S T A T E O F N E W Y O R K

3525--A

2013-2014 Regular Sessions

I N A S S E M B L Y

January 28, 2013

Introduced by M. of A. ROSENTHAL, PEOPLES-STOKES, JAFFEE, MAISEL, STEVENSON, DINOWITZ, THIELE, KEARNS, SEPULVEDA, ROBERTS, MOYA, LAVINE, COLTON, COOK, MILLMAN, GALEF, KELLNER, ENGLEBRIGHT, MAGNARELLI, SIMOTAS, SCHIMEL, STECK, BENEDETTO, PERRY -- Multi-Sponsored by -- M. of A. BOYLAND, BRENNAN, BRINDISI, CURRAN, FAHY, GIBSON, GLICK, GRAF, HEVESI, JOHNS, LIFTON, McDONOUGH, MONTESANO, PAULIN, RAIA, RIVERA, SKARTADOS, WEISENBERG -- read once and referred to the Committee on Consumer Affairs and Protection -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general business law and the agriculture and markets law, in relation to the labeling of genetically modified foods

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The general business law is amended by adding a new section 391-s to read as follows:

S 391-S. GENETICALLY MODIFIED FOODS; REQUIRED LABELING. 1. DEFINITIONS. AS USED IN THIS SECTION, THE TERM:

(A) "DISTRIBUTOR" MEANS A PERSON OR BUSINESS ENGAGED IN ANY METHOD OF DISTRIBUTING OR TRANSPORTING A FOOD OR FOOD PRODUCT FROM ONE PLACE TO ANOTHER.

(B) "ENZYME" MEANS A PROTEIN THAT CATALYZES CHEMICAL REACTIONS OF OTHER SUBSTANCES WITHOUT ITSELF BEING DESTROYED OR ALTERED UPON COMPLETION OF THE REACTIONS.

(C) "GENETICALLY ENGINEERED," "GENETIC ENGINEERING," "GENETICALLY MODIFIED," OR "GENETIC MODIFICATION," AS APPLIED TO ANY HUMAN FOOD, MEANS PRODUCED FROM OR WITH AN ORGANISM OR ORGANISMS WITH GENETICS ALTERED MATERIALLY THROUGH THE APPLICATION OF:

(I) IN VITRO NUCLEIC ACID TECHNIQUES, INCLUDING BUT NOT LIMITED TO RECOMBINANT DEOXYRIBONUCLEIC ACID (DNA) TECHNIQUES AND THE DIRECT INJECTION OF NUCLEIC ACID INTO CELLS OR ORGANELLES, OR

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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(II) FUSION OF CELLS BEYOND THE TAXONOMIC FAMILY THAT OVERCOME NATURAL PHYSIOLOGICAL REPRODUCTIVE OR RECOMBINANT BARRIERS AND THAT ARE NOT TECHNIQUES USED IN TRADITIONAL BREEDING AND SELECTION.

(D) "MANUFACTURER" MEANS A PERSON OR BUSINESS THAT MAKES, PROCESSES, COMBINES, OR PACKAGES FOOD INGREDIENTS INTO A FINISHED FOOD PRODUCT.

(E) "MEDICAL FOOD" MEANS A FOOD THAT IS FORMULATED TO BE CONSUMED OR ADMINISTERED INTERNALLY UNDER THE SUPERVISION OF A PHYSICIAN AND THAT IS INTENDED FOR THE SPECIFIC DIETARY MANAGEMENT OF A DISEASE OR CONDITION FOR WHICH DISTINCTIVE NUTRITIONAL REQUIREMENTS, BASED ON RECOGNIZED SCIENTIFIC PRINCIPLES, ARE ESTABLISHED BY MEDICAL EVALUATION.

(F) "PROCESSED FOOD" MEANS ANY FOOD OTHER THAN A RAW AGRICULTURAL COMMODITY, INCLUDING ANY FOOD PRODUCED FROM A RAW AGRICULTURAL COMMODITY THAT HAS BEEN SUBJECT TO PROCESSING SUCH AS CANNING, SMOKING, PRESSING, COOKING, FREEZING, DEHYDRATION, FERMENTATION, OR MILLING.

