

485--B

2015-2016 Regular Sessions

I N S E N A T E

(PREFILED)

January 7, 2015

Introduced by Sens. LAVALLE, ADDABBO, AVELLA, BOYLE, BRESLIN, CARLUCCI, COMRIE, DILAN, ESPAILLAT, HAMILTON, HASSELL-THOMPSON, HOYLMAN, KRUEGER, LANZA, LATIMER, MARTINS, MONTGOMERY, MURPHY, PANEPINTO, PARKER, PERALTA, PERKINS, RIVERA, ROBACH, SAVINO, SERRANO, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Consumer Protection in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general business law and the agriculture and markets law, in relation to the labeling of genetically modified foods

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 Section 1. Legislative findings and intent. The legislature finds that  
2 New York state consumers have the right to know whether the foods they  
3 purchase have been produced with genetic engineering so they can make  
4 informed purchasing decisions.  
5 Further the legislature finds that:  
6 (a) Currently, there is no federal law that requires food producers to  
7 identify whether foods were produced with genetic engineering. At the  
8 same time, the United States Food and Drug Administration (FDA) does not  
9 require safety studies of such foods;  
10 (b) Identification of foods produced with genetic engineering can  
11 provide a critical method for tracking effects of consuming foods  
12 produced with genetic engineering;  
13 (c) More than sixty countries, including key United States trading  
14 partners, have laws mandating disclosure of genetically engineered  
15 foods. Identifying foods produced with genetic engineering will help  
16 protect our state's export market;

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD03147-07-6

1 (d) A variety of genetically engineered crops are commercially culti-  
2 vated and sold in the United States, including corn, canola, sugar  
3 beets, soybean, cotton, alfalfa, and papaya. It has been estimated that  
4 70-80% of packaged grocery products contain some materials derived from  
5 these genetically engineered crops;

6 (e) Without disclosure, consumers with certain dietary restrictions  
7 may unknowingly consume such food in violation of such dietary  
8 restrictions;

9 (f) Preserving the identity, quality, and reliability of agricultural  
10 products is of prime importance to our state's fiscal health;

11 (g) The cultivation of genetically engineered crops can cause serious  
12 environmental impacts;

13 (h) It is the intent of this act to ensure that New York consumers and  
14 farmers are fully and reliably informed about whether the food and seed  
15 they purchase and eat were produced with genetic engineering so they may  
16 choose for themselves whether to purchase and eat or use such food and  
17 seed;

18 (i) It is the intent of this act only to regulate the labeling of  
19 seed, seed stock, and food for human consumption offered for retail sale  
20 within New York State.

21 S 2. The general business law is amended by adding a new section 391-u  
22 to read as follows:

23 S 391-U. GENETICALLY ENGINEERED FOODS; REQUIRED LABELING. 1. DEFI-  
24 NITIONS. AS USED IN THIS SECTION, THE TERM:

25 (A) "DEPARTMENT" MEANS THE STATE DEPARTMENT OF AGRICULTURE AND  
26 MARKETS.

27 (B) "DISTRIBUTOR" MEANS A PERSON OR BUSINESS ENGAGED IN ANY METHOD OF  
28 DISTRIBUTING OR TRANSPORTING A FOOD OR FOOD PRODUCT FROM ONE PLACE TO  
29 ANOTHER.

30 (C) "ENZYME" MEANS A PROTEIN THAT CATALYZES CHEMICAL REACTIONS OF  
31 OTHER SUBSTANCES WITHOUT ITSELF BEING DESTROYED OR ALTERED UPON  
32 COMPLETION OF THE REACTIONS.

33 (D) "GENETICALLY ENGINEERED," OR "GENETICALLY MODIFIED," OR ANY DERIV-  
34 ATIVE OF THOSE WORDS, AS APPLIED TO ANY FOOD FOR HUMAN CONSUMPTION OR  
35 SEED MEANS PRODUCED FROM OR WITH AN ORGANISM OR ORGANISMS WITH GENETICS  
36 ALTERED MATERIALLY THROUGH THE APPLICATION OF:

37 (I) IN VITRO NUCLEIC ACID TECHNIQUES, INCLUDING BUT NOT LIMITED TO  
38 RECOMBINANT DEOXYRIBONUCLEIC ACID (DNA) TECHNIQUES AND THE DIRECT  
39 INJECTION OF NUCLEIC ACID INTO CELLS OR ORGANELLES; OR

40 (II) THE FUSION OF CELLS BEYOND THE TAXONOMIC FAMILY THAT OVERCOMES  
41 NATURAL PHYSIOLOGICAL, REPRODUCTIVE, OR RECOMBINANT BARRIERS AND THAT  
42 ARE NOT TECHNIQUES USED IN TRADITIONAL BREEDING AND SELECTION.

