



House of Representatives

General Assembly

File No. 179

February Session, 2016

Substitute House Bill No. 5300

House of Representatives, March 24, 2016

The Committee on Children reported through REP. URBAN of the 43rd Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING CHILDREN'S FOOD AND GENETIC ENGINEERING.

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

1 Section 1. (NEW) (*Effective October 1, 2016*) (a) For the purposes of
2 this section:

3 (1) "Infant formula" has the same meaning as provided in section
4 21a-92 of the general statutes;

5 (2) "Baby food" means a prepared solid food consisting of a soft
6 paste or an easily chewed food that is intended for consumption by
7 children two years of age or younger and is commercially available;

8 (3) "Children's food" means any food or beverage that is intended
9 for consumption by children eleven years of age or younger and is
10 commercially available including, but not limited to, breakfast cereal,
11 snack food, candy, dairy products, baked goods, carbonated
12 beverages, fruit juice and noncarbonated beverages, prepared foods

13 and meals, and frozen and chilled desserts;

14 (4) "Genetic engineering" has the same meaning as provided in
15 section 21a-92b of the general statutes;

16 (5) "Snack food" includes, but is not limited to, potato chips, tortilla
17 chips, corn chips, pretzels, nuts, popcorn, snack bars, granola bars,
18 breakfast bars, cereal bars, crackers, cookies, processed fruit snacks,
19 gelatin and pudding;

20 (6) "Candy" includes, but is not limited to, chocolate, candy bars,
21 hard candy and chewy candy, including, but not limited to, licorice,
22 gummi candy, jelly beans and sour candy, but does not include gum
23 and breath mints;

24 (7) "Dairy products" includes, but is not limited to, milk, flavored
25 milk drinks, yogurt, yogurt drinks and cheese, but does not include
26 butter, eggs, cream, cottage cheese and sour cream;

27 (8) "Baked goods" includes, but is not limited to, snack cakes,
28 pastries, doughnuts, bread, rolls, bagels, breadsticks, buns, croissants,
29 taco shells and tortillas and toaster baked goods, including, but not
30 limited to, frozen waffles, French toast sticks and toaster pastries;

31 (9) "Carbonated beverages" includes, but is not limited to, all
32 nonalcoholic carbonated beverages, both diet and regular;

33 (10) "Fruit juice and noncarbonated beverages" includes, but is not
34 limited to, fruit juice, juice drinks, fruit-flavored drinks, vegetable
35 juice, tea drinks, energy drinks, sports drinks, cocoa, bottled water,
36 ready-to-pour beverages and beverages sold in concentrated or
37 powdered form, but does not include any form of coffee or loose leaf
38 or bagged tea;

39 (11) "Prepared foods and meals" includes, but is not limited to,
40 frozen and chilled entrees, frozen pizzas, canned soups and pasta,
41 lunch kits and nonfrozen packaged entrees; and

42 (12) "Frozen and chilled desserts" includes, but is not limited to, ice
43 cream, sherbet, sorbet, popsicles and other frozen novelties, frozen
44 yogurt and frozen baked goods, including, but not limited to, frozen
45 pies and cakes.

46 (b) Notwithstanding the provisions of section 21a-92c of the general
47 statutes, on and after July 1, 2017, any infant formula, baby food or
48 children's food that is partially or entirely produced with genetic
49 engineering and is offered or intended for retail sale in this state shall
50 include labeling that states in a clear and conspicuous manner
51 "produced with genetic engineering". Such labeling shall be in the
52 same size and font as the ingredients in the nutritional facts panel on
53 the food label.

