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

3908

2011-2012 Regular Sessions

I N S E N A T E

March 9, 2011

Introduced by Sen. LAVALLE -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

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-r to read as follows:

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

(A) "GENETICALLY MODIFIED MATERIAL" MEANS MATERIAL DERIVED FROM ANY PART OF A GENETICALLY MODIFIED ORGANISM, WITHOUT REGARD TO WHETHER THE ALTERED MOLECULAR OR CELLULAR CHARACTERISTICS OF THE ORGANISM ARE DETECTABLE IN THE MATERIAL.

(B) "GENETICALLY MODIFIED ORGANISM" MEANS:

(I) AN ORGANISM THAT HAS BEEN ALTERED AT THE MOLECULAR OR CELLULAR LEVEL BY MEANS THAT ARE NOT POSSIBLE UNDER NATURAL CONDITIONS OR PROCESSES, INCLUDING RECOMBINANT DNA AND RNA TECHNIQUES, CELL FUSION, MICROENCAPSULATION, MACROENCAPSULATION, GENE DELETION AND DOUBLING, INTRODUCTION OF A FOREIGN GENE, AND A PROCESS THAT CHANGES THE POSITIONS OF GENES, OTHER THAN A MEANS CONSISTING EXCLUSIVELY OF BREEDING, CONJUGATION, FERMENTATION, HYBRIDIZATION, IN VITRO FERTILIZATION, OR TISSUE CULTURE; AND

(II) AN ORGANISM MADE THROUGH SEXUAL OR ASEXUAL REPRODUCTION, OR BOTH, INVOLVING AN ORGANISM DESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH, IF POSSESSING ANY OF THE ALTERED MOLECULAR OR CELLULAR CHARACTERISTICS OF THE ORGANISM SO DESCRIBED.

(C) "PRODUCED WITH A GENETICALLY MODIFIED MATERIAL" USED WITH RESPECT TO A FOOD, MEANS A FOOD IF:

(I) THE ORGANISM FROM WHICH THE FOOD IS DERIVED HAS BEEN INJECTED OR OTHERWISE TREATED WITH A GENETICALLY MODIFIED MATERIAL, EXCEPT THAT THE

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

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USE OF MANURE AS A FERTILIZER FOR RAW AGRICULTURAL COMMODITIES MAY NOT BE CONSTRUED TO BE PRODUCTION WITH A GENETICALLY MODIFIED MATERIAL;

(II) THE ANIMAL FROM WHICH THE FOOD IS DERIVED HAS BEEN FED GENETICALLY MODIFIED MATERIAL; AND

(III) THE FOOD CONTAINS AN INGREDIENT THAT IS A FOOD TO WHICH SUBPARAGRAPH (I) OR (II) OF THIS PARAGRAPH APPLIES.

2. NO PERSON, FIRM, CORPORATION, OR OTHER LEGAL ENTITY SHALL MANUFACTURE, SELL OR DISTRIBUTE FOOD OR FOOD PRODUCTS PRODUCED WITH A GENETICALLY MODIFIED MATERIAL, OR CONTAINING A GENETICALLY MODIFIED MATERIAL UNLESS IT BEARS A LABEL OR LABELING UPON WHICH SHALL BE CLEARLY IMPRINTED THE WORDS "THIS PRODUCT CONTAINS A GENETICALLY MODIFIED MATERIAL," OR "THIS PRODUCT WAS PRODUCED WITH A GENETICALLY MODIFIED MATERIAL".

3. (A) 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 UNLESS:

(I) SUCH PERSON IS AN AGRICULTURAL PRODUCER AND THE VIOLATION OCCURS BECAUSE FOOD THAT IS GROWN, RAISED, OR OTHERWISE PRODUCED BY SUCH PRODUCER, WHICH FOOD DOES NOT CONTAIN A GENETICALLY MODIFIED MATERIAL AND WAS NOT PRODUCED WITH A GENETICALLY MODIFIED MATERIAL, IS CONTAMINATED WITH A FOOD THAT CONTAINS A GENETICALLY MODIFIED MATERIAL OR WAS PRODUCED WITH A GENETICALLY MODIFIED MATERIAL INCLUDING CONTAMINATION RESULTING FROM THE MINGLING OF FOODS; AND

(II) SUCH CONTAMINATION IS NOT INTENDED BY THE AGRICULTURAL PRODUCER.

(B) PARAGRAPH (A) OF THIS SUBDIVISION SHALL NOT APPLY TO AN AGRICULTURAL PRODUCER TO THE EXTENT THAT SUCH CONTAMINATION OCCURS AS A RESULT OF THE NEGLIGENCE OF SUCH PRODUCER.

