

REFERENCE TITLE: **genetically engineered foods; labeling**

State of Arizona
House of Representatives
Fifty-second Legislature
First Regular Session 2015

HB 2462

Introduced by

Representatives Mendez, Clark, Steele: Andrade, Espinoza, Gabaldón

AN ACT

Amending title 41, chapter 15, Arizona Revised Statutes, by adding article 2.1; relating to the labeling of genetically engineered foods.

Be it enacted by the Legislature of the State of Arizona:

Section 1. Title 41, chapter 15, Arizona Revised Statutes, is amended by adding article 2.1, to read:

ARTICLE 2.1. LABELING OF FOOD

PRODUCED WITH GENETIC ENGINEERING

41-2071. Definitions

In this article, unless the context otherwise requires:

1. "Consumer" means any person who purchases, leases, contracts for or otherwise agrees to pay consideration for goods or services not for resale in the ordinary course of the person's trade or business for one of the following purposes:

(a) The person's use or benefit.

(b) The use or benefit of the person's household or a member of the person's household.

(c) In connection with the operation of a farm whether or not the farm is conducted as a trade or business.

(d) The use or benefit of a person's business or in connection with the operation of the person's business.

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

3. "Food" means food intended for human consumption.

4. "Genetic engineering" means a process by which a food is produced from an organism or organisms in which the genetic material has been changed through the application of one of the following:

(a) In vitro nucleic acid techniques, including recombinant DNA techniques and the direct injection of nucleic acid into cells or organelles.

(b) The fusion of cells, including protoplast fusion, or hybridization techniques that overcome natural physiological, reproductive or recombination barriers, in which the donor cells or protoplasts do not fall within the same taxonomic group and in a way that does not occur by natural multiplication or natural recombination.

5. "In vitro nucleic acid techniques" means techniques, including recombinant DNA or ribonucleic acid techniques, that use vector systems and techniques involving the direct introduction into the organisms of hereditary materials prepared outside the organisms such as micro-injection, chemoporation, electroporation, micro-encapsulation and liposome fusion.

6. "Manufacturer" means a person who does any of the following:

(a) Produces a processed food or raw agricultural commodity under its own brand or label for sale in or into this state.

(b) Sells in or into this state under its own brand or label a processed food or raw agricultural commodity produced by another supplier.

(c) Owns a brand that it licenses or licensed to another person for use on a processed food or raw commodity sold in or into this state.

(d) Sells in, sells into or distributes in this state a processed food or raw agricultural commodity that is packaged under a brand or label owned by another person.

(e) Imports into the United States for sale in or into this state a processed food or raw agricultural commodity produced by a person without a presence in the United States.

(f) Produces a processed food or raw agricultural commodity for sale in or into this state without affixing a brand name.

7. "Organism" means any biological entity that is capable of replication, reproduction or transferring of genetic material.

8. "Processed food" means any food other than a raw agricultural commodity and includes any food produced from a raw agricultural commodity that has been subjected to processing, including canning, smoking, pressing, cooking, freezing, dehydration, fermentation or milling.

9. "Processing aid" means a substance that is any of the following:

(a) Added to a food during the processing of the food but that is removed in some manner from the food before the food is packaged in a finished form.

(b) 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.

(c) Added to a food for its technical or functional effect in the processing but is present in the finished food at levels that do not have any technical or functional effect in that finished food.

10. "Raw agricultural commodity" means any food in its raw or natural state, including any fruit or vegetable that is washed, colored or otherwise treated in its unpeeled natural form before marketing.

41-2072. Labeling of food produced with genetic engineering; requirements

A. Except as set forth in section 41-2073, food that is offered for sale by a retailer shall be labeled as produced entirely or in part from genetic engineering if it is a product that is offered for retail sale in this state and is entirely or partially produced with genetic engineering.

B. If a food is required to be labeled pursuant to subsection A of this section, it shall be labeled as follows:

1. In the case of a packaged raw agricultural commodity, the manufacturer shall label the package offered for retail sale with the clear and conspicuous words "produced with genetic engineering".

2. In the case of any raw agricultural commodity that is not separately packaged, the retailer shall post a label appearing on the retail store shelf or bin in which the commodity is displayed for sale with the clear and conspicuous words "produced with genetic engineering".

3. In the case of any processed food that contains a product or products of genetic engineering, the

manufacturer shall label the package in which the processed food is offered for sale with one of the following phrases:

- (a) "Partially produced with genetic engineering".
- (b) "May be produced with genetic engineering".
- (c) "Produced with genetic engineering".

C. Unless exempt under section 41-2073, a manufacturer of a food produced entirely or in part from genetic engineering shall not label the product on the package, in signage or in advertising as "natural", "naturally made", "naturally grown", "all natural" or any words of similar import that would have a tendency to mislead a consumer.

