

SENATE BILL 778

J1, C2

4r2327
CF 4r2328

By: **Senators Montgomery, Benson, Feldman, Forehand, Madaleno, Manno,
Raskin, and Simonaire**

Introduced and read first time: January 31, 2014

Assigned to: Finance

A BILL ENTITLED

AN ACT concerning

Health – General – Genetically Engineered Food – Labeling Requirements

FOR the purpose of requiring certain foods that are entirely or partially produced with genetic engineering to display a certain label beginning on a certain date; requiring a manufacturer to include a certain label on certain foods; requiring a supplier to include a certain label on a container used for packaging, holding, or transporting certain foods; requiring a retailer to place a certain label on a shelf or bin containing certain foods; authorizing the Attorney General to bring an action to enjoin a violation of this Act; authorizing an injured resident of the State to bring an action to enjoin a violation of this Act under certain circumstances; providing that certain enforcement provisions do not apply to a certain manufacturer, supplier, retailer, or farmer under certain circumstances; authorizing the court to award certain costs to a prevailing resident under certain circumstances; providing a certain defense for a retailer; specifying when certain raw foods or packaged foods have not been produced with the knowing or intentional use of genetic engineering; requiring the Department of Health and Mental Hygiene to adopt certain regulations; making the provisions of this Act severable; stating certain findings of the General Assembly; stating the purpose of this Act; defining certain terms; and generally relating to genetically engineered food.

BY adding to

Article – Health – General

Section 21–1001 through 21–1006 to be under the new part “Part I. Genetically Engineered Food”

Annotated Code of Maryland

(2009 Replacement Volume and 2013 Supplement)

Preamble

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



WHEREAS, Maryland consumers have the right to make informed purchasing decisions and to know whether the foods they purchase were produced with genetic engineering; and

WHEREAS, Labeling is necessary to ensure that Maryland consumers are fully and reliably informed about the products they purchase and consume; and

WHEREAS, Labels provide informed consent and prevent consumer deception; and

WHEREAS, Polls consistently show that the vast majority of the public wants to know whether food was produced with genetic engineering; now, therefore,

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Health – General

PART I. GENETICALLY ENGINEERED FOOD.

21-1001.

(A) IN THIS PART THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) “GENETIC ENGINEERING” OR “GENETICALLY ENGINEERED” MEANS THE PROCESS OF ALTERING THE GENETIC MATERIAL OF FOOD THROUGH:

(1) IN VITRO ACID TECHNIQUES, INCLUDING:

(I) RECOMBINANT DEOXYRIBONUCLEIC ACID (DNA);

(II) RIBONUCLEIC ACID (RNA);

(III) DIRECT INJECTION OF NUCLEIC ACID INTO CELLS OR ORGANELLES;

(IV) ENCAPSULATION;

(V) GENE DELETION;

(VI) DOUBLING;

(VII) DNA AND RNA TECHNIQUES THAT USE VECTOR SYSTEMS; AND

(VIII) DIRECT INTRODUCTION OF HEREDITARY MATERIALS INTO THE FOOD THAT ARE PREPARED OUTSIDE THE FOOD, SUCH AS:

- 1. BIOLISTICS;**
- 2. MICROINJECTION;**
- 3. MACROINJECTION;**
- 4. CHEMOPORATION;**
- 5. ELECTROPORATION;**
- 6. MICROENCAPSULATION; AND**
- 7. LIPOSOME FUSION; OR**

(2) METHODS OF FUSING CELLS BEYOND THE TAXONOMIC FAMILY THAT:

(I) OVERCOME ONE OF THE FOLLOWING:

- 1. NATURAL PHYSIOLOGICAL BARRIERS;**
- 2. REPRODUCTIVE BARRIERS; OR**
- 3. RECOMBINATION BARRIERS; AND**

(II) ARE NOT TECHNIQUES USED IN TRADITIONAL BREEDING AND SELECTION, SUCH AS:

- 1. CONJUGATION;**
- 2. TRANSDUCTION; AND**
- 3. HYBRIDIZATION.**

(C) (1) "PACKAGED FOODS" MEANS ANY FOOD OFFERED FOR RETAIL SALE IN THE STATE THAT IS SUBJECT TO THE MARYLAND FOOD, DRUG, AND COSMETIC ACT.

