

**EXHIBIT 5**

**EXCERPTS**

Transcript of Hearing (Mark-Up) Before the Senate Committee on Judiciary  
April 3, 2014, CD No. 14-93

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

S. Jud 14-93

Robbins, Russell, Englert, Orseck, Untereiner & Sauber LLP

1 Senator Dick Sears: There is first, I had a meeting last Friday  
2 morning with the Attorney General to go over some of the changes  
3 that we're contemplating to the Bill, and you have a letter  
4 dated April 1 from Attorney General Sorrel. I won't bother  
5 reading it. I think it speaks for itself. He intends to, if  
6 there is a suit, to vigorously defend the State and supports  
7 some of the changes we've made here. Some of them were his  
8 suggestions, so we support his [IND 00:00:44]. But I think it's  
9 an excellent letter, and it speaks for itself. You have that  
10 and most members of the public should have that copy. If you  
11 don't, Penny can make more copies of the letter. You also have  
12 draft 1.3 annotated version sent to this hearing committee  
13 amendment and, Mike, why don't you go over the annotated  
14 version? I think it's easier to follow--for people to follow--  
15 Michael O'Grady: Okay.

16 Senator Dick Sears: --than just the amendments.

17 Michael O'Grady: Sure.

18 Senator Dick Sears: That's in your 433 version.

19 Michael O'Grady: Okay.

20 Senator Dick Sears: So we're going over the 538 PM Version on  
21 4-2.

22 Michael O'Grady: So this is Mike O'Grady with Legislative  
23 Council. I'm getting feedback off this. Excuse me. And the  
24 amendment before you partly includes some of the technical  
25 changes that were suggested by interested parties and also

1 includes a new effective date provision and a way to fund the  
2 implementation and administration of the requirements by the  
3 Attorney General. So should I step through just the highlighted  
4 changes?

5 Senator Dick Sears: Yeah well I think so, yes.

6 Michael O'Grady: Okay on page--

7 Senator Dick Sears: Unless Committee Members have questions?

8 Senator Tim Ashe: I think we just focus on the changes.

9 Senator Dick Sears: Yes. Committee Members have questions about  
10 a particular section that's been in there. That's fine.

11 Michael O'Grady: Sure. On Page 1, Line 19, in the findings  
12 regarding the FDA authority to require labeling of food  
13 products, there was a suggested change to strike the word  
14 "justify" and put in "require" such labeling and I think that is  
15 more technically and legally correct. And so that change was  
16 made. Should I move on?

17 Senator Dick Sears: Yep.

18 Michael O'Grady: On the next page, Page 2, this is a change  
19 again to the findings and again regarding FDA authority or  
20 guidance specifically and it's a change to accurately reflect  
21 what the 1992 draft guidance addressed. It didn't necessarily  
22 address the need for the FDA to regular labeling. It was more a  
23 broad guidance to industry regarding food produced with  
24 bioengineering. And so I think that striking the phrase "the  
25 need for the FDA to regulate" is a technical change but it also

1 is a more accurate change. Moving down on Page 2, Line 6,  
2 there's just striking an extraneous use of the word "as". Then  
3 you can move forward significantly out of the findings to Page 6  
4 to the "purpose" section in Section 2. The purpose section in  
5 the Senate Committee on Agriculture proposal of the amendment  
6 was struck in its entirety but really the operative change is on  
7 Lines 18 to 20 and it's the phrase "by which if they choose,  
8 persons may avoid potential health risks of food produced from  
9 genetic engineering". And it was suggested as a change to more  
10 accurately reflect the findings and the purpose or the State  
11 interest involve the providing consumers with info that allows  
12 them to avoid potential health effects of the food that they  
13 purchase. And so it's really a policy statement or a purpose  
14 and I do think to an extent it reflects what you're trying to do  
15 with the Bill.

16 Female 1: I have a questions, Bill.

17 Senator Dick Sears: Yep.

18 Female 1: So when it says regarding potential--

19 Senator Dick Sears: You may want to speak into the microphone.

20 Female 1: When it says "regarding the potential health effects  
21 of the food they purchase" that could also be read as to  
22 positive effects or negative effects. Is that what was the  
23 intention?

24 Michael O'Grady: Yeah. So I mean I do think that it's  
25 regarding the health effects in general, depending on your

1 position on the food, the technology, I suppose. Should I move  
2 on?

3 Senator Dick Sears: Yes.

4 Michael O'Grady: On Page 7 you'll see that the subdivision  
5 three and four in the "purpose" section of the Senate Committee  
6 on Agriculture Amendment were struck. But what's really being  
7 done there is combining them into one new subdivision which  
8 really is how this subdivision came out of the House and the  
9 Senate Committee on Ag felt that it needed to be broke up. And  
10 the recommendation is that it really should be combined again  
11 because it's about reducing consumer confusion and deception by  
12 disclosure of factual information. They really are conjoined.  
13 Really on is dependent on the other, and it's really going back  
14 to the original purpose or the original language from the House  
15 passed Bill. Should I move on?

16 Senator Dick Sears: What's the importance of the "purpose"  
17 section?

18 Michael O'Grady: Well remember in this instance with the  
19 possible litigation and the litigation regarding what the State  
20 interest is, there is the specific statutory statement of what  
21 that State interest is. And one of which is prevention of  
22 consumer deception. One specific relationship of that is the  
23 prohibition on the use of the word "natural" for food produced  
24 from genetic engineering because arguably people do not think of  
25 food produced from genetic engineering as natural. So labeling

1 it as natural arguably is misleading and providing the factual  
2 statement prevents that consumer deception.

