

ASSEMBLY BILL

No. 2552

Introduced by Assembly Member Friedman

February 14, 2024

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2552, as introduced, Friedman. Pesticides: first-generation 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. 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 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 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 expand the definition of a wildlife habitat area to include an open-space land, as defined. The bill would additionally prohibit the use of a second-generation anticoagulant rodenticide within 5,000 feet of a wildlife habitat area, and prohibit the use of first-generation anticoagulant rodenticide, defined as a pesticide product containing the active ingredients diphacinone, chlorophacinone, or warfarin, in a wildlife habitat area or within 5,000 feet of 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 definition 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 authorize any person to commence a civil suit to enjoin a person who is alleged to be in violation of the above-described provisions, as specified. The bill would require recovered civil penalties to be deposited into the Poison-Free Wildlife Account, which the bill would establish in the Wildlife Restoration Fund, and would require those funds to be available for expenditure, upon appropriation by the Legislature, 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.
State-mandated local program: yes.

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

1 SECTION 1. (a) The Legislature finds and declares all of the
2 following:

3 (1) Wildlife, including birds of prey, mountain lions, bobcats,
4 fishers, foxes, coyotes, and endangered species, such as the
5 northern spotted owl, pacific fisher, and San Joaquin kit fox, are
6 an irreplaceable part of California's natural ecosystems. As
7 predators of small mammals, they play an important role in
8 regulating and controlling the population of rodents throughout
9 the state to improve public health and welfare.

10 (2) Millions of people annually visit California for purposes of
11 viewing and photographing wildlife, and these visits contribute
12 millions of dollars to California's economy.

13 (3) Urban areas are increasingly being used by predatory
14 mammals and birds of prey, and the public enjoys seeing these
15 animals and values them and the ecosystem services they provide.

16 (4) The ecosystem services provided by native wildlife predators
17 are a public trust, just like clean air and water. We, as California
18 residents, are obligated to conserve these wildlife populations for
19 future generations of Californians.

20 (5) Consistent with this obligation, and as set forth in Executive
21 Order No. N-82-20 and codified by the Legislature in Section
22 71450 of the Public Resources Code, it is the policy of the state
23 to conserve at least 30 percent of California's land and coastal
24 waters by 2030 in a manner that protects and restores biodiversity,
25 enables enduring conservation measures on a broad range of
26 landscapes, builds climate resilience, reduces risk from extreme
27 climate events, and contributes to the state's efforts to combat
28 climate change.

29 (6) Protection and restoration of biodiversity, consistent with
30 Executive Order No. N-82-20 and Section 71450 of the Public
31 Resources Code, requires implementation of science-based
32 measures to limit the use of anticoagulant rodenticides, which

1 cause direct mortality and chronic long-term health impacts for
2 natural predators, nontarget organisms, and endangered species.

3 (7) Rodenticides can be counterproductive to rodent control by
4 poisoning, harming, and killing natural predators that help regulate
5 rodent populations throughout California.

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

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

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

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

21 SEC. 2. Section 12978.7 of the Food and Agricultural Code is
22 amended to read:

23 12978.7. (a) For purposes of this section, the following terms
24 have the following meanings:

25 (1) "*Chlorophacinone*" means a pesticide product containing
26 chlorophacinone.

27 (1)

28 (2) "*Diphacinone*" means ~~any~~ a pesticide product containing
29 diphacinone.

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

33 (A) *Diphacinone*.

34 (B) *Chlorophacinone*.

35 (C) *Warfarin*.

36 (2)

37 (4) "*Integrated pest management*" means an ecosystem-based
38 strategy that focuses on long-term prevention of pests or their
39 damage through a combination of techniques, such as biological
40 control, habitat manipulation, modification of cultural practices,

1 and use of resistant varieties. Pesticides are used only after
2 monitoring indicates pesticides are needed according to established
3 guidelines, and treatments are made with the goal of removing
4 only the target organism. Pest control materials are selected and
5 applied in a manner that minimizes risks to human health,
6 beneficial and nontarget organisms, and the environment.

