House of Representatives

File No. 863

General Assembly

January Session, 2013

(Reprint of File No. 229)

Substitute House Bill No. 6527
As Amended by House Amendment
Schedule "A"

Approved by the Legislative Commissioner
May 24, 2013

AN ACT CONCERNING 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 Section 21a-92 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2013*):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, sections 2 and 3 of this act, and section 21a-102, as amended by 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 subsection (a) 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**]** humans or

other animals, or (B) to affect the structure or any function of the body of [man] humans 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] humans or other animals; (C) articles, other than food, intended to affect the structure or any function of the body of [man] humans 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] humans or other animals, [and] (B) chewing gum, (C) infant formula, and [(C)] (D) 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) "Infant formula" means a milk-based or soy-based powder, concentrated liquid or ready-to-feed substitute for human breast milk that is intended for infant consumption and is commercially available;

[(13)**]** (14) "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)**]** (15) "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)**]** (16) "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)**]** (17) "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)**]** (18) "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)**]** (19) "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)**]** (20) "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;

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

[(21)**]** (22) "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)**]** (23) "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)**]** (24) The term "safe" has reference to the health of **[**man**]** human or animal;

[(24)**]** (25) "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, section 3 of this act, section 21a-102 of the general statutes, as amended by this act, and section 5 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 or any seed or seed stock that is intended to produce food 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) fusion of 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 for purposes that include, but are not limited to, increasing a raw agricultural commodity's resistance to herbicides and pesticides; or (C) contains an ingredient, component or substance described in subparagraph (A) of this subdivision;

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

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

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

(6) "Processing aid" means: (A) Any substance that is added to a food intended for human consumption 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 such 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 such 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;

(7) "Retailer" means a person or entity that engages in the sale of food intended for human consumption to a consumer;

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

(9) "Manufacturer" means a person who produces food intended for human consumption or seed or seed stock that is intended to produce food for human consumption and sells such item to a retailer or distributor.

Sec. 3. (NEW) (*Effective October 1, 2013*) (a) On and after the occurrence of the following: (1) Any five states, not including this state, enact a mandatory labeling law for genetically-engineered foods that is substantially consistent with the provisions of sections 1 to 4, inclusive, of this act, (2) the aggregate population of such states is more than twenty-five million, and (3) two of such states border Connecticut or are New York and New Jersey, no person shall sell, offer for sale or

distribute in this state any (A) food intended for human consumption, or (B) seed or seed stock that is intended to produce food for human consumption that is entirely or partially genetically-engineered, except a processed food subject to the provisions of this section solely because one or more processing aids or enzymes were produced or derived from genetic engineering, unless such food, seed or seed stock is labeled as follows: (i) In the case of such wholesale food that is not intended for retail sale, on the bill of sale accompanying such food during shipping, with the clear and conspicuous words: "Produced with Genetic Engineering"; (ii) in the case of such food for retail sale contained in a package, with the clear and conspicuous words: "Produced with Genetic Engineering"; (iii) in the case of such 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 with the clear and conspicuous words: "Produced with Genetic Engineering"; and (iv) in the case of any such seed or seed stock, on the container holding the seed or seed stock displayed for sale or any label identifying ownership or possession of the commodity with the clear and conspicuous words: "Produced with Genetic Engineering". Such food labeling shall be displayed in the same size and font as the ingredients in the nutritional facts panel on the food label.

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

(1) Alcoholic beverages;

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

(3) Farm products that are sold by a farmer or the farmer's agent to a consumer at a pick-your-own farm, roadside stand, on-farm market or farmers' market;

(4) 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; and

(5) Products derived from a single type of crop raised on a farm that produces not more than one million five hundred thousand dollars in gross sales for the farmer on whose farm such crop was raised in the previous twelve months.

(c) Any person selling, offering for sale or distributing in this state any food, seed or seed stock required to be labeled as provided in this section shall be responsible for ensuring that such food, seed or seed stock is so labeled.

(d) The provisions of this section shall be enforced, within available appropriations, by the Commissioner of Consumer Protection.