(G) "PROCESSING AID" MEANS:

(I) A SUBSTANCE THAT IS ADDED TO A FOOD DURING THE PROCESSING OF THE FOOD BUT IS REMOVED IN SOME MANNER FROM THE FOOD BEFORE IT IS PACKAGED IN ITS FINAL FORM;

(II) A SUBSTANCE THAT IS ADDED TO A FOOD DURING PROCESSING, IS CONVERTED INTO CONSTITUENTS NORMALLY PRESENT IN THE FOOD, AND DOES NOT SIGNIFICANTLY INCREASE THE AMOUNT OF THE CONSTITUENTS FOUND IN THE FOOD; OR

(III) A SUBSTANCE THAT IS ADDED TO A FOOD FOR ITS TECHNICAL OR FUNCTIONAL EFFECTS IN THE PROCESSING BUT IS PRESENT IN THE FINISHED FOOD AT INSIGNIFICANT LEVELS AND DOES NOT HAVE ANY TECHNICAL OR FUNCTIONAL EFFECT IN THAT FINISHED FOOD.

(H) "RAW AGRICULTURAL COMMODITY" MEANS ANY PLANT, ANIMAL, OR FUNGI GROWN OR PRODUCED FOR HUMAN FOOD USE PURPOSES.

(I) "RETAILER" MEANS A PERSON OR BUSINESS ENGAGED IN SELLING THE FOOD FROM INDIVIDUALS OR BUSINESSES TO THE END-USER.

2. LABELING OF GENETICALLY ENGINEERED FOODS. (A) ANY FOOD OFFERED FOR RETAIL SALE IN NEW YORK IS MISBRANDED IF IT IS ENTIRELY GENETICALLY ENGINEERED OR PARTIALLY PRODUCED WITH GENETIC ENGINEERING AND THAT FACT IS NOT DISCLOSED AS FOLLOWS:

(I) IN THE CASE OF A RAW AGRICULTURAL COMMODITY THAT IS NOT SEPARATELY PACKAGED OR LABELED, THE WORDS "GENETICALLY ENGINEERED" SHALL BE PLACED ON THE CONTAINER USED FOR PACKAGING, HOLDING AND/OR TRANSPORT IN A CLEAR AND CONSPICUOUS MANNER BY THE MANUFACTURER, AND MAINTAINED BY THE DISTRIBUTOR, AND ON THE RETAIL STORE SHELF OR BIN IN WHICH SUCH COMMODITY IS DISPLAYED FOR SALE IN A CLEAR AND CONSPICUOUS MANNER BY THE RETAILER.

(II) IN THE CASE OF PROCESSED FOOD CONTAINING SOME PRODUCTS OF GENETIC ENGINEERING, THE MANUFACTURER MUST LABEL THE PRODUCT, IN A CLEAR AND CONSPICUOUS MANNER ON THE FRONT OR BACK OF THE PACKAGE OF SUCH FOOD, WITH THE WORDS "PRODUCED WITH GENETIC ENGINEERING".

(III) IN THE CASE OF ANY SEED OR SEED STOCK, THE MANUFACTURER OR OTHER ENTITY RESPONSIBLE FOR PRODUCING THE SEED MUST LABEL THE SEED OR SEED STOCK CONTAINER, THE SALES RECEIPT, AND ANY OTHER REFERENCE TO IDENTIFICATION, OWNERSHIP, OR POSSESSION, IN A CLEAR AND CONSPICUOUS MANNER WITH THE WORDS "GENETICALLY ENGINEERED".

(B) THIS SECTION SHALL NOT BE CONSTRUED TO REQUIRE EITHER THE LISTING OR IDENTIFICATION OF ANY INGREDIENT OR INGREDIENTS THAT WERE GENETICALLY ENGINEERED, NOR THAT THE TERM "GENETICALLY ENGINEERED" BE PLACED IMMEDIATELY PRECEDING ANY COMMON NAME OR PRIMARY PRODUCT DESCRIPTOR OF A FOOD.

