H.722

Introduced by Representatives Webb of Shelburne, Cheney of Norwich, Lanpher of Vergennes, Lenes of Shelburne, Lorber of Burlington, Masland of Thetford, McCullough of Williston, Mrowicki of Putney, Ram of Burlington, Sharpe of Bristol and Taylor of Barre City

Referred to Committee on

Date:

Subject: Consumer affairs; food labeling; genetic engineering

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

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

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

Sec. 1. 18 V.S.A. § 4051 is amended to read:

§ 4051. DEFINITIONS

For the purposes of this chapter:

(1) The term "department" means the Vermont department of health.

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

(3) The term "person" includes an individual, partnership, corporation and association.

(4) The term "food" means (A) articles used for food or drink for man or other animals, (B) chewing gum, and (C) articles used for components of any such article.

(5) The term "drug" means (A) articles recognized in the official United States Pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement to any of them; (B) articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; (C) articles (other than food) intended to affect the structure or any function of the body of man or other animals; (D) articles intended for use as a component of any article specified in clauses (A), (B) or (C) but does not include devices or their components, parts or accessories.

(6) The term "device" (except when used in subdivision (18) of this section and in sections 4052(10), ~~4060(6)~~ 4060(a)(6), 4064(c) and 4067(3) of this title) means instruments, apparatus and contrivances, including their components, parts and accessories, intended (A) for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; or (B) to affect the structure of any function of the body of man or other animals. The term "device" shall not mean professional diagnostic instruments.

* * *

(15) The term "label" means a display of written, printed or graphic matter upon the immediate container of any article and a requirement made by or under authority of this chapter that any word, statement or other information appearing on the label shall not be considered to be complied with unless such word, statement or other information also appears on the outside container or wrapper, if any there be, of the retail package of the article, or is easily legible through the outside container or wrapper.

(16) The term "immediate container" does not include package liners.

(17) The term "misbranded package" means any retailed package of a hazardous substance, intended for household use, which fails to bear a label:

(A) Which states conspicuously (i) the name or identifying trade name or trade-mark and place of business of the manufacturer, packer or distributor; (ii) the common or usual name, or the chemical name (if there be no common or usual name) or the recognized generic name (not trade name only) of the hazardous substance or of each component which contributes substantially to its hazard; (iii) one of the following signal words: "danger", "warning", or "caution"; when necessary an affirmative statement of the principal hazard or hazards such as "flammable", "vapor harmful", "causes burns", "absorbed through skin", or similar wording descriptive of the hazard; (iv) precautionary measures describing the action to be followed or avoided;

(v) instructions, when necessary, for the first aid treatment in case of contact or exposure, if the substance is hazardous through contact or exposure; (vi) the word "poison" for any substance which is defined as poisonous by subsection (10)(A); (vii) instructions for handling or storage; and (viii) the statement "keep out of the reach of children", or its practical equivalent; and

(B) On which any statement required under subdiv. (17)(A) of this section is located prominently and is in English in legible type in contrast by typography, layout, or color with other printed matter on the label: provided, that the board shall, by regulations, provide for minimum information which shall appear on the labels for small packages, which labels need not include all of the information required by this subsection; provided further, that the board may provide for less than the foregoing statement of the hazard or precautionary measures for labels of hazardous substances presenting only minor hazards; and the term "misbranded package" shall not apply to packages of economic poisons subject to the federal insecticide, fungicide and rodenticide act, to packages of substances subject to the federal food, drug and cosmetic act or to packages of substances intended for use in agriculture, horticulture, industrial or related uses. Nothing in this chapter shall be construed to be in conflict or interfere with the administration of chapter 81 of Title 6.

(18) If an article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false because it is misleading, then in determining whether the labeling or advertisement is misleading, there shall be taken, into account (among other things) not only representations made or suggested by statement, word, design, device, sound, or in any combination thereof, but also the extent to which the labeling or advertisement fails to reveal facts material in the light of such representations, or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under such conditions of use as are customary or usual.

* * *

(23) The provisions of this chapter regarding the selling of food, drugs, devices, or cosmetics, shall be considered to include the manufacture, production, processing, packing, offer, possession, and holding of any such article for sale; and the sale, dispensing, and giving of any such article, and the supplying or applying of any such articles in the conduct of any food, drug, or cosmetic establishment.

(24) The term "federal act" means the federal food, drug and cosmetic act (Title 21 U.S.C. 301 et seq.; 52 Stat. 1040 et seq.).

(25) The term "enzyme" means a protein that catalyzes chemical reactions of other substances without itself being destroyed or altered upon completion of the reactions.

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

(A) In vitro nucleic acid techniques, including recombinant deoxyribonucleic acid (DNC) 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/protoplasts do not fall within the same taxonomic family, in a way that does not occur by natural multiplication or natural recombination.

(27) The term "in vitro nucleic acid techniques" means techniques, including recombinant DNC or RNA 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.

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

(29) The term "organism" means any biological entity capable of replication, reproduction, or transferring of genetic material.

