SENATE BILL REPORT
SB 6298

As of January 31, 2012

Title: An act relating to labeling foods containing genetically engineered material.

Brief Description: Concerning labeling of foods that contain genetically engineered material.

Sponsors: Senators Chase, Nelson, Shin, Keiser, Rolfes and Conway.

Brief History:
Committee Activity: Agriculture, Water & Rural Economic Development: 1/26/12.

SENATE COMMITTEE ON AGRICULTURE, WATER & RURAL ECONOMIC DEVELOPMENT

Staff: Diane Smith (786-7410)

Background: According to the USDA's National Agricultural Statistics Service's June Agricultural Survey, in 2011 94 percent of the acres in the United States that are planted to soybeans are planted with herbicide tolerant (HT) soybeans; 73 percent of the acres planted with cotton are planted with insect resistant (Bt) cotton; 65 percent of the acres planted with corn are planted with Bt corn. These crops, also called genetically modified (GM), result from recombinant DNA biotechnological procedures that allow the genetic makeup of an organism to be modified. This can be accomplished by incorporating genes from other organisms or by rearranging genes already present. These changes can result in the expression of attributes not found in the original organism such as herbicide and insect resistance.

There is no one statute or federal agency devoted to the regulation of GM foods. The Food and Drug Administration (FDA) regulates the safety of foods. The FDA also enforces the Food, Drug and Cosmetics Act which ensures the safety of most domestic and imported foods, except for meat and poultry which are regulated by the United States Department of Agriculture (USDA). Pesticides used in or on foods are regulated primarily by the Environmental Protection Agency (EPA) which reviews safety and sets tolerances for pesticides. The FDA monitors foods to enforce the tolerances for pesticides established by the EPA. The USDA-Animal and Plant Health Inspection Service controls the field trials of any GM crop that falls under permitting requirements.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

At the federal level, the principles of food labeling are the same, whether or not a food is made from a GE source. The FDA has not found that foods from GE organisms, as a class, present different or greater safety concerns, materially different nutritional value, or functional characteristics than their conventional counterparts. This is the basis for the FDA's finding that GM-food is not materially different from its non-GE counterparts. If that were not the case, then the absence of material information about the GM source of the food in the food's labeling would make the product misbranded under federal law. The FDA does not have the authority to require labeling based on consumer interest alone without a finding of materiality.

The Washington Intrastate Commerce in Food and Drug Act (Act) is administered by the Department of Agriculture (Department.) The regulations prescribed by the Director of the Department for labeling requirements must conform so far as is practicable with those prescribed by the federal regulations. Misbranding is addressed in the Act, however, GM-content is not addressed. Any person who violates the provisions concerning the misbranding of any food, as for any other act prohibited under the Act, is guilty of a misdemeanor and is subject to a penalty of up to $200. For a second violation, the person is subject to imprisonment for up to 30 days and a fine of up to $500. If the violation is with intent to defraud or mislead, the penalty is imprisonment for up to 90 days and a fine of up to $1,000.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Proposed First Substitute): Beginning July 1, 2014, any food offered for retail sale is misbranded if it is, or may have been, entirely or partly produced with genetic engineering and that fact is not disclosed.

Disclosure by the clear and conspicuous words genetically engineered is required on raw agricultural commodities. The words partially produced with genetic engineering or may be partially produced with genetic engineering are required on processed foods. The words genetically engineered do not have to be placed immediately preceding any common name of the food. No genetically engineered food can be labeled as natural.

In addition, the use of the label, natural may not be used if the food contains a processing aid. Processing aids are defined in the bill.

There are ten exemptions from the bill. Among the exemptions are those for food derived entirely from an animal that is not itself genetically engineered, regardless of the animal's feed sources or drug use; a raw agricultural commodity not intentionally grown, raised, produced, or derived from a genetically engineered seed or food, if it is accompanied by a sworn statement to that effect from its supplier; until July 1, 2019, processed food with no more than nine-tenths of 1 percent of total weight from engineered material; and medical food.

Another exemption is for food certified by an independent organization as GM-free. This exception requires rulemaking by the Department as to the sampling and testing procedures used by the organization. These sampling and testing procedures must be consistent with those recommended by internationally recognized standards organizations.

The Department, through the Office of Attorney General (OAG), may bring an action in court to enjoin anyone violating the Act. A provision is also made for a citizen's suit so that any person in the public interest may seek an injunction if the person gives the violator, Department and the OAG 60 days notice. The judge may award the prevailing plaintiff costs and attorney's fees.

The Department may also assess a civil penalty of $1,000 per day with each violation considered a separate violation.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.