

In the Senate of the United States,

July 7, 2016.

Resolved, That the Senate agree to the amendment of the House of Representatives to the text of the bill (S. 764) entitled “An Act to reauthorize and amend the National Sea Grant College Program Act, and for other purposes.”, do pass with the following

SENATE AMENDMENT TO HOUSE AMENDMENT:

In lieu of the matter proposed to be inserted, insert the following:

1 ***SECTION 1. NATIONAL BIOENGINEERED FOOD DISCLOSURE***

2 ***STANDARD.***

3 *The Agricultural Marketing Act of 1946 (7 U.S.C.*
4 *1621 et seq.) is amended by adding at the end the following:*

5 ***“Subtitle E—National Bioengi-***
6 ***neered Food Disclosure Stand-***
7 ***ard***

8 ***“SEC. 291. DEFINITIONS.***

9 *“In this subtitle:*

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

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

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

11 “(2) *FOOD.*—*The term ‘food’ means a food (as*
12 *defined in section 201 of the Federal Food, Drug, and*
13 *Cosmetic Act (21 U.S.C. 321)) that is intended for*
14 *human consumption.*

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

17 **“SEC. 292. APPLICABILITY.**

18 “(a) *IN GENERAL.*—*This subtitle shall apply to any*
19 *claim in a disclosure that a food bears that indicates that*
20 *the food is a bioengineered food.*

21 “(b) *APPLICATION OF DEFINITION.*—*The definition of*
22 *the term ‘bioengineering’ under section 291 shall not affect*
23 *any other definition, program, rule, or regulation of the*
24 *Federal Government.*

1 “(c) *APPLICATION TO FOODS.*—*This subtitle shall*
2 *apply only to a food subject to—*

3 “(1) *the labeling requirements under the Federal*
4 *Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.);*
5 *or*

6 “(2) *the labeling requirements under the Federal*
7 *Meat Inspection Act (21 U.S.C. 601 et seq.), the Poul-*
8 *try Products Inspection Act (21 U.S.C. 451 et seq.),*
9 *or the Egg Products Inspection Act (21 U.S.C. 1031*
10 *et seq.) only if—*

11 “(A) *the most predominant ingredient of the*
12 *food would independently be subject to the label-*
13 *ing requirements under the Federal Food, Drug,*
14 *and Cosmetic Act (21 U.S.C. 301 et seq.); or*

15 “(B)(i) *the most predominant ingredient of*
16 *the food is broth, stock, water, or a similar solu-*
17 *tion; and*

18 “(ii) *the second-most predominant ingre-*
19 *redient of the food would independently be subject*
20 *to the labeling requirements under the Federal*
21 *Food, Drug, and Cosmetic Act (21 U.S.C. 301 et*
22 *seq.).*

1 **“SEC. 293. ESTABLISHMENT OF NATIONAL BIOENGINEERED**
2 **FOOD DISCLOSURE STANDARD.**

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

6 *“(1) establish a national mandatory bioengi-*
7 *neered food disclosure standard with respect to any*
8 *bioengineered food and any food that may be bioengi-*
9 *neered; and*

10 *“(2) establish such requirements and procedures*
11 *as the Secretary determines necessary to carry out the*
12 *standard.*

13 *“(b) REGULATIONS.—*

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

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

21 *“(A) prohibit a food derived from an ani-*
22 *mal to be considered a bioengineered food solely*
23 *because the animal consumed feed produced*
24 *from, containing, or consisting of a bioengi-*
25 *neered substance;*

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

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

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

16 “(E) provide alternative reasonable disclo-
17 sure options for food contained in small or very
18 small packages;

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

21 “(i) an implementation date that is
22 not earlier than 1 year after the implemen-
23 tation date for regulations promulgated in
24 accordance with this section; and

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

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

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

13 “(G) exclude—

14 “(i) food served in a restaurant or
15 similar retail food establishment; and

16 “(ii) very small food manufacturers.

17 “(3) SAFETY.—For the purpose of regulations
18 promulgated and food disclosures made pursuant to
19 paragraph (2), a bioengineered food that has success-
20 fully completed the pre-market Federal regulatory re-
21 view process shall not be treated as safer than, or not
22 as safe as, a non-bioengineered counterpart of the food
23 solely because the food is bioengineered or produced or
24 developed with the use of bioengineering.

1 “(c) *STUDY OF ELECTRONIC OR DIGITAL LINK DIS-*
2 *CLOSURE.*—

3 “(1) *IN GENERAL.*—Not later than 1 year after
4 *the date of enactment of this subtitle, the Secretary*
5 *shall conduct a study to identify potential techno-*
6 *logical challenges that may impact whether consumers*
7 *would have access to the bioengineering disclosure*
8 *through electronic or digital disclosure methods.*

9 “(2) *PUBLIC COMMENTS.*—In conducting the
10 *study under paragraph (1), the Secretary shall solicit*
11 *and consider comments from the public.*

12 “(3) *FACTORS.*—The study conducted under
13 *paragraph (1) shall consider whether consumer access*
14 *to the bioengineering disclosure through electronic or*
15 *digital disclosure methods under this subtitle would be*
16 *affected by the following factors:*

17 “(A) *The availability of wireless Internet or*
18 *cellular networks.*

19 “(B) *The availability of landline telephones*
20 *in stores.*

21 “(C) *Challenges facing small retailers and*
22 *rural retailers.*

23 “(D) *The efforts that retailers and other en-*
24 *tities have taken to address potential technology*
25 *and infrastructure challenges.*