54 (c) Infant formula, baby food or children's food that is produced
55 partially or entirely with genetically engineered materials that does not
56 include labeling that states in a clear and conspicuous manner
57 "produced with genetic engineering" as required under subsection (b)
58 of this section shall be deemed misbranded pursuant to section 21a-102
59 of the general statutes, except that such infant formula, baby food or
60 children's food shall not be considered misbranded if it (1) was
61 produced by a person who (A) was without knowledge that such
62 infant formula, baby food or children's food was created with
63 materials that were partially or entirely produced with genetic
64 engineering, and (B) obtains a sworn statement from the party that
65 sold or otherwise provided such materials to such person that such
66 materials have not been knowingly genetically engineered and have
67 not been knowingly commingled with any genetically engineered
68 materials; and (2) prior to July 1, 2021, is subject to the labeling
69 requirement of subsection (b) of this section solely because it includes
70 one or more materials produced with genetic engineering that, in the
71 aggregate, accounts for nine-tenths of one per cent or less of the total
72 weight of the infant formula, baby food or children's food.

73 (d) The Department of Consumer Protection, after consultation with
74 the Departments of Agriculture, Energy and Environmental Protection

75 and Public Health, shall adopt regulations, in accordance with chapter
76 54 of the general statutes, to implement and enforce this section.

77 (e) The Commissioner of Consumer Protection may impose a civil
78 penalty of not more than five thousand dollars for each violation of
79 this section. The Attorney General, upon request of the commissioner,
80 may bring an action in the superior court in the judicial district of
81 Hartford to collect such civil penalty and for any injunctive or
82 equitable relief. In any action brought by the Attorney General to
83 enforce the provisions of this section, the state shall be entitled to
84 recover, when it is the prevailing party, the costs of investigation,
85 expert witness fees, costs of the action and reasonable attorneys' fees.

86 (f) A distributor or retailer that sells or offers for sale infant formula,
87 baby food or children's food that fails to conform to the labeling
88 requirements set forth in subsection (b) of this section shall not be
89 liable for damages in any civil proceeding brought to enforce the
90 provisions of this section.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2016	New section

Statement of Legislative Commissioners:

The title was changed for clarity and consistency and subsection (c) was rewritten for consistency with subsection (b).

KID Joint Favorable Subst. -LCO

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 17 \$	FY 18 \$
Comptroller Misc. Accounts (Fringe Benefits) ¹	GF - Cost	None	31,952
Consumer Protection, Dept.	GF - Cost	None	90,000
Resources of the General Fund	GF - Potential Revenue Gain	None	Potential

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill results in a cost to the state of \$121,952 in FY 18 due to requiring certain products to be labeled “Produced with Genetic Engineering” and adopting mandatory labeling laws for genetically engineered food. The Department of Consumer Protection (DCP) will 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 (\$31,952). 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. Additionally the bill results in a potential minimal revenue gain in FY 18 if a civil penalty is successfully applied. Given the time that would be required for an investigation it is unlikely a civil penalty would be assessed in FY 18. The bill sets a civil penalty of \$5,000 for each violation of the labelling

¹The 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 39.94% of payroll in FY 17 and FY 18.

requirement.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation and the number of civil penalties.

OLR Bill Analysis

HB 5300

AN ACT CONCERNING CHILDREN'S FOOD AND GENETIC ENGINEERING.

SUMMARY:

Starting July 1, 2017, and regardless of existing law, this bill requires baby food, infant formula, or children's food partially or entirely produced with genetic engineering and offered or intended for retail sale in Connecticut to be clearly labeled "produced with genetic engineering."

It generally deems as "misbranded" any food not so labeled, but it exempts from civil liability distributors and retailers that sell or offer for sale such food not meeting the labeling requirement.

It requires the Department of Consumer Protection (DCP), in consultation with the Agriculture, Energy and Environmental Protection, and Public Health departments, to adopt implementing regulations, and authorizes the DCP commissioner to impose a civil penalty of up to \$5,000 for each violation of the bill's provisions.

Existing law, which does not take effect unless four other states meeting certain criteria enact similar laws, requires certain foods, including baby and children's food and infant formula, that are entirely or partially genetically engineered to be labeled as such, and generally deems as misbranded any food not so labeled (see BACKGROUND).

