LEGISLATION	ROBERTS-STABENOW COMPROMISE BILL	SENATE DARK ACT (AMENDMENT 3450 TO S. 764)	HOUSE-PASSED DARK ACT (H.R. 1599)	VERMONT ACT 120
Bill Summary	The Roberts-Stabenow compromise would preempt state GMO labeling laws and create a national, mandatory labeling standard for GMO foods. The labeling standard, which would take effect two years after its passage, is intended to cover more foods than Vermont and other state laws, and requires that companies disclose the presence of GMOs with on-package text, a Department of Agriculture-regulated symbol, or a digital or electronic link (i.e. QR code) subject to strict rules established in the bill. Companies that have labeled GMO foods in response to Vermont's labeling law could continue to disclose with text on the package instead of using QR codes. While the bill permits companies to use QR codes, it requires that the USDA analyze potential consumer challenges, and places strict rules on their use along with privacy protections. Concerns have been raised surrounding the bill's definition of biotechnology, enforcement mechanisms, and the preemption of state seed labeling laws and other potential loopholes (see below). Finally, the bill contains important protections for organic food and farming, preserves the ability of states to utilize existing consumer protection laws, and allows citizens to bring private rights of action as means of enforcement.	The Senate version of the DARK Act would preempt state GMO labeling laws while simultaneously barring the establishment of a national mandatory GMO labeling standard. Instead, the Senate version of the DARK Act would rely on companies to make voluntary GMO labeling claims through the use of social media, 1-800 numbers, QR codes or by posting GMO information on a company website. The bill would permit the USDA to require the use of 1-800 numbers, URLs, QR codes or other off-package disclosures five years after enactment, while making it harder for companies like Campbell's or Mars to voluntarily disclose the presence of GMOs. The bill would undercut the USDA organic standards, as well as the ability of states and citizens to bring private rights of action.	The House-passed version of the DARK Act would preempt state GMO labeling laws, while also prohibiting the Food and Drug Administration from establishing a national, mandatory GMO labeling standard. Instead, the House-passed bill would create a voluntary certification program for companies who wish to put a seal on their products, denoting that the product contains GMOs or was produced without genetic engineering. The bill would prohibit companies like Campbell's or Mars from disclosing the presence of GMOs in their products as they have done in accordance with Vermont Act 120, while at the same time creating a weaker standard for non-GMO food labeling than the USDA organic standards and the independent Non-GMO Project standard. The bill could severely undercut the organic standards, as well as the ability of states and citizens to bring private rights of action.	Vermont Act 120, which went into effect on July 1, mandates the labeling of foods produced with genetic engineering that fall under the FDA's purview. Specifically, Act 120 requires that companies label certain food products with one of three disclosures: "Produced with Genetic Engineering," "Partially Produced with Genetic Engineering" or "May be Produced with Genetic Engineering" (see below for more details). Due to federal preemption clauses in the Nutrition Labeling and Education Act, Meat Inspection Act, Poultry Inspection Act and Egg Product Inspection Act, Vermont is prevented from requiring that individual GMO ingredients be labeled and from requiring that products regulated by USDA, which contain meat, eggs or poultry, be required to carry a GMO disclosure. Act 120 establishes strict financial penalties for non-compliance and allows citizens to bring private rights of action as a means of enforcement.

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Scope	**Mandatory GMO labeling standard**	**Voluntary GMO labeling program**	**Voluntary certification program for non-GMO and GMO foods**	**Mandatory GMO labeling standard for FDA regulated foods only**
Legal Authority	• Foods regulated by the FDA and USDA are subject to the mandatory labeling standard.	• Foods regulated by the FDA and USDA are subject to the voluntary labeling program.	• Companies can use voluntary certification program for non-GMO or GMO foods regulated by the FDA and USDA.	• Foods regulated by the FDA are subject to the mandatory labeling standard.
