

JAN 24 2013

A BILL FOR AN ACT

RELATING TO LABELING OF GENETICALLY ENGINEERED WHOLE FOOD.

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

1 SECTION 1. The legislature finds that Hawaii consumers
2 have the right to know whether the foods they purchase are
3 produced with genetic engineering so that they can make an
4 informed choice of products. Labeling is necessary to ensure
5 that Hawaii consumers are fully and reliably informed about the
6 products they purchase and consume.

7 The legislature finds that there are no federal or state
8 requirements that these foods be labeled. In contrast, sixty-
9 one countries, including Japan, South Korea, China, Australia,
10 Russia, Malaysia, members of the European Union, and other key
11 United States trading partners have laws mandating disclosure of
12 genetically engineered foods on food labels. No international
13 agreements prohibit the mandatory identification of foods
14 produced with genetic engineering.

15 The legislature finds that the United States Food and Drug
16 Administration does not require or conduct safety studies of
17 genetically engineered foods. Instead, consultations are



1 voluntary and developers of those foods may decide what
2 information to provide to the agency.

3 The legislature further finds that the State of Hawaii has
4 a national reputation for producing high-quality foods and
5 maintaining a pure and preserved natural environment. The
6 sustainability of the State's unique agricultural heritage and
7 the vitality of its tourism industry rely upon this reputation.
8 Preserving the identity, quality, and reliability of Hawaii's
9 agricultural products and exports is critical to Hawaii's
10 economic well-being.

11 The legislature further finds that labeling genetically
12 engineered whole foods can be implemented without substantially
13 burdening either the food producers or government regulators.
14 Papayas exported from Hawaii to Japan are already labeled as
15 genetically engineered. Hawaii residents deserve to have the
16 same information provided to them about the food they buy and
17 consume. Many local growers already voluntarily label locally-
18 grown produce with a "Hawaii seal of quality" or as "island
19 fresh" at a nominal cost.

20 Accordingly, the purpose of this Act is to establish a
21 consistent and enforceable standard for labeling whole foods
22 produced using genetic engineering. Identifying foods produced



1 through genetic engineering will also help protect our state's
2 agricultural economy and environment. It is the intent of the
3 legislature that this Act be liberally construed to fulfill
4 these purposes.

5 SECTION 2. Chapter 328, Hawaii Revised Statutes, is
6 amended by adding a new section to be appropriately designated
7 and to read as follows:

8 **"§328- Genetically engineered whole food; labeling."**

9 (a) The sale, offering for sale, or distribution of any
10 genetically engineered whole food intended for human consumption
11 within the State is prohibited unless the fact of genetic
12 engineering is disclosed as follows:

13 (1) In the case of a raw agricultural commodity, on the
14 package offered for retail sale, with the words
15 "genetically engineered" appearing clearly and
16 conspicuously on the label on the front of the package
17 of the commodity or, in the case of any such commodity
18 that is not separately packaged or labeled, on a clear
19 and conspicuous label appearing on the retail store
20 shelf or bin in which the commodity is displayed for
21 sale;



1 (2) In the case of any seed or seed stock, on the seed or
2 seed stock container, sales receipt, or any other
3 documentation of identification, ownership, or
4 possession, with the words "genetically engineered" or
5 "produced with genetic engineering" stated clearly and
6 conspicuously; and

7 (3) In the case of all genetically engineered whole foods
8 resulting from the transfer of animal genes into
9 plants, on a clear and conspicuous label that
10 indicates this fact in a manner that will allow
11 vegetarians and those with religious dietary
12 restrictions to observe their dietary guidelines.

13 (b) This section shall not apply to any of the following:

14 (1) A raw agricultural commodity or food that has been
15 grown, raised, produced, or derived without the
16 knowing and intentional use of genetically engineered
17 seed or food; provided that the person who sells,
18 offers for sale, or distributes the raw agricultural
19 commodity or food shall obtain, from the immediate
20 source of the raw agricultural commodity or food, a
21 sworn statement that the raw agricultural commodity or
22 food:



- 1 (A) Has not been knowingly or intentionally
2 genetically engineered; and
3 (B) Has been segregated from, and has not been
4 knowingly or intentionally commingled at any time
5 with, foods that may have been genetically
6 engineered.

