

1 H.112
2 Introduced by Representatives Webb of Shelburne, Bartholomew of Hartland,
3 Zagar of Barnard, Partridge of Windham, McCullough of
4 Williston, Bissonnette of Winooski, Burke of Brattleboro,
5 Buxton of Tunbridge, Carr of Brandon, Cheney of Norwich,
6 Christie of Hartford, Cross of Winooski, Dakin of Chester,
7 Deen of Westminster, Devereux of Mount Holly, Donahue of
8 Northfield, Donovan of Burlington, Ellis of Waterbury,
9 Emmons of Springfield, Frank of Underhill, French of
10 Randolph, Head of South Burlington, Hooper of Montpelier,
11 Keenan of St. Albans City, Krowinski of Burlington, Lanpher
12 of Vergennes, Lenes of Shelburne, Marek of Newfane, Martin
13 of Springfield, Martin of Wolcott, Masland of Thetford,
14 McCarthy of St. Albans City, McCormack of Burlington, Miller
15 of Shaftsbury, Mrowicki of Putney, Nuovo of Middlebury,
16 Pearson of Burlington, Peltz of Woodbury, Rachelson of
17 Burlington, Ram of Burlington, Sharpe of Bristol, Spengler of
18 Colchester, Stevens of Waterbury, Stuart of Brattleboro, Till of
19 Jericho, Toleno of Brattleboro, Townsend of South Burlington,
20 Waite-Simpson of Essex, Wizowaty of Burlington, and
21 Woodward of Johnson

1 Referred to Committee on

2 Date:

3 Subject: Consumer affairs; food labeling; genetic engineering

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

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

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

9 ~~Sec. 1. FINDINGS~~

10 ~~The General Assembly finds and declares that:~~

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

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

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

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

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

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

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

1 ~~(C) There have been no long term studies in the United States that~~
2 ~~examine the safety of human consumption of genetically engineered foods.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (B) Under *Holk v. Snapple Beverage Co.*, 575 F.3d 329 (3d Cir.
19 2009), the Federal Food, Drug, and Cosmetic Act and the FDA policy for
20 labels using the word "natural" do not preempt states from regulating the use
21 of the word "natural."

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

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

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

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

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

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

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

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

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

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

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

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

12 Subchapter 3. Labeling of Food Produced with
13 Genetic Engineering

14 § 4091. PURPOSE

15 It is the purpose of this chapter to:

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

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

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

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

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

12 (A) displacement of native flora and fauna;

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

15 (C) creation of herbicide-resistant “super weeds” and
16 pesticide-resistant insects; and

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

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

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

3 § 4092. DEFINITIONS

4 As used in this subchapter:

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

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

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

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

19 (3) "In vitro nucleic acid techniques" means techniques, including
20 recombinant DNA or ribonucleic acid techniques, that use vector systems and
21 techniques involving the direct introduction into the organisms of hereditary

1 ~~materials prepared outside the organisms such as micro injection,~~

2 ~~chemoporation, electroporation, micro-encapsulation, and liposome fusion.~~

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

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

9 ~~(6) "Processing aid" means:~~

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

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

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

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

4 § 4093. LABELING OF FOOD PRODUCED WITH GENETIC
5 ENGINEERING

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

8 (1) offered for retail sale in Vermont; and

9 (2) entirely or partially produced with genetic engineering.

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

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

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

1 ~~(c) Except as set forth under section 4094 of this title, a food produced~~
2 ~~entirely or in part from genetic engineering shall not be labeled on the product,~~
3 ~~in signage, or in advertising as “natural,” “naturally made,” “naturally grown,”~~
4 ~~“all natural,” or any words of similar import that would have a tendency to~~
5 ~~mislead a consumer.~~

6 § 4094. EXEMPTIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2 § 4095. SEVERABILITY

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

9 § 4096. PENALTIES

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

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

15 § 4051. DEFINITIONS

16 For the purposes of this chapter:

17 * * *

18 (2) The term ~~“board” means the state board of health.~~ “Commissioner”
19 means the Commissioner of Health.

