

House Bill 1152

By: Representatives Clark of the 98<sup>th</sup> and Beverly of the 143<sup>rd</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Article 2 of Chapter 2 of Title 26 of the Official Code of Georgia Annotated,  
2 relating to adulteration and misbranding of food, so as to require the labeling of genetically  
3 engineered food; to provide for definitions; to provide for exceptions; to provide for rules and  
4 regulations; to provide for penalties; to provide for notice; to provide for related matters; to  
5 provide for contingent effectiveness; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Article 2 of Chapter 2 of Title 26 of the Official Code of Georgia Annotated, relating to  
9 adulteration and misbranding of food, is amended by revising Code Section 26-2-21, relating  
10 to definitions, as follows:

11 "26-2-21.

12 (a) As used in this article, the term:

13 (1) 'Commissioner' means the Commissioner of Agriculture.

14 (2) 'Contaminated with filth' applies to any food not securely protected from dust, dirt,  
15 and, as far as may be necessary, by all reasonable means, from all foreign or injurious  
16 contamination.

17 (3) 'Enzyme' means a protein that catalyzes chemical reactions of other substances  
18 without itself being destroyed or altered upon completion of such reactions.

19 ~~(3)~~(4) 'Federal act' means the Federal Food, Drug, and Cosmetic Act (Title 21 U.S.C.  
20 Section 301, et seq., 52 Stat. Section 1040, et seq.).

21 ~~(4)~~(5) 'Food' means:

22 (A) Articles used for food or drink for human consumption;

23 (B) Chewing gum; and

24 (C) Articles used for components of any such articles.

25 ~~(5)~~(6) 'Food sales establishment' means retail and wholesale grocery stores; retail  
26 seafood stores and places of business; food processing plants, except those food

27 processing plants which are currently required to obtain a license from the Commissioner  
 28 under any other provision of law; bakeries; confectioneries; fruit, nuts, and vegetable  
 29 stores or roadside stands; wholesale sandwich and salad manufacturers, including  
 30 vending machines and operations connected therewith; and places of business and similar  
 31 establishments, mobile or permanent, engaged in the sale of food primarily for  
 32 consumption off the premises. Within a food sales establishment, there may be a food  
 33 service component, not separately operated, which may serve customers on site. This  
 34 food service component shall be considered as part of the food sales establishment. The  
 35 food sales component of any food service establishment defined in Code Section  
 36 26-2-370 shall not be included in this definition. This term shall not include 'food service  
 37 establishments' as defined in Code Section 26-2-370. This term also shall not include  
 38 establishments engaged in the sale of food primarily for consumption off the premises if  
 39 such sale is an authorized part of and occurs upon the site of a fair or festival which:

40 (A) Is sponsored by a political subdivision of this state or by an organization exempt  
 41 from taxes under paragraph (1) of subsection (a) of Code Section 48-7-25 or under  
 42 Section 501(d) or paragraphs (1) through (8) or paragraph (10) of Section 501(c) of the  
 43 Internal Revenue Code, as that code is defined in Code Section 48-1-2;

44 (B) Lasts 120 hours or less; and

45 (C) When sponsored by such an organization, is authorized to be conducted pursuant  
 46 to a permit issued by the municipality or county in which it is conducted.

47 This term also shall not include establishments engaged in the boiling, bottling, and sale  
 48 of sugar cane syrup or sorghum syrup within this state, provided that such bottles contain  
 49 a label listing the producer's name and street address, all added ingredients, and the net  
 50 weight or volume of the product.

51 (7) 'Food service establishment' shall have the same meaning as in Code Section  
 52 26-2-370.

53 (8) 'Genetic engineering' means a process by which a food is produced from an organism  
 54 or organisms in which the genetic material has been changed through the application of:

55 (A) In vitro nucleic acid techniques, including recombinant deoxyribonucleic acid  
 56 (DNA) techniques and the direct injection of nucleic acid into cells or organelles; or

57 (B) Fusion of cells, including protoplast fusion, or hybridization techniques that  
 58 overcome natural physiological, reproductive, or recombination barriers, where the  
 59 donor cells or protoplasts do not fall within the same taxonomic family, in a way that  
 60 does not occur by natural multiplication or natural recombination.

