

Office of the Vermont Secretary of State
Vermont State Archives
Veto Message: Governor Douglas

2006 (S.18) An act relating to liability resulting from the use of
genetically engineered seeds and plant parts.

Text of Communication from Governor

The text of the communication from His Excellency, the Governor, whereby he vetoed and returned unsigned **Senate Bill No. 18** to the Senate is as follows:

“May 15, 2006

David Gibson, Secretary

Vermont State Senate

State House

Montpelier, Vermont 05602

Dear Secretary Gibson:

I am returning S.18, *An Act Relating to Liability Resulting From the Use of Genetically Engineered Seeds and Plant Parts*, without my signature because of my objections described herein.

I respect how passionate the arguments are around the issue of genetically engineered crops and the work of the Legislature in attempting a compromise. Rather than find a middle ground between the competing interests, S.18 may promote litigation between neighboring Vermonters and may saddle seed manufacturers and local distributors with greater business risk. If the history of commerce is any guide, those risks will be passed on to our farmers in the form of higher prices or restricted access to genetically engineered seeds. I cannot endorse such an outcome by signing S.18.

S.18 in its final form is particularly regrettable. The House-passed bill, predicated upon an actual Vermont court case involving a Vermont farmer and an out-of-state manufacturer of an agricultural input, was clearly a better path and one that I could have supported. The ruling by U.S. District Court Judge William Sessions in Mainline Tractor & Equipment Company, Inc., v. Nutrite Corporation, 937 F. Supp. 1095 (D. Vt. 1996) declares Vermont farmers to be consumers – an enviable status in a business contract dispute – and allows Vermont farmers to seek to recover “future economic losses” on any of the many products that they purchase for their operations. I speak in the present tense because the court’s ruling still applies, and therefore still protects, Vermont farmers in any suit filed in federal court.

The House version would have settled unequivocally that the Mainline Tractor decision provides the same protection in any suit filed in state court. Had the conference committee recommended that option to the

General Assembly, we could have struck a true balance between the interests of conventional farmers and the interests of those opposed to the technology at issue. I would likely be signing a bill that would have protected the interests of all farmers, rather than rejecting one which seems intent on stigmatizing an emerging and promising technology, threatening to undermine our recently strengthened Right to Farm law, and encouraging expensive lawsuits against our farmers and those who sell them their seeds.

This disapproval should not be misinterpreted as a judgment of the worth and value of Vermont's organic farms and markets. I am proud of the nearly 400 certified organic farms in Vermont. Ten percent of Vermont's dairies and 36,000 acres of hay and pasture, as well as a high percentage of Vermont's vegetables, are now farmed or grown organically. Clearly, this form of production has worth and value to all who support a vibrant agriculture. As Governor, as a Vermonter, I want our organic farms to thrive and multiply.

I am equally proud of our conventional farmers who have adopted the use of genetically engineered seeds in order to increase their profitability and to further the environmental sustainability of their farms. These seeds improve crop yields and thereby reduce costs. They replace pesticides and thereby remove toxins from our environment. They allow less tillage during planting and thereby minimize soil erosion and the transport of phosphorous to our lakes and rivers. Less tillage also means a farmer has lower energy costs for diesel and gasoline.

Nearly all of Vermont's soybean acres and 29% of Vermont's corn acres were planted to some variety of genetically engineered seed last year. Our farmers have clearly demonstrated their need for these more expensive hybrids. Although the proponents of S.18 argue that it would not get in the way of farmers' choices, S.18 will, at a minimum, increase the business risk for manufacturers and thereby increase costs for Vermont's seed distributors and farmers.

I understand the arguments of those who claim that genetically engineered crops pose an economic risk to those who do not want to use them. The experience of organic farmers in the marketplace, however, does not support the fearful hypotheses of those who would restrict the use of these seeds. The public testimony before the General Assembly indicated that no organic farm has ever lost its U.S.D.A. certification, or its organic market, anywhere in the nation, because its crops were found to contain genetically altered pollen. The proponents have cited no actual case of physical or economic damage, and to sign this bill would ratify a claim that is, I believe, without substance.

The proponents of S.18 further claim that our conventional farmers need the protection of S.18 because the contracts that they sign when they purchase these seeds "force" them to accept "all of the liability for damages" and to indemnify the manufacturers of the seeds for any economic judgment. A review of a standard seed contract reveals no such "indemnification" language. These contracts are substantially similar to standard contracts for other agricultural products used by farmers. To sign into law a bill founded on a faulty legal premise and that might well encourage the very legal actions against which the bill pretends to protect farmers, makes no sense.

S.18 decrees that the mere presence of genetically engineered pollen on a neighbor's property shall constitute "substantial and unreasonable interference with the use and enjoyment" of that property if damages exceed \$3,500. Although there is no credible scientific evidence to suggest that genetically engineered pollen is any more or less dangerous than pollen that is genetically modified through traditional hybridization, S.18 creates a novel standard for litigation akin to a "strict nuisance liability." In this case, the pollen has merely to drift onto a neighbor's property and cause some alleged damage to that neighbor's "use and enjoyment" of that property. Even though the bill attempts to create a barrier to frivolous lawsuits, our legal history suggests that no such barrier will prove to be an impediment for the determined.

Ironically, S.18 does not create a similar standard of strict nuisance liability for any of the myriad other arguably hazardous compounds, such as insecticides and herbicides, which we have, by law and custom, decided to allow in our society. The standard of “strict liability” has long been reserved for compounds or acts that are truly and inherently dangerous. The scientific and economic evidence regarding the use of genetically engineered crops is to the contrary. Despite this evidence, S.18 clearly implies that genetically engineered seeds pose a danger and applies this special standard inappropriately.

