

# STATE OF NEW YORK

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4687

2017-2018 Regular Sessions

## IN SENATE

February 24, 2017

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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;

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

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1 (e) A variety of genetically engineered crops are commercially culti-  
2 vated and sold in the United States, including corn, canola, soybean,  
3 cotton, sugar beets, alfalfa, and papaya. It has been estimated that  
4 60-70% of packaged grocery products contain some materials produced with  
5 genetic engineering, typically derived from genetically engineered soy,  
6 sugar beets, and/or corn. Consumers should be provided with the informa-  
7 tion necessary to make informed decisions when choosing food to buy for  
8 themselves and their families;

9 (f) Without disclosure, consumers with certain dietary restrictions  
10 may unknowingly consume such food in violation of such dietary  
11 restrictions;

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

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

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

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

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

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

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

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

51 § 391-u. Genetically engineered foods; required labeling. 1. Defi-  
52 initions. As used in this section, the term:

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

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

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

7 (d) "Genetically engineered," or "genetically modified," or any deriv-  
8 ative of those words, as applied to any food for human consumption,  
9 means produced from or with an organism or organisms with genetics  
10 altered materially through the application of:

11 (i) in vitro nucleic acid techniques, including but not limited to  
12 recombinant deoxyribonucleic acid (DNA) techniques and the direct  
13 injection of nucleic acid into cells or organelles; or

14 (ii) the fusion of cells beyond the taxonomic family that overcomes  
15 natural physiological, reproductive, or recombinant barriers and that  
16 are not techniques used in traditional breeding and selection.

17 For purposes of subparagraph (i) of this paragraph, "in vitro nucleic  
18 acid techniques" include, but are not limited to, recombinant DNA or RNA  
19 techniques that use vector systems, and techniques involving the direct  
20 introduction into the organisms of hereditary materials prepared outside  
21 the organisms such as biolistics, microinjection, macro-injection,  
22 chemoporation, electroporation, microencapsulation, and liposome fusion.

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

25 (f) "Medical food" means a food that is formulated to be consumed or  
26 administered enterally under the supervision of a physician and that is  
27 intended for the specific dietary management of a disease or condition  
28 for which distinctive nutritional requirements, based on recognized  
29 scientific principles, are established by medical evaluation.

30 (g) "Processed food" means any food other than a raw agricultural  
31 commodity, including any food produced from a raw agricultural commodity  
32 that has been subject to processing such as canning, smoking, pressing,  
33 cooking, freezing, dehydration, fermentation, or milling.

34 (h) "Processing aid" means:

35 (i) a substance that is added to a food during the processing of the  
36 food but is removed in some manner from the food before it is packaged  
37 in its finished form;

38 (ii) a substance that is added to a food during processing, is  
39 converted into constituents normally present in the food, and does not  
40 significantly increase the amount of the constituents naturally found in  
41 the food; or

42 (iii) a substance that is added to a food for its technical or func-  
43 tional effect in the processing but is present in the finished food at  
44 insignificant levels and does not have any technical or functional  
45 effect in that finished food.

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

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

50 2. Labeling of genetically engineered foods. (a) Any food for human  
51 consumption offered for retail sale in New York is misbranded if it is  
52 entirely genetically engineered or partially produced with genetic engi-  
53 neering and that fact is not disclosed as follows:

54 (i) In the case of a raw agricultural commodity that is not separately  
55 packaged or labeled, the words "Produced with Genetic Engineering" or  
56 any other derivative of those words, the initials "GE", "GM", or "GMO",

1 or derivative of those phrases, shall be placed on the container used  
2 for packaging, holding, and/or transport in a clear and conspicuous  
3 manner by the manufacturer, and maintained by the distributor, and  
4 displayed in a clear and conspicuous manner on the retail store shelf or  
5 bin in which such commodity is offered for sale by the retailer.

6 (ii) In the case of processed food containing some products of genetic  
7 engineering, the manufacturer must label the food, in a clear and  
8 conspicuous manner on the package of such food, with the words "Produced  
9 with Genetic Engineering" or any other derivative of those words, the  
10 initials "GE", "GM", "GMO", or derivative of those phrases.

