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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2015

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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:

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

3 CHAPTER 37

4 GENETICALLY ENGINEERED RAW AND PACKAGED FOOD LABELING ACT

5 **21-37-1. Findings and declarations.** – The general assembly hereby finds and declares
6 that:

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

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

16 (3) In the United States, there is currently no federal or Rhode Island requirement that
17 genetically engineered ("GE") foods be labeled. In contrast, sixty-four (64) countries, including
18 Japan, South Korea, China, Australia, Russia, India, the European Union member states, and

1 other key United States trading partners, already have laws mandating disclosure of genetically
2 engineered foods on food labels. In 2011, the Codex Alimentarius Commission stated that
3 governments are free to decide whether and how to label foods produced with genetic
4 engineering.

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

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

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

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

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

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

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

34 (11) Mandatory identification of foods produced with genetic engineering can be a

1 critical method of preserving the economic value of exports or domestically sensitive markets
2 with restrictions on, or prohibitions against, genetic engineering.

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

5 (13) The organic food industry is growing rapidly, with 2.7 billion dollars in growth in
6 2012. While total United States food sales grew at a rate of three point seven percent (3.7%), the
7 organic food industry grew at a rate of ten point two percent (10.2%) in 2012, accounting for 31.5
8 billion dollars in sales. Sales of organic fruits and vegetables account for forty-three percent
9 (43%) of those new dollars, thirty-four point eight percent (34.8%) of total organic food sales,
10 and ten point three percent (10.3%) of all United States fruit and vegetable sales. Organic dairy
11 grew at a rate of seven point one percent (7.1%) in 2012 and constitutes over six percent (6%) of
12 the total United States dairy market. Trade industry data shows that, over the long term, organic
13 farming is more profitable and economically secure than conventional farming. Organic farmers
14 are prohibited from using genetically engineered seeds. Nonetheless, organic crops are routinely
15 threatened with transgenic contamination from neighboring fields of genetically engineered
16 crops. The risk of contamination can erode public confidence in organic products, significantly
17 undermining the job-creating, economy-boosting growth of the organic market. Requiring the
18 labeling of foods produced through genetic engineering will help protect organics nationwide by
19 increasing identification of genetically engineered foods through the food production process,
20 thereby reducing the risk of contamination.

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

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

31 (16) The cultivation of genetically engineered crops can have serious effects on the
32 environment. For example, in 2013, ninety-three percent (93%) of all soy grown in the United
33 States was engineered to be herbicide resistant. In fact, the vast majority of genetically engineered
34 crops are designed to withstand herbicides, and therefore promote indiscriminate herbicide use.

1 As a result, genetically engineered herbicide-resistant crops have caused five hundred twenty
2 seven million pounds (527,000,000 lbs.) of additional herbicides to be applied to the nation's
3 farmland. These toxic herbicides damage the vitality and quality of our soil, harm wildlife,
4 contaminate our drinking water, and pose health risks to consumers and farm workers.

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

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

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

19 **21-37-2. Declaration of intent and purpose. – (a) The intent of this chapter is to**
20 **establish a consistent and enforceable standard for labeling foods produced using genetic**
21 **engineering, and thus provide the people of Rhode Island with knowledge of how their food is**
22 **produced.**

23 (b) The purposes of this chapter are to:

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

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

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

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

34 (5) Provide consumers with data from which they may make informed decisions for

1 personal, religious, moral, cultural, or ethical reasons.

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

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

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

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

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

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

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

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

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

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

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

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

32 **21-37-4. Labeling of genetically engineered raw and packaged foods.** -- Commencing
33 January 1, 2016, all raw food and packaged food that is entirely or partially produced with genetic
34 engineering must be labeled in accordance with the provisions of this chapter and is otherwise

1 misbranded if that fact is not disclosed.

2 **21-37-5. Means of labeling.** – (a) In the case of raw food packaged for retail sale, the
3 manufacturer shall include the words "genetically engineered" clearly and conspicuously on the
4 front or back of the package of such commodity. In the case of raw agricultural commodities that
5 are not separately packaged or labeled, the retailer shall place a clear and conspicuous label on
6 the retail store shelf or bin in which such commodity is displayed for sale.

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

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

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

19 **21-37-6. Enforcement.** – (a) The attorney general may bring an action to enjoin a
20 violation of this chapter in any court of competent jurisdiction.

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

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

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

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

34 (d) For purposes of this chapter, food will be considered not to have been produced with

1 the knowing or intentional use of genetic engineering if:

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

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

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

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

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

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

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

25 (2) A lack of such disclosure.

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

30 (g) The director of the department of health shall prescribe, enact, and enforce rules
31 necessary to implement this chapter. The director is not authorized to exempt from the
32 requirements of § 21-37-4, any food product that is made subject to those requirements by the
33 provisions of this chapter. The director may by regulation provide that a person may be subject to
34 an injunction and prevailing party attorneys' fees under this chapter for failure to label packaged

1 food described in §21-37-6(c)(1) at such time as the director may determine that the commercial
2 availability of relevant materials not produced with genetic engineering make it economically and
3 commercially practicable to apply the labeling requirements of this chapter to such packaged
4 food.

5 **21-37-7. Severability.** -- If any provision of this chapter or its application to any person
6 or circumstance is held invalid with respect to any particular raw or packaged food, situation, or
7 entity, the invalidity does not affect other provisions or applications of this chapter which can be
8 given effect without the invalid provision or application, and to this end the provisions of this
9 chapter are severable.

10 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

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

- 1 This act would require the labeling of all raw and packaged food that is entirely or
- 2 partially produced with genetic engineering, commencing January 1, 2016.
- 3 This act would take effect upon passage.

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