

AMENDED IN ASSEMBLY APRIL 23, 2007

AMENDED IN ASSEMBLY APRIL 17, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 541

Introduced by Assembly Member Huffman

(Principal coauthor: Assembly Member Coto)

*(Coauthors: Assembly Members Beall, Berg, DeSaulnier, Krekorian,
and Lieber)*

(Coauthor: Senator Migden)

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 presence of the plant within the property owned or operated by a person for whom the plant presence was not intended shall constitute a private nuisance, 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 prevailing plaintiff in an action under these provisions may recover damages as are recoverable at common law in an action for private nuisance, reasonable attorney's fees, 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 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 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 (c) Risks relating to the uncontrollable movement of, and
13 cross-contamination by, genetically engineered material are being
14 ~~unfairly passed~~ *passed unfairly* from manufacturers of genetically
15 engineered plants to innocent and unknowing farmers and other
16 property owners.

17 (d) It is in the interest of the state to ensure that appropriate
18 safeguards exist to protect farmers, landowners, and the
19 environment from cross-contamination from the use of genetically
20 engineered plants, and to provide a remedy for damages sustained
21 from cross-contamination. It is further in the interest of the state
22 to ensure that innocent farmers, farm businesses, and other property
23 owners are shielded from legal liability for the presence of

1 genetically engineered material in their crops that occurred without
2 their knowledge and is beyond their control.

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

5

6 PART 9. LIABILITY FOR DAMAGES CAUSED BY
7 GENETICALLY ENGINEERED PLANTS

8

9 7200. As used in this part, the following definitions apply:

10 (a) “Genetically engineered plant” has the same meaning as
11 defined in subdivision (b) of Section 512 of the Food and
12 Agricultural Code.

13 (b) “Manufacturer” means any person who develops or creates
14 a genetically engineered plant for field trials or commercial
15 purposes. “Manufacturer” does not include a person who is a
16 producer, as defined in Section 59510 of the Food and Agricultural
17 Code, a distributor, as defined in Section 59506 of the Food and
18 Agricultural Code, or a retailer, as defined in Section 59514 of the
19 Food and Agricultural Code, of a genetically engineered plant.

20 (c) “Modern biotechnology” has the same meaning as defined
21 in subdivision (c) of Section 512 of the Food and Agricultural
22 Code.

23 (d) “Person” includes any individual, partnership, limited
24 liability company, limited liability partnership, corporation, firm,
25 company, or any other entity, including a public entity, doing
26 business in California.

27 7202. (a) The release by a manufacturer, directly or through
28 its licensees or agents, of a genetically engineered plant shall
29 constitute a private nuisance for which the manufacturer shall be
30 liable if the following conditions are met:

31 (1) The release causes the presence of the plant within the
32 property owned or occupied by a person for whom the plant
33 presence was not intended and with whom the manufacturer has
34 not entered a contract of sale, use, or license, and thereby
35 constitutes an unreasonable interference with the use and enjoyment
36 of the person’s property.

37 (2) The release results in damages in any calendar year that
38 exceed three thousand five hundred dollars (\$3,500) , and thereby
39 constitutes substantial interference with the use and enjoyment of
40 the person’s property.

1 (b) Notwithstanding other provisions of this part, defenses at
2 law or equity available in a private nuisance action apply, except
3 it shall not be a defense to an action based on the liability arising
4 in subdivision (a) that genetically engineered plants are in common
5 or general use in the geographic region in which the property on
6 which the nuisance occurs are located, nor shall the person owning
7 or occupying the property have a duty to establish buffer zones,
8 segregation protocols, or otherwise initiate measures to protect
9 specifically against the potential release of genetically engineered
10 plants onto his or her property.

11 (c) A person who is not in breach of contract regarding the
12 purchase or use of a genetically engineered plant and unknowingly
13 comes into possession of or who uses that genetically engineered
14 plant as a result of natural reproduction, cross-pollination, seed
15 mixing, or other commingling or unintended presence or other
16 contamination shall not be liable for any damages, attorney's fees,
17 or costs caused by the possession or use of that genetically
18 engineered plant.

19 (d) A manufacturer shall have a defense to liability for any
20 damages resulting from private nuisance if the court finds either
21 of the following:

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

23 (A) The property from which the genetically engineered plant
24 was released can be determined.

25 (B) The owner of the property from which the genetically
26 engineered plant was released, or his or her agent, signed a contract
27 with the manufacturer for the genetically engineered plant and
28 received a training manual from the manufacturer.

29 (C) The court finds that the damages would not have occurred
30 had the property owner or his or her agent followed the terms of
31 the manufacturer's contract and training manual.

32 (D) The property owner or his or her agent willfully or with
33 gross negligence contaminated the plaintiff's property, products,
34 or facilities.

35 (2) Any person not included under paragraph (1) who willfully
36 or with gross negligence contaminated the plaintiff's property,
37 products, or facilities with the genetically engineered material.

