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## **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 penalties 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 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 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)