

Initiative Measure No. 519

filed May 31, 2012

BILL REQUEST - CODE REVISER'S OFFICE

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BRIEF DESCRIPTION:

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AN ACT Relating to disclosure regarding foods containing genetically engineered material; adding a new chapter to Title 15 RCW; and prescribing penalties.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

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

(1) More than one thousand two hundred constituents of a wheat farming region of the state have signed a petition demanding mandatory disclosure for crops produced with genetic engineering. The farmers are concerned they will lose their wheat export markets if genetically engineered wheat is approved.

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

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

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

(5) Forty-nine countries, including Japan, South Korea, China, Australia, New Zealand, Thailand, Russia, the European Union member states, and other key United States trading partners, have laws mandating disclosure of genetically engineered foods on food labels.

(6) Numerous foreign markets with restrictions against foods produced through genetic engineering have restricted imports of United States crops due to concerns about genetic engineering. In 1994 and 1995, the United States supplied eighty-two percent of the corn imported by European Union countries. Ten years later, in large part due to market concerns about genetically engineered foods, the loss of trade dollars for corn surpassed eight hundred seventeen million dollars. Some estimate the trade losses at more than one billion dollars, which never have been recouped.

(7) Consumers should have the right to know whether the foods they purchase were produced with genetic engineering. The genetic engineering of plants and animals often causes unintended consequences. Manipulating genes and inserting them into organisms is an imprecise process. The results are not always predictable or controllable and can lead to adverse health or environmental consequences.

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

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

(10) Mandatory identification of foods produced with genetic engineering can be a critical method for preserving the economic value of exports to markets with restrictions and prohibitions against genetic engineering. Industry data shows foods identified as a nongenetically modified organism are the fastest growing market segment, with sales increases last year between twenty and twenty-seven percent.

(11) Currently, there is no federal or state law that requires food producers to identify whether foods were produced using genetic engineering. At the same time, the United States food and drug administration does not require safety studies of such foods. Unless these foods contain a known allergen, the United States food and drug administration does not require the developers of genetically engineered crops to consult with the agency. Consultations with the United States food and drug administration are entirely voluntary and the developers themselves may decide what information they may wish to provide.

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

(13) The cultivation of genetically engineered crops can also cause serious impacts to the environment. For example, most genetically engineered crops are designed to withstand weed-killing herbicides. As a result, genetically engineered crops have caused hundreds of millions of pounds of additional herbicides to be applied to the nation's farmland. Because of the massive increase in use of herbicides, herbicide-resistant weeds have developed and flourished, a problem that has in turn resulted in the use of increasingly toxic and more dangerous herbicides. These toxic herbicides damage the vitality and tilth of the soil, contaminate our drinking water, and pose health risks to consumers and farmworkers. The public should have the choice to avoid purchasing foods produced in a manner that can lead to such harm.

(14) United States department of agriculture data shows Washington state ranks second in the nation for organic farm-gate sales at two hundred eighty-one million dollars per year. While total United States food sales are virtually stagnant, growing less than one percent overall, the organic food industry is growing at a rate of eight percent. Sales of organic fruits and vegetables are up eleven and eight-tenths percent, accounting for approximately twelve percent of all United States fruit and vegetable sales. Organic dairy, another key industry in Washington state, is growing at nine percent and comprises nearly six percent of the total United States dairy market.

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

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

(17) Organic farmers are prohibited from using genetically engineered seeds. Nonetheless, these farmers' crops are routinely threatened with contamination from neighboring lands where genetically engineered crops abound. This risk of contamination can erode public confidence in organic products, significantly undermining this job creating, growing industry in our state. Consumers should have the choice to avoid purchasing foods whose production could harm the state's organic farmers and its organic food industry.

(18) The labeling, advertising, and marketing of genetically engineered foods using terms such as "natural," "naturally made," "naturally grown," or "all natural" is misleading to Washington state consumers.

(19) The purpose of this chapter is to protect our state's export market and to ensure people are fully informed about whether the food they purchase and eat was produced through genetic engineering and not misbranded as "natural" so they may choose for themselves whether to purchase and eat such food.

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

(1) "Department" means the department of agriculture.

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

(3)(a) "Genetically engineered" means any food that is produced from an organism or organisms in which the genetic material has been changed through the application of: (i) In vitro nucleic acid techniques including recombinant deoxyribonucleic acid techniques and the direct injection of nucleic acid into cells or organelles. In vitro nucleic acid techniques include, but are not limited to, recombinant deoxyribonucleic acid or ribonucleic acid techniques that use vector systems and techniques involving the direct introduction into the organisms of hereditary material prepared outside the organisms, such as micro-injection, macro-injection, chemoporation, electroporation, micro-encapsulation, and liposome fusion; or (ii) fusion of cells, including protoplast fusion, or hybridization techniques that overcome natural physiological, reproductive, or recombination barriers, where the donor cells or protoplasts do not fall within the same taxonomic family, in a way that does not occur by natural multiplication or natural recombination.

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

(4) "Ingredient" means any substance that is used in the manufacture, or contained in the final form, of a processed food.

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

(6) "Processing aid" means:

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

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

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

NEW SECTION. **Sec. 3.** (1) Beginning July 1, 2014, any food offered for retail sale in Washington is misbranded if it is, or may have been, entirely or partly produced with genetic engineering and that fact is not disclosed as follows:

(a) In the case of a raw agricultural commodity, on the package offered for retail sale, with the clear and conspicuous words "genetically engineered" on the front of the package of such a commodity, or in the case of such a commodity that is not separately packaged or labeled, on a label appearing on the retail store shelf or bin in which such a commodity is displayed for sale; and

(b) In the case of any processed food, in clear and conspicuous language on the front of the package of the processed food, with the words "partially produced with genetic engineering" or "may be partially produced with genetic engineering."

(2) Subsections (1) and (4)(e) of this section may not be construed to require either the listing or identification of any ingredient or ingredients that were genetically engineered, nor that the term "genetically engineered" be placed immediately preceding any common name or primary product descriptor of a food.

(3) In addition to any disclosure required by subsection (1) of this section, if a food contains a processing aid and is not otherwise exempt from labeling under subsection (4) of this section, the food may not, on its label, in accompanying signage in a retail

establishment, or in any advertising or promotional materials, state or imply that the food is "natural," "naturally made," "naturally grown," "all natural," or any words of similar import that would have any tendency to mislead a consumer.

(4) Subsection (1) of this section does not apply to any of the following:

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

(b) A raw agricultural commodity or food that has been grown, raised, produced, or derived without the knowing and intentional use of genetically engineered seed or food. To be included within the exclusion under this subsection, the person responsible for complying with subsection (1) of this section with respect to a raw agricultural commodity or food must obtain, from whoever sold the raw agricultural commodity or food to that person, a sworn statement that the raw agricultural commodity or food: (i) Has not been knowingly or intentionally produced through genetic engineering; and (ii) has been segregated from, and has not been knowingly or intentionally commingled with, foods that may have been genetically engineered at any time. In providing such a sworn statement, a person may rely on a sworn statement from his or her own supplier that contains such an affirmation;

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

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

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

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

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

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

(i) Medical food.

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

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

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

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

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

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

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