

House Substitute for SENATE BILL No. 261

By Committee on Agriculture

3-17

1 AN ACT concerning agriculture; relating to the labeling of certain foods;
2 prohibiting the use of identifiable meat terms on labels of meat analogs
3 without use of proper qualifying language; amending K.S.A. 65-656
4 and 65-665 and repealing the existing sections.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 65-656 is hereby amended to read as follows: 65-
8 656. For the purpose of this act:

9 (a) "Secretary" means the secretary of agriculture or the secretary's
10 authorized representatives.

11 (b) "Person" means an individual, partnership, governmental entity,
12 corporation, or association of persons.

13 (c) "Food" means: (1) Articles used for food or drink for humans or
14 other animals; (2) chewing gum; and (3) articles used for components of
15 any such article.

16 (d) "Drug" means: (1) Articles recognized in the official United States
17 pharmacopoeia, official homeopathic pharmacopoeia of the United States,
18 or official national formulary, or any supplement to any of them; (2)
19 articles intended for use in diagnosis, cure, mitigation, treatment or
20 prevention of disease in humans or other animals; (3) articles, other than
21 food, intended to affect the structure or any function of the body of
22 humans or other animals; and (4) articles intended for use as a component
23 of any article specified in paragraph (1), (2); or (3); but does not include
24 devices or their components, parts or accessories. The term "drug" ~~shall~~
25 *does* not include amygdalin (laetrile).

26 (e) "Device," except as used in ~~subsection (j) of K.S.A. 65-657(j),~~
27 ~~subsection (f) of K.S.A. 65-665(f), subsections (e) and (o) of K.S.A. 65-~~
28 ~~669;(c) and (o) and subsection (e) of K.S.A. 65-671(c),~~ and amendments
29 thereto, means instruments, apparatus and contrivances, including their
30 components, parts and accessories, intended for use in the diagnosis, cure,
31 mitigation, treatment; or prevention of disease in humans or other animals
32 or to affect the structure or any function of the body of humans or other
33 animals.

34 (f) "Cosmetic" means: (1) Articles intended to be rubbed, poured,
35 sprinkled, or sprayed on, introduced into, or otherwise applied to the
36 human body or any part thereof for cleaning, beautifying, promoting

1 attractiveness or altering appearance; and (2) articles intended for use as a
2 component of any such articles, except that such term ~~shall~~ *does* not
3 include soap.

4 (g) "Official compendium" means the official United States
5 pharmacopoeia, official homeopathic pharmacopoeia of the United States,
6 official national formulary or any supplement to any of them.

7 (h) "Label" means a display of written, printed or graphic matter upon
8 the immediate container of any article; and a requirement made by or
9 under authority of this act that any word, statement, or other information
10 appearing on the label shall not be considered to be complied with unless
11 such word, statement, or other information also appears on the outside
12 container or wrapper, if any ~~there be~~, of the retail package of such article,
13 or is easily legible through the outside container or wrapper.

14 (i) "Immediate container" does not include package liners.

15 (j) "Labeling" means all labels and other written, printed or graphic
16 matter upon an article or any of its containers or wrappers or
17 accompanying such article.

18 (k) "Advertisement" means all representations disseminated in any
19 manner or by any means other than by labeling, for the purpose of
20 inducing, or ~~which~~ *that* are likely to induce, directly or indirectly, the
21 purchase of food, drugs, devices or cosmetics.

22 (l) "New drug" means: (1) Any drug the composition of which is such
23 that such drug is not generally recognized, among experts qualified by
24 scientific training and experience to evaluate the safety and effectiveness
25 of drugs, as safe and effective for use under the conditions prescribed,
26 recommended; or suggested in the labeling thereof; or (2) any drug the
27 composition of which is such that such drug, as a result of investigations to
28 determine its safety and effectiveness for use under such conditions, has
29 become so recognized, but ~~which~~ *that* has not, otherwise than in such
30 investigations, been used to a material extent or for a material time under
31 such conditions. The term "new drug" ~~shall~~ *does* not include amygdalin
32 (laetrile).

33 (m) "Contaminated with filth" applies to any food, drug, device or
34 cosmetic not securely protected from dust, dirt, and as far as may be
35 necessary by all reasonable means, from all foreign or injurious
36 contaminations.

