

AMENDED IN SENATE MARCH 19, 2012

AMENDED IN SENATE JUNE 8, 2011

AMENDED IN ASSEMBLY APRIL 14, 2011

AMENDED IN ASSEMBLY MARCH 15, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 907

Introduced by Assembly Member Ma

February 17, 2011

An act to amend Sections ~~1122, 1156.6, 1190, 1190.1, 1191, 1196, 1196.1, and 1196.3~~ of, and to add Section 1190.2 to, the Harbors and Navigation Code, relating to harbors and ports ~~55523.3, 55524.5, 55525.75, 55862.7, 55864, 55901, and 55922~~ of the Food and Agricultural Code, relating to processors of farm products, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 907, as amended, Ma. ~~Harbors and ports: Monterey Bay and the Bays of San Francisco, San Pablo, and Suisun: pilotage. Processors of farm products.~~

(1) Existing law requires a processor of farm products, as defined, to be licensed by the Secretary of Food and Agriculture, and provides that an application for a license or for a renewal of a license that shows the applicant to be in an unsound financial condition is sufficient grounds to deny an application. Existing law provides that if the secretary is not satisfied that an applicant or licensee is financially responsible, the secretary may, in lieu of denying, suspending, or

revoking the license, accept an irrevocable guarantee of the obligations of the licensee to all California farm product creditors.

This bill would also authorize the secretary to accept a surety bond, in a form and amount acceptable to the secretary, in an amount that is at least sufficient to pay the obligations of the licensee at the time the bond is issued.

(2) Existing law authorizes the Department of Food and Agriculture, as an alternative to revocation or denial of a license, to stay a revocation subject to specified conditions for a period of probation, or issue a license subject to specified conditions, including a requirement of restitution. Existing law also authorizes the department to settle or adjudicate the disposition of a case other than by revocation or denial of a license, including ordering payment of amounts owing and imposing administrative penalties.

This bill would specify that the restitution or amounts owing shall be to California farm product creditors to whom the licensee owes money, and would also authorize the department to require an applicant, licensee, or respondent to pay for investigative costs incurred by the department. The bill would authorize the department to impose an administrative fine, not to exceed \$10,000, on processors who crush grapes for certain violations, including failing or refusing to pay for a farm product in the manner specified in a contract.

(3) Existing law requires a person found to be operating a business without a license or who has failed to pay a license fee pursuant to a certain schedule to pay additional license fees to the secretary, including paying an amount that is double the amount of the license fee due.

This bill would require a processor who crushes grapes who violates those provisions to pay an additional administrative fine to the secretary, up to a maximum of \$6,000.

(4) Existing law prohibits the department from recovering investigative costs for an administrative licensing action or any action that has not been filed in a court of law.

This bill would delete that prohibition.

(5) Under existing law, the funds collected pursuant to the provisions regulating processors of farm products are deposited in the Department of Food and Agriculture Fund in the State Treasury, and are continuously appropriated for the administration and enforcement of those provisions.

Because the administrative fines that would be authorized by this bill would be deposited in the Department of Food and Agriculture Fund in the State Treasury, the bill would make an appropriation.

~~Existing law provides for the regulation and licensing of pilots for Monterey Bay and the Bays of San Francisco, San Pablo, and Suisun by the Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun. Existing law specifies the rates of bar pilotage for vessels inward or outward bound through the Golden Gate and into or out of the Bays of San Francisco, San Pablo, and Suisun.~~

~~This bill would increase those rates, with additional increases effective January 1, 2013, January 1, 2014, and January 1, 2015. This bill also would delete obsolete rate increases in those provisions. The bill would establish a fuel surcharge for each movement of a vessel using pilot services which would be determined by the board's executive director according to specified criteria.~~

~~Existing law requires the board to adopt a schedule of pilotage rates applicable to pilots and inland pilots for those operations that are not otherwise provided for under existing law. Existing law also requires the board to establish a surcharge for each movement of a vessel using pilot services to be used for the pilot and inland pilot continuing education program established by the board.~~

