An act to 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 1381, as introduced, Evans. 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 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 also prescribe who is responsible for complying with those labeling requirements. The bill would authorize the Attorney General or an injured resident of the state to bring an action for injunctive relief against a violation of these provisions, as specified. The bill would authorize a court to award a prevailing plaintiff reasonable attorneys’ fees and costs, and would prohibit a court from awarding monetary damages in an action brought under the bill’s provisions.
Because this bill would create new crimes by expanding the number of foods that could potentially be misbranded and expanding the definition of the crime of perjury, 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 people of the State of California do enact as follows:

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

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

(b) Polls consistently show that the vast majority of the members of the public, more than 90 percent, want to know, for health, economic, environmental, religious, and ethical reasons, if the food they purchase was produced with genetic engineering.

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

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

(e) Genetic engineering of plants and animals can cause unintended consequences. It has been demonstrated that manipulating genes through genetic engineering and inserting them into organisms is an imprecise process. The results are not always predictable or controllable.
(f) United States government scientists have stated that the artificial insertion of genetic material into plants via genetic engineering can increase the levels of known toxicants or allergens in foods and create new toxicants or allergens with consequent health concerns.

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

(h) Without mandatory disclosure, consumers of foods produced through genetic engineering may unknowingly violate their dietary and religious beliefs.

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

(j) Mandatory identification of foods produced with genetic engineering can be a critical method of preserving the economic value of exports or domestically sensitive markets with restrictions on, or prohibitions against, genetic engineering. With such a large export market, GE labeling requirements will give importers greater confidence in California’s agricultural products.

(k) Agriculture is a major economic driver in California, with more than 400 commodities generating $43.5 billion in revenue in the year 2011. California is the nation’s leading agricultural producer, generating half of the nation’s fruits, nuts, and vegetables. Agricultural exports in the year 2011 generated $16.8 billion in revenue, representing 39 percent of total production. Preserving the identity, quality, and reliability of California’s agricultural products and exports is critical to the state’s economic well-being.

(l) GE crops pose a potential threat to the state’s $1.39 billion organic agriculture sector. Organic production accounted for 3.1 percent of total agriculture earnings in the state and 39 percent of organic sales nationally in the year 2011. Organic farmers are
prohibited from using genetically engineered seeds or feed, yet
have no protection against possible unintended transgenic
contamination from neighboring farms. This is a particular concern
for California’s organic dairy farmers, who generated $127 million
in revenue in the year 2011. Food labeling gives consumers the
right to support food production systems that do not threaten the
integrity and economic well-being of organic agriculture and
California’s exports.

(m) United States Department of Agriculture (USDA) data
shows that California ranks first in organic farm-gate sales. This
important element of California’s economy must be protected.
Foods identified as non-GE constitute the fastest growing segment
in agriculture, with annual sales increases in the year 2011 between
20 and 27 percent. However, only a small portion of the food
industry participates in voluntary labeling of foods claimed not to
be the product of genetic engineering. There are no consistent
standards for that labeling, or for the enforcement of voluntary
labels. Thus, voluntary labeling is insufficient to provide consumers
with adequate information on whether the food they are purchasing
was produced with genetic engineering, and in some cases the
labels may be misleading.

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

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

(p) The people of California should have the choice to avoid
purchasing foods produced in ways that can lead to that
environmental harm.

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

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

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

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

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

Article 6.6. The California Right to Know Genetically
Engineered Food Act

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

(a) “Agriculture” means the science, art, or practice of
cultivating the soil, producing crops, and raising livestock or fish
and, in varying degrees, the preparation and marketing of the
resulting products.
(b) “Cultivated commercially” means grown or raised by a person in the course of business or trade, and sold within the United States.

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

(d) “Food facility” shall have the meaning set forth in Section 113789.

(e) (1) “Genetically engineered” means produced from an organism or organisms in which the genetic material has been changed through the application of either of the following:
   (A) (i) In vitro nucleic acid techniques, which include, but are not limited to, recombinant deoxyribonucleic acid (DNA) or ribonucleic acid (RNA) direct injection of nucleic acid into cells or organelles, encapsulation, gene deletion, and doubling.
   (ii) “In vitro nucleic acid techniques” include, but are not limited to, recombinant DNA or RNA techniques that use vector systems, and techniques involving the direct introduction into the organisms of hereditary materials prepared outside the organisms such as biolistics, microinjection, macroinjection, chemoporation, electroporation, microencapsulation, and liposome fusion.
   (B) 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.
   (2) “Genetically engineered” does not include an animal who has not itself been genetically engineered, regardless of whether that animal has been fed or injected with any food or any drug that has been produced through means of genetic engineering.

(f) “Label” shall have the meaning set forth in Section 109955.

(g) “Labeling” shall have the meaning set forth in Section 109960.

(h) “Manufacturer” means the person or entity that makes, processes, combines, or packages food ingredients into a finished product.

(i) “Medical food” shall have the meaning set forth in Section 109971.

(j) “Organism” means any biological entity capable of replication, reproduction, or transferring genetic material.
(k) “Packaged food” means any food offered for retail sale in the state, other than raw food and food served, sold, or provided ready to eat in any bake sale, restaurant, or cafeteria that are subject to the provisions of Article 6 (commencing with Section 110660).

(l) “Raw agricultural commodity” shall have the meaning set forth in Section 110020.

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

110809. Any raw agricultural commodity or packaged food that is entirely or partially produced with genetic engineering shall be labeled in accordance with this article and is misbranded if not labeled in accordance with this article.

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

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

(3) A supplier of a raw agricultural commodity shall label each container used for packaging, holding, or transporting a raw agricultural commodity produced with genetic engineering that is delivered directly to a retailer in the state.

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

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

110809.2. (a) The Attorney General may bring an action to enjoin a violation of this article in any court of competent jurisdiction.
(b) Except as provided in subdivision (c), an injured resident of the state may, 60 days after giving notice of the alleged violation to the Attorney General and the alleged violator, bring an action to enjoin a violation of this article by a manufacturer or retailer in any court of competent jurisdiction. The court may award to a prevailing plaintiff reasonable attorneys’ fees and costs incurred in investigating and prosecuting the action. The court shall not award monetary damages.

(c) Neither injunctive relief nor attorneys’ fees and costs shall be granted with respect to failure to label any of the following.

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

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

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

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

(2) A manufacturer or retailer who obtained a sworn statement from the supplier that the food was produced without knowledge or intent to use genetic engineered and has been segregated from, and not knowingly or intentionally commingled with, foods that may have been genetically engineered.

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

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

(e) A retailer that is not the producer or the manufacturer of food the retailer sells under its brand is not liable under this article except if the retailer knowingly and willfully fails to provide point-of-purchase labeling for an unpackaged raw agricultural commodity. It is a defense in an action under this section that a
retailer reasonably relied on a disclosure that the food was not
produced through genetic engineering that is contained in the bill
of sale or invoice provided by the wholesaler or distributor of the
food.

(f) No action shall be brought under this section against a farmer
who is not a retailer or manufacturer. A farmer who swears a false
statement under this section remains subject to laws pertaining to
perjury.

(g) The department shall adopt and enforce regulations necessary
to implement this article.

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

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