Final Draft

Proposition 105
Labeling Genetically Modified Food

Proposition 105 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 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to voluntarily label their products as to whether or not they contain genetically engineered material, and has issued draft guidance on this labeling to the food industry.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, Proposition 105 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. Unpackaged raw food products, such as fresh fruits and vegetables and unprocessed grains and nuts, produced with genetic engineering 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, meat, or pure honey, 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. Proposition 105 prohibits a person from suing a manufacturer, distributor, or retailer for not properly labeling foods produced with genetic engineering.

Proposition 105 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. Proposition 105 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 105 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 105 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) 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. Requiring the labeling of foods produced with genetic engineering may also 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.

Estimate of Fiscal Impact

State revenue. Passage of Proposition 105 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 proposition 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 proposition.

Staffing, rulemaking, and computer software updates are expected to cost about $113,000 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 105 does not identify a funding source to implement the measure's requirements, so it is assumed state General Fund will be used.

Last Draft as Mailed to Interested Parties

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.

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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.

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- food or drink for animals;
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- 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:

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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.

Last Draft Comments from Interested Parties

Proposition 105
Labeling Genetically Modified Food

Alan Lewis, representing Vitamin Cottage as a proponent:

Page 1 Lines 16 and 17

Text in third draft reads: "to increase the herbicidal tolerance or pest and virus resistance of plants."

The reference to "virus" is redundant. Virus are always considered a subcategory of pest along with bacteria, fungus, insects and wildlife among others.

Suggested final text: "to increase the herbicidal tolerance or pest ~~and virus~~ resistance of plants."

Page 2 Lines 10 thru 14

Text in third draft reads: "…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 sentence should begin with "Unpackaged raw foods…".

The statute combines "raw" AND "separately packaged" as the standard for bin labeling. The suggested new construction mirrors the language in the initiative and the language in the prior sentence. Moreover, it immediately and accurately communicates to the reader the intended meaning.

Suggested final text: "…Unpackaged 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".

Page 2 Lines 28-31

Text in third draft reads:

"• 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"

Change "…such as milk and meat…" to "…such as milk, meat, and honey…" as contemplated by the language of the initiative.

Suggested final text:

"• foods sold in a restaurant;

Alan Lewis, representing Vitamin Cottage as a proponent (Cont.)

- foods derived entirely from an animal, such as milk, meat, or honey, regardless of the animal's diet or medications, unless the animal itself has been genetically engineered; and"

Page 2 Lines 33 – 39.

Text in third draft reads: "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 term “Manufacturer” is clearly, specifically and intentionally defined in the initiative to include farmers and seed producers. Unless this definition is provided to voters, they certainly will not understand this key concept. Suggest adding at the end of this paragraph the definition from the initiative which reads: “(15.5) “MANUFACTURER” MEANS A PERSON OR BUSINESS ENGAGED IN THE PRODUCTION OR PROCESSING OF SEED, SEED STOCK, FOOD, OR ANY FOOD PRODUCT.”:

Suggested final text: "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. MANUFACTURER IS DEFINED TO INCLUDE A PERSON OR BUSINESS ENGAGED IN THE PRODUCTION OR PROCESSING OF SEED, SEED STOCK, FOOD, OR ANY FOOD PRODUCT."

Page 3 Lines 12-15

Text in third draft reads: "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."

Suggest adding a key example, country of origin labeling. Recent federal court rulings have found that country of origin labeling requirements do not impede free speech even if they are not based on health risks to consumers. Specifically, "the consumers desire to know is sufficient cause for the government to require label disclosures."

This is the most similar case to GMO labeling, and thus should be included in the ballot language.

Last Draft Comments from Interested Parties

Alan Lewis, representing Vitamin Cottage as a proponent (Cont.)

Suggested final text: "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, country of origin labeling, and either the presence of allergens in the food, or the existence of allergens in the manufacturing facility."

Page 4 Lines 9-11

Text in third draft reads: "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."

It is not accurate to say no scientific evidences exists in this regard. There are several peer-reviewed studies published in reputable and bona fide scientific journals that call into question the safety of GMO foods for both animal and human consumption.

Suggest using the language "no scientific consensus has been reached that genetically engineered foods are riskier than other foods" to avoid misrepresenting the existence of these studies.

Suggested final text: "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 consensus has been reached that genetically engineered foods are any riskier than other foods."

Shayne Madsen, representing the Coalition Against the Misleading Labeling Measure as an opponent:

August 11, 2014

Attn:
LEGISLATIVE COUNCIL
ROOM 029 STATE CAPITOL
DENVER, COLORADO 80203-1784
Re: Comments on Draft Ballot Analysis and Arguments – Initiative #48

Please find comments and requested changes to the Draft Ballot Analysis and Arguments regarding Initiative #48.

Arguments Against

Arguments presented against the measure fail to sufficiently inform voters of the serious cost impacts the measure will have on consumers. Numerous economic studies as well as independent media sources have reviewed and confirmed that mandatory labeling requirements such as proposed in Initiative #48 – especially those imposed on a single-state basis – will inevitably result in higher food costs for consumers. References to key studies and findings are attached.

