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H.P. 490

House of Representatives, February 26, 2013

An Act To Protect Maine Food Consumers' Right To Know about Genetically Engineered Food and Seed Stock

Reference to the Committee on Labor, Commerce, Research and Economic Development suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative HARVELL of Farmington.

Cosponsored by Senator JOHNSON of Lincoln, Senator CAIN of Penobscot and

Representatives: BEAR of the Houlton Band of Maliseet Indians, BEAUDOIN of Biddeford, BEAULIEU of Auburn, BECK of Waterville, BENNETT of Kennebunk, BERRY of Bowdoinham, BOLAND of Sanford, BRIGGS of Mexico, BROOKS of Winterport, CAMPBELL of Newfield, CAREY of Lewiston, CASAVANT of Biddeford, CHAPMAN of Brooksville, CHASE of Wells, CHIPMAN of Portland, COTTA of China, CRAFTS of Lisbon, DAUGHTRY of Brunswick, DAVIS of Sangerville, DeCHANT of Bath, DICKERSON of Rockland, DION of Portland, DOAK of Columbia Falls, DUNPHY of Embden, ESPLING of New Gloucester, EVANGELOS of Friendship, FARNSWORTH of Portland, FOWLE of Vassalboro, GIDEON of Freeport, GILBERT of Jay, GILLWAY of Searsport, GOODE of Bangor, GRAHAM of North Yarmouth, GRANT of Gardiner, GUERIN of Glenburn, HAMANN of South Portland, HARLOW of Portland, HICKMAN of Winthrop, HOBBS of Saco, HUBBELL of Bar Harbor, JOHNSON of Greenville, JONES of Freedom, JORGENSEN of Portland, KENT of Woolwich, KESCHL of Belgrade, KINNEY of Limington, KNIGHT of Livermore Falls, KRUGER of Thomaston, KUMIEGA of Deer Isle, KUSIAK of Fairfield, LAJOIE of Lewiston, LIBBY of Lewiston, LONGSTAFF of Waterville, MacDONALD of Old Orchard Beach, MacDONALD of Boothbay, MAKER of Calais, MALABY of Hancock, MASTRACCIO of Sanford, McCABE of Skowhegan, McCLELLAN of Raymond, McGOWAN of York, McLEAN of Gorham, MONAGHAN-DERRIG of Cape Elizabeth, MOONEN of Portland, MORIARTY of Cumberland, MORRISON of South Portland, NADEAU of Winslow, NELSON of Falmouth, NEWENDYKE of Litchfield, PARRY of Arundel, PEAVEY HASKELL of Milford, PEOPLES of Westbrook, PETERSON of Rumford, PLANTE of Berwick, POULIOT of Augusta, POWERS of Naples, RANKIN of Hiram, REED of Carmel, ROCHELO of Biddeford, RUSSELL of Portland, RYKERSON of Kittery, SANBORN of Gorham, SANDERSON of Chelsea, SCHNECK of Bangor, SHAW of Standish, SHORT of Pittsfield, SIROCKI of Scarborough, SOCTOMAH of the Passamaquoddy Tribe, STANLEY of Medway, STUCKEY of Portland, TIPPING-SPITZ of Orono, TREAT of Hallowell, TURNER of Burlington, TYLER of Windham, VILLA of Harrison, VOLK of Scarborough, WALLACE of Dexter, WEAVER of York, WELSH of Rockport, WERTS of Auburn, WILSON of Augusta, WINCHENBACH of Waldoboro, Senators: President ALFOND of Cumberland, BOYLE of Cumberland, COLLINS of York, CRAVEN of Androscoggin, DUTREMBLE of York, GERZOFISKY of Cumberland, GRATWICK of Penobscot, HAMPER of Oxford, HASKELL of Cumberland, HILL of York, JACKSON of Aroostook, LACHOWICZ of Kennebec, LANGLEY of Hancock, MAZUREK of Knox, MILLETT of Cumberland, PATRICK of Oxford, PLUMMER of Cumberland, TUTTLE of York, WHITTEMORE of Somerset.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 22 MRSA c. 565** is enacted to read:

3 **CHAPTER 565**

4 **GENETICALLY ENGINEERED PRODUCTS**

5 **§2591. Definitions**

6 As used in this chapter, unless the context otherwise indicates, the following terms
7 have the following meanings.

8 **1. Commissioner.** "Commissioner" means the Commissioner of Agriculture,
9 Conservation and Forestry.

10 **2. Genetically engineered.** "Genetically engineered" has the same meaning as
11 under Title 7, section 1051, subsection 2.

12 **3. Medical food.** "Medical food" means food prescribed by a physician for
13 treatment of a medical condition.

