

AMENDED IN SENATE APRIL 24, 2014

AMENDED IN SENATE APRIL 3, 2014

SENATE BILL

No. 1381

Introduced by Senator Evans
(Coauthors: Senators DeSaulnier and Pavley)
(Coauthors: Assembly Members Levine and Yamada)

February 21, 2014

An act to *amend Section 111910 of*, 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 amended, Evans. Food labeling: genetically engineered food.

Existing law, the Sherman Food, Drug, and Cosmetic ~~Law~~ *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. ~~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.~~

Existing law authorizes any person to bring an action in superior court for violations of the California Organic Products Act of 2003, which, among other things, prohibits a product from being handled, processed, sold, advertised, represented, or offered for sale in this state unless it also is prominently labeled and invoiced in compliance with federal regulations, as specified. The law authorizes the court to grant a temporary or permanent injunction restraining any person from violating the act. The law also authorizes the court to award reasonable attorney's fees to a person, organization, or entity that brings an action pursuant to these provisions.

This bill would apply these provisions to violations of the genetically engineered food provisions described above.

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.

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 them
20 into organisms is an imprecise process. The results are not always
21 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 products
8 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 increasing
26 environmental stress. More than 106 major salmon runs in northern
27 California and the Pacific Northwest are extinct and another 214
28 runs of wild salmon are at risk of extinction. An escaped GE fish
29 could pose additional environmental risk to California's already
30 stressed wild salmon populations and coastal ecosystems by, among
31 other things, imposing new competitive pressures on these
32 populations for food and space, interfering with effective breeding
33 and reproduction, and spreading disease. The west coast salmon
34 fishing industry, including both commercial and recreational
35 components, has lost an estimated 72,000 jobs during the last 20
36 years. In the face of market confusion, seafood consumers may
37 avoid purchasing salmon altogether to avoid genetically engineered
38 salmon which would further negatively impact California's wild
39 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 genetic
9 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
15 added to Chapter 5 of Part 5 of Division 104 of the Health and
16 Safety 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 limited
34 to, recombinant DNA or RNA techniques that use vector systems,
35 and techniques involving the direct introduction into the organisms
36 of hereditary materials prepared outside the organisms such as
37 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 that
 6 has been produced through means of genetic engineering.
 7 ~~(e) “Injured resident” means a person who purchases a product~~
 8 ~~that is misbranded under the provisions of this chapter.~~
 9 ~~(d)~~
 10 (c) “Label” shall have the meaning set forth in Section 109955.
 11 ~~(e)~~
 12 (d) “Labeling” shall have the meaning set forth in Section
 13 109960.
 14 ~~(f)~~
 15 (e) “Manufacturer” means the person or entity that makes,
 16 processes, combines, or packages food ingredients into a finished
 17 product.
 18 ~~(g)~~
 19 (f) “Organism” means any biological entity capable of
 20 replication, reproduction, or transferring genetic material.
 21 ~~(h)~~
 22 (g) “Packaged food” means any food offered for retail sale in
 23 the state, other than raw food and food served, sold, or provided
 24 ready to eat in any bake sale, restaurant, or cafeteria that are subject
 25 to the provisions of Article 6 (commencing with Section 110660).
 26 ~~(i)~~
 27 (h) “Raw agricultural commodity” shall have the meaning set
 28 forth in Section 110020.
 29 ~~(j)~~
 30 (i) “Retailer” means ~~a dealer engaged in the business of selling~~
 31 ~~any perishable agricultural commodity at retail.~~ *an establishment*
 32 *engaged in the business of selling any perishable agricultural*
 33 *commodity or packaged food via a storefront.*
 34 ~~(k)~~
 35 (j) “Supplier” means a person or entity that engages in the
 36 operation of selling or distributing raw agricultural commodities
 37 that the person or entity has produced, purchased, or acquired from
 38 a processor.
 39 110809. (a) Any raw agricultural commodity or packaged food
 40 that is entirely or partially produced with genetic engineering shall

1 be labeled in accordance with this article and is misbranded if not
2 labeled in accordance with this article.

