

AMENDED IN ASSEMBLY APRIL 25, 2005

AMENDED IN ASSEMBLY MARCH 31, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 984

Introduced by Assembly Member Laird
(Coauthor: Assembly Member Berg)

February 18, 2005

An act to add Section 1714.43 to the Civil Code, relating to liability.

LEGISLATIVE COUNSEL'S DIGEST

AB 984, as amended, Laird. Liability: genetically engineered plants.

Under existing law, everyone is generally responsible, not only for the result of his or her willful acts, but also for an injury occasioned to another by his or her want of ordinary care or skill in the management of his or her property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon himself or herself.

This bill would *enact the Food Integrity and Farmer Protection Act, and would provide that the manufacturer of a genetically engineered plant, as defined, is liable to for the contamination of a farm product, facility, or other property of any producer, grain and seed cleaner, handler, or processor—*~~injured by the release of that plant into California~~. The bill would authorize the prevailing plaintiff in an action under these provisions to recover compensatory damages for injury, reasonable attorney's fees, and other litigation expenses. The bill would provide that a manufacturer has a defense to liability if specified conditions are met or if the gross negligence of another

caused the injury. The bill would provide that the liability created by these provisions may not be waived or otherwise avoided by contract or other means. The bill would further make legislative findings and declarations regarding California's agricultural industry and the impact that genetically modified plants may have upon that industry.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. This act shall be known and may be cited as the
2 Food Integrity and Farmer Protection Act.

3 ~~SECTION 1.~~

4 SEC. 2. The Legislature finds and declares all of the
5 following:

6 (a) Agricultural industries are vital components of California's
7 economy, creating 1.1 million jobs in the state.

8 (b) California is the leading agricultural state in the country,
9 producing more than 250 commodities and farm gate revenues
10 totaling nearly \$30 billion dollars annually, of which nearly \$6.5
11 billion dollars is from exports.

12 (c) California is a leading producer of organic crops,
13 producing more than 200 products totaling \$605 million dollars
14 in 2003.

15 (d) California has a unique, national reputation for producing
16 high quality crops and its agricultural heritage is dependent on
17 maintaining this reputation.

18 (e) More than 97 percent of California farms are family farms
19 or partnerships.

20 (f) California has a diverse agricultural bounty, including
21 many specialty crop commodities.

22 (g) Genetically engineered plants have been shown to be
23 dispersed into the environment through pollen drift, seed
24 commingling, and inadvertent transfer of seeds by humans,
25 animals, and weather events.

26 (h) The unintended presence of genetically engineered plants
27 and material in agricultural crops can have devastating economic
28 impacts for producers who sell in organic markets and foreign
29 markets that prohibit or reject products that contain genetically
30 engineered material.

1 (i) The liability for the uncontrollable movement of genetically
2 engineered material is being unfairly passed from manufacturers
3 of genetically engineered plants to innocent and unsuspecting
4 farmers.

5 (j) It is in the interest of the state to ensure that the use of
6 genetically engineered plants in California for agricultural
7 purposes is conducted in a manner that does not result in
8 economic loss resulting from the unintended presence of
9 genetically engineered materials in crops other than those for
10 which the use is authorized by the manufacturer. It is further in
11 the interest of the state to ensure that innocent farmers and farm
12 businesses are shielded from legal liability for the presence of
13 genetically engineered material in their crops without their
14 knowledge and beyond their control.

15 ~~SEC. 2.~~

16 *SEC. 3.* Section 1714.43 is added to the Civil Code, to read:

17 1714.43. (a) As used in this section, the following definitions
18 apply:

19 (1) "Farm product" includes every agricultural, horticultural,
20 viticultural, or vegetable product of the soil, honey and beeswax,
21 oilseeds, poultry, poultry product, livestock product, and
22 livestock for immediate slaughter. It does not include timber or
23 any timber product, milk or any milk product, any aquacultural
24 product, or cattle sold to any person who is bonded under the
25 federal Packers and Stockyards Act, 1921 (7 U.S.C. Sec. 181, et
26 seq.).

27 (2) "Genetically engineered plant" means a plant or any plant
28 part or material, including, but not limited to, seeds and pollen, in
29 which the genetic material has been changed through modern
30 biotechnology in a way that does not occur naturally by
31 multiplication or natural recombination.

32 (3) "Grain and seed" means any grain, seeds, rice, beans, and
33 any other farm product that is customarily cleaned by grain and
34 seed cleaners.

35 (4) "Grain and seed cleaner" means a person that is lawfully
36 engaged in the business of cleaning grain and seeds for others.

37 (5) "Handler" means any person engaged in this state in the
38 business of marketing farm products, including persons engaged
39 in the drying, milling, or storing of a farm product.

1 (6) “Injury” means economic damage or loss, including, but
2 not limited to, all of the following:

3 (A) Loss of any price premium that would have accrued to a
4 producer, grain and seed cleaner, handler, or processor by
5 contract or other marketing arrangement or that would have been
6 otherwise reasonably available to those entities through ordinary
7 commercial channels.

8 (B) Any additional transportation, storage, handling, or related
9 charges or costs incurred by the producer, grain and seed cleaner,
10 handler, or processor that would not have been incurred in the
11 absence of genetically engineered plant material.

