H.112

Introduced by Representatives Webb of Shelburne, Bartholomew of Hartland, Zagar of Barnard, Partridge of Windham, McCullough of Williston, Bissonnette of Winooski, Burke of Brattleboro, Buxton of Tunbridge, Carr of Brandon, Cheney of Norwich, Christie of Hartford, Cross of Winooski, Dakin of Chester, Deen of Westminster, Devereux of Mount Holly, Donahue of Northfield, Donovan of Burlington, Ellis of Waterbury, Emmons of Springfield, Frank of Underhill, French of Randolph, Head of South Burlington, Hooper of Montpelier, Keenan of St. Albans City, Krowinski of Burlington, Lanpher of Vergennes, Lenes of Shelburne, Marek of Newfane, Martin of Springfield, Martin of Wolcott, Masland of Thetford, McCarthy of St. Albans City, McCormack of Burlington, Miller of Shaftsbury, Mrowicki of Putney, Nuovo of Middlebury, Pearson of Burlington, Peltz of Woodbury, Rachelson of Burlington, Ram of Burlington, Sharpe of Bristol, Spengler of Colchester, Stevens of Waterbury, Stuart of Brattleboro, Till of Jericho, Toleno of Brattleboro, Townsend of South Burlington, Waite-Simpson of Essex, Wizowaty of Burlington, and Woodward of Johnson

Referred to Committee on

Date:

Subject: Consumer affairs; food labeling; genetic engineering

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

An act relating to the labeling of food produced with genetic engineering

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

Sec. 1. FINDINGS

The General Assembly finds and declares that:

(1) U.S. federal law does not provide for the necessary and satisfactory regulation of the safety and labeling of food that contains genetically engineered ingredients, as evidenced by the following:

(A) U.S. federal labeling and food and drug laws do not require manufacturers of food produced from genetically engineered ingredients to label such food as genetically engineered.

(B) As indicated by the testimony of Dr. Robert Merker, a U.S. Food and Drug Administration (FDA) Consumer Safety Officer, the FDA does not have statutory authority to require labeling of foods produced with genetic engineering.

(C) The FDA has adopted a policy regarding the labeling of food produced from genetic engineering based on a conclusion that these products are generally regarded as safe with no material difference from conventional products. The FDA does not require genetically engineered foods to be labeled as such.

(D) Instead of specifically regulating the safety and labeling of food produced from genetic engineering, the FDA regulates genetically engineered foods in the same way it regulates foods developed by traditional plant breeding, but, according to Dr. James Maryanski, FDA biotechnology coordinator (1985−2008), the decision to regulate genetically engineered food in this manner was a political decision not based in science.

(E) Under its regulatory framework, the FDA does not test the safety of genetically engineered foods independently. Instead, manufacturers submit safety research and studies, the majority of which the manufacturers finance or conduct.

(F) There is a lack of consensus regarding the validity of the research or science surrounding genetically engineered foods, or both. The result is public uncertainty about the nutrition, health, safety, environmental impacts, and the proliferation of genetic engineering technology that is not fully understood or proven to be safe.

(G) There have been no long-term studies in the United States that examine the safety of human consumption of genetically engineered foods.

(2) Genetically engineered ingredients are increasingly present in foods available for human consumption, as evidenced by the fact that:

(A) an estimated 70 to 80 percent of the processed foods sold in the United States have at least one genetically engineered ingredient; and

(B) according to the U.S. Department of Agriculture, in 2011, genetically engineered soybeans accounted for 94 percent of U.S. soybean acreage, genetically engineered corn accounted for 88 percent of U.S. corn acreage, and genetically engineered sugar beets accounted for 95 percent of U.S. sugar beet acreage.

(3) Genetically engineered foods have an effect on health, safety, agriculture, and the environment, as evidenced by the following:

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

(B) Trends in commodity agricultural production practices are toward monocultured crop production, which may result in genetic homogeneity, loss of biodiversity, and increased vulnerability of crops to pests, diseases, and

variable climate conditions. Genetically engineered crops are one tool used in commodity agricultural production.

