

From: Rep Scharf <Rep.AnnaScharf@oregonlegislature.gov>
Sent: Wednesday, February 28, 2024 3:03 PM
To: Goddard Aurora <Aurora.Goddard@oregonlegislature.gov>
Subject: LC opinion on HB4059A
Importance: High

Can you give me an LC opinion on Section 1 and what the change in language / definition actually means.

Section 1 of the bill.

SECTION 1. Section 1, chapter 370, Oregon Laws 2023, is amended to read:

Sec. 1. (1) As used in this section: (a) "Canola" means plants of the [genus] species *Brassica napus* and *Brassica rapa*.

This bill removed GENUS and defined canola as a SPECIES which is very plant specific not like GENUS. Genus has been used in this statute since 2013, and reaffirmed in the passage of bills in 2015, 2019, and 2023.

Why change that now from Genus to Species? AND What specific plant species will now be included in the 500 acre cap?

The A-Engrossed version also removed the wording in (A) & (B)

[(A)in which seeds having a high oil content are the primary economically valuable product; and] [(B) That have a high erucic acid content suitable for industrial uses or a low erucic acid content suitable for edible oils.]

What does removing this language do to the bill? This language was in the original bill in 2013 and was reaffirmed in the 2015, 2019 and 2023 bills.

ODA is saying that despite the definition change in Statue in this bill, they can redefine to the old language in rule making.

Thanks.

From: Goddard Aurora <Aurora.Goddard@oregonlegislature.gov>
Sent: Wednesday, February 28, 2024 4:11 PM
To: Rep Scharf <Rep.AnnaScharf@oregonlegislature.gov>
Subject: RE: LC opinion on HB4059A

Representative Scharf,

Under section 1 of HB 4059-A, the plant species to which the 500-acre cap apply are Brassica napus and Brassica rapa.

Section 1 (1)(a) changes the definition of "canola" to (1) go from the genus Brassica to the two species Brassica napus and Brassica rapa and (2) remove (A) and (B), which described oil-producing brassica.

At a technical level, those changes just trade one sort of limitation in current law—(A) and (B)—for a different sort of limitation—only two species out of a genus that includes more than the two species.

The bill uses the term "species" (versus "genus") because two species, Brassica napus and Brassica rapa, are specified. Previously, the term "genus" was used because a genus is a higher level of organization than a species—just the first part of a species name—and only the genus Brassica was specified.

As a substantive matter, currently, per (A) and (B), the limitations on canola in section 1 apply only to certain brassica produced for oil.

Similarly, in HB 4059-A, the limitations on canola in section 1 apply only to the two species of brassica from which most canola oil is sourced.

Of note, however, according to my quick research, the species Brassica rapa includes various brassica that are not used for oil, such as turnips and napa cabbage. It seemingly is only a subspecies, Brassica rapa oleifera, that is used for oilseed.

Thus, in the bill, the 500-acre cap apparently applies both to the primary sources of canola oil and to, e.g., turnips and napa cabbage.

The State Department of Agriculture can adopt rules to establish the same or an equivalent definition of canola. The department's definition cannot exclude or include brassica in a manner contrary to the text of the bill, as doing so would be outside the department's statutory authority.

If my quick research is correct that the species Brassica rapa includes some brassica that are not used for oil, the department could not adopt the old definition via rule, because the old definition seemingly is a somewhat narrower category than that of the two species specified in the bill.

That said, I am no expert on the technical aspects of growing brassica crops, and my time for research has been quite limited.

Please let me know if I can provide any further assistance with this issue.

Best,

Aurora Goddard
Deputy Legislative Counsel
Legislative Counsel
900 State St NE Ste S101
Salem, Oregon 97301
(503) 986-1243

****LEGAL NOTICE****

Legislative Counsel staff assist the Legislative Assembly in the development and consideration of legislative matters. Legislative Counsel staff have no authority to provide legal advice to any person not affiliated with the Legislative Assembly. For this reason, this communication should not be considered or used as legal advice for any person not affiliated with the Legislative Assembly.

E-mail communications from Legislative Counsel staff are informal communications provided for the convenience of members of the Legislative Assembly and legislative staff. Unless otherwise specified, this communication is intended to give a first impression of a legal issue and is not a formal opinion of the Office of Legislative Counsel.

This e-mail may contain information that is privileged, confidential, or otherwise exempt from disclosure under applicable law. If you are not the addressee or it appears from the context or otherwise that you have received this e-mail in error, please advise me immediately by reply e-mail, keep the contents confidential, and immediately delete the message and any attachments from your system.