S T A T E O F N E W Y O R K

1559

2011-2012 Regular Sessions

I N A S S E M B L Y

January 10, 2011

Introduced by M. of A. ORTIZ, COOK -- Multi-Sponsored by -- M. of A. HOOPER, McENENY, ROBINSON -- read once and referred to the Committee on Agriculture

AN ACT to amend the agriculture and markets law, in relation to liability for crop contamination by genetically engineered material

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The agriculture and markets law is amended by adding a new article 9-B to read as follows:

ARTICLE 9-B
LIABILITY FOR CROP
CONTAMINATION BY
GENETICALLY ENGINEERED MATERIAL

SECTION 142-AAA. LIABILITY FOR CROP CONTAMINATION BY GENETICALLY ENGINEERED MATERIAL.
142-BBB. SEED CONTRACTS.

S 142-AAA. LIABILITY FOR CROP CONTAMINATION BY GENETICALLY ENGINEERED MATERIAL. 1. FOR PURPOSES OF THIS ARTICLE:

(A) "GENETICALLY ENGINEERED" MEANS ALTERED BY HUMAN MANIPULATION AT THE MOLECULAR OR CELLULAR LEVEL BY PROCESSES, INCLUDING RECOMBINANT DNA AND RNA TECHNIQUES, CELL FUSION, MICROENCAPSULATION, MACROENCAPSULATION, GENE DELETION AND DOUBLING, INTRODUCTION OF FOREIGN GENES, AND GENE REPOSITIONING, WHICH ARE NOT POSSIBLE UNDER NATURAL CONDITIONS. "GENETICALLY ENGINEERED" DOES NOT INCLUDE PRODUCTS ALTERED EXCLUSIVELY BY BREEDING, CONJUGATION, FERMENTATION, HYBRIDIZATION, IN VITRO FERTILIZATION, OR TISSUE CULTURE.

(B) "CROSS-CONTAMINATION" MEANS ANY TRANSFER AND INCORPORATION OF GENETIC MATERIAL FROM A GENETICALLY ENGINEERED CROP OR PLANT, BY CROSS-POLLINATION OR OTHER MEANS, INTO A NON-GENETICALLY ENGINEERED CROP OR

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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PLANT OR TO WILD PLANT POPULATIONS OR THE PRESENCE OF GENETICALLY ENGINEERED SEEDS IN A LOT OR PACKAGE OF NON-GENETICALLY ENGINEERED SEEDS.

(C) "MANUFACTURER" MEANS A PERSON, FIRM, OR CORPORATION WHO PRODUCES, DISTRIBUTES, AND SELLS GENETICALLY ENGINEERED PLANTS, PLANTING STOCK, OR SEEDS.

2. A MANUFACTURER OF GENETICALLY ENGINEERED PLANTS, PLANTING STOCK, OR SEEDS SHALL BE LIABLE TO ANY PERSON FOR ANY DAMAGES, INCLUDING REASONABLE ATTORNEY'S FEES AND OTHER LITIGATION COSTS, AND TO THE STATE FOR NATURAL RESOURCES DAMAGES AND COSTS OF RESTORATION, DUE TO CROSS-CONTAMINATION CAUSED BY THE MANUFACTURER'S PRODUCTS. SUCH LIABILITY TO FARMERS SHALL INCLUDE BUT NOT BE LIMITED TO:

(A) LOSS OF ANY PRICE PREMIUM WHICH WOULD HAVE ACCRUED TO A FARMER GROWING NON-GENETICALLY ENGINEERED PRODUCTS BY CONTRACT OR OTHER MARKETING ARRANGEMENT, OR WHICH WOULD HAVE BEEN OTHERWISE REASONABLY AVAILABLE TO THE FARMER THROUGH ORDINARY COMMERCIAL CHANNELS;

(B) ANY JUDGMENT, CHARGE, OR PENALTY FOR WHICH THE FARMER GROWING NON-GENETICALLY ENGINEERED PRODUCTS IS LIABLE DUE TO BREACH OF CONTRACT, INCLUDING LOSS OF ORGANIC CERTIFICATION, FOR FAILURE TO DELIVER A CROP FREE OF GENETICALLY ENGINEERED MATERIAL OR FOR DELIVERING A CROP EXCEEDING ANY CONTRACTUALLY AGREED TOLERANCES FOR THE PRESENCE OF GENETICALLY ENGINEERED MATERIAL;

