

ORIGINAL

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<p>SUPREME COURT OF COLORADO 2 East 14th Ave. Denver, CO 80203</p> <hr/> <p>Original Proceeding Pursuant to Colo. Rev. Stat. § 1-40-107(2) Appeal from the Ballot Title Board</p> <hr/> <p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2013-2014 #48 ("Labeling Genetically Modified Food")</p> <p>Petitioners: MARC ARNUSCH and MARY LOU CHAPMAN v. Respondents: LARRY COOPER and CHERYL GRAY</p> <p>and</p> <p>Title Board: SUZANNE STAIERT; DANIEL DOMENICO; and JASON GELENDER</p>	<p>FILED IN THE SUPREME COURT</p> <p>DEC 7 2013</p> <p>OF THE STATE OF COLORADO <i>Christine M. Dunne, Clerk</i></p> <p>▲ COURT USE ONLY ▲</p>
<p>Attorneys for Petitioners: Mark G. Grueskin, #14621 RECHT KORNFELD, P.C. 1600 Stout Street, Suite 1000 Denver, CO 80202 Phone: 303-573-1900 Facsimile: 303-446-9400 Email: mark@rechtkornfeld.com</p>	<p>Case No. _____</p> <p>13SA 335</p>
<p>PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2013- 2014 #48 ("LABELING GENETICALLY MODIFIED FOOD")</p>	

Marc Arnusch and Mary Lou Chapman (“Petitioners”), registered electors of the State of Colorado, through their undersigned counsel, respectfully petition this court pursuant to C.R.S. § 1-40-107(2), to review the actions of the Title Setting Board with respect to the title, ballot title, and submission clause set for Initiative 2013-2014 #48 (“Labeling Genetically Modified Food”).

STATEMENT OF THE CASE

A. Procedural History of Proposed Initiative #48

Larry Cooper and Cheryl Gray (hereafter “Proponents”) proposed Initiative 2013-2014 #48 (the “Proposed Initiative”). A review and comment hearing was held before representatives of the Offices of Legislative Council and Legislative Legal Services. Thereafter the Proponents submitted a final version of the Proposed Initiative to the Secretary of State for purposes of submission to the Title Board, of which the Secretary or his designee is a member.

A Title Board hearing was held on December 4, 2013 to establish the Proposed Initiative’s single subject and set a title. On December 11, 2013 Petitioners filed a Motion for Rehearing, alleging that the title was confusing, misleading, and failed to reflect the intent of the Proponents. The rehearing was held on December 18, 2013, at which time the Title Board granted in part the

Motion for Rehearing to cure certain deficiencies in the title it had set but denied the Motion in other respects, some of which are at issue in this appeal.

B. Jurisdiction

Petitioners are entitled to a review before the Colorado Supreme Court pursuant to C.R.S. § 1-40-107(2). Petitioners timely filed the Motion for Rehearing with the Title Board. *See* C.R.S. § 1-40-107(1). Additionally, Petitioners timely filed this Petition for Review within five days from the date of the hearing on the Motion for Rehearing. C.R.S. § 1-40-107(2).

As required by C.R.S. § 1-40-107(2), attached to this Petition for Review are certified copies of: (1) the draft, amended, and final versions of the initiative filed by the Proponents; (2) the original ballot title set for this measure; (3) the Motion for Rehearing filed by the Petitioners; and (4) the ruling on the Motion for Rehearing as reflected by the title and ballot title and submission clause set by the Board. Petitioners believe that the Title Board erred in denying certain aspects of the Motion for Rehearing. Consequently, this matter is properly before this Court.

GROUND FOR APPEAL

In violation of C.R.S. §§ 1-40-106, -107, the title set by the Title Board is unfair, misleading, does not fairly and correctly express the true meaning of the

Proposed Initiative, and will lead to voter confusion. The following is an advisory list of issues to be addressed in Petitioners' brief:

1. The titles incorrectly summarize the measure in stating that labeling is required for "food that has been... treated with genetically modified material;" in fact, the measure requires labeling only if "the organism from which the food is derived" – not the food product itself – "has been treated with a genetically engineered material."
2. The single subject statement in the titles ("concerning labeling of genetically modified food") is misleading because it does not reflect that the Proposed Initiative deals with labeling of some, rather than all, genetically modified foods.
3. The titles do not inform voters that the essence of the Proposed Initiative is that the failure to label genetically modified food is treated as "misbranding" of food.
4. The titles do not inform voters that the misbranding of food can be punished by various means including criminal prosecution.
5. The titles do not inform voters that the measure exempts genetically engineered foods from treatment as "misbranded" food if they are produced without specific knowledge on the part of the manufacturer.

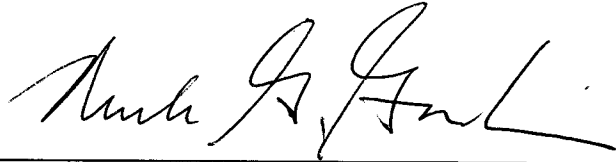
6. The titles do not inform voters that the measure provides a unique definition of "genetically modified" and "genetically engineered," such that foods qualify under these definitions if they contain any genetically engineered ingredient, component, or other article, whether or not the ultimate food product itself has gone through the process of having been genetically modified.
7. The titles do not inform voters that the measure exempts from the labeling requirement any processed food that is produced with genetically engineered enzymes or additives.
8. The titles do not inform voters that the measure's informational requirements apply to raw agricultural commodities but do so only at the point of retail sale rather than at the point of consumption.
9. The titles contain the mandated wording of the label even though such detail is not a central measure of the initiative.