3 Female 1: So, [PH] Dick, on remark.

4 Senator Dick Sears: Yes.

5 Female 1: So you had spoken before about the freedom of speech  
6 issue. I'm thinking of West Minster Crackers which has been in  
7 business since like 1828 or something. I don't know what their  
8 package looked like then. But on their packaging now, the  
9 crackers that you get with soup, it does say natural and then in  
10 other place it says naturally. So they're going to be forbidden  
11 to use those words that they've currently used for a very long  
12 time. Is that an issue of freedom of speech?

13 Michael O'Grady: First of all, I don't know if they will be  
14 prohibited because I don't know if they use--if their food is  
15 produced with genetic engineering or not.

16 Female 1: I believe it is.

17 Michael O'Grady: Well assuming that it is, they would be  
18 prohibited from using that term "natural" and then you're into  
19 the first amendment analysis and because it is a restraint on  
20 speech instead of mandated speech, you're into the central  
21 Hudson test which is the substantial State interest directly  
22 related to the regulation. And the concept here is that the  
23 State interest as prevention of consumer deception and providing  
24 the [IND 00:09:16] the use of the natural unless it is--if it is  
25 produced by genetic engineering, you can argue that that is

1 directly related State interest.

2 Female 1: Okay so you're confident about that.

3 Michael O'Grady: I think that there is precedent for that to  
4 support that argument. I'm not saying that it won't be argued.  
5 It will be argued.

6 Senator Dick Sears: So, Betty, maybe Mike if you could talk a  
7 little more into the microphone?

8 Michael O'Grady: Sure.

9 Senator Joe Benning: Trying desperately to minimize the  
10 potential for litigation. And I'm looking at these two  
11 provisions that are both in the purpose section and it seems to  
12 me it's like waving a red flag in front of a boat. Why don't we  
13 just say under public health and food safety establish a system  
14 by which persons may make informed decisions regarding the food  
15 they purchase and consume, period? And then on the next  
16 Subsection 3, would be reduce and prevent consumers confusion  
17 and deception by promoting the disclosure of factual information  
18 on food labels to allow consumers to make informed decisions.  
19 To me that accomplishes the purpose without throwing that red  
20 flag out there that invites litigation. I don't know if this is  
21 the proper time--

22 Senator Dick Sears: No better time. My hope is that we take a  
23 break at 10 and Mike can come back with a cleaner version.

24 Michael O'Grady: Well on the first statement and the purpose on  
25 Sub 1, that was the original language that established the



1 system by which a person may make an informed decision regarding  
2 potential health effects to the food they purchase and consume.

3

4 Senator Joe Benning: I want to avoid "the potential health  
5 effects" because it can be argued in both directions and that,  
6 to me, invites litigation. So if you eliminate that and simply  
7 say your purpose is to allow people to make informed decisions  
8 about the foods they purchase and consume and leave it at that.

9 Michael O'Grady: Well remember that there's that decision the  
10 IDFA versus mastoid case where the court said that mere consumer  
11 curiosity is not sufficient as a State interest. That you need  
12 to go beyond that and you need to show an interest beyond just  
13 the desire to know and what the findings relate to and what this  
14 purpose section is supposed to reflect is that the informed  
15 decision making is about that consumer's ability to avoid any  
16 potential health effects. So I think if you remove that  
17 reference to the "potential health effects", I don't think you  
18 remove a red flag. I think you might actually create a new red  
19 flag.

20 Senator Joe Benning: Okay.

21 Senator Dick Sears: Do you want to have an alternative  
22 amendment?

23 Senator Joe Benning: I'm just thinking through what Michael was  
24 just saying. I'll think some more about that.

25 Senator Dick Sears: Okay. If you do, what we would do is, what

1 I would plan to do is write--is have Michael draft an  
2 alternative amendment that we could look at it at 10:30.

3 Michael O'Grady: Okay. And on Sub 3 I think--

4 Senator Dick Sears: Assuming he gets a half an hour to do that.

5 Michael O'Grady: On Sub 3 and 4 I do think that--

6 Senator Dick Sears: I think combining them back is a good idea.

7 Michael O'Grady: Because it is stated as going back to relating  
8 to the natural pervadition and the fact that the disclosure  
9 about factual information helps prevent consumer deception or  
10 misleading speech. And so again I think they are tied together.

11 I didn't quite follow you recommended change there.

12 Senator Joe Benning: Well I looked at the two of them in  
13 combination with that particular section and thought what's the  
14 best way to minimize potential litigation?

15 Senator Dick Sears: Why don't you think about it and we'll go  
16 back over.

17 Senator Joe Benning: Okay.

18 Senator Dick Sears: Why don't we get to the definitions if  
19 there's any--

20 Michael O'Grady: Sure.

21 Senator Dick Sears: I think on Page 18--

22 Michael O'Grady: Yeah. There--

23 Senator Dick Sears: Food.

24 Michael O'Grady: Page 8 and there was a recommendation that a  
25 definition of food be added and it's based on Title 18, Section

1 40-51 which relates to the misbranding of food which is where  
2 some of the other States that have proposed legislation or not  
3 the legislation regarding food produced with genetic engineering  
4 have included in their States misbranding laws they put these  
5 provisions. And it's a little intuitive. Food means articles  
6 intended for human consumption including drinks, chewing gum and  
7 articles used for components of any such article. That probably  
8 should say--

9 Senator Dick Sears: I was just going to strike the word  
10 "intended for human consumption".

11 Michael O'Grady: Right.

12 Senator Dick Sears: Because we've already defined foods.

13 Michael O'Grady: Right, as intended for human consumption so  
14 you don't need it in the definition of processed food or in the  
15 definition of raw agricultural commodities duplicative at that  
16 point.

