HOUSE DOCKET, NO. 369 FILED ON: 1/13/2015

HOUSE . . . . . No. 3242

The Commonwealth of Massachusetts

PRESENTED BY:

Ellen Story and Todd M. Smola

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act establishing the genetic engineering transparency food and seed labeling act.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
Ellen Story	*3rd Hampshire*	*1/13/2015*
Todd M. Smola	*1st Hampden*	*1/13/2015*
Joan B. Lovely	*Second Essex*	*1/20/2015*
Bruce E. Tarr	*First Essex and Middlesex*	*1/17/2015*
Michael J. Moran	*18th Suffolk*	*1/16/2015*
Daniel A. Wolf	*Cape and Islands*	*1/29/2015*
Stephen L. DiNatale	*3rd Worcester*	*1/14/2015*
Sarah K. Peake	*4th Barnstable*	*1/15/2015*
Carolyn C. Dykema	*8th Middlesex*	*1/28/2015*
Tricia Farley-Bouvier	*3rd Berkshire*	*1/26/2015*
Byron Rushing	*9th Suffolk*	*1/30/2015*
James B. Eldridge	*Middlesex and Worcester*	*1/26/2015*
Timothy R. Madden	*Barnstable, Dukes and Nantucket*	*1/15/2015*
Brian R. Mannal	*2nd Barnstable*	*1/26/2015*
Marjorie C. Decker	*25th Middlesex*	*1/26/2015*
Peter V. Kocot	*1st Hampshire*	*1/15/2015*
Mary S. Keefe	*15th Worcester*	*1/30/2015*
Gailanne M. Cariddi	*1st Berkshire*	*1/16/2015*

Kathleen O'Connor Ives	*First Essex*	*1/16/2015*
Nicholas A. Boldyga	*3rd Hampden*	*1/29/2015*
Gloria L. Fox	*7th Suffolk*	*1/26/2015*
James Arciero	*2nd Middlesex*	*1/20/2015*
Brian M. Ashe	*2nd Hampden*	*1/15/2015*
Cory Atkins	*14th Middlesex*	*1/23/2015*
Bruce J. Ayers	*1st Norfolk*	*2/4/2015*
Ruth B. Balser	*12th Middlesex*	*1/26/2015*
Christine P. Barber	*34th Middlesex*	*2/1/2015*
Michael J. Barrett	*Third Middlesex*	*1/26/2015*
F. Jay Barrows	*1st Bristol*	*1/28/2015*
Jennifer E. Benson	*37th Middlesex*	*1/16/2015*
Donald R. Berthiaume, Jr.	*5th Worcester*	*2/1/2015*
Paul Brodeur	*32nd Middlesex*	*1/30/2015*
Antonio F. D. Cabral	*13th Bristol*	*2/3/2015*
Kate D. Campanale	*17th Worcester*	*2/3/2015*
Harriette L. Chandler	*First Worcester*	*2/2/2015*
Leah Cole	*12th Essex*	*1/15/2015*
Edward F. Coppinger	*10th Suffolk*	*1/29/2015*
Cynthia S. Creem	*First Middlesex and Norfolk*	*1/26/2015*
Brendan P. Crighton	*11th Essex*	*1/30/2015*
Claire D. Cronin	*11th Plymouth*	*1/26/2015*
Daniel Cullinane	*12th Suffolk*	*2/2/2015*
Mark J. Cusack	*5th Norfolk*	*2/4/2015*
Josh S. Cutler	*6th Plymouth*	*1/22/2015*
Michael S. Day	*31st Middlesex*	*2/3/2015*
Viriato M. deMacedo	*Plymouth and Barnstable*	*1/30/2015*
Angelo L. D'Emilia	*8th Plymouth*	*1/30/2015*
Marcos A. Devers	*16th Essex*	*2/1/2015*
Sal N. DiDomenico	*Middlesex and Suffolk*	*1/29/2015*
Geoff Diehl	*7th Plymouth*	*1/26/2015*
Daniel M. Donahue	*16th Worcester*	*1/30/2015*
Paul J. Donato	*35th Middlesex*	*1/29/2015*
Kenneth J. Donnelly	*Fourth Middlesex*	*1/22/2015*
Shawn Dooley	*9th Norfolk*	*1/22/2015*
Benjamin B. Downing	*Berkshire, Hampshire, Franklin and Hampden*	*1/29/2015*
Michelle M. DuBois	*10th Plymouth*	*1/22/2015*
Peter J. Durant	*6th Worcester*	*1/21/2015*

