

H. B. 2178

(By Delegates Manypenny and Guthrie)

[Introduced January 12, 2011; referred to the
Committee on Agriculture then Finance.]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §19-2H-1, §19-2H-2, §19-2H-3, §19-2H-4, §19-2H-5 and §19-2H-6, all relating to creating the "Genetically Engineered Food Right to Know Act"; making legislative findings; setting forth labeling requirements regarding the sale of foods containing genetically engineered materials and foods produced with genetically engineered materials; providing exceptions; requiring testing; providing civil penalties; providing for civil suits by the Commissioner of Agriculture and suits by citizens; defining terms; and providing rulemaking authority.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §19-2H-1, §19-2H-2, §19-2H-3, §19-2H-4, §19-2H-5 and §19-2H-6, all to read as follows:

1 ARTICLE 2H. GENETICALLY ENGINEERED FOOD RIGHT TO KNOW ACT.

2 §19-2H-1. Short title.

3 This article may be cited as the "Genetically Engineered Food
4 Right to Know Act."

5 §19-2H-2. Findings.

6 The Legislature finds as follows:

7 (1) The process of genetically engineering foods results in
8 the material change of such foods.

9 (2) The United States Congress has previously required that
10 all foods bear labels that reveal material facts to consumers.

11 (3) Federal agencies have failed to uphold congressional
12 intent by allowing genetically engineered foods to be marketed,
13 sold and otherwise used without labeling that reveals material
14 facts to the public.

15 (4) Consumers wish to know whether the food they purchase and
16 consume contains or is produced with a genetically engineered
17 material for a variety of reasons, including the potential transfer
18 of allergens into food and other health risks, concerns about
19 potential environmental risks associated with the genetic
20 engineering of crops, and religiously and ethically based dietary
21 restrictions.

22 (5) Consumers have a right to know whether the food they
23 purchase contains or was produced with genetically engineered
24 material.

1 (6) Labels voluntarily placed on foods are insufficient to
2 provide consumers with adequate information on whether or not all
3 the food they are purchasing contains or was produced with
4 genetically engineered material.

5 (7) Mandatory labeling provides a critical scientific method
6 necessary for the continual postmarket surveillance to study long-
7 term health impacts and enforcement of food safety laws preventing
8 adulterated foods from reaching consumers.

9 (8) Many of the United States' key trading partners, including
10 countries in the European Union, Japan, and the People's Republic
11 of China, have established, or are in the process of implementing,
12 mandatory labeling requirements for genetically engineered food.

13 (9) Adoption and implementation of mandatory labeling
14 requirements for genetically engineered food produced in this state
15 would facilitate international trade by allowing West Virginia
16 farmers and companies to export and appropriately market their
17 products, both genetically engineered and nongenetically
18 engineered, to foreign customers.

19 **§19-2H-3. Labeling regarding genetically engineered material.**

20 (a) No food may be sold in this state if it contains a
21 genetically engineered material, or was produced with a genetically
22 engineered material, unless it bears a label (or labeling, in the
23 case of a raw agricultural commodity, other than the sale of such
24 a commodity at retail) that provides notices in accordance with the

1 following:

2 (1) A notice as follows: "GENETICALLY ENGINEERED";

3 (2) A notice as follows: "THIS PRODUCT CONTAINS A GENETICALLY
4 ENGINEERED MATERIAL, OR WAS PRODUCED WITH A GENETICALLY ENGINEERED
5 MATERIAL";

6 (3) The notice required in subdivision (1) of this subsection
7 must immediately precede the notice required in subdivision (2) of
8 this subsection and must not be less than twice the size of the
9 notice required in subdivision (2).

10 (4) The notice required in subdivision (2) of this subsection
11 must be of the same size as would apply if the notice provided
12 nutrition information that is required by Section 403 of the
13 Federal Food, Drug and Cosmetic Act, 21 U.S.C. §343.

14 (5) The notices required in subdivisions (1) and (2) of this
15 subsection must be clearly legible and conspicuous.

