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

4468--A

2013-2014 Regular Sessions

I N S E N A T E

April 3, 2013

Introduced by Sens. PARKER, AVELLA, PERKINS -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection -- 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, in relation to enacting the New York right to know genetically engineered food act

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

Section 1. Short title. This act shall be known and may be cited as the "New York right to know genetically engineered food act".

S 2. Legislative intent. The legislature intends to create and enforce the fundamental right of the people of New York to be fully informed about whether the food they purchase and eat is genetically engineered and not misbranded as natural so that they can choose for themselves whether to purchase and eat such foods. This act shall be liberally construed to fulfill this purpose.

S 3. The general business law is amended by adding a new article 16-A to read as follows:

ARTICLE 16-A

NEW YORK RIGHT TO KNOW GENETICALLY ENGINEERED FOOD ACT

SECTION 266-A. DEFINITIONS.
266-B. LABELING OF GENETIC ENGINEERING OF FOOD.
266-C. MISBRANDING OF GENETICALLY ENGINEERED FOOD AS "NATURAL".
266-D. EXEMPTIONS.
266-E. ENFORCEMENT.

S 266-A. DEFINITIONS. (A) THE TERM "CULTIVATED COMMERCIALLY" AS USED IN THIS ARTICLE, MEANS GROWN OR RAISED BY A PERSON IN THE COURSE OF HIS OR HER BUSINESS OR TRADE AND SOLD WITHIN THE UNITED STATES.

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

LBD05872-03-4

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

(C)(I) "GENETICALLY ENGINEERED" SHALL MEAN ANY FOOD THAT IS PRODUCED FROM AN ORGANISM OR ORGANISMS IN WHICH THE GENETIC MATERIAL HAS BEEN CHANGED THROUGH THE APPLICATION OF:

(A) IN VITRO NUCLEIC ACID TECHNIQUES, INCLUDING RECOMBINANT DEOXYRIBONUCLEIC ACID (DNA) TECHNIQUES AND THE DIRECT INJECTION OF NUCLEIC ACID INTO CELLS OR ORGANELLES, OR

(B) FUSION OF CELLS, INCLUDING PROTOPLAST FUSION, OR HYBRIDIZATION TECHNIQUES THAT OVERCOME NATURAL PHYSIOLOGICAL, REPRODUCTIVE, OR RECOMBINATION BARRIERS, WHERE THE DONOR CELLS/PROTOPLASTS DO NOT FALL WITHIN THE SAME TAXONOMIC FAMILY, IN A WAY THAT DOES NOT OCCUR BY NATURAL MULTIPLICATION OR NATURAL RECOMBINATION.

(II) FOR PURPOSES OF THIS ARTICLE (A) "ORGANISM" MEANS ANY BIOLOGICAL ENTITY CAPABLE OF REPLICATION, REPRODUCTION, OR TRANSFERRING GENETIC MATERIAL.

(B) "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 MICRO-INJECTION, MACRO-INJECTION, CHEMOPORATION, ELECTROPORATION, MICRO-ENCAPSULATION, AND LIPOSOME FUSION.

(D) "PROCESSED FOOD" SHALL MEAN ANY FOOD OTHER THAN A RAW AGRICULTURAL COMMODITY, AND INCLUDES 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.

(E) "PROCESSING AID" SHALL MEAN (1) A SUBSTANCE THAT IS ADDED TO A FOOD DURING THE PROCESSING OF SUCH FOOD, BUT IS REMOVED IN SOME MANNER FROM THE FOOD BEFORE IT IS PACKAGED IN ITS FINISHED FORM;

(2) 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

(3) 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.

(F) "FOOD PROCESSING ESTABLISHMENT" SHALL HAVE THE MEANING SET FORTH IN SECTION 251-Z-2 OF THE AGRICULTURE AND MARKETS LAW.

S 266-B. LABELING OF GENETIC ENGINEERING OF FOOD. (A) COMMENCING JULY FIRST, TWO THOUSAND FIFTEEN, ANY FOOD OFFERED FOR RETAIL SALE IN NEW YORK IS MISBRANDED IF IT IS OR MAY HAVE BEEN ENTIRELY OR PARTIALLY PRODUCED WITH GENETIC ENGINEERING AND THAT FACT IS NOT DISCLOSED: (I) IN THE CASE OF A RAW AGRICULTURAL COMMODITY ON THE PACKAGE OFFERED FOR RETAIL SALE, WITH THE CLEAR AND CONSPICUOUS WORDS "GENETICALLY ENGINEERED" ON THE FRONT OF THE PACKAGE OF SUCH COMMODITY OR, IN THE CASE OF ANY SUCH COMMODITY THAT IS NOT SEPARATELY PACKAGED OR LABELED, ON A LABEL APPEARING ON THE RETAIL STORE SHELF OR BIN IN WHICH SUCH COMMODITY IS DISPLAYED FOR SALE; (II) IN THE CASE OF ANY PROCESSED FOOD, IN CLEAR AND CONSPICUOUS LANGUAGE ON THE FRONT OR BACK OF THE PACKAGE OF SUCH FOOD, WITH THE WORDS "PARTIALLY PRODUCED WITH GENETIC ENGINEERING" OR "MAY BE PARTIALLY PRODUCED WITH GENETIC ENGINEERING".