James J. Dwyer	*30th Middlesex*	*1/26/2015*
Lori A. Ehrlich	*8th Essex*	*1/22/2015*
Ryan C. Fattman	*Worcester and Norfolk*	*1/13/2015*
Kimberly N. Ferguson	*1st Worcester*	*1/22/2015*
John V. Fernandes	*10th Worcester*	*1/30/2015*
Ann-Margaret Ferrante	*5th Essex*	*1/16/2015*
Michael J. Finn	*6th Hampden*	*1/26/2015*
Carole A. Fiola	*6th Bristol*	*1/28/2015*
Jennifer L. Flanagan	*Worcester and Middlesex*	*2/2/2015*
Linda Dorcena Forry	*First Suffolk*	*1/22/2015*
Paul K. Frost	*7th Worcester*	*1/29/2015*
William C. Galvin	*6th Norfolk*	*1/29/2015*
Sean Garballey	*23rd Middlesex*	*1/19/2015*
Denise C. Garlick	*13th Norfolk*	*2/1/2015*
Colleen M. Garry	*36th Middlesex*	*1/26/2015*
Carmine L. Gentile	*13th Middlesex*	*1/27/2015*
Susan Williams Gifford	*2nd Plymouth*	*2/2/2015*
Anne M. Gobi	*Worcester, Hampden, Hampshire and Middlesex*	*2/3/2015*
Thomas A. Golden, Jr.	*16th Middlesex*	*2/3/2015*
Kenneth I. Gordon	*21st Middlesex*	*1/23/2015*
Danielle W. Gregoire	*4th Middlesex*	*1/29/2015*
Jonathan Hecht	*29th Middlesex*	*1/22/2015*
Robert L. Hedlund	*Plymouth and Norfolk*	*1/22/2015*
Paul R. Heroux	*2nd Bristol*	*1/29/2015*
Bradford R. Hill	*4th Essex*	*1/30/2015*
Kate Hogan	*3rd Middlesex*	*2/2/2015*
Kevin G. Honan	*17th Suffolk*	*2/3/2015*
Steven S. Howitt	*4th Bristol*	*2/3/2015*
Donald F. Humason, Jr.	*Second Hampden and Hampshire*	*1/30/2015*
Patricia D. Jehlen	*Second Middlesex*	*1/29/2015*
Bradley H. Jones, Jr.	*20th Middlesex*	*1/26/2015*
Brian A. Joyce	*Norfolk, Bristol and Plymouth*	*1/22/2015*
Louis L. Kafka	*8th Norfolk*	*1/22/2015*
Jay R. Kaufman	*15th Middlesex*	*1/15/2015*
James M. Kelcourse	*1st Essex*	*1/28/2015*
Thomas P. Kennedy	*Second Plymouth and Bristol*	*1/31/2015*
Kay Khan	*11th Middlesex*	*1/27/2015*
Robert M. Koczera	*11th Bristol*	*2/4/2015*

