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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-SEVENTH SESSION

H. F. No. 3

08/24/2012 Authored by Clark
The bill was read for the first time

1.1 A bill for an act
1.2 relating to food safety; regulating genetically engineered food; amending
1.3 Minnesota Statutes 2010, section 34A.03, as added; proposing coding for new
1.4 law in Minnesota Statutes, chapter 31.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. **[31.98] DEFINITIONS.**

1.7 Subdivision 1. **Applicability.** For the purposes of sections 31.98 to 31.982, the
1.8 following terms have the meanings given.

1.9 Subd. 2. **Enzyme.** "Enzyme" means a protein that catalyzes chemical reactions
1.10 of other substances without itself being destroyed or altered upon completion of such
1.11 reactions.

1.12 Subd. 3. **Genetically engineering.** "Genetically engineering" means any food or
1.13 food ingredient that is produced from an organism or organisms in which the genetic
1.14 material was changed through the application of:

1.15 (1) in vitro nucleic acid techniques, including recombinant deoxyribonucleic acid
1.16 (DNA) techniques and the direct injection of nucleic acid into cells or organelles; or

1.17 (2) fusion of cells, including protoplast fusion or hybridization techniques that
1.18 overcome natural physiological, reproductive, or recombination barriers, where the donor
1.19 cells or protoplasts do not fall within the same taxonomic family, in a way that does not
1.20 occur by natural multiplication or natural recombination.

1.21 Subd. 4. **In vitro nucleic acid techniques.** "In vitro nucleic acid techniques" means
1.22 techniques, including, but not limited to, recombinant DNA or ribonucleic acid (RNA)
1.23 techniques, that use vector systems and techniques involving the direct introduction

2.1 into the organisms of hereditary materials prepared outside the organisms such as
 2.2 microinjection, chemoporation, electroporation, microencapsulation, and liposome fusion.

2.3 Subd. 5. **Organism.** "Organism" means any biological entity capable of replication,
 2.4 reproduction, or transferring genetic material.

2.5 Subd. 6. **Processed food.** "Processed food" means any food other than a
 2.6 raw agricultural commodity and includes any food produced from a raw agricultural
 2.7 commodity that was processed through canning, smoking, pressing, cooking, freezing,
 2.8 dehydration, fermentation, or milling.

2.9 Subd. 7. **Processing aid.** "Processing aid" means:

2.10 (1) a substance that is added to a food during the processing of such food but that is
 2.11 removed in some manner from the food before the food is packaged in a finished form;

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

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

2.18 Subd. 8. **Raw agricultural commodity.** "Raw agricultural commodity" means any
 2.19 food in its raw or natural state, including any fruit that is washed, colored, or otherwise
 2.20 treated in its unpeeled natural form prior to marketing.

2.21 Sec. 2. **[31.981] DISCLOSURE WITH RESPECT TO GENETICALLY**
 2.22 **ENGINEERED FOOD.**

2.23 (a) On and after July 1, 2014, any food or food ingredient offered for retail sale in
 2.24 this state is misbranded if it is entirely or partially produced with genetic engineering
 2.25 and such fact is not disclosed, as follows:

2.26 (1) in the case of a raw agricultural commodity, on the package offered for retail
 2.27 sale, with the clear and conspicuous words "genetically engineered" on the front of the
 2.28 package of such commodity, or in the case of any such commodity that is not separately
 2.29 packaged or labeled, on a label that appears on the retail store shelf or bin in which such
 2.30 commodity is displayed for sale; or

2.31 (2) in the case of any processed food, in clear and conspicuous language on the front
 2.32 or back of the package of such food, with the words "partially produced with genetic
 2.33 engineering" or "may be partially produced with genetic engineering."

2.34 (b) The requirements of paragraph (a) do not apply to the foods listed in clauses (1)
 2.35 to (9). A person is not required to list or identify any ingredient or ingredients in the foods

3.1 listed in clauses (1) to (9) that were genetically engineered, nor is a person required to
3.2 place the term "genetically engineered" immediately preceding any common name or
3.3 primary product descriptor of the food listed in clauses (1) to (9):

3.4 (1) food consisting entirely of, or derived entirely from, an animal that has not itself
3.5 been produced with genetic engineering, regardless of whether such animal was fed or
3.6 injected with any food or drug produced with genetic engineering;

