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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 1770 Session of  
2013

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INTRODUCED BY P. DALEY, CUTLER, MUNDY, ROZZI, KINSEY,  
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V. BROWN, BISHOP AND O'BRIEN, OCTOBER 17, 2013

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REFERRED TO COMMITTEE ON AGRICULTURE AND RURAL AFFAIRS,  
OCTOBER 17, 2013

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AN ACT

1 Amending Title 3 (Agriculture) of the Pennsylvania Consolidated  
2 Statutes, providing for labeling of genetically engineered  
3 food.

4 The General Assembly of the Commonwealth of Pennsylvania  
5 hereby enacts as follows:

6 Section 1. Title 3 of the Pennsylvania Consolidated Statutes  
7 is amended by adding a chapter to read:

8 CHAPTER 58

9 LABELING OF GENETICALLY ENGINEERED FOOD

10 Sec.

11 5801. Scope of chapter.

12 5802. Definitions.

13 5803. Labeling.

14 5804. Mislabeling.

15 5805. Regulations.

16 5806. Penalties.

17 § 5801. Scope of chapter.

1 This chapter relates to the labeling of genetically  
2 engineered food.

3 § 5802. Definitions.

4 The following words and phrases when used in this chapter  
5 shall have the meanings given to them in this section unless the  
6 context clearly indicates otherwise:

7 "Advertisement." All representations, other than labeling,  
8 disseminated in any manner or by any means for the purpose of  
9 inducing or which are likely to induce, directly or indirectly,  
10 the purchase of food, drugs, devices or cosmetics.

11 "Color additive."

12 (1) A material with or without intermediate or final  
13 change of identity, from a vegetable, animal, mineral or  
14 other source, both which:

15 (i) Is a dye, pigment or other substance made by:

16 (A) a process of synthesis or similar artifice;

17 or

18 (B) extracted, isolated or otherwise derived;

19 and

20 (ii) When added or applied to a food, drug, cosmetic  
21 or to the human body or a part of the human body is  
22 capable, alone or through reaction with other substance,  
23 of imparting color thereto.

24 (2) The term does not include material exempted by  
25 regulation under the Federal Food, Drug, and Cosmetic Act or  
26 material which the department determines is used, or intended  
27 to be used, solely for a purpose or purposes other than  
28 coloring.

29 (3) The term includes black, white and intermediate  
30 grays, as well as all other colors.

1           (4) Nothing in this definition shall be construed to  
2 apply to any pesticide chemical, soil or plant nutrient or  
3 other agricultural chemical used or intended to be used  
4 solely because of its effect in aiding, retarding or  
5 otherwise directly or indirectly affecting the growth or  
6 other natural physiological processes of produce of the soil  
7 which thereby affects its color, whether before or after  
8 harvest.

9           "Cosmetic."

10           (1) Articles intended to be rubbed, poured, sprinkled or  
11 sprayed on, introduced into or otherwise applied to the human  
12 body or a part of the human body for cleansing, beautifying,  
13 promoting attractiveness or altering the appearance.

14           (2) The term shall also include all articles intended  
15 for use as a component of any articles.

16           (3) The term does not include soap.

17           "Device." Except when used in the definition of drug in this  
18 section, the term includes instruments, apparatuses and  
19 contrivances, including their components, parts and accessories,  
20 intended for use in the diagnosis, cure, mitigation, treatment  
21 or prevention of disease in humans or other animals or to affect  
22 the structure or a function of the body of humans or other  
23 animals.

24           "Distributor." A person that sells, supplies, furnishes or  
25 transports food in this Commonwealth that the person does not  
26 produce.

27           "Drug."

28           (1) The term includes the following:

29                   (i) An official compendium.

30                   (ii) Articles intended for use in the diagnosis,

1 cure, mitigation, treatment or prevention of disease in  
2 humans or other animals.

3 (iii) Articles, other than food, intended to affect  
4 the structure or a function of the body of a human or any  
5 other animal.

