

By: Price

H.B. No. 2217

A BILL TO BE ENTITLED

AN ACT

relating to the misbranding of certain food.

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 431.080 to read as follows:

Sec. 431.080. DEFINITIONS. In this subchapter:

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

(2) "Egg product" has the meaning assigned by Section 4(f), Egg Products Inspection Act (21 U.S.C. Section 1033(f)).

(3) "Fish" has the meaning assigned by Section 403 of the federal Act (21 U.S.C. Section 343(g)(4)(E)).

(4) "Meat food product" has the meaning assigned by Section 1(j), Federal Meat Inspection Act (21 U.S.C. Section 601(j)).

(5) "Poultry" has the meaning assigned by Section 4(e), Poultry Products Inspection Act (21 U.S.C. Section 453(e)).

(6) "Poultry product" has the meaning assigned by Section 4(f), Poultry Products Inspection Act (21 U.S.C. Section 453(f)).

SECTION 2. 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:

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, including  
11 any food that approximates the texture, flavor, appearance, or  
12 other aesthetic qualities of or the chemical characteristics of any  
13 specific type of poultry or poultry product, meat or meat food  
14 product, egg or egg product, or fish, unless the food's ~~its~~ label  
15 bears, in prominent type of uniform size, as applicable:

16 (1) the word "imitation" [~~and~~] immediately  
17 followed by ~~thereafter~~ the name of the food imitated;

18 (2) "This product does not contain animal  
19 protein";

20 (3) the word "meatless";

21 (4) the words "meat free"; or

22 (5) the words "egg free";

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

25 (f) if in package form unless it bears a label  
26 containing:

27 (1) the name and place of business of the

1 manufacturer, packer, or distributor; and

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

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

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

19                   (1) it conforms to such definition and standard;  
20 and

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

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

27                   (1) a food for which a standard of quality has

1 been prescribed by federal regulations or department rules as  
2 provided by Section 431.245, and its quality falls below such  
3 standard unless its label bears, in such manner and form as those  
4 regulations or rules specify, a statement that it falls below such  
5 standard; [~~or~~]

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

12 (3) poultry or a poultry product, meat or a meat  
13 food product, egg or an egg product, or fish but does not contain  
14 poultry, meat, egg, or fish; or

15 (4) a food for which a standard of identity has  
16 been prescribed by federal regulations if the food does not meet the  
17 standard of identity;

18 (j) unless its label bears:

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

20 and

21 (2) in case it is fabricated from two or more  
22 ingredients, the common or usual name of each such ingredient, and  
23 if the food purports to be a beverage containing vegetable or fruit  
24 juice, a statement with appropriate prominence on the information  
25 panel of the total percentage of the fruit or vegetable juice  
26 contained in the food; except that spices, flavorings, and colors  
27 not required to be certified under Section 721(c) of the federal

1 Act, other than those sold as such, may be designated as spices,  
2 flavorings, and colors, without naming each; provided that, to the  
3 extent that compliance with the requirements of this subdivision is  
4 impractical or results in deception or unfair competition,  
5 exemptions shall be established by department rules;

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

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

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

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

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

9           (p) if its packaging or labeling is in violation of an  
10 applicable regulation issued under Section 3 or 4 of the federal  
11 Poison Prevention Packaging Act of 1970 (15 U.S.C. Section 1472 or  
12 1473);

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

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

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

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

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

26                           (i) derived from any source; and

27                           (ii) derived from fat;

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

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

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

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

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

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

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

27 (iii) that is an infant formula

1 subject to Section 412 of the federal Act;

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

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

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

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

23 (D) if a person offers food for sale and has  
24 annual gross sales made or business done in sales to consumers that  
25 is not more than \$500,000 or has annual gross sales made or business  
26 done in sales of food to consumers that is not more than \$50,000,  
27 the requirements of this subsection do not apply to food sold by



1 that person to consumers unless the label or labeling of food  
2 offered by that person provides nutrition information or makes a  
3 nutrition claim;

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

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

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

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

22 SECTION 3. As soon as practicable after the effective date  
23 of this Act, the executive commissioner of the Health and Human  
24 Services Commission shall adopt rules as necessary to implement the  
25 changes in law made by this Act to Section [431.082](#), Health and  
26 Safety Code.

27 SECTION 4. This Act takes effect September 1, 2021.