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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. **850**

02/21/2013 Authored by Clark, Hausman, Laine, Slocum, Johnson, S., and others
The bill was read for the first time and referred to the Committee on Agriculture Policy

1.1 A bill for an act
1.2 relating to food safety; requiring disclosure of genetically engineered food and
1.3 seed; amending Minnesota Statutes 2012, sections 21.86, subdivision 1; 34A.03;
1.4 proposing coding for new law in Minnesota Statutes, chapter 31.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. Minnesota Statutes 2012, section 21.86, subdivision 1, is amended to read:

1.7 Subdivision 1. **Prohibitions.** A person may not advertise or sell any agricultural,
1.8 vegetable, flower, wildflower, tree, or shrub seed if:

1.9 (a) a test to determine the percentage of germination required by sections 21.82 and
1.10 21.83 has not been completed within a 12-month period, exclusive of the calendar month
1.11 in which the test was completed or it is offered for sale beyond the sell by date exclusive
1.12 of the calendar month in which the seed was to have been sold, except that:

1.13 (1) when advertised or offered for sale as agricultural seed, native grass and forb
1.14 (wildflowers) seeds must have been tested for percentage of germination as required
1.15 by section 21.82 within a 15-month period, exclusive of the calendar month in which
1.16 the test was completed;

1.17 (2) it is unlawful to offer cool season lawn and turf grasses including Kentucky
1.18 bluegrass, red fescue, chewings fescue, hard fescue, tall fescue, perennial ryegrass,
1.19 intermediate ryegrass, annual ryegrass, colonial bent grass, creeping bent grass, and
1.20 mixtures or blends of those grasses, for sale beyond the sell by date exclusive of the
1.21 calendar month in which the seed was to have been sold;

1.22 (3) this prohibition does not apply to tree, shrub, agricultural, flower, wildflower,
1.23 or vegetable seeds packaged in hermetically sealed containers. Seeds packaged in
1.24 hermetically sealed containers under the conditions defined by rule may be offered for

2.1 sale for a period of 36 months after the last day of the month that the seeds were tested
2.2 for germination prior to packaging; and

2.3 (4) if seeds in hermetically sealed containers are offered for sale more than 36
2.4 months after the last day of the month in which they were tested prior to packaging, they
2.5 must be retested within a nine-month period, exclusive of the calendar month in which
2.6 the retest was completed;

2.7 (b) it is not labeled in accordance with sections 21.82 and 21.83 or has false or
2.8 misleading labeling;

2.9 (c) false or misleading advertisement has been used in respect to its sale;

2.10 (d) it contains prohibited noxious weed seeds;

2.11 (e) it consists of or contains restricted noxious weed seeds in excess of 25 seeds per
2.12 pound or in excess of the number declared on the label attached to the container of the
2.13 seed or associated with the seed;

2.14 (f) it contains more than one percent by weight of all weed seeds;

2.15 (g) it contains less than the stated net weight of contents;

2.16 (h) it contains less than the stated number of seeds in the container;

2.17 (i) it contains any labeling, advertising, or other representation subject to sections
2.18 21.82 and 21.83 representing the seed to be certified unless:

2.19 (1) it has been determined by a seed certifying agency that the seed conformed to
2.20 standards of purity and identity as to kind, species, subspecies, or variety, and also that
2.21 tree seed was found to be of the origin and elevation claimed, in compliance with the
2.22 rules pertaining to the seed; and

2.23 (2) the seed bears an official label issued for it by a seed certifying agency stating
2.24 that the seed is of a certified class and a specified kind, species, subspecies, or variety;

2.25 (j) it is labeled with a variety name but not certified by an official seed certifying
2.26 agency when it is a variety for which a United States certificate of plant variety protection
2.27 has been granted under United States Code, title 7, sections 2481 to 2486, specifying
2.28 sale by variety name only as a class of certified seed. Seed from a certified lot may be
2.29 labeled as to variety name when used in a blend or mixture by or with approval of the
2.30 owner of the variety; or

2.31 (k) the person whose name appears on the label does not have complete records
2.32 including a file sample of each lot of agricultural, vegetable, flower, tree or shrub seed
2.33 sold in this state as required in section 21.84; or

2.34 (l) seed grown for human food is genetically engineered and this fact is not disclosed
2.35 as required under section 31.982.

