2013 DRAFTING REQUEST

Bill

Received:	**8/7/2013**	Received By:	**btradewe**
Wanted:	**As time permits**	Same as LRB:	
For:	**Chris Taylor (608) 266-5342**	By/Representing:	**Anne Gargano Ahmed**
May Contact:		Drafter:	**btradewe**
Subject:	**Agriculture - food safety**	Addl. Drafters:	
		Extra Copies:	

Submit via email: **YES**
Requester's email: **Rep.Taylor@legis.wisconsin.gov**
Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Labeling of genetically modified foods

Instructions:

See attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	btradewe 11/14/2013			_____ _____			
/P1	btradewe 1/31/2014	evinz 11/20/2013	rschluet 11/20/2013	_____ _____	sbasford 11/20/2013		
/1		evinz 2/12/2014	jmurphy 2/12/2014	_____ _____	sbasford 2/12/2014	srose 2/28/2014	State

FE Sent For:

At Intro.

<END>

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FE Sent For:		1 eev 2/12/14	1 eev 2/12/14	jm 2/12			

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Instructions:

See attached

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Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	btradewe	/p1 eev 11/20/13	/p1 eev 11/20/13	11/20/13			

FE Sent For:

<END>

Tradewell, Becky

From: Gargano Ahmed, Anne
Sent: Wednesday, August 07, 2013 12:18 PM
To: Tradewell, Becky
Subject: Drafting Instructions for GMO Labeling Bill

Dear Becky,

Representative Taylor would like a bill drafted requiring food manufacturers to include labels on genetically modified foods. She would like to model the Wisconsin bill after the one recently passed in Vermont. Here is a link to that bill: http://www.leg.state.vt.us/docs/2014/bills/intro/H-112.pdf

Please let me know if you have any questions.

Thanks so much,

Anne Gargano Ahmed
Rep. Chris Taylor's Office
76th Assembly District

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 (G) 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. Amestoy*, 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 Grant 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. § 360ee(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

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 The regulation may be amended or repealed in the same manner as is provided for its adoption, except that in the case of a regulation amending or repealing any such regulation, the ~~board~~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

Sec. 7. STATUTORY REVISION

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

Sec. 8. EFFECTIVE DATE

This act shall take effect on July 1, 2014.

State of Wisconsin
2013 – 2014 LEGISLATURE

LRB–2872/P1
RCT:..:...

SOON (in 11/14)

eev

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Note

SAJ
xref N/A

gen cat

AN ACT ...; **relating to:** labeling of genetically engineered food and granting rule–making authority.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 97.26 of the statutes is created to read:

97.26 Labeling of genetically engineered food. (1) DEFINITIONS. In this section:

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

(b) "Genetic engineering" means the alteration of the genetic material of an organism using any of the following methods:

1. In vitro nucleic acid techniques.

2. Fusion of cells, including protoplast fusion, or hybridization techniques that overcome natural physiological, reproductive, or recombination barriers, if the donor cells or protoplasts do not originate from within the same taxonomic group as the organism, in a way that does not occur by natural multiplication or natural recombination.

(c) "In vitro nucleic acid techniques" means techniques, including recombinant deoxyribonucleic acid or ribonucleic acid techniques, that use vector systems and techniques involving the direct introduction into an organism of hereditary materials, including nucleic acid, prepared outside the organism, such as through microinjection, chemoporation, electroporation, microencapsulation, and liposome fusion.

****NOTE: There was some redundancy between the definitions of "genetic engineering" and "in vitro nucleic acid techniques" in the Vermont legislation that I have tried to eliminate.

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

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

(f) "Processing aid" means any of the following:

1. A substance that is added to a food during the processing of the food, but that is removed from the food before the food is packaged in its finished form.

2. 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 those constituents naturally found in the food.

3. A substance that is added to a food for its technical or functional effect in the processing of the food, but that is present in the food in its finished form at levels that do not have any technical or functional effect in the finished food.

****NOTE: This definition does not seem completely clear, but it is based on a definition in the federal Food and Drug Administration's food labeling regulations.

****NOTE: This draft does not include a definition of "raw agricultural commodity" because it is defined in s. 97.01(14) and that definition applies throughout ch. 97.

(g) "Retailer" means a person who sells food to consumers.

(2) PROHIBITIONS. Except as provided in sub. (3), a retailer may not do any of the following:

(a) Sell a raw agricultural commodity produced through genetic engineering that is packaged unless the package is clearly and conspicuously labeled with the words "Produced through genetic engineering."

