OFFICE OF THE SECRETARY OF STATE

KATE BROWN
SECRETARY OF STATE

ELECTIONS DIVISION

JIM WILLIAMS
DIRECTOR

255 CAPITOL STREET NE, SUITE 501
SALEM, OREGON 97310-0722

(503) 986-1518

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To All Interested Parties:

Secretary of State Kate Brown is responsible for the pre-election review of proposed initiative petitions for compliance with the procedural constitutional requirements established in the Oregon Constitution for initiative petitions. This review will be completed before approving the form of the cover and signature sheets for the purpose of circulating the proposed initiative petition to gather signatures.

The Secretary of State is seeking public input on whether proposed initiative petition (#44), satisfies the procedural constitutional requirements for circulation as a proposed initiative petition. Petition #44 was filed in our office on January 3, 2014, by Scott Bates and Aurora Paulsen, for the General Election of November 4, 2014.

A copy of the text of this proposed initiative petition is on the second page of the letter. If you are interested in providing comments on whether the proposed initiative petition meets the procedural constitutional requirements, please write to the secretary at the Elections Division. Your comments, if any, must be received by the Elections Division no later than January 28, 2014, in order for them to be considered in the review.

KATE BROWN
Secretary of State

BY:

Lydia Plukchi
Compliance Specialist

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OREGON:
AN ACT REQUIRING THE LABELING OF GENETICALLY ENGINEERED RAW AND PACKAGED FOOD

Section 1. Findings and Declarations

(1) Oregon consumers have the right to know whether the foods they purchase were produced with genetic engineering so they can make informed purchasing decisions. Labeling is necessary to ensure that Oregon consumers are fully and reliably informed about the products they purchase and consume. Labels provide informed consent and prevent consumer deception. Polls consistently show that the vast majority of the public wants to know if its food was produced with genetic engineering, for a variety of reasons.

(2) For multiple health, personal, economic, environmental, religious, and cultural reasons, the State of Oregon finds that food produced with genetic engineering should be labeled as such, as evidenced by the following.

(3) In the United States, there is currently no federal or Oregon State requirement that genetically engineered foods be labeled. In contrast, sixty-four countries, including Japan, South Korea, China, Australia, Russia, India, the European Union member states, and other key U.S. trading partners, already have laws mandating disclosure of genetically engineered foods on food labels. In 2011, Codex Alimentarius, the food standards organization of the United Nations, stated that governments are free to decide on whether and how to label foods produced with genetic engineering.

(4) The U.S. Food and Drug Administration (FDA) does not require or conduct safety studies of genetically engineered foods. Instead, any safety consultations are voluntary, and genetically engineered food developers may decide what information to provide to the agency. Market approval of genetically engineered food is based on industry research alone. There have been no long-term or epidemiological studies in the U.S. that examine the safety of human consumption of genetically engineered foods.

(5) The genetic engineering of plants and animals often causes unintended consequences. Manipulating genes via genetic engineering and inserting them into organisms is an imprecise process. The results are not always predictable or controllable. Mixing plant, animal, bacterial, and viral genes through genetic engineering in combinations that cannot occur in nature may produce results that lead to adverse health or environmental consequences.

(6) U.S. government scientists have stated that the artificial insertion of genetic material into plants via genetic engineering can cause a variety of significant problems with plant foods. Such genetic engineering may increase the levels of known toxicants or allergens in foods and create new toxicants or allergens with consequent health concerns.

(7) Independent scientists are limited from conducting safety and risk-assessment research of genetically engineered materials used in food products due to industry restrictions on research of genetically engineered materials used in food products.

(8) Mandatory identification of foods produced with genetic engineering can provide a method for detecting, at a large epidemiological scale, the potential health effects of consuming such foods.

(9) Without mandatory disclosure, consumers of genetically engineered food may unknowingly violate their dietary and religious beliefs.

