

Introduced by

Representatives Lemieux, Kempenich, Lloyd, Pietsch

Senators G. Nelson, Wardner

1 A BILL for an Act relating to the sampling of genetically modified crops.

2 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

3 **SECTION 1. Genetically modified seed - Patent infringement - Sampling -**

4 **Mediation.**

5 1. For purposes of this section, farmer means the person responsible for planting a  
6 crop on, managing the crop, and harvesting the crop from land on which a patent  
7 infringement is alleged to have occurred.

8 2. a. Before a person holding a patent on a genetically modified seed may enter  
9 upon any land farmed by another for the purpose of obtaining crop samples to  
10 determine whether patent infringement has occurred, the person holding the  
11 patent:

12 (1) Shall notify the agriculture commissioner in writing of the person's belief  
13 that a patent infringement has occurred and include facts from the  
14 allegation;

15 (2) Shall notify the farmer in writing of the allegation that a patent  
16 infringement has occurred and request written permission to enter upon  
17 the farmer's land; and

18 (3) Must obtain the written permission of the farmer.

19 b. If the farmer withholds written permission, the person holding a patent may  
20 petition the state district court for an order granting permission to enter upon  
21 the farmer's land.

22 3. The farmer may accompany the person holding the patent at the time any samples  
23 are taken.

- 1           4.   If requested by the farmer or the person holding the patent, the state seed  
2           commissioner shall accompany the person holding the patent at the time any  
3           sample is taken. The state seed commissioner may impose a fee for providing  
4           that service. The patent holder and the farmer shall each pay one-half of the fee  
5           charged by the commissioner.
- 6           5.   If the person holding a patent believes that the crop from which samples are to be  
7           taken may be subject to intentional damage or destruction, the person may seek a  
8           protection order from the state district court. The protection order may not interrupt  
9           or interfere with normal farming practices, including harvest and tillage.
- 10          6.   The person holding the patent may take samples from a standing crop, from  
11          representative standing plants in the field, or from crops remaining in the field after  
12          harvest.
- 13          7.   The person holding the patent may obtain no more samples than those reasonably  
14          necessary to make a determination regarding patent infringement. An equal  
15          number of samples must remain in the custody of the state seed commissioner or  
16          the farmer for future comparison and verification purposes. All samples taken  
17          must be placed in containers, labeled as to the date, time, and location from which  
18          they were taken, and the labels must be signed by the farmer, the person who took  
19          the samples, and the state seed commissioner if the commissioner was present at  
20          the time the samples were taken. The patent holder and the farmer shall share  
21          equally the cost of the containers needed for the second set of samples which are  
22          retained by the state seed commissioner or the farmer. The farmer and the person  
23          holding the patent shall share equally the cost of the containers and the cost of  
24          obtaining the samples.
- 25          8.   Within sixty days from the date the samples are taken, an independent laboratory  
26          shall conduct all tests to determine whether patent infringement has occurred. The  
27          person holding the patent shall notify the farmer of the test results, by certified mail  
28          or by any other method of delivery for which a signature is required, within  
29          twenty-one days from the date the results were reported to the person holding the  
30          patent.

- 1           9.    The parties may participate in mediation at any time. The mediation must be  
2                conducted by a mediator jointly selected by the farmer and the person holding the  
3                patent. If the farmer and the person holding the patent are unable to select a  
4                mediator, the mediation must be conducted by an independent agricultural  
5                mediation service.
- 6           10. If the case is not settled after mediation, either party may file a claim for relief with  
7                the federal district court having jurisdiction over the claim. Unless otherwise  
8                specified in a contract between the farmer and the person holding the patent, the  
9                appropriate state district court is the one that has jurisdiction over that portion of  
10              this state in which the farmer's land is located.