

# STATE OF NEW YORK

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2473

2019-2020 Regular Sessions

## IN SENATE

January 25, 2019

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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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(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",

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

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.

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.