

**Roberts/Stabenow GMO Labeling Legislation
Section by Section Summary**

SEC. 1. NATIONAL BIOENGINEERED FOOD DISCLOSURE STANDARD

Section 1 establishes a national bioengineered food disclosure standard within the Agricultural Marketing Act of 1946. It adds sections 291 through 296 to the Act.

Subtitle E – National Bioengineered Food Disclosure Standard

Sec. 291. Definitions

Sec. 291 defines the term “bioengineering,” and any similar term determined by the Secretary, to refer to a food that: (A) 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. As provided in Section 292, this definition will not affect any other federal definition, program, rule, or regulation.

“Food” means a food as defined in Section 201 of the Federal Food, Drug, and Cosmetic Act (FFDCA) intended for human consumption. Animal feed and pet food, therefore, would be excluded from the standard.

Sec. 292. Applicability

Under Sec. 292, the bioengineered food disclosure standard applies to any claim in a disclosure that indicates a food is a bioengineered food.

Section 292 limits the scope of the human foods that would be subject to the bill. (1) Foods that are subject to labeling requirements of the FFDCA, the Federal Meat Inspection Act (FMIA), the Poultry Products Inspection Act (PMIA), or the Egg Products Inspection Act. (2) Meat, poultry, and egg products would be excluded if their most predominant ingredient is a food that is regulated by USDA, unless the first ingredient is listed as broth, stock, water, or similar solutions, in which case, they are excluded if the second most predominant ingredient is regulated by USDA.

In instances when the first ingredient is regulated by FDA (or the second ingredient for soups and stocks), the products would be covered. Presumably, the focus on “subject to the labeling requirements” would provide the Secretary with the authority to exempt fresh produce, meat, and poultry when the products otherwise lawfully may be sold without a label.

Sec. 293. Establishment of National Bioengineered Food Disclosure Standard

Sec. 293 lays out the framework for the establishment of a mandatory bioengineered food disclosure standard. The bill directs the Secretary of Agriculture to establish, within 2 years of enactment, a disclosure standard that would apply to any bioengineered food or any food that may be bioengineered.

Regulations

The Secretary is authorized to establish the requirements or procedures deemed necessary to carry out the mandatory bioengineering disclosure standard, subject to the following requirements set out in the bill.

- A disclosure that a food is bioengineered may only be made in accordance with the Secretary's regulations.
- A food derived from animals may not be considered bioengineered solely because the animal consumed bioengineered feed.
- The regulations must determine the threshold of a bioengineered substance in a food that would render the food bioengineered.
- The regulations must establish a process for requesting an agency determination regarding additional factors and conditions under which a food would be considered bioengineered.
- A bioengineered food that has successfully completed the premarket federal regulatory review process would not be treated as safer than, or not as safe as, its non-bioengineered counterpart solely because the food is bioengineered.
- Food served in restaurants or similar retail food establishments would be exempt from the standard.
- Very small businesses also would be exempt from the standard. The Secretary would need to define "very small businesses."

Form of Disclosure

Sec. 293 requires that the form of the bioengineering disclosure must be a text, symbol, or electronic digital link. The bill would not allow the Internet website Uniform Resource Locators that are not embedded in the link to qualify for the disclosure (i.e., a company could not comply by posting the website URL on the package). Any electronic or digital link disclosure must be of sufficient size to be easily and effectively scanned or read by a digital device. The bill specifically states the food manufacturer may choose from among these disclosure options. In addition, the Secretary must provide reasonable alternative disclosure options for food contained in small or very small packages.

On-package language would be required to accompany electronic or digital link disclosures. The language would state only, "Scan here for more food information," or similar language that only reflects technological changes. The electronic or digital link must provide the bioengineering disclosure in a consistent and conspicuous manner on the first landing page that appears, and it must exclude marketing and promotional information. The disclosures also must include a telephone number that provides access to the bioengineering disclosure. These links may not collect, analyze, or sell personally identifiable information about consumers of their devices. If such information must be collected to fulfill the purpose of the disclosure standard, the information must be deleted immediately and not used for any other purpose.

