

114TH CONGRESS  
2D SESSION

**S.** \_\_\_\_\_

To amend the Agricultural Marketing Act of 1946 to require the Secretary of Agriculture to establish a national disclosure standard for bioengineered foods, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

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\_\_\_\_\_ introduced the following bill; which was read twice  
and referred to the Committee on \_\_\_\_\_

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## **A BILL**

To amend the Agricultural Marketing Act of 1946 to require the Secretary of Agriculture to establish a national disclosure standard for bioengineered foods, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. NATIONAL BIOENGINEERED FOOD DISCLO-**  
4       **SURE STANDARD.**

5       The Agricultural Marketing Act of 1946 (7 U.S.C.  
6       1621 et seq.) is amended by adding at the end the fol-  
7       lowing:

1 **“Subtitle E—National Bioengi-**  
2 **neered Food Disclosure Stand-**  
3 **ard**

4 **“SEC. 291. DEFINITIONS.**

5 “In this subtitle:

6 “(1) **BIOENGINEERING.**—The term ‘bio-

7 engineering’, and any similar term, as determined by

8 the Secretary, with respect to a food, refers to a

9 food—

10 “(A) that contains genetic material that

11 has been modified through in vitro recombinant

12 deoxyribonucleic acid (DNA) techniques; and

13 “(B) for which the modification could not

14 otherwise be obtained through conventional

15 breeding or found in nature.

16 “(2) **FOOD.**—The term ‘food’ means a food (as

17 defined in section 201 of the Federal Food, Drug,

18 and Cosmetic Act (21 U.S.C. 321)) that is intended

19 for human consumption.

20 “(3) **SECRETARY.**—The term ‘Secretary’ means

21 the Secretary of Agriculture.

22 **“SEC. 292. APPLICABILITY.**

23 “(a) **IN GENERAL.**—This subtitle shall apply to any

24 claim in a disclosure that a food bears that indicates that

25 the food is a bioengineered food.

1           “(b) APPLICATION OF DEFINITION.—The definition  
2 of the term ‘bioengineering’ under section 291 shall not  
3 affect any other definition, program, rule, or regulation  
4 of the Federal Government.

5           “(c) APPLICATION TO FOODS.—This subtitle shall  
6 apply only to a food subject to—

7                   “(1) the labeling requirements under the Fed-  
8 eral Food, Drug, and Cosmetic Act (21 U.S.C. 301  
9 et seq.); or

10                   “(2) the labeling requirements under the Fed-  
11 eral Meat Inspection Act (21 U.S.C. 601 et seq.),  
12 the Poultry Products Inspection Act (21 U.S.C. 451  
13 et seq.), or the Egg Products Inspection Act (21  
14 U.S.C. 1031 et seq.) only if—

15                           “(A) the most predominant ingredient of  
16 the food would independently be subject to the  
17 labeling requirements under the Federal Food,  
18 Drug, and Cosmetic Act (21 U.S.C. 301 et  
19 seq.); or

20                           “(B)(i) the most predominant ingredient of  
21 the food is broth, stock, water, or a similar so-  
22 lution; and

23                           “(ii) the second-most predominant ingre-  
24 dient of the food would independently be sub-  
25 ject to the labeling requirements under the Fed-

1           eral Food, Drug, and Cosmetic Act (21 U.S.C.  
2           301 et seq.).

3   **“SEC. 293. ESTABLISHMENT OF NATIONAL BIOENGINEERED**  
4                   **FOOD DISCLOSURE STANDARD.**

5           “(a) ESTABLISHMENT OF MANDATORY STANDARD.—  
6 Not later than 2 years after the date of enactment of this  
7 subtitle, the Secretary shall—

8                   “(1) establish a national mandatory bioengi-  
9           neered food disclosure standard with respect to any  
10           bioengineered food and any food that may be bio-  
11           engineered; and

12                   “(2) establish such requirements and proce-  
13           dures as the Secretary determines necessary to carry  
14           out the standard.

15           “(b) REGULATIONS.—

16                   “(1) IN GENERAL.—A food may bear a disclo-  
17           sure that the food is bioengineered only in accord-  
18           ance with regulations promulgated by the Secretary  
19           in accordance with this subtitle.

20                   “(2) REQUIREMENTS.—A regulation promul-  
21           gated by the Secretary in carrying out this subtitle  
22           shall—

23                           “(A) prohibit a food derived from an ani-  
24           mal to be considered a bioengineered food solely  
25           because the animal consumed feed produced

1 from, containing, or consisting of a bioengi-  
2 neered substance;

3 “(B) determine the amounts of a bioengi-  
4 neered substance that may be present in food,  
5 as appropriate, in order for the food to be a  
6 bioengineered food;

7 “(C) establish a process for requesting and  
8 granting a determination by the Secretary re-  
9 garding other factors and conditions under  
10 which a food is considered a bioengineered food;

