

AMENDED IN ASSEMBLY APRIL 17, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 541

Introduced by Assembly Member Huffman

February 21, 2007

An act to add Part 9 (commencing with Section 7200) to Division 4 of the Civil Code, to add Article 6 (commencing with Section 510) to Chapter 3 of, and to repeal Article 5 (commencing with Section 491) of Chapter 3 of, Part 1 of Division 1 of, the Food and Agricultural Code, relating to liability.

LEGISLATIVE COUNSEL'S DIGEST

AB 541, as amended, Huffman. Liability: genetically engineered plants.

Existing law provides that 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 state several findings and declarations regarding genetically engineered plants.

This bill would provide that the release by a manufacturer, *as defined*, directly or through its licensees or agents, of a genetically engineered plant that causes the ~~unintended~~ presence of the plant ~~part within the property owned or occupied by a person with whom the manufacturer has not entered a contract of sale, use, or license shall constitute an unreasonable interference with the use and enjoyment of the person's property.~~ This bill would provide that if the release results in damages ~~in any calendar year that exceed \$3,500,~~ *it within the property owned*

*or operated by a person for whom the plant presence was not intended shall constitute ~~substantial interference with the use and enjoyment of the person's property, constituting a private nuisance, and~~ subjecting the manufacturer to liability for resulting damages *if specified criteria are met*. This bill would also provide that the liability created pursuant to these provisions may not be waived or otherwise avoided by contract or other means, *except as specified*, and that a ~~person who prevails~~ *prevailing plaintiff* in an action under these provisions may recover ~~compensatory damages~~ *damages as are recoverable at common law in an action for private nuisance*, reasonable attorney's fees, ~~and other litigation expenses and costs and other litigation costs and expenses, including expert witness fees.~~*

This bill would also provide that a person who is not in breach of contract regarding the purchase or use of a genetically engineered plant and unknowingly comes into possession or uses that genetically engineered plant as a result of natural reproduction, cross-pollination, seed mixing, or other commingling or unintended presence or other contamination shall not be liable for any damages, attorney's fees, or costs caused by the possession or use of that genetically engineered plant.

Existing law ~~create~~ *creates* the Food Biotechnology Task Force to evaluate various factors related to food biotechnology including potential benefits and impacts to human health, the state's economy, and the environment accruing from food biotechnology.

This bill would repeal those provisions. This bill would require that not less than 30 days prior to the open field production of a genetically engineered plant, any person intending to undertake that production ~~to~~ notify the agricultural commissioner in the county where the production will occur. This bill would require each county agricultural commissioner to include in the annual county crop report submitted to the Department of Food and Agriculture information collected during the year on the number of acres of open field production of genetically engineered plants, the types of crops produced, and the genetic traits of those crops. This bill would also provide that the Secretary of Food and Agriculture or agricultural commissioner shall levy a civil penalty against any person who fails to provide the required notice, or who violates any regulations adopted pursuant to these provisions, in an amount not less than \$500 nor more than \$5,000 for each violation.

This bill would prohibit the production of a pharmaceutical crop that is produced by means of open field production and is of a plant species

that is commonly produced for use as food for humans or animals. This bill would provide that the secretary shall investigate any suspected violation of this provision and that the secretary or agricultural commissioner shall levy a civil penalty against any person who fails to provide the required notice, or who violates any regulations adopted pursuant to these provisions, in an amount not less than \$1,000 nor more than \$10,000 for each violation.

Because this bill would create new crimes, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) Genetically engineered plants have been shown to be
4 dispersed into the environment through pollen drift, seed
5 commingling, and inadvertent transfer of seeds by humans,
6 animals, and weather events.

7 (b) The unintended presence of genetically engineered plants
8 and material in agricultural crops can have devastating economic
9 impacts for producers who sell in organic markets and foreign
10 markets that prohibit or restrict products that contain genetically
11 engineered material.

