

SENATE BILL NO. 266  
INTRODUCED BY J. COBB

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A COMPANY HOLDING A PATENT TO A GENETICALLY ENGINEERED WHEAT VARIETY MUST POST A \$10 MILLION BOND PRIOR TO RELEASE OF THAT VARIETY FOR COMMERCIAL PRODUCTION IN MONTANA; PROVIDING THAT POSTING A BOND DOES NOT LIMIT THE LIABILITY OF THE COMPANY POSTING THE BOND; PROVIDING THAT THE BOND REMAIN IN EFFECT FOR 5 YEARS AFTER A PROPRIETARY GENETICALLY ENGINEERED WHEAT VARIETY HAS LAST BEEN GROWN IN MONTANA; PROVIDING THAT THE AMOUNT OF THE BOND BE RETURNED TO THE COMPANY THAT ORIGINALLY POSTED THE BOND AFTER THE 5 YEARS HAVE PASSED; PROVIDING FOR THE ESTABLISHMENT OF A WHEAT BOND BOARD; PROVIDING FOR THE ESTABLISHMENT OF PROCEDURES AND COMPENSATION FOR THE WHEAT BOND BOARD AND ITS MEMBERS; PROVIDING POWERS AND DUTIES OF THE WHEAT BOND BOARD AND THE DEPARTMENT OF AGRICULTURE; PROVIDING STANDARDS FOR CLAIMS ELIGIBILITY; PROVIDING FOR CLAIMS AGAINST THE FUND AND EXCLUDING THOSE WHO PRODUCE OR HANDLE GENETICALLY ENGINEERED WHEAT; PROVIDING A PROCEDURE FOR FILING CLAIMS BY ELIGIBLE PARTIES; PROVIDING A PROCESS FOR DETERMINING THE FAIR MARKET PRICE FOR A CLAIMANT'S WHEAT; PROVIDING FOR THE PAYMENT OF A CLAIM IN AN AMOUNT NOT TO EXCEED \$150,000 FOR EACH CLAIM OR \$500,000 FOR EACH CLAIMANT; PROVIDING FOR NOTICE BY THE BOARD; PROVIDING FOR A HEARING AND APPEAL PROCESS; PROVIDING FOR THE PAYMENT OF CLAIMS IN THE EVENT THERE IS INSUFFICIENT MONEY IN THE BOND FUND; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, Montana annually exports approximately \$300 million to \$500 million worth of wheat; and  
WHEREAS, the majority of this wheat is exported to markets in Pacific Rim countries that do not want or accept genetically engineered crops for human consumption; and

WHEREAS, a law is necessary to protect Montana's wheat producers and other sectors of Montana's wheat industry from financial damage resulting from contamination of Montana's conventionally bred wheat by proprietary genetically engineered wheat; and

WHEREAS, contamination may result in the loss of markets for Montana-grown wheat and in the liability of Montana's wheat producers, brokers, wholesalers, warehousemen, processors, and shippers for damages suffered in the value chain that Montana-grown wheat passes through; and

WHEREAS, the bond established by this act would reimburse eligible parties whose operations are in Montana for all or part of their damages up to \$150,000 for each claim, with a maximum of \$500,000 for each claimant.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Purpose.** The purpose of [sections 1 through 3 and 5 through 12] is to protect Montana's environment and economy by requiring a company holding a patent on a genetically engineered wheat variety to post a \$10 million bond prior to release for commercial production of that variety in Montana.

NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 3 and 5 through 12], the following definitions apply:

(1) "Board" means the wheat bond board provided for in [section 4].

(2) "Contamination" means the unintentional transfer of genes from genetically engineered wheat into conventionally bred grain or the physical commingling of genetically engineered wheat, including plant parts not limited to the seed, with conventionally bred grain when the level of genetically engineered wheat intermixed exceeds .005% by volume. Contamination can occur in production, handling, warehousing, processing, or transportation.

(3) (a) "Eligible party" means an agricultural business operating in Montana, including but not limited to a producer, custom harvester, warehouse, broker, shipper, processor, or other agriculture-related business that produces or handles conventionally bred grain that claims to have suffered a direct financial loss due to contamination from a genetically engineered wheat variety.

(b) The term does not include agricultural businesses that produce or handle genetically engineered wheat.

(4) "Fund" means the wheat bond fund established pursuant to [section 3].

(5) "Genetically engineered" means that the DNA of an organism has been altered by human manipulation in laboratory processes using any of the following:

(a) bacterial vectors;

(b) viral promoters;

(c) antibiotic-resistant or herbicide-resistant markers; or

(d) incorporating protein-coding DNA material from species of organisms that could not cross with the crop plant in nature.

**NEW SECTION. Section 3. Introduction of genetically engineered wheat -- bond required -- no limitation on liability.** (1) There is a wheat bond fund in the state special revenue fund. Prior to the release of a genetically engineered wheat variety into Montana for commercial production, a company holding the patent on that genetically engineered wheat variety shall post a \$10 million bond with the department to be deposited in the wheat bond fund.

