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STATE OF RHODE ISLAND
IN GENERAL ASSEMBLY
JANUARY SESSION, A.D. 2015

A N A C T

RELATING TO FOOD AND DRUGS -- GENETICALLY ENGINEERED RAW AND PACKAGED FOOD LABELING ACT

Introduced By: Representatives Canario, Hull, Edwards, Bennett, and Abney

Date Introduced: January 21, 2015

Referred To: House Health, Education & Welfare

It is enacted by the General Assembly as follows:

SECTION 1. Title 21 of the General Laws entitled "FOOD AND DRUGS" is hereby amended by adding thereto the following chapter:

CHAPTER 37
GENETICALLY ENGINEERED RAW AND PACKAGED FOOD LABELING ACT

21-37-1. Findings and declarations. – The general assembly hereby finds and declares that:

(1) Rhode Island consumers have the right to know whether the foods they purchase were produced with genetic engineering so they can make informed purchasing decisions. Labeling is necessary to ensure that Rhode Island consumers are fully and reliably informed about the products they purchase and consume. Labels provide informed consent and prevent consumer deception. Polls consistently show that the vast majority of the public wants to know if its food was produced with genetic engineering, for a variety of reasons. 

(2) For multiple health, personal, economic, environmental, religious, and cultural reasons, the general assembly finds that food produced with genetic engineering should be labeled as such. 

(3) In the United States, there is currently no federal or Rhode Island requirement that genetically engineered ("GE") foods be labeled. In contrast, sixty-four (64) countries, including Japan, South Korea, China, Australia, Russia, India, the European Union member states, and
other key United States trading partners, already have laws mandating disclosure of genetically
engineered foods on food labels. In 2011, the Codex Alimentarius Commission stated that
governments are free to decide whether and how to label foods produced with genetic
engineering.

(4) The U.S. Food and Drug Administration (“FDA”) does not require or conduct safety
studies of genetically engineered foods. Instead, any safety consultations are voluntary, and
genetically engineered food developers may decide what information to provide to the FDA.
Market approval of genetically engineered food is based on industry research alone. There have
been no long-term or epidemiological studies in the United States that examine the safety of
human consumption of genetically engineered foods.

(5) The genetic engineering of plants and animals often causes unintended consequences.
Manipulating genes via genetic engineering and inserting them into organisms is an imprecise
process. The results are not always predictable or controllable. Mixing plant, animal, bacterial,
and viral genes through genetic engineering in combinations that cannot occur in nature may
produce results that lead to adverse health or environmental consequences.

(6) United States government scientists have stated that the artificial insertion of genetic
material into plants via genetic engineering can cause a variety of significant problems with plant
foods. Such genetic engineering may increase the levels of known toxicants or allergens in foods
and create new toxicants or allergens with consequent health concerns.

(7) Independent scientists are limited from conducting safety and risk-assessment
research of genetically engineered materials used in food products due to industry restrictions on
research of those materials.

(8) Mandatory identification of foods produced with genetic engineering can provide a
method for detecting, at a large epidemiological scale, the potential health effects of consuming
such foods.

(9) Without mandatory disclosure, consumers of genetically engineered food may
unknowingly violate their dietary and/or religious beliefs.

(10) Numerous foreign markets with restrictions on foods produced with genetic
engineering have restricted imports of United States crops due to concerns about genetic
engineering. Some foreign markets are choosing to purchase agricultural products from countries
other than the United States because genetically engineered crops are not identified in the United
States, which makes it impossible for buyers to determine what does or does not meet their
national labeling laws or restrictions and thus renders United States products less desirable.

(11) Mandatory identification of foods produced with genetic engineering can be a
critical method of preserving the economic value of exports or domestically sensitive markets
with restrictions on, or prohibitions against, genetic engineering.

(12) Preserving the identity, quality, and reliability of Rhode Island's agricultural
products and exports is critical to the state's economic well-being.

(13) The organic food industry is growing rapidly, with 2.7 billion dollars in growth in
2012. While total United States food sales grew at a rate of three point seven percent (3.7%), the
organic food industry grew at a rate of ten point two percent (10.2%) in 2012, accounting for 31.5
billion dollars in sales. Sales of organic fruits and vegetables account for forty-three percent
(43%) of those new dollars, thirty-four point eight percent (34.8%) of total organic food sales,
and ten point three percent (10.3%) of all United States fruit and vegetable sales. Organic dairy
 grew at a rate of seven point one percent (7.1%) in 2012 and constitutes over six percent (6%) of
the total United States dairy market. Trade industry data shows that, over the long term, organic
farming is more profitable and economically secure than conventional farming. Organic farmers
are prohibited from using genetically engineered seeds. Nonetheless, organic crops are routinely
threatened with transgenic contamination from neighboring fields of genetically engineered
crops. The risk of contamination can erode public confidence in organic products, significantly
undermining the job-creating, economy-boosting growth of the organic market. Requiring the
labeling of foods produced through genetic engineering will help protect organics nationwide by
increasing identification of genetically engineered foods through the food production process,
thereby reducing the risk of contamination.

