

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.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

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

4 ARTICLE 2.1. LABELING OF FOOD
5 PRODUCED WITH GENETIC ENGINEERING

6 41-2071. Definitions

7 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

8 1. "CONSUMER" MEANS ANY PERSON WHO PURCHASES, LEASES, CONTRACTS FOR OR
9 OTHERWISE AGREES TO PAY CONSIDERATION FOR GOODS OR SERVICES NOT FOR RESALE IN
10 THE ORDINARY COURSE OF THE PERSON'S TRADE OR BUSINESS FOR ONE OF THE
11 FOLLOWING PURPOSES:

12 (a) THE PERSON'S USE OR BENEFIT.

13 (b) THE USE OR BENEFIT OF THE PERSON'S HOUSEHOLD OR A MEMBER OF THE
14 PERSON'S HOUSEHOLD.

15 (c) IN CONNECTION WITH THE OPERATION OF A FARM WHETHER OR NOT THE FARM
16 IS CONDUCTED AS A TRADE OR BUSINESS.

17 (d) THE USE OR BENEFIT OF A PERSON'S BUSINESS OR IN CONNECTION WITH
18 THE OPERATION OF THE PERSON'S BUSINESS.

19 2. "ENZYME" MEANS A PROTEIN THAT CATALYZES CHEMICAL REACTIONS OF OTHER
20 SUBSTANCES WITHOUT ITSELF BEING DESTROYED OR ALTERED ON COMPLETION OF THE
21 REACTIONS.

22 3. "FOOD" MEANS FOOD INTENDED FOR HUMAN CONSUMPTION.

23 4. "GENETIC ENGINEERING" MEANS A PROCESS BY WHICH A FOOD IS PRODUCED
24 FROM AN ORGANISM OR ORGANISMS IN WHICH THE GENETIC MATERIAL HAS BEEN CHANGED
25 THROUGH THE APPLICATION OF ONE OF THE FOLLOWING:

26 (a) IN VITRO NUCLEIC ACID TECHNIQUES, INCLUDING RECOMBINANT DNA
27 TECHNIQUES AND THE DIRECT INJECTION OF NUCLEIC ACID INTO CELLS OR ORGANELLES.

28 (b) THE FUSION OF CELLS, INCLUDING PROTOPLAST FUSION, OR HYBRIDIZATION
29 TECHNIQUES THAT OVERCOME NATURAL PHYSIOLOGICAL, REPRODUCTIVE OR RECOMBINATION
30 BARRIERS, IN WHICH THE DONOR CELLS OR PROTOPLASTS DO NOT FALL WITHIN THE SAME
31 TAXONOMIC GROUP AND IN A WAY THAT DOES NOT OCCUR BY NATURAL MULTIPLICATION OR
32 NATURAL RECOMBINATION.

33 5. "IN VITRO NUCLEIC ACID TECHNIQUES" MEANS TECHNIQUES, INCLUDING
34 RECOMBINANT DNA OR RIBONUCLEIC ACID TECHNIQUES, THAT USE VECTOR SYSTEMS AND
35 TECHNIQUES INVOLVING THE DIRECT INTRODUCTION INTO THE ORGANISMS OF HEREDITARY
36 MATERIALS PREPARED OUTSIDE THE ORGANISMS SUCH AS MICRO-INJECTION,
37 CHEMOPORATION, ELECTROPORATION, MICRO-ENCAPSULATION AND LIPOSOME FUSION.

38 6. "MANUFACTURER" MEANS A PERSON WHO DOES ANY OF THE FOLLOWING:

39 (a) PRODUCES A PROCESSED FOOD OR RAW AGRICULTURAL COMMODITY UNDER ITS
40 OWN BRAND OR LABEL FOR SALE IN OR INTO THIS STATE.

41 (b) SELLS IN OR INTO THIS STATE UNDER ITS OWN BRAND OR LABEL A
42 PROCESSED FOOD OR RAW AGRICULTURAL COMMODITY PRODUCED BY ANOTHER SUPPLIER.

