

# SB0734



## 99TH GENERAL ASSEMBLY

### State of Illinois

2015 and 2016

SB0734

Introduced 2/3/2015, by Sen. David Koehler

#### SYNOPSIS AS INTRODUCED:

New Act

Creates the Genetically Engineered Food Labeling Act. Provides that beginning on the effective date of the Act, any food offered for retail sale in this State is misbranded if it is entirely or partially produced with genetic engineering and that fact is not disclosed in a certain manner. Provides that the Act shall 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. Provides that until the effective date of the Act, any processed food that would be subject to the provision concerning the labeling of genetically engineered foods solely because it includes one or more materials produced by genetic engineering is not misbranded provided that the engineered materials in the aggregate do not account for more than a certain amount of the total weight of the processed food. Sets forth provisions concerning applicability and the right of action for violations, damages, and attorneys' fees. Provides that the Department of Public Health shall adopt rules necessary to implement the Act. Defines terms. Contains a severability provision. Effective January 1, 2017.

LRB099 07549 JLK 27673 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning health.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the  
5 Genetically Engineered Food Labeling Act.

6 Section 15. In this Act, terms have the meanings given to  
7 them in the Illinois Food, Drug and Cosmetic Act, except as  
8 provided in this Section.

9 "Agriculture" means the science, art, or practice of  
10 cultivating soil, producing crops, and raising livestock or  
11 fish and, in varying degrees, the preparation and marketing of  
12 the resulting products.

13 "Cultivated commercially" means agricultural commodities  
14 grown or raised in the course of business or trade and sold  
15 within the United States.

16 "Department" means the Department of Public Health.

17 "Enzyme" means a protein that catalyzes chemical reactions  
18 of other substances without itself being destroyed or altered  
19 upon completion of the reactions.

20 "Food" means any articles used to feed or nourish man,  
21 chewing gum, and articles used for components, including food  
22 additives, of any such article.

23 "Genetically engineered" means a process that results in a

1 substance that is produced from an organism or organisms in  
2 which the genetic material has been changed through the  
3 application of the following:

4 (1) in vitro nucleic acid techniques, which include,  
5 but are not limited to, recombinant deoxyribonucleic acid  
6 (DNA), direct injection of nucleic acid into cells or  
7 organelles, encapsulation, gene deletion, and doubling  
8 (for the purposes of this definition, "in vitro nucleic  
9 acid techniques" include, but are not limited to,  
10 recombinant DNA or RNA techniques that use vector systems  
11 and techniques involving the direct introduction into the  
12 organisms of hereditary materials prepared outside the  
13 organisms, such as biolistics, microinjection,  
14 macro-injection, chemoporation, electroporation,  
15 microencapsulation, and liposome fusion); or

16 (2) methods of fusing cells beyond the taxonomic family  
17 that overcome natural physiological reproductive or  
18 recombinant barriers, and that are not techniques used in  
19 traditional breeding and selection, such as conjugation,  
20 transduction, and hybridization.

21 "Label" means a display of written, printed, or graphic  
22 matter upon or connected to the immediate container or surface  
23 of any article. In order to meet the definition of "label", any  
24 word, statement, or other information appearing on the label  
25 shall appear on the outside container or wrapper, if any, of  
26 the bulk, wholesale, or retail package of the article or be

1 easily legible through the outside container or wrapper.

2 "Labeling" means any written, printed, or graphic matter  
3 that is present on the label, accompanies the food, or is  
4 displayed near the food, including that for the purpose of  
5 promoting its sale or disposal.

6 "Manufacturer" means the person or business that makes,  
7 processes, combines, or packages food ingredients into a  
8 finished food product.

9 "Medical food" means a food that is formulated to be  
10 consumed or administered enterally under the supervision of a  
11 physician and which is intended for the specific dietary  
12 management of a disease or condition for which distinctive  
13 nutritional requirements, based on recognized scientific  
14 principles, are established by medical evaluation.

15 "Organism" means any biological entity capable of  
16 replication, reproduction, or transferring genetic material.

17 "Packaged food" means any food offered for retail sale in  
18 this State, other than raw food and food served, sold, or  
19 provided ready to eat in any bake sale, restaurant, or  
20 cafeteria, and that is otherwise subject to the provisions of  
21 the Illinois Food, Drug and Cosmetic Act prohibiting  
22 misbranding.

