

7405

I N S E N A T E

May 14, 2014

Introduced by Sen. SANDERS -- 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 engineered 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 entirely genetically engineered or partially produced
4 with genetic engineering so they can make informed purchasing decisions.
5 Labeling is necessary to ensure that New York consumers are fully and
6 reliably informed about the products they purchase and consume. Further
7 the legislature finds that:
8 (a) Currently, there is no federal law that requires food producers to
9 identify whether foods were produced with genetic engineering. At the
10 same time, the United States Food and Drug Administration (FDA) does not
11 require safety studies of such foods. Unless these foods contain a known
12 allergen, the FDA does not require the developers of genetically engi-
13 neered foods to consult with the agency. Consultations with the FDA are
14 entirely voluntary;
15 (b) Mandatory identification of foods produced with genetic engineer-
16 ing can provide a critical method for tracking any potential short-term
17 and long-term health effects of consuming foods produced with genetic
18 engineering;
19 (c) Polls consistently show that the vast majority of the public wants
20 to know if their food has been produced with genetic engineering;
21 (d) More than sixty countries, including Japan, South Korea, China,
22 Australia, New Zealand, Thailand, Russia, the European Union member
23 states, and other key United States trading partners, have laws mandat-
24 ing disclosure of genetically engineered foods;
25 (e) A variety of genetically engineered crops are commercially culti-
26 vated and sold in the United States, including corn, canola, soybean,
27 cotton, sugar beets, alfalfa, and papaya. It has been estimated that
28 60-70% of packaged grocery products contain some materials produced with

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

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1 genetic engineering, typically derived from genetically engineered soy,
2 sugar beets, and/or corn. Consumers should be provided with the informa-
3 tion necessary to make informed decisions when choosing food to buy for
4 themselves and their families;

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

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

10 (h) The cultivation of genetically engineered crops can cause serious
11 environmental impacts. For example, most genetically engineered crops
12 are designed to withstand weed-killing herbicides. Because genetically
13 engineered crops are more resistant to herbicides, their cultivation has
14 resulted in the application of millions of additional pounds of herbi-
15 cides to the nation's farmland. The massive increase in the use of
16 herbicides has led to the emergence of herbicide-resistant weeds, which
17 have infested farm fields and roadsides, complicating weed control for
18 farmers and encouraging the use of increasingly toxic and more dangerous
19 herbicides. Toxic herbicides damage the vitality of the soil, contam-
20 inate drinking water supplies, and pose health risks to consumers and
21 farm workers. New York consumers should have the ability to avoid
22 purchasing foods produced in ways that can lead to such environmental
23 harm;

24 (i) Conventional, non-organic farmers have a right to choose what
25 crops they grow and many conventional farmers want to grow traditional
26 crops developed without genetic engineering. Identifying seeds and seed
27 stock produced with genetic engineering would protect the farmers' right
28 to know what they are purchasing and protect their right to choose what
29 they grow;

30 (j) Identifying foods produced with genetic engineering will help
31 protect our state's export market because many of our trading partners
32 have bans on the import and cultivation of genetically engineered seed
33 and food as well as laws mandating the labeling of genetically engi-
34 neered seed and foods;

35 (k) It is the intent of this act to ensure that New York consumers and
36 farmers are fully and reliably informed about whether the food and seed
37 they purchase and eat were produced with genetic engineering so they may
38 choose for themselves whether to purchase and eat or use such food,
39 seed, and seed stock;

40 (l) It is the intent of this act to enable improved tracking of genet-
41 ically engineered food consumption and of any potential health impacts;
42 and

43 (m) It is the intent of this act only to regulate food for human
44 consumption offered for retail sale within New York state.

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

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

49 (A) "DEPARTMENT" MEANS THE STATE DEPARTMENT OF AGRICULTURE AND
50 MARKETS.

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

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

(D) "GENETICALLY ENGINEERED," OR "GENETICALLY MODIFIED," OR ANY DERIVATIVE OF THOSE WORDS, AS APPLIED TO ANY FOOD FOR HUMAN CONSUMPTION, 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) 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.