Last Draft Comments from Interested Parties

Shayne Madsen, representing the Coalition Against the Misleading Labeling Measure as an opponent (Cont.)

Argument #1: The use of the word "could" rather than "will" in the opponent arguments implies that increased cost impacts resulting from the measure are merely speculative. However, although there are variable estimates of the amount of cost increases that will result from the labeling requirement, there is widespread agreement from all sources that cost increases will occur.

We therefore request the following changes to Argument #1:

1) Proposition ? ~~could~~ will 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~~ will have increased costs for record-keeping, product verification, and separate product storage and handling processes for genetically engineered products, as required by the measure. 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.

Arguments Against (continued)

Argument #2 presented against the measure fails to sufficiently inform voters that measure conflicts with existing federal food labeling policy. One of the most important flaws of the measure is related to the misleading and inaccurate information that would be provided by the label. Instead, Argument #2 emphasizes the important, but less relevant, issue of whether the label will wrongly imply there is a safety concern with labeled products.

We therefore request the following changes to Argument #2:

2) 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. The measure also conflicts with existing federal food labeling policy because requiring the special labeling of certain foods produced with genetic engineering ~~may~~ send the message to consumers that the foods are somehow unsafe, even though no scientific evidence indicates that genetically engineered foods are any riskier than other foods.

Last Draft Comments from Interested Parties

Shayne Madsen, representing the Coalition Against the Misleading Labeling Measure as an opponent (Cont.)

Summary and Analysis

It is important to note that the measure defines only certain scientific processes as "genetic engineering." There are many other ways of "scientifically altering" the genetic material of food crops (including mutagenesis, radiation and chemical processes), and these processes are not required to have special labeling under this measure.

The measure only defines certain foods as "genetically engineered" – even though most food crops today have had their "genetics scientifically altered." Therefore the description of foods covered by the measure should be revised as follows:

Foods covered by the measure. "Genetically engineered" is defined in the measure as food produced from an organism that has had its characteristics modified by a specific scientific process. ~~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" using certain scientific techniques.

Estimate of Fiscal Impact

The Estimate of Fiscal Impact does not accurately reflect to voters the true regulatory costs to the state related to establishing regulations, implementing and enforcing the measure's requirements. Since the specific labeling requirements in Initiative 48 are not required by federal law, are not consistent with current FDA regulations and do not exist in any other state or country, tens of thousands of food and beverage products would have to be specially relabeled, repackaged and monitored just in Colorado. In addition, because Initiative 48's requirements apply to foods exported from Colorado, state officials would also have to implement regulations to assure compliance with export labeling. To ensure compliance with these requirements Colorado state officials would have to monitor and inspect tens of thousands of products in thousands of stores statewide and from hundreds of food companies both within and outside of Colorado. Effective enforcement would also include auditing the records of farmers, food manufacturers, distributors and stores, including sworn statements provided to prove that certain products do not contain any ingredients that would require the special labeling. A study of a similar GMO labeling measure proposed last year in Washington, Initiative 522, concluded that state enforcement of that measure would have required approximately 200 full time-equivalent employees at a cost of $22.5 million annually. A copy the Executive Summary of this study is attached (See Attachment A).

Information provided by the Coalition Against the Misleading Labeling Measure, 1999 Broadway, Ste. 4190, Denver, CO 80202.

Last Draft Comments from Interested Parties

Bob Mattive, representing himself:

In the Background section: In agriculture....virus resistance of plants, but it could also increase nutritional levels and extend shelf life of food.

Arguments Against: FDA policy states that FDA has no basis for concluding that GE foods differ from other foods in any meaningful way or present any greater safety concern.

Foods from GE plants must meet the same safety requirements as non GE foods.

http:/www.fda.gov/Food/FoodScienceResearch/Biotechnology/ucm34

1. Costs of Labeling Genetically Modified Food Products in N.Y. State
May 2014

By William Lesser, Susan E. Lynch Professor in Science and Business, Dyson School of Applied Economics and Management, Cornell University

- Study estimates direct and indirect economic impacts of proposed mandatory labeling in New York State. Estimated midpoint of annual costs to four-person household is $800, including increased ingredient costs for non-GM or organic ingredients, "Identity Preservation" costs for recordkeeping and handling, and consumer impact of additional state regulatory costs.
- The study looks at further indirect impacts of mandatory labeling, including economic impacts to farmer and agricultural sectors: "Additional costs to the State include the potential loss of net farmer income from producing GM corn and soybeans, which while very real for State farmers is minor compared to direct consumer costs. There are additionally regulatory costs which are borne by the State."
- Study further concludes mandatory labeling will increase costs for both GM and non-GM products, as well as reducing consumer choice: "Consumer studies along with experiences from Europe tell us that many shoppers will avoid/pay less for labeled GM foods, in which case many of those over time will be disappear, reducing choice and raising food costs due to the higher ingredient costs of non-GM inputs."