12 ~~(e) The liability for the uncontrollable movement of genetically~~
13 *(c) Risks relating to the uncontrollable movement of, and*
14 *cross-contamination by, genetically engineered material is-are*
15 *being unfairly passed from manufacturers of genetically engineered*
16 *plants to innocent and unknowing farmers and other property*
17 *owners.*

18 ~~(d) It is in the interest of the state to ensure that the use of~~
19 ~~genetically engineered plants in California is conducted in a manner~~
20 ~~that does not result in economic loss resulting from the unintended~~
21 ~~presence of genetically engineered materials in crops or on other~~

1 ~~property other than those for which the use is authorized by the~~
 2 ~~manufacturer. It is further in the interest of the state to ensure that~~
 3 *(d) It is in the interest of the state to ensure that appropriate*
 4 *safeguards exist to protect farmers, landowners, and the*
 5 *environment from cross-contamination from the use of genetically*
 6 *engineered plants, and to provide a remedy for damages sustained*
 7 *from cross-contamination. It is further in the interest of the state*
 8 *to ensure that innocent farmers, farm businesses, and other property*
 9 *owners are shielded from legal liability for the presence of*
 10 *genetically engineered material in their crops that occurred without*
 11 *their knowledge and is beyond their control.*

12 SEC. 2. Part 9 (commencing with Section 7200) is added to
 13 Division 4 of the Civil Code, to read:

14
 15 PART 9. LIABILITY FOR DAMAGES CAUSED BY
 16 GENETICALLY ENGINEERED PLANTS
 17

18 7200. As used in this part, the following definitions apply:

19 (a) "Genetically engineered plant" has the same meaning as
 20 defined in subdivision (b) of Section 512 of the Food and
 21 Agricultural Code.

22 ~~(b) "Manufacturer" means a person that makes and~~
 23 ~~commercializes a genetically engineered plant.~~

24 *(b) "Manufacturer" means any person who develops or creates*
 25 *a genetically engineered plant for field trials or commercial*
 26 *purposes. "Manufacturer" does not include a person who is a*
 27 *producer, as defined in Section 59510 of the Food and Agricultural*
 28 *Code, a distributor, as defined in Section 59506 of the Food and*
 29 *Agricultural Code, or a retailer, as defined in Section 59514 of*
 30 *the Food and Agricultural Code, of a genetically engineered plant.*

31 (c) "Modern biotechnology" has the same meaning as defined
 32 in subdivision (c) of Section 512 of the Food and Agricultural
 33 Code.

34 (d) "Person" includes any individual, partnership, limited
 35 liability company, limited liability partnership, corporation, firm,
 36 company, or any other entity, *including a public entity*, doing
 37 business in California.

38 ~~7202. (a) (1) The release by a manufacturer, directly or through~~
 39 ~~its licensees or agents, of a genetically engineered plant that causes~~

1 the unintended presence of the plant part within the property owned
2 or occupied by a person with whom the manufacturer has not

3 7202. (a) *The release by a manufacturer, directly or through*
4 *its licensees or agents, of a genetically engineered plant shall*
5 *constitute a private nuisance for which the manufacturer shall be*
6 *liable if the following conditions are met:*

7 (1) *The release causes the presence of the plant within the*
8 *property owned or occupied by a person for whom the plant*
9 *presence was not intended and with whom the manufacturer has*
10 *not entered a contract of sale, use, or license shall constitute, and*
11 *thereby constitutes an unreasonable interference with the use and*
12 *enjoyment of the person's property.*

13 ~~(2) A release that meets the conditions of paragraph (1) and that~~
14 (2) *The release results in damages in any calendar year that*
15 *exceed three thousand five hundred dollars (\$3,500) shall constitute*
16 *, and thereby constitutes substantial interference with the use and*
17 *enjoyment of the person's property.*

18 ~~(3) A release that meets the conditions of paragraphs (1) and~~
19 ~~(2) shall constitute a private nuisance, and the manufacturer shall~~
20 ~~be liable for any damages resulting from the private nuisance.~~

21 (b) Notwithstanding other provisions of this part, defenses at
22 law or equity available in a private nuisance action apply, except
23 it shall not be a defense to an action based on the liability arising
24 in subdivision (a) that genetically engineered plants are in common
25 or general use in the geographic region in which the property on
26 which the nuisance occurs are located, nor shall the person owning
27 or occupying the property have a duty to establish buffer zones,
28 segregation protocols, or otherwise initiate measures to protect
29 specifically against the potential release of genetically engineered
30 plants onto his or her property.

31 (c) A person who is not in breach of contract regarding the
32 purchase or use of a genetically engineered plant and unknowingly
33 comes into possession ~~or of or who~~ uses that genetically engineered
34 plant as a result of natural reproduction, cross-pollination, seed
35 mixing, or other commingling or unintended presence or other
36 contamination shall not be liable for any damages, attorney's fees,
37 or costs caused by the possession or use of that genetically
38 engineered plant.