3.1 Sec. 2. **[31.98] PURPOSE; CONSTRUCTION.**

3.2 Subdivision 1. **Purpose.** Sections 31.981 to 31.985:

3.3 (1) permit the citizens of Minnesota to avoid food containing ingredients that
 3.4 have neither been in the food supply for hundreds of years nor the subject of long-term,
 3.5 well-designed clinical safety trials;

3.6 (2) afford the citizens of Minnesota greater public access to information
 3.7 indispensable to the exercise of informed consumer choice;

3.8 (3) protect against contamination of crops, animals, and personnel in direct or
 3.9 indirect contact with food that has been genetically engineered;

3.10 (4) limit the economic impact on producers and manufacturers who seek to prevent
 3.11 contamination of organic or natural food sources;

3.12 (5) aid the citizens of Minnesota who wish to consume a diet largely or entirely
 3.13 comprised of organic or natural ingredients to avoid consumption of foods containing
 3.14 genetically engineered ingredients; and

3.15 (6) provide state officials better means to identify the source of adulteration in food
 3.16 products and facilitate warnings and recalls of adulterated products.

3.17 Subd. 2. **Construction.** Sections 31.981 to 31.985 shall be construed to supplement,
 3.18 and not to conflict with, any federal law or regulation.

3.19 Sec. 3. **[31.981] DEFINITIONS.**

3.20 Subdivision 1. **Applicability.** For the purposes of sections 31.98 to 31.985, the
 3.21 following terms have the meanings given.

3.22 Subd. 2. **Cultivated commercially.** "Cultivated commercially" means grown or
 3.23 raised in the course of a business or trade and sold or offered for sale within this state or
 3.24 the United States generally.

3.25 Subd. 3. **Distributor.** "Distributor" means a person or business engaged in any
 3.26 method of distributing or transporting a food or food product from one place to another.

3.27 Subd. 4. **Enzyme.** "Enzyme" means a protein that catalyzes chemical reactions of
 3.28 other substances without being destroyed or altered upon completion of such reactions.

3.29 Subd. 5. **Genetically engineered.** "Genetically engineered," "genetic engineering,"
 3.30 "genetically modified," "genetic modification," "genetically manipulated," "genetic
 3.31 manipulation," or similar terms, when applied to human food, mean a food that is
 3.32 produced from or with an organism or organisms with genetics altered materially through
 3.33 the application of: (1) in vitro and in vivo nucleic acid techniques, including recombinant
 3.34 ribonucleic acid (RNA) techniques, recombinant deoxyribonucleic acid (DNA) techniques,
 3.35 and the direct injection of nucleic acid into cells or organelles; or (2) methods of fusing

4.1 cells beyond the taxonomic family that overcome natural physiological reproductive or
4.2 recombinant barriers, and that are not techniques used in traditional breeding and selection
4.3 such as conjugation, transduction, and hybridization. "Genetically engineered," "genetic
4.4 engineering," "genetically modified," "genetic modification," "genetically manipulated,"
4.5 "genetic manipulation," or similar terms, when applied to human food, also mean a food
4.6 derived from an organism that was treated with a genetically engineered material and a
4.7 food that contains an ingredient, component, or other article that is genetically engineered.

4.8 Subd. 6. **In vitro and in vivo nucleic acid techniques.** "In vitro and in vivo
4.9 nucleic acid techniques" means techniques, including but not limited to recombinant
4.10 deoxyribonucleic acid techniques that use vector systems and techniques involving the
4.11 direct introduction into the organisms of hereditary material or other nucleic acid molecules,
4.12 such as RNAi, prepared outside the organisms, such as microinjection, macroinjection,
4.13 chemoporation, electroportation, microencapsulation, and liposome fusion.