17 Senator Joe Benning: It's not exclusive though. So is food  
18 medication?

19 Michael O'Grady: When you--intended for human consumption.

20 Hmm. You could exclude medication. There is in the exemptions  
21 medical food is exempt but medication itself is not exempt.

22 Senator Joe Benning: Chewing tobacco.

23 Female 1: Throat lozenges. Well do we really consume chewing  
24 gum? We generally spit it out.

25 Senator Dick Sears: Well once in a while. You want to look at

1 that?

2 Michael O'Grady: I can look at that and I think it comes back  
3 to what--it comes back to what is food. In Connecticut just  
4 define food as food intended for human consumption. It says  
5 food is food intended for human consumption. If you look at  
6 other definitions of food in our statutes, for example, in the  
7 regulation of food establishments, it defines food as all  
8 articles used for food, drink, confectionary or condiment by man  
9 whether simple mixed or compound and all substances and  
10 ingredients thereof. I think if you--

11 Senator Joe Benning: That appears where at that? That  
12 definition you just described?

13 Michael O'Grady: Pardon me?

14 Senator Joe Benning: That definition you just articulated is  
15 where?

16 Michael O'Grady: It's in Title 18 of the Vermont statute.

17 Senator Joe Benning: Why would you [IND 00:16:49] to do--

18 Michael O'Grady: There is another definition of food in Title 18  
19 regarding the misbranding of food which is the definition in  
20 front of you and the proposed amendment is based on that  
21 definition. What I'm saying is that there are different ways  
22 and sometimes it comes back to just defining food as food.

23 Senator Dick Sears: Did this recommendation come from either  
24 the Vermont Law School or the Attorney General?

25 Michael O'Grady: The Vermont Law School.

1 Senator Dick Sears: And, Bridgette, do you agree with that?

2 Bridget Asay, Assistant Attorney General: I think it's helpful,  
3 Senator, to clarify. Mike said he was clarifying that it's  
4 human food. That's the legislatures choice clarifying that is  
5 very helpful. I would be more comfortable I think with the  
6 Connecticut definition that food is reverentially food but  
7 intended for human consumption.

8 Senator Tim Ashe: But we have two Vermont definitions that were  
9 just cited and we've chosen one but not the other. Is there a  
10 reason why other than you just had to pick on?

11 Michael O'Grady: The one reason why is that the one we picked is  
12 in the misbranding of food section which is generally where in  
13 these bills and legislation in other states this type of  
14 legislation has been proposed to be included. For instance,  
15 this Bill--

16 Senator Tim Ashe: What does that really matter in this  
17 definition for this section?

18 Michael O'Grady: I agree. I don't think it's necessary that  
19 you can tailor the definition as you want.

20 Senator Dick Sears: I think as a gum chewer I'm fine with that.  
21 I'm sure if I can buy all natural somebody will produce all  
22 natural non-GMO gum someday.

23 Senator Tim Ashe: It's out there because using the term  
24 including and then only having a couple of these cited is not  
25 only an abnormality but--

1 Senator Dick Sears: May we look at Connecticut's version?

2 Michael O'Grady: Well to address Senator Ash's point,  
3 Legislative Council has inserted into the statutory  
4 interpretation section of Title 1 the fact that including means  
5 including but not limited to.

6 Senator Tim Ashe: Right so therefore this adds some value.

7 Michael O'Grady: Right.

8 Senator Dick Sears: But just say including but not limited to.

9 Michael O'Grady: So for instance, in Connecticut the definition  
10 of food means articles used for food or drink for humans. It  
11 then goes on to say "or other animals" but I don't think that  
12 that is your intent. And then it says "chewing gum, infant  
13 formula and articles used for components of any such articles".

14 Senator Dick Sears: this is better.

15 Michael O'Grady: Pardon me?

16 Senator Tim Ashe: Substance?

17 [IND 00:19:39]

18 Michael O'Grady: For--

19 Senator Joe Benning: Articles intended for human--

20 Michael O'Grady: No, sustenance instead of. So that would  
21 allow for the interpretation that it's not medicine.

22 [IND 00:19:56]

23 Senator Dick Sears: Well I think it is later.

24 Senator Tim Ashe: That's another issue. That's chewing gum  
25 plus sustenance?

1 Female 1: No.

2 Michael O'Grady: Right but you're saying articles used for food  
3 or drink for human sustenance, comma, chewing gum or you could  
4 say what's in the establishment, confectionary or condiment.

5 Senator Tim Ashe: That will work. Really demeaning the word  
6 sustenance.

7 Michael O'Grady: No, you're distinguishing it. You're  
8 distinguishing chewing gum from something that's intended for  
9 human sustenance.