(C) ANY PROCESSED FOOD THAT WOULD BE SUBJECT TO THIS SECTION SOLELY BECAUSE IT INCLUDES ONE OR MORE MATERIALS PRODUCED BY GENETIC ENGINEERING IS NOT MISBRANDED PROVIDED THAT THE ENGINEERED MATERIALS IN THE AGGREGATE DO NOT ACCOUNT FOR MORE THAN NINE-TENTHS OF ONE PERCENT OF THE TOTAL WEIGHT OF THE PROCESSED FOOD.

(D) THIS SUBDIVISION DOES NOT APPLY TO ANY OF THE FOLLOWING:

(I) FOOD CONSISTING ENTIRELY OF, OR DERIVED ENTIRELY FROM, AN ANIMAL THAT HAS NOT ITSELF BEEN GENETICALLY ENGINEERED, REGARDLESS OF WHETHER THE ANIMAL HAS BEEN FED WITH ANY FOOD PRODUCED WITH GENETIC ENGINEERING OR TREATED WITH ANY DRUG OR VACCINE THAT HAS BEEN PRODUCED THROUGH GENETIC ENGINEERING;

(II) A RAW AGRICULTURAL COMMODITY OR FOOD THAT HAS BEEN GROWN, RAISED, PRODUCED, OR DERIVED WITHOUT THE KNOWING AND INTENTIONAL USE OF GENETICALLY ENGINEERED SEED OR FOOD. TO BE INCLUDED WITHIN THE EXCLUSION UNDER THIS PARAGRAPH, THE PERSON RESPONSIBLE FOR COMPLYING WITH THIS SUBDIVISION WITH RESPECT TO A RAW AGRICULTURAL COMMODITY OR FOOD MUST OBTAIN, FROM WHOEVER SOLD THE RAW AGRICULTURAL COMMODITY OR FOOD TO THAT PERSON, A SWORN STATEMENT THAT THE RAW AGRICULTURAL COMMODITY OR FOOD: (1) HAS NOT BEEN KNOWINGLY OR INTENTIONALLY GENETICALLY ENGINEERED; AND (2) HAS BEEN SEGREGATED FROM, AND HAS NOT BEEN KNOWINGLY OR INTENTIONALLY COMMINGLED WITH, FOODS THAT MAY HAVE BEEN GENETICALLY ENGINEERED AT ANY TIME. IN PROVIDING SUCH A SWORN STATEMENT, A PERSON MAY RELY ON A SWORN STATEMENT FROM HIS OR HER OWN SUPPLIER THAT CONTAINS SUCH AN AFFIRMATION;

(III) ANY PROCESSED FOOD THAT WOULD BE SUBJECT TO THIS SECTION SOLELY BECAUSE ONE OR MORE PROCESSING AIDS OR ENZYMES WERE PRODUCED OR DERIVED WITH GENETIC ENGINEERING;

(IV) ANY ALCOHOLIC BEVERAGE THAT IS SUBJECT TO REGULATION BY THE ALCOHOLIC BEVERAGE CONTROL LAW;

(V) FOOD THAT HAS BEEN LAWFULLY CERTIFIED TO BE LABELED, MARKETED, AND OFFERED FOR SALE AS "ORGANIC" PURSUANT TO THE FEDERAL ORGANIC FOODS PRODUCTION ACT OF 1990, 7 U.S.C. 6501, ET SEQ., AND THE NATIONAL ORGANIC PROGRAM REGULATIONS PROMULGATED PURSUANT THERETO BY USDA;

(VI) FOOD THAT IS NOT PACKAGED FOR RETAIL SALE AND THAT EITHER: (1) IS A PROCESSED FOOD PREPARED AND INTENDED FOR IMMEDIATE HUMAN CONSUMPTION; OR (2) IS SERVED, SOLD, OR OTHERWISE PROVIDED IN ANY RESTAURANT OR OTHER FOOD SERVICE ESTABLISHMENT THAT IS PRIMARILY ENGAGED IN THE SALE OF FOOD PREPARED AND INTENDED FOR IMMEDIATE HUMAN CONSUMPTION; OR

(VII) MEDICAL FOOD.