(b) Sell a raw agricultural commodity produced through genetic engineering that is not packaged unless the retailer places a clear and conspicuous sign that states "Produced through genetic engineering" on the shelf or bin where the raw agricultural commodity is displayed.

(c) Sell a processed food produced, in whole or in part, through genetic engineering unless the package is clearly and conspicuously labeled with the words "Partially produced through genetic engineering" ~~or~~ or "May be partially produced through genetic engineering."

****NOTE: Based on the Vermont bill, this ~~subsection~~ paragraph seems to assume that all processed foods are packaged, but some processed foods are sold in bulk, much like raw agricultural commodities. For example, foods such as trail mix or rolls may be kept in bins and put into plastic or paper bags by the consumer. How should the proposal deal with this?

(d) Sell a food produced, in whole or in part, through genetic engineering that is labeled as "natural," "naturally made," "naturally grown," or "all natural" or any words of similar meaning that would have a tendency to mislead a consumer.

(3) EXEMPTIONS. (a) The prohibitions in sub. (2) do not apply to the sale of any of the following:

1. A food consisting entirely of, or derived entirely from, an animal not produced through genetic engineering, regardless of whether the animal was fed or injected with any food or drug produced through genetic engineering.

2. A food purchased by a retailer if the retailer obtains a statement, made or subscribed under oath or affirmation or in compliance with s. 887.015, from the person from whom the retailer purchases the food that the food was not knowingly produced, in whole or in part, through genetic engineering and has been segregated from and not knowingly commingled with food that may have been produced through genetic engineering.

3. A raw agricultural commodity grown by the retailer if the retailer did not knowingly produce the raw agricultural commodity through genetic engineering.

****NOTE: This provision is not in the Vermont bill. I included it because a person may sell at retail (at a farm stand, for example) food that the retailer did not purchase from someone else but instead grew. There would not be anyone from whom the retailer could obtain a sworn statement as required under subd. 2. This provision is intended to address the situation in which the retailer inadvertently sold a genetically engineered food, for example, if a crop was affected by cross–pollination with a genetically engineered plant. Please let me know if you do not want this provision.

4. A processed food that would be subject to sub. (2) solely because it is produced using one or more processing aids or enzymes produced through genetic engineering.

5. An alcohol beverage, as defined in s. 125.02 (1).

1 6. Until July 1, 2020, a processed food that contains one or more, but fewer than
2 11, ingredients produced through genetic engineering, if the weight of each of those
3 ingredients is not more than 0.45 percent of the weight of the processed food.

4 7. A food that an independent organization determines, using a sampling and
5 testing procedure that complies with the rules promulgated under par. (c), was not
6 produced, in whole or in part, through genetic engineering and has not been
7 commingled with food produced through genetic engineering.

8 8. A food that is labeled as "organic" in accordance with the federal Organic
9 Food Products Act, 7 USC 6501 to 6523.

10 9. A food that is not packaged for retail sale if one of the following applies:

11 a. The food is a processed food prepared and intended for immediate
12 consumption.

13 b. The food is sold in a restaurant or other operation that is primarily engaged
14 in the sale of food that is prepared and intended for immediate human consumption.

****NOTE: I think that this is intended to cover food prepared and sold for "take out" from a grocery store, as well as a restaurant, and to cover food that is sold by a restaurant that one might not eat right after buying it, like loaves of bread or whole cakes. The use of "immediate" seems potentially problematic, but I haven't thought of a different way to draft this to cover what I think it is intended to cover.

15 10. A medical food, as defined in 20 USC 360ee (b) (3).

16 (b) In providing a statement under par. (a) 2., a person who sells food to a
17 retailer may rely on a statement, made or subscribed under oath or affirmation or
18 in compliance with s. 887.015, from the person's supplier that the food was not
19 knowingly produced, in whole or in part, through genetic engineering and has been
20 segregated from and not knowingly commingled with food that may have been
21 produced through genetic engineering.

1 (c) The department shall promulgate rules specifying requirements for
2 sampling and testing procedures for the purposes of par. (a) 7. In the rules, the
3 department shall require the use of a statistically valid sampling plan that is
4 consistent with the recommendations of internationally recognized entities, such as
5 the International Organization for Standardization or the Grain and Feed Trade
6 Association. In the rules, the department shall also require all of the following:

7 1. The use of a testing procedure that is consistent with the most recent version
8 of the Codex Alimentarius Commission publication Guidelines on Performance
9 Criteria and Validation of Methods for Detection, Identification and Quantification
10 of Specific DNA Sequences and Specific Proteins in Foods, CAC/GL 74–2010.

