

Symington: S.18 was introduced and referred to the committee on agriculture, which respectfully reports the house propose to the senate to amend the bill as printed in today's calendar. Rep. Zuckerman of Burlington speaking for the committee. The bill was subsequently referred to the committee on judiciary which respectfully reports the house propose to the senate to amend the bill as printed in today's calendar. Rep. Jewett of Ripton speaking for the judiciary committee. Please listen to the second reading of the bill.

Clerk: An Act relating to the liability resulting from the use of genetically engineered seeds and plants.

Symington: The member from Burlington

Zuckerman: Thank you, Madame Speaker. The House Agriculture Committee met a number of times and heard from numerous witnesses, from the dept of ag to farmers and other consumers throughout the state on the issue of genetically engineered seeds and plant parts. We learned a number of different things regarding legal issues around this, and it was rather complex. The house ag cmte version that was eventually voted out essentially was attempting to incorporate into VT law a court decision that happened in the federal courts called the Mainline Tractor case, which made farmers as consumers, and therefore they were protected under consumer law for damages from defective product, and that is the nuts and bolts, to be perfectly honest, of what the house ag cmte version does. It also indicated that any actions, if there are legal actions around genetic engineering, would occur in VT law, in VT courts, as opposed to in other jurisdictions. It also had a limitation of action, with regard to statute of limitation of 3 years. That's actually shorter than normal for a lot of law, but we felt that with plants and products like that, your results are there after year one, so to go more than three years out was unnecessary. And we also included a severability section that said that if any one part of the law was found to be unconstitutional, then other parts would be. Our committee voted this out on a 5-3-3 vote, and we will, I will stand up and speak after the member from the committee on judiciary, regarding our position with their substitution of amendment. Thank you.

Symington: The member from Ripton.

Jewett: Madame Speaker, to carry a little on the member from Burlington's comments, a little procedural review is in order, seeing as we spent quite a bit of time on this last year, and we've had the summer and fall since then. The senate last year did pass S. 18, and S. 18 as passed by the senate did include a strict liability provision, making the manufacturers of genetically engineered products liable without fault for damages that they might cause here in VT. It also included what have generally been called affirmative defenses. These are legal theories that the manufacturers can then rely on when a suit like this is brought to try and clear themselves of that liability. That bill went over to house agriculture, the member from Burlington's committee. That structure of the bill did not pass house agriculture, as I understand it. And the member from Burlington has pointed out the Mainline Tractor case, which they tried to codify. House agriculture did send House Judiciary S. 18, albeit in a slightly different form, and we also took up the case of Mainline Tractor. Mainline Tractor was a case that came out of the Islands. It's a federal district court case here in VT. The defendants included Nutrite Corp and Monsanto. It was a dispute over a herbicide that did not perform as advertised, was the claim.

The claim included the claims of negligence – I may not get them all here – claims of strict liability, breach of warranty, and there may have been others. There were 3 important points in Mainline that we, following up on the work of the house agriculture committee have tried to codify in our version of S. 18, which is again, a strike all. And I'm working off a reprint of the calendar here, let me get to the right point here. I'm going to skip over the findings if I may, and the intent and move to section 3. These three points: if VT farmers are harmed, they are entitled to economic losses, to recover their economic losses. There's a theory that's very strongly held here in VT drawing a line between contract claims and claims of tort, claims of negligence, strict liability. And it says that you cannot recover economic losses in tort. And this is difficult because what good does it really do the farmer, if he can get a new bag of seed when he's lost his crop, if that in fact happens? So, the Mainline Tractor case stands for, in part, the proposition that economic losses are recoverable, and we felt that to be important and worthy of placing in our green books. I believe that's in section 4715, section 3 of the bill and just under that, we've added a new chapter, section 4715 is the part that deals with economic losses.

Secondly, consumers, when they get into disputes with, because of their somewhat, well, considerably lesser bargaining power, consumers are treated more favorably when dealing with large corporations. And this is part of our UCC here in VT, that's the Uniform Commercial Code, and it's also part of our consumer fraud act. And both of those acts specifically find that in VT, farmers will be treated as consumers. And we felt that that is also in keeping with the nature of farming we have here in VT, that they should be entitled to those benefits that are provided in the law. That is generally seen in section 4716, and this is not really a great change in the law because as I said, this is already in our Consumer Fraud Act and our Uniform Commercial Code.