3.7 (2) a raw agricultural commodity or food derived therefrom that was grown, raised,
3.8 or produced without the knowing and intentional use of food or seed produced with genetic
3.9 engineering, provided any person otherwise required to comply with the provisions of this
3.10 section obtains a sworn statement from whoever sold the commodity or food to the person
3.11 that such commodity or food was not knowingly or intentionally produced with genetic
3.12 engineering; and has been segregated from, and was not knowingly or intentionally
3.13 commingled with, food that may have been produced with genetic engineering at any
3.14 time. In providing such a sworn statement, a person may rely on a sworn statement from
3.15 the person's own supplier that contains the affirmation set forth in the previous sentence;

3.16 (3) any processed food that would be subject to paragraph (a) solely because it
3.17 includes one or more processing aids or enzymes produced with genetic engineering;

3.18 (4) any alcoholic beverage subject to chapter 340A;

3.19 (5) until July 1, 2019, any processed food that would be subject to the provisions of
3.20 paragraph (a) solely because such processed food includes one or more ingredients that
3.21 have been produced with genetic engineering, provided:

3.22 (i) no single such ingredient accounts for more than one-half of one percent of the
3.23 total weight of such processed food; and

3.24 (ii) the processed food does not contain more than ten such ingredients;

3.25 (6) food that an independent organization has determined was not knowingly and
3.26 intentionally produced from or commingled with food or seed produced with genetic
3.27 engineering, provided such determination is made pursuant to a sampling and testing
3.28 procedure approved in rules adopted by the commissioner. The commissioner shall not
3.29 approve a sampling procedure under this section unless such sampling is performed
3.30 according to a statistically valid sampling plan consistent with principles recommended
3.31 by internationally recognized sources such as the International Standards Organization
3.32 (ISO) and the Grain and Feed Trade Association (GAFTA). The commissioner shall not
3.33 approve a testing procedure under this section unless it:

3.34 (i) is consistent with the most recent "Guidelines on Performance Criteria and
3.35 Validation of Methods for Detection, Identification and Quantification of Specific DNA

4.1 Sequences and Specific Proteins in Foods, (CAC/GL 74 (2010))" published by the Codex
 4.2 Alimentarius Commission; and

4.3 (ii) does not rely on testing of processed foods in which no DNA is detectable;

4.4 (7) food that has been lawfully certified to be labeled, marketed, and offered for sale
 4.5 as organic pursuant to the federal Organic Food Products Act of 1990 and the regulations
 4.6 promulgated thereto by the United States Department of Agriculture;

4.7 (8) food that is not packaged for retail sale and that either is a processed food
 4.8 prepared and intended for immediate human consumption or is served, sold, or otherwise
 4.9 provided in any restaurant or other food establishment that is primarily engaged in the sale
 4.10 of food prepared and intended for immediate human consumption; and

4.11 (9) medical food.

4.12 **Sec. 3. [31.982] MISBRANDING OF GENETICALLY ENGINEERED FOODS**
 4.13 **AS NATURAL.**

4.14 In addition to the disclosure requirements in section 31.981, a genetically engineered
 4.15 food or food ingredient sold or offered for sale in Minnesota may not, on its label,
 4.16 accompanying signage in a retail establishment, or in any advertising or promotional
 4.17 materials, state or imply that the food is "natural," "naturally made," "naturally grown,"
 4.18 "all natural," or any words of similar import that would have any tendency to mislead a
 4.19 consumer. This section does not apply to items that are exempt from disclosure under
 4.20 section 31.981, paragraph (b).

4.21 **Sec. 4. Minnesota Statutes 2010, section 34A.03, as added by Laws 2012, chapter 244,**
 4.22 **article 2, section 26, is amended to read:**

4.23 **34A.03 MISBRANDING.**

4.24 (a) Food is misbranded if:

4.25 (1) its labeling is false or misleading in any particular, or its labeling, whether on
 4.26 the item itself, its container, or its package, fails to conform with the requirements of
 4.27 this chapter;

4.28 (2) it is offered for sale or distributed under the name of another food;

4.29 (3) it is an imitation of another food for which a definition and standard of identity
 4.30 have been prescribed by rules as provided by sections 31.10 and 31.102; or if it is an
 4.31 imitation of another food that is not subject to clause (5), unless in either case its label
 4.32 bears in type of uniform size and prominence the word "imitation" and immediately
 4.33 thereafter the name of the food imitated;