Law being amended	• Agricultural Marketing Act of 1946	• Agricultural Marketing Act of 1946	• Food, Drug, and Cosmetics Act • Plant Protection Act • Agricultural Marketing Act of 1946	• Vermont Commerce and Trade Statute (9 V.S.A. § 3043)
Label requirement	• To meet the mandatory labeling requirements of this bill, a food product must contain either: 1. an on-package disclosure; 2. a USDA-regulated symbol; or 3. a digital or electronic link (i.e. QR code) with accompanying text and a phone number subject to rules laid out in the bill (see "QR Code Rules" below for more information). • The USDA will develop alternatives for small and very small food packages. • The USDA will allow small manufacturers to put a phone number with accompanying text and a URL on their package.	• To meet the voluntary labeling requirements, companies could provide GMO information through: 1. an on-package disclosure; 2. a QR code; 3. 1-800 numbers; 4. a URL printed on packaging; 5. a company's website; 6. social media webpages; or 7. through other digital means.	• Companies wishing to voluntarily label their products would go through a certification process to obtain a seal that would communicate to consumers that the product contains GMOs or is non-GMO. • The House-passed bill would make it harder for companies to voluntarily disclose the presence of GMOs in their products.	• To meet the mandatory labeling requirements of Act 120, a food product must carry an on-package disclosure stating one of the following: 1. "Produced with Genetic Engineering," if the product contains over 75 percent GMO ingredients by total weight; 2. "Partially Produced with Genetic Engineering," if the product contains GMO ingredients above 0.9 percent total weight but less than 75 percent; or 3. "May be Produced with Genetic Engineering," if the company cannot determine if GMO ingredients are in the product.

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Definition of biotechnology	• "The definition of 'bioengineering,' and any similar term, as determined by the Secretary, with respect to food, refers to a food (A) that contains genetic material that has been modified through in vitro recombinant DNA techniques, and (B) the modification could not otherwise be obtained through conventional breeding or found in nature." • In technical assistance dated June 27, the FDA raised concerns that the definition of "bioengineering" could exclude oils and sugars derived from GMO crops as well as certain forms of genetic engineering like CRISPR or RNAi. • According to a letter dated July 1 from the USDA's Office of General Counsel, all food ingredients derived from genetic engineering, including oils and sugars, as well as ingredients derived from newer genetic engineering techniques, will include a disclosure.	• "The definition of 'bioengineering,' and any similar term, as determined by the Secretary, with respect to food, refers to a food (A) that contains genetic material that has been modified through in vitro recombinant DNA techniques, and (B) the modification could not otherwise be obtained through conventional breeding or found in nature."	• "(3) The term 'genetically engineered plant' refers to a plant or plant product (as those terms are defined in section 403 of the Plant Protection Act (7 U.S.C. 7702)), if— (A) it contains genetic material that has been modified through in vitro recombinant deoxyribonucleic acid (DNA) techniques; and (B) the modification could not otherwise be obtained using conventional breeding techniques. (4) The term 'comparable food' means, with respect to a covered product produced from, containing, or consisting of a genetically engineered plant— (A) the parental variety of the plant; (B) another commonly consumed variety of the plant; or C) a commonly consumed covered product with properties comparable to the covered product produced from, containing, or consisting of the genetically engineered plant."	• "'Genetic engineering' is a process by which a food is produced from an organism or organisms in which the genetic material has been changed through the application of: (A) in vitro nucleic acid techniques, including recombinant deoxyribonucleic acid (DNA) techniques and the direct injection of nucleic acid into cells or organelles; or (B) fusion of cells (including protoplast fusion) or hybridization techniques that overcome natural physiological, reproductive, or recombination barriers, where the donor cells or protoplasts do not fall within the same taxonomic group, in a way that does not occur by natural multiplication or natural recombination. 'In vitro nucleic acid techniques' means techniques, including recombinant DNA or ribonucleic acid techniques, that use vector systems and techniques involving the direct introduction into the organisms of hereditary materials prepared outside the organisms such as micro-injection, chemoporation, electroporation, micro-encapsulation, and liposome fusion." • Vermont's definition of genetic engineering is based on the internally agreed upon definition established by the United Nation's Codex Alimentarius.

