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INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFIC


November 8, 2011

Office of the Attorney General
Dawn L. McFarland, Acting Initiative Coordinator
1300 I Street
Sacramento, CA 95814

**RE: Request to Prepare Title and Summary**

Dear Ms. McFarland:

Pursuant to Elections Code Section 9001, I hereby request that the Attorney General prepare a title and summary of the enclosed statewide ballot initiative.

I propose the title: **"The California Right to Know Genetically Engineered Food Act."**

Please also find enclosed the statement required under Elections Code Section 9608; the certificate required by Elections Code Section 9001(b); the address at which I am currently registered to vote; my public contact information; and a check payable to the State of California in the amount of $200.00.

I would like the public to be aware, in considering this measure, that:

(1) The definition of "genetically engineered" set forth in new Section 110808(c) of the Health and Safety Code, is worded to exclude a change in genetic material accomplished solely through the following forms of mutagenesis: somaclonal variation through tissue culture, recognition and selection of naturally occurring mutations, and induced mutation through radiation or chemical mutagenesis.

(2) Food retailers would not be responsible for compliance with the labeling requirements imposed by new Section 110809 except as to meat, fish, fruits, vegetables and other whole or processed foods not already packaged and labeled for retail sale in the form received by the retailer. However, prepared foods intended for immediate consumption, the labels of which are not otherwise required to include any listing of ingredients, would be exempted

from the labeling requirements of this measure, for example, bagels, salads and sandwiches from salad bars and deli counters.

(3) Under the exemption set forth in new Section 110809.1(j), restaurants, delicatessens, pizza parlors, take-out food facilities and similar facilities would not be obligated to label any items that they sell, serve or provide.

(4) Under the exemption set forth in Section 110809.1(c), animal products such as meat and dairy would not be considered to be genetically engineered solely because the animal has been injected with a genetically engineered hormone such as rbGH. Only animals (and products derived therefrom) that have themselves been genetically engineered would be considered genetically engineered under this measure, such as genetically engineered salmon if and when that becomes commercially available.

(5) Under the exemption set forth in new Section 110809.1(d), inadvertent contamination of a farmer's field with genetically engineered seed/pollen would not cause the products of that field to be treated as "genetically engineered" for purposes of this measure, if the farmer had not intentionally bought and planted genetically engineered seed.

Thank you for your time and attention to this matter, and please direct any inquiries regarding this to Doug Linney at (510) 444-4710 x309.

Sincerely yours,

James Wheaton

*The people of the State of California do enact as follows:*

# THE CALIFORNIA RIGHT TO KNOW GENETICALLY ENGINEERED FOOD ACT

## SECTION 1. FINDINGS AND DECLARATIONS

(a) California consumers have the right to know whether the foods they purchase contain genetically engineered material. The genetic engineering of plants and animals often causes unintended consequences. Manipulating genes and inserting them into organisms is an imprecise process. The results are not always predictable or controllable, and they can lead to adverse health or environmental consequences.

(b) Government scientists have stated that the artificial insertion of DNA into plants, a technique unique to genetic engineering, can cause a variety of significant problems with plant foods. Such genetic engineering can increase the levels of known toxicants in foods, introduce new toxicants or new allergens, and reduce the nutritional value of food.

(c) Mandatory labeling of genetically engineered foods can provide a critical method for tracking the potential health effects of eating genetically engineered foods.

(d) No federal or California law requires that foods be labeled to disclose that they are genetically engineered. At the same time, the U.S. Food and Drug Administration does not require safety studies of such foods. Unless these foods contain a known allergen, the FDA does not even require developers of genetically engineered crops to consult with the agency.

(e) Polls consistently show that more than 90 percent of the public want labels on genetically engineered foods.

(f) Fifty countries—including the European Union member states, Japan and other key U.S. trading partners—have laws mandating disclosure of genetically engineered foods on food labels. No international agreements prohibit the mandatory labeling of such foods.

(g) Without labeling, consumers of genetically engineered food can unknowingly violate their own dietary and religious restrictions.