(B) SUBDIVISION (A) OF THIS SECTION AND SUBDIVISION (E) OF SECTION TWO HUNDRED SIXTY-SIX-D OF THIS ARTICLE SHALL NOT BE CONSTRUED TO REQUIRE EITHER THE LISTING OR IDENTIFICATION OF ANY INGREDIENT OR INGREDIENTS

THAT WERE GENETICALLY ENGINEERED OR THAT THE TERM "GENETICALLY ENGINEERED" BE PLACED IMMEDIATELY PRECEDING ANY COMMON NAME OR PRIMARY PRODUCT DESCRIPTOR OF A FOOD.

S 266-C. MISBRANDING OF GENETICALLY ENGINEERED FOOD AS "NATURAL". IN ADDITION TO ANY DISCLOSURE REQUIRED BY SECTION TWO HUNDRED SIXTY-SIX-B OF THIS ARTICLE, IF A FOOD MEETS ANY OF THE DEFINITIONS IN SUBDIVISION (C) OR (D) OF SECTION TWO HUNDRED SIXTY-SIX-A OF THIS ARTICLE, AND IS NOT OTHERWISE EXEMPTED FROM LABELING UNDER SECTION TWO HUNDRED SIXTY-SIX-D OF THIS ARTICLE, THE FOOD MAY NOT IN NEW YORK, ON ITS LABEL, ACCOMPANYING SIGNAGE IN A RETAIL ESTABLISHMENT, OR IN ANY ADVERTISING OR PROMOTIONAL MATERIALS, STATE OR IMPLY THAT THE FOOD IS "NATURAL," "NATURALLY MADE," "NATURALLY GROWN," "ALL NATURAL," OR ANY WORDS OF SIMILAR IMPORT THAT WOULD HAVE ANY TENDENCY TO MISLEAD ANY CONSUMER.

S 266-D. EXEMPTIONS. THE REQUIREMENTS OF SECTION TWO HUNDRED SIXTY-SIX-B OF THIS ARTICLE SHALL NOT APPLY TO ANY OF THE FOLLOWING:

(A) FOOD CONSISTING ENTIRELY OF, OR DERIVED ENTIRELY FROM, AN ANIMAL THAT HAS NOT ITSELF BEEN GENETICALLY ENGINEERED, REGARDLESS OF WHETHER SUCH ANIMAL HAS BEEN FED OR INJECTED WITH ANY GENETICALLY ENGINEERED FOOD OR ANY DRUG THAT HAS BEEN PRODUCED THROUGH MEANS OF GENETIC ENGINEERING.

(B) A RAW AGRICULTURAL COMMODITY OR FOOD DERIVED THEREFROM THAT HAS BEEN GROWN, RAISED, OR PRODUCED WITHOUT THE KNOWING AND INTENTIONAL USE OF GENETICALLY ENGINEERED SEED OR FOOD. FOOD WILL BE DEEMED TO BE DESCRIBED IN THE PRECEDING SENTENCE ONLY IF THE PERSON OTHERWISE RESPONSIBLE FOR COMPLYING WITH THE REQUIREMENTS OF SUBDIVISION (A) OF SECTION TWO HUNDRED SIXTY-SIX-B OF THIS ARTICLE WITH RESPECT TO A RAW AGRICULTURAL COMMODITY OR FOOD OBTAINS, FROM WHOEVER SOLD THE COMMODITY OR FOOD TO THAT PERSON, A SWORN STATEMENT THAT SUCH COMMODITY OR FOOD: (I) HAS NOT BEEN KNOWINGLY OR INTENTIONALLY GENETICALLY ENGINEERED; AND (II) HAS BEEN SEGREGATED FROM, AND HAS NOT BEEN KNOWINGLY OR INTENTIONALLY COMMINGLED WITH, FOOD THAT MAY HAVE BEEN GENETICALLY ENGINEERED AT ANY TIME. IN PROVIDING SUCH A SWORN STATEMENT, ANY PERSON MAY RELY ON A SWORN STATEMENT FROM HIS OR HER OWN SUPPLIER THAT CONTAINS THE AFFIRMATION SET FORTH IN THE PRECEDING SENTENCE.

