

2012

# GENETICALLY ENGINEERED FOODS. LABELING.

Follow this and additional works at: [http://repository.uchastings.edu/ca\\_ballot\\_props](http://repository.uchastings.edu/ca_ballot_props)

---

## Recommended Citation

GENETICALLY ENGINEERED FOODS. LABELING. California Proposition 37 (2012).  
[http://repository.uchastings.edu/ca\\_ballot\\_props/1316](http://repository.uchastings.edu/ca_ballot_props/1316)

This Proposition is brought to you for free and open access by the California Ballot Propositions and Initiatives at UC Hastings Scholarship Repository. It has been accepted for inclusion in Propositions by an authorized administrator of UC Hastings Scholarship Repository. For more information, please contact [marcusc@uchastings.edu](mailto:marcusc@uchastings.edu).

**GENETICALLY ENGINEERED FOODS. LABELING. INITIATIVE STATUTE.**

- Requires labeling on raw or processed food offered for sale to consumers if made from plants or animals with genetic material changed in specified ways.
- Prohibits labeling or advertising such food, or other processed food, as “natural.”
- Exempts foods that are: certified organic; unintentionally produced with genetically engineered material; made from animals fed or injected with genetically engineered material but not genetically engineered themselves; processed with or containing only small amounts of genetically engineered ingredients; administered for treatment of medical conditions; sold for immediate consumption such as in a restaurant; or alcoholic beverages.

**Summary of Legislative Analyst’s Estimate of Net State and Local Government Fiscal Impact:**

- Increased annual state costs ranging from a few hundred thousand dollars to over \$1 million to regulate the labeling of genetically engineered foods.
- Potential, but likely not significant, costs to state and local governments due to litigation resulting from possible violations of the requirements of this measure. Some of these costs would be supported by court filing fees that the parties involved in each legal case would be required to pay under existing law.

**ANALYSIS BY THE LEGISLATIVE ANALYST**

**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.

**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 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, 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.

★ **ARGUMENT IN FAVOR OF PROPOSITION 37** ★

YES ON PROPOSITION 37—because you should have the right to know what is in your food.

*Voting Yes on Prop. 37 means three things*

- **YOU WILL HAVE THE RIGHT TO KNOW WHAT'S IN YOUR FOOD**, and whether your food is produced using genetic engineering.
- **FOOD WILL BE LABELED ACCURATELY**. Food labels will have to disclose if the product was produced through genetic engineering.
- **PROTECTING YOUR FAMILY'S HEALTH WILL BE EASIER**. You'll have the information you need about foods that some physicians and scientists say are linked to allergies and other significant health risks.

The food we buy already has nutritional information on the labels. With Proposition 37, we will have information, in plain language, if the food was genetically engineered, which means the food has DNA that was artificially altered in a laboratory using genes from viruses, bacteria, or other plants or animals.

Because genetically engineered foods are controversial, *over 40 countries around the world require labels for genetically engineered foods*, including most of Europe, Japan, and even China and India. Shouldn't American companies give Americans the same information they give foreigners?

There are no long-term health studies that have proven that genetically engineered food is safe for humans. Whether you buy genetically engineered food or not, you have a right to know what you are buying and not gamble on your family's health. Labeling lets us know what's in our food so we can decide for ourselves.

**PROPOSITION 37 IS A SIMPLE, COMMON SENSE MEASURE**. It doesn't cost anything to include information on a label, and it's phased in, giving manufacturers time to print new labels telling you what's in the food, or change their products if they do not want to sell food produced using genetic engineering.

Proposition 37 also prevents the misleading use of the word "natural" on products that are genetically engineered.

Big food manufacturers and agrichemical companies and their lobbyists oppose this measure. Many of these are the same companies that lied to us about the effects of pesticides or fought to keep other information off food labels, such as the number of calories, or how much fat or salt is in their products. Now they want to keep us in the dark about their genetic engineering of our foods.

