

S. 18

This part is the House Agriculture Committee recommended amendment to the Senate Bill. Later, the House Judiciary Committee recommends further amendment.

An act relating to liability resulting from the use of genetically engineered seeds and plant parts.

*(It says Rep. Zuckerman because he is the reporter of the bill, not because he personally is making the recommendation.) Rep. Zuckerman of Burlington, for the Committee on **Agriculture**, recommends that the House propose to the Senate that the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following: *(the “striking all and inserting in lieu of just means they are completely rewriting the senate bill from scratch...it’s common procedure for an amendment to be a strike all.)**

Sec. 1. SHORT TITLE

This act shall be known and may be cited as the Farmer Protection Act.

Sec. 2. 6 V.S.A. chapter 35, subchapter 3 is added to read:

Subchapter 3. Liability Resulting from the Use of

Genetically Engineered Seeds and Plant Parts

The definitions section was not changed. However, they did eliminate the findings and purpose section because they felt it was too biased against biotech.

§ 650. DEFINITIONS

As used in this subchapter, “injury” includes:

(1) loss of any price premium that would have accrued to a farmer by contract or other marketing arrangement or that would have been otherwise reasonably available to the person through ordinary commercial channels;

(2) any reasonable additional transportation, storage, handling, or related charges or costs incurred by a farmer that occurred because of the use of genetically engineered seeds or plant parts;

(3) any judgment, charge, or penalty for which the farmer of nongenetically engineered products is liable because of breach of contract, including loss of organic certification.

This (below) is where the major changes occurred in the House Ag Committee – they attempted to change it from “strict” liability to “product” liability, but it is still for GE crops.

§ 651. LIABILITY FOR DAMAGES RESULTING FROM GENETICALLY ENGINEERED CROPS

- (a) The buyer of genetically engineered seeds or plant parts may recover damages for any injury proximately caused by the use of genetically engineered seeds or plant parts.

Section (a) above says that if you bought GE seeds and you suffer injury that you can prove was caused by the GE seeds (that’s the “proximately caused” part), then you can recover economic damages, which you would also have to prove. This is part of the Mainline Tractor decision (saying that a farmer can recover economic loss), and addresses the part of the GE seeds contract that says you can only get a new bag of seed if you have problems.

- (b) The manufacturer of genetically engineered seeds or plant parts may be liable to any person for an injury proximately caused by the use by any person of genetically engineered seeds or plant parts.

Section (b) above establishes a “cause of action” for anyone who suffers an injury that they can prove is caused (because of “proximately”) by someone’s use of GE seeds. So, it basically says if you suffer an injury because you’re contaminated, you’re allowed to try and hold the manufacturer liable, but you have to prove that your injury came from someone specifically using GE seeds. Also, there is no protection in this clause for the user of the GE seeds. It just gives the injured party permission to try and hold the manufacturer liable.

- (c) For the purposes of this section, the buyer of genetically engineered seeds or plant parts is a consumer, and genetically engineered seeds or plant parts are consumer goods.

Section (c) above says that the farmer is a consumer. This is also part of Mainline Tractor, and it is an attempt to get at the unfair relationship between the manufacturer of the GE seeds and the farmer who must agree to the Technology Use Agreement. Some lawyers argued that if the farmer is a consumer, then many of the provisions in the contract would not hold up in court (like putting the liability on the farmer), but the farmer would still have to argue these points. They would not automatically be assumed.

- (d) A farmer who is not in breach of contract for the purchase or use of genetically engineered seeds or plant parts and unknowingly comes into possession or unknowingly uses such seeds or plant parts as a result of natural reproduction, cross-pollination, or other alteration shall not be liable for any injuries, claims, losses, and expense, including attorney's fees, caused by the use of a genetically engineered seed or plant part.

