House of Representatives

General Assembly

File No. 576

January Session, 2013

Substitute House Bill No. 6519

House of Representatives, April 18, 2013

The Committee on Public Health reported through REP. JOHNSON of the 49th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING THE LABELING OF GENETICALLY-ENGINEERED FOOD.

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

Section 1. Section 21a-92 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2013*):

For the purposes of this chapter, **[**and**]** section 21a-65 and sections 2 and 3 of this act, the following terms shall have the meanings hereinafter specified:

(1) "Advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of food, drugs, devices or cosmetics;

(2) (A) "Color additive" means a material which (i) is a dye, pigment or other substance made by a process of synthesis or similar artifice, or extracted, isolated or otherwise derived, with or without intermediate

or final change of identity, from a vegetable, animal, mineral or other source, and (ii) when added or applied to a food, drug or cosmetic, or to the human body or any of its parts, is capable, alone or through reaction with other substance, of imparting color thereto, except that the term "color additive" does not include any material exempted by regulation under the federal act, or which the commissioner, by regulation, determines is used, or intended to be used, solely for a purpose or purposes other than coloring; (B) the term "color" includes black, white and intermediate grays, as well as all other colors; (C) nothing in subparagraph (A) of this subdivision shall be construed to apply to any pesticide chemical, soil or plant nutrient, or other agricultural chemical used, or intended to be used, solely because of its effect in aiding, retarding or otherwise affecting, directly or indirectly, the growth or other natural physiological processes of produce of the soil which thereby affects its color, whether before or after harvest;

(3) "Commissioner" means the Commissioner of Consumer Protection;

(4) "Contaminated with filth" applies to any food, drug, device or cosmetic not securely protected from dust or dirt, and as far as may be necessary, by all reasonable means, from all foreign or injurious contaminations;

(5) "Cosmetic" means (A) articles intended to be rubbed, poured, sprinkled or sprayed on, introduced into, or otherwise applied to the human body or any of its parts for cleansing, beautifying, promoting attractiveness or altering the appearance, and (B) articles intended for use as a component of any such articles; except that such term shall not include soap;

(6) "Device", except when used in subdivision (15) of this section and in subsection (i) of section 21a-93, **[**subsection (f)**]** subdivision (6) of section 21a-102, as amended by this act, subsection (c) of section 21a-106 and subsection (c) of section 21a-112, means instruments, apparatus and contrivances, including their components, parts and accessories, intended (A) for use in the diagnosis, cure, mitigation,

treatment or prevention of disease in man or other animals or (B) to affect the structure or any function of the body of man or other animals;

(7) "Director" means the director of the agricultural experiment station;

(8) "Drug" means (A) articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States or official National Formulary, or any supplement to any of them; (B) articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; (C) articles, other than food, intended to affect the structure or any function of the body of man or any other animal; and (D) articles intended for use as a component of any articles specified in this subdivision; but shall not include devices or their components, parts or accessories;

(9) "Federal act" means the federal Food, Drug and Cosmetic Act, as amended, Title 21 USC 301 et seq.: 52 Stat. 1040 et seq.;

(10) "Food" means (A) articles used for food or drink for man or other animals, and (B) chewing gum, and (C) articles used for components of any such article;

(11) "Food additive" means any substance the intended use of which results or reasonably may be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food, including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting or holding food; and including any source of radiation intended for any such use, if such substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures or, in the case of a substance used in food prior to January 1, 1958, through either scientific procedures or experience based on common use in food, to be safe under the

conditions of its intended use; except that such term does not include (A) a pesticide chemical in or on a raw agricultural commodity; or (B) a pesticide chemical to the extent that it is intended for use or is used in the production, storage or transportation of any raw agricultural commodity; or (C) a color additive; or (D) any substance used in accordance with a sanction or approval granted prior to June 12, 1963, or the federal Food, Drug and Cosmetic Act, the Poultry Products Inspection Act (21 USC 451 et seq.) or the Meat Inspection Act of March 4, 1907, as amended;

(12) "Immediate container" shall not include package liners;

(13) "Intrastate commerce" means any and all commerce within the state of Connecticut and subject to its jurisdiction, and shall include the operation of any business or service establishment;

(14) "Label" means a display of written, printed or graphic matter upon the immediate container of any article, provided a requirement made by or under authority of this chapter that any information or other word or statement appear on the label shall not be considered to be complied with unless such information or other word or statement also appears on the outside container or wrapper, if any, of the retail package of such article, or is easily legible through the outside container or wrapper;

(15) "Labeling" means all labels and other written, printed or graphic matter (A) upon any article or any of its containers or wrappers, or (B) accompanying such article; provided, if an article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false because it is misleading, then, in determining whether the labeling or advertisement is misleading, there shall be taken into account, among other things, not only representations made or suggested by statement, word, design, device or sound, or any combination thereof, but also the extent to which the labeling or advertisement fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling or

advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under such conditions of use as are customary or usual, and provided the representation of a drug, in its labeling or advertisement, as an antiseptic shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment or dusting powder or for such other use as involves prolonged contact with the body;

(16) "Natural food" means food (A) which has not been treated with preservatives, antibiotics, synthetic additives, artificial flavoring or artificial coloring; **[**and**]** (B) which has not been processed in a manner that makes such food significantly less nutritive; and (C) which has not been genetically-engineered, as defined in section 2 of this act. Processing of food by extracting, purifying, heating, fermenting, concentrating, dehydrating, cooling or freezing shall not, of itself, prevent the designation of such food as "natural food";

(17) "New drug" means (A) any drug the composition of which is such that such drug is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended or suggested in its labeling, or (B) any drug the composition of which is such that such drug, as a result of investigation to determine its safety and effectiveness for use under such conditions, has become so recognized, but which has not, otherwise than in such investigations, been used to a material extent or for a material time under such conditions, except that the provisions of this subsection pertaining to "effectiveness" shall not apply to any drug which (i) was commercially sold or used in the United States on October 9, 1962, (ii) was not a new drug as defined by this subsection prior to the enactment of these provisions, and (iii) was not covered by an effective application under section 21a-110 or under Section 355 of the federal act, when such drug is intended solely for use under conditions prescribed, recommended, or suggested in labeling with respect to such drug on whichever of the above dates is applicable;

(18) "Official compendium" means the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, official National Formulary, or any supplement to any of them;

(19) "Organically grown" means produced through organic farming methods, which involve a system of ecological soil management and mechanical or biological methods to control insects, weeds, pathogens and other pests and which rely on crop rotation, crop residues, composted animal manures, legumes, green manures, composted organic waste or mineral-bearing rocks and not genetically-engineered, as defined in section 2 of this act;

(20) "Person" includes any individual, partnership, corporation, limited liability company or association;

(21) "Pesticide chemical" means any substance which, alone, in chemical combination or in formulation with one or more other substances is an "economic poison" within the meaning of the federal Insecticide, Fungicide and Rodenticide Act, 7 USC 135-135k, and which is used in the production, storage or transportation of raw agricultural commodities;

(22) "Raw agricultural commodity" means any food in its raw or natural state, including all fruits that are washed, colored or otherwise treated in their unpeeled natural form prior to marketing;

(23) The term "safe" has reference to the health of man or animal;

(24) "Sale" means any and every sale and includes (A) manufacture, processing, packing, canning, bottling or any other production, preparation or putting up; (B) exposure, offer or any other proffer; (C) holding, storing or any other possessing; (D) dispensing, giving, delivering, serving or any other supplying; and (E) applying, administering or any other using.

Sec. 2. (NEW) (*Effective October 1, 2013*) For purposes of this section and section 3 of this act:

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

(2) "Genetically-engineered" or "genetic engineering" means a process whereby any food intended for human consumption (A) is produced from an organism or organisms in which the genetics are materially altered through the application of: (i) In vitro nucleic acid techniques, including recombinant DNA (deoxyribonucleic acid) techniques, the direct injection of nucleic acid into cells or organelles, encapsulation, gene deletion and doubling, or (ii) methods of fusing cells that do not fall within the same taxonomic family, that overcome natural physiological reproductive or recombinant barriers and that are not techniques used in traditional breeding and selection such as conjugation, transduction and hybridization; (B) is treated with a material described in subparagraph (A) of this subdivision, except manure that is used as a fertilizer for a raw agricultural commodity; or (C) contains an ingredient, component or substance described in subparagraph (A) of this subdivision;

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

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

(5) "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;

(6) "Retailer" means a person or entity that engages in the sale of food to a consumer;

(7) "Distributor" means a person or entity that sells, supplies, furnishes or transports food in this state that such person or entity does not produce; and

(8) "Manufacturer" means a person who produces seed, seed stock or food and sells such item to a retailer or distributor.

Sec. 3. (NEW) (*Effective October 1, 2013*) (a) On and after the date of adoption of a mandatory labeling law for foods made with the process of genetic engineering by any two of the following states: (1) Maine; (2) New Hampshire; (3) Vermont; (4) Massachusetts; (5) Rhode Island; (6) New York; (7) Pennsylvania; or (8) New Jersey, any food, seed or seed stock introduced or delivered for introduction into commerce in this state that is, or may have been, entirely or partially genetically-engineered, except a processed food in which one or more processing aids or enzymes were produced or derived from genetic engineering, shall be labeled as follows: (A) In the case of wholesale food intended for human consumption that is not intended for retail sale, on the shipping manifest accompanying such food during shipping, with the clear and conspicuous words: "Produced with Genetic Engineering"; (B) in the case of food for retail sale contained in a package, by the manufacturer, distributor or retailer of the food, with the clear and conspicuous words: "Produced with Genetic Engineering"; (C) in the case of food that is a raw agricultural commodity, on the package offered for retail sale or, in the case of any such commodity that is not separately packaged or labeled, on the retail store shelf or bin that holds such commodity displayed for sale, by the retailer, with the clear and conspicuous words: "Produced with Genetic Engineering"; and (D) in the case of any seed or seed stock, on the container holding the seed or seed stock displayed for sale, the sales receipt, or any label identifying ownership or possession of the commodity, by the manufacturer or distributor, with the clear and conspicuous words:

"Produced with Genetic Engineering".

(b) Notwithstanding the provisions of chapter 418 of the general statutes, the Commissioner of Consumer Protection, in consultation with the Commissioners of Agriculture, Energy and Environmental Protection and Public Health, may adopt regulations, pursuant to chapter 54 of the general statutes, to implement and enforce the provisions of this section.

Sec. 4. Section 21a-102 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2013*):

A food shall be deemed to be misbranded: **[**(a)**]** (1) If its labeling is false or misleading in any particular. A statement on the label or labeling either directly or indirectly implying that the product is recommended or endorsed by any agency of the federal or state government shall be considered misleading, unless the agency concerned has approved the statement prior to its use; **[**(b)**]** (2) if it is offered for sale under the name of another food; **[**(c)**]** (3) if it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation" and, immediately thereafter, the name of the food imitated; **[**(d)**]** (4) if its container is so made, formed or filled as to be misleading; **[**(e)**]** (5) if in package form, unless it bears a label containing **[**(1)**]** (A) the name and place of business of the manufacturer, packer or distributor; and **[**(2)**]** (B) an accurate statement of the quantity of the contents in terms of weight, measure or numerical count; provided, under **[**subdivision (2) of this subsection**]** subparagraph (B) of this subdivision, reasonable variations shall be permitted, and exemptions as to small packages shall be established by regulations promulgated by the commissioner and director, acting jointly; **[**(f)**]** (6) if any information or other word or statement, required by or under authority of this chapter to appear on the label or labeling, is not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs or devices, in the labeling, and in such terms, as to render it likely to be read and understood by the ordinary individual under customary conditions of

