

1 S.89

2 Introduced by Senators Zuckerman, Baruth, Ashe, Fox, French, Galbraith,

3 Lyons, McCormack, Pollina, Rodgers, and White

4 Referred to Committee on

5 Date:

6 Subject: Agriculture; consumer affairs; food labeling; genetically engineered

7 ingredients; seed contracts

8 Statement of purpose of bill as introduced: This bill proposes to provide that
9 food is misbranded if it is entirely or partially produced with genetic
10 engineering and it is not labeled as genetically engineered.

11 An act relating to food produced with genetic engineering

12 It is hereby enacted by the General Assembly of the State of Vermont:

13 Sec. 1. FINDINGS; LABELING OF FOOD PRODUCED WITH

14 GENETICALLY ENGINEERED INGREDIENTS

15 The General Assembly finds and declares that:

16 (1) U.S. federal law does not provide for the regulation of the labeling of
17 food that contains genetically engineered ingredients; consequently,
18 manufacturers of food produced from genetically engineered ingredients are
19 not required to label such food as genetically engineered.

1 (2) The U.S. Food and Drug Administration (FDA) does not
2 independently test the safety of genetically engineered foods; instead, the FDA
3 relies on safety research and studies submitted and financed by manufacturers.

4 (3) Genetically engineered ingredients are increasingly present in foods
5 available for human consumption, as evidenced by the fact that it is estimated
6 that 70 to 80 percent of the processed foods sold in the United States have at
7 least one genetically engineered ingredient.

8 (4) Vermont and other states do have the authority to regulate the
9 labeling of genetically engineered foods as evidenced by the fact that:

10 (A) the U.S. Court of Appeals for the Second Circuit held in *National*
11 *Electric Manufacturers Assn. v. Sorrell*, 272 F.3d 104 (2d Cir. 2001), that
12 states are free to compel the disclosure of factual commercial speech as long as
13 the means employed by the state are rationally related to the state's legitimate
14 interest; and

15 (B) the decision of the U.S. Court of Appeals for the Second Circuit
16 in *International Dairy Foods Ass'n v. Amestoy*, 92 F.3d 67 (2d Cir. 1996), is
17 expressly limited to cases in which a state disclosure requirement is supported
18 by no interest other than gratification of consumer curiosity.

1 (5) Genetically engineered foods have an effect on human health, animal
2 health, agriculture, and the environment, and, consequently, the citizens of
3 Vermont have a legitimate interest in requiring food produced from genetic
4 engineering to be labeled as such, as evidenced by the fact that:

5 (A) Independent studies in laboratory animals indicate that the
6 ingestion of genetically engineered foods may lead to health problems such as
7 gastrointestinal damage, liver and kidney damage, reproductive problems,
8 immune system interference, and allergic responses.

9 (B) Genetically engineered crops that include pesticides may
10 adversely affect populations of nontarget insects, and may contribute to genetic
11 homogeneity, loss of biodiversity, and increased vulnerability of crops to pests
12 or diseases.

13 (C) Labeling foods produced with genetic engineering as “natural,”
14 “naturally made,” “naturally grown,” “all natural,” or other similar descriptors
15 is misleading and poses a risk of confusing or deceiving consumers.

16 (D) Public opinion polls conducted by the Center for Rural Studies at
17 the University of Vermont indicate that a large majority of Vermonters want
18 foods produced with genetic engineering to be labeled as such.

19 (6) Because both the FDA and the U.S. Congress have failed to require
20 the labeling of food produced with genetic engineering, the State should
21 exercise its authority to require food produced with genetic engineering to be

1 labeled as such in order to serve the legitimate interests of the State to prevent
2 inadvertent consumer deception, promote food safety, protect the environment,
3 and promote economic development.

4 Sec. 2. 18 V.S.A. chapter 82, subchapter 3 is added to read:

5 Subchapter 3. Labeling of Food Produced with
6 Genetic Engineering

7 § 4091. PURPOSE

8 It is the purpose of this chapter to:

9 (1) Reduce consumer confusion and deception regarding the ingredients
10 in the food they purchase by requiring the disclosure of factual information on
11 food labels so that food that is produced with genetic engineering is not
12 misbranded as “natural.”

