

# LAW OFFICES OF JAMES WHEATON

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11-0099

19 December 2011

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

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INITIATIVE COORDINATOR  
ATTORNEY GENERAL'S OFFICE

By hand delivery

**RE: Request to Prepare Title and Summary for Initiative Measure**

Dear Ms. McFarland:

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

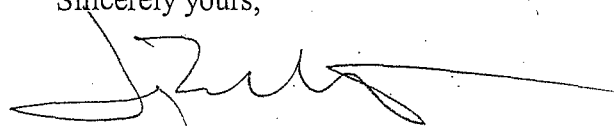
I have previously submitted a request for title and summary, No. 11-0071. If you have any questions regarding the differences, please feel free to contact me.

Please also find enclose:

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

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

Sincerely yours,



James Wheaton

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

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

### **SECTION 1. FINDINGS AND DECLARATIONS**

- (a) California consumers have the right to know whether the foods they purchase 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-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.

**SECTION 2. STATEMENT OF PURPOSE**

The purpose of this measure is to create and enforce the fundamental right of the people of California to be fully informed about whether the food they purchase and eat is genetically engineered 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.

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

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

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

***§110808 Definitions***

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

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

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

**(c) Genetically engineered.**

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

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

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

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

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

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

**(d) 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 on 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--*

*(i) 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;*

*(ii) 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, nor 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 subdivisions 110809, if a food meets any of the definitions in section 110808(c) or (d), 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 subsection (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: (i) has not been knowingly or intentionally genetically engineered; and (ii) has been segregated from, and has not been knowingly or intentionally commingled with, food that may have been genetically engineered at any time. In providing such a sworn statement, any person may rely on a sworn statement from his own supplier that contains the affirmation set forth in the preceding sentence.*
- (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: (i) no single such ingredient accounts for more than one-half of one percent of the total weight of such processed food; and (ii) the processed food does not contain more than ten such ingredients.*
- (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: (i) it is consistent with the most recent "Guidelines on Performance Criteria and Validation of Methods for Detection, Identification and Quantification of Specific DNA Sequences and Specific Proteins in Foods," (CAC/GL 74 (2010)) published by the Codex Alimentarius Commission; and (ii) it does not rely on testing of processed 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: (i) is a processed food prepared and intended for immediate human consumption or (ii) is served, sold or otherwise provided in any restaurant or other food facility that is primarily engaged in the sale of food prepared and intended for immediate human consumption.*
- (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 of Chapter 8, any violation of sections 110809 or 110890.1 shall be deemed a violation of Civil Code section 1770(a)(5) and may be prosecuted under Title 1.5 of Part 4 of Division 3 of that code (commencing with section 1750), 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 110890, 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.*

## **SECTION 4: ENFORCEMENT**

Section 111910 of Article 4 of Chapter 8 of Part 5 of Division 104 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.

## **SECTION 5. MISBRANDING**

Section 110663 is added to Article 6 of Chapter 5 or Part 3 of Division 104 to read:

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

## **SECTION 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.

## **SECTION 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.

## **SECTION 8. EFFECTIVE DATE**

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

## **SECTION 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.



**SECTION 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.