
OLR Bill Analysis

HB 6527

AN ACT CONCERNING GENETICALLY ENGINEERED BABY FOOD.

SUMMARY:

This bill, starting July 1, 2015:

1. requires infant formula or baby food partially or entirely produced with genetic engineering offered or intended for retail sale in Connecticut to be clearly and conspicuously labeled as “produced with genetic engineering” and
2. prohibits anyone from manufacturing, selling, offering for sale, or distributing in Connecticut any infant formula or baby food containing genetically engineered material unless it is labeled as “produced with genetic engineering.”

The bill requires the Department of Consumer Protection (DCP) commissioner to adopt regulations to implement and enforce the bill’s provisions. Products violating the labeling requirements are considered misbranded and, with exceptions, subject to seizure. Those making or selling products in violation of the bill are subject to a civil penalty, with an exception for existing inventory.

The bill also changes the definitions of natural and organically grown food to exclude genetically modified foods, thus changing (1) when anyone can advertise, distribute, or sell food as natural or organically grown and (2) what foods can be certified as organically grown.

EFFECTIVE DATE: October 1, 2013

MISBRANDED INFANT FORMULA OR BABY FOOD

Starting July 1, 2015, any infant formula or baby food that is

partially or entirely produced with genetic engineering offered or intended for retail sale in Connecticut will be considered misbranded if it does not include labeling that clearly and conspicuously states “produced with genetic engineering.” The labeling must be displayed in the same size and font as the ingredients in the nutrition facts panel on the food label.

Exceptions

The formula or baby food will not be considered misbranded if the producer (1) did not know that the formula or baby food was created with material that was partially or entirely produced with genetic engineering and (2) gets a sworn statement from the material seller stating that the material has not been knowingly genetically engineered or commingled with any genetically engineered material.

Before July 1, 2019, formula or baby food will not be considered misbranded if it is subject to the labeling requirement only because it includes one or more material produced with genetic engineering that make up .9% or less of its total weight.

Penalties

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 (CGS § 21a-96). A person who misbrands food or sells or receives it in Connecticut may be subject to criminal penalties (CGS § 21a-95)(see BACKGROUND).

MANUFACTURE, SALE, OR DISTRIBUTION OF MISLABELED FORMULA OR BABY FOOD

Beginning July 1, 2015, the bill prohibits anyone from manufacturing, selling, offering for sale, or distributing in Connecticut any infant formula or baby food containing genetically engineered material unless it includes labeling stating “produced with genetic engineering.”

A person who knowingly violates this provision is liable for a civil penalty of up to \$1,000 per day, per product. The fine must (1) accrue

and be assessed for each uniquely named, designated, or marketed product and (2) not be made or multiplied by the number of individual packages of the same product displayed or offered for retail sale.

A person may sell or distribute his or her existing inventory (as of October 1, 2013) of infant formula or baby food containing genetically engineered material until July 1, 2016 if he or she can demonstrate that it was purchased before October 1, 2013 in an amount comparable to that purchased during the same period of the prior year.

The bill authorizes the DCP commissioner to enforce this labeling requirement within available appropriations.

Regulations

The bill requires DCP, in consultation with the departments of Agriculture, Energy and Environmental Protection, and Public Health, to adopt necessary implementing regulations.

DISTRIBUTORS AND RETAILERS

Under the bill, distributors or retailers that sell or advertise misbranded infant formula or baby food cannot be found liable or negligent in a civil proceeding brought to enforce the product labeling requirement. But they can be subject to a (1) civil penalty for distributing or selling the product in violation of the bill and (2) criminal penalty for selling misbranded food (see BACKGROUND).

NATURAL FOOD AND ORGANICALLY GROWN

By law:

1. "natural food" means food that has not been treated with preservatives, antibiotics, synthetic additives, or artificial flavoring or coloring and 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 defined as “natural” or “organically grown” if it was grown, raised, manufactured, cultured, or created in any way through genetic engineering. Thus, the bill changes (1) when anyone can advertise, distribute, or sell food as natural or organically grown and (2) what foods can be certified as organically grown. Foods advertised, distributed, or sold as natural or organically grown that do not conform to the revised definitions will be considered misbranded (see BACKGROUND).

DEFINITIONS

Genetically Engineered or Genetic Engineering

Under the bill, “genetically engineered” or “genetic engineering” means the production of food from or with an organism or organisms with materially altered genetics by (1) using in vitro nucleic acid techniques, including recombinant RNA and DNA techniques and direct injection of nucleic acid into cells or organelles or (2) fusing cells that are not in the same taxonomic family, in a way that does not occur by natural multiplication or recombination.

A food is considered to be genetically engineered if its derivative organisms have been injected or otherwise treated with a genetically engineered material. Raw agricultural commodities fertilized with manure are not considered to (1) be genetically engineered or (2) contain a genetically engineered ingredient, component, or article.

In Vitro Nucleic Acid Techniques

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 prepared outside the organisms such as microinjection, macroinjection, chemoporation, electroporation, microencapsulation, and liposome fusion.

Organism

The bill defines “organism” as any biological entity able to replicate, reproduce, or transfer genetic material.

Infant Formula

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

Baby Food

The bill defines “baby food” as a prepared solid food consisting of a soft paste or easily chewed food commercially available and intended for consumption by children age two or younger.

BACKGROUND

Misbranding Criminal Penalties

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

A person cannot be criminally penalized 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 adulterated or misbranded in violation of this law (CGS § 21a-95).

DCP Embargo and Seizure of Misbranded Food

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

Once the commissioner files a complaint in Superior Court, the law

requires the court to issue a warrant to seize the described article and summon the person named in the complaint. The law requires the court to 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 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 Labeling Requirements

Generally, the federal Food, Drugs and Cosmetics Act prohibits states from requiring that food transported between states be labeled in a manner inconsistent with federal labeling requirements. However, a state may file a petition requesting exemption from the prohibition if the state labeling:

1. would not cause any food to be in violation of any applicable federal law,
2. would not unduly burden interstate commerce, and
3. is designed to address a particular need for information that is not met by federal labeling requirements (21 USC § 343-1).

Related Case

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

In a case involving a Vermont law requiring dairy manufacturers to label milk and milk products derived from or that may have been derived from cows treated with recombinant bovine somatotropin (a synthetic hormone used to increase milk production), the Second Circuit ruled the law was likely unconstitutional on First Amendment grounds. The district court had denied the dairy manufacturers' request for an injunction to prevent the law's enforcement by ruling that the manufacturers had not shown a likelihood of success under

the First Amendment or Commerce Clause of the U. S. Constitution. But the Second Circuit concluded that Vermont's asserted state interest of a public “right to know” and strong consumer interest was inadequate to compel the commercial speech (i.e., the labeling requirement). Because the Second Circuit ruled on First Amendment grounds, it did not reach the Commerce Clause claims (*International Dairy Foods Association v. Amestoy*, 92 F. 3d 67 (2d Cir. 1996)).

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

COMMITTEE ACTION

Children Committee

Joint Favorable

Yea 11 Nay 1 (03/12/2013)