House of Representatives

General Assembly

File No. 307

February Session, 2012

Substitute House Bill No. 5117

House of Representatives, April 10, 2012

The Committee on Environment reported through REP. ROY of the 119th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING GENETICALLY-ENGINEERED FOODS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) (*Effective October 1, 2012*) For the purposes of this section and sections 2 to 5, inclusive, of this act:

(1) "Cultivated commercially" means grown or raised by a person in the course of his or her business or trade and sold within the United States;

(2) "Enzyme" means a protein that catalyzes chemical reactions of other substances without being destroyed or altered upon completion of such reactions;

(3) "Genetically engineered" means any food that is produced from an organism or organisms in which the genetic material changed through the application of: (A) In vitro nucleic acid techniques, including recombinant deoxyribonucleic acid (DNA) techniques and the direct injection of nucleic acid into cells or organelles, or (B) fusion

of cells, including protoplast fusion, or hybridization techniques that overcome natural physiological, reproductive or recombination barriers, where the donor cells or protoplasts do not fall within the same taxonomic family, in a way that does not occur by natural multiplication or natural recombination;

(4) "Organism" means any biological entity capable of replication, reproduction or transferring genetic material;

(5) "In vitro nucleic acid techniques" means techniques, including, but not limited to, recombinant deoxyribonucleic acid or ribonucleic acid techniques, that use vector systems and techniques involving the direct introduction into the organisms of hereditary materials prepared outside the organisms such as microinjection, macroinjection, chemoporation, electroporation, microencapsulation and liposome fusion;

(6) "Processed food" means any food other than a raw agricultural commodity and includes any food produced from a raw agricultural commodity that was processed through canning, smoking, pressing, cooking, freezing, dehydration, fermentation or milling; and

(7) "Processing aid" means: (A) Any substance that is added to a food during the processing of such food but that is removed in some manner from the food before the food is packaged in a finished form; (B) any substance that is added to a food during processing, that is converted into constituents normally present in the food, and that does not significantly increase the amount of the constituents naturally found in the food; or (C) any substance that is added to a food for its technical or functional effect in the processing but that is present in the finished food at insignificant levels and that does not have any technical or functional effect in the finished food.

Sec. 2. (NEW) (*Effective October 1, 2012*) (a) On and after July 1, 2014, any food offered for retail sale in this state shall be deemed misbranded if such food is, or may have been, entirely or partially produced with genetic engineering and such fact is not disclosed, as

follows: (1) In the case of a raw agricultural commodity, on the package offered for retail sale, with the clear and conspicuous words "Genetically Engineered" on the front of the package of such commodity, or in the case of any such commodity that is not separately packaged or labeled, on a label that appears on the retail store shelf or bin in which such commodity is displayed for sale; and (2) in the case of any processed food, in clear and conspicuous language on the front or back of the package of such food, with the words "Partially Produced with Genetic Engineering" or "May be Partially Produced with Genetic Engineering".

(b) Nothing in subsection (a) of this section shall be construed to require either the listing or identification of any ingredient or ingredients that were genetically engineered, nor that the term "Genetically Engineered" be placed immediately preceding any common name or primary product descriptor of a food.

(c) The requirements of subsection (a) of this section shall not apply to any of the following:

(1) 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;

(2) A raw agricultural commodity or food derived from such commodity that was raised or produced without the knowing and intentional use of genetically-engineered seed or food, provided any person required to comply with the provisions of this section obtains a sworn statement from the person providing such commodity or food that such commodity or food: (A) Was not knowingly or intentionally genetically engineered; and (B) has been segregated from, and was not knowingly or intentionally commingled with, food that may have been genetically engineered at any time. In providing such a sworn statement, any person may rely on a sworn statement from his or her own supplier that contains such an affirmation;

(3) Any processed food that would be subject to the provisions of this section solely because it includes one or more genetically-engineered processing aids or enzymes;

(4) Any alcoholic beverage;

(5) Until July 1, 2019, any processed food that would be subject to the provisions of this section solely because such processed food includes one or more genetically-engineered ingredients, provided: (A) No single such ingredient accounts for more than one-half of one per cent of the total weight of such processed food; and (B) such processed food does not contain more than ten such ingredients;

(6) Food that an independent organization determines was not knowingly and intentionally produced from or commingled with genetically-engineered seed or genetically-engineered food, provided such determination is made pursuant to a sampling and testing procedure approved in regulations adopted by the Department of Agriculture. No sampling procedure shall be approved by the department pursuant to this subdivision unless such sampling is: (A) Performed according to a statistically valid sampling plan consistent with principles recommended by internationally recognized sources such as the International Standards Organization (ISO) and the Grain and Feed Trade Association (GAFTA), (B) consistent with the most recent "Guidelines on Performance Criteria and Validation of Methods for Detection, Identification and Quantification of Specific DNA Sequences and Specific Proteins in Foods, (CAC/GL 74 (2010)" published by the Codex Alimentarius Commission, and (C) not reliant on testing of processed foods in which no DNA is detectable;

(7) Food that is lawfully certified to be labeled, marketed and offered for sale as "organic" pursuant to the federal Organic Food Products Act of 1990 and the regulations promulgated by the United States Department of Agriculture;

(8) Food that is not packaged for retail sale and that either: (A) Is a processed food prepared and intended for immediate human

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 human consumption; and

(9) Medical food.

