

Proposition 105 Labeling Genetically Modified Food

1 **Proposition 105 proposes amending the Colorado statutes to:**

- 2 ♦ require foods that are genetically modified or produced with genetic
3 engineering to include the words "Produced With Genetic Engineering" on
4 the label or container, with certain exceptions;
- 5 ♦ apply existing food mislabeling penalties in state law to a food
6 manufacturer, distributor, or retailer for failing to comply with the labeling
7 requirements;
- 8 ♦ prohibit a person from bringing legal action against a manufacturer,
9 distributor, or retailer for failing to comply with the labeling requirements;
10 and
- 11 ♦ require the Colorado Department of Public Health and Environment to
12 develop regulations and oversee the labeling requirements.

13 **Summary and Analysis**

14 **Background.** Genetic engineering refers to specific scientific processes that alter
15 the characteristics of organisms at the molecular or cellular level. In agriculture, genetic
16 engineering is generally used to increase the herbicidal tolerance or pest resistance of
17 plants. Genetic engineering was first accomplished in 1973, and became
18 commercialized in 1976. According to the U.S. Food and Drug Administration (FDA),
19 genetically engineered foods, also called genetically modified organisms or GMOs, have
20 been in the food supply since the 1990s. According to the U.S. Department of
21 Agriculture (USDA), in 2013, 90 percent of corn, 90 percent of cotton, and 93 percent of
22 soybean crops planted in the United States were genetically engineered. Currently, no
23 genetically engineered animals are FDA-approved for human consumption, although
24 animal feed may contain genetically engineered material.

25 **Existing labeling of genetically engineered foods.** FDA rules state that
26 genetically engineered foods and food ingredients must meet the same safety
27 requirements as other foods. The FDA allows food producers to voluntarily label their
28 products as to whether or not they contain genetically engineered material, and has
29 issued draft guidance on this labeling to the food industry.

30 The USDA certifies organic foods under the National Organic Program, which can
31 then be labeled as "USDA Organic." Crops grown with the use of genetic engineering
32 cannot be certified as organic under the USDA program.

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1 A number of retailers currently sell foods identified as not containing genetically
2 engineered material that have been verified by a third-party verification organization.
3 One such organization currently lists about 16,000 individual food products as having
4 passed its verification process. These products are labeled as "Non-GMO Project
5 Verified."

6 **Proposed labeling requirements.** Beginning July 1, 2016, Proposition 105
7 requires that certain foods sold in Colorado — that are genetically modified or produced
8 with genetic engineering — be labeled "Produced With Genetic Engineering" in a clear
9 and conspicuous manner. For packaged foods that are produced with genetic
10 engineering, the words must be included on the label. Unpackaged raw food products,
11 such as fresh fruits and vegetables and unprocessed grains and nuts, produced with
12 genetic engineering must be identified with the same wording on the container, bin, or
13 shelf where the foods are displayed for sale by a retailer.

14 **Foods covered by the measure.** "Genetically engineered" is defined in the
15 measure as food produced from an organism that has had its genetics scientifically
16 altered. A food is also considered genetically engineered if the organism from which the
17 food is made has been treated with a genetically engineered material or contains an
18 ingredient, component, or other substance that is genetically engineered.

19 These foods are exempt from the measure:

- 20 • food or drink for animals;
- 21 • chewing gum;
- 22 • alcoholic beverages;
- 23 • foods, such as cheese, that would only be considered genetically
24 engineered because a genetically engineered material was used as a
25 processing aid;
- 26 • prepared foods intended for immediate human consumption;
- 27 • foods sold in a restaurant;
- 28 • foods derived entirely from an animal, such as milk, meat, or pure honey,
29 regardless of the animal's diet or medications, unless the animal itself has
30 been genetically engineered; and
- 31 • medically prescribed foods.

32 **Penalties for violations.** A manufacturer, distributor, or retailer that fails to properly
33 label foods that have been produced with genetic engineering commits a violation under
34 the Colorado Food and Drug Act. The penalty for a violation is a fine of not more than
35 \$1,000, six months imprisonment in a county jail, or both. Subsequent violations are
36 punishable by a fine of up to \$2,000, one year in a county jail, or both. Proposition 105
37 prohibits a person from suing a manufacturer, distributor, or retailer for not properly
38 labeling foods produced with genetic engineering.

1 Proposition 105 exempts from penalties a person who:

- 2 • grows, raises, or produces food without knowing that the food or seed
- 3 had been genetically engineered; and
- 4 • obtains a sworn statement from the seller that the seed or food was not
- 5 knowingly created with genetic engineering.

