

**SENATE BILL NO. 2304**

Introduced by

Senator Bowman

1 A BILL for an Act to create and enact a new chapter to title 4 of the North Dakota Century  
2 Code, relating to damages for cross-pollination with transgenic wheat; and to provide for a  
3 legislative council study.

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

5 **SECTION 1.** A new chapter to title 4 of the North Dakota Century Code is created and  
6 enacted as follows:

7 **Nontransgenic wheat crop - Cross-pollination - Claim for relief.** A producer has a  
8 claim for relief against the patent holder of a transgenic wheat seed for damages sustained, if:

- 9 1. The producer can demonstrate a good-faith intent to plant a nontransgenic wheat  
10 crop that after harvest was to have been marketed as a nontransgenic wheat crop  
11 or seed;
- 12 2. The producer can demonstrate that the crop was raised in a manner that was  
13 consistent with the producer's intent to market the product as a nontransgenic  
14 wheat crop or seed;
- 15 3. The producer discovered through testing before harvest of the crop that the crop  
16 had been cross-pollinated with a transgenic wheat;
- 17 4. The cross-pollination, using state-of-the-art testing methods recommended by the  
18 administrator of the agricultural experiment station, resulted in the crop exceeding  
19 a transgenic tolerance level of one-half of one percent; and
- 20 5. As a result of the crop exceeding the transgenic tolerance level established in this  
21 section, the producer had to accept a price per bushel that was less than the price  
22 that would have been paid on the date of sale had the crop or seed not exceeded  
23 the transgenic tolerance level established in this section.

24 **Award of damages - Costs and attorney's fees - Reimbursement.**

- 1           1. Damages awarded to a producer under this Act may not exceed the difference in  
2           the amount that the producer actually received for the crop or seed after  
3           cross-pollination beyond the established tolerance level versus the amount that the  
4           producer would have received had the cross-pollination remained below the  
5           established tolerance level.
- 6           2. If a producer is awarded damages under this Act, the producer is entitled to receive  
7           reimbursement for all costs and attorney's fees associated with bringing the action.
- 8           3. If a producer is not awarded damages under this Act, the producer shall reimburse  
9           the patent holder for all costs and attorney's fees incurred by the patent holder in  
10          defending the action.

11           **Claims for damages - Defense.** It is a complete defense to any action brought under  
12 this Act for damages resulting from cross-pollination beyond established tolerance levels if the  
13 patent holder can demonstrate that the cross-pollination either occurred or may reasonably be  
14 believed to have occurred as a result of an act over which the patent holder had no control,  
15 including use of a contaminated seed source and any direct or indirect action to cause  
16 cross-pollination, but excluding an act of God.

17           **Contrary contractual provisions.** If the terms of any contract between a farmer and a  
18 patent holder are contrary to the provisions of this chapter, those terms are void.

19           **SECTION 2. TRANSGENIC WHEAT - LEGISLATIVE COUNCIL STUDY.** The  
20 legislative council shall consider studying the research, development, and use of biotechnology  
21 in the agricultural sector, including testing mechanisms and liability issues associated with the  
22 production, storage, transportation, and use of transgenic wheat. The legislative council shall  
23 report its findings and recommendations, together with any legislation required to implement the  
24 recommendations, to the fifty-ninth legislative assembly.