(2) "PACKAGED FOODS" DOES NOT INCLUDE:

(I) RAW FOOD;

(II) FOOD SERVED, SOLD, OR PROVIDED READY TO EAT IN ANY BAKE SALE, RESTAURANT, OR CAFETERIA;

(III) MEAT FOOD PRODUCTS, AS DEFINED IN § 4-401 OF THE AGRICULTURE ARTICLE; AND

(IV) POULTRY PRODUCTS, AS DEFINED IN § 4-201 OF THE AGRICULTURE ARTICLE.

(D) (1) “RAW FOODS” MEANS ANY FOOD OFFERED FOR RETAIL SALE IN THE STATE THAT IS IN ITS RAW OR NATURAL STATE, INCLUDING ALL FRUITS THAT ARE WASHED, COLORED, OR OTHERWISE TREATED IN THEIR UNPEELED NATURAL FORM BEFORE MARKETING.

(2) “RAW FOODS” DOES NOT INCLUDE:

(I) MEAT FOOD PRODUCTS, AS DEFINED IN § 4-101 OF THE AGRICULTURE ARTICLE; AND

(II) POULTRY PRODUCTS, AS DEFINED IN § 4-201 OF THE AGRICULTURE ARTICLE.

21-1002.

THE GENERAL ASSEMBLY FINDS THAT:

(1) FOR MULTIPLE HEALTH, PERSONAL, ECONOMIC, ENVIRONMENTAL, RELIGIOUS, AND CULTURAL REASONS, FOOD THAT IS GENETICALLY ENGINEERED SHOULD BE LABELED;

(2) CURRENTLY THERE IS NOT A FEDERAL OR STATE REQUIREMENT TO LABEL GENETICALLY ENGINEERED FOOD, BUT 64 COUNTRIES, INCLUDING JAPAN, SOUTH KOREA, CHINA, AUSTRALIA, RUSSIA, INDIA, EUROPEAN UNION MEMBER STATES, AND OTHER KEY UNITED STATES TRADING PARTNERS ALREADY HAVE LAWS MANDATING FOOD LABELS ON GENETICALLY ENGINEERED FOOD;

(3) IN 2011, CODEX ALIMENTARIUS, THE FOOD STANDARDS ORGANIZATION OF THE UNITED NATIONS, STATED THAT GOVERNMENTS ARE

FREE TO DECIDE ON WHETHER AND HOW TO LABEL GENETICALLY ENGINEERED FOODS;

(4) THE GENETIC ENGINEERING OF PLANTS AND ANIMALS OFTEN CAUSES UNINTENDED CONSEQUENCES BECAUSE:

(I) MANIPULATING GENES VIA GENETIC ENGINEERING AND INSERTING THEM INTO ORGANISMS IS AN IMPRECISE PROCESS, AND THE RESULTS ARE NOT ALWAYS PREDICTABLE OR CONTROLLABLE;

(II) MIXING PLANT, ANIMAL, BACTERIAL, AND VIRAL GENES THROUGH GENETIC ENGINEERING IN COMBINATIONS THAT CANNOT OCCUR IN NATURE MAY PRODUCE RESULTS THAT COULD LEAD TO ADVERSE HEALTH OR ENVIRONMENTAL CONSEQUENCES;

(III) AS STATED BY UNITED STATES GOVERNMENT SCIENTISTS, ARTIFICIALLY INSERTING GENETIC MATERIAL INTO PLANTS VIA GENETIC ENGINEERING CAN CAUSE A VARIETY OF SIGNIFICANT PROBLEMS WITH PLANT FOODS; AND

(IV) GENETICALLY ENGINEERING FOOD MAY:

