

3835--B

2013-2014 Regular Sessions

I N S E N A T E

February 21, 2013

Introduced by Sens. LAVALLE, ADDABBO, AVELLA, BOYLE, CARLUCCI, DILAN, ESPAILLAT, HOYLMAN, KRUEGER, LATIMER, MONTGOMERY, PERKINS, ROBACH, SERRANO, SMITH -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Consumer Protection in accordance with Senate Rule 6, sec. 8 -- 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:

- 1 Section 1. Legislative findings and intent. The legislature finds that
2 New York state consumers have the right to know whether the foods they
3 purchase have been produced with genetic engineering so they can make
4 informed purchasing decisions.
5 Further the legislature finds that:
6 (a) Currently, there is no federal law that requires food producers to
7 identify whether foods were produced with genetic engineering. At the
8 same time, the United States Food and Drug Administration (FDA) does not
9 require safety studies of such foods;
10 (b) Identification of foods produced with genetic engineering can
11 provide a critical method for tracking effects of consuming foods
12 produced with genetic engineering;
13 (c) More than sixty countries, including key United States trading
14 partners, have laws mandating disclosure of genetically engineered
15 foods. Identifying foods produced with genetic engineering will help
16 protect our state's export market;
17 (d) A variety of genetically engineered crops are commercially culti-
18 vated and sold in the United States, including corn, canola, sugar

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

LBD02306-26-4

1 beets, soybean, cotton, alfalfa, and papaya. It has been estimated that
2 70-80% of packaged grocery products contain some materials derived from
3 these genetically engineered crops;

4 (e) Without disclosure, consumers with certain dietary restrictions
5 may unknowingly consume such food in violation of such dietary
6 restrictions;

7 (f) Preserving the identity, quality, and reliability of agricultural
8 products is of prime importance to our state's fiscal health;

9 (g) The cultivation of genetically engineered crops can cause serious
10 environmental impacts;

11 (h) It is the intent of this act to ensure that New York consumers and
12 farmers are fully and reliably informed about whether the food and seed
13 they purchase and eat were produced with genetic engineering so they may
14 choose for themselves whether to purchase and eat or use such food and
15 seed;

16 (i) It is the intent of this act only to regulate the labeling of
17 seed, seed stock, and food for human consumption offered for retail sale
18 within New York State.

19 S 2. The general business law is amended by adding a new section 391-t
20 to read as follows:

21 S 391-T. GENETICALLY ENGINEERED FOODS; REQUIRED LABELING. 1. DEFI-
22 NITIONS. AS USED IN THIS SECTION, THE TERM:

23 (A) "DEPARTMENT" MEANS THE STATE DEPARTMENT OF AGRICULTURE AND
24 MARKETS.

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

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

31 (D) "GENETICALLY ENGINEERED," OR "GENETICALLY MODIFIED," OR ANY DERIV-
32 ATIVE OF THOSE WORDS, AS APPLIED TO ANY FOOD FOR HUMAN CONSUMPTION OR
33 SEED MEANS PRODUCED FROM OR WITH AN ORGANISM OR ORGANISMS WITH GENETICS
34 ALTERED MATERIALLY THROUGH THE APPLICATION OF:

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

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

41 FOR PURPOSES OF SUBPARAGRAPH (I) OF THIS PARAGRAPH, "IN VITRO NUCLEIC
42 ACID TECHNIQUES" INCLUDE, BUT ARE NOT LIMITED TO, RECOMBINANT DNA OR RNA
43 TECHNIQUES THAT USE VECTOR SYSTEMS, AND TECHNIQUES INVOLVING THE DIRECT
44 INTRODUCTION INTO THE ORGANISMS OF HEREDITARY MATERIALS PREPARED OUTSIDE
45 THE ORGANISMS SUCH AS BIOLISTICS, MICROINJECTION, MACRO-INJECTION,
46 CHEMOPORATION, ELECTROPORATION, MICROENCAPSULATION, AND LIPOSOME FUSION.

47 (E) "MANUFACTURER" MEANS A PERSON OR BUSINESS ENGAGED IN THE
48 PRODUCTION OR PROCESSING OF SEED, SEED STOCK, OR ANY FOOD PRODUCT.