Whether you want to eat genetically engineered foods or not, **PROPOSITION 37 GIVES YOU THE POWER** to choose what foods to feed your family. The big chemical companies should not make the decision for you.

Consumers, family farmers, doctors, nurses, nutritionists, and small business people and **NEARLY ONE MILLION CALIFORNIANS ALREADY STEPPED UP TO SIGN THE PETITIONS GIVING YOU THE RIGHT TO KNOW WHAT'S IN OUR FOOD. WILL YOU JOIN THEM?**

Find out more or join us now at [www.CARightToKnow.org](http://www.CARightToKnow.org).

When you vote on Prop. 37, please ask yourself just one question: **DO I HAVE THE RIGHT TO KNOW WHAT IS IN THE FOOD I EAT AND FEED MY FAMILY?** The answer is *Yes on Proposition 37*.

[www.CARightToKnow.org](http://www.CARightToKnow.org)

**DR. MICHELLE PERRO**, Pediatrician  
**REBECCA SPECTOR**, West Coast Director  
Center for Food Safety  
**GRANT LUNDBERG**, Chief Executive Officer  
Lundberg Family Farms

★ **REBUTTAL TO ARGUMENT IN FAVOR OF PROPOSITION 37** ★

37's so-called "right to know" regulations are really a deceptive scheme, full of special-interest exemptions and hidden costs for consumers and taxpayers.

37 exempts milk, cheese and meat from its labeling requirements. It exempts beer, wine, liquor, food sold at restaurants and other foods containing genetically engineered (GE) ingredients.

In fact, **IT EXEMPTS TWO-THIRDS OF THE FOODS CALIFORNIANS CONSUME**—including products made by corporations funding the 37 campaign.

**CREATES NEW SHAKEDOWN LAWSUITS**

37 was written by a trial lawyer who specializes in filing lawsuits against businesses. It creates a new category of shakedown lawsuits allowing lawyers to sue farmers, grocers, and food companies—without any proof of violation or damage.

**CONSUMERS WOULD GET MISLEADING INFORMATION**

More than 400 scientific studies have shown foods made with GE ingredients are safe. Leading health organizations like the American Medical Association, World Health Organization, National Academy of Sciences, 24 Nobel Prize winning scientists, and US Food and Drug Administration agree.

*"There is no scientific justification for special labeling of bioengineered foods."*—American Medical Association

**HIGHER COSTS FOR CONSUMERS AND TAXPAYERS**

Studies show that, by forcing many common food products to be repackaged or remade with higher-priced ingredients, 37 would cost the average California family hundreds of dollars more per year for groceries.

The official state fiscal impact analysis concludes that administering 37's red tape and lawsuits would cost taxpayers millions.

Even 37's largest funder admits it *"would be an expensive logistical nightmare."*

**37 IS A DECEPTIVE AND COSTLY SCHEME. Vote NO!**

[www.NoProp37.com](http://www.NoProp37.com)

**JONNALEE HENDERSON**  
California Farm Bureau Federation  
**DR. HENRY I. MILLER**, Founding Director  
Office of Biotechnology of the Food & Drug Administration  
**TOM HUDSON**, Executive Director  
California Taxpayer Protection Committee

★ **ARGUMENT AGAINST PROPOSITION 37** ★

Prop. 37 isn't a simple measure, like promoters claim. It's a deceptive, deeply flawed food labeling scheme that would add more government bureaucracy and taxpayer costs, create new frivolous lawsuits, and increase food costs by billions—without providing any health or safety benefits. And, it's full of special-interest exemptions.

**PROP. 37 CONFLICTS WITH SCIENCE**

Biotechnology, also called genetic engineering (GE), has been used for nearly two decades to grow varieties of corn, soybeans and other crops that resist diseases and insects and require fewer pesticides. Thousands of common foods are made with ingredients from biotech crops.

