

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; and to declare an
2 emergency.

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

4 **SECTION 1. Genetically modified seed - Patent infringement - Sampling -**
5 **Mediation.**

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

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

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

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

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

20 b. If the farmer withholds written permission, the person holding a patent may
21 petition the federal district court having jurisdiction over that portion of this
22 state in which the farmer's land is located for an order granting permission to
23 enter upon the farmer's land.

- 1 3. Unless a shorter period of time is agreed to in writing or ordered by the federal
2 district court, samples may not be collected until a period of at least five days has
3 passed from the time the farmer gave written permission or from the date of the
4 court order. The farmer may accompany the person holding the patent at the time
5 any samples are taken.
- 6 4. An independent agent agreed to by both parties also must accompany the person
7 holding the patent at the time any sample is taken.
- 8 5. If the person holding a patent believes that the crop from which samples are to be
9 taken may be subject to intentional damage or destruction, the person may seek a
10 protection order from the federal district court. The protection order may not
11 interrupt or interfere with normal farming practices, including harvest and tillage.
- 12 6. The person holding the patent may take crop samples from only a standing crop or
13 representative standing plants in the field. Upon a showing of good cause, the
14 person holding the patent may collect seed samples from crops remaining in the
15 field after harvest.
- 16 7. The person holding the patent may obtain no more samples than those reasonably
17 necessary to make a determination regarding patent infringement. An equal
18 number of samples must remain in the custody of the independent agent agreed to
19 by both parties for future comparison and verification purposes. All samples taken
20 must be placed in containers, labeled as to the date, time, and location from which
21 they were taken, and the labels must be signed by the farmer, the person holding
22 the patent, and the independent agent agreed to by both parties. The person
23 holding the patent shall supply the containers for that person's samples. The
24 independent agent shall supply the containers for the agent's samples and the
25 farmer shall bear the cost of the agent's containers.
- 26 8. Within sixty days from the date the samples are taken, an independent laboratory
27 shall conduct all tests to determine whether patent infringement has occurred. The
28 person holding the patent shall notify the farmer of the test results, by certified mail
29 or by any other method of delivery for which a signature is required, within ten
30 days from the date the samples were analyzed. If the person holding the patent

1 fails to comply with the dates set forth in this subsection, the crop samples may not
2 be used as evidence in any claim alleging patent infringement.

3 9. If a dispute between the farmer and the person holding the patent remains after
4 the samples have been analyzed, the farmer may require the person holding the
5 patent to participate in mediation of the matter. The mediation must be conducted
6 by a mediator jointly selected by the farmer and the person holding the patent. If
7 the farmer and the person holding the patent are unable to select a mediator, the
8 mediation must be conducted by the agricultural mediation service.

9 10. If the case is not settled after mediation, either party may file a claim with the state
10 seed arbitration board. The board may require that additional independent tests
11 be conducted.

12 11. If the case is not settled after arbitration, either party may file a claim for relief with
13 the federal district court having jurisdiction over that portion of this state in which
14 the farmer's land is located. This requirement, if the claim is based on a contract,
15 is deemed to be part of the contract, regardless of whether the contract is written
16 or oral.

17 **SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure.