

Date of Hearing: April 19, 2023

ASSEMBLY COMMITTEE ON AGRICULTURE

Robert Rivas, Chair

AB 865 (Garcia) – As Amended March 23, 2023

SUBJECT: Sale of agricultural products: requirements for sale

SUMMARY: Requires that a grower or producer selling specified agricultural products use a self-attestation form developed by the California Food and Agriculture Department (CDFA) to demonstrate compliance with applicable California environmental, health, and labor laws. Specifically, *this bill*:

1. Names section the California Farmers and Farmworker Protection and Climate Mitigation Pilot Program Act (CFFCMP).
2. Requires a grower or producer that sells an agricultural product to a distributor to confirm, via a prescribed self-attestation form, to the distributor whether the agricultural product was produced in compliance with specified California health and environmental protection laws and specified California labor laws.
3. Requires a distributor that sells an agricultural product to a retailer to provide to the retailer the self-attestation form received from a grower or producer, as specified.
4. Prohibits a distributor from selling an agricultural product to a retailer if the self-attestation form provided is incomplete or indicates that the agricultural product was not produced in compliance with specified California health and environmental protection laws and specified California labor laws.
5. Requires CDFA to develop regulations for CFFCMP before this program can start.
6. Requires CFFCMP to apply only to the sale of an agricultural product listed and only during the California growing season for that agricultural product.
7. Requires CDFA to develop and adopt regulations to administer and enforce the requirements CFFCMP, including developing a self-attestation form for a grower or producer to verify compliance with CFFCMP.
8. Requires CDFA to not impose additional fees on growers or producers to meet the requirements of CFFCMP.
9. Provided for a civil penalty of five hundred dollars (\$500) per violation of CFFCMP, if distributor violates CFFCMP.

10. Requires any funds recovered from CFFCMP violations to be deposited in the CDFA Fund to be used for the administration and enforcement of CFFCMP.
 - a. Requires any excess funds to be used for the Buy California Program to promote consumption of California-grown and -produced agricultural products to California consumers.
11. Defines, for this section, the following:
 - a. “Agricultural product” means bell peppers, blueberries, dates, honeydew melons, lemons, olives, or table grapes.
 - b. “Compliance with specified California health and environmental protection laws” means the use of only pesticides registered with the Department of Pesticide Regulation.
 - c. “Compliance with specified California labor laws” means compliance with all of the following:
 - i. “Child labor regulations” means the regulations established by the Department of Industrial Relations related to child labor.
 - ii. “The minimum wage” means the California minimum wage law.
 - iii. “Overtime requirements” means the California overtime laws.
 - d. “Distributor” means a person who sells, supplies, or otherwise provides an agricultural product from a grower or producer to a retailer.
 - e. “Retailer” means a retailer that sells agricultural products at more than one retail location.

EXISTING LAW:

1. Requires all California state-owned or state-run institutions, public schools and colleges, that purchase agricultural food products ensure that at least 60% of the agricultural food products that it purchases in a calendar year are grown or produced in the state, as specified. *Food and Agriculture Code (FAC) 58595*
2. Establishes, within CDFA, the “Buy California Program” to encourage consumer nutritional and food awareness and to foster purchases of high-quality California agricultural products. *FAC 58750*

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.

A 2018 report, *A Decade of Change: A Case Study of Regulatory Compliance Costs in the Produce Industry*, stated regulatory pressure is a source of increasing concern to the California agricultural industry, “in the decade since 2006, new rules at both the state and federal levels have imposed significantly higher regulatory burdens on growers, specifically with respect to food safety, water quality, labor wages, air quality, and worker health and safety. Additional regulations are in process as the Sustainable Groundwater Management Act is developed at the local levels for implementation in 2022, and minimum wage and overtime laws for farmworkers are phased in, also by 2022.” The case study show that, for this lettuce grower, production costs had increased by 24.8% from 2006 to 2017, but the costs of regulatory compliance had risen by 795%.

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 the existing statutory and regulatory framework creates and unlevelled playing field for California growers. California’s environmental, health and safety, and labor standards are among the highest in the world. As such all produce sold in California whether from in state or out of state should meet California’s high standards. Compliance with important California laws comes at a cost to California farmer and farmworkers – who depend on employment on California farms. This bill attempts to address the economic disadvantage that impact California farmer and producers.

Opponents state this bill will harm California consumers and inevitably lead to shortages of listed items on store shelves. For many of these items, California farms do not produce these items in sufficient supply to meet in-state demand. Fruits and vegetables must be sourced from other states and other parts of the globe in order to provide consumers fresh produce options. Restricting import options will mean that some items cannot be offered when they are not in-season and will likely drive-up prices for products that are available.

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.

An Office of Legislative Counsel legal opinion from March of 2022 states that AB 710 (E. Garcia) of 2022, if enacted, would not violate the dormant commerce clause. This bill based on the same principals of AB 710.

PREVIOUS LEGISLATION:

AB 710 (E. Garcia) of 2022 would have required that a grower or producer selling specified agricultural products use a self-attestation form developed by the California Food and Agriculture Department (CDFA) to demonstrate compliance with applicable California environmental, health, and labor laws, among other things. This bill was held in the Senate Business, Professions and Economic Development Committee.

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

California Date Commission
California Farm Bureau Federation
California Fresh Fruit Association
Hadley Date Gardens, INC.
Riverside County Farm Bureau
Twenty-nine Palms Band of Mission Indians

Opposition

California Grocers Association
California Retailers Association

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