14 **§2592. Disclosure requirements for genetically engineered food**

15 **1. Disclosure.** Beginning 18 months after the effective date of this section, any food
16 or seed stock offered for retail sale that is genetically engineered must be accompanied by
17 a conspicuous disclosure that states "Produced with Genetic Engineering." The statement
18 must be located on the package for all packaged food or seed stock or, in the case of
19 unpackaged food or seed stock, on a card or label on the store shelf or bin in which the
20 food or seed stock is displayed.

21 **2. Use of term "natural."** A food or seed stock that is subject to disclosure under
22 subsection 1 may not be described on the label or by similar identification as "natural."

23 **3. Misbranding.** Any food or seed stock that is genetically engineered that does not
24 display the disclosure required under subsection 1 or that is labeled or identified as
25 natural in violation of subsection 2 is considered misbranded for the purposes of chapter
26 551, subchapter 1 except that:

27 **A.** A food or seed stock is not considered misbranded if the food or seed stock is
28 produced by a person who:

29 (1) Grows, raises or otherwise produces that food or seed stock without
30 knowledge that the food or seed stock was created from other seed or other food
31 that was genetically engineered; and

32 (2) Obtains a sworn statement from the person from whom the food or seed
33 stock was obtained that the food or seed stock was not knowingly genetically
34 engineered and was segregated from and not knowingly commingled with a food
35 or seed stock component that may have been genetically engineered;

1 B. A food product derived from an animal is not considered misbranded if the animal
2 was not genetically engineered but was fed genetically engineered feed; and

3 C. Until July 1, 2019, a packaged processed food is not considered misbranded if the
4 total weight of the processed food that was genetically engineered is less than 0.9%
5 of the total weight of the processed food.

6 **4. Rules.** The commissioner may adopt routine technical rules under Title 5, chapter
7 375, subchapter 2-A for the administration and enforcement of this chapter.

8 **§2593. Third-party protection**

9 **1. Reliance on affidavit.** A distributor or retailer that sells or advertises food or
10 seed stock that is genetically engineered that fails to make the disclosure required under
11 section 2592, subsection 1 is not subject to liability in any civil action to enforce this
12 chapter if the distributor or retailer relied on the affidavit under section 2595 provided by
13 the producer or grower stating that the food or seed stock is not subject to the disclosure
14 requirements under this chapter.

15 **2. Restaurants.** Restaurants are exempt from the disclosure requirements of this
16 chapter.

17 **3. Exempt products.** Alcoholic beverages and medical food are exempt from the
18 disclosure requirements of this chapter.

19 **§2594. Enforcement**

20 **1. Authority.** The commissioner shall enforce this chapter in the same manner as is
21 authorized for enforcement of chapter 551, subchapter 1.

22 **2. No private right.** There is no private right of action to enforce this chapter.

23 **3. Penalty.** A person who violates this chapter commits a civil violation for which a
24 fine may be assessed that may not exceed \$1,000 per day per misbranded product per
25 sales location.

26 **§2595. Affidavit**

27 The commissioner shall develop an affidavit form that may be provided by a
28 producer or grower of food or seed stock to distributors and retailers and that may be
29 included in shipments of food or seed stock within the State certifying that the food or
30 seed stock being sold or shipped is not subject to the disclosure requirements of this
31 chapter.

32 **Sec. 2. Contingent effective date; contingent repeal.** The Commissioner of
33 Agriculture, Conservation and Forestry shall monitor legislative activities in other states
34 and certify to the Secretary of State and the Revisor of Statutes when legislation
35 substantially similar to this Act has been adopted in at least 5 other states or in a state or
36 states with a population or combined population of at least 20,000,000. Those sections of
37 this Act that enact the Maine Revised Statutes, Title 22, chapter 565 take effect 30 days
38 after the date of the commissioner's certification. If no certification has been made by the

1 commissioner pursuant to this section by January 1, 2023, this Act is repealed on that
2 date.

3 **SUMMARY**

4 This bill requires disclosure of genetic engineering at the point of retail sale of food
5 and seed stock and provides that food or seed stock for which the disclosure is not made
6 is considered to be misbranded and subject to the sanctions for misbranding. The bill
7 provides that food or seed stock may not be labeled as natural if it has been genetically
8 engineered. The bill exempts products produced without knowledge that the products, or
9 items used in their production, were genetically engineered; animal products derived from
10 an animal that was not genetically engineered but was fed genetically engineered food;
11 and products with only a minimum content produced by genetic engineering. The bill
12 also provides that the disclosure requirements do not apply to restaurants, alcoholic
13 beverages or medical food. The disclosure provisions are administered by the
14 Department of Agriculture, Conservation and Forestry.