

AMENDED IN ASSEMBLY APRIL 8, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2240

Introduced by ~~Committee on Agriculture (Galgiani (Chair), Tom Berryhill (Vice Chair), Conway, Ma, Mendoza, and Yamada)~~
Assembly Member Ma

February 18, 2010

An act to amend Sections ~~55861, 55861.5, and 55862.7~~ of 55722.5, 55861, 55861.5, 55862.7, 56382.8, and 56571 of, and to amend and renumber Section 56189 of, the Food and Agricultural Code, relating to agriculture.

LEGISLATIVE COUNSEL'S DIGEST

AB 2240, as amended, ~~Committee on Agriculture~~ *Ma*. Agriculture: processors of farm products: *dealers*: licensing: fees.

Existing law requires processors of farm products and cash buying processors of farm products to be licensed and to pay to the Department of Food and Agriculture an annual license application fee in accordance with a specified schedule determined by the annual dollar volume of business based on farm product volumes. The department is required to reevaluate that fee structure based on operating costs in fiscal years 1998–99 and 1999–2000 and to submit a report, with specified information, to the Legislature within 60 days subsequent to June 30, 2000.

This bill, instead, would authorize the department to reevaluate the fee structure based on operating costs. The bill would also raise certain fees and delete the outdated fee structure and reporting provisions.

Existing law authorizes an aggrieved grower or licensee, with a complaint not subject to certain federal laws, to seek resolution of the

complaint by filing a complaint as provided and paying a \$60 filing fee.

This bill would raise the filing fee to \$100.

Existing law provides that the application fees are maximum fees and that the Secretary of Food and Agriculture may fix the fees at a lesser amount or adjust the fees whenever the secretary finds that the cost of administration can be defrayed with the below-maximum fees.

This bill would authorize the secretary to appoint an advisory committee of producers and licensees to provide guidance in establishing those fees or to rely on input from any similar advisory committee already assembled by the secretary.

Existing law requires that a person engaged in the business of buying, receiving on consignment, soliciting for sale on commission, or negotiating the sale of farm products from a licensee or producer for resale be licensed and pay to the department an annual application fee in accordance with a specified schedule determined by the annual dollar volume of business based on farm product value returned to the grower or licensee. The department is required to reevaluate that fee structure based on operating costs in fiscal years 1998–99 and 1999–2000 and to submit a report, with specified information, to the Legislature within 60 days subsequent to June 30, 2000. Existing law authorizes, in addition to all other complaint procedures, any aggrieved grower or licensee, with a complaint not subject to certain federal laws, to file an informal complaint for damages that do not exceed \$30,000 to be accompanied by a nonrefundable filing fee of \$60.

This bill, instead, would authorize the department to reevaluate the fee structure based on operating costs. The bill would also raise the agent fee and application fee for a dollar volume of less than \$20,000, and delete the outdated fee structure for dollar volumes of \$20,000 and over and reporting provisions. The bill would raise the informal complaint nonrefundable filing fee to \$100.

This bill would make other technical, nonsubstantive changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

- 1 *SECTION 1. Section 55722.5 of the Food and Agricultural*
- 2 *Code is amended to read:*

1 55722.5. (a) An aggrieved grower or licensee with a complaint
2 that is not subject to the federal Packers and Stockyards Act, 1921
3 (7 U.S.C. Sec. 181, et seq.) or the federal Perishable Agricultural
4 Commodities Act, 1930 (7 U.S.C. Sec. 499a et seq.) may seek
5 resolution of that complaint by filing a complaint with the
6 department within nine months from the date a complete account
7 of sales was due. The complaint shall be accompanied by two
8 copies of all documents in the complainant's possession that are
9 relevant to establishing the complaint, a filing fee of ~~sixty dollars~~
10 ~~(\$60)~~; *one hundred dollars (\$100)*, and a written denial of
11 jurisdiction from the appropriate federal agency unless the
12 commodity involved clearly does not fall under either the federal
13 Packers and Stockyards Act, 1921 (7 U.S.C. Sec. 181, et seq.) or
14 the federal Perishable Agricultural Commodities Act, 1930 (7
15 U.S.C. Sec. 499a et seq.). Within five business days of receipt of
16 a signed and verified complaint, the filing fee, and the denials of
17 federal jurisdiction, the department shall serve the verified
18 complaint on the respondent. Service shall be by certified mail.
19 The department, the secretary, the department's employees, the
20 department's agents, the boards and commissions associated with
21 the department, their employees or agents, and the State of
22 California are not parties to the dispute in a proceeding brought
23 under this section.