PRAYER FOR RELIEF

Petitioners respectfully request that, after consideration of the parties' briefs, this Court determine that the title set for the Proposed Initiative is neither fair nor

accurate and remand the Proposed Initiative to the Title Board with instructions to redraft the title to accurately and fairly represent the text of the Proposed Initiative.

Respectfully submitted this 24th day of December, 2013.

A handwritten signature in black ink, appearing to read "Mark G. Grueskin", written over a horizontal line.

Mark G. Grueskin, #14621
RECHT KORNFELD, P.C.
1600 Stout Street, Suite 1000
Denver, CO 80202
Phone: 303-573-1900
Facsimile: 303-446-9400
Email: mark@rechkornfeld.com
ATTORNEYS FOR PETITIONERS

CERTIFICATE OF SERVICE

I, Laurene Uhlberg, hereby affirm that a true and accurate copy of the
**PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE
SETTING BOARD CONCERNING PROPOSED INITIATIVE 2013-2014
#48 ("LABELING GENETICALLY MODIFIED FOOD")** was sent this day,
December 24th, 2013, via first class U.S. mail, postage pre-paid to the proponents
and their counsel and to counsel for the Title Board at:

Larry Cooper
6961 Lee Street
Arvada, CO 80004

Cheryl Gray
665 Eldorado Blvd., #434
Broomfield, CO 80021

Thomas Rogers
Lewis Roca Rothgerber
1200 Seventeenth Street, Suite 3000
Denver, CO 80202

LeeAnn Morrill
Office of the Attorney General
1300 Broadway, 6th Floor
Denver, CO 80203

Laurene Uhlberg



STATE OF COLORADO

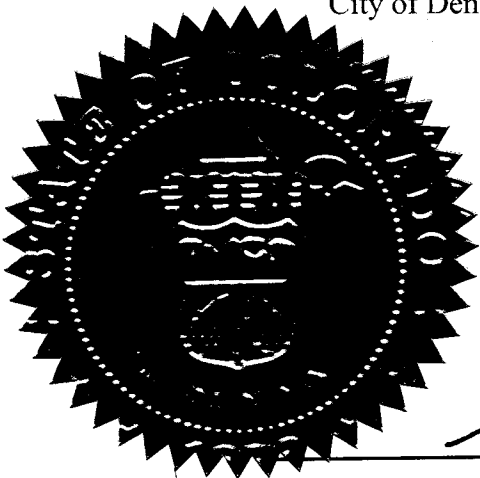
DEPARTMENT OF
STATE

CERTIFICATE

I, **SCOTT GESSLER**, Secretary of State of the State of Colorado, do hereby certify that:

the attached are true and exact copies of the filed text, motion for rehearing, titles, and the rulings thereon of the Title Board on Proposed Initiative "2013-2014 #48 'Labeling Genetically Modified Food'".....

..... **IN TESTIMONY WHEREOF** I have unto set my hand
and affixed the Great Seal of the State of Colorado, at the
City of Denver this 5th day of January, 2012.



A handwritten signature in black ink, reading "Scott Gessler", is written over a horizontal line.

SECRETARY OF STATE

Ballot Title Setting Board

Proposed Initiative 2013-2014 #48

The title as designated and fixed by the Board is as follows:

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.

The ballot title and submission clause as designated and fixed by the Board is as follows:

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?

Hearing December 4, 2013:

Single subject approved; staff draft amended, titles set.

Hearing adjourned 1:40 p.m.

Rehearing December 18, 2013:

Motion for Rehearing granted to the extent that the Board made changes to the title; denied in all other respects.

Hearing adjourned 12:22 p.m.

RECEIVED



DEC 11 2013

ELECTIONS
SECRETARY OF STATE

4:20

BEFORE THE COLORADO BALLOT TITLE SETTING BOARD

MARC ARNUSCH and MARY LOU CHAPMAN, Objectors

vs.

LARRY COOPER and CHERYL GRAY, Proponents.

MOTION FOR REHEARING

Marc Arnusch and Mary Lou Chapman, through their legal counsel, Recht Kornfeld P.C., objects to the Title Board's title and ballot title and submission clause set for Initiative 2013-14 #48 ("Labeling Genetically Modified Food").

On December 4, 2013, the Board set the following ballot title and submission clause:

Shall there be a change to the Colorado Revised Statutes concerning labeling of genetically modified food; and, in connection therewith, requiring that the words, "Produced With Genetic Engineering" appear in a clear and conspicuous manner on the label starting on July 1, 2016; exempting certain food that is not packaged for retail sale, alcoholic beverages, animal food, and medically prescribed food; authorizing 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 in connection with the labeling requirements?

