

B-Engrossed House Bill 2509

Ordered by the Senate June 9
Including House Amendments dated April 21 and Senate Amendments
dated June 9

Sponsored by Representative CLEM (Pre-session 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.

[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.]

Allows person to file mediation request with State Department of Agriculture if person has reasonable belief that agricultural or horticultural practice on nearby land is interfering or might interfere with farming practice. Requires department to provide mediation services or refer person to federally certified mediation program. Caps department charges for mediation services. Allows court making determination whether to grant injunctive relief to consider party unwillingness to mediate.

Requires parties to court action regarding alleged agricultural or horticultural practice interference with farming practice to attempt mediation of dispute by department or under federally certified mediation program. Creates exceptions.

Provides for confidentiality regarding mediation communications and mediated agreement terms in dispute regarding alleged agricultural or horticultural practice interference with farming practice. Creates cause of action for improper disclosure of confidential communications or agreement terms.

Exempts disputes regarding production of genetically engineered commodities in county with valid ordinance lawfully adopted on or before January 1, 2016, that regulates genetically engineered commodities.

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. (1) If a person that is engaged in a farming practice, as defined in ORS**
5 **30.930, has a reasonable belief that the planting, growing or harvesting of an agricultural or**
6 **horticultural commodity on nearby land might interfere with or is interfering with the**
7 **farming practice, and the person responsible for the planting, growing or harvesting disputes**
8 **that it might interfere with or is interfering with the farming practice, the State Department**
9 **of Agriculture shall, if requested by either party to the dispute:**

10 **(a) Provide mediation program services under ORS 36.270 to assist the parties in at-**
11 **tempting to reach a voluntary resolution of the dispute; or**

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

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

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

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

20 (5) If a court action arises out of an alleged interference with the use of land for a
21 farming practice due to the planting, growing or harvesting of an agricultural or
22 horticultural commodity on nearby land, and the parties to the action have not previously
23 attempted to have the dispute mediated, the parties must participate in a mediation pro-
24 ceeding under a program described under subsection (1) of this section beginning no later
25 than 270 days after the action is filed. This subsection does not require participation in a
26 mediation proceeding if the action settles or is otherwise resolved within 270 days after filing
27 or if all parties to the action agree to waive mediation. A court may impose sanctions against
28 a party that is unwilling to participate for at least four hours, or for a shorter time that
29 was agreed to by the parties, in a mediation proceeding required under this subsection.

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

32 **SECTION 2.** (1) A mediation described in section 1 (1) of this 2015 Act is subject to ORS
33 36.220.

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

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

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

1 ically engineered agricultural or horticultural commodities.

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

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