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AB-450 Bees: Apiary Protection Act. (2019-2020)

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Assembly Bill No. 450

CHAPTER 300

An act to amend Sections 29041, 29047, 29048, 29070, 29070.5, 29101, 29302, and 29313 of the Food and Agricultural Code, relating to bees.

[Approved by Governor September 20, 2019. Filed with Secretary of State September 20, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

AB 450, Arambula. Bees: Apiary Protection Act.

(1) Existing law, the Apiary Protection Act, provides for the regulation and management of apiaries. Existing law requires that registration of an apiary be filed with the agricultural commissioner of the county in which the apiary is located, or with the Secretary of Food and Agriculture if there is no agricultural commissioner in the county. Existing law requires any person relocating a bee colony from a registered apiary in one county to another county where the apiary is not registered to notify the county agricultural commissioner within 72 hours of the first movement. Existing law conditions the availability of certain protections under the Apiary Protection Act on a beekeeper's compliance with this requirement. Existing law exempts information provided pursuant to this requirement from disclosure pursuant to the California Public Records Act.

Existing law also requires any apiary operator, or the apiary operator's designated representative, to notify a county agricultural commissioner when relocating a bee colony within the county, but does not impose a 72-hour deadline for providing notice or include other provisions relating to this requirement that are consistent with the above-described provisions regarding notice of a relocation to another county.

Existing law makes it an infraction for any person to fail to comply with specified requirements of the Apiary Protection Act, including the above-described notification requirements.

This bill would recast provisions regarding notice of relocation within a county to be consistent with those regarding notice of relocation to another county, including, among other things, by imposing a 72-hour deadline for providing notice of relocation within a county or subsequent movement within the destination county, and by exempting information provided pursuant to that notification requirement from disclosure pursuant to the California Public Records Act. By imposing a notification requirement of shorter duration, the violation of which is a crime, the bill would impose a state-mandated local program.

(2) Existing law that becomes operative on and after January 1, 2020, authorizes the secretary or a county agricultural commissioner, in lieu of prosecution, and in addition to any other penalty that is provided in the Apiary Protection Act, to impose an administrative civil penalty for a violation of certain requirements of the Apiary Protection Act regulating the registration and identification of apiaries and the relocation of bee colonies, pursuant to a prescribed hearing and appeals process.

This bill would further delay the operative date of these provisions until January 1, 2021.

(3) Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 29041 of the Food and Agricultural Code is amended to read:

29041. Notwithstanding the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), any information provided in accordance with this article, Section 29070, or Section 29070.5 shall be held confidential, and shall not be disclosed to any person or governmental agency, other than the department or a county department of agriculture. The information shall also be considered privileged under the provisions of Sections 1040 and 1060 of the Evidence Code, with the exception of the location of apiaries for disclosure to pesticide applicators pursuant to Section 29101.

SEC. 2. Section 29047 of the Food and Agricultural Code is amended to read:

29047. Any person who owns or is in possession of an apiary may bring an action to recover damages for any injury to the apiary by reason of any pest control operation if the person has complied with Sections 29043, 29046, 29070, and 29070.5, and with regulations adopted by the secretary providing for the protection of bees under Sections 11502, 14005, and 29080 when these requirements apply to the property where the alleged damage has occurred.

SEC. 3. Section 29048 of the Food and Agricultural Code is amended to read:

29048. Any pesticide applicator who experiences any loss because of a beekeeper's failure to request notification of a pesticide application pursuant to Section 29101, or pursuant to any department rule or regulation, or who experiences any loss because of a beekeeper's failure to register bees pursuant to Section 29041 or 29042, may bring an action for the recovery of damages against that beekeeper.

SEC. 4. Section 29070 of the Food and Agricultural Code is amended to read:

29070. (a) Any person relocating a colony of bees from a registered apiary in one county to another county, where the apiary is not registered for the current calendar year, shall notify the destination commissioner within 72 hours of the first movement or entry into the county. The notification shall include all of the following:

(1) The name and address of the apiary operator or the operator's designated representative.

(2) A telephone number where the apiary operator or the operator's designated representative may be reached.

(b) The apiary operator or the operator's designated representative shall provide locations of each colony upon request by the commissioner of any county.

