

1 TO THE HONORABLE SENATE:

2       The Committee on Agriculture to which was referred House Bill No. 112  
3       entitled “An act relating to the labeling of food produced with genetic  
4       engineering” respectfully reports that it has considered the same and  
5       recommends that the Senate propose to the House that the bill be amended by  
6       striking out all after the enacting clause and inserting in lieu thereof the  
7       following:

8 Sec. 1. FINDINGS

9       The General Assembly finds and declares that:

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

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

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

20           (C) No formal FDA policy on the labeling of genetically engineered  
21           foods has been adopted. Currently, the FDA only provides nonbinding  
22           guidance on the labeling of genetically engineered foods, including a 1992

1       draft guidance regarding the need for the FDA to regulate labeling of food  
2       produced from genetic engineering and a 2001 draft guidance for industry  
3       regarding voluntary labeling of food produced from genetic engineering.

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

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

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

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

19              (D) There is a lack of consensus regarding the validity of the research  
20       and science surrounding the safety of genetically engineered foods, as  
21       indicated by the fact that there are peer-reviewed studies published in

1       international scientific literature showing negative, neutral, and positive health  
2       results.

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

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

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

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

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

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

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

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

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

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

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

15           (5) For multiple health, personal, religious, and environmental reasons,  
16       the State of Vermont finds that food produced from genetic engineering should  
17       be labeled as such, as evidenced by the following:

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

21           (B) Polling by the New York Times indicated that many consumers  
22       are under an incorrect assumption about whether the food they purchase is

1       produced from genetic engineering, and labeling food as produced from  
2       genetic engineering will reduce consumer confusion or deception regarding the  
3       food they purchase.

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

11               (D) Persons with certain religious beliefs object to producing foods  
12       using genetic engineering because of objections to tampering with the genetic  
13       makeup of life forms and the rapid introduction and proliferation of genetically  
14       engineered organisms and, therefore, need food to be labeled as genetically  
15       engineered in order to conform to religious beliefs and comply with dietary  
16      restrictions.

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

19               (6) Because both the FDA and the U.S. Congress do not require the  
20       labeling of food produced with genetic engineering, the State should require  
21       food produced with genetic engineering to be labeled as such in order to serve  
22      the interests of the State, notwithstanding limited exceptions, to prevent

1       inadvertent consumer deception, prevent potential risks to human health,  
2       protect religious practices, and protect the environment.

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

4           **CHAPTER 82A. LABELING OF FOOD PRODUCED WITH GENETIC**  
5                   **ENGINEERING**

6           **§ 3041. PURPOSE**

7       It is the purpose of this chapter to:

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

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

14       (3) Consumer confusion and deception. Reduce and prevent consumer  
15      confusion and deception by prohibiting the labeling of products produced from  
16      genetic engineering as “natural.”

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

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

21           **§ 3042. DEFINITIONS**

22       As used in this chapter:

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

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

6           (3) “Genetic engineering” is a process by which a food is produced from  
7        an organism or organisms in which the genetic material has been changed  
8        through the application of:

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

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

17           (4) “In vitro nucleic acid techniques” means techniques, including  
18        recombinant DNA or ribonucleic acid techniques, that use vector systems and  
19        techniques involving the direct introduction into the organisms of hereditary  
20        materials prepared outside the organisms such as micro-injection,  
21        chemoporation, electroporation, micro-encapsulation, and liposome fusion.

22           (5) “Manufacturer” means a person who:

1               (A) produces a processed food or raw agricultural commodity under  
2       its own brand or label for sale in or into the State;  
3               (B) sells in or into the State under its own brand or label a processed  
4       food or raw agricultural commodity produced by another supplier;  
5               (C) owns a brand that it licenses or licensed to another person for use  
6       on a processed food or raw commodity sold in or into the State;  
7               (D) sells in, sells into, or distributes in the State a processed food or  
8       raw agricultural commodity that it packaged under a brand or label owned by  
9       another person;  
10              (E) imports into the United States for sale in or into the State a  
11       processed food or raw agricultural commodity produced by a person without a  
12       presence in the United States; or  
13              (F) produces a processed food or raw agricultural commodity for sale  
14       in or into the State without affixing a brand name.

15              (6) “Organism” means any biological entity capable of replication,  
16       reproduction, or transferring of genetic material.

