

JAN 20 2012

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# A BILL FOR AN ACT

RELATING TO THE LABELING OF GENETICALLY ENGINEERED.

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

1           SECTION 1. The legislature finds that a poll conducted by  
2 the University of Hawaii's college of tropical agriculture and  
3 human resources shows that seventy-two per cent of Hawaii's  
4 residents feel that it is very important that genetically  
5 modified fruit be labeled. Numerous nations, including  
6 countries of the European Union, Japan, and China, require  
7 labeling of genetically engineered foods. West Hawaii Today  
8 reported on September 1, 2011, that Japan approved importation  
9 of genetically modified papayas if labeled as such. This was  
10 the last step in a ten-year effort to get papayas introduced  
11 into Japan, a huge market for papaya growers.

12           Hawaii has a national reputation for producing high-quality  
13 foods and maintaining a pure and preserved natural environment.  
14 The State's unique agricultural heritage and vitality of its  
15 tourism industry rely upon this reputation.

16           Although genetically engineered crops in the United States  
17 have contaminated conventional and organic crops of the same  
18 species via pollen or seed dispersal, Hawaii papaya growers have



1 found a method of utilizing genetic engineering technology to  
2 improve papaya crops without contamination to other crops or  
3 harm to humans.

4 Mandatory labeling of genetically engineered whole foods:

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

15 The purpose of this Act is to require the labeling of  
16 genetically engineered whole food produced, sold, or distributed  
17 in Hawaii.

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

21 "Genetically engineered food crop" means a plant in which  
22 the genetic material has been changed through modern



1 biotechnology in a way that does not occur naturally by  
2 multiplication or natural recombination, or both.

3 "Genetically engineered whole food" means any genetically  
4 engineered food crop in its raw or natural state that is  
5 intended for human consumption, including all fruits that are  
6 washed, colored, or otherwise treated in their unpeeled natural  
7 form prior to marketing.

8 "Modern biotechnology" means the application of in vitro  
9 nucleic acid techniques, including recombinant deoxyribonucleic  
10 acid and direct injection of nucleic acid into cells or  
11 organelles. This also includes the fusion of cells (including  
12 protoplast fusion) or hybridization techniques beyond the  
13 taxonomic family that overcome natural physiological,  
14 reproductive, or recombination barriers and that are not  
15 techniques used in traditional breeding and selection. Those  
16 techniques include recombinant deoxyribonucleic acid techniques  
17 that use vector systems and techniques involving the direct  
18 introduction into the organism of hereditary materials prepared  
19 outside the organism such as micro-injection, macro-injection,  
20 chemoporation, electroporation, micro-encapsulation and liposome  
21 fusion."



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

3 "§328-6 Prohibited acts. The following acts and the  
4 causing thereof within the State by any person are prohibited:

- 5 (1) The manufacture, sale, delivery, holding, or offering  
6 for sale of any food, drug, device, or cosmetic that  
7 is adulterated or misbranded;
- 8 (2) The adulteration or misbranding of any food, drug,  
9 device, or cosmetic;
- 10 (3) The receipt in commerce of any food, drug, device, or  
11 cosmetic that is adulterated or misbranded, and the  
12 delivery or proffered delivery thereof for pay or  
13 otherwise;
- 14 (4) The sale, delivery for sale, holding for sale, or  
15 offering for sale of any article in violation of  
16 section 328-11, 328-12, or 328-17;
- 17 (5) The dissemination of any false advertisement;
- 18 (6) The refusal to permit entry or inspection, or to  
19 permit the taking of a sample, as authorized by  
20 sections 328-22 and 328-23 to 328-27, or to permit  
21 access to or copying of any record as authorized by  
22 section 328-23;



