

AMENDED IN SENATE APRIL 3, 2014

**SENATE BILL**

**No. 1381**

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**Introduced by Senator Evans**  
*(Coauthors: Senators DeSaulnier and Pavley)*  
*(Coauthors: Assembly Members Levine and Yamada)*

February 21, 2014

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An act to add Section 110663 to, and to add Article 6.6 (commencing with Section 110808) to Chapter 5 of Part 5 of Division 104 of, the Health and Safety Code, relating to genetically engineered food.

LEGISLATIVE COUNSEL'S DIGEST

SB 1381, as amended, Evans. Food labeling: genetically engineered food.

Existing law, the Sherman Food, Drug, and Cosmetic Law makes it unlawful to manufacture, sell, deliver, hold, or offer for sale, any food that is misbranded. Food is misbranded if its labeling does not conform to specified state and federal labeling requirements regarding nutrition, nutrient content or health claims, and food allergens. Violation of this law is a misdemeanor.

This bill would require that any food, except as provided, offered for retail sale in the state be considered misbranded if it is entirely or partially genetically engineered, as defined, and that fact is not disclosed in a specified manner. The bill would prescribe labeling requirements for a raw agricultural commodity that is genetically engineered and packaged foods, as defined, containing some products of genetic engineering. The bill would ~~also prescribe who is responsible for complying with those~~ *impose these* labeling requirements *on manufacturers and retailers, as defined, of the commodities and foods.* The bill would authorize the Attorney General or an injured resident of

the state to bring an action for injunctive relief against a violation of these provisions, as specified. The bill would authorize a court to award a prevailing plaintiff reasonable attorneys' fees and costs, and would prohibit a court from awarding monetary damages in an action brought under the bill's provisions.

Because this bill would create new crimes by expanding the number of foods that could potentially be misbranded ~~and expanding the definition of the crime of perjury~~, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. The Legislature finds and declares all of the  
2 following:
- 3 (a) California consumers have the right to know, through  
4 labeling, whether the foods they purchase were produced with  
5 genetic engineering, so they can make informed purchasing  
6 decisions.
- 7 (b) Polls consistently show that the vast majority of the members  
8 of the public, more than 90 percent, want to know, for health,  
9 economic, environmental, religious, and ethical reasons, if the  
10 food they purchase was produced with genetic engineering.
- 11 (c) *Without mandatory disclosure, consumers of foods produced*  
12 *through genetic engineering may unknowingly violate their dietary*  
13 *and religious beliefs.*
- 14 (e)
- 15 (d) There is currently no federal or California requirement that  
16 genetically engineered (GE) foods be labeled. In contrast, 64  
17 countries, including three of California's leading trading partners,  
18 Japan, China, and the European Union member states, as well as  
19 South Korea, Australia, Russia, and Malaysia, already have laws  
20 mandating that foods produced through genetic engineering be  
21 labeled.

1     ~~(d)~~  
2     (e) The United States Food and Drug Administration (FDA)  
3 does not require safety studies of GE foods. Instead, any  
4 consultations are voluntary and GE food developers may decide  
5 what information to provide to the FDA.

6     ~~(e)~~  
7     (f) Genetic engineering of plants and animals can cause  
8 unintended consequences. It has been demonstrated that  
9 manipulating genes through genetic engineering and inserting them  
10 into organisms is an imprecise process. The results are not always  
11 predictable or controllable.

12     ~~(f)~~  
13     (g) United States government scientists have stated that the  
14 artificial insertion of genetic material into plants via genetic  
15 engineering can increase the levels of known toxicants or allergens  
16 in foods and create new toxicants or allergens with consequent  
17 health concerns.

18     ~~(g)~~  
19     (h) Mandatory identification of foods produced with genetic  
20 engineering can provide a method for detecting, at a large  
21 epidemiological scale, the potential health effects of consuming  
22 those foods.

23     ~~(h) Without mandatory disclosure, consumers of foods produced~~  
24 ~~through genetic engineering may unknowingly violate their dietary~~  
25 ~~and religious beliefs.~~

26     (i) Numerous foreign markets with restrictions on foods  
27 produced through genetic engineering have restricted imports of  
28 United States crops due to concerns about genetic engineering.  
29 Some foreign markets are choosing to purchase agricultural  
30 products from countries other than the United States because GE  
31 crops are not identified in the United States, which makes it  
32 impossible for buyers to determine what does or does not meet  
33 their national labeling laws or restrictions and thus renders United  
34 States products less desirable.