6 **Regulation by the state.** Proposition 105 requires the Colorado Department of
7 Public Health and Environment to establish regulations for labeling foods that have been
8 genetically modified or produced with genetic engineering. These regulations may
9 include procedures for the inspection of manufacturers and testing of food products to
10 ensure compliance with the measure's labeling requirements.

For information on those issue committees that support or oppose the measures on the ballot at the November 4, 2014, election, go to the Colorado Secretary of State's elections center web site hyperlink for ballot and initiative information:

<http://www.sos.state.co.us/pubs/elections/Initiatives/InitiativesHome.html>

11 Arguments For

12 1) The labeling of genetically engineered foods will increase the availability of
13 information about Colorado's food supply. Current labeling requirements for packaged
14 foods identify ingredients, nutritional values, and either the presence of allergens in the
15 food, or the existence of allergens in the manufacturing facility. The measure's labeling
16 requirements give Colorado consumers additional information to consider when making
17 their food purchasing decisions. The issue is not whether foods produced with genetic
18 engineering are good or bad, rather that many consumers want to have the option to
19 choose based on their personal needs and values. In the absence of federal action,
20 Proposition 105 can help Colorado citizens make informed food choices by requiring
21 labeling of foods produced with genetic engineering.

22 2) Over 60 countries, including all members of the European Union, have laws or
23 regulations mandating the labeling of genetically engineered foods. Additionally, a small
24 number of states have passed but not yet implemented laws requiring the labeling of
25 genetically engineered foods. The FDA's current voluntary labeling guidelines are not
26 widely used, do not provide enough information, and may never be made mandatory by
27 the federal government. Third party non-GMO and USDA organic labeling account for
28 only a small fraction of consumers' food choices in Colorado, so they are not a substitute
29 for mandatory labeling.

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1 **Arguments Against**

2 1) Proposition 105 will result in higher food prices as farmers, food manufacturers,
3 distributors, and retailers pass their costs to comply with the labeling requirements on to
4 consumers. Such businesses will have increased costs for record-keeping, product
5 verification, and separate product storage and handling processes for genetically
6 engineered products. The labeling requirement may be particularly burdensome for small
7 businesses and farmers' markets, since the measure does not provide for any
8 exemptions based on an operation's size.

9 2) The measure conflicts with existing nationwide voluntary labeling standards that
10 already provide consumers with accurate and reliable information on non-genetically
11 engineered and organic foods. Because of the large number of labeling exemptions
12 included in the measure — most notably food served in restaurants and meat and dairy
13 products regardless of the animal's diet and medications — the proposed labeling
14 requirements would not give consumers a reliable way of knowing which foods contain
15 genetically engineered ingredients, and which do not. These exempted foods will
16 appear as products that were not produced with genetic engineering, which may mislead
17 rather than inform consumers. Requiring the labeling of foods produced with genetic
18 engineering may also send the message to consumers that the foods are unsafe, even
19 though no scientific evidence indicates that genetically engineered foods are any riskier
20 than other foods.

21 **Estimate of Fiscal Impact**

22 **State revenue.** Passage of Proposition 105 may result in an increase in revenue
23 from fines. A manufacturer, distributor, or retailer that fails to properly label foods that
24 have been produced with genetic engineering commits a violation under the Colorado
25 Food and Drug Act. The penalty for a violation is a fine of not more than \$1,000,
26 six months imprisonment in a county jail, or both. Subsequent violations are punishable
27 by a fine of up to \$2,000, one year in a county jail, or both. In the past five years, one
28 person has been found guilty of mislabeling a food, drug, device, or cosmetic product, so
29 this proposition is not expected to create a significant increase in fine collections from
30 violations.

31 **State spending.** The Colorado Department of Public Health and Environment will
32 develop rules for the regulation of the labeling requirements through a stakeholder
33 process and hire staff to handle complaints, perform inspections, gather samples, and
34 test food. The department will also be required to update its computer software to track
35 complaints and food inspections. The frequency of inspections, sampling, and testing
36 will depend on the rules established by the department; however, it is expected that the
37 department will test at least 30 samples annually. The department is expected to hire up
38 to two additional staff to implement the proposition.

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1 Staffing, rulemaking, and computer software updates are expected to cost about
2 \$113,000 in the first year of implementation. Once the rules are in place, staffing,
3 computer software maintenance, and food sampling and testing are estimated to cost
4 \$130,000 annually. Proposition 105 does not identify a funding source to implement the
5 measure's requirements, so it is assumed state General Fund will be used.