(e) Any person found to knowingly violate this section shall be liable for a civil penalty not to exceed one thousand dollars per day, per product. Calculation of such civil penalty shall not be made or multiplied by the number of individual packages of the same product displayed or offered for retail sale. Civil penalties assessed under this section shall accrue and be assessed per each uniquely named, designated or marketed product.

(f) Notwithstanding the provisions of subsection (c) of this section, a retailer shall not be liable for the failure to label pursuant to this section unless the retailer is the producer or the manufacturer of the genetically-engineered food, seed or seed stock and sells the genetically-engineered food under a brand it owns, unless the failure to label was knowing and wilful.

(g) The Commissioner of Consumer Protection may adopt regulations, in accordance with the provisions of 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) 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**]** this subparagraph, 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**]** subsection, 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**]** this subparagraph 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 intended for human consumption and 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 intended for human consumption produced without the producer's knowledge that a seed or other component of such 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 have been produced with genetic engineering, 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.

(b) Seed or seed stock that is intended to produce food for human consumption shall be deemed misbranded 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.

Sec. 5. Section 21a-99 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2013*):

All such proceedings for the enforcement, or to restrain violations, of this chapter and section 3 of this act shall be by and in the name of the state of Connecticut.

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
Sec. 5	*October 1, 2013*	21a-99

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: Potential Fiscal Impact in the Out Years

Municipal Impact: None

Explanation

The bill is not anticipated to result in a cost in either FY 14 or FY 15 as the requirement of any person to not sell, offer for sale, or distribute certain products is not anticipated to be implemented until the out years due to the bill's requirements needed prior to implementation.

The bill specifies that the Department of Consumer Protection (DCP) implement the provisions within available appropriations. However, if the bill were to be implemented the cost to the state would be an estimated $117,632 in the out years due to requiring certain products to be labeled "Produced with Genetic Engineering" and adopting mandatory labeling laws for genetically engineered food. DCP may incur costs of $90,000 for a Consumer Protection Food Inspector and a part-time paralegal to respond to complaints and issues related to genetically engineered products. This includes salaries ($80,000) and other expenses ($10,000) including computers, software, travel 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 cost could vary depending on the timing of implementation.

House "A" was a strike all amendment that altered the implementation requirements with the resulting impact identified above.

The Out Years

The impact identified above is anticipated in the out years only subject to inflation.

OLR Bill Analysis

sHB 6527 (as amended by House "A")*

AN ACT CONCERNING GENETICALLY ENGINEERED BABY FOOD.

SUMMARY:

This bill generally prohibits anyone from selling, offering for sale, or distributing in the state certain foods that are entirely or partially genetically-engineered unless they are labeled as produced with genetic engineering. It generally deems such items misbranded if they do not contain the required label. But these requirements only go into effect when five other states meeting certain criteria enact a substantially similar law. The five states must have a total population of over 25 million, and they must include (1) two states bordering Connecticut or (2) New York and New Jersey.

The bill generally applies to food intended for human consumption, or seed or seed stock intended to produce such food. But certain food items are exempt, such as (1) alcohol, (2) food not packaged for retail sale that is intended for immediate consumption, and (3) certain farm products. There are also two situations where the labeling requirement applies, but failure to comply does not render the food items misbranded.

The bill generally subjects knowing violators to a daily fine of up to $1,000 per product. But retailers are only liable for failure to label under certain conditions.

By deeming food that violates the bill's labeling requirements to be misbranded, the bill also allows the Department of Consumer Protection (DCP) to place an embargo on, and in some circumstances, seize, the food. A person who misbrands food or sells misbranded

food in Connecticut may be subject to criminal penalties (see BACKGROUND).

The bill requires the DCP commissioner to enforce the bill's labeling requirements, within available appropriations. It authorizes him to adopt regulations to implement and enforce these requirements.

Among other things, the bill also:

1. specifies that infant formula is included in the definition of "food" for purposes of the bill's labeling requirements as well as other provisions in the existing state Food, Drug, and Cosmetic Act (presumably, infant formula already fits within the act's definition of food) and

2. specifically excludes genetically-engineered foods from the definition of "natural food," for purposes of the laws regulating the advertisement, distribution, or sale of food as natural.