35     ~~(j) Mandatory identification of foods produced with genetic~~  
36 ~~engineering can be a critical method of preserving the economic~~  
37 ~~value of exports or domestically sensitive markets with restrictions~~  
38 ~~on, or prohibitions against, genetic engineering. With such a large~~  
39 ~~export market, GE labeling requirements will give importers greater~~  
40 ~~confidence in California's agricultural products.~~

1     (k) ~~Agriculture is a major economic driver in California, with  
2 more than 400 commodities generating \$43.5 billion in revenue  
3 in the year 2011. California is the nation's leading agricultural  
4 producer, generating half of the nation's fruits, nuts, and  
5 vegetables. Agricultural exports in the year 2011 generated \$16.8  
6 billion in revenue, representing 39 percent of total production.  
7 Preserving the identity, quality, and reliability of California's  
8 agricultural products and exports is critical to the state's economic  
9 well-being.~~

10    (i) ~~GE crops pose a potential threat to the state's \$1.39 billion  
11 organic agriculture sector. Organic production accounted for 3.1  
12 percent of total agriculture earnings in the state and 39 percent of  
13 organic sales nationally in the year 2011. Organic farmers are  
14 prohibited from using genetically engineered seeds or feed, yet  
15 have no protection against possible unintended transgenic  
16 contamination from neighboring farms. This is a particular concern  
17 for California's organic dairy farmers, who generated \$127 million  
18 in revenue in the year 2011. Food labeling gives consumers the  
19 right to support food production systems that do not threaten the  
20 integrity and economic well-being of organic agriculture and  
21 California's exports.~~

22    (m) ~~United States Department of Agriculture (USDA) data  
23 shows that California ranks first in organic farm-gate sales. This  
24 important element of California's economy must be protected.  
25 Foods identified as non-GE constitute the fastest growing segment  
26 in agriculture, with annual sales increases in the year 2011 between  
27 20 and 27 percent. However, only a small portion of the food  
28 industry participates in voluntary labeling of foods claimed not to  
29 be the product of genetic engineering. There are no consistent  
30 standards for that labeling, or for the enforcement of voluntary  
31 labels. Thus, voluntary labeling is insufficient to provide consumers  
32 with adequate information on whether the food they are purchasing  
33 was produced with genetic engineering, and in some cases the  
34 labels may be misleading.~~

35    (j) *Agricultural exports in California in 2011 generated \$16.8  
36 billion in revenue, representing 39 percent of total production.  
37 Mandatory identification of foods produced with genetic  
38 engineering can be a critical method of preserving the economic  
39 value of exports or domestically sensitive markets with restrictions  
40 on, or prohibitions against, genetic engineering. Preserving the*

1 *identity, quality, and reliability of California's agricultural*  
2 *products and exports is critical to the state's economic well being.*

3 ~~(n)~~

4 (k) The cultivation of GE crops can have serious effects on the  
5 environment. For example, in the year 2012, 93 percent of all soy  
6 grown in the United States was genetically engineered to be  
7 herbicide resistant. In fact, the vast majority of GE crops are  
8 designed to withstand herbicides and they, therefore, promote  
9 indiscriminate herbicide use. As a result, GE crops have caused  
10 527 million pounds of additional herbicides to be applied to the  
11 nation's farmland. These toxic herbicides damage the vitality and  
12 quality of our soil, contaminate our drinking water, and pose health  
13 risks to consumers and farmworkers. Further, because of the  
14 consequent massive increase in herbicide use, herbicide-resistant  
15 weeds have developed and flourished, infesting farm fields and  
16 roadsides, complicating weed control for farmers, and causing  
17 farmers to resort to more and increasingly toxic herbicides.

18 ~~(o)~~

19 (l) The FDA is currently proposing approval of the first GE  
20 salmon for human consumption. Wild Pacific salmon are a critical  
21 natural and cultural resource of California and are under increasing  
22 environmental stress. More than 106 major salmon runs in northern  
23 California and the Pacific Northwest are extinct and another 214  
24 runs of wild salmon are at risk of extinction. An escaped GE fish  
25 could pose additional environmental risk to California's already  
26 stressed wild salmon populations and coastal ecosystems by, among  
27 other things, imposing new competitive pressures on these  
28 populations for food and space, interfering with effective breeding  
29 and reproduction, and spreading disease. The west coast salmon  
30 fishing industry, including both commercial and recreational  
31 components, has lost an estimated 72,000 jobs during the last 20  
32 years. In the face of market confusion, seafood consumers may  
33 avoid purchasing salmon altogether to avoid genetically engineered  
34 salmon which would further negatively impact California's wild  
35 salmon fishermen.

36 ~~(p)~~

37 (m) The people of California should have the choice to avoid  
38 purchasing foods produced in ways that can lead to that  
39 environmental harm.

40 ~~(q)~~

1 (n) Labeling of foods produced through genetic engineering as  
2 provided in this act can be implemented without substantial burden  
3 to either food producers or the government.

4 SEC. 2. It is the intent of the Legislature, with the enactment  
5 of this act, to require the labeling of all foods produced with genetic  
6 engineering sold within the state, *with exceptions*.