7 ~~(3)~~

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

11 (A) Brodifacoum.

12 (B) Bromadiolone.

13 (C) Difenacoum.

14 (D) Difethialone.

15 (6) "Warfarin" means a pesticide product containing warfarin.

16 ~~(4)~~

17 (7) "Wildlife habitat area" means ~~any~~ a park or wildlife refuge
18 managed by a state agency, regional government, or
19 quasi-government agency, or by a special ~~district~~. *district or an*
20 *open-space land as defined in paragraph (1), (3), or (4) of*
21 *subdivision (h) of Section 65560 of the Government Code.*

22 (b) Except as provided in subdivision ~~(f)~~, (g) or paragraph (1)
23 of subdivision (h), and notwithstanding ~~subdivision (e)~~,
24 subdivisions (c), (d), and (e), the use of ~~any~~ a second-generation
25 anticoagulant rodenticide or ~~diphacinone~~ first-generation
26 anticoagulant rodenticide is prohibited in a wildlife habitat ~~area~~.
27 *area or within 5,000 feet of a wildlife habitat area.*

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

32 (d) Except as provided in subdivision ~~(f) or (g)~~, (g) or (h), the
33 use of diphacinone is prohibited in this state and diphacinone shall
34 be considered a restricted material pursuant to Section 14004.5
35 until the director makes the certification described in subdivision
36 ~~(i)~~. (j).

37 (e) *Except as provided in subdivision (g) or (h), the use of*
38 *chlorophacinone or warfarin is prohibited in this state and*
39 *chlorophacinone and warfarin shall be considered restricted*
40 *materials pursuant to Section 14004.5. The director may suspend*

1 *the prohibition if the director makes the certification described in*
2 *subdivision (k). Nothing in this subdivision or subdivision (k)*
3 *requires the department to suspend the prohibition on*
4 *chlorophacinone or warfarin described in this subdivision,*
5 *complete a reevaluation of chlorophacinone or warfarin, or adopt*
6 *any additional restrictions on chlorophacinone or warfarin.*

7 (e)

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

10 (f)

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

12 (1) The use of ~~a second-generation anticoagulant rodenticides~~
13 ~~or diphacinone rodenticide~~ or *first-generation anticoagulant*
14 *rodenticide* by ~~any~~ a governmental agency employee who complies
15 with Section 106925 of the Health and Safety Code, who uses *a*
16 ~~second-generation anticoagulant rodenticides or diphacinone~~
17 ~~rodenticide~~ or *first-generation anticoagulant rodenticide* for public
18 health activities.

19 (2) The use of ~~a second-generation anticoagulant rodenticides~~
20 ~~or diphacinone rodenticide~~ or *first-generation anticoagulant*
21 *rodenticide* otherwise prohibited by this section when used by ~~any~~
22 *a* governmental agency employee for the purposes of protecting
23 water supply infrastructure and facilities in a manner that is
24 consistent with all otherwise applicable federal and state laws and
25 regulations.

26 (3) The use of ~~a second-generation anticoagulant rodenticides~~
27 ~~or diphacinone rodenticide~~ or *first-generation anticoagulant*
28 *rodenticide* by a mosquito or vector control district formed under
29 Chapter 1 (commencing with Section 2000) of Division 3 or
30 Chapter 8 (commencing with Section 2800) of Division 3 of the
31 Health and Safety Code to protect the public health.

32 (4) The use of ~~any a second-generation anticoagulant~~
33 ~~rodenticides or diphacinone rodenticide~~ or *first-generation*
34 *anticoagulant rodenticide* for the eradication of nonnative invasive
35 species inhabiting or found to be present on offshore islands in a
36 manner that is consistent with all otherwise applicable federal and
37 state laws and regulations.

38 (5) The use of ~~any a second-generation anticoagulant rodenticide~~
39 ~~or diphacinone first-generation anticoagulant rodenticide~~ that the
40 Department of Fish and Wildlife determines is required to control

1 or eradicate an invasive rodent population for the protection of
2 threatened or endangered species or their habitats.