(10) Numerous foreign markets with restrictions on foods produced with genetic engineering have restricted imports of U.S. crops due to concerns about genetic engineering. Some foreign markets are choosing to purchase agricultural products from countries other than the U.S. because genetically engineered crops are not identified in the U.S., which makes it impossible for buyers to determine what does or does not meet their national labeling laws or restrictions and thus renders U.S. products less desirable.

(11) Mandatory identification of foods produced with genetic engineering can be a critical method of preserving the economic value of exports or domestically sensitive markets with restrictions on, or prohibitions against, genetic engineering.

(12) Oregon's agricultural economy is remarkably diverse, third overall among the states. Two hundred twenty-five agricultural commodities are produced in Oregon, and the state is the top producer nationally of 14 of those. Over 80 percent of Oregon's agricultural products are exported out of state, and agricultural products rank second in value among Oregon's exports. Preserving the identity, quality, and reliability of Oregon's agricultural products and exports is critical to Oregon's economic well-being.

(13) The organic food industry is a rapidly growing industry, with 2.7 billion dollars in growth in 2012. While total U.S. food sales grew at a rate of 3.7 percent, the organic food industry grew at a rate of 10.2 percent in 2012, accounting for 31.5 billion dollars in sales. Sales of organic fruits and vegetables account for 43 percent of those new dollars, 34.8 percent of total organic food sales, and 10.3 percent of all U.S. fruit and vegetable sales. Organic dairy grew at a rate of 7.1 percent in 2012 and comprises over 6 percent of the total U.S. dairy market. Trade industry data shows that, over the long term, organic farming is more profitable and economically secure than conventional farming. Organic farmers are prohibited from using genetically engineered seeds. Nonetheless, organic crops are routinely threatened with transgenic contamination from neighboring fields of genetically engineered crops. The risk of contamination can erode public confidence in organic products, significantly undermining the job-creating, economy-boosting growth of the organic market. Requiring the labeling of foods produced through genetic engineering will help protect organics nationwide by increasing identification of genetically engineered foods through the food production process, thereby reducing the risk of contamination.

(14) U.S. Department of Agriculture (USDA) data shows that Oregon ranks 3rd in organic farm-gate sales at $233 million a year. This important element of Oregon's economy must be protected. Foods identified as non-genetically engineered constitute the fastest growing market segment in agriculture. However, only a small portion of the food industry participates in voluntary labeling of foods claimed not to be the product of genetic engineering. Nor are there consistent standards for such labeling, or for enforcement of voluntary labels. As such, voluntary labels are insufficient to provide consumers with adequate information on whether or not the food they are purchasing was produced with genetic engineering and may be misleading.

(15) Requiring that foods produced through genetic engineering be labeled as such will create additional market opportunities for producers who are not certified as organic and whose products are not produced through genetic engineering. Such additional market opportunities will also contribute to vibrant and diversified agricultural communities.

(16) The cultivation of genetically engineered crops can have serious effects on the environment. For example, in 2013, 93 percent of all soy grown in the U.S. was engineered to be herbicide resistant. In fact, the vast majority of genetically engineered crops are designed to withstand herbicides, and therefore promote indiscriminate herbicide use. As a result, genetically engineered, herbicide resistant crops have caused 527 million pounds of additional herbicides to be applied to the nation's farmland. These toxic herbicides damage the vitality and quality of our soil, harm wildlife, contaminate our drinking water, and pose health risks to consumers and farmworkers. Further, because of the consequent massive increase in the use of herbicides, herbicide-resistant weeds have developed and flourished, infesting farm fields and roadsides, complicating weed control for farmers, and causing farmers to resort to more and increasingly toxic herbicides.

(17) The people of Oregon should have the choice to avoid purchasing foods produced in ways that can lead to such environmental harm.

