

# House Bill 3501

Sponsored by Representative BARNHART; Representatives BAILEY, HOLVEY

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Prohibits growing commodity containing genetically engineered material unless commodity is incapable of reproducing or material is declared incapable of damaging other commodities and, if for food, material has been declared safe for consumption. Makes violation subject to civil penalty, not to exceed \$10,000.

Declares food containing genetically engineered material to be adulterated unless material has been declared safe for consumption. Makes violation subject to maximum of \$2,500 fine, six months' imprisonment, or both, and to civil penalty not exceeding \$10,000.

Prohibits State Department of Fish and Wildlife from approving use of genetically engineered salmon or trout stocks for crossbreeding with natural stocks. Prohibits department from approving use of genetically engineered salmon or trout stocks unless of type that has been declared safe for consumption.

Prohibits licensing of proposed salmon hatchery operation producing genetically engineered salmon if proposed operation lacks substantial protections against genetically engineered salmon breeding with natural salmon or if genetically engineered salmon have not been declared safe for consumption.

Requires Director of Agriculture and appointee of Director of Oregon Health Authority to recommend rejection of application for biopharm permit if biopharm lacks substantial protections against introducing genetically engineered material into nearby agricultural or horticultural commodities. Requires taking enforcement action against biopharm if biopharm endangers agricultural, horticultural or forest production or endangers public health.

## A BILL FOR AN ACT

1  
2 Relating to genetically engineered material; creating new provisions; and amending ORS 496.275,  
3 496.450, 508.710, 561.740 and 616.360.

4 **Be It Enacted by the People of the State of Oregon:**

### **SECTION 1. (1) As used in this section:**

6 **(a)(A) "Commodity" means:**

7 **(i) Any distinctive type of agricultural, horticultural, viticultural, vegetable, animal or**  
8 **seafood product in a natural or unprocessed state; and**

9 **(ii) Bees and honey.**

10 **(B) "Commodity" does not mean biopharmaceutical crops, timber or timber products.**

11 **(b) "Genetically engineered material" means a substance derived from any part of a ge-**  
12 **netically engineered organism, whether or not the altered molecular or cellular character-**  
13 **istics of the organism are detectable in the substance.**

14 **(c) "Genetically engineered organism" means:**

15 **(A) A life form that has been altered at the molecular or cellular level by means that are**  
16 **not possible under natural conditions or processes, except means consisting exclusively of**  
17 **breeding, conjugation, fermentation, hybridization, in vitro fertilization, tissue culture or**  
18 **mutagenesis; or**

19 **(B) A life form produced through sexual or asexual reproduction involving an initial life**  
20 **form described in subparagraph (A) of this paragraph, if the life form produced possesses any**  
21 **of the altered molecular or cellular characteristics of the initial life form.**

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (2) A person may not engage in the commercial production of a commodity that contains  
2 genetically engineered material unless the commodity is incapable of reproducing or the  
3 State Department of Agriculture or the United States Department of Agriculture has deter-  
4 mined, based on scientific evidence:

5 (a) That the genetically engineered material does not present a danger of contamination  
6 or other damage to other commodities; and

7 (b) If the commodity is of a type used for food as defined in ORS 616.205, or in the pro-  
8 duction of food, that the genetically engineered material is safe for consumption.

9 (3) Violation of this section is subject to a civil penalty imposed by the State Department  
10 of Agriculture, not to exceed \$10,000.

11 **SECTION 2.** Section 3 of this 2011 Act is added to and made a part of ORS 616.205 to  
12 616.385.

13 **SECTION 3.** (1) As used in this section:

14 (a) "Genetically engineered material" means a substance derived from any part of a ge-  
15 netically engineered organism, whether or not the altered molecular or cellular character-  
16 istics of the organism are detectable in the substance.

17 (b) "Genetically engineered organism" means:

18 (A) A life form that has been altered at the molecular or cellular level by means that are  
19 not possible under natural conditions or processes, except means consisting exclusively of  
20 breeding, conjugation, fermentation, hybridization, in vitro fertilization, tissue culture or  
21 mutagenesis; or

22 (B) A life form produced through sexual or asexual reproduction involving an initial life  
23 form described in subparagraph (A) of this paragraph, if the life form produced possesses any  
24 of the altered molecular or cellular characteristics of the initial life form.

25 (2) A food is deemed to be adulterated if the food contains, or was produced using, a ge-  
26 netically engineered material that the State Department of Agriculture or the United States  
27 Department of Agriculture has not declared to be safe for consumption.

28 (3) A food is considered to have been produced using a genetically engineered material  
29 for purposes of subsection (2) of this section if, except as provided in subsection (4) of this  
30 section, the plant or animal from which the food or any ingredient in the food is derived is  
31 a genetically engineered organism or has been injected with, treated with or fed a genetically  
32 engineered material.

33 (4) For purposes of subsection (3) of this section, the use of manure from an animal fed  
34 genetically engineered material in the growing of a raw agricultural commodity is not an  
35 injection or treatment of the commodity with genetically engineered material.

