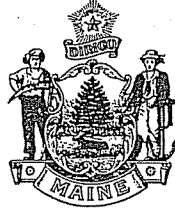


MAINE STATE LEGISLATURE

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124th MAINE LEGISLATURE

FIRST REGULAR SESSION-2009

Legislative Document

No. 183

H.P. 148

House of Representatives, January 21, 2009

An Act To Amend the Laws Concerning Genetically Engineered Plants and Seeds

Reference to the Committee on Agriculture, Conservation and Forestry suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative SCHATZ of Blue Hill.
Cosponsored by Representatives: BERRY of Bowdoinham, EATON of Sullivan, FLEMINGS
of Bar Harbor, HINCK of Portland, PIOTTI of Unity.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 7 MRSA §1051, sub-§2**, as amended by PL 2007, c. 602, §1, is further
3 amended to read:

4 **2. Genetically engineered.** "~~Genetically engineered~~" means ~~the application of in~~
5 ~~vitro nucleic acid techniques produced through techniques in which genetic material has~~
6 ~~been altered in a way that does not occur naturally by mating or natural recombination,~~
7 ~~including recombinant deoxyribonucleic acid and direct injection of nucleic acid into~~
8 ~~cells or organelles, or the fusion of cells beyond the taxonomic family, that overcome~~
9 ~~natural physiological reproductive or recombinant barriers and that are not techniques~~
10 ~~used in traditional breeding and selection~~ ribonucleic acid techniques, cell fusion,
11 microinjection, macroinjection, encapsulation and gene deletion and doubling.
12 "Genetically engineered" does not include products altered exclusively by breeding,
13 conjugation, fermentation, hybridization, in vitro fertilization or tissue culture.

14 **Sec. 2. 7 MRSA §1051, sub-§5**, as enacted by PL 2007, c. 602, §4, is amended to
15 read:

16 **5. Technology use agreement.** "Technology use agreement" means an agreement
17 between a manufacturer and a farmer that controls the right to plant a given genetically
18 engineered plant part, seed or plant on a specific area of land for a certain period of time.
19 The agreement provisions may include restrictions on the use of proprietary traits in the
20 creation of new varieties of a genetically engineered plant part, seed or plant and give
21 permission for the manufacturer to enter the farmer's property to check for violations of
22 the agreement subject to the provisions of section 1055.

23 **Sec. 3. 7 MRSA §1052, sub-§1**, as enacted by PL 2001, c. 330, §1, is amended to
24 read:

25 **1. Instructions.** The manufacturer or seed dealer of the genetically engineered
26 plants, plant parts or seeds shall provide written instructions to all growers on how to
27 plant the plant parts, seeds or plants and how to grow and harvest the crop to minimize
28 potential cross-contamination and provide the identity, relevant traits or characteristics of
29 the plant part, seed or plant and requirements for their safe handling, storage, transport
30 and use. These instructions must be at least as inclusive as guidelines issued by the
31 United States Department of Agriculture relative to the establishment of buffer zones
32 between genetically engineered plants and wild or cultivated plants subject to the risk of
33 cross-contamination. The manufacturer or seed dealer shall file a copy of these
34 instructions with the commissioner at least 20 days in advance of any sale of the
35 genetically engineered plants, plant parts or seeds in this State.

36 Instructions under this subsection must be provided to a grower using the plant part, seed
37 or plant separately from a technology use agreement and must be in at least 12-point type.

38 **Sec. 4. 7 MRSA §1052, sub-§2-A** is enacted to read:

39 **2-A. Reporting.** For a genetically engineered plant part, seed or plant sold in the
40 State, the manufacturer shall report annually to the commissioner the total potential

1 amount of acreage of genetically modified crops grown from that plant part, seed or plant
2 in the State.

3 **Sec. 5. 7 MRSA §1053**, as enacted by PL 2007, c. 602, §5, is repealed.

4 **Sec. 6. 7 MRSA §1055** is enacted to read:

5 **§1055. Violations of technology use agreements**

6 **1. Investigating violations of technology use agreements; rights of farmers.** A
7 manufacturer or manufacturer's agent may not enter real property owned or occupied by a
8 farmer to acquire samples of a crop grown on the farmer's property from the genetically
9 engineered plant part, seed or plant subject to a technology use agreement without an
10 order from a court in the State. If a manufacturer obtains a court order required under this
11 subsection, the manufacturer or manufacturer's agent shall:

12 A. Give written notice of the manufacturer's intent to enter the property to the farmer
13 and the commissioner and include a copy of the court order. The notice must be given
14 no later than 5 business days before the day the manufacturer or manufacturer's agent
15 enters the property. The notice must include the following information:

16 (1) The proposed date and time of the entry upon the property;

17 (2) The purpose for the entry upon the property;

18 (3) The rights provided to a farmer in paragraphs B and C; and

19 (4) The identity of a manufacturer's agent if the agent is to enter the property;