43 (c) OWNS A BRAND THAT IT LICENSES OR LICENSED TO ANOTHER PERSON FOR
44 USE ON A PROCESSED FOOD OR RAW COMMODITY SOLD IN OR INTO THIS STATE.

1 (d) SELLS IN, SELLS INTO OR DISTRIBUTES IN THIS STATE A PROCESSED FOOD
2 OR RAW AGRICULTURAL COMMODITY THAT IT PACKAGED UNDER A BRAND OR LABEL OWNED
3 BY ANOTHER PERSON.

4 (e) IMPORTS INTO THE UNITED STATES FOR SALE IN OR INTO THIS STATE A
5 PROCESSED FOOD OR RAW AGRICULTURAL COMMODITY PRODUCED BY A PERSON WITHOUT A
6 PRESENCE IN THE UNITED STATES.

7 (f) PRODUCES A PROCESSED FOOD OR RAW AGRICULTURAL COMMODITY FOR SALE
8 IN OR INTO THIS STATE WITHOUT AFFIXING A BRAND NAME.

9 7. "ORGANISM" MEANS ANY BIOLOGICAL ENTITY THAT IS CAPABLE OF
10 REPLICATION, REPRODUCTION OR TRANSFERRING OF GENETIC MATERIAL.

11 8. "PROCESSED FOOD" MEANS ANY FOOD OTHER THAN A RAW AGRICULTURAL
12 COMMODITY AND INCLUDES ANY FOOD PRODUCED FROM A RAW AGRICULTURAL COMMODITY
13 THAT HAS BEEN SUBJECTED TO PROCESSING, INCLUDING CANNING, SMOKING, PRESSING,
14 COOKING, FREEZING, DEHYDRATION, FERMENTATION OR MILLING.

15 9. "PROCESSING AID" MEANS A SUBSTANCE THAT IS ANY OF THE FOLLOWING:

16 (a) ADDED TO A FOOD DURING THE PROCESSING OF THE FOOD BUT THAT IS
17 REMOVED IN SOME MANNER FROM THE FOOD BEFORE THE FOOD IS PACKAGED IN A
18 FINISHED FORM.

19 (b) ADDED TO A FOOD DURING PROCESSING, IS CONVERTED INTO CONSTITUENTS
20 NORMALLY PRESENT IN THE FOOD AND DOES NOT SIGNIFICANTLY INCREASE THE AMOUNT
21 OF THE CONSTITUENTS NATURALLY FOUND IN THE FOOD.

22 (c) ADDED TO A FOOD FOR ITS TECHNICAL OR FUNCTIONAL EFFECT IN THE
23 PROCESSING BUT IS PRESENT IN THE FINISHED FOOD AT LEVELS THAT DO NOT HAVE ANY
24 TECHNICAL OR FUNCTIONAL EFFECT IN THAT FINISHED FOOD.

25 10. "RAW AGRICULTURAL COMMODITY" MEANS ANY FOOD IN ITS RAW OR NATURAL
26 STATE, INCLUDING ANY FRUIT OR VEGETABLE THAT IS WASHED, COLORED OR OTHERWISE
27 TREATED IN ITS UNPEELED NATURAL FORM BEFORE MARKETING.

28 41-2072. Labeling of food produced with genetic engineering:
29 requirements

30 A. EXCEPT AS SET FORTH IN SECTION 41-2073, FOOD THAT IS OFFERED FOR
31 SALE BY A RETAILER SHALL BE LABELED AS PRODUCED ENTIRELY OR IN PART FROM
32 GENETIC ENGINEERING IF IT IS A PRODUCT THAT IS OFFERED FOR RETAIL SALE IN
33 THIS STATE AND IS ENTIRELY OR PARTIALLY PRODUCED WITH GENETIC ENGINEERING.

34 B. IF A FOOD IS REQUIRED TO BE LABELED PURSUANT TO SUBSECTION A OF
35 THIS SECTION, IT SHALL BE LABELED AS FOLLOWS:

36 1. IN THE CASE OF A PACKAGED RAW AGRICULTURAL COMMODITY, THE
37 MANUFACTURER SHALL LABEL THE PACKAGE OFFERED FOR RETAIL SALE WITH THE CLEAR
38 AND CONSPICUOUS WORDS "PRODUCED WITH GENETIC ENGINEERING".

