
A BILL FOR AN ACT

RELATING TO FOOD.

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

1 PART I

2 SECTION 1. There has been growing public concern over the
3 potential risks of consuming genetically engineered products,
4 greater transparency in the labeling of foods that contain
5 genetically engineered ingredients is necessary. This
6 disclosure would assist the people of Hawaii to make fully
7 informed purchasing decisions.

8 The purpose of this Act is to create greater transparency
9 by:

- 10 (1) Imposing labeling and other requirements on imported
11 genetically engineered produce;
- 12 (2) Authorizing the labeling of non-genetically engineered
13 food as "not genetically engineered" or "does not
14 include a genetically engineered ingredient";
- 15 (3) Establishing penalties for the false labeling of food
16 as "not genetically engineered" or "does not include a
17 genetically engineered ingredient"; and



1 (4) Authorizing any person or public agency to seek an
2 injunction to prevent or terminate the false labeling
3 of food as "not genetically engineered" or "does not
4 include a genetically engineered ingredient".

5 PART II

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

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

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



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

3 (c) This section shall not apply to:

4 (1) Produce grown without the knowing and intentional use
5 of genetically engineered seed or organisms; provided
6 that any person who sells, offers to sell, or
7 distributes the produce shall obtain, from the
8 immediate source of the produce, a sworn statement
9 that the produce has not been knowingly and
10 intentionally genetically engineered, grown from
11 genetically engineered seeds or organisms, or
12 comingled with genetically engineered produce or
13 organisms; or

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

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

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



1 "Genetically engineered" means the same as defined in
2 section 328-B.

3 "Produce" means fresh fruits and vegetables for human
4 consumption.

5 (f) The director of health shall adopt rules, pursuant to
6 chapter 91, necessary to implement this section, including rules
7 for the testing of produce to determine the presence of
8 genetically engineered produce."

9 SECTION 3. Section 150A-5, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "**§150A-5 Conditions of importation.** The importation into
12 the State of any of the following articles, viz., nursery-stock,
13 tree, shrub, herb, vine, cut-flower, cutting, graft, scion, bud,
14 seed, leaf, root, or rhizome; nut, fruit, or vegetable; grain,
15 cereal, or legume in the natural or raw state; moss, hay, straw,
16 dry-grass, or other forage; unmanufactured log, limb, or timber,
17 or any other plant-growth or plant-product, unprocessed or in
18 the raw state; soil; microorganisms; live bird, reptile,
19 nematode, insect, or any other animal in any stage of
20 development (that is in addition to the so-called domestic
21 animal, the quarantine of which is provided for in chapter 142);
22 genetically engineered produce pursuant to section 328-A; box,



1 vehicle, baggage, or any other container in which [~~such~~] these
2 articles have been transported or any packing material used in
3 connection therewith shall be made in the manner hereinafter set
4 forth:

5 (1) Notification of arrival. Any person who receives for
6 transport or brings or causes to be brought to the
7 State as freight, air freight, baggage, or otherwise,
8 for the purpose of debarkation or entry therein, or as
9 ship's stores, any of the foregoing articles, shall,
10 immediately upon the arrival thereof, notify the
11 department, in writing, of the arrival, giving the
12 waybill number, container number, name and address of
13 the consignor, name and address of the consignee or
14 the consignee's agent in the State, marks, number of
15 packages, description of contents of each package,
16 port at which laden, and any other information that
17 may be necessary to locate or identify the same, and
18 shall hold such articles at the pier, airport, or any
19 other place where they are first received or
20 discharged, in such a manner that they will not spread
21 or be likely to spread any infestation or infection of
22 insects or diseases that may be present until



1 inspection and examination can be made by the
2 inspector to determine whether or not any article, or
3 any portion thereof, is infested or infected with or
4 contains any pest. The department may adopt rules to
5 require identification of specific articles on
6 negotiable and non-negotiable warehouse receipts,
7 bills of lading, or other documents of title for
8 inspection of pests. In addition, the department
9 shall adopt rules to designate restricted articles
10 that shall require:

11 (A) A permit from the department in advance of
12 importation; or

13 (B) A department letter of authorization or
14 registration in advance of importation.

