

JAN 24 2013

A BILL FOR AN ACT

RELATING TO LABELING.

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 were
3 produced with genetic engineering so they can make an informed
4 choice of products. Consumers nationally and in Hawaii
5 overwhelmingly favor knowing whether the food they purchase and
6 consume is produced with genetic engineering for health-related,
7 economic, environmental, religious, ethical, and other reasons.
8 Polls consistently show that the vast majority of the public –
9 more than ninety per cent – wants to know if its food was
10 produced with genetic engineering for health, economic,
11 environmental, religious, and ethical reasons. There is
12 currently no federal or Hawaii state requirement that these
13 foods be labeled. In contrast, sixty-one countries, including
14 Japan, South Korea, China, Australia, Russia, Malaysia, the
15 European Union member states, and other key United States
16 trading partners, already have laws requiring that foods
17 produced through genetic engineering be labeled. The United
18 States Food and Drug Administration does not require or conduct



1 safety studies of genetically engineered foods. Instead, any
2 consultations are voluntary, and developers may decide what
3 information they may wish to provide to the agency.

4 The legislature finds that the genetic engineering of
5 plants and animals can cause unintended consequences. It has
6 been demonstrated that manipulating genes through genetic
7 engineering and inserting them into organisms is an imprecise
8 process, so the results are not always predictable or
9 controllable. United States government scientists have stated
10 that the artificial insertion of genetic material into plants
11 via genetic engineering can increase the levels of known
12 toxicants or allergens in foods and create new toxicants or
13 allergens with consequent health concerns. Mandatory
14 identification of foods produced with genetic engineering can
15 provide a critical method for detecting and tracking, at a large
16 epidemiological scale, the potential health effects of consuming
17 such foods. Without mandatory disclosure, consumers of foods
18 produced through genetic engineering may unknowingly violate
19 individuals' dietary and religious beliefs.

20 No international agreement prohibits the mandatory
21 identification of foods produced with genetic engineering. In
22 2011, Codex Alimentarius, the food standards organization of the



1 United Nations, stated that governments are free to decide on
2 whether and how to label foods produced with genetic
3 engineering. To that end, numerous foreign markets with
4 restrictions on foods produced through genetic engineering have
5 restricted imports of United States crops due to concerns about
6 genetic engineering. Some foreign markets are choosing to
7 purchase agricultural products from countries other than the
8 United States because genetically engineered crops are not
9 identified in the United States, making it impossible for buyers
10 to distinguish what does or does not meet their national
11 labeling laws or restrictions and contemporaneously rendering
12 United States' products less desirable.

13 Mandatory identification of foods produced with genetic
14 engineering can be a critical method of preserving the economic
15 value of exports or domestically sensitive markets with
16 restrictions and prohibitions against genetic engineering.
17 Labeling requirements will give importers greater confidence in
18 Hawaiian agricultural products. The State of Hawaii has a
19 national reputation for producing high-quality foods and
20 maintaining a pure and preserved natural environment, and the
21 State's unique agricultural heritage and vitality in its tourism
22 industry rely upon this reputation. Hawaii farmers' farm gate



1 revenues total approximately \$700,000,000 annually, and
2 agriculture employs approximately 23,000 residents. Preserving
3 the identity, quality, and reliability of Hawaii's agricultural
4 products and exports is critical to Hawaii's economic well-
5 being.

6 Organic food sales are increasing. While total United
7 States food sales are virtually unchanged, growing less than one
8 per cent yearly, the organic food industry grew at a rate of 9.5
9 per cent in 2011, and, for the first time, surpassed the
10 \$30,000,000,000 mark. Sales of organic fruits and vegetables
11 are up 11.8 per cent, accounting for approximately twelve per
12 cent of all United States fruit and vegetable sales. Organic
13 dairy is growing at nine per cent and comprises nearly six per
14 cent of the total United States dairy market. Trade industry
15 data shows organic farming is more profitable and economically
16 secure than conventional farming over the long term. Hawaii's
17 organic farmers are prohibited from using genetically engineered
18 seeds. Nonetheless, these farmers' crops are threatened with
19 transgenic contamination from neighboring fields of genetically
20 engineered crops. The risk of contamination can erode public
21 confidence in organic products, significantly undermining the
22 job creating, economy boosting growth of the organic market.



