

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-SIXTH LEGISLATURE

FIRST SPECIAL SESSION
August 29, 2013

SECOND REGULAR SESSION
January 8, 2014 to May 2, 2014

THE EFFECTIVE DATE FOR
FIRST SPECIAL SESSION
EMERGENCY LAW IS
SEPTEMBER 6, 2013

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
AUGUST 1, 2014

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH THE MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

Augusta, Maine
2014

this assessment to any other person, except that the technical panel may consider information provided by the bureau, the landowner or a 3rd-party forest certification program auditor.

Sec. 4. 12 MRSA §8869, sub-§3-B is enacted to read:

3-B. Reporting and notification; outcome-based forestry projects. The director, in consultation with the technical panel under subsection 3-A, shall report to the joint standing committee of the Legislature having jurisdiction over forestry matters as follows.

A. Beginning March 1, 2015 and annually thereafter, the director shall submit a report detailing the progress on each outcome-based forestry agreement under section 8003, subsection 3, paragraph Q. The report must include an assessment of the landowner's progress toward attaining the outcomes under subsection 3-A. The report must be presented to the joint standing committee of the Legislature having jurisdiction over forestry matters at a public meeting no sooner than 30 days after submission of the report to the committee.

B. When an initial outcome-based forestry agreement is approved by the director as provided by section 8003, subsection 3, paragraph Q, the director shall notify the joint standing committee of the Legislature having jurisdiction over forestry matters within 15 days. In the notification, the director shall address how the proposed agreement will provide at least the equivalent forest and environmental protection as provided by rules and regulations that otherwise would apply to that outcome-based forestry area.

C. When an outcome-based forestry agreement under this section is renewed as provided by section 8003, subsection 3, paragraph Q, the director shall notify the joint standing committee of the Legislature having jurisdiction over forestry matters no later than 15 days after the agreement is renewed.

A report, notification or any information concerning outcome-based forestry projects under this subsection must be placed on the Department of Agriculture, Conservation and Forestry's publicly accessible website.

Sec. 5. 12 MRSA §8869, sub-§7-A, as amended by PL 2011, c. 488, §4, is further amended to read:

7-A. Exemption for outcome-based forestry areas. ~~Outcome-based forest policy experimental areas~~ An outcome-based forestry area designated under section 8003, subsection 3, paragraph Q are is exempt from the requirements of this subchapter and

~~rules adopted pursuant to this subchapter section if specifically exempted in the agreement establishing the outcome-based forestry area.~~

Sec. 6. 12 MRSA §8869, sub-§13, as amended by PL 2011, c. 488, §5 and c. 657, Pt. W, §7 and PL 2013, c. 405, Pt. A, §23, is further amended to read:

13. Confidential information. Information provided to the bureau voluntarily or to fulfill reporting requirements for the purposes of establishing and monitoring outcome-based ~~forest policy experimental~~ forestry areas, as created pursuant to section 8003, subsection 3, paragraph Q, is public unless the person to whom the information belongs or pertains requests that it be designated as confidential and the bureau has determined it contains proprietary information. For the purposes of this subsection, "proprietary information" means information that is a trade secret or production, commercial or financial information the disclosure of which would impair the competitive position of the person submitting the information and would make available information not otherwise publicly available. The bureau, working with the landowner and the panel of technical experts appointed under subsection 3-A, may publish reports as long as those reports do not reveal confidential information.

Sec. 7. 12 MRSA §8879, sub-§1, as amended by PL 2011, c. 532, §2 and c. 657, Pt. W, §7 and PL 2013, c. 405, Pt. A, §23, is further amended to read:

1. Content. The report must describe the condition of the State's forests based on historical information and information collected and analyzed by the bureau for the 5-year period. The report must provide an assessment at the state level of progress in achieving the standards developed pursuant to section 8876-A, including ~~progress an assessment of the designated~~ progress an assessment of the designated outcome-based forestry ~~experiment projects~~ experiment projects authorized under section 8003, subsection 3, paragraph Q, including a recommendation to continue, change or discontinue the outcome-based forestry projects. The director shall also provide observations on differences in achieving standards by landowner class. The report must summarize importing and exporting of forest products for foreign and interstate activities. The director shall obtain public input during the preparation of the report through appropriate methods.

See title page for effective date.

CHAPTER 543

S.P. 654 - L.D. 1660

An Act Regarding Bad Faith Assertions of Patent Infringement

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

Sec. 1. 14 MRSA c. 757 is enacted to read:

CHAPTER 757

ACTIONS FOR BAD FAITH ASSERTION OF PATENT INFRINGEMENT

§8701. Actions for bad faith assertion of patent infringement

1. Definitions. As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

A. "Demand letter" means a letter, an e-mail or other written communication asserting that a target has engaged in patent infringement.

B. "Person" means a natural person, corporation, trust, partnership, incorporated or unincorporated association or any other legal entity.

C. "Target" means a person:

- (1) Who has received a demand letter;
- (2) Against whom a lawsuit has been filed alleging patent infringement; or
- (3) Whose customers have received a demand letter asserting that the person's product, service or technology has infringed a patent.

