

Initiative Measure No.

# 522

## concerns labeling of genetically-engineered foods.

This measure would require most raw agricultural commodities, processed foods, and seeds and seed stocks, if produced using genetic engineering, as defined, to be labeled as genetically engineered when offered for retail sale.

Should this measure be enacted into law?

Yes

No

The Secretary of State is not responsible for the content of statements or arguments (WAC 434-381-180).

## Explanatory Statement

Written by the Office of the Attorney General

### The Law as it Presently Exists

In general, federal law regulates the safety and quality of food shipped between states, while Washington law regulates the safety and quality of food produced and sold within the state. Both federal and state law identify and regulate foods that are “misbranded” or “adulterated,” but neither state nor federal law requires any specific labeling of foods produced using genetic engineering.

Under Washington law, the director of the state Department of Agriculture is authorized to condemn, seize, and destroy misbranded or adulterated foods and food items. Washington law defines food and food products as “misbranded” where labeling or packaging is false or misleading, and “adulterated” if they contain some added substance that is poisonous or harmful to health, or if they are contaminated, diseased, putrid, or otherwise unfit as food or injurious to health. State law imposes many specific labeling and packaging requirements and prohibitions for food and food products, but it does not require any specific labeling of genetically engineered foods. No provision of state law treats genetically engineered food as adulterated.

Washington law also authorizes the director of the state Department of Agriculture to stop the sale of mislabeled agricultural seeds, flower seeds, and vegetable seeds sold in Washington, and to condemn and seize the seeds if necessary. Seeds are considered to be misbranded if they are not accurately labeled in compliance with state law, but existing state law does not require that genetically engineered seeds be labeled as genetically engineered.

### The Effect of the Proposed Measure, if Approved

The measure would impose labeling requirements on genetically engineered foods and seeds offered for retail sale in Washington. The measure defines “genetically engineered” to mean changes to genetic material produced through techniques that directly insert DNA or RNA into organisms or that use cell fusion techniques to overcome natural barriers to cell multiplication or recombination.

Beginning July 1, 2015, any food produced using “genetic engineering” that is not labeled as required in the measure would be considered “misbranded.” The measure would require genetically engineered raw agricultural commodities to be labeled conspicuously with the words “genetically engineered,” and genetically engineered packaged processed foods would have to be labeled conspicuously with the words “partially produced with genetic engineering” or “may be partially produced with genetic engineering.” The measure would exempt the following foods from the labeling requirements: alcoholic beverages; certified organic foods; foods not produced using genetic engineering, as certified by an approved independent organization; foods served in restaurants or in food service establishments; “medical food”; and foods consisting of or derived from animals that have themselves not been genetically engineered, regardless of whether the animal has been fed any genetically engineered food; and processed foods produced using genetically engineered processing aids or enzymes. Processed foods containing small amounts of genetically engineered materials would be exempt until July 1, 2019.

Beginning July 1, 2015, the measure also would require that genetically engineered seeds and seed stock be labeled conspicuously with the words “genetically engineered” or “produced with genetic engineering.”

The measure provides that its requirements are to be implemented and enforced by the state Department of Health, instead of the state Department of Agriculture, and would authorize the Department of Health to assess a civil penalty of up to one thousand dollars per day for each violation. The Department of Health, acting

through the Attorney General, could bring an action in superior court to enjoin a person violating the measure. Separately, after giving sixty days notice, any private person could bring an action in superior court to enjoin a person violating the measure, and potentially recover costs and attorney fees for the action.

## Fiscal Impact Statement

Written by the Office of Financial Management  
For more information visit [www.ofm.wa.gov/ballot](http://www.ofm.wa.gov/ballot)

The initiative authorizes the Washington State Department of Health to adopt rules necessary to implement the initiative. Beginning July 1, 2015, the initiative allows the Department of Health, through the Attorney General, to bring an action to enjoin violations of the initiative's requirement that most raw agricultural commodities, processed foods, seeds and seed stocks, if produced using genetic engineering, be labeled as genetically engineered when offered for retail sale. Known state agency implementation costs are estimated at \$3,368,000 over six fiscal years. State and local revenue and costs from enforcement activities are indeterminate.