3 (6) The use of ~~any~~ *a* second-generation anticoagulant rodenticide
4 or ~~diphacinone~~ *first-generation anticoagulant rodenticide* to control
5 an actual or potential rodent infestation associated with a public
6 health need, as determined by a supporting declaration from the
7 State Public Health Officer or a local public health officer. For
8 purposes of this section, a public health need is an urgent,
9 nonroutine situation posing a significant risk to human health in
10 which it is documented that other rodent control alternatives,
11 including nonchemical alternatives, are inadequate to control the
12 rodent infestation.

13 (7) The use of ~~any~~ *a* second-generation anticoagulant rodenticide
14 or ~~diphacinone~~ *first-generation anticoagulant rodenticide* for
15 research purposes related to the reevaluation described in paragraph
16 (1) of subdivision ~~(h)~~ or *(i)*, paragraph (1) of subdivision ~~(i)~~ *(j)*,
17 or *paragraph (1) of subdivision (k)*. Before using a
18 second-generation anticoagulant rodenticide or ~~diphacinone~~
19 *first-generation anticoagulant rodenticide* in the manner described
20 in this paragraph, a written authorization for research shall be
21 obtained from the director. The director may specify the conditions
22 in the authorization for research under which the research shall be
23 conducted. The director may terminate, amend, or refuse to issue
24 an authorization for research if the director determines any of the
25 following:

26 (A) The research may involve a hazard to the environment.

27 (B) The research may be used for purposes unrelated to pesticide
28 data development.

29 (C) A violation of the authorization for research, prior
30 authorization for research, or Division 6 (commencing with Section
31 11401) or this division, or a regulation adopted pursuant to either
32 or both of those divisions, has occurred in connection with the
33 research.

34 ~~(g)~~

35 *(h)* (1) This section does not apply to the use of *a*
36 second-generation anticoagulant ~~rodenticides~~ or ~~diphacinone~~
37 *rodenticide* or *first-generation anticoagulant rodenticide* in either
38 of the following locations:

39 (A) A medical waste generator, as defined in Section 117705
40 of the Health and Safety Code.

1 (B) A facility registered annually and subject to inspection under
2 Section 510 of the Federal Food, Drug, and Cosmetic Act (21
3 U.S.C. Sec. 360 et seq.) and compliant with the Federal Insecticide,
4 Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136 et seq.).

5 (2) ~~This section does~~ *The prohibitions in subdivisions (c), (d),*
6 *and (e) do not apply to the use of a second-generation anticoagulant*
7 ~~rodenticides or diphacinone rodenticide or first-generation~~
8 *anticoagulant rodenticide* for agricultural activities, as defined in
9 Section 564.

10 (3) For purposes of paragraph (2), “agricultural activities”
11 include activities conducted in any of the following locations:

12 (A) A warehouse used to store foods for human or animal
13 consumption.

14 (B) An agricultural food production site, including, but not
15 limited to, a slaughterhouse or cannery.

16 (C) A factory, brewery, or winery.

17 (D) An agricultural production site housing water storage and
18 conveyance facilities.

19 (E) An agricultural production site housing rights-of-way and
20 other transportation infrastructure.

21 ~~(h)~~

22 (i) After the director determines that both of the following
23 conditions have occurred, the director shall certify to the Secretary
24 of State that determination:

25 (1) The department has completed the reevaluation of
26 second-generation anticoagulant rodenticides, as commenced by
27 the department on March 12, 2019, pursuant to California Notice
28 2019-03—~~(Notice (“Notice of Final Decision to Begin Reevaluation~~
29 ~~of Second-Generation Anticoagulant—Rodenticides).”~~
30 *Rodenticides”*).

