

# MICROFILM DIVIDER

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ROLL NUMBER

DESCRIPTION

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2001 HOUSE AGRICULTURE

HB 1442

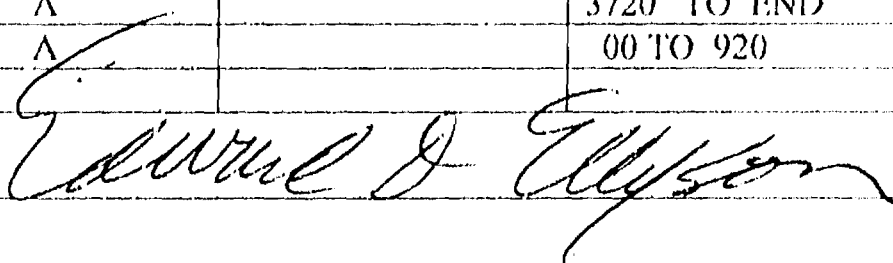
2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1442

House Agriculture Committee

Conference Committee

Hearing Date 2--8--01

Tape Number	Side A	Side B	Meter #
FIVE	A		3720 TO END
SIX	A		00 TO 920
Committee Clerk Signature 			

Minutes:

1A: 3720; CHAIRMAN NICHOLAS: We will open the hearing on HB 1442.

A bill for an act relating to the sampling of genetically modified crops.

Representative Lemieux, you were the prime sponsor of 1442.

REPRESENTATIVE LEMIEUX: Thank you Chairman Nicholas and members of the Agr. committee. I am not real sure how to follow up a presentation like that. HB 1442 is a Bill to establish some rules. When we were younger we all played games and every game had it's own rules. When we played games on the play ground when we were little the rules tried to make it fair for the little guy to play with the big guys. No one got hurt, everyone had fun and it was an enjoyable afternoon on the play ground. HB 1442 is an attempt to establish some rules by which we will all play. It is not an attempt to circumvent anyone's rights. It is just saying if we are going to play this game which we have all been committed to. Its a game called GMO

If we are going to play this game, we need to play the game fair so that everybody has a good time. No one gets hurt. HB 1442 begins by saying that if you are going to sample a field and you are the patent holder. You must follow the rules. I have some proposed amendments. We have been trying to perfect this Bill for a number of days. I think most of the people have seen the amendment and rather than talking to the Bill. It would probably be more appropriate to talk to the amendments. The amendments are basically put together so that we has members of this committee can read them. I will walk you through the bill step by step. SECTION ONE AND STARTING WITH LINE ONE: Before a person holding a patent on a genetically modified seed may enter upon the land of another for the purpose of obtaining crop samples to determine whether patent infringement has occurred, the person holding the patent must:

- A. Obtain written permission of the landowner or lessee; or
- B. Obtain an order from a district court having jurisdiction over the area in which the land is located. The land owner must give written permission.

PLEASE NOTE: REPRESENTATIVE READ THE BILL.....PLEASE SEE BILL WHICH IS ATTACHED TO THESE MINUTES. PLEASE SEE AMENDMENTS.

Basically, ladies and gentleman of the House Agr. Committee. We know that we are farming with GMO crops. We feel, I feel that the people in the state of ND, have to have some protection that lays down some guide lines of fairness and equity. That is what this bill is all about. We don't want in infringe on Monsanto rights to protect their patent. We just suggest that we play by the rules so that we can all win.

CHAIRMAN NICHOLAS; Any questions? O.K. thank you REP.LEMIEUX.

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Do the other cosponsors want to comment on this? O.K. who else would like to comment on HB 1442? We will take testimony.

ERIC ARMUNDSTAD: PRESIDENT OF NDFB. I would like to address the amendment. We certainly do support this legislation. It just make common sense. The provision for notification clause we agree with. They are property rights. You have the right to know who is out there. The independent verification of the sampling techniques and things like that are certainly very important. Along with the dispute resolution, therefore NDFB will support this legislation.

CHAIRMAN NICHOLAS: ADDITIONAL TESTIMONY.

ROGER JOHNSON: Commissioner of Agriculture. I am going to try and be quick. I support the amendment. There may be a few minor issues that need to be cleaned up with them but it make a lot of sense to me.

CHAIRMAN NICHOLAS: Thank you Roger.

MARK SITZ: ND FARMERS UNION: We would too be in favor of SB 1442. With regard to the amendment that was handed out we would be in agreement with that as well.