20 B. Permit the farmer, the commissioner or an agent of the farmer or commissioner to
21 accompany the manufacturer or manufacturer's agent while samples are taken;

22 C. Permit the farmer, the commissioner or an agent of the farmer or commissioner to
23 take matching samples or receive split samples of any samples taken by the
24 manufacturer or manufacturer's agent. The farmer may waive this right with a
25 certified letter to the commissioner and the manufacturer or manufacturer's agent;

26 D. Provide reasonable cooperation to the farmer, the commissioner or an agent of the
27 farmer or commissioner during the course of activities described in this subsection;
28 and

29 E. Pay the reasonable costs of the commissioner or the commissioner's agent
30 incurred pursuant to paragraphs B and C, as determined by the commissioner.

31 **2. Actions.** A technology use agreement must require that an action alleging a
32 violation of the agreement be brought in a court in the State. The venue for an action
33 under this subsection is in the county in which one of the parties resides, unless neither
34 party resides in the State, in which case the action must be brought in the county in which
35 the land subject to the technology use agreement is located. If a manufacturer prevails in
36 an action alleging a violation of a technology use agreement, the manufacturer may be
37 awarded any costs incurred pursuant to subsection 1, paragraph E, in addition to any other
38 damages to which the manufacturer is entitled. A provision of a technology use
39 agreement contrary to this subsection is null and void.

1 **Sec. 7. 7 MRSA §1056** is enacted to read:

2 **§1056. Liability resulting from cross-contamination**

3 **1. Nuisance.** A manufacturer, directly or through its licensees or agents, that cross-
4 contaminates land owned or occupied by a person with whom the manufacturer has not
5 entered a technology use agreement, causing the person to incur damages of more than
6 \$250 after mitigation, commits a private nuisance for which the person may bring an
7 action.

8 **2. Defenses preserved.** A manufacturer may employ a defense at law or equity
9 available in a private nuisance action against an action under subsection 1, except that it
10 is not a defense to an action that the:

11 A. Genetically engineered crops are in common or general use in the geographic
12 region in which the land on which the nuisance occurs is located; or

13 B. The person owning or occupying the lands has a duty to establish a buffer zone or
14 otherwise initiate measures to protect against cross-contamination.

15 **3. Knowing possession or use.** A person that contaminates the property of another
16 with a product that is sold, licensed, leased or given to the person by a manufacturer or
17 the manufacturer's agent is not liable to the manufacturer unless the contamination was
18 willful, premeditated and undertaken with the specific purpose of harming the property of
19 another. Liability may not be proved solely from evidence that the person ignored or
20 failed to apply directions or instructions received from or failed to observe conditions
21 imposed by the manufacturer.

22 **4. Unknowing possession or use.** A person other than a manufacturer that is not in
23 breach of a technology use agreement and that unknowingly possesses or uses a
24 genetically engineered plant part, seed or plant as a result of natural reproduction,
25 pollination or other contamination is not liable for any damages, attorney's fees or costs
26 caused by that possession or use.

27 **5. Damages.** A person that prevails in an action against a manufacturer under this
28 section may recover compensatory damages, reasonable attorney's fees and other
29 litigation expenses and costs. Liability or damages under this section may not be waived
30 or otherwise avoided other than by insurance. A cause of action under this section does
31 not preclude other actions in law and equity for the same conduct, except that there may
32 be only one recovery of damages. Damages awarded in an action brought under this
33 section may include economic losses, such as:

34 A. The loss of any price premium or price differential that would have accrued by
35 contract or that would have been otherwise reasonably available through ordinary
36 commercial channels;

37 B. Reasonable additional transportation, storage or handling costs;

38 C. The cost of purchasing replacement seed or feed if the former seed or feed is no
39 longer available for the person's use; and

1 D. The amount of an adverse judgment, charge or penalty for which the person is
2 liable because of breach of contract, including loss of organic certification, resulting
3 from the cross-contamination.

4 SUMMARY

5 This bill makes the following changes to the genetically engineered plants and seeds
6 laws.

7 1. It amends the definitions of "genetically engineered" and "technology use
8 agreement."

9 2. It requires the manufacturer of a genetically engineered plant part, seed or plant
10 sold in the State to report annually to the Commissioner of Agriculture, Food and Rural
11 Resources the total potential amount of acreage of genetically modified crops grown from
12 that plant part, seed or plant in the State.

13 3. It repeals the section of law pertaining to de minimus possession.

14 4. It provides for a process by which a manufacturer of a genetically engineered
15 plant part, seed or plant may investigate a violation of a technology use agreement and
16 the rights of a farmer during an investigation.

17 5. It creates a right of action as and damages for a private nuisance against a
18 manufacturer of a genetically engineered plant part, seed or plant that cross-contaminates
19 a person's land and limits the liability of knowing and unknowing users and possessors of
20 a genetically engineered plant part, seed or plant.