
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-engineered 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 somatotropin (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)