

“The California Food and Farm Protection Act”

Bill Number: AB 541

Introduced by Assembly Member Jared Huffman, 6th District
February 21, 2007

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

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

- (a) Genetically engineered plants have been shown to be dispersed into the environment through pollen drift, seed commingling, and inadvertent transfer of seeds by humans, animals, and weather events.
- (b) The unintended presence of genetically engineered plants and material in agricultural crops can have devastating economic impacts for producers who sell in organic markets and foreign markets that prohibit or restrict products that contain genetically engineered material.
- (c) The liability for the uncontrollable movement of genetically engineered material is being unfairly passed from manufacturers of genetically engineered plants to innocent and unknowing farmers and other property owners.
- (d) It is in the interest of the state to ensure that the use of genetically engineered plants in California is conducted in a manner that does not result in economic loss resulting from the unintended presence of genetically engineered materials in crops or on other property other than those for which the use is authorized by the manufacturer. It is further in the interest of the state to ensure that innocent farmers, farm businesses, and other property owners are shielded from legal liability for the presence of genetically engineered material in their crops that occurred without their knowledge and is beyond their control.

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

PART 9. Liability For Damages Caused by Genetically Engineered Plants

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

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

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

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

(d) "Person" includes any individual, partnership, limited liability company, limited liability partnership, corporation, firm, company, or any other entity doing business in California.

7202. (a) (1) The release by a manufacturer, 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.

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

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

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

(c) 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.

(d) A manufacturer shall not be liable for any damages resulting from private nuisance if the court finds either of the following:

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

- (A) The plaintiff or his or her agent acted in gross negligence.
 - (B) The plaintiff received and signed a contract with the manufacturer.
 - (C) The plaintiff received a training manual from the manufacturer.
 - (D) The court finds that the damages would not have occurred had the plaintiff or his or her agent followed the terms of the manufacturer's contract and training manual.
- (2) Any person not included under paragraph (1) acted in a grossly negligent manner that caused damages from the use of a genetically engineered plant manufactured by the manufacturer.
- (e) A person who prevails in an action under this section may recover compensatory damages, reasonable attorney's fees, and other litigation expenses and costs.
 - (f) The liability created by this section may not be waived or otherwise avoided by contract or other means.
 - (g) A cause of action under this section shall be in addition to and not in lieu of existing actions at law and equity, provided, however, that there shall be only one recovery of any specific damages as defined in this section.
 - (h) The provisions of this part shall apply notwithstanding any other provision of law.

7204. (a) A contract for the purchase of seeds or plant parts in California is governed by the laws of California.

(b) Any provision of a seed contract executed in California that purports to waive the provisions of this part, to choose the laws of another jurisdiction to govern the contract, or to choose a forum for adjudication of disputes arising out of the contract that would not otherwise have jurisdiction over the parties to the contract, is void and unenforceable.

7206. The proper venue for an action under this part is the superior court in the county in which the injury is alleged to have occurred.

7208. The provisions of this part are severable. If any provision of this part or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

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

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

Article 6. Genetically Engineered Plants

510. The Legislature finds and declares the following:

(a) The unintended presence of genetically engineered plants and material in agricultural crops can have adverse economic impacts on agricultural producers, including producers who sell to organic markets and foreign markets.

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

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

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

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

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

(1) Recombinant deoxyribonucleic acid (DNA).

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

(3) Recombinant DNA techniques that use vector systems and techniques involving the direct introduction into the organism of hereditary materials prepared outside the organism, such as microinjection, macroinjection, chemoporation, electroporation, microencapsulation, and liposome fusion.

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

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

(1) The FDA Center for Biologics Evaluation and Research.

(2) The FDA Center for Drug Evaluation and Research.

(3) The FDA Center for Veterinary Medicine.

(4) The USDA Center for Veterinary Biologics.

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

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

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

(1) Proposed date of open field production.

(2) Proposed location and number of acres.

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

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

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

516. (a) Each county agricultural commissioner shall include in the annual county crop report submitted to the department pursuant to Section 2272 information collected during the year pursuant to Section 514 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. Information shall be presented as a countywide aggregate and shall not provide information regarding the specific location of the production or the identification of any producer.

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

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

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

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

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

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

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

(d) The discovery of a pharmaceutical drug or other substance in the state's food supply could have tremendously disruptive effects on the state's agricultural and food supply

industries and severely undermine consumer and export market confidence in the safety of the food supply.

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

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

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

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

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

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

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

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