Flexibility for Small Businesses

The Secretary must provide at least an additional year after the implementation date of the regulations for small businesses to comply with the standard. Small businesses must also be permitted to choose from among two disclosure options, in addition to the disclosure options available to all businesses: (1) a telephone number accompanied by language indicating that the number provides access to additional information; and (2) an Internet website maintained by the

small food manufacturer. On-package language also would be required to accompany any telephone number disclosure, indicating that the telephone number will provide access to additional information by stating only “Call for more information.”

Study of Electronic or Digital Link Disclosure

Within 1 year of the bill’s enactment, the Secretary must conduct a study to identify potential technological challenges that may affect whether consumers would have access to bioengineering disclosures through electronic or digital disclosure methods, including the consideration of public comments. The study must consider whether the availability of wireless Internet or cellular networks, the availability of landline telephones in stores, and challenges facing small and rural retailers would affect consumer access to bioengineering disclosures. The study also must consider efforts that retailers and other entities have taken to address potential technology and infrastructure challenges, as well as the costs and benefits of installing in retail stores electronic or digital link scanners or other evolving technology that provide bioengineering disclosure information. If after conducting the study the Secretary determines that consumers would not have sufficient access to bioengineering disclosures through electronic or digital disclosure methods while shopping, the Secretary must consult with food retailers and manufacturers and provide additional and comparable options to access the bioengineering disclosure.

State Food Labeling Standards

Sec. 293 would authorize states to adopt requirements relating to the labeling or disclosure of whether a food is bioengineered, or was developed or produced using bioengineering, as long as those requirements are identical to the mandatory disclosure requirements established under the bill.

Consistency with Other Laws

Sec. 293 directs the Secretary to consider establishing consistency between the bioengineering disclosure standard and the Organic Foods Production Act of 1990.

Enforcement

It shall be a prohibited act for a person to knowingly fail to make a disclosure as required by the disclosure standard and the Secretary’s regulations. Persons subject to the disclosure standard would be required to maintain and make available any records required by the Secretary’s regulations to establish compliance with the standard. The bill would authorize the Secretary to conduct audits of any records required to demonstrate compliance with the standard. Persons subject to an audit would have to be provided with notice and an opportunity for a hearing on the results of the audit, after which the Secretary would need to make the results of the audit public.

The Secretary would have no authority to recall food on the basis of whether the food bears a bioengineering disclosure.

Sec. 294. Savings Provision

Under Sec. 294, the bioengineering disclosure standard must be applied consistently with U.S. trade agreements. Sec. 294 also clarifies that the bioengineering disclosure standard does not affect the

authority of the Secretary of Health and Human Services or create any rights or obligations for any person under the FFDCA or affect the authority of the Secretary of Treasury or create any rights or obligations for any person under the Federal Alcohol Administration Act.

Sec. 294 also states that a food may not be considered “not bioengineered,” “non-GMO,” or any similar terms solely because the food is not required to bear a bioengineering disclosure.

Subtitle F – Labeling of Certain Food

Sec. 295. Federal Preemption

Sec. 295 prohibits any state or political subdivision of a state, either directly or indirectly, from establishing or maintaining any requirement relating to the labeling of whether a food (including restaurant food) or seed is genetically engineered or was developed or produced using genetic engineering. This prohibition would apply to any other similar terms as determined by the Secretary. The prohibition also would apply to any requirement for claims that a food or seed is or contains an ingredient that was developed or produced using genetic engineering.

Sec. 296. Exclusion from Federal Preemption

Sec. 296 clarifies that remedies established by state or federal statutory or common law rights are not preempted.

SEC. 2. ORGANICALLY PRODUCED FOOD.

Under Sec. 2, certification of a food under the Organic Foods Production Act is considered sufficient to make a claim that a food is “not bioengineered,” “non-GMO,” or a similar claim.