

SENATE BILL No. 236

By Committee on Agriculture

2-14

AN ACT concerning agricultural production; relating to genetically modified organism crops.

Be it enacted by the Legislature of the State of Kansas:

Section 1. For the purposes of this act:

(a) "Genetically modified organism" means an organism that has been altered at the molecular or cellular level by means that are not possible under natural conditions or processes, including but not limited to:

- (1) Recombinant DNA and RNA techniques;
- (2) cell fusion;
- (3) microencapsulation;
- (4) macroencapsulation;
- (5) gene deletion and doublings;
- (6) introducing a foreign gene;
- (7) changing the positions of genes, other than by a means consisting exclusively of breeding, conjugation, fermentation, hybridization, invitro fertilization or tissue culture; or
- (8) the offspring of an altered organism if the offspring possesses any of the changed molecular or cellular characteristics of the parent organism.

(b) "Genetically modified food" means items for human consumption that contain or were produced using seeds or hormones that consist wholly or partly of genetically modified organisms.

(c) "Crop contamination" means any transfer of genetic material from a genetically modified growing crop, by cross pollination or other means, to a nongenetically modified growing crop, provided that the farmer that grows the nongenetically modified crops does not also knowingly grow genetically modified crops.

(d) "Secretary" means the secretary of the department of agriculture.

(e) "Department" means the Kansas department of agriculture.

Sec. 2. The secretary shall adopt rules and regulations for implementing sections 2 through 8, and amendments thereto, as necessary to carry out the purposes of this act. Permanent rules and regulations may include but shall not be limited to:

- 1 (a) The content and form of the application;
- 2 (b) the duration of the certificates;
- 3 (c) the certification process; and
- 4 (d) the inspection of certified genetically modified organism crops.

5 Sec. 3. (a) The department shall give public notice when the follow-
6 ing have occurred:

- 7 (1) An application has been submitted; and
- 8 (2) an application for amendment of an application for a certificate
9 has been submitted.

10 (b) The secretary shall develop a mailing list of those persons who
11 wish to be informed when an application has been submitted pursuant to
12 subsection (a).

13 Sec. 4. The department shall conduct a comprehensive environmen-
14 tal and marketability impact review upon receipt of the application. Upon
15 completion of such review, the department shall make the report available
16 to those persons on the mailing list in section 3, and amendments thereto.

17 Sec. 5. (a) (1) Upon receipt of the department's report pursuant to
18 section 4, and amendments thereto, the secretary shall set the dates for
19 a minimum of two hearings to begin not less than 30 days nor more than
20 120 days after receipt of the report by the director. The secretary shall
21 preside over the hearings.

22 (2) Any studies, investigations, reports or other documentary evi-
23 dence, including those prepared by the department, that any person
24 wishes the secretary to consider or that the secretary expects to use or
25 rely upon must be made a part of the record.

26 (3) A record must be made of the hearing and of all testimony taken.
27 The record must be made available to the public within a reasonable time
28 frame.

29 (b) (1) Within 90 days after the public hearing described in this sec-
30 tion, the secretary shall make complete findings and render a final deci-
31 sion upon the record, either granting or denying the application for a
32 certificate. The findings and the final decision must be in writing.

33 (2) A decision granting a certificate may be made in the following
34 manner:

- 35 (A) The application may be approved as filed; or
- 36 (B) the application may be approved with terms, conditions or mod-
37 ifications considered appropriate and necessary by the secretary.

38 (3) The secretary may not grant a certificate either as proposed by
39 the applicant or as modified by the director unless the secretary finds and
40 determines that:

- 41 (A) The department has received adequate information to enable the
42 secretary to fully assess the potential impacts of commercial use of the
43 genetically modified organisms; and

1 (B) issuing the certificate will result in important economic devel-
2 opment and the benefits of issuing the certificate exceed any costs to
3 agriculture and the Kansas economy.

