

STATE OF NEW YORK

5603

2017-2018 Regular Sessions

IN ASSEMBLY

February 10, 2017

Introduced by M. of A. MORINELLO -- read once and referred to the
Committee on Consumer Affairs and Protection

AN ACT to amend the agriculture and markets law and the general business
law, in relation to the labeling of foods produced with certain types
of fertilizer

The People of the State of New York, represented in Senate and Assem-
bly, do enact as follows:

1 Section 1. The agriculture and markets law is amended by adding a new
2 section 214-o to read as follows:

3 § 214-o. The labeling of foods produced with certain types of ferti-
4 lizers. 1. Definitions. As used in this section the following terms
5 shall have the following meanings:

6 (a) "Anaerobic digestion" means any natural biological processes
7 involving microorganisms in the absence of oxygen for the purposes of
8 breaking down biodegradable material and the creation of methane.

9 (b) "Commercial fertilizer" shall mean any substances containing one
10 or more recognized plant nutrients which is used for its plant nutrient
11 content, and which is designed for use or claimed to have value in
12 promoting plant growth, except unmanipulated animal and vegetable
13 manures, agricultural liming material, wood ashes, gypsum and other
14 products exempted by regulation of the commissioner.

15 (c) "Digestate" means any liquid or solid that is produced as the
16 result of the process of anaerobic digestion.

17 (d) "Effluent" means any garbage, refuse, raw sewage, septage or
18 sludge produced from a sewage treatment plant, waste treatment plant or
19 water supply treatment plant that is known to contain excrementitious
20 waste products or other wastes or washings from the bodies of human
21 beings.

22 2. (a) Any food for human consumption offered for retail sale in New
23 York is misbranded if it is produced with commercial fertilizer composed
24 of digestate produced or partially produced from effluent that has gone

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

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1 through an anaerobic digestion process and that fact is not disclosed as
2 follows:

3 (i) in the case of raw agricultural commodity that is not separately
4 packaged or labeled, the words "produced with fertilizer containing
5 anaerobically digested human fecal matter" or any other derivative of
6 those words shall be placed on the container used for packaging, hold-
7 ing, and/or transport in a clear and conspicuous manner by the manufac-
8 turer, and maintained by the distributor, and displayed in a clear and
9 conspicuous manner on the retail store shelf or bin in which such
10 commodity is for sale by the retailer;

11 (ii) in the case of processed food containing some products produced
12 with commercial fertilizer composed of digestate produced or partially
13 produced from effluent that has gone through an anaerobic digestion
14 process, the manufacturer must label the food, in a clear and conspicu-
15 ous manner on the package of such food, with the words "produced with
16 fertilizer containing anaerobically digested human fecal matter" or any
17 other derivative of those words; and

18 (iii) in the case of any seed or seed stock, the manufacturer or other
19 entity responsible for producing the seed must label the seed or seed
20 stock container, the sales receipt, and any other reference to identifi-
21 cation, ownership, or possession, in a clear and conspicuous manner with
22 the words "produced with fertilizer containing anaerobically digested
23 human fecal matter" or any other derivative of those words.

24 (b) This subdivision shall not be construed to require either the
25 listing or identification of any ingredients that were produced with
26 commercial fertilizer composed of digestate produced or partially
27 produced from effluent that has gone through an anaerobic digestion
28 process, nor that the phrase "produced with fertilizer containing anae-
29 robically digested human fecal matter" or any other derivative of those
30 words be placed immediately preceding any common name or primary product
31 descriptor of a food.

32 (c) Any processed food or raw agricultural commodity that would be
33 subject to this section solely because it includes one or more materials
34 produced with commercial fertilizer composed of digestate produced or
35 partially produced from effluent that has gone through an anaerobic
36 digestion process is not misbranded provided that these materials in the
37 aggregate do not account for more than nine-tenths of one percent of the
38 total weight of the processed food or raw agricultural commodity.

39 (d) This subdivision shall not apply to any of the following:

40 (i) a raw agricultural commodity or food that has been grown, raised,
41 produced, or derived without the knowing and intentional use of ferti-
42 lizer composed of digestate produced or partially produced from effluent
43 that has gone through an anaerobic digestion process. Included within
44 the exclusion under this paragraph, the person responsible for complying
45 with paragraph (a) of this subdivision with respect to a raw agricul-
46 tural commodity or food, shall obtain from whomever sold the raw agri-
47 cultural commodity or food to that person, a written statement, which
48 shall be included on an invoice, that may be in an electronic form, that
49 the raw agricultural commodity or food: (A) has not been knowingly or
50 intentionally produced with commercial fertilizer composed of digestate
51 produced or partially produced from effluent that has gone through an
52 anaerobic digestion process; and (B) has been segregated from, and has
53 not been knowingly or intentionally commingled with foods that may have
54 been produced with commercial fertilizer composed of digestate produced
55 or partially produced from effluent that has gone through an anaerobic
56 digestion process. In providing such statement, a person may rely on a