(2) The principal of the bond must be held in escrow and the interest accrued must be appropriated to the department to cover the cost of administering the bond fund. The bond must be invested in a federally insured investment program. If there are interest earnings in excess of administrative costs, the balance must be appropriated to the department to promote Montana agricultural products.

(3) A bonded company's liability for contamination is not limited to the bond amount. [Sections 1 through 3 and 5 through 12] do not affect the right of damaged parties to sue a company holding the patent on a genetically engineered wheat variety that is the source of contamination.

(4) The fund shall remain in effect for 5 years after a proprietary genetically engineered wheat variety has last been grown in Montana to give reasonable assurance that residual contamination from that variety will be covered by [sections 1 through 3 and 5 through 12]. If there is money remaining in the fund at the end of this 5-year period, the money must be returned to the company that originally posted the bond.

(5) The fiscal year of the fund begins July 1 and the finances of the fund must be calculated on an accrual basis in accordance with generally accepted accounting principles.

(6) All money in the fund is for the exclusive purpose of satisfying claims as provided in [section 10] and for paying the department for administrative and enforcement costs related to administering the provisions of [sections 1 through 3 and 5 through 12].

(7) Money in the fund is not subject to appropriation or expenditure for any purpose other than those provided in [sections 1 through 3 and 5 through 12].

(8) Except as provided in subsection (4), any unexpended balance in the fund at the end of the fiscal year must be retained in the fund.

**NEW SECTION. Section 4. Wheat bond board.** (1) There is a wheat bond board consisting of six members as provided in subsection (2).

(2) The board must be appointed by the director of agriculture and the state auditor. The membership of the board consists of:

- (a) the director of agriculture or a designee, who shall serve as presiding officer;
- (b) the state auditor or a designee, who shall serve as vice presiding officer;
- (c) three Montana wheat producers, one of whom is an organic producer, who are appointed by the director of agriculture;
- (d) a licensed grain merchant or processor operating in Montana who is appointed by the director of agriculture;
- (e) a grain shipper operating in Montana who is appointed by the state auditor; and
- (f) a representative from Montana's financial industry who is appointed by the state auditor.

(3) Members of the board shall serve staggered terms of 3 years, except when the appointment is made to fill a vacancy on the board, in which event the appointee shall fill out the unexpired term of the member whose position is being filled. The initial appointments are as follows:

- (a) two members for 1-year terms;
- (b) two members for 2-year terms; and
- (c) two members for 3-year terms.

(4) The board is allocated to the department of agriculture for administrative purposes only as prescribed in 2-15-121. The department may charge the board for services provided by the department pursuant to 2-15-121. The costs charged by the department must be commensurate with the cost of the services provided.

(5) Members of the board must be reimbursed and compensated as provided in [section 5].

**NEW SECTION. Section 5. Wheat bond board -- procedure -- compensation.** (1) The board shall meet on a regular basis and at the call of the presiding officer or upon the written request of two or more members.

(2) Appointed members are entitled to compensation in the amount of \$35 for each day that the board meets.

(3) Five voting members constitute a quorum, and the affirmative vote of a majority of the members present is necessary for any substantive action to be taken by the board. The majority may not include any member who has a conflict of interest. A statement by a member that the member has a conflict of interest is conclusive for proving that there is a conflict of interest.

(4) A vacancy in the membership may not impair the duties of the board.

**NEW SECTION. Section 6. Wheat bond board -- powers and duties.** The board, in consultation with the department, shall administer [sections 1 through 3 and 5 through 12]. The board shall:

- (1) provide for its organization and procedures, including but not limited to procedures for determining claims;
- (2) provide for the administration of the fund as provided in [section 3], the payment of claims from the fund, and the payment of administrative costs from the fund; and
- (3) adopt rules necessary for the implementation and administration of [sections 1 through 3 and 5 through 12].

**NEW SECTION. Section 7. Department -- powers and duties.** (1) The department shall perform the administrative functions necessary for the operation of the board. The department, along with a state fiduciary agent, shall act in a manner necessary to minimize the risk of investment loss to the fund.

- (2) Administrative costs approved by the board must be paid from the fund.
- (3) The department shall determine the balance of money available to administer [sections 1 through 3 and 5 through 12] for the next fiscal year by calculating the ending balance of the fund and reporting that amount to the board, along with the department's estimate of the amount required by the department to administer [sections 1 through 3 and 5 through 12].