GROUND'S FOR RECONSIDERATION

A. Contrary to the statutory requirements for a ballot title that is not confusing, not misleading, and reflective of the intent of the proponents, C.R.S. §§ 1-40-106, -107, the Board has erred by setting titles that do not reveal that the measure:

- (1) Requires, rather than authorizes, state agency regulation of food labeling;
- (2) Does not create a blanket prohibition against private rights of action;
- (3) Addresses the subject of "labeling food" rather than just "labeling of genetically modified food";
- (4) Addresses the subject of labeling of "some" rather than the entire sphere of "genetically modified food";

- (5) Exempts from the measure's labeling requirements all restaurant food;
- (6) Exempts from labeling requirements any animal products from animals that were given food, injections, or drugs that include genetically modified organisms;
- (7) Exempts from the measure's labeling requirements all animal food, whether for livestock or domestic animals;
- (8) Exempts from labeling requirements certain foods, but not others, that contain or have been affected by genetically modified processing aids;
- (9) Exempts against allegation of misbranding food sellers who (i) lack knowledge that seeds or foods were derived using genetic engineering and (ii) so certify at time of delivery;
- (10) Does not immunize retailers, manufacturers, or distributors against private rights of action that are not related to conformance to labeling requirements;
- (11) Extends immunity against private rights of action to advertising as well as sale and labeling of food;
- (12) Fails to indicate that raw agricultural commodities are not required to be labeled at the point of sale but are subject to signage requirements reflecting information provided by manufacturers and distributors;
- (13) Requires labeling by raw agricultural commodity manufacturers;
- (14) Requires raw agricultural commodity distributors to maintain labels for retailers;
- (15) Redefines existing definition of "food" by eliminating many food components and chewing gum for purposes of this labeling;
- (16) Fails to disclose that a food is considered to be genetically modified if it contains any ingredient, component, or other article that is genetically engineered;
- (17) Fails to disclose that a food is considered to be genetically modified if it has been treated with any genetically engineered material;
- (18) Confuses voters by using two different terms ("genetically modified" and "genetic engineering") to describe the same food(s).

B. The label's wording, quoted in the title, is not a central element of the measure.

RESPECTFULLY SUBMITTED this 11th day of December, 2013.

RECHT KORNFELD, P.C.



Mark Grueskin

1600 Stout Street, Suite 1000

Denver, CO 80202

Phone: 303-573-1900

Email: mark@rechtkornfeld.com

Objectors' Addresses:

Marc Arnusch
6506 County Road 65
Keenesburg, CO 80643

Mary Lou Chapman
9525 West 71st Avenue
Arvada, CO 80004

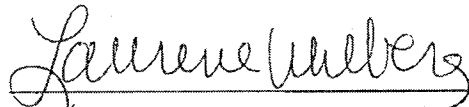
CERTIFICATE OF SERVICE

I hereby affirm that a true and accurate copy of the **MOTION FOR REHEARING** of Marc Arnusch and Mary Lou Chapman was sent this day, December 11, 2013, via first class U.S. mail, postage pre-paid to the proponents and their counsel at:

Larry Cooper
6961 Lee Street
Arvada, CO 80004

Cheryl Gray
665 Eldorado Blvd., #434
Broomfield, CO 80021

Thomas Rogers
Lewis Roca Rothgerber
1200 Seventeenth Street
Suite 3000
Denver, CO 80202

A handwritten signature in cursive script, reading "Laurene Umber", written in dark ink. The signature is fluid and stylized, with a horizontal line drawn beneath the name.

Ballot Title Setting Board

Proposed Initiative 2013-2014 #48

The title as designated and fixed by the Board is as follows:

A change to the Colorado Revised Statutes concerning labeling of genetically modified food; and, in connection therewith, requiring that the words, "Produced With Genetic Engineering" appear in a clear and conspicuous manner on the label starting on July 1, 2016; exempting certain food that is not packaged for retail sale, alcoholic beverages, animal food, and medically prescribed food; authorizing 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 in connection with the labeling requirements.

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there be a change to the Colorado Revised Statutes concerning labeling of genetically modified food; and, in connection therewith, requiring that the words, "Produced With Genetic Engineering" appear in a clear and conspicuous manner on the label starting on July 1, 2016; exempting certain food that is not packaged for retail sale, alcoholic beverages, animal food, and medically prescribed food; authorizing 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 in connection with the labeling requirements?

Hearing December 4, 2013:

Single subject approved; staff draft amended, titles set.

Hearing adjourned 1:40 p.m.

Colorado Right to Know Act
(Statutory Amendment)

RECEIVED

NOV 22 2013

ELECTIONS/LICENSING
SECRETARY OF STATE

S.WARD
1:30 P.M.

Text of Measure:

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

2013-14 #48 – FINAL TEXT

(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:

2013-14 #48 – FINAL TEXT

(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

2013-14 #48 – FINAL TEXT

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.

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NOV 22 2013

ELECTIONS/LICENSING
SECRETARY OF STATE

S.WARD 1:30P.M.

2013-14 #48 – AMENDED TEXT

Colorado Right to Know Act
(Statutory Amendment)

Text of Measure:

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

SECTION 1. Part 4 of Article 5 of Title 25 in Colorado Revised Statutes, add 25-5-401.5 as follows; is amended by the addition of Section 401.5 to read:

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25-5-401.5. LEGISLATIVE DECLARATION. (1) THE ELECTORATE OF COLORADO HEREBY FINDS, DETERMINES, AND DECLARES THAT:

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(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) IF 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, amend 25-5-402, add (8.5), (9.5), (12.5), (15.5), (16.5), (20.3), (20.5), and (21.5) as follows:

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25-5-402. Definitions. As used in this part 4, unless the context otherwise requires:

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(1) "Advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics;

(2) "Color" includes black, white, and intermediate grays;

(3)(a) "Color additive" means a material which:

2013-14 #48 – AMENDED TEXT

~~(1) Is a dye, pigment, or other substance made by a process of synthesis or similar artifice or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity, from a vegetable, animal, mineral, or other source; and~~