2. Proposition 37 – California Food Labeling Initiative: Economic Implications for Farmers and the Food Industry if the Proposed Initiative were Adopted
September 2012

By Julian M. Alston and Daniel A. Summer. Professors in the Department of Agricultural and Resource Economics of the University of California, Davis

- Study outlines significant costs for California's food and agricultural industries, as well as significant consumer costs.
- "Proposition 37 would cause food manufacturers and retailers to change the methods used to produce many of the foods Californians eat, and would make those foods more expensive. Among consumers, the burden would be greater on the poor who spend a larger share of their income on food."
- *"Proposition 37 would impose about $1.2 billion in additional costs on California food processors to meet segregation, monitoring and certification costs."*
- Study also outlines significant environmental and safety costs: "The implications for the environment and farm worker safety are negative. Compared with GE production, to achieve comparable pest control, acres that switch to non-GE production would be expected to use 50–100 percent more herbicide and 10–30 percent more pesticide with potential for a heavier environmental burden (GE insect-resistant corn provides area-wide insect suppression that benefits non-GE producers; the total national insecticide saving from the use of IR maize was almost 80 percent in 2009)."

3. Initiative 522: Costly, Flawed and Ill-Conceived
September 2013
Washington Research Council

Study estimated impacts of Washington-only mandatory labeling requirement would increase grocery costs for a four-person household to be over $450 per year.

> "We estimate that the initial start-up costs to comply with I-522's Washington-only regulations for farmers and food manufacturers would be $264 million. (For reference, we estimate that retail expenditures on groceries in Washington in 2012 were $16.4 billion.) On an ongoing basis, food manufacturers would either have to create special labels for the portions of their products sold in Washington state, or remake those products with higher-priced non-GE or organic ingredients to avoid the mandate to apply special labels. Those costs would be passed on to Washington consumers through higher food prices. This would increase grocery bills for most Washington families by hundreds of dollars per year."

4. White Paper on Washington State Initiative I-522
Labeling of Foods Containing Genetically Modified Ingredients
October 2013
Washington State Academy of Sciences

See Section 4: Policy and Trade and Section 5: Regulation and Enforcement

- "Mandatory labeling, especially at a state versus federal level, is likely to affect trade and impose higher costs on firms producing and selling products in WA. These costs are likely to be passed on to the consumer resulting in higher food prices. Importantly, these costs will be borne by firms and consumers for both GM and non-GM foods as labeling foods as non-GM will require oversight costs."
- "Responsibility and costs for monitoring and compliance of I-522 would accrue to both the public and private firms; the estimates have a wide range, and could vary from a few hundred thousand to millions of dollars annually."

5. The Genetically Engineered Foods Mandatory Labeling Initiative
Overview of Anticipated Impacts and Estimated Costs to Consumers
July 2012
Northbridge Environmental Management Consultants

- Study estimated consumer cost impacts of proposed mandatory labeling in California:
- Mid-point of groceries cost increases for four-person household was estimated at $350-$400 per year per family.
- Additional cost scenarios were studied:
  "Finally, we computed costs on a state-wide basis, aggregating consumer costs across all households. The total annual consumer cost to pay for the changes made to the food supply by the Initiative range from $4.5 to $5.2 billion. Given the conservative nature of our substitution cost assumptions, we believe it is more likely that true costs will fall toward the upper ends of the ranges provided."

6. The Potential Impacts of Mandatory Labeling for Genetically Engineered Food in the United States
April 2014
Council for Agricultural Science and Technology

- Regarding costs, the report concludes: "Mandatory GE labeling would increase U.S. food costs. The size of the increase will depend on choices made in the marketplace by suppliers and marketers, and what products are included in labeling requirements."
- "If, as in other countries, sellers move to non-GE offerings in response to mandatory labeling, food costs could rise significantly and these increased costs would extract a greater burden on low-income families. If, on the other hand, food supplies choose to label virtually all products as containing GE without testing or segregation, increases in costs might be minimal."

7. Labeling Genetically Modified Foods: An Economic Appraisal
Undated
U.S. Department of Agriculture – Economic Research Service

- This is a technical paper the "presents a simple economic model showing how introduction of labeling for genetically modified foods can affect food markets." and includes "the implications of labeling for international trade in food products."

8. Information Policy and Genetically Modified Food: Weighing the Benefits and Costs
2003
Department of Resource Economics, University of Massachusetts Amherst

- "This paper discusses empirical work on the sources and magnitude of benefits and costs from labeling programs, with particular emphasis on the impact of the design of the labeling program on benefits and costs."
- "The costs of GM labeling programs are highly variable. At one end of the spectrum are voluntary labeling programs for GMF on non-GMFs, where companies set up segregation or IP systems that ensure label integrity for specific product flows. The price of the labeling and underlying quality assurance systems will be reflected in the product price. At the other end of the spectrum is mandatory labeling of all GMFs (broadly defined) and non-GMFs (narrowly defined), verified through IP systems with full traceability. Here all the producers and consumers will bear the costs of labeling and related quality assurance."

