

JAN 29 2015

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. Labeling is necessary to ensure that Hawaii
5 consumers are fully and reliably informed about the products
6 they purchase and consume. Labels provide informed consent and
7 prevent consumer deception.

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



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

12 The legislature further finds that the genetic engineering
13 of plants and animals can have unintended consequences. It has
14 been demonstrated that manipulating genes through genetic
15 engineering and inserting them into organisms is an imprecise
16 process, so the results are not always predictable or
17 controllable. United States government scientists have stated
18 that the artificial insertion of genetic material into plants
19 via genetic engineering may increase the levels of known
20 toxicants or allergens in foods and create new toxicants or
21 allergens with consequent health concerns. Independent



1 scientists are limited from conducting safety and risk-
2 assessment research of genetically engineered materials used in
3 food products due to industry restrictions on research of those
4 materials. Mandatory identification of foods produced with
5 genetic engineering can provide a critical method for detecting
6 and tracking, at a large epidemiological scale, the potential
7 health effects of consuming such foods. Without mandatory
8 disclosure, consumers of foods produced through genetic
9 engineering may unknowingly violate individuals' dietary and
10 religious beliefs.

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



1 Mandatory identification of foods produced with genetic
2 engineering can be a critical method of preserving the economic
3 value of exports or domestically sensitive markets with
4 restrictions and prohibitions against genetic engineering.
5 Labeling requirements will give importers greater confidence in
6 Hawaiian agricultural products. The State of Hawaii has a
7 national reputation for producing high-quality foods and
8 maintaining a pure and preserved natural environment, and the
9 State's unique agricultural heritage and vitality in its tourism
10 industry rely upon this reputation. Preserving the identity,
11 quality, and reliability of Hawaii's agricultural products and
12 exports is critical to Hawaii's economic well-being.

13 The organic food industry is growing rapidly. In the
14 United States in 2012, there was an estimated \$28,400,000,000 in
15 organic product sales, accounting for over four per cent of
16 total food sales. Trade industry data shows organic farming is
17 more profitable and economically secure than conventional
18 farming over the long term. Hawaii's organic farmers are
19 prohibited from using genetically engineered seeds.
20 Nonetheless, these farmers' crops are threatened with transgenic
21 contamination from neighboring fields of genetically engineered



1 crops. The risk of contamination can erode public confidence in
2 organic products, significantly undermining the job creating,
3 economy boosting growth of the organic market. Requiring the
4 labeling of foods produced through genetic engineering will help
5 protect organics statewide by increasing identification of
6 genetically engineered foods through the food production
7 process, thereby reducing the risk of contamination.

8 Foods identified as non-genetically engineered are the
9 fastest growing market in agriculture. However, only a small
10 portion of the food industry participates in voluntary labeling
11 of foods claimed not to contain genetically engineered
12 ingredients. Nor are there consistent standards for such
13 labeling or for enforcement of voluntary labels. As such,
14 voluntary labels are insufficient to provide consumers with
15 adequate information on whether or not the food they are
16 purchasing was produced with genetic engineering, and thus, may
17 be misleading. Requiring that foods produced through genetic
18 engineering be labeled as such will create additional market
19 opportunities for producers who are not certified as organic and
20 whose products are not produced through genetic engineering.



1 These additional market opportunities will also contribute to
2 vibrant and diversified agricultural communities.

3 The cultivation of genetically engineered crops can cause
4 serious impacts to the environment. For example, in 2014,
5 ninety-four per cent of all soy grown in the United States was
6 engineered to be herbicide resistant. In fact, the vast
7 majority of genetically engineered crops are designed to
8 withstand herbicides and therefore promote indiscriminate
9 herbicide use. As a result, genetically engineered herbicide-
10 resistant crops have caused approximately 527,000,000 pounds of
11 additional herbicides to be applied to the nation's farmland.
12 These toxic herbicides damage the vitality and quality of our
13 soil, harm wildlife, contaminate our drinking water, and pose
14 health risks to consumers and farm workers. Because of the
15 consequent massive increase in the use of herbicides, herbicide
16 resistant weeds have developed and flourished, infesting farm
17 fields and roadsides, complicating weed control for farmers, and
18 causing farmers to resort to more and increasingly toxic
19 herbicides. Additionally, insect-resistant genetically
20 engineered crops pose a high risk of fostering rapid evolution
21 of pests resistant to organic pesticides, leading to



1 agricultural losses for organic farmers, and facilitating
2 agriculturally and environmentally harmful monocultures, such as
3 growing corn continuously on the same field year and year.