And then sections 4717 and 4718 can generally be read together as a statement that we felt that if VT farmers do come to a point where they are in litigation over things that occur here in VT, that those cases ought to be heard in VT courts, under VT law, and so the choice of law says the law to be used in such disputes will be VT law, and the venue, will be, in this case it says the VT county in which one of the parties resides, or if neither party resides in the state, then the venue is any county in the state of VT.

There will be an amendment I understand, that we will take up, I am told, after caucus, and I'll speak more broadly to that after we've heard that amendment. I would like to say that our vote on the S.18 strike all was 9-1-1 in committee. We did have a long list of witnesses, that included the following: Sam Burr from legislative council, Michael Duane – Asst. Atty General assigned to Agriculture, Steve Kerr – Secretary of Agriculture, Peter Langrock – who was the attorney in the Mainline Tractor case, Ed Miller – a lobbyist, Margaret Laggis – lobbyist, Art Menut – VT Farm Bureau, John Cleary – organic certification, the following Representatives - Bill Johnson, John Malcolm, Dexter Randall, Harvey Smith, David Zuckerman, Norm McAllister, Bill Paine – with, is he with the VT Farm Bureau?, Amy Shollenberger – Rural Vermont, Paul Ferber – VT Law School, Joe Mendelson – Center for Food Safety, Jack Lazor – a farmer, Lyle Edwards – a farmer, Ken van Hanzinga – a farmer, Judy Clark – farmer, Jen Ingersoll – farmer, Joris de Boer – farmer, Amy Shollenberger again,

Ben Davis – VT Public Interest Research Group. Thank you very much. We would appreciate your support.

Symington: The member from Burlington.

Zuckerman: The House Agriculture Cmte met and agreed to the substitution of the judiciary version for the agriculture version on an 11-0 vote.

Symington: Members, it is my understanding that leadership has requested that we break for caucuses on this. Again, the democrats will caucus in room 11, the republicans in room 10, progressives in Ethan Allen room. It is my request that we back by five after 2. No, I'm not doing my math right – 2:30. So, the house will stand in recess until 2:30, but I would ask that people be expeditious in getting to caucus so that we can progress with this debate.

[break]

Symington: [a bit cut off]...genetically engineered seeds and plants. The member from Ripton.

Jewett: Madame Speaker, at this time, I'd move that the house judiciary version of S. 18 be substituted for the house agriculture version of S. 18.

Symington: The member from Ripton moves that the substitute the amendment proposed by the committee on judiciary in place of the amendment proposed by the committee on agriculture. The member from Burlington.

Zuckerman: Madame Speaker, as I indicated before the caucus, in relation to this motion, the agriculture committee voted 11-0 to approve the substitution of the judiciary committee amendment for the agriculture committee amendment.

Symington: The question is shall the House substitute for the committee on agriculture's report, the amendment recommended by the committee on the judiciary. Are you ready for the question? If so, all those in favor please indicate by saying Aye.

[ayes]

All those opposed, Nay.

[silence]

The Ayes appear to have it. They ayes do have it, and you have substituted the amendment as recommended by the committee on judiciary. So, the question is shall the [pause] the member from East Montpelier.

Klein: Thank you Madame Speaker. I'd like to, I guess, amend the judiciary cmte's strike all with another, with the Randall amendment, which I believe has been passed out on every member's desk.

Symington: The member from East Montpelier moves to substitute for the amendment offered by the committee on judiciary, an amendment that appears on an 8 ½ x 11 sheet that has been distributed on members' desk. As I understand, there is a version of this, an earlier version, that's in the calendar, we are using the version that is printed on an 8 ½ x 11 sheet of paper. The lead name on that amendment, as it appears, is a member from Troy, Representative Randall. As many of you know, Representative Randall is not able to be here today, but it is that amendment that we are working with here. The member from East Montpelier.