- 1           (7) The giving of a guaranty or undertaking which guaranty  
2           or undertaking is false, except by a person who relied  
3           on a guaranty or undertaking to the same effect signed  
4           by, and containing the name and address of the person  
5           residing in the State from whom the person received in  
6           good faith the food, drug, device, or cosmetic;
- 7           (8) The removal or disposal of a detained or embargoed  
8           article in violation of sections 328-25 to 328-27;
- 9           (9) The alteration, mutilation, destruction, obliteration,  
10          or removal of the whole or any part of the labeling  
11          of, or the doing of any other act with respect to a  
12          food, drug, device, or cosmetic, if the act is done  
13          while the article is held for sale and results in the  
14          article being adulterated or misbranded;
- 15          (10) Forging, counterfeiting, simulating, or falsely  
16          representing, or without proper authority using any  
17          mark, stamp, tag, label, or other identification  
18          device authorized or required by rules adopted under  
19          this part or regulations adopted under the Federal  
20          Act;
- 21          (11) The use, on the labeling of any drug or in any  
22          advertisement relating to the drug, of any



1 representation or suggestion that an application with  
2 respect to the drug is effective under section 328-17,  
3 or that the drug complies with that section;

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

11 (13) In the case of a prescription drug distributed or  
12 offered for sale in this State, the failure of the  
13 manufacturer, packer, or distributor thereof to  
14 maintain for transmittal, or to transmit, to any  
15 practitioner who makes written request for information  
16 as to the drug, true and correct copies of all printed  
17 matter [~~which~~] that is required to be included in any  
18 package in which that drug is distributed or sold, or  
19 [~~such~~] other printed matter as is approved under the  
20 Federal Act. Nothing in this paragraph shall be  
21 construed to exempt any person from any labeling



1 requirement imposed by or under other provisions of  
2 this part;

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

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

17 (A); or

18 (C) Making, selling, disposing of, or causing to be  
19 made, sold, or disposed of, or keeping in  
20 possession, control, or custody, or concealing,  
21 with intent to defraud, any punch, die, plate, or  
22 other thing designed to print, imprint, or



1 reproduce that trade name or other identifying  
2 mark or imprint of another or any likeness of any  
3 of the foregoing upon any drug, device, or  
4 container thereof;

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

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

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





1 (B) Prescribe or specify by any means the manner in  
2 which [sueh] the commodities are packaged or  
3 labeled;

4 (17) The selling or dispensing in restaurants, soda  
5 fountains, drive-ins, lunch wagons, or similar public  
6 eating establishments of imitation milk and imitation  
7 milk products in place of fresh milk and fresh milk  
8 products respectively; of liquid or dry products  
9 [whieh] that simulate cream but do not comply with  
10 content requirements for cream in place of cream; of  
11 non-dairy frozen desserts [whieh] that do not comply  
12 with content requirements for dairy frozen desserts in  
13 place of dairy frozen desserts; and of any other  
14 imitation food or one made in semblance of a genuine  
15 food in place of [sueh] the genuine food, unless the  
16 consumer is notified by either proper labeling or  
17 conspicuous posted signs or conspicuous notices on  
18 menu cards and advertisements informing of [sueh] the  
19 substitution, [~~to include but not limited to~~]  
20 including the substitution of imitation milk in milk  
21 shake and malted milk drinks;



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



1           (21) The sale, offering for sale, or distribution of any  
2                           genetically engineered whole food imported and sold in  
3                           Hawaii or grown or engineered in Hawaii and sold  
4                           elsewhere, unless the food is conspicuously labeled  
5                           bearing the wording "GENETICALLY ENGINEERED"."

6           SECTION 4. Section 328-29, Hawaii Revised Statutes, is  
7 amended by amending subsection (a) to read as follows:

8           "(a) Any person who violates section 328-6 shall be fined  
9 not more than \$500, or imprisoned not more than one year, or  
10 both[-]; provided that the penalty for violation of section  
11 328-6(21) shall be a fine of not more than \$500, to be imposed  
12 upon the food grower, food distributor, food packager, or food  
13 wholesaler, rather than upon the retailer, of the genetically  
14 engineered whole food."

15           SECTION 5. Statutory material to be repealed is bracketed  
16 and stricken. New statutory material is underscored.

17           SECTION 6. This Act shall take effect upon its  
18 approval.

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# S.B. NO. 2279

**Report Title:**

Genetically Engineered Crops; Required Labeling

**Description:**

Prohibits the sale or distribution of any genetically engineered whole food intended for human consumption unless the food is labeled as genetically engineered. Defines "genetically engineered food crop", "modern biotechnology", and "genetically engineered whole food".

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

