

Date of Hearing: May 3, 2023

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Chris Holden, Chair
AB 865 (Garcia) – As Amended March 23, 2023

Policy Committee: Agriculture Vote: 8 - 0

Urgency: No State Mandated Local Program: Yes Reimbursable: No

SUMMARY:

This bill prohibits the sale of an agricultural product in California unless the distributor has received from the agricultural product's grower or producer an attestation that the product was produced in compliance with specified state laws.

Specifically, this bill, among other things:

- 1) Requires a grower or producer that sells an agricultural product to a distributor to attest to the distributor under penalty of perjury, using a self-attestation form developed by the California Department of Food and Agriculture (CDFA), whether the agricultural product was produced in compliance with specified California health, environmental protection, and labor laws.
- 2) 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.
- 3) 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 the laws referenced in 1).
- 4) Requires CDFA to develop and adopt regulations to administer and enforce the requirements of this bill, and prohibits CDFA from imposing additional fees on growers or producers to meet the requirements of this bill.
- 5) Makes a distributor who violates this bill liable for a civil penalty of \$500 for each violation, and provides that this penalty shall be assessed and recovered in a civil action brought by the Attorney General at the request of CDFA.
- 6) Requires any funds recovered from civil penalties be deposited in the CDFA Fund to be used for the administration and enforcement of this bill, upon appropriation.
- 7) Requires any excess funds be used for the Buy California Program to promote consumption of California-grown and produced agricultural products.

FISCAL EFFECT:

CDFA estimates costs ranging from \$20 million to \$25 million in the first year followed by ongoing annual costs ranging from \$10 million to \$15 million to fulfill the requirements of this bill (General Fund).

CDFA's estimated costs are based on the following assumptions: to verify an agricultural product is produced in compliance with California laws, CDFA will likely need to compile and compare the labor, health, and environmental laws of other states and countries to determine if these laws are equivalent to California's laws. In addition, CDFA will need to maintain records of growers' and producers' self-attestation forms and potentially oversee and regulate distributors and retailers to ensure they are not selling noncompliant products. This process would likely open CDFA up to legal challenges based on disputes over interpretations of other jurisdictions' laws as well as interstate commerce and international trade issues – resulting in significant costs to CDFA's legal office. CDFA notes the provisions requiring the department to develop and adopt regulations to administer and enforce the requirements of this bill are vague. CDFA would likely define the appropriate level of enforcement in its regulations, making it difficult to estimate enforcement costs prior to the promulgation of regulations. If CDFA establishes a robust enforcement program, it would likely need to flag produce lacking self-attestation forms and audit and investigate producers and distributors. To fulfill the requirements of this bill, considering the many unknowns, CDFA notes it would need to hire administrative and technical field staff, including investigators and auditors, acquire additional office and warehouse space with refrigeration capabilities, and obtain IT infrastructure.

This bill prohibits CDFA from imposing additional fees on growers or producers to meet the requirements of this bill, and the civil penalties prescribed in this bill will almost certainly be insufficient to cover the department's implementation costs.

COMMENTS:

1) **Purpose.** According to the author:

The expectation of a healthy and safe society is a human right and the Legislature can show its commitment to safeguarding that ideal by ensuring that produce sold in the state meets those expectations. The question we must ask ourselves is “why has the state put these regulations on our own farmers?” Was it ensure the health and safety of our fieldworkers and our consumers? Or was it just to hurt our farmers? If we truly did those things for the health and safety benefits to our state, then this bill is a no-brainer.

2) **Support and Opposition.** According to supporters, this bill levels the playing field by creating a pilot program for ensuring agricultural products sold in California, whether they were grown in-state or imported from another state or country, were produced in compliance with California's health, environmental protection, food safety, and labor laws. The Riverside County Farm Bureau states:

California agriculture is responsible for more than half of all U.S. domestic fruit and vegetable production and has maintained its position as a national and world leader when it comes to protection of consumers and agricultural fieldworkers by ensuring the use of safe chemicals and providing economic freedom by assuring the right to a living wage. Unfortunately, other states and countries are not required to meet California's high standards and protections and can import agricultural products into our state at lower costs and with none of the world-leading consumer and farmworker protections that California

growers provide and that California consumers have become accustomed to it.

Writing in opposition, the California Grocers Association argues that requiring imported fruits and vegetables to comply with California standards will result in retailers not offering these items in their stores:

Grocery stores, across California, source as much fresh produce as they can from California farmers when that produce is in season. However, California does not grow the necessary amounts to feed the entire state. Produce suppliers must import produce from other states and countries to ensure all Californian's have access to fresh fruits and vegetables. The minimum wage compliance provision alone will stop the importation of the produce mentioned in the bill. California has the third highest minimum wage in the country. Additionally, minimum wages in other countries are calculated in a different currency, which is constantly fluctuating.

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