6 (iv) Articles intended for use as a component of any  
7 articles specified in this paragraph.

8 (2) The term does not include devices or their  
9 components, parts or accessories.

10 "Enzyme." A protein that catalyzes chemical reactions of  
11 other substances without being destroyed or altered upon  
12 completion of such reactions.

13 "Federal Food, Drug, and Cosmetic Act." The Federal Food,  
14 Drug, and Cosmetic Act (52 Stat. 1040, 21 U.S.C. § 301 et seq.).

15 "Food." Articles used for food or drink for humans or other  
16 animals, chewing gum and articles used for components of food,  
17 drink or chewing gum.

18 "Genetically engineered" or "genetic engineering."

19 (1) A process whereby food intended for human  
20 consumption is produced from an organism or organisms in  
21 which the genetics are materially altered through the  
22 application of at least one of the following:

23 (i) In vitro nucleic acid techniques, including  
24 recombinant DNA (deoxyribonucleic acid) techniques.

25 (ii) The direct injection of nucleic acid into cells  
26 or organelles.

27 (iii) Encapsulation.

28 (iv) Gene deletion and doubling.

29 (v) Methods of fusing cells that do not fall within  
30 the same taxonomic family, that overcome natural

1 physiological reproductive or recombinant barriers and  
2 that are not techniques used in traditional breeding and  
3 selection such as conjugation, transduction and  
4 hybridization.

5 (2) The term includes food which is treated with a  
6 material described in this definition, except manure that is  
7 used as a fertilizer for a raw agricultural commodity or  
8 contains an ingredient, component or substance described in  
9 this definition.

10 "Label." A display of written, printed or graphic matter  
11 upon the immediate container of an article. The term immediate  
12 container as used in this definition does not include package  
13 liners.

14 "Labeling." All labels and other written, printed or graphic  
15 matter on an article or its containers, wrappers or other  
16 material accompanying the article.

17 "Manufacturer." A person who produces seed, seed stock or  
18 food and sells the item to a retailer or distributor.

19 "Natural food."

20 (1) Food which has not been:

21 (i) Treated with preservatives, antibiotics,  
22 synthetic additives, artificial flavoring or artificial  
23 coloring.

24 (ii) Processed in a manner that makes such food  
25 significantly less nutritive.

26 (iii) Genetically engineered.

27 (2) The term does not automatically exclude the  
28 processing of food by extracting, purifying, heating,  
29 fermenting, concentrating, dehydrating, cooling or freezing.

30 "New drug."

1           (1) A drug not generally recognized among experts  
2 qualified by scientific training and experience to evaluate  
3 the safety and effectiveness of drugs, as safe and effective  
4 for use under the conditions prescribed, recommended or  
5 suggested in its labeling.

6           (2) The term also includes any drug which, as a result  
7 of investigation to determine its safety and effectiveness  
8 for use under such conditions, has become so recognized, but  
9 which has not, other than in investigations, been used to a  
10 material extent or for a material time under those  
11 conditions.

12           (3) A drug's effectiveness shall not be considered with  
13 regard to the following:

14           (i) either:

15                   (A) a drug which was commercially sold or used  
16 in the United States on or before October 9, 1962; or

17                   (B) was not a new drug prior to the enactment of  
18 this chapter; and

19           (ii) was not covered by an effective application  
20 under section 355 of the Federal Food, Drug, and Cosmetic  
21 Act, when the drug is intended solely for use under  
22 conditions prescribed, recommended or suggested in  
23 labeling with respect to the drug on whichever of the  
24 dates under this paragraph is applicable.

25           "Official compendium." The official United States  
26 Pharmacopoeia, official Homeopathic Pharmacopoeia of the United  
27 States, official National Formulary or a supplement to any of  
28 them.

29           "Organism." A biological entity capable of replication,  
30 reproduction or transferring genetic material.