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

5 “(4) *ADDITIONAL DISCLOSURE OPTIONS.—If the*
6 *Secretary determines in the study conducted under*
7 *paragraph (1) that consumers, while shopping, would*
8 *not have sufficient access to the bioengineering disclo-*
9 *sure through electronic or digital disclosure methods,*
10 *the Secretary, after consultation with food retailers*
11 *and manufacturers, shall provide additional and*
12 *comparable options to access the bioengineering dis-*
13 *closure.*

14 “(d) *DISCLOSURE.—In promulgating regulations*
15 *under this section, the Secretary shall ensure that—*

16 “(1) *on-package language accompanies—*

17 “(A) *the electronic or digital link disclosure,*
18 *indicating that the electronic or digital link will*
19 *provide access to an Internet website or other*
20 *landing page by stating only ‘Scan here for more*
21 *food information’, or equivalent language that*
22 *only reflects technological changes; or*

23 “(B) *any telephone number disclosure, indi-*
24 *cating that the telephone number will provide ac-*

1 *cess to additional information by stating only*
2 *‘Call for more food information.’;*

3 *“(2) the electronic or digital link will provide ac-*
4 *cess to the bioengineering disclosure located, in a con-*
5 *sistent and conspicuous manner, on the first product*
6 *information page that appears for the product on a*
7 *mobile device, Internet website, or other landing page,*
8 *which shall exclude marketing and promotional infor-*
9 *mation;*

10 *“(3)(A) the electronic or digital link disclosure*
11 *may not collect, analyze, or sell any personally iden-*
12 *tifiable information about consumers or the devices of*
13 *consumers; but*

14 *“(B) if information described in subparagraph*
15 *(A) must be collected to carry out the purposes of this*
16 *subtitle, that information shall be deleted immediately*
17 *and not used for any other purpose;*

18 *“(4) the electronic or digital link disclosure also*
19 *includes a telephone number that provides access to*
20 *the bioengineering disclosure; and*

21 *“(5) the electronic or digital link disclosure is of*
22 *sufficient size to be easily and effectively scanned or*
23 *read by a digital device.*

24 *“(e) STATE FOOD LABELING STANDARDS.—Notwith-*
25 *standing section 295, no State or political subdivision of*

1 *a State may directly or indirectly establish under any au-*
2 *thority or continue in effect as to any food in interstate*
3 *commerce any requirement relating to the labeling or disclo-*
4 *sure of whether a food is bioengineered or was developed*
5 *or produced using bioengineering for a food that is the sub-*
6 *ject of the national bioengineered food disclosure standard*
7 *under this section that is not identical to the mandatory*
8 *disclosure requirement under that standard.*

9 “(f) *CONSISTENCY WITH CERTAIN LAWS.*—*The Sec-*
10 *retary shall consider establishing consistency between—*

11 “(1) *the national bioengineered food disclosure*
12 *standard established under this section; and*

13 “(2) *the Organic Foods Production Act of 1990*
14 *(7 U.S.C. 6501 et seq.) and any rules or regulations*
15 *implementing that Act.*

16 “(g) *ENFORCEMENT.*—

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

20 “(2) *RECORDKEEPING.*—*Each person subject to*
21 *the mandatory disclosure requirement under this sec-*
22 *tion shall maintain, and make available to the Sec-*
23 *retary, on request, such records as the Secretary deter-*
24 *mines to be customary or reasonable in the food in-*

1 *dustry, by regulation, to establish compliance with*
2 *this section.*

3 “(3) *EXAMINATION AND AUDIT.*—

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

8 “(B) *NOTICE AND HEARING.*—*A person sub-*
9 *ject to an examination, audit, or similar activity*
10 *under subparagraph (A) shall be provided notice*
11 *and opportunity for a hearing on the results of*
12 *any examination, audit, or similar activity.*

13 “(C) *AUDIT RESULTS.*—*After the notice and*
14 *opportunity for a hearing under subparagraph*
15 *(B), the Secretary shall make public the sum-*
16 *mary of any examination, audit, or similar ac-*
17 *tivity under subparagraph (A).*

18 “(4) *RECALL AUTHORITY.*—*The Secretary shall*
19 *have no authority to recall any food subject to this*
20 *subtitle on the basis of whether the food bears a disclo-*
21 *sure that the food is bioengineered.*

22 **“SEC. 294. SAVINGS PROVISIONS.**

23 “(a) *TRADE.*—*This subtitle shall be applied in a man-*
24 *ner consistent with United States obligations under inter-*
25 *national agreements.*

1 *the labeling of whether a food (including food served in a*
 2 *restaurant or similar establishment) or seed is genetically*
 3 *engineered (which shall include such other similar terms as*
 4 *determined by the Secretary of Agriculture) or was devel-*
 5 *oped or produced using genetic engineering, including any*
 6 *requirement for claims that a food or seed is or contains*
 7 *an ingredient that was developed or produced using genetic*
 8 *engineering.*

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

10 *“Nothing in this subtitle, subtitle E, or any regulation,*
 11 *rule, or requirement promulgated in accordance with this*
 12 *subtitle or subtitle E shall be construed to preempt any rem-*
 13 *edy created by a State or Federal statutory or common law*
 14 *right.”.*

15 **SEC. 2. ORGANICALLY PRODUCED FOOD.**

16 *In the case of a food certified under the national or-*
 17 *ganic program established under the Organic Foods Pro-*
 18 *duction Act of 1990 (7 U.S.C. 6501 et seq.), the certification*
 19 *shall be considered sufficient to make a claim regarding the*
 20 *absence of bioengineering in the food, such as “not bioengi-*
 21 *neered”, “non-GMO”, or another similar claim.*

Attest:

Secretary.

114TH CONGRESS
2^D Session

S. 764

**SENATE AMENDMENT TO
HOUSE AMENDMENT**