37 (n) "Pesticide chemical" means any substance ~~which~~ *that*, alone, in
38 chemical combination, or in formulation with one or more other
39 substances is a "pesticide" within the meaning of the agricultural
40 chemicals act, K.S.A. 2-2202, and amendments thereto, and ~~which~~ *that* is
41 used in the production, storage or transportation of raw agricultural
42 commodities.

43 (o) "Raw agricultural commodity" means any food in its raw or

1 natural state, including all fruits that are washed, colored; or otherwise
2 treated in their unpeeled natural form prior to marketing.

3 (p) "Food additive" means any substance, the intended use of which
4 results or may be reasonably expected to result, directly or indirectly, in its
5 becoming a component or otherwise affecting the characteristics of any
6 food, including any substance intended for use in producing,
7 manufacturing, packing, processing, preparing, treating, packaging,
8 transporting; or holding food; ~~and including.~~ "Food additive" includes any
9 source of radiation intended for any such use, if such substance is not
10 generally recognized, among experts qualified by scientific training and
11 experience to evaluate its safety, as having been adequately shown through
12 scientific procedures, or, in the case of a substance used in a food prior to
13 January 1, 1958, through either scientific procedures or experience based
14 on common use in food, to be safe under the conditions of its intended use.
15 "Food additive" does not include: (1) A pesticide chemical in or on a raw
16 agricultural commodity; (2) a pesticide chemical to the extent that it is
17 intended for use or is used in the production, storage; or transportation of
18 any raw agricultural commodity; (3) a color additive; or (4) any substance
19 used in accordance with a sanction or approval granted prior to the
20 enactment of the food additive amendment of 1958, pursuant to the federal
21 act.

22 (q) (1) "Color additive" means a material ~~which~~ *that*: (A) Is a dye,
23 pigment; or other substance made by a process of synthesis or similar
24 artifice, or extracted, isolated; or otherwise derived, with or without
25 intermediate or final change of identity from a vegetable, animal, mineral;
26 or other source; or (B) when added or applied to a food, drug or cosmetic,
27 or to the human body or any part thereof, is capable, alone or through
28 reaction with another substance, of imparting color thereto; except that
29 such term does not include any material which has been or hereafter is
30 exempted under the federal act.

31 (2) The term "color" includes black, white and intermediate grays.

32 (3) Nothing in this subsection shall be construed to apply to any
33 pesticide chemical, soil or plant nutrient, or other agricultural chemical
34 solely because of its effect in aiding, retarding or otherwise affecting,
35 directly or indirectly, the growth or other natural physiological process of
36 produce of the soil and thereby affecting its color, whether before or after
37 harvest.

38 (r) "Imitation" means, *except for imitation food as provided in K.S.A.*
39 *65-665, and amendments thereto,* any article made in the semblance of
40 another, consisting of similar or dissimilar ingredients and being capable
41 of being substituted for the imitated article without the knowledge of the
42 consumer.

43 (s) "Federal act" means the federal food, drug and cosmetic act, ~~title~~

1 21 U.S.C. § 301 et seq.; ~~52 Stat. 1040 et seq.~~

2 (t) "Department" means the Kansas department of agriculture.

3 (u) "Distribution" means the provision of food, drug, cosmetic or
4 device to another person and includes selling, offering for sale, giving,
5 supplying, transporting, applying and dispensing.

6 (v) "Food establishment" means any place in which food is prepared,
7 served or offered for sale or service on the premises or elsewhere. "Food
8 establishment" does not include roadside markets that offer only whole
9 fresh fruits, nuts and vegetables for sale. "Food establishment" includes,
10 but is not limited to:

11 (1) Eating or drinking establishments, fixed or mobile restaurants,
12 coffee shops, cafeterias, short-order cafes, luncheonettes, tea rooms, grills,
13 sandwich shops, soda fountains, taverns, private clubs, roadside stands,
14 industrial-feeding establishments, catering kitchens, commissaries and any
15 other private, public or nonprofit organizations routinely serving food; and

16 (2) grocery stores, convenience stores, bakeries and locations where
17 food is provided for the public with or without charge.

