

SENATE BILL NO. 440
INTRODUCED BY E. BUTCHER

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THAT ALL GENETICALLY ENGINEERED WHEAT SEED SOLD OR DISTRIBUTED WITHIN THE STATE BE ACCOMPANIED WITH INSTRUCTIONS REGARDING PLANTING, GROWING, AND HARVESTING; PROVIDING POWERS AND DUTIES TO THE DEPARTMENT OF AGRICULTURE, INCLUDING THE RIGHT TO INSPECT AND TO ESTABLISH RULES TO IMPLEMENT THE INSTRUCTION REQUIREMENTS AND ENFORCEMENT PROVISIONS; PROVIDING FOR FEES TO BE CHARGED TO MANUFACTURERS; ESTABLISHING A GENETICALLY ENGINEERED WHEAT ACCOUNT IN THE STATE SPECIAL REVENUE FUND; REQUIRING RECORDKEEPING BY DEALERS; PROVIDING THAT A GROWER THAT FOLLOWS ALL INSTRUCTIONS PROVIDED WITH THE WHEAT SEED IS NOT LIABLE FOR DAMAGES; PROVIDING FOR A PENALTY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. Section 1. Definitions. As used in [sections 1 through 8], the following definitions apply:

(1) "Cross-contamination" means the unintentional transfer and incorporation of genetic material between a genetically engineered crop, by cross-pollination or other means, and a nongenetically engineered crop or a wild plant population.

(2) "Dealer" means a seed dealer as defined in 80-5-120.

(3) "Department" means the department of agriculture.

(4) "Genetically engineered" means a wheat variety:

(a) altered at the molecular or cellular level by means that are not possible under natural conditions or processes, including but not limited to:

(i) recombinant DNA and RNA techniques;

(ii) cell fusion;

(iii) microencapsulation;

(iv) macroencapsulation;

(v) gene deletion and doubling;

(vi) introducing a foreign gene; and

(vii) changing the positions of genes, other than by a means consisting exclusively of breeding, conjugation, fermentation, hybridization, in vitro fertilization, or tissue culture;

(b) made through sexual or asexual reproduction, or both, involving a genetically engineered variety that has been altered as described in subsection (4)(a) if the variety possesses any of the altered molecular or cellular characteristics of the organism described.

(5) "Manufacturer" means an entity holding the patent to a genetically engineered wheat variety.

NEW SECTION. Section 2. Instructions required. (1) To minimize the potential for cross-contamination of wheat prior to sale or distribution in Montana, a manufacturer of genetically engineered wheat shall provide to all growers purchasing the wheat seed written instructions regarding:

(a) planting the wheat;

(b) growing the wheat; and

(c) harvesting the wheat.

(2) The instructions, at a minimum, must:

(a) be at least as inclusive as guidelines issued by the United States department of agriculture relative to the establishment of buffer zones between genetically engineered plants and wild or cultivated plants subject to the risk of cross-contamination;

(b) be in the form prescribed by the department;

(c) contain all of the information required by the department;

(d) be attached to the wheat seed package or provided in writing to a bulk purchaser in a manner prescribed by the department; and

(e) include any other requirement prescribed by department rule.

(3) The manufacturer shall file a copy of these instructions with the department at least 20 days in advance of any sale or distribution of the genetically engineered wheat seed in this state.

NEW SECTION. Section 3. Powers and duties of the department. (1) The department may:

(a) enter a premises at any reasonable time to inspect genetically engineered wheat seed that is intended for sale or distribution to ensure that proper instructions have been provided; and

(b) cooperate with and enter into agreements with governmental agencies of this state, agencies of other states, agencies of the U.S. government, and private associations in furtherance of [sections 1 through 8].

(2) The department shall adopt any rules necessary for the implementation of [sections 1 through 8].

The rules must include but are not limited to:

- (a) buffer zone requirements for each genetically engineered wheat variety;
- (b) the form in which the instructions must appear;
- (c) information that must be included in the instructions;
- (d) direction on how the instructions must be attached to the wheat seed package or provided in writing to a bulk purchaser; and
- (e) any other rules necessary for the implementation of [sections 1 through 8].

NEW SECTION. Section 4. Fees. Before a manufacturer may distribute or sell genetically engineered wheat seed in the state, the department shall assess a fee on each manufacturer commensurate with the costs of administering [sections 1 through 8]. The department shall adopt the fee by rule.

NEW SECTION. Section 5. Disposition of funds -- genetically engineered account. There is a genetically engineered wheat account in the state special revenue fund. All fees and revenue from violations authorized and collected pursuant to [sections 1 through 8] must be deposited in the account to the credit of the department.

(2) Money received as revenue pursuant to [sections 1 through 8] that is not immediately required for the purposes of [sections 1 through 8] must be invested under provisions of the unified investment program established in Title 17, chapter 6, part 2. All interest earned on the account must be deposited in the account.

NEW SECTION. Section 6. Recordkeeping. A dealer shall identify and maintain, for at least 2 years after the date of sale, a list of names and addresses of all purchasers of genetically engineered wheat seed. The list is not a public record. A dealer shall permit the department to inspect the list when requested to facilitate an investigation into a claim of cross-contamination.

NEW SECTION. Section 7. Liability. If a grower has followed all of the instructions provided with the wheat seed, the grower is not liable for damages that are the result of cross-contamination.

NEW SECTION. Section 8. Violation -- penalty. (1) Failure to comply with [sections 1 through 8] is a civil violation. The department may assess a fine not to exceed \$1,000 for each violation.

(2) Each instance in which genetically engineered wheat seed is not accompanied by instructions

constitutes a separate violation.

(3) Each instance in which a dealer has not kept accurate records regarding purchasers of genetically engineered wheat seed constitutes a separate violation.

(4) Any funds received by the department as the result of a violation must be deposited in the genetically engineered wheat account as provided in [section 5].

NEW SECTION. **Section 9. Codification instruction.** [Sections 1 through 8] are intended to be codified as an integral part of Title 80, chapter 5, and the provisions of Title 80, chapter 5, apply to [sections 1 through 8].

NEW SECTION. **Section 10. Effective date.** [This act] is effective on passage and approval.

- END -