



Senate Amendment to the House Amendment to S. 764 — GMO Labeling Requirements (Sen. Roberts, R-KS)

CONTACT: [Nicholas Rodman](#), 202-226-8576

FLOOR SCHEDULE:

Scheduled for consideration on July 14, 2016 subject to a [rule](#).

The rule also provides for so-called same-day authority for July 14 and 15, waiving clause 6(a) of Rule XIII (requiring a 2/3 vote to consider a rule on the same day it is reported from the Rules Committee).

TOPLINE SUMMARY:

The [Senate Amendment to the House Amendment to S. 764](#) would establish a mandatory standard for food companies to disclose on their packaging any bioengineered food and any food that may be bioengineered, or containing genetically modified organisms (GMOs) within 2 years.

COST:

No Congressional Budget Office (CBO) estimate is available.

CONSERVATIVE CONCERNS:

Conservatives may be concerned that the bill would create a mandatory national labeling standard.

The Food and Drug Administration is tasked with regulating food safety in interstate commerce and has repeatedly chosen not to require GMO labeling as a food safety issue. Creating a federally mandated labeling requirement will increase costs for firms, which will be passed on to consumers.

Many conservatives may believe that, rather than creating an arbitrary federal mandate, it would be more appropriate to allow free market forces to meet any demand for non-GMO products.

Some conservatives may also believe that challenges presented by the Vermont labeling law or other state labeling laws would be better addressed by challenging the Constitutional validity of such statutes.

- **Expand the Size and Scope of the Federal Government?** Yes. The bill would create a new federally mandatory labeling requirement for products containing GMOs.
- **Encroach into State or Local Authority?** Yes. The bill would preempt any state laws requiring (or not requiring) the labeling of GMOs.
- **Delegate Any Legislative Authority to the Executive Branch?** Yes. The Secretary of Agriculture would have the authority to establish requirements and procedures necessary to carry out the legislation.

- **Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** No.

DETAILED SUMMARY AND ANALYSIS:

Recently, the State of Vermont enacted a [mandatory labeling requirement](#) for genetically engineered food sold within the state. This law went into effect on July 1, 2016, though it will not be enforced until January 1, 2017. Many food producers have asserted that it is necessary for the federal government to preempt the Vermont law in order to prevent a national patchwork of conflicting requirements for labeling. Connecticut and Maine have also passed similar GMO labeling laws. Several groups have challenged the Vermont law, arguing that it violates the First Amendment, Fifth Amendment, and the Commerce Clause of the U.S. Constitution, and that the law should be struck down. Enacting a federally mandated labeling requirement would likely moot many of these arguments and ensure that a labeling requirement survives Constitutional scrutiny. More information is available from the Heritage Foundation [here](#), and from *Seton Hall Student Law Scholarship* [here](#).

The bill would establish a mandatory standard for food companies to disclose on their packaging any bioengineered food and any food that may be bioengineered within 2 years. The Secretary of Agriculture would have the authority to establish requirements and procedures necessary to carry out the legislation.

A food item would be required to bear a bioengineered disclosure only in accordance with regulations promulgated by the Secretary of Agriculture. In promulgating such regulations, the Secretary's regulation would: (1) prohibit a food derived from an animal to be considered a bioengineered food solely because the animal consumed feed produced from, containing, or consisting of GMOs; (2) determine the amounts of a bioengineered substance that may be present in food in order for the food to be a bioengineered food; (3) establish a process for requesting and granting a determination by the Secretary regarding other factors and conditions under which a food is considered a bioengineered food; (4) require that the form of a food disclosure be a text, symbol, or electronic or digital link, but excluding Internet website Uniform Resource Locators (URL) not embedded in the link, with the disclosure option to be selected by the food manufacturer; (5) provide alternative reasonable disclosure options for food contained in small or very small packages; (6) in the case of small food manufacturers, provide a 1 year implementation date after the implementation date for the required promulgated regulations, and allow for specified options for the small food manufacturers including a telephone number or an Internet website.

The bill would clarify that a bioengineered food that has successfully completed the pre-market federal regulatory review process would not be treated as safer than, or not as safe as, a non-bioengineered counterpart of the food solely because the food is bioengineered or produced or developed with the use of bioengineering.

The Secretary of Agriculture would be directed to conduct a study to identify potential technological challenges that may impact whether consumers would have access to the bioengineering disclosure through electronic or digital disclosure methods and solicit comments from the public. If the Secretary determines in the study that consumers, while shopping, would not have sufficient access to the bioengineering disclosure through electronic or digital disclosure methods, the Secretary, after consultation with food retailers and manufacturers, would be authorized to provide additional and comparable options to access the bioengineering disclosure.

The Secretary would additionally be directed to ensure that: (1) on-package language accompanies the electronic or digital link disclosure and any telephone number disclosure; (2) the electronic or digital link will provide access to the bioengineering disclosure located, in a consistent and conspicuous manner, on the first product information page that appears for the product on a mobile device, Internet website, or other landing page, which shall exclude marketing and promotional information; (3) the electronic or digital link disclosure also includes a telephone number that provides access to the bioengineering

disclosure; and (4) the electronic or digital link disclosure is of sufficient size to be easily and effectively scanned or read by a digital device.

The bill would mandate that no state or 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 produced using bioengineering for a food that is not identical to the mandatory disclosure requirement stated in the bill. The bill would direct the Secretary of Agriculture to consider establishing consistency between the national bioengineered food disclosure standard established by the bill, and the [Organic Foods Production Act of 1990](#). Knowingly failing to make a disclosure would be prohibited. Each person subject to the mandatory disclosure requirements would be required to make records available to the Secretary of Agriculture on request. In turn, the Secretary would have the authority to conduct an audit, but would not have the authority to recall any food on the basis of whether the food bears a disclosure that the food is bioengineered. A food would not be considered to be 'not bioengineered', 'non-GMO', or any other similar claim describing the absence of bioengineering in the food solely because the food is not required to bear a disclosure that the food is bioengineered.

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 or seed is genetically engineered or was developed or produced using genetic engineering. Nothing in the bill would be construed to preempt any remedy created by a state or federal statutory or common law right.

The GMO Labeling Requirements legislation would seek to preempt shortsighted anti-GMO labelling regulations put in place in the state of Vermont. More information on those regulations can be found [here](#). The RSC's legislative bulletin on the House-[passed](#) H.R. 1599 - Safe and Accurate Food Labeling Act of 2015 can be found [here](#).

OUTSIDE GROUPS:

[Heritage Action - Key Vote NO](#)

COMMITTEE ACTION:

S. 764 was introduced on March 17, 2015 and was originally referred to the Senate Committee on Commerce, Science, and Transportation. The bill was then passed in the Senate on July 28, 2015 by unanimous consent and in the House on September 18, 2015 with an amendment. On July 7, 2016, Senate concurred in the House amendment to S. 764, referred to the Senate Committee on Agriculture, Nutrition and Forestry, with an amendment by yea-nay vote: [63 – 30](#). The Senate amendment struck the original language in S. 764 and replaced it with the current language.

ADMINISTRATION POSITION:

No Statement of Administration Policy is available.

CONSTITUTIONAL AUTHORITY:

Bills originating in the Senate are not required to have a Constitutional Authority Statement.

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