

February 1, 2011

SB218: Establish procedures related to protected plants.

Introduced by: D. Steinbeisser

Since my husband has been involved in Montana agriculture a lot longer than I have, I ran this bill past him. His reaction was that, in his experience, when a person buys protected plant varieties, a contract is signed between the company and the farmer.

Unfortunately, since I've been in Helena and the farm is in NE Montana, I don't have a copy of a contract for reference. In the case of a contract, I don't see the need for this bill. Wouldn't a breach be covered under contract law? In the case where a grower is suspected of illegally obtaining a protected plant variety, there likely wouldn't be a contract, which renders the wording in Section 5 on venue, moot.

I am not an attorney, but maybe a better way to word that section would be "unless specified in a contract, the venue must be in the district court for the district in which the alleged intellectual property right violation occurred".

Contracts aside, as I read this bill, I see references in Section 3 and 6 to "A department..." and "The department...", but do not see a definition in Section 2 of what department is involved. I would assume it is Agriculture, but as it stands, it could be any department.

Section 3 (3iii) states the court order must be "reasonably based on information". The word 'reasonably' is subjective. Laws must be objective and spell out exactly what is needed to obtain a court order.

Section 3 (4) also deals with costs associated with sampling and that "the fee may not exceed other seed-related sampling fees charged by the department." If SB195 goes through and the seed laboratory is given control of testing and fees, this wording will be incorrect.

Section 4 (5) states that the "mediator shall schedule mediation to begin within 30 days..."...within 30 days of when...the date of sampling, the date the testing results were provided, the date of mediator selection?

Lastly, I did not see anywhere that the prevailing party should be entitled to reimbursement for attorney fees and costs associated with a dispute. If included, this should clearly indicate what fees and costs should be reimbursed.

I ask the members of the committee to take another look at this bill before taking action. As it stands, I am opposed to this bill and ask the members to vote NO.

Thank you,

Cindy Swank

6670 Sleeping Giant View
Helena, MT 59602

5102 Road 2041
Poplar, MT 59255