

AMENDED IN SENATE JUNE 21, 2012

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 55523.3, ~~55524.5~~, 55525.75, 55527.6, 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. 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. *Existing law also requires a licensee or applicant to furnish and maintain an*

irrevocable guarantee if the secretary determines that, in the preceding 4 years, the person has engaged in certain conduct, including a violation that resulted in license revocation.

~~This bill would also authorize the secretary to accept a surety bond, in a form and amount acceptable to specify that the irrevocable guarantee may include a personal or corporate guarantee, a certificate of deposit, a bank letter of credit, or a surety bond, as determined to be appropriate by the secretary, in an amount that is at least sufficient to pay the obligations of the licensee at the time the bond guarantee 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)~~

~~(2) Existing law requires a person found to be operating a business within the past 5 years without a license or who has failed to pay a license fee pursuant to a certain schedule to pay additional license fees penalties to the secretary, including paying an amount that is double the amount of the license fee due equal to that portion of the fees that were not paid for the last 5 years the business has operated.~~

~~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 increase that penalty amount to 3 times the portion of the fees that were not paid for the last 5 years the business has operated.~~

(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)

(3) 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 *additional penalties* 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.

The bill would make other technical, nonsubstantive changes.

Vote: 2/3. Appropriation: 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 secretary is not satisfied that an applicant
4 or licensee is financially responsible, the secretary may, in lieu of
5 denying, suspending, or revoking the license, accept an irrevocable
6 guarantee ~~or a surety bond~~ of the obligations of the licensee to all
7 California farm product creditors. ~~The surety bond irrevocable~~
8 *guarantee may include a personal or corporate guarantee, a*
9 *certificate of deposit, a bank letter of credit, or a surety bond, as*
10 *determined to be appropriate by the secretary, and shall be in an*
11 *amount that is at least sufficient to pay for the licensee's obligations*
12 *at the time the ~~bond~~ guarantee is issued. The guarantee ~~or surety~~*
13 *~~bond~~ shall be for any period, in any form, and in any amount that*
14 *the secretary may, from time to time, require. The secretary may,*
15 *as a condition of accepting and maintaining the guarantee ~~or surety~~*
16 *~~bond~~, require the guarantor to supply financial information to the*
17 *secretary at times and to the extent the secretary deems advisable.*

18 (b) A ~~guarantee or surety bond~~ placed with the secretary
19 pursuant to subdivision (a) shall support an action in a court of
20 competent jurisdiction by a farm products creditor for obligations
21 of the licensee to the creditor and by a state officer for the

1 obligations of the licensee to the state related to transactions subject
2 to the guarantee or surety bond.

3 (c) An irrevocable guarantee or surety bond deposited with
4 *accepted by* the secretary pursuant to this section shall not operate
5 as a release for purposes of Section 55637.

6 ~~SEC. 2.— Section 55524.5 of the Food and Agricultural Code is~~
7 ~~amended to read:~~

8 ~~55524.5.— (a) The Legislature finds there to be a substantial~~
9 ~~nexus between the conduct specified in Section 55524 and an~~
10 ~~applicant's or holder's fitness for licensure.~~

11 ~~(b) The department shall not dismiss an action where a violation,~~
12 ~~however minor, has been established. The department shall not~~
13 ~~dismiss an action because the applicant or holder establishes factors~~
14 ~~in mitigation.~~

15 ~~(c) However, the department may impose discipline other than~~
16 ~~denial or revocation of the license. As an alternative to revocation~~
17 ~~of a license, the department may stay a revocation subject to terms~~
18 ~~for a period of probation. As an alternative to denial the department~~
19 ~~may issue a license subject to conditions. Terms of probation or~~
20 ~~terms of conditional licensure may include, but are not limited to,~~
21 ~~a requirement of restitution to California farm product creditors~~
22 ~~to whom the licensee owes money, payment of investigative costs~~
23 ~~incurred by the department, payment for extra audits, immediate~~
24 ~~revocation on a new violation, or any other terms that respond to~~
25 ~~the particular violations or circumstances found. For processors~~
26 ~~who crush grapes, terms of probation or terms of conditional~~
27 ~~licensure may also include payment of an administrative fine not~~
28 ~~to exceed ten thousand dollars (\$10,000) for violations of Sections~~
29 ~~55872, 55874, 55875, and 55879.~~

30 ~~(d) Once a finding of a violation has been made, the department~~
31 ~~may consider the following factors in assessing the appropriate~~
32 ~~level of discipline:~~

- 33 ~~(1) The relative isolation or infrequency of the conduct.~~
- 34 ~~(2) Whether the conduct was a part of a pattern or practice.~~
- 35 ~~(3) Whether the actor had been warned before.~~
- 36 ~~(4) Whether the actor considered the consequences of the~~
37 ~~conduct.~~
- 38 ~~(5) Whether the actor reasonably relied on others.~~
- 39 ~~(6) The severity of the consequences.~~
- 40 ~~(7) The mens rea of the actor.~~

- 1 ~~(8) In the case of a criminal conviction, evidence of~~
2 ~~rehabilitation.~~
- 3 ~~(9) The total licensing history.~~
- 4 ~~(e) The following factors shall not be considered in assessing~~
5 ~~the appropriate level of discipline:~~
 - 6 ~~(1) The social or economic contributions of the applicant or~~
7 ~~holder.~~
 - 8 ~~(2) General testimonials as to good character and worthiness to~~
9 ~~be licensed.~~
 - 10 ~~(3) Economic hardship on the licensee.~~
 - 11 ~~(4) "Mercy of the court" pleas in connection with criminal~~
12 ~~convictions, pattern or practice violations, or deception.~~
 - 13 ~~(5) In the case of a felony criminal conviction, the department~~
14 ~~shall not consider rehabilitation unless the convicted person has a~~
15 ~~valid certificate of rehabilitation.~~
- 16 ~~SEC. 3.~~
- 17 *SEC. 2.* Section 55525.75 of the Food and Agricultural Code
18 is amended to read:
 - 19 55525.75. (a) The withdrawal of an application for a license
20 after it has been filed with the department does not deprive the
21 department of its authority to institute or continue a proceeding
22 against the applicant or to enter an order denying the license, unless
23 the department consents in writing to the withdrawal.
 - 24 (b) The expiration or forfeiture by operation of law of a license,
25 or its forfeiture or cancellation by order of the department or by
26 order of a court of law, or its surrender without the written consent
27 of the department, does not deprive the department of its authority
28 to institute or continue a disciplinary proceeding against the holder
29 upon any ground provided by law or to enter an order revoking
30 the license or otherwise taking disciplinary action against the
31 holder.
 - 32 (c) Any action brought by the department against an applicant
33 or holder does not abate by reason of the sale or other transfer of
34 ownership of the business that is a party to the action, except with
35 the written consent of the department.
 - 36 (d) Nothing in this division or in any other provision of this
37 code deprives the department of the authority to settle or adjudicate
38 a disposition of a case other than by revocation or denial. The
39 department or the department's designee may compromise with
40 the applicant or holder in a written stipulation and order. The

1 department may, following a hearing, order probation on terms
 2 and conditions as determined by the department. The authority
 3 conferred by this subdivision shall include, but is not limited to,
 4 the authority to order payment of amounts determined owing to
 5 California farm product creditors, the authority to dismiss an action
 6 on the department's own initiative, the authority to order
 7 administrative ~~finer under subdivision (e) of Section 55524.5~~
 8 ~~penalties~~, the authority to order a respondent to pay ~~the department~~
 9 ~~for investigative costs and~~ heightened audit scrutiny, the authority
 10 to suspend a license for a period of years, or any combination of
 11 remedies other than final revocation or denial of a license.

12 *SEC. 3. Section 55527.6 of the Food and Agricultural Code is*
 13 *amended to read:*

14 55527.6. (a) Licensees or applicants for a license shall be
 15 required to furnish and maintain ~~a surety bond~~ *an irrevocable*
 16 *guarantee* in a form and amount satisfactory to the ~~director~~
 17 *secretary*, if within the preceding four years the ~~director~~ *secretary*
 18 determines that they have done any of the following:

19 (1) Engaged in conduct which demonstrates a lack of financial
 20 responsibility including, but not limited to, delinquent accounts
 21 payable, judgments of liability, insolvency, or bankruptcy.