1 "Pesticide chemical." A substance which alone, in chemical  
2 combination or in formulation with one or more other substances  
3 is an "economic poison" within the meaning of the Federal  
4 Insecticide, Fungicide, and Rodenticide Act (61 Stat.  
5 163, 7 U.S.C. § 136 et seq.), and which is used in the  
6 production, storage or transportation of raw agricultural  
7 commodities.

8 "Processed food." A food other than a raw agricultural  
9 commodity. The term includes a food produced from a raw  
10 agricultural commodity that has been processed through canning,  
11 smoking, pressing, cooking, freezing, dehydration, fermentation  
12 or milling.

13 "Processing aid." The term includes any of the following:

14 (1) A substance that is added to a food during the  
15 processing of the food, but that is removed in some manner  
16 from the food before the food is packaged in a finished form.

17 (2) A substance that is added to a food during  
18 processing, that is converted into constituents normally  
19 present in the food and that does not significantly increase  
20 the amount of the constituents naturally found in the food.

21 (3) A substance that is added to a food for its  
22 technical or functional effect in the processing, but that is  
23 present in the finished food at insignificant levels and that  
24 does not have any technical or functional effect in the  
25 finished food.

26 "Raw agricultural commodity." A food in its raw or natural  
27 state, including all fruits that are washed, colored or  
28 otherwise treated in their unpeeled natural form prior to  
29 marketing.

30 "Retailer." A person or entity that engages in the sale of

1 food to a consumer.

2 "Secretary." Includes an authorized representative, employee  
3 or agent of the Department of Agriculture.

4 § 5803. Labeling.

5 (a) General rule.--On and after October 1, 2014, any food,  
6 seed or seed stock offered or intended for retail sale in this  
7 Commonwealth that is or may have been entirely or partially  
8 genetically engineered, shall be labeled as follows:

9 (1) In the case of food for retail sale contained in a  
10 package, by the manufacturer, distributor or retailer of the  
11 food, with the clear and conspicuous words "Produced with  
12 Genetic Engineering."

13 (2) In the case of food that is a raw agricultural  
14 commodity, on the package offered for retail sale or, in the  
15 case of any such commodity that is not separately packaged or  
16 labeled, on the retail store shelf or bin that holds the  
17 commodity displayed for sale, by the retailer, with the clear  
18 and conspicuous words "Produced with Genetic Engineering."

19 (3) In the case of any seed or seed stock, on the  
20 container holding the seed or seed stock displayed for sale,  
21 the sales receipt or any label identifying ownership or  
22 possession of the commodity, by the manufacturer or  
23 distributor, with the clear and conspicuous words "Produced  
24 with Genetic Engineering."

25 (b) Placement.--The information, other words or statements  
26 indicating that the food was produced with genetic engineering  
27 shall appear on the outside container or wrapper, if any, of the  
28 retail package of the article or shall be easily legible through  
29 the outside container or wrapper.

30 (c) Exception.--This section does not apply to a processed

1 food in which one or more processing aids or enzymes were  
2 produced or derived from genetic engineering.

3 § 5804. Mislabeleding.

4 (a) General rule.--A food shall be deemed to be mislabeled  
5 if the food which is subject to this chapter has labeling that  
6 is false or misleading in any of the following ways:

7 (1) A statement on the label or labeling either directly  
8 or indirectly implying that the product is recommended or  
9 endorsed by an agency of the Federal or State government  
10 shall be considered misleading, unless the agency concerned  
11 has approved the statement prior to its use.

12 (2) If a food is offered for sale under the name of  
13 another food.

14 (3) If a food is an imitation of another food, unless  
15 its label bears, in type of uniform size and prominence, the  
16 word "imitation" and, immediately thereafter, the name of the  
17 food imitated.

18 (4) If a food's container is so made, formed or filled  
19 as to be misleading.

20 (5) If in package form, unless it bears a label  
21 containing the name and place of business of the  
22 manufacturer, packer or distributor and an accurate statement  
23 of the quantity of the contents in terms of weight, measure  
24 or numerical count. Reasonable variations shall be permitted,  
25 and exemptions as to small packages shall be established by  
26 regulations promulgated by the department.