24 (b) The respondent served shall answer within 30 calendar days
25 of service. The respondent's response shall include two copies of
26 all relevant documentation of the transactions referred to in the
27 verified complaint.

28 (c) Within 30 calendar days of receipt of the answer, the
29 department shall issue to both parties a written factual summary
30 on the basis of the documents that have been filed with the
31 department.

32 (d) If a settlement is not reached within 30 calendar days after
33 the department's summary is issued, the department, on request
34 of the claimant or respondent and upon payment of a filing fee of
35 three hundred dollars (\$300), shall schedule alternate dispute
36 resolution, to commence within 90 calendar days. The department
37 shall serve both parties with a notice of hearing, which sets out
38 the time, date, street address, room number, telephone number,
39 and name of the hearing officer. Service of the notice of hearing
40 shall be by certified mail.

- 1 (e) The alternate dispute resolution shall proceed as follows:
- 2 (1) The hearing shall be conducted by hearing officers in
- 3 accordance with standard procedures promulgated by the American
- 4 Arbitration Association or other acceptable alternative dispute
- 5 resolution entities.
- 6 (2) The hearing officers shall be familiar with the type of issues
- 7 presented by ~~such~~ *those* claims, but need not be attorneys.
- 8 (3) The sole parties to the proceedings shall be the complainant
- 9 and the respondent.
- 10 (4) The disputes, claims, and interests of the department or the
- 11 State of California are not within the jurisdiction of the
- 12 proceedings.
- 13 (5) The validity of a regulation of the department or order
- 14 promulgated pursuant to this code is not within the jurisdiction of
- 15 the proceedings.
- 16 (6) Law and motion matters shall be handled by the assigned
- 17 hearing officer.
- 18 (7) The hearing officer has no authority to enter into settlement
- 19 discussions except upon stipulation of the parties involved.
- 20 (8) The parties may represent themselves in propria persona or
- 21 may be represented by a licensed attorney at law. A party may not
- 22 be represented by a representative who is not licensed to practice
- 23 law.
- 24 (9) To the extent of any conflict between any provision of
- 25 Chapter 4.5 (commencing with Section 11400) of Part 1 of Division
- 26 3 of Title 2 of the Government Code and this article, this article
- 27 shall prevail.
- 28 (10) The hearing officer may order a review of records or an
- 29 audit of records by a certified public accountant. The review or
- 30 audit shall be conducted under generally accepted auditing
- 31 standards of the American Institute of Certified Public Accountants,
- 32 and upon completion of the review or audit the nature and extent
- 33 of the review or audit shall be disclosed to the parties by the auditor
- 34 in the audit report. The audit report shall disclose the number of
- 35 transactions reviewed and the rationale for selecting those
- 36 transactions. The department shall advance the costs of the audit
- 37 or review of records, but the hearing officer shall apportion the
- 38 costs at the conclusion of the hearing. The department shall pursue
- 39 repayment in accordance with the hearing officer's apportionment
- 40 and may bring an action in a court of competent jurisdiction to

1 recover funds advanced. Nothing in this subdivision shall be
2 construed to require the department to pursue any specific remedy
3 or to prohibit the department from accepting a reasonable
4 repayment plan.

5 (f) The hearing officer shall render a written decision within 60
6 days of submission of the case for decision. In addition to rendering
7 a written finding as to what is owed by whom on the substantive
8 allegations of the complaint, the hearing officer shall decide
9 whether or not to order the full cost of the alternative dispute
10 resolution proceeding, and in what ratio or order the losing party
11 is to pay the costs of the proceeding. For these purposes, the cost
12 of the alternative dispute resolution proceeding does not include
13 the filing fee, the parties' attorney fees, or expert witness fees. The
14 hearing officer may also award a sanction against a complainant
15 for filing a frivolous complaint or against a respondent for
16 unreasonable delay tactics, bad faith bargaining, or resistance to
17 the claim, of either 10 percent of the amount of the award or a
18 specific amount, up to a maximum of one thousand dollars
19 (\$1,000). Any sanction award shall not be deemed to be res judicata
20 or collateral estoppel in any subsequent case in which either the
21 complainant or respondent are charged with filing a frivolous
22 complaint, unreasonable delay tactics, bad faith bargaining, or
23 resistance to the claim. The department may consider the written
24 decision of the hearing officer in determining any related licensing
25 action. The written decision of the hearing officer may be
26 introduced as evidence at a court proceeding.

