

Legislative Activity Around the States

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All but six states have legislation sessions this year. Even though most of those are dedicated to budgetary items; it doesn't necessarily mean that officials can't stir up a little mischief. Thus far, over 72,000 pieces of legislation have been introduced in the states and we can expect to see about 16% of those bills become law. Of those bills filed, about 75 directly affected the seed industry, while countless others indirectly impacted seed.

Most of the sessions are beginning to wrap up and bill-filing deadlines are over, so we can begin to breathe a little easier. Nothing too onerous has passed in the states. The bills affecting the seed industry generally fall into five categories, with a few exceptions:

- Pre-emption of local laws
These bills, which the seed industry usually supports, disallow local governments (cities, counties, political subdivisions, etc.) from enacting laws relating to the seed industry that are more stringent than state laws. Uniformity is necessary to ensure proper use of seed by commercial customers and consumers, and also to enable efficient production and distribution. Labeling requirements unique to seed distributed within an area with differing laws undermine the goal of uniformity without providing commensurate benefit. The laws are now in effect in 19 states with a couple of others with legislation under consideration this year.
- Strict Liability
Strict liability laws create a "pass through" of liability from farmer to the manufacturer, even though the handling of the seed is out of control of the manufacturer. Generally the bills create a right of action and subsequent damages for a private nuisance claim 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.
- Labeling requirements
These bills require that seed (or other food products) sold or distributed in or from the state bear a label that is plainly visible on the principal display panel that contains the conspicuous words "genetically engineered". Not only is this onerous for intrastate commerce compliance, it places an unnecessary warning on a product fully approved by all state and federal laws for consumer safety.
- Public Record Access
These bills authorize various government entities to allow public access to seed test results, including propriety information. Open records accessibility seems to be the proponent logic for the legislation. Obviously, established PVP and patent protections rights would override the legislation, although not without additional conflict.

- General Anti-Biotech Initiatives

A wide variety of bills were introduced in almost every state that either ban or create moratoriums for use of genetically engineered products in the state. And most don't go down without a great deal of effort. Although these bills generally do not directly address seed, often it can be interpreted for inclusion. As an example, genetic modifications of wild rice in Minnesota were banned last year. Using the same spiritual aspects to support argument for these proposed bans, legislation came close to passing in Hawaii that would have created a moratorium on poi research. Another bill would have done the same for maize in New Mexico. It is anticipated that this tactic will continue to be used in future ban attempts.

They say that predicting legislation is a dangerous and lonely activity. Just when you think you have seen it all, someone comes up with a totally different angle. Some of the more unique governmental activities this year include:

- Maine – GE Ban

During the annual Montville, Maine town meeting this spring, a resolution was passed that banned genetically modified organisms within the town's jurisdiction. The ban would affect about 6,100 acres of Maine's 1.25 million acres of farmland. However, the state declared the process, but not the intention, of the ordinance illegal. Under Maine law, towns must notify the state Department of Agriculture and the Pesticide Control Board in advance if they plan to vote on an ordinance affecting agriculture. That was not done in Montville, thus invalidating the ordinance. The town of Montville has not reported how they will proceed at this point. It is also worth noting that Maine is a "Right-to-Farm" state, which may further complicate the town's decision.

- Maine – Bt Ban

Until last August, Maine was the only state that disallowed the sales of Bt products. The state's board of pesticides has been given the authority to promulgate the rules to allow Bt, because they want to consider it a pesticide. ASTA filed a comment to explain the science and the necessity for consistency with EPA rules. The rules are still under consideration. During one of the hearings, a committee member stated that Maine was the only state that didn't allow Bt to be sold because they were smarter than everyone else.

- Minnesota – Field Crop Signs are Labels

The Minnesota Department of Agriculture declared field plot signs should be considered labeling, and not advertising, without the opportunity for public comment. As a result, the state law would require the brand name be added to field signs, as well as the variety notation and other regulatory language. ASTA got involved at the request of the state agribusiness association and member companies to provide support information to the department. After further consideration, the department rescinded the decision.

- New Jersey – Dissolution of the Department of Agriculture

The New Jersey governor proposed eliminating the state's department of

agriculture to save money for the financially strapped state. What made that especially ironic is that they call themselves the Garden State. After Capitol demonstrations by farmers and consolidated efforts by the agricultural industry in the state, the governor declared that option “off the table”.

Since this is a Presidential election year, most of the attention has been redirected away from anything other than pressing business in the states. However, you can expect especially active legislatures in 2009 as a result. ASTA will keep their eyes open for any activity that may affect the seed industry and report to the states accordingly. The ASTA web site (www.amseed.org) has a bill tracking system available to all members, if you are ever interested in the progress of a particular piece of legislation.