

AMENDED IN ASSEMBLY JUNE 19, 2014

SENATE BILL

No. 1040

Introduced by Senator Evans

(Coauthors: Senators DeSaulnier, Leno, and Pavley)

(Coauthors: Assembly Members Levine and Yamada)

February 18, 2014

An act to amend Section 25237 of the Business and Professions Code, relating to alcoholic beverages add Section 110663 to, and to add Article 6.6 (commencing with Section 110808) to Chapter 5 of Part 5 of Division 104 of, the Health and Safety Code, relating to genetically engineered food. .

LEGISLATIVE COUNSEL'S DIGEST

SB 1040, as amended, Evans. ~~Alcoholic beverages: wine labeling.~~ Food labeling: genetically engineered food.

Existing law, the Sherman Food, Drug, and Cosmetic Law, makes it unlawful to manufacture, sell, deliver, hold, or offer for sale, any food that is misbranded. Food is misbranded if its labeling does not conform to specified state and federal labeling requirements regarding nutrition, nutrient content or health claims, and food allergens. Violation of this law is a misdemeanor.

This bill, beginning January 1, 2016, would require that any food, except as provided, offered for retail sale in the state be considered misbranded if it is entirely or partially genetically engineered, as defined, and that fact is not disclosed in a specified manner. The bill would prescribe labeling requirements for a raw agricultural commodity that is genetically engineered and packaged foods, as defined, containing some products of genetic engineering. The bill would impose

these labeling requirements on manufacturers and retailers, as defined, of the commodities and foods.

Because this bill would create new crimes by expanding the number of foods that could potentially be misbranded, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~The Alcoholic Beverage Control Act makes it unlawful to make any representation that a wine is produced entirely from grapes grown in specified counties unless the representation is true. The act specifies that those provisions apply to representations made on labels, advertising matter, letterheads, invoices, tags, signs, business cards, and all other representations of any kind whether oral, written, or printed. A violation of the act is a misdemeanor.~~

~~This bill would additionally provide that these provisions apply to representations made on bottles and to representations made in an electronic form. By expanding the scope of an existing crime, the bill would impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 *SECTION 1. The Legislature finds and declares all of the*
2 *following:*

3 *(a) California consumers have the right to know, through*
4 *labeling, whether the foods they purchase were produced with*
5 *genetic engineering, so they can make informed purchasing*
6 *decisions.*

7 *(b) Polls consistently show that the vast majority of the members*
8 *of the public, more than 90 percent, want to know, for health,*

1 *economic, environmental, religious, and ethical reasons, if the*
2 *food they purchase was produced with genetic engineering.*

3 *(c) Without mandatory disclosure, consumers of foods produced*
4 *through genetic engineering may unknowingly violate their dietary*
5 *and religious beliefs.*

6 *(d) There is currently no federal or California requirement that*
7 *genetically engineered (GE) foods be labeled. In contrast, 64*
8 *countries, including three of California's leading trading partners,*
9 *Japan, China, and the European Union member states, as well as*
10 *South Korea, Australia, Russia, and Malaysia, already have laws*
11 *mandating that foods produced through genetic engineering be*
12 *labeled.*

13 *(e) The United States Food and Drug Administration (FDA)*
14 *does not require safety studies of GE foods. Instead, any*
15 *consultations are voluntary and GE food developers may decide*
16 *what information to provide to the FDA.*

17 *(f) Genetic engineering of plants and animals can cause*
18 *unintended consequences. It has been demonstrated that*
19 *manipulating genes through genetic engineering and inserting*
20 *them into organisms is an imprecise process. The results are not*
21 *always predictable or controllable.*

22 *(g) United States government scientists have stated that the*
23 *artificial insertion of genetic material into plants via genetic*
24 *engineering can increase the levels of known toxicants or allergens*
25 *in foods and create new toxicants or allergens with consequent*
26 *health concerns.*

27 *(h) Mandatory identification of foods produced with genetic*
28 *engineering can provide a method for detecting, at a large*
29 *epidemiological scale, the potential health effects of consuming*
30 *those foods.*