Prop. 37 bans these perfectly safe foods in California unless they're specially relabeled or remade with higher cost ingredients.

The US Food and Drug Administration says such a labeling policy would *"be inherently misleading."*

Respected scientific and medical organizations have concluded that biotech foods are safe, including:

- National Academy of Sciences
- American Council on Science and Health
- Academy of Nutrition and Dietetics
- World Health Organization

*"There is no scientific justification for special labeling of bioengineered foods."*—American Medical Association, June 2012

**PROP. 37: FULL OF SPECIAL-INTEREST EXEMPTIONS**

*"Prop. 37's arbitrary regulations and exemptions would benefit certain special interests, but not consumers."*—Dr. Christine Bruhn, Department of Food Science and Technology, UC Davis

37 is full of absurd, politically motivated exemptions. It requires special labels on soy milk, but exempts cow's milk and dairy products. Fruit juice requires a label, but alcohol is exempt. Pet foods containing meat require labels, but meats for human consumption are exempt.

Food imported from China and other foreign countries are exempt if sellers simply claim their products are "GE free." Unscrupulous foreign companies could game the system.

**PROP. 37 AUTHORIZES SHAKEDOWN LAWSUITS**

It was written by a trial lawyer to benefit trial lawyers. It creates a new class of "headhunter lawsuits," allowing lawyers to sue family farmers and grocers without any proof of harm.

*"37 lets trial lawyers use shakedown lawsuits to squeeze money from family farmers and grocers—costing California courts, businesses and taxpayers millions."*—California Citizens Against Lawsuit Abuse

**PROP. 37: MORE BUREAUCRACY AND TAXPAYER COSTS**

37 requires state bureaucrats to administer its complex requirements by monitoring tens of thousands of food labels. It sets no limit on how many millions would be spent on bureaucracy, red tape and lawsuits.

It's a blank check . . . paid by taxpayers.

**PROP. 37 MEANS HIGHER FOOD COSTS**

37 forces farmers and food companies to implement costly new operations or switch to higher-priced, non-GE or organic ingredients to sell food in California.

Economic studies show this would increase food costs for the average family by hundreds of dollars annually—a HIDDEN FOOD TAX that would especially hurt seniors and low-income families who can least afford it.

*"37 would unfairly hurt family farmers and consumers. It must be stopped."*—California Farm Bureau Federation, representing 80,000 farmers

Join scientists, medical experts, family farmers, taxpayer advocates, small businesses.

VOTE NO ON 37.

**STOP THIS DECEPTIVE, COSTLY FOOD LABELING SCHEME.**

[www.NoProp37.com](http://www.NoProp37.com)

**DR. BOB GOLDBERG**, Member

National Academy of Sciences

**JAMIE JOHANSSON**

California Family Farmer

**BETTY JO TOCCOLI**, President

California Small Business Association

★ **REBUTTAL TO ARGUMENT AGAINST PROPOSITION 37** ★

*Proposition 37—Say "Yes" to know what's in your food.*

*Proposition 37 simply means you've the right to know what's in your food.* The way to do that is to make sure food labels are accurate.

*Proposition 37 puts you in charge.* No government bureaucracy, politician or agricultural company will be able to hide whether your food is genetically engineered. Enforcement is only an issue if companies disobey the law! All they must do is tell you what's in your food, as they already do in over 40 other nations throughout Europe, Australia, Japan and even China and Russia.

*Proposition 37 doesn't ban genetically engineered food.* Big agribusiness and agricultural companies and their lobbyists want to scare you. Under Proposition 37, you can keep buying your current foods, or you can select foods that aren't genetically engineered. It's your choice.

*Proposition 37 doesn't raise food costs or taxes.* Because food companies regularly re-print labels and there's a reasonable phase in period, Proposition 37 won't raise prices.

