



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

SB2151

Introduced 2/20/2009, by Sen. John O. Jones

SYNOPSIS AS INTRODUCED:

New Act

Creates the Farmer Protection Act. Provides that the release by a manufacturer of a genetically engineered plant shall constitute a private nuisance for which the manufacturer shall be liable only if the release (i) causes the presence of the plant within the property owned or occupied by a person for whom the plant presence was not intended and (ii) results in damage in any calendar year that exceeds \$3,500. Provides that defenses at law or equity available in a private nuisance action apply to actions brought under this Act. Provides that a person owning or occupying the property upon which a nuisance release occurs does not have a duty to establish buffer zones, segregation protocols, or otherwise initiate measures to protect specifically against the potential release of genetically engineered plants. Provides that a person who is not in breach of a seed contract regarding the purchase or use of a genetically engineered plant and that unknowingly comes into possession of a genetically engineered plant shall not be liable for certain damages. Authorizes, under certain conditions, a seed supplier or, in some cases, the Director of Agriculture or his or her designee to enter upon real property farmed by another person for the purpose of obtaining crop samples. Authorizes the seed supplier to petition the circuit court for the county in which the real property is located for an order granting permission to enter upon the farmer's real property. Sets forth protocols for inspections. Provides that a farmer has a right of action against a seed supplier for violations of the Act and may recover certain damages. Effective immediately.

LRB096 11433 JDS 21906 b

A BILL FOR

1 AN ACT concerning agriculture.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 "Farmer Protection Act".

6 Section 5. Definitions. As used in the this Act:

7 "Department" means the Illinois Department of Agriculture.

8 "Director" means the Director of Agriculture or the
9 Director's designee.

10 "DNA" means deoxyribonucleic acid.

11 "Farmer" means the person responsible for planting a crop,
12 managing the crop, and harvesting the crop from land on which a
13 breach of contract or patent infringement is alleged to have
14 occurred.

15 "Genetically engineered plant" means a plant or any plant
16 part or material, including seeds and pollen, in which the
17 genetic material has been changed through modern biotechnology
18 in a way that does not occur naturally by multiplication or
19 natural recombination.

20 "Manufacturer" means a person that develops or creates a
21 genetically engineered plant for field trials or for commercial
22 purposes, but does not include a person that is a farmer, seed
23 cleaner, or other non-manufacturer third-party.

1 "Modern biotechnology" means the application of in vitro
2 nucleic acid techniques, fusion of cells, including protoplast
3 fusion, or hybridization techniques that overcome natural
4 physiological, reproductive, or recombination barriers and
5 that are not techniques used in traditional breeding and
6 selection, including the following:

7 (1) recombinant DNA;

8 (2) direct injection of nucleic acid into cells or
9 organelles; and

10 (3) recombinant DNA techniques that use vector systems
11 and techniques involving the direct introduction into the
12 organism of hereditary materials prepared outside the
13 organism, such as microinjection, macroinjection,
14 chemoporation, electroporation, microencapsulation, and
15 liposome fusion.

16 "Seed" means agricultural seed or vegetable seed used to
17 grow a commercial agricultural or a commercial vegetable crop.

18 "Seed contract" means a written contract between a seed
19 supplier and a farmer that a farmer must sign to obtain the
20 seed or the right to plant the seed.

21 "Seed supplier" means a person engaged in commercial
22 production, manufacture, or supply of seed.

23 Section 10. Manufacturer Liability.

24 (a) The release by a manufacturer, directly or through its
25 licensees or agents, of a genetically engineered plant shall

1 constitute a private nuisance for which the manufacturer shall
2 be liable if the following conditions are met:

3 (1) the release causes the presence of the plant within
4 the property owned or occupied by a person for whom the
5 plant presence was not intended and with whom the
6 manufacturer has not entered into a seed contract or a
7 license, and thereby constitutes an unreasonable
8 interference with the use and enjoyment of that person's
9 property; and

10 (2) the release results in damages in any calendar year
11 that exceed \$3,500, thereby constituting substantial
12 interference with the use and enjoyment of the person's
13 property.

