

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

363H0702

SENATE ENGROSSED NO. **SB 179** - 02/07/2002

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

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

1 FOR AN ACT ENTITLED, An Act to regulate sampling procedures for verification of
2 transgenic seed use.

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

4 Section 1. Terms used in this Act mean:

5 (1) "Farmer," the person responsible for planting a crop on, managing the crop, and
6 harvesting the crop from land on which a patent infringement is alleged to have
7 occurred; and

8 (2) "Transgenic organism," an organism that has been modified by genetic engineering to
9 contain DNA from an outside source.

10 Section 2. Before a person holding a patent on transgenic seed may enter upon any land
11 farmed by another for the purpose of obtaining crop samples to determine whether patent
12 infringement has occurred, the person holding the patent:

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

15 (2) Shall obtain the written permission of the farmer.



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

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

13 Section 4. If the person holding a patent believes that the crop from which samples are to be
14 taken may be subject to intentional damage or destruction, the person may seek a protection
15 order from the circuit court. The protection order may not interrupt or interfere with normal
16 farming practices, including harvest and tillage.

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

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

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

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