*Proposition 37 will help protect your family's health.* The FDA says "providing more information to consumers about

bioengineered foods would be useful." Without accurate food labeling, you risk eating foods you are allergic to. Why don't the big food companies want you to know what's in your food? With conflicting, uncertain science about the health effects of genetically engineered foods, labeling is an important tool to protect your family's health.

**WE HAVE THE RIGHT TO KNOW WHAT'S IN OUR FOOD.** *Yes on 37.*

[www.Carighttoknow.org](http://www.Carighttoknow.org)

**JAMIE COURT**, President

Consumer Watchdog

**JIM COCHRAN**, General Manager

Swanton Berry Farm

**DR. MARCIA ISHII-EITEMAN**, Senior Scientist

Pesticide Action Network

(2) *The petitioner’s disciplinary record and record of rehabilitation while incarcerated; and*

(3) *Any other evidence the court, within its discretion, determines to be relevant in deciding whether a new sentence would result in an unreasonable risk of danger to public safety.*

(h) *Under no circumstances may resentencing under this act result in the imposition of a term longer than the original sentence.*

(i) *Notwithstanding subdivision (b) of Section 977, a defendant petitioning for resentencing may waive his or her appearance in court for the resentencing, provided that the accusatory pleading is not amended at the resentencing, and that no new trial or retrial of the individual will occur. The waiver shall be in writing and signed by the defendant.*

(j) *If the court that originally sentenced the defendant is not available to resentence the defendant, the presiding judge shall designate another judge to rule on the defendant’s petition.*

(k) *Nothing in this section is intended to diminish or abrogate any rights or remedies otherwise available to the defendant.*

(l) *Nothing in this and related sections is intended to diminish or abrogate the finality of judgments in any case not falling within the purview of this act.*

(m) *A resentencing hearing ordered under this act shall constitute a “post-conviction release proceeding” under paragraph (7) of subdivision (b) of Section 28 of Article I of the California Constitution (Marsy’s Law).*

**SEC. 7. Liberal Construction:**

*This act is an exercise of the public power of the people of the State of California for the protection of the health, safety, and welfare of the people of the State of California, and shall be liberally construed to effectuate those purposes.*

**SEC. 8. Severability:**

*If any provision of this act, or the application thereof to any person or circumstance, is held invalid, that invalidity shall not affect any other provision or application of this act, which can be given effect without the invalid provision or application in order to effectuate the purposes of this act. To this end, the provisions of this act are severable.*

**SEC. 9. Conflicting Measures:**

*If this measure is approved by the voters, but superseded by any other conflicting ballot measure approved by more voters at the same election, and the conflicting ballot measure is later held invalid, it is the intent of the voters that this act shall be given the full force of law.*

**SEC. 10. Effective Date:**

*This act shall become effective on the first day after enactment by the voters.*

**SEC. 11. Amendment:**

*Except as otherwise provided in the text of the statutes, the provisions of this act shall not be altered or amended except by one of the following:*

(a) *By statute passed in each house of the Legislature, by rollcall entered in the journal, with two-thirds of the membership and the Governor concurring; or*

(b) *By statute passed in each house of the Legislature, by*

*rollcall vote entered in the journal, with a majority of the membership concurring, to be placed on the next general ballot and approved by a majority of the electors; or*

(c) *By statute that becomes effective when approved by a majority of the electors.*

**PROPOSITION 37**

This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8, of the California Constitution.

This initiative measure amends and adds sections to the Health and Safety Code; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

**PROPOSED LAW**

*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 were produced using genetic engineering. 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 and introduce new toxicants and health concerns.

(c) Mandatory identification of foods produced through genetic engineering can provide a critical method for tracking the potential health effects of eating genetically engineered foods.

(d) No federal or California law requires that food producers identify whether foods were produced using genetic engineering. 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 to know if their food was produced using genetic engineering.

(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. No international agreements prohibit the mandatory identification of foods produced through genetic engineering.

(g) Without disclosure, 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-

36

37

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 environmental 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.