- 1 (d) A manufacturer shall ~~not be liable~~ *have a defense to liability*
2 for any damages resulting from private nuisance if the court finds
3 either of the following:
- 4 (1) That all of the following conditions are met:
- 5 ~~(A) The plaintiff or his or her agent acted in gross negligence.~~
6 ~~(B) The plaintiff received and signed a contract with the~~
7 ~~manufacturer.~~
8 ~~(C) The plaintiff received a training manual from the~~
9 ~~manufacturer.~~
10 ~~(D) The court finds that the damages would not have occurred~~
11 ~~had the plaintiff or his or her agent followed the terms of the~~
12 ~~manufacturer's contract and training manual.~~
- 13 ~~(2) Any person not included under paragraph (1) acted in a~~
14 ~~grossly negligent manner that caused damages from the use of a~~
15 ~~genetically engineered plant manufactured by the manufacturer.~~
- 16 (e) A person who prevails in an action under this section may
17 recover ~~compensatory damages, reasonable attorney's fees, and~~
18 ~~other litigation expenses and costs.~~
- 19 (A) *The property from which the genetically engineered plant*
20 *was released can be determined.*
- 21 (B) *The owner of the property from which the genetically*
22 *engineered plant was released, or his or her agent, signed a*
23 *contract with the manufacturer for the genetically engineered plant*
24 *and received a training manual from the manufacturer.*
- 25 (C) *The court finds that the damages would not have occurred*
26 *had the property owner or his or her agent followed the terms of*
27 *the manufacturer's contract and training manual.*
- 28 (D) *The property owner or his or her agent willfully or with*
29 *gross negligence contaminated the plaintiff's property, products,*
30 *or facilities.*
- 31 (2) *Any person not included under paragraph (1) who willfully*
32 *or with gross negligence contaminated the plaintiff's property,*
33 *products, or facilities with the genetically engineered material.*
- 34 (e) *Any person found to have willfully or with gross negligence*
35 *contaminated the plaintiff's property, products, or facilities*
36 *pursuant to subdivision (d) shall be liable for damages in lieu of,*
37 *and to the same extent as a manufacturer.*
- 38 (f) *A prevailing plaintiff in an action under this section may*
39 *recover damages as are recoverable at common law in an action*

1 *for private nuisance, reasonable attorney's fees, and other*
2 *litigation expenses and costs, including expert witness fees.*

3 ~~(f)~~

4 (g) The liability created by this section may not be waived or
5 otherwise avoided by contract or other means, *except that public*
6 *entities, including the University of California, conducting bona*
7 *fide research activities funded by, or in conjunction with, one or*
8 *more nonpublic entities, may agree to contractual provisions*
9 *indemnifying the public entity from liability or costs of defense.*

10 ~~(g)~~

11 (h) A cause of action under this section shall be in addition to
12 and not in lieu of existing actions at law and equity, provided,
13 however, that there shall be only one recovery of any specific
14 damages as defined in this section.

15 ~~(h)~~

16 (i) The provisions of this part shall apply notwithstanding any
17 other provision of law.

18 ~~7204. (a) A contract for the purchase of seeds or plant parts~~

19 7204. (a) A contract authorizing the use of a genetically
20 engineered plant in California is governed by the laws of
21 California.

22 ~~(b) Any provision of a seed contract executed in California that~~
23 ~~purports to waive the provisions of this part, to choose the laws of~~

24 (b) California law shall govern any dispute relating to or arising
25 out of the use of a genetically engineered plant in California,
26 notwithstanding any contrary choice of law contractual provision.
27 Any provision in a contract purporting to waive or preclude the
28 application of California law and to choose the laws of another
29 jurisdiction to govern the contract, or to choose a forum for
30 adjudication of disputes arising out of the contract that would not
31 otherwise have jurisdiction over the parties to the contract, is void
32 and unenforceable.

33 ~~7206.—~~

34 (c) The proper venue for an action under this part is the superior
35 court in the county in which the ~~injury is alleged to have occurred.~~
36 ~~damage occurred. Any contractual provision purporting to waive~~
37 ~~or preclude California as the proper venue is void and~~
38 ~~unenforceable.~~

1 7208.