36 (5) The State Department of Agriculture shall adopt rules for carrying out this section.  
37 The rules may include, but need not be limited to, rules for:

38 (a) Determining whether a food or food ingredient that contains genetically engineered  
39 material is safe for consumption;

40 (b) Detecting genetically engineered material in foods and food ingredients; and

41 (c) Identifying food production processes that rely on genetically engineered organisms.

42 (6) The department may inspect food commodities and products in the possession of an  
43 agricultural commodity producer, food manufacturer, wholesaler or retailer, may obtain  
44 samples of the foods, food ingredients and materials used to produce food and may seize  
45 foods, food ingredients and materials used to produce food to the extent the department

1 **considers necessary to protect the public from adulterated foods described in this section.**

2 **(7) This section and any rules for the administration and enforcement of this section do**  
 3 **not create a new public or private cause of action or preclude an existing cause of action.**

4 **SECTION 4.** ORS 616.360 is amended to read:

5 616.360. In the promulgation of rules under ORS 616.341, 616.345, 616.350, 616.366 and 616.380  
 6 **and section 3 of this 2011 Act**, the State Department of Agriculture shall give appropriate con-  
 7 sideration to:

8 (1) Measures and procedures required to protect the health and life of animals and the people  
 9 of this state.

10 (2) The laws of other states.

11 (3) The laws of the United States. The department's rules shall conform in so far as practicable  
 12 with, but shall not be more restrictive than, the laws and rules of the federal Food and Drug Ad-  
 13 ministration.

14 (4) The opinions of recognized experts and governmental agencies in the field of food additives.

15 **SECTION 5.** ORS 496.275 is amended to read:

16 496.275. (1) The Legislative Assembly hereby declares the necessity to review all options and  
 17 means for the protection and restoration of Oregon's salmon resource that promote local economic  
 18 development and enjoyment by all the citizens of Oregon. Options and means shall include operation  
 19 of salmon production facilities, in cooperation with the State Department of Fish and Wildlife, by  
 20 both public and private nonprofit agencies as well as by public local partnerships, to meet local  
 21 production and harvest needs as well as to help restore and maintain natural salmon spawning  
 22 populations. Such cooperative production projects shall be operated using scientifically sound  
 23 hatchery practices and shall be consistent with objectives to protect and restore natural fish pro-  
 24 duction.

25 (2) The [*State Department of Fish and Wildlife*] **department** shall:

26 (a) Review and revise existing state administrative rules so that the different forms of hatchery  
 27 production are recognized as a necessary and critical element in the state's salmon production sys-  
 28 tem in order to provide harvest opportunities for Oregon's citizens. In so doing, the department shall  
 29 identify low natural production areas and, using genetically compatible stocks approved by the de-  
 30 partment, encourage volunteer efforts such as the salmon and trout enhancement program to main-  
 31 tain and to enhance production. **However, the department:**

32 **(A) May not approve the crossbreeding of natural and genetically engineered salmon or**  
 33 **trout stocks; and**

34 **(B) May not approve the use of any genetically engineered salmon or trout stocks unless**  
 35 **the genetically engineered salmon or trout are of a type that the State Department of Agri-**  
 36 **culture or the United States Department of Agriculture has determined based on scientific**  
 37 **evidence to be safe for consumption.**

38 (b) Identify existing private and public salmon production facilities that are currently either  
 39 underutilized or subject to decommissioning and that may be appropriate for other forms of opera-  
 40 tion.

41 (c) Inventory other appropriate local sites, identify possible types of production facilities, re-  
 42 commend stock selection and release size, and assist in securing the acquisition of brood stock ap-  
 43 proved by the [*department*] **State Department of Fish and Wildlife** that maximizes local  
 44 production.

45 (d) Investigate and implement ways to improve hatchery smolt survival and reduce predation by

1 such means as night releases, net pen acclimation, alternate release sites, volitional and other re-  
 2 lease strategies, transport and other means that may be effective and consistent with the conserva-  
 3 tion of native salmon and genetic resources.

4 (e) Make recommendations on methods by which operations of facilities referred to in this sub-  
 5 section and subsection (3) of this section can generate revenue for sustainable production, including  
 6 but not limited to state bonding, license surcharges, ad valorem taxes, local economic development  
 7 funds, service districts, sale of excess eggs and salmon, and gifts, grants and donations.

8 (f) Identify needed monitoring and evaluation activities to ensure protection of natural spawning  
 9 fish populations and to assess the contribution of such cooperative projects to public fisheries.

10 (g) Assist in developing, for department approval, plans of operation for such cooperative  
 11 hatchery projects consistent with applicable rules and standards of sound, scientific fish manage-  
 12 ment practice.

13 (3) The department shall encourage and assist in planning hatchery facilities that seek to im-  
 14 plement innovative plans or programs designed to meet production for harvest needs consistent with  
 15 conservation objectives.

16 (4) The State Fish and Wildlife Commission shall approve, prior to implementation, operational  
 17 plans for any fish propagation facilities operated by contractor agreement with other state or federal  
 18 agencies, local governments, special districts and nonprofit organizations.