11 2. The use of a testing procedure that does not rely on the testing of processed
12 foods in which no deoxyribonucleic acid is detectable.

13 **SECTION 2. Effective date.**

14 (1) This act takes effect on July 1, 2015.

15 **(END)**

Note

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB–2872/P1dn
RCT:.....
Leev

date

This is a preliminary version of the proposal that requires the labeling of genetically engineered foods. It is based on the Vermont bill, 2013 H. 112, as introduced. That bill was modified and passed the House. As I understand it, the bill has not been taken up in the Vermont Senate. I did not find a detailed explanation of the bill and found it difficult to interpret some of the provisions. Please review this draft carefully. There are some notes in the draft concerning specific provisions.

I lack the expertise to fully understand or evaluate the definitions of "genetic engineering" and "in vitro nucleic acid techniques." For example, I am unsure that experts would agree about whether one organism is in the same "taxonomic group" as another. It seems as though there might be a more straightforward way to define "genetic engineering." Having someone with scientific expertise review the definitions seems advisable.

It is likely that this proposal would be challenged on federal constitutional grounds. A challenger might argue that the proposal is preempted (by the labeling provisions of the federal Food, Drug, and Cosmetic Act), compels speech in violation of the First Amendment, or violates the Commerce Clause. I have not done extensive research on these issues and it appear that no court has ruled on a case involving state labeling requirements for genetically engineered food. Arguments can be made on both sides of these issues.

The Food, Drug, and Cosmetic Act includes a preemption provision for some kinds of state labeling requirements, but arguably that provision does not apply to this proposal in part because the Food and Drug Administration has not issued any regulations on the issue. The FDA has concluded that the use of bioengineering in the production of a food does not, in and of itself, mean that there is a material difference in the food. In guidance on voluntary labeling of foods as developed using (or not using) bioengineering, the FDA has expressed concern that certain statements might be misleading in expressing or implying that a food is superior because it is not bioengineered. Under the Food, Drug, and Cosmetic Act, a food is misbranded if its labeling is false or misleading in any particular. The act prohibits the sale of misbranded foods.

It might be helpful to have materials in the drafting file for this draft that outline concerns that it is meant to address, especially (in order to counter preemption and

First Amendment challenges) any concerns other than human health or consumer interest in this kind of labeling. Our drafting policy generally prohibits the inclusion of legislative findings in drafts, for a number of reasons. One exception is to express bases for asserting that a provision is constitutional. If you are interested in including legislative findings in this draft, please let me know.

This draft contains a provision, based on the Vermont bill, that prohibits describing a genetically engineered food as "natural." The FDA has not issued regulations on the issue of using "natural" on food labels, but it has not objected to the use of the term if the food does not contain added color, artificial flavors, or synthetic substances.

The penalties in s. 97.72 will apply to violations of the prohibitions in this draft unless the draft includes a specific penalty. Please let me know if you would like to include a specific penalty. I believe that making a false statement that a food was not produced through genetic engineering would be a violation of s. 946.32. If you want to provide a penalty that is specific to statements given for this purpose or if you do not want the penalties in s. 946.32 to apply, please let me know.

The Vermont bill includes an effective date of July 1, 2014. That bill was introduced in January of this year. I have included an effective date of July 1, 2015. Please let me know if you would prefer a different date.

Please contact me with any questions or redraft instructions.

Rebecca C. Tradewell
Managing Attorney
Phone: (608) 266–7290
E–mail: becky.tradewell@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2872/P1dn
RCT:eev:rs

November 20, 2013

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1/30/14 -2872/P1

Call from Craig of Rep. C. Taylor's office:

Concerning notes in draft - Note on page 2 = OK. Notes at top of p. 3, OK.

Note at bottom of p. 3 - add provision requiring sign on bin for processed, unpackaged food.

Note on p. 4 = OK.

Note on p. 5 = OK.

Change effective date to first day of 13th month beginning after publication.

No other changes.

RCT

State of Wisconsin
2013 – 2014 LEGISLATURE

SOON (in 1/31)
today if possible

LRB–2872/P1
RCT:eev:rs

rmr

PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION

regen

AN ACT *to create* 97.26 of the statutes; **relating to:** labeling of genetically engineered food and granting rule–making authority.