~~(H) When added or applied to a food, drug, or cosmetic or to the human body or any part thereof, is capable (alone or through reaction with other substance) of imparting color thereto; except that such term does not include any material which is exempted under the federal act.~~

~~(b) Nothing in this subsection (3) shall be construed to apply to any pesticide chemical, soil or plant nutrient, or other agricultural chemical solely because of its effect in aiding, retarding, or otherwise affecting, directly or indirectly, the growth or other natural physiological process or produce of the soil and thereby affecting its color, whether before or after harvest.~~

~~(4) "Consumer commodity", except as otherwise specifically provided in this subsection (4), means any food, drug, cosmetic, or device. Such term does not include:~~

~~(a) Any tobacco or tobacco product;~~

~~(b) Any commodity subject to packaging or labeling requirements imposed under article 9 of title 35, C.R.S., being known as the "Pesticide Act", or imposed by the secretary of agriculture under the "Federal Insecticide, Fungicide, and Rodenticide Act", as amended (7 U.S.C. secs. 135-135k), or under the federal "Animal Virus, Serum, Toxin, Antitoxin Act" (21 U.S.C. secs. 151-158);~~

~~(c) Any drug subject to the provisions of section 25-5-415(1)(m) or of 21 U.S.C. secs. 353(b)(1) or 356;~~

~~(d) Any beverage subject to or complying with packaging or labeling requirements imposed under the "Federal Alcohol Administration Act" (27 U.S.C. secs. 201-211); or~~

~~(e) Any commodity subject to the provisions of article 27 of title 35, C.R.S., concerning seeds.~~

~~(5) "Contaminated with filth" applies to any food, drug, cosmetic, or device not securely protected from dust, dirt, and, as far as may be necessary by all reasonable means, from all foreign or injurious contaminations.~~

~~(6) "Cosmetic" means articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance or articles intended for use as a component of any such articles; except that such term does not include soap.~~

~~(7) "CULTIVATED COMMERCIALY" MEANS GROWN OR RAISED IN THE COURSE OF BUSINESS OR TRADE AND SOLD OR INTENDED FOR SALE.~~

~~(78) "Department" means the department of public health and environment.~~

~~(89) "Device", except when used in subsection (23) of this section and in sections 25-5-403(1)(j), 25-5-411(1)(g), 25-5-415(1)(d), and 25-5-417(1)(d), means instruments, apparatus, and contrivances, including their components, parts, and accessories, intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals or to affect the structure or any function of the body of man or other animals.~~

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~~(910) “Drug” means:~~

~~(a) Articles recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, official national formulary, or any supplement to any of them;~~

~~(b) Articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;~~

~~(c) Articles, other than food, intended to affect the structure or any function of the body of man or other animals;~~

~~(d) Articles intended for use as a component of any article specified in paragraph (a), (b), or (c) of this subsection (9) but does not include devices or their components, parts, or accessories.~~

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

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

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~~(1012) “Federal act” means the “Federal Food, Drug, and Cosmetic Act” (21 U.S.C. sec. 301 et seq., 52 Stat. 1040 et seq.).~~

~~(1113) “Food” means articles used for food or drink for man or other animals, chewing gum, and articles used for components of any such article.~~

~~(1214) “Food additive” means any substance, the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food (including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food and including any source of radiation intended for any such use) if such substance is not generally recognized among experts qualified by scientific training and experience to evaluate its safety as having been adequately shown through scientific procedures (or, in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use. The term does not include:~~

~~(a) A pesticide chemical in or on a raw agricultural commodity;~~

~~(b) A pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity;~~

~~(c) A color additive; or~~

~~(d) Any substance used in accordance with a sanction or approval granted prior to the enactment of the amendment to the federal act known as the “Food Additives Amendment of 1958”, the “Poultry Products Inspection Act” (21 U.S.C. secs. 451-470), or the “Meat Inspection Act of March 4, 1907”, as amended and extended (21 U.S.C. secs. 71-91).~~

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~~(12.515) “GENETICALLY MODIFIED/ENGINEERED” SHALL HAVE THE SAME MEANING AS OR “GENETICALLY ENGINEERED/MODIFIED,” AND 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) IF THE ORGANISM(S) FROM WHICH THE FOOD IS DERIVED HAS (HAVE) 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) IF THE FOOD CONTAINS AN INGREDIENT, COMPONENT, OR OTHER ARTICLE THAT IS GENETICALLY ENGINEERED.~~

~~(1316) “Immediate container” does not include package liners.~~

~~(1417) “Label” means a display of written, printed, or graphic matter upon the immediate container of any article; and by or under the authority of this part 4 a requirement that any word, statement, or other information appear on the label shall not be considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper, if any, of the retail package of such article or is easily legible through the outside container or wrapper.~~

~~(1518) “Labeling” means all labels and other written, printed, or graphic matter upon an article or any of its containers or wrappers, or accompanying such article.~~

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

~~(1619) “Official compendium” means the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, official national formulary, or any supplement to any of them.~~

~~(16.529) “ORGANISM” MEANS ANY BIOLOGICAL ENTITY CAPABLE OF REPLICATION, REPRODUCTION OR TRANSFERRING GENETIC MATERIAL.~~

~~(1721) “Package” means any container or wrapping in which any consumer commodity is enclosed for use in the delivery or display of that consumer commodity to retail purchasers. The term does not include:~~

