

# STATE OF COLORADO

## Colorado General Assembly

Mike Mauer, Director  
Legislative Council Staff

**Colorado Legislative Council**  
029 State Capitol Building  
Denver, Colorado 80203-1784  
Telephone (303) 866-3521  
Facsimile (303) 866-3855  
TDD (303) 866-3472  
E-Mail: lcs.ga@state.co.us



Dan L. Cartin, Director  
Office of Legislative Legal Services

**Office of Legislative Legal Services**  
091 State Capitol Building  
Denver, Colorado 80203-1782  
Telephone (303) 866-2045  
Facsimile (303) 866-4157  
E-Mail: ols.ga@state.co.us

### MEMORANDUM

October 10, 2013

**TO:** Mr. Larry Cooper, Ms. Cheryl Gray, and Mr. Tomas Rogers

**FROM:** Legislative Council Staff and Office of Legislative Legal Services

**SUBJECT:** Proposed initiative measure 2013-2014 #48, concerning Labeling Genetically Modified Food

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Colorado Legislative Council and the Office of Legislative Legal Services to "review and comment" on initiative petitions for proposed laws and amendments to the Colorado constitution. We hereby submit our comments to you regarding the appended proposed initiative.

The purpose of this statutory requirement of the Legislative Council and the Office of Legislative Legal Services is to provide comments intended to aid proponents in determining the language of their proposal and to avail the public of knowledge of the contents of the proposal. Our first objective is to be sure we understand your intent and your objective in proposing the amendment. We hope that the statements and questions contained in this memorandum will provide a basis for discussion and understanding of the proposal.

#### Purposes

The major purposes of the proposed amendment to the **Colorado Revised Statutes** appear to be:

1. To require the labeling of genetically modified food beginning January 1, 2016.

#### Technical Comments

The following comments address technical issues raised by the form of the proposed initiative. These comments will be read aloud at the public meeting only if the proponents so request. You will have the opportunity to ask questions about these comments at the review and comment meeting. Please consider revising the proposed initiative as suggested below.

1. It is standard drafting practice to insert a left tab at the beginning of the first line of each new section, subsection, paragraph, subparagraph, or sub-subparagraph, including amending clauses and section headings.
2. An amending clause should follow the standard format shown in the initiative drafting guide and style sheet. When adding a new section, the entire section number should be shown after the instruction "**add**". For example, the amending clause of **Section 1** of the proposed measure should read as follows: "In Colorado Revised Statutes, **add** 25-5-401.5 as follows:".
3. It is standard drafting practice to include the section number being added or amended and a headnote for the corresponding section that briefly describes the contents of the section. The section number and headnote should be in bold-faced type, be in lower case letters, follow the amending clause, and appear before the language of the section. Also, an introductory portion, which ends in a colon, must generally be numbered; definition sections are an exception. For example:

**"SECTION 1.** In Colorado Revised Statutes, **add** 25-5-401.5 as follows:

**25-5-401.5. Legislative declaration.** (1) THE ELECTORATE OF COLORADO HEREBY FINDS, DETERMINES, AND DECLARES THAT:

(a) LABELING OF..."

4. Sections 2 and 3 also need to have the section numbers and headnotes that appear in current law.
5. The preferred method for separating a series in a list is to use a comma after the second to last item in the series. See section 25-5-401.5 (1) of the proposed measure.
6. It is unnecessary to show the language of an entire section if that language is not being amended. When amending sections 25-5-402 and 25-5-411, the proponents should include the introductory portion and the new subsections and paragraphs only. See the example in paragraph 6 of the review and comment memo.
7. Rather than amending section 25-5-402 in its entirety, the proponents should instead add subsections using decimal numbers. The subsections that are not amended should not appear in the initiative, for example:

**"SECTION 2.** In Colorado Revised Statutes, 25-5-402, **add** (6.5), (8.5), (9.5), (12.5), (15.5), (16.5), (20.3), (20.5), and (21.5) as follows:

**25-5-402. Definitions.** As used in this part 4, unless the context otherwise requires:

(6.5) "CULTIVATED COMMERCIALLY" MEANS..."

8. The definitions should be in alphabetical order. In section 25-5-402 of the proposed measure, subsection (29) should be placed between proposed subsections (9) and (10).

Similarly, proposed subsection (30) should be placed between proposed subsections (18) and (19).

