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AB-2552 Pesticides: anticoagulant rodenticides. (2023-2024)

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Assembly Bill No. 2552**CHAPTER 571**

An act to amend Section 12978.7 of, and to add Section 12997.8 to, the Food and Agricultural Code, relating to pesticides.

[Approved by Governor September 25, 2024. Filed with Secretary of State September 25, 2024.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2552, Friedman. Pesticides: anticoagulant rodenticides.

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 pesticides, as prescribed. Existing law prohibits the use of a second-generation anticoagulant rodenticide and diphacinone, as defined, in a wildlife habitat area, as defined. Existing law prohibits the use of a second-generation anticoagulant rodenticide 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 a trend of statistically significant reductions to the detectable levels of second-generation anticoagulant rodenticides or any of their metabolites, as provided. Existing law also prohibits the use of diphacinone in the state until the director certifies to the Secretary of State that the Department of Pesticide Regulation has completed any pending reevaluation of diphacinone and, 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 to the detectable levels of diphacinone or any of its metabolites, as provided. Existing law exempts the use of a second-generation anticoagulant rodenticide or diphacinone from these prohibitions under certain circumstances, including for agricultural activities. 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 additionally prohibit the use of a first-generation anticoagulant rodenticide, defined as a pesticide product containing the active ingredients diphacinone, chlorophacinone, or warfarin, in a wildlife habitat area, as specified. The bill would prohibit the use of chlorophacinone or warfarin in the state and would require chlorophacinone and warfarin to be considered restricted materials, unless that prohibition is suspended by the director, as specified. By imposing additional duties on county agricultural commissioners, and expanding the scope of a crime, this bill would impose a state-mandated local program.

This bill would make a person who sells or uses a first-generation anticoagulant rodenticide or second-generation anticoagulant rodenticide in violation of the above-described provisions liable for a civil penalty not to exceed \$25,000 per day for each violation, in addition to any other penalty established by law. The bill would require recovered civil penalties to be deposited into the Department of Pesticide Regulation Fund, and would require those funds to be available for expenditure for specified purposes.

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 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 these animals and values them 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 and codified by the Legislature in Section 71450 of the Public Resources Code, 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 and Section 71450 of the Public Resources Code, 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) Rodenticides can be counterproductive to rodent control by poisoning, harming, and killing natural predators that help regulate rodent populations throughout California.

(8) Animals are capable of experiencing pain, stress, and fear, as well as pleasure, equanimity, and social bonds. Animals are able to subjectively feel and perceive the world around them, have intrinsic value, and deserve to be treated with compassion and to enjoy a quality of life that reflects their intrinsic value.

(9) The Legislature has an interest in ensuring that human activities are conducted in a manner that minimizes pain, stress, fear, and suffering for animals and reflects their intrinsic value.

(10) Exposure to anticoagulant rodenticides can cause pain, stress, fear, suffering, and sometimes death to animals, such as mountain lions, bobcats, owls, and foxes, that are not the intended targets of rodenticides. These animals have a right to a life free of poison.

(b) This act shall be known, and may be cited, as the Poison-Free Wildlife Act.

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) "Chlorophacinone" means a pesticide product containing chlorophacinone.

(2) "Diphacinone" means a pesticide product containing diphacinone.

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

(A) Diphacinone.

(B) Chlorophacinone.

(C) Warfarin.

(4) "Integrated pest management" has the same meaning as defined in Section 11401.7.

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

(A) Brodifacoum.

(B) Bromadiolone.

(C) Difenacoum.

(D) Difethialone.

(6) "Sustainable pest management" has the same meaning as defined in Section 11412.

(7) "Warfarin" means a pesticide product containing warfarin.

(8) "Wildlife habitat area" means a 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 (g), and notwithstanding subdivisions (c), (d), and (e), the use of a second-generation anticoagulant rodenticide or first-generation anticoagulant rodenticide is prohibited in a wildlife habitat area.

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

(d) Except as provided in subdivision (g) or (h), 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 (j).

