

AMENDED IN ASSEMBLY APRIL 25, 2016

AMENDED IN ASSEMBLY MARCH 9, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

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 amended, Mathis. Pesticides: assessments on sales: ~~combination~~ *home water treatment pesticide* 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 \$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. *provide that for certain*~~

home water treatment pesticide products, the assessment shall be paid only on the value of the active ingredient, as determined by the director upon application of a registrant.

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

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

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

3 12841. (a) It is unlawful for a person to sell for use in this state
4 any pesticide products that have been registered by the director
5 for which the mill assessment established by this article, and the
6 regulations adopted pursuant to it, is not paid at the times specified
7 in Section 12843.

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

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

31 (2) *For a home water treatment pesticide product that includes*
32 *an instrument or appliance used to deliver the pesticide, the*

1 *assessment shall be paid only on the value of the active ingredient,*
2 *which shall be determined by the director upon application of a*
3 *registrant.*

4 (2)

5 (3) For purposes of this section, “active ingredient” means any
6 active ingredient that is required to be stated on the label on any
7 registered pesticide under Section 12883.

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

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

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

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

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

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

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

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

39 (D) For all transactions on or after January 1, 2004, the actual
40 rate shall be that set by regulations adopted by the director at a

1 rate adequate to support the department's annual expenditures
2 authorized in the annual Budget Act and provide a prudent reserve.
3 The rate set by the director shall be no greater than 21 mills
4 (\$0.021). However, if regulations are not adopted before a payment
5 is due, payment shall be made at the rate of 17.5 mills (\$0.0175),
6 and, upon adoption of regulations, payment of any additional
7 amount due shall be made.

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

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

24 (1) Notwithstanding Sections 2282 and 12784, the director shall
25 pay, in accordance with the criteria set forth in Section 12844, the
26 following amounts to the counties as reimbursement for costs
27 incurred by the counties in the administration and enforcement of
28 Division 6 (commencing with Section 11401), this chapter, Chapter
29 3 (commencing with Section 14001), Chapter 3.4 (commencing
30 with Section 14090), and Chapter 3.5 (commencing with Section
31 14101):

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

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

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

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

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

7 12841. (a) ~~It is unlawful for a person to sell for use in this state~~
8 ~~any pesticide products that have been registered by the director~~
9 ~~for which the mill assessment established by this article, and the~~
10 ~~regulations adopted pursuant to it, is not paid at the times specified~~
11 ~~in Section 12843.~~

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

21 (c) (1) ~~Upon application for registration of a combination~~
22 ~~product, the director shall determine the value of the active~~
23 ~~ingredients in the combination product and shall establish the rate~~
24 ~~of assessment based on the percentage of the sale price attributable~~
25 ~~to the value of the active ingredients. An assessment shall not be~~
26 ~~paid on the percentage of the sale price attributable to the value~~
27 ~~of the instrument or appliance with which the active ingredients~~
28 ~~are incorporated.~~

29 (2) ~~An applicant for registration of a combination product may~~
30 ~~contest the director's determination by appealing to the Secretary~~
31 ~~of the California Environmental Protection Agency.~~

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

35 (1) ~~If the registrant did not first sell the pesticide in this state or~~
36 ~~have actual knowledge, at the time of its sale, that the pesticide~~
37 ~~would be sold for use in this state, the assessment shall be paid by~~
38 ~~the licensed pesticide broker, licensed pest control dealer, or other~~
39 ~~person who first sold the pesticide for use in this state.~~

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

4 ~~(e) It has been and continues to be the intent of the Legislature~~
5 ~~that this division requires the department to register all pesticides~~
6 ~~before their sale for use in this state and, except as otherwise~~
7 ~~provided by law, requires the department to regulate and control~~
8 ~~the use of pesticides in accordance with this division. Except as~~
9 ~~provided in Section 12841.1, the department shall continue to~~
10 ~~collect the assessment as provided in this article at the same rate~~
11 ~~on all registered agricultural and registered nonagricultural~~
12 ~~pesticides.~~

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

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

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

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

23 ~~(D) For all transactions on or after January 1, 2004, the actual~~
24 ~~rate shall be that set by regulations adopted by the director at a~~
25 ~~rate adequate to support the department's annual expenditures~~
26 ~~authorized in the annual Budget Act and provide a prudent reserve.~~
27 ~~The rate set by the director shall be no greater than 21 mills~~
28 ~~(\$0.021). However, if regulations are not adopted before a payment~~
29 ~~is due, payment shall be made at the rate of 17.5 mills (\$0.0175),~~
30 ~~and, upon adoption of regulations, payment of any additional~~
31 ~~amount due shall be made.~~

32 ~~(2) The regulations adopted pursuant to this section, or any~~
33 ~~amendment thereto, shall be adopted by the director in accordance~~
34 ~~with Chapter 3.5 (commencing with Section 11340) of Part 1 of~~
35 ~~Division 3 of Title 2 of the Government Code. However, the~~
36 ~~adoption, amendment, readoption, or repeal of these regulations~~
37 ~~shall be considered by the Office of Administrative Law as an~~
38 ~~emergency, and necessary for the immediate preservation of the~~
39 ~~public peace, health, safety, and general welfare. Notwithstanding~~
40 ~~any other law, the regulations shall remain in effect until amended~~

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2 upon the adoption of an emergency regulation establishing a new
3 rate, the information upon which the director has calculated, based,
4 or determined the new rate.

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

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9 pay, in accordance with the criteria set forth in Section 12844, the
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14 with Section 14090), and Chapter 3.5 (commencing with Section
15 14101):

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

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

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

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

29 (h) For purposes of this section, the following definitions apply:

30 (1) "Active ingredient" means any active ingredient required
31 to be stated on the label of a pesticide pursuant to Section 12883.

32 (2) "Combination product" means a pesticide product with one
33 or more active ingredients combined with an instrument or
34 appliance used to deliver the pesticide that is sold with the
35 pesticide.