

SENATE INDIAN AND CULTURAL AFFAIRS COMMITTEE SUBSTITUTE FOR
SENATE BILL 303

49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;
ENACTING THE FARMER PROTECTION ACT; PROVIDING PROTECTION FROM
LIABILITY; PROHIBITING INSPECTIONS WITHOUT PERMISSION;
ESTABLISHING JURISDICTION AND VENUE.

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

Section 1. SHORT TITLE.--This act may be cited as the
"Farmer Protection Act".

Section 2. DEFINITIONS.--As used in the Farmer Protection
Act:

A. "farmer" means a person who plants a crop,
manages a crop or harvests a crop;

B. "genetically engineered plant" means a plant or
any plant part or material, including seeds and pollen, in
which the genetic material has been changed through modern

.181730.1

underscored material = new
[bracketed material] = delete

1 biotechnology in a way that does not occur naturally by
2 multiplication or natural recombination;

3 C. "seed" means agricultural seed or vegetable seed
4 used to grow a commercial agricultural or a commercial
5 vegetable crop;

6 D. "seed contract" means a written contract between
7 a seed supplier and a farmer that a farmer must sign to obtain
8 the seed or the right to plant the seed; and

9 E. "seed supplier" means a person engaged in
10 commercial production, manufacture or supply of seed or
11 technology genetically engineered into seed, including holding
12 a patent on a genetically engineered plant.

13 Section 3. PROTECTION FROM LIABILITY.--

14 A. A person owning or occupying property shall not
15 have a duty to establish buffer zones or segregation protocols
16 or otherwise initiate measures to protect specifically against
17 the potential release of genetically engineered plants onto
18 that person's property.

19 B. A person who is not in breach of a seed contract
20 regarding the purchase or use of a genetically engineered plant
21 and who unknowingly comes into possession of a genetically
22 engineered plant or who uses a genetically engineered plant as
23 a result of natural reproduction, cross-pollination, seed
24 mixing or other commingling or unintended presence or other
25 contamination shall not be liable for any damages, attorney

.181730.1

1 fees or costs caused by the possession or use of that
2 genetically engineered plant.

3 Section 4. INSPECTIONS.--A seed supplier of genetically
4 engineered plant seed may only enter upon real property farmed
5 by another person for the purpose of obtaining crop samples if:

6 A. both of the following conditions are met:

7 (1) the seed supplier notifies the farmer of
8 the seed supplier's desire to enter onto the real property and
9 of the purpose for the requested entry and requests written
10 permission from the farmer or the farmer's agent to enter upon
11 the farmer's real property; and

12 (2) the seed supplier obtains the written
13 permission of the farmer to enter upon the real property of the
14 farmer; or

15 B. there is a contractual obligation allowing
16 access.

17 Section 5. CHOICE OF LAW--JURISDICTION--VENUE.--

18 A. New Mexico law shall govern any dispute relating
19 to or arising out of the use of a genetically engineered plant
20 in New Mexico.

21 B. A seed contract authorizing the use of a
22 genetically engineered plant in New Mexico is governed by the
23 law of New Mexico. Any provision in a seed contract purporting
24 to waive or preclude the application of New Mexico law or to
25 choose the laws of another jurisdiction to govern that

.181730.1

1 contract, or to choose a forum for adjudication of disputes
2 arising out of that contract that would not otherwise have
3 jurisdiction over the parties to the contract, is void and
4 unenforceable.

5 C. The proper venue for an action relating to or
6 arising out of the use of a genetically engineered plant in New
7 Mexico is the district court in the county in which the damage
8 occurred. Any contractual provision purporting to waive or
9 preclude New Mexico as the proper venue for that action is void
10 and unenforceable.

11 D. Any provision in a seed contract purporting to
12 waive or preclude the application of New Mexico law and to
13 choose the laws of another jurisdiction to govern that
14 contract, or to choose a forum for adjudication of disputes
15 arising out of the use of a genetically engineered plant in New
16 Mexico that would not otherwise have jurisdiction over the
17 parties to the contract, is void and unenforceable.

18 Section 6. SEVERABILITY.--If any part or application of
19 the Farmer Protection Act is held invalid, the remainder or its
20 application to other situations or persons shall not be
21 affected.