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S.B. NO. 258

A Bill for an Act Relating to Food, Drugs, and Cosmetics.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 328-10, Hawaii Revised Statutes, is amended to read as follows:

“§328-10 Foods deemed misbranded when. A food shall be deemed to be misbranded:

- (1) If its labeling is false or misleading in any particular; or if its labeling or packaging fails to conform with the requirements of sections 328-2 and 328-19.1;
- (2) If it is offered for sale under the name of another food;
- (3) If it is an imitation of another food for which a definition and standard of identity has been prescribed by [regulation] rules as provided by section 328-8; or if it is an imitation of another food that is not subject to paragraph (7) [of this section], unless its label bears in type of uniform size and prominence, the word “imitation” and, immediately thereafter, the name of the food imitated;
- (4) If its container is so made, formed, or filled as to be misleading;
- (5) If in package form, unless it bears a label containing (A) the name and place of business of the manufacturer, packer, or distributor; (B) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count, which statement shall be separately and accurately stated in a uniform location upon the principal display panel of the label; provided that under [clause] subparagraph (B) [of this paragraph] reasonable variations shall be permitted, and exemptions as to small packages shall be established, by [regulations prescribed] rules adopted by the department of health;
- (6) If any word, statement, or other information required by or under authority of this part to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;
- (7) If it purports to be or is represented as a food for which a definition and standard of identity have been prescribed by [regulations] rules as provided by section 328-8, unless (A) it conforms to such definition and standard, and (B) its label bears the name of the food specified in the definition and standards, and, insofar as may be required by the [regulations,] rules, the common names of optional ingredients (other than spices, flavoring, and coloring) present in the food;
- (8) If it purports to be or is represented as:

- (A) A food for which a standard of quality has been prescribed by [regulations] rules as provided by section 328-8 and its quality falls below such standard unless its label bears, in such manner and form as the [regulations] rules specify, a statement that it falls below such standard; or
 - (B) A food for which a standard or standards of fill of container have been prescribed by [regulation] rules as provided by section 328-8, and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as the [regulations] rules specify, a statement that it falls below such standard;
- (9) If it is not subject to paragraph (7) [of this section], unless its label bears (A) the common or usual name of the food, if any there be, and (B) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings, without naming each; provided that to the extent that compliance with the requirements of [clause] subparagraph (B) [of this paragraph] is impractical or results in deception or unfair competition, exemptions shall be established by [regulations] rules prescribed by the department; and, provided further that the requirements of [clause] subparagraph (B) shall not apply to food products which are packaged at the direction of purchasers at retail at the time of sale, the ingredients of which are disclosed to the purchasers by other means in accordance with [regulations] rules prescribed by the department;
- (10) If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the department determines to be, and by [regulations] rules prescribes, as necessary in order to fully inform purchasers as to its value for such uses;
- (11) If it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact; provided that to the extent that compliance with the requirements of this paragraph is impracticable, exemptions shall be established by [regulations] rules prescribed by the department; and, provided further that this paragraph and paragraphs (7) and (9) [of this section] with respect to artificial coloring shall not apply in the case of butter, cheese, or ice cream. The provisions of this paragraph regarding chemical preservatives shall not apply to a pesticide chemical when used in or on a raw agricultural commodity which is the produce of the soil;
- (12) If it is a product intended as an ingredient of another food and, when used according to the directions of the purveyor, will result in the final food product being adulterated or misbranded;
- (13) If it is a color additive unless its packaging and labeling are in conformity with the packaging and labeling requirements applicable to the color additive prescribed under the Federal Act;
- (14) If it is a raw agricultural commodity which is the produce of the soil, bearing or containing a pesticide chemical applied after harvest, unless the shipping container of such commodity bears labeling which declares the presence of such chemical in or on such commodity and the common or usual name and the function of such chemical; provided that no such declaration shall be

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required while such commodity, having been removed from the shipping container, is being held or displayed for sale at retail out of such container in accordance with the custom of the trade.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 29, 1987.)