9. Direct and Hidden Costs in Identity Preserved Supply Chains
2002
By Richard Maltsberger & Nicholas Kalaitzandonakes

- "Any labeling scheme must be supported by an effective identity preservation system which implies extra logistical costs. Both direct and hidden costs exist in identity preserved (IP) systems. Such costs vary substantially with the configuration of individual supply chains and can be meaningful, especially under strict standards and thresholds."
- While the study is not specifically related to GE food labeling, it's been widely referenced in GE food labeling cost studies because GE food labeling, like other IP food products such as organics and Kosher foods, are IP food systems.
- The study creates a model for IP systems: "To estimate IP costs, we build the Process & Economic Simulation of IP (PRESIP). The PRESIP model is designed to capture the subtle intricacies of day-to-day operations, chain coordination, and relevant costs in the IP supply chains for grain. Its structure is flexible and can be adjusted to simulate any asset configuration that may be encountered."

Washington Research Council

Attachment A

Special Report

September 2013

INITIATIVE 522: COSTLY, FLAWED AND ILL-CONCEIVED

Executive Summary

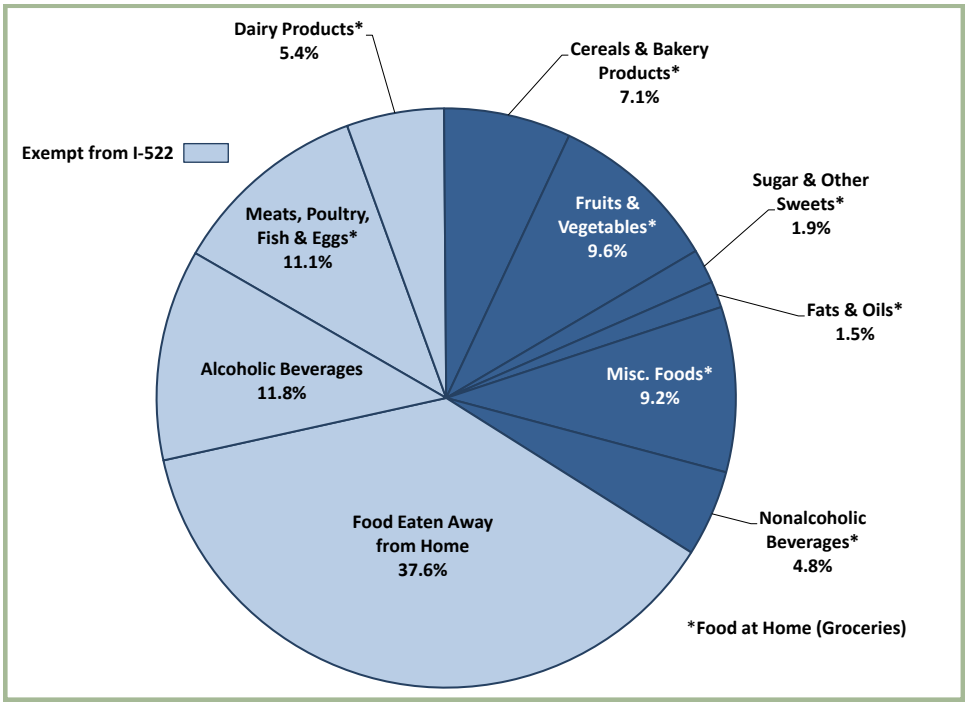
On November 5, 2013, Washington voters will decide the fate of Initiative 522, which would require special labels on certain foods made with genetically engineered (GE) ingredients and on GE seeds and seed stock sold at retail. There are a lot of misconceptions about GE products, which have safely been part of our food supply for nearly 20 years. In this report, the Washington Research Council assesses the economic impact of I-522 on Washington consumers, taxpayers, and Washington's agricultural economy.

Broad exemptions undermine the initiative's stated goal of providing consumer information.

While I-522 supporters say the measure simply provides consumers with necessary information, there are so many exemptions to the initiative's regulations that it would not provide consumers with meaningful or complete information about the presence or absence of GE content. The exemptions include foods that come from animals (like meat, milk and eggs), even if those animals were fed on GE grains, silage or other GE foods; raw agricultural commodities that may contain but were grown without the "intentional use" of GE products (if the supplier provides a sworn statement to that effect); processed foods, such as cheese, which were made with GE enzymes or other "GE processing aids;" food sold at restaurants or sold "to go;" all alcoholic beverages; and any foods labeled as "certified organic." Processed foods in which GE materials account for 0.9 percent or less of the total weight of the foods would be temporarily exempt until 2019. However, beginning July 1, 2019, that labeling threshold would drop to zero.

Given all of the exemptions, we estimate that only about one-third of the food Washington consumers regularly purchase would be subject to the labeling provisions in I-522—even though the remaining two-thirds of foods may contain GE ingredients.

Chart ES1: Two-Thirds of Food and Beverage Expenditures in Washington Would Be Exempt From I-522's Labeling Requirement



Compliance costs for farmers and food companies would be high.

