House Bill 2736

Sponsored by Representative BUCKLEY

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.**

Exempts farmer from liability for inadvertent acquisition or use of genetically engineered plant or plant seeds. Makes manufacturer of genetically engineered seed liable for damages resulting from undesired release of genetically engineered plant on property.

Establishes protocols for acquisition of plant samples at farm by manufacturer of genetically engineered plants. Establishes protocols for analysis of acquired samples.

Prohibits open field growing of certain pharmaceutical crops. Makes violation subject to civil penalty of not less than $1,000 and not more than $10,000.

Requires notice to State Department of Agriculture prior to open field growing of genetically engineered plants. Makes violation subject to civil penalty of not less than $500 and not more than $5,000. Requires department to annually report aggregated information regarding genetically engineered plant production to interim committee of Legislative Assembly.

Prohibits certain provisions in contracts authorizing use of genetically engineered seeds.

Provides aggrieved farmer with right of action for manufacturer violations of Act.

Revises existing laws governing biopharms.

A BILL FOR AN ACT

Relating to genetically engineered plants; creating new provisions; and amending ORS 561.740.

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

SECTION 1. As used in sections 1 to 10 of this 2013 Act:

(1) "Farmer" means a person responsible for planting, managing or harvesting a crop.

(2) "Genetically engineered" means containing genetic material that has been changed through modern biotechnology in a way that does not occur through natural processes of multiplication or natural recombination.

(3) "Manufacturer" means:

(a) A person that develops or creates a genetically engineered plant for field trials for commercial purposes;

(b) An agent acting on behalf of a person described in paragraph (a) of this subsection; or

(c) A person that asserts against a farmer intellectual property or contractual rights concerning the use of a genetically engineered plant.

(4) "Modern biotechnology" means:

(a) The application of in vitro nucleic acid techniques, including but not limited to recombinant deoxyribonucleic acid and the direct injection of nucleic acids into cells or organelles; or

(b) The fusion of cells beyond the taxonomic family that overcomes natural physiologic reproductive or recombinant barriers by techniques not used in traditional breeding and selection.

(5) "Open field production" means the planting, growing, propagation or cultivation of any genetically engineered plant outside of a greenhouse, indoor laboratory or other self-

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.

contained production system located in an enclosed structure.

(6) "Pharmaceutical crop" means a seed or plant that is genetically engineered to produce compounds for which commercialization requires approval from:

(a) The United States Food and Drug Administration Center for Biologics Evaluation and Research;

(b) The United States Food and Drug Administration Center for Drug Evaluation and Research;

(c) The United States Food and Drug Administration Center for Veterinary Medicine; or

(d) The United States Department of Agriculture Center for Veterinary Biologics.

(7) "Seed contract" means a written contract that a manufacturer requires a farmer to enter into in order to obtain agricultural or vegetable seed or to plant agricultural or vegetable seed.

SECTION 2. A person is not liable for any damages, attorney fees or costs arising out of the possession or use of a genetically engineered plant if:

(1) The person is not in breach of a seed contract regarding the purchase or use of the genetically engineered plant or seeds of the genetically engineered plant; and

(2) The person unknowingly came into possession of or used the genetically engineered plant as the result of natural reproduction, cross-pollination, seed mixing or other commingling, unintended presence or contamination.

SECTION 3. (1) The release of a genetically engineered plant by a manufacturer or by a licensee of a manufacturer is a private nuisance if the release causes the presence of the plant on property owned or occupied by a person who did not intend for the plant to be present on the property. A manufacturer may be found liable in an action brought under this section only if:

(a) The person owning or occupying the property where the genetically engineered plant is present has not entered into a seed contract or a license for the plant or seeds of the plant;

(b) The presence of the plant on the property has caused an unreasonable and substantial interference with the use and enjoyment of the property by the person; and

(c) The release has resulted in damages to the property during any calendar year that exceeds $3,500.

(2) Any defense that may be asserted against an action or suit for a private nuisance may be asserted under this section except that:

(a) The common or general use of the genetically engineered plant within the geographic region containing the property is not a defense; and

(b) A person owning or occupying a property has no duty to employ a buffer zone, segregation protocols or other measures to protect specifically against the potential release of genetically engineered plants onto the property.

(3) It is a defense to manufacturer liability under this section if:

(a) The property from which the genetically engineered plant was released can be determined;

(b) The owner of the property from which the genetically engineered plant was released, or the agent of the owner, signed a seed contract with the manufacturer for the plant and received a training manual from the manufacturer;

(c) The damages to property underlying the action would not have occurred if the owner

or agent had complied with the seed contract and followed the training manual; and

(d) The owner or agent acted deliberately or with gross negligence to contaminate the property, products or facilities of the person bringing the private nuisance action.