purchase and use; [(g)] (7) if it purports to be or simulates or is represented as a food for which a definition and standard of identity has been prescribed by regulations as provided by section 21a-100, unless [(1)] (A) it conforms to such definition and standard, and [(2)] (B) its label bears the name of the food specified in the definition and standard, and, so far as may be required by such regulations, the common names of optional ingredients, other than spices, flavoring and coloring, present in such food; [(h)] (8) if it purports to be or is represented as [(1)] (A) a food for which a standard of quality has been prescribed by regulations as provided by section 21a-100 and its quality falls below such standard, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard; [or (2)] (B) a food for which a standard or standards of fill of container have been prescribed by regulations as provided by section 21a-100, and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard; [(3)] or (C) a food for which no definition and standard of identity and no standard of quality has been prescribed by regulations as provided by section 21a-100, and it falls below the standard of purity, quality or strength which it purports or is represented to possess; [(i)] (9) if it is not subject to the provisions of [subsection (g)] subdivision (7) of this section, unless its label bears [(1)] (A) the common or usual name of the food, if any, and [(2)] (B) if it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings and colorings, other than those sold as such, may be designated as spices, flavorings and colorings without naming each; provided, to the extent that compliance with the requirements of [subdivision (2) of this subsection] subparagraph (B) of this subdivision is impracticable, or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the commissioner and director, acting jointly; [(j)] (10) if it purports to be or is represented to be for special dietary uses, unless its label bears such information concerning its vitamin, mineral and other dietary properties as is

necessary in order fully to inform purchasers as to its value for such uses, as provided by regulations promulgated by the commissioner and director, acting jointly; **[**(k)**]** (11) if it bears or contains any artificial flavoring, artificial coloring, artificial sweetening or chemical preservative, unless it bears labeling stating that fact; provided, to the extent that compliance with the requirements of this subsection is impracticable, exemptions shall be established by regulations promulgated by the commissioner and director, acting jointly; (12) if it is genetically-engineered, as defined in section 2 of this act, and does not bear labeling as required in accordance with section 3 of this act, unless (A) it is a food produced without the producer's knowledge that a seed or other component of the food was genetically-engineered, or (B) on or before July 1, 2019, it is a processed food, as defined in section 2 of this act, that is subject to the provisions of section 3 of this act, solely because it contains one or more materials that are genetically-engineered, as defined in section 2 of this act, provided such genetically-engineered materials do not, in the aggregate, account for more than nine-tenths of one per cent of the total weight of the processed food.

This act shall take effect as follows and shall amend the following sections:		
Section 1	*October 1, 2013*	21a-92
Sec. 2	*October 1, 2013*	New section
Sec. 3	*October 1, 2013*	New section
Sec. 4	*October 1, 2013*	21a-102

Statement of Legislative Commissioners:

In section 1(6), the phrase "subdivision 10 of section 21a-102" was changed to "subdivision (6) of section 21a-102", for accuracy and consistency with the drafting conventions of the general statutes. In section 2, subdivisions (1) and (7) were deleted for clarity and the remaining subdivisions were renumbered.

PH *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 14 $	FY 15 $
Consumer Protection, Dept.	GF – Potential Cost	90,000	90,000
State Comptroller - Fringe Benefits[1]	GF – Potential Cost	27,632	27,632

Municipal Impact: None

Explanation

The bill results in a potential cost to the Department of Consumer Protection (DCP) of $117,632 in FY 14 and FY 15 by requiring certain products to be labeled "Produced with Genetic Engineering" if any two of eight states listed in the bill adopt mandatory labeling laws for genetically engineered foods. The DCP will require a Consumer Protection Food Inspector and a part-time paralegal to respond to complaints and issues related to genetically engineered products. Costs include salaries ($80,000), other expenses including computers, software, travel and miscellaneous costs ($10,000) and fringe benefits ($27,632). The additional staff will need to examine the chain of production of suspect products in order to determine if such products meet the requirements of the bill.

The Out Years

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

[1]The fringe benefit costs for most state employees are budgeted centrally in accounts administered by the Comptroller. The estimated active employee fringe benefit cost associated with most personnel changes is 34.54% of payroll in FY 14 and FY 15.

OLR Bill Analysis

sHB 6519

AN ACT CONCERNING THE LABELING OF GENETICALLY-ENGINEERED FOOD.

SUMMARY:

This bill provides that certain food items are considered misbranded unless labeled as "Produced with Genetic Engineering." The requirement goes into effect when similar mandatory labeling laws are adopted in any two nearby states (the other New England states, New York, New Jersey, and Pennsylvania).

The bill applies to wholesale and retail food, raw agricultural commodities, and seeds or seed stock that are, or may have been, at least partially produced with genetic engineering. But the bill provides a broad exemption for processed foods in which one or more processing aids or enzymes were produced or derived from genetic engineering. There are also two situations where the labeling requirement applies but failure to comply does not render the food items misbranded.