(d) The Department of Agriculture, in consultation with the Departments of Public Health and Energy and Environmental Protection, may adopt regulations pursuant to chapter 54 of the general statutes that are necessary for the implementation and enforcement of the provisions of this section.

(e) Any person may bring an action in the superior court for the judicial district of Hartford to enforce the provisions of this section and the court shall have jurisdiction upon hearing and for cause shown to grant a temporary or permanent injunction restraining any person from violating any provision of this section. In addition to any injunctive relief provided, the court may award to the person bringing the action reasonable attorney's fees and all reasonable costs incurred in the investigation and prosecution of such action, as determined by the court. Nothing in this subsection shall be construed to limit or alter the powers of the department and its authorized agents to bring an action to enforce the provisions of this section.

Sec. 3. (NEW) (*Effective October 1, 2012*) The Department of Agriculture shall adopt regulations, pursuant to chapter 54 of the general statutes, that establish best practices for farmers who cultivate commercially any genetically-engineered crop. Such regulations shall require the implementation of practices by such farmers to: (1) Eliminate or minimize the degree to which such genetically-engineered crop affects neighboring lands, and (2) minimize the amount of herbicides used by such farmers to eradicate herbicide-resistant weeds.

Sec. 4. (*Effective October 1, 2012*) Not later than October 15, 2012, the Commissioner of Consumer Protection shall, in accordance with section 11-4a of the general statutes, report to the joint standing committees of the General Assembly having cognizance of the

environment and consumer protection on a method to implement a program that will provide preference in the display of food items at retail establishments for any food item that is voluntarily labeled in such a manner as to indicate whether such food item is genetically engineered or contains genetically-engineered ingredients.

Sec. 5. (NEW) (*Effective October 1, 2012*) Not later than October 15, 2012, the Commissioner of Consumer Protection, in consultation with the Commissioners of Agriculture, Public Health and Energy and Environmental Protection, shall publish a list on the Department of Consumer Protection's Internet web site that indicates those raw agricultural commodities known to be genetically engineered. The commissioner shall update such list not less than once every calendar year.

Sec. 6. (NEW) (*Effective October 1, 2012*) Not later than January 1, 2013, the Commissioner of Administrative Services shall develop recommendations for the implementation of state agency procurement guidelines that will provide a preference for the use and purchase of processed foods and raw agricultural commodities that are voluntarily labeled to indicate whether such processed food or raw agricultural commodity contains genetically-engineered ingredients or is genetically engineered, respectively. Concomitantly, the commissioner shall submit any requisite statutory or regulatory changes for the implementation of such recommendations to the joint standing committee of the General Assembly having cognizance of matters relating to the environment.

This act shall take effect as follows and shall amend the following sections:		
Section 1	*October 1, 2012*	New section
Sec. 2	*October 1, 2012*	New section
Sec. 3	*October 1, 2012*	New section
Sec. 4	*October 1, 2012*	New section
Sec. 5	*October 1, 2012*	New section
Sec. 6	*October 1, 2012*	New section

Statement of Legislative Commissioners:
In section 2(e), the reference to "such person" in the second sentence was changed to "the person bringing the action" for clarity, and in section 4, "(NEW)" was deleted because this is a special act section.

ENV *Joint Favorable Subst.-LCO*

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 13 $	FY 14 $
Department of Agriculture	GF - Potential Cost	Potential Significant	Potential Significant

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill requires the Department of Agriculture (DAG) to develop regulations that establish best practices for farmers who commercially cultivate any genetically-engineered crop. This requirement may result in significant costs to DAG as the agency would have to hire a consultant with the scientific knowledge required to draft the regulations.

There is no fiscal impact to the Department of Consumer Protection (DCP) as the agency currently has information available to publish the on-line list required under the bill.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis
sHB 5117

AN ACT CONCERNING GENETICALLY-ENGINEERED FOODS.