(C) Genetically engineered crops that include pesticides may adversely affect populations of butterflies and other nontarget insects.

(D) Organic food certification, which is generally construed not to include ingredients produced from genetic engineering, can be adversely affected by contamination from genetically engineered crops.

(E) Cross-pollination from genetically engineered crops may have an adverse effect on wild plant species.

(F) The proliferation of patented genetically engineered crops reduces the options of farmers who may want to save their own seed.

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

(A) Under the Tenth Amendment to the U.S. Constitution and the U.S. Supreme Court's ruling in *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132 (1963), states may regulate the retail sale of food in the interest of consumers when such regulation does not conflict with federal law.

(B) Under *Holk v. Snapple Beverage Co.*, 575 F.3d 329 (3d Cir. 2009), the Federal Food, Drug, and Cosmetic Act and the FDA policy for labels using the word "natural" do not preempt states from regulating the use of the word "natural."

(C) The Supreme Court, in *Milavetz, Gallop & Milavetz v. United States*, 130 S.Ct. 1324 (2010), reaffirmed the proposition, first expressed in *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626 (1985), that "an advertiser's [First Amendment] rights are adequately protected as long as disclosure requirements are reasonably related to the State's interest in preventing deception of consumers."

(D) Under current First Amendment jurisprudence, expressed in *National Electric Manufacturers Assn. v. Sorrell*, 272 F.3d 104 (2d Cir. 2001), states are free to compel the disclosure of factual commercial speech as long as the means employed by the State are rationally related to the State's legitimate interest.

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

(5) For multiple personal, health, religious, and economic reasons, the citizens of Vermont desire, require, and necessitate that food produced from genetic engineering be labeled as such, as evidenced by the following:

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

(B) Given that 6 V.S.A. § 641(9) defines "genetically engineered seed" as "seed produced using a variety of methods . . . used to modify genetically organisms or influence their growth and development by means that are not possible under natural conditions or processes," labeling foods produced with genetic engineering as "natural," "naturally made," "naturally grown," "all natural," or other descriptors of similar substance is inherently misleading and poses a risk of confusing and deceiving consumers, and conflicts with the general perception that "natural" foods are not genetically engineered.

(C) Vermont citizens with certain religious beliefs object to producing foods using genetic engineering because of objections to tampering with the genetic makeup of life forms and the rapid introduction and proliferation of genetically engineered organisms and, therefore, need food to be labeled as genetically engineered in order to conform to religious beliefs.

(D) Requiring that foods produced through genetic engineering be labeled as such will create additional market opportunities for those producers who are not certified as organic and whose products are not produced from genetic engineering. Such additional market opportunities will contribute to the vibrant and diversified agricultural community of Vermont.

(E) Labeling gives consumers information they can use to make informed decisions about what products they would prefer to purchase.

(F) On March 12, 2012, the Vermont Congressional Delegation, along with 52 other members of Congress, sent a letter to the Honorable Margaret Hamburg, Commissioner of the FDA, asking that the FDA require labeling of food produced with genetic engineering.

(6) Because both the FDA and the U.S. Congress have failed to require the labeling of food produced with genetic engineering, the State should exercise its authority to require food produced with genetic engineering to be labeled as such in order to serve the legitimate interests of the State to prevent inadvertent consumer deception, promote food safety, respect religious beliefs, protect the environment, and promote economic development.

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

Subchapter 3. Labeling of Food Produced with Genetic Engineering

§ 4091. PURPOSE

It is the purpose of this chapter to:

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

(2) Food safety. Promote food safety by allowing consumers to make informed dietary decisions when purchasing food, since genetically engineered food is considered to be recognized generally as safe by the U.S. Food and

Drug Administration despite a lack of consensus about that fact in the scientific community, and since scientific evidence indicates that foods produced using genetic engineering pose potential food safety and health issues related to allergenicity, antibiotic resistance, immune response, reproductive problems, and liver and kidney damage.

