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AB-1322 Pesticides: second-generation anticoagulant rodenticide: diphacinone. (2023-2024)

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Assembly Bill No. 1322

CHAPTER 836

An act to amend Section 12978.7 of the Food and Agricultural Code, relating to pesticides.

[Approved by Governor October 13, 2023. Filed with Secretary of State October 13, 2023.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1322, Friedman. Pesticides: second-generation anticoagulant rodenticide: diphacinone.

Existing law regulates the use of pesticides and authorizes the Director of Pesticide Regulation to adopt regulations to govern the possession, sale, or use of any pesticide, as prescribed. Existing law prohibits the use of second-generation anticoagulant rodenticides, as defined, in wildlife habitat areas. Existing law additionally prohibits the use of second-generation anticoagulant rodenticides in the state until the director certifies to the Secretary of State that, among other things, the Department of Pesticide Regulation, in consultation with the Department of Fish and Wildlife, has adopted any additional restrictions necessary to ensure that continued use of second-generation anticoagulant rodenticides is not reasonably expected to result in significant adverse effects to nontarget wildlife, as provided. Existing law exempts the use of second-generation anticoagulant rodenticides from these prohibitions under certain circumstances. Existing law requires the director, and each county agricultural commissioner under the direction and supervision of the director, to enforce the provisions regulating the use of pesticides. A violation of these provisions is a misdemeanor.

This bill would also prohibit the use of diphacinone in a wildlife habitat area and in the state and would generally apply the above provisions and other related requirements to diphacinone. The bill would change the above-described condition required for the director to make the certification to the Secretary of State to instead provide that the Department of Pesticide Regulation, in consultation with, and with the concurrence of, the Department of Fish and Wildlife, has adopted any additional restrictions that are necessary to ensure a trend of statistically significant reductions in the mean concentration values of detectable levels of second-generation anticoagulant rodenticides or any of their metabolites in tested tissues of a scientifically representative sample of wildlife. The bill would authorize these restrictions to include a requirement to implement alternatives, such as integrated pest management, before the use of second-generation anticoagulant rodenticides. The bill would also set forth similar conditions for the director to make the certification with respect to diphacinone, as provided.

By imposing additional duties on county agricultural commissioners, and expanding the definition of a crime, this bill would impose a state-mandated local program.

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 with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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

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

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

(1) Wildlife, including birds of prey, mountain lions, bobcats, fishers, foxes, coyotes, and endangered species such as the northern spotted owl, pacific fisher, and San Joaquin kit fox, are an irreplaceable part of California's natural ecosystems. As predators of small mammals, they play an important role in regulating and controlling the population of rodents throughout the state to improve public health and welfare.

(2) Millions of people annually visit California for the purposes of viewing and photographing wildlife, and these visits contribute millions of dollars to California's economy.

(3) Urban areas are increasingly being used by predatory mammals and birds of prey and the public enjoys seeing them and values these animals and the ecosystem services they provide.

(4) The ecosystem services provided by native wildlife predators are a public trust, just like clean air and water. We, as California residents, are obligated to conserve these wildlife populations for future generations of Californians.

(5) Consistent with this obligation, and as set forth in Executive Order No. N-82-20, it is the policy of the state to conserve at least 30 percent of California's land and coastal waters by 2030 in a manner that protects and restores biodiversity, enables enduring conservation measures on a broad range of landscapes, builds climate resilience, reduces risk from extreme climate events, and contributes to the state's efforts to combat climate change.

(6) Protection and restoration of biodiversity consistent with Executive Order No. N-82-20 requires implementation of science-based measures to limit the use of anticoagulant rodenticides, which cause direct mortality and chronic long-term health impacts for natural predators, nontarget organisms, and endangered species.

(7) Second-generation anticoagulant rodenticides (SGARs) are particularly dangerous to nontarget wildlife as SGARs are higher potency than prior generations and a single dose has a half-life of more than 100 days in a rodent's liver. Due to SGARs' high toxicity and concern for their impact on nontarget wildlife, the Legislature enacted the California Ecosystems Protection Act of 2020 (Assembly Bill 1788) to restrict the use of SGARs until further study is conducted. Since the implementation of Assembly Bill 1788 in January 2021, the California Department of Fish and Wildlife has continued to document the presence of SGARs in nontarget wildlife and more data and analysis is required to determine whether additional restrictions are necessary to protect wildlife and ecosystems.