### General Assumptions

- The fiscal estimates contained in this fiscal impact statement are based, in part, on assumptions about the scope and legal effect of the ballot measure should it be enacted by the voters. Such assumptions are not intended to represent legal interpretation or conclusions of law.
- The initiative is effective Dec. 5, 2013. However, the initiative's labeling requirements begin July 1, 2015.
- Estimates are described using the state's fiscal year (FY) of July 1 through June 30.

### State Revenue Assumptions

The initiative would allow the Department of Health (DOH) to assess a civil penalty against any person violating the requirements of the initiative in an amount not to exceed one thousand dollars (\$1,000) per day. Additional state revenue could be generated from filing fees for civil actions filed in county superior courts to enforce the initiative's requirements. As provided in RCW 36.18.025, 46 percent of county superior court filing fees must be remitted to the State Treasurer for deposit in the state general fund and 54 percent of fees remain with the county. There are no data to estimate the annual number of civil actions or civil penalties that may be generated. Therefore, the state revenue impact from the initiative is indeterminate.

### State Expenditure and Cost Assumptions

DOH program development will include expenditures for rule making, inspection and compliance, as well as education and technical assistance to the food industry. The cost of these expenditures over six fiscal years is estimated at \$2,168,000. Beginning July 1, 2015, DOH will contract with a private laboratory for product sampling and testing as required in the initiative. Total cost of this expenditure over six fiscal years is estimated at \$1,200,000. Table 1.1 shows DOH estimated costs by fiscal year.

### Local Revenue, Expenditure and Cost Assumptions

Counties may experience increased revenue, expenditures and costs from civil actions filed in county superior courts to enforce the initiative's requirements. There are no data to estimate the annual number of civil actions that may occur. Therefore, the fiscal impact on counties from the initiative is indeterminate.

| Fiscal Year                     | 2014             | 2015             | 2016             | 2017             | 2018             | 2019             | COSTS              |
|---------------------------------|------------------|------------------|------------------|------------------|------------------|------------------|--------------------|
| Program Development             | \$82,000         | \$96,000         | \$210,000        | \$210,000        | \$210,000        | \$210,000        | \$1,018,000        |
| Rule Development                | \$96,000         | \$122,000        | \$0              | \$0              | \$0              | \$0              | \$218,000          |
| Compliance and Enforcement      | \$0              | \$0              | \$239,000        | \$231,000        | \$231,000        | \$231,000        | \$932,000          |
| Laboratory Sampling and Testing | \$0              | \$0              | \$300,000        | \$300,000        | \$300,000        | \$300,000        | \$1,200,000        |
| <b>TOTAL</b>                    | <b>\$178,000</b> | <b>\$218,000</b> | <b>\$749,000</b> | <b>\$741,000</b> | <b>\$741,000</b> | <b>\$741,000</b> | <b>\$3,368,000</b> |

## Argument For Initiative Measure 522

### Right to Know

In America, we have a right to know important information about the food we eat and feed our families – such as sugar and sodium levels, whether flavors are natural or artificial, the country of origin, and if fish are wild or farm-raised.

We also should have a right to choose whether we want to buy and eat genetically engineered food. Labels matter. They ensure transparency and preserve the freedom to make our own decisions about the food we eat. I-522 is a step in the right direction.

U.S. companies already label genetically engineered foods for markets in the 64 countries that require labeling, including some of Washington's largest trading partners. Genetically engineered crops, such as wheat, have contaminated conventional crops in the Northwest. Some countries suspended imports from our farmers, putting our economy at risk. Separation and labeling, from the seed level up through the supply chain, helps protect exports to countries that require labeling.

### Broad Support

I-522 was brought to the ballot by more than 350,000 citizens and draws strong support from farmers, fishing families, health care professionals, business owners, Republicans, Democrats, and Independents across our state.

