Public Law 102-560
102d Congress

An Act

To clarify that States, instrumentalities of States, and officers and employees of States acting in their official capacity, are subject to suit in Federal court by any person for infringement of patents and plant variety protections, and that all the remedies can be obtained in such suit that can be obtained in a suit against a private entity.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Patent and Plant Variety Protection Remedy Clarification Act”.

SEC. 2. LIABILITY OF STATES, INSTRUMENTALITIES OF STATES, AND STATE OFFICIALS FOR INFRINGEMENT OF PATENTS.

(a) LIABILITY AND REMEDIES.—(1) Section 271 of title 35, United States Code, is amended by adding at the end the following:

“(h) As used in this section, the term ‘whoever’ includes any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in his official capacity. Any State, and any such instrumentality, officer, or employee, shall be subject to the provisions of this title in the same manner and to the same extent as any nongovernmental entity.”.

(2) Chapter 29 of title 35, United States Code, is amended by adding at the end the following new section:

“§ 296. Liability of States, instrumentalities of States, and State officials for infringement of patents

“(a) IN GENERAL.—Any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in his official capacity, shall not be immune, under the eleventh amendment of the Constitution of the United States or under any other doctrine of sovereign immunity, from suit in Federal court by any person, including any governmental or nongovernmental entity, for infringement of a patent under section 271, or for any other violation under this title.

“(b) REMEDIES.—In a suit described in subsection (a) for a violation described in that subsection, remedies (including remedies both at law and in equity) are available for the violation to the same extent as such remedies are available for such a violation in a suit against any private entity. Such remedies include damages, interest, costs, and treble damages under section 284, attorney fees under section 285, and the additional remedy for infringement of design patents under section 289.”.

(b) CONFORMING AMENDMENT.—The table of sections at the beginning of chapter 29 of title 35, United States Code, is amended by adding at the end the following new item:

“Sec. 296. Liability of States, instrumentalities of States, and State officials for infringement of patents.”
SEC. 3. LIABILITY OF STATES, INSTRUMENTALITIES OF STATES, AND
STATE OFFICIALS FOR INFRINGEMENT OF PLANT VARIETY
PROTECTION.

(a) INFRINGEMENT OF PLANT VARIETY PROTECTION.—Section 111
of the Plant Variety Protection Act (7 U.S.C. 2541) is amended—
(1) by inserting "(a)" before "Except as otherwise provided"; and
(2) by adding at the end thereof the following new sub-
section:
"(b) As used in this section, the term 'perform without authority'
includes performance without authority by any State, any
instrumentality of a State, and any officer or employee of a State
or instrumentality of a State acting in his official capacity. Any
State, and any such instrumentality, officer, or employee, shall
be subject to the provisions of this Act in the same manner and
to the same extent as any nongovernmental entity."

(b) LIABILITY OF STATES, INSTRUMENTALITIES OF STATES,
AND STATE OFFICIALS FOR INFRINGEMENT OF PLANT VARIETY
PROTECTION.—Chapter 12 of the Plant Variety Protection Act (7 U.S.C.
2561 et seq.) is amended by adding at the end thereof the following
new section:

"SEC. 130. LIABILITY OF STATES, INSTRUMENTALITIES OF STATES,
AND STATE OFFICIALS FOR INFRINGEMENT OF PLANT
VARIETY PROTECTION.

(a) Any State, any instrumentality of a State, and any officer
or employee of a State or instrumentality of a State acting in
his official capacity, shall not be immune, under the eleventh
amendment of the Constitution of the United States or under any
other doctrine of sovereign immunity, from suit in Federal court
by any person, including any governmental or nongovernmental
entity, for infringement of plant variety protection under section
111, or for any other violation under this title.

(b) In a suit described in subsection (a) for a violation described
in that subsection, remedies (including remedies both at law and
in equity) are available for the violation to the same extent as
such remedies are available for such a violation in a suit against
any private entity. Such remedies include damages, interest, costs,
and treble damages under section 124, and attorney fees under
section 125."
SEC. 4. EFFECTIVE DATE.

The amendments made by this Act shall take effect with respect to violations that occur on or after the date of the enactment of this Act.


LEGISLATIVE HISTORY—S. 758:

SENATE REPORTS: No. 102-280 (Comm. on the Judiciary).
CONGRESSIONAL RECORD, Vol. 188 (1992):
June 12, considered and passed Senate.
Oct. 3, considered and passed House.