4.14 Subd. 7. **Manufacturer.** "Manufacturer" means a person or business engaged in the
4.15 production or processing of seed, seed stock, food, or any food product.

4.16 Subd. 8. **Natural.** "Natural" means food which has not been:

4.17 (1) treated with preservatives, antibiotics, synthetic additives, artificial flavoring, or
4.18 artificial coloring;

4.19 (2) processed in a manner that makes such food significantly less nutritive; and

4.20 (3) intentionally grown, raised, manufactured, cultured, or created in any way
4.21 through the process of genetic engineering.

4.22 Subd. 9. **Organic.** "Organic" has the meaning given in section 31.92, subdivision 3,
4.23 and does not mean food or seed intentionally grown, raised, manufactured, cultured, or
4.24 created in any way through the process of genetic engineering.

4.25 Subd. 10. **Organism.** "Organism" means any biological entity capable of
4.26 replication, reproduction, or transferring genetic material.

4.27 Subd. 11. **Processed food.** "Processed food" means any food other than a
4.28 raw agricultural commodity and includes any food produced from a raw agricultural
4.29 commodity that was processed through canning, smoking, pressing, cooking, freezing,
4.30 dehydration, fermentation, or milling.

4.31 Subd. 12. **Processing aid.** "Processing aid" means:

4.32 (1) a substance that is added to a food during the processing of such food but is
4.33 removed from the food in some manner before the food is packaged in a final form;

4.34 (2) a substance that is added to a food during processing, is converted into
4.35 constituents normally present in the food, and that does not significantly increase the
4.36 amount of the constituents found in the food; or

5.1 (3) a substance that is added to a food for its technical or functional effect in the
 5.2 processing but is present in the finished food at insignificant levels and does not have any
 5.3 technical or functional effect in the finished food.

5.4 Subd. 13. **Retailer.** "Retailer" means a person or business engaged in selling
 5.5 food from individuals or businesses to the end user. For the purposes of section 31.983,
 5.6 "retailer" does not mean a manufacturer when the manufacturer is also acting as a retailer
 5.7 with respect to the food item at issue.

5.8 Sec. 4. **[31.982] DISCLOSURE OF GENETICALLY ENGINEERED FOOD**
 5.9 **OR SEED.**

5.10 Subdivision 1. **Disclosure required.** On and after January 1, 2015, any food or seed
 5.11 sold or offered for sale in this state is misbranded if it is, or may have been, genetically
 5.12 engineered and such fact is not disclosed as follows:

5.13 (1) in the case of the package offered for sale, the words "Produced with Genetic
 5.14 Engineering" shall be placed on the package offered for sale in a clear and conspicuous
 5.15 manner by the manufacturer;

5.16 (2) in the case of a raw agricultural commodity that is not separately packaged or
 5.17 labeled, the words "Produced with Genetic Engineering" shall be placed on the container
 5.18 used for packaging, holding, or transport in a clear and conspicuous manner by the
 5.19 manufacturer, and maintained by the distributor, and on the retail store shelf or bin in which
 5.20 such commodity is displayed for sale in a clear and conspicuous manner by the retailer;

5.21 (3) in the case of any seed or seed stock, the words "Produced with Genetic
 5.22 Engineering" shall be placed on the seed or seed stock container, on the sales receipt, or on
 5.23 any other reference to identification, ownership, or possession in a clear and conspicuous
 5.24 manner by the manufacturer or other entity responsible for producing the seeds.

5.25 Subd. 2. **Exceptions.** (a) The requirements in subdivision 1 do not apply to a
 5.26 processed food that would be subject to this section solely because one or more processing
 5.27 aids or enzymes were produced or derived with genetic engineering.

