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SENATE BILL NO. 606

Offered January 19, 2012

A *BILL to amend and reenact §§ 3.2-5120 and 3.2-5123 of the Code of Virginia, relating to the labeling of genetically-engineered food; penalty.*

Patron—Vogel

Referred to Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 3.2-5120 and 3.2-5123 of the Code of Virginia are amended and reenacted as follows:

§ 3.2-5120. Definitions.

As used in this article, unless the context requires a different meaning:

"Advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or that are likely to induce, directly or indirectly, the purchase of food.

"Butter" means the food product generally known as butter, which is made exclusively from milk or cream, or both, with or without common salt, and with or without coloring matter, and containing not less than 80 percent by weight of milk fat, having allowed for all tolerances.

"Contaminated with filth" applies to any food not securely protected from dust, dirt, and as far as may be necessary by all reasonable means, from all foreign or injurious contaminations.

"Federal act" means the Federal Food, Drug and Cosmetic Act (Title 21 U.S.C. § 301 et seq.).

"Food" means all articles used for food, drink, confectionery, or condiment, for humans or other animals, whether simple, mixed, or compound, and all substances or ingredients used in the preparation thereof.

"Genetically-engineered food" means any food derived in whole or in part from a genetically-engineered organism if that organism can be detected in the food at a level two or more times the limit of detection of the most sensitive method commercially available for detecting that particular type of genetically-engineered organism; any food product prepared or processed using a genetically-engineered organism, enzyme, or other genetically-engineered processing agent, whether or not the organism, enzyme, or agent is present in the final product; or any dairy or meat product derived from livestock that has been fed any material derived from a genetically-engineered organism or has been injected or treated with genetically-engineered hormones or drugs.

"Genetically-engineered organism" means any plant, animal, or microorganism, including a bacterium or virus, created by or derived from any method used to modify the organism's genetic material or influence the organism's growth or development by means that are not possible under natural conditions or processes. Such means include, without limitation, cell fusion, micro-encapsulation, macro-encapsulation, and the use of recombinant deoxyribonucleic acid or recombinant ribonucleic acid. "Genetically engineered organism" does not include any plant, animal, or microorganism created by traditional breeding, artificial insemination, embryo transfer, nondirected mutagenesis, fermentation, hybridization, in-vitro fertilization, or tissue culture.

"Immediate container" does not mean package liners.

"Label" means a display of written, printed, or graphic matter upon the immediate container of any article.

"Labeling" means all labels and other written, printed, or graphic matter upon an article or any of its containers or wrappers, or accompanying such article.

"Selling of food" means the manufacture, production, processing, packing, exposure, offer, possession, and holding of any such article for sale; the sale of any such article; and the supplying of any such articles in the conduct of any food establishment.

§ 3.2-5123. Misbranded food.

A. A food shall be deemed to be misbranded:

1. If its labeling is false or misleading in any particular.

2. If any word, statement, or other information appearing on the label does not also appear on the outside container or wrapper, if present, of the retail package of such article, or is not easily legible through the outside container or wrapper.

3. If any word, statement, or other information required by this article is not prominently placed on the label with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

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4. Unless its label bears:

a. The common or usual name of the food, if there is any;

b. When the food is fabricated from two or more ingredients, the common or usual name of each ingredient. Spices, flavorings, and colors not required to be certified under ~~section~~ § 721 (c) of the federal act, other than those sold as such, may be designated as spices, flavorings, and colorings, without naming each; and

c. When the food purports to be a beverage containing vegetable or fruit juice, a statement with appropriate prominence on the information panel of the total percentage of such fruit or vegetable juice contained in the food.

To the extent that the Commissioner believes that compliance with the requirements of subdivision 4 b is impractical or results in deception or unfair competition, exemptions shall be established by the Commissioner. The requirements of subdivision 4 b shall not apply to any carbonated beverages, ingredients of which have been fully and correctly disclosed to the extent prescribed by subdivision 4 b to the Commissioner in an affidavit.

5. If it is offered for sale under the name of another food.

6. If it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word, imitation, and immediately thereafter, the name of the food imitated.

7. If its container is made, formed, or filled as to be misleading.

8. If in package form, unless it bears a label containing: (i) the name and place of business of the manufacturer, packer, or distributor; (ii) the name of the article; (iii) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided, that under clause (iii) of this subdivision reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the Board.

9. If it purports to be or is represented as a food for which a definition and standard of identity has been prescribed by regulations as provided by § 3.2-5101 unless: (i) it conforms to such definition and standard; and (ii) its label bears the name of the food specified in the definition and standard, and, insofar as may be required by such regulations, the common names of optional ingredients, other than spices, flavoring, and coloring, present in such food.

10. If it purports to be or is represented as:

a. A food for which a standard of quality has been prescribed by regulations as provided by § 3.2-5101 and its quality falls below such standard unless its label bears, in such manner and form as regulations specify, a statement that it falls below such standards; or

b. A food for which a standard or standards of fill of container have been prescribed by regulations as provided by § 3.2-5101, and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard.

11. If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the Board requires through regulation to fully inform purchasers as to its value for such uses.

12. If it bears or contains any artificial flavoring, artificial coloring or chemical preservative, unless it bears labeling stating that fact; provided that to the extent that the Commissioner believes that compliance with the requirements of this subdivision is impracticable, exemptions shall be established by the Commissioner; provided, that the provisions of this subdivision and of subdivisions 4 and 9 with respect to artificial colorings shall not apply in the case of butter, cheese or ice cream.

13. If it is a food intended for human consumption, it is offered for sale, and its label and labeling do not comply with the requirements of ~~Section~~ § 403 (q) of the federal act pertaining to nutrition information.

14. If it is a food intended for human consumption, it is offered for sale, and its label and labeling do not comply with the requirements of ~~Section~~ § 403 (r) of the federal act pertaining to nutrient content claims and health claims.

15. If it is a genetically-engineered food, unless it bears labeling stating that fact, provided that to the extent that the Commissioner believes that compliance with the requirements of this subdivision is impracticable, exemptions shall be established by the Commissioner.

B. If an article is alleged to be misbranded because the label is misleading, or if an advertisement is alleged to be false because it is misleading, then in determining whether the labeling or advertisement is misleading, there shall be taken into account, among other things, not only representations made or suggested by statement, word, design, device, sound, or in any combination thereof, but also the extent to which the labeling or advertisement fails to reveal facts material in the light of such representations or material with respect to consequences that may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement or under such conditions of use as are customary or usual.