The bill authorizes the Department of Consumer Protection (DCP) commissioner, in consultation with the commissioners of agriculture, public health, and energy and environmental protection, to adopt regulations to implement and enforce the bill's labeling requirements.

By deeming food that violates the bill's labeling requirements to be misbranded, the bill allows DCP to place an embargo and, in some circumstances, seize the food. A person who misbrands food or sells or receives misbranded food in Connecticut may be subject to criminal penalties (see BACKGROUND).

The bill also specifically excludes genetically-engineered foods from

the definitions of "natural food" and "organically grown," for purposes of the laws regulating the advertisement, distribution, or sale of food as natural or organically grown and the certification of food as organic. The U.S. Department of Agriculture (USDA) already excludes food produced through genetic engineering from being labeled as organic.

EFFECTIVE DATE: October 1, 2013

MISBRANDED GENETICALLY-ENGINEERED FOOD

Genetically-engineered

Under the bill, "genetically-engineered" or "genetic engineering" is a process through which food intended for human consumption is produced from an organism or organisms in which the genetics are materially changed by:

1. in vitro nucleic acid techniques, including recombinant DNA techniques, directly injecting nucleic acid into cells or organelles, encapsulation, gene deletion, and doubling or

2. fusing cells that are not in the same taxonomic family, in a way that overcomes natural physiological reproductive or recombinant barriers and that is not used in traditional breeding and selection such as conjugation, transduction, and hybridization.

"Genetically-engineered" or "genetic engineering" also includes food intended for humans that (1) contains an ingredient, component, or substance produced as described above or (2) is treated with a material produced as described above, except for manure used as fertilizer for raw agricultural commodities. A raw agricultural commodity is a food in its raw or natural state, including fruit that is washed, colored, or treated in its unpeeled, natural form before marketing.

General Labeling Requirement

The bill generally requires food, seed, or seed stock introduced or delivered for introduction into commerce in this state that is, or may have been, entirely or partially genetically-engineered to be labeled with the clear and conspicuous words, "Produced with Genetic Engineering." Genetically-engineered food is misbranded if it does not contain the required label, subject to the exceptions set forth below. It is unclear if the misbranding also applies to seed or seed stock that lacks the required label.

The requirement goes into effect when at least two of the following states adopt mandatory labeling laws for genetically-engineered foods: Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, or Vermont.

The specifics of the labeling location, and responsible party for labeling, vary depending on the type of item, as follows:

1. Wholesale foods intended for human consumption that are not intended for retail sale: the label must appear on the shipping manifest that accompanies the food during shipping (presumably the manufacturer or distributor is responsible for the labeling).

2. Packaged food for retail sale: the manufacturer, distributor, or retailer must label the package.

3. Raw agricultural commodities: the retailer must label the item, and the label must appear (a) on the package offered for retail sale or (b) for such commodities that are not separately packaged or labeled, on the retail store shelf or bin that displays them for sale.

4. Seed or seed stock: the manufacturer or distributor must label the item on (a) the container holding such items displayed for sale, (b) the sales receipt (it is unclear how a manufacturer or distributor would label a sales receipt), or (c) any label identifying the commodity's ownership or possession.

The bill defines a retailer as a person or entity that engages in the sale of food to a consumer. A distributor is a person or entity that sells, supplies, furnishes, or transports food in this state that the person or entity did not produce. A manufacturer is a person who produces seed, seed stock, or food and sells such items to a retailer or distributor.

As described above, the bill applies to food, seed, or seed stock, introduced or delivered for introduction into commerce in this state, that is or may have been genetically-engineered. It is unclear if Connecticut manufacturers selling food to retailers outside the state would be subject to the labeling requirement.

Exceptions

Certain Processed Foods. The bill's labeling requirement does not apply to processed foods in which one or more processing aids or enzymes were produced or derived from genetic engineering. This exception appears to apply regardless of whether the food itself contains genetically-engineered components.

On or before July 1, 2019, the bill also exempts certain genetically-engineered processed food that is not labeled from being deemed misbranded. This exemption applies to processed food that is subject to the bill's labeling requirement solely because it contains one or more genetically-engineered materials that in the aggregate do not account for more than 0.9% (9/10 of 1 percent) of the processed food's total weight.

