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

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

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

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

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

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

§ 1055. Violations of technology use agreements

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

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

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

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

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

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

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

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

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

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

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

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

§ 1056. Liability resulting from cross-contamination

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

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

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

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

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

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

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

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

SUMMARY

This bill does the following.

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

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