

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.