Journal of the Senate

TUESDAY, APRIL 15, 2014

The Senate was called to order by the President.

Devotional Exercises

Devotional exercises were conducted by the Reverend Taehaku of East Calais.

Pledge of Allegiance

The President then led the members of the Senate in the pledge of allegiance.

Joint Senate Resolution Adopted on the Part of the Senate

Joint Senate resolution of the following title was offered, read and adopted on the part of the Senate, and is as follows:

By Senators Baruth and Benning,

J.R.S. 55. Joint resolution relating to weekend adjournment.

Resolved by the Senate and House of Representatives:

That when the two Houses adjourn on Friday, April 18, 2014, it be to meet again no later than Tuesday, April 22, 2014.

Bill Passed

S. 202.

Senate bill of the following title was read the third time and passed:

An act relating to the energy efficiency charge.

Proposal of Amendment; Third Reading Ordered

H. 483.

Senator Ashe, for the Committee on Finance, to which was referred House bill entitled:

An act relating to adopting revisions to Article 9 of the Uniform Commercial Code.

Reported that the bill ought to pass in concurrence.

Thereupon, the bill was read the second time by title only pursuant to Rule 43.

Thereupon, pending the question, Shall the bill be read third time?, Senator Ashe moved that the Senate propose to the House to amend the bill as follows:

First: In Sec. 1, in § 9-801, by striking out the following: "2013" and inserting in lieu thereof the following: 2014.

Second: In Sec. 2, by striking out the following: "2013" and inserting in lieu thereof the following: 2014.

Which was agreed to.

Thereupon, third reading of the bill was ordered.

Proposal of Amendment; Third Reading Ordered

H. 112.

Senator Zuckerman, for the Committee on Agriculture, to which was referred House bill entitled:

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

Reported recommending that the Senate propose to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. FINDINGS

The General Assembly finds and declares that:

(1) U.S. federal law does not provide for the labeling of food that is produced with genetic engineering, as evidenced by the following:

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

(B) As indicated by the testimony of a U.S. Food and Drug Administration (FDA) Supervisory Consumer Safety Officer, the FDA has statutory authority to require labeling of food products, but does not consider genetically engineered foods to be materially different from their traditional counterparts to justify such labeling.

(C) No formal FDA policy on the labeling of genetically engineered foods has been adopted. Currently, the FDA only provides nonbinding guidance on the labeling of genetically engineered foods, including a 1992 draft guidance regarding the need for the FDA to regulate labeling of food produced from genetic engineering and a 2001 draft guidance for industry regarding voluntary labeling of food produced from genetic engineering.

(2) U.S. federal law does not require independent testing of the safety of food as produced with genetic engineering, as evidenced by the following:

(A) In its regulation of food, the FDA does not distinguish genetically engineered foods from foods developed by traditional plant breeding.

(B) Under its regulatory framework, the FDA does not independently test the safety of genetically engineered foods. Instead, manufacturers submit safety research and studies, the majority of which the manufacturers finance or conduct. The FDA reviews the manufacturers' research and reports through a voluntary safety consultation, and issues a letter to the manufacturer acknowledging the manufacturer's conclusion regarding the safety of the genetically engineered food product being tested.

(C) The FDA does not use meta-studies or other forms of statistical analysis to verify that the studies it reviews are not biased by financial or professional conflicts of interest.

(D) There is a lack of consensus regarding the validity of the research and science surrounding the safety of genetically engineered foods, as indicated by the fact that there are peer-reviewed studies published in international scientific literature showing negative, neutral, and positive health results.

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

(F) Independent scientists may be limited from conducting safety and risk-assessment research of genetically engineered materials used in food products due to industry restrictions or patent restrictions on the use for research of those genetically engineered materials used in food products.

(3) Genetically engineered foods are increasingly available for human consumption, as evidenced by the fact that:

(A) it is estimated that up to 80 percent of the processed foods sold in the United States are at least partially produced from genetic engineering; and

(B) according to the U.S. Department of Agriculture, in 2012, genetically engineered soybeans accounted for 93 percent of U.S. soybean acreage, and genetically engineered corn accounted for 88 percent of U.S. corn acreage.