~~This bill would make those provisions inapplicable to inland pilots. This bill would provide that the board's schedule of pilotage rates for those operations not otherwise provided for under existing law shall be increased pursuant to the board's findings and recommendations to the Legislature dated May 25, 2011, with additional increases effective January 1, 2013, January 1, 2014, and January 1, 2015. The bill would require the board to post the schedule of rates on its Internet Web site. The bill would also make conforming changes.~~

~~Under existing law, whenever suspected safety standard violations concerning pilot hoists, pilot ladders, or the proper rigging of pilot hoists or pilot ladders are reported to the board, the executive director is required to assign a commission investigator to personally inspect the equipment for its compliance with specified safety standards. This requirement applies to vessels in certain defined pilotage grounds.~~

~~This bill would provide that, if a vessel is expected to pass outside the pilotage grounds before the investigation, findings, and recommendations are complete, the port agent would be authorized to review the initial report of a suspected safety standard violation and any information gathered as part of the preliminary investigation. The~~

bill would further provide that if the port agent, in his or her discretion, concludes that the ladder or hoist presents a potential danger, the agent would be required to report the suspected safety standard violation to other pilot organizations.

Existing law makes the owner, operator, and agents of a vessel jointly and severally liable for \$600 per day when a pilot is unwillingly carried out to sea or unnecessarily detained on board a vessel.

This bill would increase that amount to \$2,058 per day, with additional increases effective January 1, 2013, January 1, 2014, and January 1, 2015.

Vote: majority^{2/3}. Appropriation: ~~no~~yes. Fiscal committee: yes. State-mandated local program: no.

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

1 SECTION 1. Section 55523.3 of the Food and Agricultural
 2 Code is amended to read:
 3 55523.3. (a) If the ~~director~~ secretary is not satisfied that an
 4 applicant or licensee is financially responsible, the ~~director~~
 5 secretary may, in lieu of denying, suspending, or revoking the
 6 license, accept an irrevocable guarantee or a surety bond of the
 7 obligations of the licensee to all California farm product creditors.
 8 The surety bond shall be in an amount that is at least sufficient to
 9 pay for the licensee's obligations at the time the bond is issued.
 10 The guarantee or surety bond shall be for any ~~periods~~ period, in
 11 any form, and in any ~~amounts~~ amount that the ~~director~~ secretary
 12 may, from time to time, require. The ~~director~~ secretary may, as a
 13 condition of accepting and maintaining the guarantee or surety
 14 bond, require the guarantor to supply financial information to the
 15 ~~director~~ secretary at times and to the extent the ~~director~~ secretary
 16 deems advisable.
 17 (b) A guarantee or surety bond placed with the ~~director~~ secretary
 18 pursuant to subdivision (a) shall support an action in a court of
 19 competent jurisdiction by a farm products creditor for obligations
 20 of the licensee to the creditor and by a state officer for the
 21 obligations of the licensee to the state related to transactions subject
 22 to the guarantee or surety bond.
 23 (c) An irrevocable guarantee or surety bond deposited with the
 24 secretary pursuant to this section shall not operate as a release
 25 for purposes of Section 55637.

1 SEC. 2. Section 55524.5 of the Food and Agricultural Code is
2 amended to read:

3 55524.5. (a) The Legislature finds there to be a substantial
4 nexus between the conduct specified in Section 55524 and an
5 applicant's or holder's fitness for licensure.

6 (b) The department shall not dismiss an action where a violation,
7 however minor, has been established. The department shall not
8 dismiss an action because the applicant or holder establishes factors
9 in mitigation.