43 FOR PURPOSES OF SUBPARAGRAPH (I) OF THIS PARAGRAPH, "IN VITRO NUCLEIC  
44 ACID TECHNIQUES" INCLUDE, BUT ARE NOT LIMITED TO, RECOMBINANT DNA OR RNA  
45 TECHNIQUES THAT USE VECTOR SYSTEMS, AND TECHNIQUES INVOLVING THE DIRECT  
46 INTRODUCTION INTO THE ORGANISMS OF HEREDITARY MATERIALS PREPARED OUTSIDE  
47 THE ORGANISMS SUCH AS BIOLISTICS, MICROINJECTION, MACRO-INJECTION,  
48 CHEMOPORATION, ELECTROPORATION, MICROENCAPSULATION, AND LIPOSOME FUSION.

49 (E) "MANUFACTURER" MEANS A PERSON OR BUSINESS ENGAGED IN THE  
50 PRODUCTION OR PROCESSING OF SEED, SEED STOCK, OR ANY FOOD PRODUCT.

51 (F) "MEDICAL FOOD" MEANS A FOOD THAT IS FORMULATED TO BE CONSUMED OR  
52 ADMINISTERED ENTERALLY UNDER THE SUPERVISION OF A PHYSICIAN AND THAT IS  
53 INTENDED FOR THE SPECIFIC DIETARY MANAGEMENT OF A DISEASE OR CONDITION  
54 FOR WHICH DISTINCTIVE NUTRITIONAL REQUIREMENTS, BASED ON RECOGNIZED  
55 SCIENTIFIC PRINCIPLES, ARE ESTABLISHED BY MEDICAL EVALUATION.

1 (G) "PROCESSED FOOD" MEANS ANY FOOD OTHER THAN A RAW AGRICULTURAL  
2 COMMODITY, INCLUDING ANY FOOD PRODUCED FROM A RAW AGRICULTURAL COMMODITY  
3 THAT HAS BEEN SUBJECT TO PROCESSING SUCH AS CANNING, SMOKING, PRESSING,  
4 COOKING, FREEZING, DEHYDRATION, FERMENTATION, OR MILLING.

5 (H) "PROCESSING AID" MEANS:

6 (I) A SUBSTANCE THAT IS ADDED TO A FOOD DURING THE PROCESSING OF THE  
7 FOOD BUT IS REMOVED IN SOME MANNER FROM THE FOOD BEFORE IT IS PACKAGED  
8 IN ITS FINISHED FORM;

9 (II) A SUBSTANCE THAT IS ADDED TO A FOOD DURING PROCESSING, IS  
10 CONVERTED INTO CONSTITUENTS NORMALLY PRESENT IN THE FOOD, AND DOES NOT  
11 SIGNIFICANTLY INCREASE THE AMOUNT OF THE CONSTITUENTS NATURALLY FOUND IN  
12 THE FOOD; OR

13 (III) A SUBSTANCE THAT IS ADDED TO A FOOD FOR ITS TECHNICAL OR FUNC-  
14 TIONAL EFFECT IN THE PROCESSING BUT IS PRESENT IN THE FINISHED FOOD AT  
15 INSIGNIFICANT LEVELS AND DOES NOT HAVE ANY TECHNICAL OR FUNCTIONAL  
16 EFFECT IN THAT FINISHED FOOD.

17 (I) "STOCK-KEEPING UNIT," FOR PURPOSES OF SUBDIVISION THREE OF THIS  
18 SECTION, SHALL MEAN ALL OF A GROUP OF FOOD ITEMS OF THE SAME BRAND,  
19 QUANTITY OF CONTENTS, RETAIL PRICE, AND VARIETY.

20 (J) "RAW AGRICULTURAL COMMODITY" MEANS ANY PLANT, ANIMAL, OR FUNGI  
21 GROWN OR PRODUCED FOR HUMAN FOOD-USE PURPOSES.

22 (K) "RETAILER" MEANS A PERSON OR BUSINESS ENGAGED IN SELLING FOOD FROM  
23 INDIVIDUALS OR BUSINESSES TO THE END-USER.