(4) Genetically engineered foods potentially pose risks to health, safety, agriculture, and the environment, as evidenced by the following:

(A) There are conflicting studies assessing the health consequences of food produced from genetic engineering.

(B) The genetic engineering of plants and animals may cause unintended consequences.

(C) The use of genetically engineered crops is increasing in commodity agricultural production practices, which contribute to genetic homogeneity, loss of biodiversity, and increased vulnerability of crops to pests, diseases, and variable climate conditions.

(D) Cross-pollination of or cross-contamination by genetically engineered crops may contaminate organic crops and, consequently, affect marketability of those crops.

(E) Cross-pollination from genetically engineered crops may have an adverse effect on native flora and fauna. The transfer of unnatural deoxyribonucleic acid to wild relatives can lead to displacement of those native plants, and in turn, displacement of the native fauna dependent on those wild varieties.

(5) For multiple health, personal, religious, and environmental reasons, the State of Vermont finds that food produced from genetic engineering should 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) Polling by the New York Times indicated that many consumers are under an incorrect assumption about whether the food they purchase is produced from genetic engineering, and labeling food as produced from genetic engineering will reduce consumer confusion or deception regarding the food they purchase.

(C) Because genetic engineering, as regulated by this act, involves the direct injection of genes into cells, the fusion of cells, or the hybridization of genes that does not occur in nature, labeling foods produced with genetic engineering as "natural," "naturally made," "naturally grown," "all natural," or other similar descriptors is inherently misleading, poses a risk of confusing or deceiving consumers, and conflicts with the general perception that "natural" foods are not genetically engineered.

(D) Persons 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 and comply with dietary restrictions.

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

(6) Because both the FDA and the U.S. Congress do not require the labeling of food produced with genetic engineering, the State should require food produced with genetic engineering to be labeled as such in order to serve the interests of the State, notwithstanding limited exceptions, to prevent inadvertent consumer deception, prevent potential risks to human health, protect religious practices, and protect the environment.

Sec. 2. 9 V.S.A. chapter 82A is added to read:

CHAPTER 82A. LABELING OF FOOD PRODUCED WITH GENETIC ENGINEERING

§ 3041. PURPOSE

It is the purpose of this chapter to:

(1) Public health and food safety. Establish a system by which a person may make an informed decision regarding the potential health effects of the food they purchase and consume.

(2) Environmental impacts. Inform the purchasing decisions of consumers who are concerned about the potential environmental effects of the production of food from genetic engineering.

(3) Consumer confusion and deception. Reduce and prevent consumer confusion and deception by prohibiting the labeling of products produced from genetic engineering as "natural."

(4) Disclosure of factual information. Promote the disclosure of factual information on food labels to allow consumers to make informed decisions.

(5) Protecting religious practices. Provide consumers with data from which they may make informed decisions for religious reasons.

§ 3042. DEFINITIONS

As used in this chapter:

(1) "Consumer" shall have the same meaning as in subsection 2451a(a) of this title.

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

(3) "Genetic engineering" is a process by which a food 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.

(4) "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.

(5) "Manufacturer" means a person who:

(A) produces a processed food or raw agricultural commodity under its own brand or label for sale in or into the State;

(B) sells in or into the State under its own brand or label a processed food or raw agricultural commodity produced by another supplier;

(C) owns a brand that it licenses or licensed to another person for use on a processed food or raw commodity sold in or into the State;

(D) sells in, sells into, or distributes in the State a processed food or raw agricultural commodity that it packaged under a brand or label owned by another person;

(E) imports into the United States for sale in or into the State a processed food or raw agricultural commodity produced by a person without a presence in the United States; or

(F) produces a processed food or raw agricultural commodity for sale in or into the State without affixing a brand name.

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

(7) "Processed food" means any food intended for human consumption 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.

(8) "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.

