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Texas Joins States Requiring Labeling of Cell-Cultured and Analogue Meat and Poultry Products

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In May, Texas Governor Greg Abbott signed Senate Bill 664 (“SB 664”) into law to amend the Texas Food, Drug, and Cosmetic Act and the Texas Meat and Poultry Inspection Act by adding new labeling requirements for analogue and cell-cultured meat and poultry products. By enacting SB 664, Texas joined a growing list of states with legislation requiring analogue and cell-cultured meat labeling.¹ This summary provides an initial overview of SB 664 and some of the legal challenges the new law may face in the future.

Why did the Texas Legislature pass SB 664?

Proponents of SB 664 claim that the new law protects consumers from unclear labeling. SB 664 defines “analogue product” and “cell-cultured product” and creates labeling requirements for these types of products aimed at helping consumers understand how the products are sourced. The prominent labeling requirements are also intended to aid Texas consumers by ensuring that they can easily discern that such products are sourced from alternative proteins.²

When is compliance required?

SB 664 will become effective on September 1, 2023.

What products are impacted by SB 664?

SB 664 imposes new labeling requirements on “analogue products” and “cell-cultured products”. SB 664 defines an analogue product as “a food product derived by combining processed plant products, insects, or fungus with food additives to approximate the texture, flavor, appearance, or other aesthetic qualities or the chemical characteristics of any specific type of” egg, fish, meat, or poultry products.³

SB 664 defines a cell-cultured product as “a food product derived by harvesting animal cells and artificially replicating those cells in a growth medium in a laboratory to produce tissue.”⁴

What does SB 664 require?

SB 664 requires analogue and cell-cultured product labels to include specific terminology that is intended to clarify the contents of the product, displayed “prominently” and “in close proximity to” the product’s name.⁵ The required terminology depends on whether the applicable product is an analogue product or a cell-cultured product. Analogue product labels must include one of the following terms: (1) “analogue”; (2) “meatless”; (3) “plant-based”; (4) “made from plants”; or (5) “a similar qualifying term or disclaimer intended to clearly communicate to a

¹ See, e.g., [Oklahoma Meat Consumer Protection Act](#) (2020).

² Senator Charles Perry, [SB 664: Bill Analysis](#) (May 24, 2023).

³ [Tex. SB No. 664](#), 88th Leg., R.S. (2023).

⁴ *Id.*

⁵ See *id.*

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consumer the contents of the product.”⁶ Similarly, cell-cultured product labels must display one of the following terms: (1) “cell-cultured”; (2) “lab-grown”; or (3) “a similar qualifying term or disclaimer intended to clearly communicate to a consumer the contents of the product.”⁷

The required labeling must be displayed prominently and in close proximity to the product’s name, in line with specific requirements spelled out within the text of SB 664. Under the law, a term is “prominently” featured on a label if its type is “equal to or greater in size than” the surrounding type.⁸ SB 664 also clarifies that required labeling is “in close proximity to” the product’s name if it is located (1) immediately before or after the product’s name, (2) in the line immediately before or after the line containing the product’s name, or (3) within the same phrase or sentence as the product’s name.⁹

Who must comply with SB 664?

Both manufacturers and retailers should ensure that any analogue and cell-cultured products they manufacture or sell comply with SB 664’s new labeling requirements. Analogue products are governed by the Texas Food, Drug, and Cosmetic Act, while cell-cultured products are governed by the Texas Meat and Poultry Inspection Act.

All analogue products that fail to comply with SB 664’s labeling requirements would be considered misbranded, so manufacturers must ensure that analogue products are properly labeled before they are introduced or delivered for introduction into commerce.¹⁰ With regard to retailers, the *receipt* of misbranded food is also unlawful under the Texas Food, Drug, and Cosmetic Act, so retailers must also be familiar with SB 664’s labeling requirements to ensure that they are not receiving misbranded analogue products.¹¹

Manufacturers and retailers must also ensure that cell-cultured products comply with the new labeling requirements. SB 664 similarly applies to all cell-cultured products, and the Texas Meat and Poultry Inspection Act also prohibits the “sale or offer . . . for sale” of a product that is improperly labeled, which would include a product that violates SB 664’s labeling requirements.¹²

What are the penalties for noncompliance?

