

MAINE STATE LEGISLATURE

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123rd MAINE LEGISLATURE

FIRST REGULAR SESSION-2007

Legislative Document

No. 1650

H.P. 1159

House of Representatives, March 22, 2007

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 Senator DAMON of Hancock and
Representatives: FAIRCLOTH of Bangor, MAREAN of Hollis, PINGREE of North Haven,
PIOTTI of Unity, PRATT of Eddington.

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

2 **Sec. 1. 7 MRSA §1051, sub-§2**, as enacted by PL 2001, c. 330, §1, is amended to
3 read:

4 **2. Genetically engineered.** "Genetically engineered" means ~~altered by human~~
5 manipulation at the molecular or cellular level by processes produced through techniques
6 in which genetic material has been altered in a way that does not occur naturally by
7 mating or natural recombination, including recombinant deoxyribonucleic acid and
8 ribonucleic acid techniques, cell fusion, ~~microencapsulation~~ microinjection,
9 ~~macroencapsulation~~ macroinjection, encapsulation, gene deletion and introduction of
10 ~~foreign genes~~ doubling. "Genetically engineered" does not include products altered
11 exclusively by breeding, conjugation, fermentation, hybridization, in vitro fertilization or
12 tissue culture.

13 **Sec. 2. 7 MRSA §1051, sub-§3**, as enacted by PL 2001, c. 330, §1, is amended to
14 read:

15 **3. Seed dealer.** "Seed dealer" means a person who cleans, processes, sells or offers
16 for sale ~~seeds~~ a genetically engineered plant part, seed or plant in this the State.

17 **Sec. 3. 7 MRSA §1051, sub-§4** is enacted to read:

18 **4. Manufacturer.** "Manufacturer" means a person that produces or commercializes
19 a genetically engineered plant part, seed or plant, not including a farm operation for the
20 purposes of Title 17, section 2805.

21 **Sec. 4. 7 MRSA §1051, sub-§5** is enacted to read:

22 **5. Technology use agreement.** "Technology use agreement" means an agreement
23 between a manufacturer and a farmer that controls the right to plant a given genetically
24 engineered plant part, seed or plant on a specific area of land for a certain period of time.
25 The agreement provisions may include restrictions on the use of proprietary traits in the
26 creation of new varieties of a genetically engineered plant part, seed or plant and give
27 permission for the manufacturer to enter the farmer's property to check for violations of
28 the agreement subject to the provisions of section 1053.

29 **Sec. 5. 7 MRSA §1052, sub-§1**, as enacted by PL 2001, c. 330, §1, is amended to
30 read:

31 **1. Instructions.** The manufacturer or seed dealer of the genetically engineered
32 plants, plant parts or seeds shall provide written instructions to all growers on how to
33 plant the plant parts, seeds or plants and how to grow and harvest the crop to minimize
34 potential cross-contamination. These instructions must be at least as inclusive as
35 guidelines issued by the United States Department of Agriculture relative to the
36 establishment of buffer zones between genetically engineered plants and wild or
37 cultivated plants subject to the risk of cross-contamination and provide the identity,
38 relevant traits or characteristics of the plant part, seed or plant and requirements for their
39 safe handling, storage, transport and use. The manufacturer or seed dealer shall file a

1 copy of these instructions with the commissioner at least 20 days in advance of any sale
2 of the genetically engineered plants, plant parts or seeds in this State.

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

5 **Sec. 6. 7 MRSA §1052, sub-§2-A** is enacted to read:

6 **2-A. Reporting.** For a genetically engineered plant part, seed or plant sold in the
7 State, the manufacturer shall report annually to the commissioner the total potential
8 amount of acreage of genetically modified crops grown from that plant part, seed or plant
9 in the State.

10 **Sec. 7. 7 MRSA §1053** is enacted to read:

11 **§1053. Violations of technology use agreements**

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

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

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

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

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

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

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

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

32 D. Provide reasonable cooperation to the farmer, the commissioner or an agent of the
33 farmer or commissioner during the course of activities described in this subsection;
34 and

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

37 **2. Actions.** A technology use agreement must require that an action alleging a
38 violation of the agreement be brought in a court in the State. The venue for an action

1 under this subsection must be brought in the county in which one of the parties resides,
2 unless neither party resides in the State, then the venue must be brought in the county in
3 which the land subject to the technology use agreement is located. If a manufacturer
4 prevails in an action alleging a violation of a technology use agreement, the manufacturer
5 may be awarded any costs incurred pursuant to subsection 3, paragraph E, in addition to
6 any other damages to which the manufacturer is entitled. A provision of a technology use
7 agreement contrary to this subsection is null and void.

8 **Sec. 8. 7 MRSA §1054** is enacted to read:

9 **§1054. Liability resulting from cross-contamination**

10 **1. Nuisance.** A manufacturer, directly or through its licensees or agents, that cross-
11 contaminates land owned or occupied by a person with whom the manufacturer has not
12 entered a technology use agreement and the person incurs damages of more than \$250
13 after mitigation commits a private nuisance for which the person may bring an action.

14 **2. Defenses preserved.** A manufacturer may employ a defense at law or equity
15 available in a private nuisance action against an action under subsection 1, except that:

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

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

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

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

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

- 1 A. The loss of any price premium or price differential that would have accrued by
2 contract or that would have been otherwise reasonably available through ordinary
3 commercial channels;
- 4 B. Reasonable additional transportation, storage or handling costs;
- 5 C. The cost of purchasing replacement seed or feed if the former seed or feed is no
6 longer available for the person's use; and
- 7 D. The amount of an adverse judgment, charge or penalty for which the person is
8 liable because of breach of contract, including loss of organic certification, resulting
9 from the cross-contamination.

10

SUMMARY

11 This bill does the following.

- 12 1. It amends the definition of "genetically engineered" and "seed dealer."
- 13 2. It defines "technology use agreement."
- 14 3. It requires the manufacturer of a genetically engineered plant part, seed or plant
15 sold in the State to report annually to the Commissioner of Agriculture, Food and Rural
16 Resources the total potential amount of acreage of genetically modified crops grown from
17 that plant part, seed or plant in the State.
- 18 4. It provides for a process by which a manufacturer of a genetically engineered
19 plant part, seed or plant may investigate a violation of a technology use agreement and
20 the rights of a farmer during an investigation.
- 21 5. It creates a right of action as and damages for a private nuisance against a
22 manufacturer of a genetically engineered plant part, seed or plant that cross-contaminates
23 a person's land and limits the liability of knowing and unknowing users and possessors of
24 a genetically engineered plant part, seed or plant.