

HOUSE BILL REPORT

HB 1098

As Reported By House Committee On:

Agriculture & Ecology

Title: An act relating to false writings or statements concerning the food production industry.

Brief Description: Providing increased penalties for false writings or statements concerning farms or agricultural commodities.

Sponsors: Representatives Chappell, Chandler, Mastin, Brumsickle, Boldt, Lisk, Schoesler, Robertson, Sehlin, Clements, Foreman, Pennington, Stevens, Delvin and Mielke.

Brief History:

Committee Activity:

Agriculture & Ecology: 1/25/95, 2/9/95, 3/1/95 [DPS].

HOUSE COMMITTEE ON AGRICULTURE & ECOLOGY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives Chandler, Chairman; Koster, Vice Chairman; McMorris, Vice Chairman; Mastin, Ranking Minority Member; Chappell, Assistant Ranking Minority Member; Boldt; Clements; Delvin; Honeyford; Johnson; Robertson and Schoesler.

Minority Report: Do not pass. Signed by 5 members: Representatives R. Fisher; Kremen; Poulsen; Regala and Rust.

Staff: Bill Lynch (786-7092).

Background: In general, a person injured in his or her business, trade, or profession by the publication of a defamatory and false statement may bring a defamation action to recover damages.

Summary of Substitute Bill: If a producer of an agricultural commodity suffers damages resulting from another person's dissemination of false information to the public regarding the commodity, the producer may bring a court action for damages. The action may be brought if: (1) the information disseminated is false information regarding the application of an agricultural chemical or process, or alleging any

disease to agricultural commodities, and is not based on reliable scientific facts and data; (2) the person who disseminated it knows or should know that the information is false; and (3) the information casts doubt on the safety of the commodity to the consuming public.

The burden of proof is on the producer to show that he or she was damaged by the false information. Information is considered false if it is a false factual assertion or an opinion premised upon facts that are false. A class of producers may maintain an action if they are damaged even though the statement is not directed at a particular producer.

The action for damages resulting from such disparagement must be commenced within three years. This cause of action does not apply to customary debate among researchers or to an opinion of a member of the general public expressed in a news medium in a manner that is open to a member of the general public.

In a case where such damages are awarded, the court must award the plaintiff all costs of the litigation, including reasonable attorneys' fees, investigation costs, and court costs.

Substitute Bill Compared to Original Bill: The substitute bill requires the producer to prove by a preponderance of the evidence that he or she was damaged by the false information. A definition of false information is added. A class of producers are specifically authorized to bring an action even though a disparaging statement is not directed at any particular producer. The exemption for false statements made by producers is deleted. Language is added to clarify that the state has a compelling interest in preventing the dissemination of disparaging information about agricultural products.

Appropriation: None.

Fiscal Note: Not Requested.

Effective Date of Substitute Bill: The bill contains an emergency clause and takes effect immediately.

Testimony For: There is a need to balance the interests of all parties. Consumer confidence in the safety of food products is below the level that existed before the ALAR scare. Many people lost money because the public believed misleading information about ALAR. Agricultural products are highly perishable and delays in marketing can cause huge losses. Agriculture is a major industry in the state, so the state has a compelling interest in preventing false information about agricultural products from being disseminated.

Testimony Against: It is not clear what constitutes reliable scientific data. This could have a chilling effect on the freedom of speech. A cause of action already exists at common law for product disparagement. Allowing a cause of action to be brought without having to prove malice is probably unconstitutional.

Testified: Representative Chappell, prime sponsor; Chris Cheney, Washington Hop Commission (pro); Heather Rainey (pro); Bob Brody, Washington Association of Apple Growers (pro); Allan Fackenthall, Gardenspot Grange/Washington State Grange (pro); Bill Fritz, Washington Food Processors Council (pro); Jim Zimmerman, Washington Fish Growers Association (pro); Mike Schwisow, Oregon-Washington Dairy Processors Association and Washington State Potato Commission (pro); Henry Michael, Washington State Potato Commission (pro); Mark Allen, Washington State Association of Broadcasters (con); and Diana Kramer, Washington Newspaper Publishers Association (con).