Section (d) was not changed from the senate version, except to add a second "unknowingly" before "uses such seeds or plant parts" which clarifies, but does not change the original meaning. It is our best attempt to protect the contaminated farmer from lawsuits. However, it will not protect against patent infringement, as pretty much everyone agrees that we "aren't allowed" to do that. It will protect against trespass, conversion, and a few other things.

§ 652. SEED CONTRACTS GOVERNED BY VERMONT LAW

- (a) A seed contract for the purchase of seeds or plant parts in Vermont is governed by the laws of Vermont. If a seed contract purports to choose the laws of a jurisdiction other than Vermont to govern the contract, such provisions of the contract are void and unenforceable.

Section (a) above is saying that the contracts are only under Vermont law, and if they state otherwise, that part of the contract is void.

- (b) The venue for an action under this subchapter shall be in the county in which the injury is alleged to have occurred.

Section (b) above says that if there's a lawsuit, it will take place in the county where the problem occurred (ie, it will happen in Vermont).

§ 653. LIMITATION OF ACTION

An action brought pursuant to this subchapter shall be brought within three years after the cause of action accrues and not after.

This is the statute of limitations. They picked three years because it's standard for this type of issue.

Sec. 3. SEVERABILITY

If any provision of this act or its application to any person or circumstance is held invalid or in violation of the constitution or laws of the United States, the invalidity or the violation shall not affect other provisions of this act which can be given effect without the invalid provision or application, and to this end, the provisions of this act are severable.

This (above) means that if any part of the law is struck down in court, the other parts still stand.

(Committee vote: 5-3-3) – YES was Zuckerman, Botzow, M. Johnson, Copeland-Hanzas, and Orr. NO was B. Johnson, Malcolm, and Bartlett. Absent were Smith, Dunsmore, and Lawrence.

Now, from here down in the Judiciary Committee's recommendation to forget about the Agriculture Committee's amendment and rewrite the bill as follows (another "strikeall"). Rep. Jewett is the reporter.

Rep. Jewett of Ripton, for the Committee on **Judiciary**, recommends that the House propose to the Senate that the bill be amended by striking all after enacting clause and inserting in lieu thereof the following:

Sec. 1. FINDINGS; PURPOSE

The Judiciary Committee worked very hard on the findings and purpose section in an attempt to find "neutral" language that all could agree on.

- (a) Vermont's farmers and agriculture are vitally important to sustaining the economy and maintaining the traditional values of our state. Building on our long history of cooperation among farmers and protecting the viability of all types of farming are critical to keeping agriculture a healthy part of life in Vermont.

We agree with (a) above.

(b) In balancing the interests of all farmers, it is important to ensure that they retain the greatest possible flexibility as they make decisions as to how best to run their farms. They also need as much protection as possible against having liability unfairly shifted to them for the actions of others.

The second sentence in (b) above is really the key. This statement that farmers need as much protection as possible against having liability unfairly shifted to them is the crux of our issue, yet it is absolutely not addressed in this version of the bill.

- (c) Vermont law has recognized the economic and cultural importance of agriculture. Vermont has defined farmers as consumers under our Uniform Commercial Code and Consumer Fraud Act, and federal case law has allowed farmers to be compensated for economic loss caused by the wrongful action of others. Vermont courts also furnish fair forums for resolving agricultural disputes which may arise in this state. These protections would be jeopardized if anyone selling products to Vermont farmers is able to compel disputes with those farmers to be heard in other states, under another state's laws, and before non-Vermont juries.

Section (c) is their statement that they're interested in codifying Mainline Tractor, and protecting farmers by insisting cases be heard in Vermont under Vermont law. These are important points for us, and we support them.

