

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

363H0702

SENATE BILL NO. 179

Introduced by: Senators Symens and Diedrich (Larry) and Representatives Jaspers and Burg

1 FOR AN ACT ENTITLED, An Act to regulate certain practices related to genetically modified
2 crops.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. For purposes of this Act, the term, farmer, means the person responsible for
5 planting a crop on, managing the crop, and harvesting the crop from land on which a patent
6 infringement is alleged to have occurred.

7 Section 2. Before a person holding a patent on a genetically modified seed may enter upon
8 any land farmed by another for the purpose of obtaining crop samples to determine whether
9 patent infringement has occurred, the person holding the patent:

10 (1) Shall notify the secretary of agriculture in writing of the person's belief that a patent
11 infringement has occurred and include facts from the allegation;

12 (2) Shall notify the farmer in writing of the allegation that a patent infringement has
13 occurred and request written permission to enter upon the farmer's land; and

14 (3) Shall obtain the written permission of the farmer.

15 If the farmer withholds written permission, the person holding a patent may petition the



1 circuit court for an order granting permission to enter upon the farmer's land.

2 Section 3. The farmer may accompany the person holding the patent at the time any samples
3 are taken.

4 Section 4. If requested by the farmer or the person holding the patent, a representative of the
5 secretary of agriculture shall accompany the person holding the patent at the time any sample is
6 taken. The Department of Agriculture may, in rules promulgated pursuant to chapter 1-26,
7 impose a fee for providing that service. The patent holder and the farmer shall each pay one-half
8 of the fee charged by the department.

9 Section 5. If the person holding a patent believes that the crop from which samples are to be
10 taken may be subject to intentional damage or destruction, the person may seek a protection
11 order from the circuit court. The protection order may not interrupt or interfere with normal
12 farming practices, including harvest and tillage.

13 Section 6. The person holding the patent may take samples from a standing crop, from
14 representative standing plants in the field, or from crops remaining in the field after harvest.

15 Section 7. The person holding the patent may obtain no more samples than those reasonably
16 necessary to make a determination regarding patent infringement. An equal number of samples
17 shall remain in the custody of Department of Agriculture or the farmer for future comparison and
18 verification purposes. All samples taken shall be placed in containers, labeled as to the date, time,
19 and location from which they were taken, and the labels shall be signed by the farmer, the person
20 who took the samples, and the representative of the secretary of agriculture if the representative
21 was present at the time the samples were taken. The patent holder and the farmer shall share
22 equally the cost of the containers needed for the second set of samples which are retained by the
23 Department of Agriculture or the farmer. The farmer and the person holding the patent shall
24 share equally the cost of the containers and the cost of obtaining the samples.

1 Section 8. Within sixty days from the date the samples are taken, an independent laboratory
2 shall conduct all tests to determine whether patent infringement has occurred. The person
3 holding the patent shall notify the farmer of the test results, by certified mail or by any other
4 method of delivery for which a signature is required, within twenty-one days from the date the
5 results were reported to the person holding the patent.

6 Section 9. The parties may participate in mediation at any time. The mediation shall be
7 conducted by a mediator jointly selected by the farmer and the person holding the patent. If the
8 farmer and the person holding the patent are unable to select a mediator, the mediation shall be
9 conducted by an independent agricultural mediation service.

10 Section 10. If the case is not settled after mediation, either party may file a claim for relief
11 with the federal district court having jurisdiction over the claim. Unless otherwise specified in
12 a contract between the farmer and the person holding the patent, the appropriate state circuit
13 court is the one that has jurisdiction over that portion of this state in which the farmer's land is
14 located.