No one in Vermont wants our farmers to be the subject of litigation. Curiously, S.18 does not do the one thing that its proponents proclaim it will do--protect farmers from mischievous or predatory lawsuits. S.18 targets the manufacturers of genetically engineered seeds by providing that “no person shall be liable to a manufacturer” because of the effect that genetically modified seeds, used properly, may have on the property of another. There is nothing in S.18 that explicitly protects Vermont farmers or Vermont seed distributors from being sued by a neighboring farm, or anyone else who may claim injury. Nowhere in the bill is there a bar to legal action against a farmer who uses GE seeds, or protection from liability should a suit be filed. Unfortunately, what S.18 has done, and would continue to do if enacted, is needlessly divide our farming community.

Genetically engineered crops and organically produced crops are both here to stay. We need to work to find ways for both production practices to thrive, rather than continue to battle over the assignment of liability for a “harm” that is, as yet, both scientifically and economically unproven.

There is much in S.18 that I believe would be a good addition to Vermont law, specifically those provisions that were the substance of the House-passed bill. I support the purpose and intent of S.18 to promote the fair treatment for farmers in legal controversies, to confirm that farmers are consumers for the purpose of economic legal disputes, and to provide that Vermont law and Vermont courts should be used to govern lawsuits involving Vermont farmers.

I also support the provisions that require that all disputes under contracts for agricultural goods be decided using Vermont law, in Vermont courts and in the county where one of the parties lives and that the protections of the bill cannot be waived by a contract. These provisions can help Vermont farmers. I do not, however, support singling out one farming practice – the use of genetically engineered seeds and plant parts by Vermont farmers – and application of a special legal standard to that practice. It is, in fact, this attempt that I find so troubling, and that inspires my disapproval.

Vermont agriculture, while changing, is still largely a dairy agriculture. The American dairy industry is famously dynamic and intensely competitive. Fortunately, our dairy farmers are very good at what they do, and have a strong competitive position, whether they milk 40 or 400 cows, whether they farm conventionally or organically, whether they ship milk raw or make a fine cheese. As a state, we do more than most to help our farmers compete with their peers. Since states have little power to influence the price that farmers receive for their milk, Vermont focuses on helping our farmers reduce their costs of production. We have, for instance, reduced their property taxes substantially through an aggressive “current use” program, and reduced their costs of improving water quality through my aggressive “Clean and Clear” program.

Our farmers are affected more by macroeconomic factors than by any state program. Any action that puts them at a competitive disadvantage, vis-à-vis their peers, contradicts our efforts to help them sustain their farms and Vermont’s farming tradition. Genetically engineered seeds have become an important agronomic and economic tool for many of our farmers. So long as the scientific community endorses their safety and the several national governments regulate their use, we should do nothing that would hinder a farmer’s choice to use this tool.

We should not, of course, promote any technology that is known to be harmful to human health or the environment. As they should be, genetically engineered seeds are subjected to exceptional scientific scrutiny during development and equally exceptional government regulation prior to release. Scientific communities in the United States, Canada and Europe have investigated claims that genetically engineered pollen is dangerous to human health or the environment, and have concluded that genetically engineered hybrids pose no more risk, on either count, than do hybrids that have been genetically modified through traditional means.

The American Dietetic Association (ADA) recently renewed its endorsement of genetically engineered foods. In the February issue of the *Journal of the American Dietetic Association*, it stated its position “that agricultural and food biotechnology techniques can enhance the quality, safety, nutritional value, and variety of food available for human consumption and increase the efficiency of food production, food processing, food distribution, and environmental and waste management.”

Vermont farmers work hard, and generally ask little in return but the opportunity to make their own decisions, according to the law and their own consciences. The overwhelming preponderance of independent scientific inquiry finds that genetically engineered crops are a benefit to humans and the environment. The experience, to date, of those who use, and those who choose not to use, these crops has shown no adverse economic consequences from pollen drift. If there is no documented human or environmental danger to the use of genetically engineered seeds, no documented economic losses by those who farm without them, and if there is competent regulation of the companies that produce them, our State should not stigmatize this technology by adopting S.18 that could simply make it tougher for farmers to farm.

In sum, I believe that this bill will do nothing to actually promote the success of organic agriculture in Vermont, but will signal to the world that Vermont cares little about scientific opinion, legal precedent, and its conventional farmers’ competitive position.

I believe that Vermont will forever be a diverse agricultural state, and is all the better for that diversity. To remain so, however, we must continue to allow our farmers to adopt new practices and technologies, whether they be organic methods or genetically engineered seeds. Years of successful experience by the seed industry have taught us that identity-preserved plants of many kinds – whether they yield certified seeds or organic foods – can indeed be produced in the same neighborhood. This requires a sense of shared responsibility amongst farmers.

On this matter, Vermont now has a choice before it, one that is entirely appropriate to the season. After several years of futile skirmishing, we must now move beyond this campaign and greet the prospects of a new crop season in Vermont with common sense and tolerance, just as farmers themselves have for countless generations. We can choose to continue this battle over a technology, or we can choose to sit down at the table, as we did early in my administration, and find a way to co-exist. I choose the latter.

Sincerely,

/s/ James H. Douglas
James H. Douglas
Governor

JHD/dsy”

No vote to override the Governor's Veto

The Senate and House met briefly on June 1, 2006. Aware that an override was not possible, the general assembly cast no vote and let the bill die.

Sources: Journal of the Senate, May 10, 2006.