3. RIGHT OF ACTION FOR VIOLATIONS. ANY PERSON, FIRM, CORPORATION, OR OTHER LEGAL ENTITY VIOLATING THIS SECTION SHALL BE SUBJECT TO THE PENALTIES FOR FALSE LABELS AND MISBRANDING AS SET FORTH IN SECTION THREE HUNDRED NINETY-TWO-B OF THIS ARTICLE.

S 2. Section 198 of the agriculture and markets law is amended by adding a new subdivision 12 to read as follows:

12. THE TERM: (A) "DISTRIBUTOR" MEANS A PERSON OR BUSINESS ENGAGED IN ANY METHOD OF DISTRIBUTING OR TRANSPORTING A FOOD OR FOOD PRODUCT FROM ONE PLACE TO ANOTHER.

(B) "ENZYME" MEANS A PROTEIN THAT CATALYZES CHEMICAL REACTIONS OF OTHER SUBSTANCES WITHOUT ITSELF BEING DESTROYED OR ALTERED UPON COMPLETION OF THE REACTIONS.

(C) "GENETICALLY ENGINEERED," "GENETIC ENGINEERING," "GENETICALLY MODIFIED," OR "GENETIC MODIFICATION," AS APPLIED TO ANY HUMAN FOOD, MEANS PRODUCED FROM OR WITH AN ORGANISM OR ORGANISMS WITH GENETICS ALTERED MATERIALLY THROUGH THE APPLICATION OF:

(I) IN VITRO NUCLEIC ACID TECHNIQUES, INCLUDING BUT NOT LIMITED TO RECOMBINANT DEOXYRIBONUCLEIC ACID (DNA) TECHNIQUES AND THE DIRECT INJECTION OF NUCLEIC ACID INTO CELLS OR ORGANELLES, OR

(II) FUSION OF CELLS BEYOND THE TAXONOMIC FAMILY THAT OVERCOME NATURAL PHYSIOLOGICAL REPRODUCTIVE OR RECOMBINANT BARRIERS AND THAT ARE NOT TECHNIQUES USED IN TRADITIONAL BREEDING AND SELECTION.

(D) "MANUFACTURER" MEANS A PERSON OR BUSINESS THAT MAKES, PROCESSES, COMBINES, OR PACKAGES FOOD INGREDIENTS INTO A FINISHED FOOD PRODUCT.

(E) "MEDICAL FOOD" MEANS A FOOD THAT IS FORMULATED TO BE CONSUMED OR ADMINISTERED INTERNALLY UNDER THE SUPERVISION OF A PHYSICIAN AND THAT IS INTENDED FOR THE SPECIFIC DIETARY MANAGEMENT OF A DISEASE OR CONDITION FOR WHICH DISTINCTIVE NUTRITIONAL REQUIREMENTS, BASED ON RECOGNIZED SCIENTIFIC PRINCIPLES, ARE ESTABLISHED BY MEDICAL EVALUATION.

(F) "PROCESSED FOOD" MEANS ANY FOOD OTHER THAN A RAW AGRICULTURAL COMMODITY, INCLUDING ANY FOOD PRODUCED FROM A RAW AGRICULTURAL COMMODITY THAT HAS BEEN SUBJECT TO PROCESSING SUCH AS CANNING, SMOKING, PRESSING, COOKING, FREEZING, DEHYDRATION, FERMENTATION, OR MILLING.

(G) "PROCESSING AID" MEANS:

(I) A SUBSTANCE THAT IS ADDED TO A FOOD DURING THE PROCESSING OF THE FOOD BUT IS REMOVED IN SOME MANNER FROM THE FOOD BEFORE IT IS PACKAGED IN ITS FINAL FORM;

(II) A SUBSTANCE THAT IS ADDED TO A FOOD DURING PROCESSING, IS CONVERTED INTO CONSTITUENTS NORMALLY PRESENT IN THE FOOD, AND DOES NOT SIGNIFICANTLY INCREASE THE AMOUNT OF THE CONSTITUENTS FOUND IN THE FOOD; OR

(III) A SUBSTANCE THAT IS ADDED TO A FOOD FOR ITS TECHNICAL OR FUNCTIONAL EFFECTS IN THE PROCESSING BUT IS PRESENT IN THE FINISHED FOOD AT INSIGNIFICANT LEVELS AND DOES NOT HAVE ANY TECHNICAL OR FUNCTIONAL EFFECT IN THAT FINISHED FOOD.