### Labels Let You Decide

Voting *Yes on I-522* is an important step for more information about your food. You should have the freedom to decide what to eat. Your food decisions should be up to you – not corporations, the government, or special interests. Labels let you decide. Vote for the right to know what's in your food.

### Rebuttal of Argument Against

Powerful chemical corporations that genetically engineer food oppose labeling because they care about their profits, not our right to know. The truth: labels ensure transparency. The government has conducted no independent safety tests and the Washington State Nurses Association endorses labeling to trace health issues. Labeling is easy and it gives us the freedom to decide what to buy. Foods are relabeled frequently. Adding words to a label doesn't increase costs. Trust yourself to decide.

### Argument Prepared by

**Judy Huntington**, RN, Executive Director, Washington Nurses Association; **Seth Williams**, Fourth-Generation Wheat Farmer, Eastern Washington; **Walt Bowen**, President, Washington State Senior Citizens' Lobby; **Trudy Bialic**, Director of Public Affairs, PCC Natural Markets; **Maralyn Chase**, State Senator, Democrat, Shoreline; **Cary Condotta**, State Representative, Republican, Wenatchee.

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## Argument Against Initiative Measure 522

I-522 mandates costly, misleading food labeling regulations in Washington that don't exist in any other state.

### I-522 makes no sense.

For decades, agricultural biotechnology has helped improve food crops so they resist disease, require fewer pesticides or are more nutritious. Today, 70-80% of grocery products include ingredients from these foods, and they're deemed safe by the FDA and major scientific and medical organizations. Yet I-522 would require thousands of these products to have special, new labels – only for Washington – while giving special exemptions to thousands of others, even when they contain "genetically engineered" (GE) ingredients.

I-522 requires fruits, vegetables and grain-based products to be labeled, but exempts meat and dairy products from animals fed GE grains. It mandates special labels and signs in supermarkets, but exempts restaurants from providing information about GE ingredients in their foods. Foods from foreign countries would be exempt if manufacturers simply *claim* they're exempt. So I-522 wouldn't even give consumers a reliable way of knowing which foods contain GE ingredients.

### Higher taxpayer costs, more state bureaucracy and lawsuits.

I-522 would require the state to monitor labels on thousands of products in thousands of stores – costing taxpayers millions. It would allow trial lawyers to sue farmers, food producers and grocers over the wording on food labels – encouraging shakedown lawsuits. And, studies show I-522's Washington-only labeling requirements would hurt local farmers and increase an average family's food costs by hundreds of dollars per year.

Washington scientists, farmers and food producers urge *no* on 522.

### Rebuttal of Argument For

Existing food labels already give consumers the option to choose foods without GE ingredients by choosing products labeled "certified organic." I-522's complicated, poorly written regulations would put Washington farmers and food producers at a competitive disadvantage, not protect them. I-522 would not protect our export markets or provide consumers with reliable information about our food. But it would increase grocery prices for Washington families and cost taxpayers millions. Vote *no* on this costly, unnecessary measure.

### Argument Prepared by

**R. James Cook**, Professor Emeritus, WSU; Member, National Academy of Sciences; **Dan Newhouse**, Former Director, Washington State Department of Agriculture; **Mike LaPlant**, President, Washington Farm Bureau; Family Farmer, Grant County; **Peter Dunbar**, M.D., Former President, Washington State Medical Association; **Nicole Berg**, Family Farmer; National Conservation Leadership Award Winner; **Eric Maier**, Past President, Washington Association of Wheat Growers.

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petition and must facilitate and cannot obstruct the public vote of any initiative. For local initiatives, government officials must, in all circumstances, strictly comply with the requirements of this act for any initiative regardless of its subject matter. The term "local legislative authority" must be construed to include the people via local initiative regardless of the subject matter of the ballot measure. Citizens have just as much right to decide issues with local initiatives as governments do. This section may not be construed in any way to impede the right to legal review of the sufficiency of valid voter signatures or post-election legal review; however, under no circumstances may an initiative be prohibited from submission to the people for a vote if sufficient valid voter signatures are submitted.