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

54 (G) "PROCESSED FOOD" MEANS ANY FOOD OTHER THAN A RAW AGRICULTURAL
55 COMMODITY, INCLUDING ANY FOOD PRODUCED FROM A RAW AGRICULTURAL COMMODITY

1 THAT HAS BEEN SUBJECT TO PROCESSING SUCH AS CANNING, SMOKING, PRESSING,
2 COOKING, FREEZING, DEHYDRATION, FERMENTATION, OR MILLING.

3 (H) "PROCESSING AID" MEANS:

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

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

11 (III) A SUBSTANCE THAT IS ADDED TO A FOOD FOR ITS TECHNICAL OR FUNC-
12 TIONAL EFFECT IN THE PROCESSING BUT IS PRESENT IN THE FINISHED FOOD AT
13 INSIGNIFICANT LEVELS AND DOES NOT HAVE ANY TECHNICAL OR FUNCTIONAL
14 EFFECT IN THAT FINISHED FOOD.

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

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

19 2. LABELING OF GENETICALLY ENGINEERED SEED AND FOOD. (A) ANY FOOD FOR
20 HUMAN CONSUMPTION, SEED, OR SEED STOCK OFFERED FOR RETAIL SALE IN NEW
21 YORK IS MISBRANDED IF IT IS ENTIRELY GENETICALLY ENGINEERED OR PARTIALLY
22 PRODUCED WITH GENETIC ENGINEERING AND THAT FACT IS NOT DISCLOSED AS
23 FOLLOWS:

24 (I) IN THE CASE OF A RAW AGRICULTURAL COMMODITY THAT IS NOT SEPARATELY
25 PACKAGED OR LABELED, THE WORDS "PRODUCED WITH GENETIC ENGINEERING" OR
26 ANY OTHER DERIVATIVE OF THOSE WORDS, THE INITIALS "GE", "GM", OR "GMO",
27 OR A DERIVATIVE OF THOSE PHRASES, SHALL BE PLACED ON THE CONTAINER USED
28 FOR PACKAGING, HOLDING, AND/OR TRANSPORT IN A CLEAR AND CONSPICUOUS
29 MANNER BY THE MANUFACTURER, AND MAINTAINED BY THE DISTRIBUTOR, AND
30 DISPLAYED IN A CLEAR AND CONSPICUOUS MANNER ON THE RETAIL STORE SHELF OR
31 BIN IN WHICH SUCH COMMODITY IS OFFERED FOR SALE BY THE RETAILER.

32 (II) IN THE CASE OF A RAW AGRICULTURAL COMMODITY THAT IS SEPARATELY
33 PACKAGED OR PROCESSED FOOD CONTAINING SOME PRODUCTS OF GENETIC ENGINEER-
34 ING, THE MANUFACTURER MUST LABEL THE FOOD, IN A CLEAR AND CONSPICUOUS
35 MANNER ON THE PACKAGE OF SUCH FOOD, WITH THE WORDS "PRODUCED WITH GENET-
36 IC ENGINEERING" OR ANY OTHER DERIVATIVE OF THOSE WORDS, THE INITIALS
37 "GE", "GM", "GMO", OR A DERIVATIVE OF THOSE PHRASES.

38 (III) IN THE CASE OF ANY SEED OR SEED STOCK, THE MANUFACTURER OR OTHER
39 ENTITY RESPONSIBLE FOR PRODUCING THE SEED MUST LABEL THE SEED OR SEED
40 STOCK CONTAINER, THE SALES RECEIPT, AND ANY OTHER REFERENCE TO IDENTIFI-
41 CATION, OWNERSHIP, OR POSSESSION, IN A CLEAR AND CONSPICUOUS MANNER WITH
42 THE WORDS "PRODUCED WITH GENETIC ENGINEERING" OR ANY OTHER DERIVATIVE OF
43 THOSE WORDS, THE INITIALS "GE", "GM", "GMO", OR A DERIVATIVE OF THOSE
44 PHRASES.

