

# 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.

LBD08577-01-7

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.