

Date of Hearing: April 27, 2022

**ASSEMBLY COMMITTEE ON AGRICULTURE**

Robert Rivas, Chair

AB 1959 Committee on Agriculture – As Amended April 20, 2022

**SUBJECT:** Food and agriculture: omnibus bill

**SUMMARY:** This is the Assembly Committee on Agriculture 2022 omnibus bill. This bill deletes the sunset clause on the law that allows the use of carbon monoxide (CO) for the control of burrowing rodent pests (BRP) and add conforming privacy protection to recent updates to Food and Agriculture code related to the federal Food Safety Modernization Act (FSMA). Specifically, this bill:

- 1) Deletes the sunset clause on the law that allows the use of CO for the control of BRP
- 2) Requires all proprietary information obtained by the produce safety program be confidential and not disclosed except when required by court order in a judicial proceeding.
- 3) Requires the information that is contained in individual reports of produce inspections not be made public by CDFA in that form.
  - a) Allows information that is contained in those reports may be prepared in combined form for use by the secretary of CDFA, the agents of the secretary, or other interested persons in the formulation, administration, and enforcement of the produce safety rule.
  - b) Allows information to be made available pursuant to court order.
  - c) Requires the information not be made available to anyone for private purposes.
- 4) Requires all proprietary information obtained by CDFA's produce safety program from any source, including, as specified, is confidential and not to be disclosed except when required by court order in a judicial proceeding. This also applies to sales data and noncompliance observations obtained during a produce inspection.
- 5) Allows the disclosure of information on crops or any other related information that is required for reports and inventory information, and any other information that gives only totals, but excludes individual information.
- 6) Defines the following:
  - a) "Produce safety program" means the unit operating in the department's inspection services division responsible for implementing the produce safety rule.
  - b) "Produce safety rule" means Part 112 (commencing with Section 112.1) of Subchapter B of Chapter I of Title 21 of the Code of Federal Regulations.

- 7) Makes legislative findings in order to protect proprietary information, including personal and financial information, received by CDFA's produce safety it is necessary that this act limit the public's right of access to that information.

**EXISTING LAW:**

- 1) Authorizes the use of CO for the control of BRP under specified conditions. CO devices must have a permanently affixed warning label, as specified.
- 2) Repeals the above provisions on January 1, 2023.
- 3) Authorizes the director of the Department of Pesticide Regulation (DPR) to adopt and enforce regulations that provide for the proper, safe, and efficient use of CO pest control devices for the protection of public health and safety and the environment.
- 4) Requires the secretary of the California Department of Food and Agriculture (CDFA) to establish a research program on the control of vertebrate pests that pose a significant threat to the welfare of the state's agricultural economy, infrastructure, and the public. Among other purposes, the program is specifically charged with investigating effective and economical alternative methods for the control of vertebrate pests, including using CO to control BRP.
- 5) Establishes the Vertebrate Pest Control Research Advisory Committee to annually recommend to the secretary priorities for conducting various vertebrate pest control research projects.
- 6) Repeals provisions regarding the vertebrate pest control research program and advisory committee on January 1, 2026.
- 7) Establishes fruit, nut, and vegetable standards and requires CDFA and county agricultural commissioners to enforce those provisions.
- 8) Provides that CDFA and specified other agents of CDFA are authorized to enforce and make inspections of grade, standards of quality, and other provisions of any raw unprocessed fruit, nut, or vegetable marketing, food safety, or enforcement program adopted under state or federal authority.

**FISCAL EFFECT:** Unknown.

**COMMENTS:****Carbon Monoxide Pest Control**

CO is a colorless, odorless gas that is toxic in high concentrations. CO is widely known as a household danger as it can be produced when a gas cooktop or combustion engine is operated in an enclosed space, allowing CO to accumulate to toxic, even fatal, concentrations. Household CO detectors are now commonly used to warn occupants of the presence of CO. However, because of its toxicity, CO has been found to be a valuable tool in controlling BRPs.

AB 643 (Huber), Chapter 407, Statutes of 2011, authorized the use of CO for the control of BRP, only until January 1, 2018, and required the CO delivery device to have a specified warning label permanently affixed in plain view of the operator, subject to specified provisions governing (a)

the protection of endangered species; (b) the mode of taking a fur-bearing animal; and, (c) pest control operations and the use of agricultural chemicals, as specified.

Prior to AB 643, in California it was illegal to kill any animal using CO, which includes BRP. Anticoagulant bait, zinc phosphide bait, gas cartridge fumigation and trapping were allowed to be used for BRP control in California.

CO is an efficient form of BRP control and causes much less environmental problems. With recent restrictions on the use of rodenticides in California, alternative methods of BRP control are needed.

SB 1332 (Wolk) Chapter 257, Statutes of 2014, aimed to ensure that the use of these devices be regulated in a way that does not jeopardize human health or the environment. DPR has not yet promulgated the regulation nor released any review of this practice. While CO is an effective tool for pest control, those regulations are still pending.

AB 1126 (Assembly Agriculture Committee), Chapter 112, Statutes of 2018 extended to 2018 the sunset deadline on the use of CO for the control of BRP. The entire Vertebrate Pest Control Research Program and Advisory Committee, which includes the section of law that allows the use of CO for the control of BRP, will expire in 2026.

### **Food Safety Modernization Act Privacy (FSMA)**

The Inspection and Compliance Branch within the CDFA is responsible for administering the fruit, nut, and vegetable standardization program to protect consumers by ensuring that these products are of consistent and acceptable quality in the marketplace. County agricultural commissioners are responsible for enforcing the standardization program on the local level, where they inspect fields, packinghouses, and retail facilities to ensure that fruits, nuts, and vegetables meet quality, maturity, variety, grade, size, and packing arrangement requirements. Signs and labels for these commodities are inspected for accuracy.

FSMA was signed into law on January 4, 2011, and is a major overhaul of food safety practices in the United States. Instead of focusing on responding to illness outbreaks and issuing voluntary food recalls, FSMA focuses on preventing outbreaks by enabling the Food and Drug Administration (FDA) to strengthen and implement preventative measures that reach all aspects of the food system, spanning from the field to the final consumer. Specifically, FSMA authorizes FDA to enforce compliance with prevention and risk-based food safety standards, holds imported foods to the same standards as domestic products, holds mandatory food product recalls (rather than voluntary), and directs FDA to partner with state and local authorities to build an integrated national food safety system.

This bill would provide that proprietary information obtained in connection with CDFA's produce safety program and proprietary information obtained by CDFA in connection with laws relating to fruit, nut, and vegetable standards is confidential and prohibits that information from being disclosed, except when required by court order in a judicial proceeding. This bill also prohibits information contained in individual reports of produce inspections from being made public by CDFA except pursuant to a court order or when prepared in aggregated form, as specified. This practice is in common use throughout the Food and Agriculture code.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

None on file.

**Opposition**

None on file.

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