13 (2) Promote food safety by allowing consumers to make informed
14 dietary decisions when purchasing food, because there is a lack of consensus in
15 the scientific community regarding the safety of genetically engineered food.

16 (3) Provide consumers with data from which they may make informed
17 decisions for personal, moral, cultural, or ethical reasons.

18 (4) Assist consumers in making informed decisions about food
19 purchases that have potential effects on the environment, including:
20 displacement of native flora and fauna; ecosystem disruptions, such as loss of

1 biodiversity; increased herbicide and pesticide use; and adverse effects on
2 nontarget insects.

3 (5) Create additional market opportunities for those producers who are
4 not certified organic and whose products are not produced using genetic
5 engineering.

6 (6) Allow consumers to make informed purchasing decisions regarding
7 products instead of relying on product packaging that identifies a genetically
8 engineered product as “natural.”

9 § 4092. DEFINITIONS

10 As used in this subchapter:

11 (1) “Enzyme” means a protein that catalyzes chemical reactions of other
12 substances without itself being destroyed or altered upon completion of the
13 reactions.

14 (2) “Genetic engineering” means a food or food ingredient that is
15 produced from an organism or organisms in which the genetic material has
16 been changed through the application of:

17 (A) in vitro nucleic acid techniques, including recombinant
18 deoxyribonucleic acid (DNA) techniques and the direct injection of nucleic
19 acid into cells or organelles; or

20 (B) fusion of cells, including protoplast fusion, or hybridization
21 techniques that overcome natural physiological, reproductive, or recombination

1 barriers, where the donor cells or protoplasts do not fall within the same
2 taxonomic group, in a way that does not occur by natural multiplication or
3 natural recombination.

4 (3) “In vitro nucleic acid techniques” means techniques, including
5 recombinant DNA or ribonucleic acid (RNA) techniques, that use vector
6 systems and techniques involving the direct introduction into the organisms of
7 hereditary materials prepared outside the organisms such as microinjection,
8 chemoporation, electroporation, microencapsulation, and liposome fusion.

9 (4) “Organism” means any biological entity capable of replication,
10 reproduction, or transferring of genetic material.

11 (5) “Processed food” means any food other than a raw agricultural
12 commodity and includes any food produced from a raw agricultural
13 commodity that has been subject to processing such as canning, smoking,
14 pressing, cooking, freezing, dehydration, fermentation, or milling.

15 (6) “Processing aid” means:

16 (A) a substance that is added to a food during the processing of such
17 food but that is removed in some manner from the food before the food is
18 packaged in its finished form;

19 (B) a substance that is added to a food during processing, is
20 converted into constituents normally present in the food, and does not

1 significantly increase the amount of the constituents naturally found in the
2 food; or

3 (C) a substance that is added to a food for its technical or functional
4 effect in the processing but is present in the finished food at levels that do not
5 have any technical or functional effect in that finished food.

6 (7) “Raw agricultural commodity” means any food in its raw or natural
7 state. It includes any fruit that is washed, colored, or otherwise treated in its
8 unpeeled natural form prior to marketing.

9 § 4093. LABELING OF FOOD PRODUCED WITH GENETIC

10 ENGINEERING

11 Except as set forth under section 4095 of this title, food shall be labeled as
12 produced entirely or in part from genetic engineering if it is a product:

13 (1) offered for retail sale in Vermont;

14 (2) entirely or partially produced with genetic engineering; and

15 (3) the fact that it was entirely or partially produced with genetic
16 engineering is not disclosed:

17 (A) in the case of a raw agricultural commodity, on the package
18 offered for retail sale, with the clear and conspicuous words, “produced from
19 genetic engineering” on the front of the package of such commodity or in the
20 case of any such commodity that is not separately packaged or labeled, on a

1 label appearing on the retail store shelf or bin in which such commodity is
2 displayed for sale;

3 (B) in the case of any processed food, in clear and conspicuous
4 language on the front or back of the package of such food, with the words
5 “partially produced with genetic engineering” or “may be partially produced
6 with genetic engineering.”