(c) Subsequent movement into the destination county shall require further notification to the commissioner within 72 hours of movement.

(d) When the apiary operator removes the last colony from the county, the operator shall notify the commissioner of that final movement within 72 hours.

SEC. 5. Section 29070.5 of the Food and Agricultural Code is amended to read:

29070.5. Any apiary operator or the apiary operator's designated representative relocating a colony of bees within a county where the apiary is currently registered shall notify the commissioner of the movement within 72 hours of the relocation.

SEC. 6. Section 29101 of the Food and Agricultural Code is amended to read:

29101. (a) Each beekeeper shall report to the commissioner of the county in which the beekeeper's apiary is located, on a form approved by the secretary, each location of apiaries for which notification of pesticide usage is sought. This report for notification may be filed with and be part of the form used for registration pursuant to Article 4 (commencing with Section 29040), or shall be submitted in writing if notice of relocation is made as set forth in Section 29070 or 29070.5. Except for reports filed as part of an initial registration pursuant to Section 29040, each request shall be mailed within 72 hours before locating an apiary, where feasible, but in no event later than 72 hours after locating an apiary.

(b) The beekeeper shall not be entitled to notification until receipt and processing of the report is made by the commissioner. However, the commissioner may provide notice earlier if practicable.

(c) Notice to pesticide applicators shall not be required until the written report by the beekeeper has been received and processed by the commissioner, except that the commissioner may provide notice earlier if practicable.

(d) The commissioner shall process the written report as expeditiously as reasonable, but shall not exceed 16 working hours. The 16-hour period shall commence upon receipt of the written report.

SEC. 7. Section 29302 of the Food and Agricultural Code is amended to read:

29302. (a) Unless otherwise stated, it shall be an infraction for any person to fail to comply with any requirement of this chapter, or regulations adopted pursuant to this chapter, after a warning notice of seven days is given. However, there shall be no warning notice for infractions involving the following sections:

(1) Subdivisions (b) and (c) of Section 29046.

(2) Subdivisions (b) and (c) of Section 29056.

(3) Section 29072.

(4) Section 29111.

(5) Section 29113.

(6) Section 29120.

(7) Section 29126.

(8) Section 29127.

(9) Section 29145.

(10) Section 29150.

(11) Section 29170.

(12) Section 29171.

(13) Section 29172.

(14) Section 29173.

(15) Section 29204.

(b) Violations shall be referred to the district attorney in the affected county, or to the Attorney General if the district attorney is not able to prosecute the matter. For purposes of this chapter, each incident shall constitute a separate infraction. When violations of provisions governing hives or colonies are involved, each separate hive or colony shall constitute a separate infraction. Notwithstanding any other law, the maximum penalty of each infraction shall be one hundred dollars (\$100) for the first hive or colony, plus one dollar (\$1.00) for each additional hive or colony not in compliance, as applicable to a maximum penalty not to exceed one thousand dollars (\$1,000), except that a violation of Section 29070 or 29070.5 shall be subject to a maximum fifty dollar (\$50) fine. Nothing in this section shall prevent the secretary or the commissioner from initiating any procedures for issuance of a prior warning notice or notice to correct.

SEC. 8. Section 29313 of the Food and Agricultural Code is amended to read:

29313. (a) In lieu of prosecution, and in addition to any other penalty that is provided in this chapter, the secretary or the commissioner may impose an administrative civil penalty on a person who violates Article 4 (commencing with Section 29040) or Article 5 (commencing with Section 29070), or any regulations adopted pursuant to this chapter to implement those articles.

(b) An administrative civil penalty imposed pursuant to this section shall be levied in proportion to the violation, measured as either "serious," "moderate," or "minor."

(1) "Serious" violations are repeat or intentional violations, punishable by an administrative civil penalty of not less than four hundred one dollars (\$401) and up to a maximum of one thousand dollars (\$1,000) per violation.

(2) "Moderate" violations are repeat violations or violations that are not intentional, punishable by an administrative civil penalty of not less than one hundred fifty-one dollars (\$151), but not more than four hundred dollars (\$400) per violation.

