

Assembly Bill No. 520

CHAPTER 220

An act to amend Section 43003 of, and to add Section 885 to, the Food and Agricultural Code, relating to civil administrative penalties.

[Approved by Governor September 6, 2005. Filed with
Secretary of State September 6, 2005.]

LEGISLATIVE COUNSEL'S DIGEST

AB 520, Parra. Civil administrative penalties: food and agriculture violations.

Under existing law, persons who sell certain agricultural commodities are required to provide a record of proof of ownership, as specified. Existing law prohibits any person knowingly falsifying those records or causing those records to be falsified. Violation of these provisions is a misdemeanor pursuant to other provisions of law.

This bill would authorize the Secretary of Food and Agriculture, or the County Agricultural Commissioner to, in lieu of prosecution, levy a civil fine against persons violating those provisions, as specified.

Under existing law, in lieu of civil prosecution, the Secretary of Food and Agriculture or the County Agricultural Commissioner may levy a civil penalty against any person for a violation relating to the use of a California Grown seal on agricultural products of not more than \$500 for each violation.

This bill would authorize the secretary or the commissioner to levy a civil penalty against any person violating provisions relating to fruit, nut, and vegetable standards. The civil penalties would range from not more than \$500 or \$3,000 for first violations, as specified, to fines up to \$1,000 or \$5,000 for subsequent or other violations, as specified.

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

SECTION 1. Section 885 is added to the Food and Agricultural Code, to read:

885. In lieu of civil prosecution, the secretary or the commissioner may levy a civil penalty against any person violating the provisions of this chapter or any regulation adopted pursuant to its provisions. The civil penalty for each violation shall be, for a first violation, a fine of not more than five hundred dollars (\$500). For a second or subsequent violation, the fine shall be not less than one hundred dollars (\$100), nor more than one thousand dollars (\$1,000). Before a civil penalty is levied, the person charged with the violation shall receive notice of the nature of the violation and shall be given an opportunity to be heard. This shall include

the right to review the evidence and a right to present evidence on his or her own behalf. Subdivision (e) of Section 43003 shall apply to any fine levied pursuant to this section.

SEC. 2. Section 43003 of the Food and Agricultural Code is amended to read:

43003. (a) In lieu of civil prosecution, the secretary or the commissioner may levy a civil penalty against any person violating this division or any regulation adopted pursuant to its provisions. Except as provided in subdivisions (b) and (c), the civil penalty for each violation shall be, for a first violation, a fine of not more than five hundred dollars (\$500). For a second or subsequent violation, the fine shall be not less than one hundred dollars (\$100), nor more than one thousand dollars (\$1,000).

(b) The secretary or the commissioner may, for a first violation, levy a civil penalty not to exceed three thousand dollars (\$3,000) for each violation of Section 42945, 42948, 42949, 42951, subdivision (b) of Section 44971, Section 44972, subdivision (c) of Section 44974, or Section 44986.

(c) The secretary or the commissioner may, for a first violation, levy a civil penalty not to exceed five hundred dollars (\$500) for each violation of Section 44973, 44982, 44983, 44984, 45031, 45034, or 45035. For a second or subsequent violation, or for a violation involving avocados worth five hundred dollars (\$500) or more, the fine shall be not less than two hundred fifty dollars (\$250) nor more than five thousand dollars (\$5,000).

(d) Before a civil penalty is levied, the person charged with the violation shall receive notice of the nature of the violation and shall be given an opportunity to be heard. This shall include the right to review the evidence and a right to present evidence on his or her own behalf.

(e) The person fined may appeal to the secretary within 10 days of the date of receiving notification of the fine. The following procedures apply to the appeal:

(1) The appeal need not be formal, but it shall be in writing and signed by the appellant or his or her authorized agent, and shall state the grounds for the appeal.

(2) Any party may, at the time of filing the appeal or within 10 days thereafter, present written evidence and a written argument to the secretary.

(3) The secretary 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.

(5) The secretary shall decide the appeal on any oral or written argument, briefs, and evidence that he or she has received.

(6) The secretary shall render a written decision within 45 days of the date of appeal or within 15 days of the date of oral arguments.

(7) On an appeal pursuant to this section, the secretary may sustain, modify by reducing the amount of the fine, or reverse the decision of the commissioner. A copy of the secretary's decision shall be delivered or mailed to the appellant and the commissioner.

(8) Review of the decision of the secretary may be sought by the appellant pursuant to Section 1094.5 of the Code of Civil Procedure.