7 SEC. 3. Section 110663 is added to the Health and Safety Code,  
8 to read:

9 110663. A food is misbranded if its labeling does not conform  
10 to the requirements of Section 110809.

11 SEC. 4. Article 6.6 (commencing with Section 110808) is  
12 added to Chapter 5 of Part 5 of Division 104 of the Health and  
13 Safety Code, to read:

14  
15 Article 6.6. The California Right to Know Genetically  
16 Engineered Food Act  
17

18 110808. The following definitions shall apply for the purposes  
19 of this article only:

20 ~~(a) "Agriculture" means the science, art, or practice of~~  
21 ~~cultivating the soil, producing crops, and raising livestock or fish~~  
22 ~~and, in varying degrees, the preparation and marketing of the~~  
23 ~~resulting products.~~

24 ~~(b) "Cultivated commercially" means grown or raised by a~~  
25 ~~person in the course of business or trade, and sold within the United~~  
26 ~~States.~~

27 ~~(c)~~

28 (a) "Food" shall have the meaning set forth in Section 109935,  
29 except that "food" as used in this article includes only food for  
30 human consumption and not any food for consumption by animals.

31 ~~(d) "Food facility" shall have the meaning set forth in Section~~  
32 ~~113789.~~

33 ~~(e)~~

34 (b) (1) "Genetically engineered" means produced from an  
35 organism or organisms in which the genetic material has been  
36 changed through the application of either of the following:

37 (A) (i) In vitro nucleic acid techniques, which include, but are  
38 not limited to, recombinant deoxyribonucleic acid (DNA) or  
39 ribonucleic acid (RNA) direct injection of nucleic acid into cells  
40 or organelles, encapsulation, gene deletion, and doubling.

1 (ii) “In vitro nucleic acid techniques” include, but are not limited  
2 to, recombinant DNA or RNA techniques that use vector systems,  
3 and techniques involving the direct introduction into the organisms  
4 of hereditary materials prepared outside the organisms such as  
5 biolistics, microinjection, macroinjection, chemoporation,  
6 electroporation, microencapsulation, and liposome fusion.

7 (B) Methods of fusing cells beyond the taxonomic family that  
8 overcome natural physiological, reproductive, or recombinant  
9 barriers, and that are not techniques used in traditional breeding  
10 and selection such as conjugation, transduction, and hybridization.

11 (2) “Genetically engineered” does not include an animal who  
12 has not itself been genetically engineered, regardless of whether  
13 that animal has been fed or injected with any food or any drug that  
14 has been produced through means of genetic engineering.

15 (c) *“Injured resident” means a person who purchases a product*  
16 *that is misbranded under the provisions of this chapter.*

17 ~~(f)~~

18 (d) “Label” shall have the meaning set forth in Section 109955.

19 ~~(g)~~

20 (e) “Labeling” shall have the meaning set forth in Section  
21 109960.

22 ~~(h)~~

23 (f) “Manufacturer” means the person or entity that makes,  
24 processes, combines, or packages food ingredients into a finished  
25 product.

26 ~~(i) “Medical food” shall have the meaning set forth in Section~~  
27 ~~109971.~~

28 ~~(j)~~

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

31 ~~(k)~~

32 (h) “Packaged food” means any food offered for retail sale in  
33 the state, other than raw food and food served, sold, or provided  
34 ready to eat in any bake sale, restaurant, or cafeteria that are subject  
35 to the provisions of Article 6 (commencing with Section 110660).

36 ~~(l)~~

37 (i) “Raw agricultural commodity” shall have the meaning set  
38 forth in Section 110020.

39 (j) *“Retailer” means a dealer engaged in the business of selling*  
40 *any perishable agricultural commodity at retail.*

1 (m)

2 (k) “Supplier” means a person or entity that engages in the  
3 operation of selling or distributing raw agricultural commodities  
4 that the person or entity has produced, purchased, or acquired from  
5 a processor.

6 110809. (a) Any raw agricultural commodity or packaged  
7 food that is entirely or partially produced with genetic engineering  
8 shall be labeled in accordance with this article and is misbranded  
9 if not labeled in accordance with this article.

10 (b) *This section does not apply to an alcoholic beverage that is*  
11 *subject to the Alcoholic Beverage Control Act (Division 9*  
12 *(commencing with Section 23000) of the Business and Professions*  
13 *Code).*

14 110809.1. (a) (1) A manufacturer of a raw agricultural  
15 commodity packaged for retail sale shall include the words  
16 “Genetically Engineered” clearly and conspicuously on the front  
17 or back of the package of that commodity.

18 (2) A retailer of a raw agricultural commodity that is not  
19 separately packaged or labeled shall place a clear and conspicuous  
20 label on the retail store shelf or bin in which that commodity is  
21 displayed for sale.