11 “(D) in accordance with subsection (d), re-  
12 quire that the form of a food disclosure under  
13 this section be a text, symbol, or electronic or  
14 digital link, but excluding Internet website Uni-  
15 form Resource Locators not embedded in the  
16 link, with the disclosure option to be selected by  
17 the food manufacturer;

18 “(E) provide alternative reasonable dislo-  
19 sure options for food contained in small or very  
20 small packages;

21 “(F) in the case of small food manufactur-  
22 ers, provide—

23 “(i) an implementation date that is  
24 not earlier than 1 year after the implemen-

1                   tation date for regulations promulgated in  
2                   accordance with this section; and

3                   “(ii) on-package disclosure options, in  
4                   addition to those available under subpara-  
5                   graph (D), to be selected by the small food  
6                   manufacturer, that consist of—

7                   “(I) a telephone number accom-  
8                   panied by appropriate language to in-  
9                   dicate that the phone number provides  
10                  access to additional information; and

11                  “(II) an Internet website main-  
12                  tained by the small food manufacturer  
13                  in a manner consistent with sub-  
14                  section (d), as appropriate; and

15                  “(G) exclude—

16                  “(i) food served in a restaurant or  
17                  similar retail food establishment; and

18                  “(ii) very small food manufacturers.

19                  “(3) SAFETY.—For the purpose of regulations  
20                  promulgated and food disclosures made pursuant to  
21                  paragraph (2), a bioengineered food that has suc-  
22                  cessfully completed the pre-market Federal regu-  
23                  latory review process shall not be treated as safer  
24                  than, or not as safe as, a non-bioengineered counter-  
25                  part of the food solely because the food is bioengi-

1       neered or produced or developed with the use of bio-  
2       engineering.

3       “(c) STUDY OF ELECTRONIC OR DIGITAL LINK DIS-  
4 CLOSURE.—

5           “(1) IN GENERAL.—Not later than 1 year after  
6       the date of enactment of this subtitle, the Secretary  
7       shall conduct a study to identify potential techno-  
8       logical challenges that may impact whether con-  
9       sumers would have access to the bioengineering dis-  
10      closure through electronic or digital disclosure meth-  
11      ods.

12          “(2) PUBLIC COMMENTS.—In conducting the  
13      study under paragraph (1), the Secretary shall so-  
14      licit and consider comments from the public.

15          “(3) FACTORS.—The study conducted under  
16      paragraph (1) shall consider whether consumer ac-  
17      cess to the bioengineering disclosure through elec-  
18      tronic or digital disclosure methods under this sub-  
19      title would be affected by the following factors:

20           “(A) The availability of wireless Internet  
21      or cellular networks.

22           “(B) The availability of landline telephones  
23      in stores.

24           “(C) Challenges facing small retailers and  
25      rural retailers.

1           “(D) The efforts that retailers and other  
2 entities have taken to address potential tech-  
3 nology and infrastructure challenges.

4           “(E) The costs and benefits of installing in  
5 retail stores electronic or digital link scanners  
6 or other evolving technology that provide bio-  
7 engineering disclosure information.

8           “(4) ADDITIONAL DISCLOSURE OPTIONS.—If  
9 the Secretary determines in the study conducted  
10 under paragraph (1) that consumers, while shop-  
11 ping, would not have sufficient access to the bio-  
12 engineering disclosure through electronic or digital  
13 disclosure methods, the Secretary, after consultation  
14 with food retailers and manufacturers, shall provide  
15 additional and comparable options to access the bio-  
16 engineering disclosure.

17           “(d) DISCLOSURE.—In promulgating regulations  
18 under this section, the Secretary shall ensure that—

19           “(1) on-package language accompanies—

20           “(A) the electronic or digital link disclo-  
21 sure, indicating that the electronic or digital  
22 link will provide access to an Internet website  
23 or other landing page by stating only ‘Scan  
24 here for more food information’, or equivalent



1 language that only reflects technological  
2 changes; or

3 “(B) any telephone number disclosure, in-  
4 dicating that the telephone number will provide  
5 access to additional information by stating only  
6 ‘Call for more food information.’;

7 “(2) the electronic or digital link will provide  
8 access to the bioengineering disclosure located, in a  
9 consistent and conspicuous manner, on the first  
10 product information page that appears for the prod-  
11 uct on a mobile device, Internet website, or other  
12 landing page, which shall exclude marketing and  
13 promotional information;

14 “(3)(A) the electronic or digital link disclosure  
15 may not collect, analyze, or sell any personally iden-  
16 tifiable information about consumers or the devices  
17 of consumers; but

18 “(B) if information described in subparagraph  
19 (A) must be collected to carry out the purposes of  
20 this subtitle, that information shall be deleted imme-  
21 diately and not used for any other purpose;

22 “(4) the electronic or digital link disclosure also  
23 includes a telephone number that provides access to  
24 the bioengineering disclosure; and

1           “(5) the electronic or digital link disclosure is  
2           of sufficient size to be easily and effectively scanned  
3           or read by a digital device.