(h) The cultivation of genetically engineered crops can also cause serious impacts to the environment. For example, most genetically engineered crops are designed to withstand weed-killing pesticides known as herbicides. As a

result, hundreds of millions of pounds of additional herbicides have been used on U.S. farms. Because of the massive use of such products, herbicide-resistant weeds have flourished—a problem that has resulted, in turn, in the use of increasingly toxic herbicides. These toxic herbicides damage our agricultural areas, impair our drinking water, and pose health risks to farm workers and consumers. California consumers should have the choice to avoid purchasing foods production of which can lead to such harm.

(i) Organic farming is a significant and increasingly important part of California agriculture. California has more organic cropland than any other state and has almost one out of every four certified organic operations in the nation. California's organic agriculture is growing faster than 20 percent a year.

(j) Organic farmers are prohibited from using genetically engineered seeds. Nonetheless, these farmers' crops are regularly threatened with accidental contamination from neighboring lands where genetically engineered crops abound. This risk of contamination can erode public confidence in California's organic products, significantly undermining this industry. Californians should have the choice to avoid purchasing foods whose production could harm the state's organic farmers and its organic foods industry.

## SECTION 2. STATEMENT OF PURPOSE

The purpose of this measure is to create and enforce the fundamental right of the people of California to be fully informed about whether the food they purchase and eat is genetically engineered so that they can choose for themselves whether to purchase and eat such foods.

## SECTION 3. THE CALIFORNIA RIGHT TO KNOW GENETICALLY ENGINEERED FOOD ACT

Article 6.6 (commencing with section 110808) is added to Chapter 5 of Part 5 of Division 104 of the Health and Safety Code (the Sherman Food, Drug and Cosmetic Law), to read as follows:

### *THE CALIFORNIA RIGHT TO KNOW GENETICALLY ENGINEERED FOOD ACT*

***§110808 Definitions***

***The following definitions shall apply only for the purposes of this Article:***

***(a) Cultivated commercially.*** *"Cultivated commercially" means grown or raised by a person in the course of his business or trade and sold within the United States.*

***(b) Enzyme.*** *"Enzyme" means a protein that catalyzes chemical reactions of other substances without itself being destroyed or altered upon completion of the reactions.*

***(c) Genetically engineered.*** *(1) "Genetically engineered" means any food that consists of, is composed of, contains or is produced from an organism or organisms in which the genetic material has been changed through the application of:*

*(i) In vitro nucleic acid techniques, including recombinant deoxyribonucleic acid (DNA) techniques and the direct injection of nucleic acid into cells or organelles, or*

*(ii) Fusion of cells (including protoplast fusion) or hybridization techniques that overcome natural physiological, reproductive or recombination barriers, where the donor cells/protoplasts do not fall within the same taxonomic family, in a way that does not occur by natural multiplication or natural recombination.*

*(2) For purposes of this subsection (c):*

*(i) "Organism" means any biological entity capable of replication, reproduction or transferring genetic material.*

*(ii) "In vitro nucleic acid techniques" include but are not limited to recombinant DNA or RNA techniques that use vector systems and techniques involving the direct introduction into the organisms of hereditary materials prepared outside the organisms such as micro-injection, macro-injection, chemoporation, electroporation, micro-encapsulation and liposome fusion.*

***(d) Ingredient.*** *"Ingredient" means any substance that is used in the manufacture, or contained in the final form, of a processed food.*

***(e) Processed food.*** *"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.*

***(f) Processing aid.*** *"Processing aid" means:*

*(1) A substance that is added to a food during the processing of such food but is removed in some manner from the food before it is packaged in its finished form;*

*(2) 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 naturally found in the food; or*

*(3) A substance that is added to a food for its technical or functional effect 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.*

***(g) Food Facility.*** *"Food facility" shall have the meaning set forth in Section 113789.*

***§110809 Labeling of Genetically Engineered Food***

*(a) Commencing on July 1, 2014, for any genetically engineered raw agricultural commodity that is offered for retail sale in California, a clear and conspicuous statement consisting of the words "GENETICALLY ENGINEERED" must appear either: (i) on the front package or label of any such commodity; or (ii) in the case of any such commodity that is not separately packaged or labeled, on a label appearing on the retail store shelf or bin in which such commodity is displayed for sale.*