10 Senator Dick Sears: We'll come back to this issue and greater  
11 minds will prevail.

12 Michael O'Grady: Okay.

13 Female 1: Did you get the difference between chewing gum and  
14 chewing tobacco?

15 Senator Tim Ashe: There is no difference.

16 Senator Dick Sears: Tobacco is already labeled.

17 Michael O'Grady: Right and.

18 Senator Dick Sears: I think it clearly is labeled. I don't  
19 have any with me but if anybody has tobacco could they show us  
20 the label? No it's clearly labeled as dangerous. I don't think  
21 we need to--

22 Senator Tim Ashe: Yeah but you might have a religious person  
23 who's chewing tobacco. The point is--

24 Senator Dick Sears: Well if they're.

25 Female 1: You know I'm okay with not chewing--

1 Senator Dick Sears: Tobacco is clearly labeled as a dangerous.

2 Female 1: I just can't get around the chewing gum.

3 Senator Dick Sears: We can take that out.

4 Female 1: Yeah but I'm okay.

5 Senator Dick Sears: This is clearly labeled as good clean

6 feeling. It's artificially flavored. Expiration date is 3

7 August '15. Eat, drink, chew, good, clean feeling.

8 Michael O'Grady: Should I move on?

9 Female 1: Yes.

10 Senator Dick Sears: Well if anybody wants to see the label of  
11 chewing gum.

12 Michael O'Grady: On Page 9, Line 15 in the definition of  
13 processed food, the phrase "intended for human consumption" can  
14 be struck. Similarly on Page 10 in the definition of raw  
15 agricultural commodity the phrase "intended for human  
16 consumption" is struck. That takes you to Section 30-43, the  
17 requirements for labeling of food produced with genetic  
18 engineering and the first change on Page 10, Line 17 and 18  
19 relates to the operative requirement for the retailer. And it  
20 used to be that it was food purchased by the retail after July 1  
21 shall be labeled and the suggestion was to change it to offered  
22 for sale. And that's more consistent with the general  
23 prohibitions or restrictions on retailers. It's usually on what  
24 they sell or offer for sale.

25 Senator Tim Ashe: Is that because the manner in which the



1 retailer once buys the product there then sell them in some  
2 cases prior to the purchase of the first instance? Meaning that  
3 the supplier provided--

4 Michael O'Grady: Yes.

5 Senator Tim Ashe: And there's a reimbursement that goes back--

6 Michael O'Grady: Right. There's possible--

7 Senator Tim Ashe: Yeah.

8 Michael O'Grady: Right, when does the conveyance occur?

9 Transaction occur? Should I move on?

10 Senator Dick Sears: Yes.

11 Michael O'Grady: Page 10 or actually it's Page 11, line 8 and  
12 9, the change in the label for the raw agricultural commodity,  
13 there was the suggestion that it be specific and clear about  
14 what that label should be. So the language with the clear and  
15 conspicuous words produce with genetic engineering was added for  
16 the raw agricultural commodity. That's my opinion of  
17 clarification. Should I move on?

18 Senator Dick Sears: Yes.

19 Michael O'Grady: Moving down on Page 11, line 13 to 14, for the  
20 processed food there is the Committee on Agriculture had the  
21 language that the food is--should be labeled with the words  
22 partially produced with genetic engineering or may be partially  
23 produced with genetic engineering. There was a recommendation  
24 for consistency with other states and for essentially clarity  
25 and for the general consumers certainty in knowing that the

1 words "may be partially" be struck. That does raise some  
2 questions about the potential burden on the producer, the  
3 manufacturer because there are those manufacturers, producers,  
4 etc, that may not have the ability to test all of their sources  
5 or their ingredients. And one to have language that says "may  
6 be partially produced" or have some conditional language because  
7 they just did not have the ability to test all of their sources.

8 So yes this language might be more clear for consumers. It  
9 might be consistent with what's in other states. But it may  
10 actually lead to an argument that it increases the burden on the  
11 producers to test all of their sources. So I think this is a  
12 policy decision of what--and that you need to weigh on how you  
13 want this process food to be labeled.

14 Senator Tim Ashe: It might also require them to say something  
15 that's not true.

16 Michael O'Grady: Right.

17 Senator Dick Sears: Yeah, Bridgette?

18 Bridget Asay, Assistant Attorney General: If I could just speak  
19 to this briefly, Senator. It is a policy decision certainly.  
20 From a legal perspective, the AG's office does have some  
21 concerns that we wanted to raise about dropping the option to  
22 say "may be partially produced" because it leaves a food  
23 producer with the binary choice. The label has to be accurate.  
24 It can't' require a label that's not accurate. So they have to  
25 be able to say with certainty and accuracy that, yes, the

1 product is produced or no it is not.

2 Senator Dick Sears: So you're in favor of what is rewritten  
3 here?

4 Bridget Asay, Assistant Attorney General: For defensibility  
5 purposes, for having "may be" as an option and in terms of  
6 consistency--

7 Senator Dick Sears: For having "may be"?

8 Bridget Asay, Assistant Attorney General: One of the options.  
9 So "may be partially produced" as a choice for the manufacturer  
10 as a legal issue I think is--

11 Senator Tim Ashe: But are you suggesting the language that  
12 existed which was partially produced or may be partially  
13 produced or are you suggesting we have partially produced, may  
14 be partially produced or produced?

15 Bridget Asay, Assistant Attorney General: I'm suggesting the  
16 latter. Three options that allow for consistency with the--

17 Senator Tim Ashe: I'm doing strike out. And the new language.

18 Senator Dick Sears: So that's your suggestion. My plan is to  
19 try to identify where the difficult or where the controversies  
20 are and come back to them. So that would be produced or may be  
21 produced.

22 Bridget Asay, Assistant Attorney General: Partially produced.

23 Senator Tim Ashe: Or partially.

24 Michael O'Grady: Partially.

25 Bridget Asay, Assistant Attorney General: May partially.

1 Senator Dick Sears: But if you listen to the testimony of Ben &  
2 Jerry's representative, I think he was fairly clear that they  
3 have decided to change one product, the Heath Bar Crunch to  
4 Toffee Crunch because they can't be guaranteed that the Heath  
5 Bar isn't partially produced. So that would be my argument for  
6 what is in front of us. But we can discuss that later on.