1. INCREASE THE LEVELS OF KNOWN TOXICANTS OR ALLERGENS IN FOODS; AND

2. CREATE NEW TOXICANTS OR ALLERGENS IN FOODS;

(5) WITHOUT MANDATORY DISCLOSURE, INDIVIDUALS WHO CONSUME GENETICALLY ENGINEERED FOOD MAY UNKNOWINGLY VIOLATE THE DIETARY AND RELIGIOUS BELIEFS OF SOME INDIVIDUALS;

(6) THE FAILURE TO LABEL GENETICALLY ENGINEERED FOOD IN THE UNITED STATES HAS HAD A NEGATIVE IMPACT ON THE UNITED STATES' ECONOMY BECAUSE:

(I) NUMEROUS FOREIGN MARKETS HAVE RESTRICTED IMPORTS OF CERTAIN UNITED STATES' FOODS DUE TO CONCERNS ABOUT GENETIC ENGINEERING;

(II) SOME FOREIGN MARKETS CHOOSE TO PURCHASE FOOD FROM COUNTRIES OTHER THAN THE UNITED STATES BECAUSE GENETICALLY ENGINEERED FOOD IS NOT LABELED IN THE UNITED STATES; AND

(III) FAILURE TO LABEL GENETICALLY ENGINEERED FOOD MAKES IT DIFFICULT OR IMPOSSIBLE FOR CONSUMERS TO DETERMINE WHICH FOODS ORIGINATING IN THE UNITED STATES MEET APPLICABLE LABELING LAWS OR RESTRICTIONS, MAKING UNITED STATES FOOD LESS DESIRABLE IN MANY FOREIGN MARKETS;

(7) AGRICULTURE IS THE LARGEST COMMERCIAL INDUSTRY IN THE STATE AND PRESERVING THE IDENTITY, QUALITY, AND RELIABILITY OF THE STATE'S AGRICULTURAL PRODUCTS AND EXPORTS IS CRITICAL TO THE STATE'S ECONOMIC WELL-BEING BECAUSE:

(I) THE AGRICULTURE INDUSTRY EMPLOYS APPROXIMATELY 350,000 PEOPLE IN THE STATE; AND

(II) THE STATE HAS 12,800 FARMS, ACCOUNTING FOR 2,050,000 ACRES OF LAND;

(8) THE ORGANIC FOOD INDUSTRY IS GROWING RAPIDLY, INCREASING BY \$2,700,000,000 IN 2012;

(9) ORGANIC FOOD SALES GREW AT A RATE OF 10.2% IN 2012, ACCOUNTING FOR \$31,500,000,000 IN SALES, WHILE UNITED STATES FOOD SALES GREW BY ONLY 3.7% IN 2012;

(10) IN 2012, ORGANIC FRUITS AND VEGETABLES ACCOUNTED FOR:

(I) \$13,500,000,000 IN ORGANIC FOOD SALES;

(II) 34.8% OF TOTAL ORGANIC FOOD SALES; AND

(III) 10.3% OF ALL UNITED STATES FRUIT AND VEGETABLE SALES;

(11) FOODS IDENTIFIED AS NOT GENETICALLY ENGINEERED CONSTITUTE THE FASTEST GROWING MARKET SEGMENT IN FOOD SALES, BUT ONLY A SMALL PORTION OF THE FOOD INDUSTRY PARTICIPATES IN VOLUNTARILY LABELING NONGENETICALLY ENGINEERED FOODS;

(12) THERE ARE NO CONSISTENT FEDERAL STANDARDS FOR:

(I) VOLUNTARILY LABELING GENETICALLY ENGINEERED FOODS; OR

(II) THE ENFORCEMENT OF VOLUNTARY LABELING STANDARDS;

(13) VOLUNTARY LABELING IS INSUFFICIENT TO PROVIDE CONSUMERS WITH ADEQUATE INFORMATION ON WHETHER THE FOOD THEY ARE PURCHASING HAS BEEN GENETICALLY ENGINEERED, AND THEREFORE MAY BE MISLEADING;

