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Testimony of the
Biotechnology Innovation Organization (BIO)

Hearing of the Maine Legislature's Joint Committee on Agriculture, Conservation and Forestry
April 1, 2025

Representative Bill Pluecker, Chair
Senator Rachel Talbot Ross, Chair
Representative Tim Guerrette, Ranking Member
Senator Russell Black, Ranking Member
Joint Agriculture, Conservation and Forestry Committee
Maine Legislature
Cross Building, Room 214
Augusta, ME 04333

Re: In Opposition to LD 1257, An Act Regarding Labeling of Genetically Engineered Food Products

I submit this testimony today on behalf of the Biotechnology Innovation Organization (BIO) in opposition to LD 1257, "An Act Regarding Labeling of Genetically Engineered Food Products." Under the legislation, which is clearly preempted by at least three federal laws, state labelling would be required for food or food products offered for sale in Maine derived from aquaculture, livestock or poultry that is genetically engineered (GE).

BIO is a Washington, DC-based trade group representing more than 1,100 biotechnology companies – including some based in Maine - academic institutions, state biotechnology centers, and related organizations across the United States and 31 other nations that are involved in the research and development of healthcare, agricultural, industrial, and environmental biotechnology products.

Maine's bioscience industry employed 9,946 individuals in 2023 across 640 state business establishments. With 22.2 percent growth in bioscience industry employment since 2019, Maine has outpaced the strong job growth seen nationally. The state's average bioscience industry wage was $95,859—58 percent higher than the private sector average.

In the summer of 2016, the U.S. Congress overwhelmingly passed, and President Barack Obama signed the Bioengineered Food Disclosure Law, amending the Agricultural Marketing Act of 1946 to direct the U.S. Department of Agriculture (USDA) to establish a national mandatory uniform standard for disclosing human foods that are or may be bioengineered. Under the standard, food manufacturers, importers, and certain retailers are required to ensure bioengineered

foods are appropriately disclosed. Regulated entities have several disclosure options: text, symbol, electronic or digital link, and/or text message. Additional options such as a phone number or web address are available to small food manufacturers or for small and very small packages.

The rules implementing the National Bioengineered Food Disclosure Standard (NBFDS) were finalized in late 2018 and companies have been voluntarily complying with the requirements since early 2019. Mandatory compliance started on January 1, 2022, and all foods entering commerce must now be labeled in compliance with the Standard.

Since the comprehensive federal regulatory review process - that includes the U.S. Food and Drug Administration (FDA), USDA, and the U.S. Environmental Protection Agency - has determined that there is no difference in safety between a bioengineered food and its non-bioengineered counterpart, the NBFDS is considered a marketing standard – not a health and safety requirement – intended to provide consumers with more information about their food.

Indeed, the committee report accompanying the 2016 federal law noted:

"The comprehensive federal regulatory review process has determined that foods produced using bioengineering are safe and not materially different in any way from those made using other methods. This is consistent with scientific research conducted and reviewed by both federal agencies and private entities. Consequently, the legislation ensures that the national disclosure standard and USDA's implementing regulations treat the safety of a bioengineered food the same as its non-bioengineered counterpart. The mandatory disclosure requirement is designed solely to address marketing matters, not based on any concerns with respect to safety of bioengineered foods or ingredients, which is why authority for implementation of this program is given to the Secretary under the Agricultural Marketing Act. The legislation does not change the authority of the FDA to require that a bioengineered food be accurately labeled should any material difference arise with respect to safety or nutrition. FDA's authority over bioengineered foods remains the same."

As for GE animals such as fish and other aquaculture, livestock, and poultry, FDA approves and regulates said products, ensuring they meet the same strict safety standards as conventionally bred animals and their products. Extensive research and studies have found no evidence that GE animals or their products pose a health risk to humans. Regulatory agencies and scientists focus on assessing potential unintended effects of genetic modifications, such as changes in nutritional value or the presence of novel proteins that could cause allergic reactions. The safety of GE animal products is assessed by comparing them to their conventionally bred counterparts, ensuring they are at least as safe. In the United States, the only commercially available GE animal for human consumption is a GE salmon product and it is specifically listed in the NBFDS as being subject to the Standard. Furthermore, as noted on USDA's NBFDS website, "New BE products continue to be

developed. Even if a food is not included on the List, regulated entities whose records show that a food they are selling is bioengineered must make appropriate disclosure of that food."

