

#52

3/18/69

Memorandum 69-52

Subject: Study 52 - Sovereign Immunity (Escaping Fire and Chemicals)

At the March meeting, the Commission determined that the liability of public entities for escaping fire and for damage from the use of agricultural chemicals should be made clear. The attached exhibits contain draft statutes that would accomplish this objective.

Respectfully submitted,

John H. DeMouly
Executive Secretary

EXHIBIT I

LIABILITY IN RELATION TO FIRES

Section 1. Section 13011 is added to the Health and Safety Code, to read:

13011. As used in Sections 13007, 13008, and 13009, "person" includes but is not limited to the state, a county, city, district, public authority, public agency, and any other political subdivision or public corporation.

Note: The sections referred to read as follows:

13007. Any person who personally or through another wilfully, negligently, or in violation of law, sets fire to, allows fire to be set to, or allows a fire kindled or attended by him to escape to, the property of another, whether privately or publicly owned, is liable to the owner of such property for any damages to the property caused by the fire.

13008. Any person who allows any fire burning upon his property to escape to the property of another, whether privately or publicly owned, without exercising due diligence to control such fire, is liable to the owner of such property for the damages to the property caused by the fire.

13009. The expenses of fighting any fires mentioned in Sections 13007 and 13008 are a charge against any person made liable by those sections for damages caused by such fires. Such charge shall constitute a debt of such person, and is collectible by the person, or by the federal, state, county, or private agency, incurring such expenses in the same manner as in the case of an obligation under a contract, expressed or implied.

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EXHIBIT II

INJURIOUS AGRICULTURAL CHEMICALS

Section 1. Section 815.8 is added to the Government Code, to read:

815.8. Notwithstanding Section 14002 of the Agricultural Code, a public entity is liable for an injury caused by the use of any injurious agricultural chemical to the same extent that the public entity would be subject to such liability if it were a private person. "Injurious agricultural chemical" means an economic poison as defined in Section 12753 of the Agricultural Code or an injurious material as defined in Section 14001 of the Agricultural Code.

Note: Section 12753 provides:

12753. "Economic poison" includes any of the following:

(a) Any spray adjuvant.

(b) Any substance, or mixture of substances which is intended to be used for defoliating plants, regulating plant growth, or for preventing, destroying, repelling, or mitigating any and all insects, fungi, bacteria, weeds, rodents, or predatory animals or any other form of plant or animal life which is, or which the director may declare to be, a pest, which may infest or be detrimental to vegetation, man, animals or households, or be present in any environment whatsoever.

Section 14001 provides:

14001. As used in this article, "injurious material" means any material which the director, pursuant to Section 14005, finds and determines is injurious.

Section 14005 provides:

14005. The director, after investigation and hearing, shall adopt regulations which govern the application, in pest control or other agricultural operations, of any material which he finds and determines is injurious to any person, animal, or crop, except the pest or vegetation which it is intended to destroy.

Section 14002 provides:

14002. This chapter does not apply to any agency of the United States or of this state, or to any officer, agent, or employee of any such agency who is acting within the scope of his authority, while he is engaged in, conducting, or supervising research on any injurious material.