20 * * *

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

2 § 4053. REGULATIONS AND HEARINGS

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

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

15 * * *

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

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

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

5 § 4060. MISBRANDED FOOD

6 A food shall be deemed to be misbranded:

7 * * *

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

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

10 § 4069. REGULATIONS; AUTHORITY

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

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

19 (c) Before ~~promulgating~~ adopting any regulations contemplated by section
20 4058; 4060(10); 4061; 4064(d), (f), (g), (h), and (k); or 4068(b) of this title, the
21 ~~board~~ Commissioner shall give appropriate notice of the proposal and of the

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

9 Sec. 7. STATUTORY REVISION

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

14 Sec. 8. EFFECTIVE DATE

15 This act shall take effect on July 1, 2014.

Sec. 1. FINDINGS

The General Assembly finds and declares that:

(1) U.S. federal law does not provide for the regulation of the safety and 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 Dr. Robert Merker, 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.

(D) The FDA regulates genetically engineered foods in the same way it regulates foods developed by traditional plant breeding.

(E) Under its regulatory framework, the FDA does not independently test the safety of genetically engineered foods. Instead, manufacturers may 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.

(F) 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.

(G) 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.

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

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

(2) 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.

(3) Genetically engineered foods pose potential risks to 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) The genetic engineering of plants and animals may cause unintended consequences. The use of genetic engineering to manipulate genes by inserting them into organisms is an imprecise process. Mixing plant, animal, bacteria, and viral genes through genetic engineering in combinations that cannot occur in nature may produce results that lead to adverse health or environmental consequences.

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

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

(E) Cross-pollination of or cross-contamination by genetically engineered crops may contaminate organic crops and prevent organic farmers and organic food producers from qualifying for organic certification under federal law.

(F) 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.

(4) For multiple health, personal, cultural, religious, environmental, and economic 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) 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.

(C) 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.

(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 also contribute to vibrant and diversified agricultural communities.

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

(5) 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,

promote food safety, protect cultural and religious practices, protect the environment, and promote economic development.

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. Promote food safety and protect public health by enabling consumers to avoid the potential risks associated with genetically engineered foods, and serve as a risk management tool enabling consumers, physicians, and scientists to identify unintended health effects resulting from the consumption of genetically engineered foods.

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

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

(4) 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 to enable consumers to make informed purchasing decisions.

(5) Protecting religious and cultural practice. Provide consumers with data from which they may make informed decisions for personal, religious, moral, cultural, or ethical 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) "Organism" means any biological entity capable of replication, reproduction, or transferring of genetic material.

(6) "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.

(7) "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.

(8) "Raw agricultural commodity" means any food in its raw or natural state, including any fruit 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, 2015 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 with genetic engineering" or "genetically engineered" 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 that contains a product or products of genetic engineering, 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 3044 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.

(d) This law 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 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 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) Until July 1, 2019, 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 nine-tenths of one 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 section.

(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 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.

(9) 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:

(1) the retailer is the producer or manufacturer of the processed food;

or

(2) the retailer sells the processed food under a brand it owns, but the food was produced or manufactured by another producer or manufacturer.

(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 20 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. PENALTIES; ENFORCEMENT

(a) A violation of this chapter is deemed to be a violation of section 2453 of this title.

(b) The Attorney General shall have the same authority to make rules, conduct civil investigations, enter into assurances of discontinuance, and bring civil actions, and 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 DATE

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

(b) Secs. 1 (findings) and 2 (labeling of food produced with genetic engineering) of this act shall take effect on the first occurring of the following two dates:

(1) 18 months after two other states enact legislation with requirements substantially comparable to the requirements of this act for the labeling of food produced from genetic engineering; or

(2) July 1, 2015.