(8) Diphacinone is a first-generation anticoagulant rodenticide (FGAR) that is commonly used and sold throughout the state and is the most frequently detected FGAR in nontarget wildlife. In a 16-year study of urban bobcats in Los Angeles, diphacinone was detected in approximately 30 percent of the blood samples tested and 40 percent of the liver samples tested. Exposure to diphacinone results in both lethal and sublethal effects on nontarget wildlife, including causing severe skin diseases and decreasing the immune system's response.

(9) Mountain lions in southern California are facing what scientists call an "extinction vortex" caused by lack of habitat connectivity, vehicle strikes, and rodenticide poisoning. National Park Service researchers have documented the presence of SGARs or FGARs in 39 out of 40 mountain lions tested in the Santa Monica Mountains. Rodenticide poisoning is so pervasive that in September 2022, the four unborn kittens of a pregnant mountain lion named P-54 tested positive for SGARs and FGARs, including diphacinone. Another female mountain lion, P-65, died in 2022 of severe mange, and five anticoagulant rodenticide compounds were found in her liver, including SGARs and diphacinone. Research demonstrates a strong correlation between severe mange and the level of exposure to anticoagulant rodenticides.

(10) Rodenticides can be counterproductive to rodent control by poisoning, harming, and killing natural predators that help regulate rodent populations throughout California.

(b) It is the intent of the Legislature in enacting this act to ensure that the use of anticoagulant rodenticides that are harmful to aquatic, terrestrial, and avian wildlife species be appropriately restricted in order to protect and restore the state's biodiversity.

(c) This act shall be known, and may be cited, as the California Ecosystems Protection Act of 2023.

SEC. 2. Section 12978.7 of the Food and Agricultural Code is amended to read:

12978.7. (a) For purposes of this section, the following terms have the following meanings:

(1) "Diphacinone" means any pesticide product containing diphacinone.

(2) "Integrated pest management" means an ecosystem-based strategy that focuses on long-term prevention of pests or their damage through a combination of techniques, such as biological control, habitat manipulation, modification of cultural practices, and use of resistant varieties. Pesticides are used only after monitoring indicates pesticides are needed according to established guidelines, and treatments are made with the goal of removing only the target organism. Pest control materials are selected and applied in a manner that minimizes risks to human health, beneficial and nontarget organisms, and the environment.

(3) "Second-generation anticoagulant rodenticide" means any pesticide product containing any of the following active ingredients:

(A) Brodifacoum.

(B) Bromadiolone.

(C) Difenacoum.

(D) Difethialone.

(4) "Wildlife habitat area" means any park or wildlife refuge managed by a state agency, regional government, or quasi-government agency, or by a special district.

(b) Except as provided in subdivision (f), and notwithstanding subdivision (c), the use of any second-generation anticoagulant rodenticide or diphacinone is prohibited in a wildlife habitat area.

(c) Except as provided in subdivision (f) or (g), the use of any second-generation anticoagulant rodenticide is prohibited in this state until the director makes the certification described in subdivision (h).

(d) Except as provided in subdivision (f) or (g), the use of diphacinone is prohibited in this state and diphacinone shall be considered a restricted material pursuant to Section 14004.5 until the director makes the certification described in subdivision (i).

(e) State agencies are directed to encourage federal agencies to comply with subdivisions (b) to (d), inclusive.

(f) This section does not apply to any of the following:

(1) The use of second-generation anticoagulant rodenticides or diphacinone by any governmental agency employee who complies with Section 106925 of the Health and Safety Code, who uses second-generation anticoagulant rodenticides or diphacinone for public health activities.

(2) The use of second-generation anticoagulant rodenticides or diphacinone otherwise prohibited by this section when used by any governmental agency employee for the purposes of protecting water supply infrastructure and facilities in a manner that is consistent with all otherwise applicable federal and state laws and regulations.

(3) The use of second-generation anticoagulant rodenticides or diphacinone by a mosquito or vector control district formed under Chapter 1 (commencing with Section 2000) of Division 3 or Chapter 8 (commencing with Section 2800) of Division 3 of the Health and Safety Code to protect the public health.

(4) The use of any second-generation anticoagulant rodenticides or diphacinone for the eradication of nonnative invasive species inhabiting or found to be present on offshore islands in a manner that is consistent with all otherwise applicable federal and state laws and regulations.

(5) The use of any second-generation anticoagulant rodenticide or diphacinone that the Department of Fish and Wildlife determines is required to control or eradicate an invasive rodent population for the protection of threatened or endangered species or their habitats.

