

SECOND REGULAR SESSION

HOUSE BILL NO. 1416

92ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES SHOEMYER (Sponsor) AND WHORTON (Co-sponsor).

Read 1st time February 5, 2004, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

4407L.011

AN ACT

To amend chapter 266, RSMo, by adding thereto one new section relating to patent infringement on genetically engineered plants and seed.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 266, RSMo, is amended by adding thereto one new section, to be known as section 266.146, to read as follows:

266.146. 1. As used in this section, "farmer" means the person responsible for planting a crop on land, managing the crop on land, and harvesting the crop from land on which a patent infringement is alleged to have occurred.

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

(1) Notify the director of the Missouri department of agriculture in writing of such person's belief that a patent infringement has occurred and include the facts regarding the allegation;

(2) 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

(3) Obtain the written permission of the farmer. If the farmer withholds written permission, the person holding a patent may petition the federal district court for an order granting permission to enter upon the farmer's land.

3. The farmer shall have the right to accompany the person holding the patent at the time any samples are taken.

4. If requested by the farmer or person holding the patent, the director shall designate a representative of the Missouri department of agriculture to accompany the

19 person holding the patent at the time any sample is taken. The director may impose a fee
20 for providing such service, with the patent holder and the farmer each paying one-half of
21 the fee charged by the director.

22 **5. If the person holding the patent believes that the crop from which samples are**
23 **to be taken may be subject to intentional damage or destruction, the person may seek an**
24 **order from the federal district court to protect the crop from such intentional damage or**
25 **destruction; except that such order shall not interrupt or interfere with normal farming**
26 **practices, including harvest and tillage.**

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

29 **7. The person holding the patent may obtain no more samples than those**
30 **reasonably necessary to make a determination regarding patent infringement. An equal**
31 **number of samples shall remain in the custody of the department of agriculture or the**
32 **farmer for future comparison and verification purposes. All samples taken shall be placed**
33 **in containers, labeled as to the date, time, and location from which they were taken, and**
34 **the labels shall be signed by the farmer, the person who took the samples, and the**
35 **representative from the department of agriculture if present at the time the samples are**
36 **taken. The person holding the patent and the farmer shall share equally the cost of**
37 **obtaining the samples, and the cost of the containers needed for the samples taken by the**
38 **person holding the patent and the samples to be retained by the department of agriculture**
39 **or the farmer.**

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

45 **9. The parties may participate in mediation at any time. Such mediation shall be**
46 **conducted by a mediator jointly selected by the farmer and the person holding the patent.**
47 **If the person holding the patent and the farmer are unable to select a mediator, the**
48 **mediation shall be conducted by an independent agricultural mediation service.**

49 **10. If the case is not settled after mediation, either party may file a claim for relief**
50 **with the federal district court having jurisdiction over the claim. Unless otherwise**
51 **specified in a contract between the farmer and the person holding the patent, the**
52 **appropriate district court shall be the district court that has jurisdiction over that portion**
53 **of this state in which the farmer's land is located.**