

**First Regular Session
Sixty-third General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 01-0340.02 Jery Payne

SENATE BILL 01-146

SENATE SPONSORSHIP

Tupa

HOUSE SPONSORSHIP

(None)

Senate Committees

Business, Labor, and Finance

House Committees

A BILL FOR AN ACT

101 **CONCERNING A REQUIREMENT THAT GENETICALLY ENGINEERED FOOD**
102 **BE ACCOMPANIED BY A NOTICE THAT SUCH FOOD IS**
103 **GENETICALLY ENGINEERED, AND, IN CONNECTION THEREWITH,**
104 **REQUIRING THAT GENETICALLY ENGINEERED FOODS BE**
105 **LABELED.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Enacts the "Genetically Engineered Food Labeling Act of 2001". Changes the definition of misbranding in order to create a requirement that genetically engineered food bear a label or notice containing either the words "genetically engineered" or the words "This product contains

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

or was produced with a genetically engineered material." Requires that such notice be printed in the same typeface, size, color, and density as the print that is used to provide ingredient information, and enclosed in a graphic box set apart from, but adjacent to, the listing of ingredients. If the food is not packaged, requires a sign that is located at the point of sale, in at least 24r-point type, and is positioned so as to make it clear that the notice applies to such food.

Exempts the following foods from the labeling requirements:

- Food that is served in restaurants or other establishments in which food is served for immediate human consumption.
- Food that is processed and prepared primarily in a retail establishment, is ready for human consumption, is offered for sale to consumers but not for immediate consumption in such establishment, and is not offered for sale outside such establishment.

Applies the misbranding misdemeanor penalty and the good-faith guarantee or undertaking exception currently in the "Colorado Food and Drug Act" to a failure to provide such notice of genetic engineering. Requires the good-faith guarantee or undertaking to contain a statement that food is not genetically engineered, if appropriate.

Creates an affirmative defense to a criminal misbranding proceeding if:

- The misbranding was due to a failure to label the food as genetically engineered;
- The defendant was an agricultural producer; and
- The food would not have otherwise been genetically engineered food or food product but was inadvertently contaminated with a genetically engineered material or was inadvertently produced with a genetically engineered material.

Defines relevant terms, including "agricultural product", "genetically engineered food", "genetically engineered material", "genetically engineered organism", and "ingredients statement".

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Legislative declaration - short title.** (1) The
3 General Assembly finds, determines, and declares that the process of
4 genetically engineering foods results in the material change of such foods.
5 The United States congress and the state of Colorado have required that
6 all foods bear a label that informs consumers of material facts.

1 Consumers desire to know whether the food they purchase and consume
2 contains or is produced with genetically engineered material for a variety
3 of reasons that include the potential transfer of allergens into food and
4 other health risks, concerns about potential environmental risks associated
5 with genetic engineering of crops, and religiously and ethically based
6 dietary restrictions. Consumers have a right to know if the food they
7 purchase or consume contains or was produced with genetically
8 engineered material. In addition, reasonably available technology permits
9 the detection of genetically engineered material in food. Therefore, it is
10 appropriate to extend existing labeling requirements to provide notice to
11 consumers whenever genetically engineered food is displayed for retail
12 sale.

13 (2) This act shall be known and may be cited as the "Genetically
14 Engineered Food Labeling Act of 2001".

15 **SECTION 2.** 25-5-402, Colorado Revised Statutes, is amended
16 BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to
17 read:

18 **25-5-402. Definitions.** As used in this part 4, unless the context
19 otherwise requires:

20 (1.5) "AGRICULTURAL PRODUCT" MEANS ANY AGRICULTURAL,
21 HORTICULTURAL, VITICULTURAL, VEGETABLE, OR ANIMAL PRODUCT THAT
22 IS GROWN OR PRODUCED.

23 (12.3) "GENETICALLY ENGINEERED FOOD" MEANS THE FOLLOWING:

24 (a) ALL FOODS DERIVED IN WHOLE OR IN PART FROM A
25 GENETICALLY ENGINEERED VIRUS, MICROORGANISM, PLANT, LIVESTOCK,
26 OR OTHER ORGANISM IF SUCH GENETICALLY ENGINEERED MATERIAL CAN
27 BE DETECTED AT A LEVEL AT LEAST TWICE THE LIMITS OF DETECTION OF

1 THE MOST SENSITIVE METHOD COMMERCIALY AVAILABLE FOR DETECTION
2 OF THAT PARTICULAR TYPE OF GENETICALLY ENGINEERED MATERIAL;

