
A BILL FOR AN ACT

RELATING TO FOOD LABELING.

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

1 PART I

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

5 "§328- Imported genetically engineered produce;
6 labeling requirement. (a) The sale, offering for sale, or
7 distribution of any imported genetically engineered produce
8 intended for human consumption within the State is prohibited
9 unless the fact of genetic engineering is disclosed clearly and
10 conspicuously with a label bearing the words "genetically
11 engineered" directly on the produce offered for retail sale, on
12 the label of the produce's packaging, or, in the case of any
13 such produce that is not separately packaged or labeled, on a
14 clear and conspicuous label appearing on the retail store shelf
15 or bin in which the produce is displayed for sale.

16 (b) Suppliers shall be responsible for labeling both the
17 imported produce and the container used for the packaging,
18 holding, or transporting of the imported produce that is



1 delivered directly to Hawaii retailers. The imported
2 genetically engineered produce shall be subject to section 150A-
3 5.

4 (c) This section shall not apply to:

5 (1) Hawaii-grown produce;

6 (2) Produce grown without the knowing and intentional use
7 of genetically engineered seed or organisms; provided
8 that persons who sell, offer to sell, or distribute
9 such produce shall obtain, from the immediate source
10 of the produce, a sworn statement that the produce has
11 not been knowingly and intentionally genetically
12 engineered, grown from genetically engineered seeds or
13 organisms, or comingled with genetically engineered
14 produce or organisms; or

15 (3) Produce prepared or served in restaurants or other
16 establishments in which food is served for immediate
17 human consumption.

18 (d) Produce shall be considered genetically engineered
19 produce if the organism from which the produce is derived has
20 been genetically engineered.

21 (e) As used in this section, unless the context clearly
22 requires otherwise:



1 "Genetically engineered" means:

2 (1) Altered at the molecular or cellular level by means
3 that are not possible under natural conditions or
4 processes, including recombinant deoxyribonucleic acid
5 and ribonucleic acid techniques, cell fusion,
6 microencapsulation, macroencapsulation, gene deletion
7 and doubling, introduction of a foreign gene, and
8 changing the positions of genes, other than by a means
9 consisting exclusively of breeding, conjugation,
10 fermentation, hybridization, in vitro fertilization,
11 tissue culture, or mutagenesis; or
12 (2) Made through sexual or asexual reproduction, or both,
13 involving an organism described in paragraph (1).

14 "Produce" means fresh fruits and vegetables for human
15 consumption.

16 (f) The director of health shall adopt rules, pursuant to
17 chapter 91, necessary to effectuate the purposes of this
18 section, including rules for the testing of produce to determine
19 the presence of genetically engineered produce."

20 SECTION 2. Section 150A-5, Hawaii Revised Statutes, is
21 amended to read as follows:



1 **"§150A-5 Conditions of importation.** The importation into
2 the State of any of the following articles, viz., nursery-stock,
3 tree, shrub, herb, vine, cut-flower, cutting, graft, scion, bud,
4 seed, leaf, root, or rhizome; nut, fruit, or vegetable; grain,
5 cereal, or legume in the natural or raw state; moss, hay, straw,
6 dry-grass, or other forage; unmanufactured log, limb, or timber,
7 or any other plant-growth or plant-product, unprocessed or in
8 the raw state; soil; microorganisms; live bird, reptile,
9 nematode, insect, or any other animal in any stage of
10 development (that is in addition to the so-called domestic
11 animal, the quarantine of which is provided for in chapter 142);
12 genetically engineered produce pursuant to section 328- ; box,
13 vehicle, baggage, or any other container in which such articles
14 have been transported or any packing material used in connection
15 therewith shall be made in the manner hereinafter set forth:

16 (1) Notification of arrival. Any person who receives for
17 transport or brings or causes to be brought to the
18 State as freight, air freight, baggage, or otherwise,
19 for the purpose of debarkation or entry therein, or as
20 ship's stores, any of the foregoing articles, shall,
21 immediately upon the arrival thereof, notify the
22 department, in writing, of the arrival, giving the