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QR code rules	• The Stabenow-Roberts bill has strict rules surrounding the use of digital or electronic link disclosures (i.e. QR codes). 1. To be in compliance, the QR code must be accompanied by text stating, "Scan here for more food information," and be accompanied by a telephone number that provides access to GMO information. 2. The GMO disclosure must be located on the first product information page, website or other landing page once a consumer scans a QR code. 3. Companies are prohibited from collecting, analyzing, or selling any personally identifiable information about consumers or the devices of consumers obtained through use of QR codes. If such information is required to be collected, it must be deleted immediately.	• No provisions.	• N/A	• N/A
QR code study	• A provision in the bill requires that, not later than one year after its passage, the Secretary of Agriculture conduct a study to identify potential technological challenges that may impact whether consumers would have access to GMO information disclosed through a QR code, and provide additional and comparable options to access GMO information if the study comes back negative.	• No provisions.	• N/A	• N/A

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Mandatory labeling trigger	• No trigger necessary because FDA-and USDA-regulated foods are already subject to a mandatory labeling standard.	• A mandatory labeling standard would only be triggered if the USDA determines that there is not substantial participation among food companies in voluntarily providing GMO and non-GMO information to consumers (see requirements above). • If a mandatory labeling standard were triggered, the USDA would allow companies to disclose the presence of GMOs through on-package disclosures or through the use of social media, URLs printed on packaging, QR codes, 1-800 numbers or by posting GMO information on a company website.	• The House-passed bill does not include any trigger for mandatory labeling. • The bill gives discretion to the FDA to require labeling of GMO foods only when there is a health or allergy concern; nutritional, functional or compositional difference; or if the food would be misleading without a label.	• No trigger necessary because FDA-regulated foods are already subject to the labeling requirements of Act 120.
Exemptions	• Animals that are fed genetically engineered feed but are not genetically engineered themselves • Restaurants and similar retail establishments • Very small food manufacturers • A product is excluded from the labeling requirements of the Stabenow-Roberts compromise if: 1. the most predominant ingredient in the food is meat, eggs or poultry; or 2. the second most predominant ingredient in the food is meat, eggs or poultry in a case where the most predominant ingredient in the food is broth, stock or water.	• Restaurants and similar retail establishments would not be covered by the voluntary GMO or non-GMO labeling standard created in the Senate version of the DARK Act.	• Animals that are fed genetically engineered feed but are not genetically engineered themselves • Processing aides • Enzymes • Approved substances allowed in organic food production	• All food products that contain meat, eggs or poultry, which are subject to USDA regulation • Animals that are fed genetically engineered feed but are not genetically engineered themselves • FDA regulated foods that contain GMO content that is less than 0.9 percent by total weight of product • Restaurant and processed foods intended for immediate consumption • Medical foods • Alcoholic beverages • Processing aides • Enzymes • Food that has been independently certified to be organic or non-GMO

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Enforcement	• Creates a process for the USDA to publicly audit products believed to be in non-compliance • The USDA and FDA retain existing enforcement mechanisms • Retains existing state right of action through consumer protection laws • Preserves private rights of action by citizens	• Creates a process for the USDA to publicly audit products believed to be in non-compliance • The USDA and FDA retain existing enforcement mechanisms • The Senate DARK Act could block the ability of states to bring suit under state consumer protection laws. • The Senate DARK Act could block private rights of action by citizens.	• The USDA and FDA retain existing enforcement mechanisms • Permits the USDA to take investigative action with regard to foods believed to be in non-compliance • Civil penalty up to $10,000 for failure to provide information to the USDA or misusing label, and up to a five-year bar from using label. The USDA can request the Attorney General bring civil suit. • The House-passed DARK Act could block the ability of states to bring suit under state consumer protection laws. • The House-passed DARK Act could block private rights of action by citizens.	• In implementing Act 120, the Vermont Attorney General created a six-month grace period that delays enforcement actions until January 1, 2017, unless there is evidence that a manufacturer distributed a mislabeled product after July 1, 2016. • Violators are liable for a civil penalty of no more than $1,000 per day, per product. • Act 120 allows for citizen suit enforcement.
