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 Assembly, do enact as follows:

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

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

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

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

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

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

2. (a) Any food for human consumption offered for retail sale in New York is misbranded if it is produced with commercial fertilizer composed 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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through an anaerobic digestion process and that fact is not disclosed as follows:

(i) in the case of raw agricultural commodity that is not separately packaged or labeled, the words "produced with fertilizer containing anaerobically digested human fecal matter" or any other derivative of those words 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 for sale by the retailer;

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

(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 fertilizer containing anaerobically digested human fecal matter" or any other derivative of those words.

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

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

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

(i) a raw agricultural commodity or food that has been grown, raised, produced, or derived without the knowing and intentional use of fertilizer composed of digestate produced or partially produced from effluent that has gone through an anaerobic digestion process. Included within the exclusion under this paragraph, the person responsible for complying with paragraph (a) of this subdivision with respect to a raw agricultural commodity or food, shall obtain from whomever sold the raw agricultural commodity or food to that person, a written statement, which shall be included on an invoice, that may be in an electronic form, that the raw agricultural commodity or food: (A) has not been knowingly or intentionally produced with commercial fertilizer composed of digestate produced or partially produced from effluent that has gone through an anaerobic digestion process; and (B) has been segregated from, and has not been knowingly or intentionally commingled with foods that may have been produced with commercial fertilizer composed of digestate produced or partially produced from effluent that has gone through an anaerobic digestion process. In providing such statement, a person may rely on a

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

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

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

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

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

(vi) medical food.

(e) Any person, firm, corporation, or other legal entity violating this subdivision shall be subject to the penalties for false labels and misrepresentations as set forth in section three hundred ninety-two-b of the general business law, provided however that a retailer shall not be penalized for the failure to label under section three hundred ninety-two-b of the general business law unless (i) the retailer is the manufacturer of the food, seed or seed stock produced with commercial fertilizer composed of digestate produced or partially produced from effluent that has gone through an anaerobic digestion process and sells such food under a brand it owns or (ii) the retailer's failure to label was knowing and willful. 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 (A) any disclosure concerning foods produced with commercial fertilizer composed of digestate produced or partially produced from effluent that has gone through an anaerobic digestion process received pursuant to this section or (B) the lack of any disclosure.

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

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

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

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

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

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

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

2. (a) Any food for human consumption offered for retail sale in New York is misbranded if it is produced with commercial fertilizer composed of digestate produced or partially produced from effluent that has gone through an anaerobic digestion process 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 fertilizer containing anaerobically digested human fecal matter" or any other derivative of those words 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 for sale by the retailer;

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

(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 fertilizer containing anaerobically digested human fecal matter" or any other derivative of those words.

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

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

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

(i) a raw agricultural commodity or food that has been grown, raised, produced, or derived without the knowing and intentional use of fertilizer composed of digestate produced or partially produced from effluent that has gone through an anaerobic digestion process. Included within the exclusion under this paragraph, the person responsible for complying with paragraph (a) of this subdivision with respect to a raw agricultural commodity or food, shall obtain from whomever sold the raw agricultural commodity or food to that person, a written statement, which shall be included on an invoice that may be in an electronic form, that the raw agricultural commodity or food: (A) has not been knowingly or intentionally produced with commercial fertilizer composed of digestate produced or partially produced from effluent that has gone through an

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

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

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

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

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

(vi) medical food.

(e) Any person, firm, corporation, or other legal entity violating this subdivision 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 (i) the retailer is the manufacturer of the food, seed or seed stock produced with commercial fertilizer composed of digestate produced or partially produced from effluent that has gone through an anaerobic digestion process and sells such food under a brand it owns or (ii) the retailer's failure to label was knowing and willful. 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 (A) any disclosure concerning foods produced with commercial fertilizer composed of digestate produced or partially produced from effluent that has gone through an anaerobic digestion process received pursuant to this section or (B) the lack of any disclosure.

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

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