14 (b) Defenses at law or equity available in a private
15 nuisance action apply to actions brought under this Section,
16 except it shall not be a defense to an action based on the
17 liability set forth in subsection (a) of this Section that
18 genetically engineered plants are in common or general use in
19 the geographic region in which the property on which the
20 nuisance occurs are located, nor shall the person owning or
21 occupying the property have a duty to establish buffer zones,
22 segregation protocols, or otherwise initiate measures to
23 protect specifically against the potential release of
24 genetically engineered plants onto that person's property.

25 (c) A person who is not in breach of a seed contract
26 regarding the purchase or use of a genetically engineered plant

1 and that unknowingly comes into possession of a genetically
2 engineered plant or that uses a genetically engineered plant as
3 a result of natural reproduction, cross-pollination, seed
4 mixing, or other commingling or unintended presence or other
5 contamination shall not be liable for any damages, attorney
6 fees, or costs caused by the possession or use of that
7 genetically engineered plant.

8 (d) A manufacturer shall have a defense to liability for an
9 action based on the liability set forth in subsection (a) of
10 this Section if the court finds that all of the following
11 conditions are met:

12 (1) the property from which the genetically engineered
13 plant was released can be determined;

14 (2) the owner of the property from which the
15 genetically engineered plant was released, or the owner's
16 agent, signed a seed contract with the manufacturer for the
17 genetically engineered plant and received a training
18 manual from the manufacturer;

19 (3) the damages would not have occurred had the
20 property owner or the property owner's agent followed the
21 terms of the manufacturer's seed contract and training
22 manual; and

23 (4) the property owner or the property owner's agent
24 willfully or with gross negligence contaminated the
25 plaintiff's property, products, or facilities.

26 (e) A person found to have willfully or with gross

1 negligence contaminated the plaintiff's property, products, or
2 facilities shall be liable for damages in lieu of, and to the
3 same extent as, a manufacturer.

4 (f) A prevailing plaintiff in an action under this Section
5 may recover damages as are recoverable at common law in an
6 action for private nuisance, reasonable attorney fees, and
7 other litigation expenses and costs, including expert witness
8 fees.

9 (g) The liability created by this Section shall not be
10 waived or otherwise avoided by contract or other means.

11 (h) A cause of action arising under this Section shall be
12 in addition to and not in lieu of existing actions at law and
13 equity; however, there shall be only one recovery of any
14 specific damages as defined in this section.

15 Section 15. Inspections.

16 (a) Sections 15 through 30 of this Act apply to the
17 inspection of seed and the crop growing from seed by a seed
18 supplier.

19 (b) A seed contract shall not give or be interpreted to
20 give a seed supplier or an agent of a seed supplier the right
21 to enter real property owned or occupied by a farmer to acquire
22 samples of a crop grown from the seed or any other plant
23 growing on that real property. A seed supplier of any type of
24 seed may only enter upon real property farmed by another person
25 for the purpose of obtaining crop samples if both of the

1 following conditions are met:

2 (1) the seed supplier notifies the farmer and the
3 Director of the seed supplier's desire to enter onto the
4 real property and of the purpose of the requested entry and
5 requests written permission from the farmer or the farmer's
6 agent to enter upon the farmer's real property; and

7 (2) the seed supplier obtains the written permission of
8 the farmer to enter upon the real property of the farmer;
9 the farmer shall grant or deny the request of the seed
10 supplier within a reasonable period of time.

11 (c) If a seed supplier or a farmer requests the Director to
12 participate in or conduct the collection of samples or any
13 other aspect of the sampling or analysis process, the Director
14 shall designate an employee of the Department or enter into an
15 agreement with another person to participate in or conduct the
16 specified activity.

17 Section 20. Sampling Protocol.

18 (a) The seed supplier shall reasonably cooperate with a
19 farmer and the Director or their agents in the course of the
20 activities set forth in this Section.

21 (b) The seed supplier shall permit the farmer and the
22 Director or their agents to accompany the seed supplier or the
23 seed supplier's agent while samples are taken. An employee of
24 the Department shall oversee the collection of samples. If the
25 Director or an agent of the Director accompanies the seed

1 supplier on the real property to take samples under this
2 Section, the seed supplier shall reimburse the reasonable costs
3 incurred by the Director or the Director's agent, as determined
4 by the Director, in connection with such activity.

