

HB 1674-FN - AS INTRODUCED

2016 SESSION

16-2660

08/05

HOUSE BILL 1674-FN

AN ACT requiring the labeling of genetically engineered foods.

SPONSORS: Rep. Abramson, Rock. 20; Rep. McConnell, Ches. 12

COMMITTEE: Environment and Agriculture

ANALYSIS

This bill requires the labeling of genetically engineered foods and agricultural commodities.

Explanation: Matter added to current law appears in bold italics.

Matter removed from current law appears [in brackets and struckthrough.]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

16-2660

08/05

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Sixteen

AN ACT requiring the labeling of genetically engineered foods.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Findings, Declarations, and Intent.

I. The general court finds that:

(a) New Hampshire consumers have the right to know whether the foods they purchase were produced with genetic engineering so they can make informed purchasing decisions. Labeling is necessary to ensure that New Hampshire consumers are fully and reliably informed about the products they purchase and consume. Labels provide informed consent and prevent consumer deception. Polls consistently show that the vast majority of the public wants to know if its food was produced with genetic engineering, for a variety of reasons.

- (b) The genetic engineering of plants and animals often causes unintended consequences. Manipulating genes via genetic engineering and inserting them into organisms is an imprecise process. The results are not always predictable or controllable. Mixing plant, animal, bacterial, 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) United States government scientists have stated that the artificial insertion of genetic material into plants via genetic engineering can cause a variety of significant problems with plant foods. Such genetic engineering may increase the levels of known toxicants or allergens in foods and create new toxicants or allergens with consequent health concerns.

II. It is the intent of the general court that this act:

- (a) Assist consumers who are concerned about the potential effects of genetic engineering on their health, beliefs, and the environment to make informed purchasing decisions.
- (b) Reduce and prevent consumer confusion and inadvertent deception and promote the disclosure of factual information on food labels.
- (c) Create additional market opportunities for New Hampshire producers who are not certified organic producers and whose products are not produced using genetic engineering.
- (d) Ensure that consumers are provided with data from which they can make informed decisions for personal, health, environmental, religious, cultural, or ethical reasons.

2 New Subdivision; Genetically Engineered Foods. Amend RSA 146 by inserting after section 21 the following new subdivision:

Genetically Engineered Foods

146:22 Definitions. In this subdivision:

- I. "Commissioner" means the commissioner of the department of health and human services.
- II. "Enzyme" means a protein that catalyzes chemical reactions of other substances without itself being destroyed or altered upon completion of the reactions.
- III. "Food" means "food" as defined in RSA 146:2, I.
- IV. "Manufacturer" means the person or business that makes, processes, combines, or packages food ingredients into a finished food product.
- V. "Medical food" means food prescribed by a physician for treatment of a medical condition.
- VI. "Genetically engineered" or "genetic engineering" means a process whereby any food intended for human consumption is produced from an organism or organisms in which the genetics are materially altered through the application of:
- (a) In vitro nucleic acid techniques, which include, but are not limited to, recombinant deoxyribonucleic acid (DNA), the direct injection of nucleic acid into cells or organelles, encapsulation, gene deletion and doubling; or
- (b) Methods of fusing cells beyond the taxonomic family that overcome natural physiological reproductive or recombinant barriers, and that are not techniques used in traditional breeding and selection such as conjugation, transduction, and hybridization.
- VII. "In vitro nucleic acid techniques" means techniques that include, but are not limited to, recombinant DNA 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 biolistics, microinjection, macro-injection, chemoporation, electroporation, microencapsulation, and liposome fusion.
- VIII. "Processed food" means any food other than a raw agricultural commodity and includes any food produced from a raw agricultural commodity that was processed through canning, smoking, pressing, cooking, freezing, dehydration, fermentation, or milling.

IX. "Processing aid" means:

- (a) A substance that is added to a food during processing of the food but removed from the food before it is packaged in its final form;
- (b) A substance that is added to a food during processing, is converted into constituents normally present in the food, and that does not significantly increase the amount of the constituents found in the food; or
- (c) A substance that is added to a food for its technical or functional effects in processing but is present in the finished food at insignificant levels and that does not have any technical or functional effect in that finished food.