Taking into account those categories of food which would be exempt from I-522's requirements, foods that would require special labeling for retail sale just in Washington would include thousands of common food products. The

Table ES1: Estimated Range of Cost Increase in Annual Food Spending, by Household Size

Household Size	2	3	4	5	6
2015 to 2019	$97-$260	$150-$390	$200-$520	$240-$650	$290-$790
2019 and Beyond*	$220-$260	$340-$390	$450-$520	$560-$650	$670-$790

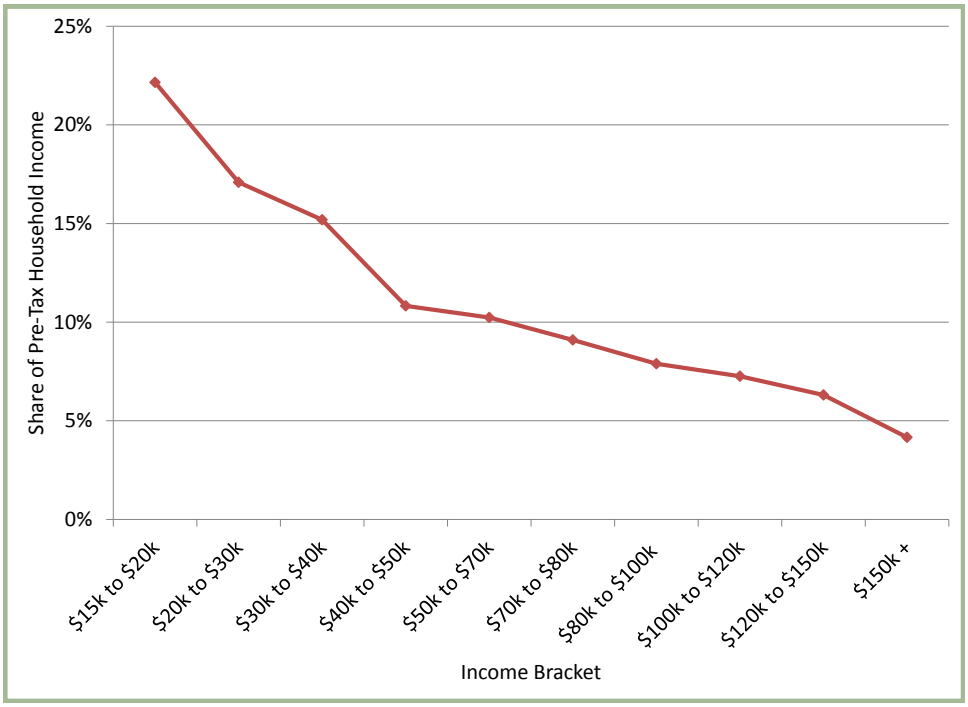
*I-522 would set a 0% threshold for labeling in 2019. No existing data is availiable for the costs of complying with a threshold that low. Thus, exisiting data for obtaining non-GE ingredients to achieve a 0.5% threshold was used as a proxy for 0%. This means that the compliance costs shown for 2019 and beyond are actually understated.

Source: Northbridge Environmental Management Consultants

economic impact of complying with these Washington-only regulations would involve a number of initial and ongoing costs to farmers, food processors and manufacturers, retailers, consumers and taxpayers.

We estimate that the initial start-up costs to comply with I-522's Washington-only regulations for farmers and food manufacturers would be $264 million. (For reference, we estimate that retail expenditures on groceries in Washington in 2012 were $16.4 billion.) On an ongoing basis, food manufacturers would either have to create special labels for the portions of their products sold in Washington state, or remake those products with higher-priced non-GE or organic ingredients to avoid the mandate to apply special labels. Those costs would be passed on to Washington consumers through higher food prices. This would increase grocery bills for most Washington families by hundreds of dollars per year.

Chart ES2: I-522's Increased Costs Would Fall Heavily On Lower Income Families (Expenditures on Groceries as a Percentage of Income)



Consumer food costs would increase by hundreds of dollars per year.

We estimate that, for the 2015–19 period, the increase in food costs that I-522 would impose for a household of four would be between $200 and $520 per year. For 2019 and onward, the increase in food costs for such a family would be more than $450 per year. The increase in food prices caused by the initiative would disproportionately affect households with lower incomes.

Regulations would increase state spending and costs to taxpayers.

Based on regulatory costs for comparable existing programs, we estimate that a program to actively enforce I-522's Washington-only labeling regulations on thousands of common food products sold at thousands of retail stores statewide, as well as on seed and seed stock, would require the Department of Health to hire approximately 200 full time equivalent employees at a cost of $22.5 million annually. The initiative dedicates no source of funding to cover the cost of this new state government program.

I-522 exceeds international standards.

I-522 backers claim the initiative conforms to international standards. That is simply not the case. For example, in the European Union (EU), the threshold set for labeling is 0.9 percent GE content by total weight of the product. In Japan, it is 5 percent. The zero percent threshold standard that would be implemented under I-522 would be far stricter than global standards and would be difficult or impossible to enforce, given the absence of existing tests that can detect trace amounts of GE ingredients.

New lawsuit provision would be costly and complicated for farmers, retailers and food companies.