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

(4) Environmental impacts. Assist consumers in making informed decisions about food purchases that have potential effects on the environment, including:

(A) displacement of native flora and fauna;

(B) transfer of unnatural deoxyribonucleic acid to wild relatives and organic crops;

(C) creation of herbicide-resistant "super weeds" and pesticide-resistant insects; and

(D) ecosystem disruptions such as loss of biodiversity, increased herbicide and pesticide use, and adverse effects on nontarget insects such as butterflies.

(5) Promoting economic development. Create additional market opportunities for those producers who are not certified organic and whose

products are not produced using genetic engineering and allow consumers to make informed purchasing decisions.

§ 4092. DEFINITIONS

As used in this subchapter:

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

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

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

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

(3) "In vitro nucleic acid techniques" means techniques, including recombinant DNA 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 micro-injection, chemoporation, electroporation, micro-encapsulation, and liposome fusion.

(4) "Organism" means any biological entity capable of replication, reproduction, or transferring of genetic material.

(5) "Processed food" means any food other than a raw agricultural commodity and includes any food produced from a raw agricultural commodity that has been subjected to processing such as canning, smoking, pressing, cooking, freezing, dehydration, fermentation, or milling.

(6) "Processing aid" means:

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

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

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

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

§ 4093. LABELING OF FOOD PRODUCED WITH GENETIC ENGINEERING

(a) Except as set forth in section 4094 of this title, food shall be labeled as produced entirely or in part from genetic engineering if it is a product:

(1) offered for retail sale in Vermont; and

(2) entirely or partially produced with genetic engineering.

(b) If a food is required to be labeled under subsection (a) of this section, it shall be labeled as follows:

(1) in the case of a raw agricultural commodity, on the package offered for retail sale, with the clear and conspicuous words, "produced from genetic engineering" on the front of the package of the commodity or in the case of any such commodity that is not separately packaged or labeled, on a label appearing on the retail store shelf or bin in which the commodity is displayed for sale; or

(2) in the case of any processed food, in clear and conspicuous language on the front or back of the package of the food, with the words "partially produced with genetic engineering" or "may be partially produced with genetic engineering."

(c) Except as set forth under section 4094 of this title, a food 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 that would have a tendency to mislead a consumer.

§ 4094. EXEMPTIONS

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

(1) Food consisting entirely of or derived entirely from an animal which has not itself been produced with genetic engineering, regardless of whether the animal has been fed or injected with any food or drug produced with genetic engineering.

(2) A raw agricultural commodity or food derived from it that has been grown, raised, or produced without the knowing and intentional use of food or seed produced with genetic engineering. Food will be deemed to be as described in this subdivision only if the person otherwise responsible for complying with the requirements of subsection 4093(a) of this title with respect to a raw agricultural commodity or food obtains, from whomever sold the commodity or food to that person, a sworn statement that the commodity or food has not been knowingly or intentionally produced with genetic engineering and has been segregated from and has not been knowingly or

intentionally commingled with food that may have been produced with genetic engineering at any time. In providing such a sworn statement, any person may rely on a sworn statement from his or her own supplier that contains the affirmation set forth in this subdivision.

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

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

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

(A) no single such ingredient accounts for more than one-half of 0.9 percent of the total weight of the processed food; and

(B) the processed food does not contain more than ten such ingredients.

(6) Food that an independent organization has determined has not been knowingly and intentionally produced from or commingled with food or seed produced with genetic engineering, provided that the determination has been made pursuant to a sampling and testing procedure approved in regulations adopted by the Department. No sampling procedure shall be approved by the Department unless sampling is done according to a statistically valid sampling

plan consistent with principles recommended by internationally recognized sources such as the International Standards Organization or the Grant and Feed Trade Association. No testing procedure shall be approved by the Department unless:

(A) it is consistent with the most recent "Guidelines on Performance Criteria and Validation of Methods for Detection, Identification and Quantification of Specific DNA Sequences and Specific Proteins in Foods" (CAC/GL 74 (2010)), published by the Codex Alimentarius Commission; and

(B) it does not rely on testing of processed foods in which no DNA is detectable.

(7) Food that has been lawfully certified to be labeled, marketed, and offered for sale as "organic" pursuant to the federal Organic Food Products Act of 1990 and the regulations promulgated pursuant thereto by the U.S. Department of Agriculture.

