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AB-719 Bees. (2021-2022)

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Assembly Bill No. 719

CHAPTER 683

An act to amend Sections 29009, 29010, 29012, 29020, 29025, 29040, 29071, 29072, 29073, 29101, 29110, 29122, 29180, 29191, 29200, 29201, 29203, 29204, 29205, 29208, 29209, 29313, and 29320 of, and to add Section 29005.5 to, the Food and Agricultural Code, relating to bees.

[Approved by Governor September 28, 2022. Filed with Secretary of State September 28, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

AB 719, Committee on Agriculture. Bees.

(1) Existing law creates the Apiary Board within the Department of Food and Agriculture. Existing law requires the board to consist of 5 members that are appointed by the Secretary of Food and Agriculture. Existing law requires those members to be assessment-paying beekeepers that reside in California and represent the major geographical divisions of the beekeeping industry. Existing law authorizes the secretary to appoint an additional member on the board as a public member.

This bill would increase the number of board members from 5 to 7. The bill would require 6 of the 7 board members to be registered beekeepers that reside in California and are representative of the industry functions of queen breeding, pollination, or honey production. The bill would authorize the secretary to appoint the 7th member of the board, who shall be a public member.

The bill would authorize the secretary, in consultation with the board, to identify a representative from the California Agricultural Commissioners and Sealers Association and a member of the industry that represents pollinated crops to serve as subject matter experts at board meetings.

(2) Existing law, for purposes of the Apiary Protection Act, defines "pest" to mean American foulbrood or any other infectious disease, parasite, pest, or hereditary disease that affects bees that the secretary declares by regulations is detrimental to the welfare of the bee industry.

This bill would revise the definition of "pest" to, among other things, require those regulations be done in consultation with the association representing the beekeeping industry and the board. The bill would also revise the definition of "infected," "infested," "contaminated," or "diseased." The bill would also revise the definition of "inspector."

(3) Existing law, the Apiary Protection Act, requires an owner or a person in charge or possession of an apiary to comply with certain requirements, including to register the number of colonies in each apiary and the location of each apiary and to abate an infestation of an apiary upon finding an infestation to be present or receiving notice of an infestation. Under existing law, failure to comply with any requirement under the Apiary Protection Act is a crime.

This bill would apply certain requirements under the Apiary Protection Act to brokers, which the bill would define as a person or entity that receives a monetary profit from the managing of beehives, hive equipment, or honey bees that they do not own, but

have control of, through a private or public agreement between one or more parties. By extending certain requirements to brokers, the violation of which would be a crime, this bill would create a state-mandated local program.

(4) Existing law authorizes any person to transport any contaminated hive, together with its contents, or any contaminated comb, including any frame associated with it, to a suitable place for burning, or to a licensed wax salvage plant, as specified.

This bill would instead authorize any person under the supervision of the local county agricultural commissioner to transport any contaminated hive, together with its contents, or any contaminated comb, including any frame associated with it, to a suitable place for burning or disposal, or to a licensed wax salvage plant, as specified.

(5) Existing law provides that no person shall move or transport any bees, comb, appliances, or colonies within the state that are diseased, except as specified. Existing law authorizes the inspector, in a summary manner, to destroy where required, any and all diseased colonies, bees, combs, or hives that are unlawfully moved within the state wherever they may be found.

This bill would instead apply the above provisions to colonies, bees, combs, appliances, or hives that contain pests.

(6) Existing law requires a beekeeper to report to the agricultural 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. Existing law requires each request, except as specified, to be mailed within 72 hours before locating an apiary, where feasible, but in no event later than 72 hours after locating an apiary.

This bill would authorize electronic submission of the above request.

(7) Existing law requires the colony strength of a bee colony to be certified after inspection on the basis of the number of active frames of bees or the square inches of brood per colony, or both, using a sampling system, approved by the secretary.

This bill would instead require the colony strength of a bee colony to be certified after inspection on the basis of the number of active frames of bees per colony, as determined by either cluster count, frame count, or both, or another method approved by the secretary.

(8) Existing law authorizes the secretary, or the county agricultural commissioner, or any inspector acting under their direction, to enter, if they determine it to be necessary, any location where an apiary is maintained, and make an inspection of the apiary, including ancillary buildings, as specified. Existing law authorizes the inspector to give prior notice of the inspection where the notice would not interfere with the purpose of the inspection.

