

1 **H. B. 2180**

2
3 (By Delegates Manypenny and Guthrie)

4 [Introduced January 12, 2011; referred to the
5 Committee on Agriculture then Education.]

6 **FISCAL**
7 **NOTE**

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9
10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new article, designated §19-2H-1, §19-2H-2,
12 §19-2H-3, §19-2H-4, §19-2H-5, §19-2H-6, §19-2H-7, §19-2H-8,
13 §19-2H-9, §19-2H-10, §19-2H-11, §19-2H-12 and §19-2H-13, all
14 relating to creating the "Genetically Engineered Crop and
15 Animal Farmer Protection Act"; making legislative findings;
16 setting forth information requirements regarding the sale of
17 genetically engineered seeds; plants and animals; identifying
18 certain contractual provisions to be against public policy;
19 preventing noncompetitive practices involving technology fees;
20 establishing measures to be taken to avoid cross pollination
21 of genetically engineered plants and seeds; requiring
22 genetically engineered seeds to be so labeled; prohibiting
23 loan discrimination, providing for civil and citizen suits;
24 defining terms; and providing rule-making authority.

1 *Be it enacted by the Legislature of West Virginia:*

2 That the Code of West Virginia, 1931, as amended, be amended
3 by adding thereto a new article, designated §19-2H-1, §19-2H-2,
4 §19-2H-3, §19-2H-4, §19-2H-5, §19-2H-6, §19-2H-7, §19-2H-8, §19-2H-
5 9, §19-2H-10, §19-2H-11, §19-2H-12 and §19-2H-13, all to read as
6 follows:

7 **ARTICLE 2H. GENETICALLY ENGINEERED CROP AND ANIMAL FARMER**

8 **PROTECTION ACT.**

9 **§19-2H-1. Short title.**

10 This article shall be known as the "Genetically Engineered
11 Crop and Animal Farmer Protection Act."

12 **§19-2H-2. Findings.**

13 The Legislature finds the following:

14 (a) Agribusiness and biotechnology companies have rapidly
15 consolidated market power at the same time as the average farmer's
16 profits and viability have significantly declined.

17 (b) Policies promoted by biotech corporations, such as
18 patenting of seeds, depriving farmers the right to save seed,
19 unreasonable seed contracts, and intrusion into everyday farm
20 operations, have systematically acted to remove basic farmer rights
21 enjoyed since the beginning of agriculture and essential for
22 agricultural sustainability and the survival of family farms.

23 (c) The introduction of genetically engineered crops has also

1 created obstacles for farmers, including the loss of markets and
2 increased liability concerns.

3 (d) To mitigate the abuses upon farmers, a clear set of farmer
4 rights must be established.

5 **§19-2H-3. Definitions.**

6 For the purposes of this article, these definitions are
7 applicable unless a different meaning clearly appears from the
8 context:

9 (1) "Genetically engineered animal" means an animal that
10 contains a genetically engineered material or was produced with a
11 genetically engineered material. An animal shall be considered to
12 contain a genetically engineered material or to have been produced
13 with a genetically engineered material if the animal has been
14 injected or otherwise treated with a genetically engineered
15 material or is the offspring of an animal that has been so injected
16 or treated.

17 (2) "Genetically engineered plant" means a plant that contains
18 a genetically engineered material or was produced from a
19 genetically engineered seed. A plant shall be considered to
20 contain a genetically engineered material if the plant has been
21 injected or otherwise treated with a genetically engineered
22 material (except that the use of manure as a fertilizer for the
23 plant may not be construed to mean that the plant is produced with
24 a genetically engineered material).

1 (3) "Genetically engineered seed" means a seed that contains
2 a genetically engineered material or was produced with a
3 genetically engineered material. A seed shall be considered to
4 contain a genetically engineered material or to have been produced
5 with a genetically engineered material if the seed (or the plant
6 from which the seed is derived) has been injected or otherwise
7 treated with a genetically engineered material (except that the use
8 of manure as a fertilizer for the plant may not be construed to
9 mean that any resulting seeds are produced with a genetically
10 engineered material).

11 (4) "Genetically engineered material" means material that has
12 been altered at the molecular or cellular level by means that are
13 not possible under natural conditions or processes (including
14 recombinant DNA and RNA techniques, cell fusion,
15 microencapsulation, macroencapsulation, gene deletion and doubling,
16 introducing a foreign gene, and changing the positions of genes),
17 other than a means consisting exclusively of breeding, conjugation,
18 fermentation, hybridization, in-vitro fertilization, tissue
19 culture, or mutagenesis.

20 (5) "Biotech company" means a person engaged in the business
21 of creating genetically engineered material or obtaining the patent
22 rights to that material for the purposes of commercial exploitation
23 of that material. The term does not include the employees of such
24 person.

1 (6) "Commissioner" means the Commissioner of Agriculture.