27 (6) If information, other words or statements required  
28 by or under authority of this chapter to appear on the label  
29 or labeling is not prominently placed on the labeling with  
30 the conspicuousness, as compared with other words,

1 statements, designs or devices, in the labeling, and in  
2 terms, as to render it likely to be read and understood by  
3 the ordinary individual under customary conditions of  
4 purchase and use.

5 (7) If it purports to be or simulates or is represented  
6 as a food for which a definition and standard of identity has  
7 been prescribed by regulations by the department, it conforms  
8 to the definition and standard, and its label fails to bear  
9 the name of the food specified in the definition and  
10 standard, and, so far as may be required by regulations, the  
11 common names of optional ingredients, other than spices,  
12 flavoring and coloring, present in the food.

13 (8) If it purports to be or is represented as any of the  
14 following:

15 (i) A food for which a standard of quality has been  
16 prescribed by regulation and its quality falls below that  
17 standard, unless its label bears a statement that it  
18 falls below the standard.

19 (ii) A food for which a standard of fill of  
20 container have been prescribed by regulation and it falls  
21 below the standard of fill of container, unless its label  
22 bears a statement that it falls below the standard.

23 (iii) A food for which no definition and standard of  
24 identity and no standard of quality has been prescribed  
25 by regulations and it falls below the standard of purity,  
26 quality or strength which it purports or is represented  
27 to possess.

28 (9) If it purports to be or is represented to be for  
29 special dietary uses, unless its label bears the information  
30 concerning its vitamin, mineral and other dietary properties

1 as is necessary in order to fully inform purchasers as to its  
2 value.

3 (10) If it bears or contains artificial flavoring,  
4 artificial coloring, artificial sweetening or chemical  
5 preservative, unless it bears labeling stating that fact. To  
6 the extent that compliance with the requirements of this  
7 paragraph is impracticable, exemptions shall be established  
8 by regulations promulgated by the department.

9 (11) If it is genetically engineered and does not bear  
10 labeling as required in accordance with this chapter, unless  
11 it is a food produced without the producer's knowledge that a  
12 seed or other component of the food was genetically  
13 engineered on or before July 1, 2019, it is a processed food  
14 solely because it contains one or more materials that are  
15 genetically engineered if the genetically engineered  
16 materials do not, in the aggregate, account for more than  
17 0.9% of the total weight of the processed food.

18 (b) Exceptions.--If it is not subject to this chapter,  
19 unless its label bears the common or usual name of the food and,  
20 if it is fabricated from two or more ingredients, the common or  
21 usual name of each ingredient. Spices, flavorings and colorings,  
22 other than those sold as such, may be designated as spices,  
23 flavorings and colorings without naming each to the extent that  
24 compliance with the requirements of this chapter is  
25 impracticable or results in deception or unfair competition.  
26 Exemptions shall be established by regulations promulgated by  
27 the department.

28 (c) Investigation.--If an article that is regulated by this  
29 chapter is alleged to be misbranded because the labeling is  
30 misleading or if an article's advertisement is alleged to be

1 false because it is misleading, the department shall conduct an  
2 investigation. In determining whether the labeling or  
3 advertisement is misleading, the department shall take into  
4 account at least the following:

5 (1) The representations made or suggested by statement,  
6 word, design, device or sound or any combination thereof.

7 (2) The extent to which the labeling or advertisement  
8 fails to reveal material facts in light of the  
9 representations or material facts with respect to  
10 consequences which may result from the use of the article to  
11 which the labeling or advertisement relates under the  
12 conditions of use prescribed in the labeling or advertisement  
13 thereof or under conditions of use as are customary or usual.

