

Pat Roberts

AMENDMENT NO. _____ Ex. _____ Calendar No. _____

Purpose: _____

IN THE SENATE OF THE UNITED STATES— _____ Cong., _____ Sess.

S. _____
H.R. _____ (or Treaty _____)

(title) _____

SHORT TITLE

AMENDMENT N° 3450

By *McConnell for Roberts*

~~to~~ *the House amendment*
to S. 764

13

Page(s)

GPO: 2014 91-623 (mac)

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,*

- 5 **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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- 12
- 13
- 14

1 **“Subtitle E—National Voluntary**
2 **Bioengineered Food Labeling**
3 **Standard**

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’ has the meaning
17 given the term in section 201 of the Federal Food,
18 Drug, and Cosmetic Act (21 U.S.C. 321).

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

21 **“SEC. 292. APPLICABILITY.**

22 “This subtitle shall apply to any claim in the labeling
23 of food that indicates, directly or indirectly, that the food
24 is a bioengineered food or bioengineering was used in the
25 development or production of the food, including a claim

1 that a food is or contains an ingredient that was developed
2 or produced using bioengineering.

3 **“SEC. 293. ESTABLISHMENT OF NATIONAL VOLUNTARY BIO-**
4 **ENGINEERED FOOD LABELING STANDARD.**

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

8 “(1) establish a national voluntary bioengi-
9 neered food labeling standard with respect to—

10 “(A) any bioengineered food; and

11 “(B) any food that may be bioengineered
12 or may have been produced or developed using
13 bioengineering; and

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

17 “(b) REGULATIONS.—

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

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

1 “(A) prohibit any express or implied claim
2 that a food is or is not safer or of higher qual-
3 ity solely based on whether the food is or is
4 not—

5 “(i) bioengineered; or

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

8 “(B) determine the amounts of a bioengi-
9 neered substance that may be present in food,
10 as appropriate, in order for the food to be la-
11 beled as a bioengineered food;

12 “(C) establish a process for requesting and
13 granting a determination by the Secretary re-
14 garding other factors and conditions under
15 which a food may be labeled as a bioengineered
16 food; and

17 “(D) require that, if a food is voluntarily
18 labeled under this section through means of
19 scannable images or codes or other similar tech-
20 nologies—

21 “(i) the label clearly indicates to con-
22 sumers that more information is available
23 about the ingredients of the food; and

24 “(ii) the scannable image, code, or
25 similar technology provides direct access to

1 information regarding whether the food is
2 bioengineered or whether bioengineering
3 was used in the development or production
4 of the food.

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

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

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

20 “(2) the Organic Foods Production Act of 1990
21 (7 U.S.C. 6501 et seq.).

22 **“SEC. 294. RULEMAKING ON SUBSTANTIAL PARTICIPATION.**

23 “(a) DEFINITION OF LABELED FOOD.—In this sec-
24 tion, the term ‘labeled food’ means food that bears, or to
25 which is attached, any written, printed, or graphic matter,

1 including on the immediate container or on the package
2 of the food.

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

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

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

18 “(2) the extent to which there is clear indica-
19 tion in a usual and customary form that information
20 is available for the most frequently consumed labeled
21 foods or direct access to disclosures for the most fre-
22 quently consumed labeled foods, including through
23 means that are clear and direct other than the label
24 or labeling, such as responses to consumer inquiries
25 through call centers, the Internet, websites, social

1 media, scannable images or codes or other similar
2 technologies that would allow consumers to access
3 the information, or any other means the Secretary
4 considers appropriate for disclosing the bioengi-
5 neered content of food.

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

9 **“SEC. 294A. NATIONAL MANDATORY BIOENGINEERED FOOD**
10 **LABELING STANDARD.**

11 “(a) REQUIREMENT FOR ESTABLISHMENT OF MAN-
12 DATORY STANDARD.—

13 “(1) IN GENERAL.—The mandatory standard
14 under subsection (b) shall be established only if the
15 Secretary determines there is not substantial partici-
16 pation as determined in accordance with section
17 294(b).

