

JAN 23 2009

S.B. NO. 238

A BILL FOR AN ACT

RELATING TO LABELING OF GENETICALLY ENGINEERED CROPS.

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

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

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



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

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

9 Mandatory labeling of genetically engineered whole foods:

- 10 (1) Would meet the demand of Hawaii's residents for
11 informed choice concerning the foods they consume;
- 12 (2) Would provide the basis for limiting dispersal of
13 seeds from genetically engineered whole foods into the
14 agricultural landscape and environment, thus
15 mitigating the adverse environmental, agricultural,
16 and economic impacts accompanying genetically
17 engineered crop contamination episodes; and
- 18 (3) Could be implemented at minimal cost to both food
19 producers and government.

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



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

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

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

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



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

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

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

- 8 (1) The manufacture, sale, delivery, holding, or offering
9 for sale of any food, drug, device, or cosmetic that
10 is adulterated or misbranded;
- 11 (2) The adulteration or misbranding of any food, drug,
12 device, or cosmetic;
- 13 (3) The receipt in commerce of any food, drug, device, or
14 cosmetic that is adulterated or misbranded, and the
15 delivery or proffered delivery thereof for pay or
16 otherwise;
- 17 (4) The sale, delivery for sale, holding for sale, or
18 offering for sale of any article in violation of
19 section 328-11, 328-12, or 328-17;
- 20 (5) The dissemination of any false advertisement;
- 21 (6) The refusal to permit entry or inspection, or to
22 permit the taking of a sample, as authorized by



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

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

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

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

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



1 this part or regulations adopted under the Federal
2 Act;

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

8 (12) The use by any person to the person's own advantage,
9 or revealing other than to the department of health or
10 to the courts when relevant in any judicial proceeding
11 under this part, any information acquired under
12 authority of section 328-11, 328-12, 328-17, or
13 328-23, concerning any method or process which as a
14 trade secret is entitled to protection;

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



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

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

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

20 (A); or

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



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

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

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



- 1 (A) Are engaged in the packaging or labeling of
2 [~~such~~] the commodities; or
- 3 (B) Prescribe or specify by any means the manner in
4 which [~~such~~] the commodities are packaged or
5 labeled;
- 6 (17) The selling or dispensing in restaurants, soda
7 fountains, drive-ins, lunch wagons, or similar public
8 eating establishments of imitation milk and imitation
9 milk products in place of fresh milk and fresh milk
10 products respectively; of liquid or dry products
11 [~~which~~] that simulate cream but do not comply with
12 content requirements for cream in place of cream; of
13 non-dairy frozen desserts [~~which~~] that do not comply
14 with content requirements for dairy frozen desserts in
15 place of dairy frozen desserts; and of any other
16 imitation food or one made in semblance of a genuine
17 food in place of [~~such~~] the genuine food, unless the
18 consumer is notified by either proper labeling or
19 conspicuous posted signs or conspicuous notices on
20 menu cards and advertisements informing of [~~such~~] the
21 substitution, to include but not be limited to the



- 1 substitution of imitation milk in milk shake and
2 malted milk drinks;
- 3 (18) Wilfully and falsely representing or using any
4 devices, substances, methods, or treatment as
5 effective in the diagnosis, cure, mitigation,
6 treatment, or alleviation of cancer. This paragraph
7 shall not apply to any person who depends exclusively
8 upon prayer for healing in accordance with teachings
9 of a bona fide religious sect, denomination, or
10 organization, nor to a person who practices such
11 teachings;
- 12 (19) The selling or offering for sale at any food facility
13 which serves or sells over the counter directly to the
14 consumer an unlabeled or unpackaged food that is a
15 confectionery which contains alcohol in excess of
16 one-half of one per cent by weight unless the consumer
17 is notified of that fact by either proper labeling or
18 conspicuous posted signs or conspicuous notices on
19 menu cards and advertisements;
- 20 (20) The sale to a person below the age of twenty-one years
21 of any food which is a confectionery [~~which~~] that



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

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

5 (A) Is a genetically engineered whole food;

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

8 (C) Does not have affixed to the product a
9 conspicuous label bearing the notice:

10 "GENETICALLY ENGINEERED"

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

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



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

2

INTRODUCED BY:

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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".