22 ~~(3) A supplier of a raw agricultural commodity shall label each~~  
23 ~~container used for packaging, holding, or transporting a raw~~  
24 ~~agricultural commodity produced with genetic engineering that is~~  
25 ~~delivered directly to a retailer in the state.~~

26 (b) A manufacturer of packaged food containing some products  
27 of genetic engineering shall label the product in clear and  
28 conspicuous language on the front or back of the package of that  
29 food product with the words “Produced with Genetic Engineering”  
30 or “Partially Produced with Genetic Engineering.”

31 (c) This section shall not be construed to require a label that  
32 lists or identifies an ingredient that was genetically engineered, or  
33 that the words “genetically engineered” be placed immediately  
34 preceding any common name or primary product descriptor of a  
35 food.

36 (d) *This section does not apply to an alcoholic beverage that is*  
37 *subject to the Alcoholic Beverage Control Act (Division 9*  
38 *(commencing with Section 23000) of the Business and Professions*  
39 *Code).*



1 110809.2. (a) The Attorney General may bring an action to  
2 enjoin a violation of this article in any court of competent  
3 jurisdiction.

4 (b) Except as provided in subdivision (c), an injured resident  
5 of the state may, 60 days after giving notice of the alleged violation  
6 to the Attorney General and the alleged violator, bring an action  
7 to enjoin a violation of this article by a manufacturer or retailer in  
8 any court of competent jurisdiction. The court may award to a  
9 prevailing plaintiff reasonable attorneys' fees and costs incurred  
10 in investigating and prosecuting the action. The court shall not  
11 award monetary damages.

12 (c) Neither injunctive relief nor attorneys' fees and costs shall  
13 be granted with respect to failure to label any of the ~~following~~  
14 *following*:

15 (1) Packaged food in which the materials produced through  
16 genetic engineering account for nine-tenths of 1 percent or less of  
17 the total weight.

18 (2) Food produced without knowledge or intent to use genetic  
19 engineering.

20 (3) *An alcoholic beverage that is subject to the Alcoholic*  
21 *Beverage Control Act, set forth in Division 9 (commencing with*  
22 *Section 23000) of the Business and Professions Code.*

23 (d) Food is produced without knowledge or intent to use genetic  
24 engineering under ~~any~~ *either* of the following conditions:

25 (1) The food is lawfully certified to be labeled, marketed, and  
26 offered for sale as "organic" pursuant to the federal Organic Foods  
27 Production Act of 1990 (7 U.S.C. Sec. 6501 et seq.).

28 ~~(2) A manufacturer or retailer who obtained a sworn statement~~  
29 ~~from the supplier that the food was produced without knowledge~~  
30 ~~or intent to use genetic engineered and has been segregated from,~~  
31 ~~and not knowingly or intentionally commingled with, foods that~~  
32 ~~may have been genetically engineered.~~

33 ~~(3)~~

34 (2) (A) An independent organization has determined that the  
35 food was produced without knowledge or intent to use genetic  
36 engineering and has been segregated from, and not knowingly or  
37 intentionally commingled with, foods that may have been  
38 genetically engineered.

39 (B) The determination has been made pursuant to a sampling  
40 and testing procedure (i) consistent with sampling and testing

1 principles recommended by internationally recognized standards  
2 organizations and (ii) which does not rely on testing processed  
3 foods in which no DNA is detectable.

4 (e) A retailer that is not the producer or the manufacturer of  
5 food the retailer sells under its brand is not liable under this article  
6 except if the retailer knowingly and willfully fails to provide  
7 point-of-purchase labeling for an unpackaged raw agricultural  
8 commodity. It is a defense in an action under this section that a  
9 retailer reasonably relied on a disclosure that the food was not  
10 produced through genetic engineering that is contained in the bill  
11 of sale or invoice provided by the wholesaler or distributor of the  
12 food.

13 (f) No action shall be brought under this section against a farmer  
14 who is not a retailer or manufacturer. ~~A farmer who swears a false  
15 statement under this section remains subject to laws pertaining to  
16 perjury.~~

17 (g) The department shall adopt and enforce regulations necessary  
18 to implement this article.

19 *110810. This article shall become operative on January 1,*  
20 *2016.*

21 SEC. 5. The provisions of this act are severable. If any  
22 provision of this act or its application is held invalid, that invalidity  
23 shall not affect other provisions or applications that can be given  
24 effect without the invalid provision or application.

25 SEC. 6. No reimbursement is required by this act pursuant to  
26 Section 6 of Article XIII B of the California Constitution because  
27 the only costs that may be incurred by a local agency or school  
28 district will be incurred because this act creates a new crime or  
29 infraction, eliminates a crime or infraction, or changes the penalty  
30 for a crime or infraction, within the meaning of Section 17556 of  
31 the Government Code, or changes the definition of a crime within  
32 the meaning of Section 6 of Article XIII B of the California  
33 Constitution.