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



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

7 The purpose of this Act is to:

- 8 (1) Promote food safety and protect public health by
9 enabling consumers to avoid potential risks associated
10 with genetically engineered foods;
- 11 (2) Serve as a risk management tool enabling consumers,
12 physicians, and scientists to identify unintended
13 health effects resulting from consumption of
14 genetically engineered foods;
- 15 (3) Assist consumers who are concerned about the potential
16 effects of genetic engineering on the environment to
17 make informed purchasing decisions;
- 18 (4) Reduce and prevent consumer confusion and deception;
- 19 (5) Promote the disclosure of factual information on food
20 labels to allow consumers to make informed decisions;



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

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

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

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

11 **§328-A Definitions.** As used in this part, unless the
 12 context clearly requires otherwise:

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

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

20 "Department" means the department of health.



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

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

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

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



1 "Packaged food" means any food offered for retail sale in
2 Hawaii, other than raw food and food served, sold, or provided
3 ready to eat in any bake sale, restaurant, or cafeteria, and
4 that is already otherwise subject to the provisions of section
5 328-10 prohibiting misbranding.

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

8 **§328-B Raw and packaged foods produced with genetic**

9 **engineering; labeling.** (a) Beginning January 1, 2016, all raw
10 food and packaged food that is entirely or partially produced
11 with genetic engineering must be labeled in accordance with the
12 provisions of this part and is otherwise misbranded if that fact
13 is not disclosed as follows:

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

18 (2) In the case of raw agricultural commodities that are
19 not separately packaged or labeled, the retailer shall
20 place a clear and conspicuous label on the retail



1 store shelf or bin in which such commodity is
2 displayed for sale;

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

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

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



1 **§328-C Right of action for violations; damages; attorneys'**
2 **fees; enforcement.** (a) The department, acting through the
3 attorney general, may bring an action in a court of competent
4 jurisdiction to enjoin any person violating this part.

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

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

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



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

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

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

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

13 (2) In the case of a manufacturer or retailer obligated to
14 label any food under this part, if such entity has
15 obtained from whoever sold that food to them a sworn
16 statement that the food has not been knowingly or
17 intentionally genetically engineered and has been
18 segregated from, and not knowingly or intentionally
19 commingled with, foods that may have been genetically
20 engineered at any time. In providing such a sworn
21 statement, a manufacturer or retailer may rely on a



1 sworn statement from a supplier that contains such an
2 affirmation; or

3 (3) An independent organization has determined that the
4 food has not been knowingly or intentionally
5 genetically engineered and has been segregated from,
6 and not knowingly or intentionally commingled with,
7 foods that may have been genetically engineered at any
8 time, if such a determination has been made pursuant
9 to a sampling and testing procedure:

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

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

15 (f) Unless the retailer is also the producer or the
16 manufacturer of the food and sells the food under a brand it
17 owns, no act or omission or any retailer is a violation of this
18 part except for knowing and wilful failure to provide point of
19 purchase labeling for unpackaged raw agricultural commodities.
20 In any action in which it is alleged that a retailer has



1 violated this part, it shall be a defense that such retailer
2 reasonably relied on:

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

6 (2) A lack of such disclosure.

7 (g) No action may be brought against any farmer for any
8 violation of this part unless such farmer is also a retailer or
9 manufacturer. Any farmer submitting a false sworn statement
10 under subsection (e) shall be subject to the general laws of the
11 State pertaining to perjury.

12 **§328-D Rules and regulations.** (a) The department shall
13 adopt rules pursuant to chapter 91 to implement this part.

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

17 (c) The department may by rule provide that a person may
18 be subject to an injunction and prevailing party attorneys' fees
19 under this part for failure to label packaged food described in
20 section 328-C(d)(1) at such time as the department determines
21 that the commercial availability of relevant materials not



S.B. NO. 1315

Report Title:

Labeling of Genetically Engineered 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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