38 (e) Any person found to have willfully or with gross negligence
39 contaminated the plaintiff's property, products, or facilities

1 pursuant to subdivision (d) shall be liable for damages in lieu of,
2 and to the same extent as a manufacturer.

3 (f) A prevailing plaintiff in an action under this section may
4 recover damages as are recoverable at common law in an action
5 for private nuisance, reasonable attorney’s fees, and other litigation
6 expenses and costs, including expert witness fees.

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

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

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

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

31 (c) The proper venue for an action under this part is the superior
32 court in the county in which the damage occurred. Any contractual
33 provision purporting to waive or preclude California as the proper
34 venue is void and unenforceable.

35 7206. The provisions of this part are severable. If any provision
36 of this part or its application is held invalid, that invalidity shall
37 not affect other provisions or applications that can be given effect
38 without the invalid provision or application.

1 SEC. 3. Article 5 (commencing with Section 491) of Chapter
2 3 of Part 1 of Division 1 of the Food and Agricultural Code, as
3 added by Chapter 589 of the Statutes of 2000, is repealed.

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

7
8 Article 6. Genetically Engineered Plants
9

10 510. The Legislature finds and declares the following:

11 (a) The unintended presence of genetically engineered plants
12 and material in agricultural crops can have adverse economic
13 impacts on agricultural producers, including producers who sell
14 to organic markets and foreign markets, as well as adverse
15 environmental impacts.

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

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

26 (a) "FDA" means the United States Food and Drug
27 Administration.

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

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

39 (1) Recombinant deoxyribonucleic acid (DNA).

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

1 (3) 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 microinjection, macroinjection, chemoporation, electroporation,
5 microencapsulation, and liposome fusion.

6 (d) “Open field production” means the planting, growing,
7 propagation, or cultivation of any genetically engineered plant
8 outside an enclosed structure, such as a greenhouse, indoor
9 laboratory or other self-contained production system.

10 (e) “Pharmaceutical crop” means a seed or plant that is
11 genetically engineered to produce compounds for which
12 commercialization requires approval from one of the following:

- 13 (1) The FDA Center for Biologics Evaluation and Research.
- 14 (2) The FDA Center for Drug Evaluation and Research.
- 15 (3) The FDA Center for Veterinary Medicine.
- 16 (4) The USDA Center for Veterinary Biologics.

17 (f) “USDA” means the United States Department of Agriculture.

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

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

- 32 (1) Proposed date of open field production.
- 33 (2) Proposed location and number of acres.
- 34 (3) The kind, variety, type and lot number, as those terms are
35 defined in Part 201 of Title 7 of the Code of Federal Regulations,
36 of a seed or plant.

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

38 (c) An agricultural commissioner may, at his or her discretion,
39 require information beyond the information identified in

1 subdivision (b) regarding the open field planting of genetically
2 engineered plants.

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

12 (b) Information submitted to the department pursuant to
13 subdivision (a) shall be included in the annual California
14 Agricultural Resource Directory published by the department.

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

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

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

30 (a) Unlike plants that are genetically engineered for food and
31 feed purposes to, for example, increase a plant's compatibility
32 with herbicides or improve targeted production or quality traits,
33 food and feed crops also are genetically engineered for nonfood
34 purposes, specifically as a medium for the production of human
35 and animal pharmaceutical drugs and biologics.

36 (b) Food and feed crops used to produce pharmaceutical drugs
37 and grown in an open field environment can contaminate other
38 fields with the same crops designed for food and feed use, both
39 by the dispersal of pollen to fields where food and feed crops are
40 grown and by intermingling of pharmaceutical crop seeds and

1 plants with the indistinguishable crops destined for food and feed
2 markets.

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

7 (d) The discovery of a pharmaceutical drug or other substance
8 in the state’s food supply could have tremendously disruptive
9 effects on the state’s agricultural and food supply industries and
10 severely undermine consumer and export market confidence in
11 the safety of the food supply.

12 (e) It is in the interest of the state to prevent the contamination
13 of the state’s food supply by pharmaceutical drugs produced by
14 genetically engineered plants that are grown for purposes of food
15 and feed.

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

18 (a) The pharmaceutical crop is produced by means of open field
19 production.

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

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

25 (b) Anonymous complaints, unattributable information, or
26 undocumented information shall not constitute reasonable belief
27 and shall not be the basis for any investigation or audit action
28 brought under this section.

29 526. The secretary or agricultural commissioner shall levy a
30 civil penalty against any person who violates Section 522, or any
31 regulations adopted pursuant to that section, in an amount not less
32 than one thousand dollars (\$1,000) nor more than ten thousand
33 dollars (\$10,000) for each violation. The amount of the penalty
34 assessed for each violation shall be based upon the nature of the
35 violation, the seriousness of the effect of the violation upon the
36 effectuation of the purposes and provisions of this article, the
37 violator’s history of previous violations, and the impact of the
38 penalty on the violator, including the deterrent effect on future
39 violations.

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

O