X. "Raw agricultural commodity" means any plant, fungi, or fish in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing, grown or produced for human food use purposes.

XI. "Retailer" means an establishment engaged in the business of selling any perishable agricultural commodity or packaged food via a storefront.

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

XIII. "Supplier" means a person or business that supplies raw agricultural products to retailers.

146:23 Label Required.

I. Any food offered for retail sale that is genetically engineered shall be accompanied by a conspicuous disclosure that states "Produced with Genetic Engineering" or "Partially Produced with Genetic Engineering."

(a) In the case of a raw agricultural commodity, the manufacturer shall include, clearly and conspicuously, the words "Genetically Engineered" on the label on the front of the package of such commodity or, in the case of any such commodity that is not separately packaged or labeled, the retailer shall include a clear and conspicuous label on the retail store shelf or bin in which such commodity is displayed for sale;

(b) In the case of processed food containing some products of genetic engineering, the manufacturer shall label the product, in clear and conspicuous language, on the front or back of the package of such food, with the words "Produced with Genetic Engineering" or "Partially Produced with Genetic Engineering;"

(c) This law does not require either the listing or identification of any ingredient or ingredients that were genetically engineered or that the term "genetically engineered" be placed immediately preceding any common name or primary product descriptor of a food.

II. Any food that is genetically engineered that does not display the disclosure required under paragraph I is misbranded for the purposes this subdivision except that:

(a) No food is misbranded if the food is produced by a person who:

(1) Grows, raises, or otherwise produces that food without knowledge that the food was created from other seed or other food that was genetically engineered; and

(2) Obtains a sworn statement from the person from whom the food was obtained that the food was not knowingly genetically engineered and was segregated from and not knowingly commingled with a food component that may have been genetically engineered.

(b) No processed food is misbranded if it would be subject to this subdivision solely because one or more processing aids or enzymes were produced or derived with genetic engineering.

(c) No food product derived from an animal is misbranded if the animal was not genetically engineered but was fed genetically engineered feed.

(d) No packaged processed food is misbranded if the total weight of the processed food that was genetically engineered is less than 0.9 percent of the total weight of the processed food.

III. No food that is subject to disclosure under paragraph I may be described on the label or by similar identification as “natural.”

146:24 Third-Party Protection.

I. No distributor or retailer that sells or advertises food that is genetically engineered that fails to make the disclosure required under RSA 146:24 is subject to liability in any civil action to enforce this subdivision if the distributor or retailer relied on the affidavit provided by the producer or grower under RSA 146:26.

II. The retailer shall label, at the point of purchase, any raw agricultural commodity that has been produced using genetic engineering. Suppliers shall label the container used for packaging, holding and/or transporting raw genetically engineered agricultural commodities that are delivered directly to New Hampshire retailers.

III. No retailer shall be penalized or otherwise held liable for the failure to label pursuant to this section unless:

(a) Such retailer is the producer or the manufacturer of the genetically engineered food and sells the genetically engineered food under a brand it owns; or

(b) Such retailer’s failure to label was knowing and willful.

IV. In any action in which it is alleged that a retailer has violated the provisions of this subdivision, it shall be a defense that such retailer reasonably relied on:

(a) Any disclosure concerning genetically engineered foods contained in the bill of sale or invoice provided by the wholesaler or distributor; or

(b) The lack of any such disclosure.

V. Eating establishments are exempt from the disclosure requirements of this subdivision.

VI. Alcoholic beverages and medical food are exempt from the disclosure requirement of this subdivision.

VII. No action may be brought against any farmer for any violation of any provision of this subdivision unless such farmer is also a retailer or manufacturer, but any farmer submitting a false sworn statement under this subdivision shall be subject to the general laws of the state pertaining to perjury.

146:25 Affidavit. The commissioner shall develop and make available an affidavit form that may be provided by a producer or grower of food to distributors and retailers and that may be included in shipments of food within the state certifying that the food being sold or shipped is not subject to the disclosure requirements of this subdivision.

146:26 Private Right of Action Not Permitted. Nothing in this subdivision shall create a private right of action for the enforcement of this subdivision.

