STATE OF NEW YORK

2473

2019-2020 Regular Sessions

IN SENATE

January 25, 2019

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:

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 entirely genetically engineered or partially produced with genetic engineering so they can make informed purchasing decisions. Labeling is necessary to ensure that New York consumers are fully and reliably informed about the products they purchase and consume. 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. Unless these foods contain a known allergen, the FDA does not require the developers of genetically engineered foods to consult with the agency. Consultations with the FDA are entirely voluntary;

(b) Mandatory identification of foods produced with genetic engineering can provide a critical method for tracking any potential short-term and long-term health effects of consuming foods produced with genetic engineering;

(c) Polls consistently show that the vast majority of the public wants to know if their food has been produced with genetic engineering;

(d) More than sixty countries, including Japan, South Korea, China, Australia, New Zealand, Thailand, Russia, the European Union member states, and other key United States trading partners, have laws mandating 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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(e) A variety of genetically engineered crops are commercially cultivated and sold in the United States, including corn, canola, soybean, cotton, sugar beets, alfalfa, and papaya. It has been estimated that 60-70% of packaged grocery products contain some materials produced with genetic engineering, typically derived from genetically engineered soy, sugar beets, and/or corn. Consumers should be provided with the information necessary to make informed decisions when choosing food to buy for themselves and their families;

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

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

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

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

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

(k) 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, seed, and seed stock;

(l) It is the intent of this act to enable improved tracking of genetically engineered food consumption and of any potential health impacts; and

(m) It is the intent of this act only to regulate 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, 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) "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.

2. Labeling of genetically engineered foods. (a) Any food for human consumption 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 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 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 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 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 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 genetically engineered, 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, 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 responsible for complying with this subdivision with respect to a raw agricultural commodity, food, or seed must obtain, from whomever sold the raw agricultural commodity or food or seed 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, food, or seed: (1) has not been knowingly or intentionally genetically engineered; and (2) has been segregated from, and has not been knowingly or intentionally commingled with foods or seeds that may have been genetically engineered. In providing such statement, the person may rely on the written statement, which may be in an electronic form, provided from his or her own supplier that contains such an affirmation;

(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. Right of action for violations. Any person, firm, corporation, or other legal entity violating this section 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 (a) the retailer is the manufacturer of the genetically-engineered food, seed or seed stock and sells the genetically-engineered food under a brand it owns or (b) the retailer's failure to label was knowing and wilful. 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 (i) any disclosure concerning genetically-engineered foods received pursuant to this section or (ii) the lack of any disclosure.

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 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 or advertises food or seed stock that is genetically engineered that fails to make the disclosure required pursuant to subdivision two of this section, is not subject to liability in any civil action to enforce this section if the distributor or retailer relied on the written statement under subdivision two of this section provided by the manufacturer or grower stating that the food 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, 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) or ribonucleic acid (RNA) techniques, direct injection of nucleic acid into cells or organelles, encapsulation, gene deletion, and doubling, or

(ii) the fusion of cells beyond the taxonomic family that overcome 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 such 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 found naturally 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) "Raw agricultural commodity" means any plant, animal, or fungi grown or produced for human food use purposes.

(i) "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 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", "GMO", or 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 for sale by the retailer.

(ii) In the case of 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 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 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 derivative of those phrases 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 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 or raw agricultural commodity.

(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 genetically engineered, 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 or food 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 responsible for complying with paragraph (a) of this subdivision with respect to a raw agricultural commodity or food must obtain, from whomever sold the raw agricultural commodity or food 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 or food: (1) has not been knowingly or intentionally genetically engineered; and (2) has been segregated from, and has not been knowingly or intentionally commingled with foods that may have been genetically engineered. 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;

(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., and the National Organic Program regulations promulgated pursuant thereto by the United States Department of Agriculture;

(vi) Food that is not packaged for retail sale and that either: (1) is a processed food prepared and intended for immediate human consumption; or (2) 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;

(vii) 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 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. 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 (1) any disclosure concerning genetically-engineered foods received pursuant to this section or (2) the lack of any disclosure.

§ 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 foods and food products manufactured or produced using 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 foods and food products manufactured or produced using 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.