(14) Foods identified as non-genetically engineered constitute the fastest growing market
segment in agriculture. However, only a small portion of the food industry participates in
voluntary labeling of foods claimed not to be the product of genetic engineering. Nor are there
consistent standards for such labeling, or for enforcement of voluntary labels. As such, voluntary
labels are insufficient to provide consumers with adequate information on whether or not the food
they are purchasing was produced with genetic engineering, and thus may be misleading.

(15) Requiring that foods produced through genetic engineering be labeled as such will
create additional market opportunities for producers who are not certified as organic and whose
products are not produced through genetic engineering. Such additional market opportunities will
also contribute to vibrant and diversified agricultural communities.

(16) The cultivation of genetically engineered crops can have serious effects on the
environment. For example, in 2013, ninety-three percent (93%) of all soy grown in the United
States was engineered to be herbicide resistant. In fact, the vast majority of genetically engineered
crops are designed to withstand herbicides, and therefore promote indiscriminate herbicide use.
As a result, genetically engineered herbicide-resistant crops have caused five hundred twenty
seven million pounds (527,000,000 lbs.) of additional herbicides to be applied to the nation’s
farmland. These toxic herbicides damage the vitality and quality of our soil, harm wildlife,
contaminate our drinking water, and pose health risks to consumers and farm workers.

(17) Because of the consequent massive increase in the use of herbicides, herbicide-
resistant weeds have developed and flourished, infesting farm fields and roadsides, complicating
weed control for farmers, and causing farmers to resort to more and increasingly toxic herbicides.
Additionally, insect-resistant genetically engineered crops pose a high risk of fostering rapid
evolution of pests resistant to organic pesticides, to the detriment of organic farmers, and they
also facilitate agriculturally and environmentally harmful monocultures, such as growing corn
continuously on the same field year after year.

(18) The people of Rhode Island should have the choice to avoid purchasing foods
produced in ways that can lead to such environmental harm.

(19) Because neither the FDA nor Congress requires the labeling of food produced with
genetic engineering, the state should require foods produced with genetic engineering to be
labeled as such in order to serve the interests of the state, prevent consumer deception, prevent
potential risks to human health, promote food safety, protect cultural and religious practices,
protect the environment, and promote economic development.

21-37-2, Declaration of intent and purpose. – (a) The intent of this chapter is to
establish a consistent and enforceable standard for labeling foods produced using genetic
engineering, and thus provide the people of Rhode Island with knowledge of how their food is
produced.

(b) The purposes of this chapter are to:

(1) Promote food safety and protect public health by enabling consumers to avoid
potential risks associated with genetically engineered foods, and serve as a risk management tool
enabling consumers, physicians, and scientists to identify unintended health effects resulting from
consumption of genetically engineered foods;

(2) Assist consumers who are concerned about the potential effects of genetic engineering
on the environment to make informed purchasing decisions;

(3) Reduce and prevent consumer confusion and deception and promote the disclosure of
factual information on food labels to allow consumers to make informed decisions;

(4) Create and protect non-genetically engineered markets and enable consumers to make
informed purchasing decisions; and

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

(c) This chapter shall be liberally construed to fulfill these purposes.

21-37-3. Definitions, -- As used in this chapter:

(1) "Agriculture" means the science, art, or practice of cultivating the soil, producing crops, and raising livestock or fish, and, in varying degrees, the preparation and marketing of the resulting products.

(2) "Cultivated commercially" means that agricultural commodities are grown or raised in the course of business or trade and sold within the United States.

(3) "Department" means the Rhode Island department of health.

(4) "Raw food" or "raw agricultural commodity" means any food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled, natural form prior to marketing.

(5) "Packaged food" means any food offered for retail sale in the state, other than raw food and food served, sold, or provided ready to eat in any bake sale, restaurant, or cafeteria, and that is otherwise subject to the provisions of title 21 of the general laws prohibiting misbranding.

(6) "Genetically engineered" means produced from an organism or organisms in which the genetic material has been changed through the application of:

(i) In vitro nucleic acid techniques which include, but are not limited to, recombinant deoxyribonucleic acid (DNA) or ribonucleic acid (RNA), direct injection of nucleic acid into cells or organelles, encapsulation, gene deletion, and doubling; or

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

For purposes of this definition, “in vitro nucleic acid techniques” include, but are not limited to, recombinant DNA or RNA techniques that use vector systems, and techniques involving the direct introduction into the organisms of hereditary materials prepared outside the organisms such as biolistics, microinjection, macro-injection, chemoporation, electroporation, microencapsulation, and liposome fusion.