3 (b) ALL FOOD PRODUCTS PREPARED OR PROCESSED USING
4 GENETICALLY ENGINEERED ENZYMES OR OTHER GENETICALLY ENGINEERED
5 PROCESSING AGENTS, WHETHER OR NOT THESE ENZYMES OR AGENTS ARE
6 PRESENT IN THE FINAL PRODUCT;

7 (c) ALL FOODS DERIVED FROM AGRICULTURAL PRODUCTS
8 CULTIVATED USING GENETICALLY ENGINEERED ORGANISMS, WHETHER OR
9 NOT THOSE ORGANISMS ARE PRESENT IN THE FINAL PRODUCT; AND

10 (d) ALL DAIRY AND MEAT PRODUCTS DERIVED FROM LIVESTOCK
11 THAT HAVE BEEN FED GENETICALLY ENGINEERED MATERIAL OR HAVE BEEN
12 INJECTED OR TREATED WITH GENETICALLY ENGINEERED HORMONES OR
13 DRUGS.

14 (12.5) "GENETICALLY ENGINEERED MATERIAL" MEANS MATERIAL
15 DERIVED FROM ANY PART OF A GENETICALLY ENGINEERED ORGANISM,
16 WHETHER OR NOT SUCH ORGANISM IS PRESENT IN THE FINAL PRODUCT.

17 (12.7) (a) "GENETICALLY ENGINEERED ORGANISM" MEANS ANY
18 PLANT, ANIMAL, BACTERIA, OR OTHER MICROORGANISM CREATED BY OR
19 DERIVED FROM ANY METHOD USED TO GENETICALLY MODIFY ORGANISMS
20 OR INFLUENCE GROWTH OR DEVELOPMENT BY MEANS THAT ARE NOT
21 POSSIBLE UNDER NATURAL CONDITIONS OR PROCESSES. SUCH MEANS
22 INCLUDE, WITHOUT LIMITATION, CELL FUSION, MICRO-ENCAPSULATION,
23 MACRO-ENCAPSULATION, AND THE USE OF RECOMBINANT
24 DEOXYRIBONUCLEIC ACID OR RECOMBINANT RIBONUCLEIC ACID.

25 (b) "GENETICALLY ENGINEERED ORGANISM" DOES NOT INCLUDE
26 ANY PLANT, ANIMAL, BACTERIA, OR OTHER MICROORGANISM CREATED BY
27 TRADITIONAL BREEDING, ARTIFICIAL INSEMINATION, EMBRYO TRANSFER,

1 NONDIRECTED MUTAGENESIS, FERMENTATION, HYBRIDIZATION, IN-VITRO
2 FERTILIZATION, OR TISSUE CULTURE.

3 (13.5) "INGREDIENTS STATEMENT" MEANS THE LIST OF
4 INGREDIENTS CONTAINED IN A PRODUCT, WITH SUCH INGREDIENTS LISTED
5 BY THEIR COMMON AND USUAL NAMES IN DESCENDING ORDER OF
6 PREDOMINANCE.

7 **SECTION 3.** 25-5-411 (1), Colorado Revised Statutes, is
8 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

9 **25-5-411. Definitions of "misbranding".** (1) A food shall be
10 deemed to be misbranded:

11 (q) (I) IF IT IS GENETICALLY ENGINEERED FOOD INTENDED FOR
12 HUMAN CONSUMPTION, UNLESS ITS LABEL BEARS EITHER OF THE
13 FOLLOWING NOTICES:

14 (A) "GENETICALLY ENGINEERED"; OR

15 (B) "THIS PRODUCT CONTAINS OR WAS PRODUCED WITH A
16 GENETICALLY ENGINEERED MATERIAL."

17 (II) THE LABEL SHALL APPEAR ON THE FOOD PACKAGING WITH
18 OTHER INGREDIENTS; EXCEPT THAT, IF THE FOOD IS NOT PACKAGED, THE
19 NOTICE SHALL BE CLEARLY LEGIBLE AND CONSPICUOUSLY DISPLAYED ON
20 A SIGN, LOCATED AT THE POINT OF SALE, THAT BEARS SUCH NOTICE IN AT
21 LEAST TWENTY-FOUR-POINT TYPE AND IS POSITIONED SO AS TO MAKE IT
22 CLEAR THAT THE NOTICE APPLIES TO SUCH FOOD.

