

## HOUSE BILL No. 2881

By Committee on Judiciary

2-13

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9 AN ACT concerning seed contracts.

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

12 Section 1. (a) As used in this section:

13 (1) "Farmer" means the person responsible for planting a crop on,  
14 managing the crop, and harvesting the crop from real property on which  
15 the seed is planted.

16 (2) "Seed" means the seed of grass, legume, forage, cereal and fiber  
17 crops, or mixtures thereof, used to grow a commercial agricultural crop.

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

21 (4) "Seed commissioner" refers to an employee in the department of  
22 agriculture, appointed by the secretary of agriculture, who is knowledge-  
23 able about seed genetics.

24 (5) "Seed supplier" means a person engaged in commercial produc-  
25 tion and supply of either seed or technology genetically engineered into  
26 seed.

27 (b) All seed contracts shall be governed by the provisions of this act.  
28 Provisions of seed contracts in conflict with or purporting to waive any  
29 provision of this act shall be void and unenforceable against a farmer.

30 (c) A seed contract shall not give a seed supplier the right to enter  
31 real property owned or occupied by the farmer to acquire samples of the  
32 crop grown from the seed or any other plant growing on the real property  
33 unless the seed supplier has given written notice to the farmer and the  
34 secretary of agriculture of the seed supplier's belief that a patent infringe-  
35 ment has occurred and intent to enter the real property. Notice shall be  
36 given not later than five business days before the day the seed supplier  
37 enters the real property. The notice shall include the date and time of  
38 the entry upon the land and the purpose for the entry upon the land.

39 (d) A farmer has a right of action against a seed supplier if the seed  
40 supplier enters real property owned or occupied by the farmer in violation  
41 of this section.

42 (e) The seed supplier shall permit the farmer, the seed commissioner  
43 or the commissioner's agent to accompany the seed supplier or the seed

1 supplier's agent while samples are taken. The seed supplier shall permit  
2 the farmer or the seed commissioner to take matching samples or receive  
3 split samples of any samples taken by the seed supplier. These samples  
4 shall be retained for future comparison and verification purposes in the  
5 possession of the secretary of agriculture. If the commissioner or the  
6 commissioner's agent accompanies the seed supplier on the real property  
7 to take samples under this section, the seed supplier and the farmer shall  
8 each pay 50% of the reasonable costs incurred by the commissioner or  
9 the commissioner's agent, as determined by the secretary, in connection  
10 with such activities.

11 (f) Any testing of such samples shall also be conducted by an inde-  
12 pendent laboratory.

13 (g) If a seed supplier files a suit against a farmer, the seed supplier  
14 shall provide simultaneous written notice of the suit to the secretary of  
15 agriculture. If a seed supplier files a suit against a farmer, the farmer shall  
16 not be considered to be breaching a confidentiality provision in a seed  
17 contract regarding the terms or advice on a seed contract between a  
18 farmer and:

19 (1) A member of the farmer's immediate family;

20 (2) an attorney;

21 (3) an accountant;

22 (4) a professional advisor; or

23 (5) a partner, an associate or another individual engaged with the  
24 farmer in the farming enterprise for which the seed was purchased.

25 (h) If the seed supplier believes that a patent infringement has oc-  
26 curred and destruction of such crop is believed to occur, the farmer may  
27 seek a protection order from the district court. The protection order may  
28 not interrupt or interfere with normal farming practices, including harvest  
29 and tillage.

30 (i) If a farmer prevails in an action, the farmer is entitled to recover  
31 from the seed supplier any actual damages proven by the farmer resulting  
32 from the seed supplier's violations and the farmer's reasonable attorney  
33 fees and other litigation costs reasonably incurred in connection with the  
34 action.

35 (j) If it is shown that the farmer has a product on such farmer's real  
36 property in which the seed supplier has rights but the farmer did not  
37 intend for such product to be on the farmer's real property, the farmer  
38 is not liable for breach of the seed contract or violation of any of the seed  
39 supplier's property rights.

40 (k) The secretary of agriculture shall adopt rules and regulations as  
41 are necessary to implement the provisions of this section.

42 Sec. 2. This act shall take effect and be in force from and after its  
43 publication in the statute book.