61 ~~(6)~~(9) 'Immediate container' does not include package liners.

62 (10) 'In vitro nucleic acid techniques' means, but is not limited to, recombinant DNA or  
 63 RNA techniques that use vector systems and techniques involving the direct introduction

64 into the organisms of hereditary materials prepared outside the organisms, such as  
 65 micro-injection, macro-injection, chemoporation, electroporation, micro-encapsulation,  
 66 and liposome fusion.

67 ~~(7)~~(11) 'Label' means a display of written, printed, or graphic matter upon the immediate  
 68 container of any article; and a requirement made by or under the authority of this article  
 69 that any word, statement, or other information shall appear on the label shall not be  
 70 considered to be complied with unless each such word, statement, or other information  
 71 also appears on the outside wrapper or container, if there is any, of the retail package of  
 72 such article, or is easily legible through the outside container or wrapper.

73 ~~(8)~~(12) 'Labeling' means all labels and other written, printed, or graphic matter upon an  
 74 article or any of its containers or wrappers or accompanying such article.

75 ~~(9)~~(13) 'Official compendium' means the official United States Pharmacopoeia, official  
 76 Homeopathic Pharmacopoeia of the United States, official National Formulary, or any  
 77 supplement to any of them.

78 (14) 'Organism' means any biological entity capable of replication, reproduction, or  
 79 transferring genetic material.

80 ~~(10)~~(15) 'Person' means an individual, partnership, corporation, or association or any  
 81 combination thereof.

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

86 (17) 'Processing aid' means:

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

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

92 (C) Any substance that is added to a food for its technical or functional effect in the  
 93 processing but is present in the finished food at insignificant levels and does not have  
 94 any technical or functional effect in such finished food.

95 (18) 'Raw agricultural commodity' means any food in its raw or natural state, including  
 96 all fruits that are washed, colored, or otherwise treated in their unpeeled natural form  
 97 prior to marketing.

98 (19) 'Retailer' means a person or entity that engages in the sale of food to a consumer.

99 (b) The provisions of this article regarding the selling of food shall be considered to  
 100 include the manufacture, production, packaging, offer, exposure, possession, and holding

101 of any such articles and the supplying or applying of any such articles in the conduct of any  
 102 food establishment."

103 **SECTION 2.**

104 Said article is further amended by revising Code Section 26-2-28, relating to when food is  
 105 deemed misbranded, as follows:

106 "26-2-28.

107 A food shall be deemed to be misbranded if:

- 108 (1) Its labeling is false or misleading in any particular;  
 109 (2) It is offered for sale under the name of another food;  
 110 (3) It is an imitation of another food for which a definition and standard of identity have  
 111 been prescribed by regulations as provided by Code Section 26-2-35; or if it is an  
 112 imitation of another food that is not subject to paragraph (7) of this Code section, unless  
 113 its label bears, in type of uniform size and prominence, the word 'imitation' and,  
 114 immediately thereafter, the name of the food imitated;  
 115 (4) Its container is so made, formed, or filled as to be misleading;  
 116 (5)(A) In package form, unless it bears a label containing:  
 117 (i) The name and place of business of the manufacturer, packer, or distributor; and  
 118 (ii) An accurate statement of the quantity of the contents in terms of weight, measure,  
 119 or numerical count.

120 However, under division (ii) of subparagraph (A) of this paragraph, reasonable  
 121 variations shall be permitted, and exemptions as to small packages shall be established  
 122 by regulations prescribed by the Commissioner; and a food shall not be deemed  
 123 misbranded because of omission of the information required by division (i) of  
 124 subparagraph (A) of this paragraph where such omission is authorized in writing by the  
 125 Commissioner.