23 (III) THE NOTICE REQUIRED BY THIS PARAGRAPH (q) SHALL
24 CONFORM TO THE FOLLOWING REQUIREMENTS WHEN IT APPEARS ON THE
25 FOOD PACKAGING:

26 (A) THE NOTICE SHALL BE CLEARLY SET APART FROM OTHER TEXT;

27 (B) THE NOTICE SHALL BE SET IN THE SAME TYPEFACE AND SIZE AS

1 THE TYPEFACE AND SIZE OF THE PRINT THAT IS USED TO PROVIDE
2 INGREDIENT INFORMATION;

3 (C) THE NOTICE SHALL BE SET IN THE SAME COLOR AND DENSITY OF
4 PRINT AS THE COLOR AND DENSITY OF THE PRINT THAT IS USED TO PROVIDE
5 INGREDIENT INFORMATION; AND

6 (D) THE NOTICE SHALL BE ENCLOSED IN A GRAPHIC BOX SET APART
7 FROM, BUT ADJACENT TO, THE LISTING OF INGREDIENTS.

8 (IV) THE LABELING PROVISIONS OF THIS PARAGRAPH (q) DO NOT
9 APPLY TO FOOD THAT IS:

10 (A) SERVED IN RESTAURANTS OR OTHER ESTABLISHMENTS IN
11 WHICH FOOD IS SERVED FOR IMMEDIATE HUMAN CONSUMPTION; OR

12 (B) PROCESSED AND PREPARED PRIMARILY IN A RETAIL
13 ESTABLISHMENT, IS READY FOR HUMAN CONSUMPTION, IS OFFERED FOR
14 SALE TO CONSUMERS BUT NOT FOR IMMEDIATE CONSUMPTION IN SUCH
15 ESTABLISHMENT, AND IS NOT OFFERED FOR SALE OUTSIDE SUCH
16 ESTABLISHMENT.

17 **SECTION 4.** 25-5-405 (2), Colorado Revised Statutes, is
18 amended to read:

19 **25-5-405. Penalties.** (2) (a) No person shall be subject to the
20 penalties of subsection (1) of this section for having violated section
21 25-5-403 (1) (a) or (1) (c) if ~~he~~ THE PERSON establishes a valid guaranty
22 or undertaking, signed by and containing the name and address of the
23 person residing in the United States from whom ~~he~~ THE PERSON received
24 THE ARTICLE in good faith, ~~the article~~ to the effect that such article is not
25 adulterated or misbranded within the meaning of this part 4. SUCH
26 GUARANTY SHALL INCLUDE A STATEMENT THAT THE FOOD IS NOT
27 GENETICALLY ENGINEERED FOOD AND DOES NOT CONTAIN GENETICALLY

1 ENGINEERED FOOD UNLESS SUCH FOOD IS GENETICALLY ENGINEERED OR
2 CONTAINS GENETICALLY ENGINEERED FOOD.

3 (b) IT SHALL BE AN AFFIRMATIVE DEFENSE TO A CRIMINAL
4 MISBRANDING PROCEEDING BROUGHT PURSUANT TO SUBSECTION (1) OF
5 THIS SECTION IF:

6 (I) THE MISBRANDING WAS DUE TO A FAILURE TO LABEL FOOD
7 PURSUANT TO SECTION 25-5-411 (1) (q);

8 (II) THE DEFENDANT WAS AN AGRICULTURAL PRODUCER;

9 (III) THE FOOD WOULD NOT HAVE OTHERWISE BEEN GENETICALLY
10 ENGINEERED FOOD OR FOOD PRODUCT BUT WAS INADVERTENTLY
11 CONTAMINATED WITH A GENETICALLY ENGINEERED MATERIAL OR WAS
12 INADVERTENTLY PRODUCED WITH A GENETICALLY ENGINEERED MATERIAL;
13 AND

14 (IV) THE DEFENDANT DID NOT INTEND SUCH CONTAMINATION OR
15 PRODUCTION WITH GENETICALLY ENGINEERED MATERIAL.

16 **SECTION 5. Effective date - applicability.** (1) This act shall
17 take effect at 12:01 a.m. on the day following the expiration of the
18 ninety-day period after final adjournment of the general assembly that is
19 allowed for submitting a referendum petition pursuant to article V, section
20 1 (3) of the state constitution; except that, if a referendum petition is filed
21 against this act or an item, section, or part of this act within such period,
22 then the act, item, section, or part, if approved by the people, shall take
23 effect on the date of the official declaration of the vote thereon by
24 proclamation of the governor.

25 (2) The provisions of this act shall apply to the sale of genetically
26 engineered food on or after the applicable effective date of this act.