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.

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

(F) "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.

(G) "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.

(H) "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 FINISHED 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 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.

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

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

2. LABELING OF GENETICALLY ENGINEERED FOODS. (A) ANY FOOD FOR HUMAN CONSUMPTION 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 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 STORE SHELF OR BIN IN WHICH SUCH COMMODITY IS OFFERED FOR SALE BY THE RETAILER.

(II) IN THE CASE OF 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 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 DERIVATIVE OF THOSE PHRASES.

(B) THIS SECTION 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 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 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 WITH GENETIC ENGINEERING;

(II) A RAW AGRICULTURAL COMMODITY, 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 RESPONSIBLE FOR COMPLYING WITH THIS SUBDIVISION WITH RESPECT TO A RAW AGRICULTURAL COMMODITY, FOOD, OR SEED MUST OBTAIN, FROM WHOMEVER SOLD THE RAW AGRICULTURAL COMMODITY OR FOOD OR SEED 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, FOOD, OR SEED: (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 OR SEEDS THAT MAY HAVE BEEN GENETICALLY ENGINEERED. IN PROVIDING SUCH STATEMENT, THE PERSON MAY RELY ON THE WRITTEN STATEMENT, WHICH MAY BE IN AN ELECTRONIC FORM, PROVIDED 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 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. 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 MISREPRESENTATIONS AS SET FORTH IN SECTION THREE HUNDRED NINETY-TWO-B OF THIS ARTICLE, PROVIDED HOWEVER THAT A RETAILER SHALL NOT BE PENALIZED FOR THE FAILURE TO LABEL UNDER SECTION THREE HUNDRED NINETY-TWO-B OF THIS ARTICLE UNLESS (A) THE RETAILER IS THE MANUFACTURER OF THE GENETICALLY-ENGINEERED FOOD, SEED OR SEED STOCK AND SELLS THE GENETICALLY-ENGINEERED FOOD UNDER A BRAND IT OWNS OR (B) THE RETAILER'S FAILURE TO LABEL WAS KNOWING AND WILFUL. IN AN ACTION IN WHICH IT IS ALLEGED THAT A RETAILER HAS VIOLATED THE PROVISIONS OF THIS SECTION, IT SHALL BE A DEFENSE THAT SUCH RETAILER RELIED ON (I) ANY DISCLOSURE CONCERNING GENETICALLY-ENGINEERED FOODS RECEIVED PURSUANT TO THIS SECTION OR (II) THE LACK OF ANY DISCLOSURE.

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;

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

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

5. THIRD-PARTY PROTECTION; RELIANCE ON WRITTEN STATEMENT. A DISTRIBUTOR OR RETAILER THAT SELLS OR ADVERTISES FOOD OR SEED STOCK THAT IS GENETICALLY ENGINEERED THAT FAILS TO MAKE THE DISCLOSURE REQUIRED PURSUANT TO SUBDIVISION TWO OF THIS SECTION, IS NOT SUBJECT TO LIABILITY IN ANY CIVIL ACTION TO ENFORCE THIS SECTION IF THE DISTRIBUTOR OR RETAILER RELIED ON THE WRITTEN STATEMENT UNDER SUBDIVISION TWO OF THIS SECTION PROVIDED BY THE MANUFACTURER OR GROWER STATING THAT THE FOOD OR SEED STOCK IS NOT SUBJECT TO THE DISCLOSURE REQUIREMENTS UNDER THIS SECTION.

S 3. 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" OR "GENETICALLY MODIFIED," OR ANY DERIVATIVE OF THOSE WORDS, AS APPLIED TO ANY FOOD FOR HUMAN CONSUMPTION, 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) OR RIBONUCLEIC ACID (RNA) TECHNIQUES, DIRECT INJECTION OF NUCLEIC ACID INTO CELLS OR ORGANELLES, ENCAPSULATION, GENE DELETION, AND DOUBLING, OR

(II) THE 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.