*(b) Commencing on July 1, 2014, any package offered for retail sale in California containing processed food that is made with or derived from any genetically engineered ingredient shall include a clear and conspicuous statement consisting of the words "CONTAINS GENETICALLY ENGINEERED INGREDIENT(S)," followed by the name of such ingredient or ingredients. If an ingredients list appears on the package: (i) this statement shall appear underneath the ingredients list and (ii) in the case of processed food containing more than one genetically engineered ingredient, the genetically engineered ingredients listed after this statement shall be listed in the same order in which they appear in the full ingredients list.*

*(c) In lieu of compliance with subsection (b) of this section, any package containing processed food that is made with or is derived from any ingredient that may be genetically engineered shall include a clear and conspicuous statement consisting of the words "MAY CONTAIN GENETICALLY ENGINEERED INGREDIENT(S)," followed by the name of such ingredient or ingredients. If an ingredients list appears on the package: (i) this statement shall appear underneath the ingredients list and (ii) in the case of processed food containing more than one ingredient that may be genetically engineered, the genetically engineered ingredients listed after this statement shall be listed in the same order in which they appear in the full ingredients list.*

***§110809.1 Labeling of Genetically Engineered Food—Exemptions***

*The requirements of subsections (a), (b) and (c) of Section 110809 shall not apply to any of the following:*

*(a) Any raw agricultural commodity that, on the date it is offered for retail sale, is not listed in either Section 110809.2(b)(i) or in the most recent list published pursuant to Section 110809.2(b)(ii).*

*(b) A processed food that does not contain any ingredient derived from a raw agricultural commodity that, on the date the processed food is manufactured, is listed in either Section 110809.2(b)(i) or the most recent list published pursuant to Section 110809.2(b)(ii).*

*(c) Food consisting entirely of, or derived entirely from, an animal that has not itself been genetically engineered, regardless of whether such animal has been fed or injected with any genetically engineered food or any drug that has been produced through means of genetic engineering.*

*(d) A raw agricultural commodity or ingredient that has been grown, raised or produced without the knowing and intentional use of genetically engineered seed or food. Food will be deemed to be described in the preceding sentence only if the person otherwise responsible for complying with the requirements of subsection (a), (b) and (c) of Section 110809 with respect to a raw agricultural commodity or ingredient obtains, from whoever sold the commodity or ingredient to that person, a sworn statement that such commodity or ingredient: (i) has not been knowingly or intentionally genetically engineered; and (ii) has been segregated from, and has not been knowingly or intentionally commingled with, food that may have been genetically engineered at any time. In providing such a sworn statement, any person may rely on a sworn statement from his own supplier that contains the affirmation set forth in the preceding sentence.*

*(e) Any processed food that would be subject to section 110809 solely because it includes one or more genetically engineered processing aids or enzymes.*

*(f) Any alcoholic beverage that is subject to the Alcoholic Beverage Control Act, set forth in Division 9 (commencing with section 23000) of the Business and Professions Code.*

*(g) Until July 1, 2019, any processed food that would be subject to section 110809 solely because it includes one or more genetically engineered ingredients, provided that: (i) no single such ingredient accounts for more than one-half of one percent of the total weight of such processed food; and (ii) the processed food does not contain more than ten such ingredients.*

*(h) Food that an independent organization has determined has not been knowingly and intentionally produced from or commingled with genetically engineered seed or genetically engineered food, provided that such determination has been made pursuant to a sampling and testing procedure approved in regulations adopted by the Department of Food and Agriculture.*

*No sampling procedure shall be approved by the Department of Food and Agriculture unless sampling is done according to a statistically valid sampling plan minimally consistent with principles recommended by internationally recognized sources such as the International Standards Organization (ISO) and the Grain and Feed Trade Association (GAFTA). No testing procedure shall be approved by the Department of Food and Agriculture unless: (i) it is consistent with the most recent "Guidelines on Performance Criteria and Validation of Methods for Detection, Identification and Quantification of Specific DNA Sequences and Specific Proteins in Foods," (CAC/GL 74 (2010)) published by the Codex Alimentarius Commission; and (ii) it does not rely on testing of processed food ingredients in which no DNA is detectable.*

