

House Bill 3502

Sponsored by Representative BARNHART; Representatives BAILEY, HOLVEY

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires person engaged in commercial production of agricultural, horticultural or other commodity to provide information upon request of possessor of neighboring property or State Department of Agriculture regarding presence of genetically engineered material in commodity. Creates cause of action for contamination of commodities caused by migration or spreading of commodity containing genetically engineered material.

Makes person using product containing genetically engineered material to produce commodity strictly liable to product manufacturer for value of product or material that migrates or spreads to neighboring property. Prohibits manufacturer from recovering value of migrating or spreading product or genetically engineered material from possessor of neighboring property.

Makes foods that contain or are produced using genetically engineered material subject to labeling requirements. Declares food that contains or is produced using genetically engineered material and does not conform with labeling requirements to be misbranded.

Applies to foods packaged on or after January 1, 2012.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to genetically engineered material; creating new provisions; amending ORS 616.360; and
3 declaring an emergency.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. As used in sections 1 to 3 of this 2011 Act:**

6 **(1)(a) "Commodity" means:**

7 **(A) Any distinctive type of agricultural, horticultural, viticultural, vegetable, animal or**
8 **seafood product in a natural or unprocessed state; and**

9 **(B) Bees and honey.**

10 **(b) "Commodity" does not mean biopharmaceutical crops, timber or timber products.**

11 **(2) "Genetically engineered material" means a substance derived from any part of a ge-**
12 **netically engineered organism, whether or not the altered molecular or cellular character-**
13 **istics of the organism are detectable in the substance.**

14 **(3) "Genetically engineered organism" means:**

15 **(a) A life form that has been altered at the molecular or cellular level by means that are**
16 **not possible under natural conditions or processes, except means consisting exclusively of**
17 **breeding, conjugation, fermentation, hybridization, in vitro fertilization, tissue culture or**
18 **mutagenesis; or**

19 **(b) A life form produced through sexual or asexual reproduction involving an initial life**
20 **form described in paragraph (a) of this subsection, if the life form produced possesses any**
21 **of the altered molecular or cellular characteristics of the initial life form.**

22 **(4) "Neighboring property" means property having a common border with, or separated**
23 **by a roadway from, the tract of real property on which the commercial production of a**
24 **commodity occurs.**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 **SECTION 2.** (1) If a person engages in the commercial production of a commodity, upon
 2 request by the possessor of a neighboring property or by the State Department of Agricul-
 3 ture, the person shall inform the possessor or the department whether the commodity being
 4 produced by the person contains genetically engineered material. If the commodity contains
 5 genetically engineered material, the person shall also inform the possessor or the depart-
 6 ment of the type of commodity being produced, the trade name of the product, if any, and
 7 whether the commodity has been rendered incapable of reproduction.

8 (2) If the department believes that a person has failed to fully and accurately make a
 9 timely response to a request by a possessor of a neighboring property or the department
 10 under subsection (1) of this section, the department may issue a written order for the person
 11 to provide the information. If the request was made by the possessor of a neighboring prop-
 12 erty, the department shall give the possessor a copy of any information that the department
 13 receives in response to the order.

14 (3) The failure of a person to fully and accurately provide the information described in
 15 subsection (1) of this section to the department within a time specified in a written order
 16 issued by the department:

17 (a) Creates a rebuttable presumption for purposes of any action filed under section 3 of
 18 this 2011 Act that the commodity being produced by the person contains genetically engi-
 19 neered material that is capable of contaminating all of the types of commodities being
 20 produced on each neighboring property; and

21 (b) Makes the person failing to provide the information subject to a civil penalty imposed
 22 by the department, not to exceed \$10,000.

23 **SECTION 3.** (1) If a commodity that contains genetically engineered material migrates
 24 or spreads from the property where the commodity was being produced to a neighboring
 25 property, the possessor of the neighboring property may bring an action to recover economic
 26 and noneconomic damages caused by the genetically engineered material contaminating
 27 commodities produced on the neighboring property.

28 (2) A person producing a commodity containing genetically engineered material is strictly
 29 liable for damages proven under this section. A manufacturer of seeds or other products that
 30 contain genetically engineered material and are used for producing commodities is liable for
 31 any contamination damage arising from migration or spreading of genetically engineered
 32 material that is due to the defective design or defective manufacture of the seeds or pro-
 33 ducts.

34 (3) A person purchasing seeds or other products that contain genetically engineered
 35 material and are used for producing commodities is strictly liable to the manufacturer of the
 36 product for the economic value of any product or genetically engineered material of the
 37 product that migrates or spreads to a neighboring property. The manufacturer of the pro-
 38 ducts may not bring an action against the possessor of a neighboring property to recover the
 39 value of product or genetically engineered material from a product that migrates or spreads
 40 to the neighboring property. This subsection does not prevent any action for damages or
 41 recovery of value arising from the migration or spreading of a product or genetically engi-
 42 neered material beyond the neighboring properties.

