

AMENDED IN SENATE MAY 5, 2014  
AMENDED IN SENATE APRIL 24, 2014  
AMENDED IN SENATE APRIL 3, 2014

**SENATE BILL**

**No. 1381**

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

February 21, 2014

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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, 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.

~~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,
- 9 economic, environmental, religious, and ethical reasons, if the
- 10 food they purchase was produced with genetic engineering.

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

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

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

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

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

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

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

38 (j) Agricultural exports in California in 2011 generated \$16.8  
39 billion in revenue, representing 39 percent of total production.  
40 Mandatory identification of foods produced with genetic

1 engineering can be a critical method of preserving the economic  
2 value of exports or domestically sensitive markets with restrictions  
3 on, or prohibitions against, genetic engineering. Preserving the  
4 identity, quality, and reliability of California's agricultural products  
5 and exports is critical to the state's economic well-being.

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

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

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

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

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

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

9 110663. A food is misbranded if its labeling does not conform  
10 to the requirements of Section 110809.

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

14  
15 Article 6.6. The California Right to Know Genetically  
16 Engineered Food Act  
17

18 110808. The following definitions shall apply for the purposes  
19 of this article only:

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

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

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

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

36 (B) Methods of fusing cells beyond the taxonomic family that  
37 overcome natural physiological, reproductive, or recombinant  
38 barriers, and that are not techniques used in traditional breeding  
39 and selection such as conjugation, transduction, and hybridization.

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

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

6 (d) “Labeling” shall have the meaning set forth in Section  
7 109960.

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

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

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

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

19 (i) “Retailer” means an establishment engaged in the business  
20 of selling any perishable agricultural commodity or packaged food  
21 via a storefront.

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

26 110809. (a) Any raw agricultural commodity or packaged food  
27 that is entirely or partially produced with genetic engineering shall  
28 be labeled in accordance with this article and is misbranded if not  
29 labeled in accordance with this article.

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

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

38 110809.1. (a) (1) A manufacturer of a raw agricultural  
39 commodity packaged for retail sale shall include the words

1 “Genetically Engineered” clearly and conspicuously on the front  
2 or back of the package of that commodity.

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

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

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

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

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

25 110809.2. (a) A person engaged in business as a manufacturer  
26 or retailer of products who in good faith sells, offers for sale, labels,  
27 or advertises any product in reliance on the representations of a  
28 farmer, producer, or supplier that the product is not entirely or  
29 partially produced with genetic engineering, shall not be found to  
30 have violated this article unless the manufacturer or retailer knew  
31 or should have known that the product was entirely or partially  
32 produced with genetic engineering.

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

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

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

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

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

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

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

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

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

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

24 ~~(e) The department shall adopt and enforce regulations necessary  
25 to implement this article.~~

26 110810. This article shall become operative on January 1, 2016.

27 ~~SEC. 5. Section 111910 of the Health and Safety Code is  
28 amended to read:~~

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

1 irreparable damage or loss, or to show, or tending to show, unique  
2 or special individual injury or damages.

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

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

10 ~~SEC. 6.~~

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

15 ~~SEC. 7.~~

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