7 Michael O'Grady: Okay, should I move on?

8 Senator Dick Sears: Yes, please.

9 Michael O'Grady: Moving down on Page 11, line 16 through 18,  
10 there was some confusion about the language there for the  
11 labeling of the product. There was an argument that the  
12 language in the Committee on Ag amendment could be construed as  
13 to not to require labeling of the package because it says "shall  
14 not label the product in signage or in advertising". So--

15 Senator Dick Sears: This was Jim Harris' concern regarding the  
16 blue dots from the RSV.

17 Michael O'Grady: So instead the changes made that shall not  
18 label the product on the package, in signage or in advertising  
19 as natural, naturally made, or naturally grown and I think that  
20 is clear that product, the signage, the advertising cannot use  
21 that terminology "as is produced with genetic engineering".

22 Moving on to Page 12, lines 12 and 13, you're now in the  
23 exemptions to the labeling requirements and the first is in the  
24 provision about food consistency entirely of or derived entirely  
25 from an animal which has not itself been produced with genetic

1 engineering. First thing I want to note here is that it would  
2 still apply to milk. Milk has not been set out as being subject  
3 to the labeling. The second thing I would want to note is on  
4 Page 12 and 13. There's that conditional clause "regardless of  
5 whether the animal has been fed or injected with any food or  
6 drug" but sometimes the product of slaughter, etc, might be  
7 injected with something other than a food or a drug. A saline  
8 solution is sometimes used for ground turkey. There are other  
9 things that might be injected. So to be clear that it has been  
10 fed or injected with any food, drug or other substance.

11 Senator Dick Sears: So it would still apply to dairy product?

12 Michael O'Grady: It still applies to dairy products, and it  
13 still applies to all forms of process meat, and I think that's  
14 important because the Federal Meat Inspection Act has a pretty  
15 clear preemption clause that provides that no state can adopt a  
16 labeling--

17 Senator Dick Sears: This provides the exemption for dairy.

18 Michael O'Grady: Yes.

19 Senator Dick Sears: We have to make a decision whether we want  
20 to do that or not.

21 Michael O'Grady: Later in the bill or in the proposed amendment  
22 you'll see a provision where there is a report back from the  
23 Attorney General in 2016 or 2015.

24 Senator Dick Sears: Well you're in a compromised position,  
25 Michael.

1 Senator Tim Ashe: Carolyn, can I ask a question about number  
2 two on the exemption list, and I'm just trying to understand the  
3 way this is written. Starting Line 14, "the raw agricultural  
4 commodity of processed food derived from that has been grown,  
5 raised or produced without the knowing or intentional use of  
6 food or seed produced". I just want to make sure that this  
7 isn't suggesting that, "Oh, well I didn't know that the corn  
8 that's in my processed food was used in GMO's when it was being  
9 raised or grown. Now I know but I'm about to put it in the  
10 final package. Am I exempt?"

11 Michael O'Grady: Well first there needs to be the affidavit,  
12 the sworn statement that the food that you qualify for this  
13 exemption only if the person otherwise responsible for complying  
14 provides a sworn statement that the raw ag commodity or  
15 processed food has not been knowingly or intentionally produced  
16 with genetic engineering. So that's how you qualify for this  
17 exemption. It's not been knowingly or intentionally produced  
18 with genetic engineering. I don't--I think that does address  
19 your issue because you're not able to parse out when it was  
20 grown when your sworn statement has to be about its production.

21 Senator Dick Sears: Let me go back to the exemption for dairy  
22 and I--Michael and I had a long conversation about this and  
23 later on you'll see the Attorney General's study of whether  
24 dairy should be exempted or not exempted and rather than hold up  
25 the bill on that question I still believe that it is

1 questionable on dairy. The labeling, the exemption for meat is  
2 clearly regarding what the Federal Government requires on  
3 labels. But dairy is still out there, and so rather than hold  
4 up the bill and argue about whether there should be a dairy  
5 exemption we put in study language as you'll see later on.

6 Michael O'Grady: Right. That there's a--

7 Senator Dick Sears: So if the Committee would rather not have a  
8 dairy exemption, it would remove that study and remove the  
9 exemption.

10 Female 2: Could I ask a question about that?

11 Senator Dick Sears: yes.

12 Female 2: Just while we're on this. The dairy exemption is for  
13 milk, right? It doesn't go to every product that's made from  
14 milk. I mean ice cream isn't exempt.

15 Michael O'Grady: Right. If you read that it's derived entirely  
16 from an animal.

17 Female 2: So the milk itself is because the cow didn't become  
18 engineered just because it engineered--

19 Senator Dick Sears: Unless the cow was genetically engineered.

20 Female 2: Well unless the cow was--when we get to that then I  
21 think we'll--

22 Senator Dick Sears: We'll have to rewrite the bill.

23 Female 2: We'll have to do some--we'll have to go way beyond  
24 rewriting the bill when we get to that point. But anyway,  
25 that's--it's derived only from--

1 Michael O'Grady: And there are arguments for and against  
2 including milk in the exemption. And I think that that is--I  
3 don't know if you want me to go into them but there are pros and  
4 cons for including milk.

