

As Amended by House Committee

Session of 2020

HOUSE BILL No. 2437

By Representative Highland

1-10

1 AN ACT concerning agriculture; relating to the labeling of certain foods;  
2 prohibiting the use of identifiable meat terms on labels ~~or in~~  
3 ~~advertisements~~ of meat analogs without use of proper qualifying  
4 language; amending K.S.A. 65-656 and 65-665 and repealing the  
5 existing sections.  
6

7 *Be it enacted by the Legislature of the State of Kansas:*

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

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

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

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

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

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

35 (f) "Cosmetic" means: (1) Articles intended to be rubbed, poured,  
36 sprinkled, or sprayed on, introduced into, or otherwise applied to the

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

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

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

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

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

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

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

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

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

1 (o) "Raw agricultural commodity" means any food in its raw or  
2 natural state, including all fruits that are washed, colored; or otherwise  
3 treated in their unpeeled natural form prior to marketing.

4 (p) "Food additive" means any substance, the intended use of which  
5 results or may be reasonably expected to result, directly or indirectly, in its  
6 becoming a component or otherwise affecting the characteristics of any  
7 food, including any substance intended for use in producing,  
8 manufacturing, packing, processing, preparing, treating, packaging,  
9 transporting; or holding food; and including any source of radiation  
10 intended for any such use, if such substance is not generally recognized,  
11 among experts qualified by scientific training and experience to evaluate  
12 its safety, as having been adequately shown through scientific procedures,  
13 or, in the case of a substance used in a food prior to January 1, 1958,  
14 through either scientific procedures or experience based on common use in  
15 food, to be safe under the conditions of its intended use. "Food additive"  
16 does not include: (1) A pesticide chemical in or on a raw agricultural  
17 commodity; (2) a pesticide chemical to the extent that it is intended for use  
18 or is used in the production, storage; or transportation of any raw  
19 agricultural commodity; (3) a color additive; or (4) any substance used in  
20 accordance with a sanction or approval granted prior to the enactment of  
21 the food additive amendment of 1958, pursuant to the federal 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, 2020.*

16 (hh) *"Meat food product" means the same as provided in 9 C.F.R. §*  
17 *301.2, as in effect on January 1, 2020.*

18 (ii) *"Poultry product" means the same as provided in 9 C.F.R. §*  
19 *381.1, as in effect on January 1, 2020.*

20 (jj) *"Poultry food product" means the same as provided in 9 C.F.R. §*  
21 *381.1, as in effect on January 1, 2020.*

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

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

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

26 (c) If it is an imitation of another food, unless its label bears, in type  
27 of uniform size and prominence, the word, imitation, and, immediately  
28 thereafter, the name of the food imitated. *For the purposes of this section,*  
29 *"imitation" means the same as provided in 21 C.F.R. § 101.3(e), as in*  
30 *effect on January 1, 2020. In such definition, references to section 403(c)*  
31 *of the federal food, drug, and cosmetic act means this subsection (c), and*  
32 *references to the commissioner means the Kansas secretary of agriculture.*

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

34 (e) If in package form, unless it bears a label containing: (1) The  
35 name and place of business of the manufacturer, packer; or distributor; (2)  
36 an accurate statement of the quantity of the contents in terms of weight,  
37 measure; or numerical count. Reasonable variations shall be permitted, and  
38 exemptions as to small packages shall be established, by rules and  
39 regulations prescribed by the secretary of agriculture.

40 (f) If any word, statement; or other information required by or under  
41 authority of this act to appear on the label or labeling is not prominently  
42 placed thereon with such conspicuousness—(, as compared with other  
43 words, statements, designs; or devices, in the labeling), and in such terms

1 as to render it likely to be read and understood by the ordinary individual  
2 under customary conditions of purchase and use.

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

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

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

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

36 (k) If it bears or contains any artificial flavoring, artificial coloring; or  
37 chemical preservatives, unless it bears labeling stating that fact. Except  
38 that to the extent that compliance with the requirements of this ~~paragraph~~  
39 ~~subsection~~ is impracticable, exemptions shall be established by rules and  
40 regulations promulgated by the secretary.

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

1       (m) *If it is a meat analog and: (1) Its labeling~~—or—advertisement~~*  
2 *utilizes an identifiable meat term; and (2) the labeling~~—or—advertisement~~*  
3 *does not have a disclaimer in the same font, style and size, immediately*  
4 *before or after the identifiable meat term, stating **one of the following:***  
5 ***(A) "This product does not contain meat"; (B) "meatless"; or (C) "meat-***  
6 ***free."** The provisions of this subsection shall not apply to a **menu or menu***  
7 ***board or to food that can be defined as "imitation" under subsection (c)***  
8 *and is in compliance with the provisions of such subsection.*

9       (n) *If any provision of this section is held to be invalid or*  
10 *unconstitutional, it shall be conclusively presumed that the legislature*  
11 *would have enacted the remainder of this section without such invalid or*  
12 *unconstitutional provision.*

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

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