(k) The labeling, advertising and marketing of genetically engineered foods using terms such as “natural,” “naturally made,” “naturally grown,” or “all natural” is misleading to California consumers.

SEC. 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 and not misbranded as natural so that they can choose for themselves whether to purchase and eat such foods. It shall be liberally construed to fulfill this purpose.

SEC. 3. Article 6.6 (commencing with Section 110808) is added to Chapter 5 of Part 5 of Division 104 of the Health and Safety Code, to read:

ARTICLE 6.6.

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 is produced from an organism or organisms in which the genetic material has been changed through the application of:

(A) *In vitro nucleic acid techniques, including recombinant deoxyribonucleic acid (DNA) techniques and the direct injection*

*of nucleic acid into cells or organelles, or*

(B) *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 subdivision:*

(A) *“Organism” means any biological entity capable of replication, reproduction, or transferring genetic material.*

(B) *“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) *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.

(e) *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.*

(f) *Food Facility.* “Food facility” shall have the meaning set forth in Section 113789.

110809. Disclosure With Respect to Genetic Engineering of Food

(a) *Commencing July 1, 2014, any food offered for retail sale in California is misbranded if it is or may have been entirely or partially produced with genetic engineering and that fact is not disclosed:*

(1) *In the case of a raw agricultural commodity on the package offered for retail sale, with the clear and conspicuous words “Genetically Engineered” on the front of the package of such commodity or, 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;*

(2) *In the case of any processed food, in clear and conspicuous language on the front or back of the package of such food, with the words “Partially Produced with Genetic Engineering” or “May be Partially Produced with Genetic Engineering.”*

(b) *Subdivision (a) of this section and subdivision (e) of Section 110809.2 shall not be construed to require either the listing or identification of any ingredient or ingredients that were genetically engineered or that the term “genetically*

engineered” be placed immediately preceding any common name or primary product descriptor of a food.

110809.1. *Misbranding of Genetically Engineered Foods as “Natural”*

In addition to any disclosure required by Section 110809, if a food meets any of the definitions in subdivision (c) or (d) of Section 110808, and is not otherwise exempted from labeling under Section 110809.2, the food may not in California, on its label, accompanying signage in a retail establishment, or in any advertising or promotional materials, state or imply that the food is “natural,” “naturally made,” “naturally grown,” “all natural,” or any words of similar import that would have any tendency to mislead any consumer.

110809.2. *Labeling of Genetically Engineered Food—Exemptions*

The requirements of Section 110809 shall not apply to any of the following:

(a) 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.

(b) A raw agricultural commodity or food derived therefrom 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 subdivision (a) of Section 110809 with respect to a raw agricultural commodity or food obtains, from whoever sold the commodity or food to that person, a sworn statement that such commodity or food: (1) has not been knowingly or intentionally genetically engineered; and (2) 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 or her own supplier that contains the affirmation set forth in the preceding sentence.

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

(d) 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.

(e) 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: (1) no single such ingredient accounts for more than one-half of one percent of the total weight of such processed food; and (2) the processed food does not contain more than 10 such ingredients.

(f) 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. No sampling procedure shall be approved by the department unless sampling is done according to a statistically valid sampling plan

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 unless: (1) 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 (2) it does not rely on testing of processed foods in which no DNA is detectable.

(g) 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.

(h) Food that is not packaged for retail sale and that either: (1) is a processed food prepared and intended for immediate human consumption or (2) 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.

(i) Medical food.

110809.3. *Adoption of Regulations*

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 110809.2.

110809.4. *Enforcement*

In addition to any action under Article 4 (commencing with Section 111900) of Chapter 8, any violation of Section 110809 or 110890.1 shall be deemed a violation of paragraph (5) of subdivision (a) of Section 1770 of the Civil Code and may be prosecuted under Title 1.5 (commencing with section 1750) of Part 4 of Division 3 of the Civil Code, save that the consumer bringing the action need not establish any specific damage from, or prove any reliance on, the alleged violation. The failure to make any disclosure required by Section 110809, or the making of a statement prohibited by section 110809.1, shall each be deemed to cause damage in at least the amount of the actual or offered retail price of each package or product alleged to be in violation.