5 Female 2: But so you've set up a study later on?

6 Michael O'Grady: A report. It's--

7 Female 2: I mean a report to come back. Okay. Alright.

8 Michael O'Grady: Should I move on?

9 Senator Dick Sears: Yes. We'll come back to the dairy at some  
10 point.

11 Michael O'Grady: Okay. Page 12, line 15, that's really a typo.

12 It should be "knowing or intentional" and not "knowing and  
13 intentional". That same change is made on Page 13, line 17.

14 Moving on, you can then--

15 Senator Dick Sears: Wow! Look at this.

16 Michael O'Grady: Skip to Page 16. This is changing the  
17 Attorney General rule making authority. And the Attorney  
18 General had rule making authority in the Committee on Ag  
19 proposal of amendment for implementation and to ensure that or  
20 at least allow them to add a disclaimer that the food and drug  
21 administration does not consider foods produced from GE to be  
22 materially different from other foods. So that the label that  
23 the AG can determine that the label is not misleading in any  
24 way. But there was also a recommendation that the rule making  
25 include authority for the AG to require a label that's



1 consistent with other states. So in case that there is an  
2 argument about differing labels being a burden on manufacturers  
3 that the AG can make the label in Vermont consistent with other  
4 States so there isn't an additional burden on a manufacturer to  
5 have multiple labels. So that's the language that's been added  
6 on Page 16, line 17 through 19 to give that authority. You have  
7 to not withstand the specific labeling requirements in the bill  
8 because remember we went through and said what the product needs  
9 to be labeled with. It says may be partially produced or  
10 produced with genetic engineering. So you have to not withstand  
11 that and give the AG the ability to adopt a different labeling  
12 standard consistent with other states and that's what that  
13 language on Page 16 does.

14 Senator Joe Benning: Does it give them the right to dictate  
15 font size and location of the packaging?

16 Michael O'Grady: It doesn't specifically reference font size  
17 but I do think that they could for consistency with other states  
18 specify what the font size could be or where it was to be  
19 located.

20 Senator Joe Benning: Jim, just my concern for longation.

21 Female 2: Well I think we did that with made in Vermont don't  
22 we? Say where it has to be and how--

23 Michael O'Grady: The Vermont oranges rule?

24 Female 2: Yes.

25 Michael O'Grady: I do think there are some requirements about

1 how the label is provided including which label you use and how  
2 it has to be placed. I do think--

3 Senator Tim Ashe: What--I'm not sure I understand what you're  
4 talking about.

5 Senator Joe Benning: Font size and--

6 Senator Tim Ashe: No I understand what you're asking but

7 Senator White, which Vermont--

8 Female 2: We have a Vermont origins labeling law I believe and  
9 people can't--

10 Senator Tim Ashe: That's an actual fixed--

11 Female 2: Label on--

12 Michael O'Grady: There's a Vermont origins rule regarding the  
13 use of the word Vermont or made in Vermont.

14 Senator Tim Ashe: Right. Does that describe to say made in  
15 Vermont you have to put in a certain manner or is it about what  
16 you can't do?

17 Michael O'Grady: It's what you can't do but there are also  
18 provisions from my recollection of the rule and I'd have to go  
19 back to look at it again about how it is labeled. For example  
20 where it is labeled. I can get the rule at the break and--

21 Senator Tim Ashe: I'd like to see it. You don't need to do it  
22 today. It's [IND 00:38:46] and that's another issue.

23 Michael O'Grady: Okay.

24 Female 2: It came out of this [IND 00:38:48] I think.

25 Senator Tim Ashe: Yeah well I'm sure. But--

1 Female 2: That's why--and that explains it.

2 Senator Tim Ashe: Why do we care if they put it in big font,  
3 small font, front, back, side? Who cares? The point is we  
4 don't want people saying it's made in Vermont or has its origins  
5 derived.

6 Senator Joe Benning: For this issue--

7 Senator Tim Ashe: This is different.

8 Senator Joe Benning: How and where to place it is it can bring  
9 more litigation.

10 Senator Tim Ashe: And I absolutely agree with what you're  
11 saying because we were requiring to put it in a skull and cross  
12 bones on the front I'd say that would be a problem.

13 Michael O'Grady: Right and that is the--I believe the concern  
14 that Senator Benning is raising and that is not provided in here  
15 and there's actual language in the bill that--about the  
16 construction--where is it?

17 Senator Tim Ashe: In the Bill that came over from the House.

18 Michael O'Grady: Right.

19 Senator Tim Ashe: I can remember the signers that did address  
20 this.

21 Michael O'Grady: There is.

22 Female 3: Would the AG's office have to come back to [IND  
23 00:39:41] anyway because it's adopting rules?

24 Michael O'Grady: Yes. They would.

25 Female 2: So it would have to come back to [IND 00:39:46].

1 Senator Dick Sears: That small group of unelected beurocrats.

2 Then it goes to the elected bureaucrats.

3 Michael O'Grady: On Page 12 it says this section and the  
4 requirements of this chapter shall not be construed to require  
5 the placement of the term genetically engineered immediately  
6 preceding any common name or primary product descriptor of a  
7 food and that's to avoid the argument that putting that in front  
8 of the food is somehow misleading.

