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AB-1752 Bees: pesticides: civil penalties. (2023-2024)

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Assembly Bill No. 1752

CHAPTER 854

An act to amend Sections 12999.5, 29304, and 29311 of the Food and Agricultural Code, relating to bees.

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1752, Committee on Agriculture. Bees: pesticides: civil penalties.

Existing law requires the Director of Pesticide Regulation to adopt regulations necessary to minimize the hazard to bees, while still providing for the reasonable and necessary application of pesticides toxic to bees to blossoming plants, as specified. Under existing law, a failure to comply with those regulations is subject to a civil penalty of not more than \$500 for each day that the violation continues and, after a warning notice of 7 days is given, is an infraction.

In addition to the civil penalty and infraction described above, this bill would authorize a county agricultural commissioner, in lieu of a civil prosecution by the director, to levy a civil penalty of not more than \$3,000 per violation against a person violating those regulations, as specified.

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

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

SECTION 1. Section 12999.5 of the Food and Agricultural Code is amended to read:

12999.5. (a) In lieu of civil prosecution by the director, the county agricultural commissioner may levy a civil penalty against a person violating Division 6 (commencing with Section 11401), Article 10 (commencing with Section 12971) or Article 10.5 (commencing with Section 12980) of this chapter, Section 12995, Article 1 (commencing with Section 14001) of Chapter 3, Chapter 3.7 (commencing with Section 14160), Chapter 7.5 (commencing with Section 15300), Section 29102, or a regulation adopted pursuant to any of these provisions, of not more than three thousand dollars (\$3,000) for each violation. Any violation determined by the county agricultural commissioner to be a Class A violation as defined in Section 6130 of Title 3 of the California Code of Regulations is subject to a fine of not more than fifteen thousand dollars (\$15,000) for each violation. It is unlawful and grounds for denial of a permit under Section 14008 for a person to refuse or neglect to pay a civil penalty levied pursuant to this section once the order is final.

(b) If a person has received a civil penalty for pesticide drift in a school area subject to Section 11503.5 that results in a Class A violation as defined in subdivision (a), the county agricultural commissioner shall charge a fee, not to exceed fifty dollars (\$50), for processing and monitoring each subsequent pesticide application that may pose a risk of pesticide drift made in a school area subject to Section 11503.5. The county agricultural commissioner shall continue to impose the fee for each subsequent

application that may pose a risk of drift, until the person has completed 24 months without another Class A violation as defined in subdivision (a).

(c) Before a civil penalty is levied, the person charged with the violation shall be given a written notice of the proposed action, including the nature of the violation and the amount of the proposed penalty, and may have a hearing within 20 days after receiving notice of the proposed action. A notice of the proposed action 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 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 county agricultural commissioner's evidence and to present evidence on their own behalf. If a hearing is not timely requested, the county agricultural commissioner may take the action proposed without a hearing.

(d) If the person on whom the county agricultural commissioner levied a civil penalty requested and appeared at a hearing, the person may appeal the county agricultural commissioner's decision to the director within 30 days of the date of receiving a copy of the county agricultural commissioner's decision. The following procedures apply to the appeal:

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

(2) The appellant and the county agricultural commissioner may, at the time of filing the appeal or within 10 days thereafter or at a later time prescribed by the director, present the record of the hearing, including written evidence that was submitted at the hearing, and a written argument to the director stating grounds for affirming, modifying, or reversing the county agricultural commissioner's decision.

(3) The director 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 for the oral argument. The times may be altered by mutual agreement of the appellant, the county agricultural commissioner, and the director.

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

(6) The director 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 director may affirm the county agricultural commissioner's decision, modify the county agricultural commissioner's decision by reducing or increasing the amount of the penalty levied so that it is within the director's guidelines for imposing civil penalties, or reverse the county agricultural commissioner's decision. A civil penalty increased by the director shall not be higher than that proposed in the county agricultural commissioner's notice of proposed action given pursuant to subdivision (c). A copy of the director's decision shall be delivered or mailed to the appellant and the county agricultural commissioner.

(8) Any person who does not request a hearing pursuant to subdivision (c) may not file an appeal pursuant to this subdivision.

(9) Review of a decision of the director 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) The county agricultural commissioner may levy a civil penalty pursuant to subdivisions (a), (c), and (d) against a person violating paragraph (1), (2), or (8) of subdivision (a) of Section 1695 of the Labor Code, that pertains to registration with the county agricultural commissioner, carrying proof of that registration, and filing changes of address with the county agricultural commissioner.

(f) After the exhaustion of the appeal and review procedures provided in this section, the county agricultural commissioner or their representative may file a certified copy of a final decision of the county agricultural commissioner that directs the payment of a civil penalty and, if applicable, a copy of any decision of the director or their authorized representative rendered on an appeal from the county agricultural 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. Fees shall not be charged by the clerk of the superior court for the performance of official service required in connection with the entry of judgment pursuant to this section.

SEC. 2. Section 29304 of the Food and Agricultural Code is amended to read:

29304. (a) In addition to the penalties outlined in Sections 12999.5, 29302, and 29303, any person not complying with this chapter, a regulation adopted thereto, or any notice or order issued pursuant to this chapter or regulation, shall be subject to a civil penalty of not more than five hundred dollars (\$500) for each day that the violation continues.

(b) The secretary or commissioner may also seek injunctive relief against any person operating in violation of this chapter or regulations adopted thereto, or violation of any order or notice issued pursuant to the authority of this chapter or regulation adopted thereto.

(c) Any action for recovery of civil penalties or injunctive relief shall be referred to the Attorney General.

SEC. 3. Section 29311 of the Food and Agricultural Code is amended to read:

29311. The penalties prescribed by this chapter are exclusive and no other civil penalties may be assessed, except as specified in Section 12999.5.