7 § 4094. MISBRANDING OF GENETICALLY ENGINEERED FOOD AS
8 NATURAL

9 Except as set forth under section 4095 of this title, a food produced entirely
10 or in part from genetic engineering shall not be labeled on the product, in
11 signage, or in advertising as “natural,” “naturally made,” “naturally grown,”
12 “all natural,” or any words of similar import that would have a tendency to
13 mislead a consumer.

14 § 4095. EXEMPTIONS

15 The following foods shall not be subject to the labeling requirements of
16 section 4093 or 4094 of this title:

17 (1) Food consisting entirely of or derived entirely from an animal which
18 has not itself been produced with genetic engineering, regardless of whether
19 such animal has been fed or injected with any food or drug produced with
20 genetic engineering;

1 (2)(A) A raw agricultural commodity or food derived therefrom that has
2 been grown, raised, or produced without the knowing and intentional use of
3 food or seed produced with genetic engineering. Food will be deemed to be a
4 raw agricultural commodity or food derived therefrom only if the person
5 otherwise responsible for complying with the requirements of subsection
6 4093(a) of this title with respect to a raw agricultural commodity or food
7 obtains, from whomever sold the commodity or food to that person, a sworn
8 statement that such commodity or food has not been knowingly or intentionally
9 produced with genetic engineering and has been segregated from and has not
10 been knowingly or intentionally commingled with food that may have been
11 produced with genetic engineering at any time.

12 (B) In providing a sworn statement under this subdivision (2), any
13 person may rely on a sworn statement from his or her own supplier that
14 contains the affirmation set forth in subdivision (2)(A) of this section.

15 (3) Any processed food which would be subject to subsection 4093(a) of
16 this title solely because it includes one or more processing aids or enzymes
17 produced with genetic engineering.

18 (4) Any beverage that is subject to the provisions of Title 7.

19 (5) Until July 1, 2019, any processed food that would be subject to
20 subsection 4093(a) of this title solely because it includes one or more materials
21 that have been produced with genetic engineering provided that the engineered

1 materials in the aggregate do not account for more than 0.9 percent of the total
2 weight of the processed food.

3 (6) Food that:

4 (A) an independent organization has determined has not been
5 knowingly and intentionally produced from or commingled with food or seed
6 produced with genetic engineering, provided that such determination has been
7 made pursuant to a sampling and testing procedure approved in regulations
8 adopted by the department; or

9 (B) has been lawfully certified to be labeled, marketed, and offered for
10 sale as “organic” pursuant to the federal Organic Products Act of 1990,
11 7 U.S.C. §§ 6501-6527, and its implementing regulation in 7 C.F.R. part 205.

12 (7) Food that is not packaged for retail sale and that either:

13 (A) is a processed food prepared and intended for immediate human
14 consumption; or

15 (B) is served, sold, or otherwise provided in any restaurant or other
16 food establishment, as defined in section 4301 of this title, that is primarily
17 engaged in the sale of food prepared and intended for immediate human
18 consumption.

19 (8) Medical food, as that term is defined in 21 U.S.C. § 360ee(b)(3).

1 § 4096. SEVERABILITY

2 If any provision of this subchapter or its application to any person or
3 circumstance is held invalid or in violation of the Constitution or laws of the
4 United States or in violation of the Constitution or laws of Vermont, the
5 invalidity or the violation shall not affect other provisions of this section which
6 can be given effect without the invalid provision or application, and to this end,
7 the provisions of this section are severable.

8 § 4097. PENALTIES; EXEMPTIONS

9 (a) A person who violates the requirements of this subchapter shall be
10 subject to penalty under section 4054 of this title, except that:

11 (1) a retailer selling food shall not be held liable for the misbranding of
12 processed foods; and

13 (2) a retailer selling food shall not be held liable for the misbranding of
14 raw agricultural commodities provided that the retailer obtains a sworn
15 statement under section 4095 of this title within 30 days of receipt of notice of
16 violation.

17 (b) Notwithstanding any other provision of law to the contrary, a violation
18 of this subchapter shall not give rise to a cause of action under 9 V.S.A.
19 chapter 63.