15 The restricted articles shall include but not be
16 limited to certain microorganisms or living insects.
17 Failure to obtain the permit, letter of authorization,
18 or registration in advance is a violation of this
19 section;

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

21 (A) It shall be the responsibility of the
22 transportation company to distribute, prior to



1 the debarkation of passengers and baggage, the
2 State of Hawaii plant and animal declaration form
3 to each passenger, officer, and crew member of
4 any aircraft or vessel originating in the
5 continental United States or its possessions or
6 from any other area not under the jurisdiction of
7 the appropriate federal agency in order that the
8 passenger, officer, or crew member can comply
9 with the directions and requirements appearing
10 thereon. All passengers, officers, and crew
11 members, whether or not they are bringing or
12 causing to be brought for entry into the State
13 the articles listed on the form, shall complete
14 the declaration, except that one adult member of
15 a family may complete the declaration for other
16 family members. Any person who defaces the
17 declaration form required under this section,
18 gives false information, fails to declare
19 restricted articles in the person's possession or
20 baggage, or fails to declare in cargo manifests
21 is in violation of this section;



1 (B) Completed forms shall be collected by the
2 transportation company and be delivered,
3 immediately upon arrival, to the inspector at the
4 first airport or seaport of arrival. Failure to
5 distribute or collect declaration forms or to
6 immediately deliver completed forms is a
7 violation of this section; and

8 (C) It shall be the responsibility of the officers
9 and crew of an aircraft or vessel originating in
10 the continental United States or its possessions
11 or from any other area not under the jurisdiction
12 of the appropriate federal agency to immediately
13 report all sightings of any plants and animals to
14 the plant quarantine branch. Failure to comply
15 with this requirement is a violation of this
16 section;

17 (3) Plant and animal declaration form. The form shall
18 include directions for declaring domestic and other
19 animals cited in chapter 142, in addition to the
20 articles enumerated in this chapter;

21 (4) Labels. Each container in which any of the above-
22 mentioned articles are imported into the State shall



1 be plainly and legibly marked, in a conspicuous manner
2 and place, with the name and address of the shipper or
3 owner forwarding or shipping the [~~same~~] container,
4 the name or mark of the person to whom the [~~same~~]
5 container is forwarded or shipped or the person's
6 agent, the name of the country, state, or territory
7 and locality therein where the [~~product was~~] articles
8 were grown or produced, and a statement of the
9 contents of the container[~~-~~]; provided that
10 genetically engineered produce shall be labeled
11 pursuant to section 328-A. Upon failure to comply
12 with this paragraph, the importer or carrier is in
13 violation of this section;

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

17 (A) Enter and inspect any aircraft, vessel, or other
18 carrier at any time after its arrival within the
19 boundaries of the State, whether offshore, at the
20 pier, or at the airport, for the purpose of
21 determining whether any of the articles or pests



1 enumerated in this chapter or rules adopted

2 thereto, is present;

3 (B) Enter into or upon any pier, warehouse, airport,
4 or any other place in the State where any of the
5 above-mentioned articles are moved or stored, for
6 the purpose of ascertaining, by inspection and
7 examination, whether or not any of the articles
8 is infested or infected with any pest or disease
9 or contaminated with soil or contains prohibited
10 plants or animals; and

11 (C) Inspect any baggage or personal effects of
12 disembarking passengers, officers, and crew
13 members on aircraft or vessels arriving in the
14 State to ascertain if they contain any of the
15 articles or pests enumerated in this chapter. No
16 baggage or other personal effects of the
17 passengers or crew members shall be released
18 until the baggage or effects have been passed.

19 Baggage or cargo inspection shall be made at the
20 discretion of the inspector, on the pier, vessel, or
21 aircraft or in any quarantine or inspection area.