24 2. LABELING OF GENETICALLY ENGINEERED SEED AND FOOD. (A) ANY FOOD FOR  
25 HUMAN CONSUMPTION, SEED, OR SEED STOCK OFFERED FOR RETAIL SALE IN NEW  
26 YORK IS MISBRANDED IF IT IS ENTIRELY GENETICALLY ENGINEERED OR PARTIALLY  
27 PRODUCED WITH GENETIC ENGINEERING AND THAT FACT IS NOT DISCLOSED AS  
28 FOLLOWS:

29 (I) IN THE CASE OF A RAW AGRICULTURAL COMMODITY THAT IS NOT SEPARATELY  
30 PACKAGED OR LABELED, THE WORDS "PRODUCED WITH GENETIC ENGINEERING" OR  
31 ANY OTHER DERIVATIVE OF THOSE WORDS, THE INITIALS "GE", "GM", OR "GMO",  
32 OR A DERIVATIVE OF THOSE PHRASES, SHALL BE PLACED ON THE CONTAINER USED  
33 FOR PACKAGING, HOLDING, AND/OR TRANSPORT IN A CLEAR AND CONSPICUOUS  
34 MANNER BY THE MANUFACTURER, AND MAINTAINED BY THE DISTRIBUTOR, AND  
35 DISPLAYED IN A CLEAR AND CONSPICUOUS MANNER ON THE RETAIL STORE SHELF OR  
36 BIN IN WHICH SUCH COMMODITY IS OFFERED FOR SALE BY THE RETAILER.

37 (II) IN THE CASE OF A RAW AGRICULTURAL COMMODITY THAT IS SEPARATELY  
38 PACKAGED OR PROCESSED FOOD CONTAINING SOME PRODUCTS OF GENETIC ENGINEER-  
39 ING, THE MANUFACTURER MUST LABEL THE FOOD, IN A CLEAR AND CONSPICUOUS  
40 MANNER ON THE PACKAGE OF SUCH FOOD, WITH THE WORDS "PRODUCED WITH GENET-  
41 IC ENGINEERING" OR ANY OTHER DERIVATIVE OF THOSE WORDS, THE INITIALS  
42 "GE", "GM", "GMO", OR A DERIVATIVE OF THOSE PHRASES.

43 (III) IN THE CASE OF ANY SEED OR SEED STOCK, THE MANUFACTURER OR OTHER  
44 ENTITY RESPONSIBLE FOR PRODUCING THE SEED MUST LABEL THE SEED OR SEED  
45 STOCK CONTAINER, THE SALES RECEIPT, AND ANY OTHER REFERENCE TO IDENTIFI-  
46 CATION, OWNERSHIP, OR POSSESSION, IN A CLEAR AND CONSPICUOUS MANNER WITH  
47 THE WORDS "PRODUCED WITH GENETIC ENGINEERING" OR ANY OTHER DERIVATIVE OF  
48 THOSE WORDS, THE INITIALS "GE", "GM", "GMO", OR A DERIVATIVE OF THOSE  
49 PHRASES.

50 (B) THIS SECTION SHALL NOT BE CONSTRUED TO REQUIRE EITHER THE LISTING  
51 OR IDENTIFICATION OF ANY INGREDIENTS THAT WERE GENETICALLY ENGINEERED,  
52 NOR THAT THE PHRASE "PRODUCED WITH GENETIC ENGINEERING" OR ANY OTHER  
53 DERIVATIVE OF THOSE WORDS, THE INITIALS "GE", "GM", "GMO", OR A DERIVA-  
54 TIVE OF THOSE PHRASES BE PLACED IMMEDIATELY PRECEDING ANY COMMON NAME OR  
55 PRIMARY PRODUCT DESCRIPTOR OF A FOOD.

1 (C) ANY PROCESSED FOOD THAT WOULD BE SUBJECT TO THIS SECTION SOLELY  
2 BECAUSE IT INCLUDES ONE OR MORE MATERIALS PRODUCED WITH GENETIC ENGI-  
3 NEERING IS NOT MISBRANDED PROVIDED THAT THE GENETICALLY ENGINEERED MATE-  
4 RIALS IN THE AGGREGATE DO NOT ACCOUNT FOR MORE THAN NINE-TENTHS OF ONE  
5 PERCENT OF THE TOTAL WEIGHT OF THE PROCESSED FOOD.

6 (D) THIS SUBDIVISION DOES NOT APPLY TO ANY OF THE FOLLOWING:

7 (I) FOOD CONSISTING ENTIRELY OF, OR DERIVED ENTIRELY FROM, AN ANIMAL  
8 THAT HAS NOT ITSELF BEEN PRODUCED WITH GENETIC ENGINEERING, REGARDLESS  
9 OF WHETHER THE ANIMAL HAS BEEN FED WITH ANY FOOD PRODUCED WITH GENETIC  
10 ENGINEERING OR TREATED WITH ANY DRUG OR VACCINE THAT HAS BEEN PRODUCED  
11 WITH GENETIC ENGINEERING;

