

AMENDED IN SENATE AUGUST 2, 2010

AMENDED IN ASSEMBLY APRIL 5, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2686**

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**Introduced by Assembly Member Tom Berryhill**  
(Coauthor: Senator Denham)

February 19, 2010

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An act to amend Section 46017 of the Food and Agricultural Code, relating to organic products.

LEGISLATIVE COUNSEL'S DIGEST

AB 2686, as amended, Tom Berryhill. Organic products: county agricultural commissioners: civil penalties.

Existing law authorizes the Secretary of Food and Agriculture or a county agricultural commissioner to levy a civil penalty, as provided, against a person who violates the California Organic Products Act of 2003, or any regulation adopted pursuant to that act, or regulations adopted by the National Organic Program. Existing law provides that a civil penalty levied by a county agricultural commissioner may be recovered in a civil action brought in the name of the county.

This bill would authorize a county agricultural commissioner, or his or her representative, after the exhaustion of review procedures, to file a certified copy of a final decision of the commissioner that directs the payment of a civil penalty and, if applicable, a copy of any order that denies a petition for a writ of administrative mandamus with the clerk of the superior court of any county, and require the clerk to immediately enter judgment in conformity with the decision or order. The bill would provide that no fees shall be charged by the clerk of the superior court

for the performance of any official service required in connection with the entry of judgment.

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 46017 of the Food and Agricultural Code  
2 is amended to read:  
3 46017. (a) In lieu of prosecution, the secretary or a county  
4 agricultural commissioner may levy a civil penalty against any  
5 person under the enforcement jurisdiction of the secretary as  
6 provided in Section 46000 who violates this act, or any regulation  
7 adopted pursuant thereto or pursuant to this chapter, or regulations  
8 adopted by the NOP, in an amount not more than five thousand  
9 dollars (\$5,000) for each violation. The amount of the penalty  
10 assessed for each violation shall be based upon the nature of the  
11 violation, the seriousness of the effect of the violation upon  
12 effectuation of the purposes and provisions of this chapter and the  
13 impact of the penalty on the violator, including the deterrent effect  
14 on future violations.  
15 (b) Notwithstanding the penalties prescribed in subdivision (a),  
16 if the secretary or county agricultural commissioner finds that a  
17 violation was not intentional, the secretary or county agricultural  
18 commissioner may levy a civil penalty of not more than two  
19 thousand five hundred dollars (\$2,500) for each violation.  
20 (c) For a first offense, in lieu of a civil penalty as prescribed in  
21 subdivision (a) or (b), the secretary or county agricultural  
22 commissioner may issue a notice of violation if he or she finds  
23 that the violation is minor.  
24 (d) A person against whom a civil penalty is proposed shall be  
25 afforded an opportunity for a hearing before the secretary or county  
26 agricultural commissioner, upon request made in writing within  
27 30 days after the issuance of the notice of penalty. At the hearing,  
28 the person shall be given the right to review the secretary's or  
29 commissioner's evidence of the violation and the right to present  
30 evidence on his or her own behalf. If no hearing is requested, the  
31 civil penalty shall constitute a final and nonreviewable order.  
32 (e) If a hearing is held, review of the final decision of the  
33 secretary or county agricultural commissioner may be requested

1 in writing by any person, pursuant to Section 1094.5 of the Code  
2 of Civil Procedure within 30 days of the date of the final order of  
3 the secretary or county agricultural commissioner.

4 (f) A civil penalty levied by the secretary pursuant to this section  
5 may be recovered in a civil action brought in the name of the state.  
6 A civil penalty levied by a county agricultural commissioner  
7 pursuant to this section may be recovered in a civil action brought  
8 in the name of the county. After the exhaustion of the review  
9 procedures provided in this section, a county agricultural  
10 commissioner, or his or her representative, may file a certified  
11 copy of a final decision of the commissioner that directs the  
12 payment of a civil penalty and, if applicable, a copy of any order  
13 that denies a petition for a writ of administrative mandamus with  
14 the clerk of the superior court of any county. Judgment shall be  
15 entered immediately by the clerk in conformity with the decision  
16 or order. ~~No~~ Pursuant to Section 6103 of the Government Code,  
17 no fees shall be charged by the clerk of the superior court for the  
18 performance of any official service required in connection with  
19 the entry of judgment pursuant to this section.

20 (g) The secretary shall maintain in a central location, and make  
21 publicly available for inspection and copying upon request, a list  
22 of all civil penalties levied by the secretary and by each county  
23 agricultural commissioner within the past five years, including the  
24 amount of each penalty, the person against whom the penalty was  
25 levied, and the nature of the violation. Copies of this list shall also  
26 be available by mail, upon written request and payment of a  
27 reasonable fee, as set by the secretary.