1 waybill number, container number, name and address of
2 the consignor, name and address of the consignee or
3 the consignee's agent in the State, marks, number of
4 packages, description of contents of each package,
5 port at which laden, and any other information that
6 may be necessary to locate or identify the same, and
7 shall hold such articles at the pier, airport, or any
8 other place where they are first received or
9 discharged, in such a manner that they will not spread
10 or be likely to spread any infestation or infection of
11 insects or diseases that may be present until
12 inspection and examination can be made by the
13 inspector to determine whether or not any article, or
14 any portion thereof, is infested or infected with or
15 contains any pest. The department may adopt rules to
16 require identification of specific articles on
17 negotiable and non-negotiable warehouse receipts,
18 bills of lading, or other documents of title for
19 inspection of pests. In addition, the department
20 shall adopt rules to designate restricted articles
21 that shall require:



1 (A) A permit from the department in advance of
2 importation; or

3 (B) A department letter of authorization or
4 registration in advance of importation.

5 The restricted articles shall include but not be
6 limited to certain microorganisms or living insects.
7 Failure to obtain the permit, letter of authorization,
8 or registration in advance is a violation of this
9 section;

10 (2) Individual passengers, officers, and crew.

11 (A) It shall be the responsibility of the
12 transportation company to distribute, prior to
13 the debarkation of passengers and baggage, the
14 State of Hawaii plant and animal declaration form
15 to each passenger, officer, and crew member of
16 any aircraft or vessel originating in the
17 continental United States or its possessions or
18 from any other area not under the jurisdiction of
19 the appropriate federal agency in order that the
20 passenger, officer, or crew member can comply
21 with the directions and requirements appearing
22 thereon. All passengers, officers, and crew



1 members, whether or not they are bringing or
2 causing to be brought for entry into the State
3 the articles listed on the form, shall complete
4 the declaration, except that one adult member of
5 a family may complete the declaration for other
6 family members. Any person who defaces the
7 declaration form required under this section,
8 gives false information, fails to declare
9 restricted articles in the person's possession or
10 baggage, or fails to declare in cargo manifests
11 is in violation of this section;

12 (B) Completed forms shall be collected by the
13 transportation company and be delivered,
14 immediately upon arrival, to the inspector at the
15 first airport or seaport of arrival. Failure to
16 distribute or collect declaration forms or to
17 immediately deliver completed forms is a
18 violation of this section; and

19 (C) It shall be the responsibility of the officers
20 and crew of an aircraft or vessel originating in
21 the continental United States or its possessions
22 or from any other area not under the jurisdiction



1 of the appropriate federal agency to immediately
2 report all sightings of any plants and animals to
3 the plant quarantine branch. Failure to comply
4 with this requirement is a violation of this
5 section;

6 (3) Plant and animal declaration form. The form shall
7 include directions for declaring domestic and other
8 animals cited in chapter 142, in addition to the
9 articles enumerated in this chapter;

10 (4) Labels. Each container in which any of the above-
11 mentioned articles are imported into the State shall
12 be plainly and legibly marked, in a conspicuous manner
13 and place, with the name and address of the shipper or
14 owner forwarding or shipping the same, the name or
15 mark of the person to whom the same is forwarded or
16 shipped or the person's agent, the name of the
17 country, state, or territory and locality therein
18 where the product was grown or produced, and a
19 statement of the contents of the container[-];
20 provided that all genetically engineered produce
21 pursuant to section 328- shall be explicitly labeled
22 as such. Upon failure to comply with this paragraph,



1 the importer or carrier is in violation of this
2 section;

3 (5) Authority to inspect. Whenever the inspector has good
4 cause to believe that the provisions of this chapter
5 are being violated, the inspector may:

6 (A) Enter and inspect any aircraft, vessel, or other
7 carrier at any time after its arrival within the
8 boundaries of the State, whether offshore, at the
9 pier, or at the airport, for the purpose of
10 determining whether any of the articles or pests
11 enumerated in this chapter or rules adopted
12 thereto, is present;

13 (B) Enter into or upon any pier, warehouse, airport,
14 or any other place in the State where any of the
15 above-mentioned articles are moved or stored, for
16 the purpose of ascertaining, by inspection and
17 examination, whether or not any of the articles
18 is infested or infected with any pest or disease
19 or contaminated with soil or contains prohibited
20 plants or animals; and

21 (C) Inspect any baggage or personal effects of
22 disembarking passengers, officers, and crew



1 members on aircraft or vessels arriving in the
2 State to ascertain if they contain any of the
3 articles or pests enumerated in this chapter. No
4 baggage or other personal effects of the
5 passengers or crew members shall be released
6 until the baggage or effects have been passed.

