THE SENATE
TWENTY-SEVENTH LEGISLATURE, 2014
STATE OF HAWAII

JAN 16 2014

S.B. NO. 2176

A BILL FOR AN ACT

RELATING TO LABELING.

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

SECTION 1. The legislature finds that Hawaii consumers have the right to know whether the foods they purchase were produced with genetic engineering so they can make an informed choice of products. Labeling is necessary to ensure that Hawaii consumers are fully and reliably informed about the products they purchase and consume. Labels provide informed consent and prevent consumer deception.

Polls consistently show that the vast majority of the public wants to know if its food was produced with genetic engineering for multiple health, personal, economic, environmental, religious, and cultural reasons. However, there is currently no federal or Hawaii state requirement that these foods be labeled. In contrast, sixty-one countries, including Japan, South Korea, China, Australia, Russia, India, the European Union member states, and other key United States trading partners, already have laws requiring that foods produced through genetic engineering be labeled. In 2011, Codex Alimentarius, the food standards organization of the United

Nations, stated that governments are free to decide whether and how to label foods produced with genetic engineering. The United States Food and Drug Administration does not require or conduct safety studies of genetically engineered foods. Instead, any safety consultations are voluntary, and genetically engineered food developers may decide what information they provide to the agency. Market approval of genetically engineered food is based on industry research alone. There have been no long-term or epidemiological studies in the United States that examine the safety of human consumption of genetically engineered foods.

The legislature finds that the genetic engineering of plants and animals can have unintended consequences. It has been demonstrated that manipulating genes through genetic engineering and inserting them into organisms is an imprecise process, so the results are not always predictable or controllable. United States government scientists have stated that the artificial insertion of genetic material into plants via genetic engineering may increase the levels of known toxicants or allergens in foods and create new toxicants or allergens with consequent health concerns. Independent scientists are limited from conducting safety and risk-

assessment research of genetically engineered materials used in food products due to industry restrictions on research of those materials. Mandatory identification of foods produced with genetic engineering can provide a critical method for detecting and tracking, at a large epidemiological scale, the potential health effects of consuming such foods. Without mandatory disclosure, consumers of foods produced through genetic engineering may unknowingly violate individuals' dietary and religious beliefs.

Numerous foreign markets with restrictions on foods produced with genetic engineering have restricted imports of United States crops due to concerns about genetic engineering. Some foreign markets are choosing to purchase agricultural products from countries other than the United States because genetically engineered crops are not identified in the United States, making it impossible for buyers to distinguish what does or does not meet their national labeling laws or restrictions and contemporaneously rendering United States' products less desirable.

Mandatory identification of foods produced with genetic engineering can be a critical method of preserving the economic value of exports or domestically sensitive markets with

restrictions and prohibitions against genetic engineering. Labeling requirements will give importers greater confidence in Hawaiian agricultural products. The State of Hawaii has a national reputation for producing high-quality foods and maintaining a pure and preserved natural environment, and the State's unique agricultural heritage and vitality in its tourism industry rely upon this reputation. Hawaii farmers' farm gate revenues total approximately $700,000,000 annually, and agriculture employs approximately 23,000 residents. Preserving the identity, quality, and reliability of Hawaii's agricultural products and exports is critical to Hawaii's economic well-being.

The organic food industry is growing rapidly, with $2,700,000,000 in growth in 2012. While total United States food sales grew at a rate of 3.7 per cent, the organic food industry grew at a rate of 10.2 per cent in 2012, accounting for $31,500,000,000 in sales. Sales of organic fruits and vegetables account for 43 per cent of those new dollars, 34.8 per cent of total organic food sales, and 10.3 per cent of all United States fruit and vegetable sales. Organic dairy grew at a rate of 7.1 per cent in 2012 and constitutes over 6 per cent of the total United States dairy market. Trade industry data

shows organic farming is more profitable and economically secure than conventional farming over the long term. Hawaii's organic farmers are prohibited from using genetically engineered seeds. Nonetheless, these farmers' crops are threatened with transgenic contamination from neighboring fields of genetically engineered crops. The risk of contamination can erode public confidence in organic products, significantly undermining the job creating, economy boosting growth of the organic market. Requiring the labeling of foods produced through genetic engineering will help protect organics statewide by increasing identification of genetically engineered foods through the food production process, thereby reducing the risk of contamination.

