

Fifty-eighth
Legislative Assembly
of North Dakota

SENATE BILL NO.

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 contamination from transgenic wheat and to the creation of an
3 agricultural biotechnology board.

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 **Organic wheat crop - Contamination - Damages.** A producer has a claim for relief
8 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 which after harvest was to have been marketed as an organic wheat crop;
- 11 2. The producer can demonstrate that the crop was raised and harvested in a manner
12 that was consistent with the producer's intent to market the product as an organic
13 wheat crop;
- 14 3. The producer discovered through testing prior to sale of the crop that the crop had
15 become contaminated with a transgenic wheat;
- 16 4. The contamination, using state-of-the-art testing methods recommended by the
17 administrator of the agricultural experiment station was found to exceed a
18 tolerance level of _____ percent; and
- 19 5. The degree of contamination with a transgenic wheat exceeded the tolerance level
20 established in this section and the producer had to accept a price per bushel that
21 was less than the price that would have been paid on the date of sale had the
22 organic wheat not exceeded the tolerance level established in this section.

23 **Nontransgenic wheat crop - Contamination - Damages.** A producer has a claim for
24 relief against the patent holder of a transgenic wheat seed for damages sustained, if:

1. The producer can demonstrate a good-faith intent to plant and market a nontransgenic wheat crop;
2. The producer can demonstrate that the crop was raised and harvested in a manner that was consistent with the producer's intent to market a nontransgenic wheat crop;
3. The producer discovered through testing prior to sale of the crop that the crop had become contaminated with a transgenic wheat;
4. The contamination, using state-of-the-art testing methods recommended by the administrator of the agricultural experiment station was found to exceed a tolerance level of _____ percent; and
5. The degree of contamination with a transgenic wheat exceeded the tolerance level established in this section and the producer had to accept a price per bushel that was less than the price that would have been paid on the date of sale had the wheat crop not exceeded the tolerance level established in this section.

Nontransgenic wheat seed - Contamination - Damages. A producer of nontransgenic wheat seed has a claim for relief against the patent holder of a transgenic wheat seed for damages sustained, if:

1. The producer can demonstrate a good-faith intent to plant, raise, and market a nontransgenic wheat seed;
2. The producer can demonstrate that the seed was planted, raised, and harvested in a manner that was consistent with the producer's intent to market a nontransgenic wheat seed;
3. The producer discovered through testing prior to sale of the harvested wheat seed that the seed had become contaminated with a transgenic wheat;
4. The contamination, using state-of-the-art testing methods recommended by the administrator of the agricultural experiment station was found to exceed a tolerance level of _____ percent; and
5. The degree of contamination with a transgenic wheat exceeded the tolerance level established in this section and the producer had to accept a price per bushel that was less than the price that would have been paid on the date of sale had the

nontransgenic wheat seed not exceeded the tolerance level established in this section.

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

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

Claims for damages - Defense. It is a complete defense to any action brought under this Act for damages resulting from contamination beyond established tolerance levels if the patent holder can demonstrate that the contamination either occurred or may reasonably be believed to have occurred as a result of an act over which the patent holder had no control, including use of a contaminated seed source and use of insufficiently cleaned equipment in the harvesting of the crop, in the transportation of the crop, or in the storage of the crop, but excluding an act of God.

Agricultural biotechnology board - Establishment - Compensation - Report to legislative council.

1. The governor shall appoint no more than eight members to a thirteen-member agricultural biotechnology board to monitor the research, development, and use of biotechnology in the agricultural sector. The governor's appointees must include at least:
 - a. Two individuals who hold doctoral degrees in agricultural research, agricultural economics, or in a related field; and
 - b. One individual representing the North Dakota wheat commission.
2. The chairman of the legislative council shall appoint two members of the senate and two members of the house of representatives to the board.

- 1 3. The governor is chairman of the board, but the governor may designate the
- 2 lieutenant governor as chairman of the board.
- 3 4. The chairman shall determine by lot which two of the initial appointees of the
- 4 governor shall serve a term of four years, which two of the initial appointees shall
- 5 serve a term of three years, which two of the initial appointees shall serve a term of
- 6 two years, and which two of the initial appointees shall serve a term of one year.
- 7 Thereafter, the term of office for each member appointed by the governor is four
- 8 years. The term of office of each member appointed by the chairman of the
- 9 legislative council is two years.
- 10 5. The governor shall determine the compensation for members of the board who are
- 11 not otherwise receiving compensation from the state for performing duties of the
- 12 board. Each member of the board is entitled to receive reimbursement for
- 13 expenses as provided by law for state officers for attending meetings of the board
- 14 or performing other duties directed by the board. Compensation and expenses of
- 15 members are payable from funds appropriated to the governor.
- 16 6. The board shall meet at least monthly at the call of the chairman. Before July first
- 17 of every even-numbered year, the board shall report its findings and
- 18 recommendations to the legislative council.