

Assembly Bill No. 1061

Passed the Assembly September 6, 2005

Chief Clerk of the Assembly

Passed the Senate September 1, 2005

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2005, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Sections 40535 and 56382.8, and Article 3 (commencing with Section 54442) of Chapter 2 of Division 20 to, the Food and Agricultural Code, relating to agriculture omnibus.

LEGISLATIVE COUNSEL’S DIGEST

AB 1061, Committee on Agriculture. Agriculture omnibus changes.

Under existing law, all fees and assessments that are required to be paid to support certain agricultural programs are deposited into the Department of Food and Agriculture Fund.

This bill would create the Analytical Laboratory Account in the Department of Food and Agriculture Fund, into which the residual balance of all reimbursements collected by the Secretary of Food and Agriculture for services rendered by the Center for Analytical Chemistry would be deposited at the end of each fiscal year. Upon appropriation by the Legislature, money in the account would be used to fund services rendered, laboratory equipment repair or replacement, make modifications or upgrades to existing facilities, or for other uses that maintain the laboratory infrastructure.

Existing law provides for the establishment and responsibilities of an advisory committee to aid in the preparation of a report required pursuant to the Cooperative Bargaining Association Chapter. These provisions will be repealed on January 1, 2006.

This bill would reenact those provisions, with specified revisions.

Existing law provides the Agricultural Cooperative Bargaining Advisory Committee shall meet not less than twice a year.

This bill would reduce the number of mandatory meetings to one per year.

Existing law provides a procedure for addressing complaints by growers or licensed produce dealers.

This bill would establish a similar procedure for complaints where the claimed damages do not exceed \$30,000, as specified.

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

SECTION 1. Section 40535 is added to the Food and Agricultural Code, to read:

40535. (a) There is hereby created in the Department of Food and Agriculture Fund, the Analytical Laboratory Account, into which the residual balance of all reimbursements collected by the Secretary of Food and Agriculture for services rendered by the Center for Analytical Chemistry shall be deposited at the end of each fiscal year.

(b) Notwithstanding Section 221, upon appropriation by the Legislature, funds deposited in the Analytical Laboratory Account shall be used to fund services rendered, laboratory equipment repair or replacement, make modifications or upgrades to existing facilities, or for other uses that maintain the laboratory infrastructure.

SEC. 2. Article 3 (commencing with Section 54442) is added to Chapter 2 of Division 20 of the Food and Agricultural Code, to read:

Article 3. Annual Report

54442. (a) To aid in preparation of the report required under this chapter, the secretary shall establish an advisory committee consisting of the following persons:

(1) Six representatives of cooperative bargaining associations from names submitted by cooperative bargaining associations, two of whom shall be appointed by the Governor, two of whom shall be appointed by the Speaker of the Assembly, and two of whom shall be appointed by the Senate Committee on Rules.

(2) Six representatives of processors from names submitted by processors, two of whom shall be appointed by the Governor, two of whom shall be appointed by the Speaker of the Assembly, and two of whom shall be appointed by the Senate Committee on Rules.

(b) The members of the advisory committee shall be reimbursed for travel expenses pursuant to the rules and regulations adopted by the Director of the Department of Personnel Administration pursuant to Section 19820 of the

Government Code for attendance at a meeting approved by the Secretary of Food and Agriculture.

54443. The advisory committee shall study and report on all of the following issues:

- (a) Unfair trade practices.
- (b) Licensing.
- (c) Funding.
- (d) Investigation and hearing procedures.
- (e) The need for a mechanism to resolve bargaining disputes.
- (f) Any other issues relating to this chapter.
- (g) Any recommended changes to this chapter.

54444. The advisory committee shall meet not less than once annually.

54445. The advisory committee shall prepare and transmit a report to the secretary at a time fixed by the secretary so as to meet his or her obligation under this article.

