

**Fifty-seventh Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 9, 2001**

HOUSE BILL NO. 1442
(Representatives Lemieux, Kempenich, Lloyd, Pietsch)
(Senators G. Nelson, Wardner)

AN ACT relating to the sampling of genetically modified crops.

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 from the allegation;
 - (2) Shall notify the farmer in writing of the allegation 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 state district court for an order granting permission to enter upon the farmer's land.
3. The farmer may accompany the person holding the patent at the time any samples are taken.
4. If requested by the farmer or the person holding the patent, the state seed commissioner shall accompany the person holding the patent at the time any sample is taken. The state seed commissioner may impose a fee for providing that service. The patent holder and the farmer shall each pay one-half of the fee charged by the commissioner.
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 state 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 samples from a standing crop, from representative standing plants in the field, or 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 state seed commissioner or the farmer 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 who took the samples, and the state seed commissioner if the commissioner was present at the time the samples were taken. The patent holder and the farmer shall share equally the cost of the containers needed for the

second set of samples which are retained by the state seed commissioner or the farmer. The farmer and the person holding the patent shall share equally the cost of the containers and the cost of obtaining the samples.

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 twenty-one days from the date the results were reported to the person holding the patent.
9. The parties may participate in mediation at any time. 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 an independent agricultural mediation service.
10. If the case is not settled after mediation, either party may file a claim for relief with the federal district court having jurisdiction over the claim. Unless otherwise specified in a contract between the farmer and the person holding the patent, the appropriate state district court is the one that has jurisdiction over that portion of this state in which the farmer's land is located.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-seventh Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1442.

House Vote: Yeas 92 Nays 4 Absent 2

Senate Vote: Yeas 49 Nays 0 Absent 0

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2001.

Approved at _____ M. on _____, 2001.

Governor

Filed in this office this _____ day of _____, 2001,

at _____ o'clock _____ M.

Secretary of State