(4) If the owner of a property from which a genetically engineered plant was released, or an agent of the owner, acts deliberately or with gross negligence to contaminate the property, products or facilities of a person bringing a private nuisance action under this section, the owner or agent may be joined as a defendant in the action.

(5) In addition to any damages to the property resulting from the release, a court shall award costs and reasonable attorney fees to a plaintiff prevailing in an action under this section.

(6) A contract or other agreement that provides for the avoidance or waiver of liability under this section is void as a matter of public policy.

(7) The right of action created under this section is in addition to any other remedy available to recover for damages that result from the release of a genetically engineered plant.

SECTION 4. (1) A seed contract may not give a manufacturer the right to enter real property owned or occupied by a contracting farmer for the purpose of acquiring samples of seeds, crops or other plants growing on the property. This subsection does not prohibit a manufacturer from acquiring samples of seeds, crops or other plants if:

(a) The manufacturer notifies the farmer in advance that the manufacturer wishes to enter the property;

(b) The notification states the purpose of the requested entry; and

(c) The farmer gives written permission for the entry.

(2) A farmer receiving a notification under subsection (1) of this section shall respond in writing within a reasonable time granting or denying the requested entry.

(3) If the manufacturer or the farmer requests that the State Department of Agriculture participate in or conduct all or part of the sampling or analysis of seeds, crops or other plants growing on a property, the Director of Agriculture may designate a department employee or a third party to participate in the collection and analysis. The cost of services provided by the department or the third party is payable by the manufacturer.

SECTION 5. (1) A manufacturer shall allow a farmer, a State Department of Agriculture employee or a third party designee of the Director of Agriculture under section 4 of this 2013 Act to accompany the manufacturer or an agent of the manufacturer when any samples of seeds, crops or other plants are acquired from a farm under this section.

(2) The acquisition of samples of seeds, crops or other plants shall be conducted in a manner agreed to by the manufacturer and the farmer. If the manufacturer and the farmer cannot agree, and a department employee or a third party designee is present, the employee or designee shall determine the manner of acquisition. If a department employee or a third party designee is present, the acquisition must be conducted or supervised by the employee or the designee. Crop samples may be taken only from a standing crop or from crops remaining in the field after harvest. Samples of other plants may be taken only from representative plants standing in the field.

(3) Sample sizes may be limited by the director by rule or on a case-by-case basis by a department employee or a third party designee that is present at the farm. One-half of the samples shall be provided to the manufacturer and one-half shall be provided to the farmer,

the department employee or the third party designee. All samples must be placed in containers and labeled with the date, time and location of sampling. The label must be signed by the farmer, the person collecting the sample and, if present, the department employee or the third party designee.

(4) Any analysis of a sample must be conducted by the department or by an independent laboratory agreed to by the manufacturer and the farmer. A laboratory shall complete the analysis no later than 60 days after receiving the sample. A laboratory shall retain any unanalyzed portions of the samples as required by the director by rule. If the manufacturer and the farmer cannot agree on an independent laboratory, or are in disagreement regarding the analytical methods to be used, the director shall designate a department employee or a third party to decide the matter and the decision of the employee or the third party designee is not appealable. The cost of services to decide a dispute under this subsection is payable by the manufacturer.

(5) The laboratory testing seed, crop or other plant samples acquired by a manufacturer shall report the results of analytical testing to the manufacturer, the farmer and the department. The laboratory shall send the analytical results to the manufacturer and the farmer by first class mail, return receipt requested, no later than 30 days after sending the results to the department.

SECTION 6. (1) If a farmer denies a request for entry by a manufacturer under section 4 of this 2013 Act, the manufacturer may petition the circuit court for an order allowing entry. A court order issued under this subsection must require that any sampling be conducted as provided in section 5 of this 2013 Act and that sampling may not be performed in a manner that interferes with accepted farming practices.

(2) If a petition is filed with a court under this section, the court may refer the matter to mediation.

(3) If a manufacturer files a petition under this section, the manufacturer shall give notice of the petition to the Director of Agriculture. The director shall keep a record of petitions described under this section.

SECTION 7. (1) A person may not engage in the production of a pharmaceutical crop if:

(a) The pharmaceutical crop is produced by open field production; and

(b) The pharmaceutical crop is of a species commonly used for food or feed.