54446. (a) The advisory committee shall prepare and submit a report to the secretary who, in turn, shall report to the Legislature on the effectiveness of subdivisions (a) and (e) of Section 54431 in successfully aiding the bargaining process between processors and cooperative bargaining associations. The secretary shall include any recommended changes to subdivisions (a) and (e) of Section 54431 as part of the report.

(b) After receiving the report, the Assembly Committee on Agriculture and the Senate Committee on Agriculture may hold hearings on the report.

(c) The report shall, among other things, focus on any specific abuses of subdivisions (a) and (e) of Section 54431.

(d) Annual progress reports on the report shall be submitted by the advisory committee to the secretary.

54447. This article shall be construed as a continuation of former Article 3 of Chapter 2 of Division 20.

SEC. 3. Section 56382.8 is added to the Food and Agricultural Code, to read:

56382.8. (a) In addition to all other complaint procedures provided for in this chapter, any aggrieved grower or licensee with a complaint that is not subject to the federal Packers and Stockyards Act, 1921 (7 U.S.C. Sec. 181, et seq.) or the federal Perishable Agricultural Commodities Act, 1930 (7 U.S.C. Sec. 499a et seq.) and for which the claim for damages does not

exceed thirty thousand dollars (\$30,000), may file a verified complaint with the department, subject to expedited review and settlement. Informal complaints may be made for damages, but not for disciplinary action, although the department may issue a complaint pursuant to Section 56382 as the basis for disciplinary action. Informal complaints must be received by the department within nine months of when the claimant ought to have reasonably known of its existence, as required under Section 56446.

(b) Complaints must be submitted to the department in writing and verified, and may be transmitted via United States mail, overnight delivery, or by facsimile transmission, setting forth the essential details of the transactions complained of, including the following:

(1) The name and address of each party to the dispute, of the agent representing him or her in the transaction involved, if any, as well as the party's counsel, if any.

(2) The quantity and quality or grade of each kind of produce shipped if a grade or quality is the basis of payment.

(3) The date of shipment.

(4) The carrier identification if a carrier was used.

(5) The shipping and destination points.

(6) If a sale, the date, sale price, and amount actually received.

(7) If a consignment, the date, reported proceeds, gross, and net.

(8) A precise estimate of the amount of damages claimed, if known.

(9) A brief statement of material facts in dispute, including terms of applicable contracts.

(10) The amount of damages being sought.

(c) The complaint shall also, so far as practicable, be accompanied by true copies of all available papers relating to the transaction complained about, including shipping documents, letters, telegrams, invoices, manifests, inspection certificates, accountings, accounts of sale, and any special contracts or agreements.

(d) The informal complaint shall be accompanied by a nonrefundable filing fee of sixty dollars (\$60) as required under Section 56382.5.

(e) Upon confirmation that a complaint has been properly and timely filed, including the securing of a denial letter from the United States Department of Agriculture under the Federal Packers and Stockyards Act, 1921, or the Federal Perishable Agricultural Commodities Act, 1930, the department shall send a copy of the complaint to the respondent by certified mail and advise the respondent that it shall have 30 days from the department's mailing of the complaint in which to answer the complaint. The answer shall contain a brief response to the complaint, including the respondent's position with respect to the claimant's description of matters in dispute, the relevant facts, and the remedy sought, together with a description of any claims it may have against the complainant, in the same manner as claims are to be set out in the complaint. The respondent shall also include any pertinent documentation relevant to its defense with its answer.

(f) After receipt of the answer from the respondent, the department shall informally consult with the parties to clarify the nature of the dispute and to facilitate the exchange of information between the parties in order to assist the parties in reaching an expedited informal resolution of the dispute. The informal consultation process will last no longer than 60 days. The parties shall cooperate fully with the department and shall participate in the informal consultation process.

(g) If the informal consultation process provided for in this section does not result in resolution of the dispute, the complainant may then pursue arbitration against the licensee and the complaint and any counterclaim will be fully and finally adjudicated and resolved by a decision of an arbitrator under expedited arbitration procedures as follows:

(1) The complainant shall pay a fee of six hundred dollars (\$600) to the department for the arbitration and the counterclaimant shall pay a fee of six hundred dollars (\$600) for any counterclaim that is filed.