4 (4) In determining whether the benefits of issuing the certificate out-
5 weigh any costs to agriculture and the Kansas economy, the secretary
6 shall consider:

7 (A) Whether the marketability in foreign and domestic markets of
8 the genetically modified organism variety is equivalent to or greater than
9 that of comparable varieties;

10 (B) whether the genetically modified organism variety can be effec-
11 tively segregated from conventional and organic varieties in all production
12 channels, including but not limited to seedstock production, commercial
13 production, harvesting, custom harvesting, on-farm storage, commercial
14 storage, transport and processing;

15 (C) the demonstrable value of the genetically modified organism va-
16 riety to producers, consumers and the Kansas economy;

17 (D) whether any traits or substances introduced or altered as a result
18 of the genetic modification will result in a threat to public health and
19 safety or noxious weed management;

20 (E) whether the inadvertent introduction of the genetically modified
21 trait into other seeds, plants, animals or organisms, other than those spe-
22 cifically designed to incorporate the trait, can be prevented;

23 (F) whether Kansas producers will lose the export market or suffer
24 from a reduced export market for their product; and

25 (G) any other factors that the secretary considers relevant.

26 Sec. 6. (a) A certificate may be revoked or suspended by the de-
27 partment, following notice and an opportunity for a hearing before the
28 secretary, for:

29 (1) Any materially false statement in the application or in accompa-
30 nying statements or studies required by the applicant if a true statement
31 would have warranted the secretary's refusal to grant a certificate;

32 (2) failure to comply with the terms or conditions of the certificate;

33 (3) violation of any provisions of sections 2 through 8, and amend-
34 ments thereto, rules or regulations adopted pursuant to section 2, and
35 amendments thereto, or orders of the department; or

36 (4) failure to allow access to property currently planted with a ge-
37 netically modified organism variety for the purpose of inspection.

38 (b) (1) When a certificate is revoked, the department shall take ap-
39 propriate action or require the certificate holder to take appropriate ac-
40 tion to destroy the crop or any seeds of the genetically modified organism
41 variety.

42 (2) The department shall develop by rules and regulations appropri-
43 ate actions for destruction of a genetically modified organism variety de-

1 pending on the type of genetic modification that was conducted.

2 (c) The certificate holder is liable for any damages suffered by a pro-
3 ducer that are the result of the revocation of the certificate or the de-
4 struction of the crop or seeds.

5 Sec. 7. (a) Any person who plants a genetically modified organism
6 crop shall not be liable for crop contamination if such person has followed
7 the manufacturer's directions for planting such crop.

8 (b) The manufacturer of genetically modified organism seeds shall be
9 held liable for damages incurred by cross contamination of crops or for
10 other damages incurred through the use of such product.

11 (c) The manufacturer of genetically modified organism seeds shall
12 not be able to recover a technology fee from a person who has planted
13 nongenetically modified organism crops which were later contaminated,
14 through no fault of such person, by the manufacturer's genetically mod-
15 ified organism and such crop contains the manufacturer's genetically
16 modified organism's traits.

17 Sec. 8. A certificate provided for in section 5, and amendments
18 thereto, is not required for research projects on genetically modified or-
19 ganism varieties being conducted by state and federal agencies, a member
20 of the board of regents, or bona fide nonprofit research organizations and
21 their agents, provided that the research entity:

22 (a) Files a research plan with the department that accurately de-
23 scribes the location of each field experiment, provides an accurate and
24 complete experiment plan and updates that plan when seeding is per-
25 formed and harvesting is completed;

26 (b) allows the department unimpeded access to each experiment;

27 (c) provides no less than a 300-foot buffer zone between the test
28 crops and other adjacent crops;

29 (d) notifies any person growing crops within one mile of the test plot
30 that the test plot exists and provides that person with a copy of the re-
31 search plan described in subsection (a);

32 (e) complies with the provisions of the federal plant protection act, 7
33 U.S.C. 7701 through 7758, regulations adopted pursuant to 7 C.F.R. parts
34 319, 330, 340 and 360 and any other law or rule and regulation concerning
35 the introduction of organisms and products altered or produced through
36 genetic engineering.

37 Sec. 9. This act shall take effect and be in force from and after its
38 publication in the statute book.

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