SB 411-FN – AS INTRODUCED

2014 SESSION

14-2816
08/10

SENATE BILL ***411-FN***

AN ACT relative to the labeling of genetically engineered foods.

SPONSORS: Sen. Fuller Clark, Dist 21; Sen. Watters, Dist 4; Rep. Bixby, Straf 17; Rep. Murotake, Hills 32; Rep. LeBrun, Hills 32

COMMITTEE: Commerce

ANALYSIS

This bill requires the labeling of genetically engineered foods and agricultural commodities.

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Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

SB 411-FN – AS INTRODUCED

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Fourteen

AN ACT relative to the labeling of genetically engineered foods.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 New Subdivision; Genetically Engineered Foods. Amend RSA 146 by inserting after section 21 the following new subdivision:

Genetically Engineered Foods

146:22 Purpose. It is the intent of the general court that this subdivision:

I. Assist consumers who are concerned about the potential effects of genetic engineering on their health, beliefs, and the environment to make informed purchasing decisions.

II. Reduce and prevent consumer confusion and inadvertent deception and promote the disclosure of factual information on food labels.

III. Create additional market opportunities for New Hampshire producers who are not certified organic producers and whose products are not produced using genetic engineering.

IV. Ensure that consumers are provided with data from which they can make informed decisions for personal, health, environmental, religious, cultural, or ethical reasons.

V. Enable consumers to avoid the potential risks associated with genetically engineered foods and serve as a risk management tool enabling consumers, physicians, and scientists to identify unintended health effects resulting from the consumption of genetically engineered foods.

146:23 Definitions. In this subdivision:

I. "Commissioner" means the commissioner of the department of health and human services.

II. "Enzyme" means a protein that catalyzes chemical reactions of other substances without itself being destroyed or altered upon completion of the reactions.

III. "Food" means "food" as defined in RSA 146:2, I.

IV. "Manufacturer" means the person or business that makes, processes, combines, or packages food ingredients into a finished food product.

V. "Medical food" means food prescribed by a physician for treatment of a medical condition.

VI. "Genetically engineered" or "genetic engineering" means a process whereby any food intended for human consumption:

(a) Is produced from an organism or organisms in which the genetics are materially altered through the application of:

(1) In vitro nucleic acid techniques, which include, but are not limited to, recombinant deoxyribonucleic acid (DNA), the direct injection of nucleic acid into cells or organelles, encapsulation, gene deletion and doubling; or

(2) Methods of fusing cells beyond the 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), except manure that is used as a fertilizer for a raw agricultural commodity; or

(c) Contains a component or substance described in subparagraph (a).

VII. "Processed food" means any food other than a raw agricultural commodity and includes any food produced from a raw agricultural commodity that was processed through canning, smoking, pressing, cooking, freezing, dehydration, fermentation, or milling.

VIII. "Processing aid" means:

(a) A substance that is added to a food during processing of the food but removed from the food before it is packaged in its final form;

(b) A substance that is added to a food during processing, is converted into constituents normally present in the food, and that does not significantly increase the amount of the constituents found in the food; or

(c) A substance that is added to a food for its technical or functional effects in processing but is present in the finished food at insignificant levels and that does not have any technical or functional effect in that finished food.

IX. "Raw agricultural commodity" means any plant, fungi, or fish in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing, grown or produced for human food use purposes.

X. "Retailer" means an establishment engaged in the business of selling any perishable agricultural commodity or packaged food via a storefront.

XI. "Organism" means any biological entity capable of replication, reproduction, or transferring of genetic material.

XII. "Supplier" means a person or business that supplies raw agricultural products to retailers.

146:24 Label Required.

I. Any food offered for retail sale that is genetically engineered shall be accompanied by a conspicuous disclosure that states "Produced with Genetic Engineering" or "Partially Produced with Genetic Engineering."

(a) In the case of a raw agricultural commodity, the manufacturer shall include, clearly and conspicuously, the words "Genetically Engineered" on the label on the front of the package of such commodity or, in the case of any such commodity that is not separately packaged or labeled, the retailer shall include a clear and conspicuous label on the retail store shelf or bin in which such commodity is displayed for sale;

(b) In the case of processed food containing some products of genetic engineering, the manufacturer shall label the product, in clear and conspicuous language, on the front or back of the package of such food, with the words "Produced with Genetic Engineering" or "Partially Produced with Genetic Engineering."

II. Any food that is genetically engineered that does not display the disclosure required under paragraph I is misbranded for the purposes this subdivision except that:

(a) No food is misbranded if the food is produced by a person who:

(1) Grows, raises, or otherwise produces that food without knowledge that the food was created from other seed or other food that was genetically engineered; and

(2) Obtains a sworn statement from the person from whom the food was obtained that the food was not knowingly genetically engineered and was segregated from and not knowingly commingled with a food component that may have been genetically engineered.

(b) No processed food is misbranded if it would be subject to this subdivision solely because one or more processing aids or enzymes were produced or derived with genetic engineering.