CHAIRMAN NICHOLAS: Thank you. Anyone else wishing to appear in support of this Bill?

TOM NELSON: REPRESENTING THE DAKOTA RESOURCES COUNCIL. We recommend a DO PASS on this Bill.

RODNEY NELSON: FARMER NEAR CASSELTON, ND Most everyone here has heard or read of the situation that I have had with Monsanto. This legislation, I can't imagine anyone being against the BIO-TECH COMPANIES that have patents would certainly be in favor of this because it take the burden of proof away from them and it sets some ground rules so that you

know if they really think that they have a problem on a farm, they would certainly be able to prove that point through this legislation. I am proud of everyone that put it together.

CHAIRMAN NICHOLAS: QUESTIONS? I will ask for further support of 1442.

O.K. ANYONE IN OPPOSITION TO 1442?

MONSANTO REPRESENTATIVE: I have to admit you have thrown me a total curve. I had a beautiful speech written up on the ups and downs of the original version of 1442. I had a chance to look at your amendments. I would be happy to sit down with you. There is a lot of common ground. I don't get involved in the legal parts nor the patent enforcement area. However that said, there are some common grounds. I can go through some of these things with you. In a form like it is right now, even with these amendments, my gut reaction it still may present some potential problems. If a grower is caught in a web in a situation when there is a patent enforcement action. There maybe rights that are already available to growers so much of this may simply be unnecessary. We would be glad to sit down with you. Some examples here. Section One -- gaining permission to enter a field. It is our practice to try to obtain permission to enter a field. To do other wise would constitute a trespass. We could not do that. It is not written in our code that we can enter a field without permission. There are some growers that when you talk about written permission. There are some growers who have said we don't want to put anything on paper. We have to respect there position on that, as well. Some of the time periods are questionable. Some of the time periods are a little questionable requiring a five day time period following the issuance of permission or court order. In allowing a five day time period also creates a opportunity for mischief. Within five days you can do a lot to alter, damage or destroy evidence that we would need to gather to demonstrate that patent

had been violated. Let me say this, I was with our guide last week who works very closely in this area. We do not randomly go out and say that we are going to check this guys farm next week. Information comes to us from a variety of mechanisms. An average cost to just look into an allegation is between 3 and 4 thousand dollars. Just to look into something where another grower told us something. Issues like a county extension service or another third party representative be present. We would welcome that. We would prefer that it not be made mandatory because again it provides an in-between time. There are a couple of sections. No. Four. Samples, we certainly agree. The grower can take a sample and do an analysis and we can do the same. The costs are born on both sides. Fine no problem. There is an issue around Subsection Five taking samples from only standing crop or representative standing plants in the field. Again the technology that is available to us we can find crop residue after the fact. It is not something that we look to do but it is available. We can find ourselves in the tail end of the growing season some one could tell that so and so has grown a crop. We think he stole the technology. He saved the seed. You might want to look into this. By the time we could actually take action, that crop could be cut and gone. If that happens then . Like a crime Again taking samples turning it around back and forth from a lab and getting the results back to a land owner; 45 days we could work with this. A little more time would be beneficial, for all sides. A very tight time frame could be very problematic. We are really concerned that you put the person that failed to comply could loose our license they claim. We would loose our protection and ability to enforce the patent based on some ultimately arbitrary time frame that are out of our control. It is the Lab. If it is backed up or they srew something we have lost

control of our interest in it. I don't know that that is right. We have issues with Section 7. In the years that we have been enforcing our patent [end of tape # 5 and going to # 6 ]

If something were to happen here if we do want to provide some in state protections. We are happy to work with you and try to develop those and make sure they work. The producer for us to protect our technology so that we can continue to bring these things forward, but at the same time it has to fall within the boundaries of Federal Law.

REPRESENTATIVE FROELICH: One question, can you quote one statute where [could not understand question]

MONSANTO: We would not enter the property without permission.

REPRESENTATIVE ONSTAD: On your patent enforcement policy, what kind of threshold do you deem lets say you go check the field, what kind of threshold do you deem that the person, lets say you have a report, and you go check the field.

MONSANTO: Again, I don't know if there is set criteria. There might very well be again I am not the guy that goes out and dose this. I would get an answer to you. What the red flags are. I will get you answers. There are a variety of mechanisms that trigger. Most of them come from a neighbor as to complaints.