7 Baggage or cargo inspection shall be made at the
8 discretion of the inspector, on the pier, vessel, or
9 aircraft or in any quarantine or inspection area.

10 Whenever the inspector has good cause to believe
11 that the provisions of this chapter are being
12 violated, the inspector may require that any box,
13 package, suitcase, or any other container carried as
14 ship's stores, cargo, or otherwise by any vessel or
15 aircraft moving between the continental United States
16 and Hawaii or between the Hawaiian Islands, be opened
17 for inspection to determine whether any article or
18 pest prohibited by this chapter or by rules adopted
19 pursuant thereto is present. It is a violation of
20 this section if any prohibited article or any pest or
21 any plant, fruit, or vegetable infested with plant
22 pests is found;



1 (6) Request for importation and inspection. In addition
2 to requirements of the United States customs
3 authorities concerning invoices or other formalities
4 incident to importations into the State, the importer
5 shall be required to file a written statement with the
6 department, signed by the importer or the importer's
7 agent, setting forth the importer's desire to import
8 certain of the above-mentioned articles into the State
9 and:

10 (A) Giving the following additional information:

11 (i) The kind (scientific name), quantity, and
12 description;

13 (ii) The locality where same were grown or
14 produced;

15 (iii) Certification that all animals to be
16 imported are the progeny of captive
17 populations or have been held in captivity
18 for a period of one year immediately prior
19 to importation or have been specifically
20 approved for importation by the board;

21 (iv) Certification that all genetically
22 engineered produce intended for human



1 consumption is properly labeled as
2 "genetically engineered" pursuant to section
3 328- , and that such produce is not
4 identified as an invasive or threatening
5 species by the invasive species council in
6 accordance with chapter 194;

7 ~~[(iv)]~~ (v) The port from which the same were last
8 shipped;

9 ~~[(v)]~~ (vi) The name of the shipper; and

10 ~~[(vi)]~~ (vii) The name of the consignee; and

11 (B) Containing:

12 (i) A request that the department, by its duly
13 authorized agent, examine the articles
14 described;

15 (ii) An agreement by the importer to be
16 responsible for all costs, charges, or
17 expenses; and

18 (iii) A waiver of all claims for damages incident
19 to the inspection or the fumigation,
20 disinfection, quarantine, or destruction of
21 the articles, or any of them, as hereinafter



1 provided, if any treatment is deemed
2 necessary.

3 Failure or refusal to file a statement, including
4 the agreement and waiver, is a violation of this
5 section and may, in the discretion of the department,
6 be sufficient cause for refusing to permit the entry
7 of the articles into the State;

8 (7) Place of inspection. If, in the judgment of the
9 inspector, it is deemed necessary or advisable to move
10 any of the above-mentioned articles, or any portion
11 thereof, to a place more suitable for inspection than
12 the pier, airport, or any other place where they are
13 first received or discharged, the inspector is
14 authorized to do so. All costs and expenses incident
15 to the movement and transportation of the articles to
16 such place shall be borne by the importer or the
17 importer's agent. If the importer, importer's agent,
18 or transportation company requests inspection of
19 sealed containers of the above-mentioned articles at
20 locations other than where the articles are first
21 received or discharged and the department determines
22 that inspection at such place is appropriate, the



1 department may require payment of costs necessitated
2 by these inspections, including overtime costs;

3 (8) Disinfection or quarantine. If, upon inspection, any
4 article received or brought into the State for the
5 purpose of debarkation or entry therein is found to be
6 infested or infected or there is reasonable cause to
7 presume that it is infested or infected and the
8 infestation or infection can, in the judgment of the
9 inspector, be eradicated, a treatment shall be given
10 such article. The treatment shall be at the expense
11 of the owner or the owner's agent, and the treatment
12 shall be as prescribed by the department. The article
13 shall be held in quarantine at the expense of the
14 owner or the owner's agent at a satisfactory place
15 approved by the department for a sufficient length of
16 time to determine that eradication has been
17 accomplished. If the infestation or infection is of
18 such nature or extent that it cannot be effectively
19 and completely eradicated, or if it is a potentially
20 destructive pest or it is not widespread in the State,
21 or after treatment it is determined that the
22 infestation or infection is not completely eradicated,



