WEST VIRGINIA CODE: §19-39-2

§19-39-2. Misbranded food.

(a) A food product is misbranded:

(1) If its labeling is false or misleading in any manner, or fails to otherwise conform with the requirements of this article;

(2) If, in the case of a food product to which 21 U.S.C. §343 applies, its advertising is false or misleading in a material respect or its labeling is in violation of 21 U.S.C. §343;

(2) If it is offered for sale under the name of a food;

(3) If it is an imitation of a food, unless its label bears, in prominent type, the word "imitation" and immediately before or after the name of the food imitated;

(4) If it is an analogue product, unless its label bears in prominent type immediately before or after the name of the product one of the following:

(A) "Analogue";

(B) "Meatless";

(C) "Plant-based";

(D) "Made from plants"; or

(E) A similar, accurate qualifying term or disclaimer intended to clearly communicate to a consumer the contents of the product;

(5) If it is a cell-cultured product, unless its label bears in prominent type immediately before or after the name of the product using one of the following:

(A) "Cell-cultured";

(B) "Lab-grown"; or

(C) A similar, accurate qualifying term or disclaimer intended to clearly communicate to a consumer the contents of the product;

(6) If its container is made, formed, or filled in a manner that is misleading;

(7) If in package form, unless it bears a label containing:

(A) The name and place of business of the manufacturer, packer, or distributor; and

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(B) An accurate statement, located on the principal display panel of the label, of the quantity of the contents in terms of weight, measure, or numerical count: *Provided*, That under this subsection, reasonable variations may be permitted and exemptions as to small packages may be established by rule;

(8) If any word, statement, or other information required by or under the authority of this chapter to appear on the label or labeling is not prominently placed on the label or labeling 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;

(9) If it purports to be or is represented as a food or food product for which a definition and standard of identity has been prescribed by federal law or as otherwise provided by this chapter, unless:

(A) It conforms to such definition and standard; and

(B) Its label bears the name of the food or food product specified in the definition and standard, and, in so far as may be required by those regulations or rules, the common names of ingredients, other than spices, flavoring, and coloring, present in such food or food product;

(10) If it purports to be or is represented as:

(A) A food or food product for which a standard of quality has been prescribed by federal regulations or department rules as provided under this chapter, and its quality falls below such standard unless its label bears, in such manner and form as those regulations or rules specify, a statement that it falls below such standard; or

(B) A food or food product for which a standard or standards of fill of container have been prescribed by federal regulations or department rules, and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as those regulations or rules specify, a statement that it falls below such standard;

(11) Unless its label bears:

(A) The common or usual name of the food product, if any, and

(B) In case it is fabricated from two or more ingredients, the common or usual name of each such ingredient, and if the food product purports to be a beverage containing vegetable or fruit juice, a statement with appropriate prominence on the information panel of the total percentage of the fruit or vegetable juice contained in the food; except that spices, flavorings, and colors not required to be certified under 21 U.S.C. §379e, other than those sold as such, may be designated as spices, flavorings, and colors, without naming each: *Provided*, That to the extent that compliance with the requirements of this paragraph is impractical or results in deception or unfair competition, exemptions shall be established by

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department rules;

(12) 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 commissioner determines to be, and by rule prescribed, as necessary in order to fully inform purchasers as to its value for such uses;

(13) 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 subdivision is impracticable, exemptions shall be established by department rules. The provisions of this subdivision, §29-39-2(9) of this code, and §29-39-2(11) of this code with respect to artificial coloring do not apply in the case of butter, cheese, and ice cream;

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

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

(16) 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 as may be contained in regulations issued under 21 U.S.C. §379e;

(17) If its packaging or labeling is in violation of an applicable regulation issued under 15 U.S.C. §1472 and 15 U.S.C. §1473, the Poison Prevention Packaging Act of 1970;

(18) If it is a food product intended for human consumption and is offered for sale, unless its label or labeling bears nutrition information that provides:

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

(B) If the use of the food product is not typically expressed in a serving size, the common household unit of measure that expresses the serving size of the food product;

(C) The number of servings or other units of measure per container;

(D) The total number of calories in each serving size or other unit of measure that are:

(i) Derived from any source; and

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(ii) Derived from fat;

(E) The amount of total fat, saturated fat, cholesterol, sodium, total carbohydrates, complex carbohydrates, sugar, dietary fiber, and total protein contained in each serving size or other unit of measure; and

(F) Any vitamin, mineral, or other nutrient required to be placed on the label and labeling of food or food product under 21 U.S.C. §343; or

(G) If it is a food product distributed at retail in bulk display cases, or a food product received in bulk containers, unless it has nutrition labeling prescribed by the commissioner; and

(H) If the commissioner determines it is necessary, nutrition labeling will be mandatory for raw fruits, vegetables, and fish, including freshwater or marine finfish, crustaceans, mollusks including shellfish, amphibians, and other forms of aquatic animal life;

(22) If it is a food product intended for human consumption and is offered for sale, and a claim is made on the label, labeling, or retail display relating to the nutrient content or a nutritional quality of the food product to a specific disease or condition of the human body, except as permitted by 21 U.S.C. §360ee; or

(23) If it is a food product intended for human consumption and its label, labeling, and retail display do not comply with the requirements of 21 U.S.C. §360ee pertaining to nutrient content and health claims.

(b) The provisions of §29-39-2(a)(18) of this code do not apply to a food product:

(1) That is served in restaurants or other establishments in which food or food product is served for immediate human consumption or that is sold for sale or use in those establishments;

(2) That is processed and prepared primarily in a retail establishment, that is ready for human consumption, that is of the type described in subdivision (1) of this subsection, that is offered for sale to consumers but not for immediate human consumption in the establishment, and that is not offered for sale outside the establishment;

(3) That is an infant formula subject to 21 U.S.C. §350a;

(4) That is a medical food as defined in 21 U.S.C. §360ee;

(5) If the commissioner determines by rule that compliance with §29-39-29(a)(18) of this code is impracticable because the package of the food product is too small to comply with the requirements of that subdivision and if the label of that food product does not contain any nutrition information;

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(6) If the commissioner determines that a food product contains insignificant amounts of all the nutrients required by §19-39-2(18) of this code to be listed on the label or labeling of food products as long as the label, labeling, or advertising of the food product does not make any claim with respect to the nutritional value of the food product: *Provided*, That if the commissioner determines that a food product contains insignificant amounts of more than half the nutrients required by §19-39-2(18) of this code to be in the label or labeling of the food product, the amounts of those nutrients shall be stated in a simplified form prescribed by the commissioner; or

(7) If a food product is sold by a food distributor, as long as the food distributor principally sells the food product to restaurants or other establishments in which the food product is served for immediate human consumption and the food distributor does not manufacture, process, or repackage the food product it sells.

(c) If a food product is subject to 21 U.S.C. §343, the food product shall comply with §29-39-2(18) of this code in a manner prescribed by rule.

(d) If a person offers a food product for sale and has annual gross sales made or business done in sales to consumers that is not more than $500,000, or has annual gross sales made or business done in sales of the food product to consumers that is not more than $50,000, the requirements of this section do not apply.

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