Foods identified as non-genetically engineered are the fastest growing market in agriculture. However, only a small portion of the food industry participates in voluntary labeling of foods claimed not to contain genetically engineered ingredients. Nor are there consistent standards for such labeling or for enforcement of voluntary labels. As such, voluntary labels are insufficient to provide consumers with adequate information on whether or not the food they are purchasing was produced with genetic engineering, and thus, may be misleading. Requiring that foods produced through genetic

engineering be labeled as such will create additional market opportunities for producers who are not certified as organic and whose products are not produced through genetic engineering. Such additional market opportunities will also contribute to vibrant and diversified agricultural communities.

The cultivation of genetically engineered crops can cause serious impacts to the environment. For example, in 2013 93 per cent of all soy grown in the United States was engineered to be herbicide resistant. In fact, the vast majority of genetically engineered crops are designed to withstand herbicides and therefore promote indiscriminate herbicide use. As a result, genetically engineered herbicide-resistant crops have caused 527,000,000 pounds of additional herbicides to be applied to the nation's farmland. These toxic herbicides damage the vitality and quality of our soil, harm wildlife, contaminate our drinking water, and pose health risks to consumers and farm workers. Because of the consequent massive increase in the use of herbicides, herbicide resistant weeds have developed and flourished, infesting farm fields and roadsides, complicating weed control for farmers, and causing farmers to resort to more and increasingly toxic herbicides. Additionally, insect-resistant genetically engineered crops pose a high risk of

fostering rapid evolution of pests resistant to organic pesticides, leading the detriment of organic farmers, and facilitating agriculturally and environmentally harmful monocultures, such as growing corn continuously on the same field year and year.

The legislature finds that the Hawaiian islands represent a unique and fragile ecosystem, with over three hundred threatened or endangered species. Pesticides sprayed on crops genetically engineered to resist the effects of pesticides may harm threatened or endangered species and their habitats, and the ingesting of genetically engineered crops by threatened and endangered species has not been proven to be safe. The people of Hawaii should have the choice to avoid purchasing foods produced in ways that can lead to such environmental harm. The United States' exports to many countries, including papayas grown in Hawaii, are already labeled as genetically engineered. Hawaii residents deserve to have the same information provided to them about the food they buy and consume. Labeling of foods produced through genetic engineering as provided in this Act can be implemented without substantial burden to either food producers or the government. Because neither the United States Food and Drug Administration nor the United States Congress

requires the labeling of food produced with genetic engineering, the State should require food produced with genetic engineering to be labeled as such in order to serve the interests of the State, prevent consumer deception, prevent potential risks to human health, promote food safety, protect cultural and religious practices, protect the environment, and promote economic development.

The purpose of this Act is to:

(1) Promote food safety and protect public health by enabling consumers to avoid potential risks associated with genetically engineered foods;

(2) Serve as a risk management tool enabling consumers, physicians, and scientists to identify unintended health effects resulting from consumption of genetically engineered foods;

(3) Assist consumers who are concerned about the potential effects of genetic engineering on the environment to make informed purchasing decisions;

(4) Reduce and prevent consumer confusion and deception;

(5) Promote the disclosure of factual information on food labels to allow consumers to make informed decisions;

(6) Create and protect non-genetically engineered food markets and enable consumers to make informed purchasing decisions; and

(7) Provide consumers with data from which they may make informed decisions for personal, religious, moral, cultural, or ethical reasons.

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

"PART . LABELING OF GENETICALLY ENGINEERED FOODS

§328-A Definitions. As used in this part, unless the context clearly requires otherwise:

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

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

"Department" means the department of health.

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

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

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

For purposes of this definition, "in vitro nucleic acid techniques" includes but is not limited to recombinant deoxyribonucleic acid or ribonucleic acid techniques that use vector systems and techniques involving the direct introduction into the organisms of hereditary materials prepared outside the organisms such as biolistics, micro-injection, macro-injection, chemoporation, electroporation, micro-encapsulation, and liposome fusion.

"Packaged food" means any food offered for retail sale in Hawaii, other than raw food and food served, sold, or provided ready to eat in any bake sale, restaurant, or cafeteria, and that is already otherwise subject to the provisions of section 328-10 prohibiting misbranding.

"Raw food" shall have the same meanings as "raw agricultural commodity" as defined in section 328-1.

