

Proposition 37
Genetically Engineered Foods. Mandatory Labeling. Initiative Statute.

Background

Genetically Engineered (GE) Foods. Genetic engineering is the process of changing the genetic material of a living organism to produce some desired change in that organism's characteristics. This process is often used to develop new plant and animal varieties that are later used as sources of foods, referred to as GE foods. For example, genetic engineering is often used to improve a plant's resistance to pests or to allow a plant to withstand the use of pesticides. Some of the most common GE crops include varieties of corn and soybeans. In 2011, 88 percent of all corn and 94 percent of all soybeans produced in the U.S. were grown from GE seeds. Other common GE crops include alfalfa, canola, cotton, papaya, sugar beets, and zucchini. In addition, GE crops are used to make food ingredients (such as high fructose corn syrup) that are often included in processed foods (meaning foods that are not raw agriculture crops). According to some estimates, 40 percent to 70 percent of food products sold in grocery stores in California contain some GE ingredients.

Federal Regulation. Federal law does not specifically require the regulation of GE foods. However, the U.S. Department of Agriculture currently places some restrictions on the use of GE crops that are shown to cause harm to other plants. In addition, the U.S. Food and Drug Administration is responsible for ensuring that most foods (regardless of whether they are genetically engineered) and food additives are safe and properly labeled.

Reflects court ordered changes.

State Regulation. Under existing state law, California agencies are not specifically required to regulate GE foods. However, the Department of Public Health (DPH) is responsible for regulating the safety and labeling of most foods.

Proposal

This measure makes several changes to state law to explicitly require the regulation of GE foods. Specifically, it (1) requires that most GE foods sold be properly labeled, (2) requires DPH to regulate the labeling of such foods, and (3) allows individuals to sue food manufacturers who violate the measure's labeling provisions.

Labeling of Foods. This measure requires that GE foods sold at retail in the state be clearly labeled as genetically engineered. Specifically, the measure requires that raw foods (such as fruits and vegetables) produced entirely or in part through genetic engineering be labeled with the words "Genetically Engineered" on the front package or label. If the item is not separately packaged or does not have a label, these words must appear on the shelf or bin where the item is displayed for sale. The measure also requires that processed foods produced entirely or in part through genetic engineering be labeled with the words "Partially Produced with Genetic Engineering" or "May be Partially Produced with Genetic Engineering."

Retailers (such as grocery stores) would be primarily responsible for complying with the measure by ensuring that their food products are correctly labeled. Products that are labeled as GE would be in compliance. For each product that is not labeled as GE, a retailer generally must be able to document why that product is exempt from labeling. There are two main ways in which a retailer could document that a product is exempt: (1) by obtaining a sworn statement from the provider of the product (such as a wholesaler) indicating that the product has not been

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intentionally or knowingly genetically engineered or (2) by receiving independent certification that the product does not contain GE ingredients. Other entities throughout the food supply chain (such as farmers and food manufacturers) may also be responsible for maintaining these records. The measure also excludes certain food products from the above labeling requirements. For example, alcoholic beverages, organic foods, and restaurant food and other prepared foods intended to be eaten immediately would not have to be labeled. Animal products—such as beef or chicken—that were not directly produced through genetic engineering would also be exempted, regardless of whether the animal had been fed GE crops.

In addition, the measure prohibits the use of terms such as “natural,” “naturally made,” “naturally grown,” and “all natural” in the labeling and advertising of GE foods. Given the way the measure is written, there is a possibility that these restrictions would be interpreted by the courts to apply to some processed foods regardless of whether they are genetically engineered.

State Regulation. The labeling requirements for GE foods under this measure would be regulated by DPH as part of its existing responsibility to regulate the safety and labeling of foods. The measure allows the department to adopt regulations that it determines are necessary to carry out the measure. For example, DPH would need to develop regulations that describe the sampling procedures for determining whether foods contain GE ingredients.

Litigation to Enforce the Measure. Violations of the measure could be prosecuted by state, local, or private parties. It allows the court to award these parties all reasonable costs incurred in investigating and prosecuting the action. In addition, the measure specifies that consumers could sue for violations of the measure's requirements under the state Consumer Legal Remedies Act,

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which allows consumers to sue without needing to demonstrate that any specific damage occurred as a result of the alleged violation.

Fiscal Effects

Increase in State Administrative Costs. This measure would result in additional state costs for DPH to regulate the labeling of GE foods, such as reviewing documents and performing periodic inspections to determine whether foods are actually being sold with the correct labels. Depending on how and the extent to which the department chooses to implement these regulations (such as how often it chose to inspect grocery stores), these costs could range from **a few hundred thousand dollars to over \$1 million annually.**

Potential Increase in Costs Associated With Litigation. As described above, this measure allows individuals to sue for violations of the labeling requirements. As this would increase the number of cases filed in state courts, the state and counties would incur additional costs to process and hear the additional cases. The extent of these costs would depend on the number of cases filed, the number of cases prosecuted by state and local governments, and how they are decided by the courts. Some of the increased court costs would be supported by the court filing fees that the parties involved in each case would be required to pay under existing law. In the context of overall court spending, these costs are not likely to be significant in the longer run.