



Summary of Initiative 522

Prepared for members of the Washington House of Representatives by the House Office of Program Research.

This information has been prepared in response to various requests for a summary of Initiative 522. It is provided for analytical and legislative policy purposes only. It is not provided as an expression of support for or opposition to any ballot measure. These materials are intended to provide general information and are not intended to be an exhaustive analysis of all issues presented by the measure.

Brief Summary

- Requires, with a few exceptions, any food offered for retail sale after July 1, 2015, to be packaged with a disclosure if the food was produced with genetic engineering.

Background

Initiative 522

Initiative 522 was filed in 2012 as an initiative to the Legislature. Once certified, an initiative to the Legislature is submitted to the Legislature at its next regular session, at which time the Legislature must take one of three actions:

- adopt the initiative as proposed, in which case it becomes law without a vote of the people;
- reject or take no action on the proposed initiative, in which case the initiative must be placed on the ballot at the next state general election; or
- approve an alternative to the proposed initiative, in which case both the original proposal and the Legislature's alternative must be placed on the ballot at the next state general election.

The Legislature did not act on Initiative 522 during its 2013 Regular Session. This initiative is, therefore, being submitted to the people for approval or rejection at the November 2013 general election.

The ballot title and ballot measure summary are as follows:

Ballot Title

Statement of Subject: Initiative Measure No. 522 concerns labeling of genetically-engineered foods.

Concise Description: This measure would require most raw agricultural commodities, processed foods, and seeds and seed stocks, if produced using genetic engineering as defined, to be labeled as genetically engineered when offered for retail sale.

Should this measure be enacted into law? Yes [] No []

Ballot Measure Summary

This measure would require foods produced entirely or partly with genetic engineering, as defined, to be labeled as genetically engineered when offered for retail sale in Washington, beginning in July 2015. The labeling requirement would apply generally to raw agricultural commodities, processed foods, and seeds and seed stock, with some exceptions, but would not require that specific genetically-engineered ingredients be identified. The measure would authorize state enforcement and civil penalties, and allow private enforcement actions.

Labeling Requirements

The Washington Intrastate Commerce in Food and Drug Act (Act) is administered by the Washington State Department of Agriculture (WSDA) and contains the majority of the state's food labeling requirements. The rules prescribed by the Director of the WSDA under the Act for food labeling must conform, so far as is practicable, with those prescribed by federal regulations.

The Act addresses misbranding, which occurs when a food provider fails to provide accurate information or the required information on a product's label. The Act provides specificity as to what information must appear on a label but does not address genetically engineered content. Any person who violates the provisions concerning the misbranding of any food may be found guilty of a misdemeanor and be subject to a penalty of up to \$200. For a second violation, the person may face imprisonment for up to 30 days and a fine of up to \$500. If the violation is with intent to defraud or mislead, the penalty is imprisonment for up to 90 days and a fine of up to \$1,000.

On the federal level, the Food and Drug Administration (FDA), the United States Department of Agriculture (USDA), and the Environmental Protection Agency (EPA) share jurisdiction over food regulation and labeling requirements. The FDA has explicitly declined to require the labeling of genetically modified foods. The USDA and the EPA have not addressed the labeling of genetically modified foods through formal policy statements.

SummaryDisclosure Requirement

With a few exemptions, any food offered for retail sale after July 1, 2015, must be packaged with a disclosure if the food was produced with genetic engineering. The disclosure requirement applies to any

food that was entirely or partly produced from an organism or organisms in which the genetic material was changed through either in vitro nucleic acid techniques or through the fusion of cells from different taxonomic families. Food prepared for immediate human consumption or sold in a restaurant is not subject to the disclosure requirement.

The mechanisms of the required disclosure are different for different types of retail foods. For food in its raw or natural state, including unpeeled fruits and nuts, the disclosure must appear on the front of the retail package or, if not packaged, on the retail shelf or bin where the product is displayed. Genetically engineered processed food must display the disclosure on the food's packaging itself and genetically engineered seeds and seed stock may fulfill the disclosure requirement either on the packaging or the resulting sales receipt.

In all cases, the required disclosure must display the words "genetically engineered" or "produced with genetic engineering" clearly and conspicuously. Processed food packages may alternatively use the words "may be partially produced with genetic engineering." The disclosure for processed foods is not required to identify which ingredient or ingredients are genetically engineered, only that one or more of the products are genetically engineered.

Exemptions

Certain foods are exempt from the disclosure requirement. These products include medicinal food, food derived solely from an animal that was not directly genetically engineered, alcoholic beverages, food that satisfies the USDA's standards for organic certification, and food that would otherwise only be required to comply with the disclosure requirements because they were produced with a genetically engineered processing aid or enzyme. In addition, until July 1, 2019, a processed food may lawfully fail to disclose the presence of genetic engineering if the genetically engineered contents comprise less than nine-tenths of 1 percent of the food's total weight.

In addition, the Department of Health (DOH) may adopt rules that allow food producers to preemptively submit their products for genetic engineering testing by independent organizations. Products that are determined by an independent organization to not include genetic engineering are exempt from disclosure. The DOH rules must outline the acceptable sampling and testing principles to be used by the independent organization. The sampling and testing principles adopted by the DOH must be, among other things, consistent with those recommended by an internationally recognized standards organization.

Enforcement

Violations of the disclosure requirement may be enforced by the DOH. In the case of a violation, the DOH, acting through the Office of the Attorney General, may bring a case in a court of competent jurisdiction for civil penalties and injunctive relief. Any civil penalty assessed may not exceed \$1,000 per day, with each day considered a separate violation.

In addition to DOH-initiated enforcement, any person may bring an action to enjoin a violation of the disclosure requirement in a public action. A citizen-initiated injunction may only be commenced if 60

days has passed after a notice of the alleged violation has been provided to the DOH, the Office of the Attorney General, and the alleged violator. The court in a citizen-initiated action may award a prevailing plaintiff reasonable costs and attorneys' fees incurred in investigating and prosecuting the violation.

An enforcement action may not be brought against a person who failed to disclose the presence of genetic engineering in a food or seed that was grown, raised, produced, or delivered without intent or knowledge of the genetic engineering. This lack of knowledge and intent must be sworn to in a statement by the retailer of the food or the food's supplier.

Effective Date: The measure takes effect 30 days after the election at which it is approved.

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