16 (b) For purposes of subsection (a) of this section:

17 (1) The term "genetically engineered material" means material
18 derived from any part of a genetically engineered organism, without
19 regard to whether the altered molecular or cellular characteristics
20 of the organism are detectable in the material;

21 (2) The term "genetically engineered organism" means:

22 (A) An organism that has been altered at the molecular or
23 cellular level by means that are not possible under natural
24 conditions or processes (including, but not limited to, recombinant

1 DNA and RNA techniques, cell fusion, microencapsulation,
2 macroencapsulation, gene deletion and doubling, introducing a
3 foreign gene, and changing the positions of genes), other than a
4 means consisting exclusively of breeding, conjugation,
5 fermentation, hybridization, in vitro fertilization, tissue
6 culture, or mutagenesis; or

7 (B) An organism made through sexual or asexual reproduction
8 (or both) involving an organism described in paragraph (A) of this
9 subdivision, if possessing any of the altered molecular or cellular
10 characteristics of the organism so described.

11 (3) A food shall be considered to have been produced with a
12 genetically engineered material if:

13 (A) The organism from which the food is derived has been
14 injected or otherwise treated with a genetically engineered
15 material (except that the use of manure as a fertilizer for raw
16 agricultural commodities may not be construed to mean that such
17 commodities are produced with a genetically engineered material);

18 (B) The animal from which the food is derived has been fed
19 genetically engineered material; or

20 (C) The food contains an ingredient that is a food to which
21 paragraph (A) or (B) of this subdivision applies.

22 (c) This section does not apply to food that:

23 (1) Is served in restaurants or other establishments in which
24 food is served for immediate human consumption;

1 (2) Is processed and prepared primarily in a retail
2 establishment, is ready for human consumption, which is of the type
3 described in subdivision (1) of this subsection, and is offered for
4 sale to consumers but not for immediate human consumption in such
5 establishment and is not offered for sale outside such
6 establishment; or

7 (3) Is a medical food as defined in Section 5(b) of the
8 federal Orphan Drug Act.

9 (d) In the case of the transfer of food from manufacturers or
10 producers to distributors, and from distributors to other
11 distributors or to other persons in the chain of distribution,
12 including persons who hold food for sale to consumers, rules under
13 this section shall require periodic testing of foods by the
14 Commissioner of Agriculture for purposes of determining the
15 accuracy of labels under such paragraphs. Such rules shall require
16 the use of the best available technology for such testing, and
17 shall identify tests that meet such requirement. This subsection
18 and subsection (f) of this section do not apply to: (1) Foods that
19 are certified and comply with the federal Organic Foods Production
20 Act and its implementing rules; (2) foods produced with genetically
21 engineered material if the commissioner has not through such rules
22 identified a validated method of testing for such material in the
23 food; or (3) genetically engineered material contained in a food if
24 the commissioner has not through such rules identified a validated

1 method of testing for such material in the food.

2 (e) For purposes of this subsection and subsection (f) of this
3 section, a food with respect to which a test has been identified
4 under subsection (d) of this section shall not be considered to
5 contain a genetically engineered material if, as indicated by such
6 a test:

7 (1) The food does not contain any genetically engineered
8 material; or

9 (2) The food contains an adventitious genetically engineered
10 material and the amount of the material in the food is one percent
11 or less, except that a lower percentage designated by the
12 commissioner shall apply for purposes of this subsection if the
13 commissioner determines that a test identified under subsection (d)
14 of this section can detect a percentage lower than one percent.

15 (f) If it bears a label indicating that it does not contain a
16 genetically engineered material, or that it was not produced with
17 a genetically engineered material, unless the label is in
18 accordance with rules promulgated by the commissioner. With respect
19 to such rules:

20 (1) The rules may not require such a label to include any
21 statement indicating that the fact that a food does not contain
22 such material, or was not produced with such material, has no
23 bearing on the safety of the food for human consumption; and

24 (2) The rules may not prohibit such a label on the basis that,

1 in the case of the type of food involved, there is no version of
2 the food in commercial distribution that does contain a genetically
3 engineered material.

4 **§19-2H-4. Civil penalty; exception.**

5 (a) Any person engaging in the misbranding or mislabeling of
6 food within the meaning of this article or makes a false guaranty
7 shall be liable for a civil penalty in an amount not to exceed
8 \$100,000 for each violation.