12 (II) A RAW AGRICULTURAL COMMODITY, PROCESSED FOOD, OR SEED THAT HAS  
13 BEEN GROWN, RAISED, PRODUCED, OR DERIVED WITHOUT THE KNOWING AND INTEN-  
14 TIONAL USE OF GENETICALLY ENGINEERED SEED OR FOOD. TO BE INCLUDED WITHIN  
15 THE EXCLUSION UNDER THIS PARAGRAPH, THE PERSON OR ENTITY RESPONSIBLE FOR  
16 COMPLYING WITH THIS SUBDIVISION WITH RESPECT TO A RAW AGRICULTURAL  
17 COMMODITY, PROCESSED FOOD, SEED, OR SEED STOCK MUST OBTAIN, FROM WHOMEV-  
18 ER SOLD THE RAW AGRICULTURAL COMMODITY, PROCESSED FOOD, SEED, OR SEED  
19 STOCK TO THAT PERSON, A WRITTEN STATEMENT, WHICH MAY BE INCLUDED ON AN  
20 INVOICE THAT MAY BE IN AN ELECTRONIC FORM, THAT THE RAW AGRICULTURAL  
21 COMMODITY, PROCESSED FOOD, SEED, OR SEED STOCK: (1) HAS NOT BEEN KNOW-  
22 INGLY OR INTENTIONALLY PRODUCED WITH GENETIC ENGINEERING; AND (2) HAS  
23 BEEN SEGREGATED FROM, AND HAS NOT BEEN KNOWINGLY OR INTENTIONALLY  
24 COMMINGLED WITH FOODS OR SEEDS THAT MAY HAVE BEEN PRODUCED WITH GENETIC  
25 ENGINEERING;

26 (III) ANY PROCESSED FOOD THAT WOULD BE SUBJECT TO THIS SECTION SOLELY  
27 BECAUSE ONE OR MORE OF THE PROCESSING AIDS OR ENZYMES USED IN ITS  
28 PRODUCTION WERE PRODUCED WITH OR DERIVED FROM GENETIC ENGINEERING;

29 (IV) ANY ALCOHOLIC BEVERAGE THAT IS SUBJECT TO REGULATION BY THE ALCO-  
30 HOLIC BEVERAGE CONTROL LAW;

31 (V) FOOD THAT HAS BEEN LAWFULLY CERTIFIED TO BE LABELED, MARKETED, AND  
32 OFFERED FOR SALE AS "ORGANIC" PURSUANT TO THE FEDERAL ORGANIC FOODS  
33 PRODUCTION ACT OF 1990, 7 U.S.C. 6501, ET SEQ. AS AMENDED FROM TIME TO  
34 TIME, AND THE NATIONAL ORGANIC PROGRAM REGULATIONS PROMULGATED PURSUANT  
35 THERETO BY THE UNITED STATES DEPARTMENT OF AGRICULTURE;

36 (VI) FOOD THAT IS NOT PACKAGED FOR SALE AND THAT EITHER: (I) IS A  
37 PROCESSED FOOD PREPARED AND INTENDED FOR IMMEDIATE HUMAN CONSUMPTION OR  
38 (II) IS SERVED, SOLD, OR OTHERWISE PROVIDED IN ANY RESTAURANT, FOOD  
39 FACILITY, OR FOOD RETAILER THAT IS ENGAGED IN THE SALE OF FOOD PREPARED  
40 AND INTENDED FOR IMMEDIATE HUMAN CONSUMPTION; OR

41 (VII) MEDICAL FOOD.

42 3. VIOLATION. ANY PERSON OR ENTITY WHO VIOLATES THE REQUIREMENTS OF  
43 THIS SECTION SHALL BE LIABLE FOR A CIVIL PENALTY OF NOT MORE THAN ONE  
44 THOUSAND DOLLARS, PER DAY, PER STOCK-KEEPING UNIT, PROVIDED HOWEVER THAT  
45 NO LIABILITY SHALL ARISE UNDER THIS SECTION UNTIL AFTER SAID PERSON OR  
46 ENTITY IS GIVEN FORMAL NOTICE OF THE VIOLATION.

47 4. NOTICE OF VIOLATION. IN ANY CASE WHERE THERE HAS BEEN A FINAL  
48 DETERMINATION BY THE DEPARTMENT, OF A VIOLATION OF ANY OF THE PROVISIONS  
49 OF THIS SECTION, THE DEPARTMENT SHALL MAKE AVAILABLE TO THE PUBLIC,  
50 WITHOUT CHARGE, THE FOLLOWING INFORMATION:

51 (A) THE NAME AND BUSINESS ADDRESS OF THE VIOLATOR;

52 (B) THE DATE OR DATES OF INSPECTION OF THE VIOLATOR'S PREMISES BY THE  
53 DEPARTMENT;

54 (C) THE VIOLATION THAT WAS DETERMINED TO HAVE OCCURRED, INCLUDING THE  
55 NAME OF THE PRODUCT; AND

56 (D) THE AMOUNT OF THE PENALTY THAT WAS ASSESSED BY THE DEPARTMENT.