(18) Because neither the FDA nor the U.S. Congress requires the labeling of food produced with genetic engineering, the State should require foods produced with genetic engineering to be labeled as such in order to serve the interests of the State, prevent consumer deception, prevent potential risks to human health, promote food safety, protect cultural and religious practices, protect the environment, and promote economic development.

Section 2. Statement of Purpose

(1) The Genetically Engineered Raw and Packaged Food Labeling Act would result in establishing a consistent and enforceable standard for labeling foods produced using genetic engineering, and thus provide the citizens of Oregon with knowledge of how their food is produced.

(2) The purposes of this Act are:

a. Public health and food safety. Promote food safety and protect public health by enabling consumers to avoid potential risks associated with genetically engineered foods, and serve as a risk management tool enabling consumers, physicians, and scientists to identify unintended health effects resulting from consumption of genetically engineered foods.

b. Environmental impacts. Assist consumers who are concerned about the potential effects of genetic engineering on the environment to make informed purchasing decisions.

c. Consumer confusion and deception. Reduce and prevent consumer confusion and deception and promote the disclosure of factual information on food labels to allow consumers to make informed decisions.

d. Promoting and protecting economic development. Create and protect non-genetically engineered markets and enable consumers to make informed purchasing decisions.

e. Protecting religious and cultural practice. Provide consumers with data from which they may make informed decisions for personal, religious, moral, cultural, or ethical reasons.

(3) This law shall be liberally construed to fulfill these purposes.

Section 3. Definitions

(1) As used in this Act, except as otherwise provided, terms shall have the meaning given to them in ORS Title 49, Chapter 616, except that the term "food" shall include food only for human consumption and not any food for consumption by animals.

(2) "Raw food" shall have the same meaning as raw agricultural commodity as defined in ORS 616.205(17).

(3) "Packaged food" means any food offered for retail sale in Oregon, other than raw food and food served, sold, or provided ready to eat in any bake sale, restaurant, or cafeteria, and that is already otherwise subject to the provisions of ORS 616.250 prohibiting misbranding.

(4) "Genetically engineered" means produced from an organism or organisms in which the genetic material has been changed through the application of:
   (a) In vitro nucleic acid techniques which include, but are not limited to, recombinant deoxyribonucleic acid (DNA) or ribonucleic acid (RNA), direct injection of nucleic acid into cells or organelles, encapsulation, gene deletion, and doubling; or
   (b) Methods of fusing cells beyond the taxonomic family that overcome natural physiological, reproductive, or recombinantion barriers, and that are not techniques used in traditional breeding and selection such as conjugation, transduction, and hybridization.

For purposes of this definition: "*In vitro* nucleic acid techniques" include, but are not limited to, recombinant DNA or RNA techniques that use vector systems; techniques involving the direct introduction into the organisms of hereditary materials prepared outside the organisms such as biolistics, microinjection, macro-injection, chemoporation, electroporation, microencapsulation, and liposome fusion.

Section 4. Labeling of Genetically Engineered Raw and Packaged Foods

Commencing January 1, 2016, all raw food and packaged food that is entirely or partially produced with genetic engineering must be labeled in accordance with the provisions of this Act and is otherwise misbranded if that fact is not disclosed.

Section 5. Means of Labeling

(1) In the case of raw food packaged for retail sale, the manufacturer shall include the words "Genetically Engineered" clearly and conspicuously on the front or back of the package of such commodity. In the case of raw agricultural commodities that are not separately packaged or labeled, the retailer shall place a clear and conspicuous label on the retail store shelf or bin in which such commodity is displayed for sale.

(2) To make clear who is responsible for compliance with the requirements of this section, in the case of raw food, the retailer is responsible only for point of purchase shelf labeling. The supplier must label each container used for packaging, holding, and/or transporting any raw food produced with genetic engineering that is delivered directly to Oregon retailers.

(3) In the case of any packaged food containing some products of genetic engineering, the manufacturer must label the product in clear and conspicuous language on the front or back of the package of such food product with the words "Produced with Genetic Engineering" or "Partially Produced with Genetic Engineering."