39 2. IN THE CASE OF ANY RAW AGRICULTURAL COMMODITY THAT IS NOT
40 SEPARATELY PACKAGED, THE RETAILER SHALL POST A LABEL APPEARING ON THE RETAIL
41 STORE SHELF OR BIN IN WHICH THE COMMODITY IS DISPLAYED FOR SALE WITH THE
42 CLEAR AND CONSPICUOUS WORDS "PRODUCED WITH GENETIC ENGINEERING".

43 3. IN THE CASE OF ANY PROCESSED FOOD THAT CONTAINS A PRODUCT OR
44 PRODUCTS OF GENETIC ENGINEERING, THE MANUFACTURER SHALL LABEL THE PACKAGE IN

1 WHICH THE PROCESSED FOOD IS OFFERED FOR SALE WITH ONE OF THE FOLLOWING
2 PHRASES:

- 3 (a) "PARTIALLY PRODUCED WITH GENETIC ENGINEERING".
- 4 (b) "MAY BE PRODUCED WITH GENETIC ENGINEERING".
- 5 (c) "PRODUCED WITH GENETIC ENGINEERING".

6 C. UNLESS EXEMPT UNDER SECTION 41-2073, A MANUFACTURER OF A FOOD
7 PRODUCED ENTIRELY OR IN PART FROM GENETIC ENGINEERING SHALL NOT LABEL THE
8 PRODUCT ON THE PACKAGE, IN SIGNAGE OR IN ADVERTISING AS "NATURAL", "NATURALLY
9 MADE", "NATURALLY GROWN", "ALL NATURAL" OR ANY WORDS OF SIMILAR IMPORT THAT
10 WOULD HAVE A TENDENCY TO MISLEAD A CONSUMER.

11 D. THIS SECTION AND THE REQUIREMENTS OF THIS ARTICLE DO NOT REQUIRE:
12 1. THE LISTING OR IDENTIFICATION OF ANY INGREDIENT THAT IS GENETICALLY
13 ENGINEERED.

14 2. THE PLACEMENT OF THE TERM "GENETICALLY ENGINEERED" IMMEDIATELY
15 PRECEDING ANY COMMON NAME OR PRIMARY PRODUCT DESCRIPTOR OF A FOOD.

16 41-2073. Exemptions from food labeling requirements

17 THE FOLLOWING FOODS ARE NOT SUBJECT TO THE LABELING REQUIREMENTS OF
18 SECTION 41-2072, SUBSECTION A:

19 1. FOOD CONSISTING ENTIRELY OF OR DERIVED ENTIRELY FROM AN ANIMAL THAT
20 HAS NOT ITSELF BEEN PRODUCED WITH GENETIC ENGINEERING, REGARDLESS OF WHETHER
21 THE ANIMAL HAS BEEN FED OR INJECTED WITH ANY FOOD, DRUG OR OTHER SUBSTANCE
22 PRODUCED WITH GENETIC ENGINEERING.

23 2. A RAW AGRICULTURAL COMMODITY OR PROCESSED FOOD DERIVED FROM A RAW
24 AGRICULTURAL COMMODITY THAT HAS BEEN GROWN, RAISED OR PRODUCED WITHOUT THE
25 KNOWING OR INTENTIONAL USE OF FOOD OR SEED PRODUCED WITH GENETIC ENGINEERING.
26 FOOD IS DEEMED TO COMPLY WITH THIS PARAGRAPH ONLY IF THE PERSON OTHERWISE
27 RESPONSIBLE FOR COMPLYING WITH THE REQUIREMENTS OF SECTION 41-2072,
28 SUBSECTION A WITH RESPECT TO A RAW AGRICULTURAL COMMODITY OR PROCESSED FOOD
29 OBTAINS, FROM THE PERSON THAT SOLD THE RAW AGRICULTURAL COMMODITY OR
30 PROCESSED FOOD TO THAT PERSON, A SWORN STATEMENT THAT THE RAW AGRICULTURAL
31 COMMODITY OR PROCESSED FOOD HAS NOT BEEN KNOWINGLY OR INTENTIONALLY PRODUCED
32 WITH GENETIC ENGINEERING AND HAS BEEN SEGREGATED FROM AND HAS NOT BEEN
33 KNOWINGLY OR INTENTIONALLY COMMINGLED WITH FOOD THAT MAY HAVE BEEN PRODUCED
34 WITH GENETIC ENGINEERING AT ANY TIME. IN PROVIDING THE SWORN STATEMENT, A
35 PERSON MAY RELY ON A SWORN STATEMENT FROM THE PERSON'S OWN SUPPLIER THAT
36 CONTAINS THE AFFIRMATION SET FORTH IN THIS PARAGRAPH.