27 (g) Nothing in this section prohibits the parties to the dispute
28 from settling their dispute prior to, during, or after the hearing.

29 (h) Nothing in this section alters, precludes, or conditions the
30 exercise, during any stage of the proceedings provided by this
31 chapter, of any other rights to relief a party may have through
32 petition to a court of competent jurisdiction, including, but not
33 limited to, small claims court.

34 **SECTION 4.**

35 *SEC. 2.* Section 55861 of the Food and Agricultural Code is
36 amended to read:

37 55861. (a) Except as otherwise provided in this article or in
38 Section 56574, each applicant for a license shall pay to the
39 department a fee in accordance with the schedule in subdivision

1 (b), except that an agent shall pay ~~thirty-five dollars (\$35)~~ *fifty-five*
2 *dollars (\$55)* for each license period of the principal.

3 (b) The amount of the fee due each year from the applicant shall
4 be determined by the annual dollar volume of business based on
5 the value of the farm products that is returned to the grower, as
6 follows:

7 (1) For a dollar volume of less than twenty thousand dollars
8 (\$20,000), the fee shall be ~~one hundred dollars (\$100)~~ *one hundred*
9 *fifty dollars (\$150)*.

10 (2) For a dollar volume of twenty thousand dollars (\$20,000)
11 and over, but less than fifty thousand dollars (\$50,000), the fee
12 shall be two hundred dollars (\$200).

13 (3) For a dollar volume of fifty thousand dollars (\$50,000) and
14 over, but less than two million dollars (\$2,000,000), the fee shall
15 be three hundred dollars (\$300).

16 (4) For a dollar volume of two million dollars (\$2,000,000) and
17 over, the fee shall be four hundred dollars (\$400).

18 (c) The department may reevaluate the fee structure based on
19 operating costs. The fees shall adequately cover the costs to fully
20 administer and operate the program in an effective and efficient
21 manner.

22 ~~SEC. 2.~~

23 *SEC. 3.* Section 55861.5 of the Food and Agricultural Code is
24 amended to read:

25 55861.5. The fees provided by Section 55861 are maximum
26 fees. The secretary may fix those fees at a lesser amount, and may
27 adjust those fees from time to time, whenever the secretary finds
28 that the cost of administering this chapter can be defrayed with
29 those below-maximum fees. The secretary may appoint an advisory
30 committee of producers and licensees to provide guidance in
31 establishing those fees or may rely on input from any similar
32 advisory committee already assembled by the secretary.

33 ~~SEC. 3.~~

34 *SEC. 4.* Section 55862.7 of the Food and Agricultural Code is
35 amended to read:

36 55862.7. (a) If any person is found to be operating a business
37 without the license required by Section 55521, or failed to pay a
38 fee in accordance with the schedule in subdivision (b) of Section
39 55861, that person shall pay to the secretary double the amount of
40 the license fee due pursuant to this chapter.

1 (b) In addition to subdivision (a), if any person is found to be
2 operating a business within the past five years without a license
3 required by Section 55521, or failed to pay the fees in accordance
4 with the schedule in subdivision (b) of Section 55861, that person
5 shall pay to the secretary an amount equal to that portion of the
6 fees that were not paid for the last five years the business has
7 operated.

8 *SEC. 5. Section 56189 of the Food and Agricultural Code, as*
9 *added by Section 56252 of Chapter 696 of the Statutes of 1997, is*
10 *amended and renumbered to read:*

11 ~~56189.~~

12 56189.2. In addition to the other requirements of this chapter,
13 each application for a license, except for a cash buyer's license,
14 shall include an affidavit in which the applicant affirms that he or
15 she is current in making all payments required under undisputed
16 contract agreements, and that he or she will do all of the following:

17 (a) Abide by all provisions of this chapter and Chapter 6
18 (commencing with Section 55401).

