HOUSE OF REPRESENTATIVES
TWENTY-FIFTH LEGISLATURE, 2009
STATE OF HAWAII

H.B. NO. 368

A BILL FOR AN ACT

RELATING TO LABELING OF GENETICALLY ENGINEERED CROPS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that polls consistently demonstrate that seventy-two to ninety-four per cent of United States citizens support labeling of genetically engineered foods, and a poll conducted by the University of Hawaii's college of tropical agriculture and human resources shows that seventy-two per cent of Hawaii's residents feel that it is very important that genetically modified fruit be labeled. Numerous nations, including countries of the European Union, Japan, and the Republic of China, require labeling of genetically engineered foods.

Additionally, the Hawaiian Islands represent a unique and fragile ecosystem, with over three hundred threatened or endangered species. The State of Hawaii has a national reputation for producing high-quality foods, and its unique agricultural heritage is dependent on maintaining this reputation. The continued vitality of Hawaii's tourism industry

depends upon maintaining Hawaii's reputation for pure foods and a pure and preserved natural environment.

Genetically engineered crops in the United States have contaminated conventional and organic crops of the same species via pollen or seed dispersal. Contamination episodes may cause economic losses to farmers, food companies, and other entities through reduced crop prices, product recalls, and export market rejection.

Mandatory labeling of genetically engineered whole foods:

(1) Would meet the demand of Hawaii's residents for informed choice concerning the foods they consume;

(2) Would provide the basis for limiting dispersal of seeds from genetically engineered whole foods into the agricultural landscape and environment, thus mitigating the adverse environmental, agricultural, and economic impacts accompanying genetically engineered crop contamination episodes; and

(3) Could be implemented at minimal cost to both food producers and government.

The purpose of this Act is to require the labeling of any genetically engineered whole food that is sold in the State and intended for human consumption in the State.

SECTION 2. Section 328-1, Hawaii Revised Statutes, is amended by adding three new definitions to be appropriately inserted and to read as follows:

""Genetically engineered crop" means a plant in which the genetic material has been changed through modern biotechnology in a way that does not occur naturally by multiplication or natural recombination, or both.

"Genetically engineered whole food" means any genetically engineered food crop in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.

"Modern biotechnology" means the application of in vitro nucleic acid techniques, including recombinant deoxyribonucleic acid and direct injection of nucleic acid into cells or organelles. This also includes the fusion of cells (including protoplast fusion) or hybridization techniques beyond the taxonomic family that overcome natural physiological, reproductive, or recombination barriers and that are not techniques used in traditional breeding and selection. These include but are not limited to: recombinant deoxyribonucleic acid techniques that use vector systems and techniques involving the direct introduction into the organism of hereditary

materials prepared outside the organism such as micro-injection, macro-injection, chemoporation, electroporation, micro-encapsulation and liposome fusion."

SECTION 3. Section 328-6, Hawaii Revised Statutes, is amended to read as follows:

"**§328-6 Prohibited acts.** The following acts and the causing thereof within the State by any person are prohibited:

(1) The manufacture, sale, delivery, holding, or offering for sale of any food, drug, device, or cosmetic that is adulterated or misbranded;

(2) The adulteration or misbranding of any food, drug, device, or cosmetic;

(3) The receipt in commerce of any food, drug, device, or cosmetic that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise;

(4) The sale, delivery for sale, holding for sale, or offering for sale of any article in violation of section 328-11, 328-12, or 328-17;

(5) The dissemination of any false advertisement;

(6) The refusal to permit entry or inspection, or to permit the taking of a sample, as authorized by

sections 328-22 and 328-23 to 328-27, or to permit access to or copying of any record as authorized by section 328-23;

(7) The giving of a guaranty or undertaking, which guaranty or undertaking is false, except by a person who relied on a guaranty or undertaking to the same effect signed by, and containing the name and address of the person residing in the State from whom the person received in good faith the food, drug, device, or cosmetic;

(8) The removal or disposal of a detained or embargoed article in violation of sections 328-25 to 328-27;

(9) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to a food, drug, device, or cosmetic, if the act is done while the article is held for sale and results in the article being adulterated or misbranded;

(10) Forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label, or other identification device authorized or required by rules adopted under

this part or regulations adopted under the Federal Act;

(11) The use, on the labeling of any drug or in any advertisement relating to the drug, of any representation or suggestion that an application with respect to the drug is effective under section 328-17, or that the drug complies with that section;

(12) The use by any person to the person's own advantage, or revealing other than to the department of health or to the courts when relevant in any judicial proceeding under this part, any information acquired under authority of section 328-11, 328-12, 328-17, or 328-23, concerning any method or process which as a trade secret is entitled to protection;