37 3. ANY PROCESSED FOOD THAT WOULD BE SUBJECT TO SECTION 41-2072,
38 SUBSECTION A SOLELY BECAUSE IT INCLUDES ONE OR MORE PROCESSING AIDS OR
39 ENZYMES PRODUCED WITH GENETIC ENGINEERING.

40 4. ANY BEVERAGE THAT IS SUBJECT TO TITLE 4.

41 5. ANY PROCESSED FOOD THAT WOULD BE SUBJECT TO SECTION 41-2072,
42 SUBSECTION A SOLELY BECAUSE IT INCLUDES ONE OR MORE MATERIALS THAT HAVE BEEN
43 PRODUCED WITH GENETIC ENGINEERING IF THE GENETICALLY ENGINEERED MATERIALS IN
44 THE AGGREGATE DO NOT ACCOUNT FOR MORE THAN 0.9 PERCENT OF THE TOTAL WEIGHT OF
45 THE PROCESSED FOOD.

1 6. FOOD THAT AN INDEPENDENT ORGANIZATION VERIFIES HAS NOT BEEN
2 KNOWINGLY OR INTENTIONALLY PRODUCED FROM OR COMMINGLED WITH FOOD OR SEED
3 PRODUCED WITH GENETIC ENGINEERING. THE DEPARTMENT OF WEIGHTS AND MEASURES,
4 AFTER CONSULTATION WITH THE DEPARTMENT OF HEALTH SERVICES, SHALL APPROVE THE
5 INDEPENDENT ORGANIZATIONS FROM WHICH VERIFICATION IS ACCEPTABLE UNDER THIS
6 PARAGRAPH.

7 7. FOOD THAT IS NOT PACKAGED FOR RETAIL SALE AND THAT IS EITHER:

8 (a) A PROCESSED FOOD PREPARED AND INTENDED FOR IMMEDIATE HUMAN
9 CONSUMPTION.

10 (b) SERVED, SOLD OR OTHERWISE PROVIDED IN ANY RESTAURANT OR OTHER
11 RETAIL FOOD ESTABLISHMENT THAT IS PRIMARILY ENGAGED IN THE SALE OF FOOD
12 PREPARED AND INTENDED FOR IMMEDIATE HUMAN CONSUMPTION.

13 8. MEDICAL FOOD AS DEFINED IN 21 UNITED STATES CODE SECTION 360ee
14 (b)(3).

15 41-2074. Retailers; immunity

16 A. A RETAILER IS NOT LIABLE FOR THE FAILURE TO LABEL A PROCESSED FOOD
17 AS REQUIRED BY SECTION 41-2072 UNLESS THE RETAILER IS THE PRODUCER OR
18 MANUFACTURER OF THE PROCESSED FOOD.

19 B. A RETAILER IS NOT LIABLE FOR FAILURE TO LABEL A RAW AGRICULTURAL
20 COMMODITY AS REQUIRED BY SECTION 41-2072 IF THE RETAILER WITHIN THIRTY DAYS
21 AFTER ANY PROPOSED ENFORCEMENT ACTION OR NOTICE OF VIOLATION OBTAINS A SWORN
22 STATEMENT IN ACCORDANCE WITH SECTION 41-2073, PARAGRAPH 2.