45 (B) THIS SECTION SHALL NOT BE CONSTRUED TO REQUIRE EITHER THE LISTING
46 OR IDENTIFICATION OF ANY INGREDIENTS THAT WERE GENETICALLY ENGINEERED,
47 NOR THAT THE PHRASE "PRODUCED WITH GENETIC ENGINEERING" OR ANY OTHER
48 DERIVATIVE OF THOSE WORDS, THE INITIALS "GE", "GM", "GMO", OR A DERIVA-
49 TIVE OF THOSE PHRASES BE PLACED IMMEDIATELY PRECEDING ANY COMMON NAME OR
50 PRIMARY PRODUCT DESCRIPTOR OF A FOOD.

51 (C) ANY PROCESSED FOOD THAT WOULD BE SUBJECT TO THIS SECTION SOLELY
52 BECAUSE IT INCLUDES ONE OR MORE MATERIALS PRODUCED WITH GENETIC ENGI-
53 NEERING IS NOT MISBRANDED PROVIDED THAT THE GENETICALLY ENGINEERED MATE-
54 RIALS IN THE AGGREGATE DO NOT ACCOUNT FOR MORE THAN NINE-TENTHS OF ONE
55 PERCENT OF THE TOTAL WEIGHT OF THE PROCESSED FOOD.

56 (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 PRODUCED WITH GENETIC ENGINEERING, 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 WITH GENETIC ENGINEERING;

(II) A RAW AGRICULTURAL COMMODITY, PROCESSED FOOD, OR SEED 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 OR ENTITY RESPONSIBLE FOR COMPLYING WITH THIS SUBDIVISION WITH RESPECT TO A RAW AGRICULTURAL COMMODITY, PROCESSED FOOD, SEED, OR SEED STOCK MUST OBTAIN, FROM WHOMEVER SOLD THE RAW AGRICULTURAL COMMODITY, PROCESSED FOOD, SEED, OR SEED STOCK TO THAT PERSON, A WRITTEN STATEMENT, WHICH MAY BE INCLUDED ON AN INVOICE THAT MAY BE IN AN ELECTRONIC FORM, THAT THE RAW AGRICULTURAL COMMODITY, PROCESSED FOOD, SEED, OR SEED STOCK: (1) HAS NOT BEEN KNOWINGLY OR INTENTIONALLY PRODUCED WITH GENETIC ENGINEERING; AND (2) HAS BEEN SEGREGATED FROM, AND HAS NOT BEEN KNOWINGLY OR INTENTIONALLY COMMINGLED WITH FOODS OR SEEDS THAT MAY HAVE BEEN PRODUCED WITH GENETIC ENGINEERING;

(III) ANY PROCESSED FOOD THAT WOULD BE SUBJECT TO THIS SECTION SOLELY BECAUSE ONE OR MORE OF THE PROCESSING AIDS OR ENZYMES USED IN ITS PRODUCTION WERE PRODUCED WITH OR DERIVED FROM 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, MARKETING, AND OFFERED FOR SALE AS "ORGANIC" PURSUANT TO THE FEDERAL ORGANIC FOODS PRODUCTION ACT OF 1990, 7 U.S.C. 6501, ET SEQ. AS AMENDED FROM TIME TO TIME, AND THE NATIONAL ORGANIC PROGRAM REGULATIONS PROMULGATED PURSUANT THERETO BY THE UNITED STATES DEPARTMENT OF AGRICULTURE;

(VI) FOOD THAT IS NOT PACKAGED FOR SALE AND THAT EITHER: (I) IS A PROCESSED FOOD PREPARED AND INTENDED FOR IMMEDIATE HUMAN CONSUMPTION OR (II) IS SERVED, SOLD, OR OTHERWISE PROVIDED IN ANY RESTAURANT, FOOD FACILITY, OR FOOD RETAILER THAT IS ENGAGED IN THE SALE OF FOOD PREPARED AND INTENDED FOR IMMEDIATE HUMAN CONSUMPTION; OR

(VII) MEDICAL FOOD.

