

Senate Bill No. 455

Passed the Senate September 8, 2005

Secretary of the Senate

Passed the Assembly September 8, 2005

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2005, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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, 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.

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

SECTION 1. The Legislature hereby finds and declares the following:

(a) Between 1997 and 2003, the Department of Pesticide Regulation compliance audits found low rates of compliance with pesticide use laws and regulations.

(b) These laws are intended to protect people, animals, and the environment in general from the unsafe exposure to pesticides. Failure to take preventative measures to prevent pesticide exposure can lead to acute and long-term illnesses, groundwater degradation, air quality contamination, and death.

(c) In response to the low rate of compliance with pesticide-use laws and regulations and the serious health and environmental consequences of pesticide use violations, this act will ensure that pesticide safety laws are vigorously and uniformly enforced in each of the 58 counties of the state.

SEC. 2. Section 12996.5 of the Food and Agricultural Code is amended to read:

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

(1) "Office" means the Office of Environmental Health Hazard Assessment.

(2) "Department" means the Department of Pesticide Regulation.

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

(4) "Agency" means the California Environmental Protection Agency.

(5) "Nonoccupational" means that the person exposed to the pesticide was not at the time of the exposure performing work as an employee.

(6) "Acute" means a medical condition that involves a sudden onset of symptoms due to an illness, injury, or other medical

problem that requires prompt medical attention and that has a limited duration.

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

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

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

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

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

(b) The exposure of each person to a pesticide resulting from the violation of Section 12972 or 12973, or any regulation adopted pursuant to Section 12976, 12981, or 14005, that causes acute illnesses or injury, shall constitute a separate violation of the statute or regulation.

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

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

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

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

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

(e) Payment of emergency medical costs pursuant to this section shall not preclude an affected person from filing a civil action for injuries, illnesses, or costs related to the incident. Any damage award associated with a civil action related to the incident shall be reduced by the amount the plaintiff received from this section.

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

(g) For any person who provides for the immediate reimbursement of medical costs for acute medical illnesses and injuries prior to a final determination by the department, the director or agricultural commissioner may reduce, by not more than 50 percent, the fines imposed pursuant to Section 12996.5. This reduction shall not limit the responsible party's financial

obligation under this section. The department or agricultural commissioner shall attempt to complete the determination within 45 days of the incident.

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

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

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

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

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

(3) Provide an approval process to the director for taking a compliance action, as an exception to an enforcement action pursuant to paragraph (1) that will include, but not be limited to, all the following:

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

(B) Immediate corrective action was taken.

(C) First-time violation or violations.

(D) Inadvertent action.

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

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

12999.5. (a) Initiation and completion of human illness investigations by the director or commissioner shall take no

longer than 60 days unless a written explanation of the reasonable need for greater time is provided to the director. Following initial notification or knowledge of an episode, the commissioner shall initiate priority episode investigations immediately, if possible, and within 72 hours in all cases and submit a preliminary update to the director and any known aggrieved individual within 15 days.

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

(c) Any violation determined by the commissioner to be a serious violation as defined in Section 6130 of Title 3 of the California Code of Regulations is subject to a fine of not more than five thousand dollars (\$5,000) for each violation. Violation of a cease and desist order issued under authority of Sections 13101 and 13102 shall constitute a serious and separate offense per aggrieved individual. It is unlawful and grounds for denial of a permit under Section 14008 for any person to refuse or neglect to pay a civil penalty levied pursuant to this section once the order is final.

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

(e) Before a civil penalty is levied, the person charged with the violation shall be given a written notice of the proposed action including the nature of the violation and the amount of the proposed penalty, and shall have the right to request a hearing

within 20 days after receiving notice of the proposed action. A notice of the proposed action that is sent by certified mail to the last known address of the person charged shall be considered received even if delivery is refused or the notice is not accepted at that address. If a hearing is requested, notice of the time and place of the hearing shall be given at least 10 days before the date set for the hearing. At the hearing, the person shall be given an opportunity to review the commissioner's evidence and to present evidence on his or her own behalf. If a hearing is not timely requested, the commissioner may take the action proposed without a hearing.

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 6. If the Commission on State Mandates determines that this act contains 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.

Approved _____, 2005

Governor