I-522 would give trial lawyers, anti-biotechnology activists and any other person a special new right to file lawsuits against farmers, food manufacturers and grocers, by claiming they had somehow violated I-522's labeling requirements. This would undoubtedly encourage costly, "shakedown" lawsuits.

The minimal level of Department of Health activity related to the initiative anticipated by the state fiscal note seems to suggest that the state would not actively enforce the measure's labeling requirements. This means that most of the enforcement effort would be based on lawsuits filed by private parties, thus increasing the likelihood that the risks and costs of litigation over the initiative's labeling regulations would be high for the food industry and retailers.

Federal law may preempt I-522.

There may be federal legal challenges to the law created by the initiative's passage on First Amendment and other grounds, including that the labels may be considered misleading. The costs of defending I-522 against such challenges would fall to the state government, opening the door to costly litigation.

I-522 would block adoption of future technological advancements for Washington farmers and food companies.

Supporters of I-522 and other such labeling proposals have said that labeling is a step toward stigmatizing and achieving a complete ban on GE foods. To the extent that they succeed, GE research and development activity and the use of new GE breakthroughs in Washington would be stifled. This could have severe negative consequences for Washington's agricultural sector in the future, by discouraging local farmers from using GE varieties of crops that are more resistant to diseases, pests and drought, thus requiring less pesticides and water.

Existing federal labeling policy already provides consumers with ample information on GE foods.

Food labeling requirements are typically set at the federal level. Current federal food labeling regulations in the U.S. do not require special labels for foods containing GE ingredients. However, there are existing voluntary labeling standards that already provide consumers with options to purchase foods made without GE ingredients, if that is what they prefer. In addition, the "USDA organic" label is a nationally approved standard which allows consumers another option for identifying foods without GE ingredients.

I-522 would be first state-based labeling policy in the U.S.

While some countries do have GE labeling requirements, the scope and enforcement of those laws vary considerably and such regulations are set at the national level, not at the state or provincial level. If I-522 were to pass, Washington would be the only state to have such regulations in effect. (Connecticut did recently enact a GE-related labeling law, but it would not go into effect unless major "trigger" conditions are met, making it unlikely to be implemented.)

By unilaterally imposing special label-

ing as a single state, Washington would put local producers, processors and retailers at a competitive disadvantage. They would face significant costs due to having to install and maintain different sets of production processes and packaging depending on whether they are selling in Washington or in the rest of the U.S. Such a patchwork of laws does every member of the food supply chain, along with the consumer, a disservice.

I-522 would reduce consumer choice.

The end result of labeling, as has been borne out in the EU, would be reduced consumer choice. As a European Commission report noted,

> The introduction of the current labeling provisions coincided with a general withdrawal of products which would have had to be labeled and this has not facilitated choice, informed or otherwise.

In all, I-522 would have an unfair and adverse economic impact on Washington's food industry, and it would increase costs and reduce choice for consumers. Additionally, requiring producers and retailers to label products in only one state is bad policy, and it would put Washington's food industry at a competitive disadvantage.

PROPOSITION 105
LABELING GENETICALLY MODIFIED FOOD
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Proposition 105
Labeling Genetically Modified Food

Ballot Title: Shall there be a change to the Colorado Revised Statutes concerning labeling of genetically modified food; and, in connection therewith, requiring food that has been genetically modified or treated with genetically modified material to be labeled, "Produced With Genetic Engineering" starting on July 1, 2016; exempting some foods including but not limited to food from animals that are not genetically modified but have been fed or injected with genetically modified food or drugs, certain food that is not packaged for retail sale and is intended for immediate human consumption, alcoholic beverages, food for animals, and medically prescribed food; requiring the Colorado department of public health and environment to regulate the labeling of genetically modified food; and specifying that no private right of action is created for failure to conform to the labeling requirements?

Be it Enacted by the People of the State of Colorado:

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:

(1) LABELING OF GENETICALLY MODIFIED FOOD IS INTENDED TO PROVIDE CONSUMERS WITH THE OPPORTUNITY TO MAKE AN INFORMED CHOICE OF THE PRODUCTS THEY CONSUME AND TO PROTECT THE PUBLIC'S HEALTH, SAFETY AND WELFARE;

(2) PERSONS WITH CERTAIN RELIGIOUS, CULTURAL AND MORAL BELIEFS OBJECT TO CONSUMING GENETICALLY MODIFIED FOOD BECAUSE OF OBJECTIONS TO TAMPERING WITH THE GENETIC MAKEUP OF LIFE FORMS AND THE RAPID INTRODUCTION AND PROLIFERATION OF GENETICALLY ENGINEERED ORGANISMS;

(3) U.S. FEDERAL LAW DOES NOT PROVIDE FOR THE REGULATION OF THE SAFETY AND LABELING OF GENETICALLY MODIFIED FOOD;

(4) THE LONG TERM HEALTH, SAFETY AND ENVIRONMENTAL CONSEQUENCES OF GROWING AND CONSUMING GENETICALLY MODIFIED FOOD ARE NOT YET FULLY RESEARCHED AND ARE NOT YET WELL UNDERSTOOD BY SCIENCE;

(5) CONSUMERS HAVE A RIGHT TO KNOW IF THE FOOD THEY ARE CONSUMING HAS BEEN GENETICALLY MODIFIED OR HAS BEEN PRODUCED WITH GENETIC ENGINEERING.

