

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SENATE BILL 51

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Stephen H. Fischmann

AN ACT

RELATING TO AGRICULTURE; PROVIDING PROTECTION FOR FARMERS FROM
LIABILITY OVER POSSESSION OF GENETICALLY ENGINEERED PRODUCTS;
PROVIDING FOR COURT JURISDICTION FOR INFRINGEMENT CASES;
IMPOSING LIABILITY ON MANUFACTURERS FOR PRIVATE NUISANCE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**SECTION 1. GENETICALLY ENGINEERED PRODUCT--PROTECTION
FROM LIABILITY--COURT JURISDICTION.--**

A. As used in this section:

(1) "farmer" means a person who plants a crop,
manages a crop or harvests a crop;

(2) "genetically engineered product" means a
product created through means in which the genetic material has
been changed through modern biotechnology in a way that does
not occur naturally by multiplication or natural recombination;

underscored material = new
~~[bracketed material] = delete~~

underscoring material = new
~~[bracketed material] = delete~~

1 (3) "manufacturer" means a person that
2 develops, manufactures or sells a patented genetically
3 engineered product;

4 (4) "modern biotechnology" means the
5 application of in vitro nucleic acid techniques, fusion of
6 cells, including protoplast fusion, or hybridization techniques
7 that overcome natural physiological, reproductive or
8 recombination barriers and that are not techniques used in
9 traditional breeding and selection, including the following:

10 (a) recombinant DNA;

11 (b) direct injection of nucleic acid
12 into cells or organelles; and

13 (c) recombinant DNA techniques that use
14 vector systems and techniques involving the direct introduction
15 into the organism of hereditary materials prepared outside the
16 organism, such as microinjection, macroinjection,
17 chemoporation, electroporation, micro encapsulation and
18 liposome fusion; and

19 (5) "technology use agreement" means an
20 agreement between a manufacturer and a farmer that controls the
21 right to plant a given genetically engineered seed, plant part
22 or plant on a specific area of land for a certain period of
23 time.

24 B. If a genetically engineered product in which a
25 manufacturer has rights is possessed by a farmer or found on

.182923.1

underscoring material = new
~~[bracketed material] = delete~~

1 the property owned or occupied by the farmer and possession of
2 the product is not intended by the farmer, the farmer is not
3 liable for the possession of the product for the duration of
4 that possession for any damages claimed by the manufacturer.

5 C. Consistent with 28 U.S.C. Section 1400(b), an
6 infringement case brought against a farmer who does not have a
7 current technology use agreement with a manufacturer shall be
8 brought in the federal judicial district court where the farmer
9 resides or in the federal judicial district court where the
10 defendant is alleged to have committed acts of infringement and
11 has a regular and established place of business.

12 D. The release by a manufacturer, directly or
13 through its licensees or agents, of a genetically engineered
14 product shall constitute a private nuisance for which the
15 manufacturer shall be liable if the following conditions are
16 met:

17 (1) the release causes the presence of the
18 plant within the property owned or occupied by a person for
19 whom the plant presence was not intended and with whom the
20 manufacturer has not entered into a seed contract or a license,
21 and thereby constitutes an unreasonable interference with the
22 use and enjoyment of that person's property; and

23 (2) the release results in damages in any
24 calendar year that exceed five hundred dollars (\$500), thereby
25 constituting substantial interference with the use and

.182923.1

underscoring material = new
~~[bracketed material] = delete~~

1 enjoyment of the person's property.

2 - 4 -

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

.182923.1