1 Foods identified as non-genetically engineered are the
2 fastest growing market segment, with annual sales increases in
3 2011 between twenty and twenty-seven per cent. However, only a
4 small portion of the food industry participates in voluntary
5 labeling of foods claimed not to contain genetically engineered
6 ingredients. Nor are there consistent standards for such
7 labeling or for enforcement of voluntary labels. As such,
8 voluntary labels are insufficient to provide consumers with
9 adequate information on whether or not the food they are
10 purchasing was produced with genetic engineering, and in some
11 cases these labels may be misleading.

12 The cultivation of genetically engineered crops can cause
13 serious impacts to the environment. For example, in 2012
14 ninety-three per cent of all soy grown in the United States was
15 engineered to be herbicide resistant. In fact, the vast
16 majority of genetically engineered crops are designed to
17 withstand herbicides and therefore promote indiscriminate
18 herbicide use. As a result, genetically engineered crops have
19 caused 527,000,000 pounds of additional herbicides to be applied
20 to the nation's farmland. These toxic herbicides damage the
21 vitality and quality of our soil, contaminate our drinking
22 water, and pose health risks to consumers and farm workers.



1 Further, because of the consequent massive increase in use of
2 herbicides, herbicide resistant weeds have developed and
3 flourished, infesting farm fields and roadsides, complicating
4 weed control for farmers, and causing farmers to resort to more
5 and increasingly toxic herbicides.

6 The legislature finds that the Hawaiian Islands represent a
7 unique and fragile ecosystem, with over three hundred threatened
8 or endangered species. Pesticides sprayed on crops genetically
9 engineered to resist the effects of pesticides may harm
10 threatened or endangered species and their habitats, and the
11 ingesting of genetically engineered crops by threatened and
12 endangered species has not been proven safe. The people of
13 Hawaii should have the choice to avoid purchasing foods produced
14 in ways that can lead to such environmental harm. United States
15 exports to many countries, which includes papayas grown in
16 Hawaii, are already labeled as genetically engineered. Hawaii
17 residents deserve to have the same information provided to them
18 about the food they buy and consume. Labeling of foods produced
19 through genetic engineering as provided in this Act can be
20 implemented without substantial burden to either food producers
21 or the government.



1 The purpose of this Act is to establish a consistent and
2 enforceable standard for labeling all foods produced using
3 genetic engineering, and thus provide the people of Hawaii with
4 knowledge of how their food is produced. The further purpose of
5 this Act is to facilitate the exercise of the fundamental right
6 of the people of Hawaii to be fully informed about whether the
7 food they purchase and eat is produced with genetic engineering
8 so that they can choose whether to purchase and eat such foods.
9 Identifying foods produced through genetic engineering will also
10 help protect our State's agricultural economy and environment.

11 SECTION 2. Chapter 328, Hawaii Revised Statutes, is
12 amended by adding a new part to be appropriately designated and
13 to read as follows:

14 **"PART . LABELING OF GENETICALLY ENGINEERED FOODS**

15 **"§328- Definitions.** As used in this chapter, unless the
16 context clearly requires otherwise:

17 "Agriculture" means the science, art, or practice of
18 cultivating the soil, producing crops, and raising livestock or
19 fish and in varying degrees the preparation and marketing of the
20 resulting products.



1 "Cultivated commercially" means agricultural commodities
2 grown or raised in the course of business or trade and sold
3 within Hawaii.

4 "Enzyme" means a protein that catalyzes chemical reactions
5 of other substances without itself being destroyed or altered
6 upon completion of the reactions.

7 "Food" means any articles used to feed or nourish humans or
8 other animals, chewing gum, and articles used for components,
9 including food additives, of any such article.