2. Prohibition. A person may not make a bad faith assertion of patent infringement against another person.

3. Civil action. A target may bring a civil action in Superior Court against a person who has made a bad faith assertion of patent infringement against the target. In determining whether a person made a bad faith assertion of patent infringement:

A. The court may consider the following factors as evidence that the person made a bad faith assertion of patent infringement:

- (1) The demand letter does not contain:
 - (a) The patent number;
 - (b) The name and address of the patent owner or owners and assignee or assignees, if any; or
 - (c) Factual allegations concerning the specific areas in which the target's products, services or technology infringed the patent or are covered by the claims in the patent;
- (2) The demand letter does not contain the information described in subparagraph (1), the target requested the information and the

person did not provide the information within a reasonable period of time;

(3) Prior to sending the demand letter, the person failed to conduct an analysis comparing the claims in the patent to the target's products, services or technology or an analysis was done but does not identify specific areas in which the products, services or technology are covered by the claims in the patent;

(4) The demand letter includes a demand for payment of a license fee or a response within an unreasonably short period of time;

(5) The person offered to license the patent for an amount that is not based on a reasonable estimate of the value of the license;

(6) The person knew or should have known that the assertion of patent infringement is meritless;

(7) The assertion of patent infringement is deceptive; and

(8) The person or a subsidiary or affiliate of the person previously filed or threatened to file a lawsuit based on the same or similar claim of patent infringement and:

(a) Those threats or lawsuits lacked the information described in subparagraph (1); or

(b) The person attempted to enforce the claim of patent infringement in litigation and a court found the claim to be meritless; and

B. The court may consider the following factors as evidence that the person did not make a bad faith assertion of patent infringement:

(1) The demand letter contains the information described in paragraph A, subparagraph (1);

(2) The demand letter does not contain the information described in paragraph A, subparagraph (1), the target requested the information and the person provided the information within a reasonable period of time;

(3) The person engaged in a good faith effort to establish that the target infringed the patent and to negotiate an appropriate remedy;

(4) The person made a substantial investment in the use of the patent or in the production or sale of a product or item covered by the patent;

(5) The person is:

(a) The inventor or joint inventor of the patent or, in the case of a patent filed by and awarded to an assignee of the original inventor or joint inventor, is the original assignee; or

(b) An institution of higher education or a technology transfer organization whose primary purpose is to facilitate the commercialization of technologies developed by an institution of higher education that is owned by or affiliated with an institution of higher education; and

(6) The person demonstrated good faith business practices in previous efforts to enforce the patent or a substantially similar patent or successfully enforced the patent or a substantially similar patent through litigation.

4. Remedies. The court may award the following remedies to a target who prevails in an action brought pursuant to this subsection:

A. Equitable relief;

B. Damages;

C. Costs and fees, including reasonable attorney's fees; and

D. Punitive damages in an amount equal to \$50,000 or 3 times the total damages, costs and fees, whichever is greater.

5. Action by Attorney General. The Attorney General may bring an action to enjoin a violation of this chapter. Any violation of this chapter is a violation of the Maine Unfair Trade Practices Act.

6. Bond. When a target reasonably believes a person made a bad faith assertion of patent infringement against the target, the target may file a motion with the court to require the person to post a bond. If the court finds the target has established a reasonable likelihood that the person made a bad faith assertion of patent infringement, the court shall require the person to post a bond in an amount equal to a good faith estimate of the target's costs to litigate the claim and amounts reasonably likely to be recovered under subsection 4. The court shall hold a hearing if requested by either party. A bond ordered pursuant to this subsection may not exceed \$250,000. The court may waive the bond requirement if it finds the person has available assets equal to the amount of the proposed bond or for other good cause shown.

7. Exemption. This section does not apply to a demand letter or assertion of patent infringement that includes a claim for relief arising under 35 United States Code, Section 271(e)(2) or 42 United States Code, Section 262.

§8702. Rules

The Attorney General shall adopt rules implementing this chapter. Evidence of a violation of a rule adopted by the Attorney General constitutes prima facie evidence of a bad faith assertion of patent infringement in any action brought under this chapter. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

See title page for effective date.

CHAPTER 544

S.P. 618 - L.D. 1627

An Act To Amend the Reporting Requirements for the Business Equipment Tax Exemption

Emergency preamble. **Whereas**, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, changes made by the First Regular Session of the 126th Legislature to the business equipment tax exemption program will affect the reporting of information by taxpayers beginning April 1, 2014; and

Whereas, some of the information that taxpayers claiming an exemption under the program are required to report is proprietary information that could subject the taxpayers to financial harm if released publicly; and

Whereas, this legislation protects that proprietary information and needs to take effect as soon as possible to prevent harm to businesses; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 36 MRSA §693, sub-§1, as amended by PL 2013, c. 368, Pt. O, §7 and affected by §12 and c. 385, §§2 and 3, is further amended to read:

1. Reporting. On or before May 1st of each year, a taxpayer claiming an exemption under this section shall file a report with the assessor of the taxing jurisdiction in which the property would otherwise be subject to taxation on April 1st of that year. The report must identify the property for which exemption is