34A.03 MISBRANDING.

(a) Food is misbranded if:

(1) its labeling is false or misleading in any particular, or its labeling, whether on the item itself, its container, or its package, fails to conform with the requirements of this chapter;

(2) it is offered for sale or distributed under the name of another food;

(3) it is an imitation of another food for which a definition and standard of identity have been prescribed by rules as provided by sections 31.10 and 31.102; or if it is an imitation of another food that is not subject to clause (5), unless in either case its label bears in type of uniform size and prominence the word "imitation" and immediately thereafter the name of the food imitated;

(4) its container is so made, formed, or filled as to be misleading;

(5) it purports to be or is represented as a food for which a definition and standard of identity have been prescribed by rules as provided by sections 31.10, 31.102, and 31A.07, unless it conforms to that definition and standard, and its label bears the name of the food specified in the definition and standard, and insofar as may be required by the rules, the common names of optional ingredients, other than spices, flavoring, and coloring, present in the food;

(6) it purports to be or is represented as:

(i) a food for which a standard of quality has been prescribed by rules as provided by sections 31.10 and 31.102, and its quality falls below that standard unless its label bears in a manner and form the rules specify, a statement that it falls below the standard; or

(ii) a food for which a standard or standards of fill of container have been prescribed by rule as provided by sections 31.10, 31.102, and 31A.07, and it falls below the standard of fill of container applicable thereto unless its label bears, in a manner and form the rules specify, a statement that it falls below the standard;

(7) it is not subject to clause (5), unless it bears labeling clearly giving the common or usual name of the food, if there is one, and in case it is fabricated from two or more ingredients, the common or usual name of each 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 this clause is impractical or results in deception or unfair competition, exemptions must be established by rules promulgated by the commissioner;

(8) it purports to be or is represented for special dietary uses, unless its label bears information concerning its vitamin, mineral, and other dietary properties as the commissioner determines to be, and by rules prescribed as, necessary in order to fully inform purchasers as to its value for those uses;

(9) 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 clause is impracticable, exemptions must be established by rules promulgated by the commissioner. The provisions of this clause and clauses (5) and (7) with respect to artificial coloring do not apply to butter, cheese, or ice cream. The provisions with respect to chemical preservatives do not apply to a pesticide when used in or on a raw agricultural commodity which is the product of the soil;

(10) 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;

(11) it is a color additive unless its packaging and labeling are in conformity with such packaging and labeling requirements applicable to the color additive prescribed under the provisions of the federal act;

(12) it is food subject to section 31.101, subdivision 10, or chapter 31A, that fails to bear, directly or on its container, as the commissioner by rule prescribes, the inspection legend and other information the commissioner may require by rule to ensure that it will not have false or misleading labeling, and that the public will be told how to keep the article wholesome; or

(13) its labeling would deceive or mislead the purchaser with respect to its composition or suitability.

(b) Food is also misbranded if it is a raw agricultural commodity which is the product of the soil, bearing or containing a pesticide applied after harvest, unless the shipping container of that commodity bears labeling which declares the presence of the chemical in or on the commodity and the common or usual name and the function of the chemical. No such declaration is required while the commodity, having been removed 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.

History: *2012 c 244 art 2 s 26*