SUMMARY:

This bill requires that, beginning July 1, 2014, certain food items are considered misbranded unless labeled as genetically-engineered or partially produced with genetic engineering. The bill (1) authorizes the Department of Agriculture (DOAG) to adopt regulations to implement and enforce the requirement and (2) establishes a process for any person to bring legal action for enforcement.

The bill also contains several requirements for state agencies related to genetically-engineered food, crops, and commodities. It requires:

1. the Department of Consumer Protection (DCP) commissioner to publish a list of genetically-engineered raw agricultural commodities on its website;

2. DOAG to adopt regulations establishing best practices for farmers who commercially grow a genetically-engineered crop;

3. the DCP commissioner to report to the legislature on implementing a retail food display preference program for voluntarily labeled items; and

4. the Department of Administrative Services (DAS) commissioner to develop recommendations for implementing state agency procurement guidelines that provide a preference for using and purchasing voluntarily labeled foods or raw agricultural commodities, and submit to the legislature statutory and regulatory changes required to implement them.

EFFECTIVE DATE: October 1, 2012

MISBRANDED GENETICALLY ENGINEERED FOOD

Genetically Engineered

Under the bill, "genetically engineered" means any food produced from an organism or organisms in which the genetic material changed by (1) *in vitro* nucleic acid techniques such as recombinant DNA techniques and the direct injection of nucleic acid into cells or organelles or (2) fusing cells that are not in the same taxonomic family, in a way that does not occur by natural multiplication or recombination.

Label Requirement

Starting July 1, 2014, food that is genetically-enginered or partially produced with genetic engineering offered for retail sale in the state is misbranded if it is not labeled accordingly. The bill does not establish a penalty for, or consequences of, misbranding.

The bill requires processed food to state clearly and conspicuously on the food package's front or back, "Partially Produced with Genetic Engineering" or "May be Partially Produced with Genetic Engineering." Under the bill, "processed food" is any food except a raw agricultural commodity, including food produced from such a commodity through canning, smoking, pressing, cooking, freezing, dehydration, fermentation, or milling.

A raw agricultural commodity must clearly and conspicuously state "Genetically Engineered" on the front of its package. If such commodity is not separately packaged or labeled, the label must appear on the retail store shelf or bin where it is displayed.

The bill specifies that it does not require (1) genetically-engineered ingredients to be listed or identified or (2) the words "Genetically Engineered" to be placed before any food's common name or primary product descriptor.

Exemptions

The bill exempts from the labeling requirement:

1. food from a non-genetically-engineered animal even if it was fed or injected with a genetically-engineered food or drug;

2. processed food otherwise subject to labeling because it includes at least one genetically-engineered processing aid or enzyme (see below);

3. alcoholic beverages;

4. medical food;

5. food lawfully certified to be labeled, marketed, and offered for sale as organic under applicable federal law and regulations;

6. until July 1, 2019, processed food otherwise subject to labeling if the food has 10 or fewer genetically-engineered ingredients and no single ingredient is more than .5% of the food's total weight;

7. food not packaged for retail sale that is (1) a processed food prepared and intended for immediate human consumption or (2) served, sold, or provided in a restaurant or food facility that primarily sells food prepared and intended for immediate human consumption; and

8. a raw agricultural commodity or food derivative raised or produced without the knowing or intentional use of genetically-engineered seed or food if the person offering the food for sale provides a sworn statement from the producer or distributor that the commodity or derivative was (1) not knowingly or intentionally genetically-engineered and (2) segregated from and not knowingly or intentionally commingled with food that may have been genetically-engineered. The bill allows a person providing a sworn statement to rely upon a sworn statement from a supplier.

The bill also exempts food an independent organization determines was not knowingly and intentionally produced from or commingled with genetically-engineered seed or food. The determination must be based on a DOAG-approved sampling and testing procedure. For DOAG approval, the sampling procedure must require sampling to be:

1. performed according to a statistically valid sampling plan consistent with principles recommended by internationally recognized sources such as the International Standards Organization and the Grain and Feed Trade Association (see BACKGROUND);

2. consistent with the Codex Alimentarius Commission's most recent "Guidelines on Performance Criteria and Validation of Methods for Detection, Identification and Quantification of Specific DNA Sequences and Specific Proteins in Foods, (CAC/GL 74 (2010))"; and

3. not reliant on testing processed food with no detectable DNA.

Under the bill, a "processing aid" is a substance added to a food during processing but (1) removed before packaging; (2) converted into elements normally present in the food without significantly increasing the elements in the food naturally; or (3) present in the finished food product at an insignificant level without a technical or functional effect. An "enzyme" is a protein that catalyzes chemical reactions without being destroyed or altered after the reaction is complete.

Regulations

The bill authorizes DOAG, in consultation with the departments of public health and energy and environmental protection, to adopt regulations necessary to implement and enforce the bill's labeling provisions.