The NBFDS applies to food subject to the labeling requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA), and to the Federal Meat Inspection Act (FMIA), the Poultry Products Inspection Act (PPIA), and the Egg Products Inspection Act when the predominant ingredient in the food would be subject to the FFDCA's labeling requirements.

Under the Bioengineered Food Disclosure Law, states may not "directly or indirectly establish . . . as to *any food* or seed in interstate commerce *any requirement* relating to the labeling of whether a food . . . is genetically engineered." 7 U.S.C. § 1639i(b); *see also id.* § 1639b(e) (notwithstanding the express preemption provision, States may not "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").

Moreover, the statute specifies that "food" has the same meaning given to the term in FFDCA, 21 U.S.C. 321. *Id.* § 1639i(a). In turn, "food" under FFDCA "means (1) articles used for food or drink for man or other animals, (2) chewing gum, and (3) articles used for components of any such article." 21 U.S.C.A. § 321(f). Accordingly, the preemption provision contained in § 1639i broadly covers any "food," and the term "food" is also broadly defined to include any food for man, which reasonably includes food derived from aquaculture, livestock or poultry. Critically, the reach of § 1639i is not limited to foods covered bythe NBFDS: "The preemption provisions extend beyond bioengineering labeling and include genetic engineering labeling requirements." *National Bioengineered Food Disclosure Standard*, 83 Fed. Reg. 65,814, 65,835 (Dec. 21, 2018).

LD 1257 purports to require a label on *all* food derived from aquaculture, livestock or poultry that is genetically engineered, which is contrary to the broad express preemption provision regarding genetically engineered food or seed. Moreover, even if LD 1257 were limited to bioengineered foods covered by the NBFDS, LD1257 does not include commensurate limitations as set forth in 7 U.S.C.A. § 1639a(c)(2).

Because the BE Disclosure statute applies to foods derived from aquaculture, and to livestock or poultry under the conditions specified in the statute, LD 1257 is expressly preempted both with respect to foods that are genetically engineered *and* with respect to food produced through bioengineering of aquaculture, livestock, and poultry as to which FFDCA labeling requirements apply. Some meat, poultry, and fish products (e.g., raw meat and catfish) may be outside of the scope of FFDCA labeling requirements, but the Maine statute nonetheless appears to be overbroad insofar as it purports to apply to food derived from these GE animals that is within FDA's jurisdiction. Moreover, the FMIA and PPIA include well established preemption provisions that have been consistently recognized by federal courts including the U.S. Supreme Court.

In explaining the need for preempting a hodgepodge of differing GE food labeling requirements Congress said in the committee report that:

"Congress recognizes the importance of having a uniform national standard for the disclosure of whether a food is or may be genetically engineered to prevent a patchwork of state, tribal, and local requirements. The preemption provision in Section 295 applies to all disclosure requirements regarding whether a food or seed is genetically engineered. Congress selected the term ''genetically engineered'' food or seed, rather than ''bioengineering,'' because it is the intent for the provision to broadly preempt state, tribal, and local requirements regarding genetically engineered foods or seed regardless of whether the technology used to develop the food or seed falls within the definition of bioengineering. The intended goal is national uniformity and avoiding the confusion and disputes that would arise if a jurisdiction could require disclosure relying on one or more other terms that might be used to refer in various ways to genetic engineering, biotechnology, or breeding techniques, now or in the future."

Even before the 2013 federal law expressly preempting states from enacting their own GMO labeling requirements high level Maine policymakers expressed significant doubts about the legality and constitutionality of state legislation requiring Maine specific GE food labeling requirements. Indeed, in a May 14, 2013, letter to legislators then Attorney General Janet Mills outlined constitutional and other issues with pending GMO legislation.

Thank you for the opportunity to present testimony in opposition to LD 1257. I respectfully ask that you oppose this legislation, as it is unnecessary and expressly preempted by federal law. Please do not hesitate to contact me at (202) 365-6436 or gharrington@bio.org if you have any questions regarding this matter.

Respectfully submitted,

Gene Harrington
Biotechnology Innovation Organization (BIO)

About BIO

BIO is a national trade organization, based in Washington, DC, representing more than 1,100 biotechnology companies, academic institutions, state biotechnology centers, and related organizations across the United States and 31 other nations. BIO members are involved

in the research and development of healthcare, agricultural, industrial, and environmental biotechnology products. Biotechnology researchers expand the boundaries of science to benefit mankind by providing better healthcare, enhanced agriculture, and a cleaner and safer environment.
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