(13) In the case of a prescription drug distributed or offered for sale in this State, the failure of the manufacturer, packer, or distributor thereof to maintain for transmittal, or to transmit, to any practitioner who makes written request for information as to the drug, true and correct copies of all printed matter [~~which~~] that is required to be included in any package in which that drug is distributed or sold, or

[~~such~~] other printed matter as is approved under the Federal Act. Nothing in this paragraph shall be construed to exempt any person from any labeling requirement imposed by or under other provisions of this part;

(14) (A) Placing or causing to be placed upon any drug or device or container thereof, with intent to defraud, the trade name or other identifying mark, or imprint of another or any likeness of any of the foregoing; or

(B) Selling, dispensing, disposing of, or causing to be sold, dispensed, or disposed of, or concealing or keeping in possession, control, or custody, with intent to sell, dispense, or dispose of, any drug, device, or any container thereof, with knowledge that the trade name or other identifying mark or imprint of another or any likeness of any of the foregoing has been placed thereon in a manner prohibited by subparagraph (A); or

(C) Making, selling, disposing of, or causing to be made, sold, or disposed of, or keeping in

possession, control, or custody, or concealing, with intent to defraud, any punch, die, plate, or other thing designed to print, imprint, or reproduce that trade name or other identifying mark or imprint of another or any likeness of any of the foregoing upon any drug, device, or container thereof;

(15) Except as provided in part VI and section 461-1, dispensing or causing to be dispensed a different drug or brand of drug in place of the drug or brand of drug ordered or prescribed without express permission in each case of the person ordering or prescribing;

(16) The distribution in commerce of a consumer commodity as defined in this part, if [~~such~~] the commodity is contained in a package, or if there is affixed to that commodity a label, which does not conform to this part and of rules adopted under authority of this part; provided that this prohibition shall not apply to persons engaged in business as wholesale or retail distributors of consumer commodities except to the extent that [~~such~~] the persons:

(A) Are engaged in the packaging or labeling of [~~such~~] the commodities; or

(B) Prescribe or specify by any means the manner in which [~~such~~] the commodities are packaged or labeled;

(17) The selling or dispensing in restaurants, soda fountains, drive-ins, lunch wagons, or similar public eating establishments of imitation milk and imitation milk products in place of fresh milk and fresh milk products respectively; of liquid or dry products [~~which~~] that simulate cream but do not comply with content requirements for cream in place of cream; of non-dairy frozen desserts [~~which~~] that do not comply with content requirements for dairy frozen desserts in place of dairy frozen desserts; and of any other imitation food or one made in semblance of a genuine food in place of [~~such~~] the genuine food, unless the consumer is notified by either proper labeling or conspicuous posted signs or conspicuous notices on menu cards and advertisements informing of [~~such~~] the substitution, to include but not be limited to the

substitution of imitation milk in milk shake and malted milk drinks;

(18) Wilfully and falsely representing or using any devices, substances, methods, or treatment as effective in the diagnosis, cure, mitigation, treatment, or alleviation of cancer. This paragraph shall not apply to any person who depends exclusively upon prayer for healing in accordance with teachings of a bona fide religious sect, denomination, or organization, nor to a person who practices such teachings;

(19) The selling or offering for sale at any food facility which serves or sells over the counter directly to the consumer an unlabeled or unpackaged food that is a confectionery which contains alcohol in excess of one-half of one per cent by weight unless the consumer is notified of that fact by either proper labeling or conspicuous posted signs or conspicuous notices on menu cards and advertisements;

(20) The sale to a person below the age of twenty-one years of any food which is a confectionery [~~which~~] that

contains alcohol in excess of one-half of one per cent by weight[~~.~~]; and

(21) The sale, offering for sale, or distribution of any farm product grown in Hawaii that:

(A) Is a genetically engineered whole food;

(B) Is intended for human consumption in the State; and

(C) Does not have affixed to the product a conspicuous label bearing the notice: "GENETICALLY ENGINEERED"

For the purposes of this paragraph, "farm product" includes every agricultural, horticultural, viticultural, or vegetable product of the soil, honey and beeswax, oilseeds, poultry, poultry product, livestock product, and livestock for immediate slaughter. The term does not include timber or any timber product, milk or any milk product, any aquacultural product, or cattle sold to any person who is bonded under the federal Packers and Stockyards Act of 1921 (7 U.S.C. 181, et seq.)."

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

INTRODUCED BY:

JAN 23 2009

Report Title:
Genetically Engineered Crops; Required Labeling

Description:
Prohibits sale or distribution of any genetically engineered whole food intended for human consumption in the State that does not have a label conspicuously affixed identifying it as a genetically engineered. Defines "genetically engineered crop", "modern biotechnology", and "genetically engineered whole food".