(14) THE CULTIVATION OF GENETICALLY ENGINEERED CROPS CAN HAVE SERIOUS EFFECTS ON THE ENVIRONMENT DUE TO OVERAPPLICATION OF HERBICIDES ON HERBICIDE-RESISTANT CROPS, CAUSING:

(I) 527,000,000 POUNDS OF ADDITIONAL HERBICIDES TO BE APPLIED TO UNITED STATES' CROPS;

(II) DAMAGE TO THE VITALITY AND QUALITY OF THE SOIL;

(III) HARM TO WILDLIFE;

(IV) CONTAMINATED DRINKING WATER;

(V) THREATS TO THE HEALTH OF CONSUMERS, FARMERS, AND FARM WORKERS; AND

(VI) THE PROLIFERATION OF HERBICIDE-RESISTANT WEEDS;

(15) INSECT-RESISTANT GENETICALLY ENGINEERED CROPS:

(I) POSE A HIGH RISK OF FOSTERING THE RAPID EVOLUTION OF PESTS RESISTANT TO ORGANIC PESTICIDES THAT ARE DETRIMENTAL TO ORGANIC FARMERS; AND

(II) ENCOURAGE MONOCULTURES, LEAVING FARMERS, CONSUMERS, AND THE ECONOMY VULNERABLE TO DEVASTATING BLIGHTS, EXTREME WEATHER, AND OTHER CONDITIONS THAT CAN SEVERELY DAMAGE OR DESTROY THOSE CROPS;

(16) THE RESIDENTS OF THE STATE:

(I) HAVE A FUNDAMENTAL RIGHT TO MAKE INFORMED CHOICES ABOUT THE FOODS THEY PURCHASE, CONSUME, AND FEED TO THEIR FAMILIES; AND

(II) SHOULD HAVE THE CHOICE TO AVOID PURCHASING FOODS PRODUCED IN WAYS THAT MAY CAUSE ENVIRONMENTAL HARM, INCLUDING:

1. CONTAMINATION OF ORGANIC CROPS BY NONORGANIC GENETICALLY ENGINEERED CROP DRIFT; OR

2. CONTAMINATION OF THE STATE'S WATER SYSTEM DUE TO PESTICIDE USE ASSOCIATED WITH GENETICALLY ENGINEERED CROPS; AND

(17) BECAUSE THE UNITED STATES FOOD AND DRUG ADMINISTRATION AND THE UNITED STATES CONGRESS DO NOT REQUIRE THE LABELING OF GENETICALLY ENGINEERED FOOD, THE STATE SHOULD REQUIRE GENETICALLY ENGINEERED FOOD TO BE LABELED IN ORDER TO:

- (I) SERVE THE INTERESTS OF THE STATE;
- (II) PREVENT CONSUMER DECEPTION;
- (III) PREVENT POTENTIAL RISKS TO HUMAN HEALTH;
- (IV) PROMOTE FOOD SAFETY;
- (V) PROTECT CULTURAL AND RELIGIOUS PRACTICES;
- (VI) PROTECT THE ENVIRONMENT; AND
- (VII) PROMOTE ECONOMIC DEVELOPMENT.

21-1003.

THE PURPOSE OF THE LABELING REQUIREMENT UNDER THIS PART IS TO:

(1) PROMOTE FOOD SAFETY AND PROTECT PUBLIC HEALTH BY SERVING AS A RISK MANAGEMENT TOOL THAT WILL ENABLE CONSUMERS, PHYSICIANS, AND SCIENTISTS TO IDENTIFY UNINTENDED HEALTH EFFECTS RESULTING FROM THE CONSUMPTION OF GENETICALLY ENGINEERED FOODS

AND ENABLING CONSUMERS TO AVOID POTENTIAL RISKS ASSOCIATED WITH GENETICALLY ENGINEERED FOODS;

(2) CREATE AND PROTECT NONGENETICALLY ENGINEERED FOOD MARKETS;

(3) ENABLE CONSUMERS TO MAKE INFORMED PURCHASING DECISIONS; AND

(4) PROVIDE CONSUMERS WITH DATA TO MAKE INFORMED DECISIONS FOR PERSONAL, RELIGIOUS, MORAL, CULTURAL, OR ETHICAL REASONS.

