HOUSE BILL 903

By: Delegates Glass, Dwyer, Ivey, Kipke, Morhaim, and Pena–Melnyk
Introduced and read first time: February 7, 2013
Assigned to: Health and Government Operations

A BILL ENTITLED

AN ACT concerning

Genetically Engineered Food – Disclosure and Labeling Requirements

FOR the purpose of establishing that certain foods offered for retail sale in the State and produced with genetic engineering are misbranded if certain disclosure or labeling requirements are not met; establishing that certain requirements of this Act do not apply to certain foods, commodities, and beverages; establishing that certain commodities or foods shall be deemed to have been grown, raised, or produced in a certain manner under certain circumstances; prohibiting the Department of Health and Mental Hygiene from approving a certain procedure for sampling and testing food for a certain purpose unless the procedure meets certain requirements; defining certain terms; and generally relating to disclosure and labeling requirements for genetically engineered food offered for retail sale in the State.

BY adding to

Article – Health – General
Section 21–210
Annotated Code of Maryland
(2009 Replacement Volume and 2012 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Health – General


(A) (1) In this section the following words have the meanings indicated.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW. [Brackets] indicate matter deleted from existing law.
(2) “Enzyme” means a protein that catalyzes chemical reactions of other substances without itself being destroyed or altered on completion of the reactions.

(3) “Farmer’s market” means a public market at which producers of raw agricultural commodities sell the products directly to the public.

(4) “Genetic engineering” means a food or food ingredient that is produced from an organism or organisms in which the genetic material has been changed through the application of:

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

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

(5) “In vitro nucleic acid techniques” means techniques, including recombinant DNA techniques 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 micro-injection, chemoporation, electroporation, micro-encapsulation and liposome fusion.

(6) “Organism” means any biological entity capable of replication, reproduction, or transferring of genetic material.

(7) (i) “Processed food” means any food other than a raw agricultural commodity.

   (ii) “Processed food” includes 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.

(8) “Processing aid” means a substance that:
(I) IS ADDED TO A FOOD DURING THE PROCESSING OF THE
FOOD BUT IS REMOVED IN SOME MANNER FROM THE FOOD BEFORE THE FOOD IS
PACKAGED IN FINISHED FORM;

(II) 1. IS ADDED TO A FOOD DURING THE PROCESSING
OF THE FOOD;

2. IS CONVERTED INTO CONSTITUENTS NORMALLY
PRESENT IN THE FOOD; AND

3. DOES NOT SIGNIFICANTLY INCREASE THE
AMOUNT OF THE CONSTITUENTS NATURALLY FOUND IN THE FOOD; OR

(III) IS ADDED TO A FOOD FOR ITS TECHNICAL OR
FUNCTIONAL EFFECT IN THE PROCESSING BUT IS PRESENT IN THE FINISHED
FOOD AT INSIGNIFICANT LEVELS AND DOES NOT HAVE ANY TECHNICAL OR
FUNCTIONAL EFFECT IN THE FINISHED FOOD.

(9) (I) “RAW AGRICULTURAL COMMODITY” MEANS ANY FOOD
IN ITS RAW OR NATURAL STATE.

(II) “RAW AGRICULTURAL COMMODITY” INCLUDES ANY
FRUIT THAT IS WASHED, COLORED, OR OTHERWISE TREATED IN ITS UNPEELED
NATURAL FORM BEFORE MARKETING.

(B) A FOOD OFFERED FOR RETAIL SALE IN THE STATE IS MISBRANDED
IF IT IS ENTIRELY OR PARTIALLY PRODUCED WITH GENETIC ENGINEERING AND
THAT FACT IS NOT DISCLOSED:

(1) IF THE FOOD IS A RAW AGRICULTURAL COMMODITY, WITH
THE CLEAR AND CONSPICUOUS WORDS “GENETICALLY ENGINEERED” ON THE
FRONT OF THE PACKAGE OF THE FOOD;

(2) IF THE FOOD IS A RAW AGRICULTURAL COMMODITY THAT IS
NOT SEPARATELY PACKAGED OR LABELED, WITH THE CLEAR AND CONSPICUOUS
WORDS “GENETICALLY ENGINEERED” ON A LABEL APPEARING ON THE STORE
SHELF OR BIN IN WHICH THE FOOD IS DISPLAYED FOR SALE; OR

(3) IF THE FOOD IS A PROCESSED FOOD, WITH THE CLEAR AND
CONSPICUOUS WORDS “PARTIALLY PRODUCED WITH GENETIC ENGINEERING”
OR “MAY BE PARTIALLY PRODUCED WITH GENETIC ENGINEERING” ON THE
FRONT OR BACK OF THE PACKAGE OF THE FOOD.
(C) A food offered for retail sale in the State is misbranded if it is produced with genetic engineering and its label, accompanying signage in a retail establishment, or any advertising or promotional material:

(1) States or implies that the food is “natural”, “naturally made”, “naturally grown”, or “all natural”; or

(2) Uses any words or terms similar to those listed in item (1) of this subsection that would tend to mislead a consumer.

