

By: Guillen

H.B. No. 1199

A BILL TO BE ENTITLED

AN ACT

relating to the presence of lead in confectionery.

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

SECTION 1. Section 431.081, Health and Safety Code, is amended to read as follows:

Sec. 431.081. ADULTERATED FOOD. A food shall be deemed to be adulterated:

(a) if:

(1) 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) it:

(A) 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 431.161; or

(B) is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of Section 431.161(a); or

(C) is, or it bears or contains, any food additive which is unsafe within the meaning of Section 431.161(a);

1 provided, that where a pesticide chemical has been used in or on a
2 raw agricultural commodity in conformity with an exemption granted
3 or a tolerance prescribed under Section 431.161(a), and such raw
4 agricultural commodity has been subjected to processing such as
5 canning, cooking, freezing, dehydrating, or milling, the residue of
6 such pesticide chemical remaining in or on such processed food
7 shall, notwithstanding the provisions of Section 431.161 and
8 Section 409 of the federal Act, not be deemed unsafe if such residue
9 in or on the raw agricultural commodity has been removed to the
10 extent possible in good manufacturing practice, and the
11 concentration of such residue in the processed food, when ready to
12 eat, is not greater than the tolerance prescribed for the raw
13 agricultural commodity; or

14 (D) is, or it bears or contains, a new animal
15 drug, or a conversion product of a new animal drug, that is unsafe
16 under Section 512 of the federal Act; or

17 (3) it consists in whole or in part of a diseased,
18 contaminated, filthy, putrid, or decomposed substance, or if it is
19 otherwise unfit for foods; or

20 (4) it has been produced, prepared, packed or held
21 under unsanitary conditions whereby it may have become contaminated
22 with filth, or whereby it may have been rendered diseased,
23 unwholesome, or injurious to health; or

24 (5) it is, in whole or in part, the product of a
25 diseased animal, an animal which has died otherwise than by
26 slaughter, or an animal that has been fed upon the uncooked offal
27 from a slaughterhouse; or

1 (6) its container is composed, in whole or in part, of
2 any poisonous or deleterious substance which may render the
3 contents injurious to health; or

4 (7) it has been intentionally subjected to radiation,
5 unless the use of the radiation was in conformity with a regulation
6 or exemption in effect in accordance with Section 409 of the federal
7 Act;

8 (b) if:

9 (1) any valuable constituent has been in whole or in
10 part omitted or abstracted therefrom; or

11 (2) any substance has been substituted wholly or in
12 part therefor; or

13 (3) damage or inferiority has been concealed in any
14 manner; or

15 (4) any substance has been added thereto or mixed or
16 packed therewith so as to increase its bulk or weight, or reduce its
17 quality or strength or make it appear better or of greater value
18 than it is; or

19 (5) it contains saccharin, dulcin, glucin, or other
20 sugar substitutes except in dietary foods, and when so used shall be
21 declared; or

22 (6) it be fresh meat and it contains any chemical
23 substance containing sulphites, sulphur dioxide, or any other
24 chemical preservative which is not approved by the United States
25 Department of Agriculture, the Animal Plant Health Inspection
26 Service (A.P.H.I.S.) or by rules of the board;

27 (c) if it is, or it bears or contains, a color additive that

1 is unsafe under Section 431.161(a); or

2 (d) if it is confectionery and:

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

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

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

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

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

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

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

26 (F) may not be sold in a business establishment
27 which derives less than 50 percent of its gross sales from the sale

1 of confectioneries; [~~or~~]

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

13 (4) bears or contains lead in a concentration of 0.2
14 parts per million or more.

15 SECTION 2. This Act takes effect September 1, 2005.