1 written statement, which may be in an electronic form, from his or her
2 own supplier that contains such an affirmation;

3 (ii) any processed food that would be subject to this subdivision
4 solely because one or more of the processing aids or enzymes used in its
5 production were produced with commercial fertilizer composed of diges-
6 tate produced or partially produced from effluent that has gone through
7 an anaerobic digestion process;

8 (iii) any alcoholic beverage that is subject to regulation by the
9 alcoholic beverage control law;

10 (iv) food that has been lawfully certified to be labeled, marketed,
11 and offered for sale as "organic" pursuant to the federal organic foods
12 production act of 1990, 7 U.S.C. 6501, et seq., and the national organic
13 program regulations promulgated pursuant thereto by the United States
14 department of agriculture;

15 (v) food that is not packaged for retail sale and that either: (A) is
16 a processed food prepared and intended for immediate human consumption;
17 or (B) is served, sold, or otherwise provided in any restaurant or other
18 food facility that is engaged in the sale of food prepared and intended
19 for immediate consumption; or

20 (vi) medical food.

21 (e) Any person, firm, corporation, or other legal entity violating
22 this subdivision shall be subject to the penalties for false labels and
23 misrepresentations as set forth in section three hundred ninety-two-b of
24 the general business law, provided however that a retailer shall not be
25 penalized for the failure to label under section three hundred ninety-
26 two-b of the general business law unless (i) the retailer is the
27 manufacturer of the food, seed or seed stock produced with commercial
28 fertilizer composed of digestate produced or partially produced from
29 effluent that has gone through an anaerobic digestion process and sells
30 such food under a brand it owns or (ii) the retailer's failure to label
31 was knowing and willful. In an action in which it is alleged that a
32 retailer has violated the provisions of this section, it shall be a
33 defense that such retailer relied on (A) any disclosure concerning foods
34 produced with commercial fertilizer composed of digestate produced or
35 partially produced from effluent that has gone through an anaerobic
36 digestion process received pursuant to this section or (B) the lack of
37 any disclosure.

38 § 2. The general business law is amended by adding a new section 391-u
39 to read as follows:

40 § 391-u. The labeling of foods produced with certain types of ferti-
41 lizers. 1. Definitions. As used in this section the following terms
42 shall have the following meanings:

43 (a) "Anaerobic digestion" means any natural biological processes
44 involving microorganisms in the absence of oxygen for the purposes of
45 breaking down biodegradable material and the creation of methane.

46 (b) "Commercial fertilizer" shall mean any substances containing one
47 or more recognized plant nutrients which is used for its plant nutrient
48 content, and which is designed for use or claimed to have value in
49 promoting plant growth, except unmanipulated animal and vegetable
50 manures, agricultural liming material, wood ashes, gypsum and other
51 products exempted by regulation of the commissioner.

52 (c) "Digestate" means any liquid or solid that is produced as the
53 result of the process of anaerobic digestion.

54 (d) "Effluent" means any garbage, refuse, raw sewage, septage or
55 sludge produced from a sewage treatment plant, waste treatment plant or
56 water supply treatment plant that is known to contain excrementitious

1 waste products or other wastes or washings from the bodies of human
2 beings.

3 2. (a) Any food for human consumption offered for retail sale in New
4 York is misbranded if it is produced with commercial fertilizer composed
5 of digestate produced or partially produced from effluent that has gone
6 through an anaerobic digestion process and that fact is not disclosed as
7 follows:

8 (i) in the case of a raw agricultural commodity that is not separately
9 packaged or labeled, the words "produced with fertilizer containing
10 anaerobically digested human fecal matter" or any other derivative of
11 those words shall be placed on the container used for packaging, hold-
12 ing, and/or transport in a clear and conspicuous manner by the manufac-
13 turer, and maintained by the distributor, and displayed in a clear and
14 conspicuous manner on the retail store shelf or bin in which such
15 commodity is for sale by the retailer;

16 (ii) in the case of processed food containing some products produced
17 with commercial fertilizer composed of digestate produced or partially
18 produced from effluent that has gone through an aerobic digestion proc-
19 ess, the manufacturer must label the food, in a clear and conspicuous
20 manner on the package of such food, with the words "produced with ferti-
21 lizer containing anaerobically digested human fecal matter" or any other
22 derivative of those words; and

23 (iii) in the case of any seed or seed stock, the manufacturer or other
24 entity responsible for producing the seed must label the seed or seed
25 stock container, the sales receipt, and any other reference to identifi-
26 cation, ownership, or possession, in a clear and conspicuous manner with
27 the words "produced with fertilizer containing anaerobically digested
28 human fecal matter" or any other derivative of those words.