(9) "Raw agricultural commodity" means any food intended for human consumption in its raw or natural state, including any fruit or vegetable that is washed, colored, or otherwise treated in its unpeeled natural form prior to marketing.

§ 3043. LABELING OF FOOD PRODUCED WITH GENETIC ENGINEERING

(a) Except as set forth in section 3044 of this title, food purchased by a retailer after July 1, 2016 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 packaged raw agricultural commodity, the manufacturer shall label the package offered for retail sale, with the clear and conspicuous words "produced with genetic engineering";

(2) in the case of any raw agricultural commodity that is not separately packaged, the retailer shall post a label appearing on the retail store shelf or bin in which the commodity is displayed for sale; or

(3) in the case of any processed food that contains a product or products of genetic engineering, the manufacturer shall label the package in which the processed food is offered for sale with the words "partially produced with genetic engineering" or "may be partially produced with genetic engineering."

(c) Except as set forth under section 3044 of this title, a manufacturer of a food produced entirely or in part from genetic engineering shall not label 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.

(d) This section and the requirements of this chapter shall not be construed to require:

(1) the listing or identification of any ingredient or ingredients that were genetically engineered; or

(2) the placement of the term "genetically engineered" immediately preceding any common name or primary product descriptor of a food.

§ 3044. EXEMPTIONS

The following foods shall not be subject to the labeling requirements of section 3043 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 processed 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 3043(a) of this title with respect to a raw agricultural commodity or processed food obtains, from whomever sold the raw agricultural commodity or processed food to that person, a sworn statement that the raw agricultural commodity or processed 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 3043(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) Any processed food that would be subject to subsection 3043(a) of this title solely because it includes one or more materials that have been

produced with genetic engineering, provided that the genetically engineered materials in the aggregate do not account for more than 0.9 percent of the total weight of the processed food.

(6) Food that an independent organization has verified has not been knowingly and intentionally produced from or commingled with food or seed produced with genetic engineering. The Office of the Attorney General, after consultation with the Department of Health, shall approve by procedure the independent organizations from which verification shall be acceptable under this subdivision (6).

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

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

(B) served, sold, or otherwise provided in any restaurant or other food establishment, as defined in 18 V.S.A. § 4301, that is primarily engaged in the sale of food prepared and intended for immediate human consumption.

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

§ 3045. RETAILER LIABILITY

(a) A retailer shall not be liable for the failure to label a processed food as required by section 3043 of this title, unless the retailer is the producer or manufacturer of the processed food.

(b) A retailer shall not be held liable for failure to label a raw agricultural commodity as required by section 3043 of this title, provided that the retailer, within 30 days of any proposed enforcement action or notice of violation, obtains a sworn statement in accordance with subdivision 3044(2) of this title.

§ 3046. SEVERABILITY

If any provision of this chapter 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 chapter are severable.

§ 3047. FALSE CERTIFICATION

It shall be a violation of this chapter for a person knowingly to provide a false statement under subdivision 3044(2) of this title that a raw agricultural commodity or processed 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.

§ 3048. PENALTIES; ENFORCEMENT

(a) Any person who violates the requirements of this chapter shall be liable for a civil penalty of not more than $1,000.00 per day, per product. Calculation of the civil penalty shall not be made or multiplied by the number of individual packages of the same product displayed or offered for retail sale. Civil penalties assessed under this section shall accrue and be assessed per each uniquely named, designated, or marketed product.

(b) The Attorney General shall have the same authority to make rules, conduct civil investigations, enter into assurances of discontinuance, and bring civil actions as provided under subchapter 1 of chapter 63 of this title. Consumers shall have the same rights and remedies as provided under subchapter 1 of chapter 63 of this title.

Sec. 3. ATTORNEY GENERAL RULEMAKING; LABELING OF FOOD PRODUCED WITH GENETIC ENGINEERING

The Attorney General is authorized to adopt by rule requirements for the implementation of Sec. 2 of this act, including a requirement that the label required for food produced from genetic engineering include a disclaimer that the Food and Drug Administration does not consider foods produced from genetic engineering to be materially different from other foods. Any rule adopted under this section shall not go into effect until the effective date of this act.