11 (iii) In the case of any seed or seed stock, the manufacturer or other  
12 entity responsible for producing the seed must label the seed or seed  
13 stock container, the sales receipt, and any other reference to identifi-  
14 cation, ownership, or possession, in a clear and conspicuous manner with  
15 the words "Produced with Genetic Engineering" or any other derivative of  
16 those words, the initials "GE", "GM", "GMO", or derivative of those  
17 phrases.

18 (b) This section shall not be construed to require either the listing  
19 or identification of any ingredients that were genetically engineered,  
20 nor that the phrase "Produced with Genetic Engineering" or any other  
21 derivative of those words, the initials "GE", "GM", "GMO", or derivative  
22 of those phrases be placed immediately preceding any common name or  
23 primary product descriptor of a food.

24 (c) Any processed food that would be subject to this section solely  
25 because it includes one or more materials produced with genetic engi-  
26 neering is not misbranded provided that the genetically engineered mate-  
27 rials in the aggregate do not account for more than nine-tenths of one  
28 percent of the total weight of the processed food.

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

30 (i) Food consisting entirely of, or derived entirely from, an animal  
31 that has not itself been genetically engineered, regardless of whether  
32 the animal has been fed with any food produced with genetic engineering  
33 or treated with any drug or vaccine that has been produced with genetic  
34 engineering;

35 (ii) A raw agricultural commodity, food, or seed that has been grown,  
36 raised, produced, or derived without the knowing and intentional use of  
37 genetically engineered seed or food. To be included within the exclusion  
38 under this paragraph, the person responsible for complying with this  
39 subdivision with respect to a raw agricultural commodity, food, or seed  
40 must obtain, from whomever sold the raw agricultural commodity or food  
41 or seed to that person, a written statement, which may be included on an  
42 invoice that may be in an electronic form, that the raw agricultural  
43 commodity, food, or seed: (1) has not been knowingly or intentionally  
44 genetically engineered; and (2) has been segregated from, and has not  
45 been knowingly or intentionally commingled with foods or seeds that may  
46 have been genetically engineered. In providing such statement, the  
47 person may rely on the written statement, which may be in an electronic  
48 form, provided from his or her own supplier that contains such an affir-  
49 mation;

50 (iii) Any processed food that would be subject to this section solely  
51 because one or more of the processing aids or enzymes used in its  
52 production were produced with or derived from genetic engineering;

53 (iv) Any alcoholic beverage that is subject to regulation by the alco-  
54 holic beverage control law;

55 (v) Food that has been lawfully certified to be labeled, marketed, and  
56 offered for sale as "organic" pursuant to the federal Organic Foods

1 Production Act of 1990, 7 U.S.C. 6501, et seq. as amended from time to  
2 time, and the National Organic Program regulations promulgated pursuant  
3 thereto by the United States Department of Agriculture;

4 (vi) Food that is not packaged for sale and that either: (i) is a  
5 processed food prepared and intended for immediate human consumption or  
6 (ii) is served, sold or otherwise provided in any restaurant, food  
7 facility, or food retailer that is engaged in the sale of food prepared  
8 and intended for immediate human consumption; or

9 (vii) Medical food.

10 3. Right of action for violations. Any person, firm, corporation, or  
11 other legal entity violating this section shall be subject to the penal-  
12 ties for false labels and misrepresentations as set forth in section  
13 three hundred ninety-two-b of this article, provided however that a  
14 retailer shall not be penalized for the failure to label under section  
15 three hundred ninety-two-b of this article unless (a) the retailer is  
16 the manufacturer of the genetically-engineered food, seed or seed stock  
17 and sells the genetically-engineered food under a brand it owns or (b)  
18 the retailer's failure to label was knowing and wilful. In an action in  
19 which it is alleged that a retailer has violated the provisions of this  
20 section, it shall be a defense that such retailer relied on (i) any  
21 disclosure concerning genetically-engineered foods received pursuant to  
22 this section or (ii) the lack of any disclosure.

