STATE OF NEW YORK

4384

2017-2018 Regular Sessions

IN ASSEMBLY

February 2, 2017

Introduced by M. of A. TITUS, GLICK, PEOPLES-STOKES, MONTESANO, COOK -- Multi-Sponsored by -- M. of A. HIKIND, PERRY, SKARTADOS, THIELE -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law, in relation to requiring the labeling of all consumable commodities containing genetically modified organisms

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

Section 1. The general business law is amended by adding a new section 391-u to read as follows:

§ 391-u. Consumable commodities; the requirement of clear and conspicuous labeling. 1. Definitions. As used in this section, the following terms shall have the following meanings:

(a) "Food" means (i) articles used for food or drink for humans or other animals, (ii) chewing gum, (iii) infant formula, and (iv) articles used for components of any such article.

(b) "Distributor" means a person or entity that sells, supplies, furnishes or transports food intended for human consumption in this state that such person or entity does not produce.

(c) "Genetically modified organism (GMO)" means an organism whose genetic characteristics have been altered by the insertion of a modified gene or a gene from another organism using the techniques of genetic engineering.

(d) "Genetic engineering" means a process by which a food or food ingredient that is produced from an organism or organisms in which the genetic material has been changed through the application of: (i) In vitro nucleic acid techniques, including recombinant DNA techniques and the direct injection of nucleic acid into cells or organelles; or (ii) fusion of cells, including protoplast fusion, or hybridization techniques that overcome natural physiological, reproductive or recombina-

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

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tion barriers, where the donor cells or protoplasts do not fall within the same taxonomic group, in a way that does not occur by natural multiplication or natural recombination.

(e) "Infant formula" means a milk-based or soy-based powder, concentrated liquid or ready-to-feed substitute for human breast milk that is intended for infant consumption and is commercially available.

(f) "Label" means a display of written, printed or graphic matter upon the immediate container of any article, provided a requirement made by or under authority of this chapter that any information or other word or statement appear on the label shall not be considered to be complied with unless such information or other word or statement also appears on the outside container or wrapper, if any, of the retail package of such article, or is easily legible through the outside container or wrapper.

(g) "Labeling" means all labels and other written, printed or graphic matter (i) upon any article or any of its containers or wrappers, or (ii) accompanying such article; provided, if an article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false because it is misleading, then, in determining whether the labeling or advertisement is misleading, there shall be taken into account, among other things, not only representations made or suggested by statement, word, design, device or sound or any combination thereof, but also the extent to which the labeling or advertisement fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under such conditions of use as are customary or usual, and provided the representation of a drug, in its labeling or advertisement, as an antiseptic shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment or dusting powder or for such other use as involves prolonged contact with the body.

(h) "Manufacturer" means a person who produces food intended for human consumption or seed or seed stock that is intended to produce food for human consumption and sells such item to a retailer or distributor.

(i) "Raw agricultural commodity" means any food in its raw or natural state, including all fruits that are washed, colored or otherwise treated in their unpeeled natural form prior to marketing.

(j) "Retailer" means a person or entity that engages in the sale of food intended for human consumption to a consumer.

(k) "Sale" means any and every sale and includes (i) manufacture, processing, packing, canning, bottling or any other production, preparation or putting up; (ii) exposure, offer or any other proffer; (iii) holding, storing or any other possessing; (iv) dispensing, giving, delivering, serving or any other supplying; and (v) applying, administering or any other using.

2. Labeling of consumable commodities. (a) Consumable commodities shall be labeled as follows: (i) In the case of such food that is sold wholesale and is not intended for retail sale, on the bill of sale accompanying such food during shipping, with the clear and conspicuous words: "Produced with Genetic Engineering";

(ii) in the case of such food for retail sale contained in a package, including infant formula, with the clear and conspicuous words: "Produced with Genetic Engineering";

(iii) in the case of such food that is a raw agricultural commodity, on the package offered for retail sale or, in the case of any such commodity that is not separately packaged or labeled, on the bill of sale or invoice for such commodity and on the retail store shelf or bin that holds such commodity displayed for sale with the clear and conspicuous words: "Produced with Genetic Engineering"; and

(iv) in the case of any such seed or seek stock, on the container holding the seed or seed stock displayed for sale or on any label identifying ownership or possession of the commodity with the clear and conspicuous words: "Produced with Genetic Engineering".

Such food labeling shall be displayed in the same size and font as the ingredients in the nutritional facts panel on the food label.

(b) The requirements of paragraph (a) of this subdivision shall not apply to any of the following: (i) Alcoholic beverages;

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

(iii) Farm products that are sold by a farmer or the farmer's agent to a consumer at a pick-your-own farm, roadside stand, on-farm market or farmers' market; and

(iv) Food consisting entirely of, or derived entirely from, an animal that was not genetically engineered, regardless of whether such animal was fed or injected with any genetically-engineered food or any drug that was produced through means of genetic engineering.

(c) Any person selling, offering for sale, manufacturing or distributing in this state any food, seed or seed stock required to be labeled as provided in paragraph (a) of this subdivision shall be responsible for ensuring that such food, seed or seed stock is so labeled.

(d) The provisions of paragraph (a) of this subdivision shall be enforced, within available appropriations, by the department of agriculture and markets.

(e) Any person found to knowingly violate paragraph (a) of this subdivision shall be liable for a civil penalty not to exceed one thousand dollars per day, per product. Calculation of such civil penalty shall not be made or multiplied by the number of individual packages of the same product displayed or offered for retail sale. Civil penalties assessed under this paragraph shall accrue and be assessed per each uniquely named, designated or marketed product.

(f) Notwithstanding the provisions of paragraph (a) of this subdivision, a retailer shall not be penalized or otherwise held liable for the failure to label pursuant to paragraph (a) of this subdivision unless (i) the retailer is the producer or the manufacturer of the genetically-engineered food, seed or seed stock and sells the genetically-engineered food under a brand it owns, or (ii) the retailer's failure to label was knowing and wilful.

(g) In any action in which it is alleged that a retailer has violated the provisions of paragraph (a) of this subdivision, it shall be a defense that such retailer reasonably relied on (i) any disclosure concerning genetically-engineered foods contained in the bill of sale or invoice provided by the wholesaler or distributor pursuant to paragraph (a) of this subdivision, or (ii) the lack of any such disclosure.

3. Rules and regulations. (a) The department of agriculture and markets shall enforce the identification of genetically modified organ-

isms (GMOs) in consumable commodities and shall promulgate rules and regulations in furtherance of the provisions set forth in this section; and

(b) The department of agriculture and markets shall adopt any rules and regulations necessary for a special task force to be implemented with the charge of investigating the full effects, both harmful and beneficial, of using genetically modified organisms (GMOs) in consumable commodities.

§ 2. This act shall take effect immediately.