Sec. 4. EFFECTIVE DATES

(a) This section and Sec. 3 (Attorney General rulemaking) shall take effect on passage.

(b) Secs. 1 (findings) and 2 (labeling of food produced with genetic engineering) shall take effect on July 1, 2015.

And that the bill ought to pass in concurrence with such proposal of amendment.

Senator Sears, for the Committee on Judiciary, to which the bill was referred reported recommending that the Senate propose to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. FINDINGS

The General Assembly finds and declares that:

(1) U.S. federal law does not provide for the labeling of food that is produced with genetic engineering, as evidenced by the following:

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

(B) As indicated by the testimony of a U.S. Food and Drug Administration (FDA) Supervisory Consumer Safety Officer, the FDA has statutory authority to require labeling of food products, but does not consider genetically engineered foods to be materially different from their traditional counterparts to require such labeling.

(C) No formal FDA policy on the labeling of genetically engineered foods has been adopted. Currently, the FDA only provides nonbinding guidance on the labeling of genetically engineered foods, including a 1992 draft guidance regarding labeling of food produced from genetic engineering and a 2001 draft guidance for industry regarding voluntary labeling of food produced from genetic engineering.

(2) U.S. federal law does not require independent testing of the safety of food produced with genetic engineering, as evidenced by the following:

(A) In its regulation of food, the FDA does not distinguish genetically engineered foods from foods developed by traditional plant breeding.

(B) Under its regulatory framework, the FDA does not independently test the safety of genetically engineered foods. Instead, manufacturers submit safety research and studies, the majority of which the manufacturers finance or conduct. The FDA reviews the manufacturers' research and reports through a voluntary safety consultation, and issues a letter to the manufacturer acknowledging the manufacturer's conclusion regarding the safety of the genetically engineered food product being tested.

(C) The FDA does not use meta-studies or other forms of statistical analysis to verify that the studies it reviews are not biased by financial or professional conflicts of interest.

(D) There is a lack of consensus regarding the validity of the research and science surrounding the safety of genetically engineered foods, as indicated by the fact that there are peer-reviewed studies published in international scientific literature showing negative, neutral, and positive health results.

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

(F) Independent scientists may be limited from conducting safety and risk-assessment research of genetically engineered materials used in food products due to industry restrictions or patent restrictions on the use for research of those genetically engineered materials used in food products.

(3) Genetically engineered foods are increasingly available for human consumption, as evidenced by the fact that:

(A) it is estimated that up to 80 percent of the processed foods sold in the United States are at least partially produced from genetic engineering; and

(B) according to the U.S. Department of Agriculture, in 2012, genetically engineered soybeans accounted for 93 percent of U.S. soybean acreage, and genetically engineered corn accounted for 88 percent of U.S. corn acreage.

(4) Genetically engineered foods potentially pose risks to health, safety, agriculture, and the environment, as evidenced by the following:

(A) There are conflicting studies assessing the health consequences of food produced from genetic engineering.

(B) The genetic engineering of plants and animals may cause unintended consequences.

(C) The use of genetically engineered crops is increasing in commodity agricultural production practices, which contribute to genetic homogeneity, loss of biodiversity, and increased vulnerability of crops to pests, diseases, and variable climate conditions.

(D) Cross-pollination of or cross-contamination by genetically engineered crops may contaminate organic crops and, consequently, affect marketability of those crops.

(E) Cross-pollination from genetically engineered crops may have an adverse effect on native flora and fauna. The transfer of unnatural deoxyribonucleic acid to wild relatives can lead to displacement of those native plants, and in turn, displacement of the native fauna dependent on those wild varieties.

(5) For multiple health, personal, religious, and environmental reasons, the State of Vermont finds that food produced from genetic engineering should 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) Polling by the New York Times indicated that many consumers are under an incorrect assumption about whether the food they purchase is produced from genetic engineering, and labeling food as produced from genetic engineering will reduce consumer confusion or deception regarding the food they purchase.

