

AMENDED IN ASSEMBLY SEPTEMBER 7, 2005

AMENDED IN ASSEMBLY SEPTEMBER 2, 2005

AMENDED IN SENATE MAY 3, 2005

SENATE BILL

No. 455

Introduced by Senator Escutia

(Coauthors: Senators Kuehl, Ortiz, Simitian, and Vincent)

(Coauthors: Assembly Members Goldberg, Jones, Koretz, Lieber,
Montanez, and Saldana)

February 18, 2005

An act to amend Sections 12996.5, 12997.5, and 12999.5 of, and to add Section 12999.3 to the Food and Agricultural Code, relating to pest control.

LEGISLATIVE COUNSEL'S DIGEST

SB 455, as amended, Escutia. Pest control: violations.

Existing law generally regulates pest control and provides that the Attorney General may bring an action for civil penalties against any person who violates these provisions, as specified, or any regulation issued pursuant to them, however, in lieu of civil prosecution, the Director of Pesticide Regulation may levy a civil penalty of not more than \$1,000, or \$5,000, for each violation as specified. The county agricultural commissioner or the director may bring an action to enjoin the violation or the threatened violation of any order made pursuant to these provisions.

This bill would require that initiation and completion of human illness investigations in connection with these provisions take no longer than 60 days. This bill would require that regulations be adopted that require that *an* enforcement action be taken for any violation of specified provisions, including those related to a failure to

protect people, animals, and the environment from pesticide contamination. This bill would provide that violation of a cease and desist order, as specified, shall constitute a serious and separate offense per aggrieved individual. This bill would define aggrieved individual for the purpose of these provisions, and would provide an aggrieved individual the right to be notified of a proposed action, and to appeal the decision if the notice states that no fine will be imposed.

This bill would make other clarifying changes.

Because this bill would increase the duties of local officials, 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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature hereby finds and declares the
- 2 following:
- 3 (a) Between 1997 and 2003, the Department of Pesticide
- 4 Regulation compliance audits found low rates of compliance
- 5 with pesticide use laws and regulations.
- 6 (b) These laws are intended to protect people, animals, and the
- 7 environment in general from the unsafe exposure to pesticides.
- 8 Failure to take preventative measures to prevent pesticide
- 9 exposure can lead to acute and long term illnesses, groundwater
- 10 degradation, air quality contamination, and death.
- 11 (c) In response to the low rate of compliance with
- 12 pesticide-use laws and regulations and the serious health and
- 13 environmental consequences of pesticide use violations, this act
- 14 will ensure that pesticide safety laws are vigorously and
- 15 uniformly enforced in each of the 58 counties of the state.
- 16 SEC. 2. Section 12996.5 of the Food and Agricultural Code is
- 17 amended to read:

1 12996.5. (a) For the purposes of this chapter:

2 (1) “Office” means the Office of Environmental Health
3 Hazard Assessment.

4 (2) “Department” means the Department of Pesticide
5 Regulation.

6 (3) “Certified Unified Program Agency” or “CUPA” means
7 the agency certified by the Secretary for Environmental
8 Protection to implement the unified program specified in Chapter
9 6.11 (commencing with Section 25404) of Division 20 of the
10 Health and Safety Code within a jurisdiction.

11 (4) “Agency” means the California Environmental Protection
12 Agency.

13 (5) “Nonoccupational” means that the person exposed to the
14 pesticide was not at the time of the exposure performing work as
15 an employee.

16 (6) “Acute” means a medical condition that involves a sudden
17 onset of symptoms due to an illness, injury, or other medical
18 problem that requires prompt medical attention and that has a
19 limited duration.

20 (7) “Uncompensated medical care” means the cost of care not
21 covered by any other program, including, but not limited to
22 copayments for medical insurance, Healthy Families Program, or
23 Medi-Cal. Reimbursed medical costs shall not exceed 125
24 percent of the Medi-Cal reimbursement rates.

25 (8) “Aggrieved individual” means an individual whose health
26 or property has been harmed as a result of alleged violations of
27 Division 6 (commencing with Section 11401) or Division 7
28 (commencing with Section 12500) related to pesticides or any
29 regulation adopted pursuant to those divisions that are the subject
30 of a specific county or state pesticide episode investigation.

31 (9) “Enforcement action” means administrative civil penalties,
32 disciplinary actions against a license, certificate or permit, civil
33 court actions, or criminal court actions.

34 (10) “Incident” means an occurrence when one or more
35 violations or noncompliances are discovered.

36 (11) “Correction action” means provision of equipment or
37 training necessary to correct violations.

38 (b) The exposure of each person to a pesticide resulting from
39 the violation of Section 12972 or 12973, or any regulation
40 adopted pursuant to Section 12976, 12981, or 14005, that causes

1 acute illnesses or injury, shall constitute a separate violation of
2 the statute or regulation.