19 (b) Will prepare and retain financial records adequate to
20 document all transactions with suppliers.

21 (c) Will prepare and retain current financial information,
22 including, but not limited to, profit-and-loss statements and a
23 balance sheet that presents fairly the financial condition as of the
24 applicant's most recent yearend.

25 The affidavit shall be on a form prescribed by the secretary and
26 shall be submitted under penalty of perjury.

27 *SEC. 6. Section 56382.8 of the Food and Agricultural Code is*
28 *amended to read:*

29 56382.8. (a) In addition to all other complaint procedures
30 provided for in this chapter, any aggrieved grower or licensee with
31 a complaint that is not subject to the federal Packers and Stockyards
32 Act, 1921 (7 U.S.C. Sec. 181; et seq.) or the federal Perishable
33 Agricultural Commodities Act, 1930 (7 U.S.C. Sec. 499a et seq.)
34 and for which the claim for damages does not exceed thirty
35 thousand dollars (\$30,000), may file a verified complaint with the
36 department, subject to expedited review and settlement. Informal
37 complaints may be made for damages, but not for disciplinary
38 action, although the department may issue a complaint pursuant
39 to Section 56382 as the basis for disciplinary action. Informal
40 complaints must be received by the department within nine months

1 of when the claimant ought to have reasonably known of its
2 existence, as required under Section 56446.

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

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

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

13 (3) The date of shipment.

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

15 (5) The shipping and destination points.

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

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

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

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

23 (10) The amount of damages being sought.

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

30 (d) The informal complaint shall be accompanied by a
31 nonrefundable filing fee of ~~sixty dollars (\$60)~~ *one hundred dollars*
32 *(\$100)* as required under Section 56382.5.

33 (e) Upon confirmation that a complaint has been properly and
34 timely filed, including the securing of a denial letter from the
35 United States Department of Agriculture under the Federal Packers
36 and Stockyards Act, 1921, or the Federal Perishable Agricultural
37 Commodities Act, 1930, the department shall send a copy of the
38 complaint to the respondent by certified mail and advise the
39 respondent that it shall have 30 days from the department's mailing
40 of the complaint in which to answer the complaint. The answer

1 shall contain a brief response to the complaint, including the
2 respondent's position with respect to the claimant's description of
3 matters in dispute, the relevant facts, and the remedy sought,
4 together with a description of any claims it may have against the
5 complainant, in the same manner as claims are to be set out in the
6 complaint. The respondent shall also include any pertinent
7 documentation relevant to its defense with its answer.

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

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

22 (1) The complainant shall submit a fee of six hundred dollars
23 (\$600) to the department made payable to the arbitrator, arbitration
24 service, or payee designated by the department for the arbitration
25 and any counterclaimant shall submit a fee of six hundred dollars
26 (\$600) to the department for any counterclaim that is filed also
27 made payable to the arbitrator, arbitration service, or payee
28 designated by the department.

29 (2) An arbitrator from a panel of arbitrators registered with the
30 department shall be selected by the department and confirmed by
31 both the complainant and the respondent or counterclaimant after
32 the prospective arbitrator has certified that he or she has no known
33 conflict of interest in the dispute and after each party has had an
34 opportunity to lodge an objection for cause to the appointment of
35 the named arbitrator within five days of its receipt of the notice of
36 appointment of the arbitrator. The notice of appointment shall be
37 in writing and may be transmitted via overnight delivery or by
38 facsimile transmission.

39 (3) Upon confirmation of the appointment of the arbitrator the
40 department will transmit to the arbitrator the verified complaint,

1 the statement of defense, and the statement of counterclaim, if one
2 is filed.

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

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

18 (6) If there is a counterclaim filed, within five days of the
19 department's receipt of the counterclaimant's written submission
20 the department shall transmit a copy of the counterclaimant's
21 written submission to the complainant. The complainant shall have
22 10 days from the receipt of the counterclaimant's written
23 submission to submit any witness statements, evidence or legal
24 authorities and arguments in reply.