(C) Because genetic engineering, as regulated by this act, involves the direct injection of genes into cells, the fusion of cells, or the hybridization of genes that does not occur in nature, labeling foods produced with genetic engineering as "natural," "naturally made," "naturally grown," "all natural," or other similar descriptors is inherently misleading, poses a risk of confusing or deceiving consumers, and conflicts with the general perception that "natural" foods are not genetically engineered.

(D) Persons 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 and comply with dietary restrictions.

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

(6) Because both the FDA and the U.S. Congress do not require the labeling of food produced with genetic engineering, the State should require food produced with genetic engineering to be labeled as such in order to serve the interests of the State, notwithstanding limited exceptions, to prevent inadvertent consumer deception, prevent potential risks to human health, protect religious practices, and protect the environment.

Sec. 2. 9 V.S.A. chapter 82A is added to read:

CHAPTER 82A. LABELING OF FOOD PRODUCED WITH GENETIC ENGINEERING

§ 3041. PURPOSE

It is the purpose of this chapter to:

(1) Public health and food safety. Establish a system by which persons may make informed decisions regarding the potential health effects of the food they purchase and consume and by which, if they choose, persons may avoid potential health risks of food produced from genetic engineering.

(2) Environmental impacts. Inform the purchasing decisions of consumers who are concerned about the potential environmental effects of the production of food from genetic engineering.

(3) Consumer confusion and deception. Reduce and prevent consumer confusion and deception by prohibiting the labeling of products produced from genetic engineering as "natural" and by promoting the disclosure of factual information on food labels to allow consumers to make informed decisions.

(4) Protecting religious practices. Provide consumers with data from which they may make informed decisions for religious reasons.

§ 3042. DEFINITIONS

As used in this chapter:

(1) "Consumer" shall have the same meaning as in subsection 2451a(a) of this title.

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

(3) "Food" means food intended for human consumption.

(4) "Genetic engineering" is a process by which a food 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.

(5) "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.

(6) "Manufacturer" means a person who:

(A) produces a processed food or raw agricultural commodity under its own brand or label for sale in or into the State;

(B) sells in or into the State under its own brand or label a processed food or raw agricultural commodity produced by another supplier;

(C) owns a brand that it licenses or licensed to another person for use on a processed food or raw commodity sold in or into the State;

(D) sells in, sells into, or distributes in the State a processed food or raw agricultural commodity that it packaged under a brand or label owned by another person;

(E) imports into the United States for sale in or into the State a processed food or raw agricultural commodity produced by a person without a presence in the United States; or

(F) produces a processed food or raw agricultural commodity for sale in or into the State without affixing a brand name.

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

(8) "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.

(9) "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.

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

§ 3043. LABELING OF FOOD PRODUCED WITH GENETIC ENGINEERING

(a) Except as set forth in section 3044 of this title, food offered for sale by a retailer after July 1, 2016 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 packaged raw agricultural commodity, the manufacturer shall label the package offered for retail sale, with the clear and conspicuous words "produced with genetic engineering";

(2) in the case of any raw agricultural commodity that is not separately packaged, the retailer shall post a label appearing on the retail store shelf or bin in which the commodity is displayed for sale with the clear and conspicuous words "produced with genetic engineering"; or

(3) in the case of any processed food that contains a product or products of genetic engineering, the manufacturer shall label the package in which the processed food is offered for sale with the words: "partially produced with genetic engineering"; "may be produced with genetic engineering"; or "produced with genetic engineering."

(c) Except as set forth under section 3044 of this title, a manufacturer of a food produced entirely or in part from genetic engineering shall not label the product on the package, 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.

(d) This section and the requirements of this chapter shall not be construed to require:

(1) the listing or identification of any ingredient or ingredients that were genetically engineered; or

(2) the placement of the term "genetically engineered" immediately preceding any common name or primary product descriptor of a food.

§ 3044. EXEMPTIONS

The following foods shall not be subject to the labeling requirements of section 3043 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, drug, or other substance produced with genetic engineering.