1 5. THIRD-PARTY PROTECTION; RELIANCE ON WRITTEN STATEMENT. A DISTRIBUTOR OR RETAILER THAT SELLS A RAW AGRICULTURAL COMMODITY, PROCESSED FOOD, SEED, OR SEED STOCK THAT HAS BEEN PRODUCED WITH GENETIC ENGINEERING THAT FAILS TO MAKE THE DISCLOSURE REQUIRED PURSUANT TO SUBDIVISION TWO OF THIS SECTION, IS NOT SUBJECT TO FINANCIAL LIABILITY IN ANY CIVIL ACTION TO ENFORCE THIS SECTION IF THE DISTRIBUTOR OR RETAILER RELIED ON THE WRITTEN STATEMENT OBTAINED UNDER SUBDIVISION TWO OF THIS SECTION PROVIDED BY THE MANUFACTURER STATING THAT THE RAW AGRICULTURAL COMMODITY, PROCESSED FOOD, SEED, OR SEED STOCK IS NOT SUBJECT TO THE DISCLOSURE REQUIREMENTS UNDER THIS SECTION.

11 S 3. Section 198 of the agriculture and markets law is amended by adding a new subdivision 12 to read as follows:

12 12. THE TERM: (A) "DISTRIBUTOR" MEANS A PERSON OR BUSINESS ENGAGED IN ANY METHOD OF DISTRIBUTING OR TRANSPORTING A FOOD OR FOOD PRODUCT FROM ONE PLACE TO ANOTHER.

16 (B) "ENZYME" MEANS A PROTEIN THAT CATALYZES CHEMICAL REACTIONS OF OTHER SUBSTANCES WITHOUT ITSELF BEING DESTROYED OR ALTERED UPON COMPLETION OF THE REACTIONS.

19 (C) "GENETICALLY ENGINEERED," OR "GENETICALLY MODIFIED," OR ANY DERIVATIVE OF THOSE WORDS, AS APPLIED TO ANY FOOD FOR HUMAN CONSUMPTION OR SEED MEANS PRODUCED FROM OR WITH AN ORGANISM OR ORGANISMS WITH GENETICS ALTERED MATERIALLY THROUGH THE APPLICATION OF:

23 (I) IN VITRO NUCLEIC ACID TECHNIQUES, INCLUDING BUT NOT LIMITED TO RECOMBINANT DEOXYRIBONUCLEIC ACID (DNA) TECHNIQUES AND THE DIRECT INJECTION OF NUCLEIC ACID INTO CELLS OR ORGANELLES; OR

26 (II) THE FUSION OF CELLS BEYOND THE TAXONOMIC FAMILY THAT OVERCOMES NATURAL PHYSIOLOGICAL, REPRODUCTIVE, OR RECOMBINANT BARRIERS AND THAT ARE NOT TECHNIQUES USED IN TRADITIONAL BREEDING AND SELECTION.

29 FOR PURPOSES OF SUBPARAGRAPH (I) OF THIS PARAGRAPH, "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.

35 (D) "MANUFACTURER" MEANS A PERSON OR BUSINESS ENGAGED IN THE PRODUCTION OR PROCESSING OF SEED, SEED STOCK, OR ANY FOOD PRODUCT.

37 (E) "MEDICAL FOOD" MEANS A FOOD THAT IS FORMULATED TO BE CONSUMED OR ADMINISTERED ENTERALLY UNDER THE SUPERVISION OF A PHYSICIAN AND THAT 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.

42 (F) "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.

46 (G) "PROCESSING AID" MEANS:

47 (I) 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 FINISHED FORM;

50 (II) 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 NATURALLY FOUND IN THE FOOD; OR

54 (III) A SUBSTANCE THAT IS ADDED TO A FOOD FOR ITS TECHNICAL OR FUNCTIONAL EFFECT IN THE PROCESSING BUT IS PRESENT IN THE FINISHED FOOD AT

1 INSIGNIFICANT LEVELS AND DOES NOT HAVE ANY TECHNICAL OR FUNCTIONAL  
2 EFFECT IN THAT FINISHED FOOD.

3 (H) FOR THE PURPOSES OF PARAGRAPH (E) OF SUBDIVISION FIFTEEN OF  
4 SECTION TWO HUNDRED ONE OF THIS ARTICLE, "STOCK-KEEPING UNIT" SHALL MEAN  
5 ALL OF A GROUP OF FOOD ITEMS OF THE SAME BRAND, QUANTITY OF CONTENTS,  
6 RETAIL PRICE, AND VARIETY.

