STATE OF NEW YORK

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IN SENATE

January 12, 2017

Introduced by Sens. LAVALLE, ADDABBO, BOYLE, BRESLIN, MONTGOMERY, MURPHY -- 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 modified foods

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

Section 1. Legislative findings and intent. The legislature finds that New York state consumers have the right to know whether the foods they purchase have been produced with genetic engineering so they can make informed purchasing decisions.

Further the legislature finds that:

(a) Currently, there is no federal law that requires food producers to identify whether foods were produced with genetic engineering. At the same time, the United States Food and Drug Administration (FDA) does not require safety studies of such foods;

(b) Identification of foods produced with genetic engineering can provide a critical method for tracking effects of consuming foods produced with genetic engineering;

(c) More than sixty countries, including key United States trading partners, have laws mandating disclosure of genetically engineered foods. Identifying foods produced with genetic engineering will help protect our state's export market;

(d) A variety of genetically engineered crops are commercially cultivated and sold in the United States, including corn, canola, sugar beets, soybean, cotton, alfalfa, and papaya. It has been estimated that 70-80% of packaged grocery products contain some materials derived from these genetically engineered crops;

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

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

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

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

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

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

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

§ 391-u. Genetically engineered foods; required labeling. 1. Definitions. As used in this section, the term:

(a) "Department" means the state department of agriculture and markets.

(b) "Distributor" means a person or business engaged in any method of distributing or transporting a food or food product from one place to another.

(c) "Enzyme" means a protein that catalyzes chemical reactions of other substances without itself being destroyed or altered upon completion of the reactions.

(d) "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:

(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) "Stock-keeping unit," for purposes of subdivision three of this section, shall mean all of a group of food items of the same brand, quantity of contents, retail price, and variety.

(j) "Raw agricultural commodity" means any plant, animal, or fungi grown or produced for human food-use purposes.

(k) "Retailer" means a person or business engaged in selling food from individuals or businesses to the end-user.

2. Labeling of genetically engineered seed and food. (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 store 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 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 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 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, marketed, 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. Violation. 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 stock-keeping unit, provided however that no liability shall arise under this section until after said person or entity is given formal notice of the violation.

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 the 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 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 commod-

ity, processed food, seed, or seed stock is not subject to the disclosure requirements under this section.

§ 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 or seed 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.

(d) "Manufacturer" means a person or business engaged in the production or processing of seed, seed stock, or any food product.

(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.

(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.

(g) "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.

(h) For the purposes of paragraph (e) of subdivision fifteen of section two hundred one of this article, "stock-keeping unit" shall mean all of a group of food items of the same brand, quantity of contents, retail price, and variety.

(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.

§ 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 complying with paragraph (a) of 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 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 elec-

tronic 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 subdivision 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, marketed, 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.

(e) 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 stock-keeping unit, provided however that no liability shall arise under this section until after said person or entity is given formal notice of the violation.

(f) In any case where there has been a final determination by the department, of a violation of any of the provisions of this subdivision, the department shall make available to the public, without charge, the following information:

(i) the name and business address of the violator;

(ii) the date or dates of inspection of the violator's premises by the department;

(iii) the violation that was determined to have occurred, including the name of the product; and

(iv) the amount of the penalty that was assessed by the department.

(g) 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 section three hundred ninety-one-u of the general business law, 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 section three hundred ninety-one-u of the general business law provided by the manufacturer stating that the raw agricultural commodity, processed food, seed, or seed stock is not subject to the disclosure requirements under such section.

§ 5. 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.

§ 6. 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 genetic

engineering; provided, further, that the department of agriculture and markets is not authorized to create any exemptions beyond those provided for in paragraph (d) of subdivision 2 of section 391-u of the general business law as added by section two of this act and paragraph (d) of subdivision 15 of section 201 of the agriculture and markets law as added by section four of this act; this act shall remain in effect until such time as a comprehensive federal system requiring mandatory labeling of raw agricultural commodities, processed foods, seed, and seed stock produced with genetic engineering is implemented, provided however that nothing contained herein shall prevent the state from exercising any concurrent authority authorized by federal law; provided that the commissioner of agriculture and markets shall notify the legislative bill drafting commission upon the occurrence of the enactment of a comprehensive federal system requiring mandatory labeling of raw agricultural commodities, processed foods, seed, and seed stock produced with genetic engineering in order that the commission may maintain an accurate and timely effective data base of the official text of the laws of the state of New York in furtherance of effectuating the provisions of section 44 of the legislative law and section 70-b of the public officers law.