Stephen Kulik	*1st Franklin*	*1/23/2015*
Kevin J. Kuros	*8th Worcester*	*2/2/2015*
John J. Lawn, Jr.	*10th Middlesex*	*2/3/2015*
Eric P. Lesser	*First Hampden and Hampshire*	*1/29/2015*
Jason M. Lewis	*Fifth Middlesex*	*1/20/2015*
David Paul Linsky	*5th Middlesex*	*1/21/2015*
Barbara A. L'Italien	*Second Essex and Middlesex*	*1/29/2015*
Jay D. Livingstone	*8th Suffolk*	*1/15/2015*
Marc T. Lombardo	*22nd Middlesex*	*1/22/2015*
John J. Mahoney	*13th Worcester*	*2/3/2015*
Elizabeth A. Malia	*11th Suffolk*	*2/4/2015*
Paul W. Mark	*2nd Berkshire*	*1/14/2015*
Christopher M. Markey	*9th Bristol*	*2/3/2015*
Thomas M. McGee	*Third Essex*	*1/29/2015*
Joseph W. McGonagle, Jr.	*28th Middlesex*	*1/28/2015*
Joseph D. McKenna	*18th Worcester*	*1/29/2015*
Paul McMurtry	*11th Norfolk*	*1/26/2015*
James R. Miceli	*19th Middlesex*	*1/16/2015*
Aaron Michlewitz	*3rd Suffolk*	*1/30/2015*
Leonard Mirra	*2nd Essex*	*1/26/2015*
Rady Mom	*18th Middlesex*	*1/22/2015*
Mark C. Montigny	*Second Bristol and Plymouth*	*2/2/2015*
Michael O. Moore	*Second Worcester*	*1/26/2015*
Frank A. Moran	*17th Essex*	*1/26/2015*
David K. Muradian, Jr.	*9th Worcester*	*2/2/2015*
Mathew Muratore	*1st Plymouth*	*1/22/2015*
David M. Nangle	*17th Middlesex*	*1/26/2015*
Harold P. Naughton, Jr.	*12th Worcester*	*1/29/2015*
Shaunna L. O'Connell	*3rd Bristol*	*1/31/2015*
James J. O'Day	*14th Worcester*	*2/3/2015*
Alice Hanlon Peisch	*14th Norfolk*	*2/4/2015*
Thomas M. Petrolati	*7th Hampden*	*2/4/2015*
William Smitty Pignatelli	*4th Berkshire*	*1/16/2015*
Elizabeth A. Poirier	*14th Bristol*	*1/15/2015*
Denise Provost	*27th Middlesex*	*1/23/2015*
Angelo J. Puppolo, Jr.	*12th Hampden*	*1/20/2015*
David M. Rogers	*24th Middlesex*	*1/26/2015*
John H. Rogers	*12th Norfolk*	*2/2/2015*
Dennis A. Rosa	*4th Worcester*	*1/23/2015*

Jeffrey N. Roy	*10th Norfolk*	*1/27/2015*
Daniel J. Ryan	*2nd Suffolk*	*1/30/2015*
Tom Sannicandro	*7th Middlesex*	*1/30/2015*
John W. Scibak	*2nd Hampshire*	*2/4/2015*
Frank I. Smizik	*15th Norfolk*	*1/30/2015*
Theodore C. Speliotis	*13th Essex*	*2/3/2015*
Karen E. Spilka	*Second Middlesex and Norfolk*	*1/28/2015*
Thomas M. Stanley	*9th Middlesex*	*1/20/2015*
Benjamin Swan	*11th Hampden*	*2/3/2015*
Walter F. Timilty	*7th Norfolk*	*2/2/2015*
Timothy J. Toomey, Jr.	*26th Middlesex*	*2/3/2015*
Paul Tucker	*7th Essex*	*2/3/2015*
Aaron Vega	*5th Hampden*	*1/21/2015*
John C. Velis	*4th Hampden*	*1/28/2015*
RoseLee Vincent	*16th Suffolk*	*1/26/2015*
Chris Walsh	*6th Middlesex*	*1/19/2015*
James T. Welch	*Hampden*	*2/2/2015*
Timothy R. Whelan	*1st Barnstable*	*1/29/2015*
Susannah M. Whipps Lee	*2nd Franklin*	*1/20/2015*
Donald H. Wong	*9th Essex*	*1/30/2015*
Jonathan D. Zlotnik	*2nd Worcester*	*2/2/2015*

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HOUSE . . . . . No. 3242

By Representatives Story of Amherst and Smola of Warren, a petition (accompanied by bill, House, No. 3242) of Ellen Story, Todd M. Smola and others relative to the labeling of genetically engineered food. Environment, Natural Resources and Agriculture.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. *3996* OF 2013-2014.]