146:27 Penalties; Enforcement.

I. Any person who violates the requirements of this subdivision shall be liable for a civil penalty of not more than \$1,000 per day, per product. Calculation of the civil penalty shall not be made or multiplied by the number of individual packages of the same product displayed or offered for retail sale. Civil penalties assessed under this section shall accrue and be assessed per each uniquely named, designated, or marketed product.

II. The attorney general shall make rules under RSA 541-A relative to enforcement of this subdivision and conduct civil investigations, enter into assurances of discontinuance, and bring civil actions as provided under this subdivision.

146:28 Severability. If any provision of this subdivision or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the subdivision which can be given effect without the invalid provisions or applications, and to this end the provisions of this subdivision are severable.

3 Determination of Effective Date. This act shall take effect one year from the date the commissioner of health and human services certifies to the secretary of state and the director of legislative services that the Vermont bill requiring labeling of genetically modified foods, Act 120, has taken effect.

4 Effective Date.

I. Section 2 of this act shall take effect as provided in section 3 of this act.

II. The remainder of this act shall take effect upon its passage.

LBAO

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12/23/15

HB 1674-FN- FISCAL NOTE

AN ACT requiring the labeling of genetically engineered foods.

FISCAL IMPACT:

The Department of Health and Human Services states this bill, as introduced, may increase state revenue and state and local expenditures by an indeterminable amount in FY 2017 and each year thereafter. There will be no impact on county and local revenue or county expenditures.

METHODOLOGY:

The Department of Health and Human Services states this bill would require the labeling of genetically engineered foods and agricultural commodities. The bill defines genetically engineered foods and requires genetically engineered food offered for retail sale to be labeled as “Produced with Genetic Engineering” or “Partially Produced with Genetic Engineering.” The Department would be required to develop and make available an affidavit form which may be provided as a sworn statement by a provider or grower of food to distributors and retailers and may be included with shipments of food in order to certify the food is not subject to the disclosure requirements. The legislation requires the Attorney General to make rules under RSA 541-A relative to enforcement and conduct civil investigations. The Department makes the following assumptions concerning the bill:

- The Department's Food Protection Section would be responsible for regulation and enforcement for foods produced in New Hampshire as well as for inter-state commerce.
- The Food Protection Section does not have available staff or staff trained in the science of genetically engineered food.
- If responsible for enforcement, the Department assumes it would need an additional full-time inspector and a part-time paralegal. The additional staff would be responsible for responding to complaints and issues related to genetically modified foods, performing

random sampling of products, and working with a Department attorney on enforcement issues.

- Current food protection staff consists of 7.5 employees that inspect 1,500 licensed retail food establishments statewide except for those in the 16 cities and towns that are self-inspecting. This number does not include restaurants which are exempt from the bill.
- Current staff is able to provide inspections at one-third of the frequency recommended by the Food and Drug Administration.
- Current inspectors would add genetic engineering label checks to their inspections, but the Department does not know how the inspectors would verify labels or sworn statements related to genetic engineering were valid. The Department assumes this duty would add one-half hour to each inspection and further reduce the frequency of all inspections.
- There may a fiscal impact on the 16 cities and towns that perform their own inspections of food establishments if they are required to provide regulation and enforcement their city or town.

Based on these assumptions, the Department estimates the cost of the additional staff would be as follows:

	FY 2017	FY 2018	FY 2019	FY 2020
Salaries Inspector and Part-time				
Paralegal	\$74,682	\$79,401	\$82,895	\$86,401
Benefits	\$28,151	\$30,127	\$32,013	\$34,008
Operating Costs Including: office space, supplies, phone, postage, equipment, and in-state travel	\$34,111	\$29,286	\$29,286	\$29,286
Total for Additional Staff:	\$136,944	\$138,814	\$144,194	\$149,695

The Department is not able to project how much revenue would be collected from the \$1,000 per day penalty. In addition, the Department states there could be costs for modification of the food protection database, but these are not known.

The Department of Agriculture, Markets and Foods states this bill will have no fiscal impact on the Department since the Department is not tasked with implementing any provisions of the bill.

This bill does not contain authorization or an appropriation for new positions.