Because analogue and cell-cultured products are governed by different Acts, violations of SB 664 elicit different penalties depending on the type of product at issue. If an analogue product violates SB 664, Section 431.048(a) of the Texas Food, Drug, and Cosmetic Act requires the product to be marked as misbranded, as well as detained or embargoed.¹³ Detention of a product also restricts a manufacturer’s or retailer’s ability to sell the product.¹⁴ Moreover, under Section 431.0495 of the Texas Food, Drug, and Cosmetic Act, the commissioner may order a recall of a detained or embargoed analogue product.¹⁵ Finally, Section 431.054(a) of the Texas Food, Drug, and Cosmetic Act also permits issuing an administrative fine of up to \$25,000 per day for each violation to the manufacturer and/or retailer of a violative analogue product.¹⁶ If a cell-cultured product violates SB 664, the product is subject to the Texas Meat and Poultry Inspection Act, which prohibits the sale of the product until the

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ [Tex. Health & Safety Code § 431.021\(a\).](#)

¹¹ [Tex. Health & Safety Code § 431.021\(c\).](#)

¹² [Tex. Health & Safety Code § 433.042.](#)

¹³ [Tex. Health & Safety Code § 431.048\(a\).](#)

¹⁴ [Tex. Health & Safety Code § 431.048\(b\).](#)

¹⁵ [Tex. Health & Safety Code § 431.0495\(a\).](#)

¹⁶ [Tex. Health & Safety Code § 431.054.](#)

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labeling is corrected.¹⁷ However, SB 664 is likely to surprise many impacted parties and, as discussed below, is susceptible to legal challenges.

Is SB 664 likely to be challenged in court?

Multiple states, like Texas, have also adopted labeling laws for analogue and cell-cultured products. As such laws have become effective, lawsuits challenging state laws similar to SB 664 have been filed in Mississippi, Louisiana, Arkansas, Missouri, and Oklahoma.¹⁸ One similar law, in Louisiana, faced a First Amendment challenge that was initially granted by a Louisiana district court, but then later reversed on appeal by the Fifth Circuit, which held that the law does not infringe on food companies' freedom of speech because it only prohibits companies from making intentionally misleading representations that fall outside of the First Amendment's protection for commercial free speech.¹⁹ Another similar law in Missouri was also challenged on First Amendment grounds; however, the Missouri law differs from SB 664 by banning analogue and cell-cultured producers from using certain words.²⁰ A separate lawsuit challenging Oklahoma's similar Meat Consumer Protection Act, which more closely mirrors Texas's SB 664, raises Commerce Clause and Supremacy Clause concerns regarding the potential impact of the law.²¹ Like SB 664, Oklahoma's law requires specific terms to be displayed prominently and in close proximity to the product's name.²² Because Oklahoma's law is so similar to SB 664, it is likely that potential future challenges to SB 664 could take a similar approach to that seen in the Oklahoma case, *PBFA v. Stitt*.

As we've already seen happening in other states, state laws like SB 664 are also targets for preemption challenges. However, whether and to what extent federal law will preempt SB 664 is currently unclear since, for example, FDA does not currently have specific labeling regulations regarding the products targeted by SB 664.²³

Finally, SB 664 may also be likely to attract challenges in court because it creates impractical labeling requirements for nationwide manufacturers, who must now ensure that their current labels comply with the new Texas law or make revisions. Creating state-specific labels, as opposed to a uniform label that can be used in multiple states, will cost manufacturers millions of dollars. This argument remains central to cases already challenging other state statutes similar to SB 664, and it's likely that SB 664 may become the target of similar challenges in the future.²⁴

¹⁷ [Tex. Health & Safety Code §§ 433.044\(a\); 433.052](#).

¹⁸ Megan Poinski, [Texas Governor Signs New Labeling Law for Plant-Based and Cultivated Meat](#), FOOD DIVE (May 30, 2023).

¹⁹ See *Turtle Island Foods, S.P.C. v. Strain*, 65 F.4th 211, 221 (5th Cir. 2023).

²⁰ Cathy Siegner, [Court Denies Tofurky Appeal to Missouri Meat Label Law](#), FOOD DIVE (Mar. 31, 2021).

²¹ See [Complaint at 18, 26, PBFA v. Stitt, CIV-20-938-F \(W.D. Okla., filed Nov. 9, 2021\)](#).

²² See *id.* at 3.

²³ See, e.g., *Holk v. Snapple Bev. Corp.*, 575 F.3d 329, 338–41 (3d Cir. 2009).

²⁴ See, e.g., [Complaint at 25, PBFA v. Stitt, CIV-20-938-F \(W.D. Okla., filed Nov. 9, 2021\)](#).