3 SEC. 3. Section 12997.5 of the Food and Agricultural Code is
4 amended to read:

5 12997.5. (a) In addition to any penalties paid in connection
6 with an enforcement action taken pursuant to Sections 12996,
7 12997, 12999, and 12999.5, any person who is found in violation
8 of any provision of this division related to pesticides or any
9 regulation related to pesticides adopted pursuant to this division
10 that results in illness or injury requiring emergency medical
11 transport or immediate medical treatment of any individual in a
12 nonoccupational setting from any pesticide used in the
13 production of an agricultural commodity shall be liable to the
14 individual harmed or to the medical provider for the immediate
15 costs of uncompensated medical care from acute injuries and
16 illnesses of the exposed individual.

17 (b) Any order issued in connection with a finding of a
18 violation as described in subdivision (a) shall include the
19 obligation to reimburse medical costs from acute illnesses and
20 injuries of any individual requiring immediate medical treatment
21 as a consequence of this violation to the injured individuals or
22 their medical providers.

23 (c) Any person found in violation of this section shall submit
24 to the director within 30 days of the final determination of
25 liability, a written plan on how they will pay individuals and
26 medical providers for the emergency medical transport and the
27 immediate medical costs from acute medical injuries and
28 illnesses of all individuals requiring immediate medical treatment
29 as a consequence of the violation. A person alleged to have
30 violated subdivision (a) may voluntarily submit a written plan
31 pursuant to this section prior to the determination of liability. The
32 contents of the voluntary plan shall not be held against the person
33 in any action to determine whether the person violated those
34 provisions.

35 (d) Any violation of this section shall be subject to the
36 criminal and civil sanctions and penalties set forth in this
37 division.

38 (e) Payment of emergency medical costs pursuant to this
39 section shall not preclude an affected person from filing a civil
40 action for injuries, illnesses, or costs related to the incident. Any

1 damage award associated with a civil action related to the
2 incident shall be reduced by the amount the plaintiff received
3 from this section.

4 (f) Evidence of an offer to pay for medical treatment or the
5 payment of medical expenses of any individual claiming injury
6 as a result of a nonoccupational exposure from property
7 producing agricultural commodities shall be inadmissible as
8 proof of liability, in any civil, criminal, or administrative action
9 or proceeding against the entity or individual that made the offer
10 or payment.

11 (g) For any person who provides for the immediate
12 reimbursement of medical costs for acute medical illnesses and
13 injuries prior to a final determination by the department, the
14 director or agricultural commissioner may reduce, by not more
15 than 50 percent, the fines imposed pursuant to Section 12996.5.
16 This reduction shall not limit the responsible party's financial
17 obligation under this section. The department or agricultural
18 commissioner shall attempt to complete the determination within
19 45 days of the incident.

20 SEC. 4. Section 12999.3 is added to the Food and
21 Agricultural Code, to read:

22 12999.3. The director shall adopt regulations by no later than
23 July, 2006, that do all of the following:

24 (a) Establish the enforcement action guidelines of the 2005
25 Department of Pesticide Regulation Pesticide Enforcement
26 Response Policy as regulation. Those regulations shall provide
27 for the following:

28 (1) An enforcement action shall be taken on any incident,
29 including the first incident, for violations related to (i) failure to
30 provide employee training; (ii) failure to provide or maintain
31 required protective equipment or decontamination facilities; and
32 (iii) failure to protect people, animals, and the environment from
33 pesticide contamination.

34 (2) In an incident with multiple violations where immediate
35 corrective action is taken, the director or agricultural
36 commissioner may reduce the aggregate civil penalty by not
37 more than 50 percent.

38 (3) Provide an ~~appeal~~ *approval* process to the director for
39 *taking a compliance action, as an exception to an enforcement*

1 ~~actions~~ *action* pursuant to paragraph (1) that will include, but not
2 be limited to, all the following:

3 (A) Excessive enforcement action relative to the violation or
4 violations.

5 (B) Immediate corrective action was taken.

6 (C) First-time violation or violations.

7 (D) Inadvertent action.

8 (b) For a violation that results in imposition of a civil penalty
9 that is not covered by subdivision (b) of Section ~~19996.5~~
10 ~~12996.5~~, or Section 12985, the exposure of each individual shall
11 constitute a separate violation for at least one violation related to
12 the incident, and the exposure of each individual may be
13 considered a separate violation for any and all additional
14 violations.

15 SEC. 5. Section 12999.5 of the Food and Agricultural Code is
16 amended to read:

17 12999.5. (a) Initiation and completion of human illness
18 investigations by the director or commissioner shall take no
19 longer than 60 days unless a written explanation of the
20 reasonable need for greater time is provided to the director.
21 Following initial notification or knowledge of an episode, the
22 commissioner shall initiate priority episode investigations
23 immediately, if possible, and within 72 hours in all cases and
24 submit a preliminary update to the director and any known
25 aggrieved individual within 15 days.