FOR PURPOSES OF SUBPARAGRAPH (I) OF THIS PARAGRAPH, "IN VITRO NUCLEIC ACID TECHNIQUES" INCLUDE, BUT ARE NOT LIMITED TO, RECOMBINANT DNA OR RNA

1 TECHNIQUES THAT USE VECTOR SYSTEMS, AND TECHNIQUES INVOLVING THE DIRECT
2 INTRODUCTION INTO THE ORGANISMS OF HEREDITARY MATERIALS PREPARED OUTSIDE
3 THE ORGANISMS SUCH AS BIOLISTICS, MICROINJECTION, MACRO-INJECTION,
4 CHEMOPORATION, ELECTROPORATION, MICROENCAPSULATION, AND LIPOSOME FUSION.

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

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

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

16 (G) "PROCESSING AID" MEANS:

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

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

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

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

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

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

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

38 (I) IN THE CASE OF A RAW AGRICULTURAL COMMODITY THAT IS NOT SEPARATELY
39 PACKAGED OR LABELED, THE WORDS "PRODUCED WITH GENETIC ENGINEERING" OR
40 ANY OTHER DERIVATIVE OF THOSE WORDS, THE INITIALS "GE", "GM", "GMO", OR
41 DERIVATIVE OF THOSE PHRASES SHALL BE PLACED ON THE CONTAINER USED FOR
42 PACKAGING, HOLDING, AND/OR TRANSPORT IN A CLEAR AND CONSPICUOUS MANNER
43 BY THE MANUFACTURER, AND MAINTAINED BY THE DISTRIBUTOR, AND DISPLAYED IN
44 A CLEAR AND CONSPICUOUS MANNER ON THE RETAIL STORE SHELF OR BIN IN WHICH
45 SUCH COMMODITY IS FOR SALE BY THE RETAILER.

46 (II) IN THE CASE OF PROCESSED FOOD CONTAINING SOME PRODUCTS OF GENETIC
47 ENGINEERING, THE MANUFACTURER MUST LABEL THE FOOD, IN A CLEAR AND
48 CONSPICUOUS MANNER ON THE PACKAGE OF SUCH FOOD, WITH THE WORDS "PRODUCED
49 WITH GENETIC ENGINEERING" OR ANY OTHER DERIVATIVE OF THOSE WORDS, THE
50 INITIALS "GE", "GM", "GMO", OR DERIVATIVE OF THOSE PHRASES.

51 (III) IN THE CASE OF ANY SEED OR SEED STOCK, THE MANUFACTURER OR OTHER
52 ENTITY RESPONSIBLE FOR PRODUCING THE SEED MUST LABEL THE SEED OR SEED
53 STOCK CONTAINER, THE SALES RECEIPT, AND ANY OTHER REFERENCE TO IDENTIFI-
54 CATION, OWNERSHIP, OR POSSESSION, IN A CLEAR AND CONSPICUOUS MANNER WITH
55 THE WORDS "PRODUCED WITH GENETIC ENGINEERING" OR ANY OTHER DERIVATIVE OF

1 THOSE WORDS, THE INITIALS "GE", "GM", "GMO", OR DERIVATIVE OF THOSE
2 PHRASES.

3 (B) THIS SUBDIVISION SHALL NOT BE CONSTRUED TO REQUIRE EITHER THE
4 LISTING OR IDENTIFICATION OF ANY INGREDIENTS THAT WERE GENETICALLY ENGI-
5 NEERED, NOR THAT THE PHRASE "PRODUCED WITH GENETIC ENGINEERING" OR ANY
6 OTHER DERIVATIVE OF THOSE WORDS, THE INITIALS "GE", "GM", "GMO", OR
7 DERIVATIVE OF THOSE PHRASES BE PLACED IMMEDIATELY PRECEDING ANY COMMON
8 NAME OR PRIMARY PRODUCT DESCRIPTOR OF A FOOD.