~~(a) Shipping containers or wrappings used solely for the transportation of any consumer commodity in bulk or in quantity to manufacturers, packers, or processors, or to wholesale or~~

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~~retail distributors thereof; or~~

~~(b) Shipping containers or outer wrappings used by retailers to ship or deliver any commodity to retail customers if such containers or wrappers bear no printed matter pertaining to any particular commodity.~~

~~(1822) "Person" includes an individual, partnership, corporation, and association.~~

~~(1923) "Pesticide chemical" means any substance which alone, in chemical combination, or in formulation with one or more other substances is a pesticide within the meaning of section 35-9-102(21), C.R.S., and which is used in the production, storage, or transportation of raw agricultural commodities.~~

~~(2024) "Principal display panel" means that part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.~~

~~(250.3) "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.~~

~~(20.56) "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;~~

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~~(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~~

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~~(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.~~

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~~(2127) "Raw agricultural commodity" means any food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.~~

~~(21.58) "RETAILER" MEANS A PERSON OR BUSINESS ENGAGED IN SELLING THE FOOD FROM INDIVIDUALS OR BUSINESSES TO THE END-USER.~~

~~(29) "DISTRIBUTOR" MEANS A PERSON OR BUSINESS ENGAGED IN ANY METHOD OF DISTRIBUTING OR TRANSPORTING A FOOD OR FOOD PRODUCT FROM ONE PLACE TO ANOTHER.~~

~~(30) "MANUFACTURER" MEANS A PERSON OR BUSINESS ENGAGED IN THE PRODUCTION OR PROCESSING OF SEED, SEED STOCK, FOOD, OR ANY FOOD PRODUCT.~~

~~(2231) "Safe", as used in subsection (12) of this section, has reference to the health of man or animal.~~

~~(2332) If an article is alleged to be misbranded because the labeling is misleading or if an~~

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advertisement is alleged to be false because it is misleading, then, in determining whether the labeling or advertisement is misleading, there shall be taken into account all representations made or suggested by statement, work, design, device, sound, or any combination thereof, and also the extent to which the labeling or advertisement fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under such conditions of use as are customary or usual.

(2433) The representation of a drug, in its labeling or advertisement, as an antiseptic shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to be, or represented as being, an antiseptic for inhibitory use which involves prolonged contact with the body.

(2534) The provisions of this part 4 regarding the selling of food, drugs, devices, or cosmetics shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession, and holding of any such article for sale; and the sale, dispensing, and giving of any such article; and the supplying or applying of any such articles in the conduct of any food, drug, or cosmetic establishment.

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,

- (1) A food shall be deemed to be misbranded:
 - (a) If its labeling is false or misleading in any particular;
 - (b) If its labeling or packaging fails to conform to the requirements of section 25-5-410;
 - (c) If it is offered for sale under the name of another food;
 - (d) If it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation" and, immediately thereafter, the name of the food imitated;
 - (e) If its container is so made, formed, or filled as to be misleading;
 - (f) If in package form, unless it bears a label containing:
 - (I) The name and place of business of the manufacturer, packer, or distributor; and
 - (II) An accurate statement of the net quantity of the contents in terms of weight, measure, or numerical count, which statement shall be separately and accurately stated in a uniform location upon the principal display panel of the label; but, as to such terms of quantity, reasonable variations shall be permitted, and exemptions as to small packages shall be established by regulation prescribed by the department;

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~~(g) If any word, statement, or other information required by or under authority of this part 4 to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;~~

~~(h) If it purports to be or is represented as a food for which a definition and standard of identity is prescribed by regulations as provided by section 25-5-409, unless it conforms to such definition and standard and its label bears the name of the food specified in the definition and standard and, insofar as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in such food;~~

~~(i) If it purports to be or is represented as:~~

~~(I) A food for which a standard of quality has been prescribed by regulations as provided by section 25-5-409 and its quality falls below such standard, unless its label bears, in such manner and form as regulations specify, a statement that it falls below such standard; or~~

~~(II) A food for which a standard of fill of container is prescribed by regulations as provided by section 25-5-409 and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard;~~

~~(j) If it is not subject to the provisions of paragraph (h) of this section, unless it bears labeling clearly giving the common or usual name of the food, if any, and, if it is fabricated from two or more ingredients, the common or usual name of each such ingredient, except that spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings without naming each; but, to the extent that compliance with the requirements as to such multiple names is impractical or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the department. The requirements of this paragraph (j) shall not apply to food products which are packaged at the direction of purchasers at retail at the time of sale whose ingredients are disclosed to the purchasers by other means in accordance with regulations promulgated by the department.~~

~~(k) If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the department determines to be and by regulations prescribes as necessary in order to fully inform purchasers as to its value for such uses;~~

~~(l) If it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact; but, to the extent that compliance with the requirements of this paragraph (l) is impracticable, exemptions shall be established by regulations promulgated by the department. The provisions of this paragraph (l) and paragraphs (h) and (j) of this subsection (1) with respect to artificial coloring do not apply to butter, cheese, or ice cream. The provisions of this paragraph (l) with respect to chemical preservatives do not apply to a pesticide chemical when used in or on a raw agricultural commodity which is the produce of the soil.~~

~~(m) If it is a product intended as an ingredient of another food and, when used according to the directions of the purveyor, will result in the final food product being adulterated or misbranded;~~