2 7206. The provisions of this part are severable. If any provision
3 of this part or its application is held invalid, that invalidity shall
4 not affect other provisions or applications that can be given effect
5 without the invalid provision or application.

6 SEC. 3. Article 5 (commencing with Section 491) of Chapter
7 3 of Part 1 of Division 1 of the Food and Agricultural Code, as
8 added by Chapter 589 of the Statutes of 2000, is repealed.

9 SEC. 4. Article 6 (commencing with Section 510) is added to
10 Chapter 3 of Part 1 of Division 1 of the Food and Agricultural
11 Code, to read:

12
13 Article 6. Genetically Engineered Plants
14

15 510. The Legislature finds and declares the following:

16 (a) The unintended presence of genetically engineered plants
17 and material in agricultural crops can have adverse economic
18 impacts on agricultural producers, including producers who sell
19 to organic markets and foreign markets, *as well as adverse*
20 *environmental impacts.*

21 (b) It is in the interest of the state to take steps to minimize the
22 likelihood of adverse economic impacts due to the unintended
23 presence of genetically engineered plants and materials in
24 California, including by establishing a repository of information
25 on the open field production of genetically engineered plants in
26 California to assist in tracing the source of genetic material in the
27 event a genetically engineered plant is unintentionally present in
28 California.

29 512. Unless the context otherwise requires, the definitions in
30 this section govern the construction of this article.

31 (a) "FDA" means the United States Food and Drug
32 Administration.

33 (b) "Genetically engineered plant" means a plant or any plant
34 part or material, including, but not limited to, seeds and pollen, in
35 which the genetic material has been changed through modern
36 biotechnology in a way that does not occur naturally by
37 multiplication or natural recombination.

38 (c) "Modern biotechnology" means the application of in vitro
39 nucleic acid techniques, fusion of cells, including protoplast fusion,
40 or hybridization techniques beyond the taxonomic family that

1 overcome natural physiological, reproductive, or recombination
2 barriers and that are not techniques used in traditional breeding
3 and selection, including, but not limited to, all of the following:

- 4 (1) Recombinant deoxyribonucleic acid (DNA).
- 5 (2) Direct injection of nucleic acid into cells or organelles.
- 6 (3) Recombinant DNA techniques that use vector systems and
7 techniques involving the direct introduction into the organism of
8 hereditary materials prepared outside the organism, such as
9 microinjection, macroinjection, chemoporation, electroporation,
10 microencapsulation, and liposome fusion.

11 (d) "Open field production" means the planting, growing,
12 propagation, or cultivation of any genetically engineered plant
13 outside an enclosed structure, such as a greenhouse, indoor
14 laboratory or other self-contained production system.

15 (e) "Pharmaceutical crop" means a seed or plant that is
16 genetically engineered to produce compounds for which
17 commercialization requires approval from one of the following:

- 18 (1) The FDA Center for Biologics Evaluation and Research.
- 19 (2) The FDA Center for Drug Evaluation and Research.
- 20 (3) The FDA Center for Veterinary Medicine.
- 21 (4) The USDA Center for Veterinary Biologics.

22 (f) "USDA" means the United States Department of Agriculture.

23 514. (a) Not less than 30 days prior to the open field production
24 of a genetically engineered plant, any person intending to undertake
25 that production shall notify the agricultural commissioner in the
26 county where the production will occur.

27 (b) Notice to the agricultural commissioner shall be provided
28 on a form made available by the commissioner, prepared by the
29 department, after consultation with the California Agricultural
30 Commissioners and Sealers Association. The department and
31 county agricultural commissioners shall make every reasonable
32 effort to reduce the burden of submitting the notice, including
33 making the form available and allowing it to be submitted by hard
34 copy and in an online format. The notice shall include, at a
35 minimum, the following information regarding the open field
36 production of a genetically engineered plant:

- 37 (1) Proposed date of open field production.
- 38 (2) Proposed location and number of acres.

1 (3) The kind, variety, type and lot number, as those terms are
2 defined in Part 201 of Title 7 of the Code of Federal Regulations,
3 of a seed or plant.

4 (4) Trait or traits for which the plant is genetically engineered.

5 (c) An agricultural commissioner may, at his or her discretion,
6 require information beyond the information identified in
7 subdivision (b) regarding the open field planting of genetically
8 engineered plants.