This bill would instead require the inspector to give notice of the inspection where the notice would not interfere with the purpose of the inspection. The bill would provide that, to the greatest extent possible, the beekeeper or their representative may be present for an internal inspection of the hives. The bill would require an inspector to use appropriate sanitation protocols, as described, during an inspection.

(9) Existing law prescribes various abatement methods for diseased colonies.

This bill would authorize operations to abate diseased colonies to be performed by any authorized hazardous waste facility. The bill would apply the above prescribed abatement methods to hazardous waste disposal.

(10) Existing law, in lieu of prosecution, and in addition to any other specified penalty, authorizes the secretary or the county agricultural commissioner to impose an administrative civil penalty on a person who violates specified provisions of law relating to apiary registration and identification and intrastate movement of bee colonies.

This bill would apply the above provision to violations of law relating to, among other things, nonconforming honey and mislabeling.

(11) Existing law authorizes the secretary, in cooperation with the Regents of the University of California, to approve programs statewide to train, on a voluntary basis, beekeepers in the maintenance of colonies free of Africanized honey bees.

This bill would instead authorize the secretary, in consultation with the board, to approve programs statewide to train, on a voluntary basis, beekeepers, inspectors, or county agricultural commissioners in contemporary and geographically relevant colony management, including, but not limited to, the maintenance of colonies free from Africanized honey bees.

(12) This bill would also make other conforming and related changes and nonsubstantive changes.

(13) 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.

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

SECTION 1. Section 29005.5 is added to the Food and Agricultural Code, to read:

29005.5. “Broker” means a person or entity that receives a monetary profit from the managing of beehives, hive equipment, or honey bees that they do not own, but have control of, through a private or public agreement between one or more parties.

SEC. 2. Section 29009 of the Food and Agricultural Code is amended to read:

29009. “Pest” includes American foulbrood or any other infectious disease, parasite, pest, or hereditary disease that affects bees that the secretary declares by regulations, in consultation with the association representing the beekeeping industry and the board and final approval by the secretary, is detrimental to the welfare of the bee industry.

SEC. 3. Section 29010 of the Food and Agricultural Code is amended to read:

29010. “Infected,” “infested,” “contaminated,” or “diseased” includes a viable stage of a life cycle of a “pest” as defined in Section 29009 can be demonstrated to exist on or within the colony population or on hives, comb, or any appliances associated with beekeeping operations.

SEC. 4. Section 29012 of the Food and Agricultural Code is amended to read:

29012. “Inspector” means any person who has received a certificate issued by the department with curriculum approved by the secretary and who is authorized to enforce this chapter.

SEC. 5. Section 29020 of the Food and Agricultural Code is amended to read:

29020. There is in the department the Apiary Board, consisting of seven members appointed by the secretary, six of whom shall be registered beekeepers who reside in California and who are representative of the industry functions of queen breeding, pollination, or honey production. The secretary may appoint the seventh member of the board, who shall be a public member.

SEC. 6. Section 29025 of the Food and Agricultural Code is amended to read:

29025. The secretary may appoint a department representative as the secretary to the board. In consultation with the board, the secretary may identify a representative from the California Agricultural Commissioners and Sealers Association and a member of the industry that represents pollinated crops to serve as subject matter experts at meetings.

SEC. 7. Section 29040 of the Food and Agricultural Code is amended to read:

29040. Every person that is the owner, broker, or is in possession of an apiary that is located within the state, on the first day of January of each year, shall register the number of colonies in each apiary that is owned or possessed by the person and the location of each apiary. Every person required to register under this article, shall do so on the first day of January of each year in which they maintain, possess, or are in possession of an apiary, or within 30 days thereafter, as prescribed in this article.

SEC. 8. Section 29071 of the Food and Agricultural Code is amended to read:

29071. It is lawful for any person when under the supervision of the local county agricultural commissioner, except when prohibited by other provisions of this chapter, to do any of the following:

(a) Transport any contaminated hive, together with its contents, to a suitable place for burning or disposal, pursuant to Section 29208 or to a wax salvage plant licensed under Article 11 (commencing with Section 29150), after the person has killed the bees in the hive and sealed the hive to prevent the entrance of live bees.

(b) Transport contaminated comb, including any frame associated with it, to a suitable place for burning or disposal, pursuant to Section 29208 or to a wax salvage plant, licensed under the provisions of Article 11 (commencing with Section 29150) if the comb is tightly enclosed to prevent access to the comb by bees.