3. VIOLATIONS. (A) ANY PERSON, FIRM, CORPORATION, OR OTHER LEGAL ENTITY VIOLATING THIS SECTION SHALL BE SUBJECT TO THE PENALTIES FOR FALSE LABELS AND MISREPRESENTATIONS AS SET FORTH IN SECTION THREE HUNDRED NINETY-TWO-B OF THIS ARTICLE, PROVIDED HOWEVER THAT A RETAILER SHALL NOT BE SUBJECT TO THE PENALTIES UNDER SECTION THREE HUNDRED NINETY-TWO-B OF THIS ARTICLE UNLESS (I) THE RETAILER IS THE MANUFACTURER OF THE GENETICALLY ENGINEERED RAW AGRICULTURAL COMMODITY, PROCESSED FOOD, SEED, OR SEED STOCK AND SELLS THE GENETICALLY ENGINEERED RAW AGRICULTURAL COMMODITY, PROCESSED FOOD, SEED, OR SEED STOCK UNDER A BRAND IT OWNS OR (II) THE RETAILER'S FAILURE TO LABEL WAS KNOWING AND WILLFUL.

(B) ANY PERSON OR ENTITY WHO VIOLATES THE REQUIREMENTS OF THIS SECTION SHALL BE LIABLE FOR A CIVIL PENALTY OF NOT MORE THAN ONE THOUSAND DOLLARS PER DAY, PER PRODUCT.

4. NOTICE OF VIOLATION. IN ANY CASE WHERE THERE HAS BEEN A FINAL DETERMINATION BY THE DEPARTMENT, OF A VIOLATION OF ANY OF THE PROVISIONS OF THIS SECTION, THE DEPARTMENT SHALL MAKE AVAILABLE TO THE PUBLIC, WITHOUT CHARGE, THE FOLLOWING INFORMATION:

(A) THE NAME AND BUSINESS ADDRESS OF THE VIOLATOR;

(B) THE DATE OR DATES OF INSPECTION OF THE VIOLATOR'S PREMISES BY THE DEPARTMENT;

1 (C) THE VIOLATION THAT WAS DETERMINED TO HAVE OCCURRED, INCLUDING THE
2 NAME OF THE PRODUCT; AND

3 (D) THE AMOUNT OF THE PENALTY THAT WAS ASSESSED BY THE DEPARTMENT.

4 5. THIRD-PARTY PROTECTION; RELIANCE ON WRITTEN STATEMENT. A DISTRIBUTOR OR RETAILER THAT SELLS A RAW AGRICULTURAL COMMODITY, PROCESSED FOOD, SEED, OR SEED STOCK THAT HAS BEEN PRODUCED WITH GENETIC ENGINEERING THAT FAILS TO MAKE THE DISCLOSURE REQUIRED PURSUANT TO SUBDIVISION TWO OF THIS SECTION, IS NOT SUBJECT TO FINANCIAL LIABILITY IN ANY CIVIL ACTION TO ENFORCE THIS SECTION IF THE DISTRIBUTOR OR RETAILER RELIED ON THE WRITTEN STATEMENT OBTAINED UNDER SUBDIVISION TWO OF THIS SECTION PROVIDED BY THE MANUFACTURER STATING THAT THE RAW AGRICULTURAL COMMODITY, PROCESSED FOOD, SEED, OR SEED STOCK IS NOT SUBJECT TO THE DISCLOSURE REQUIREMENTS UNDER THIS SECTION.

14 S 3. Section 198 of the agriculture and markets law is amended by adding a new subdivision 12 to read as follows:

16 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.

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

22 (C) "GENETICALLY ENGINEERED," OR "GENETICALLY MODIFIED," OR ANY DERIVATIVE OF THOSE WORDS, AS APPLIED TO ANY FOOD FOR HUMAN CONSUMPTION OR SEED MEANS PRODUCED FROM OR WITH AN ORGANISM OR ORGANISMS WITH GENETICS ALTERED MATERIALLY THROUGH THE APPLICATION OF:

26 (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

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

32 FOR PURPOSES OF SUBPARAGRAPH (I) OF THIS PARAGRAPH, "IN VITRO NUCLEIC ACID TECHNIQUES" INCLUDE, BUT ARE NOT LIMITED TO, RECOMBINANT DNA OR RNA TECHNIQUES THAT USE VECTOR SYSTEMS AND TECHNIQUES INVOLVING THE DIRECT INTRODUCTION INTO THE ORGANISMS OF HEREDITARY MATERIALS PREPARED OUTSIDE THE ORGANISMS SUCH AS BIOLISTICS, MICROINJECTION, MACRO-INJECTION, CHEMOPORATION, ELECTROPORATION, MICROENCAPSULATION, AND LIPOSOME FUSION.

