
SENATE BILL 5073

State of Washington

63rd Legislature

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By Senators Chase, Kline, Keiser, Rolfes, and Hasegawa

Read first time 01/17/13. Referred to Committee on Agriculture, Water & Rural Economic Development.

1 AN ACT Relating to disclosure of foods produced through genetic
2 engineering; adding a new chapter to Title 70 RCW; and prescribing
3 penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The people find that:

6 (1) Polls consistently show that the vast majority of the public,
7 typically more than ninety percent, wants to know if their food was
8 produced using genetic engineering. Without disclosure, consumers of
9 genetically engineered food unknowingly may violate their own dietary
10 and religious restrictions.

11 (2) Currently, there is no federal or state law that requires food
12 producers to identify whether foods were produced using genetic
13 engineering. At the same time, the United States food and drug
14 administration does not require safety studies of such foods. Unless
15 these foods contain a known allergen, the United States food and drug
16 administration does not require the developers of genetically
17 engineered crops to consult with the agency. Consultations with the
18 United States food and drug administration are entirely voluntary and

1 the developers themselves may decide what information they may wish to
2 provide.

3 (3) Mandatory identification of foods produced with genetic
4 engineering can provide a critical method for tracking the potential
5 health effects of consuming foods produced through genetic engineering.

6 (4) Consumers have the right to know whether the foods they
7 purchase were produced with genetic engineering. The genetic
8 engineering of plants and animals is an imprecise process and often
9 causes unintended consequences. Mixing plant, animal, bacterial, and
10 viral genes in combinations that cannot occur in nature produces
11 results that are not always predictable or controllable, and can lead
12 to adverse health or environmental consequences.

13 (5) United States government scientists have stated that the
14 artificial insertion of genetic material into plants, a technique
15 unique to genetic engineering, can cause a variety of significant
16 problems with plant foods. Such genetic engineering can increase the
17 levels of known toxicants in foods and introduce new toxicants and
18 health concerns.

19 (6) Forty-nine countries, including Japan, South Korea, China,
20 Australia, New Zealand, Thailand, Russia, the European Union member
21 states, and other key United States trading partners, have laws
22 mandating disclosure of genetically engineered foods on food labels.
23 Many countries have restrictions or bans against foods produced with
24 genetic engineering.

25 (7) No international agreements prohibit the mandatory
26 identification of foods produced through genetic engineering.

27 (8) Numerous foreign markets with restrictions against foods
28 produced through genetic engineering have restricted imports of United
29 States crops due to concerns about genetic engineering. Some foreign
30 markets are choosing to purchase agricultural products from countries
31 other than the United States because genetically engineered crops are
32 not identified in the United States, making it impossible for buyers to
33 distinguish what does or does not meet their national labeling laws or
34 restrictions, rendering United States' products less desirable. Trade
35 losses are estimated at billions of dollars. Mandatory identification
36 of foods produced with genetic engineering can be a critical method for
37 preserving the economic value of exports to markets with restrictions
38 and prohibitions against genetic engineering.

1 (9) Industry data shows foods identified as produced without
2 genetic engineering, including conventional foods identified this way,
3 are the fastest growing label claim. Consumers have a right to an
4 informed choice at the point of sale.

5 (10) Farmers from a wheat growing region of the state have gathered
6 more than two thousand six hundred signatures on a petition demanding
7 mandatory disclosure for crops produced with genetic engineering. The
8 farmers are concerned they will lose their wheat export markets if
9 genetically engineered wheat is approved.

10 (11) Agriculture is Washington's number one employer and wheat is
11 Washington's number two export crop, second only to goods and services
12 produced by the Boeing company, and ahead of Microsoft, which ranks
13 third.

14 (12) Preserving the identity, quality, and reliability of
15 Washington's agricultural products is of prime importance to our
16 state's fiscal health.

17 (13) The cultivation of genetically engineered crops can cause
18 serious impacts to the environment. For example, most genetically
19 engineered crops are designed to withstand weed killing herbicides. As
20 a result, genetically engineered crops have caused hundreds of millions
21 of pounds of additional herbicides to be applied to the nation's
22 farmland. The massive increase in use of these herbicides has caused
23 emergence of herbicide-resistant weeds, which have infested farm fields
24 and roadsides, complicating weed control for farmers and encouraging
25 use of increasingly toxic and more dangerous herbicides. These toxic
26 herbicides damage the vitality of the soil, contaminate drinking water
27 supplies, and pose health risks to consumers and farmworkers. The
28 public should have the choice to avoid purchasing foods produced in
29 ways that can lead to such harm.