Enforcement

The bill also permits the department (presumably DOAG) or any

person to file an action in Hartford Superior Court for enforcement. The court may temporarily or permanently enjoin a person from violating the law after a hearing and a showing of cause. It can also determine and award reasonable attorney's fees and costs to the person bringing the action.

FARMER BEST PRACTICES

The bill requires DOAG to adopt regulations establishing best practices for farmers who grow or raise a genetically-engineered crop for trade or sale in the United States. The regulations must require the farmers to implement the practices to (1) eliminate or minimize the impact of genetically-engineered crops on neighboring lands and (2) minimize herbicide use to eradicate herbicide-resistant weeds.

RAW AGRICULTURAL COMMODITIES LIST

The DCP commissioner must, by October 15, 2012, publish a list of raw agricultural commodities known to be genetically-engineered on the department's website. He must do so in consultation with the agriculture, public health, and energy and environmental protection commissioners. The DCP commissioner must update the list at least once each year but it is unclear how the commissioners will obtain this information.

FOOD DISPLAY PREFERENCE REPORT

By the same date, the bill requires the DCP commissioner to report to the Environment and General Law committees on a method for implementing a program that establishes a preference for displaying foods that are voluntarily labeled to indicate whether they are genetically-engineered or contain genetically-engineered ingredients.

STATE AGENCY PROCUREMENT GUIDELINES

By January 1, 2013, the bill requires the DAS commissioner to develop recommendations for implementing state agency procurement guidelines that provide a preference for using and purchasing processed foods and raw agricultural commodities that are voluntarily labeled to indicate if they are genetically-engineered or contain

genetically-engineered ingredients. The DAS commissioner must also submit to the Environment Committee any statutory or regulatory changes needed to implement the recommendations.

It is unclear under the bill (1) whether the guidelines would apply to judicial and legislative branch agencies and (2) how the DAS commissioner's authority would reconcile with the authority and responsibilities of the State Contracting Standards Board which includes developing a procurement guide for all state contracting agencies (CGS § 4e-4(e)).

BACKGROUND

International Standards Organization

The International Standards Organization is a non-governmental organization that develops and publishes standards to support industry-wide international standardization in most business, industry, and technology sectors. It is comprised of the national standards institutes of 163 countries, including the United States.

Grain and Feed Trade Association

The Grain and Feed Trade Association is an international trade association that promotes international trade in grain, animal feed, grain legumes, and rice.

Codex Alimentarius Commission

The Codex Alimentarius Commission was created in 1963 by the Food and Agriculture Organization of the United Nations and the World Health Organization to develop food standards, guidelines, and related documents, such as codes of practice.

Federal Regulatory Authority

In general, the U.S. Food and Drug Administration and the U.S. Department of Agriculture regulate labeling requirements of certain foods through the federal Food, Drug, and Cosmetic Act (21 USC § 301 *et seq*.), the Poultry Products Inspection Act (21 USC § 451 *et seq*.) , and the Meat Inspection Act (21 USC § 601 *et seq*.). These acts generally

prohibit states from requiring that these foods be labeled in a manner inconsistent with federal labeling requirements.

Related Case

The constitutionality of state laws requiring specific food labeling has been raised in federal courts, including our own U.S. Second Circuit Court of Appeals.

In a case involving a Vermont law requiring dairy manufacturers to label milk and milk products derived from or that may have been derived from cows treated with recombinant bovine somatrotropin (a synthetic hormone used to increase milk production), the Second Circuit ruled the law was likely unconstitutional on First Amendment grounds. The district court below had denied the dairy manufacturer's request for an injunction to prevent the law's enforcement by ruling that they had not shown a likelihood of success under the First Amendment or Commerce Clause of the U.S. Constitution. But the Second Circuit concluded that Vermont's asserted state interest of a public "right to know" and strong consumer interest was inadequate to compel the commercial speech (i.e., the labeling requirement). Because the Second Circuit ruled on First Amendment grounds, it did not reach the Commerce Clause claims (*International Dairy Foods Association v. Amestoy*, 92 F.3d 67 (2d Cir. 1996)).

The Commerce Clause of the U.S. Constitution gives Congress the power "to regulate commerce with foreign nations, and among the several states" (U.S. Const. Art. I, § 8). A law that facially discriminates against interstate commerce violates the Constitution unless there is no other means to advance a legitimate local interest. If a law is facially nondiscriminatory, supports a legitimate state interest, and only incidentally burdens interstate commerce, it is constitutional unless the burden is excessive in relation to local benefits.

COMMITTEE ACTION

Environment Committee

Joint Favorable

Yea 23 Nay 6 (03/21/2012)