*(i) Food that has been lawfully certified to be labeled, marketed and offered for sale as "organic" pursuant to the federal Organic Food Products Act of 1990 and the regulations promulgated pursuant thereto by the United States Department of Agriculture.*

*(j) Food that is not packaged for retail sale and that either: (i) is a processed food prepared and intended for immediate human consumption or (ii) is served, sold or otherwise provided in any restaurant or other food facility that is primarily engaged in the sale of food prepared and intended for immediate human consumption.*

*(k) Medical food.*

***§ 110809.2 Adoption of Regulations***

*(a) The department may adopt any regulations that it determines are necessary for the enforcement and interpretation of this Article, provided that the department shall not be authorized to create any exemptions beyond those specified in section 110809.1.*

*(b) (i) As of November 1, 2011, the following raw agricultural commodities are cultivated commercially in genetically engineered form:*

*Alfalfa*
*Canola*
*Corn*
*Cotton*
*Papaya*
*Soy*
*Sugar beets*
*Zucchini & yellow summer squash*

*(ii) Within twelve months of the enactment of the California Right to Know Genetically Engineered Food Act, the department, in consultation with the California Department of Food and Agriculture, shall prepare and publish an updated list of raw agricultural commodities that are at that time cultivated commercially in genetically engineered form. The department shall publish annually an updated version of this list based on the most current available information. In preparing each such list, the department shall not apply any definition of "genetically engineered" other than that set forth in section 110808(c).*

***§110809.3 Enforcement***

*(a) Any person violating Section 110809 may be enjoined in any court of competent jurisdiction.*

*(b) Any person who has violated Section 110809 shall be liable for a civil penalty as prescribed in Section 111855.*

*(c) Actions pursuant to this section may be brought by the Attorney General in the name of the people of the State of California, by any district attorney, by any city attorney of a city having a population in excess of 750,000 or, with the consent of the district attorney, by a city prosecutor in any city or city and county having a full time city prosecutor, or as provided in subsection (d) of this section.*

*(d) Actions pursuant to this section may be brought in any court of competent jurisdiction by any person in the public interest if both of the following requirements are met:*

*(1) The action is commenced more than 60 days after the person has given notice of an alleged violation of section 110809 that is the subject of the private action to the Attorney General and the district attorney, city attorney or prosecutor in whose jurisdiction the violation is alleged to have occurred, and to the alleged violator; and*

*(2) Neither the Attorney General, any district attorney, any city attorney nor any prosecutor has commenced prosecuting an action against the violation.*

## SECTION 4. SEVERABILITY

If any provision of this initiative or the application thereof is for any reason held to be invalid or unconstitutional, that invalidity shall not affect other provisions or applications of the initiative that can be given effect without the invalid provision or application, and to this end the provisions of this initiative are severable.

## SECTION 5. CONSTRUCTION WITH OTHER LAWS

This initiative shall be construed to supplement, not to supersede, the requirements of any federal or California statute or regulation that provides for less stringent or less complete labeling of any raw agricultural commodity or processed food subject to the provisions of this initiative.

## SECTION 6. EFFECTIVE DATE

This initiative shall become effective upon enactment pursuant to Article 2, section 10(a) of the California Constitution.

## SECTION 7. CONFLICTING MEASURES

In the event that another measure or measures appearing on the same statewide ballot impose additional requirements relating to the production, sale and/or labeling of genetically engineered food, then the provisions of the other measure or measures, if approved by the voters, shall be harmonized with the provisions of this Act, provided that the provisions of the other measure or measures do not prevent, or excuse, compliance with the requirements of this Act.

In the event that the provisions of the other measure or measures prevent, or excuse, compliance with the provisions of this Act, and this Act receives a greater number of affirmative votes, then the provisions of this Act shall prevail in their entirety, and the other measure or measures shall be null and void.

## SECTION 8. AMENDMENTS

This initiative may be amended by the Legislature, but only to further its intent and purpose, by a statute passed by a two-thirds vote in each house.