31 (2) Consistent with the requirements of this division and
32 regulations adopted pursuant to this division, the department, in
33 consultation with, and with the concurrence of, the Department of
34 Fish and Wildlife, has adopted any additional restrictions that are
35 necessary to ensure a trend of statistically significant reductions
36 in the mean concentration values of detectable levels of
37 second-generation anticoagulant rodenticides or any of their
38 metabolites in tested tissues of a scientifically representative sample
39 of wildlife. These restrictions may include a requirement to
40 implement alternatives, such as integrated pest management, before

1 the use of second-generation anticoagulant rodenticides. The
2 department, in concurrence with the Department of Fish and
3 Wildlife, shall make a finding that the restrictions are necessary
4 based ~~upon~~ on the best available science, which may include
5 reviewing data and studying samples of certain species and their
6 populations as proxies for all potentially impacted species and
7 populations.

8 (i)

9 (j) After the director determines that both of the following
10 conditions have occurred, the director shall certify to the Secretary
11 of State that determination:

12 (1) The department has completed any pending reevaluation of
13 diphacinone.

14 (2) Consistent with the requirements of this division and
15 regulations adopted pursuant to this division, the department, in
16 consultation with, and with the concurrence of, the Department of
17 Fish and Wildlife, has adopted any additional restrictions that are
18 necessary to ensure a trend of statistically significant reductions
19 in the mean concentration values of detectable levels of
20 diphacinone or any of its metabolites in tested tissues of a
21 scientifically representative sample of wildlife. These restrictions
22 may include a requirement to implement alternatives, such as
23 integrated pest management, before the use of diphacinone. The
24 department, in concurrence with the Department of Fish and
25 Wildlife, shall make a finding that the restrictions are necessary
26 based upon the best available science, which may include reviewing
27 data and studying samples of certain species and their populations
28 as proxies for all potentially impacted species and populations.
29 Substantial evidence supporting the restrictions, including any
30 requirement to implement alternatives, shall, to the extent feasible,
31 include, but not be limited to, analysis regarding exposure
32 pathways, sublethal effects, species sensitivity, and the cumulative
33 and synergistic effects of exposure to anticoagulant rodenticides,
34 including lethal and sublethal effects on wildlife, including rare,
35 sensitive, special status, threatened, or endangered species.

36 (k) *If the director determines that both of the following*
37 *conditions have occurred, the director shall certify to the Secretary*
38 *of State that determination:*

39 (1) *The department has completed a reevaluation of*
40 *chlorphacinone or warfarin, respectively.*

1 (2) *Consistent with the requirements of this division and*
2 *regulations adopted pursuant to this division, the department, in*
3 *consultation with, and with the concurrence of, the Department*
4 *of Fish and Wildlife, has adopted any additional restrictions*
5 *necessary to ensure a trend of statistically significant reductions*
6 *in the mean concentration values of detectable levels of*
7 *chlorophacinone or warfarin, respectively, or any of their*
8 *metabolites, in tested tissues of a scientifically representative*
9 *sample of wildlife. These restrictions may include a requirement*
10 *to implement alternatives, such as integrated pest management,*
11 *before the use of chlorophacinone or warfarin, respectively. The*
12 *department, in concurrence with the Department of Fish and*
13 *Wildlife, shall make a finding that the restrictions are necessary*
14 *based on the best available science, which may include reviewing*
15 *data and studying samples of certain species and their populations*
16 *as proxies for all potentially impacted species and populations.*
17 *Substantial evidence supporting the restrictions, including any*
18 *requirement to implement alternatives, shall, to the extent feasible,*
19 *include, but not be limited to, analysis regarding exposure*
20 *pathways, sublethal effects, species sensitivity, and the cumulative*
21 *and synergistic effects of exposure to anticoagulant rodenticides,*
22 *including lethal and sublethal effects on wildlife, including rare,*
23 *sensitive, special status, threatened, or endangered species.*

24 SEC. 3. Section 12997.8 is added to the Food and Agricultural
25 Code, to read:

26 12997.8. (a) (1) A person who sells or uses a first-generation
27 anticoagulant rodenticide or second-generation anticoagulant
28 rodenticide in violation of Section 12978.7 or any regulations
29 adopted pursuant to that section is liable for a civil penalty not to
30 exceed twenty-five thousand dollars (\$25,000) per day for each
31 violation, in addition to any other penalty established by law. The
32 civil penalty may be assessed and recovered in a civil action
33 brought in any court of competent jurisdiction for each individual
34 sale or use, and separate civil penalties for the exposure of each
35 person or animal to a first-generation anticoagulant rodenticide or
36 second-generation anticoagulant rodenticide.