(4) This law shall not be construed to require either the listing or identification of any ingredient or ingredients that were genetically engineered or that the term "genetically engineered" be placed immediately preceding any common name or primary product descriptor of a food.

Section 6. Enforcement

(1) The Attorney General may bring an action to enjoin a violation of this Act in any court of competent jurisdiction.

(2) Any injured citizen of Oregon acting in the public interest may bring an action to enjoin a violation of this Act by a manufacturer or retailer, in any court of competent jurisdiction, if the action is commenced more than sixty (60) days after the citizen has given notice of the alleged violation to the Attorney General and to the alleged violator. The court may, in such an action, award to a citizen who is a prevailing plaintiff reasonable attorneys' fees and costs

incurred in investigating and prosecuting the action, but the court may not award any monetary damages.

(3) No person shall be subject to an injunction or responsible for payment of prevailing party attorneys' fees for failure to label any food if (a) in the case of packaged food, the materials produced through genetic engineering do not account for more than nine tenths of one percent of the total weight of the packaged food; or (b) the food has not been produced with the knowing or intentional use of genetic engineering.

(4) For purposes of this Act, food will be considered not to have been produced with the knowing or intentional use of genetic engineering if:

(a) such food is lawfully certified to be labeled, marketed, and offered for sale as "organic" pursuant to the federal Organic Foods Production Act of 1990, 7 U.S.C. §§ 6501 *et seq.*, which already prohibits genetic engineering of foods;

(b) in the case of a manufacturer or retailer obligated to label any food under this Act, if such entity has obtained from whoever sold that food to them a sworn statement that the food has not been knowingly or intentionally genetically engineered and has been segregated from, and not knowingly or intentionally commingled with, foods that may have been genetically engineered at any time. In providing such a sworn statement, a manufacturer or retailer may rely on a sworn statement from a supplier that contains such an affirmation; or

(c) an independent organization has determined that the food has not been knowingly or intentionally genetically engineered and has been segregated from, and not knowingly or intentionally commingled with, foods that may have been genetically engineered at any time, if such a determination has been made pursuant to a sampling and testing procedure (i) consistent with sampling and testing principles recommended by internationally recognized standards organizations and (ii) which does not rely on testing processed foods in which no DNA is detectable.

(5) Unless the retailer is also the producer or the manufacturer of the food and sells the food under a brand it owns, no act or omission or any retailer shall be found to be a violation of this Act except for knowing and willful failure to provide point of purchase labeling for unpackaged raw agricultural commodities. In any action in which it is alleged that a retailer has violated the provisions of this section, it shall be a defense that such retailer reasonably relied on (a) any disclosure whether a food was produced through genetic engineering contained in the bill of sale or invoice provided by the wholesaler or distributor or (b) the lack of such disclosure.

(6) No action may be brought against any farmer for any violation of any provision of this Act unless such farmer is also a retailer or manufacturer, but any farmer submitting a false sworn statement under subsection (4) of this section shall be subject to the general laws of the state pertaining to perjury.

(7) The State Department of Agriculture and/or the Oregon Health Authority shall prescribe, enact, and enforce rules necessary to implement this Act. The Department and Authority are not authorized to exempt from the requirements of Section 4 of this Act any food product that is made subject to those requirements by the provisions of this Act. The Department and/or Authority may by regulation provide that a person may be subject to an injunction and prevailing party attorneys' fees under this Act for failure to label packaged food described in subsection 3(a) of this Section 6 at such time as the Department and/or Authority determine that the commercial availability of relevant materials not produced with genetic engineering make it economically and commercially practicable to apply the labeling requirements of this Act to such packaged food.

Section 7. Severability

If any part or application of this Act is held invalid with respect to any particular raw or packaged food, situation, or entity, the remainder of this Act or its application to all other raw and packaged foods, situations, and entities shall not be affected.