A "processed food" is any food other than a raw agricultural commodity. The term includes food produced from a raw agricultural commodity through canning, smoking, pressing, cooking, freezing, dehydration, fermentation, or milling.

A "processing aid" is a substance added to a food during processing that (1) is removed before packaging, (2) is converted into constituents normally present in the food without significantly increasing the amount of the constituents naturally found in the food, or (3) was

added for its technical or functional effect in processing but is present in the finished food at insignificant levels without any technical or functional effect in the finished food.

Lack of Producer's Knowledge. The bill also exempts genetically-engineered food from being deemed misbranded, although not from being labeled as genetically-engineered, if it was produced without the producer's knowledge that a seed or food component was genetically-engineered. The bill does not specify how a producer would show this.

NATURAL FOOD AND ORGANICALLY GROWN

By law:

1. "natural food" means food that has not been (a) treated with preservatives, antibiotics, synthetic additives, or artificial flavoring or coloring and (b) processed in a way that makes it significantly less nutritive and

2. "organically grown" means produced through organic farming methods, which (a) involve a system of ecological soil management and mechanical or biological methods to control insects, weeds, pathogens, and other pests and (b) rely on crop rotation, crop residues, composted animal manure, legumes, green manure, composted organic waste, or mineral-bearing rocks (CGS § 21a-92).

Under the bill, food cannot be described as "natural" or "organically grown" if it is genetically-engineered. By law, foods that are advertised, distributed, or sold as natural or organically grown without meeting the definitions of such terms are deemed misbranded.

By law, foods can be certified as organically grown by the state Department of Agriculture, a certification body recognized by the National Organic Standards Board, or the USDA. Among other requirements, the USDA's process for certifying foods as organic excludes foods that were produced with genetic engineering.

BACKGROUND

Misbranding Criminal Penalties

The law prohibits misbranding food or selling or receiving misbranded food in Connecticut (CGS § 21a-93). A first violation of this law is punishable by up to six months in prison, a fine of up to $500, or both. Subsequent violations, or violations done with the intent to defraud or mislead, are punishable by up to one year in prison, a fine of up to $1,000, or both (CGS § 21a-95).

Generally, a person is not subject to criminal penalities for selling or receiving misbranded food within the state if he or she obtains a document signed by the person from whom he or she received the food in good faith, stating that the food is not misbranded in violation of this law. But this exemption does not apply to violations done with the intent to defraud or mislead (CGS § 21a-95).

DCP Embargo and Seizure of Misbranded Food

The law authorizes the DCP commissioner to embargo food that he determines or has probable cause to believe is misbranded. Once the commissioner embargoes an item, he has 21 days to either begin summary proceedings in Superior Court to confiscate it or to remove the embargo.

Once the commissioner files a complaint, the law requires the court to issue a warrant to seize the described item and summon the person named in the warrant and anyone else found to possess the specific item. The court must hold a hearing within five to 15 days from the date of the warrant. The court must order the food confiscated if it appears that it was offered for sale in violation of the law.

If the seized food is not injurious to health and could be brought into compliance with the law if it is repackaged or relabeled, the court may order it delivered to its owner upon payment of court costs and provision of a bond to DCP assuring that the product will be brought into compliance (CGS § 21a-96).

Federal Regulatory Authority

In general, the U.S. Food and Drug Administration and the USDA

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 the 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 manufacturers' 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 among the states (U.S. Const. Art. I, § 8). It has also been held to mean that states cannot pass laws that improperly burden or discriminate against interstate commerce (i.e., the "dormant" Commerce Clause). Under this doctrine, a law that, on its face, 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.

Related Bill

sHB 6527, reported favorably by the Children's Committee, (1) requires infant formula or baby food partially or entirely produced with genetic engineering offered or intended for retail sale in Connecticut to be labeled as "produced with genetic engineering" and (2) prohibits manufacturing, selling, offering for sale, or distributing such items in the state that are not labeled. It also changes the definitions of natural and organically grown food to exclude genetically-engineered food.

COMMITTEE ACTION

Public Health Committee

Joint Favorable Substitute
Yea 23 Nay 4 (04/02/2013)