The bill also makes technical and conforming changes.

*House Amendment "A" replaces the underlying bill. It (1) expands the type of items to which the labeling requirement applies (in the underlying bill, the requirement applied only to baby food and infant formula) and (2) adds the provision that the labeling requirement only goes into effect when five other states enact similar laws (in the underlying bill, the requirement would go into effect on July 1, 2015). Among other things, the amendment also adds and changes certain exceptions to the labeling requirement.

EFFECTIVE DATE: October 1, 2013

MISBRANDED GENETICALLY-ENGINEERED FOOD, SEED, AND SEED STOCK

Genetically-engineered

Under the bill, "genetically-engineered" or "genetic engineering" is a process through which food intended for human consumption, or

seed or seed stock intended to produce such food, is produced from an organism or organisms in which the genetics are materially changed by:

1. in vitro nucleic acid techniques (see below), including recombinant DNA techniques, directly injecting nucleic acid into cells or organelles (parts of cells), encapsulation, gene deletion, and doubling or

2. fusing cells that are not in the same taxonomic family (in taxonomy, a family is a group of related species), 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, or seed or seed stock intended to produce such food, that (1) contains an ingredient, component, or substance produced as described above or (2) is treated with a material produced as described above for, among other purposes, increasing a raw agricultural commodity's resistance to herbicides and pesticides. By law, a raw agricultural commodity is a food in its raw or natural state, including fruit that is washed, colored, or otherwise treated in its unpeeled, natural form before marketing.

The bill defines "in vitro nucleic acid techniques" as techniques, including recombinant DNA techniques, that use vector systems and techniques involving the direct introduction into organisms of hereditary material (e.g., genes) prepared outside the organisms, such as microinjection, macroinjection, chemoporation, electroporation, microencapsulation, and liposome fusion.

General Labeling Requirement

The bill generally prohibits anyone from selling, offering for sale, or distributing in the state food intended for human consumption, or seed or seed stock intended to produce such food, that is entirely or

partially genetically-engineered, unless the item is labeled with the clear and conspicuous words "Produced with Genetic Engineering." Such food, seed, and seed stock is deemed misbranded if it does not contain the required label, subject to the exceptions set forth below.

The labeling requirement goes into effect when five other states, with a total population of over 25 million, enact a mandatory labeling law for genetically-engineered food that is substantially consistent with the bill. These states must include (1) two bordering states or (2) New York and New Jersey.

The label must be displayed in the same size and font as the ingredients in the food label's nutritional facts panel. (It is unclear how this provision applies to products that do not have such panels.) The specifics of the labeling location vary depending on the type of item, as shown in Table 1.

Table 1: Location of "Produced with Genetic Engineering" Label

Item Type	*Required Location of Label*
Wholesale food not intended for retail sale	The bill of sale accompanying the food during shipping
Packaged food for retail sale	Presumably on the package
Raw agricultural commodity	(1) The package offered for retail sale or (2) for such commodities that are not separately packaged or labeled, on the retail store shelf or bin that displays them for sale
Seed or seed stock	(1) The container holding the items displayed for sale or (2) any label identifying the commodity's ownership or possession.

Responsibility for Labeling. Under the bill, anyone selling, offering for sale, or distributing in this state food, seed, or seed stock subject to the labeling requirement must ensure that the item is labeled. But despite this provision, a retailer is not liable for failing to label such items unless the retailer is the producer or manufacturer of the item and sells it under a brand the retailer owns, unless the failure to label was knowing and willful.

The bill defines a retailer as a person or entity that engages in the

sale of food intended for human consumption to a consumer. A manufacturer is a person who produces such food, or seed or seed stock intended to produce such food, and sells such items to a retailer or distributor. A distributor is a person or entity that sells, supplies, furnishes, or transports food intended for human consumption in this state that the person or entity did not produce.

