3rd Draft

Initiative #48
Labeling Genetically Modified Food

Proposition? proposes amending the Colorado statutes to:

- ♦ require foods that are genetically modified or produced with genetic engineering to include the words "Produced With Genetic Engineering" on the label or container, with certain exceptions;

- ♦ apply existing food mislabeling penalties in state law to a food manufacturer, distributor, or retailer for failing to comply with the labeling requirements;

- ♦ prohibit a person from bringing legal action against a manufacturer, distributor, or retailer for failing to comply with the labeling requirements; and

- ♦ require the Colorado Department of Public Health and Environment to develop regulations and oversee the labeling requirements.

Summary and Analysis

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

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to voluntarily label their products as to whether or not they contain genetically engineered material, and has issued draft guidance on this labeling to the food industry.

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

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

Proposed labeling requirements. Beginning July 1, 2016, the measure requires that certain foods sold in Colorado — that are genetically modified or produced with genetic engineering — be labeled "Produced With Genetic Engineering" in a clear and conspicuous manner. For packaged foods that are produced with genetic engineering, the words must be included on the label. Raw food products, such as fresh fruits and vegetables and unprocessed grains and nuts, produced with genetic engineering that are not separately packaged must be identified with the same wording on the container, bin, or shelf where the foods are displayed for sale by a retailer.

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

These foods are exempt from the measure:

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

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

The measure exempts from penalties a person who:

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

Regulation by the state. The measure requires the Colorado Department of Public Health and Environment to establish regulations for labeling foods that have been genetically modified or produced with genetic engineering. These regulations may include procedures for the inspection of manufacturers and testing of food 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 web site hyperlink for ballot and initiative information:

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

Arguments For

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

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

Arguments Against

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

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

Estimate of Fiscal Impact

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

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

Staffing, rulemaking, and computer software updates are expected to cost about $96,000 in the first year of implementation. Once the rules are in place, staffing, computer software maintenance, and food sampling and testing are estimated to cost $130,000 annually. Proposition ? does not identify a funding source to implement the measure's requirements, so it is assumed state General Fund will be used.