#### SEC. 4. ENFORCEMENT

Section 111910 of the Health and Safety Code is amended to read:

111910. (a) Notwithstanding the provisions of Section 111900 or any other provision of law, any person may bring an action in superior court pursuant to this section and the court shall have jurisdiction upon hearing and for cause shown, to grant a temporary or permanent injunction restraining any person from violating any provision of Article 6.6 (commencing with Section 110808), or Article 7 (commencing with Section 110810) of Chapter 5. Any proceeding under this section shall conform to the requirements of Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that the person shall not be required to allege facts

necessary to show, or tending to show, lack of adequate remedy at law, or to show, or tending to show, irreparable damage or loss, or to show, or tending to show, unique or special individual injury or damages.

(b) In addition to the injunctive relief provided in subdivision (a), the court may award to that person, organization, or entity reasonable attorney’s fees *and all reasonable costs incurred in investigating and prosecuting the action* as determined by the court.

(c) This section shall not be construed to limit or alter the powers of the department and its authorized agents to bring an action to enforce this chapter pursuant to Section 111900 or any other provision of law.

SEC. 5. MISBRANDING

Section 110663 is added to the Health and Safety Code, to read:

*110663. Any food is misbranded if its labeling does not conform to the requirements of Section 110809 or 110809.1.*

SEC. 6. SEVERABILITY

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

SEC. 7. 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.

SEC. 8. EFFECTIVE DATE

This initiative shall become effective upon enactment pursuant to subdivision (a) of Section 10 of Article II of the California Constitution.

SEC. 9. 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.

SEC. 10. 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.

PROPOSITION 38

This initiative measure is submitted to the people in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure amends and adds sections to the Education Code, the Penal Code, and the Revenue and Taxation Code; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

OUR CHILDREN, OUR FUTURE: LOCAL SCHOOLS AND EARLY EDUCATION INVESTMENT AND BOND DEBT REDUCTION ACT

SECTION 1. Title.

This measure shall be known and may be cited as “Our Children, Our Future: Local Schools and Early Education Investment and Bond Debt Reduction Act.”

SEC. 2. Findings and Declaration of Purpose.

(a) California is shortchanging the future of our children and our state. Today, our state ranks 46th nationally in what we invest to educate each student. California also ranks dead last, 50th out of 50 states, with the largest class sizes in the nation.

(b) Recent budget cuts are putting our schools even farther behind. Over the last three years, more than \$20 billion has been cut from California schools; essential programs and services that all children need to be successful have been eliminated or cut; and over 40,000 educators have been laid off.

(c) We are also failing with our early childhood development programs, which many studies confirm are one of the best educational investments we can make. Our underfunded public preschool programs serve only 40 percent of eligible three- and four-year olds. Only 5 percent of very low income infants and toddlers, who need the support most, have access to early childhood programs.

(d) We can and must do better. Children are our future. Investing in our schools and early childhood programs to prepare children to succeed is the best thing we can do for our children and the future of our economy and our state. Without a quality education, our children will not be able to compete in a global economy. Without a skilled workforce, our state will not be able to compete for jobs. We owe it to our children and to ourselves to improve our children’s education.

(e) It is time to make a real difference: no more half-measures but real, transformative investment in the schools on which the future of our state and our families depends. This act will enable schools to provide a well-rounded education that supports college and career readiness for every student, including a high-quality curriculum of the arts, music, physical education, science, technology, engineering, math, and vocational and technical education courses; smaller class sizes; school libraries, school nurses, and counselors.

(f) This act requires that decisions about how best to use new funds to improve our schools must be made not in Sacramento, but locally, with respect for the voices of parents, teachers, other school staff, and community members. It requires local school

37

38