10 (c) However, the department may impose discipline other than
11 denial or revocation of the license. As an alternative to revocation
12 of a license, the department may stay a revocation subject to terms
13 for a period of probation. As an alternative to denial the department
14 may issue a license subject to conditions. Terms of probation or
15 terms of conditional licensure may include, but are not limited to,
16 a requirement of restitution *to California farm product creditors*
17 *to whom the licensee owes money, payment of investigative costs*
18 *incurred by the department, payment for extra audits, immediate*
19 *revocation on a new violation, or any other terms that respond to*
20 *the particular violations or circumstances found. For processors*
21 *who crush grapes, terms of probation or terms of conditional*
22 *licensure may also include payment of an administrative fine not*
23 *to exceed ten thousand dollars (\$10,000) for violations of Sections*
24 *55872, 55874, 55875, and 55879.*

25 (d) Once a finding of a violation has been made, the department
26 may consider the following factors in assessing the appropriate
27 level of discipline:

- 28 (1) The relative isolation or infrequency of the conduct.
- 29 (2) Whether the conduct was a part of a pattern or practice.
- 30 (3) Whether the actor had been warned before.
- 31 (4) Whether the actor considered the consequences of the
32 conduct.
- 33 (5) Whether the actor reasonably relied on others.
- 34 (6) The severity of the consequences.
- 35 (7) The mens rea of the actor.
- 36 (8) In the case of a criminal conviction, evidence of
37 rehabilitation.
- 38 (9) The total licensing history.

39 (e) The following factors shall not be considered in assessing
40 the appropriate level of discipline:

1 (1) The social or economic contributions of the applicant or
2 holder.

3 (2) General testimonials as to good character and worthiness to
4 be licensed.

5 (3) Economic hardship on the licensee.

6 (4) “Mercy of the court” pleas in connection with criminal
7 convictions, pattern or practice violations, or deception.

8 (5) In the case of a felony criminal conviction, the department
9 shall not consider rehabilitation unless the convicted person has a
10 valid certificate of rehabilitation.

11 *SEC. 3. Section 55525.75 of the Food and Agricultural Code*
12 *is amended to read:*

13 55525.75. (a) The withdrawal of an application for a license
14 after it has been filed with the department does not deprive the
15 department of its authority to institute or continue a proceeding
16 against the applicant or to enter an order denying the license, unless
17 the department consents in writing to ~~such a~~ *the* withdrawal.

18 (b) The expiration or forfeiture by operation of law of a license,
19 or its forfeiture or cancellation by order of the department or by
20 order of a court of law, or its surrender without the written consent
21 of the department, does not deprive the department of its authority
22 to institute or continue a disciplinary proceeding against the holder
23 upon any ground provided by law or to enter an order revoking
24 the license or otherwise taking disciplinary action against the
25 holder.

26 (c) Any action brought by the department against an applicant
27 or holder does not abate by reason of the sale or other transfer of
28 ownership of the business that is a party to the action, except with
29 the written consent of the department.

30 (d) Nothing in this division or in any other provision of this
31 code deprives the department of the authority to settle or adjudicate
32 a disposition of a case other than by revocation or denial. The
33 department or the department’s designee may compromise with
34 the applicant or holder in a written stipulation and order. The
35 department may, following a hearing, order probation on terms
36 and conditions as determined by the department. The authority
37 conferred by this subdivision shall include, but ~~not be~~ *is not* limited
38 to, the authority to order payment of amounts determined owing
39 *to California farm product creditors*, the authority to dismiss an
40 action on the department’s own initiative, the authority to order

1 administrative ~~penalties~~ *fin*es under subdivision (c) of Section
2 55524.5, the authority to order a respondent to pay *the department*
3 for *investigative costs and* heightened audit scrutiny, the authority
4 to suspend a license for a period of years, or any combination of
5 remedies other than final revocation or denial of a license.

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

8 55862.7. (a) If any person is found to be operating a business
9 without the license required by Section 55521, or failed to pay a
10 fee in accordance with the schedule in subdivision (b) of Section
11 55861, that person shall pay to the secretary double the amount of
12 the license fee due pursuant to this chapter.

