

Fifty-ninth  
Legislative Assembly  
of North Dakota

## ENGROSSED SENATE BILL NO. 2235

Introduced by

Senators Triplett, Fairfield, Lyson, Warner

Representatives Glassheim, Sitte

1 A BILL for an Act to establish liability related to the planting of genetically engineered wheat.

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

3 **SECTION 1. Definitions.** As used in this Act:

4 1. "Genetically engineered wheat variety" means wheat seed or a whole plant or  
5 plant part, including scions intended for planting, produced using a variety of  
6 methods as identified by the national organic program of the United States  
7 department of agriculture, and used to modify organisms genetically or to influence  
8 their growth and development by means that are not possible under natural  
9 conditions or processes, including cell fusion, microencapsulation,  
10 macroencapsulation, and recombinant DNA technology.

11 2. "Injury" includes:

12 a. Loss of a price premium that would have accrued to a farmer by contract or  
13 other marketing arrangement or that would have been otherwise available to  
14 the farmer or grain warehouse operator through ordinary commercial  
15 channels.

16 b. Any additional transportation, storage, handling, or related charges or costs  
17 incurred by the farmer which would not have been incurred in the absence of  
18 crop contamination.

19 c. Any judgment, charge, or penalty for which the farmer of nongenetically  
20 engineered products is liable because of breach of contract, including loss of  
21 organic certification for failure to deliver a crop or shipment free of genetically  
22 engineered material, or for delivering a crop or shipment that exceeds any  
23 contractually agreed-upon tolerances for the presence of genetically  
24 engineered material.

- 1 d. Market price reductions resulting from the loss of wheat exports.
- 2 e. Loss of a farmer's livelihood or reputation as a result of genetically
- 3 engineered wheat.
- 4 3. "Manufacturer" means a person producing and commercializing a genetically
- 5 engineered wheat variety.

6 **SECTION 2. Damages resulting from genetically engineered wheat variety crops**  
7 **liability.**

- 8 1. The manufacturer of a genetically engineered wheat variety is liable to any person
- 9 injured by the release of a genetically engineered wheat variety. The person may
- 10 recover compensable damages, reasonable attorney's fees, and costs.
- 11 2. The venue for an action under this section is the county in which the injury is
- 12 alleged to have occurred.
- 13 3. The liability created by this section may not be waived or voided contractually.
- 14 4. A farmer who is not in breach of a contract for the purchase or use of a genetically
- 15 engineered wheat variety or plant parts and who unknowingly comes into
- 16 possession or uses such patented seeds or plant parts as a result of natural
- 17 reproduction and cross-pollination, seed commingling, or other contamination is
- 18 not liable under this section for any injuries, claims, losses, and expenses,
- 19 including attorney's fees, caused by the use of a genetically engineered wheat
- 20 variety or for damages from the infringement of patent rights held by the
- 21 manufacturer of the genetically engineered seed or plant parts.
- 22 5. A manufacturer may not be held liable if:
- 23 a. The farmer or other third party was negligent in causing the contamination;
- 24 b. The farmer received and signed a contract with the manufacturer;
- 25 c. The farmer received a training manual from the manufacturer; and
- 26 d. The farmer had not followed the manufacturer's contract and training manual.

27 **SECTION 3. Seed contract - Applicable law.** A contract for the purchase of seeds or  
28 plant parts is governed by the laws of this state and may not provide that the laws of another  
29 state prevail.