

AMENDED IN ASSEMBLY APRIL 23, 2007

AMENDED IN ASSEMBLY MARCH 26, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 698

Introduced by Assembly Member Strickland

(Coauthors: Assembly Members Berryhill, Gaines, Garcia, Jeffries, Keene, La Malfa, Maze, Plescia, Sharon Runner, Silva, and Villines)

February 22, 2007

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

LEGISLATIVE COUNSEL'S DIGEST

AB 698, as amended, 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 make certain legislative findings regarding false statements relating to agricultural products. The 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, *and would provide that this cause of action shall not be available on the basis of a complaint about the safety or quality of a perishable agricultural product when that complaint is made by an employee of the producer of that product. It would declare that these provisions are not intended to hinder, restrain, or prevent a person from reporting any good faith concern regarding food safety directly to an appropriate state or county health or agriculture agency.*

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

3 (a) California is the largest producer of agricultural products in
4 the United States.

5 (b) Consumers of California agricultural products need to have
6 reliable information regarding whether those agricultural products
7 are safe.

8 (c) False reports of contamination regarding agricultural
9 products harm California farmers, farmworkers, processors,
10 distributors, and retailers, as well as the California economy as a
11 whole. Those reports also harm consumers, who cannot assess
12 which reports of contamination are reliable.

13 (d) Allowing a civil cause of action for agricultural product
14 disparagement will discourage false reports of contamination while
15 protecting the rights of individuals to express legitimate concerns
16 over the safety of agricultural products.

17 SEC. 2. Section 47.2 is added to the Civil Code, to read:

18 47.2. (a) A producer of a perishable agricultural product who
19 suffers actual damages as a result of another person's
20 disparagement of the producer's product may recover those actual
21 damages if each of the following is found to be true:

22 (1) The disparagement clearly concerns the product specifically
23 produced by the plaintiff, and is not applicable to the product as
24 it is generally produced.

25 (2) The disparagement is disseminated to the public in any
26 manner.

1 (3) The defendant is the first person to disseminate the
2 disparagement to the public.

3 (4) The defendant knows the disparaging statement is false, or
4 acts with reckless disregard for its truth or falsity.

5 (5) The defendant intended the statement to cause financial
6 harm to the plaintiff, or either recognized or should have recognized
7 that it was likely to do so.

8 (b) The plaintiff shall bear the burden of proving each element
9 of the cause of action.

10 (c) The following definitions apply for the purposes of this
11 section:

12 (1) “Disparagement” means a false and unprivileged publication
13 made orally, in writing, or in any other visual or aural form
14 regarding a perishable agricultural product that clearly impugns
15 the safety of the product.

16 (2) “Perishable agricultural product” means an agricultural
17 product, as defined in subdivision (a) of Section 58501 of the Food
18 and Agricultural Code, that is sold or distributed in a form that
19 will perish or decay beyond marketability within a period of time.

20 (3) “*Producer*” means the person who actually grows or
21 produces perishable agricultural products.

22 (d) This section shall not eliminate or limit any other cause of
23 action that may be available.

24 (e) *The cause of action established by this section shall not be*
25 *available on the basis of a complaint about the safety or quality*
26 *of a perishable agricultural product when that complaint is made*
27 *by an employee of the producer of that product.*

28 (f) *This section is not intended to hinder, restrain, or prevent a*
29 *person from reporting any good faith concern regarding food*
30 *safety directly to an appropriate state or county health or*
31 *agriculture agency.*

32 (g) *The period for the commencement of an action under this*
33 *section shall be within one year of the date of the occurrence of*
34 *the disparagement.*