38 (D) "MANUFACTURER" MEANS A PERSON OR BUSINESS ENGAGED IN THE PRODUCTION OR PROCESSING OF SEED, SEED STOCK, OR ANY FOOD PRODUCT.

40 (E) "MEDICAL FOOD" MEANS A FOOD THAT IS FORMULATED TO BE CONSUMED OR ADMINISTERED ENTERALLY 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.

45 (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.

49 (G) "PROCESSING AID" MEANS:

50 (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 FINISHED FORM;

53 (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 NATURALLY FOUND IN THE FOOD; OR

(III) A SUBSTANCE THAT IS ADDED TO A FOOD FOR ITS TECHNICAL OR FUNCTIONAL EFFECT 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 FOOD FROM INDIVIDUALS OR BUSINESSES TO THE END-USER.

S 4. Section 201 of the agriculture and markets law is amended by adding a new subdivision 15 to read as follows:

15. (A) ANY FOOD FOR HUMAN CONSUMPTION, SEED, OR SEED STOCK 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 "PRODUCED WITH GENETIC ENGINEERING" OR ANY OTHER DERIVATIVE OF THOSE WORDS, THE INITIALS "GE", "GM", OR "GMO", OR A DERIVATIVE OF THOSE PHRASES, 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 DISPLAYED IN A CLEAR AND CONSPICUOUS MANNER ON THE RETAIL SHELF OR BIN IN WHICH SUCH COMMODITY IS OFFERED FOR SALE BY THE RETAILER.

(II) IN THE CASE OF A RAW AGRICULTURAL COMMODITY THAT IS SEPARATELY PACKAGED OR PROCESSED FOOD CONTAINING SOME PRODUCTS OF GENETIC ENGINEERING, THE MANUFACTURER MUST LABEL THE FOOD, IN A CLEAR AND CONSPICUOUS MANNER ON THE PACKAGE OF SUCH FOOD, WITH THE WORDS "PRODUCED WITH GENETIC ENGINEERING" OR ANY OTHER DERIVATIVE OF THOSE WORDS, THE INITIALS "GE", "GM", "GMO", OR A DERIVATIVE OF THOSE PHRASES.

(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 "PRODUCED WITH GENETIC ENGINEERING" OR ANY OTHER DERIVATIVE OF THOSE WORDS, THE INITIALS "GE", "GM", "GMO", OR A DERIVATIVE OF THOSE PHRASES.

(B) THIS SUBDIVISION SHALL NOT BE CONSTRUED TO REQUIRE EITHER THE LISTING OR IDENTIFICATION OF ANY INGREDIENTS THAT WERE GENETICALLY ENGINEERED, NOR THAT THE PHRASE "PRODUCED WITH GENETIC ENGINEERING" OR ANY OTHER DERIVATIVE OF THOSE WORDS, THE INITIALS "GE", "GM", "GMO", OR A DERIVATIVE OF THOSE PHRASES 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 WITH GENETIC ENGINEERING IS NOT MISBRANDED PROVIDED THAT THE GENETICALLY 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 PRODUCED WITH GENETIC ENGINEERING, 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 WITH GENETIC ENGINEERING;

(II) A RAW AGRICULTURAL COMMODITY, PROCESSED FOOD, OR SEED 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 OR ENTITY RESPONSIBLE FOR

