

FIRST REGULAR SESSION

HOUSE BILL NO. 680

95TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES SHIVELY (Sponsor), QUINN, SCHIEFFER, KUESSNER,
SCAVUZZO, TODD, ATKINS AND HODGES (Co-sponsors).

1258L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapters 266 and 436, RSMo, by adding thereto five new sections relating to private investigations for farm commodities.

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

Section A. Chapters 266 and 436, RSMo, are amended by adding thereto five new sections, to be known as sections 266.123, 266.125, 266.127, 266.129, and 436.550, to read as follows:

266.123. As used in sections 266.123 to 266.129, the following terms mean:

- (1) "Department", the department of agriculture;**
- (2) "Director", the director of the department of agriculture;**
- (3) "Farmer", the person responsible for planting a crop, managing the crop, and harvesting the crop from land on which a breach of contract or patent infringement is alleged to have occurred;**
- (4) "Genetically engineered plant", a plant or any plant part or material, including, but not limited to, seeds and pollen, in which the genetic material has been changed through modern biotechnology in a way that does not occur naturally by multiplication or natural recombination;**
- (5) "Modern biotechnology", the application of either of the following:**
 - (a) In vitro nucleic acid techniques, including recombinant deoxyribonucleic acid (DNA) and direct injection of nucleic acid into cells or organelles;**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

14 (b) Fusion of cells beyond the taxonomic family that overcome natural physiological
15 reproductive or recombinant barriers and that are not techniques used in traditional
16 breeding and selection.

 266.125. 1. Before a person, or his or her agent, holding a patent on a genetically
2 engineered plant may enter upon any land farmed by another for the purpose of obtaining
3 crop samples to determine whether breach of contract or patent infringement has
4 occurred, the person holding the patent or his or her agent shall do all of the following:

5 (1) Notify the farmer in writing of the allegation that breach of contract or patent
6 infringement has occurred and request permission to enter upon the farmer's land;

7 (2) Provide a copy of that notification to the director;

8 (3) Obtain the written permission of the farmer;

9 (4) Inform the farmer in writing of all the procedural requirements provided in this
10 section so that the farmer is made aware of any required time frames for response as well
11 as any actions that may be lawfully taken by both the farmer and the patent holder.

12 2. The farmer shall grant or deny access in writing within ten days of receipt of a
13 request to enter the land pursuant to subsection 1 of this section.

14 3. (1) If the farmer withholds permission under subsection 2 of this section, the
15 person holding a patent may petition the circuit court in the county in which the alleged
16 breach of contract or patent infringement has occurred for an order granting permission
17 to enter upon the farmer's land;

18 (2) If the person holding a patent believes that the crop from which samples are to
19 be taken may be subject to intentional damage or destruction, the person may seek a
20 protective order from the circuit court. The protective order shall be crafted to minimize
21 interruption or interference with normal farming practices, including harvest and tillage.

22 4. After written permission has been received from the farmer under subsection 2
23 of this section or if a circuit court grants an order under subsection 3 of this section, the
24 following sampling procedures shall apply:

25 (1) If requested by either party, the director or his or her designee shall be present
26 for the sampling, provide for the collection of samples, or conduct any other aspect of the
27 sampling or analysis process as requested. The director shall designate an employee or
28 enter into an agreement with an employee or agent of this state or a third party unaffiliated
29 with either party to carry out the specified sampling activity. The farmer or his or her
30 agent and the person holding the patent or his or her agent may be present at any
31 collection of samples conducted pursuant to sections 266.123 to 266.129, and each shall be
32 notified of the time and location of the sample-taking at least twenty-four hours in
33 advance;

34 (2) Samples for analysis may be taken from a standing crop, from representative
35 standing plants in the field, or from crop residue remaining in the field after harvest;

36 (3) The results of any testing conducted under sections 266.123 to 266.129 shall be
37 sent by registered letter by the testing party to all parties involved in the investigation
38 within thirty days after the results are reported from the testing laboratory.

39 5. The department may charge a reasonable fee for any sampling activities it
40 conducts as required under this section. The holder of the patent shall be responsible for
41 paying any such fee.

42 6. The department shall promulgate rules for the implementation of sections
43 266.123 to 266.129. Any rule or portion of a rule, as that term is defined in section 536.010,
44 RSMo, that is created under the authority delegated in this section shall become effective
45 only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and,
46 if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are
47 nonseverable and if any of the powers vested with the general assembly pursuant to
48 chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule
49 are subsequently held unconstitutional, then the grant of rulemaking authority and any
50 rule proposed or adopted after August 28, 2009, shall be invalid and void.

 266.127. Any patent holder, or agent of such patent holder, who violates any
2 provision of sections 266.123 to 266.129 shall be subject to a penalty of no less than fifty
3 thousand dollars per violation.

 266.129. A farmer shall not be liable to the patent holder for any damages based
2 on the presence or possession of a patented genetically engineered plant on real property
3 owned or occupied by the farmer when the farmer did not knowingly buy or otherwise
4 knowingly acquire the genetically engineered plant, the farmer acted in good faith and
5 without knowledge of the genetically engineered nature of the plant, and when the
6 genetically engineered plant is detected at a de minimis level. The authority of a court to
7 determine the presence of de minimis levels of a genetically engineered plant is intended
8 solely for the purpose of assisting in adjudicating claims relating to the possession or use
9 of a patented genetically engineered plant in which the seed labeler, patentholder, or
10 licensee, has rights. Nothing in this section is intended to do any of the following:

11 (1) Establish, or be used as the basis for establishing, an acceptable level at which
12 a patented genetically engineered plant may be present;

13 (2) Be used to alter or limit liabilities or remedies for personal injury or wrongful
14 death;

15 (3) Be used outside or beyond the scope or context of a legal dispute regarding
16 genetically engineered plants.

**436.550. Any contract executed and entered into for the purchase of genetically
2 modified seed for the production of an agricultural crop shall comply with all of the
3 provisions of sections 266.123 to 266.129, RSMo. Any such contract that does not comply
4 with all of such provisions shall be considered in violation of state law and shall therefore
5 be rendered null and void.**

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