Analysis
Insert

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 97.26 of the statutes is created to read:

97.26 Labeling of genetically engineered food. (1) DEFINITIONS. In this section:

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

(b) "Genetic engineering" means the alteration of the genetic material of an organism using any of the following methods:

1. In vitro nucleic acid techniques.

2. Fusion of cells, including protoplast fusion, or hybridization techniques that overcome natural physiological, reproductive, or recombination barriers, if the donor cells or protoplasts do not originate from within the same taxonomic group as the organism, in a way that does not occur by natural multiplication or natural recombination.

(c) "In vitro nucleic acid techniques" means techniques, including recombinant deoxyribonucleic acid or ribonucleic acid techniques, that use vector systems and techniques involving the direct introduction into an organism of hereditary materials, including nucleic acid, prepared outside the organism, such as through microinjection, chemoporation, electroporation, microencapsulation, and liposome fusion.

****NOTE: There was some redundancy between the definitions of "genetic engineering" and "in vitro nucleic acid techniques" in the Vermont legislation that I have tried to eliminate.

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

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

(f) "Processing aid" means any of the following:

1. A substance that is added to a food during the processing of the food, but that is removed from the food before the food is packaged in its finished form.

2. 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 those constituents naturally found in the food.

3. A substance that is added to a food for its technical or functional effect in the processing of the food, but that is present in the food in its finished form at levels that do not have any technical or functional effect in the finished food.

****NOTE: This definition does not seem completely clear, but it is based on a definition in the federal Food and Drug Administration's food labeling regulations.

****NOTE: This draft does not include a definition of "raw agricultural commodity" because it is defined in s. 97.01 (14) and that definition ~~applies throughout ch. 97.~~

(g) "Retailer" means a person who sells food to consumers.

(2) PROHIBITIONS. Except as provided in sub. (3), a retailer may not do any of the following:

(a) Sell a raw agricultural commodity produced through genetic engineering that is packaged unless the package is clearly and conspicuously labeled with the words "Produced through genetic engineering."

(b) Sell a raw agricultural commodity produced through genetic engineering that is not packaged unless the retailer places a clear and conspicuous sign that states "Produced through genetic engineering" on the shelf or bin where the raw agricultural commodity is displayed.

(c) Sell a processed food produced, in whole or in part, through genetic engineering that is packaged unless the package is clearly and conspicuously labeled with the words "Partially produced through genetic engineering" or "May be partially produced through genetic engineering."

Insert 3-20

****NOTE: Based on the Vermont bill, this paragraph seems to assume that all processed foods are packaged, but some processed foods are sold in bulk, much like raw agricultural commodities. For example, foods such as trail mix or rolls may be kept in bins and put into plastic or paper bags by the consumer. How should the proposal deal with this?

(d) Sell a food produced, in whole or in part, through genetic engineering that is labeled as "natural," "naturally made," "naturally grown," or "all natural" or any words of similar meaning that would have a tendency to mislead a consumer.

(3) EXEMPTIONS. (a) The prohibitions in sub. (2) do not apply to the sale of any of the following:

1. A food consisting entirely of, or derived entirely from, an animal not produced through genetic engineering, regardless of whether the animal was fed or injected with any food or drug produced through genetic engineering.

2. A food purchased by a retailer if the retailer obtains a statement, made or subscribed under oath or affirmation or in compliance with s. 887.015, from the person from whom the retailer purchases the food that the food was not knowingly produced, in whole or in part, through genetic engineering and has been segregated from and not knowingly commingled with food that may have been produced through genetic engineering.

3. A raw agricultural commodity grown by the retailer if the retailer did not knowingly produce the raw agricultural commodity through genetic engineering.

****NOTE: ~~This provision is not in the Vermont bill. I included it because a person~~ may sell at retail (at a farm stand, for example) food that the retailer did not purchase from someone else but instead grew. There would not be anyone from whom the retailer could obtain a sworn statement as required under subd. 2. This provision is intended to address the situation in which the retailer inadvertently sold a genetically engineered food, for example, if a crop was affected by cross–pollination with a genetically engineered plant. Please let me know if you do not want this provision.

4. A processed food that would be subject to sub. (2) solely because it is produced using one or more processing aids or enzymes produced through genetic engineering.

5. An alcohol beverage, as defined in s. 125.02 (1).

6. Until July 1, 2020, a processed food that contains one or more, but fewer than 11, ingredients produced through genetic engineering, if the weight of each

1 individual ingredient is not more than 0.45 percent of the weight of the processed
2 food.

3 7. A food that an independent organization determines, using a sampling and
4 testing procedure that complies with the rules promulgated under par. (c), was not
5 produced, in whole or in part, through genetic engineering and has not been
6 commingled with food produced through genetic engineering.