Klein: Thank you, Madame Speaker. It is very unfortunate that Representative Randall is not here because this amendment is truly the embodiment of his work. As many of you know, Representative Randall is a lifelong farmer, and has been intimately involved with these issues. Many of you may not know that I have not been a lifelong farmer, but I will do my best to share his thoughts. Before I get into the amendment itself, I want to tell you what the amendment is not. This amendment is not about whether GMO – genetically engineered – seeds should be used or should not be used. This amendment is not about whether genetically engineered seeds are a good thing or a bad thing. This amendment is not about whether genetically engineered seeds are safe or unsafe. What this amendment is about, is equal and fair access to our judiciary process, where an injured party in this state can more easily get relief from that injury. This is a matter of public policy. Farmers need to be on a level playing field with corporations who sell their products in this state. When economic damage occurs, we should allow an average Vter, a normal, everyday Vter the ability to have equal footing in court. That is what this amendment does.

I'm going to go through the amendment section by section. You have the amendment in front of you. I will not read the particulars of the amendment, but I will cite the section and tell you what it says. Start with section 651 – liability for damages resulting from genetically engineered crops. This section creates a clear path to the manufacturer who owns the patent the genetically engineered seed. It takes the liability of contamination from the farmer – from the GMO farmer, and puts the burden to the manufacturer. It creates a way for any farmer that has had damages incurred to recover those damages fully. But not any punitive damages. This is just about economic recovery. The farmer with damages will have to prove that those damages were a result of contamination from genetically engineered crops in order to recover the damages.

I'm going to take you back for a second to section 650, under definitions. I think this is important to read the definition of what injury is. 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 ordinary commercial channels. Any reasonable additional transportation, storage, handling or related charges or costs incurred by the contaminated farmer that would not have been incurred in the absence of crop contamination. Any judgment, charge, or penalty for which the farmer of non-genetically engineered products is liable because of a breach of contract, including loss of organic certification. Injury is defined as economic, financial loss. This bill is about making sure that the farmers can recover their economic damages.

Section 651 again. (b). This ensures that the liability goes directly back to the manufacturer, and away from the farmer, or anyone else who has used genetically modified products. It invalidates the case where any farmer might have signed a contract accepting that liability.

(c). This is the part where any farmer who unwittingly happens to use a GMO seed is relieved of any liability for having used that product and created any kind of a problem around it. In other words, it affirms the liability back to the manufacturer. This is to cover the farmer who unwillingly - unwittingly - has had crops contaminated, so the manufacturer cannot come back with any recourse. It's as close as we can come to protecting farmers against patent infringement.

Section 652. Choice of law means that this case has to be heard under Vermont law if there are any disputes over contracts.

Section 653. Venue. This section means that any problems around genetically engineered crops that the case shall be heard in Vermont, no matter where the plaintiff may reside. As long as the problem occurs in Vermont, it should be heard in VT courts. That is not the case today. This would ensure that in case of any problems with seed contracts that did arise, the farmer would not have to travel somewhere else, as today they might have to travel to St. Louis, and that they would be able to have their case heard right here in VT.

Section 654. Provisions may not be varied. Under this section, it clearly states that farmers will be protected, even if they have signed a contract, it will still put the burden of truth on the manufacturer.

Section 655. An action brought pursuant to this chapter shall be brought within 3 years after the cause of action accrues and not after. This was a section that the Senate Judiciary Committee put in, and they felt that the three years was a reasonable amount of time, and we believe that it is a reasonable limitation for anyone to find the need to recover those damages.

Section 4. Severability. This means that if any part of this law is struck down, that the rest of the law will be allowed to stand.

We ask your support on this amendment because this is about fairness. A farmer who uses a GMO seed does not own that product. In fact, they are licensed to use it. It comes with a complete set of instructions on how to plant it, where to plant it, when to plant it. But it also comes with a disclaimer that if anything results from the use of this product that causes damage to someone else, the farmer is held responsible, not the manufacturer, and that's not right. I ask for your support for this amendment.

Symington: The question is shall the House substitute for the amendment proposed by the committee on judiciary, the amendment offered by the member from East Montpelier. The member from Ripton.

