SENATE BILL REPORT
INITIATIVE 522

As of March 6, 2013

Title: An act relating to disclosure of foods produced through genetic engineering.

Brief Description: Genetically engineered foods.

Sponsors: People of the State of Washington.

Brief History:
Committee Activity: Agriculture, Water & Rural Economic Development: 2/14/13.

SENATE COMMITTEE ON AGRICULTURE, WATER & RURAL ECONOMIC DEVELOPMENT

Staff: Diane Smith (786-7410)

Background: 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, genetically modified 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.

Initiatives to the Legislature, if certified, are submitted to the Legislature at its next regular session in January. Once submitted, the Legislature must take one of the following three actions:

- adopt the initiative as proposed, in which case it becomes law without a vote of the people;
- reject or refuse to act on the proposed initiative, in which case the initiative must be placed on the ballot at the next state general election; or
- approve an alternative to the proposed initiative, in which case both the original proposal and the Legislature's alternative must be placed on the ballot at the next state general election.

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.

Summary of Bill: As of July 1, 2015, food offered for retail sale is misbranded if it was produced with genetic engineering, as defined, and the food does not so state.

However, a retail food that was produced from raw material that is documented by a sworn statement from the person supplying it, not to be knowingly or intentionally produced through genetic engineering or comingled with foods that may have been genetically engineered, is exempt and not considered misbranded.

Another exemption is temporary, expiring on July 1, 2019. This exempts processed foods that use a limited amount of genetically engineered materials so long as the engineered materials in the aggregate do not exceed nine-tenths of one percent of the total weight of the processed food.

Further exemptions include food from an animal that has not been genetically engineered even though the animal has been fed or injected with food or drugs derived from genetic engineering; any processed food that would be subject to the act only because processing aids or enzymes were derived from genetic engineering; alcoholic beverages regulated under the alcoholic beverage control title; food that has been determined by an independent organization not to be knowingly or intentionally produced from or comingled with genetically engineered seed or food, with qualifications; food lawfully certified and labeled organic; restaurant food and processed food intended for immediate human consumption; and medical food.

The Department of Health (DOH) has enforcement authority by use of civil penalties of up to $1,000 per day. DOH has limited rulemaking authority in that it does not have rulemaking authority to create any exemptions beyond those stated in the act.

Enforcement may also occur through private enforcement actions in the public interest.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Staff Summary of Public Testimony: PRO: It is fundamental to our democracy that consumers have a right to information so that they can make informed choices. This bill will facilitate our sharing in this global economy. There are major human health risks that companies have not disclosed in the past. There is a conflict of interest in the Food and Drug Administration (FDA). The FDA does not undertake independent testing but rather the industry voluntarily and confidentially tests the safety of its own products. Genetically Modified Organism (GMO)-based foods have allergenic risks and scientific uncertainty in their molecular characterization, both of which would make it very difficult to even identify an unexpected health effect without GMO labeling. The first amendment protects the free flow of information. The weight of legal authority is on the side of requiring labeling, including the commerce clause and the supremacy clause. The organic industry is threatened with GMO contamination. GMO crops ultimately increase the use of pesticides. There are cancer concerns and people should be able to choose to avoid any potential carcinogen.

Organic labeling is no substitute for GMO free. If GMOs penetrate the conventional market, wheat will not be saleable overseas, and we have a $15 billion export market. Aside from the health consequences, there is the environmental hazard.

CON: Forces behind the initiative are using scare tactics. This initiative forces large costs onto all consumers that do not help them make informed decisions about their health, the safety of their food, or its nutritional value. Consumers have the choice to buy certified organic foods already. There is a necessity to feed the world's population from the standpoint of food security and GMO food can do this. The weight of legal authority is on the side of not labeling GMO foods, including the first amendment, the commerce clause, and the supremacy clause. Consumer curiosity is not the same as a substantial governmental interest. Any regulation should be, if at all, on the federal level; otherwise we have a patchwork quilt. Requiring a completely separate food-delivery system for GMO products is very expensive. This label would be very confusing for consumers. The initiative is extremely poorly written.

OTHER: The scientific literature does not support a danger to human health from GMO foods. The only difference between the GMO crops at issue here and nature's genetic recombination is that with GMO it is precise, predictable, and controlled. GMO decreases insecticide use, allows no-till farming, and greater carbon sequestration.

Persons Testifying: PRO: Senator Chase, prime sponsor; Michael Hansen, Consumers Union; Ken Cook, Environmental workgroup; George Kimbrell, Center for Food Safety; Goldie Caughlan, Food & Water Watch; Anne Mosness, Eat Wild Salmon; Lynn Polson, Wheat Farmer; Ray Baker, Dairy Farmer; Nick Pascoe, Natural Food Products Assn. NW; Patricia Michl, citizen; Tom Stahl, Committee to Save Our Farm Markets; Lori Lively, Marlene's Markets; Mary Margaret Thomas, WA State Nurses Assn.; Laura Hendricks, Coalition to Protect Puget Sound Habitat; Micaela Preskill, WashPIRG; Trudy Bialic, PCC Natural Markets; Sharon Ness, United Food and Commercial Workers Union; Mason Giem, Rancher.

CON: Rob Maguire, citizen; James Curry, NW Food Processors Assn.; Holly Chisa, NW Grocery Assn.; Eric Maier, WA Assn. of Wheat Growers; Jan Gee, WA Food Industry Assn.; Tom Davis, WA Farm Bureau; Jay Gordon, Organic Milk Producer; Heather Hansen, WA Friends of Farms and Forests; Doug Jones, Growers for Biotechnology.

OTHER: Dr. Martina McGloughlin, University of California.