(H) "RAW AGRICULTURAL COMMODITY" MEANS ANY PLANT, ANIMAL, OR FUNGI GROWN OR PRODUCED FOR HUMAN FOOD USE PURPOSES.

(I) "RETAILER" MEANS A PERSON OR BUSINESS ENGAGED IN SELLING THE FOOD FROM INDIVIDUALS OR BUSINESSES TO THE END-USER.

S 3. Section 201 of the agriculture and markets law is amended by adding a new subdivision 15 to read as follows:

15. (A) ANY FOOD OFFERED FOR RETAIL SALE IN NEW YORK IS MISBRANDED IF IT IS ENTIRELY GENETICALLY ENGINEERED OR PARTIALLY PRODUCED WITH GENETIC ENGINEERING AND THAT FACT IS NOT DISCLOSED AS FOLLOWS:

(I) IN THE CASE OF A RAW AGRICULTURAL COMMODITY THAT IS NOT SEPARATELY PACKAGED OR LABELED, THE WORDS "GENETICALLY ENGINEERED" SHALL BE PLACED ON THE CONTAINER USED FOR PACKAGING, HOLDING AND/OR TRANSPORT IN A CLEAR AND CONSPICUOUS MANNER BY THE MANUFACTURER, AND MAINTAINED BY THE DISTRIBUTOR, AND ON THE RETAIL STORE SHELF OR BIN IN WHICH SUCH COMMODITY IS DISPLAYED FOR SALE IN A CLEAR AND CONSPICUOUS MANNER BY THE RETAILER.

(II) IN THE CASE OF PROCESSED FOOD CONTAINING SOME PRODUCTS OF GENETIC ENGINEERING, THE MANUFACTURER MUST LABEL THE PRODUCT, IN A CLEAR AND CONSPICUOUS MANNER ON THE FRONT OR BACK OF THE PACKAGE OF SUCH FOOD, WITH THE WORDS "PRODUCED WITH GENETIC ENGINEERING".

(III) IN THE CASE OF ANY SEED OR SEED STOCK, THE MANUFACTURER OR OTHER ENTITY RESPONSIBLE FOR PRODUCING THE SEED MUST LABEL THE SEED OR SEED STOCK CONTAINER, THE SALES RECEIPT, AND ANY OTHER REFERENCE TO IDENTIFICATION, OWNERSHIP, OR POSSESSION, IN A CLEAR AND CONSPICUOUS MANNER WITH THE WORDS "GENETICALLY ENGINEERED".

(B) THIS SUBDIVISION SHALL NOT BE CONSTRUED TO REQUIRE EITHER THE LISTING OR IDENTIFICATION OF ANY INGREDIENT OR INGREDIENTS THAT WERE

GENETICALLY ENGINEERED, NOR THAT THE TERM "GENETICALLY ENGINEERED" BE PLACED IMMEDIATELY PRECEDING ANY COMMON NAME OR PRIMARY PRODUCT DESCRIPTOR OF A FOOD.

(C) ANY PROCESSED FOOD THAT WOULD BE SUBJECT TO THIS SECTION SOLELY BECAUSE IT INCLUDES ONE OR MORE MATERIALS PRODUCED BY GENETIC ENGINEERING IS NOT MISBRANDED PROVIDED THAT THE ENGINEERED MATERIALS IN THE AGGREGATE DO NOT ACCOUNT FOR MORE THAN NINE-TENTHS OF ONE PERCENT OF THE TOTAL WEIGHT OF THE PROCESSED FOOD.