Sec. 2. INTENT

It is the intent of the general assembly to:

(1) codify farmers' ability to recover economic losses caused by the wrongful action of others; *(ie, codify the part of Mainline Tractor that addresses the economic loss doctrine)*

(2) confirm farmers' status as consumers with all the protections that provides; *(this is also part of Mainline Tractor, and the "protections that provides" refers to the Uniform Commercial Code and other consumer protection laws.)*

(3) provide Vermont farmers with a Vermont forum and choice of law when legal disputes arise. *(these are two of the things we asked for and are part of the senate bill)*

Sec. 3. 6 V.S.A. chapter 210 is added to read:

CHAPTER 210. FARMERS AND AGRICULTURAL GOODS

LIABILITY ACTIONS

§ 4715. DAMAGES IN ACTIONS

In any action in which liability for damages against a manufacturer of goods for agricultural use has been established in this state, the damages recoverable by a prevailing party may include economic losses.

This section (above) codifies the part of Mainline Tractor that establishes that you're allowed to recover economic losses for a defective agricultural product. It is also one of the pieces of moving toward "product" liability rather than "strict" liability. It also clearly states that first you (the farmer) have to establish that the manufacturer is liable for the damages. That is a pretty big hurdle for the farmer to jump over, as the farmer would have to prove that the product is "defective" in order to establish this liability. The

senate bill circumvented this hurdle by simply saying that the manufacturer is liable for all damages caused by GE crops.

§ 4716. FARMERS ARE CONSUMERS

- (a) Vermont farmers are consumers for the purpose of actions in product liability.
- (b) Goods purchased by farmers for agricultural use are consumer goods.

Again, the “farmers are consumers” language is from Mainline Tractor and establishes the farmers’ relationship with the manufacturer and offers some limited protections if the farmer suffers because of defective products. The specific inclusion of “product liability” is to show the legislature’s clear intent to the court that they are staying in the realm of product liability rather than strict liability. Some argued in the committee that this “farmers are consumers” language also protects the farmer who did NOT purchase the GE seed and gets contaminated because “all farmers are consumers,” but this just doesn’t make sense. The farmer who does not purchase the seed will NOT have a relationship with the manufacturer and thus will not have “privity” to sue the manufacturer for the defective product.

§ 4717. CHOICE OF LAW

If a contract for agricultural goods which are used in Vermont purports to choose the laws of a jurisdiction other than Vermont to govern the contract, such provisions of the contract are void and unenforceable. Any disputes involving such contracts shall be decided using the law of Vermont.

This language (above) is saying only Vermont law can govern the contracts for all agricultural goods. This broadens the language, as our original language was only for seed contracts (not specific to GE), and may mean that we have more opposition than we ever imagined, as every contract for everything says that you can get sued wherever the headquarters of the manufacturer are (which was pointed out several times in the testimony before the committee).

§ 4718. VENUE

The venue for an action relating to goods for agricultural use in Vermont shall be the Vermont county in which one of the parties resides. If neither party resides in the state, the venue may be any county in Vermont.

This is a weird revision of the venue section of the senate bill. The House Judiciary Committee really wanted the venue to be where the farmer resides, rather than where the problem occurred, but nobody clearly stated why this was so important.

S. 18 – formerly known as the Farmer Protection Act – House Agriculture and then House Judiciary Version
Rural Vermont commentary in *Blue italics*.

§ 4719. PROVISIONS MAY NOT BE VARIED

The provisions of this chapter may not be varied or waived by agreement of the parties.

This is good language, and basically means that if the contracts say something that is contrary to this law, then the contract isn't any good, even if the farmer knowingly agreed to it.

Sec. 4. SEVERABILITY

If any provision of this act or its application to any person or circumstance is held invalid or in violation of the constitution or laws of the United States or the state of Vermont, the invalidity or the violation shall not affect other provisions of this act which can be given effect without the invalid provision or application, and to this end, the provisions of this act are severable.

Same as above.

and that after passage, the title of the bill be changed to read as follows: “AN ACT RELATING TO FARMERS AND AGRICULTURAL GOODS LIABILITY ACTIONS”

Well, they had to rename the bill, which says a lot.

(Committee vote: 9-1-1) *YES was Lippert, Grad, Kainen, Kiss, Komline, Gervais, Jewett, Marek, and Clarkson. NO was Hube. Absent was Depoy.*