(D) This section does not apply to:

(1) Food consisting 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 or drug produced with genetic engineering;

(2) A raw agricultural commodity or food derived from the raw agricultural commodity that:

   (I) Subject to subsection (E) of this section, has been grown, raised, or produced without the knowing and intentional use of food or seed produced with genetic engineering; or

   (II) Is offered for sale at a farmer’s market;

(3) Any processed food that would be subject to subsection (B) of this section solely because it includes one or more processing aids or enzymes produced with genetic engineering;

(4) Any alcoholic beverage regulated under Article 2B of the Code;

(5) Before July 1, 2019, any processed food that would be subject to subsection (B) of this section solely because it includes one or more ingredients that have been produced with genetic engineering if:

   (I) No single ingredient produced with genetic engineering accounts for more than one-half of 1% of the total weight of the processed food; and
(II) The processed food does not contain more than 10 ingredients that have been produced with genetic engineering;

(6) Food that an independent organization has determined has not been knowingly and intentionally produced from or commingled with food or seed produced with genetic engineering if the determination has been made under a sampling and testing procedure that meets the requirements of subsection (f) of this section and is approved in regulations adopted by the department;

(7) Food that has been lawfully certified to be labeled, marketed, and offered for sale as “organic” under the Federal Organic Food Products Act of 1990 and any regulations adopted under the Act by the United States Department of Agriculture;

(8) Food that:

(I) Is not packaged for retail sale; and

(II) 1. Is processed food prepared and intended for immediate human consumption; or

2. Is served, sold, or otherwise provided in restaurant or other food service facility that is primarily engaged in the sale of food prepared and intended for immediate human consumption; and

(9) Medical food, as defined in the Federal Orphan Drug Act.

(E) (1) A raw agricultural commodity or food derived from a raw agricultural commodity or food shall be deemed to have been grown, raised, or produced without the knowing and intentional use of food or seed produced with genetic engineering only if the person otherwise responsible for complying with the requirements of subsection (b) of this section obtains from the person who sold the commodity or food to that person a sworn statement that the commodity or food:

(I) Has not been knowingly or intentionally genetically produced with genetic engineering; and
(II) HAS BEEN SEGREGATED FROM, AND HAS NOT BEEN
KNOWINGLY OR INTENTIONALLY COMMINGLED, AT ANY TIME, WITH FOOD THAT
MAY HAVE BEEN PRODUCED WITH GENETIC ENGINEERING.

(2) IN PROVIDING A SWORN STATEMENT UNDER THIS
SUBSECTION, A PERSON MAY RELY ON A SWORN STATEMENT FROM THE
SUPPLIER THAT CONTAINS THE AFFIRMATION UNDER PARAGRAPH (1) OF THIS
SUBSECTION.

(F) THE DEPARTMENT MAY NOT APPROVE A PROCEDURE FOR
SAMPLING AND TESTING FOOD TO DETECT GENETIC ENGINEERING UNLESS:

(1) SAMPLING IS DONE ACCORDING TO A STATISTICIALLY VALID
SAMPLING PLAN CONSISTENT WITH PRINCIPLES RECOMMENDED BY
INTERNATIONALLY RECOGNIZED SOURCES, INCLUDING THE INTERNATIONAL
STANDARDS ORGANIZATION AND THE GRAIN AND FEED TRADE ASSOCIATION;

(2) THE PROCEDURE IS CONSISTENT WITH THE MOST RECENT
“GUIDELINES ON PERFORMANCE CRITERIA AND VALIDATION METHODS FOR
DETECTION, IDENTIFICATION AND QUALIFICATION OF SPECIFIC DNA
SEQUENCES AND SPECIFIC PROTEINS IN FOODS” PUBLISHED BY THE CODEX
ALIMENTARIUS COMMISSION; AND

(3) THE PROCEDURE DOES NOT RELY ON TESTING OF PROCESSED
FOODS IN WHICH NO DNA IS DETECTABLE.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
October 1, 2013.