

Date of Hearing: April 15, 2021

ASSEMBLY COMMITTEE ON AGRICULTURE  
Robert Rivas, Chair  
AB 710 (Eduardo Garcia) – As Amended March 18, 2021

**SUBJECT:** Sale of listed agricultural products: requirements for sale

**SUMMARY:** This bill would prohibit a retailer from selling a listed agricultural product (LAP), produced in the state or outside of the state unless the product was produced in compliance with specified California health and environmental protection laws. Furthermore, prohibits a retailer from selling a LAP produced in the state or outside of the country unless the product was produced in compliance with specified California labor laws. Specifically, *this bill*:

- 1) Makes legislative findings and declarations regarding California's healthy and safety laws to protect consumers and agriculture workers, including laws on pesticide use, wages, and child labor. These findings also recognize the role of California farmers in providing healthy and safe working conditions.
- 2) Prohibits a retailer from selling a listed agriculture product (LAP) that was produced in or outside the state unless the LAP was produced in compliance with California health and environmental protections laws, as specified.
- 3) Prohibits a retailer from selling a LAP that was produced in or outside the country unless the LAP was produced in compliance with California labor laws, as specified.
- 4) Requires California Department of Agriculture (CDFA) to make regulations to administer and enforce compliance of the sale of a LAP complying with state laws, as specified.
- 5) Requires CDFA regulations to do all the following:
  - a) Establish a third party system to verify that a LAP was produced complying with California health and environmental protection laws and specified California labor laws.
  - b) Establish a procedure to audit sales of a LAP produced complying with California health and environmental protection laws and specified California labor laws.
  - c) Coordinate with state agencies with existing programs that monitor and enforce compliance of producers of LAPs with specified laws, to insure no additional fees are impose on producers.
    - i) If programs do not exist, the CDFA may impose requirements and fees comparable to existing programs.
- 6) Defines the following:
  - a) Compliance with specified California health and environmental protection laws means the use of only pesticides registered with the Department of Pesticide Regulation, as specified.
  - b) Compliance with specified California labor laws means compliance with all of the following:
    - i. Child labor regulations established by the Department of Industrial Relations.
    - ii. The California minimum wage, as specified.
    - iii. Overtime requirements, as specified.

- iv. Listed agricultural product means fresh or value-added fresh apples, asparagus, bell peppers, blueberries, dates, honeydew melons, lemons, nectarines, olives, and table grapes.
- v. Retailer has the same meaning as in Section 6015 of the Revenue and Taxation Code.

7) Provides that a violation of this section is not subject to criminal penalty.

**EXISTING LAW:**

- 1) Requires all California state-owned or state-run institutions, except public universities, colleges and school districts, to purchase agricultural products grown in California when the price of the California-grown agricultural product does not exceed by more than 5% the lowest bid or price for an agricultural product produced outside the state and the quality of the products are comparable.
- 2) Establishes within CDFA a public and private collaboration known as the “Buy California Program” to encourage consumer nutritional and food awareness and to foster purchases of California agricultural products.

**FISCAL EFFECT:** Unknown

**COMMENTS:** Agriculture is a key California industry that generated more than \$50 billion in annual output in 2019. California produces over 400 commercial crops. California has a strong agricultural export market because the "California" brand. Part of that brand is due to strong pesticide regulation, food safety laws, robust labor laws and an industry that understands consumer buying habits, making California agriculture products some of the safest in the world.

According to the author, California laws require growers to follow some of the strictest environmental, labor, and health and safety regulations in the country. California's pesticide regulations, for example, exist in order to ensure health and safety standards for our consumers. The state should ensure that produce shipped into the state meet the same requirements.

Supporters state agriculture is a critical aspect of our state and local economy. However, out-of-state agriculture producers oftentimes do not adhere to the same standards that California growers do to help ensure the health and safety of their workers and the environment. Unfortunately, this places in-state growers at a competitive disadvantage and places California local agriculture economies at risk. By increasing applicability of the same California standards, California can also increase adherence to California's values. Otherwise, many communities throughout the state will bear the cost in loss of jobs and ancillary economic impacts associated with the agriculture sector. Many agriculture regions in the state experience the highest unemployment and poverty rates in the state. AB 710 can help ensure the future of its agriculture economy.

Opponents state, grocery stores, across California, source as much fresh produce they can from California when it is in season. When the California growing season ends, produce suppliers get products from other countries or states who are either still in their growing season or are approaching it. Certain products grown in California, like apples, are not grown at a scale that can meet the demand of the 39 million people in the state. In order to meet the demand, apples have to be brought in from other states and the southern hemisphere.

Furthermore, Opponents point out that the minimum wage compliance provision alone, will stop the importation of many of the produce that are mentioned in the bill. California has the highest minimum wage in the United States. Other countries set their minimum wage at a different standard and currency. This will make it difficult for California companies to anticipate the market as foreign currencies fluctuate on a regular basis.

Opponents worry that that bill may force grocery stores to:

- 1) not sell products when California is not growing (off-season), which means empty shelves/unavailable products and losing customers; or
- 2) having to increase cost of labor in order to verify/track whether our suppliers and/or manufacturers out-of-state comply with CA's applicable laws.