REPRESENTATIVE LEMIEUX: You suggested that a farmer who may be in violation of your patent may taint, damage or destroy his crop. What would his advantage be by destroying his crop. On the flip side of the coin that something out of no fault of the operator. It is your contention then that something out of the hands of the operator could also come in and taint the crop so that it could be detected that it could be Roundup ready. I will give you a example. Do you suppose that some one could have a crop that is on the east side of the section line and on



the west side of the section line again. Neighbor has a crop with roundup ready soy beans or canola. Is it possible that the farmer that dose not have GMO SOYBEANS OR CANOLA that his crop could be tainted by the pollen drifting across his fields do we believe some residue in the soybeans that are being produced.

MONSANTO: We are not talking about number one incidental or anything other then someone has planted seed and there is a large field ahead of us or in plain view. Where we think something has taken place. A half a dozen seeds dose not trigger anything.

REPRESENTATIVE LEMIEUX: You have not told us what the percentage of roundup genes have to be present which I acknowledge you don't have that information with you but if someone can taint the field by putting some other mechanism to taint that field. Could not that field then also then be tainted? By no act of there own.

MONSANTO M. Diamond: That is not a question for me to answer. I will sit down with you and create something that works for everybody involved. We can go around and around on this, this is not our intent. Our intent here is to provide protection for the growers, protection to our technology.

REPRESENTATIVE LEMIEUX: Do you know if your company has ever in the past used profiling. For the use of going out and investigating patent interests.

M. DIAMOND: That question is not within my expertise.

CHAIRMAN NICHOLAS: Any more questions Committee Members. O.K. WE ARE GOING TO CLOSE THE HEARING ON SB 1442.

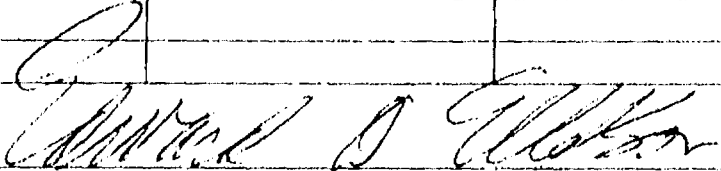
2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1442

House Agriculture Committee

Conference Committee

Hearing Date February 15, 2001

Tape Number	Side A	Side B	Meter #
2	x		1 to 1197
Committee Clerk Signature 			

Minutes:

Rep. Lemieux: The amendments you have in front of you today should be 1.07. We tried to address as many concerns as were possible. As a change to the amendments I spoke to when we heard this bill. We replaced the word landowner with the word farmer. We defined the word farmer. Section 1, part 1 for the purpose of this section, farmer means person responsible for planting a crop, managing and harvesting the crop. Part 2, section 1 for a person can enter on the land. Part 1, they can notify the ag commissioner and that's so there is public record. No. 2 is shall notify the farmer and request his written permission. Part 3, he must obtain the written permission of the farmer. Subsection D - if the farmer is not willing to give his written permission they may petition the court having jurisdiction over that portion of the state and that allows the patent holder the opportunity to get a court order. Unless there is a shorter period time than agreed to, at least five days must pass (part 3) from the time the farmer gave written permission. The farmer may accompany the patent holder. An agent of the county extension

service or any other independent agent agreed to by both parties also must accompany the person holding the patent at the time any sample is taken.

Rep. Renner: In No. 3, how come we have five days? So after the person giving permission can't collect them for five days?

Rep. Lemieux: The thought there was to afford the opportunity to get the independent parties. Someone wants to inspect a field and you say okay, but if we are going to find an independent party, it's going to take some time.

Rep. Renner: What if you are already to go?

Rep. Lemieux: Unless a shorter period of time is agreed to in writing or ordered by the district court. It awards all parties to be there to document. We are trying to leave a paper trail. So if there is a patent infringement that we protect the patent holders and the farmer. That is the whole intention of this bill. So any disputes can be settled. On section five if the patent holder believes that the crop from which samples are to be taken maybe subject to intentional damage, that person can seek a protection order from the district court. That protects the patent holder, if they feel someone would possibly taint damage or destroy the crop. Part 6 the person holding the patent may obtain no more samples than those reasonably necessary to make the determination. An equal number of samples must remain in the custody of the county extension agent or the independent agent agreed to by both parties. That is for the farmers protection. All samples must be label with date, time, and location from which they are taken. They must be signed by the farmer, the patent holder and the independent agent. The person holding the patent shall provide the containers and the cost shared equally by the patent holder and the farmer. Part 7, the person holding the patent may take crop samples from only a standing crop. We added a line here, upon showing a good cause the person holding the patent may collect samples from crop residues

