

ASSEMBLY BILL

No. 2239

Introduced by Assembly Member Mathis

February 18, 2016

An act to amend Section 12841 of the Food and Agricultural Code, relating to pesticides.

LEGISLATIVE COUNSEL'S DIGEST

AB 2239, as introduced, Mathis. Pesticides: assessments on sales: combination products.

Existing law requires every person who sells a pesticide product for use in this state that has been registered by the Director of Pesticide Regulation to pay an assessment on all sales of the pesticide product, and requires the director to establish by regulation a mill assessment rate, not to exceed 21 mills (\$0.021), as specified. Existing law requires the assessment for certain combination pesticide products to be based on the value of the active ingredient only if the director makes specified findings, including that the device is sold primarily for other than a pesticide use.

This bill would instead require the director, upon application for registration of a combination product, to determine the value of the active ingredients in the combination product and to establish the rate of assessment based on the percentage of the sales price attributable to the value of the active ingredients. The bill would define “active ingredient” and “combination product” for purposes of those provisions, and would make other nonsubstantive changes.

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

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

SECTION 1. Section 12841 of the Food and Agricultural Code is amended to read:

12841. (a) It is unlawful for a person to sell for use in this state any pesticide products that have been registered by the director for which the mill assessment established by this article, and the regulations adopted pursuant to it, is not paid at the times specified in Section 12843.

(b) Except as provided in subdivision (d), every person who sells for use in this state a pesticide product that has been registered by the director shall pay to the director the applicable assessment. Those sales expressly include all sales made electronically, telephonically, or by any other means that result in a pesticide product being shipped to or used in this state. There is a rebuttable presumption that pesticide products that are sold or distributed into or within this state by any person are sold or distributed for use in this state.

~~(c) (1) Upon application of a registrant, the director shall determine whether a fertilizer or paper product is used as a carrier for a pesticide, and is sold in combination, and whether the mill assessment under this article shall be on the pesticide value only, when the product is designed, developed, and manufactured, and sold primarily for other than a pesticide use. If the director finds that the combination product has such a major component and is designed, developed, manufactured, and sold primarily for other than a pesticide use, the assessment provided by this article shall be paid on the equivalent percentage of the sales price of the active ingredients of the pesticide product. The director shall establish this percentage of the sales price. The percentage shall be the ratio of that portion of the sales price attributable to the pesticide portion to the total sales price of the combination product.~~

~~(2) For purposes of this section, "active ingredient" means any active ingredient that is required to be stated on the label on any registered pesticide under Section 12883.~~

(c) Upon application for registration of a combination product, the director shall determine the value of the active ingredients in the combination product and shall establish the rate of assessment based on the percentage of the sale price attributable to the value of the active ingredients. An assessment shall not be paid on the

1 *percentage of the sale price attributable to the value of the*
2 *instrument or appliance with which the active ingredients are*
3 *incorporated.*

4 (d) Assessments provided for in this article for sales of registered
5 pesticides that are sold for use in this state shall be paid by the
6 registrant except as follows:

7 (1) ~~In those cases where~~ *If* the registrant did not first sell the
8 pesticide ~~into or within~~ *in* this state or have actual knowledge, at
9 the time of its sale, that the pesticide would be sold for use in this
10 state, the assessment shall be paid by the licensed pesticide broker,
11 licensed pest control dealer, or other person who first sold the
12 pesticide for use in this state.

13 (2) A person is not required to pay an assessment on registered
14 products that are labeled only for use in further manufacturing or
15 formulating of pesticides.

16 (e) It has been and continues to be the intent of the Legislature
17 that this division requires the department to register all pesticides
18 ~~prior to~~ *before* their sale for use in this state and, except as
19 otherwise provided by law, requires the department to regulate
20 and control the use of pesticides in accordance with this division.
21 Except as provided in Section 12841.1, the department shall
22 continue to collect the assessment as provided in this article at the
23 same rate on all registered agricultural and registered
24 nonagricultural pesticides.

25 (f) (1) The mill assessment shall be paid at the following rates
26 per dollar of sales for all sales of pesticides for use in this state:

27 (A) From January 1, 1998, to March 31, 1999, inclusive, the
28 rate shall be 15.15 mills (\$0.01515) plus any additional assessment
29 authorized by Section 12841.1.

30 (B) From April 1, 1999, to December 31, 2002, inclusive, the
31 rate shall be 17.5 mills (\$0.0175) plus any additional assessment
32 authorized by Section 12841.1.

33 (C) From January 1, 2003, to December 31, 2003, inclusive,
34 the rate shall be 17.5 mills (\$0.0175).

35 (D) For all transactions on or after January 1, 2004, the actual
36 rate shall be that set by regulations adopted by the director at a
37 rate adequate to support the department's annual expenditures
38 authorized in the annual Budget Act and provide a prudent reserve.
39 The rate set by the director shall be no greater than 21 mills
40 (\$0.021). However, if regulations are not adopted before a payment

1 is due, payment shall be made at the rate of 17.5 mills (\$0.0175),
2 and, upon adoption of regulations, payment of any additional
3 amount due shall be made.

4 (2) The regulations adopted pursuant to this section, or any
5 amendment thereto, shall be adopted by the director in accordance
6 with Chapter 3.5 (commencing with Section 11340) of Part 1 of
7 Division 3 of Title 2 of the Government Code. However, the
8 adoption, amendment, readoption, or repeal of these regulations
9 shall be considered by the Office of Administrative Law as an
10 emergency, and necessary for the immediate preservation of the
11 public peace, health, safety, and general welfare. Notwithstanding
12 any other ~~provision~~ of law, the regulations shall remain in effect
13 until amended by the director. The director shall make available
14 to the public, upon the adoption of an emergency regulation
15 establishing a new rate, the information upon which the director
16 has calculated, based, or determined the new rate.

17 (g) The revenue collected pursuant to this section shall be
18 deposited in the Department of Pesticide Regulation Fund and
19 distributed as follows:

20 (1) Notwithstanding Sections 2282 and 12784, the director shall
21 pay, in accordance with the criteria set forth in Section 12844, the
22 following amounts to the counties as reimbursement for costs
23 incurred by the counties in the administration and enforcement of
24 Division 6 (commencing with Section 11401), this chapter, Chapter
25 3 (commencing with Section 14001), Chapter 3.4 (commencing
26 with Section 14090), and Chapter 3.5 (commencing with Section
27 14101):

28 (A) From January 1, 1998, to March 31, 1998, inclusive,
29 five-eighths of the money received during that period pursuant to
30 this section.

31 (B) From April 1, 1998 to June 30, 2004, an amount equal to
32 the revenue derived from 6 mills (\$0.006) per dollar of sales for
33 all pesticide sales for use in this state.

34 (C) Beginning July 1, 2004, an amount equal to the revenue
35 derived from 7.6 mills (\$0.0076) per dollar of sales for all pesticide
36 sales for use in this state.

37 (2) All funds not otherwise distributed pursuant to this
38 subdivision shall remain in the Department of Pesticide Regulation
39 Fund and shall be available for expenditure, upon appropriation,
40 to support the department's operations.

- 1 (h) *For purposes of this section, the following definitions apply:*
2 (1) *“Active ingredient” means any active ingredient required*
3 *to be stated on the label of a pesticide pursuant to Section 12883.*
4 (2) *“Combination product” means a pesticide product with one*
5 *or more active ingredients combined with an instrument or*
6 *appliance used to deliver the pesticide that is sold with the*
7 *pesticide.*

O