

MAINE STATE LEGISLATURE

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124th MAINE LEGISLATURE

FIRST REGULAR SESSION-2009

Legislative Document

No. 1202

H.P. 827

House of Representatives, March 26, 2009

**An Act To Establish a Farmer's Rights in an Investigation of
Intellectual Property Theft of Genetically Engineered Material**

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

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative PRATT of Eddington.

Cosponsored by Representatives: KENT of Woolwich, McCABE of Skowhegan, O'BRIEN of Lincolnville, PERCY of Phippsburg, SCHATZ of Blue Hill, SMITH of Monmouth.

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

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

4 **1. Instructions.** The manufacturer or seed dealer of the genetically engineered
5 plants, plant parts or seeds shall provide written instructions to all growers on how to
6 plant the plant parts, seeds or plants and how to grow and harvest the crop to minimize
7 potential cross-contamination. These instructions must be at least as inclusive as
8 guidelines issued by the United States Department of Agriculture relative to the
9 establishment of buffer zones between genetically engineered plants and wild or
10 cultivated plants subject to the risk of cross-contamination and provide the identity,
11 relevant traits or characteristics of the plant part, seed or plant and requirements for its
12 safe handling, storage, transport and use. The manufacturer or seed dealer shall file a
13 copy of these instructions with the commissioner at least 20 days in advance of any sale
14 of the genetically engineered plants, plant parts or seeds in this State.

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

17 **Sec. 2. 7 MRSA §1055** is enacted to read:

18 **§1055. Violations of technology use agreements**

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

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

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

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

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

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

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

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

1 D. Provide reasonable cooperation to the farmer, the commissioner or an agent of the
2 farmer or commissioner during the course of activities described in this subsection;
3 and

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

6 2. Actions. A technology use agreement must require that an action alleging a
7 violation of the agreement be brought in a court in the State. The venue for an action
8 under this subsection must be brought in the county in which one of the parties resides,
9 unless neither party resides in the State, in which case the venue must be brought in the
10 county in which the land subject to the technology use agreement is located. If a
11 manufacturer prevails in an action alleging a violation of a technology use agreement, the
12 manufacturer may be awarded any costs incurred pursuant to subsection 1, paragraph E,
13 in addition to any other damages to which the manufacturer is entitled. A provision of a
14 technology use agreement contrary to this subsection is null and void.

15 **Sec. 3. 7 MRSA §1056** is enacted to read:

16 **§1056. Liability resulting from cross-contamination**

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

22 2. Defenses preserved. A manufacturer may employ a defense at law or equity
23 available in a private nuisance action against an action under subsection 1, except that it
24 is not a defense that:

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

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

29 3. Knowing possession or use. A person that contaminates the property of another
30 with a product that is sold, licensed, leased or given to the person by a manufacturer or
31 the manufacturer's agent is not liable to the manufacturer unless the contamination was
32 willful, premeditated and undertaken with the specific purpose of harming the property of
33 another. Liability may not be proved solely from evidence that the person ignored or
34 failed to apply directions or instructions received from or failed to observe conditions
35 imposed by the manufacturer.

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