(D) THIS SUBDIVISION DOES NOT APPLY TO ANY OF THE FOLLOWING:

(I) FOOD CONSISTING ENTIRELY OF, OR DERIVED ENTIRELY FROM, AN ANIMAL THAT HAS NOT ITSELF BEEN GENETICALLY ENGINEERED, REGARDLESS OF WHETHER THE ANIMAL HAS BEEN FED WITH ANY FOOD PRODUCED WITH GENETIC ENGINEERING OR TREATED WITH ANY DRUG OR VACCINE THAT HAS BEEN PRODUCED THROUGH GENETIC ENGINEERING;

(II) A RAW AGRICULTURAL COMMODITY OR FOOD THAT HAS BEEN GROWN, RAISED, PRODUCED, OR DERIVED WITHOUT THE KNOWING AND INTENTIONAL USE OF GENETICALLY ENGINEERED SEED OR FOOD. TO BE INCLUDED WITHIN THE EXCLUSION UNDER THIS PARAGRAPH, THE PERSON RESPONSIBLE FOR COMPLYING WITH PARAGRAPH (A) OF THIS SUBDIVISION WITH RESPECT TO A RAW AGRICULTURAL COMMODITY OR FOOD MUST OBTAIN, FROM WHOEVER SOLD THE RAW AGRICULTURAL COMMODITY OR FOOD TO THAT PERSON, A SWORN STATEMENT THAT THE RAW AGRICULTURAL COMMODITY OR FOOD: (1) HAS NOT BEEN KNOWINGLY OR INTENTIONALLY GENETICALLY ENGINEERED; AND (2) HAS BEEN SEGREGATED FROM, AND HAS NOT BEEN KNOWINGLY OR INTENTIONALLY COMMINGLED WITH, FOODS THAT MAY HAVE BEEN GENETICALLY ENGINEERED AT ANY TIME. IN PROVIDING SUCH A SWORN STATEMENT, A PERSON MAY RELY ON A SWORN STATEMENT FROM HIS OR HER OWN SUPPLIER THAT CONTAINS SUCH AN AFFIRMATION;

(III) ANY PROCESSED FOOD THAT WOULD BE SUBJECT TO THIS SUBDIVISION SOLELY BECAUSE ONE OR MORE PROCESSING AIDS OR ENZYMES WERE PRODUCED OR DERIVED WITH GENETIC ENGINEERING;

(IV) ANY ALCOHOLIC BEVERAGE THAT IS SUBJECT TO REGULATION BY THE ALCOHOLIC BEVERAGE CONTROL LAW;

(V) FOOD THAT HAS BEEN LAWFULLY CERTIFIED TO BE LABELED, MARKETED, AND OFFERED FOR SALE AS "ORGANIC" PURSUANT TO THE FEDERAL ORGANIC FOODS PRODUCTION ACT OF 1990, 7 U.S.C. 6501, ET SEQ., AND THE NATIONAL ORGANIC PROGRAM REGULATIONS PROMULGATED PURSUANT THERETO BY USDA;

(VI) FOOD THAT IS NOT PACKAGED FOR RETAIL SALE AND THAT EITHER: (1) IS A PROCESSED FOOD PREPARED AND INTENDED FOR IMMEDIATE HUMAN CONSUMPTION; OR (2) IS SERVED, SOLD, OR OTHERWISE PROVIDED IN ANY RESTAURANT OR OTHER FOOD SERVICE ESTABLISHMENT THAT IS PRIMARILY ENGAGED IN THE SALE OF FOOD PREPARED AND INTENDED FOR IMMEDIATE HUMAN CONSUMPTION; OR

(VII) MEDICAL FOOD.

(D) ANY PERSON, FIRM, CORPORATION, OR OTHER LEGAL ENTITY VIOLATING THIS SUBDIVISION SHALL BE SUBJECT TO THE PENALTIES FOR FALSE LABELS AND MISBRANDING AS SET FORTH IN SECTION THREE HUNDRED NINETY-TWO-B OF THE GENERAL BUSINESS LAW.

S 4. This act shall take effect eighteen months after it shall have become a law.