

By: Representative Eubanks

To: Agriculture

HOUSE BILL NO. 971

1 AN ACT TO CREATE THE "TRUTH IN LABELING ACT," TO PROVIDE FOR
2 THE LABELING OF FOOD PRODUCTS PRODUCED WITH GENETIC ENGINEERING;
3 TO DEFINE TERMS USED IN THIS ACT; TO SPECIFY WHICH PRODUCTS SHALL
4 BE SUBJECT TO THE REGULATION OF THIS ACT; TO PROVIDE FOR THE
5 ESTABLISHMENT OF THE MANDATORY STANDARD TO BE USED AND ENFORCED BY
6 THE COMMISSIONER OF AGRICULTURE AND COMMERCE IN COMPLIANCE WITH
7 THE NATIONAL LABELING STANDARD; TO ENSURE THAT THE COMMISSIONER
8 ADOPT REGULATORY STANDARDS THAT SPECIFY THE AMOUNT OF
9 BIOENGINEERED SUBSTANCE THAT MAY BE PRESENT IN FOOD PRODUCTS; TO
10 PRESCRIBE THE METHOD OF DISCLOSING INFORMATION ON BIOENGINEERED
11 PRODUCTS AND ANY REASONABLE ALTERNATIVE DISCLOSURE; TO REQUIRE THE
12 COMMISSIONER TO CONDUCT A STUDY ON IDENTIFYING TECHNOLOGICAL
13 CHALLENGES TO CONSUMER ACCESS TO BIOENGINEERED DISCLOSURE BY JULY
14 1, 2018, TO REQUIRE PERSONS SUBJECT TO THE MANDATORY DISCLOSURE
15 PROVISION TO PROVIDE ANY RECORDS TO THE COMMISSIONER UPON REQUEST
16 UPON THE COMMISSIONER'S EXAMINATION OR AUDIT OF SUCH PERSONS OR
17 RETAIL ESTABLISHMENTS; AND FOR RELATED PURPOSES.

18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

19 **SECTION 1.** This act shall be known, and may be cited as, the
20 Truth in Labeling Act.

21 **SECTION 2.** As used in this act, the following terms shall
22 have the meanings ascribed in this section, unless context clearly
23 requires otherwise:



(a) "Bioengineering" and any similar term, as determined by the Commissioner of Agriculture and Commerce, with respect to a food, refers to a food:

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

(ii) For which the modification could not otherwise be obtained through conventional breeding or found in nature.

(b) "Food" means a food (as defined in section 201 of the Federal Food, Drug, and Cosmetic Act (21 USC 321)) that is intended for human consumption.

(c) "Commissioner" means the Commissioner of Agriculture and Commerce of Agriculture.

SECTION 3. (1) This act shall apply to any claim in a disclosure that indicates that the food is a bioengineered food.

(2) The definition of the term "bioengineering" under Section 2 shall not affect any other definition, program, rule, or regulation of the Federal Government.

(3) This article shall apply only to a food subject to:

(a) The labeling requirements under the Federal Food, Drug, and Cosmetic Act (21 USC 301 et seq.); or

(b) The labeling requirements under the Federal Meat Inspection Act (21 USC 601 et seq.), the Poultry Products



Inspection Act (21 USC 451 et seq.), or the Egg Products

Inspection Act (21 USC 1031 et seq.) only if:

(i) The most predominant ingredient of the food would independently be subject to the labeling requirements under the Federal Food, Drug, and Cosmetic Act (21 USC 301 et seq.);

(ii) The most predominant ingredient of the food is broth, stock water, or a similar solution; or

(iii) The second-most predominant ingredient of the food would independently be subject to the labeling requirements under the Federal Food, Drug, and Cosmetic Act.

SECTION 4. (1) Not later than two (2) years after the date of enactment of this article, the Commissioner of Agriculture and Commerce shall:

(a) Ensure that all products under the Department of Agriculture and Commerce's regulatory authority comply with the national mandatory bioengineered food disclosure standard with respect to any bioengineered food and any food that may be bioengineered; and

(b) Establish such requirements and procedures as the commissioner determines necessary to carry out the standard in the State of Mississippi.

(2) (a) A food may bear a disclosure that the food is bioengineered only in accordance with regulations promulgated by the commissioner in accordance with requirements of the United States Department of Agriculture.



(b) A regulation promulgated by the commissioner in carrying out this article shall:

(i) 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 a bioengineered substance;

(ii) Determine the amounts of a bioengineered substance that may be present in food, as appropriate, in order for the food to be a bioengineered food;

(iii) Establish a process for requesting and granting a determination by the commissioner regarding other factors and conditions under which a food is considered a bioengineered food;

(iv) In accordance with subsection (4), require that the form of a food disclosure under this section be either a text or symbol, with the disclosure option to be selected by the food manufacturer;

(v) Provide alternative reasonable disclosure options for food contained in small or very small packages;

(vi) In the case of small food manufacturers, provide:

1. An implementation date that is not earlier than one (1) year after the implementation date for regulations promulgated in accordance with this section; and



97 2. On-package disclosure options, in addition
98 to those available under subparagraph (iv), to be selected by the
99 small food manufacturer, that consist of:

100 A. A telephone number accompanied by
101 appropriate language to indicate that the phone number provides
102 access to additional information; and

103 B. An Internet website maintained by the
104 small food manufacturer in a manner consistent with subsection
105 (4), as appropriate; and

106 (vii) Exclude:

107 1. Food served in a restaurant or similar
108 retail food establishment; and

109 2. Very small food manufacturers.