**PROTECTING CITIZENS' RIGHT TO PARTICIPATE BY EXTENDING THE TIME FOR SIGNATURE GATHERING ON INITIATIVES, DETERMINING INTERFERENCE IN THE SIGNATURE GATHERING PROCESS**

**Sec. 5.** RCW 29A.72.030 and 2003 c 111 s 1804 are each amended to read as follows:

Initiative measures proposed to be submitted to the people must be filed with the secretary of state within ~~(ten)~~ sixteen months prior to the election at which they are to be submitted (this act's amended change from ten months to sixteen months for filing an initiative provides up to six more months for initiative signature gathering), and the signature petitions must be filed with the secretary of state not less than four months before the next general statewide election.

Initiative measures proposed to be submitted to the legislature must be filed with the secretary of state within ~~(ten)~~ sixteen months prior to the next regular session of the legislature at which they are to be submitted (this act's amended change from ten months to sixteen months for filing an initiative provides up to six more months for initiative signature gathering), and the signature petitions must be filed with the secretary of state not less than ten days before such regular session of the legislature.

A referendum measure petition ordering that any act or part of an act passed by the legislature be referred to the people must be filed with the secretary of state within ninety days after the final adjournment of the legislative session at which the act was passed. It may be submitted at the next general statewide election or at a special election ordered by the legislature.

A proposed initiative or referendum measure may be filed no earlier than the opening of the secretary of state's office for business pursuant to RCW 42.04.060 on the first day filings are permitted, and any initiative or referendum petition must be filed not later than the close of business on the last business day in the specified period for submission of signatures. If a filing deadline falls on a Saturday, the office of the secretary of state must be open for the transaction of business under this section from 8:00 a.m. to 5:00 p.m. on that Saturday.

Opponents of ballot measures sometimes try to interfere with the signature gathering process in the final months of the campaign, taking advantage of the limited time for the collection of signatures. The people find that allowing more time for citizens to participate in the signature gathering process will deter such despicable tactics.

**NEW SECTION. Sec. 6.** The provisions of this act are to be liberally construed to effectuate the intent, policies, and purposes of this act.

**NEW SECTION. Sec. 7.** This act shall be self-executing. If any part or parts of this act are found to be in conflict with federal law, the United States Constitution, or the Washington state Constitution, the act shall be implemented to the maximum extent that federal law, the United States Constitution, and the Washington state Constitution permit. Any provision held invalid shall be severable from the remaining portions of this act.

**NEW SECTION. Sec. 8.** This act is called "Protect the Initiative Act."

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## Complete Text Initiative Measure 522

AN ACT Relating to disclosure of foods produced through genetic engineering; adding a new chapter to Title 70 RCW; and prescribing penalties.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

**NEW SECTION. Sec. 1.** The people find that:

(1) Polls consistently show that the vast majority of the public, typically more than ninety percent, wants to know if their food was produced using genetic engineering. Without disclosure, consumers of genetically engineered food unknowingly may violate their own dietary and religious restrictions.

(2) Currently, there is no federal or state law that requires food producers to identify whether foods were produced using genetic engineering. At the same time, the United States food and drug administration does not require safety studies of such foods. Unless these foods contain a known allergen, the United States food and drug administration does not require the developers of genetically engineered crops to consult with the agency. Consultations with the United States food and drug administration are entirely voluntary and the developers themselves may decide what information they may wish to provide.

(3) Mandatory identification of foods produced with genetic engineering can provide a critical method for tracking the potential health effects of consuming foods produced through genetic engineering.

(4) Consumers have the right to know whether the foods they purchase were produced with genetic engineering. The genetic engineering of plants and animals is an imprecise process and often causes unintended consequences. Mixing plant, animal, bacterial, and viral genes in combinations that cannot occur in nature produces results that are not always predictable or controllable, and can lead to adverse health or environmental consequences.

(5) United States government scientists have stated that the artificial insertion of genetic material 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.

(6) Forty-nine countries, including Japan, South Korea, China, Australia, New Zealand, Thailand, Russia, the European Union member states, and other key United States trading partners, have laws mandating disclosure of genetically engineered foods on food labels. Many countries have restrictions or bans against foods produced with genetic engineering.