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

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

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

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

§ 4095. SEVERABILITY

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

§ 4096. PENALTIES

A person who violates the requirements of this subchapter shall be subject to penalty under section 4054 of this title. Notwithstanding any other provision of law to the contrary, no violation of this subchapter shall give rise to any cause of action under 9 V.S.A. chapter 63.

Sec. 3. 18 V.S.A. § 4051 is amended to read:

§ 4051. DEFINITIONS

For the purposes of this chapter:

* * *

(2) The term ~~"board" means the state board of health.~~ "Commissioner" means the Commissioner of Health.

* * *

Sec. 4. 18 V.S.A. § 4053 is amended to read:

§ 4053. REGULATIONS AND HEARINGS

(a) The authority to enforce this chapter is vested in the ~~board~~ Commissioner. The ~~board~~ Commissioner shall from time to time for the efficient enforcement of this chapter ~~promulgate~~ adopt regulations after public hearing ~~following due notice at least ten days in advance of the hearings to interested persons~~ consistent with 3 V.S.A. chapter 25.

(b) In addition to the other remedies provided in this chapter, the ~~board~~ Commissioner is hereby authorized through the ~~attorney general~~ Attorney General or state's attorneys to apply to the civil or criminal division of any superior court, and the court shall have jurisdiction upon hearing and for cause shown, to grant a temporary or permanent injunction restraining any person from violating any provision of this chapter, irrespective of whether or not there exists an adequate remedy at law.

* * *

(d) Before any violation of this chapter is reported for institution of a criminal proceeding, the person against whom such proceeding is contemplated may be given appropriate notice and an opportunity to present his or her views to the ~~board~~ Commissioner, either orally or in writing, with regard to the contemplated proceeding. Nothing in this chapter shall be construed as requiring the ~~board~~ Commissioner to report for prosecution or for

the institution of libel proceedings minor violations of the chapter whenever he or she believes that the public interest will be best served by a suitable notice of warning in writing.

Sec. 5. 18 V.S.A. § 4060 is amended to read:

§ 4060. MISBRANDED FOOD

A food shall be deemed to be misbranded:

* * *

(13) If it is labeled in violation of section 4093 of this title.

Sec. 6. 18 V.S.A. § 4069 is amended to read:

§ 4069. REGULATIONS; AUTHORITY

(a) The authority to ~~promulgate~~ adopt regulations for the efficient enforcement of this chapter is hereby vested in the ~~board~~ Commissioner. The ~~board~~ Commissioner may make the regulations ~~promulgated~~ adopted under this chapter conform, insofar as practicable, with those promulgated under the federal act~~;~~.

(b) Hearings authorized or required by this chapter shall be conducted by the ~~board~~ Commissioner or such officer, agent, or employee as the ~~board~~ Commissioner may designate for the purpose~~;~~.

(c) Before ~~promulgating~~ adopting any regulations contemplated by section 4058; 4060(10); 4061; 4064(d), (f), (g), (h), and (k); or 4068(b) of this title, the ~~board~~ Commissioner shall give appropriate notice of the proposal and of the

time and place for a hearing. The regulation so ~~promulgated~~ adopted shall become effective on a date fixed by the ~~board~~ Commissioner, which date shall not be earlier than 60 days after its ~~promulgation~~ adoption. The regulation may be amended or repealed in the same manner as is provided for its adoption, except that in the case of a regulation amending or repealing any such regulation, the ~~board~~ Commissioner, to ~~such~~ the extent as it deems necessary in order to prevent undue hardship, may disregard the foregoing provisions regarding notice, hearing, or effective date.

Sec. 7. STATUTORY REVISION

In its statutory revision capacity under 2 V.S.A. § 424, the Office of Legislative Council shall, where appropriate, replace the term "Board of Health" in 18 V.S.A chapter 82 wherever it appears with the terms "Commissioner of Health" or "Commissioner."

Sec. 8. EFFECTIVE DATE

This act shall take effect on July 1, 2014.