(2) The State Department of Agriculture shall investigate any suspected violation of subsection (1) of this section. However, an anonymous complaint or unattributed or undocumented information is not grounds for suspecting a violation or conducting an investigation. Biopharm permit applications and biopharmaceutical crop information described under ORS 561.740 is not grounds for suspecting a violation or conducting an investigation.

(3) The department may impose a civil penalty for a violation of subsection (1) of this section. The civil penalty amount may not be less than $1,000 or more than $10,000. The department shall establish a schedule of penalty amounts based upon the nature of the violation, the effect of the violation, the previous history of the violator, the impact of the fine on the violator and the effect the penalty may have on deterring future violations.

SECTION 8. (1) A person that intends to engage in the open field production of a genetically engineered plant shall notify the Director of Agriculture of the intended production no later than 30 days prior to commencing production.

(2) The director shall make forms for providing notice under this section available to the

public without charge and shall make forms available for filing by electronic means. The forms must require the following:

(a) The proposed date for commencing the open field production of the genetically engineered plant;

(b) The proposed location and number of acres for the production;

(c) The seed or plant kind, variety, type and lot number as those terms are used for purposes of compliance with 7 C.F.R. 201.9 to 201.11 and 201.13;

(d) Any traits for which the plant has been genetically engineered; and

(e) Any other information required by the director.

(3) The director shall report annually to an interim committee of the Legislative Assembly dealing with agricultural matters regarding the information submitted under this section, aggregated by county, including but not limited to the number of acres in open field production of genetically engineered plants, the types of plants produced and the genetic traits of the plants.

(4) Except as provided in this subsection, the State Department of Agriculture may impose a civil penalty on a person that violates this section. The civil penalty amount may not be less than $500 or more than $5,000. The department shall establish a schedule of penalty amounts based upon the nature of the violation, the effect of the violation, the previous history of the violator, the impact of the fine on the violator and the effect the penalty may have on deterring future violations. The department may not impose a civil penalty for a first violation of this section.

(5) In addition to any civil penalty imposed, for a third or subsequent violation of this section the department may issue an order prohibiting the person from planting any genetically engineered plants in this state for a period of 12 months. Violation of an order described in this subsection is subject to a civil penalty in the same manner as any other violation of this section. However, violation of an order is a separate offense and subject to a separate civil penalty from any other violation of this section that a person commits regarding the same planting.

SECTION 9. Notwithstanding any contrary contractual provision, the laws of this state apply to a seed contract authorizing the use of seed within this state and to any dispute arising out of a seed contract authorizing the use of seed in this state. Any contractual provision providing for a dispute arising out of a seed contract authorizing the use of seed in this state to be resolved in a forum that would not otherwise have jurisdiction over the parties is contrary to public policy and is void. Notwithstanding any contrary contractual provision, a circuit court for a county where seed is used under authorization of a seed contract is an appropriate forum for resolving disputes arising from the contract.

SECTION 10. A farmer has a right of action against a manufacturer that violates any provision of sections 4 to 8 of this 2013 Act. In addition to any actual damages proven, a court may award a prevailing plaintiff in an action under this section costs and reasonable attorney fees.

SECTION 11. ORS 561.740 is amended to read:

561.740. (1) The Director of Agriculture and an appointee of the Director of the Oregon Health Authority who has experience in health program administration may enter into memoranda of understanding or other intergovernmental agreements on behalf of this state for the purpose of furthering collaboration between this state and federal agencies that regulate the growing of

biopharmaceutical crops. A memorandum or other agreement entered into under this section shall be designed to increase state input to the federal biopharm permitting system on biopharmaceutical crop issues and requirements of specific interest to this state.

(2) To the extent authorized under federal and state law, or under any memorandum of understanding or other agreement entered into under subsection (1) of this section, the Director of Agriculture and the appointee of the Director of the Oregon Health Authority, or their designees:

(a) Notwithstanding ORS 192.410 to 192.505, shall refuse to disclose any biopharm permit application or related biopharmaceutical crop information received from the United States Department of Agriculture's Animal and Plant Health Inspection Service, or from any successor to that service, that the United States Department of Agriculture has determined to be confidential business information.

(b) May review biopharm permit applications and biopharmaceutical crop information submitted to the United States Department of Agriculture. **The Director of Agriculture and the appointee of the Oregon Health Authority, or their designees, shall recommend that the department deny any application for a biopharm permit that would authorize pharmaceutical crop production that is prohibited under section 7 of this 2013 Act.**

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

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

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