23 41-2075. False sworn statement; penalties; unlawful practice;
24 enforcement

25 A. IT IS A VIOLATION OF THIS ARTICLE FOR A PERSON KNOWINGLY TO PROVIDE
26 A FALSE SWORN STATEMENT UNDER SECTION 41-2073, PARAGRAPH 2 THAT A RAW
27 AGRICULTURAL COMMODITY OR PROCESSED FOOD DERIVED FROM A RAW AGRICULTURAL
28 COMMODITY HAS NOT BEEN KNOWINGLY OR INTENTIONALLY PRODUCED WITH GENETIC
29 ENGINEERING AND HAS BEEN SEGREGATED FROM AND HAS NOT BEEN KNOWINGLY OR
30 INTENTIONALLY COMMINGLED WITH FOOD THAT MAY HAVE BEEN PRODUCED WITH GENETIC
31 ENGINEERING AT ANY TIME.

32 B. A PERSON THAT VIOLATES THE REQUIREMENTS OF THIS ARTICLE IS LIABLE
33 FOR A CIVIL PENALTY OF NOT MORE THAN ONE THOUSAND DOLLARS PER DAY PER
34 PRODUCT. THE CALCULATION OF THE CIVIL PENALTY MAY NOT BE MADE OR MULTIPLIED
35 BY THE NUMBER OF INDIVIDUAL PACKAGES OF THE SAME PRODUCT DISPLAYED OR OFFERED
36 FOR RETAIL SALE. CIVIL PENALTIES ASSESSED UNDER THIS SECTION SHALL ACCRUE
37 AND BE ASSESSED PER EACH UNIQUELY NAMED, DESIGNATED OR MARKETED PRODUCT.

38 C. THE DIRECTOR SHALL CONDUCT INVESTIGATIONS AND BRING ENFORCEMENT
39 ACTIONS TO ENFORCE THIS ARTICLE.

40 D. AN ACT OR PRACTICE IN VIOLATION OF THIS ARTICLE IS AN UNLAWFUL
41 PRACTICE UNDER SECTION 44-1522 AND IS SUBJECT TO ENFORCEMENT THROUGH PRIVATE
42 ACTION AND PROSECUTION BY THE ATTORNEY GENERAL. THE ATTORNEY GENERAL MAY
43 INVESTIGATE AND TAKE APPROPRIATE ACTION AS PRESCRIBED BY TITLE 44, CHAPTER
44 10, ARTICLE 7.

1 41-2076. Genetically engineered food labeling fund

2 A. THE GENETICALLY ENGINEERED FOOD LABELING FUND IS ESTABLISHED IN THE
3 DEPARTMENT TO PAY THE COSTS AND LIABILITIES INCURRED BY THE DEPARTMENT IN
4 IMPLEMENTING AND ADMINISTERING THIS ARTICLE. THE DEPARTMENT SHALL ADMINISTER
5 THE FUND. MONIES IN THE FUND ARE SUBJECT TO LEGISLATIVE APPROPRIATION. THE
6 FUND SHALL CONSIST OF LEGISLATIVE APPROPRIATIONS OF SETTLEMENT MONIES
7 RECEIVED BY THE ATTORNEY GENERAL'S OFFICE.

8 B. THE DIRECTOR MAY ACCEPT AND SPEND FEDERAL MONIES AND PRIVATE
9 GRANTS, GIFTS, CONTRIBUTIONS AND DEVICES TO ASSIST IN CARRYING OUT THE
10 PURPOSES OF THIS ARTICLE. THESE MONIES DO NOT REVERT TO THE STATE GENERAL
11 FUND AT THE END OF A FISCAL YEAR.

12 Sec. 2. Rulemaking

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

16 1. A requirement that the label required for food produced from
17 genetic engineering include a disclaimer that the United States food and drug
18 administration does not consider foods produced from genetic engineering to
19 be materially different from other foods.

20 2. Notwithstanding section 41-2072, subsection B, Arizona Revised
21 Statutes, a requirement that a label required under title 41, chapter 15,
22 article 2.1, Arizona Revised Statutes, identify food produced entirely or in
23 part from genetic engineering in a manner consistent with requirements in
24 other jurisdictions for the labeling of food, including the labeling of food
25 produced with genetic engineering.

26 Sec. 3. Effective date

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

28 Sec. 4. Severability

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