
SENATE BILL 5006

State of Washington

61st Legislature

2009 Regular Session

By Senator Jacobsen

Read first time 01/12/09. Referred to Committee on Agriculture & Rural Economic Development.

1 AN ACT Relating to genetically engineered plants; and adding a new
2 chapter to Title 15 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** The definitions in this section apply
5 throughout this chapter unless the context clearly requires otherwise.

6 (1) "Department" means the department of agriculture.

7 (2) "Director" means the director of the department.

8 (3) "Farmer" means the person responsible for planting a crop,
9 managing the crop, and harvesting the crop from land on which a breach
10 of contract or patent infringement is alleged to have occurred.

11 (4) "Genetically engineered plant" means a plant or any plant part
12 or material, including, but not limited to, seeds and pollen, in which
13 the genetic material has been changed through modern biotechnology in
14 a way that does not occur naturally by multiplication or natural
15 recombination.

16 (5) "Modern biotechnology" means the application of either of the
17 following:

18 (a) In vitro nucleic acid techniques, including recombinant

1 deoxyribonucleic acid (DNA) and direct injection of nucleic acid into
2 cells or organelles; or

3 (b) Fusion of cells beyond the taxonomic family that overcome
4 natural physiological reproductive or recombinant barriers and that are
5 not techniques used in traditional breeding and selection.

6 NEW SECTION. **Sec. 2.** (1) Before a person holding a patent on a
7 genetically engineered plant, or his or her agent, may enter upon any
8 land farmed by another for the purpose of obtaining crop samples to
9 determine whether breach of contract or patent infringement has
10 occurred, the person holding the patent or his or her agent must:

11 (a) Notify the farmer in writing of the allegation that breach of
12 contract or patent infringement has occurred and request permission to
13 enter upon the farmer's land;

14 (b) Provide a copy of that notification to the director;

15 (c) Obtain the written permission of the farmer; and

16 (d) Provide notice to the farmer of the following procedures, which
17 shall be applicable as provided:

18 (i) If the farmer withholds permission, the person holding a patent
19 may petition the superior court in the county in which the alleged
20 breach of contract or patent infringement has occurred for an order
21 granting permission to enter upon the farmer's land;

22 (ii) If the person holding a patent believes that the crop from
23 which samples are to be taken may be subject to intentional damage or
24 destruction, the person may seek a protective order from the superior
25 court. The protective order shall be crafted to minimize interruption
26 or interference with normal farming practices, including harvest and
27 tillage; and

28 (iii) The procedures described in section 3 of this act.

29 (2) The farmer shall grant or deny access in writing within ten
30 days of receipt of a request to enter the land.

31 NEW SECTION. **Sec. 3.** If requested by either party, the director
32 or his or her designee shall be present for the sampling, provide for
33 the collection of samples, or conduct any other aspect of the sampling
34 or analysis process as requested. The director shall designate an
35 employee or enter into an agreement with an employee or agent of the
36 state of Washington or a third party unaffiliated with either party to

1 carry out the specified sampling activity as provided in rules adopted
2 under section 7 of this act. The patent holder shall pay the fee
3 charged by the department under rules adopted under section 7 of this
4 act. The farmer or the agent of the farmer and the person holding the
5 patent may be present at any collection of samples conducted under this
6 chapter, and each shall be notified of the time and location of the
7 sample taking at least twenty-four hours in advance.

8 NEW SECTION. **Sec. 4.** Samples for analysis may be taken from a
9 standing crop, from representative standing plants in the field, or
10 from crop residue remaining in the field after harvest.

11 NEW SECTION. **Sec. 5.** The results of any testing conducted under
12 this chapter shall be sent by registered letter by the testing party to
13 all parties involved in the investigation within thirty days after the
14 results are reported from the testing laboratory.

15 NEW SECTION. **Sec. 6.** A farmer shall not be liable based on the
16 presence or possession of a patented genetically engineered plant on
17 real property owned or occupied by the farmer if the farmer did not
18 knowingly buy or otherwise knowingly acquire the genetically engineered
19 plant, the farmer acted in good faith and without knowledge of the
20 genetically engineered nature of the plant, and if the genetically
21 engineered plant is detected at a de minimis level. The authority of
22 a court to determine the presence of de minimis levels of a genetically
23 engineered plant is intended solely for the purpose of assisting in
24 adjudicating claims relating to the possession or use of a patented
25 genetically engineered plant in which the seed labeler, patent holder,
26 or licensee, has rights. This section is not intended to:

27 (1) Establish, or be used as the basis for establishing, an
28 acceptable level at which a patented genetically engineered plant may
29 be present;

30 (2) Be used to alter or limit liabilities or remedies for personal
31 injury or wrongful death; or

32 (3) Be used outside or beyond the scope or context of a legal
33 dispute regarding genetically engineered plants.

1 NEW SECTION. **Sec. 7.** The department may adopt rules to implement
2 this chapter.

3 NEW SECTION. **Sec. 8.** If any provision of this act or its
4 application to any person or circumstance is held invalid, the
5 remainder of the act or the application of the provision to other
6 persons or circumstances is not affected.

7 NEW SECTION. **Sec. 9.** Sections 1 through 8 of this act constitute
8 a new chapter in Title 15 RCW.

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