1 COMPLYING WITH PARAGRAPH (A) OF THIS SUBDIVISION WITH RESPECT TO A RAW
2 AGRICULTURAL COMMODITY, PROCESSED FOOD, SEED, OR SEED STOCK MUST OBTAIN,
3 FROM WHOMEVER SOLD THE RAW AGRICULTURAL COMMODITY, PROCESSED FOOD, SEED,
4 OR SEED STOCK MUST OBTAIN, FROM WHOMEVER SOLD THE RAW AGRICULTURAL
5 COMMODITY, PROCESSED FOOD, SEED, OR SEED STOCK TO THAT PERSON, A WRITTEN
6 STATEMENT, WHICH MAY BE INCLUDED ON AN INVOICE THAT MAY BE IN AN ELEC-
7 TRONIC FORM, THAT THE RAW AGRICULTURAL COMMODITY, PROCESSED FOOD, SEED,
8 OR SEED STOCK: (1) HAS NOT BEEN KNOWINGLY OR INTENTIONALLY PRODUCED WITH
9 GENETIC ENGINEERING; AND (2) HAS BEEN SEGREGATED FROM, AND HAS NOT BEEN
10 KNOWINGLY OR INTENTIONALLY COMMINGLED WITH FOODS OR SEEDS THAT MAY HAVE
11 BEEN PRODUCED WITH GENETIC ENGINEERING;

12 (III) ANY PROCESSED FOOD THAT WOULD BE SUBJECT TO THIS SUBDIVISION
13 SOLELY BECAUSE ONE OR MORE OF THE PROCESSING AIDS OR ENZYMES USED IN ITS
14 PRODUCTION WERE PRODUCED WITH OR DERIVED FROM GENETIC ENGINEERING;

15 (IV) ANY ALCOHOLIC BEVERAGE THAT IS SUBJECT TO REGULATION BY THE ALCO-
16 HOLIC BEVERAGE CONTROL LAW;

17 (V) FOOD THAT HAS BEEN LAWFULLY CERTIFIED TO BE LABELED, MARKETED, AND
18 OFFERED FOR SALE AS "ORGANIC" PURSUANT TO THE FEDERAL ORGANIC FOODS
19 PRODUCTION ACT OF 1990, 7 U.S.C. 6501, ET SEQ. AS AMENDED FROM TIME TO
20 TIME, AND THE NATIONAL ORGANIC PROGRAM REGULATIONS PROMULGATED PURSUANT
21 THERETO BY THE UNITED STATES DEPARTMENT OF AGRICULTURE;

22 (VI) FOOD THAT IS NOT PACKAGED FOR SALE AND THAT EITHER: (I) IS A
23 PROCESSED FOOD PREPARED AND INTENDED FOR IMMEDIATE HUMAN CONSUMPTION OR
24 (II) IS SERVED, SOLD, OR OTHERWISE PROVIDED IN ANY RESTAURANT, FOOD
25 FACILITY, OR FOOD RETAILER THAT IS ENGAGED IN THE SALE OF FOOD PREPARED
26 AND INTENDED FOR IMMEDIATE HUMAN CONSUMPTION; OR

27 (VII) MEDICAL FOOD.

28 (E)(I) ANY PERSON, FIRM, CORPORATION, OR OTHER LEGAL ENTITY VIOLATING
29 THIS SECTION SHALL BE SUBJECT TO THE PENALTIES FOR FALSE LABELS AND
30 MISREPRESENTATIONS AS SET FORTH IN SECTION THREE HUNDRED NINETY-TWO-B OF
31 THE GENERAL BUSINESS LAW, PROVIDED HOWEVER THAT A RETAILER SHALL NOT BE
32 SUBJECT TO THE PENALTIES UNDER SECTION THREE HUNDRED NINETY-TWO-B OF THE
33 GENERAL BUSINESS LAW UNLESS (1) THE RETAILER IS THE MANUFACTURER OF THE
34 GENETICALLY ENGINEERED RAW AGRICULTURAL COMMODITY, PROCESSED FOOD, SEED,
35 OR SEED STOCK AND SELLS THE GENETICALLY ENGINEERED RAW AGRICULTURAL
36 COMMODITY, PROCESSED FOOD, SEED, OR SEED STOCK UNDER A BRAND IT OWNS OR
37 (2) THE RETAILER'S FAILURE TO LABEL WAS KNOWING AND WILLFUL.