12 (C) Any judgment, charge, or penalty for which the producer,
13 grain and seed cleaner, handler, or processor of nongenetically
14 engineered products is liable because of breach of contract,
15 including loss of organic certification for failure to deliver a crop
16 or shipment free of genetically engineered plant material or for
17 delivering a crop or shipment exceeding any contractually agreed
18 tolerances for the presence of genetically engineered plant
19 material.

20 (D) Market price reductions incurred by a producer, grain and
21 seed cleaner, handler, or processor, resulting from loss of farm
22 product exports, including foreign and domestic markets.

23 (E) Loss of livelihood or reputation of a producer, grain and
24 seed cleaner, handler, or processor caused by the presence of a
25 genetically engineered plant material in the farm product of those
26 entities.

27 (7) “Manufacturer” means a person, corporation, or any other
28 entity ~~producing or commercializing~~ *that makes or*
29 *commercializes* a genetically engineered plant, *other than a*
30 *producer, handler, processor, or person engaged in*
31 *noncommercial activities.*

32 (8) “Modern biotechnology” means the application of in vitro
33 nucleic acid techniques, fusion of cells, including protoplast
34 fusion, or hybridization techniques beyond the taxonomic family
35 that overcome natural physiological, reproductive, or
36 recombination barriers and that are not techniques used in
37 traditional breeding and selection, including, but not limited to,
38 all of the following:

39 (A) Recombinant deoxyribonucleic acid (DNA).

40 (B) Direct injection of nucleic acid into cells or organelles.

1 (C) Recombinant DNA techniques that use vector systems and
2 techniques involving the direct introduction into the organism of
3 hereditary materials prepared outside the organism, such as
4 micro-injection, macro-injection, chemoporation, electroporation,
5 micro-encapsulation, and liposome fusion.

6 (9) “Person” includes any individual, partnership, limited
7 liability company, limited liability partnership, corporation, firm,
8 company, or any other entity doing business in California.

9 (10) “Processor” means any person engaged in the business of
10 processing or manufacturing any farm product that solicits, buys,
11 contracts to buy, or otherwise takes title to, or possession or
12 control of, any farm product from the producer of the farm
13 product for the purpose of processing or manufacturing it and
14 selling, reselling, or redelivering it in any dried, canned,
15 extracted, fermented, distilled, frozen, eviscerated, or other
16 preserved or processed form. It does not, however, include any
17 retail merchant that has a fixed or established place of business in
18 this state and does not sell at wholesale any farm product that is
19 processed or manufactured by that merchant.

20 (11) “Producer” means any person that is engaged in the
21 business of growing or producing any farm product.

22 (b) (1) The manufacturer of a genetically engineered plant is
23 liable ~~to for the contamination of a farm product, facility, or~~
24 ~~other property of any producer, grain and seed cleaner, handler,~~
25 ~~or processor injured by the release of by~~ the genetically
26 engineered plant ~~into California~~. The prevailing plaintiff in an
27 action under this section may recover compensatory damages for
28 injury, reasonable attorney’s fees, and other litigation expenses.

29 (2) The liability created by this section may not be waived or
30 otherwise avoided by contract or other means.

31 (3) A producer who is not in breach of a contract for the
32 purchase or use of a genetically engineered plant and who
33 unknowingly comes into possession of or uses that genetically
34 engineered plant as a result of natural reproduction and
35 cross-pollination, seed mixing, or other commingling or
36 unintended presence shall not be liable for any injuries, claims,
37 losses, or expenses, including attorney’s fees and damages for
38 infringement of any patent right held by the manufacturer of that
39 genetically engineered plant, caused by the use of the genetically
40 engineered plant.

1 (c) A manufacturer shall have a defense to liability under this
2 section if the court finds ~~either~~ any of the following:

3 (1) That all of the following conditions are met:

4 (A) The producer or his or her agent acted in gross negligence.

5 (B) The producer received and signed a contract with the
6 manufacturer.

7 (C) The producer received a training manual from the
8 manufacturer.

9 (D) The court finds that the injury would not have occurred
10 had the producer or his or her agent followed the terms of the
11 manufacturer's contract and training manual.

12 (2) Any person not included under paragraph (1) acted in a
13 grossly negligent manner that caused injury from the use of a
14 genetically engineered plant manufactured by the manufacturer.

15 (3) *The manufacturer establishes that a producer or other*
16 *person acted in a manner that was willfully intended to create*
17 *contamination of a farm product, facility, or other property with*
18 *genetically engineered material.*

19 (d) (1) A seed contract for the purchase of seeds or plant parts
20 in California is governed by the laws of California.

21 (2) Any provision of a seed contract executed in California
22 that purports to waive the provisions of this section, to choose the
23 laws of another jurisdiction to govern the contract, or to choose a
24 forum for adjudication of disputes arising out of the contract that
25 would not otherwise have jurisdiction over the parties to the
26 contract, is void and unenforceable.

27 (3) The proper venue for an action under this section is the
28 superior court in the county in which the injury is alleged to have
29 occurred.

30 (e) The provisions of this section are severable. If any
31 provision of this section or its application is held invalid, that
32 invalidity shall not affect other provisions or applications that can
33 be given effect without the invalid provision or application.