4           “(e) STATE FOOD LABELING STANDARDS.—Not-  
5           withstanding section 295, no State or political subdivision  
6           of a State may directly or indirectly establish under any  
7           authority or continue in effect as to any food in interstate  
8           commerce any requirement relating to the labeling or dis-  
9           closure of whether a food is bioengineered or was devel-  
10          oped or produced using bioengineering for a food that is  
11          the subject of the national bioengineered food disclosure  
12          standard under this section that is not identical to the  
13          mandatory disclosure requirement under that standard.

14          “(f) CONSISTENCY WITH CERTAIN LAWS.—The Sec-  
15          retary shall consider establishing consistency between—

16                 “(1) the national bioengineered food disclosure  
17                 standard established under this section; and

18                 “(2) the Organic Foods Production Act of 1990  
19                 (7 U.S.C. 6501 et seq.) and any rules or regulations  
20                 implementing that Act.

21          “(g) ENFORCEMENT.—

22                 “(1) PROHIBITED ACT.—It shall be a prohibited  
23                 act for a person to knowingly fail to make a disclo-  
24                 sure as required under this section.

1           “(2) RECORDKEEPING.—Each person subject to  
2           the mandatory disclosure requirement under this  
3           section shall maintain, and make available to the  
4           Secretary, on request, such records as the Secretary  
5           determines to be customary or reasonable in the  
6           food industry, by regulation, to establish compliance  
7           with this section.

8           “(3) EXAMINATION AND AUDIT.—

9                   “(A) IN GENERAL.—The Secretary may  
10           conduct an examination, audit, or similar activ-  
11           ity with respect to any records required under  
12           paragraph (2).

13                   “(B) NOTICE AND HEARING.—A person  
14           subject to an examination, audit, or similar ac-  
15           tivity under subparagraph (A) shall be provided  
16           notice and opportunity for a hearing on the re-  
17           sults of any examination, audit, or similar activ-  
18           ity.

19                   “(C) AUDIT RESULTS.—After the notice  
20           and opportunity for a hearing under subpara-  
21           graph (B), the Secretary shall make public the  
22           summary of any examination, audit, or similar  
23           activity under subparagraph (A).

24           “(4) RECALL AUTHORITY.—The Secretary shall  
25           have no authority to recall any food subject to this

1 subtitle on the basis of whether the food bears a dis-  
2 closure that the food is bioengineered.

3 **“SEC. 294. SAVINGS PROVISIONS.**

4 “(a) TRADE.—This subtitle shall be applied in a  
5 manner consistent with United States obligations under  
6 international agreements.

7 “(b) OTHER AUTHORITIES.—Nothing in this sub-  
8 title—

9 “(1) affects the authority of the Secretary of  
10 Health and Human Services or creates any rights or  
11 obligations for any person under the Federal Food,  
12 Drug, and Cosmetic Act (21 U.S.C. 301 et seq.); or

13 “(2) affects the authority of the Secretary of  
14 the Treasury or creates any rights or obligations for  
15 any person under the Federal Alcohol Administra-  
16 tion Act (27 U.S.C. 201 et seq.).

17 “(c) OTHER.—A food may not be considered to be  
18 ‘not bioengineered’, ‘non-GMO’, or any other similar claim  
19 describing the absence of bioengineering in the food solely  
20 because the food is not required to bear a disclosure that  
21 the food is bioengineered under this subtitle.

1      **“Subtitle F—Labeling of Certain**  
2                                   **Food**

3      **“SEC. 295. FEDERAL PREEMPTION.**

4           “(a) DEFINITION OF FOOD.—In this subtitle, the  
5 term ‘food’ has the meaning given the term in section 201  
6 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C.  
7 321).

8           “(b) FEDERAL PREEMPTION.—No State or a polit-  
9 ical subdivision of a State may directly or indirectly estab-  
10 lish under any authority or continue in effect as to any  
11 food or seed in interstate commerce any requirement relat-  
12 ing to the labeling of whether a food (including food served  
13 in a restaurant or similar establishment) or seed is geneti-  
14 cally engineered (which shall include such other similar  
15 terms as determined by the Secretary of Agriculture) or  
16 was developed or produced using genetic engineering, in-  
17 cluding any requirement for claims that a food or seed  
18 is or contains an ingredient that was developed or pro-  
19 duced using genetic engineering.

20      **“SEC. 296. EXCLUSION FROM FEDERAL PREEMPTION.**

21           “Nothing in this subtitle, subtitle E, or any regula-  
22 tion, rule, or requirement promulgated in accordance with  
23 this subtitle or subtitle E shall be construed to preempt  
24 any remedy created by a State or Federal statutory or  
25 common law right.”.

1 **SEC. 2. ORGANICALLY PRODUCED FOOD.**

2       In the case of a food certified under the national or-  
3 ganic program established under the Organic Foods Pro-  
4 duction Act of 1990 (7 U.S.C. 6501 et seq.), the certifi-  
5 cation shall be considered sufficient to make a claim re-  
6 garding the absence of bioengineering in the food, such  
7 as “not bioengineered”, “non-GMO”, or another similar  
8 claim.