126 (B) The Commissioner may authorize the omission from the label of packaged food  
 127 of the name and place of business of the manufacturer, packer, or distributor upon a  
 128 showing of undue hardship because of the size of the package, the material of which the  
 129 package is made, or the disproportionate cost of compliance. Before authorizing such  
 130 omission, the Commissioner shall require the filing of a certificate of territorial  
 131 responsibility in a form prescribed by him or her. Failure to maintain on file with the  
 132 Commissioner a correct current statement of territorial responsibility in accordance  
 133 with the Commissioner's requirements shall terminate any such authorization previously  
 134 granted;

135 (6) Any word, statement, or other information required by or under authority of this  
 136 article to appear on the label or labeling is not prominently placed thereon with such

137 conspicuousness, as compared with other words, statements, designs, or devices in the  
138 labeling, and in such terms as to render it likely to be read and understood by the ordinary  
139 individual under customary conditions of purchase and use;

140 (7) It purports to be or is represented as a food for which a definition and standard of  
141 identity has been prescribed by regulations as provided by Code Section 26-2-35, unless:

142 (A) It conforms to such definition and standard; and  
143 (B) Its label bears the name of the food specified in the definition and standard and,  
144 insofar as may be required by such regulations, the common names of optional  
145 ingredients, other than spices, flavoring, and coloring, present in such food;

146 (8) It purports to be or is represented as:

147 (A) A food for which a standard of quality has been prescribed by regulations as  
148 provided by Code Section 26-2-35 and its quality falls below such standard, unless its  
149 label bears, in such manner and form as such regulations specify, a statement that it  
150 falls below such standard; or  
151 (B) A food for which a standard or standards of fill of container have been prescribed  
152 by regulation as provided by Code Section 26-2-35, and it falls below the standard of  
153 fill of container applicable thereto, unless its label bears, in such manner and form as  
154 such regulations specify, a statement that it falls below such standard;

155 (9)(A) It is not subject to paragraph (7) of this Code section, unless it bears labeling  
156 clearly giving:

157 (i) The common or usual name of the food, if any such name exists; and  
158 (ii) In case it is fabricated from two or more ingredients, the common or usual name  
159 of each such ingredient; except that spices, flavorings, and colorings, other than those  
160 sold as such, may be designated as spices, flavorings, and colorings without naming  
161 each;

162 (B) To the extent that compliance with the requirements of division (ii) of  
163 subparagraph (A) of this paragraph is impractical or results in deception or unfair  
164 competition, exemptions shall be established by regulations promulgated by the  
165 Commissioner;

166 (C) The requirements of division (ii) of subparagraph (A) of this paragraph shall not  
167 apply to any carbonated beverage, the ingredients of which have been fully and  
168 correctly disclosed, to the extent prescribed by division (ii) of subparagraph (A) of this  
169 paragraph, to the Commissioner in an affidavit;

170 (10) It purports to be or is represented for special dietary uses, unless its label bears such  
171 information concerning its vitamin, mineral, and other dietary properties as the  
172 Commissioner determines to be, and by regulations prescribes, as necessary in order fully  
173 to inform purchasers as to its value for such uses;

- 174 (11) It bears or contains any artificial flavoring, artificial coloring, or chemical  
 175 preservative, unless it bears labeling stating that fact, provided that, to the extent that  
 176 compliance with the requirements of this paragraph is impracticable, exemptions shall be  
 177 established by regulations promulgated by the Commissioner; ~~or~~  
 178 (12) It is a product intended as an ingredient of another food and when used according  
 179 to the directions of the purveyor will result in the final food product being adulterated or  
 180 misbranded; or  
 181 (13) Its labeling does not conform to the requirements of Code Section 26-2-31."

### 182 SECTION 3.

183 Said article is further amended by revising Code Section 26-2-31, which is reserved, as  
 184 follows:

185 "26-2-31.