7 In providing such a sworn statement, the immediate source
8 may rely on a sworn statement that contains such an
9 affirmation from a supplier;

- 10 (2) Food that has been lawfully certified as eligible to
11 be labeled, marketed, and offered for sale as organic
12 pursuant to the federal Organic Food Production Act of
13 1990, 7 United States Code 6501, et seq., and the
14 National Organic Program regulations promulgated by
15 the United States Department of Agriculture;

- 16 (3) Food that is not packaged for retail sale and that is:
17 (A) A processed food prepared and intended for
18 immediate human consumption; or
19 (B) Served, sold, or otherwise provided in any
20 restaurant or other food service establishment
21 that is primarily engaged in the sale of food



1 prepared and intended for immediate human
2 consumption; or

3 (4) Medical food.

4 (c) This section shall not be construed to require:

5 (1) The listing or identification of any genetically
6 engineered ingredient of a food other than an
7 agricultural product; or

8 (2) That the term genetically engineered be placed
9 immediately preceding any common name or primary
10 product descriptor of a food."

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

14 "Agricultural product" means any agricultural,
15 horticultural, viticultural, or vegetable product; honey or
16 beeswax; or oilseeds, grown or produced in the course of
17 business or trade within the State. The term does not include
18 timber or any timber product, animal or any animal product, milk
19 or any milk product, or any aquacultural product.

20 "Genetically engineered" means produced from an organism or
21 organisms of which the genetic material has been changed through
22 the application of:



1 (1) In vitro nucleic acid techniques including recombinant
2 deoxyribonucleic acid techniques and the direct
3 injection of nucleic acid into cells or organelles
4 including but not limited to recombinant
5 deoxyribonucleic acid or ribonucleic acid techniques
6 that use vector systems and techniques involving the
7 direct introduction into the organisms of hereditary
8 material prepared outside the organisms such as micro-
9 injection, macro-injection, chemoporation,
10 electroporation, micro-encapsulation, and liposome
11 fusion; or

12 (2) Fusion of cells, including protoplast fusion, or
13 hybridization techniques that overcome natural
14 physiological, reproductive, or recombination
15 barriers, where the donor cells or protoplasts do not
16 fall within the same taxonomic family, in a way that
17 does not occur by natural multiplication or natural
18 recombination.

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



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



- 1 (11) The use, on the labeling of any drug or in any
2 advertisement relating to the drug, of any
3 representation or suggestion that an application with
4 respect to the drug is effective under section 328-17,
5 or that the drug complies with that section;
- 6 (12) The use by any person to the person's own advantage,
7 or revealing other than to the department of health or
8 to the courts when relevant in any judicial proceeding
9 under this part, any information acquired under
10 authority of section 328-11, 328-12, 328-17, or 328-
11 23, concerning any method or process which as a trade
12 secret is entitled to protection;
- 13 (13) In the case of a prescription drug distributed or
14 offered for sale in this State, the failure of the
15 manufacturer, packer, or distributor thereof to
16 maintain for transmittal, or to transmit, to any
17 practitioner who makes written request for information
18 as to the drug, true and correct copies of all printed
19 matter [~~which~~] that is required to be included in any
20 package in which that drug is distributed or sold, or
21 [~~such~~] other printed matter as is approved under the
22 Federal Act. Nothing in this paragraph shall be



1 construed to exempt any person from any labeling
2 requirement imposed by or under other provisions of
3 this part;

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

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

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



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

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

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

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



1 (B) Prescribe or specify by any means the manner in
2 which [~~such~~] 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 [~~which~~] that simulate cream but do not comply with
10 content requirements for cream in place of cream; of
11 non-dairy frozen desserts [~~which~~] 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 [~~such~~] 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 [~~such~~] the
19 substitution, to include but not be limited to the
20 substitution of imitation milk in milk shake and
21 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 intended for human
 3 consumption within the State unless the fact of
 4 genetic engineering is disclosed as required by
 5 section 328- ."

6 SECTION 5. If any provision of this Act, or the
 7 application thereof to any person or circumstance, is held
 8 invalid, the invalidity does not affect other provisions or
 9 applications of the Act that can be given effect without the
 10 invalid provision or application, and to this end the provisions
 11 of this Act are severable.

12 SECTION 6. Statutory material to be repealed is bracketed
 13 and stricken. New statutory material is underscored.

14 SECTION 7. This Act shall take effect upon its approval.

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S.B. NO. 1290

Report Title:

Labeling; Genetically Engineered Whole Food

Description:

Requires labeling of certain genetically engineered food products.

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