Exemptions from Labeling Requirement. The bill exempts from the labeling requirement:

1. alcoholic beverages;

2. food intended for humans that is not packaged for retail sale and is (a) a processed food prepared and intended for immediate consumption or (b) served, sold, or otherwise provided in a restaurant or other food facility primarily engaged in the sale of food prepared and intended for immediate consumption;

3. farm products sold by a farmer or his or her agent to a consumer at a pick-your-own farm, roadside stand, on-farm market, or farmers' market;

4. food consisting entirely of, or derived entirely from, an animal that was not genetically engineered, regardless of whether the animal was fed or injected with any genetically-engineered food or any drug that was produced through genetic engineering;

5. products derived from a single type of crop raised on a farm that produces not more than $1.5 million in gross sales for the farmer on whose farm the crop was raised in the previous 12 months; and

6. processed foods that would be subject to such labeling solely because one or more processing aids or enzymes were produced or derived from genetic engineering.

Under the bill, a "processed food" is any food intended for human consumption other than a raw agricultural commodity. The term

includes food produced from a raw agricultural commodity that has been processed through canning, smoking, pressing, cooking, freezing, dehydration, fermentation, or milling.

A "processing aid" is a substance added during processing to a food intended for human consumption 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.

Exemptions from Being Deemed Misbranded. While subject to the bill's labeling requirement, the following are exempt from being deemed misbranded if they are not labeled:

1. food for humans that 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) or

2. on or before July 1, 2019, processed food 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.

However, it appears that knowing violations of the labeling requirement in regard to such items are still subject to the civil penalty described below.

Civil Penalty

Under the bill, anyone found to knowingly violate the labeling

provisions is subject to a civil penalty of up to $1,000 per day. The penalty applies per each uniquely named, designated, or marketed product, but not per individual item of the same product.

INFANT FORMULA

Under existing law, the Food, Drug, and Cosmetic Act defines food as (1) articles used for food or drink for people or other animals, (2) chewing gum, and (3) articles used for components of these. The bill specifically includes infant formula in the definition. Presumably, infant formula already fits within the act's definition of food.

Thus, the bill specifies that genetically-engineered infant formula is subject to the bill's labeling requirement unless an exception applies, as set forth above. Also, all infant formula is subject to the other provisions applicable to food in the Food, Drug, and Cosmetic Act. Among other things, the act bans the sale in intrastate commerce of food that is adulterated or misbranded.

The bill defines "infant formula" as a milk- or soy-based powder, concentrated liquid, or ready-to-feed substitute for human breast milk that is commercially available and intended for infants.

NATURAL FOOD

Under existing law, "natural food" means food that has not been (1) treated with preservatives, antibiotics, synthetic additives, or artificial flavoring or coloring and (2) processed in a way that makes it significantly less nutritious.

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

DISTRIBUTOR AND MANUFACTURER

Under the bill, the definitions of distributor and manufacturer (see above) apply to an existing provision providing that packaged food is deemed misbranded if it does not have a label indicating the name and

place of business of the manufacturer, packer, or distributor. As this provision applies to food intended for humans as well as animals, the effect of this is unclear.

BACKGROUND

Misbranding Criminal Penalties

The law prohibits misbranding food, or selling, or receiving and then selling 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 penalties for selling misbranded food within the state, or receiving and then selling it, 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 committed 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 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 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 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 Bills

sSB 802, as amended and passed by the Senate on May 21, contains a similar labeling requirement. It contains fewer exceptions than this bill, and would go into effect (1) July 1, 2016 or (2) July 1, 2015 if similar laws are adopted in three nearby states before that date. It also specifically excludes genetically-engineered foods from the definition of "natural food."

sHB 6519 (File 576), reported favorably by the Public Health Committee, generally provides that certain food items, seed, or seed stock are considered misbranded unless labeled as "Produced with Genetic Engineering." The requirement would go into effect when similar mandatory labeling laws are adopted in any two nearby states. It specifically excludes genetically-engineered foods from the definition of "natural food."

COMMITTEE ACTION

Children Committee

Joint Favorable
Yea 11 Nay 1 (03/12/2013)

Public Health Committee

Joint Favorable
Yea 21 Nay 3 (04/23/2013)

Judiciary Committee

Joint Favorable
Yea 40 Nay 0 (05/07/2013)