

Introduced by Senator EvansFebruary 21, 2014

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.

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.

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

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

22 (e) Genetic engineering of plants and animals can cause
23 unintended consequences. It has been demonstrated that
24 manipulating genes through genetic engineering and inserting them
25 into organisms is an imprecise process. The results are not always
26 predictable or controllable.

1 (f) United States government scientists have stated that the
2 artificial insertion of genetic material into plants via genetic
3 engineering can increase the levels of known toxicants or allergens
4 in foods and create new toxicants or allergens with consequent
5 health concerns.

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

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

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

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

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

37 (l) GE crops pose a potential threat to the state's \$1.39 billion
38 organic agriculture sector. Organic production accounted for 3.1
39 percent of total agriculture earnings in the state and 39 percent of
40 organic sales nationally in the year 2011. Organic farmers are

1 prohibited from using genetically engineered seeds or feed, yet
2 have no protection against possible unintended transgenic
3 contamination from neighboring farms. This is a particular concern
4 for California's organic dairy farmers, who generated \$127 million
5 in revenue in the year 2011. Food labeling gives consumers the
6 right to support food production systems that do not threaten the
7 integrity and economic well-being of organic agriculture and
8 California's exports.

9 (m) United States Department of Agriculture (USDA) data
10 shows that California ranks first in organic farm-gate sales. This
11 important element of California's economy must be protected.
12 Foods identified as non-GE constitute the fastest growing segment
13 in agriculture, with annual sales increases in the year 2011 between
14 20 and 27 percent. However, only a small portion of the food
15 industry participates in voluntary labeling of foods claimed not to
16 be the product of genetic engineering. There are no consistent
17 standards for that labeling, or for the enforcement of voluntary
18 labels. Thus, voluntary labeling is insufficient to provide consumers
19 with adequate information on whether the food they are purchasing
20 was produced with genetic engineering, and in some cases the
21 labels may be misleading.

22 (n) The cultivation of GE crops can have serious effects on the
23 environment. For example, in the year 2012, 93 percent of all soy
24 grown in the United States was genetically engineered to be
25 herbicide resistant. In fact, the vast majority of GE crops are
26 designed to withstand herbicides and they, therefore, promote
27 indiscriminate herbicide use. As a result, GE crops have caused
28 527 million pounds of additional herbicides to be applied to the
29 nation's farmland. These toxic herbicides damage the vitality and
30 quality of our soil, contaminate our drinking water, and pose health
31 risks to consumers and farmworkers. Further, because of the
32 consequent massive increase in herbicide use, herbicide-resistant
33 weeds have developed and flourished, infesting farm fields and
34 roadsides, complicating weed control for farmers, and causing
35 farmers to resort to more and increasingly toxic herbicides.

36 (o) The FDA is currently proposing approval of the first GE
37 salmon for human consumption. Wild Pacific salmon are a critical
38 natural and cultural resource of California and are under increasing
39 environmental stress. More than 106 major salmon runs in northern
40 California and the Pacific Northwest are extinct and another 214

1 runs of wild salmon are at risk of extinction. An escaped GE fish
2 could pose additional environmental risk to California’s already
3 stressed wild salmon populations and coastal ecosystems by, among
4 other things, imposing new competitive pressures on these
5 populations for food and space, interfering with effective breeding
6 and reproduction, and spreading disease. The west coast salmon
7 fishing industry, including both commercial and recreational
8 components, has lost an estimated 72,000 jobs during the last 20
9 years. In the face of market confusion, seafood consumers may
10 avoid purchasing salmon altogether to avoid genetically engineered
11 salmon which would further negatively impact California’s wild
12 salmon fishermen.

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

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

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

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

24 110663. A food is misbranded if its labeling does not conform
25 to the requirements of Section 110809.

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

29

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

32

33 110808. The following definitions shall apply for the purposes
34 of this article only:

35 (a) “Agriculture” means the science, art, or practice of
36 cultivating the soil, producing crops, and raising livestock or fish
37 and, in varying degrees, the preparation and marketing of the
38 resulting products.

1 (b) "Cultivated commercially" means grown or raised by a
2 person in the course of business or trade, and sold within the United
3 States.

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

7 (d) "Food facility" shall have the meaning set forth in Section
8 113789.

9 (e) (1) "Genetically engineered" means produced from an
10 organism or organisms in which the genetic material has been
11 changed through the application of either of the following:

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

16 (ii) "In vitro nucleic acid techniques" include, but are not limited
17 to, recombinant DNA or RNA techniques that use vector systems,
18 and techniques involving the direct introduction into the organisms
19 of hereditary materials prepared outside the organisms such as
20 biolistics, microinjection, macroinjection, chemoporation,
21 electroporation, microencapsulation, and liposome fusion.

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

26 (2) "Genetically engineered" does not include an animal who
27 has not itself been genetically engineered, regardless of whether
28 that animal has been fed or injected with any food or any drug that
29 has been produced through means of genetic engineering.

30 (f) "Label" shall have the meaning set forth in Section 109955.

31 (g) "Labeling" shall have the meaning set forth in Section
32 109960.

33 (h) "Manufacturer" means the person or entity that makes,
34 processes, combines, or packages food ingredients into a finished
35 product.

36 (i) "Medical food" shall have the meaning set forth in Section
37 109971.

38 (j) "Organism" means any biological entity capable of
39 replication, reproduction, or transferring genetic material.

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

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

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

11 110809. Any raw agricultural commodity or packaged food
12 that is entirely or partially produced with genetic engineering shall
13 be labeled in accordance with this article and is misbranded if not
14 labeled in accordance with this article.

15 110809.1. (a) (1) A manufacturer of a raw agricultural
16 commodity packaged for retail sale shall include the words
17 “Genetically Engineered” clearly and conspicuously on the front
18 or back of the package of that commodity.

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

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

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

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

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.

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

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

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

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

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

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

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

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

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

36 (e) A retailer that is not the producer or the manufacturer of
37 food the retailer sells under its brand is not liable under this article
38 except if the retailer knowingly and willfully fails to provide
39 point-of-purchase labeling for an unpackaged raw agricultural
40 commodity. It is a defense in an action under this section that a

1 retailer reasonably relied on a disclosure that the food was not
2 produced through genetic engineering that is contained in the bill
3 of sale or invoice provided by the wholesaler or distributor of the
4 food.

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

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

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