21-1004.

(A) BEGINNING JULY 1, 2015, ALL RAW FOODS AND PACKAGED FOODS THAT ARE ENTIRELY OR PARTIALLY PRODUCED WITH GENETIC ENGINEERING SHALL BE LABELED IN ACCORDANCE WITH THIS SECTION.

(B) (1) A MANUFACTURER SHALL INCLUDE A LABEL DISPLAYING ONE OF THE FOLLOWING STATEMENTS ON A PACKAGE CONTAINING RAW FOODS OR PACKAGED FOODS THAT ARE ENTIRELY OR PARTIALLY PRODUCED WITH GENETIC ENGINEERING:

(I) "GENETICALLY ENGINEERED";

(II) "PRODUCED WITH GENETIC ENGINEERING"; OR

(III) "PARTIALLY PRODUCED WITH GENETIC ENGINEERING".

(2) THE LABEL SHALL BE CLEARLY AND CONSPICUOUSLY PLACED ON THE FRONT OR BACK OF THE PACKAGE.

(C) A SUPPLIER SHALL LABEL A CONTAINER USED FOR PACKAGING, HOLDING, OR TRANSPORTING RAW FOODS OR PACKAGED FOODS THAT ARE ENTIRELY OR PARTIALLY PRODUCED WITH GENETIC ENGINEERING TO A RETAILER IN THE STATE WITH THE FOLLOWING STATEMENT:

"THIS PACKAGE CONTAINS FOOD THAT HAS BEEN GENETICALLY ENGINEERED".

(D) A RETAILER SHALL CLEARLY AND CONSPICUOUSLY LABEL A SHELF OR BIN CONTAINING RAW FOODS OR PACKAGED FOODS THAT ARE ENTIRELY OR

PARTIALLY PRODUCED WITH GENETIC ENGINEERING WITH THE FOLLOWING STATEMENT:

“THIS FOOD HAS BEEN GENETICALLY ENGINEERED”.

21-1005.

(A) (1) THIS SECTION DOES NOT APPLY TO A MANUFACTURER, SUPPLIER, OR RETAILER FOR FAILURE TO LABEL RAW FOODS OR PACKAGED FOODS THAT ARE ENTIRELY OR PARTIALLY PRODUCED WITH GENETIC ENGINEERING IF:

(I) FOR PACKAGED FOOD THAT CONTAINS GENETICALLY ENGINEERED FOOD, THE FOOD THAT IS PRODUCED THROUGH GENETIC ENGINEERING ACCOUNTS FOR LESS THAN 0.9% OF THE TOTAL WEIGHT OF THE PACKAGED FOOD; OR

(II) THE FOOD HAS NOT BEEN PRODUCED WITH THE KNOWING OR INTENTIONAL USE OF GENETIC ENGINEERING AS SPECIFIED UNDER SUBSECTION (E) OF THIS SECTION.

(2) THIS SECTION DOES NOT APPLY TO A RETAILER UNLESS THE RETAILER:

(I) IS ALSO A MANUFACTURER OR SUPPLIER OF THE RAW FOODS OR PACKAGED FOODS THAT ARE ENTIRELY OR PARTIALLY PRODUCED WITH GENETIC ENGINEERING;

(II) SELLS THE RAW FOODS OR PACKAGED FOODS THAT ARE ENTIRELY OR PARTIALLY PRODUCED WITH GENETIC ENGINEERING UNDER A BRAND OWNED BY THE RETAILER; AND

(III) AS SPECIFIED UNDER SUBSECTION (E) OF THIS SECTION, KNOWINGLY AND INTENTIONALLY FAILED TO MEET THE LABELING REQUIREMENTS UNDER § 21-1004(D) OF THIS PART.