26 (b) In lieu of civil prosecution by the director, the
27 commissioner may levy a civil penalty against a person violating
28 Division 6 (commencing with Section 11401), Article 10
29 (commencing with Section 12971) or Article 10.5 (commencing
30 with Section 12980) of this chapter, Section 12995, Article 1
31 (commencing with Section 14001) of Chapter 3, Chapter 7.5
32 (commencing with Section 15300), or a regulation adopted
33 pursuant to any of these provisions, of not more than one
34 thousand dollars (\$1,000) for each violation.

35 (c) Any violation determined by the commissioner to be a
36 serious violation as defined in Section 6130 of Title 3 of the
37 California Code of Regulations is subject to a fine of not more
38 than five thousand dollars (\$5,000) for each violation. Violation
39 of a cease and desist order issued under authority of Sections
40 13101 and 13102 shall constitute a serious and separate offense

1 per aggrieved individual. It is unlawful and grounds for denial of
2 a permit under Section 14008 for any person to refuse or neglect
3 to pay a civil penalty levied pursuant to this section once the
4 order is final.

5 (d) If a person has received a civil penalty for pesticide drift in
6 a school area subject to Section 11503.5 that results in a serious
7 violation as defined in subdivision (b), the commissioner shall
8 charge a fee, not to exceed fifty dollars (\$50), for processing and
9 monitoring each subsequent pesticide application that may pose a
10 risk of pesticide drift made in a school area subject to Section
11 11503.5. The Agricultural Commissioner shall continue to
12 impose the fee for each subsequent application that may pose a
13 risk of drift, until the person has completed 24 months without
14 another serious violation as defined in subdivision (b).

15 (e) Before a civil penalty is levied, the person charged with the
16 violation shall be given a written notice of the proposed action
17 including the nature of the violation and the amount of the
18 proposed penalty, and shall have the right to request a hearing
19 within 20 days after receiving notice of the proposed action. A
20 notice of the proposed action that is sent by certified mail to the
21 last known address of the person charged shall be considered
22 received even if delivery is refused or the notice is not accepted
23 at that address. If a hearing is requested, notice of the time and
24 place of the hearing shall be given at least 10 days before the date
25 set for the hearing. At the hearing, the person shall be given an
26 opportunity to review the commissioner's evidence and to
27 present evidence on his or her own behalf. If a hearing is not
28 timely requested, the commissioner may take the action proposed
29 without a hearing.

30 (f) Upon completion of an investigation, any aggrieved
31 individual shall be given written notice of the proposed action or
32 decision to take no action. If a notice of proposed action states
33 that no fine will be imposed in accordance with subdivision (c),
34 the aggrieved individual shall have the right to appeal directly to
35 the director within 20 days after receiving notice. If the person
36 upon whom the commissioner levied a civil penalty requested
37 and appeared at a hearing, the person may appeal the
38 commissioner's decision to the director within 30 days of the
39 date of receiving a copy of the commissioner's decision. The
40 following procedures apply to an appeal:

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

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

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

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

19 (5) The director shall decide the appeal on the record of the
20 hearing, including the written evidence and the written argument
21 described in paragraph (2), that he or she has received. If the
22 director finds substantial evidence in the record to support the
23 commissioner's decision, the director shall affirm the decision.

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

27 (7) On an appeal pursuant to this section, the director may
28 affirm the commissioner's decision, modify the commissioner's
29 decision by reducing or increasing the amount of the penalty
30 levied so that it is within the director's guidelines for imposing
31 civil penalties, or reverse the commissioner's decision. A copy of
32 the director's decision shall be delivered or mailed to the
33 appellant and the commissioner.

34 (8) Any person who does not request a hearing pursuant to
35 subdivision—(e) (e) may not file an appeal pursuant to this
36 subdivision.

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

1 (g) The commissioner may levy a civil penalty pursuant to
2 subdivisions (b), (e), and (f) against a person violating paragraph
3 (1), (2), or (8) of subdivision (a) of Section 1695 of the Labor
4 Code, which pertains to registration with the commissioner,
5 carrying proof of that registration, and filing changes of address
6 with the commissioner.

7 (h) After the exhaustion of the appeal and review procedures
8 provided in this section, the commissioner or his or her
9 representative may file a certified copy of a final decision of the
10 commissioner that directs the payment of a civil penalty and, if
11 applicable, a copy of any decision of the director or his or her
12 authorized representative rendered on an appeal from the
13 commissioner's decision and a copy of any order that denies a
14 petition for a writ of administrative mandamus, with the clerk of
15 the superior court of any county. Judgment shall be entered
16 immediately by the clerk in conformity with the decision or
17 order. No fees shall be charged by the clerk of the superior court
18 for the performance of any official service required in connection
19 with the entry of judgment pursuant to this section.

20 (i) The director shall ensure uniform compliance with this
21 section throughout the state.

22 SEC. 6. If the Commission on State Mandates determines that
23 this act contains costs mandated by the state, reimbursement to
24 local agencies and school districts for those costs shall be made
25 pursuant to Part 7 (commencing with Section 17500) of Division
26 4 of Title 2 of the Government Code.

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29 **All matter omitted in this version of the bill**
30 **appears in the bill as amended in Senate,**
31 **May 03, 2005 (JR11)**
32