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~~(n) If it is meat imported from without the boundaries of the United States or if it is a meat product containing such meat, unless it bears labeling stating the fact that it is imported meat or that it contains imported meat. Any person who sells or offers for sale in this state any meat imported from without the boundaries of the United States, or any meat product containing such imported meat, without labeling such meat or meat product stating that it is imported, or contains imported meat, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for not less than thirty days nor more than ninety days, or by both such fine and imprisonment.~~

~~(o) If it is a raw agricultural commodity which is the produce of the soil, bearing or containing a pesticide chemical applied after harvest, unless the shipping container of such commodity bears labeling which declares the presence of such chemical in or on such commodity and the common or usual name and the function of such chemical; except that no such declaration shall be required while such commodity, having been removed from the shipping container, is being held or displayed for sale at retail out of such container in accordance with the custom of the trade;~~

~~(p) If it is a color additive, unless its packaging and labeling are in conformity with such packaging and labeling requirements applicable to such color additive as may be contained in regulations issued pursuant to the provisions of the federal act.~~

(q) BEGINNING JANUARY 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 AND/OR TRANSPORT BY THE MANUFACTURER, AND ~~SHOULD SHALL~~ BE MAINTAINED BY THE DISTRIBUTOR, AND DISPLAYED IN A CLEAR AND CONSPICUOUS MANNER ON THE RETAIL STORE SHELF ~~OF OR~~ BIN IN WHICH SUCH COMMODITY IS DISPLAYED FOR SALE BY THE RETAILER.

~~(R) THIS SPARAGRAPH/SECTION (q) OF SUBSECTION (1) OF THIS SECTION DOES NOT APPLY TO:~~

(I) ~~F~~FOOD OR DRINK FOR ANIMALS;

(II) ~~C~~HEWING GUM;

(III) ~~A~~LCOHOLIC BEVERAGES;

(IV) ~~A~~NY 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) ~~A~~NY FOOD WHICH IS NOT PACKAGED FOR RETAIL SALE AND THAT EITHER:

(Aa) ~~I~~IS A PROCESSED FOOD PREPARED AND INTENDED FOR IMMEDIATE HUMAN CONSUMPTION; ~~OR~~

~~(b) I~~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

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IMMEDIATE HUMAN CONSUMPTION; OR

(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;

~~(2) Foods which, in accordance with the practice of the trade, are to be processed, labeled, or repacked in substantial quantities at establishments other than those where originally processed or packed shall be exempt from any labeling requirements under this section if such food is not adulterated or misbranded under any provision of this part 4 upon removal from such processing, labeling, or repacking establishment. Regulations adopted under authority of the federal act (21 U.S.C. sec. 345) relating to such exemptions are automatically effective in this state. The department may promulgate additional regulations or amendments to existing regulations concerning such exemptions, but the department may not promulgate any regulation which has the effect of allowing any food which is subject to federal labeling requirements to be exempt from labeling requirements under the law of this state.~~

(3) FOOD WILL NOT BE CONSIDERED MISBRANDED UNDER ~~SUBSECTION 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 SUCH 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 SUBSECTION PARAGRAPH (q) OF SUBSECTION (1) OF THIS SECTION. FOR PURPOSES OF THIS SECTION, "RETAILER" EXCLUDES ANY MANUFACTURER WHERE THE MANUFACTURER IS ALSO ACTING AS A RETAILER WITH RESPECT TO THE FOOD IT MANUFACTURES.~~

(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.

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Colorado Right to Know Act
(Statutory Amendment)

RECEIVED

NOV 22 2013

ELECTIONS/LICENSING
SECRETARY OF STATE

S. WARD
1:30 P.M.

Text of Measure:

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

SECTION 1. Part 4 of Article 5 of Title 25 Colorado Revised Statutes is amended by the addition of Section 401.5 to read:

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, amend 25-5-402 as follows:

As used in this part 4, unless the context otherwise requires:

- (1) "Advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics.
- (2) "Color" includes black, white, and intermediate grays.
- (3)(a) "Color additive" means a material which:
 - (I) Is a dye, pigment, or other substance made by a process of synthesis or similar artifice or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity, from a vegetable, animal, mineral, or other source; and
 - (II) When added or applied to a food, drug, or cosmetic or to the human body or any part thereof,

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is capable (alone or through reaction with other substance) of imparting color thereto; except that such term does not include any material which is exempted under the federal act.

(b) Nothing in this subsection (3) shall be construed to apply to any pesticide chemical, soil or plant nutrient, or other agricultural chemical solely because of its effect in aiding, retarding, or otherwise affecting, directly or indirectly, the growth or other natural physiological process or produce of the soil and thereby affecting its color, whether before or after harvest.

(4) "Consumer commodity", except as otherwise specifically provided in this subsection (4), means any food, drug, cosmetic, or device. Such term does not include:

(a) Any tobacco or tobacco product;

(b) Any commodity subject to packaging or labeling requirements imposed under article 9 of title 35, C.R.S., being known as the "Pesticide Act", or imposed by the secretary of agriculture under the "Federal Insecticide, Fungicide, and Rodenticide Act", as amended (7 U.S.C. secs. 135-135k), or under the federal "Animal Virus, Serum, Toxin, Antitoxin Act" (21 U.S.C. secs. 151-158);

(c) Any drug subject to the provisions of section 25-5-415(1)(m) or of 21 U.S.C. secs. 353(b)(1) or 356;

(d) Any beverage subject to or complying with packaging or labeling requirements imposed under the "Federal Alcohol Administration Act" (27 U.S.C. secs. 201-211); or

(e) Any commodity subject to the provisions of article 27 of title 35, C.R.S., concerning seeds.