4.34 (4) its container is so made, formed, or filled as to be misleading;

5.1 (5) it purports to be or is represented as a food for which a definition and standard
5.2 of identity have been prescribed by rules as provided by sections 31.10, 31.102, and
5.3 31A.07, unless it conforms to that definition and standard, and its label bears the name
5.4 of the food specified in the definition and standard, and insofar as may be required by
5.5 the rules, the common names of optional ingredients, other than spices, flavoring, and
5.6 coloring, present in the food;

5.7 (6) it purports to be or is represented as:

5.8 (i) a food for which a standard of quality has been prescribed by rules as provided by
5.9 sections 31.10 and 31.102, and its quality falls below that standard unless its label bears in
5.10 a manner and form the rules specify, a statement that it falls below the standard; or

5.11 (ii) a food for which a standard or standards of fill of container have been prescribed
5.12 by rule as provided by sections 31.10, 31.102, and 31A.07, and it falls below the standard
5.13 of fill of container applicable thereto unless its label bears, in a manner and form the rules
5.14 specify, a statement that it falls below the standard;

5.15 (7) it is not subject to clause (5), unless it bears labeling clearly giving the common
5.16 or usual name of the food, if there is one, and in case it is fabricated from two or more
5.17 ingredients, the common or usual name of each ingredient, except that spices, flavorings,
5.18 and colorings, other than those sold as such, may be designated as spices, flavorings, and
5.19 colorings, without naming each, provided that to the extent that compliance with the
5.20 requirements of this clause is impractical or results in deception or unfair competition,
5.21 exemptions must be established by rules promulgated by the commissioner;

5.22 (8) it purports to be or is represented for special dietary uses, unless its label
5.23 bears information concerning its vitamin, mineral, and other dietary properties as the
5.24 commissioner determines to be, and by rules prescribed as, necessary in order to fully
5.25 inform purchasers as to its value for those uses;

5.26 (9) it bears or contains any artificial flavoring, artificial coloring, or chemical
5.27 preservative, unless it bears labeling stating that fact; provided that, to the extent that
5.28 compliance with the requirements of this clause is impracticable, exemptions must be
5.29 established by rules promulgated by the commissioner. The provisions of this clause and
5.30 clauses (5) and (7) with respect to artificial coloring do not apply to butter, cheese, or ice
5.31 cream. The provisions with respect to chemical preservatives do not apply to a pesticide
5.32 when used in or on a raw agricultural commodity which is the product of the soil;

5.33 (10) it is a product intended as an ingredient of another food and when used
5.34 according to the directions of the purveyor will result in the final food product being
5.35 adulterated or misbranded;

6.1 (11) it is a color additive unless its packaging and labeling are in conformity with
6.2 such packaging and labeling requirements applicable to the color additive prescribed
6.3 under the provisions of the federal act;

6.4 (12) it is food subject to section 31.101, subdivision 10, or chapter 31A, that fails to
6.5 bear, directly or on its container, as the commissioner by rule prescribes, the inspection
6.6 legend and other information the commissioner may require by rule to ensure that it
6.7 will not have false or misleading labeling, and that the public will be told how to keep
6.8 the article wholesome; ~~or~~

6.9 (13) its labeling would deceive or mislead the purchaser with respect to its
6.10 composition or suitability; or

6.11 (14) it is a genetically engineered food or food ingredient that is not labeled in
6.12 accordance with section 31.981 or 31.982.

6.13 (b) Food is also misbranded if it is a raw agricultural commodity which is the
6.14 product of the soil, bearing or containing a pesticide applied after harvest, unless the
6.15 shipping container of that commodity bears labeling which declares the presence of the
6.16 chemical in or on the commodity and the common or usual name and the function of the
6.17 chemical. No such declaration is required while the commodity, having been removed
6.18 from the shipping container, is being held or displayed for sale at retail out of the container
6.19 in accordance with the custom of the trade.

6.20 Sec. 5. **SEVERABILITY.**

6.21 If any provision of this act or its application to any person or circumstance is held
6.22 invalid or in violation of the Constitution or laws of the United States, the invalidity or the
6.23 violation shall not affect other provisions of this section which can be given effect without
6.24 the invalid provision or application, and to this end, the provisions of this act are severable.

6.25 Sec. 6. **EFFECTIVE DATE.**

6.26 Sections 1 to 5 are effective the day following final enactment.