SEC. 9. Section 29072 of the Food and Agricultural Code is amended to read:

29072. No person shall move or transport any bees, comb, appliances, or colonies within the state that contain pests, except for abatement pursuant to this chapter or for research pursuant to Section 29074.

SEC. 10. Section 29073 of the Food and Agricultural Code is amended to read:

29073. The inspector, in a summary manner, may destroy, where required, any and all colonies, bees, combs, or hives that contain pests that are unlawfully moved within the state wherever they may be found.

SEC. 11. 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 provided electronically or 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. 12. Section 29110 of the Food and Agricultural Code is amended to read:

29110. The secretary may adopt by regulation and establish, maintain, and enforce a quarantine at the boundaries of, or within, the state, to protect the bee industry against the introduction or spread of any bee pest. The secretary may make and enforce such regulations as may be necessary to prevent any bees, comb, hives, or appliances from passing over any quarantine line that is established and proclaimed pursuant to this article.

SEC. 13. Section 29122 of the Food and Agricultural Code is amended to read:

29122. Except as provided in Section 29123, the certificate required by Section 29120 shall be signed by the State Entomologist, State Apiary Inspector, or comparable officer in charge of apiary inspection for the state or territory of origin and shall certify to all of the following facts:

(a) The name and address of the owner or shipper and the place of destination in this state.

(b) The number or amount of queen bees, package bees, bee semen, hives, or nuclei that contain bees, the number of used hives either empty or containing comb, and a complete list of any other used beekeeping equipment in the shipment.

(c) The county and state or territory of origin.

(d) The date on which inspection was last made of the apiary in which the bees, comb, used hives, and appliances originated.

(e) That the apiary was found free of all pests denoted as pests by the State of California, using detection procedures and methods approved by the secretary.

(f) If the pest is American foulbrood, the total number of colonies in the apiary at the time of inspection, and the number of colonies found infested.

(g) That all American foulbrood colonies of bees found upon inspection were destroyed, removed to a quarantine apiary, removed to wax salvage, or other specified methods of destruction pursuant to Section 29208, before the issuance of the certificates.

SEC. 14. Section 29180 of the Food and Agricultural Code is amended to read:

29180. The inspector shall order the owner, broker, or person in charge of any bees that are kept in a box or other unmovable or stationary comb hive to transfer the bees to a movable frame hive within a reasonable time, to be specified in the order. In default of transfer by the owner, broker, or person in charge of the bees, the inspector may destroy in a summary manner the hive and its contents.

SEC. 15. Section 29191 of the Food and Agricultural Code is amended to read:

29191. The colony strength of a bee colony shall be certified after inspection on the basis of the number of active frames of bees per colony, as determined by either cluster count or frame count, or both, or another method approved by the secretary.

SEC. 16. Section 29200 of the Food and Agricultural Code is amended to read:

29200. The Legislature finds that in order to ensure the vitality of the apiary industry, to protect the welfare of the people of the State of California, as well as agricultural crops dependent upon bees for pollination, a pest inspection program should be an integral part of the regulatory scheme contained in this division. The Legislature further finds that without a continuing regular inspection program, including continued training for inspectors or commissioners in apiculture with curriculum approved by the secretary, as further specified in this article, the programs and requirements of law set forth in this division will be impaired.

SEC. 17. Section 29201 of the Food and Agricultural Code is amended to read:

29201. (a) The secretary, or the commissioner, or any inspector acting under their direction, may enter if they determine it to be necessary, any location where an apiary is maintained, and make an inspection of the apiary, including ancillary buildings. The inspector shall give notice of the inspection where the notice would not interfere with the purpose of the inspection. To the greatest extent possible, the beekeeper or their representative may be present for an internal inspection of the hives. The right of inspection shall occur at reasonable times, and shall not include any dwelling. If the inspector desires entry to any dwelling because the inspector suspects maintenance problems regarding a colony, hive, comb, or appliance therein, the inspector, upon request, shall obtain a warrant pursuant to the provisions of Section 1822.50 of the Civil Code and comply with the provisions therein. No person shall interfere with the entry of an inspector in the official course of the inspector's duty. The inspector shall report the result of the inspection to the beekeeper, where feasible, within five days of the inspection. An inspector shall use appropriate sanitation protocols developed in conjunction with beekeeping industry, and included in the annual training.