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

(31) The term "processing aid" means:

(A) a substance that is added to a food during the processing of such 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 insignificant levels and does not have any technical or functional effect in that finished food.

Sec. 2. 18 V.S.A. § 4060 to read:

§ 4060. MISBRANDED FOOD

(a) A food shall be deemed to be misbranded:

(1) If its labeling is false or misleading in any particular.

(2) If it is offered for sale under the name of another food.

(3) If it is an imitation of another food for which a definition and standard of identity has been prescribed by regulations as provided by section 4058 of this title; or if it is an imitation of another food that is not subject to subdivision (7) of this section, unless its label bears in type of uniform size and prominence the word imitation and, immediately thereafter, the name of the food imitated.

(4) If its container is so made, formed, or filled as to be misleading.

(5) If in package form, unless it bears a label containing (A) the name and place of business of the manufacturer, packer, or distributor; (B) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided, that under clause (B) of this subdivision reasonable variations shall be permitted, and exemptions as to small packages shall be established by regulations prescribed by the board.

(6) If any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words,

statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(7) If it purports to be or is represented as a food for which a definition and standard of identity has been prescribed by regulations as provided by section 4058 of this title, unless (A) it conforms to that definition and standard, and (B) its label bears the name of the food specified in the definition and standard and, insofar as may be required by the regulations, the common names of optional ingredients (other than spices, flavoring and coloring) present in the food.

(8) If it purports to be or is represented as

(A) a food for which a standard of quality has been prescribed by regulations, as provided by section 4058 of this title, and its quality falls below the standard unless its label bears, in such manner and form as the regulations specify, a statement that it falls below those standards; or

(B) a food for which a standard or standards of fill of container have been prescribed by regulation, as provided by section 4058 of this title, and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as the regulations specify, a statement that it falls below the standard.

(9) If it is not subject to the provisions of subdivision (7) of this section, unless it bears labeling clearly giving (A) the common or usual name of the food, if any there be, and (B) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings and colorings, other than those sold as such, may be designated as spices, flavorings and colorings, without naming each; provided that, to the extent that compliance with the requirements of clause (B) of this subdivision is impractical or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the board. And provided further that the requirements of clause (B) of this subdivision shall not apply to food products which are packaged at the direction of purchasers at retail at the time of sale, the ingredients of which are disclosed to the purchasers by other means in accordance with regulations promulgated by the board.

(10) If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral and other dietary properties as the board determines to be, and by regulations prescribed, as necessary in order to fully inform purchasers as to its value for such uses.

(11) If it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact; provided, that the extent that compliance with the requirements of this subsection is

impracticable, exemptions shall be established by regulations promulgated by the board.

(12) If it is a product intended as an ingredient of another food and when used according to the directions of the purveyor will result in the final food product being adulterated or misbranded.

(13) Except as set forth under subsection (b) of this section, if it is a product:

(A) offered for retail sale in Vermont;

(B) entirely or partially produced with genetic engineering; and

(C) that it is entirely or partially produced with genetic engineering, but such fact is not disclosed:

(i) in the case of a raw agricultural commodity, on the package offered for retail sale, with the clear and conspicuous words, "genetically engineered" on the front of the package of such 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 such commodity is displayed for sale;

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

(14) Except as set forth under subsection (b) of this section, if it is food produced with genetic engineering and its label, accompanying signage in a retail food establishment, or any advertising or promotional material states or implies that the food is "natural," "naturally made," "naturally grown," "all natural," or any words of similar import that would have any tendency to mislead any consumer.

(b) The following foods shall not be deemed to be misbranded under subdivisions (a)(13) and (14) of this section, shall not require the listing or identification of any ingredient or ingredients that was produced with genetic engineered, and shall not be required to have the term "genetically engineered" placed immediately preceding any common name or primary product descriptor of a food:

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

(2) A raw agricultural commodity or food derived therefrom 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 described in the preceding sentence only if the person otherwise responsible for complying with the requirements of this subdivision (a)(13) with respect to

a raw agricultural commodity or food obtains, from whoever sold the commodity or food to that person, a sworn statement that such 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 own supplier that contains the affirmation set forth in the preceding sentence.

(3) Any processed food which would be subject to this subdivision (a)(13) 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 this subdivision (a)(13) solely because it includes one or more ingredients that have been produced with genetic engineering, provided that:

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

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

(6) Food that an independent organization has determined has not been knowingly and intentionally produced from or commingled with food or seed

produced with genetic engineering, provided that such determination has been made pursuant to a sampling and testing procedure approved in regulations adopted by the department. No sampling procedure shall be approved by the department unless sampling is done according to a statistically valid sampling plan consistent with principles recommended by internationally recognized sources such as the International Standards Organization (ISO) and the Grant and Feed Trade Association (GAFTA). No testing procedure shall be approved by the department unless:

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

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

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

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

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

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

(9) Medical food.

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

Sec. 3. 18 V.S.A. § 4069 is amended to read:

§ 4069. REGULATIONS; AUTHORITY

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

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

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

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

Sec. 4. EFFECTIVE DATE

This act shall take effect on July 1, 2014.