



Summary Legal Analysis of Senate Bill on Genetically Engineered Food Labeling (The DARK Act)

Half-Dozen Reasons Why the Roberts Bill Should be Defeated

1. Expansive preemption: In addition to preempting all current and future state labeling laws, this bill might also expressly or impliedly preempt at least 137 existing statutes, regulations, and ordinances at the state and municipal level in 42 states. Minnesota wild rice, Hawaiian taro and Arizona quarantine laws would be affected. A special preemption clause deals with seeds, which were not at issue. Seed preemption affects a broad range of state laws relating to non-GE husbandry, agricultural chain of custody requirements and preservation for non-GE or GE contamination sensitive markets at home and abroad.
2. Improper and misleading terminology and definitions: The bill wanders back and forth between bioengineering and genetic engineering without accurately and fully defining either. It is in conflict with the FDA's own definition of GE and what is covered by it. 'Bioengineering' is a broader term that involves non-food products, including medical products. Through the bill's narrow definition, many new genetic engineering technologies and GE foods created from them would not be covered.
3. Improper jurisdiction: The bill moves jurisdiction of GE products away from the FDA, establishes a definition which is in conflict with the FDA (which is equipped to regulate and evaluate scientifically based health concerns) and hands it over to the USDA, which, in this bill, is reduced to a marketing agency for the industry.
4. Constitutional flaws: There are serious Constitutional problems with the bill. Clear violations of the First Amendment are present. Under this bill, the USDA is mandated to promulgate regulations censoring speech, including "prohibiting any express or implied claim that a food is or is not safe or of higher quality solely based on whether the food is or is not" genetically engineered. As such, corporations wishing to disclose that their foods are NOT made with genetic engineering (of which there are presently many certified food products) could face sanctions.
5. Causing market chaos and stripping already existing labeling: Certain provisions of the bill appear to be designed to rescind the non-GMO labeling currently being used by hundreds of producers on thousands of products and force these companies into a federal bureaucratic process to attempt to label non-GMO in the future. The bill also appears to be aimed at blocking the action of Campbell's Soups, which recently announced it would voluntarily label products containing GMOs. This would constitute a broad overreach



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into the conduct of a corporation which is seeking to build consumer confidence in its brands, through fuller disclosure.

6. Promoting biotech at the taxpayer's expense: The bill provides market advantages to GE foods at the expense of non-GE foods, thereby putting the government in the position of picking winners and losers. It would promote the expenditure of taxpayers' dollars to advertise GE products. Thus a moral hazard is created. The bill mandates the USDA become the marketing arm of the industry, to "promote" the technology and to address "consumer acceptance" of the technology. Since over 90% of Americans have indicated support for labeling of GE food products, this would require a substantial appropriation as well as be contrary to the interests of the vast majority of Americans.

For more fundamental problems with the Robert's bill please see full legal analysis.