18 “(2) DEADLINE.—The Secretary shall make the
19 determination as described in paragraph (1) not ear-
20 lier than the date that is 2 years after the date on
21 which the Secretary has promulgated regulations
22 under each of sections 293 and 294(b).

23 “(3) INITIATION.—If the Secretary determines
24 that there is not at least 70 percent substantial par-
25 ticipation as determined in accordance with section

1 294(b), the Secretary shall promulgate regulations
2 to establish a mandatory standard in accordance
3 with this section.

4 “(b) ESTABLISHMENT OF MANDATORY STANDARD.—

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

8 “(1) establish a national mandatory bioengi-
9 neered food labeling standard with respect to—

10 “(A) bioengineered food; and

11 “(B) food that may be bioengineered or
12 may have been produced or developed using bio-
13 engineering; and

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

17 “(c) REGULATIONS.—

18 “(1) IN GENERAL.—If the Secretary establishes
19 a mandatory standard under subsection (b), a food
20 may be labeled as bioengineered only in accordance
21 with regulations promulgated by the Secretary in ac-
22 cordance with this section.

23 “(2) REQUIREMENTS.—A regulation promul-
24 gated by the Secretary in carrying out this section
25 shall—

1 “(A) prohibit any express or implied claim
2 that a food is or is not safer or of higher qual-
3 ity solely based on whether the food is or is
4 not—

5 “(i) bioengineered; or

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

8 “(B) determine the amounts of a bioengi-
9 neered substance that may be present in food,
10 as appropriate, in order for the food to be la-
11 beled as a bioengineered food;

12 “(C) establish a process for requesting and
13 granting a determination by the Secretary re-
14 garding other factors and conditions under
15 which a food may be labeled as a bioengineered
16 food;

17 “(D) exclude food served in a restaurant
18 or similar establishment; and

19 “(E) require an appropriate person (as de-
20 termined by the Secretary) to disclose food that
21 is subject to the mandatory standard either
22 through—

23 “(i) a statement made on the food
24 label or labeling; or

1 “(ii) means other than the label or la-
2 beling, including responses to consumer in-
3 quiries through call centers, the Internet,
4 websites, social media, scannable images or
5 codes or other similar technologies that
6 would allow consumers to access the infor-
7 mation, or any other means the Secretary
8 considers appropriate for disclosing the
9 bioengineered content of food.

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

14 “(A) the date on which the Secretary pro-
15 mulgates the final regulations under this sec-
16 tion; or

17 “(B) the date on which the Secretary
18 makes a determination under subsection (a)(1).

19 “(d) STATE FOOD LABELING STANDARDS.—Not-
20 withstanding section 295, no State or political subdivision
21 of a State may directly or indirectly establish under any
22 authority or continue in effect as to any food in interstate
23 commerce any requirement relating to the labeling or dis-
24 closure of whether a food is bioengineered or was devel-
25 oped or produced using bioengineering for a food that is

1 the subject of the bioengineered food labeling standard
2 under this section that is not identical to the mandatory
3 labeling requirement under this section.

4 “(e) ENFORCEMENT.—

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

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

15 “(3) EXAMINATION AND AUDIT.—

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

20 “(B) NOTICE AND HEARING.—A person
21 subject to an examination, audit, or similar ac-
22 tivity under subparagraph (A) shall be provided
23 notice and opportunity for a hearing before an
24 administrative law judge on the results of any
25 examination, audit, or similar activity.

1 “(C) AUDIT RESULTS.—After the notice
2 and opportunity for a hearing under subpara-
3 graph (B), the Secretary shall make public the
4 summary of any examination, audit, or similar
5 activity under subparagraph (A).

6 “(4) RECALL AUTHORITY.—The Secretary shall
7 have no authority to recall any food subject to this
8 subtitle on the basis of whether the food is labeled
9 as bioengineered or developed or produced using bio-
10 engineering.

11 **“SEC. 294B. SAVINGS PROVISIONS.**

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

15 “(b) OTHER.—Nothing in this subtitle—

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

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

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.”.