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

(8) Numerous foreign markets with restrictions against foods produced through genetic engineering have restricted imports of United States crops due to concerns about genetic engineering. Some foreign markets are choosing to purchase agricultural products from countries other than the United States because genetically engineered crops are not identified in the United States, making it impossible for buyers to distinguish what does or does not meet their national labeling laws or restrictions, rendering United States' products less desirable. Trade losses are estimated at billions of dollars. Mandatory identification of foods produced with genetic engineering can be a critical method for preserving the economic value of exports to markets with restrictions and prohibitions against genetic engineering.

(9) Industry data shows foods identified as produced without genetic engineering, including conventional foods identified this

way, are the fastest growing label claim. Consumers have a right to an informed choice at the point of sale.

(10) Farmers from a wheat growing region of the state have gathered more than two thousand six hundred signatures on a petition demanding mandatory disclosure for crops produced with genetic engineering. The farmers are concerned they will lose their wheat export markets if genetically engineered wheat is approved.

(11) Agriculture is Washington's number one employer and wheat is Washington's number two export crop, second only to goods and services produced by the Boeing company, and ahead of Microsoft, which ranks third.

(12) Preserving the identity, quality, and reliability of Washington's agricultural products is of prime importance to our state's fiscal health.

(13) The cultivation of genetically engineered crops can cause serious impacts to the environment. For example, most genetically engineered crops are designed to withstand weed killing herbicides. As a result, genetically engineered crops have caused hundreds of millions of pounds of additional herbicides to be applied to the nation's farmland. The massive increase in use of these herbicides has caused emergence of herbicide-resistant weeds, which have infested farm fields and roadsides, complicating weed control for farmers and encouraging use of increasingly toxic and more dangerous herbicides. These toxic herbicides damage the vitality of the soil, contaminate drinking water supplies, and pose health risks to consumers and farmworkers. The public should have the choice to avoid purchasing foods produced in ways that can lead to such harm.

(14) United States department of agriculture data shows Washington state ranks second in the nation for organic farm-gate sales at two hundred eighty-one million dollars per year. While total United States food sales are virtually stagnant, growing less than one percent overall, the organic food industry grew at 7.7 percent according to 2010 data. Sales of organic fruits and vegetables increased eleven and eight-tenths percent, accounting for approximately twelve percent of all United States' fruit and vegetable sales. Organic dairy, another key industry in Washington state, grew at nine percent and comprises nearly six percent of the total United States dairy market. Organic farmers are prohibited from using genetically engineered seeds or livestock feed.

(15) Trade industry data shows the organic industry is creating jobs at four times the national rate.

(16) Published data shows organic farming is more profitable and economically secure than conventional farming over the long term. This important element of Washington's economy must be protected.

(17) Conventional farmers have a right to choose what crops they grow and many conventional farmers want to grow traditional crops developed without genetic engineering. Identifying seeds and seed stock produced with genetic engineering would protect farmers' rights to know what they are purchasing and protect their right to choose what they grow.

(18) The purpose of this chapter is to ensure people are fully informed about whether the food they purchase and eat was produced through genetic engineering so they may choose for themselves whether to purchase and eat such food. Identifying foods produced through genetic engineering also will help protect our state's export market.

**NEW SECTION. Sec. 2.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Department" means the department of health.

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

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(3)(a) "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 techniques and the direct injection of nucleic acid into cells or organelles. In vitro nucleic acid techniques include, but are not limited to, recombinant deoxyribonucleic acid or ribonucleic acid techniques that use vector systems and techniques involving the direct introduction into the organisms of hereditary material prepared outside the organisms, such as micro-injection, macro-injection, chemoporation, electroporation, micro-encapsulation, and liposome fusion; or (ii) fusion of cells, including protoplast fusion, or hybridization techniques that overcome natural physiological, reproductive, or recombination barriers, where the donor cells or protoplasts do not fall within the same taxonomic family, in a way that does not occur by natural multiplication or natural recombination.

