

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1442

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act relating to the sampling of genetically modified crops; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Genetically modified seed - Patent infringement - Sampling - Mediation.

1. For purposes of this section, farmer means the person responsible for planting a crop on, managing the crop, and harvesting the crop from land on which a patent infringement is alleged to have occurred.
2. a. Before a person holding a patent on a genetically modified seed may enter upon any land farmed by another for the purpose of obtaining crop samples to determine whether patent infringement has occurred, the person holding the patent:
 - (1) Shall notify the agriculture commissioner in writing of the person's belief that a patent infringement has occurred and include facts justifying the belief;
 - (2) Shall notify the farmer in writing of the person's belief that a patent infringement has occurred and request written permission to enter upon the farmer's land; and
 - (3) Must obtain the written permission of the farmer.
- b. If the farmer withholds written permission, the person holding a patent may petition the federal district court having jurisdiction over that portion of this state in which the farmer's land is located for an order granting permission to enter upon the farmer's land.
3. Unless a shorter period of time is agreed to in writing or ordered by the federal district court, samples may not be collected until a period of at least five days has passed from the time the farmer gave written permission or from the date of the court order. The farmer may accompany the person holding the patent at the time any samples are taken.
4. An independent agent agreed to by both parties also must accompany the person holding the patent at the time any sample is taken.
5. If the person holding a patent believes that the crop from which samples are to be taken may be subject to intentional damage or destruction, the person may seek a protection order from the federal district court. The protection order may not interrupt or interfere with normal farming practices, including harvest and tillage.
6. The person holding the patent may take crop samples from only a standing crop or representative standing plants in the field. Upon a showing of good cause, the person holding the patent may collect seed samples from crops remaining in the field after harvest.

7. The person holding the patent may obtain no more samples than those reasonably necessary to make a determination regarding patent infringement. An equal number of samples must remain in the custody of the independent agent agreed to by both parties for future comparison and verification purposes. All samples taken must be placed in containers, labeled as to the date, time, and location from which they were taken, and the labels must be signed by the farmer, the person holding the patent, and the independent agent agreed to by both parties. The person holding the patent shall supply the containers for that person's samples. The independent agent shall supply the containers for the agent's samples and the farmer shall bear the cost of the agent's containers.
8. Within sixty days from the date the samples are taken, an independent laboratory shall conduct all tests to determine whether patent infringement has occurred. The person holding the patent shall notify the farmer of the test results, by certified mail or by any other method of delivery for which a signature is required, within ten days from the date the samples were analyzed. If the person holding the patent fails to comply with the dates set forth in this subsection, the crop samples may not be used as evidence in any claim alleging patent infringement.
9. If a dispute between the farmer and the person holding the patent remains after the samples have been analyzed, the farmer may require the person holding the patent to participate in mediation of the matter. The mediation must be conducted by a mediator jointly selected by the farmer and the person holding the patent. If the farmer and the person holding the patent are unable to select a mediator, the mediation must be conducted by the agricultural mediation service.
10. If the case is not settled after mediation, either party may file a claim with the state seed arbitration board. The board may require that additional independent tests be conducted.
11. If the case is not settled after arbitration, either party may file a claim for relief with the federal district court having jurisdiction over that portion of this state in which the farmer's land is located. This requirement, if the claim is based on a contract, is deemed to be part of the contract, regardless of whether the contract is written or oral.

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

Renumber accordingly