18 (w) "Food processing plant" means a commercial operation that
19 processes or stores food for human consumption and provides food for
20 distribution to other business entities at other locations, including other
21 food processing plants and food establishments. "Food processing plant"
22 does not include any operation or individual beekeeper that produces and
23 distributes honey to other business entities if the producer does not process
24 the honey beyond extraction from the comb.

25 (x) "Food vending machine" means any self-service device, ~~which~~
26 *that*, upon payment, dispenses unit servings of food, either in bulk or in
27 packages. Such device shall not necessitate replenishing between each
28 vending operation. "Food vending machine" does not include any vending
29 machine dispensing only canned or bottled soft drinks or prepackaged
30 food that does not require temperature control for safety.

31 (y) "Food vending machine company" means any person in the
32 business of operating and servicing food vending machines.

33 (z) "Location" means a physical address, or absent an address, the
34 geographical area within 300 feet of a food establishment or food
35 processing plant. In the case of a mobile food establishment housed in a
36 trailer, such trailer shall be considered a food establishment with its own
37 location. In the case of a mobile food establishment that is not housed in a
38 trailer, the equipment used for storage, preparation or offering of food shall
39 be considered a food establishment with its own location.

40 (aa) "Municipality" means any city or county of this state.

41 (bb) "Processing" means the handling of a food, drug, cosmetic or
42 device, including the production, manufacturing, packaging, packing and
43 labeling of such item.

1 (cc) "Sample" means a small quantity of food and does not include a
2 meal or entree.

3 (dd) "Storage" means holding for distribution or processing.

4 (ee) *"Meat analog" means any food that approximates the aesthetic*
5 *qualities, primarily texture, flavor and appearance, or the chemical*
6 *characteristics of any specific type of meat, meat food product, poultry*
7 *product or poultry food product, but does not contain any meat, meat food*
8 *product, poultry product or poultry food product.*

9 (ff) *"Identifiable meat term" includes, but is not limited to, terms such*
10 *as meat, beef, pork, poultry, chicken, turkey, lamb, goat, jerky, steak,*
11 *hamburger, burger, ribs, roast, bacon, bratwurst, hot dog, ham, sausage,*
12 *tenderloin, wings, breast and other terms for food that contain any meat,*
13 *meat food product, poultry product or poultry food product.*

14 (gg) *"Meat" means the same as provided in 9 C.F.R. § 301.2, as in*
15 *effect on January 1, 2022.*

16 (hh) *"Meat food product" means the same as provided in 9 C.F.R. §*
17 *301.2, as in effect on January 1, 2022.*

18 (ii) *"Poultry product" means the same as provided in 9 C.F.R. §*
19 *381.1, as in effect on January 1, 2022.*

20 (jj) *"Poultry food product" means the same as provided in 9 C.F.R. §*
21 *381.1, as in effect on January 1, 2022.*

22 (kk) *"Close proximity to the identifiable meat term" means:*

23 (1) *Immediately before or after the identifiable meat term;*

24 (2) *in the same line of the label containing the identifiable meat term;*

25 (3) *in the line of the label that is immediately preceding or*
26 *subsequent to the line containing the identifiable meat term; or*

27 (4) *within the same phrase or sentence that uses the identifiable meat*
28 *term.*

29 Sec. 2. K.S.A. 65-665 is hereby amended to read as follows: 65-665.
30 A food shall be deemed to be misbranded:

31 (a) If its labeling is false or misleading in any particular.

32 (b) If it is offered for sale under the name of another food.

33 (c) If it is an imitation of another food, unless its label bears, in type
34 of uniform size and prominence, the word; "imitation;" and, immediately
35 thereafter, the name of the food imitated. *For the purposes of this section,*
36 *"imitation" means the same as provided in 21 C.F.R. § 101.3(e), as in*
37 *effect on January 1, 2022. In such definition, references to section 403(c)*
38 *of the federal food, drug, and cosmetic act mean this subsection (c), and*
39 *references to the commissioner mean the Kansas secretary of agriculture.*

40 (d) If its container is so made, formed; or filled as to be misleading.

41 (e) If in package form, unless it bears a label containing: (1) The
42 name and place of business of the manufacturer, packer; or distributor; *and*
43 (2) an accurate statement of the quantity of the contents in terms of weight,

1 measure; or numerical count. Reasonable variations shall be permitted, and
2 exemptions as to small packages shall be established, by rules and
3 regulations prescribed by the secretary of agriculture.

4 (f) If any word, statement; or other information required by or under
5 authority of this act to appear on the label or labeling is not prominently
6 placed thereon with such conspicuousness—(, as compared with other
7 words, statements, designs; or devices, in the labeling), and in such terms
8 as to render it likely to be read and understood by the ordinary individual
9 under customary conditions of purchase and use.

10 (g) If it purports to be or is represented as a food for which a
11 definition and standard of identity has been prescribed by regulations as
12 provided by K.S.A. 65-663,~~as amended and amendments thereto~~, unless:
13 (1) It conforms to such definition and standard; and (2) its label bears the
14 name of the food specified in the definition and standard, and insofar as
15 may be required by such regulations, the common names of optional
16 ingredients—(, other than spices, flavoring; and coloring), present in such
17 food.

18 (h) If it purports to be or is represented as: (1) A food for which a
19 standard of quality has been prescribed by regulations as provided in
20 K.S.A. 65-663,~~as amended and amendments thereto~~, and its quality falls
21 below such standard unless its label bears, in such manner and form as
22 such regulations specify, a statement that it falls below such standard; or
23 (2) a food for which a standard or standards of fill of container has been
24 prescribed by regulations as provided by K.S.A. 65-663,~~as amended and~~
25 ~~amendments thereto~~, and it falls below the standard of fill of container
26 applicable thereto, unless its label bears, in such manner and form as such
27 regulations specify a statement that it falls below such standard.

28 (i) If it is not subject to the provisions of ~~paragraph subsection (g) of~~
29 ~~this section~~, unless it bears labeling clearly giving: (1) The common or
30 usual name of the food, if any ~~there be~~; and (2) in case it is fabricated
31 from two or more ingredients, the common or usual name of each such
32 ingredient; except that spices, flavorings; and colorings, other than those
33 sold as such, may be designated as spices, flavorings; and colorings,
34 without naming each. Except that to the extent that compliance with the
35 requirements of ~~clause paragraph (2) of this paragraph~~ is impractical or
36 results in deception or unfair competition, exemptions shall be established
37 by rules and regulations promulgated by the secretary.

38 (j) If it purports to be or is represented for special dietary uses, unless
39 its label bears such information concerning its vitamin, mineral; and other
40 dietary properties as the secretary determines to be, and by regulations
41 prescribes, as necessary, in order to fully inform purchasers as to its value
42 for such uses.

43 (k) If it bears or contains any artificial flavoring, artificial coloring; or

1 chemical preservatives, unless it bears labeling stating that fact. Except
2 that to the extent that compliance with the requirements of this ~~paragraph~~
3 *subsection* is impracticable, exemptions shall be established by rules and
4 regulations promulgated by the secretary.

5 (l) If it is a product intended as an ingredient of another food and
6 when used according to the directions of the purveyor will result in the
7 final food product being adulterated or misbranded.

8 (m) *If it is a meat analog and: (1) Its labeling utilizes an identifiable*
9 *meat term; and (2) the labeling does not have a disclaimer in the same*
10 *font, style and size, in close proximity to the identifiable meat term, stating*
11 *one of the following: (A) "This product does not contain meat"; (B)*
12 *"meatless"; (C) "meat-free"; (D) "vegan"; (E) "veggie"; (F) "vegetarian";*
13 *(G) "vegetable"; (H) "plant-based"; or (I) a disclaimer equivalent to (A)*
14 *through (H), as determined by the secretary through rules and regulations.*
15 *The provisions of this subsection shall not apply to a menu or menu board*
16 *or to food that can be defined as "imitation" under subsection (c) and*
17 *complies with the provisions of such subsection.*

18 *If any provision of this section is held to be invalid or unconstitutional,*
19 *it shall be conclusively presumed that the legislature would have enacted*
20 *the remainder of this section without such invalid or unconstitutional*
21 *provision.*

22 Sec. 3. K.S.A. 65-656 and 65-665 are hereby repealed.

23 Sec. 4. This act shall take effect and be in force from and after its
24 publication in the statute book.