SECTION 2. In Colorado Revised Statutes, 25-5-402, **add** (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:

(8.5) "DISTRIBUTOR" MEANS A PERSON OR BUSINESS ENGAGED IN ANY METHOD OF DISTRIBUTING OR TRANSPORTING A FOOD OR FOOD PRODUCT FROM ONE PLACE TO ANOTHER.

(9.5) "ENZYME" MEANS A PROTEIN THAT CATALYZES CHEMICAL REACTIONS OF OTHER SUBSTANCES WITHOUT BEING DESTROYED OR ALTERED UPON COMPLETION OF SUCH REACTIONS.

(12.5) "GENETICALLY ENGINEERED" OR "GENETICALLY MODIFIED" MEANS FOOD PRODUCED FROM OR WITH AN ORGANISM OR ORGANISMS WITH ITS GENETICS ALTERED THROUGH APPLICATION OF:

(a) IN VITRO AND IN VIVO NUCLEIC ACID TECHNIQUES, INCLUDING RECOMBITANT DEOXYRIBONUCLEIC ACID (DNA) TECHNIQUES AND THE DIRECT INJECTION OF NUCLEIC ACID INTO CELLS OR ORGANELLES; OR

(b) METHODS OF FUSING CELLS BEYOND THE TAXONOMIC FAMILY THAT OVERCOME NATURAL PHYSIOLOGICAL REPRODUCTIVE OR RECOMBINANT BARRIERS, AND THAT ARE NOT TECHNIQUES USED IN TRADITIONAL BREEDING AND SELECTION SUCH AS CONJUGATION, TRANSDUCTION, AND HYBRIDIZATION.

(c) A FOOD SHALL OTHERWISE BE CONSIDERED TO BE GENETICALLY ENGINEERED IF:

(I) THE ORGANISM FROM WHICH THE FOOD IS DERIVED HAS BEEN TREATED WITH A GENETICALLY ENGINEERED MATERIAL; EXCEPT THAT THE USE OF MANURE AS A FERTILIZER FOR RAW AGRICULTURAL COMMODITIES MAY NOT BE CONSTRUED TO MEAN THAT SUCH COMMODITIES ARE PRODUCED WITH A GENETICALLY ENGINEERED MATERIAL; OR

(II) THE FOOD CONTAINS AN INGREDIENT, COMPONENT, OR OTHER ARTICLE THAT IS GENETICALLY ENGINEERED.

(15.5) "MANUFACTURER" MEANS A PERSON OR BUSINESS ENGAGED IN THE PRODUCTION OR PROCESSING OF SEED, SEED STOCK, FOOD, OR ANY FOOD PRODUCT.

(16.5) "ORGANISM" MEANS ANY BIOLOGICAL ENTITY CAPABLE OF REPLICATION, REPRODUCTION OR TRANSFERRING GENETIC MATERIAL.

(20.3) "PROCESSED FOOD" MEANS ANY FOOD OTHER THAN A RAW AGRICULTURAL COMMODITY AND INCLUDES ANY FOOD PRODUCED FROM A RAW AGRICULTURAL COMMODITY THAT HAS BEEN SUBJECT TO PROCESSING SUCH AS CANNING, SMOKING, PRESSING, COOKING, FREEZING, DEHYDRATION, FERMENTATION, OR MILLING .

(20.5) "PROCESSING AID" MEANS:

(a) A SUBSTANCE THAT IS ADDED TO A FOOD DURING THE PROCESSING OF THE FOOD BUT IS REMOVED IN SOME MANNER FROM THE FOOD BEFORE IT IS PACKAGED IN ITS FINAL FORM;

(b) A SUBSTANCE THAT IS ADDED TO A FOOD DURING PROCESSING, IS CONVERTED INTO CONSTITUENTS NORMALLY PRESENT IN THE FOOD, AND DOES NOT SIGNIFICANTLY INCREASE THE AMOUNT OF THE CONSTITUENTS FOUND IN THE FOOD; OR

(c) A SUBSTANCE THAT IS ADDED TO A FOOD FOR ITS TECHNICAL OR FUNCTIONAL EFFECTS IN THE PROCESSING BUT IS PRESENT IN THE FINISHED FOOD AT INSIGNIFICANT LEVELS AND DOES NOT HAVE ANY TECHNICAL OR FUNCTIONAL EFFECT IN THAT FINISHED FOOD.

(21.5) "RETAILER" MEANS A PERSON OR BUSINESS ENGAGED IN SELLING THE FOOD FROM INDIVIDUALS OR BUSINESSES TO THE END-USER.

