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HOUSE . . . . . No. 4156

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

An Act establishing the genetic engineering transparency food labeling act.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. (1) This act shall be known as the Genetic Engineering Transparency Food Labeling Act.

(2) The Genetic Engineering Transparency Food Labeling Act results in a consistent and enforceable standard for labeling foods produced using genetic engineering, and thus provides the residents of the commonwealth with necessary factual knowledge of how their food is produced. This knowledge is necessary for the following reasons:

(a) Consumer protection. Reduce and prevent consumer confusion and deception and promote the disclosure of factual information on food labels to allow consumers to make informed decisions.

(b) Economic development. Create and protect non-genetically engineered crop markets and enable consumers to make informed purchasing decisions.

(c) Religious and cultural freedom. Provide consumers with data from which they may make informed decisions for personal, religious, moral, cultural, or ethical reasons.

SECTION 2. Section 184B of chapter 94 of the General Laws, as appearing in the 2014 Official Edition, is hereby further amended by striking, in line 1, the figure "184E" and inserting in its place thereof the following figure:- 184F.

SECTION 3. Said section 184B of chapter 94, as so appearing, is hereby amended by inserting after the definition of "Food store" the following new definition:-

"Genetically engineered material", means any material derived in whole or part from processes, as identified by the national organic program of the U.S. department of agriculture, used to modify genetically organisms or influence their growth and development by means that are not possible under natural conditions or processes. Such methods include cell fusion, microencapsulation and macroencapsulation, and recombinant DNA technology, including gene deletion, gene doubling, introducing a foreign gene, and changing the positions of genes when achieved by recombinant DNA technology. Such methods do not include the use of traditional breeding, conjugation, fermentation, hybridization, in vitro fertilization, or tissue culture. Material grown from genetically engineered seed and genetically engineered plant parts shall be considered genetically engineered material.

SECTION 4. Said section 184B of said chapter 94, as so appearing, is hereby amended by inserting after the definition of "Price list" the following new definitions:-

"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.

"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 in constituents normally present on 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 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.

SECTION 5. Said Chapter 94, as so appearing, is hereby further amended by inserting after section 184E the following section:-

Section 184F. The Genetic Engineering Transparency Food Labeling Act.

(a) On October first following the date the director recognizes the occurrence of both of the following: (1) Five states, not including this state, enact a mandatory labeling law for genetically-engineered foods that is consistent with the provisions of this subsection, provided one such state borders Massachusetts; and (2) the aggregate population of such states located in the northeast region of the United States that have enacted a mandatory labeling law for genetically-engineered foods that is consistent with this subsection exceed twenty million based on 2010 census figures. Food intended 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, provided that such genetically-engineered materials, in the aggregate, account for more than nine-tenths of one per cent of the total weight of the processed food, shall be labeled as follows: (i) In the case of such food that is sold wholesale and 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 bill of sale or invoice for such commodity and on the retail store shelf or bin that holds such commodity displayed for sale 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 fats panel on the food label. Not later than 30 days after the director recognizes the occurrence of the events described in subdivisions (1) and (2) of this subsection, the commissioner shall cause to be published in the 5 newspapers in the state having the largest circulation, notice of the date of requirements of this section become effective. For the purposes of this section, “states located in the northeast region of the United States” means Connecticut, Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, and New York.

(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;

(5) Food products regulated by section 678 of Title 21 of the United States Code, the Federal Meat Inspection Act, or any successor statute; and

(6) Food products regulated by section 467e of Title 21 of the United States Code, the Poultry Products Inspection Act; or any successor statute.

(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 is so labeled.

(d) The provisions of this section shall be enforced, within applicable appropriations, by the director.

(e) Any person found to knowingly violate this section shall be liable for a civil penalty not to exceed 1,000 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 penalized or otherwise held liable for the failure to label pursuant to this section unless (1) the retailer is the producer or the manufacturer of the genetically-engineered food and sells the genetically-engineered food under a brand it owns, or (2) the retailer's failure to label was knowingly willful. In any section in which it is alleged that a retailer has violated the provisions of this section, 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 pursuant to subsection (a) of this section, or (B) the lack of any such disclosure.

(g) A food product produced entirely or in part from genetic engineering shall not be labeled on the product, in signage, or in advertising as "natural," "naturally made," "naturally grown," "all natural," or any words of similar import. This prohibition does not apply to a food's trade, brand, or product name; nor does it apply to signage or advertising occurring outside of Massachusetts, including advertising on the internet or on other media broadcasts not aimed primarily at Massachusetts consumers.

(h) The director may adopt regulations, in accordance with the provisions of section 5 of chapter 24A, to implement and enforce the provisions of this section.

SECTION 6. Section 187 of said chapter 94 is hereby amended by inserting after the words "misleading labeling." in line 137 the following paragraph:-

"Fifteenth, if it is intended for human consumption and genetically engineered, as defined in section 184B of this chapter, and does not bear labeling in accordance with section 184F of this chapter, 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, 2020, it is a processed food, as defined in section 184B of this chapter, that is subject to the provisions of subsection 4 of section 184F of this chapter, solely because it contains on or more materials that have been produced with genetic engineering, as defined in section 184B of this chapter, 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."