

Report of Committee of Conference

S.18

TO THE SENATE AND HOUSE OF REPRESENTATIVES:

The Committee of Conference, to which were referred the disagreeing votes of the two Houses upon Senate Bill, entitled:

S.18. AN ACT RELATING TO LIABILITY RESULTING FROM THE USE OF GENETICALLY ENGINEERED SEEDS AND PLANT PARTS.

Respectfully report that they have met and considered the same and recommend that the House recede from its proposals of amendment and that the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. FINDINGS; PURPOSE

(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.

(b) In assessing 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 protection from liability that might otherwise be unfairly imposed for injuries caused by the actions of others.

(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 were able to compel disputes with those farmers to be heard in other states, under another state's laws, and before non-Vermont juries.

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;
- (2) confirm farmers' status as consumers with all the protections that statuts provides;
- (3) provide Vermont farmers with a Vermont forum and choice of law when legal disputes arise.
- (4) provide remedies enhancing the ability of those who wish to be free of genetically engineered seeds and plant parts to achieve that goal and to define the rights and duties of manufacturers and distributors of genetically

engineered seeds and plant parts, thereby advancing the likelihood that those who wish to use these products will have the opportunity to do so.

Sec. 3. 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

§ 650. DEFINITIONS

As used in this subchapter:

(1) “Genetically engineered crop” means a crop grown from genetically engineered seed as defined in subdivision 641(9) of this title or genetically engineered plant part as defined in subdivision 641(10).

(2) “Manufacturer” means a person producing and commercializing genetically engineered seeds or plant parts. Such production and commercialization does not constitute an agricultural activity for the purposes of 12 V.S.A. chapter 195.

§ 651. LIABILITY FOR DAMAGES RESULTING FROM GENETICALLY  
ENGINEERED CROPS

(a)(1) **Unreasonableness.** The release by a manufacturer, directly or through its licensees or agents, of a genetically engineered seed (GES) or plant part (GEPP) that causes the unintended presence of such seed or plant part within the lands owned or occupied by a person with whom the manufacturer

has not entered a contract of sale, use, or license shall constitute an unreasonable interference with the use and enjoyment of such lands.

(2) **Substantiality.** A release that causes the unintended presence of GES or GEPP shall constitute substantial interference with the use and enjoyment of such lands if damages in any one calendar year from such unintended presence exceed \$3,500.00. after mitigation of damages.

(3) **Private Nuisance.** A release that meets the criteria of subdivisions 1 and 2 of this subsection shall constitute a private nuisance, and the manufacturer shall be liable for any damages resulting from the private nuisance.

(b) **Defenses Preserved.** Notwithstanding other provisions of this section, defenses at law or equity available in a private nuisance action apply, except it shall not be a defense to an action based on the liability arising in subsection (a) of this section that genetically engineered crops are in common or general use in the geographic region in which the lands on which the nuisance occurs are located, nor shall the person owning or occupying such lands have a duty to establish buffer zones or otherwise initiate measures to specifically protect against the potential release of GES or GEPP onto such property.

(c) A person who is not in breach of contract regarding the purchase or use of GES or GEPP and unknowingly comes into possession or uses such seeds or plant parts as a result of natural reproduction, cross-pollination, or other

contamination shall not be liable for any damages, attorney fees, or costs caused by the possession or use of GES or GEPP.

(d) No person shall be liable to a manufacturer because of the effects on the property or properties of others of GES or GEPP sold, licensed, leased, or given to the person by the manufacturer or its agent, unless the finder of fact determines that the person's conduct was willful and premeditated and undertaken with the specific purpose of harming the property or properties of others, and that the effects on such other property or properties resulted from this conduct. Such intent may not be inferred solely from proof that the person ignored or failed to apply directions or instructions received from or failed to observe conditions imposed by the manufacturer concerning the use of GES or GEPP.

(e) A person in an action against a manufacturer under this section may recover compensatory damages, reasonable attorney's fees, and other litigation expenses and costs.

(f) The liability created by this section may not be waived or otherwise avoided by contract or other means other than insurance.

(g) A cause of action under this subchapter shall be in addition to and not in lieu of existing actions at law and equity; provided, however, that there shall be only one recovery of damages except as limited by subsection (a) of this section.

Sec. 4. 6 V.S.A. chapter 210 is added to read:

CHAPTER 210. FARMERS AND AGRICULTURAL GOODS

LIABILITY ACTIONS

§ 4715. DAMAGES IN ACTIONS

Except as limited by subsection 651(a) of this title, 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, including, without limiting the generality of the foregoing:

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

(2) any reasonable additional transportation, storage, handling, or related charges or costs; and

(3) any judgment, charge, or penalty for which the prevailing party is liable because of breach of contract, including loss of organic certification.

§ 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.

§ 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.

§ 4718. FORUM AND VENUE

(a) The forum for an action relating to agricultural goods in Vermont shall be the courts of the state of Vermont.

(b) The venue for an action relating to agricultural goods 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.

§ 4719. PROVISIONS MAY NOT BE VARIED

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

Sec. 5. 6 V.S.A. § 644(a)(4) is amended to read:

(4) For all seed containing genetically engineered material, the manufacturer or processor shall cause the label or labeling to state that the seed contains genetically engineered material and to specify the identity and relevant traits or characteristics of such seed, plus any requirements for their safe handling, storage, transport, and use, the contact point for further

information and, as appropriate, the name and address of the manufacturer, distributor, or supplier of such seed.

Sec. 6. 6 V.S.A. § 644a is added to read:

The manufacturer of genetically engineered seeds and plant parts shall provide the purchaser entering into a contract with the manufacturer for the purpose of growing the genetically engineered seed (GES) or plant part (GEPP) with a written detailed description of the best practices to follow in order to prevent a release that may cause the unintended presence of the GES or GEPP within the lands owned or occupied by a person with whom the manufacturer has not entered a contract of sale, use, or license. The manufacturer shall file the description with the secretary, and the description shall be a public document as defined in chapter 5 of Title 1.

Sec. 5. 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.

COMMITTEE ON THE PART OF  
THE SENATE

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SEN. JOHN CAMPBELL

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SEN. VINCENT ILLUZZI

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SEN. SARA KITTELL

COMMITTEE ON THE PART OF  
THE HOUSE

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REP. WILLEM JEWETT

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REP. AVIS GERVAIS

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REP. MAXINE GRAD