

AN ACT

ENTITLED, An Act to regulate sampling procedures for verification of transgenic seed use.

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

Section 1. Terms used in this Act mean:

- (1) "Farmer," 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; and
- (2) "Transgenic organism," an organism that has been modified by genetic engineering to contain DNA from an outside source.

Section 2. Before a person holding a patent on transgenic 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 farmer in writing of the allegation that a patent infringement has occurred and request written permission to enter upon the farmer's land; and
- (2) Shall obtain the written permission of the farmer.

The farmer shall grant or deny access within seven days of receipt of request to enter the land. If the farmer withholds written permission, the person holding a patent may petition the circuit court for an order granting permission to enter upon the farmer's land.

Section 3. If either party requests the secretary of agriculture to provide for the collection of samples under section 2 of this Act, or to participate in or conduct any other aspect of the sampling or analysis process, the secretary shall designate an employee or enter into an agreement with a person or entity to implement the specified activity as provided in rules under section 6 of this Act. The person or entity may be, but is not required to be, an employee or agency of the State of South Dakota. The patent holder shall pay the fee charged by the department under rules promulgated pursuant to section 6 of this Act. The farmer and the person holding the patent may each be present

at any collection of samples conducted under this Act, and each shall be notified of the time and location of the sample taking in a timely manner.

Section 4. 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 circuit court. The protection order may not interrupt or interfere with normal farming practices, including harvest and tillage.

Section 5. The samples may be taken from a standing crop, from representative standing plants in the field, or from crops remaining in the field after harvest.

Section 6. The secretary of agriculture may promulgate rules, pursuant to chapter 1-26, to determine the following sampling protocols:

- (1) To determine who is authorized to collect samples or conduct related activity;
- (2) To determine methods of sample storage;
- (3) To establish standards for sampling, inspecting, analyzing, and testing seeds; and
- (4) To implement fees to recover sampling and related costs.

Section 7. The results of any testing conducted under this Act shall be sent by registered letter to either party by the other within thirty days after the results are reported from the testing laboratory.

An Act to regulate sampling procedures for verification of transgenic seed use.

I certify that the attached Act originated in the

SENATE as Bill No. 179

Secretary of the Senate

President of the Senate

Attest:

Secretary of the Senate

Speaker of the House

Attest:

Chief Clerk

Senate Bill No. 179
File No. _____
Chapter No. _____

Received at this Executive Office this ____ day of _____,

20__ at _____ M.

By _____
for the Governor

The attached Act is hereby approved this _____ day of _____, A.D., 20__

Governor

STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____, 20__
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State