

JAN 17 2014

A BILL FOR AN ACT

RELATING TO HEALTH.

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

1 SECTION 1. The legislature finds that, in the past few
2 decades, food-safety experts have identified several potential
3 problems that may arise as a result of engineering food crops.
4 Genetically engineered food may introduce new toxins or
5 allergens into previously safe foods, increase toxins to
6 dangerous levels in foods that typically produce harmless
7 amounts, or diminish a food's nutritional value. These problems
8 would have to occur at very high levels within the United States
9 population to attract the attention of regulators.

10 The legislature further finds that two events within the
11 last decade confirm researchers' concerns about allergens and
12 toxins. First, a paper published in the New England Journal of
13 Medicine in 1996 confirmed predictions that genetic engineering
14 could transfer an allergen from a known allergenic food to
15 another food. Scientists at Pioneer Hi-Bred seed company
16 successfully transferred a gene from Brazil nut into soybean to
17 improve the grain crop's nutritional quality. Subsequent
18 experiments showed that people allergic to Brazil nuts were



1 similarly allergic to the transgenic soybean. Animal and human
2 tests confirmed the peril and, fortunately, the product was
3 removed from the market before any fatalities occurred. Unlike
4 safety evaluations for drugs, however, there are no required
5 human clinical trials for genetically engineered foods.

6 In the 1980s, a contaminated brand of a food supplement
7 called L-tryptophan killed about one hundred Americans and
8 caused sickness and disability in another five to ten thousand
9 people. The contaminant arose from the genetic engineering
10 process used in its production. The disease took years to
11 discover and was only identified because the symptoms were
12 unique, acute, and fast-acting. If all three characteristics
13 were not in place, the deadly genetically engineered supplement
14 may have not been identified or timely removed from store
15 shelves.

16 In 1993, the Food and Drug Administration approved
17 Monsanto's genetically-modified rBGH, a genetically-altered
18 growth hormone that is injected into dairy cows. Even though
19 scientists warned that genetically-modified rBGH caused a
20 significant increase of IGF-1, a chemical hormone that is linked
21 to a 2.5 to four times increased risk of human colorectal and



1 breast cancer, and a 2.8 to four times increased risk of
2 prostate cancer.

3 The legislature finds that Hawaii consumers have the right
4 to know whether the foods they purchase are produced with
5 genetic engineering so they can make informed purchasing
6 decisions. Accordingly, the purpose of this Act is to establish
7 a consistent and enforceable standard for labeling all foods
8 produced using genetic engineering.

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

12 **"PART . GENETICALLY ENGINEERED FOOD**

13 **§328- Short title.** This part shall be known and may be
14 cited as the "Genetically Engineered Food Labeling Act".

15 **§328- Purpose.** The legislature finds that the
16 Genetically Engineered Food Labeling Act would result in
17 establishing a consistent and enforceable standard for labeling
18 all foods produced using genetic engineering and thus provide
19 citizens of Hawaii with knowledge of how their food is produced.

20 The purpose of this part is to facilitate the exercise of
21 the fundamental right of the people of Hawaii to be fully
22 informed about whether the food they purchase and eat is



1 produced with genetic engineering so that they can choose for
2 themselves whether to purchase and eat such foods. Identifying
3 foods produced through genetic engineering will also help to
4 protect our State's agricultural economy and environment. This
5 part shall be liberally construed to fulfill the purposes of
6 this part.

7 **§328- Definitions.** As used in this part:

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

12 "Cultivated commercially" means agricultural commodities
13 grown or raised in the course of business or trade and sold
14 within the United States.

15 "Department" means the department of health.

16 "Enzyme" means a protein that catalyzes chemical reactions
17 of other substances without itself being destroyed or altered
18 upon completion of the reactions.

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



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

4 (1) In vitro nucleic acid techniques, including
5 recombinant deoxyribonucleic acid techniques and the
6 direct injection of nucleic acid into cells or
7 organelles, encapsulation, gene deletion, and
8 doubling; or

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

14 For purposes of this definition:

15 "In vitro nucleic acid techniques" includes but is not
16 limited to recombinant deoxyribonucleic or ribonucleic acid
17 techniques that use vector systems and techniques involving the
18 direct introduction into the organisms of hereditary materials
19 prepared outside the organisms such as microinjection, macro-
20 injection, chemoporation, electroporation, microencapsulation,
21 and liposomefusion.



1 An animal that has not itself been genetically engineered,
2 regardless of whether such animal has been fed or injected with
3 any food or any drug that has been produced through means of
4 genetic engineering, shall not be considered "genetically
5 engineered" for purposes of this part.

6 "Label" means a display of written, printed, or graphic
7 matter upon or connected to the immediate container or surface
8 of any article.

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

13 "Manufacturer" means the person or business that makes,
14 processes, combines, or packages food ingredients into a
15 finished food product.

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

18 "Processed food" means any food other than a raw
19 agricultural commodity, including any food produced from a raw
20 agricultural commodity that has been subject to processing such
21 as canning, smoking, pressing, cooking, freezing, dehydration,
22 fermentation, or milling.



1 "Processing aid" means:

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

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

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

14 "Raw agricultural commodity" means any plant, fungi, or
15 fish grown or produced for human food use purposes.

16 "Retailer" means an establishment engaged in the business
17 of selling any perishable agricultural commodity or packaged
18 food via a storefront.

19 "Supplier" means a party that supplies raw agricultural
20 products to retailers.

