



**House
Legislative
Analysis
Section**

Olds Plaza Building, 10th Floor
Lansing, Michigan 48909
Phone: 517/373-6466

SEED CERTIFIERS: LIMIT LIABILITY

**House Bill 4630 as introduced
First Analysis (3-23-95)**

**Sponsor: Rep. Mike Green
Committee: Agriculture & Forestry**

THE APPARENT PROBLEM:

Public Act 221 of 1959 authorizes the Department of Agriculture to designate official seed certifying agencies to assist it in setting standards for certifying the variety, type, strain, or other genetic characteristics of agricultural and vegetable seeds or plant propagating materials. The department gave this responsibility to the Michigan Crop Improvement Association, a nonprofit corporation that was formed in 1904 and derives its income from assessing fees--both to farmers and growers who make up its members, but also for performing seed-certifying services for those who request it. Every state operates a similar seed certifying agency, although Michigan's is one of only a few that exists as a quasi-public agency, in that its activities are entirely paid for from fees it charges for membership and services, rather than from the state's general fund. In this way, MCIA can charge growers relatively low certification fees compared to what other states' seed certifiers charge. However, in recent years the seed industry has witnessed a rise in litigation involving disputes over the quality of certified seed. Sometimes the seed used by growers for a particular planting season is tainted from, for instance, a disease that may have affected the crop grown in the previous year from which it came. Growers who've purchased bad seed, of course, must replace it with good seed at their own expense, and some have filed lawsuits against the seller of the seed to try to recover some or all of their costs. In such cases, MCIA often is named a codefendant by the plaintiff even though it acted without negligence in certifying the seed, as it is seen as a "deep pocket" from which financial losses could more easily be recovered. To protect MCIA's role as a quasi-government agency in certifying seed at relatively low cost to the state's growers, some believe it should be granted immunity from liability unless it or its employees or agents were negligent or otherwise failed to follow proper protocol in certifying seed.

THE CONTENT OF THE BILL:

The bill would amend Public Act 221 of 1959 to provide that a person, except as specified in the bill, could not have a cause of action against a designated seed certifying agency or its agents or employees if the agency, its agents, or employees "engaged in duties permitted by [the] act" and utilized written and approved procedures and protocols established by the Department of Agriculture director.

Under the bill, however, official seed certifying agencies or their agents or employees would be liable for injuries to persons and damages to property if one or more of the following occurred:

- * An agency or its agents/employees failed to follow written procedures and protocols;
- * An agency or its agents/employees improperly interpreted laboratory test results even though written procedures and protocols had been followed;
- * The actions taken by an agency or its agents/employees were not within the scope of official duties.

The bill also would repeal a section of the act that currently requires the department director, upon recommendation of the Michigan Agricultural Experiment Station and official seed certifying agencies, to publish and make available to the public a list of varieties and hybrids of agricultural or vegetable seeds or plant propagating materials eligible for certification.

MCL 286.73

FISCAL IMPLICATIONS:

The House Fiscal Agency says the bill would not affect state or local budget expenditures. (3-22-95)

House Bill 4630 (3-23-95)

ARGUMENTS:

For:

Seed certification is currently performed by the Michigan Crop Improvement Association, a nonprofit corporation designated in 1959 by the Department of Agriculture as the agency responsible for certifying the varieties, types, strains, or other genetic characteristics of agricultural and vegetable seeds. MCIA essentially acts as a quasi-public agency because, though it performs a function statutorily assigned to the department, it does so without receiving any money from the state's general fund. Instead, it supports itself by charging growers membership and seed certification fees which are fairly low compared to what seed certifiers in other states charge. Unfortunately, when growers purchase seed that is tainted for any of a number of reasons, they sometimes will try to recover their financial losses by suing both the seller of the seed and MCIA, even if MCIA was not negligent in performing its certification duties. To prevent such frivolous lawsuits, the bill would provide MCIA immunity from liability unless it or its agents or employees had failed to follow written procedures and protocols, misinterpreted lab test results despite having followed proper procedures, or had acted in ways that were not within the scope of official duties. Without providing this protection, the relatively low-cost seed certification service that MCIA currently provides to the state's growers might eventually have to be performed by the department itself--possibly at a higher cost to growers and to state taxpayers.

For:

The bill would repeal a section of the act that requires the department to provide a list of approved varieties of seed for certification in the state. This requirement apparently was added to the act back when new seed varieties were being developed and released to the public continuously; if their qualities were superior to other seed varieties, they would be recommended for certification and use. Today, however, the explosion in the number of high-quality private seed varieties available has obviated the need for the department to continue publishing such a list.

POSITIONS:

The Department of Agriculture supports the bill. (3-22-95)

The Michigan Crop Improvement Association supports the bill. (3-22-95)

Michigan State University's Department of Crop and Soil Sciences supports the bill. (3-22-95)

The following offered supporting testimony on the bill (3-22-95)

* The Michigan Farm Bureau

* The Potato Growers of Michigan, Inc.