22 (2) Failed to assure future financial responsibility ~~unless a surety~~
 23 ~~bond is posted~~ *an irrevocable guarantee is provided.*

24 (3) Otherwise violated this chapter which resulted in license
 25 revocation.

26 (4) *The irrevocable guarantee may include a personal or*
 27 *corporate guarantee, a certificate of deposit, a bank letter of credit,*
 28 *or a surety bond, as determined to be appropriate by the secretary.*

29 ~~(b)~~

30 (c) ~~The bond guarantee~~ shall not be less than ten thousand
 31 dollars (\$10,000) or 20 percent of the annual dollar volume of
 32 business based on farm product value returned to the grower,
 33 whichever is greater, as assurance that the licensee's or applicant's
 34 business will be conducted in accordance with this chapter and
 35 that the licensee or applicant will pay all amounts due farm
 36 products creditors.

37 ~~(e)~~

38 (d) ~~The director secretary~~, based on changes in the nature and
 39 volume of business conducted by the licensee, may require an
 40 increase or authorize a reduction in the amount of the ~~bond~~

1 *guarantee*, but in no case shall the ~~bond~~ *guarantee* be reduced
 2 below ten thousand dollars (\$10,000). A licensee who is notified
 3 by the ~~director~~ *secretary* to provide a ~~bond~~ *guarantee* in an
 4 increased amount shall do so within a reasonable time as specified
 5 by the ~~director~~ *secretary*. If the licensee fails to do so, the ~~director~~
 6 *secretary* may, after a notice and opportunity for a hearing, suspend
 7 or revoke the license of the licensee.

8 SEC. 4. Section 55862.7 of the Food and Agricultural Code is
 9 amended to read:

10 55862.7. (a) If any person is found to be operating a business
 11 without the license required by Section 55521, or failed to pay a
 12 fee in accordance with the schedule in subdivision (b) of Section
 13 55861, that person shall pay to the secretary double the amount of
 14 the license fee due pursuant to this chapter.

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

22 ~~(e) In addition to the license fees and penalties in subdivisions~~
 23 ~~(a) and (b), any processor who crushes grapes that is found to be~~
 24 ~~knowingly operating a business within the past five years without~~
 25 ~~a license required by Section 55521, or has knowingly failed to~~
 26 ~~pay the fees in accordance with the schedule specified in~~
 27 ~~subdivision (b) of Section 55861, the processor shall pay an~~
 28 ~~administrative fine in an amount, as determined by the secretary,~~
 29 ~~up to five times the amount of the license fees and penalties due,~~
 30 ~~up to a maximum administrative fine of six thousand dollars~~
 31 ~~(\$6,000).~~

32 SEC. 5. ~~Section 55864 of the Food and Agricultural Code is~~
 33 ~~amended to read:~~

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

39 SEC. 6. ~~Section 55901 of the Food and Agricultural Code is~~
 40 ~~amended to read:~~

1 55901. ~~(a) Except as specified in Section 55902, any~~
2 ~~misdemeanor which is prescribed by this article is punishable by~~
3 ~~a fine of not less than five hundred dollars (\$500) or more than~~
4 ~~five thousand dollars (\$5,000), by imprisonment in the county jail~~
5 ~~for not more than one year, or by both that fine and imprisonment.~~

6 ~~(b) For a violation of the offense described in subdivision (a),~~
7 ~~the department may recover investigative costs, excluding~~
8 ~~attorneys' fees and administrative overhead, for those charges~~
9 ~~where there has been a conviction in a court of law, or a~~
10 ~~court-supervised settlement has been reached.~~

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

17 ~~SEC. 7.~~

18 ~~SEC. 5.~~ 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 violation, to be recovered in an action by the secretary in any court
24 of competent jurisdiction. All sums which are recovered under this
25 section shall be deposited in the State Treasury to the credit of the
26 Department of Food and Agriculture Fund.

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

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

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

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