9 (C) ANY PROCESSED FOOD OR RAW AGRICULTURAL COMMODITY THAT WOULD BE
10 SUBJECT TO THIS SECTION SOLELY BECAUSE IT INCLUDES ONE OR MORE MATERIALS
11 PRODUCED WITH GENETIC ENGINEERING IS NOT MISBRANDED PROVIDED THAT THE
12 GENETICALLY ENGINEERED MATERIALS IN THE AGGREGATE DO NOT ACCOUNT FOR
13 MORE THAN NINE-TENTHS OF ONE PERCENT OF THE TOTAL WEIGHT OF THE PROC-
14 ESSED FOOD OR RAW AGRICULTURAL COMMODITY.

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

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

21 (II) A RAW AGRICULTURAL COMMODITY OR FOOD THAT HAS BEEN GROWN, RAISED,
22 PRODUCED, OR DERIVED WITHOUT THE KNOWING AND INTENTIONAL USE OF GENET-
23 ICALLY ENGINEERED SEED OR FOOD. TO BE INCLUDED WITHIN THE EXCLUSION
24 UNDER THIS PARAGRAPH, THE PERSON RESPONSIBLE FOR COMPLYING WITH PARA-
25 GRAPH (A) OF THIS SUBDIVISION WITH RESPECT TO A RAW AGRICULTURAL COMMOD-
26 ITY OR FOOD MUST OBTAIN, FROM WHOMEVER SOLD THE RAW AGRICULTURAL COMMOD-
27 ITY OR FOOD TO THAT PERSON, A WRITTEN STATEMENT, WHICH MAY BE INCLUDED
28 ON AN INVOICE THAT MAY BE IN AN ELECTRONIC FORM, THAT THE RAW AGRICUL-
29 TURAL COMMODITY OR FOOD: (1) HAS NOT BEEN KNOWINGLY OR INTENTIONALLY
30 GENETICALLY ENGINEERED; AND (2) HAS BEEN SEGREGATED FROM, AND HAS NOT
31 BEEN KNOWINGLY OR INTENTIONALLY COMMINGLED WITH FOODS THAT MAY HAVE BEEN
32 GENETICALLY ENGINEERED. IN PROVIDING SUCH STATEMENT, A PERSON MAY RELY
33 ON A WRITTEN STATEMENT, WHICH MAY BE IN AN ELECTRONIC FORM, FROM HIS OR
34 HER OWN SUPPLIER THAT CONTAINS SUCH AN AFFIRMATION;

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

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

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

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

50 (VII) MEDICAL FOOD.

51 (E) ANY PERSON, FIRM, CORPORATION, OR OTHER LEGAL ENTITY VIOLATING
52 THIS SUBDIVISION SHALL BE SUBJECT TO THE PENALTIES FOR FALSE LABELS AND
53 MISREPRESENTATIONS AS SET FORTH IN SECTION THREE HUNDRED NINETY-TWO-B OF
54 THE GENERAL BUSINESS LAW, PROVIDED HOWEVER THAT A RETAILER SHALL NOT BE
55 PENALIZED FOR THE FAILURE TO LABEL UNDER SECTION THREE HUNDRED
56 NINETY-TWO-B OF THE GENERAL BUSINESS LAW UNLESS (I) THE RETAILER IS THE

1 MANUFACTURER OF THE GENETICALLY-ENGINEERED FOOD, SEED OR SEED STOCK AND
2 SELLS THE GENETICALLY-ENGINEERED FOOD UNDER A BRAND IT OWNS OR (II) THE
3 RETAILER'S FAILURE TO LABEL WAS KNOWING AND WILFUL. IN AN ACTION IN
4 WHICH IT IS ALLEGED THAT A RETAILER HAS VIOLATED THE PROVISIONS OF THIS
5 SECTION, IT SHALL BE A DEFENSE THAT SUCH RETAILER RELIED ON (1) ANY
6 DISCLOSURE CONCERNING GENETICALLY-ENGINEERED FOODS RECEIVED PURSUANT TO
7 THIS SECTION OR (2) THE LACK OF ANY DISCLOSURE.

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

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