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

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

31 (9) The arbitrator shall issue his or her arbitration decision and
32 award in writing within 30 days after the case has been submitted
33 for a decision. This time period may be extended by the arbitrator
34 if, in his or her judgment, clarification of the evidence submitted
35 is required from either the complainant, the respondent or
36 counterclaimant, or both.

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

39 (11) The arbitrator shall award interest at the legal rate to be
40 paid in addition to any damages that are awarded and the arbitrator

1 may award the recovery of costs to one party to the arbitration or
2 apportion costs between the parties as he or she deems appropriate.
3 Costs may include filing fees, mediation fees and expenses, fees
4 or expenses incurred by the department, fees paid to expert
5 witnesses, auditors or inspectors, but not attorneys' fees, unless
6 there has been an agreement by the parties that the prevailing party
7 in any dispute shall be entitled to recover reasonable attorneys'
8 fees as part of any award for damages, and in that case, the
9 arbitrator may award reasonable attorneys' fees to the prevailing
10 party.

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

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

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

32 *SEC. 7. Section 56571 of the Food and Agricultural Code is*
33 *amended to read:*

34 56571. (a) Except as otherwise provided in this article or
35 Section 55863, each applicant for a license shall pay to the
36 department a fee in accordance with the schedule in subdivision
37 (b), except that an agent shall pay ~~thirty-five dollars (\$35)~~ *fifty-five*
38 *dollars (\$55)* for each license period of the principal.

1 (b) The amount of the fee due each year shall be determined by
2 the annual dollar volume of business based on farm product value
3 returned to the grower or licensee, as follows:

4 (1) For a dollar volume of less than twenty thousand dollars
5 (\$20,000), the fee shall be ~~one hundred dollars (\$100)~~ *one hundred*
6 *fifty dollars (\$150)*.

7 (2) For a dollar volume of ~~twenty thousand dollars (\$20,000)~~
8 ~~and over, but less than fifty thousand dollars (\$50,000), the fee~~
9 ~~shall be four hundred dollars (\$400). Effective January 1, 1999,~~
10 ~~for a dollar volume of twenty thousand dollars (\$20,000) and over,~~
11 ~~but less than fifty thousand dollars (\$50,000), the fee shall be three~~
12 ~~hundred dollars (\$300). Effective January 1, 2000, for a dollar~~
13 ~~volume of twenty thousand dollars (\$20,000) and over, but less~~
14 ~~than fifty thousand dollars (\$50,000), the fee shall be two hundred~~
15 ~~dollars (\$200).~~

16 (3) For a dollar volume of ~~fifty thousand dollars (\$50,000) and~~
17 ~~over, but less than two million dollars (\$2,000,000), the fee shall~~
18 ~~be five hundred dollars (\$500). Effective January 1, 1999, for a~~
19 ~~dollar volume of fifty thousand dollars (\$50,000) and over, but~~
20 ~~less than two million dollars (\$2,000,000), the fee shall be four~~
21 ~~hundred dollars (\$400). Effective January 1, 2000, for a dollar~~
22 ~~volume of fifty thousand dollars (\$50,000) and over, but less than~~
23 ~~two million dollars (\$2,000,000), the fee shall be three hundred~~
24 ~~dollars (\$300).~~

25 (4) For a dollar volume of ~~two million dollars (\$2,000,000) and~~
26 ~~over, the fee shall be six hundred dollars (\$600). Effective January~~
27 ~~1, 1999, for a dollar volume of two million dollars (\$2,000,000)~~
28 ~~and over, the fee shall be five hundred dollars (\$500). Effective~~
29 ~~January 1, 2000, for a dollar volume of two million dollars~~
30 ~~(\$2,000,000) and over, the fee shall be four hundred dollars (\$400).~~

31 (c) The department ~~shall~~ *may* reevaluate the fee structure based
32 on operating costs in ~~fiscal years 1998-99 and 1999-2000 and,~~
33 ~~notwithstanding Section 7550.5 of the Government Code, shall~~
34 ~~report on the fee structure to the Legislature within 60 days~~
35 ~~subsequent to June 30, 2000. The report shall include, but shall~~
36 ~~not be limited to, a summary of the fees paid and services utilized~~
37 ~~by the various commodity groups covered under this chapter. The~~

- 1 fees shall adequately cover the costs to fully administer and operate
- 2 the program in an effective and efficient manner.

O