HOUSE BILL NO. 432

INTRODUCED BY B. WISEMAN

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT LIABILITY FOR DAMAGES RESULTING FROM THE INTRODUCTION OF A GENETICALLY MODIFIED ORGANISM MUST BE ASSUMED BY THE COMPANY THAT HOLDS THE PATENT FOR THE GENETICALLY MODIFIED ORGANISM; AND PROVIDING AN EXEMPTION FROM LIABILITY FOR THE COMPANY THAT HOLDS THE PATENT TO A GENETICALLY MODIFIED ORGANISM WHEN A FARMER KNOWINGLY AND INTENTIONALLY GROWS A GENETICALLY MODIFIED ORGANISM."

WHEREAS, genetic engineering artificially transfers genes at the cellular and molecular level between species that could never naturally breed and is therefore qualitatively different from traditional selective breeding; and

WHEREAS, many of the potential effects of genetically modified organisms are unpredictable, long-term, or irreversible; and

WHEREAS, the biotechnology companies that invent and manufacture genetically modified organisms are scientific experts with regard to this technology; and

WHEREAS, the burden of ensuring that farmers and grain warehouse operators are not harmed by this technology should be placed on the company that holds the patent to the genetically modified organism; and

WHEREAS, a genetically modified organism is substantially equivalent to an organism that is not genetically modified in its ability through cross-pollination to transfer its genetic traits, whether they are genetically engineered or not, to other organisms that are not genetically modified; and

WHEREAS, in current agronomic science, agricultural practices, and agricultural infrastructure, genetically modified organisms cannot be successfully segregated from organisms that are not genetically engineered; and

WHEREAS, the introduction of genetically modified organisms may cause significant harm to domestic and foreign market acceptance and may cause loss of value of Montana's crops, which impacts Montana farmers and Montana's crop-handling and crop-processing industries.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Definitions.** As used in [sections 1 and 2], the following definitions apply:

(1) "Crop contamination" means any transfer of genetic material from a genetically engineered crop, by cross-pollination or other means, to a nongenetically engineered crop.

(2) "Farmer" means a person responsible for planting a crop, managing a crop, or harvesting a crop.

(3) "Genetically modified organism" means an organism:

(a) that is altered at the molecular or cellular level by means that are not possible under natural conditions or processes, including but not limited to:

(i) recombinant DNA and RNA techniques;

(ii) cell fusion;

(iii) microencapsulation;

(iv) macroencapsulation;

(v) gene deletion and doubling;

(vi) introduction of a foreign gene; and

(vii) a change in the positions of genes, other than by a means consisting exclusively of breeding, conjugation, fermentation, hybridization, in vitro fertilization, or tissue culture;

(b) that is created through sexual or asexual reproduction, or both, involving a genetically modified organism and that has been altered as described in subsection (3)(a) if the organism possesses any of the altered molecular or cellular characteristics of the other genetically modified organism described.

(4) "Grain warehouse operator" means a person who owns, operates, or controls a grain warehouse or terminal warehouse.

(5) "Person" means an individual, a partnership, a firm, an association, a municipality, a public or private corporation, the state, a subdivision of the state, a trust, an estate, or any other legal entity.

(6) "Strict liability" means absolute liability for any damages that result from the use of genetically modified organisms without respect to intention or negligence.

NEW SECTION. **Section 2. Liability for damages resulting from introduction of genetically modified organism -- exemption.** (1) Except as provided in subsection (3), the company that holds the patent for a genetically modified organism is subject to strict liability for damages caused to farmers or grain warehouse operators by the use of the genetically modified organism. Damages include but are not limited to:

(a) loss, due to crop contamination, of any price premium that would have accrued to a farmer or grain warehouse operator for nongenetically modified products by contract or other marketing arrangement or that

would have been otherwise reasonably available to the farmer or grain warehouse operator through ordinary commercial channels;

(b) any additional transportation, storage, handling, or related charges or costs incurred by the farmer or grain warehouse operator that would not have been incurred in the absence of crop contamination;

(c) any judgment, charge, or penalty for which the farmer or grain warehouse operator is liable because of breach of contract, including loss of organic certification, for failure to deliver a crop or shipment free of genetically modified organisms or for delivering a crop or shipment exceeding any contractually agreed tolerances for the presence of genetically modified organisms; and

(d) market price reductions incurred by farmers resulting from the loss of exports caused by major importing countries refusing to accept a genetically engineered crop variety.

(2) A farmer or grain warehouse operator may bring action in the appropriate court against any person that causes harm under this section. The prevailing plaintiff in an action under this subsection may recover reasonable attorney fees and other litigation expenses as part of the costs, including those related to appeals.

(3) A farmer who knowingly and intentionally plants a crop that contains a genetically modified organism may not make a claim for damages that resulted from contamination against the company that holds the patent for the genetically modified organism.

NEW SECTION. **Section 3. Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 80, chapter 5, and the provisions of Title 80, chapter 5, apply to [sections 1 and 2].

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