(5) "Contaminated with filth" applies to any food, drug, cosmetic, or device not securely protected from dust, dirt, and, as far as may be necessary by all reasonable means, from all foreign or injurious contaminations.

(6) "Cosmetic" means articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance or articles intended for use as a component of any such articles; except that such term does not include soap.

(7) "CULTIVATED COMMERCIALY" MEANS GROWN OR RAISED IN THE COURSE OF BUSINESS OR TRADE AND SOLD OR INTENDED FOR SALE.

(78) "Department" means the department of public health and environment.

(89) "Device", except when used in subsection (23) of this section and in sections 25-5-403(1)(j), 25-5-411(1)(g), 25-5-415(1)(d), and 25-5-417(1)(d), means instruments, apparatus, and contrivances, including their components, parts, and accessories, intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals or to affect the structure or any function of the body of man or other animals.

(910) "Drug" means:

(a) Articles recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, official national formulary, or any supplement to any of

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them;

(b) Articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(c) Articles, other than food, intended to affect the structure or any function of the body of man or other animals;

(d) Articles intended for use as a component of any article specified in paragraph (a), (b), or (c) of this subsection (9) but does not include devices or their components, parts, or accessories.

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

(12) "Federal act" means the "Federal Food, Drug, and Cosmetic Act" (21 U.S.C. sec. 301 et seq., 52 Stat. 1040 et seq.).

(13) "Food" means articles used for food or drink for man or other animals, chewing gum, and articles used for components of any such article.

(14) "Food additive" means any substance, the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food (including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food and including any source of radiation intended for any such use) if such substance is not generally recognized among experts qualified by scientific training and experience to evaluate its safety as having been adequately shown through scientific procedures (or, in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use. The term does not include:

(a) A pesticide chemical in or on a raw agricultural commodity;

(b) A pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity;

(c) A color additive; or

(d) Any substance used in accordance with a sanction or approval granted prior to the enactment of the amendment to the federal act known as the "Food Additives Amendment of 1958", the "Poultry Products Inspection Act" (21 U.S.C. secs. 451-470), or the "Meat Inspection Act of March 4, 1907", as amended and extended (21 U.S.C. secs. 71-91).

(15) "GENETICALLY MODIFIED" SHALL HAVE THE SAME MEANING AS "GENETICALLY ENGINEERED," AND 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 RECOMBINANT DEOXYRIBONUCLEIC ACID (DNA) TECHNIQUES AND THE DIRECT INJECTION OF NUCLEIC ACID INTO CELLS OR ORGANELLES, OR

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(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(S) FROM WHICH THE FOOD IS DERIVED HAS (HAVE) 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.

(~~4~~16) "Immediate container" does not include package liners.

(~~4~~17) "Label" means a display of written, printed, or graphic matter upon the immediate container of any article; and by or under the authority of this part 4 a requirement that any word, statement, or other information appear on the label shall not be considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper, if any, of the retail package of such article or is easily legible through the outside container or wrapper.

(~~4~~18) "Labeling" means all labels and other written, printed, or graphic matter upon an article or any of its containers or wrappers, or accompanying such article.

(~~4~~19) "Official compendium" means the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, official national formulary, or any supplement to any of them.

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

(~~4~~21) "Package" means any container or wrapping in which any consumer commodity is enclosed for use in the delivery or display of that consumer commodity to retail purchasers. The term does not include:

(a) Shipping containers or wrappings used solely for the transportation of any consumer commodity in bulk or in quantity to manufacturers, packers, or processors, or to wholesale or retail distributors thereof; or

(b) Shipping containers or outer wrappings used by retailers to ship or deliver any commodity to retail customers if such containers or wrappers bear no printed matter pertaining to any particular commodity.

(~~4~~22) "Person" includes an individual, partnership, corporation, and association.

(~~4~~23) "Pesticide chemical" means any substance which alone, in chemical combination, or in formulation with one or more other substances is a pesticide within the meaning of section 35-9-102(21), C.R.S., and which is used in the production, storage, or transportation of raw

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agricultural commodities.

~~(2024)~~ “Principal display panel” means that part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

(25) “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.

(26) “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.

~~(2127)~~ “Raw agricultural commodity” means any food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.

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

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

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

~~(2231)~~ “Safe”, as used in subsection (12) of this section, has reference to the health of man or animal.

~~(2332)~~ If an article is alleged to be misbranded because the labeling is misleading or if an advertisement is alleged to be false because it is misleading, then, in determining whether the labeling or advertisement is misleading, there shall be taken into account all representations made or suggested by statement, work, design, device, sound, or any combination thereof, and also the extent to which the labeling or advertisement fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under such conditions of use as are customary or usual.

~~(2433)~~ The representation of a drug, in its labeling or advertisement, as an antiseptic shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to

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be, or represented as being, an antiseptic for inhibitory use which involves prolonged contact with the body.

(2534) The provisions of this part 4 regarding the selling of food, drugs, devices, or cosmetics shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession, and holding of any such article for sale; and the sale, dispensing, and giving of any such article; and the supplying or applying of any such articles in the conduct of any food, drug, or cosmetic establishment.