Other Provisions				
Potential impact to organic standards	• Limits risk to the USDA's organic standards by specifying that the definition of bioengineering will not affect other definitions, programs, rules or regulations of the federal government, which includes the organic standards as overseen by the USDA's National Organic Program. • Clarifies that the USDA should consider consistency with the National Organic Program when implementing the Stabenow-Roberts compromise bill. • Includes non-GMO labeling provisions related to organic (see below).	• The narrow definition of "bioengineering" included in the Senate version of the DARK Act would impair the ability of the National Organic Program to ensure that newer forms of genetic engineering are excluded from use in organic production. • The Senate version of the DARK Act states that USDA must make the bill as consistent with the National Organic Program as possible, but does not include language specifying that the definition in the DARK Act does not affect other federal definitions or regulations.	• The narrow definition of bioengineering included in the House-passed DARK Act would impair the ability of the National Organic Program to ensure that newer forms of genetic engineering are excluded from use in organic standards. • The House-passed DARK Act states that the USDA must make the bill as consistent with the National Organic Program as possible, but does not specify that the definition does not affect other federal definitions or regulations. • Approved substances under Section 2118 of the Organic Foods Production Act cannot be listed as genetically engineered. • The weak non-GMO standard created in the House-passed bill conflicts with the organic standard, and would cause confusion in the marketplace.	• Consumer Protection Rule 121 published by the Vermont Attorney General states that certified organic food is excluded from any GMO labeling requirements of Act 120.

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Non-GMO labeling provisions	• The Stabenow-Roberts bill states that certified organic products can be labeled as non-GMO. • The Stabenow-Roberts bill clarifies that just because a product does not meet the labeling requirements of this act, does not mean that it can be labeled as non-GMO or not bioengineered.	• No provisions	• The House-passed bill creates a non-GMO certification program for that is significantly weaker than the organic standard and the Non-GMO Project standard. • For instance, the House-passed bill would allow meat and dairy products to carry a non-GMO label even if they were fed GMO feed.	• No provisions
Preemptive effect	• Preempts state GMO labeling laws in exchange for a national mandatory GMO labeling law • Preempts state seed labeling laws, which could limit farmer choice • Clarifies that the bill does not preempt any remedy created by a State or Federal statute, or common law right	• Preempts state GMO labeling laws in exchange for a voluntary labeling standard • Preempts state seed labeling laws, which could limit farmer choice • No savings clause for common law	• Preempts state GMO labeling laws in exchange for a voluntary labeling standard • Preempts state seed labeling laws, which could limit farmer choice • No savings clause for common law	• No provisions
Natural labeling	• No provisions	• No provisions	• Requires the FDA define the term “natural” for purposes of food labeling within four years of its passage • Allows companies to continue to make misleading “natural” claims for foods that contain GMOs while FDA formally defines the term	• Prohibits companies from labeling their products as “natural” or derivations of the term “natural” if the product contains GMOs
Status	Passed 63-30 on July 7, 2016	Failed 49-48 (60 vote threshold) on March 16, 2016.	Passed 275-150 on July 23, 2015	Signed into law May 2014. Effective date July 1, 2016
Source document	**http://www.agriculture.senate.gov/imo/media/doc/Mandatory%20Labeling%20Bill.pdf**	**https://www.congress.gov/crec/2016/03/14/CREC-2016-03-14-pt1-PgS1467-3.pdf**	**https://www.congress.gov/114/bills/hr1599/BILLS-114hr1599eh.pdf**	**http://ago.vermont.gov/assets/files/Consumer/GE_Food/ACT%20120%20As%20Enacted.pdf**