9 Senator Dick Sears: Let's go into more controversial part.

10 Michael O'Grady: Sure. And actually I want to mention one other  
11 thing. IN the rule making on Page 16, lines 20 to 21 the  
12 original rule making had a provision about the effective date of  
13 those rules. So that was more about the to chewing them up with  
14 any contingency that may have been in the bill. You don't  
15 really need that provision about the rule going into effect on  
16 the effective date of the act because the rule is now going to  
17 be addressing potentially labeling and it might be addressing  
18 where the label is going to be to be consistent with other  
19 states. And so I think you want to give the Attorney General  
20 the ability to have that rule go into effect for the effective  
21 date of a labeling requirement to allow notice to manufacturers  
22 to have the requirement out there prior to the labeling, the  
23 prohibition on the offer for--so I think you can get rid of  
24 subsection B entirely. I don't think it's necessary. Generally  
25 the effective date for a rule is 30 days after [PH 00:41:36]

1 Elcar approval but it can also be specified in the rule itself  
2 and so what you would be doing is giving the Attorney General  
3 the discretion to specify the effective date of the rule.

4 Senator Dick Sears: So the Attorney General might want the  
5 effective date to be January 1 of 2016 rather than July so that  
6 people would be prepared to label.

7 Michael O'Grady: It's a possibility. There might be policy  
8 considerations or notice to producers or industry to allow them  
9 to--

10 Senator Dick Sears: New York passes a law. Then Connecticut's  
11 law goes into effect. You'd want to be consistent.

12 Michael O'Grady: So I would suggest striking B.

13 Senator Dick Sears: Okay.

14 Senator Tim Ashe: On Line 19, "consistent with labeling  
15 requirements in other states" they might not surfacing some  
16 arguments they were referring to similar to labeling  
17 requirements in other states raised two questions. One, should  
18 we be more clear about that? And two, would this language  
19 clearly indicate labeling requirements that are not yet in  
20 effect in other states. In some states you're having the  
21 limitation dates.

22 Senator Dick Sears: I wonder about the word "dates".

23 Senator Tim Ashe: Which is to say as of today there's no  
24 labeling requirement in the state.

25 Michael O'Grady: That's correct.

1 Senator Tim Ashe: Right?

2 Michael O'Grady: Right. Nothing is effective right--

3 Senator Tim Ashe: Law which might make it--

4 Michael O'Grady: Right but they have--right.

5 Senator Tim Ashe: So if you can think about how that might just  
6 be--

7 Michael O'Grady: Sure.

8 Senator Dick Sears: Well another thought would be on what about  
9 other nations? You have Multinational Corporation. I want to  
10 say that correctly. Multinational corporations who, for  
11 example, Coca-Cola may be providing this information in Finland  
12 and we probably want to be consistent what we do in Finland.

13 Senator Tim Ashe: So you could use the term "foreign  
14 jurisdictions" because that would mean other states or  
15 countries, correct?

16 Michael O'Grady: You could just use the term "jurisdictions".

17 Female 1: I like jurisdictions.

18 Senator Dick Sears: I think that that would make, what is it,  
19 60 other countries require the label, something like that? So  
20 if--then they would--why reinvent the wheel?

21 Senator Tim Ashe: Ben & Jerry's was where?

22 Senator Dick Sears: Monaco.

23 Senator Tim Ashe: Monaco.

24 Michael O'Grady: Should I move on?

25 Senator Dick Sears: Before Senator [IND 00:44:19] becomes a

1 lawyer I would.

2 Michael O'Grady: On Page 17 you'll see that the effective date  
3 provision from the Committee on Agriculture was struck and that  
4 there is going to be three new sections added. The first is the  
5 establishment of a special fund call the genetically engineered  
6 food labeling fund. Into that fund would be--actually the fund  
7 would be available to the Attorney General to pay costs or  
8 liabilities incurred in implementing and administering including  
9 the rule making the requirements of 9BSA Chapter 82A for the  
10 labeling of food produced with genetic engineering. So the  
11 money would go to them for whatever cost they incur in rule  
12 making, potentially also in litigation and implementation of the  
13 requirements. And when the monies exceed the funds or when the  
14 monies in the fund exceed the need for the Attorney General,  
15 those excessive funds could be available to the Secretary of  
16 Commerce and Community Development to the system manufacturers  
17 and retailers to meet applicable requirements of 9BSA82A. Then  
18 you go down to what the fund consists of and generally I'm going  
19 to talk about this generally and then we'll get into the  
20 specific language. JFO and the Department of Finance and  
21 Management do a fiscal estimate every year in the summer that  
22 goes to the Emergency Board and it's required by statute and in  
23 that fiscal estimate they estimate the amount of settlement  
24 recoveries and other revenue collected by the Attorney General  
25 each year in the performance of the Attorney General's dues. IN

1 addition there are some of those revenues that the Attorney  
2 General collects from settlements and recoveries that go into  
3 specific funds either by statute or generally in the  
4 appropriations bill. For example, the tobacco settlement funds,  
5 the Medicaid settlement funds, environmental recoveries. They  
6 all go into specified funds, and they're all accounted for in  
7 the Appropriations Budget. So what this language does says  
8 except for those monies that go into the statutorily specified  
9 funds--tobacco, Medicaid, environmental--those monies over and  
10 above the JFO and Department of Finance and Management estimates  
11 each year. So anything that the Attorney General recovers  
12 over--say the estimate is \$5 million. Anything that would be  
13 recovered over \$5 million and doesn't have a specified  
14 destination goes into this fund up to \$1.5 million.