30 (14) United States department of agriculture data shows Washington
31 state ranks second in the nation for organic farm-gate sales at two
32 hundred eighty-one million dollars per year. While total United States
33 food sales are virtually stagnant, growing less than one percent
34 overall, the organic food industry grew at 7.7 percent according to
35 2010 data. Sales of organic fruits and vegetables increased eleven and
36 eight-tenths percent, accounting for approximately twelve percent of
37 all United States' fruit and vegetable sales. Organic dairy, another
38 key industry in Washington state, grew at nine percent and comprises

1 nearly six percent of the total United States dairy market. Organic
2 farmers are prohibited from using genetically engineered seeds or
3 livestock feed.

4 (15) Trade industry data shows the organic industry is creating
5 jobs at four times the national rate.

6 (16) Published data shows organic farming is more profitable and
7 economically secure than conventional farming over the long term. This
8 important element of Washington's economy must be protected.

9 (17) Conventional farmers have a right to choose what crops they
10 grow and many conventional farmers want to grow traditional crops
11 developed without genetic engineering. Identifying seeds and seed
12 stock produced with genetic engineering would protect farmers' rights
13 to know what they are purchasing and protect their right to choose what
14 they grow.

15 (18) The purpose of this chapter is to ensure people are fully
16 informed about whether the food they purchase and eat was produced
17 through genetic engineering so they may choose for themselves whether
18 to purchase and eat such food. Identifying foods produced through
19 genetic engineering also will help protect our state's export market.

20 NEW SECTION. **Sec. 2.** The definitions in this section apply
21 throughout this chapter unless the context clearly requires otherwise.

22 (1) "Department" means the department of health.

23 (2) "Enzyme" means a protein that catalyzes chemical reactions of
24 other substances without itself being destroyed or altered upon
25 completion of the reactions.

26 (3)(a) "Genetically engineered" means any food that is produced
27 from an organism or organisms in which the genetic material has been
28 changed through the application of: (i) In vitro nucleic acid
29 techniques including recombinant deoxyribonucleic acid techniques and
30 the direct injection of nucleic acid into cells or organelles. In
31 vitro nucleic acid techniques include, but are not limited to,
32 recombinant deoxyribonucleic acid or ribonucleic acid techniques that
33 use vector systems and techniques involving the direct introduction
34 into the organisms of hereditary material prepared outside the
35 organisms, such as micro-injection, macro-injection, chemoporation,
36 electroporation, micro-encapsulation, and liposome fusion; or (ii)
37 fusion of cells, including protoplast fusion, or hybridization

1 techniques that overcome natural physiological, reproductive, or
2 recombination barriers, where the donor cells or protoplasts do not
3 fall within the same taxonomic family, in a way that does not occur by
4 natural multiplication or natural recombination.

5 (b) For the purposes of (a) of this subsection, "organism" means
6 any biological entity capable of replication, reproduction, or
7 transferring genetic material.

8 (4) "Processed food" means any food other than a raw agricultural
9 commodity and includes any food produced from a raw agricultural
10 commodity that has been subject to processing such as canning, smoking,
11 pressing, cooking, freezing, dehydration, fermentation, or milling.

12 (5) "Processing aid" means:

13 (a) A substance that is added to a food during the processing of
14 the food but is removed in some manner from the food before it is
15 packaged in its finished form;

16 (b) A substance that is added to a food during processing, is
17 converted into constituents normally present in the food, and does not
18 significantly increase the amount of the constituents naturally found
19 in the food; or

20 (c) A substance that is added to a food for its technical or
21 functional effects in the processing but is present in the finished
22 food at insignificant levels and does not have any technical or
23 functional effect in that finished food.

24 (6) "Raw agricultural commodity" has the same meaning as defined by
25 21 U.S.C. Sec. 321.

26 NEW SECTION. **Sec. 3.** (1) Beginning July 1, 2015, any food offered
27 for retail sale in Washington is misbranded if it is, or may have been,
28 entirely or partly produced with genetic engineering and that fact is
29 not disclosed as follows:

30 (a) In the case of a raw agricultural commodity, on the package
31 offered for retail sale, with the words "genetically engineered" stated
32 clearly and conspicuously on the front of the package of such a
33 commodity, or in the case of such a commodity that is not separately
34 packaged or labeled, on a label appearing on the retail store shelf or
35 bin where such a commodity is displayed for sale;

36 (b) In the case of any processed food, on the front of the package

1 of such food produced by a manufacturer, with the words "partially
2 produced with genetic engineering" or "may be partially produced with
3 genetic engineering" stated clearly and conspicuously; and

4 (c) In the case of any seed or seed stock, on the seed or seed
5 stock container, sales receipt or any other reference to
6 identification, ownership, or possession, with the words "genetically
7 engineered" or "produced with genetic engineering" stated clearly and
8 conspicuously.