(2) A raw agricultural commodity or processed food derived from it that has been grown, raised, or produced without the knowing or 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 3043(a) of this title with respect to a raw agricultural commodity or processed food obtains, from whomever sold the raw agricultural commodity or processed food to that person, a sworn statement that the raw agricultural commodity or processed 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 3043(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) Any processed food that would be subject to subsection 3043(a) of this title solely because it includes one or more materials that have been produced with genetic engineering, provided that the genetically engineered materials in the aggregate do not account for more than 0.9 percent of the total weight of the processed food.

(6) Food that an independent organization has verified has not been knowingly or intentionally produced from or commingled with food or seed produced with genetic engineering. The Office of the Attorney General, after consultation with the Department of Health, shall approve by procedure the independent organizations from which verification shall be acceptable under this subdivision (6).

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

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

(B) served, sold, or otherwise provided in any restaurant or other food establishment, as defined in 18 V.S.A. § 4301, that is primarily engaged in the sale of food prepared and intended for immediate human consumption.

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

§ 3045. RETAILER LIABILITY

(a) A retailer shall not be liable for the failure to label a processed food as required by section 3043 of this title, unless the retailer is the producer or manufacturer of the processed food.

(b) A retailer shall not be held liable for failure to label a raw agricultural commodity as required by section 3043 of this title, provided that the retailer, within 30 days of any proposed enforcement action or notice of violation, obtains a sworn statement in accordance with subdivision 3044(2) of this title.

§ 3046. SEVERABILITY

If any provision of this chapter 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 chapter are severable.

§ 3047. FALSE CERTIFICATION

It shall be a violation of this chapter for a person knowingly to provide a false statement under subdivision 3044(2) of this title that a raw agricultural commodity or processed 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.

§ 3048. PENALTIES; ENFORCEMENT

(a) Any person who violates the requirements of this chapter shall be liable for a civil penalty of not more than $1,000.00 per day, per product. Calculation of the civil penalty shall not be made or multiplied by the number of individual packages of the same product displayed or offered for retail sale. Civil penalties assessed under this section shall accrue and be assessed per each uniquely named, designated, or marketed product.

(b) The Attorney General shall have the same authority to make rules, conduct civil investigations, enter into assurances of discontinuance, and bring civil actions as provided under subchapter 1 of chapter 63 of this title. Consumers shall have the same rights and remedies as provided under subchapter 1 of chapter 63 of this title.

Sec. 3. ATTORNEY GENERAL RULEMAKING; LABELING OF FOOD PRODUCED WITH GENETIC ENGINEERING

The Attorney General may adopt by rule requirements for the implementation of 9 V.S.A. chapter 82A, including:

(1) a requirement that the label required for food produced from genetic engineering include a disclaimer that the Food and Drug Administration does not consider foods produced from genetic engineering to be materially different from other foods; and

(2) notwithstanding the labeling language required by 9 V.S.A. § 3043(a), a requirement that a label required under 9 V.S.A. chapter 82A identify food produced entirely or in part from genetic engineering in a manner consistent with requirements in other jurisdictions for the labeling of food, including the labeling of food produced with genetic engineering.

Sec. 4. GENETICALLY ENGINEERED FOOD LABELING SPECIAL FUND

(a) There is established a Genetically Engineered Food Labeling Special Fund, pursuant to 32 V.S.A. chapter 7, subchapter 5. Monies in the Fund shall:

(1) be made available to the Attorney General to pay costs or liabilities incurred in implementation and administration, including rulemaking, of the requirements of 9 V.S.A. chapter 82A for the labeling of food produced from genetic engineering; and

(2) when monies in the fund exceed the need of the Attorney General under subdivision (1) of this subsection, be made available to the Secretary of Commerce and Community Development to assist manufacturers and retailers of food to meet applicable requirements of 9 V.S.A. chapter 82A for the labeling of food produced from genetic engineering.

