

Initiative #48
Labeling Genetically Modified Food

1 **Proposition? 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"
4 on 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
7 labeling requirements;
- 8 ♦ prohibit a consumer 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 oversee the labeling requirements.

13 **Summary and Analysis**

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

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30 issued draft guidance on this labeling to the food industry.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

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

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

5 **Proposed labeling requirements.** Beginning July 1, 2016, the measure requires
6 that certain foods sold in Colorado — that are genetically modified or produced with
7 genetic engineering — be labeled "Produced With Genetic Engineering" in a clear and
8 conspicuous manner. For packaged foods that are produced with genetic
9 engineering, the words must be included on the label. Raw food products, such as
10 fresh fruits and vegetables and unprocessed grains and nuts, produced with genetic
11 engineering that are not separately packaged must be identified with the same
12 wording on the container, bin, or shelf where the foods are displayed for sale by a
13 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
17 the food is made has been treated with a genetically engineered material or contains
18 an 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, regardless of the animal's diet or
29 medications, unless the animal itself has been genetically engineered;
30 and
- 31 • medically prescribed foods.

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

1 The measure exempts 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.** The measure requires the Colorado Department of
7 Public Health and Environment to establish regulations for labeling foods that have
8 been genetically modified or produced with genetic engineering. These regulations
9 may include procedures for the inspection of manufacturers and testing of food
10 products to 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 website 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 transparency of
13 Colorado's food supply. Current labeling requirements for packaged foods identify
14 ingredients, nutritional values, and either the presence of allergens in the food, or the
15 existence of allergens in the manufacturing facility. The measure's labeling
16 requirements give Colorado consumers additional information to consider when
17 making their food purchasing decisions. The issue is not whether foods produced with
18 genetic engineering are good or bad, rather that many consumers want to have the
19 option to choose.

20 2) Over 60 countries, including all members of the European Union, and a small
21 number of states have laws or regulations mandating the labeling of genetically
22 engineered foods. The FDA's current voluntary labeling guidelines do not provide
23 enough information, and the federal government may never mandate the labeling of
24 genetically engineered foods. In the absence of federal action, Colorado can help its
25 citizens make informed food choices by requiring labeling of foods produced with
26 genetic engineering.

1 **Arguments Against**

2 1) Requiring the labeling of foods produced with genetic engineering may send
3 the message to consumers that the foods are unsafe, even though no scientific
4 evidence indicates that genetically engineered foods are any riskier than other foods.
5 Because the measure does not set a minimum allowable amount, foods containing
6 even trace amounts of genetically engineered material must be labeled.
7 Without making the Colorado food supply any safer, the measure creates an extra
8 burden for all farmers, food manufacturers, and retailers, who must ensure that
9 genetically engineered foods are properly labeled. The labeling requirement may be
10 particularly burdensome for small businesses and farmers' markets, since the labeling
11 is required regardless of the operation's size. Any costs associated with the labeling
12 requirements may be passed on to consumers through higher grocery prices.

13 2) Existing labeling programs that allow a food producer to identify foods that
14 have not been produced with genetic engineering are more reliable than the labeling
15 required under this measure. The measure includes a large number of food
16 exemptions, most notably food served in restaurants and meat and dairy products
17 regardless of whether genetically engineered foods and medications were a part of the
18 animal's diet. These exempt foods will appear as products that were not produced
19 with genetic engineering which may mislead rather than inform consumers. The most
20 reliable way for a consumer to know whether a food was produced without genetic
21 engineering is from the presence of a USDA Organic label, or a Non-GMO Project
22 Verified label, both of which are currently available.

23 **Estimate of Fiscal Impact**

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

33 **State spending.** The Colorado Department of Public Health and Environment will
34 develop rules for the regulation of the labeling requirements through a stakeholder
35 process and hire staff to handle complaints, perform inspections, gather samples, and
36 test food. The department will also be required to update its computer software to
37 track complaints and food inspections. The frequency of inspections, sampling, and
38 testing will depend on the rules established by the department; however, it is expected
39 that the department will test at least 30 samples annually. The department is
40 expected to hire up to 2 additional staff to implement the measure.

1 Staffing, rulemaking, and computer software updates are expected to cost about
2 \$96,000 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 ? does not identify a funding source to implement the
5 measure's requirements, so it is assumed state General Fund will be used.