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

An Act establishing the genetic engineering transparency food and seed labeling act.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. (1) This act shall be known as the Genetic Engineering Transparency Food and Seed Labeling Act.

(2) The Genetic Engineering Transparency Food and Seed Labeling Act results in a consistent and enforceable standard for labeling foods and seeds produced using genetic engineering, and thus provides the residents of the commonwealth with necessary factual knowledge of how their food is produced. This knowledge is necessary for the following reasons:

(a) Public health. Promote public health by allowing the food protection program to inform consumers regarding genetically engineered foods, and serve as a risk management tool

enabling consumers, physicians, and scientists to identify unintended health effects resulting from consumption of genetically engineered foods.

(b) Environmental impacts. Assist consumers who are concerned about the potential effects of genetic engineering on the environment to make informed purchasing decisions.

(c) Consumer protection. Reduce and prevent consumer confusion and deception and promote the disclosure of factual information on food and seed labels to allow consumers to make informed decisions.

(d) Economic development. Create and protect non-genetically engineered crop markets and enable consumers to make informed purchasing decisions.

(e) Religious and cultural freedom. Provide consumers with data from which they may make informed decisions for personal, religious, moral, cultural, or ethical reasons.

(3) This act shall be liberally construed to fulfill these purposes.

SECTION 2. Section 1 of Chapter 94 of the General Laws is hereby amended by inserting after line 54 the following:-

“Genetically engineered” means produced from an organism or organisms in which the genetic material has been changed through the application of:

(a) In vitro nucleic acid techniques which include, but are not limited to, recombinant deoxyribonucleic acid 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 biolistics, microinjection, macro-injection, chemoporation, electroporation, microencapsulation, and liposome fusion as well as direct injection of nucleic acid into cells or organelles, encapsulation, gene deletion, and doubling; or

(b) Methods of fusing cells beyond the taxonomic family that overcome natural physiological, reproductive, or recombination barriers, and that are not techniques used in traditional breeding and selection such as conjugation, transduction, and hybridization.

SECTION 3. Said Chapter 94 is hereby further amended by inserting at the end thereof the following new section:-

Section 330. The Genetic Engineering Transparency Food and Seed Labeling Act.

(1) For the purposes of this section, the following words shall have the following definitions:-

"Food" shall have the same meaning given to it in section 1 of this chapter, with the following exceptions:-

(a) food products and seeds consumed by animals;

(b) any alcoholic beverages as defined by Section 1 of Chapter 138 of the General Laws;

(c) any food or beverage that meets the definition of "medical food" in paragraph 3 of subsection (b) of Section 360ee of Title 21 of the United States Code, the Federal Food, Drug, and Cosmetic Act, or any successor statute;

(d) food not packaged for retail sale that is either:

(i) prepared and intended for immediate human consumption, or

(ii) served, sold or otherwise provided in any restaurant or other food service establishment that is primarily engaged in the sale of food prepared or intended for immediate human consumption

"Packaged food" means any food exposed for retail sale in Massachusetts, other than raw food and food served, sold, or provided ready to eat in any bake sale, commissary or food service establishment

"Raw agricultural commodity" and "Raw food product" shall mean any product derived from the science, art or practice of cultivating the soil, producing crops or raising livestock or fish, and, in varying degrees, including the preparation and marketing of the resulting products, but prior to their processing or combination into a food product.

(2) Any food product that is entirely or partially produced with genetic engineering shall be labeled in accordance with the provisions of this section.

(3) In the case of a genetically engineered raw food product packaged for retail sale, the manufacturer shall include the words "Genetically Engineered" or "Produced with Genetic Engineering" clearly and conspicuously on the front or back of the package of such commodity. In the case of raw agricultural commodities that are not separately packaged or labeled, the retailer shall place a clear and conspicuous label bearing those words on the retail store shelf or bin in which such commodity is displayed for sale.