19 **SECTION 6.** ORS 496.450 is amended to read:

20 496.450. (1) Any citizen or group of citizens may submit to the State Fish and Wildlife Commis-  
 21 sion a proposal for a project consistent with the recovery or sustainability of native stocks to be  
 22 implemented under the salmon and trout enhancement program or may submit a request for advice  
 23 and assistance in developing such a project.

24 (2) An enhancement project may include, but is not limited to, habitat improvement, installation  
 25 and operation of streamside incubators, brood stock development, fish stocking and spawning ground  
 26 surveys and data collection.

27 (3) The commission shall approve for implementation only those enhancement projects based on  
 28 sound biological principles and shall use fish stocks most adapted to the project locale. To the  
 29 greatest extent practicable, **subject to ORS 496.275 (2)(a)**, a project must be designed to maximize  
 30 survival, adult returns and genetic diversity while minimizing disease.

31 (4) Conditions for approval by the commission for implementation of a project include but are  
 32 not limited to:

33 (a) Provisions satisfactory to the commission for inspection and evaluation of the implementation  
 34 of a project; and

35 (b) Provisions satisfactory to the commission for controlling the expenditure of and accounting  
 36 for any funds granted by the commission for implementation of the project.

37 **SECTION 7.** ORS 508.710 is amended to read:

38 508.710. No permit [*shall*] **may** be issued:

39 (1) [*Which*] **That** may tend to deplete any natural run of anadromous fish or any population of  
 40 resident game fish.

41 (2) [*Which*] **That** may result in waste or deterioration of fish.

42 (3) If the proposed operation is to be located on the same stream or river or tributary thereof  
 43 on which a state or federal fish culture facility is established or is planned to be established.

44 (4) If the proposed operation is not consistent with sound resource management and is not in  
 45 close proximity to the ocean.

1       **(5) If the proposed operation is for the production of genetically engineered salmon and:**

2       **(a) The operation would lack substantial protections against the possibility of genetically**  
 3 **engineered salmon breeding with natural stocks of salmon; or**

4       **(b) The genetically engineered salmon have not been determined by the State Department**  
 5 **of Agriculture or the United States Department of Agriculture, based upon scientific evi-**  
 6 **dence, to be safe for consumption.**

7       [(5)] (6) If the State Fish and Wildlife Commission determines the applicant does not have the  
 8 financial capability to successfully construct and operate the hatchery or may not properly conduct  
 9 the operation authorized under the permit.

10       **SECTION 8.** ORS 561.740 is amended to read:

11       561.740. (1) The Director of Agriculture and an appointee of the Director of the Oregon Health  
 12 Authority who has experience in health program administration may enter into memoranda of  
 13 understanding or other intergovernmental agreements on behalf of this state for the purpose of fur-  
 14 thering collaboration between this state and federal agencies that regulate the growing of  
 15 biopharmaceutical crops. A memorandum or other agreement entered into under this section shall  
 16 be designed to increase state input to the federal biopharm permitting system on biopharmaceutical  
 17 crop issues and requirements of specific interest to this state.

18       (2) To the extent authorized under federal and state law, or under any memorandum of under-  
 19 standing or other agreement entered into under subsection (1) of this section, the Director of Agri-  
 20 culture and the appointee of the Director of the Oregon Health Authority, or their designees:

21       (a) Notwithstanding ORS 192.410 to 192.505, shall refuse to disclose any biopharm permit appli-  
 22 cation or related biopharmaceutical crop information received from the United States Department  
 23 of Agriculture’s Animal and Plant Health Inspection Service, or from any successor to that service,  
 24 that the United States Department of Agriculture has determined to be confidential business infor-  
 25 mation.

26       (b) May review biopharm permit applications and biopharmaceutical crop information submitted  
 27 to the United States Department of Agriculture. **The Director of Agriculture and the appointee**  
 28 **of the Director of the Oregon Health Authority shall recommend the rejection of any appli-**  
 29 **cation for the operation of a biopharm that lacks substantial protections against the possi-**  
 30 **bility of the biopharmaceutical crop causing the introduction of genetically engineered**  
 31 **material into agricultural or horticultural commodities on nearby properties.**

32       (c) May administer and conduct site inspections and monitoring of any biopharmaceutical crops  
 33 grown in Oregon.

34       (d) If there is evidence that biopharmaceutical crops are endangering Oregon agriculture,  
 35 horticulture or forest production or public health, [may] **shall** take appropriate enforcement action.

36       (e) May charge a biopharm permit applicant or holder fees for state oversight, services or ac-  
 37 tivities under this section. Fees charged under this paragraph may not total more than \$10,000 and  
 38 must be reasonably calculated to reimburse the state for the actual cost of the oversight, services  
 39 or activities. Fees collected under this paragraph shall be deposited to the credit of the Department  
 40 of Agriculture Service Fund and are continuously appropriated to the State Department of Agricul-  
 41 ture for the purpose of carrying out this section.

42       **SECTION 9. Section 1 of this 2011 Act applies to agricultural, horticultural, viticultural**  
 43 **and vegetable commodities planted on or after the effective date of this 2011 Act.**

44       **SECTION 10. Section 3 of this 2011 Act applies to food packaged on or after the effective**  
 45 **date of this 2011 Act.**