5.28 (b) A food package that contains a commodity or food produced in any way with
 5.29 genetic engineering that does not display a disclosure as required in subdivision 1, clause
 5.30 (1) or (2), shall be deemed misbranded in this state, except that:

5.31 (1) such package must not be considered misbranded if it is for a commodity or
 5.32 food produced by a person who grows, raises, or otherwise produces such commodity
 5.33 or food without knowledge that such commodity or food was created with seed or other
 5.34 food that was derived in any way through a process of genetic engineering. The person
 5.35 must obtain a sworn statement from the party that sold the seed or food to the person that

6.1 such substance was not knowingly genetically engineered, was entirely segregated from,
 6.2 and has not knowingly been comingled with a food or food component that may have
 6.3 been created through genetic engineering; or

6.4 (2) until July 1, 2019, such package will not be considered misbranded if it is a
 6.5 processed food that would be subject to this disclosure requirement solely because it
 6.6 includes one or more materials produced with genetic engineering, provided that the
 6.7 genetically engineered materials in the aggregate do not account for more than nine-tenths
 6.8 of one percent of the total weight of the processed food.

6.9 (d) The use of manure as a fertilizer for a raw agricultural commodity must not be
 6.10 construed to mean that the commodity was produced with a genetically engineered material.

6.11 (e) A person who initially provides the affirmation required in paragraph (b), clause
 6.12 (1), may rely on a sworn statement maintained by the person's supplier that contains
 6.13 the required affirmation.

6.14 Subd. 3. **Rulemaking.** The commissioner may adopt rules to carry out this section.

6.15 **Sec. 5. [31.983] THIRD PARTY PROTECTION.**

6.16 A retailer that sells or advertises a processed food product, when such product fails
 6.17 to conform to all of the disclosure requirements under section 31.982, shall not be found
 6.18 liable or negligent in any civil proceeding brought to enforce this chapter. Protection
 6.19 afforded by this section does not apply to fruit, vegetables, or animals produced with
 6.20 genetic engineering.

6.21 **Sec. 6. [31.984] MISBRANDING OF ORGANIC OR NATURAL FOODS**
 6.22 **PROHIBITED.**

6.23 Subdivision 1. **Organic.** The term "organic" may only be used to describe food or
 6.24 seed in commerce if the product fully satisfies the definition in section 31.981.

6.25 Subd. 2. **Natural.** The term "natural" may only be used to describe food or seed in
 6.26 commerce if the product fully satisfies the definition in section 31.981. However, a person
 6.27 is not prevented from identifying a food as natural solely because the food was processed by
 6.28 extracting, purifying, heating, fermenting, concentrating, dehydrating, cooling, or freezing.

6.29 **Sec. 7. [31.985] ENFORCEMENT; PRIVATE ACTION PROHIBITED.**

6.30 The commissioner shall enforce sections 31.981 to 31.984 as provided in chapter
 6.31 34A. There is no private right of action to enforce sections 31.981 to 31.984.

7.1 Sec. 8. Minnesota Statutes 2012, section 34A.03, is amended to read:

7.2 **34A.03 MISBRANDING.**

7.3 (a) Food is misbranded if:

7.4 (1) its labeling is false or misleading in any particular, or its labeling, whether on
7.5 the item itself, its container, or its package, fails to conform with the requirements of
7.6 this chapter;

7.7 (2) it is offered for sale or distributed under the name of another food;

7.8 (3) it is an imitation of another food for which a definition and standard of identity
7.9 have been prescribed by rules as provided by sections 31.10 and 31.102; or if it is an
7.10 imitation of another food that is not subject to clause (5), unless in either case its label
7.11 bears in type of uniform size and prominence the word "imitation" and immediately
7.12 thereafter the name of the food imitated;

7.13 (4) its container is so made, formed, or filled as to be misleading;

7.14 (5) it purports to be or is represented as a food for which a definition and standard
7.15 of identity have been prescribed by rules as provided by sections 31.10, 31.102, and
7.16 31A.07, unless it conforms to that definition and standard, and its label bears the name
7.17 of the food specified in the definition and standard, and insofar as may be required by
7.18 the rules, the common names of optional ingredients, other than spices, flavoring, and
7.19 coloring, present in the food;