9. When adding new paragraphs, the paragraph letters should not be small capitalized, but instead should be lower case letters. See section 25-5-402 (15) (a) of the proposed measure.
10. The first letter of a paragraph, subparagraph, or sub-subparagraph should be capitalized. See sections 25-5-401.5 (4) and 25-5-411 (1) (r) (I) to (IV) of the proposed measure for examples of this error.
11. If two phrases mean the same thing, you should consider using only one of the phrases. Alternatively, section 25-5-402 (15) of the proposed measure should read "(12.5) "GENETICALLY MODIFIED" OR "GENETICALLY ENGINEERED" MEANS...".
12. It is standard drafting practice to use semicolons to connect two or more paragraphs, subparagraphs, or sub-subparagraphs. In section 25-5-402 of the proposed measure, for example, paragraph (a) of subsection (15) should end with "ORGANELLES; OR"
13. Section 2-4-102, Colorado Revised Statutes, in the rules of statutory construction, specifies that the singular includes the plural and the plural includes the singular. For example, in section 25-5-402 (15) (c) (I) of the proposed measure, "ORGANISM(S)" should be "ORGANISM".
14. It is standard drafting practice not to use parentheses in statutory language. All parentheses should be removed from the statutory language being added. See section 25-5-402 (15) (c) (I) of the proposed measure.
15. It is standard drafting practice to use a semicolon before the phrase "except that". See section 25-5-402 (15) (c) (I) of the proposed measure.
16. It is standard drafting practice to place punctuation after quotation marks. For an example, in section 25-5-402 (15) of the proposed measure write "GENETICALLY ENGINEERED",".
17. It is standard drafting practice to avoid passive voice. For example, in section 25-5-411 (1) (q) of the proposed measure, the proponents should write "A PERSON SHALL PLACE THE WORDS "PRODUCED WITH GENETIC ENGINEERING"..." rather than "THE WORDS "PRODUCED WITH GENETIC ENGINEERING" SHALL BE PLACED...".
18. Section 25-5-411 (1) (r) of the proposed measure does not follow the introductory portion. This paragraph would work better as part of paragraph (q).
19. When referencing paragraphs, the paragraph letters should not be small capitalized, but instead should be lower case letters. See section 25-5-411 (1) (r) of the proposed measure.
20. Avoid using "and/or" as in section 25-5-411 (1) (q) of the proposed measure.

21. Avoid using "should" in section 25-5-411 (1) (q) of the proposed measure if you mean "must".
22. It is standard drafting practice to avoid the use of archaic terms. In section 25-5-411 (3) (a) of the proposed measure, instead of using "SUCH", use "THE".
23. When referencing a subsection, paragraph, subparagraph, or sub-subparagraph, it is standard drafting practice to repeat the letter or number of the subsection, paragraph, subparagraph, or sub-subparagraph. For example, in section 25-5-411 (3) of the proposed measure, write, "PARAGRAPH (q) OF SUBSECTION (1) OF THIS SECTION".

### **Substantive Comments and Questions**

The substance of the proposed initiative raises the following comments and questions:

1. Article V, section 1 (5.5) of the Colorado constitution requires all proposed initiatives to have a single subject. What is the single subject of the proposed initiative?
2. Do you see any potential first amendment issues with requiring this labeling? Is the desire for informed choice sufficient to create a legitimate government interest?
3. Section 25-5-402 (15) of the proposed measure says that the term "genetically modified" means "*food* produced from or with an organism or organisms with its genetics altered...". But doesn't this definition actually relate to something done *to* the food rather than the food itself?
4. Section 25-5-402 (7) of the proposed measure defines the term "cultivated commercially". However, this term is not used anywhere else in the proposed initiative. What is the purpose of defining this term?
5. Section 25-5-402 (30) of the proposed measure includes the processing of seed and seed stock for manufacturers? Why is this not included in the definitions for distributors and retailers?
6. Section 25-5-411 (1) (q) of the proposed measure requires labels on genetically modified products to be placed in "a clear and conspicuous manner" on food containers. Is this definition adequate? Do you anticipate the department of public health and environment promulgating rules to clarify the labeling requirements?
7. Do the requirements of this proposed initiative in any way conflict with federal statutes or regulations? Is the statement in section 25-5-401.5 (3) of the proposed measure accurate? Is this area in any way pre-empted by federal law? If yes, how can this proposal be viable when federal law already applies?
8. Will the department of public health and environment carryout inspections to enforce the labeling requirements? How do they test a product on the shelves to verify if it has not been genetically modified? Consider giving the department specific rulemaking authority regarding inspections.

9. Do retailers know whether an animal has been genetically engineered?
10. Section 25-5-411 (4) of the proposed measure says there is no private right of action against a retailer for failure to conform to the labeling requirements. Do the penalties of section 25-5-405 apply to retailers in this situation?
11. Does the language of section 25-5-411 (4) of the proposed measure mean that there is a private cause of action against manufacturers or distributors of misbranded food items?
12. Does this proposal affect products already on the shelves?
13. What current products would be affected by this proposal?
14. Would you consider an exemption for medically prescribed food?
15. When must the person in section 25-5-411 (3) of the proposed measure obtain the sworn statement? Is it at the time there is an alleged violation of the labeling requirement or must each person obtain the sworn statement at the time of every sale?
16. The language in section 25-5-411 (3) (b) of the proposed measure may be redundant. It says that the substance "was entirely segregated from, and has not knowingly been commingled with a food or food component" that has been modified. But if it was segregated, it could not have been commingled. Is this correct?
17. Is there any chance that this proposal would cause manufacturers, distributors, or retailers to cease the sale of certain items in Colorado? Is this the intent of the proposal?
18. Are you aware of similar requirements already in existence in other states? If yes, have these been met with successful implementation?