3 (b) This section does not apply to an alcoholic beverage that is
4 subject to the Alcoholic Beverage Control Act (Division 9
5 (commencing with Section 23000) of the Business and Professions
6 Code).

7 (c) *This section does not apply to any food sold at a certified*
8 *farmers' market, field retail stand, or farm stand, as defined by*
9 *Sections 47004, 47030, and 47050 of the Food and Agricultural*
10 *Code.*

11 110809.1. (a) (1) A manufacturer of a raw agricultural
12 commodity packaged for retail sale shall include the words
13 "Genetically Engineered" clearly and conspicuously on the front
14 or back of the package of that commodity.

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

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

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

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

33 (e) *This section does not apply to any food sold at a certified*
34 *farmers' market, field retail stand, or farm stand, as defined by*
35 *Sections 47004, 47030, and 47050 of the Food and Agricultural*
36 *Code.*

37 ~~110809.2. (a) The Attorney General may bring an action to~~
38 ~~enjoin a violation of this article in any court of competent~~
39 ~~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:~~

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

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

~~(c) It shall not be a violation of this article for 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.~~

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

~~(4) Food sold at a certified farmers' market, field retail stand, or farm stand, as defined by Sections 47004, 47030, and 47050 of the Food and Agricultural Code.~~

~~(d) Food is produced without knowledge or intent to use genetic engineering under either 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) An independent organization has determined that the food was produced without knowledge or intent to use genetic~~

1 engineering and has been segregated from, and not knowingly or
2 intentionally commingled with, foods that may have been
3 genetically engineered.

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

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

18 ~~(f) No action shall be brought under this section against a farmer
19 who is not a retailer or manufacturer.~~

20 ~~(g)~~

21 (e) The department shall adopt and enforce regulations necessary
22 to implement this article.

23 110810. This article shall become operative on January 1, 2016.

24 *SEC. 5. Section 111910 of the Health and Safety Code is*
25 *amended to read:*

26 111910. (a) Notwithstanding the provisions of Section 111900
27 or any other provision of law, any person may bring an action in
28 superior court pursuant to this section and the court shall have
29 jurisdiction upon hearing and for cause shown, to grant a temporary
30 or permanent injunction restraining any person from violating any
31 provision of *Article 6.6 (commencing with Section 110808) or*
32 *Article 7 (commencing with Section 110810) of Chapter 5. Any*
33 *proceeding under this section shall conform to the requirements*
34 *of Chapter 3 (commencing with Section 525) of Title 7 of Part 2*
35 *of the Code of Civil Procedure, except that the person shall not be*
36 *required to allege facts necessary to show, or tending to show, lack*
37 *of adequate remedy at law, or to show, or tending to show,*
38 *irreparable damage or loss, or to show, or tending to show, unique*
39 *or special individual injury or damages.*

1 (b) In addition to the injunctive relief provided in subdivision
2 (a), the court may award to that person, organization, or entity
3 reasonable attorney’s fees as determined by the court.

4 (c) This section shall not be construed to limit or alter the
5 powers of the department and its authorized agents to bring an
6 action to enforce this chapter pursuant to Section 111900 or any
7 other provision of law.

8 ~~SEC. 5.~~

9 *SEC. 6.* The provisions of this act are severable. If any
10 provision of this act or its application is held invalid, that invalidity
11 shall not affect other provisions or applications that can be given
12 effect without the invalid provision or application.

13 ~~SEC. 6.~~

14 *SEC. 7.* No reimbursement is required by this act pursuant to
15 Section 6 of Article XIII B of the California Constitution because
16 the only costs that may be incurred by a local agency or school
17 district will be incurred because this act creates a new crime or
18 infraction, eliminates a crime or infraction, or changes the penalty
19 for a crime or infraction, within the meaning of Section 17556 of
20 the Government Code, or changes the definition of a crime within
21 the meaning of Section 6 of Article XIII B of the California
22 Constitution.