7 8. A food that is labeled as "organic" in accordance with the federal Organic
8 Food Products Act, 7 USC 6501 to 6523.

9 9. A food that is not packaged for retail sale if one of the following applies:

10 a. The food is a processed food prepared and intended for immediate
11 consumption.

12 b. The food is sold in a restaurant or other operation that is primarily engaged
13 in the sale of food that is prepared and intended for immediate human consumption.

****NOTE: I think that this is intended to cover food prepared and sold for "takeout" from a grocery store, as well as a restaurant, and to cover food that is sold by a restaurant that one might not eat right after buying it, like loaves of bread or whole cakes. The use of "immediate" seems potentially problematic, but I haven't thought of a different way to draft this to cover what I think it is intended to cover.

14 10. A medical food, as defined in 20 USC 360ee (b) (3).

15 (b) In providing a statement under par. (a) 2., a person who sells food to a
16 retailer may rely on a statement, made or subscribed under oath or affirmation or
17 in compliance with s. 887.015, from the person's supplier that the food was not
18 knowingly produced, in whole or in part, through genetic engineering and has been
19 segregated from and not knowingly commingled with food that may have been
20 produced through genetic engineering.

21 (c) The department shall promulgate rules specifying requirements for
22 sampling and testing procedures for the purposes of par. (a) 7. In the rules, the

department shall require the use of a statistically valid sampling plan that is consistent with the recommendations of internationally recognized entities, such as the International Organization for Standardization or the Grain and Feed Trade Association. In the rules, the department shall also require all of the following:

1. The use of a testing procedure that is consistent with the most recent version of the Codex Alimentarius Commission publication 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.

2. The use of a testing procedure that does not rely on the testing of processed foods in which no deoxyribonucleic acid is detectable.

SECTION 2. Effective date. Insert 6-12

(1) This act takes effect on July 1, 2015.

(END)

1 **Analysis insert**

Genetic engineering

This bill imposes requirements relating to the labeling of food that is produced through genetic engineering. The bill defines "genetic engineering" as the alteration of the genetic material of an organism using specified techniques, including recombinant deoxyribonucleic acid (DNA) techniques, techniques that involve the introduction into an organism of hereditary materials prepared outside of the organism, such as through microinjection, and techniques that involve the fusion of cells in a way that does not occur naturally. ✓

The requirements in the bill take effect one year after the bill is enacted. ✓

Labeling

The bill generally prohibits a retailer, such as a grocer, from selling a packaged food produced through genetic engineering unless the package is clearly labeled to indicate that the food is produced through genetic engineering. The bill generally prohibits a retailer from selling an unpackaged food produced through genetic engineering unless the retailer places on the shelf or bin where the food is sold a sign indicating that the food is produced through genetic engineering.

The bill also generally prohibits a retailer from selling a food produced through genetic engineering that is labeled as "natural."

Exemptions

The bill contains a number of exemptions to the labeling requirements, including those described below.

Under the bill, the labeling requirements do not apply to food that is produced from an animal that was not genetically engineered, regardless of whether the animal was fed or injected with a food or drug produced through genetic engineering. The labeling requirements do not apply to unpackaged food that is sold in a restaurant or is prepared and sold for takeout, for example, in a grocery store. The bill also exempts from the labeling requirements, until July 1, ~~2010~~ 2020, processed foods that contain ten or fewer ingredients produced through genetic engineering if the weight of each is not more than 0.45 percent of the weight of the food. ✓

The bill allows a retailer to rely on a sworn statement from a supplier that a food was not knowingly produced through genetic engineering or on a determination by an independent organization, based on sampling and testing, that a food was not produced through genetic engineering. ✓ The bill requires the Department of Agriculture, Trade and Consumer Protection to promulgate rules specifying requirements for sampling and testing by independent organizations. ✓

For further information see the ***state*** fiscal estimate, which will be printed as an appendix to this bill.

2 **Insert 3–20**

stet

1 (d) Sell a processed food produced, in whole or in part, through genetic
2 engineering that is not packaged unless the retailer places a clear and conspicuous
3 sign that states "Partially produced through genetic engineering" or "May be
4 partially produced through genetic engineering" on the shelf or bin where the
5 processed food is displayed.

6 **Insert 6–12**

7 no ff the first day of the 13th month beginning after publication

Rose, Stefanie

From: Rep.Taylor
Sent: Friday, February 28, 2014 3:29 PM
To: LRB.Legal
Subject: Draft Review: LRB -2872/1 Topic: Labeling of genetically modified foods

Please Jacket LRB -2872/1 for the ASSEMBLY.