31 *(i) Numerous foreign markets with restrictions on foods*
32 *produced through genetic engineering have restricted imports of*
33 *United States crops due to concerns about genetic engineering.*
34 *Some foreign markets are choosing to purchase agricultural*
35 *products from countries other than the United States because GE*
36 *crops are not identified in the United States, which makes it*
37 *impossible for buyers to determine what does or does not meet*
38 *their national labeling laws or restrictions and thus renders United*
39 *States products less desirable.*

1 (j) Agricultural exports in California in 2011 generated \$16.8
2 billion in revenue, representing 39 percent of total production.
3 Mandatory identification of foods produced with genetic
4 engineering can be a critical method of preserving the economic
5 value of exports or domestically sensitive markets with restrictions
6 on, or prohibitions against, genetic engineering. Preserving the
7 identity, quality, and reliability of California's agricultural
8 products and exports is critical to the state's economic well-being.

9 (k) The cultivation of GE crops can have serious effects on the
10 environment. For example, in the year 2012, 93 percent of all soy
11 grown in the United States was genetically engineered to be
12 herbicide resistant. In fact, the vast majority of GE crops are
13 designed to withstand herbicides and they, therefore, promote
14 indiscriminate herbicide use. As a result, GE crops have caused
15 527 million pounds of additional herbicides to be applied to the
16 nation's farmland. These toxic herbicides damage the vitality and
17 quality of our soil, contaminate our drinking water, and pose health
18 risks to consumers and farmworkers. Further, because of the
19 consequent massive increase in herbicide use, herbicide-resistant
20 weeds have developed and flourished, infesting farm fields and
21 roadsides, complicating weed control for farmers, and causing
22 farmers to resort to more and increasingly toxic herbicides.

23 (l) The FDA is currently proposing approval of the first GE
24 salmon for human consumption. Wild Pacific salmon are a critical
25 natural and cultural resource of California and are under
26 increasing environmental stress. More than 106 major salmon
27 runs in northern California and the Pacific Northwest are extinct
28 and another 214 runs of wild salmon are at risk of extinction. An
29 escaped GE fish could pose additional environmental risk to
30 California's already stressed wild salmon populations and coastal
31 ecosystems by, among other things, imposing new competitive
32 pressures on these populations for food and space, interfering with
33 effective breeding and reproduction, and spreading disease. The
34 west coast salmon fishing industry, including both commercial
35 and recreational components, has lost an estimated 72,000 jobs
36 during the last 20 years. In the face of market confusion, seafood
37 consumers may avoid purchasing salmon altogether to avoid
38 genetically engineered salmon which would further negatively
39 impact California's wild salmon fishermen.

1 (m) *The people of California should have the choice to avoid*
2 *purchasing foods produced in ways that can lead to that*
3 *environmental harm.*

4 (n) *Labeling of foods produced through genetic engineering as*
5 *provided in this act can be implemented without substantial burden*
6 *to either food producers or the government.*

7 SEC. 2. *It is the intent of the Legislature, with the enactment*
8 *of this act, to require the labeling of all foods produced with*
9 *genetic engineering sold within the state, with exceptions.*

10 SEC. 3. *Section 110663 is added to the Health and Safety Code,*
11 *to read:*

12 *110663. A food is misbranded if its labeling does not conform*
13 *to the requirements of Section 110809.*

14 SEC. 4. *Article 6.6 (commencing with Section 110808) is added*
15 *to Chapter 5 of Part 5 of Division 104 of the Health and Safety*
16 *Code, to read:*

17
18 *Article 6.6. The California Right to Know Genetically*
19 *Engineered Food Act*
20

21 *110808. The following definitions shall apply for the purposes*
22 *of this article only:*

23 (a) *“Food” shall have the meaning set forth in Section 109935,*
24 *except that “food” as used in this article includes only food for*
25 *human consumption and not any food for consumption by animals.*

26 (b) (1) *“Genetically engineered” means produced from an*
27 *organism or organisms in which the genetic material has been*
28 *changed through the application of either of the following:*