(4) To make clear who is responsible for compliance with the requirements of this section, in the case of a raw food product, the retailer is responsible only for point of purchase shelf labeling. The supplier must label each container used for packaging, holding, and/or

transporting any raw food product produced with genetic engineering that is delivered directly to Massachusetts retailers.

(5) In the case of any packaged food product containing some products of genetic engineering, the manufacturer must label the product in clear and conspicuous language on the front or back of the package of such food product with the words “Produced with Genetic Engineering” or “Partially Produced with Genetic Engineering.”

(6) This law does not require either the listing or identification of any ingredient or ingredients that were genetically engineered or that the term “genetically engineered” be placed immediately preceding any common name or primary product descriptor of a food product.

(7) An animal that has not itself been genetically engineered, regardless of whether such animal has been fed or injected with any food or any drug that has been produced through means of genetic engineering shall not be considered “genetically engineered” for purposes of this section.

(8) Commencing January 1, 2017 a food product produced entirely or in part from genetic engineering shall not be labeled on the product, in signage, or in advertising as “natural,” “naturally made,” “naturally grown,” “all natural,” or any words of similar import.

(9) The food protection program of the department of public health shall promulgate regulations and guidelines necessary to implement this section. The food protection program shall not exempt any food products not expressly exempted by this section, but may authorize reasonable accommodations for products that due to peculiar size, packaging or storage requirements, are able to demonstrate a hardship in complying with the labeling called for by this act.

(10) The provisions of this section shall be enforced by the department and by local boards of health acting under the supervision of the department. Should the department deem necessary, the attorney general shall issue a corrective action notice to any manufacturer or retailer, describing a possible violation and how to remedy it. Such corrective action notice shall also explain what documentation under subsection 13 may satisfy this section. Upon request of the attorney general, the respondent manufacturer or retailer shall provide records and evidence demonstrating compliance with this section up to 3 years prior to the alleged violation. If, after 30 days from the issuance of said corrective action notice the attorney general believes the violation has not been remedied, the attorney general may bring an action to enjoin a violation of this section in any court of competent jurisdiction. A violation of this section shall be punishable by a civil penalty of not more than $1000 per day, per product; provided, that said penalty shall accrue and be assessed per each uniquely named, designated, or marketed product, and shall not be made or multiplied by the number of individual packages exposed for retail sale.

(11) Any injured citizen of Massachusetts may, after giving notice of the alleged violation to the food protection program and the alleged violator and waiting 60 days, bring an action to enjoin a violation of this section by a manufacturer or retailer in any court of competent jurisdiction. The court may, in such an action, award to a citizen who is a prevailing plaintiff reasonable attorneys' fees and costs incurred in investigating and prosecuting the action, but the court may not award any further monetary damages.

(12) No person may be subject to an injunction or responsible for payment of prevailing party attorneys' fees for failure to label any food if:

(a) in the case of packaged food, the materials produced through genetic engineering do not account for more than nine tenths of one percent of the total weight of the packaged food; or

(b) the food has not been produced with the knowing or intentional use of genetic engineering; or

(c) the food protection program and court of jurisdiction are satisfied that the food product has been duly labeled, upon conclusion of an investigation and proceeding under Section 189A.

(13) For purposes of this section, food will be considered not to have been produced with the knowing or intentional use of genetic engineering if:

(a) such food is lawfully certified to be labeled, marketed, and offered for sale as "organic" pursuant to the section 6501 of Title 7 of the United States Code, the Organic Foods Production Act, or any successor statute, which already prohibits genetic engineering;

(b) in the case of a manufacturer or retailer obligated to label any food under this act, if such entity has obtained from whomever sold that food to them a statement signed under pains and penalty of perjury that the food has not been knowingly or intentionally genetically engineered and has been segregated from, and not knowingly or intentionally commingled with, foods that may have been genetically engineered at any time. In providing such statement, a manufacturer or retailer may rely on such statement from a supplier that contains such an affirmation signed under pains and penalty of perjury; or

(c) the food protection program or an independent organization has determined that the food has not been knowingly or intentionally genetically engineered and has been segregated

from, and not knowingly or intentionally commingled with, foods that may have been genetically engineered at any time, if such a determination has been made pursuant to a sampling and testing procedure (i) consistent with sampling and testing principles recommended by internationally recognized standards organizations and (ii) which does not rely on testing processed foods in which no DNA is detectable.

