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GMO Laws Spread to Washington and New Mexico

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Just months after the November defeat of California's Proposition 37, the "California Right to Know Genetically Engineered Food Act," proponents of labeling genetically modified food have proposed similar disclosure laws in Washington State and New Mexico. Washington State's initiative reads parallel to California's Proposition 37 in many ways, with some sections of the proposed laws having nearly identical language. The law that has been proposed in New Mexico, sponsored in the State Senate by Senator Peter Wirth (D-Santa Fe), seeks to achieve similar results but through a different approach.

WASHINGTON STATE: I-522, THE RIGHT TO KNOW GENETICALLY ENGINEERED FOOD ACT

Washington State's I-522 was submitted to the Washington secretary of state as an initiative to the Legislature on January 3, 2013. If the secretary of state verifies the initiative's estimated 350,000 signatures, I-522 will be presented to the Legislature during the next regular legislative session. The Washington State Legislature, which rejected a similar genetically modified food labeling law last year, will then have three options: (1) pass I-522 as written and without a popular vote on the measure; (2) reject the initiative or refuse to act on it, sending I-522 to a popular vote in the November 2013 election; or (3) send both I-522 and a legislatively created alternative to a popular vote.

I-522 is a modified version of California's failed Proposition 37. It defines "genetically engineered" food in essentially the same way, as food produced from an organism or organisms in which the genetic material has been changed through the application of in vitro nucleic acid techniques or the fusion of cells. Exemptions to the law, such as for alcoholic beverages, certified-organic foods, and food served in restaurants, are also essentially the same.

One significant difference between I-522 and Proposition 37 is the former's exclusion of a prohibition on labeling genetically modified and/or processed foods as "natural," "naturally made," "naturally grown," "all natural," or with words of similar import. Another difference of note is I-522's inclusion of a 60-day notice requirement. I-522 requires a person seeking to bring suit to give notice to the attorney general, the Department of Health, and the target of the suit 60 days prior to filing suit.

If passed by the Legislature or the general populace via the November ballot, I-522 would become enforceable on July 1, 2015.

NEW MEXICO: SB 18, ACT TO AMEND THE NEW MEXICO FOOD ACT

Senate Bill 18 will be taken up by the Legislature when the State Senate convenes on January 15. It aims to amend the existing New Mexico Food Act to include provisions requiring labeling of genetically modified foods, including foods and beverages for both human and animal consumption as well as chewing gum.

Unlike I-522, the text of SB 18 does not take directly from California's Proposition 37. Genetically modified food is defined in part using a quantification of the amount of genetically modified material contained in the product: Genetically modified food is food product composed of more than one percent genetically modified material "produced, enhanced or otherwise

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modified through the use of recombinant deoxyribonucleic acid technology, genetic engineering or bioengineering.” The term “genetic engineering” is undefined; the quantification procedures and standards used to measure “one percent genetically modified material” are left to be determined by the state’s Environmental Improvement Board.

There are no exceptions in SB 18 like those identified in both California’s Proposition 37 and Washington’s I-522. The law would seem to apply to food sold in restaurants as well as to retail food products. Restaurants and retailers will not be able to rely on supplier guarantees that foods are made without genetically modified ingredients. Nor are there specific exemptions for the cattle, poultry, or alcoholic beverage industries. Alcoholic beverages as well as animal products made from animals that have been fed genetically modified foods may have to be labeled as genetically engineered.

Another significant difference between the proposed laws is that SB 18 does not have a citizen suit provision; enforcement of the law would be left to the state government, which would be given the authority to conduct investigations to confirm the accuracy of labeling.

Washington State and New Mexico are the only states currently considering labeling initiatives, but other states may not be far behind. For instance, an Oregon-based group called “GMO Free Oregon” aims to collect enough signatures this summer to place a similar labeling initiative on the 2014 ballot. Morrison & Foerster will continue to monitor these efforts. Please do not hesitate to contact us for more information.

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