9 (2) Subsections (1) and (3) of this section do not require either
10 the listing or identification of any ingredient or ingredients that
11 were genetically engineered, nor that the term "genetically engineered"
12 be placed immediately preceding any common name or primary product
13 descriptor of a food.

14 (3) Subsection (1) of this section does not apply to any of the
15 following:

16 (a) Food consisting entirely of, or derived entirely from, an
17 animal that has not itself been genetically engineered, regardless of
18 whether the animal has been fed or injected with any food produced with
19 genetic engineering or any drug that has been produced through means of
20 genetic engineering;

21 (b) A raw agricultural commodity or food that has been grown,
22 raised, produced, or derived without the knowing and intentional use of
23 genetically engineered seed or food. To be included within the
24 exclusion under this subsection, the person supplying a raw
25 agricultural commodity or food must provide a sworn statement that the
26 raw agricultural commodity or food: (i) Has not been knowingly or
27 intentionally produced through genetic engineering; and (ii) has been
28 segregated from, and has not been knowingly or intentionally commingled
29 with, foods that may have been genetically engineered at any time. In
30 providing such a sworn statement, a person may rely on a sworn
31 statement from his or her own supplier that contains such an
32 affirmation;

33 (c) Any processed food that would be subject to this section solely
34 because one or more processing aids or enzymes were produced or derived
35 with genetic engineering;

36 (d) Any alcoholic beverage that is subject to regulation under
37 Title 66 RCW;

1 (e) Until July 1, 2019, any processed food that would be subject to
2 this section solely because it includes one or more materials produced
3 by genetic engineering, provided that the engineered materials in the
4 aggregate do not account for more than nine-tenths of one percent of
5 the total weight of the processed food;

6 (f) Food that an independent organization has determined has not
7 been knowingly and intentionally produced from or commingled with
8 genetically engineered seed or genetically engineered food, provided
9 that such a determination has been made pursuant to a sampling and
10 testing procedure approved for this purpose in rules adopted by the
11 department. These rules may not approve a sampling and testing
12 procedure unless it is consistent with sampling and testing principles
13 recommended by internationally recognized standards organizations, such
14 as the international standards association and the grain and feed trade
15 association. No testing procedure may be approved by the department
16 unless: (i) It does not rely on testing processed foods in which no
17 deoxyribonucleic acid is detectable; and (ii) it is consistent with the
18 most recent "Guidelines on Performance Criteria and Validation of
19 Methods for Detection, Identification and Quantification of Specific
20 DNA Sequences and Specific Proteins in Foods" (CAC/GL 74, 2010)
21 published by the codex alimentarius commission;

22 (g) Food that has been lawfully certified to be labeled, marketed,
23 and offered for sale as "organic" pursuant to the federal organic foods
24 production act of 1990 and the regulations promulgated pursuant thereto
25 by the United States department of agriculture;

26 (h) Food that is not packaged for retail sale and that either: (i)
27 Is a processed food prepared and intended for immediate human
28 consumption; or (ii) is served, sold, or otherwise provided in any
29 restaurant or other food service establishment that is engaged
30 primarily in the sale of food prepared and intended for immediate human
31 consumption; or

32 (i) Medical food.

33 NEW SECTION. **Sec. 4.** The department may adopt rules necessary to
34 implement this chapter, provided that the department is not authorized
35 to create any exemptions beyond those provided in section 3(3) of this
36 act.

1 NEW SECTION. **Sec. 5.** (1) The department, acting through the
2 attorney general, may bring an action in a court of competent
3 jurisdiction to enjoin any person violating this chapter.

4 (2) The department may assess a civil penalty against any person
5 violating this chapter in an amount not to exceed one thousand dollars
6 per day. Each day of violation is considered a separate violation.

7 (3) An action to enjoin a violation of this chapter may be brought
8 in any court of competent jurisdiction by any person in the public
9 interest if the action is commenced more than sixty days after the
10 person has given notice of the alleged violation to the department, the
11 attorney general, and to the alleged violator.

12 (4) The court may award to a prevailing plaintiff reasonable costs
13 and attorneys' fees incurred in investigating and prosecuting an action
14 to enforce this chapter.

15 NEW SECTION. **Sec. 6.** Sections 1 through 5 of this act constitute
16 a new chapter in Title 70 RCW.

17 NEW SECTION. **Sec. 7.** If any provision of this act or its
18 application to any person or circumstance is held invalid, the
19 remainder of the act or the application of the provision to other
20 persons or circumstances is not affected.

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