7 (I) "RAW AGRICULTURAL COMMODITY" MEANS ANY PLANT, ANIMAL, OR FUNGI  
8 GROWN OR PRODUCED FOR HUMAN FOOD-USE PURPOSES.

9 (J) "RETAILER" MEANS A PERSON OR BUSINESS ENGAGED IN SELLING FOOD FROM  
10 INDIVIDUALS OR BUSINESSES TO THE END-USER.

11 S 4. Section 201 of the agriculture and markets law is amended by  
12 adding a new subdivision 15 to read as follows:

13 15. (A) ANY FOOD FOR HUMAN CONSUMPTION, SEED, OR SEED STOCK OFFERED  
14 FOR RETAIL SALE IN NEW YORK IS MISBRANDED IF IT IS ENTIRELY GENETICALLY  
15 ENGINEERED OR PARTIALLY PRODUCED WITH GENETIC ENGINEERING AND THAT FACT  
16 IS NOT DISCLOSED AS FOLLOWS:

17 (I) IN THE CASE OF A RAW AGRICULTURAL COMMODITY THAT IS NOT SEPARATELY  
18 PACKAGED OR LABELED, THE WORDS "PRODUCED WITH GENETIC ENGINEERING" OR  
19 ANY OTHER DERIVATIVE OF THOSE WORDS, THE INITIALS "GE", "GM", OR "GMO",  
20 OR A DERIVATIVE OF THOSE PHRASES, SHALL BE PLACED ON THE CONTAINER USED  
21 FOR PACKAGING, HOLDING, AND/OR TRANSPORT IN A CLEAR AND CONSPICUOUS  
22 MANNER BY THE MANUFACTURER, AND MAINTAINED BY THE DISTRIBUTOR, AND  
23 DISPLAYED IN A CLEAR AND CONSPICUOUS MANNER ON THE RETAIL SHELF OR BIN  
24 IN WHICH SUCH COMMODITY IS OFFERED FOR SALE BY THE RETAILER.

25 (II) IN THE CASE OF A RAW AGRICULTURAL COMMODITY THAT IS SEPARATELY  
26 PACKAGED OR PROCESSED FOOD CONTAINING SOME PRODUCTS OF GENETIC ENGINEER-  
27 ING, THE MANUFACTURER MUST LABEL THE FOOD, IN A CLEAR AND CONSPICUOUS  
28 MANNER ON THE PACKAGE OF SUCH FOOD, WITH THE WORDS "PRODUCED WITH GENET-  
29 IC ENGINEERING" OR ANY OTHER DERIVATIVE OF THOSE WORDS, THE INITIALS  
30 "GE", "GM", "GMO", OR A DERIVATIVE OF THOSE PHRASES.

31 (III) IN THE CASE OF ANY SEED OR SEED STOCK, THE MANUFACTURER OR OTHER  
32 ENTITY RESPONSIBLE FOR PRODUCING THE SEED MUST LABEL THE SEED OR SEED  
33 STOCK CONTAINER, THE SALES RECEIPT, AND ANY OTHER REFERENCE TO IDENTIFI-  
34 CATION, OWNERSHIP, OR POSSESSION, IN A CLEAR AND CONSPICUOUS MANNER WITH  
35 THE WORDS "PRODUCED WITH GENETIC ENGINEERING" OR ANY OTHER DERIVATIVE OF  
36 THOSE WORDS, THE INITIALS "GE", "GM", "GMO", OR A DERIVATIVE OF THOSE  
37 PHRASES.

38 (B) THIS SUBDIVISION SHALL NOT BE CONSTRUED TO REQUIRE EITHER THE  
39 LISTING OR IDENTIFICATION OF ANY INGREDIENTS THAT WERE GENETICALLY ENGI-  
40 NEERED, NOR THAT THE PHRASE "PRODUCED WITH GENETIC ENGINEERING" OR ANY  
41 OTHER DERIVATIVE OF THOSE WORDS, THE INITIALS "GE", "GM", "GMO", OR A  
42 DERIVATIVE OF THOSE PHRASES BE PLACED IMMEDIATELY PRECEDING ANY COMMON  
43 NAME OR PRIMARY PRODUCT DESCRIPTOR OF A FOOD.