(c) No food product derived from an animal is misbranded if the animal was not genetically engineered but was fed genetically engineered feed.

(d) No packaged processed food is misbranded if the total weight of the processed food that was genetically engineered is less than 0.9 percent of the total weight of the processed food.

III. No food that is subject to disclosure under paragraph I may be described on the label or by similar identification as "natural."

146:25 Third-party Protection.

I. No distributor or retailer that sells or advertises food that is genetically engineered that fails to make the disclosure required under RSA 146:24 is subject to liability in any civil action to enforce this subdivision if the distributor or retailer relied on the affidavit provided by the producer or grower under RSA 146:26.

II. The retailer shall label, at the point of purchase, any raw agricultural commodity that has been produced using genetic engineering. Suppliers shall label the container used for packaging, holding and/or transporting raw genetically engineered agricultural commodities that are delivered directly to New Hampshire retailers.

III. No retailer shall be penalized or otherwise held liable for the failure to label pursuant to this section unless:

(a) Such retailer is the producer or the manufacturer of the genetically engineered food and sells the genetically engineered food under a brand it owns; or

(b) Such retailer's failure to label was knowing and willful.

IV. In any action in which it is alleged that a retailer has violated the provisions of this subdivision, it shall be a defense that such retailer reasonably relied on:

(a) Any disclosure concerning genetically engineered foods contained in the bill of sale or invoice provided by the wholesaler or distributor; or

(b) The lack of any such disclosure.

V. Eating establishments are exempt from the disclosure requirements of this subdivision.

VI. Alcoholic beverages and medical food are exempt from the disclosure requirement of this subdivision.

146:26 Affidavit. The commissioner shall develop and make available an affidavit form that may be provided by a producer or grower of food to distributors and retailers and that may be included in shipments of food within the state certifying that the food being sold or shipped is not subject to the disclosure requirements of this subdivision.

146:27 Private Right of Action Not Permitted. Nothing in this subdivision shall create a private right of action for the enforcement of this subdivision.

146:28 Severability. If any provision of this subdivision or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the subdivision which can be given effect without the invalid provisions or applications, and to this end the provisions of this subdivision are severable.

2 Determination of Effective Date. If the commissioner of health and human services certifies to the secretary of state and the director of legislative services on or before January 1, 2018 that legislation requiring mandatory labeling of genetically engineered food has been adopted by at least 4 of the following states: Maine, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, and Pennsylvania, this act shall take effect 18 months after the date of such certification. If such certification is not made by January 1, 2018, this act shall not take effect.

3 Effective Date.

I. Section 1 of this act shall take effect as provided in section 2 of this act.

II. The remainder of this act shall take effect upon its passage.

LBAO
14-2816
11/25/13

SB 411-FN - FISCAL NOTE

AN ACT relative to the labeling of genetically engineered foods.

FISCAL IMPACT:

The Department of Health and Human Services states this bill, **as introduced,** will increase state expenditures by an indeterminable amount in FY 2015 and each year thereafter. There will be no fiscal impact on state revenue, or county or local revenue and expenditures.

METHODOLOGY:

The Department of Health and Human Services states this bill defines genetically engineered foods and requires food offered for retail sale that is genetically engineered to be labeled: "Produced with Genetic Engineering" or "Partially Produced with Genetic Engineering". The Department also states that genetically engineered food not displaying the required disclosure would be mislabeled and subject to inspection and enforcement. The Department would be required to develop and make available an affidavit form which may be provided by a provider or grower of food to distributors and retailers and may be included with shipments of food certifying that the food being shipped is not subject to the disclosure requirement. The Department assumes the Division of Public Health, Food Protection Section will be responsible for regulation and enforcement for foods produced in New Hampshire as well as for inter-state commerce. The Department states the Food Protection Section does not currently have available staff or any staff trained in the science of genetically engineered food and assumes it would need an additional full-time inspector (Program Specialist, LG 23), and a part-time paralegal position (Paralegal I, LG 16). The additional staff would be responsible for responding to complaints and issues related to genetically modified foods, performing random sampling of products, and working with a Department attorney on enforcement issues. The Department indicates, since implementation is subject to other states passing similar laws, it is not able to determine the fiscal impact but provides the following estimate of costs:

	FY 2015	FY 2016	FY 2017	FY 2018
Salaries	72,540	75,563	78,800	82,115
Benefits	26,017	27,148	29,058	31,087
Current Expense (Supplies, telephone, postage, etc.)	4,000	4,000	4,000	4,000
Equipment (Computer and office furniture)	7,000	0	0	0
In-state travel	2,000	2,000	2,000	2,000

Out of state travel	1,000	1,000	1,000	1,000
Office space (Rent)	14,639	15,442	16,195	16,681
Total:	127,196	125,153	131,053	136,883

In addition, the Department states there could be additional costs related to modifications of the food protection database, but these costs are not known at this time.

This bill does not authorize additional positions or create an appropriation.