43 (4) Subsections (1) to (3) of this section do not apply to the migration or spreading of
 44 seeds or other products or of genetically engineered material from products that is due to
 45 the actions of the possessor of the neighboring property or due to vandalism or other un-

1 lawful acts by a party acting without authorization of the person who purchased the product.

2 **SECTION 4.** Section 5 of this 2011 Act is added to and made a part of ORS 616.205 to
3 **616.385.**

4 **SECTION 5.** (1) As used in this section:

5 (a) "Genetically engineered material" means a substance derived from any part of a ge-
6 netically engineered organism, whether or not the altered molecular or cellular character-
7 istics of the organism are detectable in the substance.

8 (b) "Genetically engineered organism" means:

9 (A) A life form that has been altered at the molecular or cellular level by means that are
10 not possible under natural conditions or processes, except means consisting exclusively of
11 breeding, conjugation, fermentation, hybridization, in vitro fertilization, tissue culture or
12 mutagenesis; or

13 (B) A life form produced through sexual or asexual reproduction involving an initial life
14 form described in subparagraph (A) of this paragraph, if the life form produced possesses any
15 of the altered molecular or cellular characteristics of the initial life form.

16 (2) A packaged food shall be deemed to be misbranded if:

17 (a) The food contains, or was produced using, a genetically engineered material and the
18 labeling does not include a clear and prominent statement that the food contains genetically
19 engineered material; or

20 (b) The food contains, or was produced using, a genetically engineered material and the
21 labeling includes any statement indicating that the food does not contain genetically engi-
22 neered material.

23 (3) A food is considered to have been produced using a genetically engineered material
24 for purposes of subsection (2) of this section if:

25 (a) Except as provided in subsection (4) of this section, the organism from which the food
26 is derived has been injected or otherwise treated with a genetically engineered material;

27 (b) An animal from which the food is derived has been fed genetically engineered mate-
28 rial; or

29 (c) The food contains an ingredient that is a food produced as described in paragraph (a)
30 or (b) of this subsection.

31 (4) For purposes of subsection (3)(a) of this section, the use of manure from an animal
32 fed genetically engineered material in the growing of a raw agricultural commodity is not
33 an injection or treatment of the commodity with genetically engineered material.

34 (5) Subsection (2) of this section does not apply to:

35 (a) Foods that are certified and comply with the federal Organic Foods Production Act
36 (P.L. 101-624, as amended by P.L. 109-97) and the implementing regulations for the Act; or

37 (b) Foods that are produced with genetically engineered material that does not exceed
38 one percent of the materials used to produce the food, as determined by the State Depart-
39 ment of Agriculture, if no validated method of testing for the presence of that genetically
40 engineered material in the food has been identified by the State Department of Agriculture
41 or the United States Department of Agriculture. If the State Department of Agriculture or
42 the United States Department of Agriculture identifies a validated method of testing that can
43 detect the presence of genetically engineered material in food that is produced using not
44 more than one percent genetically engineered material, the State Department of Agriculture
45 may establish a zero tolerance for the material or may exempt foods produced with a lower

1 percentage of genetically engineered material that cannot be detected by a validated method
2 of testing.

3 (6) The department shall adopt rules for carrying out this section. The rules may include,
4 but need not be limited to, rules for identifying packaged foods and food production processes
5 that use genetically engineered material and rules for food package labeling statements re-
6 garding the presence or absence of genetically engineered material.

7 (7) The department may inspect consumer commodities and products in the possession
8 of an agricultural commodity producer, food manufacturer, processor, packager, wholesaler
9 or retailer, may obtain samples of the foods, food ingredients and materials used to produce
10 food and may seize foods, food ingredients and materials used to produce food to the extent
11 the department considers necessary to prevent the offering of misbranded foods to the pub-
12 lic.

13 (8) This section and any rules for the administration and enforcement of this section do
14 not create a new public or private cause of action or preclude an existing cause of action.

15 **SECTION 6.** ORS 616.360 is amended to read:

16 616.360. In the promulgation of rules under ORS 616.341, 616.345, 616.350, 616.366 and 616.380
17 and section 5 of this 2011 Act, the State Department of Agriculture shall give appropriate con-
18 sideration to:

19 (1) Measures and procedures required to protect the health and life of animals and the people
20 of this state.

21 (2) The laws of other states.

22 (3) The laws of the United States. The department's rules shall conform in so far as practicable
23 with, but shall not be more restrictive than, the laws and rules of the federal Food and Drug Ad-
24 ministration.

25 (4) The opinions of recognized experts and governmental agencies in the field of food additives.

26 **SECTION 7.** Section 2 of this 2011 Act applies to agricultural, horticultural, viticultural
27 and vegetable commodities that are planted on or after the effective date of this 2011 Act.

28 **SECTION 8.** Section 3 of this 2011 Act applies to a migration or spreading of genetically
29 engineered material to a neighboring property that occurs in whole or in part on or after the
30 effective date of this 2011 Act.

31 **SECTION 9.** Section 5 of this 2011 Act applies to foods that are packaged on or after
32 January 1, 2012.

33 **SECTION 10.** This 2011 Act being necessary for the immediate preservation of the public
34 peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect
35 on its passage.

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