(e) Except as provided in subdivision (g) or (h), the use of chlorophacinone or warfarin is prohibited in this state and chlorophacinone and warfarin shall be considered restricted materials pursuant to Section 14004.5. The director may suspend the prohibition if the director makes the certification described in subdivision (k). Nothing in this subdivision or subdivision (k) requires the department to suspend the prohibition on chlorophacinone or warfarin described in this subdivision, complete a reevaluation of chlorophacinone or warfarin, or adopt any additional restrictions on chlorophacinone or warfarin.

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

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

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

(2) The use of a second-generation anticoagulant rodenticide or first-generation anticoagulant rodenticide otherwise prohibited by this section when used by an employee or contractor of a governmental agency or public utility, as defined in Section 216 of the Public Utilities Code, for purposes of protecting water supply and hydroelectric energy generating infrastructure and facilities in a manner that is consistent with all otherwise applicable federal and state laws and regulations.

(3) The use of a second-generation anticoagulant rodenticide or first-generation anticoagulant rodenticide 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 a second-generation anticoagulant rodenticide or first-generation anticoagulant rodenticide 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 a second-generation anticoagulant rodenticide or first-generation anticoagulant rodenticide 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 a second-generation anticoagulant rodenticide or first-generation anticoagulant rodenticide 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 a second-generation anticoagulant rodenticide or first-generation anticoagulant rodenticide for research that the department funds, pursuant to Section 6025.5, to protect the food system and the environment.

(8) The use of a second-generation anticoagulant rodenticide or first-generation anticoagulant rodenticide for research purposes related to the reevaluation described in paragraph (1) of subdivision (i), paragraph (1) of subdivision (j), or paragraph (1) of subdivision (k). Before using a second-generation anticoagulant rodenticide or first-generation anticoagulant rodenticide 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.

(h) (1) This section does not apply to the use of a second-generation anticoagulant rodenticide or first-generation anticoagulant rodenticide 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) The prohibitions in subdivisions (c), (d), and (e) do not apply to the use of a second-generation anticoagulant rodenticide or first-generation anticoagulant rodenticide 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.

(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 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 percentage of wildlife exposed or 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 shall include a requirement to implement sustainable pest management and integrated pest management practices, such as biological control, habitat manipulation, and modification of cultural practices, 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 on 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.

(j) 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 percentage of wildlife exposed or 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 shall include a requirement to implement sustainable pest management and integrated pest management practices, such as biological control, habitat manipulation, and modification of cultural practices, 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.

(k) If 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 a reevaluation of chlorophacinone or warfarin, respectively.

(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 necessary to ensure a trend of statistically significant reductions in the percentage of wildlife exposed or mean concentration values of detectable levels of chlorophacinone or warfarin, respectively, or any of their metabolites, in tested tissues of a scientifically representative sample of wildlife. These restrictions shall include a requirement to implement sustainable pest management and integrated pest management practices, such as biological control, habitat manipulation, and modification of cultural practices, before the use of chlorophacinone or warfarin, respectively. The department, in concurrence with the Department of Fish and Wildlife, shall make a finding that the restrictions are necessary based on 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. Section 12997.8 is added to the Food and Agricultural Code, to read:

12997.8. (a) (1) A person who sells or uses a first-generation anticoagulant rodenticide or second-generation anticoagulant rodenticide in violation of Section 12978.7 or any regulations adopted pursuant to that section is liable for a civil penalty not to exceed twenty-five thousand dollars (\$25,000) per day for each violation, in addition to any other penalty established by law.

(2) In an action brought pursuant to paragraph (1), the court may enjoin the unlawful sale or use of a first-generation anticoagulant rodenticide or second-generation anticoagulant rodenticide, and may compel specific performance of an act or course of conduct necessary to protect a person, animal, crop, or property.

(b) (1) Civil penalties recovered pursuant to this section shall be deposited into the Department of Pesticide Regulation Fund, and shall be available for expenditure to cover the department's costs in administering and enforcing this section and Section 12978.7.

(2) Any remaining civil penalties, after covering the costs described in paragraph (1), shall be available for expenditure for the purposes described in Section 6027.1.

SEC. 4. 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.