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

- 14 (6) Request for importation and inspection. In addition
15 to requirements of the United States customs
16 authorities concerning invoices or other formalities
17 incident to importations into the State, the importer
18 shall be required to file a written statement with the
19 department, signed by the importer or the importer's
20 agent, setting forth the importer's desire to import
21 certain of the above-mentioned articles into the State
22 and:



- 1 (A) Giving the following additional information:
- 2 (i) The kind (scientific name), quantity, and
- 3 description;
- 4 (ii) The locality where [~~same~~] articles were
- 5 grown or produced;
- 6 (iii) Certification that all animals to be
- 7 imported are the progeny of captive
- 8 populations or have been held in captivity
- 9 for a period of one year immediately prior
- 10 to importation or have been specifically
- 11 approved for importation by the board;
- 12 (iv) Certification that all genetically
- 13 engineered produce intended for human
- 14 consumption is properly labeled as
- 15 "genetically engineered" pursuant to section
- 16 328-A and that the produce is not identified
- 17 as an invasive or threatening species by the
- 18 invasive species council pursuant to chapter
- 19 194;
- 20 [~~(iv)~~] (v) The port from which the [~~same~~]
- 21 articles were last shipped;
- 22 [~~(v)~~] (vi) The name of the shipper; and



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

2 (B) Containing:

3 (i) A request that the department, by its duly
4 authorized agent, examine the articles
5 described;

6 (ii) An agreement by the importer to be
7 responsible for all costs, charges, or
8 expenses; and

9 (iii) A waiver of all claims for damages incident
10 to the inspection or the fumigation,
11 disinfection, quarantine, or destruction of
12 the articles, or any of them, as hereinafter
13 provided, if any treatment is deemed
14 necessary.

15 Failure or refusal to file a statement, including
16 the agreement and waiver, is a violation of this
17 section and may, in the discretion of the department,
18 be sufficient cause for refusing to permit the entry
19 of the articles into the State;

20 (7) Place of inspection. If, in the judgment of the
21 inspector, it is deemed necessary or advisable to move
22 any of the above-mentioned articles, or any portion



1 thereof, to a place more suitable for inspection than
2 the pier, airport, or any other place where they are
3 first received or discharged, the inspector is
4 authorized to do so. All costs and expenses incident
5 to the movement and transportation of the articles to
6 such place shall be borne by the importer or the
7 importer's agent. If the importer, importer's agent,
8 or transportation company requests inspection of
9 sealed containers of the above-mentioned articles at
10 locations other than where the articles are first
11 received or discharged and the department determines
12 that inspection at such place is appropriate, the
13 department may require payment of costs necessitated
14 by these inspections, including overtime costs;

- 15 (8) Disinfection or quarantine. If, upon inspection, any
16 article received or brought into the State for the
17 purpose of debarkation or entry therein is found to be
18 infested or infected or there is reasonable cause to
19 presume that it is infested or infected and the
20 infestation or infection can, in the judgment of the
21 inspector, be eradicated, a treatment shall be given
22 such article. The treatment shall be at the expense



1 of the owner or the owner's agent, and the treatment
2 shall be as prescribed by the department. The article
3 shall be held in quarantine at the expense of the
4 owner or the owner's agent at a satisfactory place
5 approved by the department for a sufficient length of
6 time to determine that eradication has been
7 accomplished. If the infestation or infection is of
8 such nature or extent that it cannot be effectively
9 and completely eradicated, or if it is a potentially
10 destructive pest or it is not widespread in the State,
11 or after treatment it is determined that the
12 infestation or infection is not completely eradicated,
13 or if the owner or the owner's agent refuses to allow
14 the article to be treated or to be responsible for the
15 cost of treatment and quarantine, the article, or any
16 portion thereof, together with all packing and
17 containers, may, at the discretion of the inspector,
18 be destroyed or sent out of the State at the expense
19 of the owner or the owner's agent. Such destruction
20 or exclusion shall not be made the basis of a claim
21 against the department or the inspector for damage or
22 loss incurred;



1 (9) Disposition. Upon completion of inspection, either at
2 the time of arrival or at any time thereafter should
3 any article be held for inspection, treatment, or
4 quarantine, the inspector shall affix to the article
5 or the container or to the delivery order in a
6 conspicuous place thereon, a tag, label, or stamp to
7 indicate that the article has been inspected and
8 passed. This action shall constitute a permit to
9 bring the article into the State; and

10 (10) Ports of entry. None of the articles mentioned in
11 this section shall be allowed entry into the State
12 except through the airports and seaports in the State
13 designated and approved by the board."

