



Senate Fiscal Agency
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BILL



ANALYSIS

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House Bill 4630 (as reported without amendment)
 Sponsor: Representative Mike Green
 House Committee: Agriculture and Forestry
 Senate Committee: Agriculture and Forestry

Date Completed: 5-9-95

RATIONALE

Public Act 221 of 1959 authorizes the Director of the Department of Agriculture to designate official seed certifying agencies to advise the Department as to the variety, type, strain, or other genetic characteristics of agricultural and vegetable seeds and to recommend standards for these seeds or plant propagation materials to be certified and the labeling of seeds. The Department has designated the Michigan Crop Improvement Association, a nonprofit corporation organized in 1924, to serve as the official seed certification agency for the State, which includes inspecting approximately 50,000 acres of seed fields in Michigan. The association derives its income from assessing its members, including certified seed producers, fees for seed certifying tests and services. The seed industry recently has experienced an increase in litigation involving disputes over the quality of certified seed. Growers who purchased the seed, which certifiers did not know was tainted with disease, must replace it with good seed at their own expense. Consequently, some farmers have sued the seller of the seed to try to recover some of their costs. In some cases, the association has been named a codefendant, even though it evidently acted without negligence in certifying the seed. Some people believe that the association and its employees should be granted immunity from liability while carrying out their seed certification duties, unless the association or its employees were negligent or otherwise failed to follow proper procedures and protocols when certifying seed.

CONTENT

The bill would amend the seed certification Act to provide limited liability to an official seed certifying agency and its agents or employees and to specify circumstances under which it would be liable for injuries to persons and damage to property.

In addition, the bill would repeal a provision in the Act that requires the Director of the Department of Agriculture, 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 and vegetable seeds or plant propagating materials eligible for certification.

Under the bill, a person would not have a cause of action against a designated official seed certifying agency or its agent or employee if the agency, agent, or employee were engaged in duties permitted by the Act, and used written and approved procedures and protocols established by the Director.

A designated official seed certifying agency, or its agent or employee, would be liable for injuries to persons and damage to property under one or more of the following circumstances:

- The agency, agent, or employee failed to follow written procedures and protocols.
- The agency, agent, or employee improperly interpreted laboratory test results even though written procedures and protocols were followed.
- Actions taken by the agency, agent, or employee were not within the scope of the agency's official duties.

MCL 286.73

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Seed certification is a responsibility of the Michigan Crop Improvement Association that has been delegated to it by the Michigan Department of Agriculture. The association maintains laboratory facilities and trains inspectors and technicians to carry out this function. Recently, the seed industry has been involved in lawsuits over the viability of seed that had been certified. In Michigan, litigation primarily has involved potato seeds, which have been certified as to variety and level of disease. While many of these seeds appeared to be disease free, they carried bacterial ringrot which can be latent in the seed and exhibit no symptoms upon inspection. Once the seeds have been planted, however, the disease can appear. Although inspectors were not negligent in failing to detect the disease, the association has been named a codefendant in a number of lawsuits in cases in which certified seeds were found to have been tainted. Mounting a defense in these suits reportedly has cost the association more than \$100,000. Consequently, potato inspection fees have almost doubled, and the association has had to use surplus field seed funds to cover defense costs. The increased fees threaten the ability of seed growers in Michigan to compete with seed growers in other states. In order to keep the program solvent and maintain the ability of inspectors to make objective decisions, the association and its employees should be given the same immunity protections that Department inspectors would have if they were to certify seed.

Supporting Argument

The bill would repeal a provision that requires the Director to publish a list of varieties and hybrids of agricultural or vegetable seeds or plant propagating materials eligible for certification. This requirement apparently was needed when new seed varieties were continuously being developed and released to the public. If their qualities were superior to other seed varieties, they were recommended for certification and use. With today's growth in the number of high-quality private seed varieties that are available and the abundance of information on these seeds, publication of a list no longer is needed. Removal of the list of varieties eligible for certification is needed to allow for a less restrictive marketing of Michigan-developed and out-of-State-developed genetics as certified seed. Any variety that has been properly released and described should be eligible for certification in Michigan.

Legislative Analyst: L. Arasim

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: A. Rich

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.