

A-Engrossed House Bill 2509

Ordered by the House April 21
Including House Amendments dated April 21

Sponsored by Representative CLEM (Presession filed.)

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.

[Repeals statutes pertaining to defunct Astor experiment station.]

Requires State Department of Agriculture to provide mediation program services when person has reasonable belief that planting, growing or harvesting of agricultural or horticultural commodity on nearby land might interfere or is interfering with farming practices. Allows court or arbitrator to award costs if losing party to court or arbitration action refused mediation.

Requires department mediation if person files court action alleging interference. Creates exceptions. Allows court to impose sanctions if party refuses mediation.

Requires that, upon request, department employee be present at time sample is taken for crop testing purposes. Allows department to charge fee.

Requires department and Oregon State University to make educational materials and information available regarding tools and techniques for cultivation of land for conventional, organic, identity-preserved and genetically engineered crops.

Allows Oregon State University to provide technical assistance to grower groups and private agricultural entities to establish and operate voluntary systems for cooperative monitoring of crop isolation requirements for seed certification.

A BILL FOR AN ACT

1
2 Relating to agriculture.

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

4 **SECTION 1. As used in sections 1 to 5 of this 2015 Act:**

5 (1) **“Coexistent use of agricultural lands” means the concurrent cultivation of land for**
6 **conventional, organic, identity-preserved and genetically engineered crops in a manner con-**
7 **sistent with underlying consumer preferences and farmer choices.**

8 (2) **“Farming practice” means a mode of operation on a farm that:**

9 (a) **Is or may be used on a farm of a similar nature;**

10 (b) **Is a generally accepted, reasonable and prudent method for the operation of the farm**
11 **to obtain a profit in money;**

12 (c) **Is or may become a generally accepted, reasonable and prudent method in conjunction**
13 **with farm use;**

14 (d) **Complies with applicable laws; and**

15 (e) **Is done in a reasonable and prudent manner.**

16 (3) **“Identity-preserved crop” means a crop of an assured quality in which the identity**
17 **of the material is maintained from the germ plasm or breeding stock to the processed**
18 **product on a retail shelf.**

19 **SECTION 2. (1) If a person that is engaged in a farming practice has a reasonable belief**
20 **that the planting, growing or harvesting of an agricultural or horticultural commodity on**

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 nearby land might interfere with or is interfering with the farming practice, upon the re-
2 quest of a party to the dispute and agreement to pay any required costs or fees, **the State**
3 **Department of Agriculture shall provide mediation program services under ORS 36.270 to**
4 **assist the parties in attempting to reach agreement on issues regarding the coexistent use**
5 **of agricultural lands. If a party to a dispute refuses to allow the department to attempt**
6 **mediation of the dispute and subsequently is the losing party in an arbitration or court**
7 **action, the arbitrator or court may award the prevailing party costs and reasonable attorney**
8 **fees.**

If...

9 (2) **If a court action arises out of an alleged interference with the use of land for a**
10 **farming practice resulting from the use of land for planting, growing or harvesting of an**
11 **agricultural or horticultural commodity on nearby land, and the parties to the action have**
12 **not previously allowed the department to attempt mediation of the dispute, the parties must**
13 **participate in the department mediation process beginning no later than 270 days after the**
14 **action is filed. This subsection does not require mediation if the action settles or is otherwise**
15 **resolved within 270 days after filing, if mediation was conducted under subsection (1) of this**
16 **section or if all parties to the action agree to waive mediation. A court may impose sanctions**
17 **against a party that fails to participate in, or act in good faith in, any mediation proceeding**
18 **by the department under this subsection.**

If-Then
Formula
Approach

Then...

19 (3) **This section does not create any new cause of action or supersede any requirement,**
20 **condition or prohibition otherwise established by law regarding the bringing of an action.**

21 **SECTION 3.** Upon request by a farmer or by the holder of a patent granted for a seed,
22 crop or trait under the Patent Act (35 U.S.C. 101 et seq.) or under the Plant Variety Pro-
23 tection Act (7 U.S.C. 2321 et seq.), the Director of Agriculture shall appoint a representative
24 of the State Department of Agriculture to accompany the farmer, the patent holder or a crop
25 testing service at the time a sample is taken. The department may charge the requester a
26 fee for the services.

27 **SECTION 4.** The State Department of Agriculture and Oregon State University shall
28 make publicly available any department or university educational materials and information
29 regarding the coexistent use of agricultural lands and, to the extent consistent with federal
30 law, any United States Department of Agriculture educational materials and information
31 that identify tools and techniques for promoting or enhancing coexistence between types of
32 crop cultivation.

33 **SECTION 5.** Oregon State University may provide technical assistance to grower groups
34 and private agricultural entities to enable the groups or entities to enhance the coexistent
35 use of agricultural lands by establishing and operating voluntary systems for the cooperative
36 monitoring of crop isolation requirements for seed certification.

It does create a new cause of action by forcing parties into mediation, which is directly against ORS 36.270, and supersedes the requirement of ORS 36.270 by effectively removing the voluntary participation requirement.

This forces parties to participate in mediation, which goes against the spirit of ORS 36.270, which notes mediation participation is voluntary.