(b) For the purposes of (a) of this subsection, "organism" means any biological entity capable of replication, reproduction, or transferring genetic material.

(4) "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.

(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 finished 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 naturally 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.

(6) "Raw agricultural commodity" has the same meaning as defined by 21 U.S.C. Sec. 321.

**NEW SECTION. Sec. 3.** (1) Beginning July 1, 2015, any food offered for retail sale in Washington is misbranded if it is, or may have been, entirely or partly produced with genetic engineering and that fact is not disclosed as follows:

(a) In the case of a raw agricultural commodity, on the package offered for retail sale, with the words "genetically engineered" stated clearly and conspicuously on the front of the package of

such a commodity, or in the case of such a commodity that is not separately packaged or labeled, on a label appearing on the retail store shelf or bin where such a commodity is displayed for sale;

(b) In the case of any processed food, on the front of the package of such food produced by a manufacturer, with the words “partially produced with genetic engineering” or “may be partially produced with genetic engineering” stated clearly and conspicuously; and

(c) In the case of any seed or seed stock, on the seed or seed stock container, sales receipt or any other reference to identification, ownership, or possession, with the words “genetically engineered” or “produced with genetic engineering” stated clearly and conspicuously.

(2) Subsections (1) and (3) of this section do not 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.

(3) Subsection (1) of this section does 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 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;

(b) A raw agricultural commodity or food that has been grown, raised, produced, or derived without the knowing and intentional use of genetically engineered seed or food. To be included within the exclusion under this subsection, the person supplying a raw agricultural commodity or food must provide a sworn statement that the raw agricultural commodity or food: (i) Has not been knowingly or intentionally produced through genetic engineering; and (ii) has been segregated from, and has not been knowingly or intentionally commingled with, foods that may have been genetically engineered at any time. In providing such a sworn statement, a person may rely on a sworn statement from his or her own supplier that contains such an affirmation;

(c) Any processed food that would be subject to this section solely because one or more processing aids or enzymes were produced or derived with genetic engineering;

(d) Any alcoholic beverage that is subject to regulation under Title 66 RCW;

(e) Until July 1, 2019, any processed food that would be subject to this section solely because it includes one or more materials produced by genetic engineering, provided that the engineered materials in the aggregate do not account for more than nine-tenths of one percent of the total weight of the processed food;

(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 a determination has been made pursuant to a sampling and testing procedure approved for this purpose in rules adopted by the department. These rules may not approve a sampling and testing procedure unless it is consistent with sampling and testing principles recommended by internationally recognized standards organizations, such as the international standards association and the grain and feed trade association. No testing procedure may be approved by the department unless: (i) It does not rely on testing processed foods in which no deoxyribonucleic acid is detectable; and (ii) 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;

(g) Food that has been lawfully certified to be labeled, marketed, and offered for sale as “organic” pursuant to the federal organic foods production 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 service establishment that is engaged primarily in the sale of food prepared and intended for immediate human consumption; or

(i) Medical food.

**NEW SECTION. Sec. 4.** The department may adopt rules necessary to implement this chapter, provided that the department is not authorized to create any exemptions beyond those provided in section 3(3) of this act.

**NEW SECTION. Sec. 5.** (1) The department, acting through the attorney general, may bring an action in a court of competent jurisdiction to enjoin any person violating this chapter.

(2) The department may assess a civil penalty against any person violating this chapter in an amount not to exceed one thousand dollars per day. Each day of violation is considered a separate violation.

(3) An action to enjoin a violation of this chapter may be brought in any court of competent jurisdiction by any person in the public interest if the action is commenced more than sixty days after the person has given notice of the alleged violation to the department, the attorney general, and to the alleged violator.

(4) The court may award to a prevailing plaintiff reasonable costs and attorneys’ fees incurred in investigating and prosecuting an action to enforce this chapter.

**NEW SECTION. Sec. 6.** Sections 1 through 5 of this act constitute a new chapter in Title 70 RCW.

**NEW SECTION. Sec. 7.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

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