(7) As used in this chapter, except as otherwise provided, terms shall have the meaning given to them in the general laws, except that the term "food" shall include food only for human consumption and not any food for consumption by animals.

21-37-4. Labeling of genetically engineered raw and packaged foods, -- Commencing January 1, 2016, all raw food and packaged food that is entirely or partially produced with genetic engineering must be labeled in accordance with the provisions of this chapter and is otherwise...
misbranded if that fact is not disclosed.

21-37-5. Means of labeling. – (a) In the case of raw food packaged for retail sale, the manufacturer shall include the words “genetically engineered” clearly and conspicuously on the front or back of the package of such commodity. In the case of raw agricultural commodities that are not separately packaged or labeled, the retailer shall place a clear and conspicuous label on the retail store shelf or bin in which such commodity is displayed for sale.

(b) To make clear who is responsible for compliance with the requirements of this section, in the case of raw food, the retailer is responsible only for point of purchase shelf labeling. The supplier must label each container used for packaging, holding, and/or transporting any raw food produced with genetic engineering that is delivered directly to Rhode Island retailers.

(c) In the case of any packaged food containing some products of genetic engineering, the manufacturer must label the product in clear and conspicuous language on the front and back of the package of such food product with the words “produced with genetic engineering” or “partially produced with genetic engineering.”

(d) This chapter does not require either the listing or identification of any ingredient or ingredients that were genetically engineered or that the term “genetically engineered” be placed immediately preceding any common name or primary product descriptor of a food.

21-37-6. Enforcement. – (a) The attorney general may bring an action to enjoin a violation of this chapter in any court of competent jurisdiction.

(b) Any injured resident of this state may, after giving notice of the alleged violation to the attorney general and the alleged violator and waiting sixty (60) days, bring an action to enjoin a violation of this chapter by a manufacturer or retailer in any court of competent jurisdiction. The court may, in such an action, award to a resident who is a prevailing plaintiff reasonable attorneys' fees and costs incurred in investigating and prosecuting the action, but the court may not award any monetary damages.

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

(1) In the case of packaged food, the materials produced through genetic engineering do not account for more than nine tenths of one percent (0.9%) of the total weight of the packaged food; or

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

(d) For purposes of this chapter, food will be considered not to have been produced with
the knowing or intentional use of genetic engineering if:

(1) Such food is lawfully certified to be labeled, marketed, and offered for sale as "organic" pursuant to the federal Organic Foods Production Act of 1990, 7 U.S.C. §§ 6501 et seq., which already prohibits genetic engineering;

(2) In the case of a manufacturer or retailer obligated to label any food under this chapter, if such entity has obtained from whoever sold that food to them a sworn statement that the food has not been knowingly or intentionally genetically engineered and has been segregated from, and not knowingly or intentionally commingled with, foods that may have been genetically engineered at any time. In providing such a sworn statement, a manufacturer or retailer may rely on a sworn statement from a supplier that contains such an affirmation; or

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

(i) Consistent with sampling and testing principles recommended by internationally recognized standards organizations; and

(ii) Which does not rely on testing processed foods in which no DNA is detectable.

(c) Unless the retailer is also the producer or the manufacturer of the food and sells the food under a brand it owns, no act or omission or any retailer is a violation of this chapter except for knowing and willful failure to provide point of purchase labeling for unpackaged raw agricultural commodities. In any action in which it is alleged that a retailer has violated the provisions of this section, it shall be a defense that such retailer reasonable relied on:

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

(2) A lack of such disclosure.

(f) No action may be brought against any farmer for any violation of any provision of this chapter unless such farmer is also a retailer or manufacturer, but any farmer submitting a false sworn statement under § 21-37-6(d) shall be subject to the general laws of the state pertaining to perjury.

(g) The director of the department of health shall prescribe, enact, and enforce rules necessary to implement this chapter. The director is not authorized to exempt from the requirements of § 21-37-4, any food product that is made subject to those requirements by the provisions of this chapter. The director may by regulation provide that a person may be subject to an injunction and prevailing party attorneys' fees under this chapter for failure to label packaged
food described in §21-37-6(c)(1) at such time as the director may determine that the commercial availability of relevant materials not produced with genetic engineering make it economically and commercially practicable to apply the labeling requirements of this chapter to such packaged food.

21-37-7. Severability. — If any provision of this chapter or its application to any person or circumstance is held invalid with respect to any particular raw or packaged food, situation, or entity, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

SECTION 2. This act shall take effect upon passage.
EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T
RELATING TO FOOD AND DRUGS -- GENETICALLY ENGINEERED RAW AND PACKAGED FOOD LABELING ACT

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1 This act would require the labeling of all raw and packaged food that is entirely or partially produced with genetic engineering, commencing January 1, 2016.

2 This act would take effect upon passage.

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