

ASSEMBLY BILL

No. 698

Introduced by Assembly Member Strickland

February 22, 2007

An act to add Section 47.2 to the Civil Code, relating to defamation.

LEGISLATIVE COUNSEL'S DIGEST

AB 698, as introduced, Strickland. Perishable agricultural product defamation.

Existing law provides for civil liability for defamation and provides that defamation is effected by libel or slander. Under existing law, an action for libel or slander is based, in part, on false and unprivileged publications, as specified. Under existing law, privileged publications are publications made in connection with the discharge of official duties or in certain official proceedings.

This bill would allow a producer of a perishable agricultural product, as defined, who suffers actual damages as a result of another person's disparagement of the producer's product to recover those actual damages if certain facts are found to be true. The bill would define "disparagement" for these purposes as a false and unprivileged publication regarding a perishable agricultural product that clearly impugns the safety of the product. The bill would require the plaintiff to bear the burden of proof as to each element of the cause of action.

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. Section 47.2 is added to the Civil Code, to read:

- 1 47.2. (a) A producer of a perishable agricultural product who
2 suffers actual damages as a result of another person’s
3 disparagement of the producer’s product may recover those actual
4 damages if each of the following is found to be true:
- 5 (1) The disparagement clearly concerns the product specifically
6 produced by the plaintiff, and is not applicable to the product as
7 it is generally produced.
- 8 (2) The disparagement is disseminated to the public in any
9 manner.
- 10 (3) The defendant knows the disparaging statement is false, or
11 acts with reckless disregard for its truth or falsity.
- 12 (4) The defendant intended the statement to cause financial
13 harm to the plaintiff, or either recognized or should have recognized
14 that it was likely to do so.
- 15 (b) The plaintiff shall bear the burden of proving each element
16 of the cause of action.
- 17 (c) The following definitions apply for the purposes of this
18 section:
- 19 (1) “Disparagement” means a false and unprivileged publication
20 made orally, in writing, or in any other visual or aural form
21 regarding a perishable agricultural product that clearly impugns
22 the safety of the product.
- 23 (2) “Perishable agricultural product” means an agricultural
24 product, as defined in subdivision (a) of Section 58501 of the Food
25 and Agricultural Code, that is sold or distributed in a form that
26 will perish or decay beyond marketability within a period of time.
- 27 (d) This section shall not eliminate or limit any other cause of
28 action that may be available.