13 (b) In addition to subdivision (a), if any person is found to be
14 operating a business within the past five years without a license
15 required by Section 55521, or failed to pay the fees in accordance
16 with the schedule in subdivision (b) of Section 55861, that person
17 shall pay to the secretary an amount equal to that portion of the
18 fees that were not paid for the last five years the business has
19 operated.

20 (c) *In addition to the license fees and penalties in subdivisions*
21 *(a) and (b), any processor who crushes grapes that is found to be*
22 *knowingly operating a business within the past five years without*
23 *a license required by Section 55521, or has knowingly failed to*
24 *pay the fees in accordance with the schedule specified in*
25 *subdivision (b) of Section 55861, the processor shall pay an*
26 *administrative fine in an amount, as determined by the secretary,*
27 *up to five times the amount of the license fees and penalties due,*
28 *up to a maximum administrative fine of six thousand dollars*
29 *(\$6,000).*

30 *SEC. 5. Section 55864 of the Food and Agricultural Code is*
31 *amended to read:*

32 55864. All fees ~~which~~, *administrative fines, and investigative*
33 *costs that* are collected pursuant to this chapter shall be paid into
34 the State Treasury monthly and shall be credited to the Department
35 of *Food and Agriculture* Fund and, except as otherwise provided
36 in Section 55433, shall be expended in carrying out this chapter.

37 *SEC. 6. Section 55901 of the Food and Agricultural Code is*
38 *amended to read:*

39 55901. (a) Except as specified in Section 55902, any
40 misdemeanor which is prescribed by this article is punishable by

1 a fine of not less than five hundred dollars (\$500) or more than
2 five thousand dollars (\$5,000), by imprisonment in the county jail
3 for not more than one year, or by both that fine and imprisonment.

4 (b) For a violation of the offense described in subdivision (a),
5 the department may recover investigative costs, excluding
6 attorneys' fees and administrative overhead, for those charges
7 where there has been a conviction in a court of law, or a
8 court-supervised settlement has been reached. ~~Nothing in this~~
9 ~~section allows the department to recover investigative costs for an~~
10 ~~administrative licensing action or any action that has not been filed~~
11 ~~in a court of law.~~

12 (c) Any person or entity responsible for investigative costs under
13 this section shall be allowed to audit the department's investigative
14 costs. The audit must be performed by a third-party certified public
15 accountant and paid for by the person or entity requesting the audit.
16 The department shall promulgate regulations to implement this
17 subdivision by June 1, 2002.

18 *SEC. 7. Section 55922 of the Food and Agricultural Code is*
19 *amended to read:*

20 55922. (a) Any person that violates any provision of this
21 chapter is liable civilly in the sum of not less than five hundred
22 dollars (\$500) or more than one thousand dollars (\$1,000) for each
23 ~~and every~~ violation, ~~this sum~~ to be recovered in an action by the
24 secretary in any court of competent jurisdiction. All sums which
25 are recovered under this section shall be deposited in the State
26 Treasury to the credit of the Department of Food and Agriculture
27 Fund.

28 (b) ~~For a violation of the offense described in subdivision (a),~~
29 ~~the~~The department may recover investigative costs, excluding
30 ~~attorneys'~~ attorney's fees and administrative overhead, for those
31 charges where there has been a conviction in a court of law, or a
32 court-supervised settlement has been reached. ~~Nothing in this~~
33 ~~section allows the department to recover investigative costs for an~~
34 ~~administrative licensing action or any action that has not been filed~~
35 ~~in a court of law.~~

36 (c) Any person or entity responsible for investigative costs under
37 this section shall be allowed to audit the department's investigative
38 costs. The audit ~~must~~ shall be performed by a third-party certified
39 public accountant and paid for by the person or entity requesting

1 the audit. The department shall promulgate regulations to
2 implement this subdivision by June 1, 2002.

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**All matter omitted in this version of the bill
appears in the bill as amended in the
Senate, June 8, 2011. (JR11)**

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