17              (7) “Processed food” means any food intended for human consumption  
18       other than a raw agricultural commodity and includes any food produced from  
19       a raw agricultural commodity that has been subjected to processing such as  
20       canning, smoking, pressing, cooking, freezing, dehydration, fermentation, or  
21       milling.

22              (8) “Processing aid” means:

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

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

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

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

15          § 3043. LABELING OF FOOD PRODUCED WITH GENETIC  
16          ENGINEERING

17          (a) Except as set forth in section 3044 of this title, food purchased by a  
18       retailer after July 1, 2016 shall be labeled as produced entirely or in part from  
19       genetic engineering if it is a product:

20           (1) offered for retail sale in Vermont; and  
21           (2) entirely or partially produced with genetic engineering.

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

3            (1) in the case of a packaged raw agricultural commodity, the  
4        manufacturer shall label the package offered for retail sale, with the clear and  
5        conspicuous words “produced with genetic engineering”;

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

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

13        (c) Except as set forth under section 3044 of this title, a manufacturer of a  
14        food produced entirely or in part from genetic engineering shall not label the  
15        product, in signage, or in advertising as “natural,” “naturally made,” “naturally  
16        grown,” “all natural,” or any words of similar import that would have a  
17        tendency to mislead a consumer.

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

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

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

3           § 3044. EXEMPTIONS

4           The following foods shall not be subject to the labeling requirements of  
5           section 3043 of this title:

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

10           (2) A raw agricultural commodity or processed food derived from it that  
11 has been grown, raised, or produced without the knowing and intentional use  
12 of food or seed produced with genetic engineering. Food will be deemed to be  
13 as described in this subdivision only if the person otherwise responsible for  
14 complying with the requirements of subsection 3043(a) of this title with  
15 respect to a raw agricultural commodity or processed food obtains, from  
16 whomever sold the raw agricultural commodity or processed food to that  
17 person, a sworn statement that the raw agricultural commodity or processed  
18 food has not been knowingly or intentionally produced with genetic  
19 engineering and has been segregated from and has not been knowingly or  
20 intentionally commingled with food that may have been produced with genetic  
21 engineering at any time. In providing such a sworn statement, any person may

1       rely on a sworn statement from his or her own supplier that contains the  
2       affirmation set forth in this subdivision.

3           (3) Any processed food which would be subject to subsection 3043(a) of  
4       this title solely because it includes one or more processing aids or enzymes  
5       produced with genetic engineering.

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

7           (5) Any processed food that would be subject to subsection 3043(a) of  
8       this title solely because it includes one or more materials that have been  
9       produced with genetic engineering, provided that the genetically engineered  
10      materials in the aggregate do not account for more than 0.9 percent of the total  
11      weight of the processed food.

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

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

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

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

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

5       § 3045. RETAILER LIABILITY

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

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

13       § 3046. SEVERABILITY

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

20       § 3047. FALSE CERTIFICATION

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

1       commodity or processed food has not been knowingly or intentionally  
2       produced with genetic engineering and has been segregated from and has not  
3       been knowingly or intentionally commingled with food that may have been  
4       produced with genetic engineering at any time.

5       § 3048. PENALTIES; ENFORCEMENT

6       (a) Any person who violates the requirements of this chapter shall be liable  
7       for a civil penalty of not more than \$1,000.00 per day, per product.

8       Calculation of the civil penalty shall not be made or multiplied by the number  
9       of individual packages of the same product displayed or offered for retail sale.

10      Civil penalties assessed under this section shall accrue and be assessed per  
11      each uniquely named, designated, or marketed product.

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

15      Consumers shall have the same rights and remedies as provided under  
16      subchapter 1 of chapter 63 of this title.

17      Sec. 3. ATTORNEY GENERAL RULEMAKING; LABELING OF FOOD

18                  PRODUCED WITH GENETIC ENGINEERING

19      The Attorney General is authorized to adopt by rule requirements for the  
20      implementation of Sec. 2 of this act, including a requirement that the label  
21      required for food produced from genetic engineering include a disclaimer that  
22      the Food and Drug Administration does not consider foods produced from

1       genetic engineering to be materially different from other foods. Any rule  
2       adopted under this section shall not go into effect until the effective date  
3       of this act.

4 Sec. 4. EFFECTIVE DATES

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

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

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15 (Committee vote: \_\_\_\_\_)

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Senator [surname]

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