
A BILL FOR AN ACT

RELATING TO GENETICALLY MODIFIED PLANT ORGANISMS.

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

1 SECTION 1. The purpose of this Act is to address
2 genetically modified plant organisms. More specifically, this
3 Act preempts any state administrative regulatory action or
4 county regulatory action that bans or restricts certain
5 activities relating to genetically modified plant organisms.

6 This Act, however, provides an exception from the
7 preemption. The Act states that it is not superior to any
8 county ordinance that became effective before January 1, 2009,
9 and made it unlawful for any person to take certain actions
10 relating to particular species of genetically engineered plant
11 organisms. This Act is not intended to supersede or nullify an
12 ordinance that fits under those conditions. The legislature
13 finds that ordinance no. 08-154 of the county of Hawaii is such
14 an ordinance.

15 This Act also provides another exception from the
16 preemption. The Act states that it is not superior to any state
17 administrative or county regulatory action concerning the



1 genetic modification of taro or the testing, planting, or
2 growing of genetically modified taro.

3 SECTION 2. The Hawaii Revised Statutes is amended by
4 adding a new chapter to be appropriately designated and to read
5 as follows:

6 "CHAPTER

7 GENETICALLY MODIFIED PLANT ORGANISMS

8 § -1 Definitions. For the purposes of this chapter:

9 "County regulatory action" means a county ordinance,
10 charter provision, rule, permit condition, or executive or
11 administrative directive or order.

12 "Genetic modification" means alteration to a life form or
13 its living progeny at the nucleic acid level using the
14 techniques collectively referred to as recombinant DNA
15 technology.

16 "Growing" includes cultivating, propagating, and raising.

17 "Recombinant DNA technology" means the transfer of genes,
18 regulatory sequences, or nucleic acid between hosts by the use
19 of vectors or laboratory manipulations and includes the
20 insertion, excision, duplication, inactivation, or relocation of
21 specific genes, regulatory sequences, or sections of nucleic
22 acid. The term does not apply to a material or an organism



1 developed exclusively through traditional methods of breeding,
2 hybridization, or nondirected mutagenesis.

3 "State administrative regulatory action" means a state
4 rule, permit condition, or executive or administrative directive
5 or order.

6 § -2 **Prohibition of state administrative regulatory**

7 **action.** (a) No state administrative regulatory action shall
8 ban or restrict a person from genetically modifying within the
9 State any plant organism if the genetic modification is
10 performed in accordance with a valid permit from the relevant
11 federal agency.

12 (b) Except as provided under subsection (c), no state
13 administrative regulatory action shall ban or restrict a person
14 from testing, planting, or growing within the State any
15 genetically modified plant organism; provided that, if a valid
16 permit from a federal agency is required for testing, planting,
17 or growing the genetically modified plant organism, the person
18 shall perform the testing, planting, or growing in accordance
19 with the permit.

20 (c) A state administrative regulatory action may regulate
21 the testing, planting, or growing of a plant organism in a
22 manner not discriminatory against any genetically modified plant



1 organism. A state administrative regulatory action shall be
2 deemed "discriminatory against any genetically modified plant
3 organism" if the action has a prohibitory or regulatory effect
4 on a genetically modified plant organism that differs from the
5 effect on a similar non-genetically modified plant organism.

6 (d) Any state administrative regulatory action in
7 contravention of this section shall be void as against public
8 policy.

9 § -3 **Preemption of county regulatory action.** (a)

10 Except as otherwise provided under section -5, no county
11 regulatory action shall ban or otherwise regulate the genetic
12 modification of any plant organism.

13 (b) Except as provided under subsection (c) or section
14 -5, no county regulatory action shall ban or otherwise
15 regulate the planting, growing, testing, advertisement,
16 labeling, packaging, handling, transportation, distribution,
17 use, notification of use, certification, or registration of any
18 genetically modified plant organism.

19 (c) A county zoning ordinance or land use permit condition
20 may regulate agricultural uses and activities at a site in a
21 manner not discriminatory against any genetically modified plant
22 organism. A county zoning ordinance or permit condition shall



1 be deemed "discriminatory against any genetically modified plant
2 organism" if the ordinance or permit condition has a prohibitory
3 or regulatory effect on a genetically modified plant organism
4 that differs from the effect on a similar non-genetically
5 modified plant organism.

6 (d) Any county regulatory action in contravention of this
7 section shall be void as against public policy.

8 § -4 **Court proceedings to enforce chapter.** (a) If the
9 attorney general reasonably believes that a state administrative
10 or county regulatory action violates section -2 or section
11 -3, as applicable, the attorney general may commence
12 appropriate action in circuit court to invalidate the state
13 administrative or county regulatory action.

14 (b) Any other person who is or may become aggrieved by a
15 state administrative or county regulatory action that violates
16 section -2 or section -3, as applicable, may join in the
17 action filed by the attorney general or file the person's own
18 action in circuit court to invalidate the state administrative
19 or county regulatory action.

20 § -5 **Exceptions.** (a) This chapter shall not be
21 superior to any county ordinance that:

22 (1) Took effect before January 1, 2009; and



1 (2) Made it unlawful for any person to test, propagate,
 2 cultivate, raise, plant, grow, introduce, or release
 3 particular species of genetically engineered plant
 4 organisms.

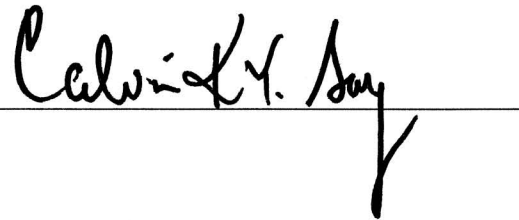
5 The provisions of the county ordinance relating to the
 6 particular species of genetically engineered plant organisms
 7 shall not be affected by this chapter.

8 (b) This chapter also shall not be superior to any state
 9 administrative regulatory action or county regulatory action
 10 that bans, restricts, or otherwise regulates the genetic
 11 modification of taro or the testing, planting, or growing of
 12 genetically modified taro."

13 SECTION 3. This Act shall take effect on July 1, 2009.

14

INTRODUCED BY:



A handwritten signature in black ink, appearing to read "Calvin K. Say", is written over a horizontal line.

JAN 26 2009



Report Title:

Genetically Modified Organisms; Preemption; Exceptions

Description:

Preempts certain state administrative regulatory actions and county regulatory actions relating to genetically modified plant organisms. Excepts from the preemption any county ordinance that took effect before 01/01/09 and made unlawful certain actions relating to particular species of genetically modified plant organisms. Excepts also from the preemption any state administrative regulatory action or county regulatory action that bans, restricts, or otherwise regulates the growing of genetically modified taro.