(6) The use of any second-generation anticoagulant rodenticide or diphacinone to control an actual or potential rodent infestation associated with a public health need, as determined by a supporting declaration from the State Public Health Officer or a local public health officer. For purposes of this section, a public health need is an urgent, nonroutine situation posing a significant risk to human health in which it is documented that other rodent control alternatives, including nonchemical alternatives, are inadequate to control the rodent infestation.

(7) The use of any second-generation anticoagulant rodenticide or diphacinone for research purposes related to the reevaluation described in paragraph (1) of subdivision (h) or paragraph (1) of subdivision (i). Before using a second-generation

anticoagulant rodenticide or diphacinone in the manner described in this paragraph, a written authorization for research shall be obtained from the director. The director may specify the conditions in the authorization for research under which the research shall be conducted. The director may terminate, amend, or refuse to issue an authorization for research if the director determines any of the following:

(A) The research may involve a hazard to the environment.

(B) The research may be used for purposes unrelated to pesticide data development.

(C) A violation of the authorization for research, prior authorization for research, or Division 6 (commencing with Section 11401) or this division, or a regulation adopted pursuant to either or both of those divisions, has occurred in connection with the research.

(g) (1) This section does not apply to the use of second-generation anticoagulant rodenticides or diphacinone in either of the following locations:

(A) A medical waste generator, as defined in Section 117705 of the Health and Safety Code.

(B) A facility registered annually and subject to inspection under Section 510 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 360 et seq.) and compliant with the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136 et seq.).

(2) This section does not apply to the use of second-generation anticoagulant rodenticides or diphacinone for agricultural activities, as defined in Section 564.

(3) For purposes of paragraph (2), "agricultural activities" include activities conducted in any of the following locations:

(A) A warehouse used to store foods for human or animal consumption.

(B) An agricultural food production site, including, but not limited to, a slaughterhouse or cannery.

(C) A factory, brewery, or winery.

(D) An agricultural production site housing water storage and conveyance facilities.

(E) An agricultural production site housing rights-of-way and other transportation infrastructure.

(h) After the director determines that both of the following conditions have occurred, the director shall certify to the Secretary of State that determination:

(1) The department has completed the reevaluation of second-generation anticoagulant rodenticides, as commenced by the department on March 12, 2019, pursuant to California Notice 2019-03 "(Notice of Final Decision to Begin Reevaluation of Second-Generation Anticoagulant Rodenticides)."

(2) Consistent with the requirements of this division and regulations adopted pursuant to this division, the department, in consultation with, and with the concurrence of, the Department of Fish and Wildlife, has adopted any additional restrictions that are necessary to ensure a trend of statistically significant reductions in the mean concentration values of detectable levels of second-generation anticoagulant rodenticides or any of their metabolites in tested tissues of a scientifically representative sample of wildlife. These restrictions may include a requirement to implement alternatives, such as integrated pest management, before the use of second-generation anticoagulant rodenticides. The department, in concurrence with the Department of Fish and Wildlife, shall make a finding that the restrictions are necessary based upon the best available science, which may include reviewing data and studying samples of certain species and their populations as proxies for all potentially impacted species and populations.

(i) After the director determines that both of the following conditions have occurred, the director shall certify to the Secretary of State that determination:

(1) The department has completed any pending reevaluation of diphacinone.

(2) Consistent with the requirements of this division and regulations adopted pursuant to this division, the department, in consultation with, and with the concurrence of, the Department of Fish and Wildlife, has adopted any additional restrictions that are necessary to ensure a trend of statistically significant reductions in the mean concentration values of detectable levels of diphacinone or any of its metabolites in tested tissues of a scientifically representative sample of wildlife. These restrictions may include a requirement to implement alternatives, such as integrated pest management, before the use of diphacinone. The department, in concurrence with the Department of Fish and Wildlife, shall make a finding that the restrictions are necessary

based upon the best available science, which may include reviewing data and studying samples of certain species and their populations as proxies for all potentially impacted species and populations. Substantial evidence supporting the restrictions, including any requirement to implement alternatives, shall, to the extent feasible, include, but not be limited to, analysis regarding exposure pathways, sublethal effects, species sensitivity, and the cumulative and synergistic effects of exposure to anticoagulant rodenticides, including lethal and sublethal effects on wildlife, including rare, sensitive, special status, threatened, or endangered species.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, 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.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.