(3) THIS SECTION DOES NOT APPLY TO A FARMER WHO IS NOT A RETAILER OR MANUFACTURER.

(B) (1) THE ATTORNEY GENERAL MAY BRING AN ACTION TO ENJOIN A VIOLATION OF THIS PART IN A COURT OF COMPETENT JURISDICTION.

(2) A RESIDENT OF THE STATE MAY BRING AN ACTION TO ENJOIN A VIOLATION OF THIS PART BY A MANUFACTURER OR RETAILER IN A COURT OF COMPETENT JURISDICTION AFTER PROVIDING NOTICE TO THE ATTORNEY GENERAL AND THE ALLEGED VIOLATOR AND WAITING 60 DAYS BEFORE BRINGING THE ACTION.

(3) IF A JUDGMENT IS ENTERED IN FAVOR OF A RESIDENT BRINGING AN ACTION UNDER PARAGRAPH (2) OF THIS SUBSECTION, THE COURT:

(I) MAY AWARD THE RESIDENT:

- 1. ATTORNEY FEES; AND**
- 2. COSTS INCURRED IN INVESTIGATING AND PROSECUTING THE ACTION; AND**

(II) MAY NOT AWARD MONETARY DAMAGES.

(C) IN AN ACTION ALLEGING THAT A RETAILER HAS VIOLATED THE PROVISIONS OF THIS PART, IT SHALL BE A DEFENSE THAT THE RETAILER REASONABLY RELIED ON:

(1) A DISCLOSURE IN THE BILL OF SALE OR INVOICE PROVIDED BY THE WHOLESALE OR DISTRIBUTOR STATING WHETHER THE FOOD IS GENETICALLY ENGINEERED; OR

(2) A LACK OF A DISCLOSURE IN THE BILL OF SALE OR INVOICE.

(D) RAW FOODS OR PACKAGED FOODS THAT ARE ENTIRELY OR PARTIALLY PRODUCED WITH GENETIC ENGINEERING HAVE NOT BEEN PRODUCED WITH THE KNOWING OR INTENTIONAL USE OF GENETIC ENGINEERING IF:

(1) THE FOOD IS CERTIFIED TO BE LABELED, MARKETED, AND OFFERED FOR SALE AS ORGANIC UNDER THE ORGANIC FOODS PRODUCTION ACT OF 1990;

(2) A MANUFACTURER OR RETAILER HAS OBTAINED A SWORN STATEMENT FROM THE PERSON THAT SOLD THE FOOD TO THE MANUFACTURER, RETAILER, OR SUPPLIER STATING THAT THE FOOD WAS NOT KNOWINGLY OR INTENTIONALLY:

(I) GENETICALLY ENGINEERED; AND

(II) COMMINGLED WITH FOODS THAT MAY HAVE BEEN GENETICALLY ENGINEERED; OR

(3) AN INDEPENDENT ORGANIZATION HAS DETERMINED THAT THE FOOD HAS NOT BEEN KNOWINGLY OR INTENTIONALLY GENETICALLY ENGINEERED OR COMMINGLED WITH FOODS THAT MAY HAVE BEEN GENETICALLY ENGINEERED BY USING A SAMPLING AND TESTING PROCEDURE THAT:

(I) IS CONSISTENT WITH SAMPLING AND TESTING PRINCIPLES RECOMMENDED BY INTERNATIONALLY RECOGNIZED STANDARDS ORGANIZATIONS; AND

(II) DOES NOT RELY ON TESTING PROCESSED FOODS IN WHICH NO DNA IS DETECTABLE.

21-1006.

THE DEPARTMENT SHALL ADOPT REGULATIONS NECESSARY FOR THE ADMINISTRATION OF THIS PART.

SECTION 2. AND BE IT FURTHER ENACTED, That if any provision of this Act or the application thereof to any person or circumstance is held invalid for any reason in a court of competent jurisdiction, the invalidity does not affect other provisions or any other application of this Act which can be given effect without the invalid provision or application, and for this purpose the provisions of this Act are declared severable.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2014.