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

16 "**§150A-6.1 Plant import.** (a) The board shall maintain a
17 list of restricted plants that require a permit for entry into
18 the State. Restricted plants or any portion thereof shall not
19 be imported into the State without a permit issued pursuant to
20 rules.

21 (b) The department shall designate, by rule, as restricted
22 plants, specific plants that may be detrimental or potentially



1 harmful to agriculture, horticulture, the environment, or animal
2 or public health, or that spread or may be likely to spread an
3 infestation or infection of an insect, pest, or disease that is
4 detrimental or potentially harmful to agriculture, horticulture,
5 the environment, or animal or public health. In addition, plant
6 species designated by rule as noxious weeds are designated as
7 restricted plants.

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

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

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

15 (f) No person shall import, offer for sale, or sell within
16 the State any plant, or the produce or any portion of a plant,
17 that constitutes genetically engineered produce in violation of
18 section 328-A."

19 PART III

20 SECTION 5. Chapter 328, Hawaii Revised Statutes, is
21 amended by adding a new part to be appropriately designated and
22 to read as follows:



1 "PART LABELING OF NON-GENETICALLY ENGINEERED FOOD

2 §328-B Definitions. For the purpose of this part:

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

6 (1) In vitro nucleic acid techniques, including
7 recombinant deoxyribonucleic acid or ribonucleic acid
8 techniques that use vector systems; techniques
9 involving the direct introduction into the organism of
10 hereditary materials prepared outside the organisms,
11 such as micro-injection, macro-injection,
12 chemoporation, electroporation, micro-encapsulation,
13 and liposome fusion; and the direct injection of
14 nucleic acid into cells or organelles; or

15 (2) Fusion of cells, including protoplast fusion, or
16 hybridization techniques that overcome natural
17 physiological, reproductive, or recombination
18 barriers, where the donor cells/protoplasts do not
19 fall within the same taxonomic family, in a way that
20 does not occur by natural multiplication or natural
21 recombination.

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



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

3 §328-C Labeling as "not genetically engineered" or "does
4 not include a genetically engineered ingredient". (a) Food
5 offered for retail sale may have a label stating that the food
6 is "not genetically engineered" or "does not include a
7 genetically engineered ingredient" if the statement is true.

8 (b) The food label authorized by this section shall be
9 displayed in accordance with section 328-8.

10 (c) Food offered for retail sale with a label falsely
11 stating that the food is "not genetically engineered" or "does
12 not include a genetically engineered ingredient" shall be a
13 violation of this section and shall be subject to the penalties
14 in section 328-30.

15 §328-D Injunctive relief. (a) Any person or public
16 agency may bring a civil action in any circuit court of
17 competent jurisdiction for injunctive relief to prevent or
18 terminate any violation of section 328-C.

19 (b) The circuit court, in its discretion, may award to a
20 prevailing person or public agency reasonable attorney's fees
21 and costs for investigating and prosecuting the action."



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PART IV

SECTION 6. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 7. In codifying the new sections added by sections 2 and 5 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 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 9. This Act shall take effect on July 1, 2014.

INTRODUCED BY:

Jessica Woolley

JAN 23 2014



H.B. NO. 2667

Report Title:

Genetically Engineered Food; Labeling; Injunction; Penalties

Description:

Establishes labeling requirements and import restrictions on imported genetically engineered produce. Authorizes the labeling of non-gentically engineered food as "not genetically engineered" or "does not include a genetically engineered ingredient". Establishes penalties for false labeling. Authorizes any person or public agency to seek an injunction to prevent or terminate the false labeling.

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