2 **§19-2H-4. Information requirements regarding sale of genetically**
3 **engineered seeds, plants and animals.**

4 (a) Full disclosure of risks of use. -- A biotech company
5 that sells any genetically engineered animal, genetically
6 engineered plant, or genetically engineered seed that the biotech
7 company knows, or has reason to believe, will be used by the
8 purchaser in this state to produce an agricultural commodity shall
9 provide written notice to the purchaser that fully and clearly
10 discloses the possible legal and environmental risks that the use
11 of the genetically engineered animal, genetically engineered plant,
12 or genetically engineered seed may pose to the purchaser.

13 (b) Effect of disclosure. -- The provision of written notice
14 under subsection (a) of this section regarding the risks of using
15 a genetically engineered animal, genetically engineered plant, or
16 genetically engineered seed does not relieve the biotech company
17 from any liability that may result from the release of genetically
18 engineered material into the environment. The receipt of the
19 written notice by the purchaser shall not be construed to create
20 any liability on the purchaser.

21 **§19-2H-5. Contract limitations regarding sale of genetically**
22 **engineered seeds, plants and animals.**

23 (a) Certain contract terms and limitations unenforceable. --

1 If a contract for the sale of a genetically engineered animal,
2 genetically engineered plant, or genetically engineered seed to a
3 purchaser for use in agricultural production contains a provision
4 described in subsection (b) of this section, the provision is
5 hereby declared to be against public policy and therefore void and
6 unenforceable as a matter of law.

7 (b) Prohibited terms and limitations. -- The provisions
8 referred to in subsection (a) of this section are any of the
9 following:

10 (1) In the case of a sale of genetically engineered plants or
11 genetically engineered seeds, a provision that prohibits the
12 purchaser from retaining a portion of the harvested crop for future
13 crop planting by the purchaser or that charges a fee to retain a
14 portion of the harvested crop for future crop planting;

15 (2) A provision that limits the ability of the purchaser to
16 recover damages from the biotech company for a genetically
17 engineered animal, genetically engineered plant, or genetically
18 engineered seed that does not perform as advertised;

19 (3) A provision that shifts any liability from the biotech
20 company to the purchaser;

21 (4) A provision that requires the purchaser to grant agents of
22 the seller access to the purchaser's property;

23 (5) A provision that mandates arbitration of any disputes
24 between the biotech company and the purchaser;

1 (6) A provision that mandates any court of jurisdiction for
2 settlement of disputes;

3 (7) A provision that mandates that the purchaser pay
4 liquidated damages of more than a technology fee or similar fee
5 itself, plus interest; or

6 (8) A provision that imposes any unfair condition upon the
7 purchaser, as determined by the commissioner or a court.

8 **§19-2H-6. Prevention of noncompetitive practices involving**
9 **technology fees.**

10 (a) Disclosure of technology fees. -- Any biotech company that
11 sells a genetically engineered animal, genetically engineered
12 plant, or genetically engineered seed for use in agricultural
13 production in this state shall notify the commissioner, at such
14 times and in such manner as the commissioner shall require, of the
15 following:

16 (1) The nature and amount of any technology, nonproduction,
17 royalty, or similar fees collected by the biotech company in each
18 country where that genetically engineered animal, plant, or seed is
19 marketed; and

20 (2) In the case of genetically engineered plants or
21 genetically engineered seeds, the prices charged by the biotech
22 company for herbicides associated with that genetically engineered
23 seed or plant.

24 (b) Prohibition on noncompetitive practices. -- A biotech

1 company that sells a genetically engineered animal, genetically
2 engineered plant, or genetically engineered seed for use in
3 agricultural production in this state may not charge higher
4 technology, nonproduction, royalty, or similar fees for sales of
5 the genetically engineered animal, plant, or seed in this state
6 than in other countries in which the genetically engineered animal,
7 plant, or seed is sold.

8 (c) Publication of data. -- The commissioner shall publish all
9 data received under subdivision (1), subsection (a) of this section
10 every six months in an electronic format.

11 **§19-2H-7. Measures to avoid cross pollination involving**
12 **genetically engineered seeds or plants.**

13 (a) Designation of predominately outcrossed pollinators. --
14 The commissioner shall determine which plants are predominately
15 outcrossed pollinators and make such information available to
16 persons who sell or purchase such plants or the seeds of such
17 plants for use in agricultural production.

18 (b) Minimizing the negative effects of predominately
19 outcrossed pollinators. -- The commissioner shall propose rules to
20 require effective mitigation strategies for any crop that is a
21 predominately outcrossed pollinator.

22 (c) Providing instructions to avoid cross pollination. -- The
23 seller of any genetically engineered plant or genetically

1 engineered seed that has been identified as a predominately
2 outcrossed pollinator shall provide written instructions to each
3 purchaser of the plants or seeds regarding how to plant and
4 cultivate the plants or seeds so as to avoid cross contamination.

5 **§19-2H-8. Prohibition on labeling certain seeds as nongenetically**
6 **engineered.**

7 A seed company or other person may not sell, or offer for
8 sale, seeds for planting that are labeled as nongenetically
9 engineered or otherwise represented as not containing genetically
10 engineered material if the commissioner finds that any sample of
11 the seeds contains genetically engineered material.

