

AMENDED IN ASSEMBLY JANUARY 17, 2008

AMENDED IN ASSEMBLY APRIL 23, 2007

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CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 541**

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**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

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*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. An act to add Article 2.6 (commencing with Section 52300) to Chapter 2 of Division 18 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.~~

*This bill would provide a protocol for obtaining and testing a crop sample to determine whether a contract has been breached or a patent on a transgenic organism has been infringed by a farmer who is planting, managing, or harvesting a crop, as specified. The bill would provide for agreed or court-ordered sampling, with provisions relating to notice to the parties of sampling and results, protective orders against intentional destruction or damage to crops, and fees for sampling by or under agreement with the Secretary of Food and Agriculture. The bill would provide that a farmer is not liable for breach of a seed contract or patent infringement for a de minimis or unintentional possession of a product in which the seed labeler, or patent holder or licensee, has rights. This bill would state the intent of the Legislature, as specified, in enacting this act.*

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

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

- 1 *SECTION 1. Article 2.6 (commencing with Section 52300) is*
- 2 *added to Chapter 2 of Division 18 of the Food and Agricultural*
- 3 *Code, to read:*

1           Article 2.6. *Genetically Engineered Plants*

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3       52300. *For purposes of this article only, the following*  
4 *definitions apply:*

5       (a) *“Farmer” means the person responsible for planting a crop,*  
6 *managing the crop, and harvesting the crop from land on which*  
7 *a breach of contract or patent infringement is alleged to have*  
8 *occurred.*

9       (b) *“Transgenic organism” means an organism, including, but*  
10 *not limited to, animal, plant, bacterium, cyanobacterium, fungus,*  
11 *protist, or virus altered or produced through genetic modification*  
12 *from a donor, vector, or recipient organism using modern*  
13 *molecular techniques such as recombinant deoxyribonucleic acid*  
14 *methodology, and any living organisms derived therefrom.*

15       52301. (a) *Before a person or his or her agent holding a patent*  
16 *on a transgenic organism may enter upon any land farmed by*  
17 *another for the purpose of obtaining crop samples to determine*  
18 *whether breach of contract or patent infringement has occurred,*  
19 *the person holding the patent or his or her agent shall do both of*  
20 *the following:*

21       (1) *Notify the farmer in writing of the allegation that breach of*  
22 *contract or patent infringement has occurred and request*  
23 *permission to enter upon the farmer’s land.*

24       (2) *Obtain the written permission of the farmer.*

25       (b) *The farmer shall grant or deny access in writing within 10*  
26 *days of receipt of a request to enter the land pursuant to*  
27 *subdivision (a). If the farmer withholds permission, the person*  
28 *holding a patent may petition the superior court in the county in*  
29 *which the alleged breach of contract or patent infringement has*  
30 *occurred for an order granting permission to enter upon the*  
31 *farmer’s land.*

32       52302. *If either party requests the secretary to provide for the*  
33 *collection of samples under Section 52301, or to participate in or*  
34 *conduct any other aspect of the sampling or analysis process, the*  
35 *secretary shall designate an employee or enter into an agreement*  
36 *with a person or entity to implement the specified activity as*  
37 *provided in regulations adopted pursuant to Section 52305. The*  
38 *person or entity may be, but is not required to be, an employee or*  
39 *agency of the state. The patent holder shall pay the fee charged*  
40 *by the department under regulations adopted pursuant to Section*

1 52305. *The farmer or the agent of the farmer and the person*  
2 *holding the patent may be present at any collection of samples*  
3 *conducted pursuant to this article, and each shall be notified of*  
4 *the time and location of the sample taking in a timely manner.*

5 52303. *If the person holding a patent believes that the crop*  
6 *from which samples are to be taken may be subject to intentional*  
7 *damage or destruction, the person may seek a protective order*  
8 *from the superior court. The protective order shall be crafted to*  
9 *minimize interruption or interference with normal farming*  
10 *practices, including harvest and tillage.*

11 52304. *Samples for analysis may be taken from a standing*  
12 *crop, from representative standing plants in the field, or from crop*  
13 *residue remaining in the field after harvest.*

14 52305. *The secretary may adopt rules, pursuant to Section*  
15 *52331, to determine sampling protocols, which may specify all of*  
16 *the following:*

17 (a) *Who is authorized to collect samples or conduct related*  
18 *activity.*

19 (b) *Methods of sample storage.*

20 (c) *Standards for sampling, inspecting, analyzing, and testing*  
21 *seeds consistent with this article.*

22 (d) *Fees to recover sampling and related costs.*

23 52306. *The results of any testing conducted pursuant to this*  
24 *article shall be sent by registered letter by the testing party to the*  
25 *other party within 30 days after the results are reported from the*  
26 *testing laboratory.*

27 52307. *A farmer is not liable for the breach of a seed contract*  
28 *or for patent infringement if a product, in which the seed labeler,*  
29 *or patent holder or licensee, has rights, is possessed by the farmer*  
30 *or found on real property owned or occupied by the farmer and*  
31 *the presence of the product is de minimis or not intended by the*  
32 *farmer.*

33 SEC. 2. *It is the intent of the Legislature to clarify, as needed,*  
34 *the role and responsibility of the Department of Food and*  
35 *Agriculture in the oversight of regulated agricultural*  
36 *biotechnology.*

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**All matter omitted in this version of the bill  
appears in the bill as amended in the  
Assembly, April 23, 2007 (JR11)**

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