(C) ANY ADDITIONAL TRANSPORTATION, STORAGE, HANDLING, OR RELATED CHARGES OR COSTS INCURRED BY THE FARMER THAT WOULD NOT HAVE BEEN INCURRED IN THE ABSENCE OF CROSS-CONTAMINATION;

(D) MARKET PRICE REDUCTIONS INCURRED BY FARMERS RESULTING FROM LOSS OF CROP EXPORTS, INCLUDING FOREIGN AND DOMESTIC MARKETS; AND

(E) A FARMER'S LOSS OF LIVELIHOOD OR REPUTATION CAUSED BY CROSS-CONTAMINATION.

A FARMER WHO IS NOT IN BREACH OF A CONTRACT FOR THE PURCHASE OR USE OF GENETICALLY ENGINEERED PLANTS, PLANTING STOCK, OR SEEDS AND UNKNOWINGLY COMES INTO POSSESSION OR USES SUCH PLANTS, PLANTING STOCK, OR SEEDS AS A RESULT OF NATURAL REPRODUCTION, CROSS-CONTAMINATION, OR OTHER MEANS SHALL NOT BE LIABLE UNDER THIS SUBDIVISION FOR ANY DAMAGES CAUSED BY THE USE OF SUCH PLANTS, PLANTING STOCK, OR SEEDS, INCLUDING DAMAGES FOR PATENT INFRINGEMENT.

A MANUFACTURER SHALL HAVE AN AFFIRMATIVE DEFENSE TO LIABILITY UNDER THIS SUBDIVISION IF: A FARMER OR OTHER THIRD PARTY ACTED IN GROSS NEGLIGENCE TO CAUSE THE RELEASE OF THE GENETICALLY ENGINEERED MATERIAL THAT RESULTED IN CROSS-CONTAMINATION; THE FARMER HAD RECEIVED AND SIGNED A CONTRACT WITH THE MANUFACTURER; THE FARMER HAD RECEIVED WRITTEN MATERIALS FROM THE MANUFACTURER EXPLAINING HOW TO PLANT AND CULTIVATE THE GENETICALLY ENGINEERED PLANTS; AND BY FOLLOWING THE MANUFACTURER'S CONTRACT AND INSTRUCTIONS THE FARMER WOULD NOT HAVE CAUSED DAMAGES THROUGH THE USE OF SUCH PLANTS, PLANTING STOCK OR SEEDS; OR A SEED SELLER OR DISTRIBUTOR, OTHER THAN THE MANUFACTURER, ACTED IN GROSS NEGLIGENCE TO CAUSE THE PRESENCE OF THE MANUFACTURER'S GENETICALLY ENGINEERED SEEDS IN A LOT OR PACKAGE OF SEEDS THAT WERE SOLD TO A FARMER AS NON-GENETICALLY ENGINEERED SEEDS.

THE PROVISIONS OF THIS SUBDIVISION SHALL NOT LIMIT THE LIABILITY OF A MANUFACTURER UNDER ANY CAUSE OF ACTION NOT BASED UPON THIS SUBDIVISION. THE PROVISIONS OF THIS SUBDIVISION SHALL NOT BE SUBJECT TO WAIVER, BY AGREEMENT, OR OTHERWISE.

S 142-BBB. SEED CONTRACTS. A SEED CONTRACT FOR THE PURCHASE OF SEEDS OR PLANTING STOCK IN NEW YORK MUST BE GOVERNED BY THE LAWS OF NEW YORK. IF SUCH A CONTRACT EXECUTED IN NEW YORK PURPORTS TO WAIVE THE PROVISIONS OF THIS SECTION, TO CHOOSE THE LAWS OF ANOTHER JURISDICTION TO GOVERN

THE CONTRACT OR TO CHOOSE A FORUM FOR ADJUDICATION OF DISPUTES ARISING OUT OF THE CONTRACT THAT WOULD NOT OTHERWISE HAVE JURISDICTION OVER THE PARTIES TO THE CONTRACT, SUCH PROVISIONS ARE VOID AND UNENFORCEABLE.

S 2. Severability. If any clause, sentence, subdivision, paragraph, section or part of this act is adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, subdivision, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

S 3. This act shall take effect on the one hundred twentieth day after it shall have become a law.