

Louisiana Act 273 Creates New Hurdles for Plant-Based Alternative Food Companies

07.29.2019

From "veggie burgers" to "almond milk," plant-based food alternatives are a growing industry in the United States, with sales growth outpacing the general food market by nearly 9%. This boom has created tremendous opportunities for emerging companies like Beyond Meat, which had a May IPO of \$25 per share and has seen a 575% increase as of July 11, 2019. However, as these products grow in popularity and gain market share, some states are looking to restrict how alternative food companies market their products to consumers. Recently, Louisiana joined the list of over a dozen states that have passed legislation imposing such restrictions.

On June 11, 2019, Louisiana Governor John Bel Edwards signed into law Act 273, the "Truth in Labeling of Food Products Act." The Act's stated purpose is to "protect consumers from misleading and false labeling of food products that are edible by humans." The Act is short (comprised of only six statutes), yet it may present big challenges for companies that produce, sell or advertise alternative food products in Louisiana.

Act 273 broadly prohibits individuals and companies doing business in Louisiana from "intentionally misbrand[ing] or misrepresent[ing] any food product as an agricultural product [(defined as 'any beef, pork, poultry, crawfish, shrimp, meat, sugar, or rice product that is edible by humans')]] through any activity." The Act provides a list of examples that breach this prohibition, such as "[r]epresenting a food product as pork or a pork product when the food product is not derived from a domesticated swine."

When the Act becomes effective on October 1, 2020, any person who violates the Act could be subject to civil penalties of "not more than five hundred dollars for each violation." Additionally, every day the violation occurs will be deemed a separate offense.

Notably, Act 273 leaves many questions open, including:

1. How will penalties be calculated? It remains unclear whether a penalty will be given for every *item* that contains "misleading" labeling, or for each *type* of product that contains the same label.
2. Exactly *who* will be affected? The Act purports to limit its application to "a person that *places a label* on a food product." Yet, activities prohibited by the Act include: selling products "under the name of an agricultural product"; "representing a food product as an agricultural product"; and "utilizing a term that is the same as . . . or defined historically in reference to a specific agricultural product." In addition, the Act has different definitions for a "label" and "labeling," further confusing the prohibitions' limited scope.

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These and other questions will remain unanswered until the Louisiana Commissioner of Agriculture adopts rules and regulations, which he is bound to do under the new law.

Predicting the Commissioner's approach to its rulemaking authority under Act 237 is difficult in light of the various interests at play and potential challenges from those who oppose the law. Some groups, for example, believe that the recent food labeling laws were enacted to protect the meat and dairy industries from the spike in competition created by plant-based alternatives and have little to do with consumer protection. Such groups point to existing consumer protection laws governing food advertisements and labeling as well as to studies like the International Food Information Council's survey of individuals across the country finding that nearly three-quarters of Americans understand that plant-based products with "milk" in their labeling (e.g., soy milk) do not contain cow's milk. Statutes similar to Act 273 have recently come under attack in Arkansas, Missouri, and Mississippi through lawsuits alleging that the laws violate plant-based food companies' First Amendment rights.

Thus, Act 273's fate is uncertain and will likely depend on the Commissioner's rules and regulations as well as the outcomes of ongoing and anticipated litigation. Until then, those involved in the plant-based alternative food industry in Louisiana should work with competent counsel to plan for how they will address the Act's requirements when it takes effect in 2020.