186 (a) Food and seed or seed stock that is intended to produce food that is entirely or partially  
 187 genetically engineered, except a processed food subject to the provisions of this Code  
 188 section solely because one or more processing aids or enzymes were produced or derived  
 189 from genetic engineering, shall be labeled as follows:

190 (1) In the case of food that is sold wholesale and is not intended for retail sale, on the bill  
 191 of sale accompanying such food during shipping, with the clear and conspicuous words  
 192 'Produced with Genetic Engineering':

193 (2) In the case of food for retail sale contained in a package, with the clear and  
 194 conspicuous words 'Produced with Genetic Engineering':

195 (3) In the case of food that is a raw agricultural commodity, on the package offered for  
 196 retail sale or, in the case of any such commodity that is not separately packaged or  
 197 labeled, on the bill of sale or invoice for such commodity and on the retail store shelf or  
 198 bin that holds such commodity displayed for sale, with the clear and conspicuous words  
 199 'Produced with Genetic Engineering'; and

200 (4) In the case of any such seed or seed stock, on the container holding the seed or seed  
 201 stock displayed for sale or on any label identifying ownership or possession of the  
 202 commodity, with the clear and conspicuous words 'Produced with Genetic Engineering.'

203 Such food labeling shall be displayed in the same size and font as the ingredients in the  
 204 nutritional facts panel on the food label.

205 (b) The requirements of subsection (a) of this Code section shall not apply to:

206 (1) Alcoholic beverages;

207 (2) Food that is not packaged for retail sale and that either:

208 (A) Is a processed food prepared and intended for immediate consumption; or

209 (B) Is served, sold, or otherwise provided in any food service establishment;

- 210 (3) Farm products that are sold by a farmer or the farmer's agent to a consumer at a  
 211 pick-your-own farm, roadside stand, on-farm market, or farmers' market; or
- 212 (4) Food consisting entirely of, or derived entirely from, an animal that was not  
 213 genetically engineered, regardless of whether such animal was fed or injected with any  
 214 genetically engineered food or any drug that was produced through means of genetic  
 215 engineering.
- 216 (c) Any person selling, offering for sale, or distributing in this state any food, seed, or seed  
 217 stock required to be labeled as provided in this Code section shall be responsible for  
 218 ensuring that such food, seed, or seed stock is so labeled.
- 219 (d) The provisions of this Code section shall be enforced, within available appropriations,  
 220 by the Commissioner.
- 221 (e) Any person found to knowingly violate this Code section shall be liable for a civil  
 222 penalty not to exceed \$1,000.00 per day, per product. Calculation of such civil penalty  
 223 shall not be made or multiplied by the number of individual packages of the same product  
 224 displayed or offered for retail sale. Civil penalties assessed under this subsection shall  
 225 accrue and be assessed per each uniquely named, designated, or marketed product.
- 226 (f) Notwithstanding the provisions of subsection (c) of this Code section, a retailer shall  
 227 not be penalized or otherwise held liable for the failure to label pursuant to this Code  
 228 section unless:
- 229 (1) The retailer is the producer or manufacturer of the genetically engineered food, seed,  
 230 or seed stock and sells the genetically engineered food under a brand it owns; or
- 231 (2) The retailer's failure to label was knowing and willful. In any action in which it is  
 232 alleged that a retailer has violated the provisions of this Code section, it shall be a defense  
 233 that such retailer reasonably relied on:
- 234 (A) Any disclosure concerning genetically engineered foods contained in the bill of  
 235 sale or invoice provided by the wholesaler or distributor pursuant to subsection (a) of  
 236 this Code section; or
- 237 (B) The lack of any such disclosure.
- 238 (g) The Commissioner may adopt rules and regulations necessary to implement and  
 239 enforce the provisions of this Code section.
- 240 (h) Not later than 30 days after the effective date of this Code section, the Commissioner  
 241 shall cause to be published in the five newspapers in this state having the largest circulation  
 242 notice of the date the requirements of this Code section become effective. Reserved."

243 **SECTION 4.**

244 This Act shall become effective on October 1 following the date the Commissioner of  
 245 Agriculture certifies the occurrence of both of the following:

246 (1) Four states, not including this state, enact a mandatory labeling law for genetically  
247 engineered foods that is consistent with the provisions of this Code section, provided that  
248 one such state borders Georgia; and

249 (2) The aggregate population of such states located in the southeast region of the United  
250 States that have enacted a mandatory labeling law for genetically engineered foods that  
251 is consistent with this Code section exceeds 20 million based on 2010 census figures.

252

**SECTION 5.**

253 All laws and parts of laws in conflict with this Act are repealed.