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HOUSE BILL NO. 2349

Offered January 14, 2017

A *BILL to amend and reenact §§ 3.2-5120 and 3.2-5123 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 3.2-5123.1 and 3.2-5123.2, relating to bioengineered foods; labeling.*

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Referred to Committee on Agriculture, Chesapeake 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 and that the Code of Virginia is amended by adding sections numbered 3.2-5123.1 and 3.2-5123.2 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.

"Bioengineered food" means food that contains genetic material that has been modified through *in vitro* recombinant deoxyribonucleic acid (DNA) techniques and for which the modification could not otherwise be obtained through conventional breeding or found in nature.

"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 modified fish" means (i) a finfish or shellfish whose genetic structure has been altered at the molecular level by means that are not possible under natural conditions or processes, including recombinant DNA and RNA techniques, cell fusion, gene deletion or doubling, the introduction of exogenous genetic material, the alteration of the position of a gene, or a similar procedure or (ii) the progeny of such a finfish or shellfish.

"Genetically modified fish product" means a product prepared from a genetically modified fish.

"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.

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

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59 naming each; and

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

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

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

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

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

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

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

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

83 a. A food for which a standard of quality has been prescribed by regulations as provided by
84 § 3.2-5101 and its quality falls below such standard unless its label bears, in such manner and form as
85 regulations specify, a statement that it falls below such standards; or

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

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

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

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

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

104 15. *If it is a genetically modified fish or genetically modified fish product unless its label and*
105 *labeling state that fact.*

106 16. *If its label or labeling states that it is or contains a fish or fish product that is "wild,"*
107 *"antibiotic-free," "hormone-free," or free from added colors or additives, unless the fish or the fish in*
108 *the product (i) was harvested from a river or an ocean, (ii) has not been raised in captivity under*
109 *control for its entire life, and (iii) is free from added colors and additives.*

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

118 **§ 3.2-5123.1. Bioengineered food; labeling; federal law.**

119 *A bioengineered food whose manufacturer, pursuant to the National Bioengineered Food Disclosure*
120 *Standard or federal regulations adopted thereunder, selects the disclosure option of an electronic or*

digital link shall also bear a label displaying the statement "Congress prohibits states from requiring the on-package labeling of the GMO content of this product."

§ 3.2-5123.2. Bioengineered food; retail signage.

A retail food store that sells any food that qualifies as a bioengineered food pursuant to the National Bioengineered Food Disclosure Standard (the Standard) or federal regulations adopted thereunder shall:

1. Post in a prominent place near each public entrance to the store a sign displaying the statement "Any product bearing a matrix barcode and a label reading 'Scan here for more food information' may contain one or more bioengineered ingredients.";

2. Install in each aisle or on each display where a bioengineered food is displayed an electronic or digital link scanner or other device that provides bioengineering disclosure information;

3. Post in a prominent place near each public entrance to the store, or in the section of the store where food bearing an electronic or digital link authorized by the Standard is sold, a representative example of the disclosure information that is available by accessing a particular food's electronic or digital link; and

4. Post on each shelf or on each display where a bioengineered food is displayed one or more printed pages containing all of the bioengineering disclosure information that is available to a person using an electronic or digital link scanner or other device to access such information.

2. That §§ 3.2-5123.1 and 3.2-5123.2 of the Code of Virginia, as created by this act, shall be repealed upon the amendment by the United States Congress of the National Bioengineered Food Disclosure Standard to prohibit the on-package disclosure of bioengineered food solely by means of an electronic or digital link.