1 or if the owner or the owner's agent refuses to allow
2 the article to be treated or to be responsible for the
3 cost of treatment and quarantine, the article, or any
4 portion thereof, together with all packing and
5 containers, may, at the discretion of the inspector,
6 be destroyed or sent out of the State at the expense
7 of the owner or the owner's agent. Such destruction
8 or exclusion shall not be made the basis of a claim
9 against the department or the inspector for damage or
10 loss incurred;

11 (9) Disposition. Upon completion of inspection, either at
12 the time of arrival or at any time thereafter should
13 any article be held for inspection, treatment, or
14 quarantine, the inspector shall affix to the article
15 or the container or to the delivery order in a
16 conspicuous place thereon, a tag, label, or stamp to
17 indicate that the article has been inspected and
18 passed. This action shall constitute a permit to
19 bring the article into the State; and

20 (10) Ports of entry. None of the articles mentioned in
21 this section shall be allowed entry into the State



1 except through the airports and seaports in the State
2 designated and approved by the board."

3 SECTION 3. Section 150A-6.1, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§150A-6.1 Plant import.** (a) The board shall maintain a
6 list of restricted plants that require a permit for entry into
7 the State. Restricted plants or any portion thereof shall not
8 be imported into the State without a permit issued pursuant to
9 rules.

10 (b) The department shall designate, by rule, as restricted
11 plants, specific plants that may be detrimental or potentially
12 harmful to agriculture, horticulture, the environment, or animal
13 or public health, or that spread or may be likely to spread an
14 infestation or infection of an insect, pest, or disease that is
15 detrimental or potentially harmful to agriculture, horticulture,
16 the environment, or animal or public health. In addition, plant
17 species designated by rule as noxious weeds are designated as
18 restricted plants.

19 (c) The department may regulate or prohibit the sale of
20 specific plants on the list of restricted plants by rule.

21 (d) Noxious weeds may be imported only for research, by
22 permit, and shall not be offered for sale or sold in the State.



1 (e) No person shall import, offer for sale, or sell within
2 the State any plant or propagative portion of *Salvinia molesta*
3 or *Salvinia minima* and *Pistia stratiotes*.

4 (f) No person shall import, offer for sale, or sell within
5 the State any plant, or the produce or any portion of a plant,
6 that constitutes genetically modified produce in violation of
7 section 328- ."

8 PART II

9 SECTION 4. The purpose of this part is to authorize the
10 labeling of qualified food sold at retail as "not genetically
11 engineered" or "does not include a genetically engineered
12 ingredient".

13 The legislature intends that any interested person or
14 public agency have the authority to seek an injunction to
15 prevent or terminate a violation of this part.

16 SECTION 5. The Hawaii Revised Statutes is amended by
17 adding a new chapter to be appropriately designated and to read
18 as follows:

19 "CHAPTER

20 LABELING OF NON-GENETICALLY ENGINEERED FOOD

21 § -A Definitions. For the purpose of this chapter:

22 "Food" has the same meaning as defined under section 328-1.



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

- 4 (1) In vitro nucleic acid techniques, including
5 recombinant deoxyribonucleic acid or ribonucleic acid
6 techniques that use vector systems; techniques
7 involving the direct introduction into the organism of
8 hereditary materials prepared outside the organisms,
9 such as micro-injection, macro-injection,
10 chemoporation, electroporation, micro-encapsulation,
11 and liposome fusion; and the direct injection of
12 nucleic acid into cells or organelles; or
13 (2) Fusion of cells, including protoplast fusion, or
14 hybridization techniques that overcome natural
15 physiological, reproductive, or recombination
16 barriers, where the donor cells/protoplasts do not
17 fall within the same taxonomic family, in a way that
18 does not occur by natural multiplication or natural
19 recombination.

20 "Label" means the same as defined under section 328-2.

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



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 7. In codifying the new sections added by section
5 5 of this Act, the revisor of statutes shall substitute
6 appropriate section numbers for the letters used in designating
7 the new sections in this Act.

8 SECTION 8. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 9. This Act shall take effect on July 1, 2112.



Report Title:

Genetically Engineered Organisms; Produce; Labeling; Import

Description:

Imposes labeling requirements and import restrictions on imported genetically engineered produce. Authorizes labeling of non-genetically engineered food and creates a private right of action to enjoin violations. Effective July 1, 2112. (HB174 HD2)

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