10 "Genetically engineered" means produced from an organism or
11 organisms in which the genetic material has been changed through
12 the application of:

13 (1) In vitro nucleic acid techniques, which include but
14 are not limited to: recombinant deoxyribonucleic acid
15 techniques; direct injection of nucleic acid into
16 cells or organelles; encapsulation; gene deletion; and
17 doubling; or

18 (2) Methods of fusing cells beyond the taxonomic family
19 that overcome natural physiological reproductive or
20 recombinant barriers and that are not techniques used
21 in traditional breeding and selection such as
22 conjugation, transduction, and hybridization.



1 For purposes of this definition, "in vitro nucleic acid
2 techniques" include but are not limited to recombinant
3 deoxyribonucleic acid or ribonucleic acid techniques that use
4 vector systems and techniques involving the direct introduction
5 into the organisms of hereditary materials prepared outside the
6 organisms such as micro-injection, macro-injection,
7 chemoporation, electroporation, micro-encapsulation, and
8 liposome fusion.

9 "Label" means a display of written, printed, or graphic
10 matter upon or connected to the immediate container or surface
11 of any article.

12 "Labeling" means any written, printed, or graphic matter
13 that is present on the label, accompanies the food, or is
14 displayed near the food, including for the purpose of promoting
15 its sale or disposal.

16 "Manufacturer" means the person or business that makes,
17 processes, combines, or packages food ingredients into a
18 finished food product.

19 "Organism" means any biological entity capable of
20 replication, reproduction, or transferring genetic material.

21 "Processed food" means any food other than a raw
22 agricultural commodity, including any food produced from a raw



1 agricultural commodity that has been subject to processing such
2 as canning, smoking, pressing, cooking, freezing, dehydration,
3 fermentation, or milling.

4 "Processing aid" means:

5 (1) A substance that is added to a food during the
6 processing of the food but is removed in some manner
7 from the food before it is packaged in its final form;

8 (2) A substance that is added to a food during processing,
9 is converted into constituents normally present in the
10 food, and does not significantly increase the amount
11 of the constituents found in the food; or

12 (3) A substance that is added to a food for its technical
13 or functional effects in the processing but is present
14 in the finished food at insignificant levels and does
15 not have any technical or functional effect in that
16 finished food.

17 "Raw agricultural commodity" means any plant, animal, or
18 fungi grown or produced for human food use purposes.

19 "Supplier" means a person or entity that engages in the
20 operation of selling or distributing raw agricultural
21 commodities that the person or entity has produced, purchased,
22 or acquired from a processor.



1 §328- **Foods produced through genetic engineering;**
2 **labeling.** (a) Any genetically engineered food offered for sale
3 within the State of Hawaii and intended for human consumption
4 within the State of Hawaii is misbranded if it is entirely or
5 partially produced with genetic engineering and that fact is not
6 disclosed as follows:

7 (1) In the case of a raw agricultural commodity on the
8 package offered for retail sale, with the words
9 "Genetically Engineered" appearing clearly and
10 conspicuously on the label on the front of the package
11 of such commodity or, in the case of any such
12 commodity that is not separately packaged or labeled,
13 on a clear and conspicuous label appearing on the
14 retail store shelf or bin in which such commodity is
15 displayed for sale;

16 (2) In the case of processed food containing some products
17 of genetic engineering, the manufacturer must label
18 the product, in clear and conspicuous language on the
19 front or back of the package of such food, with the
20 words "Produced with Genetic Engineering" or
21 "Partially Produced with Genetic Engineering";



- 1 (3) All foods produced through genetic engineering
2 resulting from transfer of animal genes into plants
3 shall be labeled to indicate this fact in a manner
4 that will allow vegetarians and those with religious
5 dietary restrictions to observe their dietary
6 guidelines;
- 7 (4) In the case of raw agricultural commodities including
8 unprocessed meat and fish, the retailer is responsible
9 for point of purchase labeling of any raw agricultural
10 commodity that has been produced using genetic
11 engineering. It is the responsibility of suppliers to
12 label the container used for packaging, holding, or
13 transporting raw genetically engineered agricultural
14 commodities that are delivered directly to Hawaii
15 retailers; and
- 16 (5) Any word, statement, or other information appearing on
17 the label shall not be considered to be in compliance
18 with this section unless such word, statement, or
19 other information also appears on the outside
20 container or wrapper, if any, of the bulk, wholesale,
21 or retail package of such article or is easily legible
22 through the outside container or wrapper.