7.20 (6) it purports to be or is represented as:

7.21 (i) a food for which a standard of quality has been prescribed by rules as provided by
7.22 sections 31.10 and 31.102, and its quality falls below that standard unless its label bears in
7.23 a manner and form the rules specify, a statement that it falls below the standard; or

7.24 (ii) a food for which a standard or standards of fill of container have been prescribed
7.25 by rule as provided by sections 31.10, 31.102, and 31A.07, and it falls below the standard
7.26 of fill of container applicable thereto unless its label bears, in a manner and form the rules
7.27 specify, a statement that it falls below the standard;

7.28 (7) it is not subject to clause (5), unless it bears labeling clearly giving the common
7.29 or usual name of the food, if there is one, and in case it is fabricated from two or more
7.30 ingredients, the common or usual name of each ingredient, except that spices, flavorings,
7.31 and colorings, other than those sold as such, may be designated as spices, flavorings, and
7.32 colorings, without naming each, provided that to the extent that compliance with the
7.33 requirements of this clause is impractical or results in deception or unfair competition,
7.34 exemptions must be established by rules promulgated by the commissioner;

7.35 (8) it purports to be or is represented for special dietary uses, unless its label
7.36 bears information concerning its vitamin, mineral, and other dietary properties as the

8.1 commissioner determines to be, and by rules prescribed as, necessary in order to fully
8.2 inform purchasers as to its value for those uses;

8.3 (9) it bears or contains any artificial flavoring, artificial coloring, or chemical
8.4 preservative, unless it bears labeling stating that fact; provided that, to the extent that
8.5 compliance with the requirements of this clause is impracticable, exemptions must be
8.6 established by rules promulgated by the commissioner. The provisions of this clause and
8.7 clauses (5) and (7) with respect to artificial coloring do not apply to butter, cheese, or ice
8.8 cream. The provisions with respect to chemical preservatives do not apply to a pesticide
8.9 when used in or on a raw agricultural commodity which is the product of the soil;

8.10 (10) it is a product intended as an ingredient of another food and when used
8.11 according to the directions of the purveyor will result in the final food product being
8.12 adulterated or misbranded;

8.13 (11) it is a color additive unless its packaging and labeling are in conformity with
8.14 such packaging and labeling requirements applicable to the color additive prescribed
8.15 under the provisions of the federal act;

8.16 (12) it is food subject to section 31.101, subdivision 10, or chapter 31A, that fails to
8.17 bear, directly or on its container, as the commissioner by rule prescribes, the inspection
8.18 legend and other information the commissioner may require by rule to ensure that it
8.19 will not have false or misleading labeling, and that the public will be told how to keep
8.20 the article wholesome; ~~or~~

8.21 (13) its labeling would deceive or mislead the purchaser with respect to its
8.22 composition or suitability; or

8.23 (14) the food is genetically engineered and this fact is not disclosed as required
8.24 under section 31.982.

8.25 (b) Food is also misbranded if it is a raw agricultural commodity which is the
8.26 product of the soil, bearing or containing a pesticide applied after harvest, unless the
8.27 shipping container of that commodity bears labeling which declares the presence of the
8.28 chemical in or on the commodity and the common or usual name and the function of the
8.29 chemical. No such declaration is required while the commodity, having been removed
8.30 from the shipping container, is being held or displayed for sale at retail out of the container
8.31 in accordance with the custom of the trade.

8.32 **Sec. 9. SEVERABILITY.**

8.33 If any provision of this act or its application to any person or circumstance is held
8.34 invalid or in violation of the state or United States Constitution or any other law of the
8.35 United States, the invalidity or the violation shall not affect other provisions of this section

9.1 which can be given effect without the invalid provision or application, and to this end, the
9.2 provisions of this act are severable.

9.3 Sec. 10. **EFFECTIVE DATE.**

9.4 Sections 1 to 9 are effective July 1, 2013.