37 (2) A person may commence a civil suit to enjoin a person
38 who is alleged to be in violation of Section 12978.7 or regulations
39 adopted pursuant to that section and to seek civil penalties. The
40 suit may be brought by any person on their own behalf or on behalf

1 of individual animals, wildlife, wildlife species, or any
2 representative thereof that are at risk of being killed, injured,
3 harassed, or harmed by the unlawful sale or use of a first-generation
4 anticoagulant rodenticide or second-generation anticoagulant
5 rodenticide. For purposes of this paragraph, “harassment” includes
6 creating a likelihood of injury to an animal by annoying it to such
7 an extent as to disrupt normal behavioral patterns, including, but
8 not limited to, breeding, feeding, or sheltering.

9 (b) An action shall only be commenced pursuant to subdivision
10 (a) if both of the following conditions are satisfied:

11 (1) 60 days have passed since written notice of the alleged
12 violation has been given to the department and any alleged violator.

13 (2) The department, the Attorney General, a district attorney, a
14 city attorney, or a prosecutor has not commenced or diligently
15 prosecuted a civil or criminal action for the alleged violation.

16 (c) A person who brings an action pursuant to subdivision (a)
17 shall notify the Attorney General and the department that the action
18 has been filed within 60 days of filing the action.

19 (d) A person who brings an action pursuant to subdivision (a)
20 shall, after the action is dismissed or settled or a judgment is
21 entered for the action, report the dismissal or the results of the
22 settlement or judgment and the final disposition of the case to the
23 Attorney General.

24 (e) A person who prevails in an action brought pursuant to
25 subdivision (a) shall be entitled to an award of reasonable
26 attorney’s fees and costs.

27 (f) In an action brought pursuant to subdivision (a), the court
28 may enjoin the unlawful sale or use of a first-generation
29 anticoagulant rodenticide or second-generation anticoagulant
30 rodenticide, and may compel specific performance of an act or
31 course of conduct necessary to protect a person, animal, crop, or
32 property. In addition to the civil penalty described in subdivision
33 (a), the court may award medical costs and pain, suffering, and
34 emotional distress damages on behalf of animals or persons that
35 result from the violation.

36 (g) Civil penalties recovered pursuant to subdivision (a) shall
37 be deposited into the Poison-Free Wildlife Account, which is
38 hereby established in the Wildlife Restoration Fund, and shall be
39 available for expenditure, upon appropriation by the Legislature,
40 as follows:

1 (1) 40 percent for the purposes described in Section 1771 of the
2 Fish and Game Code.

3 (2) 40 percent for the purposes Section 1301 of the Fish and
4 Game Code.

5 (3) 20 percent for the purposes described in Section 1773.1 of
6 the Fish and Game Code.

7 (h) An action brought pursuant to this section shall be
8 commenced within two years of the occurrence of the violation.

9 SEC. 4. No reimbursement is required by this act pursuant to
10 Section 6 of Article XIII B of the California Constitution for certain
11 costs that may be incurred by a local agency or school district
12 because, in that regard, this act creates a new crime or infraction,
13 eliminates a crime or infraction, or changes the penalty for a crime
14 or infraction, within the meaning of Section 17556 of the
15 Government Code, or changes the definition of a crime within the
16 meaning of Section 6 of Article XIII B of the California
17 Constitution.

18 However, if the Commission on State Mandates determines that
19 this act contains other costs mandated by the state, reimbursement
20 to local agencies and school districts for those costs shall be made
21 pursuant to Part 7 (commencing with Section 17500) of Division
22 4 of Title 2 of the Government Code.