9 (b) No person shall be subject to the penalties of this
10 section involving the misbranding or mislabeling of food within the
11 meaning of this article if he or she establishes a guaranty or
12 undertaking signed by, and containing the name and address of, the
13 person or persons residing in the United States from whom the
14 recipient received in good faith the food (including the receipt of
15 seeds to grow raw agricultural commodities), to the effect that the
16 food does not contain a genetically engineered material or was not
17 produced with a genetically engineered material.

18 (c) If a recipient who with respect to a food establishes a
19 guaranty or undertaking in accordance with subsection (b) of this
20 section, the exclusion under that subsection from being subject to
21 penalties applies to the recipient without regard to the use of the
22 food by the recipient, including:

23 (1) Processing the food;

24 (2) Using the food as an ingredient in a food product;

1 (3) Repacking the food; or

2 (4) Growing, raising, or otherwise producing the food.

3 (d)(1) No person shall be subject to the penalties of
4 subsection (a) of this section for a violation of this article
5 involving the misbranding or mislabeling of food if:

6 (A) Such person is an agricultural producer and the violation
7 occurs because food that is grown, raised, or otherwise produced by
8 such producer, which food does not contain a genetically engineered
9 material and was not produced with a genetically engineered
10 material, is contaminated with a food that contains a genetically
11 engineered material or was produced with a genetically engineered
12 material (including contamination by mingling the two); and

13 (B) Such contamination is not intended by the agricultural
14 producer.

15 (2) Subdivision (1) of this subsection does not apply to an
16 agricultural producer to the extent that the contamination occurs
17 as a result of the negligence contamination of the producer.

18 **§19-2H-5. Citizen suits.**

19 (a) General. -- Except as provided in subsection (c) of this
20 section, any person may on his or her behalf commence a civil
21 action in an appropriate circuit court against:

22 (1) A person who is alleged to have engaged in a violation of
23 this article involving the misbranding or mislabeling of food; or

24 (2) The commissioner where there is alleged a failure of the

1 commissioner to perform any act or duty under this article that is
2 not discretionary.

3 (b) Relief. -- In a civil action under subsection (a) of this
4 section, the circuit court may:

5 (1) Enforce the compliance of a person with respect to the
6 requirements of this article; or

7 (2) Order the commissioner to perform an act or duty required
8 by this article.

9 (c) Limitations. -- (1) A civil action may not be commenced
10 under subdivision (1), subsection (a) of this section prior to
11 sixty days after the plaintiff has provided to the commissioner
12 notice of the violation involved; and (2) a civil action may not be
13 commenced under subdivision (2), subsection (a) of this section if
14 the commissioner has commenced and is diligently prosecuting an
15 action in a circuit court to enforce compliance with this article.

16 (d) Right of commissioner to intervene. -- In any civil action
17 under subdivision (1), subsection (a) of this section, the
18 commissioner, if not a party, may intervene as a matter of right.

19 (e) Award of costs; filing of bond. -- In a civil action under
20 subsection (a) of this section, the circuit court involved may
21 award costs of litigation (including reasonable attorney and expert
22 witness fees) to any party whenever the court determines such an
23 award is appropriate. The court may, if a temporary restraining
24 order or preliminary injunction is sought, require the filing of a

1 bond or equivalent security in accordance with the West Virginia
2 Rules of Civil Procedure.

3 (f) Savings provision. -- This section does not restrict any
4 right that a person (or class of persons) may have under any
5 statute or common law to seek enforcement of the provisions
6 referred to subsection (a) of this section, or to seek any other
7 relief, including relief against the commissioner.

8 **§19-2H-6. Rulemaking authority.**

9 The commissioner shall propose rules in accordance with
10 article three, chapter twenty-nine-a of this code to implement and
11 enforce this article.

NOTE: The purpose of this bill is to create the "Genetically Engineered Food Right to Know Act." The bill makes legislative findings, sets forth labeling requirements regarding the sale of foods containing genetically engineered materials or foods produced with genetically engineered materials. The bill also provides for exceptions, testing, civil penalties and civil suits by the Commissioner of Agriculture and suits by citizens. The bill further defines terms and provides rulemaking authority.

This article is new; therefore, it has been completely underscored.