23 4. Notice of violation. In any case where there has been a final  
24 determination by the department, of a violation of any of the provisions  
25 of this section, the department shall make available to the public,  
26 without charge, the following information:

27 (a) the name and business address of the violator;

28 (b) the date or dates of inspection of the violator's premises by the  
29 department;

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

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

33 5. Third-party protection; reliance on written statement. A distribu-  
34 tor or retailer that sells or advertises food or seed stock that is  
35 genetically engineered that fails to make the disclosure required pursu-  
36 ant to subdivision two of this section, is not subject to liability in  
37 any civil action to enforce this section if the distributor or retailer  
38 relied on the written statement under subdivision two of this section  
39 provided by the manufacturer or grower stating that the food or seed  
40 stock is not subject to the disclosure requirements under this section.

41 § 3. Section 198 of the agriculture and markets law is amended by  
42 adding a new subdivision 12 to read as follows:

43 12. The term: (a) "Distributor" means a person or business engaged in  
44 any method of distributing or transporting a food or food product from  
45 one place to another.

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

49 (c) "Genetically engineered" or "genetically modified," or any deriva-  
50 tive of those words, as applied to any food for human consumption, means  
51 produced from or with an organism or organisms with genetics altered  
52 materially through the application of:

53 (i) in vitro nucleic acid techniques, including but not limited to  
54 recombinant deoxyribonucleic acid (DNA) or ribonucleic acid (RNA) tech-  
55 niques, direct injection of nucleic acid into cells or organelles,  
56 encapsulation, gene deletion, and doubling, or

1 (ii) the fusion of cells beyond the taxonomic family that overcome  
2 natural physiological, reproductive, or recombinant barriers and that  
3 are not techniques used in traditional breeding and selection.

4 For purposes of subparagraph (i) of this paragraph, "in vitro nucleic  
5 acid techniques" include, but are not limited to, recombinant DNA or RNA  
6 techniques that use vector systems, and techniques involving the direct  
7 introduction into the organisms of hereditary materials prepared outside  
8 the organisms such as biolistics, microinjection, macro-injection,  
9 chemoporation, electroporation, microencapsulation, and liposome fusion.

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

12 (e) "Medical food" means a food that is formulated to be consumed or  
13 administered enterally under the supervision of a physician and that is  
14 intended for the specific dietary management of a disease or condition  
15 for which distinctive nutritional requirements, based on recognized  
16 scientific principles, are established by medical evaluation.

17 (f) "Processed food" means any food other than a raw agricultural  
18 commodity, including any food produced from a raw agricultural commodity  
19 that has been subject to processing such as canning, smoking, pressing,  
20 cooking, freezing, dehydration, fermentation, or milling.

21 (g) "Processing aid" means:

22 (i) a substance that is added to a food during the processing of such  
23 food but is removed in some manner from the food before it is packaged  
24 in its finished form;

25 (ii) a substance that is added to a food during processing, is  
26 converted into constituents normally present in the food, and does not  
27 significantly increase the amount of the constituents found naturally in  
28 the food; or

29 (iii) a substance that is added to a food for its technical or func-  
30 tional effect in the processing but is present in the finished food at  
31 insignificant levels and does not have any technical or functional  
32 effect in that finished food.

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

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

37 § 4. Section 201 of the agriculture and markets law is amended by  
38 adding a new subdivision 15 to read as follows:

39 15. (a) Any food for human consumption offered for retail sale in New  
40 York is misbranded if it is entirely genetically engineered or partially  
41 produced with genetic engineering and that fact is not disclosed as  
42 follows:

43 (i) In the case of a raw agricultural commodity that is not separately  
44 packaged or labeled, the words "Produced with Genetic Engineering" or  
45 any other derivative of those words, the initials "GE", "GM", "GMO", or  
46 derivative of those phrases shall be placed on the container used for  
47 packaging, holding, and/or transport in a clear and conspicuous manner  
48 by the manufacturer, and maintained by the distributor, and displayed in  
49 a clear and conspicuous manner on the retail store shelf or bin in which  
50 such commodity is for sale by the retailer.

51 (ii) In the case of processed food containing some products of genetic  
52 engineering, the manufacturer must label the food, in a clear and  
53 conspicuous manner on the package of such food, with the words "Produced  
54 with Genetic Engineering" or any other derivative of those words, the  
55 initials "GE", "GM", "GMO", or derivative of those phrases.