SECTION 3. In Colorado Revised Statutes, 25-5-411, **add** (1)(q), (1)(r), (3) and (4) as follows:

25-5-411. Definitions of "misbranding". (1) A food shall be deemed to be misbranded:

(q) BEGINNING JULY 1, 2016, IF IT HAS BEEN GENETICALLY MODIFIED OR HAS BEEN PRODUCED WITH GENETIC ENGINEERING, UNLESS THE WORDS "PRODUCED WITH GENETIC ENGINEERING" APPEAR IN A CLEAR AND CONSPICUOUS MANNER ON ITS LABEL, IN THE CASE OF PACKAGED FOOD. IN THE CASE OF A RAW AGRICULTURAL COMMODITY THAT IS NOT SEPARATELY PACKAGED OR LABELED, THE WORDS "PRODUCED WITH GENETIC

ENGINEERING" SHALL BE PLACED IN A CLEAR AND CONSPICUOUS MANNER ON THE CONTAINER USED FOR PACKAGING, HOLDING OR TRANSPORT BY THE MANUFACTURER, AND SHALL BE MAINTAINED BY THE DISTRIBUTOR, AND DISPLAYED IN A CLEAR AND CONSPICUOUS MANNER ON THE RETAIL STORE SHELF OR BIN IN WHICH SUCH COMMODITY IS DISPLAYED FOR SALE BY THE RETAILER. THIS PARAGRAPH (q) OF SUBSECTION (1) OF THIS SECTION DOES NOT APPLY TO:

(I) FOOD OR DRINK FOR ANIMALS;

(II) CHEWING GUM;

(III) ALCOHOLIC BEVERAGES;

(IV) ANY PROCESSED FOOD THAT WOULD BE SUBJECT TO SUBSECTION (q) SOLELY BECAUSE ONE OR MORE PROCESSING AIDS OR ENZYMES WERE PRODUCED OR DERIVED WITH GENETIC ENGINEERING;

(V) ANY FOOD WHICH IS NOT PACKAGED FOR RETAIL SALE AND THAT EITHER:

(a) IS A PROCESSED FOOD PREPARED AND INTENDED FOR IMMEDIATE HUMAN CONSUMPTION;

(b) IS SERVED, SOLD, OR OTHERWISE PROVIDED IN ANY RESTAURANT OR OTHER FOOD ESTABLISHMENT THAT IS PRIMARILY ENGAGED IN THE SALE OF FOOD PREPARED AND INTENDED FOR IMMEDIATE HUMAN CONSUMPTION;

(VI) FOOD CONSISTING ENTIRELY OF, OR DERIVED ENTIRELY FROM, AN ANIMAL THAT HAS NOT ITSELF BEEN GENETICALLY ENGINEERED, REGARDLESS OF WHETHER THE ANIMAL HAS BEEN FED OR INJECTED WITH ANY FOOD PRODUCED WITH GENETIC ENGINEERING OR ANY DRUG THAT HAS BEEN PRODUCED THROUGH MEANS OF GENETIC ENGINEERING; OR

(VII) MEDICALLY PRESCRIBED FOOD.

(3) FOOD WILL NOT BE CONSIDERED MISBRANDED UNDER PARAGRAPH (q) OF SUBSECTION (1) OF THIS SECTION IF IT IS PRODUCED BY A PERSON WHO:

(a) GROWS, RAISES, OR OTHERWISE PRODUCES SUCH FOOD WITHOUT KNOWLEDGE THAT THE FOOD WAS CREATED WITH SEED OR OTHER FOOD THAT WAS DERIVED IN ANY WAY THROUGH A PROCESS OF GENETIC ENGINEERING; AND

(b) OBTAINS A SWORN STATEMENT FROM THE PARTY THAT SOLD TO SUCH PERSON THE SEED OR FOOD THAT SUCH SUBSTANCE HAS NOT BEEN KNOWINGLY ENGINEERED, WAS ENTIRELY SEGREGATED FROM, AND HAS NOT KNOWINGLY BEEN COMMINGLED WITH A FOOD OR FOOD COMPONENT THAT MAY HAVE BEEN CREATED THROUGH A PROCESS OF GENETIC ENGINEERING. THE SWORN STATEMENT MUST BE OBTAINED AT THE TIME THE SEED OR FOOD IS DELIVERED FROM THE SELLER.

(4) THERE IS NO PRIVATE RIGHT OF ACTION AGAINST A DISTRIBUTOR, MANUFACTURER, OR RETAILER THAT SELLS OR ADVERTISES FOOD FOR FAILURE TO CONFORM TO THE LABELING REQUIREMENTS UNDER PARAGRAPH (q) OF SUBSECTION (1) OF THIS SECTION.

(5) THE DEPARTMENT SHALL PROMULGATE REGULATIONS IN ACCORDANCE WITH THE REQUIREMENTS OF SECTION 25-5-420 CONCERNING THE PROCEDURES FOR PROMULGATING SUCH REGULATIONS, TO CARRY OUT THE LABELING REQUIREMENTS OF PARAGRAPH (q) OF SUBSECTION (1) OF THIS SECTION. SUCH REGULATIONS MAY PRESCRIBE THE PROCEDURES FOR INSPECTIONS AND TESTING OF PRODUCTS TO ENSURE COMPLIANCE WITH

PARAGRAPH (q) OF SUBSECTION (1) OF THIS SECTION.