(b) The Fund shall consist of:

(1) except for those recoveries that by law are appropriated for other uses, up to $1,500,000.00 of the settlement monies or other revenues collected by the Office of the Attorney General that, as determined by the Office of the Attorney General after consultation with the Joint Fiscal Office and the Department of Finance and Management, exceed the estimated amounts of settlement proceeds in the official fiscal forecast issued under 32 V.S.A. § 305a for fiscal year 2015;

(2) private gifts, bequests, grants, or donations made to the State from any public or private source for the purposes for which the Fund was established; and

(3) such sums as may be appropriated by the General Assembly.

Sec. 5. ATTORNEY GENERAL FISCAL YEAR BUDGET

If, in fiscal year 2015, $1,500,000.00 in monies is not collected in the Genetically Engineered Food Labeling Special Fund established under Sec. 4 of this act, the Attorney General shall include in the fiscal year 2016 budget proposal for the Office of the Attorney General the monies necessary to implement and administer the requirements established by 9 V.S.A. chapter 82A for the labeling of food produced from genetic engineering.

Sec. 6. ATTORNEY GENERAL REPORT ON LABELING OF MILK

(a) On or before January 15, 2015, the Office of the Attorney General, after consultation with the Agency of Agriculture, Food and Markets, shall submit to the Senate and House Committees on the Judiciary, the Senate Committee on Agriculture, and the House Committee on Agriculture and Forest Products a report regarding whether milk and milk products should be subject to the labeling requirements of 9 V.S.A. chapter 82A for food produced with genetic engineering. The report shall include:

(1) a recommendation as to whether milk or milk products should be subject to the requirements of 9 V.S.A. chapter 82A; and

(2) the legal basis for the recommendation under subdivision (1) of this subsection.

(b) In exercise of the Attorney General's authority to defend the interests of the State, the Attorney General, in his or her discretion, may notify the General Assembly that it is not in the best interest of the State to submit the report required under subsection (a) of this section on or before January 15, 2015. Any notice submitted under this subsection shall estimate the date when the report shall be submitted to the General Assembly.

Sec. 7. EFFECTIVE DATES

(a) This section and Secs. 3 (Attorney General rulemaking), 4 (genetically engineered food labeling special fund), 5 (Attorney General budget fiscal year 2016), 6 (Attorney General report; milk) shall take effect on passage.

(b) Secs. 1 (findings) and 2 (labeling of food produced with genetic engineering) shall take effect on July 1, 2016.

And that the bill ought to pass in concurrence with such proposal of amendment.

Senator Sears, for the Committee on Appropriations, to which the bill was referred reported recommending that the Senate propose to the House to amend the bill as recommended by the Committee on Judiciary with the following amendment thereto:

First: By striking out Sec. 4 in its entirety and inserting in lieu thereof a new Sec. 4 to read as follows:

Sec. 4. GENETICALLY ENGINEERED FOOD LABELING SPECIAL FUND

(a) There is established a Genetically Engineered Food Labeling Special Fund, pursuant to 32 V.S.A. chapter 7, subchapter 5 to pay costs or liabilities incurred by the Attorney General or the State in implementation and

administration, including rulemaking, of the requirements under 9 V.S.A. chapter 82A for the labeling of food produced from genetic engineering.

(b) The Fund shall consist of:

(1) private gifts, bequests, grants, or donations of any amount made to the State from any public or private source for the purposes for which the Fund was established;

(2) except for those recoveries that by law are appropriated for other uses, up to $1,500,000.00 of settlement monies collected by the Office of the Attorney General that, as determined by the Office of the Attorney General after consultation with the Joint Fiscal Office and the Department of Finance and Management, exceed the estimated amounts of settlement proceeds in the July 2014 official revenue forecast issued under 32 V.S.A. § 305a for fiscal year 2015; and

(3) such sums as may be appropriated or transferred by the General Assembly.

(c) Monies in the Fund from settlement monies collected by the Office of the Attorney General or from funds appropriated or transferred by the General Assembly shall be disbursed only if monies in the Fund from private gifts, bequests, grants, or donations are insufficient to the Attorney General to pay the costs or liabilities of the Attorney General or the State incurred in implementation and administration of the requirements of 9 V.S.A. chapter 82A.