14 (3) If the article is a drug, its labeling or  
15 advertisement as an antiseptic shall be considered to be a  
16 representation that it is a germicide, except in the case of  
17 a drug purporting to be or represented as an antiseptic for  
18 inhibitory use as a wet dressing, ointment or dusting powder  
19 or for other use that involves prolonged contact with the  
20 body.

21 § 5805. Regulations.

22 Notwithstanding other provisions of law, the department may  
23 promulgate regulations to carry out this chapter.

24 § 5806. Penalties.

25 (a) Criminal penalties.--A person who violates a provision  
26 of this chapter or a rule, regulation, standard or order made  
27 under this chapter commits a summary offense for the first or  
28 second offense. A person who violates this chapter or a rule,  
29 regulation, standard or order made under this chapter commits a  
30 misdemeanor of the third degree if the violation is a third or

1 subsequent offense and if the violation occurs within two years  
2 of the date of the last previous offense.

3 (b) Civil penalties.--In addition to proceeding under any  
4 other remedy available at law or in equity for a violation of  
5 this chapter, or a rule or regulation adopted or any order  
6 issued under this chapter, the secretary may assess a civil  
7 penalty not to exceed \$10,000 upon an individual or business for  
8 each offense. No civil penalty shall be assessed unless the  
9 person charged has been given notice and opportunity for a  
10 hearing in accordance with law. In determining the amount of the  
11 penalty, the secretary shall consider the gravity of the  
12 violation. Whenever the secretary finds a violation which did  
13 not cause harm to human health, the secretary may issue a  
14 warning in lieu of assessing a penalty. In case of inability to  
15 collect the civil penalty or failure of any person to pay all or  
16 any portion of the penalty as the secretary may determine, the  
17 secretary may refer the matter to the Attorney General, who  
18 shall recover the amount by action in the appropriate court.

19 (c) Guaranty.--

20 (1) No prosecution shall be sustained under the  
21 provisions of this chapter for the manufacture, delivery,  
22 consignment, bailment, holding or sale of or offering for  
23 sale, exposing for sale or having in possession with intent  
24 to sell a mislabeled or misbranded article against a person  
25 from whom the article of food, sample or portion was obtained  
26 by the department if the person can establish a guaranty to  
27 the effect that the article of food is not mislabeled or  
28 misbranded within the meaning of this chapter, was mislabeled  
29 or misbranded prior to coming into the possession of the  
30 person and the person did not know or have reason to know of

1 the mislabeling or misbranding or was mislabeled or  
2 misbranded after it left the possession and control of the  
3 person. The guaranty must be signed by the supplier,  
4 manufacturer, wholesale dealer, jobber or distributor from  
5 whom the articles of food were purchased or procured.

6 (2) The guaranty to afford protection shall contain the  
7 name and address of the supplier, manufacturer, wholesale  
8 dealer, jobber or distributor making the sale of the article  
9 of food to the person holding the guaranty. A supplier,  
10 manufacturer, wholesale dealer, jobber or distributor giving  
11 a guaranty under the provisions of this chapter may be held  
12 responsible and may be proceeded against for the mislabeling  
13 or misbranding of any article of food sold under the guaranty  
14 and shall be subject to the penalties provided for violation  
15 of this chapter. A guaranty shall not operate as a defense to  
16 prosecution for a violation of the provisions of this chapter  
17 if the person holding the guaranty continues to sell the same  
18 food after written or printed notice from the secretary that  
19 the article is mislabeled or misbranded within the meaning of  
20 this chapter. However, if the person violated the provisions  
21 of this chapter by having stored, transported, exposed or  
22 kept the article in a way or manner to render it diseased,  
23 contaminated or unwholesome, the person may be proceeded  
24 against for a violation.

25 (d) Minor violations.--Nothing in this chapter shall be  
26 construed as requiring prosecution or institution of a  
27 proceeding under this chapter for minor violations of this  
28 chapter if the secretary believes that the public interest will  
29 be adequately served in the circumstances by a suitable written  
30 notice or warning.

1 Section 2. This act shall take effect in 60 days.