AMENDMENT NO. ................................................ Ex. ........................................... Calendar No. ................................................
Purpose: ..............................................................
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S. ................................................................. (or Treaty ..................................................)
H.R. ............................................................... SHORT TITLE ........................................
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AMENDMENT N° 3450

By McConnell for Robers

Am the House amendment

to S. 744

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Page(s)

INTENDED to be proposed by..............................................................

Viz:

1 Strike all after the enacting clause
2 and insert the following.

3 Be it enacted by the Senate and House of Representa-
4 tives of the United States of America in Congress assembled,
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SECTION 1. NATIONAL VOLUNTARY BIOENGINEERED FOOD
6 LABELING STANDARD.
7 The Agricultural Marketing Act of 1946 (7 U.S.C.
8 1621 et seq.) is amended by adding at the end the fol-
9 lowing:

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“Subtitle E—National Voluntary Bioengineered Food Labeling Standard

“SEC. 291. DEFINITIONS.

“In this subtitle:

“(1) BIOENGINEERING.—The term ‘bio-engineering’, and any similar term, as determined by the Secretary, with respect to a food—

“(A) that contains genetic material that has been modified through in vitro recombinant deoxyribonucleic acid (DNA) techniques; and

“(B) for which the modification could not otherwise be obtained through conventional breeding or found in nature.

“(2) FOOD.—The term ‘food’ has the meaning given the term in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321).

“(3) SECRETARY.—The term ‘Secretary’ means the Secretary of Agriculture.

“SEC. 292. APPLICABILITY.

“This subtitle shall apply to any claim in the labeling of food that indicates, directly or indirectly, that the food is a bioengineered food or bioengineering was used in the development or production of the food, including a claim
that a food is or contains an ingredient that was developed
or produced using bioengineering.

"SEC. 293. ESTABLISHMENT OF NATIONAL VOLUNTARY BIO-
ENGINEERED FOOD LABELING STANDARD.

"(a) ESTABLISHMENT OF STANDARD.—Not later
than 1 year after the date of enactment of this subtitle,
the Secretary shall—

"(1) establish a national voluntary bioengineered food labeling standard with respect to—

"(A) any bioengineered food; and

"(B) any food that may be bioengineered
or may have been produced or developed using
bioengineering; and

"(2) establish such requirements and procedures as the Secretary determines necessary to carry out the standard.

"(b) REGULATIONS.—

"(1) IN GENERAL.—A food may be labeled as
bioengineered only in accordance with regulations promulgated by the Secretary in accordance with
this subtitle.

"(2) REQUIREMENTS.—A regulation promulgated by the Secretary in carrying out this subtitle shall—
“(A) prohibit any express or implied claim that a food is or is not safer or of higher quality solely based on whether the food is or is not—

“(i) bioengineered; or

“(ii) produced or developed with the use of bioengineering;

“(B) determine the amounts of a bioengineered substance that may be present in food, as appropriate, in order for the food to be labeled as a bioengineered food;

“(C) establish a process for requesting and granting a determination by the Secretary regarding other factors and conditions under which a food may be labeled as a bioengineered food; and

“(D) require that, if a food is voluntarily labeled under this section through means of scannable images or codes or other similar technologies—

“(i) the label clearly indicates to consumers that more information is available about the ingredients of the food; and

“(ii) the scannable image, code, or similar technology provides direct access to
information regarding whether the food is bioengineered or whether bioengineering was used in the development or production of the food.

"(c) STATE FOOD LABELING STANDARDS.—Notwithstanding section 295, no State or political subdivision of a State may directly or indirectly establish under any authority or continue in effect as to any food in interstate commerce any requirement relating to the labeling or disclosure of whether a food is bioengineered or was developed or produced using bioengineering for a food that is the subject of the bioengineered food labeling standard under this section that is not identical to that voluntary standard.

"(d) CONSISTENCY WITH CERTAIN LAWS.—To the maximum extent practicable, the Secretary shall establish consistency between—

"(1) the national voluntary bioengineered food labeling standard established under this section; and

"(2) the Organic Foods Production Act of 1990 (7 U.S.C. 6501 et seq.).

"SEC. 294. RULEMAKING ON SUBSTANTIAL PARTICIPATION.

"(a) DEFINITION OF LABELED FOOD.—In this section, the term ‘labeled food’ means food that bears, or to which is attached, any written, printed, or graphic matter,
including on the immediate container or on the package
of the food.

"(b) RULEMAKING.—Not later than 1 year after the
date of enactment of this subtitle, the Secretary shall pro-
mulgate regulations defining the circumstances that con-
stitute substantial participation by labeled foods with vol-
untary disclosures of whether a food is, is not, or may
be bioengineered or whether bioengineering was, was not,
or may have been used in the development or production
of the food.

"(c) CONSIDERATION.—In promulgating regulations
under subsection (b), the Secretary shall consider—

"(1) the percentage of the labeled foods con-
sumed by consumers that disclose whether the food
is, is not, or may be bioengineered or whether bio-
engineering was, was not, or may have been used in
the development or production of the food; and

"(2) the extent to which there is clear indica-
tion in a usual and customary form that information
is available for the most frequently consumed labeled
foods or direct access to disclosures for the most fre-
quently consumed labeled foods, including through
means that are clear and direct other than the label
or labeling, such as responses to consumer inquiries
through call centers, the Internet, websites, social
media, scannable images or codes or other similar technologies that would allow consumers to access the information, or any other means the Secretary considers appropriate for disclosing the bioengineered content of food.