44 (C) ANY PROCESSED FOOD THAT WOULD BE SUBJECT TO THIS SECTION SOLELY  
45 BECAUSE IT INCLUDES ONE OR MORE MATERIALS PRODUCED WITH GENETIC ENGI-  
46 NEERING IS NOT MISBRANDED PROVIDED THAT THE GENETICALLY ENGINEERED MATE-  
47 RIALS IN THE AGGREGATE DO NOT ACCOUNT FOR MORE THAN NINE-TENTHS OF ONE  
48 PERCENT OF THE TOTAL WEIGHT OF THE PROCESSED FOOD.

49 (D) THIS SUBDIVISION DOES NOT APPLY TO ANY OF THE FOLLOWING:

50 (I) FOOD CONSISTING ENTIRELY OF, OR DERIVED ENTIRELY FROM, AN ANIMAL  
51 THAT HAS NOT ITSELF BEEN PRODUCED WITH GENETIC ENGINEERING, REGARDLESS  
52 OF WHETHER THE ANIMAL HAS BEEN FED WITH ANY FOOD PRODUCED WITH GENETIC  
53 ENGINEERING OR TREATED WITH ANY DRUG OR VACCINE THAT HAS BEEN PRODUCED  
54 WITH GENETIC ENGINEERING;

55 (II) A RAW AGRICULTURAL COMMODITY, PROCESSED FOOD, OR SEED THAT HAS  
56 BEEN GROWN, RAISED, PRODUCED, OR DERIVED WITHOUT THE KNOWING AND INTEN-

1 TIONAL USE OF GENETICALLY ENGINEERED SEED OR FOOD. TO BE INCLUDED WITHIN  
2 THE EXCLUSION UNDER THIS PARAGRAPH, THE PERSON OR ENTITY RESPONSIBLE FOR  
3 COMPLYING WITH PARAGRAPH (A) OF THIS SUBDIVISION WITH RESPECT TO A RAW  
4 AGRICULTURAL COMMODITY, PROCESSED FOOD, SEED, OR SEED STOCK MUST OBTAIN,  
5 FROM WHOMEVER SOLD THE RAW AGRICULTURAL COMMODITY, PROCESSED FOOD, SEED,  
6 OR SEED STOCK MUST OBTAIN, FROM WHOMEVER SOLD THE RAW AGRICULTURAL  
7 COMMODITY, PROCESSED FOOD, SEED, OR SEED STOCK TO THAT PERSON, A WRITTEN  
8 STATEMENT, WHICH MAY BE INCLUDED ON AN INVOICE THAT MAY BE IN AN ELEC-  
9 TRONIC FORM, THAT THE RAW AGRICULTURAL COMMODITY, PROCESSED FOOD, SEED,  
10 OR SEED STOCK: (1) HAS NOT BEEN KNOWINGLY OR INTENTIONALLY PRODUCED WITH  
11 GENETIC ENGINEERING; AND (2) HAS BEEN SEGREGATED FROM, AND HAS NOT BEEN  
12 KNOWINGLY OR INTENTIONALLY COMMINGLED WITH FOODS OR SEEDS THAT MAY HAVE  
13 BEEN PRODUCED WITH GENETIC ENGINEERING;

14 (III) ANY PROCESSED FOOD THAT WOULD BE SUBJECT TO THIS SUBDIVISION  
15 SOLELY BECAUSE ONE OR MORE OF THE PROCESSING AIDS OR ENZYMES USED IN ITS  
16 PRODUCTION WERE PRODUCED WITH OR DERIVED FROM GENETIC ENGINEERING;

17 (IV) ANY ALCOHOLIC BEVERAGE THAT IS SUBJECT TO REGULATION BY THE ALCO-  
18 HOLIC BEVERAGE CONTROL LAW;

19 (V) FOOD THAT HAS BEEN LAWFULLY CERTIFIED TO BE LABELED, MARKETED, AND  
20 OFFERED FOR SALE AS "ORGANIC" PURSUANT TO THE FEDERAL ORGANIC FOODS  
21 PRODUCTION ACT OF 1990, 7 U.S.C. 6501, ET SEQ. AS AMENDED FROM TIME TO  
22 TIME, AND THE NATIONAL ORGANIC PROGRAM REGULATIONS PROMULGATED PURSUANT  
23 THERETO BY THE UNITED STATES DEPARTMENT OF AGRICULTURE;

24 (VI) FOOD THAT IS NOT PACKAGED FOR SALE AND THAT EITHER: (I) IS A  
25 PROCESSED FOOD PREPARED AND INTENDED FOR IMMEDIATE HUMAN CONSUMPTION OR  
26 (II) IS SERVED, SOLD, OR OTHERWISE PROVIDED IN ANY RESTAURANT, FOOD  
27 FACILITY, OR FOOD RETAILER THAT IS ENGAGED IN THE SALE OF FOOD PREPARED  
28 AND INTENDED FOR IMMEDIATE HUMAN CONSUMPTION; OR

29 (VII) MEDICAL FOOD.