EFFECTIVE DATE: October 1, 2016

LABELING REQUIREMENT

Under the bill, starting July 1, 2017 and regardless of existing law, baby food, infant formula, or children's food partially or entirely

produced with genetic engineering (see BACKGROUND) must be clearly and conspicuously labeled “produced with genetic engineering” if it is offered or intended for retail sale in the state. The label must be the same size and in the same font as the ingredients listed on the food label’s nutritional facts panel.

The bill generally deems as misbranded baby food, infant formula, and children’s food produced with genetic engineering that does not clearly and conspicuously display the required label. By law, the state may embargo and seize misbranded food; a person who misbrands food or sells it may be subject to criminal penalties (see BACKGROUND).

Exceptions to Finding of Misbranding

Improperly labeled baby food, infant formula, and children’s food produced with genetic engineering is not considered misbranded under the bill if:

1. the person producing the food or formula did not know that it was created with genetically engineered material and obtains, from the person who sold or provided him or her the material, a sworn statement that the material was not knowingly (a) genetically engineered and (b) commingled with any genetically engineered material; and
2. before July 1, 2021, the product is subject to the labeling requirement only because it includes material produced with genetic engineering that together comprise nine-tenths of one percent (0.009) or less of the product’s total weight.

This latter exception is similar to one in existing law for genetically engineered processed foods, except the current total weight exception (also nine-tenths of one percent) does not include the knowledge requirement and ends on July 1, 2019 (CGS § 21a-102).

If both this bill and existing law (CGS § 21a-92c, see BACKGROUND) take effect it is not immediately clear which of these

and other possibly inconsistent provisions, such as the different penalty provisions (see below) would take precedence.

PENALTIES, INJUNCTIVE RELIEF, AND COURT COSTS

The bill authorizes the DCP commissioner to impose a civil penalty of up to \$5,000 for each violation of the bill. But existing law (CGS § 21a-92c) generally subjects knowing violators to a daily fine of up to \$1,000 per product. Existing law also imposes criminal penalties for misbranding food (see BACKGROUND). The bill exempts from civil liability distributors and retailers that sell or offer for sale baby and children's food and infant formula that does not meet the labeling requirement.

The bill authorizes the attorney general, at the DCP commissioner's request, to bring an action in Hartford Superior Court to collect the penalty and for any injunctive or equitable relief. The bill entitles the state to recover costs when it is the prevailing party, including the costs of investigation, expert witness fees, the costs of the action, and reasonable attorney's fees.

DEFINITIONS

"Baby food" is commercially available, prepared solid food consisting of soft paste or an easily chewed food intended for consumption by children age two or younger.

Under the bill and existing law, "infant formula" is a commercially available (1) milk- or soy-based powder; (2) concentrated liquid; or (3) ready-to-feed substitute for human breast milk, intended for infant consumption.

"Children's food" is commercially available food or beverage intended for consumption by children age 11 or younger, including breakfast cereal, snack food, candy, dairy products, baked goods, carbonated beverages, fruit juice and non-carbonated beverages, prepared foods and meals, and frozen and chilled desserts (see definitions below).

Children's Food Definitions

"Snack food" includes potato, corn, and tortilla chips; pretzels; nuts; popcorn; snack, granola, breakfast, and cereal bars; crackers; cookies; processed fruit snacks; gelatin; and pudding;

"Candy" includes chocolate, candy bars, hard and chewy candy, including licorice, "gummi" candy, jelly beans, and sour candy, but not gum or breath mints;

"Dairy products" include milk, flavored milk drinks, yogurt, yogurt drinks and cheese, but not butter, eggs, cream, cottage cheese, or sour cream;

"Baked goods" include snack cakes, pastries, doughnuts, bread, rolls, bagels, breadsticks, buns, croissants, taco shells, tortillas, and toasted baked goods, such as frozen waffles, French toast sticks, and toaster pastries;

"Carbonated beverages" include all diet and regular nonalcoholic carbonated beverages;