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

- (1) A food shall be deemed to be misbranded:
 - (a) If its labeling is false or misleading in any particular;
 - (b) If its labeling or packaging fails to conform to the requirements of section 25-5-419;
 - (c) If it is offered for sale under the name of another food;
 - (d) If it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation" and, immediately thereafter, the name of the food imitated;
 - (e) If its container is so made, formed, or filled as to be misleading;
 - (f) If in package form, unless it bears a label containing:
 - (I) The name and place of business of the manufacturer, packer, or distributor; and
 - (II) An accurate statement of the net quantity of the contents in terms of weight, measure, or numerical count, which statement shall be separately and accurately stated in a uniform location upon the principal display panel of the label; but, as to such terms of quantity, reasonable variations shall be permitted, and exemptions as to small packages shall be established by regulation prescribed by the department;
 - (g) If any word, statement, or other information required by or under authority of this part 4 to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;
 - (h) If it purports to be or is represented as a food for which a definition and standard of identity is prescribed by regulations as provided by section 25-5-409, unless it conforms to such definition and standard and its label bears the name of the food specified in the definition and standard and, insofar as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in such food;
 - (i) If it purports to be or is represented as:
 - (I) A food for which a standard of quality has been prescribed by regulations as provided by

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section 25-5-409 and its quality falls below such standard, unless its label bears, in such manner and form as regulations specify, a statement that it falls below such standard; or

(II) A food for which a standard of fill of container is prescribed by regulations as provided by section 25-5-409 and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard;

(j) If it is not subject to the provisions of paragraph (h) of this section, unless it bears labeling clearly giving the common or usual name of the food, if any, and, if it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings without naming each; but, to the extent that compliance with the requirements as to such multiple names is impractical or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the department. The requirements of this paragraph (j) shall not apply to food products which are packaged at the direction of purchasers at retail at the time of sale whose ingredients are disclosed to the purchasers by other means in accordance with regulations promulgated by the department.

(k) If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the department determines to be and by regulations prescribes as necessary in order to fully inform purchasers as to its value for such uses;

(l) If it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact; but, to the extent that compliance with the requirements of this paragraph (l) is impracticable, exemptions shall be established by regulations promulgated by the department. The provisions of this paragraph (l) and paragraphs (h) and (j) of this subsection (I) with respect to artificial coloring do not apply to butter, cheese, or ice cream. The provisions of this paragraph (l) with respect to chemical preservatives do not apply to a pesticide chemical when used in or on a raw agricultural commodity which is the produce of the soil.

(m) If it is a product intended as an ingredient of another food and, when used according to the directions of the purveyor, will result in the final food product being adulterated or misbranded;

(n) If it is meat imported from without the boundaries of the United States or if it is a meat product containing such meat, unless it bears labeling stating the fact that it is imported meat or that it contains imported meat. Any person who sells or offers for sale in this state any meat imported from without the boundaries of the United States, or any meat product containing such imported meat, without labeling such meat or meat product stating that it is imported, or contains imported meat, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for not less than thirty days nor more than ninety days, or by both such fine and imprisonment.

(o) If it is a raw agricultural commodity which is the produce of the soil, bearing or containing a pesticide chemical applied after harvest, unless the shipping container of such commodity bears labeling which declares the presence of such chemical in or on such commodity and the common or usual name and the function of such chemical; except that no such declaration shall be required while such commodity, having been removed from the shipping container, is being held

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or displayed for sale at retail out of such container in accordance with the custom of the trade;

(p) If it is a color additive, unless its packaging and labeling are in conformity with such packaging and labeling requirements applicable to such color additive as may be contained in regulations issued pursuant to the provisions of the federal act.

(Q) BEGINNING JANUARY 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 AND/OR TRANSPORT BY THE MANUFACTURER, AND SHOULD BE MAINTAINED BY THE DISTRIBUTOR, AND DISPLAYED IN A CLEAR AND CONSPICUOUS MANNER ON THE RETAIL STORE SHELF OF BIN IN WHICH SUCH COMMODITY IS DISPLAYED FOR SALE BY THE RETAILER.

(R) SUBSECTION (Q) 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; OR

(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; OR

(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.

(2) Foods which, in accordance with the practice of the trade, are to be processed, labeled, or repacked in substantial quantities at establishments other than those where originally processed or packed shall be exempt from any labeling requirements under this section if such food is not adulterated or misbranded under any provision of this part 4 upon removal from such processing, labeling, or repacking establishment. Regulations adopted under authority of the federal act (21 U.S.C. sec. 345) relating to such exemptions are automatically effective in this state. The department may promulgate additional regulations or amendments to existing regulations concerning such exemptions, but the department may not promulgate any regulation which has the effect of allowing any food which is subject to federal labeling requirements to be exempt from labeling requirements under the law of this state.

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(3) FOOD WILL NOT BE CONSIDERED MISBRANDED UNDER SUBSECTION (Q) IF IT IS PRODUCED BY A PERSON WHO:

(A) GROWS, RAISES, OR OTHERWISE PRODUCES SUCH FOOD WITHOUT KNOWLEDGE THAT SUCH 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.

(4) THERE IS NO PRIVATE RIGHT OF ACTION AGAINST A RETAILER THAT SELLS OR ADVERTISES FOOD FOR FAILURE TO CONFORM TO THE LABELING REQUIREMENTS UNDER SUBSECTION (Q). FOR PURPOSES OF THIS SECTION, "RETAILER" EXCLUDES ANY MANUFACTURER WHERE THE MANUFACTURER IS ALSO ACTING AS A RETAILER WITH RESPECT TO THE FOOD IT MANUFACTURES.