30 (E) ANY PERSON OR ENTITY WHO VIOLATES THE REQUIREMENTS OF THIS SECTION  
31 SHALL BE LIABLE FOR A CIVIL PENALTY OF NOT MORE THAN ONE THOUSAND  
32 DOLLARS, PER DAY, PER STOCK-KEEPING UNIT, PROVIDED HOWEVER THAT NO  
33 LIABILITY SHALL ARISE UNDER THIS SECTION UNTIL AFTER SAID PERSON OR  
34 ENTITY IS GIVEN FORMAL NOTICE OF THE VIOLATION.

35 (F) IN ANY CASE WHERE THERE HAS BEEN A FINAL DETERMINATION BY THE  
36 DEPARTMENT, OF A VIOLATION OF ANY OF THE PROVISIONS OF THIS SUBDIVISION,  
37 THE DEPARTMENT SHALL MAKE AVAILABLE TO THE PUBLIC, WITHOUT CHARGE, THE  
38 FOLLOWING INFORMATION:

39 (I) THE NAME AND BUSINESS ADDRESS OF THE VIOLATOR;

40 (II) THE DATE OR DATES OF INSPECTION OF THE VIOLATOR'S PREMISES BY THE  
41 DEPARTMENT;

42 (III) THE VIOLATION THAT WAS DETERMINED TO HAVE OCCURRED, INCLUDING  
43 THE NAME OF THE PRODUCT; AND

44 (IV) THE AMOUNT OF THE PENALTY THAT WAS ASSESSED BY THE DEPARTMENT.

45 (G) A DISTRIBUTOR OR RETAILER THAT SELLS A RAW AGRICULTURAL COMMODITY,  
46 PROCESSED FOOD, SEED, OR SEED STOCK THAT HAS BEEN PRODUCED WITH GENETIC  
47 ENGINEERING THAT FAILS TO MAKE THE DISCLOSURE REQUIRED PURSUANT TO  
48 SECTION THREE HUNDRED NINETY-ONE-U OF THE GENERAL BUSINESS LAW, IS NOT  
49 SUBJECT TO FINANCIAL LIABILITY IN ANY CIVIL ACTION TO ENFORCE THIS  
50 SECTION IF THE DISTRIBUTOR OR RETAILER RELIED ON THE WRITTEN STATEMENT  
51 OBTAINED UNDER SUBDIVISION TWO OF SECTION THREE HUNDRED NINETY-ONE-U OF  
52 THE GENERAL BUSINESS LAW PROVIDED BY THE MANUFACTURER STATING THAT THE  
53 RAW AGRICULTURAL COMMODITY, PROCESSED FOOD, SEED, OR SEED STOCK IS NOT  
54 SUBJECT TO THE DISCLOSURE REQUIREMENTS UNDER SUCH SECTION.

55 S 5. Severability clause. If any provision of this act or its applica-  
56 tion to any person, legal entity, or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other  
2 persons, legal entity or circumstances shall not be affected.

3 S 6. This act shall take effect twenty-four months after it shall have  
4 become a law; provided, however, that effective immediately, the depart-  
5 ment of agriculture and markets shall adopt any rules and regulations  
6 necessary to implement this act, including, but not limited to, creating  
7 and maintaining a list, which shall be made available to the public at  
8 no cost, of raw agricultural commodities that are produced with genetic  
9 engineering; provided, further, that the department of agriculture and  
10 markets is not authorized to create any exemptions beyond those provided  
11 for in paragraph (d) of subdivision 2 of section 391-u of the general  
12 business law as added by section two of this act and paragraph (d) of  
13 subdivision 15 of section 201 of the agriculture and markets law as  
14 added by section four of this act; this act shall remain in effect until  
15 such time as a comprehensive federal system requiring mandatory labeling  
16 of raw agricultural commodities, processed foods, seed, and seed stock  
17 produced with genetic engineering is implemented, provided however that  
18 nothing contained herein shall prevent the state from exercising any  
19 concurrent authority authorized by federal law; provided that the  
20 commissioner of agriculture and markets shall notify the legislative  
21 bill drafting commission upon the occurrence of the enactment of a  
22 comprehensive federal system requiring mandatory labeling of raw agri-  
23 cultural commodities, processed foods, seed, and seed stock produced  
24 with genetic engineering in order that the commission may maintain an  
25 accurate and timely effective data base of the official text of the laws  
26 of the state of New York in furtherance of effectuating the provisions  
27 of section 44 of the legislative law and section 70-b of the public  
28 officers law.