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

12. (A) THE TERM "GENETICALLY MODIFIED MATERIAL" MEANS MATERIAL DERIVED FROM ANY PART OF A GENETICALLY MODIFIED ORGANISM, WITHOUT REGARD TO WHETHER THE ALTERED MOLECULAR OR CELLULAR CHARACTERISTICS OF THE ORGANISM ARE DETECTABLE IN THE MATERIAL.

(B) THE TERM "GENETICALLY MODIFIED ORGANISM" MEANS:

(I) AN ORGANISM THAT HAS BEEN ALTERED AT THE MOLECULAR OR CELLULAR LEVEL BY MEANS THAT ARE NOT POSSIBLE UNDER NATURAL CONDITIONS OR PROCESSES, INCLUDING RECOMBINANT DNA AND RNA TECHNIQUES, CELL FUSION, MICROENCAPSULATION, MACROENCAPSULATION, GENE DELETION AND DOUBLING, INTRODUCTION OF A FOREIGN GENE, AND A PROCESS THAT CHANGES THE POSITION OF GENES, OTHER THAN A MEANS CONSISTING EXCLUSIVELY OF BREEDING, CONJUGATION, FERMENTATION, HYBRIDIZATION, IN VITRO FERTILIZATION, OR TISSUE CULTURE; AND

(II) AN ORGANISM MADE THROUGH SEXUAL OR ASEXUAL REPRODUCTION, OR BOTH, INVOLVING AN ORGANISM DESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH, IF POSSESSING ANY OF THE ALTERED MOLECULAR OR CELLULAR CHARACTERISTICS OF THE ORGANISM SO DESCRIBED.

(C) THE TERM "PRODUCED WITH A GENETICALLY MODIFIED MATERIAL," USED WITH RESPECT TO A FOOD, MEANS A FOOD IF:

(I) THE ORGANISM FROM WHICH THE FOOD IS DERIVED HAS BEEN INJECTED OR OTHERWISE TREATED WITH A GENETICALLY MODIFIED MATERIAL, EXCEPT THAT THE USE OF MANURE AS A FERTILIZER FOR RAW AGRICULTURAL COMMODITIES MAY NOT BE CONSTRUED TO BE PRODUCTION WITH A GENETICALLY MODIFIED MATERIAL;

(II) THE ANIMAL FROM WHICH THE FOOD IS DERIVED HAS BEEN FED GENETICALLY MODIFIED MATERIAL; AND

(III) THE FOOD CONTAINS AN INGREDIENT THAT IS A FOOD TO WHICH SUBPARAGRAPH (I) OR (II) OF THIS PARAGRAPH APPLIES.

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

15. IF IT CONTAINS A GENETICALLY MODIFIED MATERIAL, OR WAS PRODUCED WITH A GENETICALLY MODIFIED MATERIAL, UNLESS IT BEARS A LABEL OR LABELING UPON WHICH SHALL BE CLEARLY IMPRINTED THE WORDS "THIS PRODUCT CONTAINS A GENETICALLY MODIFIED MATERIAL," OR "THIS PRODUCT WAS PRODUCED WITH A GENETICALLY MODIFIED MATERIAL".

(A) NO PERSON SHALL BE IN VIOLATION OF THIS SECTION IF:

(I) SUCH PERSON IS AN AGRICULTURAL PRODUCER AND THE VIOLATION OCCURS BECAUSE FOOD THAT IS GROWN, RAISED, OR OTHERWISE PRODUCED BY SUCH PRODUCER, WHICH FOOD DOES NOT CONTAIN A GENETICALLY MODIFIED MATERIAL AND WAS NOT PRODUCED WITH A GENETICALLY MODIFIED MATERIAL, IS CONTAMINATED WITH A FOOD THAT CONTAINS A GENETICALLY MODIFIED MATERIAL OR WAS PRODUCED WITH A GENETICALLY MODIFIED MATERIAL, INCLUDING CONTAMINATION RESULTING FROM THE MINGLING OF FOODS; AND

(II) SUCH CONTAMINATION IS NOT INTENDED BY THE AGRICULTURAL PRODUCER.

(B) PARAGRAPH (A) OF THIS SUBDIVISION SHALL NOT APPLY TO AN AGRICULTURAL PRODUCER TO THE EXTENT THAT SUCH CONTAMINATION OCCURS AS A RESULT OF THE NEGLIGENCE OF SUCH PRODUCER.

S 4. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.