(2) An arbitrator from a panel of arbitrators registered with the department shall be selected by the department and confirmed by both the complainant and the respondent or counterclaimant after the prospective arbitrator has certified that he or she has no known conflict of interest in the dispute and after each party has had an opportunity to lodge an objection for cause to the

appointment of the named arbitrator within five days of its receipt of the notice of appointment of the arbitrator. The notice of appointment shall be in writing and may be transmitted via overnight delivery or by facsimile transmission.

(3) Upon confirmation of the appointment of the arbitrator the department will transmit to the arbitrator the verified complaint, the statement of defense, and the statement of counterclaim, if one is filed.

(4) The complainant shall have 30 days after receipt of the notice of appointment of the arbitrator to submit to the department in writing sworn declarations by witnesses and any other documentary evidence not previously submitted, as well as legal authorities and arguments.

(5) Within five days of the department's receipt of the complainant's written submission the department shall transmit a copy of the complainant's written submission to the respondent. The respondent shall have 30 days from the receipt of the complainant's written submission to submit to the department in writing responsive declarations by witnesses or other documentary evidence not previously submitted, as well as any legal authorities and arguments. The respondent's written submission in support of its counterclaim, if any, must be sent to the department at the same time as the responsive submission.

(6) If there is a counterclaim filed, within five days of the department's receipt of the counterclaimant's written submission the department shall transmit a copy of the counterclaimant's written submission to the complainant. The complainant shall have 10 days from the receipt of the counterclaimant's written submission to submit any witness statements, evidence or legal authorities and arguments in reply.

(7) The arbitrator may, in the interest of justice, briefly extend the time periods for written submissions by either party.

(8) Once all periods for submission of evidence and arguments have expired and the department has transmitted all written submissions to the arbitrator, the case and all evidence to be considered by the arbitrator shall be deemed to be submitted.

(9) The arbitrator shall issue his or her arbitration decision and award in writing within 30 days after the case has been submitted for a decision. This time period may be extended by the arbitrator if, in his or her judgment, clarification of the evidence submitted

is required from either the complainant, the respondent or counterclaimant, or both.

(10) No hearings or live testimony shall be conducted under the expedited arbitration procedures.

(11) The arbitrator shall award interest at the legal rate to be paid in addition to any damages that are awarded and the arbitrator may award the recovery of costs to one party to the arbitration or apportion costs between the parties as he or she deems appropriate. Costs may include filing fees, mediation fees and expenses, fees or expenses incurred by the department, fees paid to expert witnesses, auditors or inspectors, but not attorneys' fees, unless there has been an agreement by the parties that the prevailing party in any dispute shall be entitled to recover reasonable attorneys' fees as part of any award for damages, and in that case, the arbitrator may award reasonable attorneys' fees to the prevailing party.

(h) Either party to an expedited arbitration proceeding conducted pursuant to this section may bring an action in any California court of competent jurisdiction to enforce any awards for damages made pursuant to this section. If an enforcement action is necessary to secure payment of awards for damages, the party initiating the enforcement proceeding shall be entitled to recover all additional expenses, costs and attorneys' fees incurred in connection with that proceeding.

(i) The department shall retain jurisdiction, as provided for under Section 56445, over any matter in which a licensee refuses to pay or otherwise comply with an arbitrator's decision conducted pursuant to the expedited arbitration procedures as set forth herein, and may immediately commence an action to revoke the license of the licensee.

(j) A complainant may enforce his or her rights through the verified complaint and expedited arbitration process as provided herein, or by a civil action brought in any court of competent jurisdiction. This section shall in no way abridge, preclude, or alter other remedies available to the parties now existing under common law or by statute, and the provisions set forth herein are in addition to those other remedies.

Approved _____, 2005

Governor