"(d) REQUIREMENT.—In promulgating regulations under subsection (b), the Secretary shall define the term ‘most frequently consumed labeled foods’.

"SEC. 294A. NATIONAL MANDATORY BIOENGINEERED FOOD LABELING STANDARD.

"(a) REQUIREMENT FOR ESTABLISHMENT OF MANDATORY STANDARD.—

"(1) IN GENERAL.—The mandatory standard under subsection (b) shall be established only if the Secretary determines there is not substantial participation as determined in accordance with section 294(b).

"(2) DEADLINE.—The Secretary shall make the determination as described in paragraph (1) not earlier than the date that is 2 years after the date on which the Secretary has promulgated regulations under each of sections 293 and 294(b).

"(3) INITIATION.—If the Secretary determines that there is not at least 70 percent substantial participation as determined in accordance with section
294(b), the Secretary shall promulgate regulations to establish a mandatory standard in accordance with this section.

"(b) Establishment of Mandatory Standard.—

If the Secretary determines that there is not substantial participation as described in subsection (a), the Secretary shall—

"(1) establish a national mandatory bioengineered food labeling standard with respect to—

"(A) bioengineered food; and

"(B) food that may be bioengineered or may have been produced or developed using bioengineering; and

"(2) establish such requirements and procedures as the Secretary determines necessary to carry out the standard.

"(c) Regulations.—

"(1) In General.—If the Secretary establishes a mandatory standard under subsection (b), a food may be labeled as bioengineered only in accordance with regulations promulgated by the Secretary in accordance with this section.

"(2) Requirements.—A regulation promulgated by the Secretary in carrying out this section shall—
"(A) prohibit any express or implied claim that a food is or is not safer or of higher quality solely based on whether the food is or is not—

"(i) bioengineered; or

"(ii) produced or developed with the use of bioengineering;

"(B) determine the amounts of a bioengineered substance that may be present in food, as appropriate, in order for the food to be labeled as a bioengineered food;

"(C) establish a process for requesting and granting a determination by the Secretary regarding other factors and conditions under which a food may be labeled as a bioengineered food;

"(D) exclude food served in a restaurant or similar establishment; and

"(E) require an appropriate person (as determined by the Secretary) to disclose food that is subject to the mandatory standard either through—

"(i) a statement made on the food label or labeling; or
"(ii) means other than the label or labeling, including responses to consumer inquiries through call centers, the Internet, websites, social media, scannable images or codes or other similar technologies that would allow consumers to access the information, or any other means the Secretary considers appropriate for disclosing the bioengineered content of food.

"(3) IMPLEMENTATION.—The implementation date for regulations promulgated in accordance with this section shall be not earlier than 2 years after the later of—

"(A) the date on which the Secretary promulgates the final regulations under this section; or

"(B) the date on which the Secretary makes a determination under subsection (a)(1).

"(d) STATE FOOD LABELING STANDARDS.—Notwithstanding section 295, no State or political subdivision of a State may directly or indirectly establish under any authority or continue in effect as to any food in interstate commerce any requirement relating to the labeling or disclosure of whether a food is bioengineered or was developed or produced using bioengineering for a food that is
the subject of the bioengineered food labeling standard
under this section that is not identical to the mandatory
labeling requirement under this section.

"(e) ENFORCEMENT.—

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

"(2) RECORDKEEPING.—Each person subject to
the mandatory labeling requirement under this sec-
tion shall maintain, and make available to the Sec-
retary, on request, such records as the Secretary de-
termines to be customary or reasonable in the food
industry, by regulation, to establish compliance with
this section.

"(3) EXAMINATION AND AUDIT.—

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

"(B) NOTICE AND HEARING.—A person
subject to an examination, audit, or similar ac-
tivity under subparagraph (A) shall be provided
notice and opportunity for a hearing before an
administrative law judge on the results of any
examination, audit, or similar activity.
“(C) AUDIT RESULTS.—After the notice and opportunity for a hearing under subparagraph (B), the Secretary shall make public the summary of any examination, audit, or similar activity under subparagraph (A).

“(4) RECALL AUTHORITY.—The Secretary shall have no authority to recall any food subject to this subtitle on the basis of whether the food is labeled as bioengineered or developed or produced using bioengineering.

“SEC. 294B. SAVINGS PROVISIONS.

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

“(b) OTHER.—Nothing in this subtitle—

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

“(2) affects the authority of the Secretary of the Treasury or creates any rights or obligations for any person under the Federal Alcohol Administra-

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"Subtitle F—Labeling of Certain Food

SEC. 295. FEDERAL PREEMPTION.

(a) Definition of Food.—In this subtitle, the term 'food' has the meaning given the term in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321).

(b) Federal Preemption.—No State or a political subdivision of a State may directly or indirectly establish under any authority or continue in effect as to any food or seed in interstate commerce any requirement relating to the labeling of whether a food (including food served in a restaurant or similar establishment) or seed is genetically engineered (which shall include such other similar terms as determined by the Secretary of Agriculture) or was developed or produced using genetic engineering, including any requirement for claims that a food or seed is or contains an ingredient that was developed or produced using genetic engineering."