"Fruit juice and noncarbonated beverages" include fruit juice, juice drinks, fruit-flavored drinks, vegetable juice, tea drinks, energy drinks, sports drinks, cocoa, bottled water, ready-to-pour beverages, and beverages sold in concentrated or powdered form. It does not include any coffee, loose tea, or tea bags;

"Prepared foods and meals" include frozen and chilled entrees, frozen pizzas, canned soups and pasta, lunch kits, and non-frozen packaged entrees; and

"Frozen and chilled desserts" include ice cream, sherbet, sorbet, popsicles, and other frozen novelties, frozen yogurt, and frozen baked goods, including frozen pies and cakes.

BACKGROUND**Genetic Engineering**

By law, genetic engineering is a process by which a food or food

ingredient is produced from an organism or organisms in which the genetic material has been changed by (1) in vitro nucleic acid techniques, including recombinant DNA techniques and the direct injection of nucleic acid into cells or organelles, or (2) fusion of cells, including protoplast fusion, or hybridization techniques that overcome natural physiological, reproductive, or recombination barriers, where the donor cells or protoplasts do not fall within the same taxonomic group in a way that does not occur by natural multiplication or natural recombination (CGS § 21a-92b (2)).

Misbranding Criminal Penalties

The law prohibits misbranding food or selling misbranded food in Connecticut (CGS § 21a-93). A first violation is punishable by up to six months in prison, a fine of up to \$500, or both. Subsequent violations, and violations made 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 if he or she obtains in good faith a document signed by the person from whom he or she received the food, 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. He may tag the item as embargoed. 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, generally 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 were 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).

Related State Law

A state GMO labeling law, enacted in 2013, has not yet taken effect. CGS § 21a-92c generally requires certain foods intended for human consumption, including baby and children's food and infant formula, that are entirely or partially genetically engineered to be labeled as such. The law generally deems these items misbranded if they are not so labeled. It generally subjects knowing violators to a daily fine of up to \$1,000 per product, but retailers are liable for failure to label only under certain conditions. If four other states meeting certain criteria enact similar laws, this law will go into effect on the first day of October following the enactment of such a law in the last of the four states. One of these states must border Connecticut, and the total population of the enacting states in the northeast must exceed 20 million based according to 2010 Census figures. States to which this applies are the other five New England states, New Jersey, New York, and Pennsylvania.

Possible Congressional Preemption

The U.S. House of Representatives has passed legislation that would bar states from passing or enacting their own GMO labeling laws. The measure failed in the U.S. Senate on March 16, 2016. Supporters of the bill say they will continue to work with the Senate on compromise legislation that would establish federal labeling standards.

Related Cases – Labeling in General

Federal law generally prohibits states from requiring foods to be

labeled in a manner inconsistent with federal labeling requirements. Labeling cases also raise First Amendment and Commerce Clause issues under the U. S. Constitution.

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 U.S. Second Circuit Court of Appeals ruled the law was likely unconstitutional on First Amendment grounds. The court 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 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. Under the so-called "dormant" Commerce Clause doctrine, a law that does not discriminate on its face, supports a legitimate state interest, and only incidentally burdens interstate commerce, is constitutional unless the burden is excessive in relation to local benefits.

Related Cases – GMO (Genetically Modified Organism) Labeling

In a case now before the 2nd U.S. Circuit Court of Appeals, the Grocery Manufacturers Association (GMA) and other food associations have challenged Vermont's 2014 mandatory GMO labeling law (Act 120).

Among other things, GMA claims the law violates the First Amendment by compelling manufacturers "to use their labels to convey an opinion with which they disagree... namely, that consumers should assign significance to the fact that a product contains an

ingredient derived from a genetically engineered plant” (*Grocery Manufacturers Association et al v. Sorrell*, Case # 5:14-CV-117).

COMMITTEE ACTION

Committee on Children

Joint Favorable

Yea 13 Nay 0 (03/08/2016)