1 (b) This section shall not be construed to require either
2 the listing or identification of any ingredient or ingredients
3 that were genetically engineered or that the term "genetically
4 engineered" be placed immediately preceding any common name or
5 primary product descriptor of a food.

6 (c) This section shall not apply to any of the following:

7 (1) Any processed food that would be subject to this
8 section solely because it includes one or more
9 materials produced by genetic engineering; provided
10 that the engineered materials in the aggregate do not
11 account for more than nine-tenths of one per cent of
12 the total weight of the processed food;

13 (2) A raw agricultural commodity or food that has been
14 grown, raised, produced, or derived without the
15 knowing and intentional use of genetically engineered
16 seed or food;

17 (3) Any processed food that would be subject to this
18 section solely because one or more processing aids or
19 enzymes were produced or derived with genetic
20 engineering;

21 (4) Any liquor or intoxicating liquor, as defined in
22 section 281-1 and regulated under chapter 281;



1 (5) Food that has been lawfully certified to be labeled,
2 marketed, and offered for sale as "organic" pursuant
3 to the federal Organic Foods Production Act of 1990,
4 7 U.S.C. 6501, *et seq.*, and the National Organic
5 Program regulations promulgated pursuant thereto by
6 the United States department of agriculture;

7 (6) Food that is not packaged for retail sale and that
8 either:

9 (A) Is a processed food prepared and intended for
10 immediate human consumption; or

11 (B) Is served, sold, or otherwise provided in any
12 restaurant or other food service establishment
13 that is primarily engaged in the sale of food
14 prepared and intended for immediate human
15 consumption;

16 (7) An animal that has not itself been genetically
17 engineered, regardless of whether such animal has been
18 fed or injected with any food or any drug that has
19 been produced through means of genetic engineering; or

20 (8) Medical food, as defined in section 346-67.

21 (d) The department of health shall not adopt any rule
22 expanding the exceptions in this section.



1 **§328- Rules and regulations.** The department of health
2 shall:

3 (1) Adopt rules pursuant to chapter 91 to carry out this
4 part; and

5 (2) Perform all functions necessary to effectuate the
6 purposes of this part.

7 **§328- Injunctive relief; attorneys' fees.** (a) The
8 director or any resident of the State of Hawaii may institute a
9 civil action in any court of competent jurisdiction for
10 injunctive relief to prevent any violation of this part or any
11 rule adopted to implement this part. The court shall have
12 powers to grant relief in accordance with the Hawaii rules of
13 civil procedure.

14 (b) The court shall award to a prevailing plaintiff
15 reasonable costs and attorneys' fees incurred while
16 investigating and prosecuting an action to enforce this chapter.

17 **§328- Penalty.** Any person who violates this part or
18 rules adopted pursuant to this part shall be fined not more than
19 \$500, or imprisoned not more than one year, or both."

20 SECTION 3. If any provision of this Act, or the
21 application thereof to any person or circumstance, is held
22 invalid, the invalidity does not affect other provisions or



1 applications of the Act that can be given effect without the
2 invalid provision or application, and to this end the provisions
3 of this Act are severable.

4 SECTION 4. This Act shall take effect upon its approval.

5

INTRODUCED BY:

Mike Hubbard



Report Title:

Labeling of Genetically Engineered Whole Foods; Private Civil Enforcement

Description:

Requires labeling of foods that have been genetically engineered. Provides a penalty for violations and authorizes private civil enforcement of the Act.

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