110 (c) For the purpose of regulations promulgated and food
111 disclosures made pursuant to paragraph (b), a bioengineered food
112 that has successfully completed the pre-market federal regulatory
113 review process shall not be treated as safer than, or not as safe
114 as, a non-bioengineered counterpart of the food solely because the
115 food is bioengineered or produced or developed with the use of
116 bioengineering.

117 (3) (a) Not later than July 1, 2018, the commissioner shall
118 conduct a study to identify potential technological challenges
119 that may impact whether consumers would have access to the
120 bioengineering disclosure through electronic or digital disclosure
121 methods.



122 (b) In conducting the study under paragraph (a), the
123 commissioner shall solicit and consider comments from the public.

124 (c) The study conducted under paragraph (a) shall
125 consider whether consumer access to the bioengineering disclosure
126 through electronic or digital disclosure methods under this
127 subtitle would be affected by the following factors:

128 (i) The availability of wireless Internet or
129 cellular networks;

130 (ii) The availability of landline telephones in
131 stores;

132 (iii) Challenges facing small retailers and rural
133 retailers;

134 (iv) The efforts that retailers and other entities
135 have taken to address potential technology and infrastructure
136 challenges; and

137 (v) The costs and benefits of installing, in
138 retail stores, electronic or digital link scanners or other
139 evolving technology that provide bioengineering disclosure
140 information.

141 (d) If the commissioner determines in the study
142 conducted under paragraph (a) that consumers, while shopping,
143 would not have sufficient access to the bioengineering disclosure
144 through electronic or digital disclosure methods, the
145 commissioner, after consultation with food retailers and



manufacturers, shall provide additional and comparable options to access the bioengineering disclosure.

(4) In promulgating regulations under this section, the commissioner shall ensure that:

(a) On-package language accompanies any telephone number disclosure, indicating that the telephone number will provide access to additional information by stating only "Call for more food information"; and

(b) The disclosure text or symbol will be displayed, in a consistent and conspicuous manner, on the packaging material of the product, and shall exclude marketing and promotional information.

(5) Notwithstanding Section 6, no political subdivision of this 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 national bioengineered food disclosure standard under this section that is not identical to the mandatory disclosure requirement under that standard.

(6) The Commissioner of Agriculture and Commerce shall consider establishing consistency between:

(a) The national bioengineered food disclosure standard established under this section; and



(b) The Organic Foods Production Act of 1990 and any rules or regulations implementing that act.

(7) (a) It shall be a prohibited act for a person to knowingly fail to make a disclosure as required under this section.

(b) Each person subject to the mandatory disclosure requirement under this section shall maintain, and make available to the commissioner, on request, such records as the commissioner determines to be customary or reasonable in the food industry, by regulation, to establish compliance with this section.

(c) Examination and Audit:

(i) The commissioner may conduct an examination, audit or similar activity with respect to any records required under paragraph (b);

(ii) A person subject to an examination, audit or similar activity under subparagraph (i) shall be provided notice and opportunity for a hearing on the results of any examination, audit or similar activity; and

(iii) After the notice and opportunity for a hearing under subparagraph (ii), the commissioner shall make public the summary of any examination, audit or similar activity under subparagraph (i).

(d) The commissioner shall have no authority to recall any food subject to this act on the basis of whether the food bears a disclosure that the food is bioengineered.



196 **SECTION 5.** (1) This section shall be applied in a manner
197 consistent with United States obligations under international
198 agreements.

199 (2) A food may not be considered to be "not bioengineered,"
200 "non-GMO" or any other similar claim describing the absence of
201 bioengineering in the food solely because the food is not required
202 to bear a disclosure that the food is bioengineered under this
203 section.

204 **SECTION 6.** (1) No state agency or a political subdivision
205 of the state may directly or indirectly establish, under any
206 authority or continue in effect as to any food or seed in
207 interstate commerce, any requirement relating to the labeling of
208 whether a food, including food served in a restaurant or similar
209 establishment, or seed is genetically engineered, which shall
210 include such other similar terms as determined by the Commissioner
211 of Agriculture and Commerce of Agriculture, or was developed or
212 produced using genetic engineering, including any requirement for
213 claims that a food or seed is or contains an ingredient that was
214 developed or produced using genetic engineering.

215 (2) Nothing in this act or any regulation, rule or
216 requirement promulgated in accordance with this act shall be
217 construed to preempt any remedy created by a state or federal
218 statutory or common law right.

219 **SECTION 7.** In the case of a food certified under the
220 national organic program established under the Organic Foods



221 Production Act of 1990, the certification shall be considered
222 sufficient to make a claim regarding the absence of bioengineering
223 in the food, such as "not bioengineered," "non-GMO" or another
224 similar claim.

225 **SECTION 8.** This act shall take effect and be in force from
226 and after July 1, 2017.