D. This section and the requirements of this article do not require:

- 1. The listing or identification of any ingredient that is genetically engineered.
- 2. The placement of the term "genetically engineered" immediately preceding any common name or primary product descriptor of a food.

41-2073. Exemptions from food labeling requirements

The following foods are not subject to the labeling requirements of section 41-2072, subsection A:

- 1. Food consisting entirely of or derived entirely from an animal that has not itself been produced with genetic engineering, regardless of whether the animal has been fed or injected with any food, drug or other substance produced with genetic engineering.
- 2. A raw agricultural commodity or processed food derived from a raw agricultural commodity that has been grown, raised or produced without the knowing or intentional use of food or seed produced with genetic engineering. Food is deemed to comply with this paragraph only if the person otherwise responsible for complying with the requirements of section 41-2072, subsection A with respect to a raw agricultural commodity or processed food obtains, from the person that sold the raw agricultural commodity or processed food to that person, a sworn statement that the raw agricultural commodity or processed food has not been knowingly or intentionally produced with genetic engineering and has been segregated from and has not been knowingly or intentionally commingled with food that may have been produced with genetic engineering at any time. In providing the sworn statement, a person may rely on a sworn statement from the person's own supplier that contains the affirmation set forth in this paragraph.
- 3. Any processed food that would be subject to section 41-2072, subsection A solely because it includes one or more processing aids or enzymes produced with genetic engineering.
- 4. Any beverage that is subject to title 4.
- 5. Any processed food that would be subject to section 41-2072, subsection A solely because it includes one or more materials that have been produced with genetic engineering if the genetically engineered materials in the aggregate do not account for more than 0.9 percent of the total weight of

the processed food.

6. Food that an independent organization verifies has not been knowingly or intentionally produced from or commingled with food or seed produced with genetic engineering. The department of weights and measures, after consultation with the department of health services, shall approve the independent organizations from which verification is acceptable under this paragraph.

7. Food that is not packaged for retail sale and that is either:

(a) A processed food prepared and intended for immediate human consumption.

(b) Served, sold or otherwise provided in any restaurant or other retail food establishment that is primarily engaged in the sale of food prepared and intended for immediate human consumption.

8. Medical food as defined in 21 United States Code section 360ee (b)(3).

41-2074. Retailers; immunity

A. A retailer is not liable for the failure to label a processed food as required by section 41-2072 unless the retailer is the producer or manufacturer of the processed food.

B. A retailer is not liable for failure to label a raw agricultural commodity as required by section 41-2072 if the retailer within thirty days after any proposed enforcement action or notice of violation obtains a sworn statement in accordance with section 41-2073, paragraph 2.

41-2075. False sworn statement; penalties; unlawful practice; enforcement

A. It is a violation of this article for a person knowingly to provide a false sworn statement under section 41-2073, paragraph 2 that a raw agricultural commodity or processed food derived from a raw agricultural commodity has not been knowingly or intentionally produced with genetic engineering and has been segregated from and has not been knowingly or intentionally commingled with food that may have been produced with genetic engineering at any time.

B. A person that violates the requirements of this article is liable for a civil penalty of not more than one thousand dollars per day per product. The calculation of the civil penalty may not be made or multiplied by the number of individual packages of the same product displayed or offered for retail sale. Civil penalties assessed under this section shall accrue and be assessed per each uniquely named, designated or marketed product.

C. The director shall conduct investigations and bring enforcement actions to enforce this article.

D. An act or practice in violation of this article is an unlawful practice under section 44-1522 and is subject to enforcement through private action and prosecution by the attorney general. The attorney general may investigate and take appropriate action as prescribed by title 44, chapter 10, article 7.

41-2076. Genetically engineered food labeling fund

A. The genetically engineered food labeling fund is established in the department to pay the costs and liabilities incurred by the department in implementing and administering this article. The department

shall administer the fund. Monies in the fund are subject to legislative appropriation. The fund shall consist of legislative appropriations of settlement monies received by the attorney general's office.

B. The director may accept and spend federal monies and private grants, gifts, contributions and devises to assist in carrying out the purposes of this article. These monies do not revert to the state general fund at the end of a fiscal year.

Sec. 2. **Rulemaking**

The director of the department of weights and measures may adopt by rule requirements for the implementation title 41, chapter 15, article 2.1, Arizona Revised Statutes, including both of the following:

1. A requirement that the label required for food produced from genetic engineering include a disclaimer that the United States food and drug administration does not consider foods produced from genetic engineering to be materially different from other foods.
2. Notwithstanding section 41-2072, subsection B, Arizona Revised Statutes, a requirement that a label required under title 41, chapter 15, article 2.1, Arizona Revised Statutes, identify food produced entirely or in part from genetic engineering in a manner consistent with requirements in other jurisdictions for the labeling of food, including the labeling of food produced with genetic engineering.

Sec. 3. **Effective date**

This act is effective from and after June 30, 2016.

Sec. 4. **Severability**

If a provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.