Jewett: House judiciary did hear from the member from East Montpelier during the lunch hour, and we voted on a vote of 8-3 to consider this as an unfriendly amendment to our strike all of S. 18.

Symington: The member from Burlington.

Zuckerman: Madame Speaker, the house agriculture committee also met, and being consistent with our divided committee on this bill, we voted 7 to 4 in opposition to this amendment.

Symington: The question is shall the House substitute for the amendment proposed by the committee on judiciary, the amendment offered by the member from East Montpelier. Are you ready for the question? The member from Berlin.

Green: Madame Speaker, as a new member of the agriculture committee, this issue is a complex one for me, but it is now resolved in my mind on the basis of two questions. Is it reasonable to expect that a seed manufacturer should have anticipated that drift would occur –spore drift would occur – from one field to another. And my answer to that is an obvious yes. Is it reasonable that the seed manufacturer should have anticipated that because of that drift, that organic farmers downwind might suffer an economic loss, and my answer to that question is also yes. I favor the Randall amendment.

Symington: Are you ready for the question? [pause] If so, all those in favor. Member from Ripton.

Jewett: Madame Speaker, I spoke briefly before we went to caucus. In my opinion, this, there are two important aspects to this bill. One is judicial, and the other is agricultural. And if I may, though I am a member of the judiciary, I'd like to reflect a little bit on the agricultural aspect of the bill because my district does include quite a bit of agricultural territory.

This is a time of great opportunity for the agriculture here in VT. You have appointed me to the milk pricing committee, and I've been doing my homework in there. VT is already acknowledged as the milk shed of New England, but with our agricultural land base, with our hardworking farmers, with our proximity to population centers, we can become New England's market basket as well. But there is work to be done in order to turn this opportunity into reality. This legislature, our agency, our farmers, and our trade groups must do more to promote the great variety of agricultural opportunities that are available right now. VT is a dairy state and will remain one, but VT agriculture is far bigger than that.

VT agriculture includes in my district, the Knott Brothers farm, the Goodrich farm, both of Salisbury. John Roberts, and several farms in Cornwall, all of them large dairies selling commodity milk. And I go around to all of the folks who are here today, the advocates, and I check in with them, and they're all acknowledged as good stewards of the land. VT agriculture also includes people like Annie Claghorn and Caitlin Fox, who live in Leicester and milk 30 Jerseys, and they receive \$29/cwt, and they only cultivate 90 acres, and they support themselves on agriculture. It includes Blue Ledge Farm and Twig Farm, of Leicester and Cornwall who are milking goats and producing and selling organic cheeses. It includes Sunrise

Orchards in Cornwall, a large producer of apples, and I'm telling you if you've tasted one of their apples, out of the controlled climate in March, it virtually melts the ice. February. It's as good as it was in September or October. It includes Golden Russett Farm just out of my district in Shoreham, where they grow organic vegetables, and Maple Meadow Farm in Salisbury, where they have 60,000 laying hens. It includes my neighbors Nola Kevra, in Ripton, who grows salad greens year round and the Allens who grow organic tomatoes. It includes Monument Farms in Webridge – one of three remaining milk producers. When it comes to promoting the VT brand, helping to open new markets, and assisting farmers in learning new skills, I know we can do more.

And I know that as much as there is to do, we need to be careful not to pit VT farmers against each other. I'm optimistic that we can work at avoiding the battle lines that grow up around genetic engineering, and make no mistake, there are some serious battle lines. Farmers who use this technology feel that it is a very important tool for them, that it helps them to remain economically viable, and that in fact they can reduce their pesticide use in certain cases. They are, I don't think it's overstated to say that they're appalled that this legislature would label that, their practices as being dangerous. Farmers who don't use this technology, their neighbors, are equally as concerned, that their neighbors' use of this technology will impact their operation. And both views are heartfelt. But my concern is that we will not make broad progress in promoting the variety of agriculture that is available if we allow those battle lines to arise.

With that, the house judiciary, I reiterate and propose this to you, a version of S. 18 that does not include strict liability. This is not to say that it is in all aspects different from what the member from East Montpelier proposed. In fact, there are many similarities. Both versions stand for the proposition that if and when VT farmers come to legal action, that that action, those actions should be heard in a VT court house, to a VT judge, a VT jury, and under VT law.