21 **§328- Labeling of genetically engineered foods.** (a)

22 Commencing July 1, 2015, any food offered for retail sale in



1 Hawaii is misbranded and shall be prohibited if it is entirely
2 or partially produced with genetic engineering and that fact is
3 not disclosed as follows:

4 (1) In the case of a raw agricultural commodity, on the
5 package offered for retail sale, the manufacturer
6 shall include the words "genetically engineered"
7 appearing clearly and conspicuously on the label on
8 the front of the package of such commodity or, in the
9 case of any such commodity that is not separately
10 packaged or labeled, the retailer shall include a
11 clear and conspicuous label appearing on the retail
12 store shelf or bin in which such commodity is
13 displayed for sale; and

14 (2) In the case of processed food containing some products
15 of genetic engineering, the manufacturer shall label
16 the product, in clear and conspicuous language on the
17 front or back of the package of such food, with the
18 words "produced with genetic engineering" or
19 "partially produced with genetic engineering".

20 (b) This section shall not be construed to require either
21 the listing or identification of any ingredient or ingredients
22 that were genetically engineered, nor that the term "genetically



1 engineered" be placed immediately preceding any common name or
2 primary product descriptor of a food.

3 (c) For the purposes of this section, a requirement that
4 any word, statement, or other information appearing on the label
5 shall not be considered to be complied with unless such word,
6 statement, or other information also appears on the outside
7 container or wrapper, if any, of the bulk, wholesale, or retail
8 package of such article or is easily legible through the outside
9 container or wrapper.

10 (d) Until July 31, 2015, any processed food that would be
11 subject to this section solely because it includes one or more
12 materials produced by genetic engineering is not misbranded
13 provided that the engineered materials in the aggregate do not
14 account for more than nine-tenths of one per cent of the total
15 weight of the processed food.

16 (e) In the case of raw agricultural commodities, including
17 unprocessed whole fish:

18 (1) The retailer is responsible for point of purchase
19 labeling of any raw agricultural commodity that has
20 been produced using genetic engineering. It is the
21 responsibility of suppliers to label the container
22 used for packaging, holding, or transporting raw



1 genetically engineered agricultural commodities that
2 are delivered directly to Hawaii retailers; and

3 (2) A retailer shall not be penalized or otherwise held
4 liable for the failure to label pursuant to this
5 section unless:

6 (A) The retailer is the producer or the manufacturer
7 of the genetically engineered food, seed, or seed
8 stock and sells the genetically engineered food
9 under a brand it owns; or

10 (B) The retailer's failure to label was knowing and
11 wilful.

12 In any action in which it is alleged that a retailer has
13 violated the provisions of this section, it shall be a defense
14 that such retailer reasonably relied on any disclosure
15 concerning genetically engineered foods contained in the bill of
16 sale or invoice provided by the wholesaler or distributor; or
17 the lack of any such disclosure.

18 (f) Subsection (a) does not apply to any of the following:

19 (1) A raw agricultural commodity or food that has been
20 grown, raised, produced, or derived without the
21 knowing and intentional use of genetically engineered
22 seed or food. To be included within the exclusion



1 under this subsection, the person responsible for
2 complying with subsection (a) with respect to a raw
3 agricultural commodity or food shall obtain, from
4 whoever sold the raw agricultural commodity or food to
5 that person, a sworn statement that the raw
6 agricultural commodity or food:

7 (A) Has not been knowingly or intentionally
8 genetically engineered; and

9 (B) Has been segregated from, and has not been
10 knowingly or intentionally commingled with, foods
11 that may have been genetically engineered at any
12 time.

13 In providing such a sworn statement, a person may rely
14 on a sworn statement from the person's own supplier
15 that contains such an affirmation;

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

20 (3) Any liquor as defined in section 281-1;

21 (4) Food that has been lawfully certified to be labeled,
22 marketed, and offered for sale as "organic" pursuant



1 to the federal Organic Foods Production Act of 1990,
2 title 7 United States Code section 6501, et seq., and
3 the National Organic Program regulations promulgated
4 by the United States Department of Agriculture;

5 (5) Food that is not packaged for retail sale and that is:

6 (A) A processed food prepared and intended for
7 immediate human consumption, including food for
8 sale at the deli or bakery of a retail outlet; or

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

14 (6) Medical food as defined in section 346-67.

15 **§328- Enforcement.** (a) The department shall prescribe,
16 enact, and enforce rules necessary to implement this part;
17 provided that the department shall not create new exemptions
18 beyond those listed in this part.

19 (b) The department, acting through the attorney general,
20 may bring an action in a court of competent jurisdiction to
21 enjoin any person violating this part.



1 (c) The department may assess a civil penalty against any
2 person violating this part in an amount not to exceed \$500 per
3 violation. Each day of violation is considered a separate
4 violation.

5 (d) Any injured citizen of Hawaii acting in the public
6 interest may bring an action to enjoin a violation of this part
7 in any court of competent jurisdiction if the action is
8 commenced more than sixty days after the person gives notice of
9 the alleged violation to the department, attorney general, and
10 alleged violator.

11 (e) Manufacturers or suppliers are the potential
12 defendants for failure to label processed foods and packaged raw
13 agricultural commodities. Retailers are potentially liable only
14 for failure to provide point-of-purchase labeling for unpackaged
15 raw agricultural commodities.

16 (f) The court may award to a prevailing plaintiff
17 reasonable costs and attorneys' fees incurred in investigating
18 and prosecuting an action to enforce this part. Such an award
19 does not include monetary damages, only fee and cost recovery."

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: John M. ...

Paul ...

Michelle ...

Francesca ...

Hanna ...



Report Title:

Genetically Engineered Food; Labeling

Description:

Imposes labeling requirements on genetically engineered food offered for retail sale.

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

