

JAN 17 2014

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# A BILL FOR AN ACT

RELATING TO LABELING.

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

1           SECTION 1. Chapter 328, Hawaii Revised Statutes, is  
2 amended by adding a new part to be appropriately designated and  
3 to read as follows:

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

5           **§328- Definitions.** As used in this part, unless the  
6 context clearly requires otherwise:

7           "Distributor" means a person or business engaged in any  
8 method of distributing or transporting a food or food product  
9 from one place to another.

10           "Enzyme" means a protein that catalyzes chemical reactions  
11 of other substances without itself being destroyed or altered  
12 upon completion of the reactions.

13           "Genetically engineered", "genetic engineering",  
14 "genetically modified", or "genetic modification", as applied to  
15 any human food, means produced from or with an organism or  
16 organisms with genetics altered materially through the  
17 application of:



1           (1) In vitro nucleic acid techniques, including but not  
2           limited to recombinant deoxyribonucleic acid  
3           techniques and the direct injection of nucleic acid  
4           into cells or organelles; or

5           (2) Methods of fusing cells beyond the taxonomic family  
6           that overcome natural physiological reproductive or  
7           recombinant barriers and that are not techniques used  
8           in traditional breeding and selection.

9           "Manufacturer" means the person or business that makes,  
10          processes, combines, or packages food ingredients into a  
11          finished food product.

12          "Processed food" means any food other than a raw  
13          agricultural commodity, including any food produced from a raw  
14          agricultural commodity that has been subject to processing such  
15          as canning, smoking, pressing, cooking, freezing, dehydration,  
16          fermentation, or milling.

17          "Processing aid" means:

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

21          (2) A substance that is added to a food during processing,  
22          is converted into constituents normally present in the



1 food, and does not significantly increase the amount  
2 of the constituents found in the food; or

3 (3) A substance that is added to a food for its technical  
4 or functional effects in the processing but is present  
5 in the finished food at insignificant levels and does  
6 not have any technical or functional effect in that  
7 finished food.

8 "Raw agricultural commodity" means any plant, animal, or  
9 fungi grown or produced for food.

10 "Retailer" means a person or business engaged in selling  
11 the food from individuals or businesses to the end-user.

12 **§328- Foods produced through genetic engineering;**  
13 **labeling.** (a) Until January 1, 2015, any processed food that  
14 would be subject to this section solely because it includes  
15 materials produced by genetic engineering shall not be deemed  
16 misbranded if the genetically engineered materials in the  
17 aggregate do not account for more than nine-tenths of one per  
18 cent of the total weight of the processed food. Beginning  
19 January 1, 2015, any food offered for retail sale in Hawaii is  
20 misbranded if it is produced with any amount of genetic  
21 engineering and that fact is not disclosed as follows:



- 1           (1) In the case of a raw agricultural commodity that is  
2                   not separately packaged or labeled, the words  
3                   "Genetically Engineered" shall be placed on the  
4                   container used for packaging, holding and transport in  
5                   a clear and conspicuous manner by the manufacturer,  
6                   and maintained by the distributor, and on the retail  
7                   store shelf or bin in which such commodity is  
8                   displayed for sale in a clear and conspicuous manner  
9                   by the retailer;
- 10          (2) In the case of processed food containing some products  
11                   of genetic engineering, the manufacturer shall label  
12                   the product, in clear and conspicuous manner on the  
13                   front or back of the package of such food, with the  
14                   words "Produced with Genetic Engineering"; and
- 15          (3) In the case of any seed or seed stock, the  
16                   manufacturer or other entity responsible for producing  
17                   the seed shall label the seed or seed stock container,  
18                   the sales receipt, and any other reference to  
19                   identification, ownership, or possession, in a clear  
20                   and conspicuous manner with the words "Genetically  
21                   Engineered".



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 does not apply to any of the following:

7           (1) Food consisting entirely of, or derived entirely from,  
8 an animal that has not itself been genetically  
9 engineered, regardless of whether that animal has been  
10 fed with any food produced with genetic engineering or  
11 treated with any drug or vaccine that has been  
12 produced through genetic engineering;

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. To be included within the exclusion  
17 under this paragraph, the person responsible for  
18 complying with this section with respect to a raw  
19 agricultural commodity or food shall obtain, from the  
20 seller of the raw agricultural commodity or food to  
21 that person, a sworn statement that the raw  
22 agricultural commodity or 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 with, foods
- 5 that may have been genetically engineered at any
- 6 time.

7 In providing such a sworn statement, the seller may  
8 rely on a sworn statement from the seller's own  
9 supplier that contains such an affirmation;

- 10 (3) Any processed food that would be subject to this
- 11 section solely because one or more processing aids or
- 12 enzymes were produced or derived with genetic
- 13 engineering;

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

- 16 (5) Food that has been lawfully certified to be labeled,
- 17 marketed, and offered for sale as "organic" pursuant
- 18 to the federal Organic Foods Production Act of 1990,
- 19 7 U.S.C. 6501, *et seq.*, and the National Organic
- 20 Program regulations promulgated pursuant thereto by
- 21 the United States Department of Agriculture;



1 (6) Food that is not packaged for retail sale and that  
2 either:

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

5 (B) Is served, sold, or otherwise provided in any  
6 restaurant or other food service establishment  
7 that is primarily engaged in the sale of food  
8 prepared and intended for immediate human  
9 consumption; and

10 (7) Medical food, as defined in section 346-67.

11 **§328- Rules and regulations.** The department of health  
12 shall:

13 (1) Adopt rules pursuant to chapter 91 to carry out this  
14 part; and

15 (2) Perform all functions necessary to effectuate the  
16 purposes of this part.

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 **§328- Injunctive relief; attorneys' fees.** (a) The  
21 director or any resident of the State of Hawaii may institute a  
22 civil action in any court of competent jurisdiction for



1 injunctive relief to prevent any violation of this part or any  
2 rule adopted to implement this part. The court shall have  
3 powers to grant relief in accordance with the Hawaii rules of  
4 civil procedure.

5 (b) The court shall award to a prevailing plaintiff  
6 reasonable costs and attorneys' fees incurred while  
7 investigating and prosecuting an action to enforce this part.  
8 Such an award shall be separate from the inclusion of any  
9 potential monetary damages."

10 SECTION 2. If any provision of this Act, or the  
11 application thereof to any person or circumstance, is held  
12 invalid, the invalidity does not affect other provisions or  
13 applications of the Act that can be given effect without the  
14 invalid provision or application, and to this end the provisions  
15 of this Act are severable.

16 SECTION 3. This Act shall take effect upon its approval.

17

INTRODUCED BY: *Therese Chun Oakland*



# S.B. NO. 2521

**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.*