*“If it's #2, then stores would pass the cost to our customers and may potentially lose them because produce would be more expensive. Customers may be faced with one of two scenarios: they cannot afford products or they cannot purchase due to limited or no availability”.*

### **Commerce Clause:**

Commerce clause is a provision of the U.S. Constitution (Article I, Section 8) that authorizes Congress “to regulate Commerce with foreign Nations, and among the several States, and with Indian Tribes.” The commerce clause has traditionally been interpreted both as a grant of positive authority to Congress and as an implied prohibition of state laws and regulations that interfere with or discriminate against interstate commerce. In its positive interpretation, the clause serves as the legal foundation of much of the federal government’s regulatory power.

In November 2008, voters passed Proposition 2, which addressed confinement of farm animals. The law requires that certain farm animals, including egg-laying hens, have room to move freely. AB 1473 (Huffman), Chapter 51, Statutes of 2010, required out-of-state egg producers to comply with California animal care standards. In two cases, *State of Missouri, et al. v. Harris, et al.* and *State of Missouri v. State of California*, Plaintiffs argued that California is regulating extraterritorially by telling farmers in other states how to run their businesses, thus violation the commerce clause. In both these cases, the courts allowed California to continue to require out of state egg producer to meet California standards.

The California foie gras law (SB 1520 of 2004) prohibits the "force feeding of a bird for the purpose of enlarging the bird's liver beyond normal size" as well as the sale of products that are a result of this process. This banned the traditional method of producing foie gras in California. The law went into effect in 2012. In 2015, U.S. District Judge Stephen Wilson held that the portion of California's law banning the sale of foie gras within the state was preempted by the federal Poultry Products Inspection Act, and enjoined the California Attorney General from enforcing it. That decision was overturned on appeal on September 15, 2017, but that decision was stayed to permit the plaintiffs to petition the U.S. Supreme Court. The petition was denied on January 7, 2019, leaving the lower court ruling in effect.

On July 14, 2020, District Judge Stephen Wilson lifted the ban on foie gras, ruling that the state's health code does not prevent the food from being imported from out of California.

These two examples suggest that this bill, if it becomes law, will likely face some form of commerce clause lawsuit.

### **PREVIOUS LEGISLATION:**

AB 582 (E. Garcia) of 2020 would have prohibited a retailer from selling an agricultural product, to the public unless the agricultural product is grown in the state, with limited exceptions. This bill was held in the Senate Business, Professions and Economic Development Committee.

AB 1248 (E. Garcia) of 2019, would have required all state institutions to purchase California-grown agricultural products, with specified exemption. This bill was held in Senate Governmental Organization Committee.

AB 2106 (E. Garcia) of 2018 would have increased the existing bid preference from 5% to 10% for state purchases, as specified, for California-grown, or California-packed or processed agricultural products over those produced out of state. This bill was held on the Senate Appropriations suspense file.

AB 822 (Aguiar-Curry) Chapter 785, Statutes of 2017, allows for 5% price difference for state purchases, as specified, for California-grown, or California-packed or processed agricultural products over those produced out of state.

AB 199 (Holden) in 2013 provided a 5% preference for state purchases of California-grown agricultural products in the early versions of that bill. However, the final version of the bill removed the 5% preference. It required that state-owned and state-run institutions purchase California-grown products instead of those grown out of state if the price was equal to or less than the out-of-state product, and if the availability and delivery schedule of the agricultural product was acceptable. This bill was vetoed by Governor Brown.

AB 1960 (Ma) of 2010, encouraged the State of California and its agencies to purchase California grown, or grown and processed, fruit, nuts and vegetables if the price is equal to or less than, imported fruits, nuts and vegetables. This bill was held in the Senate Rules Committee.

AB 2994 (Frommer) of 2004, proposed requiring state agencies to give preference to the purchase of lumber and certain solid wood products harvested from forests in California when price, fitness, and quality are equal. This bill was vetoed by Governor Schwarzenegger.

AB 801 (Salinas) of 2001, proposed requiring California state-owned or state-run institutions to purchase agricultural products grown in California before those that are grown outside this state, provided the prices for California grown products do not exceed the lowest price of products grown outside California by more than 5%. It also included California public schools, but only when price and quality were equal to products grown outside California. This bill was vetoed by Governor Davis.

SB 1893 (Perata) of 2000, proposed requiring state agencies and school districts to purchase agricultural products produced in California if the cost and quality are equal or superior to those produced outside California. If California products were not found to be equal, preference was

to be given to products produced in other states over foreign products, if the cost and quality are equal. This bill was held on the Senate Appropriations suspense file.

AB 214 (Wiggins) of 1999, proposed establishing preferences for the purchase of U.S. and California manufactured materials, with respect to public works contracts entered into by public entities. The bill was vetoed by Governor Davis.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Growing Coachella Valley (Sponsor)  
California Apple Commission  
California Blueberry Commission  
California Date Commission  
California Fresh Fruit Association  
Coachella Valley Water District  
Desert Fresh INC  
Imperial Irrigation District  
Olive Growers Council of California  
Twenty-nine Palms Band of Mission Indians

**Opposition**

California Grocers Association

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