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Sen. David Koehler

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AMENDMENT TO SENATE BILL 1666

AMENDMENT NO. ______. Amend Senate Bill 1666 by replacing everything after the enacting clause with the following:

"Section 1. Short title. This Act may be cited as the Genetically Engineered Food Labeling Act.

Section 15. In this Act, terms have the meanings given to them in the Illinois Food, Drug and Cosmetic Act, except as provided in this Section.

"Agriculture" means the science, art, or practice of cultivating soil, producing crops, and raising livestock or fish and, in varying degrees, the preparation and marketing of the resulting products.

"Cultivated commercially" means agricultural commodities grown or raised in the course of business or trade and sold within the United States.

"Department" means the Department of Public Health.

"Enzyme" means a protein that catalyzes chemical reactions of other substances without itself being destroyed or altered upon completion of the reactions.

"Food" means any articles used to feed or nourish man, chewing gum, and articles used for components, including food additives, of any such article.

"Genetically engineered" means a process that results in a substance that is produced from an organism or organisms in which the genetic material has been changed through the application of the following:

(1) in vitro nucleic acid techniques, which include, but are not limited to, recombinant deoxyribonucleic acid (DNA), direct injection of nucleic acid into cells or organelles, encapsulation, gene deletion, and doubling (for the purposes of this definition, "in vitro nucleic acid techniques" include, but are not limited to, recombinant DNA or RNA techniques that use vector systems and techniques involving the direct introduction into the organisms of hereditary materials prepared outside the organisms, such as biolistics, microinjection, macro-injection, chemoporation, electroporation, microencapsulation, and liposome fusion); or

(2) methods of fusing cells beyond the taxonomic family that overcome natural physiological reproductive or recombinant barriers, and that are not techniques used in traditional breeding and selection, such as conjugation,

transduction, and hybridization.

"Label" means a display of written, printed, or graphic matter upon or connected to the immediate container or surface of any article. In order to meet the definition of "label", any word, statement, or other information appearing on the label shall appear on the outside container or wrapper, if any, of the bulk, wholesale, or retail package of the article or be easily legible through the outside container or wrapper.

"Labeling" means any written, printed, or graphic matter that is present on the label, accompanies the food, or is displayed near the food, including that for the purpose of promoting its sale or disposal.

"Manufacturer" means the person or business that makes, processes, combines, or packages food ingredients into a finished food product.

"Medical food" means a food that is formulated to be consumed or administered enterally under the supervision of a physician and which is intended for the specific dietary management of a disease or condition for which distinctive nutritional requirements, based on recognized scientific principles, are established by medical evaluation.

"Organism" means any biological entity capable of replication, reproduction, or transferring genetic material.

"Packaged food" means any food offered for retail sale in this State, other than raw food and food served, sold, or provided ready to eat in any bake sale, restaurant, or cafeteria, and that is otherwise subject to the provisions of the Illinois Food, Drug and Cosmetic Act prohibiting misbranding.

"Processed food" means any food other than a raw agricultural commodity, including any food produced from a raw agricultural commodity that has been subject to processing such as canning, smoking, pressing, cooking, freezing, dehydration, fermentation, or milling.

"Processing aid" means the following:

(a) a substance that is added to a food during the processing of the food but is removed in some manner from the food before it is packaged in its final form;

(b) a substance that is added to a food during processing, is converted into constituents normally present in the food, and does not significantly increase the amount of the constituents found in the food; or

(c) a substance that is added to a food for its technical or functional effects in the processing but is present in the finished food at insignificant levels and does not have any technical or functional effect in that finished food.

"Raw agricultural commodity" means any plant, animal, or fungi grown or produced for human food purposes, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form before marketing.

Section 20. Labeling of genetically engineered foods.

(a) Beginning on the effective date of this Act, any food offered for retail sale in this State is misbranded if it is entirely or partially produced with genetic engineering and that fact is not disclosed as follows:

(1) In the case of a raw agricultural commodity, on the package offered for retail sale, with the words "Genetically Engineered" appearing clearly and conspicuously on the label on the front of the package of the commodity or, in the case of any such commodity that is not separately packaged or labeled, on a clear and conspicuous label appearing on the retail store shelf or bin in which the commodity is displayed for sale.

(2) In the case of processed food containing some products of genetic engineering, the manufacturer must label the product, in clear and conspicuous language on the front or back of the package of such food, with the words "Produced with Genetic Engineering" or "Partially Produced with Genetic Engineering".

(b) This Act shall not be construed to require either the listing or identification of any ingredient or ingredients that were genetically engineered, nor that the term "genetically engineered" be placed immediately preceding any common name or primary product descriptor of a food.

(c) Until the effective date of this Act, any processed food that would be subject to this Section solely because it includes one or more materials produced by genetic engineering is not misbranded provided that the engineered materials in the aggregate do not account for more than nine-tenths of one percent of the total weight of the processed food.