29 (A) (i) *In vitro nucleic acid techniques, which include, but are*
30 *not limited to, recombinant deoxyribonucleic acid (DNA) or*
31 *ribonucleic acid (RNA) direct injection of nucleic acid into cells*
32 *or organelles, encapsulation, gene deletion, and doubling.*

33 (ii) *“In vitro nucleic acid techniques” include, but are not*
34 *limited to, recombinant DNA or RNA techniques that use vector*
35 *systems, and techniques involving the direct introduction into the*
36 *organisms of hereditary materials prepared outside the organisms*
37 *such as biolistics, microinjection, macroinjection, chemoporation,*
38 *electroporation, microencapsulation, and liposome fusion.*

39 (B) *Methods of fusing cells beyond the taxonomic family that*
40 *overcome natural physiological, reproductive, or recombinant*

1 *barriers, and that are not techniques used in traditional breeding*
2 *and selection such as conjugation, transduction, and hybridization.*

3 (2) *“Genetically engineered” does not include an animal who*
4 *has not itself been genetically engineered, regardless of whether*
5 *that animal has been fed or injected with any food or any drug*
6 *that has been produced through means of genetic engineering.*

7 (c) *“Label” shall have the meaning set forth in Section 109955.*

8 (d) *“Labeling” shall have the meaning set forth in Section*
9 *109960.*

10 (e) *“Manufacturer” means the person or entity that makes,*
11 *processes, combines, or packages food ingredients into a finished*
12 *product.*

13 (f) *“Organism” means any biological entity capable of*
14 *replication, reproduction, or transferring genetic material.*

15 (g) *“Packaged food” means any food offered for retail sale in*
16 *the state, other than raw food and food served, sold, or provided*
17 *ready to eat in any bake sale, restaurant, or cafeteria that are*
18 *subject to the provisions of Article 6 (commencing with Section*
19 *110660).*

20 (h) *“Raw agricultural commodity” shall have the meaning set*
21 *forth in Section 110020.*

22 (i) *“Retailer” means an establishment engaged in the business*
23 *of selling any perishable agricultural commodity or packaged food*
24 *via a storefront.*

25 (j) *“Supplier” means a person or entity that engages in the*
26 *operation of selling or distributing raw agricultural commodities*
27 *that the person or entity has produced, purchased, or acquired*
28 *from a processor.*

29 110809. (a) *Any raw agricultural commodity or packaged*
30 *food that is entirely or partially produced with genetic engineering*
31 *shall be labeled in accordance with this article and is misbranded*
32 *if not labeled in accordance with this article.*

33 (b) *This section does not apply to an alcoholic beverage that is*
34 *subject to the Alcoholic Beverage Control Act (Division 9*
35 *commencing with Section 23000) of the Business and Professions*
36 *Code).*

37 (c) *This section does not apply to any food sold at a storefront*
38 *with 10 or fewer employees or a certified farmers’ market, field*
39 *retail stand, or farm stand, as defined by Sections 47004, 47030,*
40 *and 47050 of the Food and Agricultural Code.*

1 110809.1. (a) (1) A manufacturer of a raw agricultural
2 commodity packaged for retail sale shall include the words
3 “Genetically Engineered” clearly and conspicuously on the front
4 or back of the package of that commodity.

5 (2) A retailer of a raw agricultural commodity that is not
6 separately packaged or labeled shall place a clear and conspicuous
7 label on the retail store shelf or bin in which that commodity is
8 displayed for sale.

9 (b) A manufacturer of packaged food containing some products
10 of genetic engineering shall label the product in clear and
11 conspicuous language on the front or back of the package of that
12 food product with the words “Produced with Genetic Engineering”
13 or “Partially Produced with Genetic Engineering.”

14 (c) This section shall not be construed to require a label that
15 lists or identifies an ingredient that was genetically engineered,
16 or that the words “genetically engineered” be placed immediately
17 preceding any common name or primary product descriptor of a
18 food.

19 (d) This section does not apply to an alcoholic beverage that is
20 subject to the Alcoholic Beverage Control Act (Division 9
21 commencing with Section 23000) of the Business and Professions
22 Code).