(C) ANY PROCESSED FOOD THAT WOULD BE SUBJECT TO SECTION TWO HUNDRED SIXTY-SIX-B OF THIS ARTICLE SOLELY BECAUSE IT INCLUDES ONE OR MORE GENETICALLY ENGINEERED PROCESSING AIDS OR ENZYMES.

(D) ANY ALCOHOLIC BEVERAGE.

(E) UNTIL JULY FIRST, TWO THOUSAND TWENTY, ANY PROCESSED FOOD THAT WOULD BE SUBJECT TO SECTION TWO HUNDRED SIXTY-SIX-B OF THIS ARTICLE SOLELY BECAUSE IT INCLUDES ONE OR MORE GENETICALLY ENGINEERED INGREDIENTS, PROVIDED THAT: (I) NO SINGLE SUCH INGREDIENT ACCOUNTS FOR MORE THAN ONE-HALF OF ONE PERCENT OF THE TOTAL WEIGHT OF SUCH PROCESSED FOOD; AND (II) THE PROCESSED FOOD DOES NOT CONTAIN MORE THAN TEN SUCH INGREDIENTS.

(F) FOOD THAT AN INDEPENDENT ORGANIZATION HAS DETERMINED HAS NOT BEEN KNOWINGLY AND INTENTIONALLY PRODUCED FROM OR COMMINGLED WITH GENETICALLY ENGINEERED SEED OR GENETICALLY ENGINEERED FOOD, PROVIDED THAT SUCH DETERMINATION HAS BEEN MADE PURSUANT TO A SAMPLING AND TESTING PROCEDURE APPROVED IN REGULATIONS ADOPTED BY THE DEPARTMENT OF AGRICULTURE AND MARKETS. NO SAMPLING PROCEDURE SHALL BE APPROVED BY THE DEPARTMENT UNLESS SAMPLING IS DONE ACCORDING TO A STATISTICALLY VALID SAMPLING PLAN CONSISTENT WITH PRINCIPLES RECOMMENDED BY INTERNATIONALLY RECOGNIZED SOURCES SUCH AS THE INTERNATIONAL STANDARDS ORGANIZATION (ISO) AND THE GRAIN AND FEED TRADE ASSOCIATION (GAFTA). NO TESTING PROCEDURE SHALL BE APPROVED BY THE DEPARTMENT UNLESS: (I) IT IS CONSISTENT WITH THE THE

MOST RECENT "GUIDELINES ON PERFORMANCE CRITERIA AND VALIDATION OF METHODS FOR DETECTION, IDENTIFICATION AND QUANTIFICATION OF SPECIFIC DNA SEQUENCES AND SPECIFIC PROTEINS IN FOODS," (CAC/GL 74 (2010)) PUBLISHED BY THE CODEX ALIMENTARIUS COMMISSION; AND (II) IT DOES NOT RELY ON TESTING OF PROCESSED FOODS IN WHICH NO DNA IS DETECTABLE.

(G) FOOD THAT HAS BEEN LAWFULLY CERTIFIED TO BE LABELED, MARKETED, AND OFFERED FOR SALE AS "ORGANIC" PURSUANT TO THE FEDERAL ORGANIC FOOD PRODUCTS ACT OF 1990 AND THE REGULATIONS PROMULGATED PURSUANT THERETO BY THE UNITED STATES DEPARTMENT OF AGRICULTURE.

(H) FOOD THAT IS NOT PACKAGED FOR RETAIL 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 OR OTHER FOOD FACILITY THAT IS PRIMARILY ENGAGED IN THE SALE OF FOOD PREPARED AND INTENDED FOR IMMEDIATE HUMAN CONSUMPTION.

(I) MEDICAL FOOD.

S 266-E. ENFORCEMENT. THE COMMISSIONER OF AGRICULTURE AND MARKETS MAY INSTITUTE SUCH ACTION AT LAW OR IN EQUITY AS MAY APPEAR NECESSARY TO ENFORCE COMPLIANCE WITH ANY PROVISIONS OF THIS ARTICLE OR OF THE RULES AND REGULATIONS PROMULGATED THEREUNDER, AND, IN ADDITION TO ANY OTHER REMEDY UNDER ARTICLE THREE OF THE AGRICULTURE AND MARKETS LAW OR OTHERWISE, MAY APPLY FOR RELIEF BY INJUNCTION IF NECESSARY TO PROTECT THE PUBLIC INTEREST WITHOUT BEING COMPELLED TO ALLEGE OR PROVE THAT AN ADEQUATE REMEDY AT LAW DOES NOT EXIST. SUCH APPLICATION MAY BE MADE TO THE SUPREME COURT IN ANY DISTRICT OR COUNTY AS PROVIDED IN THE CIVIL PRACTICE LAW AND RULES, OR TO THE SUPREME COURT IN THE THIRD JUDICIAL DISTRICT.

S 4. This act shall take effect on the sixtieth day after it shall have become a law.