(d) Subsection (a) of this Section does not apply to any of the following:

(1) food consisting entirely of, or derived entirely from, an animal that has not itself been genetically engineered, regardless of whether the animal has been fed or injected with any food produced with genetic engineering or any drug or vaccine that has been produced through means of genetic engineering;

(2) a raw agricultural commodity or food that has been grown, raised, produced, or derived without the knowing and intentional use of genetically engineered seed or food; to be included within the exclusion under this subsection (d), the person responsible for complying with this Section with respect to a raw agricultural commodity or food must obtain, from whoever sold the raw agricultural commodity or food to that person, a sworn statement that the raw agricultural commodity or food (A) has not been knowingly or intentionally genetically engineered and (B) has been segregated from, and has not been knowingly or intentionally commingled with, foods that may have been genetically engineered at any time; in providing the sworn statement, a person may rely on a sworn statement from his

or her own supplier that contains such an affirmation;

(3) any processed food that would be subject to this Section solely because one or more processing aids or enzymes were produced or derived with genetic engineering;

(4) any alcoholic beverage that is subject to regulation under the Liquor Control Act of 1934;

(5) food that has been 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. 6501, et seq., and the National Organic Program regulations promulgated pursuant thereto by the United States Department of Agriculture;

(6) food that is not packaged for retail sale and that either (A) is a processed food prepared and intended for immediate human consumption or (B) is served, sold, or otherwise provided in any restaurant or other food service establishment that is primarily engaged in the sale of food prepared and intended for immediate human consumption; or

(7) medical food.

(e) With regard to the requirements of this Act concerning raw food, the retailer is responsible only for point of purchase shelf labeling. The supplier must label each container used for packaging, holding, or transporting, or any combination thereof, any raw food produced with genetic engineering that is delivered directly to Illinois retailers.

Section 25. Right of action for violations, damages, and attorneys' fees.

(a) The Department, acting through the Attorney General, may bring an action in a court of competent jurisdiction to enjoin any person violating this Act.

(b) The Department may assess a civil penalty against any person violating this Act.

(c) Any injured citizen of this State may, after giving notice of the alleged violation to the Attorney General and the alleged violator and waiting 60 days, bring an action to enjoin a violation of this Act by a manufacturer or retailer in any court of competent jurisdiction. The court may award to a citizen who is a prevailing plaintiff reasonable attorneys' fees and costs incurred in investigating and prosecuting the action, but the court may not award any monetary damages.

(d) For the purposes of this Act, food shall be considered not to have been produced with the knowing or intentional use of genetic engineering if:

(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. 6501 et seq., which prohibits genetic engineering; or

(2) in the case of a manufacturer or retailer obligated to label any food under this Act, if such entity has obtained from whomever sold the food to them a sworn statement that the food has not been knowingly or

intentionally genetically engineered and has been segregated from, and not knowingly or intentionally commingled with, foods that may have been genetically engineered at any time.

(e) With regard to the sworn statement described in item (2) of subsection (d) of this Section, a manufacturer or retailer may rely on a sworn statement from a supplier that contains the affirmation. Alternatively, a manufacturer or retailer may rely on an independent organization if it determines that the food has not been knowingly or intentionally genetically engineered and has been segregated from, and not knowingly or intentionally commingled with, foods that may have been genetically engineered at any time, if such a determination has been made pursuant to a sampling and testing procedure:

(1) consistent with sampling and testing principles recommended by internationally recognized standards organizations; and

(2) that does not rely on testing processed foods in which no DNA is detectable.

(f) Unless the retailer is also the producer or the manufacturer of the food and sells the food under a brand it owns, no act or omission of any retailer shall be deemed a violation of this Act, except for knowingly and willfully failing to provide point of purchase labeling for unpackaged raw agricultural commodities. In any action in which it is alleged that a retailer has violated the provisions of this Section, it shall be a defense that such retailer reasonably relied on any disclosure as to whether a food was produced through genetic engineering contained in the bill of sale or invoice provided by the wholesaler or distributor, or a lack of such disclosure.

(g) No action may be brought against any farmer for any violation of any provision of this Act unless the farmer is also a retailer or manufacturer, but any farmer submitting a false sworn statement under item (2) of subsection (d) of this Section shall be subject to the laws of this State pertaining to perjury.

(h) The Department of Public Health shall adopt and enforce rules necessary to implement this Act. The Department of Public Health is not authorized to exempt from the requirements of this Section any food product that is made subject to those requirements by the provisions of this Act. The Department of Public Health may by rule provide that a person may be subject to an injunction and responsible for the payment of the prevailing party's attorneys' fees under this Act for failure to label packaged food in accordance with this Act at such time as the Department of Public Health determines the commercial availability of relevant materials not produced with genetic engineering.

Section 97. Severability. The provisions of this Act are severable under Section 1.31 of the Statute on Statutes.

Section 999. Effective date. This Act takes effect January 1, 2016.".