

# Enrolled House Bill 2509

Sponsored by Representative CLEM (Pre-session filed.)

CHAPTER .....

AN ACT

Relating to agriculture.

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

**SECTION 1.** (1) If a person that is engaged in a farming practice, as defined in ORS 30.930, has a reasonable belief that the planting, growing or harvesting of an agricultural or horticultural commodity on nearby land might interfere with or is interfering with the farming practice, and the person responsible for the planting, growing or harvesting disputes that it might interfere with or is interfering with the farming practice, the State Department of Agriculture shall, if requested by either party to the dispute:

(a) Provide mediation program services under ORS 36.270 to assist the parties in attempting to reach a voluntary resolution of the dispute; or

(b) Refer the parties to the United States Department of Agriculture for the purpose of participating in a certified state agricultural mediation program.

(2) A person that is requested to participate in a mediation proceeding under this section may elect to have the proceeding conducted through the use of mediation program services described in subsection (1)(a) of this section or under a mediation program described in subsection (1)(b) of this section. However, if the State Department of Agriculture has referred the parties under subsection (1)(b) of this section, a person electing to instead use mediation services described in subsection (1)(a) of this section must pay any additional costs and fees resulting from that election.

(3) If the State Department of Agriculture provides mediation program services under subsection (1)(a) of this section, the total amount that the department may require of the parties as costs and fees for services provided in connection with the mediation of the dispute may not exceed \$2,500. The party requesting the mediation services is responsible for paying the costs and fees unless both parties agree to divide the costs and fees. Unless the parties agree to a shorter time, the department shall conduct at least four hours of mediation proceedings to attempt to reach resolution of the dispute.

(4) If a party is offered dispute mediation under subsection (1) of this section and is unwilling to participate in a mediation proceeding, a court may consider that unwillingness when determining whether to grant or deny a preliminary injunction.

(5) If a court action arises out of an alleged interference with the use of land for a farming practice due to the planting, growing or harvesting of an agricultural or horticultural commodity on nearby land, and the parties to the action have not previously attempted to have the dispute mediated, the parties must participate in a mediation proceeding under a program described under subsection (1) of this section beginning no later

than 270 days after the action is filed. This subsection does not require participation in a mediation proceeding if the action settles or is otherwise resolved within 270 days after filing or if all parties to the action agree to waive mediation. A court may impose sanctions against a party that is unwilling to participate for at least four hours, or for a shorter time that was agreed to by the parties, in a mediation proceeding required under this subsection.

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

**SECTION 2.** (1) A mediation described in section 1 (1) of this 2015 Act is subject to ORS 36.220.

(2) Except as provided under ORS 36.220 to 36.238, if the parties to a mediation described in section 1 of this 2015 Act have agreed in writing that all or part of the mediation communications or all or part of the terms of a mediation agreement are confidential, a cause of action exists against a party that discloses the confidential communications or terms for damages resulting from the disclosure.

(3) Section 1 of this 2015 Act does not require a party to a mediation proceeding to disclose confidential business information or to disclose other confidential information that may be adverse to the legal interests of the party.

**SECTION 3.** Section 1 of this 2015 Act does not apply to any dispute regarding the planting, growing or harvesting of a genetically engineered agricultural or horticultural commodity in a county that has in effect a valid ordinance lawfully adopted on or before the effective date of this 2015 Act that regulates the planting, growing or harvesting of genetically engineered agricultural or horticultural commodities.

**SECTION 4.** Upon request by a farmer or by the holder of a patent granted for a seed, crop or trait under the Patent Act (35 U.S.C. 101 et seq.) or under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.), the Director of Agriculture shall appoint a representative of the State Department of Agriculture to accompany the farmer, the patent holder or a crop testing service at the time a sample is taken. The department may charge the requester a fee for the services. This section does not create any new right of entry or affect any existing right of entry onto a property.

Passed by House April 23, 2015

Received by Governor:

Repassed by House June 23, 2015

.....M.,....., 2015

Approved:

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Timothy G. Sekerak, Chief Clerk of House

.....M.,....., 2015

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Tina Kotek, Speaker of House

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Kate Brown, Governor

Passed by Senate June 11, 2015

Filed in Office of Secretary of State:

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Peter Courtney, President of Senate

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Jeanne P. Atkins, Secretary of State