(d) On or after July 1, 2018, if the Attorney General is not involved in ongoing litigation regarding the requirements of 9 V.S.A. chapter 82A and monies in the Fund exceed the costs or liabilities of the Attorney General or the State:

(1) unexpended monies in the Fund received from private or public sources shall be appropriated by the General Assembly, after review by the Senate and House Committees on Appropriations, the Senate Committee on Agriculture, and the House Committee on Agriculture and Forest Products, for the support of agricultural activities or agricultural purposes in the State, including promotion of value-added products, compliance with water quality requirements, and marketing assistance and development; and

(2) unexpended State monies in the Fund shall revert to the General Fund.

Second: In Sec. 5 (Attorney General fiscal year budget), after the words "Attorney General shall" by striking out the word "include" and inserting in lieu thereof the word request

And that the bill ought to pass in concurrence with such proposal of amendment.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and the recommendation of proposal of amendment of the Committee on Agriculture was amended as recommended by the Committee on Judiciary.

Thereupon, the proposal of amendment of the Committee on Agriculture, as amended, was amended as recommended by the Committee on Appropriations.

Thereupon, the question, Shall the Senate propose to the House to amend the bill as recommended by the Committee on Agriculture, as amended?, was agreed to on a roll call, Yeas 26, Nays 2.

Senator Starr having demanded the yeas and nays, they were taken and are as follows:

Roll Call

Those Senators who voted in the affirmative were: Ashe, Ayer, Baruth, Benning, Bray, Campbell, Collins, Cummings, Doyle, Hartwell, Kitchel, Lyons, MacDonald, Mazza, McCormack, Mullin, Nitka, Pollina, Rodgers, Sears, Sirotkin, Snelling, Starr, Westman, White, Zuckerman.

Those Senators who voted in the negative were: Flory, McAllister.

Those Senators absent and not voting were: French, Galbraith.

Thereupon, third reading of the bill was ordered.

Proposals of Amendment; Third Reading Ordered

H. 260.

Senator MacDonald, for the Committee on Finance, to which was referred House bill entitled:

An act relating to electronic insurance notices and credit for reinsurance.

Reported recommending that the Senate propose to the House to amend the bill as follows:

First: By striking out Secs. 1, 2, and 3 (pertaining to electronic insurance notices) in their entirety.

Second: In Sec. 4, 8 V.S.A. § 3634a (credit for reinsurance), in subdivision (b)(5), by adding a new subparagraph (H) to read as follows:

(H) Credit for reinsurance ceded to a certified reinsurer shall be permitted only for reinsurance contracts entered into or renewed on or after the effective date of the certification of the assuming insurer by the Commissioner.

Third: By striking out Sec. 5 (effective dates) in its entirety and inserting in lieu thereof a new Sec. 5 (renumbered as Sec. 2) to read as follows:

Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.

And by renumbering all the sections of the bill to be numerically correct.

After passage, the title of the bill is to be amended to read:

An act relating to credit for reinsurance.

And that the bill ought to pass in concurrence with such proposals of amendment.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and the proposals of amendment were collectively agreed to, and third reading of the bill was ordered.

Message from the House No. 49

A message was received from the House of Representatives by Ms. Melissa Kucserik, its Second Assistant Clerk, as follows:

Mr. President:

I am directed to inform the Senate that:

The House has passed a House bill of the following title:

H. 891. An act relating to the authority of the Secretary of Agriculture, Food and Markets to respond to and remediate potential public health hazards.

In the passage of which the concurrence of the Senate is requested.

The House has considered Senate proposal of amendment to House bill of the following title:

H. 872. An act relating to the State's Transportation Program and miscellaneous changes to the State's transportation laws.

And has severally concurred therein with a further proposal of amendment thereto, in the adoption of which the concurrence of the Senate is requested.

Adjournment

On motion of Senator Campbell, the Senate adjourned until one o'clock and thirty minutes in the afternoon on Wednesday, April 16, 2014.