(b) If the inspector finds American foulbrood disease has infected more than two hives of 99 colonies or less, or 2 percent or more of colonies of 100 or more, the inspector shall make a complete inspection of all the hives in the apiary and the owner of the hives in the apiary shall pay the cost of the complete inspection. If the inspector finds American foulbrood disease has infested less than 2 percent of colonies of 100 or more as the result of an inspection made after the disease was brought to the inspector's attention in writing, the commissioner may assess the costs of the inspection on the person who brought the disease to the inspector's attention.

SEC. 18. Section 29203 of the Food and Agricultural Code is amended to read:

29203. (a) If infestation is found in an apiary, the inspector shall notify the owner, broker, or person in charge or possession of the apiary in writing. The notice shall state the nature of the pest infestation found and the manner in which the inspector has marked the hives or any part of the hives that contain evidence of the infestation and shall order the abatement of the infestation within a specified time. No person after receiving notice shall refuse or neglect to abate the infestation within the time specified in the notice or order.

(b) If the inspector, in the inspector's judgment, believes summary abatement is necessary, the inspector may do so, or require that abatement be performed under the inspector's direct supervision. The inspector may also issue a hold order against the apiary, giving notice that the apiary is held to the owner or bailee and posting a copy of the hold order in a conspicuous place in the apiary. No person, who has been given notice of a hold order, shall move the apiary or any part of the apiary or any other bee equipment from the location unless authorized by the inspector, until the hold order is released.

SEC. 19. Section 29204 of the Food and Agricultural Code is amended to read:

29204. Every infested apiary is a public nuisance. The owner, broker, or person in charge or possession of any apiary, upon finding an infestation to be present, or upon receiving notice an infestation exists in the apiary, shall abate the infestation without undue delay, pursuant to the requirements of law.

SEC. 20. Section 29205 of the Food and Agricultural Code is amended to read:

29205. The notice may be served upon the broker or the person that has possession or that owns the infested apiary, personally or by certified mail to their last known address. If the owner, broker, or person in charge or possession of any apiary is not known, the notice shall be served by posting it in a conspicuous place in the apiary.

SEC. 21. Section 29208 of the Food and Agricultural Code is amended to read:

29208. (a) If abatement is by burning or hazardous waste disposal, the person abating shall act in accordance with applicable air pollution control district or air quality maintenance district regulations and state and local fire control laws. If the regulations or laws prohibit burning immediately, the diseased colonies shall be sealed and placed in an enclosed structure and thereafter burned on the first date allowed by the regulation or law. All the activities shall be reported to the inspector before burning or disposal, who may require that burning or disposal occur only under the inspector's supervision.

(b) The inspector's supervision shall be in addition to, but not in conflict with, the applicable air pollution control district or air quality management district regulations and fire control laws. Burning or disposal without the knowledge of the inspector is a violation of this section.

(c) If abatement is by delivery to a licensed wax salvage plant, the person abating shall provide the inspector with information as to the date and location of delivery.

(d) If the inspector determines that abatement by burning or hazardous waste disposal is appropriate, the inspector's costs for supervising the burning or disposal shall be borne by the beekeeper with the diseased hives.

(e) In lieu of the methods prescribed pursuant to Section 29151, operations to abate diseased colonies may be performed by any hazardous waste facility authorized to operate under Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code.

SEC. 22. Section 29209 of the Food and Agricultural Code is amended to read:

29209. If the owner, broker, or person in charge or possession of an apiary in which an infestation is found to exist cannot be located after diligent search by the inspector, or if notice has been served pursuant to this article and the owner, broker, or person in charge or possession of the apiary refuses or neglects to abate the infestation within the time that is specified in the notice, the inspector shall abate the infestation within 72 hours after expiration of the time that is specified in the notice. The cost of abatement shall be paid by the owner of the apiary.

SEC. 23. 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), Article 10 (commencing with Section 29671) of Chapter 2, 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. 24. Section 29320 of the Food and Agricultural Code is amended to read:

29320. The secretary, in consultation with the board, may approve programs statewide to train, on a voluntary basis, beekeepers, inspectors, or commissioners in contemporary and geographically relevant colony management, including, but not limited to, the maintenance of colonies free from Africanized honey bees.

SEC. 25. 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.