12 **§19-2H-9. Prohibition on certain nonfertile plant seeds.**

13 Notwithstanding any other provision of law, effective forty-
14 five days after the date of the enactment of this article, a person
15 may not manufacture, distribute, sell, plant, or otherwise use any
16 seed that is genetically engineered to produce a plant whose seeds
17 are not fertile or are rendered infertile by the application of an
18 external chemical inducer.

19 **§19-2H-10. Prohibition on loan discrimination.**

20 A financial institution may not discriminate against an
21 agricultural producer that refuses to use genetically engineered
22 plants or animals or add as condition to a loan the requirement
23 that the producer use genetically engineered plants or animals.

1 **§19-2H-11. Civil penalties for violation.**

2 (a) Authority to assess penalties. -- The commissioner may
3 assess, by written order, a civil penalty against a biotech company
4 or other person that violates a provision of this article,
5 including a rule promulgated or order issued under this article.
6 Each violation, and each day during which a violation continues,
7 shall be a separate offense.

8 (b) Amount and factors in assessing penalties. -- The maximum
9 amount that may be assessed under this section for a violation may
10 not exceed \$100,000. In determining the amount of the civil
11 penalty, the commissioner shall take into account:

12 (1) The gravity of the violation;

13 (2) The degree of culpability;

14 (3) The size and type of the business; and

15 (4) Any history of prior offenses under this article or other
16 laws administered by the commissioner.

17 (c) The civil penalty is payable to the State of West Virginia
18 and is collectible in any manner now or hereafter provided for
19 collection of debt. If any person liable to pay the civil penalty
20 neglects or refuses to pay the same, the amount of the civil
21 penalty, together with interest at ten percent, is a lien in favor
22 of the State of West Virginia upon the property, both real and
23 personal, of such a person after the same has been entered and
24 docketed to record in the county where such property is situated.

1 The clerk of the county, upon receipt of the certified copy of
2 such, shall enter same to record without requiring the payment of
3 costs as a condition precedent to recording.

4 **§19-2H-12. Citizen suits.**

5 (a) General. -- Except as provided in subsection (c) of this
6 section, any person may commence a civil action in an appropriate
7 circuit court against:

8 (1) A person who has introduced a genetically engineered
9 organism into the environment without approval under this article;

10 (2) The commissioner, where there is alleged a failure of the
11 commissioner to perform any act or duty under this article that is
12 the responsibility of the commissioner and is not discretionary; or

13 (3) Another state agency, if there is alleged a failure of the
14 agency to perform any act or duty under this article that is the
15 responsibility of the agency and is not discretionary.

16 (b) Relief. -- In a civil action under this section, the
17 circuit court involved may, as the case may be:

18 (1) Enforce the compliance of a person with the applicable
19 provisions referred to in the complaint; or

20 (2) Order the commissioner or the agency head to perform the
21 act or duty referred to in the complaint.

22 (c) Limitations. --

23 (1) A civil action may not be commenced under subdivision (1),
24 subsection (a) of this section prior to sixty days after the

1 plaintiff has provided to the commissioner notice of the violation
2 involved; and

3 (2) A civil action may not be commenced under subdivision (1),
4 subsection (a) of this section against the commissioner if the
5 commissioner has commenced and is diligently prosecuting a civil or
6 criminal action in a circuit court to enforce compliance with the
7 applicable provisions referred to in the complaint.

8 (d) Right of commissioner to intervene. -- In any civil action
9 under subdivision (1), subsection (a) of this section, the
10 commissioner, if not a party, may intervene as a matter of right.

11 (e) Award of costs; filing of bond. -- In a civil action under
12 subsection (a) of this section, the circuit court involved may
13 award costs of litigation (including reasonable attorney and expert
14 witness fees) to any party whenever the court determines such an
15 award is appropriate. The court may, if a temporary restraining
16 order or preliminary injunction is sought, require the filing of a
17 bond or equivalent security in accordance with the West Virginia
18 Rules of Civil Procedure.

19 (f) No restrictions. -- This section does not restrict any
20 right that the commissioner or a person (or class of persons) may
21 have under any other provision of this code or common law to seek
22 enforcement of the provisions of this article, or to seek any other
23 relief (including relief against the commissioner or the head of
24 another state agency).

1 **§19-2H-13. Rule-making authority.**

2 The commissioner shall propose rules in accordance with
3 article three, chapter twenty-nine-a of this code to implement and
4 enforce this article.

NOTE: The purpose of this bill is to create the "Genetically Engineered Crop and Animal Farmer Protection Act." The bill makes legislative findings, sets forth information requirements regarding the sale of genetically engineered seeds, plants and animals, identifies certain contractual provisions to be against public policy and prevents noncompetitive practices involving technology fees. The bill also sets forth measures to be taken to avoid cross pollination of genetically engineered plants and seeds and requires genetically engineered seeds to be so labeled. The bill further prohibits loan discrimination. Also, the bill provides for civil and citizen suits. The bill defines terms and provides rule-making authority.

This article is new; therefore, it has been completely underscored.