38 (II) ANY PERSON OR ENTITY WHO VIOLATES THE REQUIREMENTS OF THIS
39 SECTION SHALL BE LIABLE FOR A CIVIL PENALTY OF NOT MORE THAN ONE THOU-
40 SAND DOLLARS PER DAY, PER PRODUCT.

41 (F) IN ANY CASE WHERE THERE HAS BEEN A FINAL DETERMINATION BY THE
42 DEPARTMENT, OF A VIOLATION OF ANY OF THE PROVISIONS OF THIS SUBDIVISION,
43 THE DEPARTMENT SHALL MAKE AVAILABLE TO THE PUBLIC, WITHOUT CHARGE, THE
44 FOLLOWING INFORMATION:

45 (I) THE NAME AND BUSINESS ADDRESS OF THE VIOLATOR;

46 (II) THE DATE OR DATES OF INSPECTION OF THE VIOLATOR'S PREMISES BY THE
47 DEPARTMENT;

48 (III) THE VIOLATION THAT WAS DETERMINED TO HAVE OCCURRED, INCLUDING
49 THE NAME OF THE PRODUCT; AND

50 (IV) THE AMOUNT OF THE PENALTY THAT WAS ASSESSED BY THE DEPARTMENT.

51 (G) A DISTRIBUTOR OR RETAILER THAT SELLS A RAW AGRICULTURAL COMMODITY,
52 PROCESSED FOOD, SEED, OR SEED STOCK THAT HAS BEEN PRODUCED WITH GENETIC
53 ENGINEERING THAT FAILS TO MAKE THE DISCLOSURE REQUIRED PURSUANT TO
54 SECTION THREE HUNDRED NINETY-ONE-T OF THE GENERAL BUSINESS LAW, IS NOT
55 SUBJECT TO FINANCIAL LIABILITY IN ANY CIVIL ACTION TO ENFORCE THIS
56 SECTION IF THE DISTRIBUTOR OR RETAILER RELIED ON THE WRITTEN STATEMENT

1 OBTAINED UNDER SUBDIVISION TWO OF SECTION THREE HUNDRED NINETY-ONE-T OF
2 THE GENERAL BUSINESS LAW PROVIDED BY THE MANUFACTURER STATING THAT THE
3 RAW AGRICULTURAL COMMODITY, PROCESSED FOOD, SEED, OR SEED STOCK IS NOT
4 SUBJECT TO THE DISCLOSURE REQUIREMENTS UNDER SUCH SECTION.

5 S 5. Severability clause. If any provision of this act or its applica-
6 tion to any person, legal entity, or circumstance is held invalid, the
7 remainder of the act or the application of the provision to other
8 persons, legal entity or circumstances shall not be affected.

9 S 6. This act shall take effect twenty-four months after it shall have
10 become a law; provided, however, that effective immediately, the depart-
11 ment of agriculture and markets shall adopt any rules and regulations
12 necessary to implement this act, including, but not limited to, creating
13 and maintaining a list, which shall be made available to the public at
14 no cost, of raw agricultural commodities that are produced with genetic
15 engineering; provided, further, that the department of agriculture and
16 markets is not authorized to create any exemptions beyond those provided
17 for in paragraph (d) of subdivision 2 of section 391-t of the general
18 business law as added by section two of this act and paragraph (d) of
19 subdivision 15 of section 201 of the agriculture and markets law as
20 added by section four of this act; this act shall remain in effect until
21 such time as a comprehensive federal system requiring mandatory labeling
22 of raw agricultural commodities, processed foods, seed, and seed stock
23 produced with genetic engineering is implemented, provided however that
24 nothing contained herein shall prevent the state from exercising any
25 concurrent authority authorized by federal law; provided that the
26 commissioner of agriculture and markets shall notify the legislative
27 bill drafting commission upon the occurrence of the enactment of a
28 comprehensive federal system requiring mandatory labeling of raw agri-
29 cultural commodities, processed foods, seed, and seed stock produced
30 with genetic engineering in order that the commission may maintain an
31 accurate and timely effective data base of the official text of the laws
32 of the state of New York in furtherance of effectuating the provisions
33 of section 44 of the legislative law and section 70-b of the public
34 officers law.