15 Senator Dick Sears: Would you like to know how we came to 1.5?

16 Senator Tim Ashe: I don't [IND 00:47:27].

17 Senator Dick Sears: Well--

18 Female 1: Because that's what we were told it would cost to  
19 defend?

20 Senator Dick Sears: No. In my meeting on Tuesday--last Friday  
21 morning with the Attorney General we discussed the cost of  
22 establishing the rule, possible litigation. There's an estimate  
23 that if the state would lose it could cost 5 to 10 million but  
24 we both agreed that to set a fund with the anticipation of  
25 losing would be a wrong thing to do and also makes no basis



1 because we think this is defensible. So we tried to take a view  
2 of what would that amount be and I think we've seen estimates of  
3 about a million dollars to defend and so adding 500,000 for  
4 other activities that might go along with it, It provides  
5 assurance to me and I think the Attorney General that this would  
6 be an adequate amount to defend the State should we be sued.  
7 And a number of us--I don't know if everybody on the Committee  
8 has received emails or letters from people expressing the desire  
9 to donate and so I don't know why we would not allow people to  
10 donate to the fund if they so desire. Simply what it does--  
11 Michael O'Grady: Right. So this isn't a contingency fund.  
12 This isn't--

13 Senator Dick Sears: Doesn't trigger the bill or anything else.  
14 It just says that when the fund gets to 1.5 we stop putting  
15 money into it. That's all. It doesn't trigger the--I mean if  
16 the fund is at 700,000--so why 12016 the law still goes into  
17 effect.

18 Michael O'Grady: And the money coming from the Attorney  
19 General's recoveries is only in fiscal year '15 and fiscal year  
20 '16 the Attorney General has to come with their proposed budget  
21 and include any additional costs that would be necessary to meet  
22 the \$1.5 million threshold. So it doesn't affect the fiscal  
23 year '15 budget because you're only taking things that are in  
24 excess of the estimates. It's not a contingency clause. It  
25 provides for the estimated amount of funding necessary for

1 litigation and administration, other requirements and those are  
2 the general how this would work. It's been reviewed by JFO.

3 And so--

4 Senator Tim Ashe: So what if they disagree?

5 Senator Dick Sears: Who?

6 Senator Tim Ashe: JFO and [IND 00:50:17].

7 Michael O'Grady: Well they come up with an estimate and I can  
8 give you the--they do it in a collaborative way that is  
9 submitted to the Emergency Board and I can--

10 [IND 00:50:31]

11 Senator Dick Sears: NO but you.

12 Michael O'Grady: You could just strike the reference to--the AG  
13 wanted--the AG is not in the business of doing estimates and is  
14 not often aware of what the estimate is going to be so they  
15 wanted to be able to console--

16 Senator Tim Ashe: I got you. So does the Department of Finance  
17 and Management typically go into any part of the budget that is  
18 recommended by the other litigation cuts? Which is to say  
19 what's their expertise?

20 Michael O'Grady: It's not that they build into the budget at  
21 litigation costs. What they build into the budget is an  
22 estimate of what the Attorney General will recover in  
23 settlements.

24 Senator Dick Sears: It sounds like the Department of Financial  
25 Regulation. In certain places they come in with more money that

1 they goes into the general fund then they anticipate.

2 Senator Tim Ashe: I understand the intent. [IND 00:51:42].

3 Senator Dick Sears: Yes. Senator White?

4 Female 2: Well we're not going to--I understand you put  
5 this--the intent of this is also--and I think that--and I read  
6 in the letter from the AG's office that they are [IND 00:51:58].

7 I do think it does set somewhat of a danger precedent in that  
8 we would establish defense funds for different issues in the  
9 AG's office and I'm concerned about it.

10 Senator Dick Sears: I don't disagree except that we just voted  
11 on a fund and that's 237. I voted against the bill my full  
12 disclosure but it was a similar fund in that bill that allowed  
13 private donations.

14 Senator Tim Ashe: The Legal Defense Fund?

15 Senator Dick Sears: It's not a Legal Defense.

16 Michael O'Grady: Right. It's S239.

17 Senator Dick Sears: 239.

18 Michael O'Grady: And it was a special fund for implementation  
19 of the program like many special funds that are created in law  
20 are for--they are for implementation of the program and this  
21 is--what this fund would be for also it's for implementation  
22 and administration of the program which may include litigation.

23 Senator Dick Sears: Maybe they won't sue. Maybe they'll see,  
24 "Gee, Vermont, you're doing the right thing."

25 Senator Joe Benning: Well let's turn it around and ask the

1 opposite question. When they do sue they're successful and  
2 we're told [IND 00:53:10].

3 Senator Dick Sears: It would be the same as Vermont--

4 Female 1: We pay it.

5 Michael O'Grady: The Attorney General will have to come to the  
6 General Assembly to seek an appropriation to pay that.

7 Senator Joe Benning: But if there are ruling folks out there  
8 who are stepping up to the plate to contribute, they're capped  
9 with the 1.5.

10 Michael O'Grady: That is true. The fund would be capped at 1.5.

11 There is a--you could--that's a great question. Do you want to  
12 allow money in excess of 1.5 and that all that is the 1.5 is a  
13 cap on what the Attorney general needs to provide from their--

14 Senator Dick Sears: But I think if you wanted to do that, that  
15 could be done in 2015 after we see what's coming in. Doesn't  
16 necessarily have to--these decisions could be made by the next  
17 legislature. It doesn't mean--I mean and you have the study on  
18 dairy so there could be a discussion of that in the 2015 session  
19 of the legislature. So because of the effect--it's an unusually  
20 long effective date but that does provide a future legislature  
21 to look at what's going on and probably know a lot more year  
22 from now than they do today. I have a feeling that Monsanto  
23 will say, "Gee, we don't want to take on Vermont."

24 Michael O'Grady: Well that raises an interesting question about  
25 what if the state issued or has never sued--let's say they sued