Both provisions contain the ability to collect for economic losses, so that if and when damaged, a farmer does not just get a new bag of seed, but is compensated for the loss of his or her crop. I've gone over the specific aspects of the version that house judiciary passed in my earlier comments. The only other one is to reiterate what is elsewhere in VT law that VT farmers are consumers and should be treated as such. With that, I would ask your support and will be voting no on the amendment, and would like your support for house judiciary's version of S. 18. Thank you.

Symington: Are you ready for the question? If so. Member from Highgate.

[mumbling]

Symington: The member from Highgate requests that when the vote is taken it shall be by roll. Is the member sustained? The member is sustained, and when the vote is taken it shall be by roll. The question is shall. Member from East Montpelier.

Klein: I want to reiterate that this amendment makes no value judgment on the use of genetically engineered seeds. I appreciate the remarks of the member from Ripton, but this has nothing.

Nothing in this amendment is saying that these seeds are safe, unsafe, good or bad, should or should not be used. And, in fact, if there is no problem with these seeds, as we all hope that there is no problem, well then, we may never have to use this statute if this amendment passes, and there is no harm in having this statute on the books. No harm. I ask for your support on this amendment.

Symington: The question is shall the amendment as proposed by the member from Troy and the member from East Montpelier substitute for the amendment proposed by the committee on judiciary. Are you ready for the question? If so, the clerk shall commence to call the roll.

[first name called, break]

Symington: Will the house please come to order. Members kindly take their seats.

[talking]

Symington: I'd like to remind members that we're in the middle of a roll call vote. All conversation and passing of notes should cease. I'd also like to remind you that at this point all electronic devices and laptops should be closed and off. Please stay in your seats until the results of the vote are announced.

The question is shall the amendment offered by the member from East Montpelier, which has been distributed on the desks on which the lead name is the member from Troy, shall that amendment be substituted for the amendment proposed by the committee on judiciary. The clerk shall continue to call the roll.

[Roll call vote can be found here:

<http://www.leg.state.vt.us/database/status/rcdetail.cfm?Session=2006&RollCallID=3657>]

Symington: For the purposes of explanation, the member from Georgia.

Branagan: [a bit cut off] ...An opportunity for both conventional farmers and organic farmers to exist in Vt. Strict liability is not the proper legal term for use in this matter. Any farmer suffering economic damage from any source already has adequate avenues for recovering loss.

Symington: The member from Moretown.

Grad: My no vote reflects my respect for the committee process, and role as vice chair. My committee passed a bill, that while it may not go far enough for some, it does provide new protections and access for farmers, including allowing for recovery of economic damages and change of venue, thus strengthening current law. The judiciary bill paves the way for the conversation of GMOs to continue in the conference committee. My no vote is not against the need for stringent protections against GMOs, but in favor of the committee process.

Symington: The member from Newport City.

Kilmartin: I've looked beyond the battle lines. I vote yes to allocate responsibility for injury and damages where it belongs, on the back of the corporations owning the patents, the technology, the genes, and who reap the profits from their technology. The Uniform Commercial Code, the Consumer Fraud Act, and the Judiciary Committee's amendment are inadequate for the protection needed by all VT farmers, especially the VT farmers using GMO seeds. For those who can prove both injury and economic damages, their damages should be borne by the manufacturers, not the already overly burdened VT farmer.

LaVoie: Madame Speaker?

Symington: The member from Swanton.

LaVoie: May I explain my vote?

Symington: You may.

LaVoie: There are bound to be many more issues that confront agriculture in this state. We will need to have many more difficult conversations. However, if the basis upon which these conversations exist continues to pit traditional against organic farmer, large farm against small farm, dairy against crop, then agriculture in VT will cease to exist. We will lose the basis upon which this great state was formed.

Symington: Please listen to the results of your vote. Those voting yes, 68. Those voting no, 79, and you have failed to amend to substitute the amendment offered by the member from East Montpelier for the amendment offered by the committee on judiciary.