(14) It shall be a violation of this section for any retailer, wholesaler or distributor to knowingly and willfully remove, alter or obscure any label affixed under this section, or to knowingly and willfully fail to provide point of purchase labeling for unpackaged raw agricultural commodities. In any action in which it is alleged that a retailer has violated the provisions of this section, it shall be an affirmative defense that such retailer reasonably relied on:

(a) any disclosure whether a food was produced through genetic engineering contained in the bill of sale or invoice provided by the wholesaler or distributor; or

(b) a lack of such disclosure.

(15) No action may be brought against any farmer for any violation of any provision of this section unless such farmer is also a retailer or manufacturer, but any farmer submitting a false sworn statement under paragraph (b) of subsection (13) of this section shall be subject to section 1A of chapter 268 of the General Laws.

SECTION 4. Section 187 of said chapter 94 is hereby amended by inserting after the words “misleading labeling.” in line 137 the following paragraph:-

"Fifteenth, if it is intended for human consumption and genetically engineered, as defined in section 1 of this chapter, and does not bear labeling in accordance with section 330 of this chapter.

SECTION 5. Section 84 of Chapter 128 of the General Laws is hereby amended by inserting after the definition of "Flower seeds" the following definitions:-

"Genetically engineered seed" shall mean any agricultural, flower, tree and shrub, vegetable or weed seed produced from an organism or organisms in which the genetic material has been changed through the application of:

(a) In vitro nucleic acid techniques which include, but are not limited to, recombinant deoxyribonucleic acid or ribonucleic acid, direct injection of nucleic acid into cells or organelles, encapsulation, gene deletion, and doubling, recombinant deoxyribonucleic acid 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 biolistics, microinjection, macro-injection, chemoporation, electroporation, microencapsulation, and liposome fusion; or

(b) Methods of fusing cells beyond the taxonomic family that overcome natural physiological, reproductive, or recombination barriers, and that are not techniques used in traditional breeding and selection such as conjugation, transduction, and hybridization.

"Genetically engineered plant part" shall mean a whole plant or plant part, including scions intended for planting, which contains material derived from a genetically engineered seed or is itself produced using the methods described in the definition of genetically engineered seed.

SECTION 6. Said Chapter 128 is hereby amended by adding after section 89 the following new section:-

Section 89A. Genetically engineered seeds; labeling or tagging containers

Each container of genetically engineered seed distributed, offered for sale or exposed for sale within the commonwealth shall bear the identity of such seed, relevant traits or characteristics of the seed that cause it to be defined as genetically engineered, plus any legal requirements or recommended precautions for their safe handling, storage, transport, and use, the contact point for further information and, as appropriate, the name and address of the manufacturer, distributor, or supplier of such seed.

The commissioner shall promulgate regulations requiring the annual reporting by manufacturers or processors of all genetically engineered seed and genetically engineered plant parts distributed, sold or exposed for sale within the commonwealth, as to the nature of sales of genetically engineered seed and genetically engineered plant products during the previous calendar year.

SECTION 7. Section 93 of said Chapter 128 is hereby amended in line 3 by striking out the words “flower or tree and shrub”, and inserting in place thereof the following words:-

“flower, tree and shrub or genetically engineered”

SECTION 8. Said Section 93 is hereby further amended in line 11 by striking out the words “flower and tree or shrub”, and inserting in place thereof the following words:-

“flower, tree and shrub or genetically engineered”

SECTION 9. This act shall take effect January 1, 2017.