23 "Processed food" means any food other than a raw  
24 agricultural commodity, including any food produced from a raw  
25 agricultural commodity that has been subject to processing such  
26 as canning, smoking, pressing, cooking, freezing, dehydration,

1 fermentation, or milling.

2 "Processing aid" means the following:

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

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

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

15 "Raw agricultural commodity" means any plant, animal, or  
16 fungi grown or produced for human food purposes, including all  
17 fruits that are washed, colored, or otherwise treated in their  
18 unpeeled natural form before marketing.

19 Section 20. Labeling of genetically engineered foods.

20 (a) Beginning on the effective date of this Act, any food  
21 offered for retail sale in this State is misbranded if it is  
22 entirely or partially produced with genetic engineering and  
23 that fact is not disclosed as follows:

24 (1) In the case of a raw agricultural commodity, on the  
25 package offered for retail sale, with the words

1 "Genetically Engineered" appearing clearly and  
2 conspicuously on the label on the front of the package of  
3 the commodity or, in the case of any such commodity that is  
4 not separately packaged or labeled, on a clear and  
5 conspicuous label appearing on the retail store shelf or  
6 bin in which the commodity is displayed for sale.

7 (2) In the case of processed food containing some  
8 products of genetic engineering, the manufacturer must  
9 label the product, in clear and conspicuous language on the  
10 front or back of the package of such food, with the words  
11 "Produced with Genetic Engineering" or "Partially Produced  
12 with Genetic Engineering".

13 (b) This Act shall not be construed to require either the  
14 listing or identification of any ingredient or ingredients that  
15 were genetically engineered, nor that the term "genetically  
16 engineered" be placed immediately preceding any common name or  
17 primary product descriptor of a food.

18 (c) Until the effective date of this Act, any processed  
19 food that would be subject to this Section solely because it  
20 includes one or more materials produced by genetic engineering  
21 is not misbranded provided that the engineered materials in the  
22 aggregate do not account for more than nine-tenths of one  
23 percent of the total weight of the processed food.

24 (d) Subsection (a) of this Section does not apply to any of  
25 the following:

26 (1) food consisting entirely of, or derived entirely

1 from, an animal that has not itself been genetically  
2 engineered, regardless of whether the animal has been fed  
3 or injected with any food produced with genetic engineering  
4 or any drug or vaccine that has been produced through means  
5 of genetic engineering;

6 (2) a raw agricultural commodity or food that has been  
7 grown, raised, produced, or derived without the knowing and  
8 intentional use of genetically engineered seed or food; to  
9 be included within the exclusion under this subsection (d),  
10 the person responsible for complying with this Section with  
11 respect to a raw agricultural commodity or food must  
12 obtain, from whoever sold the raw agricultural commodity or  
13 food to that person, a sworn statement that the raw  
14 agricultural commodity or food (A) has not been knowingly  
15 or intentionally genetically engineered and (B) has been  
16 segregated from, and has not been knowingly or  
17 intentionally commingled with, foods that may have been  
18 genetically engineered at any time; in providing the sworn  
19 statement, a person may rely on a sworn statement from his  
20 or her own supplier that contains such an affirmation;

21 (3) any processed food that would be subject to this  
22 Section solely because one or more processing aids or  
23 enzymes were produced or derived with genetic engineering;

24 (4) any alcoholic beverage that is subject to  
25 regulation under the Liquor Control Act of 1934;

26 (5) food that has been lawfully certified to be

1 labeled, marketed, and offered for sale as organic pursuant  
2 to the federal Organic Foods Production Act of 1990, 7  
3 U.S.C. 6501, et seq., and the National Organic Program  
4 regulations promulgated pursuant thereto by the United  
5 States Department of Agriculture;

6 (6) food that is not packaged for retail sale and that  
7 either (A) is a processed food prepared and intended for  
8 immediate human consumption or (B) is served, sold, or  
9 otherwise provided in any restaurant or other food service  
10 establishment that is primarily engaged in the sale of food  
11 prepared and intended for immediate human consumption; or

12 (7) medical food.

