flavoring, and coloring, present in

1 such food;

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

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

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

15 (j) unless its label bears:

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

17 and

18 (2) in case it is fabricated from two or more
19 ingredients, the common or usual name of each such ingredient, and
20 if the food purports to be a beverage containing vegetable or fruit
21 juice, a statement with appropriate prominence on the information
22 panel of the total percentage of the fruit or vegetable juice
23 contained in the food; except that spices, flavorings, and colors
24 not required to be certified under Section 721(c) of the federal
25 Act, other than those sold as such, may be designated as spices,
26 flavorings, and colors, without naming each; provided that, to the
27 extent that compliance with the requirements of this subdivision is

1 impractical or results in deception or unfair competition,
2 exemptions shall be established by department rules;

3 (k) if it purports to be or is represented for special
4 dietary uses, unless its label bears such information concerning
5 its vitamin, mineral, and other dietary properties as the executive
6 commissioner determines to be, and by rule prescribed, as necessary
7 in order to fully inform purchasers as to its value for such uses;

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

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

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

1 misbranded;

2 (o) if it is a color additive, unless its packaging and
3 labeling are in conformity with the packaging and labeling
4 requirements applicable to the color additive as may be contained
5 in regulations issued under Section 721 of the federal Act;

6 (p) if its packaging or labeling is in violation of an
7 applicable regulation issued under Section 3 or 4 of the federal
8 Poison Prevention Packaging Act of 1970 (15 U.S.C. 1472 or 1473);

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

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

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

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

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

22 (i) derived from any source; and

23 (ii) derived from fat;

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

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

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

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

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

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

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

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

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

27 or

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

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

9 (C) if the secretary determines that a food
10 contains insignificant amounts of all the nutrients required by
11 Subdivision (1) to be listed in the label or labeling of food, the
12 requirements of Subdivision (1) do not apply to the food if the
13 label, labeling, or advertising of the food does not make any claim
14 with respect to the nutritional value of the food, provided that if
15 the secretary determines that a food contains insignificant amounts
16 of more than half the nutrients required by Subdivision (1) to be in
17 the label or labeling of the food, the amounts of those nutrients
18 shall be stated in a simplified form prescribed by the secretary;

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

27 (E) if foods are subject to Section 411 of

1 the federal Act, the foods shall comply with Subdivisions (1) and
2 (2) in a manner prescribed by the rules; and

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

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

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

18 SECTION 3. Subchapter C, Chapter 433, Health and Safety
19 Code, is amended by adding Section 433.0415 to read as follows:

20 Sec. 433.0415. LABELING CELL-CULTURED PRODUCT. (a) In
21 this section:

22 (1) "Cell-cultured product" has the meaning assigned
23 by Section 431.0805.

24 (2) "Close proximity" means:

25 (A) immediately before or after the name of the
26 product;

27 (B) in the line of the label immediately before

1 or after the line containing the name of the product; or

2 (C) within the same phrase or sentence containing
3 the name of the product.

4 (b) A cell-cultured product must be labeled in prominent
5 type equal to or greater in size than the surrounding type and in
6 close proximity to the name of the product using one of the
7 following:

8 (1) "cell-cultured";

9 (2) "lab-grown"; or

10 (3) a similar qualifying term or disclaimer intended
11 to clearly communicate to a consumer the contents of the product.

12 (c) The provisions of this subchapter apply to a
13 cell-cultured product, as applicable.

14 SECTION 4. As soon as practicable after the effective date
15 of this Act, the executive commissioner of the Health and Human
16 Services Commission shall adopt any rules necessary to implement
17 the changes in law made by this Act.

18 SECTION 5. This Act takes effect September 1, 2023.