(3) "Minor" violations are violations that are procedural in nature, punishable by an administrative civil penalty of not less than fifty dollars (\$50), but not more than one hundred fifty dollars (\$150) per violation.

(c) Before an administrative civil penalty is imposed pursuant to this section, the person charged with the violation shall receive written notice of the proposed action, including the nature of the violation and, if applicable, the amount of the proposed civil penalty. The person shall have the right to request a hearing within 20 days after receiving notice of the proposed action. A notice that is sent by certified mail to the last known address of the person charged shall be considered received even if delivery is refused or if the notice is not accepted at that address. If a hearing is requested, notice of the time and place of the hearing shall be given at least 10 days before the date set for the hearing. At the hearing, the person shall be given an opportunity to review the secretary's or the commissioner's evidence and to present evidence on the person's own behalf. If a hearing is not timely requested, the secretary or the commissioner may take the action proposed without a hearing.

(d) If the person, upon whom the commissioner imposed an administrative civil penalty, requested and appeared at a hearing, the person may appeal the commissioner's decision to the secretary within 30 days of the date of receiving a copy of the commissioner's decision. The following procedures apply to the appeal:

(1) The appeal shall be in writing and signed by the appellant or the appellant's authorized agent, state the grounds for the appeal, and include a copy of the commissioner's decision. The appellant shall file a copy of the appeal with the commissioner at the same time it is filed with the secretary.

(2) The appellant and the commissioner, at the time of filing the appeal or within 10 days thereafter or at a later time prescribed by the secretary, may present the record of the hearing and a written argument to the secretary stating the ground for affirming, modifying, or reversing the commissioner's decision.

(3) The secretary may grant oral arguments upon application made at the time written arguments are filed.

(4) If an application to present an oral argument is granted, written notice of the time and place for the oral argument shall be given at least 10 days before the date set therefor. The times may be altered by mutual agreement of the appellant, the commissioner, and the secretary.

(5) The secretary shall decide the appeal on the record of the hearing, including the written evidence and the written argument described in paragraph (2), that the secretary has received. If the secretary finds substantial evidence in the record to support the commissioner's decision, the secretary shall affirm the decision.

(6) The secretary shall render a written decision within 45 days of the date of appeal or within 15 days of the date of oral arguments or as soon thereafter as practical.

(7) On an appeal pursuant to this section, the secretary may affirm the commissioner's decision, modify the commissioner's decision by reducing or increasing the amount of the civil penalty levied, if applicable, so that it is within the secretary's guidelines for imposing administrative civil penalties, or reverse the commissioner's decision. Any civil penalty increased by the secretary shall not be higher than that proposed in the commissioner's notice of proposed action given pursuant to subdivision (c). A copy of the secretary's decision shall be delivered or mailed to the appellant and the commissioner.

(8) Any person who does not request a hearing with the commissioner pursuant to a civil penalty imposed under subdivision (c) may not file an appeal to the secretary pursuant to this subdivision.

(9) Review of a decision of the secretary may be sought by the appellant within 30 days of the date of the decision pursuant to Section 1094.5 of the Code of Civil Procedure.

(e) After the exhaustion of the appeal and review of procedures provided in this section, the commissioner, or the commissioner's representative, may file a certified copy of a final decision of the commissioner that directs the payment of a civil penalty, and, if applicable, a copy of any decision of the secretary, or the secretary's authorized representative, rendered on an appeal from the commissioner's decision and a copy of any order that denies a petition for a writ of administrative mandamus, with the clerk of the superior court of any county. Judgment shall be entered immediately by the clerk in conformity with the decision or order. No fees

shall be charged by the clerk of the superior court for the performance of any official service required in connection with the entry of judgment pursuant to this section.

(f) In addition to the administrative civil penalties prescribed in subdivision (b), the appellant may be required to cover the cost of the administrative hearing unless the decision of the secretary or the commissioner is overturned.

(g) This section shall become operative on January 1, 2021.

SEC. 9. The Legislature finds and declares that Section 1 of this act, which amends Section 29041 of the Food and Agricultural Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

Because disclosing the location of apiaries within the state could put those apiaries at risk, it is necessary to limit the public's right of access to that information.

SEC. 10. 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.