**NEW SECTION. Section 8. Claim eligibility.** (1) A party is eligible to file a claim against the fund if:

- (a) there is evidence that the party has suffered damages due to contamination by a specific, proprietary variety of genetically engineered wheat; and
  - (b) the genetically engineered wheat variety can be positively identified using generally accepted laboratory methods.
- (2) A party that intentionally produces or handles genetically engineered wheat and conventionally bred wheat on or in the same operation, facility, or mode of transportation is ineligible for claims under [sections 1 through 3 and 5 through 12].
- (3) Claims documentation must provide at a minimum:
    - (a) the name and address of the party filing the claim;
    - (b) the type of grain contaminated;
    - (c) the number of bushels of contaminated grain;
    - (d) the date of the first discovery of the contamination; and

(e) lab results verifying the presence of contamination and identifying the specific variety that is the source of contamination.

(4) Evidence to support the claim must be submitted to the board through generally accepted recordkeeping forms and practices.

(5) Parties filing a claim shall provide the board with additional information as required by the board to carry out the provisions of [sections 1 through 3 and 5 through 12].

**NEW SECTION. Section 9. Claims against fund -- exclusion.** To prevent fraudulent claims, growers of genetically engineered wheat and businesses that handle genetically engineered wheat are excluded from making a claim.

**NEW SECTION. Section 10. Procedure for filing claims -- eligible parties -- fair market price -- payment of claim.** (1) A claim must be filed in the manner prescribed by the board and as provided in [section 8].

(2) The board shall determine that a claim is eligible for payment from the fund if the board finds all of the following:

(a) the claim was filed in a timely manner in accordance with procedures required by the board. A claim is not timely if it is filed later than 2 years after contamination is first discovered or more than 1 year after damages have been incurred as a result of contamination.

(b) the claim shows a loss due to contamination by a genetically engineered wheat variety;

(c) a producer's loss was not due to the reckless disregard of sound management practices required to prevent contamination of the crop; and

(d) there is adequate documentation to establish the existence of a claim and to determine the amount of the loss. The board may require that the claimant provide invoices or other documentation to help quantify financial damages.

(3) The board shall determine the dollar value of a claim based on the eligible party's loss. The value of the claim must be the difference between the grain's fair market price if the contamination had not occurred and the actual market price received or receivable for the contaminated grain.

(4) (a) Except as provided in subsection (4)(b), the board shall determine the fair market price for the grain if the contamination had not occurred based on the market price that sellers received or would have received for grain of a similar type and condition and with the same intrinsic characteristics on the date that the

claimant suffered the loss.

(b) If the eligible party executed a contract for the sale of the grain prior to the contamination, the board shall determine the fair market value for the grain if the contamination had not occurred based on the contract price.

(5) The board shall presume that the market price for the contaminated grain is the same price accepted by the eligible party from the first purchaser who purchased the grain with knowledge of the contamination or the existing market value if the grain remains unsold.

(6) The eligible party filing a claim as provided in [sections 1 through 3 and 5 through 12] is bound by the value determined by the board.

(7) In the absence of a contract that specifies the value of the grain, the value of the loss must be based on the date the board validates the claim for payment from the fund. Upon a validation of a claim, the board shall provide for payment of the loss, not to exceed \$150,000 for each claim or \$500,000 for each claimant, regardless of when the claim occurred and regardless of the number of claims.

**NEW SECTION. Section 11. Notice of board determination -- hearing -- appeal.** (1) The board shall send notice to a claimant regarding the board's validation of the claim and the value determination of the claimant's payment amount through certified mail, return receipt requested.

(2) Within 20 days of receipt of the notice, the claimant may request a hearing before the board for review of either determination. The request must be made in the manner prescribed by board rules.

(3) The hearing and any further appeal must be conducted as a contested case under the Montana Administrative Procedure Act.

(4) An eligible party whose claim has been refused by the board may appeal the board's decision to the district court of the county in which the eligible party resides.

**NEW SECTION. Section 12. Payment of claims -- insufficient funds.** (1) If at any time the board determines that the fund contains insufficient money to make payment of all claims, the board may order that payment be deferred on specific claims. The board shall hold those claims for payment until the board determines that the fund again contains sufficient money.

(2) In the event of payment, the fund is subrogated to the extent of the amount of any payments to all rights, powers, privileges, and remedies of the eligible party against any person regarding the loss.

(3) The eligible party shall render all necessary assistance to aid the board in securing the rights granted

in [sections 1 through 3 and 5 through 12]. An action or claim initiated by an eligible party and pending at the time of payment from the fund may not be compromised or settled without consent of the board.

NEW SECTION. **Section 13. Codification instruction.** (1) [Sections 1 through 3 and 5 through 12] are intended to be codified as an integral part of Title 80, and the provisions of Title 80 apply to [sections 1 through 3 and 5 through 12].

(2) [Section 4] is intended to be codified as an integral part of Title 2, chapter 15, part 30, and the provisions of Title 2, chapter 15, part 30, apply to [section 4].

NEW SECTION. **Section 14. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 15. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 16. Effective date.** [This act] is effective on passage and approval.

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