29 (b) This subdivision shall not be constructed to require either the
30 listing or identification of any ingredients that were produced with
31 commercial fertilizer composed of digestate produced or partially
32 produced from effluent that has gone through an anaerobic digestion
33 process, nor that the phrase "produced with fertilizer containing anae-
34 robically digested human fecal matter" or any other derivative of those
35 words be placed immediately preceding any common name or primary product
36 descriptor of a food.

37 (c) Any processed food or raw agricultural commodity that would be
38 subject to this section solely because it includes one or more materials
39 produced with commercial fertilizer composed of digestate produced or
40 partially produced from effluent that has gone through an anaerobic
41 digestive process is not misbranded provided that these materials on the
42 aggregate do not account for more than nine-tenths of one percent of the
43 total weight of the processed food or raw agricultural commodity.

44 (d) This subdivision shall not apply to any of the following:

45 (i) a raw agricultural commodity or food that has been grown, raised,
46 produced, or derived without the knowing and intentional use of ferti-
47 lizer composed of digestate produced or partially produced from effluent
48 that has gone through an anaerobic digestion process. Included within
49 the exclusion under this paragraph, the person responsible for complying
50 with paragraph (a) of this subdivision with respect to a raw agricul-
51 tural commodity or food, shall obtain from whomever sold the raw agri-
52 cultural commodity or food to that person, a written statement, which
53 shall be included on an invoice that may be in an electronic form, that
54 the raw agricultural commodity or food: (A) has not been knowingly or
55 intentionally produced with commercial fertilizer composed of digestate
56 produced or partially produced from effluent that has gone through an

1 anaerobic digestion process; and (B) has been segregated from, and has
2 not been knowingly or intentionally commingled with foods that may have
3 been produced with commercial fertilizer composed of digestate produced
4 or partially produced from effluent that has gone through an anaerobic
5 digestion process. In providing such statement, a person may rely on a
6 written statement, which may be in an electronic form, from his or her
7 own supplier that contains such an affirmation;

8 (ii) any processed food that would be subject to this subdivision
9 solely because one or more of the processing aids or enzymes used in its
10 production were produced with commercial fertilizer composed of diges-
11 tate produced or partially produced from effluent that has gone through
12 an anaerobic digestion process;

13 (iii) any alcoholic beverage that is subject to regulation by the
14 alcoholic beverage control law;

15 (iv) food that has been lawfully certified to be labeled, marketed,
16 and offered for sale as "organic" pursuant to the federal organic foods
17 production act of 1990, 7 U.S.C. 6501, et seq., and the national organic
18 program regulations promulgated pursuant thereto by the United States
19 department of agriculture;

20 (v) food that is not packaged for retail sale and that either: (A) is
21 a processed food prepared and intended for immediate human consumption;
22 or (B) is served, sold, or otherwise provided in any restaurant or other
23 food facility that is engaged in the sale of food prepared and intended
24 for immediate consumption; or

25 (vi) medical food.

26 (e) Any person, firm, corporation, or other legal entity violating
27 this subdivision shall be subject to the penalties for false labels and
28 misrepresentations as set forth in section three hundred ninety-two-b of
29 this article, provided however that a retailer shall not be penalized
30 for the failure to label under section three hundred ninety-two-b of
31 this article unless (i) the retailer is the manufacturer of the food,
32 seed or seed stock produced with commercial fertilizer composed of
33 digestate produced or partially produced from effluent that has gone
34 through an anaerobic digestion process and sells such food under a brand
35 it owns or (ii) the retailer's failure to label was knowing and willful.
36 In an action in which it is alleged that a retailer has violated the
37 provisions of this section, it shall be a defense that such retailer
38 relied on (A) any disclosure concerning foods produced with commercial
39 fertilizer composed of digestate produced or partially produced from
40 effluent that has gone through an anaerobic digestion process received
41 pursuant to this section or (B) the lack of any disclosure.

42 § 3. Severability clause. If any provision of this act or its applica-
43 tion to any person, legal entity, or circumstance is held invalid, the
44 remainder of the act or the application of the provision to other
45 persons, legal entity or circumstances shall not be affected.

46 § 4. This act shall take effect twenty-four months after it shall have
47 become a law; provided, however, that effective immediately, the depart-
48 ment of agriculture and markets shall adopt any rules and regulations
49 necessary to implement this act, including, but not limited to, creating
50 and maintaining a list, which shall be made available to the public at
51 no cost, of raw agricultural commodities that are produced with commer-
52 cial fertilizer composed of digestate produced or partially produced
53 from effluent that has gone through an anaerobic digestion process.