



CENTER FOR FOOD SAFETY

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Oregon State Legislature
House Committee on Rules
Oregon State Capitol
900 Court Street NE, Room HR 50
Salem, OR 97301

House Committee on Rules
Hearing on HB 4100

Statement of Aurora Paulsen, Attorney, Center for Food Safety

Good afternoon. My name is Aurora Paulsen, and I am an attorney for the nonprofit, public interest organization Center for Food Safety, based in our Portland office. I thank the Committee for the opportunity to present testimony today in support of HB 4100.

CFS is a consumer and sustainable agriculture organization. We have over 400,000 farmer and consumer members across the country, including thousands in Oregon. CFS has worked on the issue of genetically engineered crops and GE labeling for nearly two decades, at both the federal and state levels. To that end, we have worked with dozens of states on crafting GE labeling bills. Among other efforts, we co-authored California's 2012 Proposition 37 and Washington's 2013 Initiative 522.

My colleagues here today will be discussing the vital public policy reasons that support passage of HB 4100, and why Oregonians have a right to know what is in their food. Thus, I will use my few minutes to further explain that, in addition to those important rationales, HB 4100 has been carefully crafted to comply with Oregon and federal law, and thus any purported legal arguments raised against it are wholly without merit.

I. HB 4100 does not violate First Amendment commercial speech rights.

First, HB 4100 does not violate First Amendment commercial speech rights. Rather, Oregon, like any state, can lawfully compel the labeling of GE foods because, under U.S. Supreme Court cases, such labeling is a factual disclosure that is "reasonably related" to legitimate Oregon state interests,¹ such as interests in:

- **Public health.** GE labeling prevents consumers from being confused or deceived by disclosing a fact of production about which consumers have health and safety concerns.

¹ See, e.g., *Zauderer v. Office of Disciplinary Counsel of the Sup. Ct. of Ohio*, 471 U.S. 626, 651, 661 (1985).

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The U.S. government does not do any independent testing of GE foods, but instead relies entirely on industry data, and FDA does not make safety findings.

- **Local economies.** Oregon's export markets are jeopardized by contamination from GE crops because over sixty countries—including key U.S. trading partners like the EU, Russia, Japan, and China—have laws requiring the labeling of GE foods and will reject GE-contaminated food. Identification is a critical way to preserve export markets.
- **Environment.** GE crops, which are overwhelmingly engineered to do one of two things—either to be resistant to herbicides, or to produce an insecticide throughout plant tissues—have increased overall herbicide use in the U.S. *by hundreds of millions of pounds*. Herbicide use causes irreversible harm to, among other things, soil, drinking water, and wildlife, including bees and other pollinators.

The First Amendment protects the free flow of information, and Oregon's numerous interests in GE labeling easily overcome any "minimal" interest food companies have in not disclosing such information.²

II. HB 4100 is consistent with the U.S. Constitution's Dormant Commerce Clause.

Second, HB 4100 is consistent with the U.S. Constitution's Dormant Commerce Clause. Although the U.S. Constitution empowers Congress to regulate interstate commerce, states may regulate aspects of commerce as long as they do not discriminate against out-of-state interests.³ HB 4100 would not unfairly discriminate against out-of-state interests because it requires labeling no matter where the GE crops are produced.

Where, as here, a state law has only indirect effects on interstate commerce, that law is constitutional unless the burden it imposes on commerce is "clearly excessive" in relation to its local benefits.⁴ With HB 4100, Oregon's interests in preventing consumer confusion and protecting public health, local economies, and the environment easily outweigh any labeling inconvenience to food companies. Courts have repeatedly found similar local benefits to be sufficient.

III. Federal food labeling requirements do not preempt HB 4100.

Finally, federal food labeling requirements do not preempt HB 4100. The U.S. government may preclude state laws on certain issues by impliedly or expressly preempting them. However, the U.S. government has not done this with GE labeling.

First, the federal government does not require GE foods to be labeled, and it does not have a law specifically focused on overseeing GE organisms.⁵ Second, the process of genetic engineering is not a category covered by any federal labeling law. The federal Nutrition Labeling and

² *Id.* at 651.

³ See, e.g., *Brown-Forman Distillers Corp. v. N.Y. State Liquor Auth.*, 476 U.S. 573, 579 (1986).

⁴ See, e.g., *Pike v. Bruce Church*, 397 U.S. 137, 142 (1970).

⁵ FDA only has addressed GE labeling via a 1992 policy statement, which does not carry the force of law, and therefore cannot be given preemptive effect. See, e.g., *Holk v. Snapple*, 575 F.3d 329, 341–42 (3d Cir. 2009).

Education Act preempts certain forms of labeling, such as nutrition or health claims, but it does not include genetic engineering, so genetic engineering is not preempted by that law.⁶

IV. In conclusion, HB 4100 is soundly drafted, and any legal arguments raised against it are wholly without merit.

In conclusion, HB 4100 is soundly drafted, and any arguments raised against it are wholly without merit. More generally, the intention of HB 4100 is simple: it merely requires that foods that are produced using genetic engineering be labeled as such. This law is intended to provide Oregon consumers with information about the foods they purchase that is currently hidden.

One of the great freedoms we have as Americans is the basic right to choose what we purchase. If we want to know whether our food contains gluten, high fructose corn syrup, or trans-fats, we can simply read the label. That information has empowered millions of Americans to take control of what we eat and how we feed our families, for health, religious, environmental, or moral reasons. However, these freedoms are being denied to the more than 90 percent of Americans who want to know whether their food is genetically engineered. Since FDA has so far refused to label GE foods, it is up to individual states to lead the way—as Oregon has in many other areas—and protect this state’s interests, including interests in public health; our local economies; our farmers and native ecosystems; and the right to know what is in our food.

Thank you for this opportunity to provide testimony, and I am happy to respond to any follow-up questions from the Committee or provide supplemental information.

Respectfully,

A handwritten signature in blue ink, appearing to read "Aurora Paulsen".

Aurora Paulsen
Center for Food Safety

⁶ *Id.* at 336.