1 (iii) In the case of any seed or seed stock, the manufacturer or other  
2 entity responsible for producing the seed must label the seed or seed  
3 stock container, the sales receipt, and any other reference to identifi-  
4 cation, ownership, or possession, in a clear and conspicuous manner with  
5 the words "Produced with Genetic Engineering" or any other derivative of  
6 those words, the initials "GE", "GM", "GMO", or derivative of those  
7 phrases.

8 (b) This subdivision shall not be construed to require either the  
9 listing or identification of any ingredients that were genetically engi-  
10 neered, nor that the phrase "Produced with Genetic Engineering" or any  
11 other derivative of those words, the initials "GE", "GM", "GMO", or  
12 derivative of those phrases be placed immediately preceding any common  
13 name or primary product descriptor of a food.

14 (c) Any processed food or raw agricultural commodity that would be  
15 subject to this section solely because it includes one or more materials  
16 produced with genetic engineering is not misbranded provided that the  
17 genetically engineered materials in the aggregate do not account for  
18 more than nine-tenths of one percent of the total weight of the proc-  
19 essed food or raw agricultural commodity.

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

21 (i) Food consisting entirely of, or derived entirely from, an animal  
22 that has not itself been genetically engineered, regardless of whether  
23 the animal has been fed with any food produced with genetic engineering  
24 or treated with any drug or vaccine that has been produced with genetic  
25 engineering;

26 (ii) A raw agricultural commodity or food that has been grown, raised,  
27 produced, or derived without the knowing and intentional use of genet-  
28 ically engineered seed or food. To be included within the exclusion  
29 under this paragraph, the person responsible for complying with para-  
30 graph (a) of this subdivision with respect to a raw agricultural commod-  
31 ity or food must obtain, from whomever sold the raw agricultural commod-  
32 ity or food to that person, a written statement, which may be included  
33 on an invoice that may be in an electronic form, that the raw agricul-  
34 tural commodity or food: (1) has not been knowingly or intentionally  
35 genetically engineered; and (2) has been segregated from, and has not  
36 been knowingly or intentionally commingled with foods that may have been  
37 genetically engineered. In providing such statement, a person may rely  
38 on a written statement, which may be in an electronic form, from his or  
39 her own supplier that contains such an affirmation;

40 (iii) Any processed food that would be subject to this subdivision  
41 solely because one or more of the processing aids or enzymes used in its  
42 production were produced with or derived from genetic engineering;

43 (iv) Any alcoholic beverage that is subject to regulation by the alco-  
44 holic beverage control law;

45 (v) Food that has been lawfully certified to be labeled, marketed, and  
46 offered for sale as "organic" pursuant to the federal Organic Foods  
47 Production Act of 1990, 7 U.S.C. 6501, et seq., and the National Organic  
48 Program regulations promulgated pursuant thereto by the United States  
49 Department of Agriculture;

50 (vi) Food that is not packaged for retail sale and that either: (1) is  
51 a processed food prepared and intended for immediate human consumption;  
52 or (2) is served, sold, or otherwise provided in any restaurant or other  
53 food facility that is engaged in the sale of food prepared and intended  
54 for immediate consumption;

55 (vii) Medical food.

1 (e) Any person, firm, corporation, or other legal entity violating  
2 this subdivision shall be subject to the penalties for false labels and  
3 misrepresentations as set forth in section three hundred ninety-two-b of  
4 the general business law, provided however that a retailer shall not be  
5 penalized for the failure to label under section three hundred ninety-  
6 two-b of the general business law unless (i) the retailer is the  
7 manufacturer of the genetically-engineered food, seed or seed stock and  
8 sells the genetically-engineered food under a brand it owns or (ii) the  
9 retailer's failure to label was knowing and wilful. In an action in  
10 which it is alleged that a retailer has violated the provisions of this  
11 section, it shall be a defense that such retailer relied on (1) any  
12 disclosure concerning genetically-engineered foods received pursuant to  
13 this section or (2) the lack of any disclosure.

14 § 5. Severability clause. If any provision of this act or its applica-  
15 tion to any person, legal entity, or circumstance is held invalid, the  
16 remainder of the act or the application of the provision to other  
17 persons, legal entity or circumstances shall not be affected.

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