13 (e) With regard to the requirements of this Act concerning  
14 raw food, the retailer is responsible only for point of  
15 purchase shelf labeling. The supplier must label each container  
16 used for packaging, holding, or transporting, or any  
17 combination thereof, any raw food produced with genetic  
18 engineering that is delivered directly to Illinois retailers.

19 Section 25. Right of action for violations, damages, and  
20 attorneys' fees.

21 (a) The Department, acting through the Attorney General,  
22 may bring an action in a court of competent jurisdiction to  
23 enjoin any person violating this Act.

24 (b) The Department may assess a civil penalty against any  
25 person violating this Act.



1 (c) Any injured citizen of this State may, after giving  
2 notice of the alleged violation to the Attorney General and the  
3 alleged violator and waiting 60 days, bring an action to enjoin  
4 a violation of this Act by a manufacturer or retailer in any  
5 court of competent jurisdiction. The court may award to a  
6 citizen who is a prevailing plaintiff reasonable attorneys'  
7 fees and costs incurred in investigating and prosecuting the  
8 action, but the court may not award any monetary damages.

9 (d) For the purposes of this Act, food shall be considered  
10 not to have been produced with the knowing or intentional use  
11 of genetic engineering if:

12 (1) the food is lawfully certified to be labeled,  
13 marketed, and offered for sale as organic pursuant to the  
14 federal Organic Foods Production Act of 1990, 7 U.S.C. 6501  
15 et seq., which prohibits genetic engineering; or

16 (2) in the case of a manufacturer or retailer obligated  
17 to label any food under this Act, if such entity has  
18 obtained from whomever sold the food to them a sworn  
19 statement that the food has not been knowingly or  
20 intentionally genetically engineered and has been  
21 segregated from, and not knowingly or intentionally  
22 commingled with, foods that may have been genetically  
23 engineered at any time.

24 (e) With regard to the sworn statement described in item  
25 (2) of subsection (d) of this Section, a manufacturer or  
26 retailer may rely on a sworn statement from a supplier that

1 contains the affirmation. Alternatively, a manufacturer or  
2 retailer may rely on an independent organization if it  
3 determines that the food has not been knowingly or  
4 intentionally genetically engineered and has been segregated  
5 from, and not knowingly or intentionally commingled with, foods  
6 that may have been genetically engineered at any time, if such  
7 a determination has been made pursuant to a sampling and  
8 testing procedure:

9 (1) consistent with sampling and testing principles  
10 recommended by internationally recognized standards  
11 organizations; and

12 (2) that does not rely on testing processed foods in  
13 which no DNA is detectable.

14 (f) Unless the retailer is also the producer or the  
15 manufacturer of the food and sells the food under a brand it  
16 owns, no act or omission of any retailer shall be deemed a  
17 violation of this Act, except for knowingly and willfully  
18 failing to provide point of purchase labeling for unpackaged  
19 raw agricultural commodities. In any action in which it is  
20 alleged that a retailer has violated the provisions of this  
21 Section, it shall be a defense that such retailer reasonably  
22 relied on any disclosure as to whether a food was produced  
23 through genetic engineering contained in the bill of sale or  
24 invoice provided by the wholesaler or distributor, or a lack of  
25 such disclosure.

26 (g) No action may be brought against any farmer for any

1 violation of any provision of this Act unless the farmer is  
2 also a retailer or manufacturer, but any farmer submitting a  
3 false sworn statement under item (2) of subsection (d) of this  
4 Section shall be subject to the laws of this State pertaining  
5 to perjury.

6 (h) The Department of Public Health shall adopt and enforce  
7 rules necessary to implement this Act. The Department of Public  
8 Health is not authorized to exempt from the requirements of  
9 this Section any food product that is made subject to those  
10 requirements by the provisions of this Act. The Department of  
11 Public Health may by rule provide that a person may be subject  
12 to an injunction and responsible for the payment of the  
13 prevailing party's attorneys' fees under this Act for failure  
14 to label packaged food in accordance with this Act at such time  
15 as the Department of Public Health determines the commercial  
16 availability of relevant materials not produced with genetic  
17 engineering.

18 Section 97. Severability. The provisions of this Act are  
19 severable under Section 1.31 of the Statute on Statutes.

20 Section 999. Effective date. This Act takes effect January  
21 1, 2017.