5 (c) Plant material samples shall be acquired in a manner
6 that is agreed upon by the parties involved. In the event that
7 an agreement cannot be reached, the manner for sample
8 acquisition shall be prescribed by the Director. The samples
9 may only be taken from a standing crop, from representative
10 standing plants in the field or from crops remaining in the
11 field after harvest. Samples shall be taken by Department
12 personnel. The Department may select another entity to collect
13 samples if all parties agree.

14 (d) A seed supplier shall take no more samples than those
15 deemed by the Director to be reasonably necessary. An equal
16 number of samples shall remain in the custody of the Director
17 or the farmer for future comparison and verification purposes.

18 (e) All samples taken shall be placed in containers and
19 labeled as to the date, time, and location from which they were
20 taken, and the labels shall be signed by the farmer or farmer's
21 agent, the person who took the samples and the Director or
22 Director's agent.

23 (f) Within 60 days after the date the samples are taken, an
24 independent laboratory shall conduct all tests on the samples.

25 (g) The parties shall mutually agree upon the laboratory
26 and the methods used for the analysis of samples. If the

1 laboratory or methods cannot be agreed upon, an independent
2 third party agricultural mediator shall make the final
3 determination of the laboratory and methods to be utilized. The
4 seed supplier shall pay the reasonable costs incurred by the
5 need for mediation. The results of all tests on the seeds shall
6 be reported by the testing laboratory to the Director.

7 (h) Any plant material remaining after analysis is complete
8 shall be retained by the laboratory or the Department in an
9 appropriate manner.

10 (i) The results of testing shall be sent by registered
11 letter to the seed supplier and the farmer within 30 days after
12 the results are reported from the testing laboratory to the
13 Director.

14 Section 25. Denial of Permission to Inspect.

15 (a) If a farmer denies permission for a seed supplier to
16 enter upon the farmer's real property for an inspection under
17 to Section 15 of this Act, the seed supplier may petition the
18 circuit court for the county in which the real property is
19 located for an order granting permission to enter upon the
20 farmer's real property.

21 If the court issues such an order, the order shall require
22 that the sampling protocol set forth in Section 20 of the Act
23 be implemented. A court order shall not interrupt or interfere
24 with normal farming practices, including harvest and tillage.

25 (b) The parties may participate in mediation at any time.

1 The mediation shall be conducted by a mediator jointly selected
2 by the parties. If the parties cannot agree on a mediator, the
3 mediation shall be conducted by an independent agricultural
4 mediation service.

5 (c) If a seed supplier files suit against a farmer, the
6 seed supplier shall provide simultaneous written notice of the
7 suit to the Director. The Director shall keep a file of all
8 notices of suits received pursuant to this section.

9 Section 30. Right of Action for Violations; Damages;
10 Attorney Fees and Costs; Choice of Law; Jurisdiction; Venue.

11 (a) A farmer has a right of action against a seed supplier
12 if the seed supplier or an agent of the seed supplier violates
13 the provisions of this Act.

14 (b) If a farmer prevails in an action filed under this
15 Section, the farmer is entitled to recover from the seed
16 supplier the following:

17 (1) actual damages proven by the farmer resulting from
18 the seed supplier's violation of this Act; and

19 (2) the farmer's reasonable attorney fees and other
20 litigation costs, including expert witness fees, incurred
21 in connection with the action.

22 (c) A seed contract authorizing the use of seed in Illinois
23 is governed by the law of Illinois. Illinois law shall govern
24 any dispute relating to or arising out of the use of a seed in
25 Illinois, notwithstanding any contrary choice of law

1 contractual provision.

2 (d) Any provision in a seed contract purporting to waive or
3 preclude the application of Illinois law and to choose the laws
4 of another jurisdiction to govern the contract, or to choose a
5 forum for adjudication of disputes arising out of the contract
6 that would not otherwise have jurisdiction over the parties to
7 the contract, is void and unenforceable.

8 (e) The proper venue for an action pursuant to any and all
9 sections of this Act is the circuit court in the county in
10 which the damage occurred. Any contractual provision
11 purporting to waive or preclude Illinois as the proper venue is
12 void and unenforceable.

13 Section 97. Severability. If any part or application of the
14 Farmer Protection Act is held invalid, the remainder or its
15 application to other situations or persons shall not be
16 affected.

17 Section 99. Effective date. This Act takes effect upon
18 becoming law.