9 516. (a) Each county agricultural commissioner shall include
10 in the annual county crop report submitted to the department
11 pursuant to Section 2272 information collected during the year
12 pursuant to Section 514 on the number of acres of open field
13 production of genetically engineered plants, the types of crops
14 produced, and the genetic traits of those crops. Information shall
15 be presented as a countywide aggregate and shall not provide
16 information regarding the specific location of the production or
17 the identification of any producer.

18 (b) Information submitted to the department pursuant to
19 subdivision (a) shall be included in the annual California
20 Agricultural Resource Directory published by the department.

21 518. (a) The secretary or agricultural commissioner shall levy
22 a civil penalty against any person who violates Section 514, or any
23 regulations adopted pursuant to that section, in an amount not less
24 than five hundred dollars (\$500) nor more than five thousand
25 dollars (\$5,000) for each violation. The amount of the penalty
26 assessed for each violation shall be based upon the nature of the
27 violation, the seriousness of the effect of the violation upon the
28 effectuation of the purposes and provisions of this article, the
29 violator's history of previous violations, and the impact of the
30 penalty on the violator, including the deterrent effect on future
31 violations.

32 (b) For a first offense, in lieu of a civil penalty as prescribed in
33 subdivision (a), the secretary or agricultural commissioner may
34 issue a notice of violation.

35 520. The Legislature finds and declares all of the following:

36 (a) Unlike plants that are genetically engineered for food and
37 feed purposes to, for example, increase a plant's compatibility
38 with herbicides or improve targeted production or quality traits,
39 food and feed crops also are genetically engineered for nonfood

1 purposes, specifically as a medium for the production of human
2 and animal pharmaceutical drugs and biologics.

3 (b) Food and feed crops used to produce pharmaceutical drugs
4 and grown in an open field environment can contaminate other
5 fields with the same crops designed for food and feed use, both
6 by the dispersal of pollen to fields where food and feed crops are
7 grown and by intermingling of pharmaceutical crop seeds and
8 plants with the indistinguishable crops destined for food and feed
9 markets.

10 (c) Pharmaceutical crop drugs are designed to be biologically
11 active in humans and animals, posing serious public health risks
12 if the food crops in which they are produced contaminate the food
13 supply for humans and animals.

14 (d) The discovery of a pharmaceutical drug or other substance
15 in the state's food supply could have tremendously disruptive
16 effects on the state's agricultural and food supply industries and
17 severely undermine consumer and export market confidence in
18 the safety of the food supply.

19 (e) It is in the interest of the state to prevent the contamination
20 of the state's food supply by pharmaceutical drugs produced by
21 genetically engineered plants that are grown for purposes of food
22 and feed.

23 522. The production within the state of a pharmaceutical crop
24 that meets both of the following conditions is hereby prohibited:

25 (a) The pharmaceutical crop is produced by means of open field
26 production.

27 (b) The pharmaceutical crop is of a plant species that is
28 commonly produced for use as food for humans or animals.

29 524. (a) The department shall investigate suspected violations
30 of Section 522 based upon a reasonable belief that the subject of
31 the investigation is not in compliance with that section.

32 (b) Anonymous complaints, unattributable information, or
33 undocumented information shall not constitute reasonable belief
34 and shall not be the basis for any investigation or audit action
35 brought under this section.

36 526. The secretary or agricultural commissioner shall levy a
37 civil penalty against any person who violates Section 522, or any
38 regulations adopted pursuant to that section, in an amount not less
39 than one thousand dollars (\$1,000) nor more than ten thousand
40 dollars (\$10,000) for each violation. The amount of the penalty

1 assessed for each violation shall be based upon the nature of the
2 violation, the seriousness of the effect of the violation upon the
3 effectuation of the purposes and provisions of this article, the
4 violator’s history of previous violations, and the impact of the
5 penalty on the violator, including the deterrent effect on future
6 violations.

7 SEC. 5. No reimbursement is required by this act pursuant to
8 Section 6 of Article XIII B of the California Constitution because
9 the only costs that may be incurred by a local agency or school
10 district will be incurred because this act creates a new crime or
11 infraction, eliminates a crime or infraction, or changes the penalty
12 for a crime or infraction, within the meaning of Section 17556 of
13 the Government Code, or changes the definition of a crime within
14 the meaning of Section 6 of Article XIII B of the California
15 Constitution.