§328-B Raw and packaged foods produced with genetic engineering; labeling. (a) Beginning January 1, 2015, all raw food and packaged food that is entirely or partially produced with genetic engineering must be labeled in accordance with the provisions of this part and is otherwise misbranded if that fact is not disclosed as follows:

(1) In the case of raw food packaged for retail sale, the manufacturer shall include the words "Genetically Engineered" clearly and conspicuously on the front or back of the package of such commodity;

(2) In the case of raw agricultural commodities that are not separately packaged or labeled, the retailer shall place a clear and conspicuous label on the retail store shelf or bin in which such commodity is displayed for sale;

(3) In the case of raw food, the retailer is responsible only for point of purchase shelf labeling. The supplier must label each container used for packaging, holding, and transporting any raw food produced with genetic engineering that is delivered directly to Hawaii retailers; and

(4) In the case of any packaged food containing some products of genetic engineering, the manufacturer shall label the product, in clear and conspicuous language on the front or back of the package of such food product with the words "Produced with Genetic Engineering" or "Partially Produced with Genetic Engineering".

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

§328-C Right of action for violations; damages; attorneys' fees; enforcement. (a) The department, acting through the attorney general, may bring an action in a court of competent jurisdiction to enjoin any person violating this part.

(b) The department may assess a civil penalty against any person violating this part in an amount not to exceed $500 per violation. Each day of violation shall be considered a separate violation.

(c) Any injured citizen of the State may, after giving notice of the alleged violation to the department and the alleged violator and waiting sixty days, bring an action to enjoin a violation of this part by a manufacturer or retailer in any court of competent jurisdiction. The court may, in such an action, award to a citizen who is a prevailing plaintiff reasonable attorneys' fees and costs incurred in investigating and prosecuting the action, but the court may not award any monetary damages.

(d) No person may be subject to an injunction or responsible for payment of prevailing party attorneys' fees for failure to label any food if:

(1) In the case of packaged food, the materials produced through genetic engineering do not account for more than nine-tenths of one per cent of the total weight of the packaged food; or

(2) The food has not been produced with the knowing or intentional use of genetic engineering.

(e) For purposes of this section, food will be considered not to have been produced with the knowing or intentional use of genetic engineering if:

(1) Such food is lawfully certified to be labeled, marketed, and offered for sale as "organic" pursuant to the federal Organic Food Production Act of 1990;

(2) In the case of a manufacturer or retailer obligated to label any food under this part, if such entity has obtained from whoever sold that food to them a sworn statement that the food has not been knowingly or intentionally genetically engineered and has been segregated from, and not knowingly or intentionally commingled with, foods that may have been genetically engineered at any time. In providing such a sworn statement, a manufacturer or retailer may rely on a sworn statement from a supplier that contains such an affirmation; or

(3) An independent organization has determined that the food has not been knowingly or intentionally genetically engineered and has been segregated from, and not knowingly or intentionally commingled with, foods that may have been genetically engineered at any

time, if such a determination has been made pursuant to a sampling and testing procedure:

(A) Consistent with sampling and testing principles recommended by internationally recognized standards organizations; and

(B) Which does not rely on testing processed foods in which no deoxyribonucleic acid is detectable.

(f) Unless the retailer is also the producer or the manufacturer of the food and sells the food under a brand it owns, no act or omission or any retailer is a violation of this part except for knowing and wilful failure to provide point of purchase labeling for unpackaged raw agricultural commodities. In any action in which it is alleged that a retailer has violated this part, it shall be a defense that such retailer reasonably relied on:

(1) Any disclosure whether a food was produced through genetic engineering contained in the bill of sale or invoice provided by the wholesaler or distributor; or

(2) A lack of such disclosure.

(g) No action may be brought against any farmer for any violation of this part unless such farmer is also a retailer or manufacturer. Any farmer submitting a false sworn statement

under subsection (e) shall be subject to the general laws of the State pertaining to perjury.

§328-D Rules and regulations. (a) The department shall adopt rules pursuant to chapter 91 to implement this part.

(b) The department is not authorized to exempt from the requirements of section 328-B any food product that is made subject to those requirements by the provisions of this part.

(c) The department may by rule provide that a person may be subject to an injunction and prevailing party attorneys' fees under this part for failure to label packaged food described in section 328-C(d)(1) at such time as the department determines that the commercial availability of relevant materials not produced with genetic engineering make it economically and commercially practicable to apply the labeling requirements of this part to that packaged food."

SECTION 3. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 4. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

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

INTRODUCED BY: _____

S.B. NO. 2176

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.

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