23 (e) This section does not apply to any food sold at a storefront
24 with 10 or fewer employees or a certified farmers’ market, field
25 retail stand, or farm stand, as defined by Sections 47004, 47030,
26 and 47050 of the Food and Agricultural Code.

27 110809.2. (a) A person engaged in business as a manufacturer
28 or retailer of products who in good faith sells, offers for sale,
29 labels, or advertises any product in reliance on the representations
30 of a farmer, producer, or supplier that the product is not entirely
31 or partially produced with genetic engineering, shall not be found
32 to have violated this article unless the manufacturer or retailer
33 knew or should have known that the product was entirely or
34 partially produced with genetic engineering.

35 (b) A farmer, producer, or supplier who is not a retailer or
36 manufacturer is not liable for a violation of this article.

37 (c) It shall not be a violation of this article for failure to label
38 any of the following:

1 (1) Packaged food in which the materials produced through
2 genetic engineering account for nine-tenths of 1 percent or less of
3 the total weight.

4 (2) Food produced without knowledge or intent to use genetic
5 engineering.

6 (3) An alcoholic beverage that is subject to the Alcoholic
7 Beverage Control Act, set forth in Division 9 (commencing with
8 Section 23000) of the Business and Professions Code.

9 (4) Food sold at a storefront with 10 or fewer employees or a
10 certified farmers' market, field retail stand, or farm stand, as
11 defined by Sections 47004, 47030, and 47050 of the Food and
12 Agricultural Code.

13 (d) Food is produced without knowledge or intent to use genetic
14 engineering under either of the following conditions:

15 (1) The food is lawfully certified to be labeled, marketed, and
16 offered for sale as "organic" pursuant to the federal Organic
17 Foods Production Act of 1990 (7 U.S.C. Sec. 6501 et seq.).

18 (2) (A) An independent organization has determined that the
19 food was produced without knowledge or intent to use genetic
20 engineering and has been segregated from, and not knowingly or
21 intentionally commingled with, foods that may have been
22 genetically engineered.

23 (B) The determination has been made pursuant to a sampling
24 and testing procedure that (i) is consistent with sampling and
25 testing principles recommended by internationally recognized
26 standards organizations and (ii) does not rely on testing processed
27 foods in which no DNA is detectable.

28 110810. This article shall become operative on January 1,
29 2016.

30 SEC. 5. The provisions of this act are severable. If any
31 provision of this act or its application is held invalid, that invalidity
32 shall not affect other provisions or applications that can be given
33 effect without the invalid provision or application.

34 SEC. 6. No reimbursement is required by this act pursuant to
35 Section 6 of Article XIII B of the California Constitution because
36 the only costs that may be incurred by a local agency or school
37 district will be incurred because this act creates a new crime or
38 infraction, eliminates a crime or infraction, or changes the penalty
39 for a crime or infraction, within the meaning of Section 17556 of
40 the Government Code, or changes the definition of a crime within

1 *the meaning of Section 6 of Article XIII B of the California*
2 *Constitution.*

3 ~~SECTION 1. Section 25237 of the Business and Professions~~
4 ~~Code is amended to read:~~

5 ~~25237. It is unlawful to make any representation that a wine~~
6 ~~is produced entirely from grapes grown in the counties mentioned~~
7 ~~in Section 25236 unless the representation is true. This section~~
8 ~~shall apply to representations made on labels, bottles, advertising~~
9 ~~matter, letterheads, invoices, tags, signs, business cards, and all~~
10 ~~other representations of any kind that are oral, written, electronic,~~
11 ~~or printed.~~

12 ~~SEC. 2. No reimbursement is required by this act pursuant to~~
13 ~~Section 6 of Article XIII B of the California Constitution because~~
14 ~~the only costs that may be incurred by a local agency or school~~
15 ~~district will be incurred because this act creates a new crime or~~
16 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
17 ~~for a crime or infraction, within the meaning of Section 17556 of~~
18 ~~the Government Code, or changes the definition of a crime within~~
19 ~~the meaning of Section 6 of Article XIII B of the California~~
20 ~~Constitution.~~

O