

**ASSEMBLY BILL**

**No. 2179**

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**Introduced by Assembly Member Allen**

February 23, 2012

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An act to amend Section 309 of, to repeal Sections 500, 2580, 2581, and 2584 of, and to repeal and add Sections 2582 and 2583 of, the Fish and Game Code, relating to fish and game.

LEGISLATIVE COUNSEL'S DIGEST

AB 2179, as introduced, Allen. Fish and game: enforcement and penalties.

Existing law authorizes the Fish and Game Commission, or any person appointed by the commission to conduct a hearing, to cause the deposition of witnesses, as prescribed, and to compel the attendance of witnesses and the production of documents and papers, in accordance with certain requirements.

This bill would eliminate the prohibition that the commission not revoke or suspend any license or permit until specified regulations have been adopted and approved, as specified. This bill would also eliminate the provision that any deliberation conducted by the commission, or conducted by any person appointed by the commission to conduct a hearing, is required to be conducted pursuant to the law governing administrative adjudication.

Existing law requires the commission to adopt guidelines, by regulation, to assist the director and the department in ascertaining the amount of specified civil penalties, as prescribed.

This bill would repeal these provisions.

Existing law permits the Department of Fish and Game to impose civil liability upon any person for specified acts with prescribed

exceptions done for profit or personal gain, for unlawfully exporting, importing, possessing, receiving, or transporting in interstate commerce any container or package containing any bird, mammal, amphibian, reptile, or fish, or any endangered or threatened species, or any fully protected bird, mammal, or fish unless the container is marked as prescribed, and for any unlawful failure or refusal to maintain any records or paperwork as required. Under existing law, the department may assess a civil penalty of not more than \$10,000 for each bird, mammal, amphibian, reptile, or fish, or for each endangered or threatened species, or each fully protected bird, mammal, or fish unlawfully taken, possessed, transported, imported, received, purchased, acquired, or sold, in addition to any other applicable penalty. Existing law also requires the department to consult with the district attorney in the jurisdiction where a violation is alleged to have occurred, and before proceeding with a civil action, to seek the concurrence of the Attorney General, as described. Existing law permits the Director of Fish and Game to issue a complaint to any person on whom a civil penalty may be imposed, in accordance with specified provisions, and requires a referee or hearing board, as provided for, to conduct any required hearing.

This bill would repeal these provisions. This bill would instead permit the department to impose administrative civil penalties not to exceed \$20,000 or deny, suspend, or revoke any license, permit or other entitlement issued by the department to any person who has violated any provision of the code or regulations adopted pursuant to the code. This bill would require, prior to the imposition of administrative penalties or any revocation or suspension, a person to be given a written notice of the proposed action. This bill would require a person denied a license, permit, or other privilege, or who receives notice of a proposed penalty, revocation, or suspension, to have the right to request a hearing before the department in accordance with specified procedures. This bill would permit the department to take the action proposed without a hearing if a hearing is not requested. This bill would permit a party ordered to pay an administrative penalty or whose license, permit, or other privilege is denied, suspended, or revoked and who appeared at a hearing to appeal to the commission, as prescribed. This bill would permit a review of a decision of the commission, as specified.

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 309 of the Fish and Game Code is  
2 amended to read:

3 309. (a) The commission or any person appointed by it to  
4 conduct a hearing may, in any investigation or hearing, cause the  
5 deposition of witnesses, residing within or without the state, to be  
6 taken in the manner prescribed by law for deposition in civil actions  
7 in the superior courts of this state under Title 4 (commencing with  
8 Section 2016.010) of Part 4 of the Code of Civil Procedure, and  
9 may compel the attendance of witnesses and the production of  
10 documents and papers. The commission shall adopt regulations  
11 that afford procedural and substantive due process to any person  
12 whose license or permit is subject to revocation or suspension by  
13 *the commission*. ~~Except upon conviction of a violation of this code~~  
14 ~~or a regulation adopted pursuant to this code relating to the licensed~~  
15 ~~or permitted activity and notwithstanding any other provision of~~  
16 ~~this code, the commission shall not revoke or suspend any license~~  
17 ~~or permit until the regulations required by this section have been~~  
18 ~~adopted and approved by the Office of Administrative Law~~  
19 ~~pursuant to Chapter 3.5 (commencing with Section 11340) of Part~~  
20 ~~1 of Division 3 of Title 2 of the Government Code.~~

21 (b) ~~Any deliberation conducted by the commission, or conducted~~  
22 ~~by any person appointed by the commission to conduct hearings,~~  
23 ~~is deemed to be a proceeding required to be conducted pursuant~~  
24 ~~to Chapter 5 (commencing with Section 11500) of Part 1 of~~  
25 ~~Division 3 of Title 2 of the Government Code or similar provision,~~  
26 ~~within the meaning of paragraph (3) of subdivision (e) of Section~~  
27 ~~11126 of the Government Code.~~

28 SEC. 2. Section 500 of the Fish and Game Code is repealed.

29 500. (a) ~~The commission shall, by regulation, adopt guidelines~~  
30 ~~to assist the director and the department in ascertaining the amount~~  
31 ~~of civil penalties to be imposed pursuant to Section 2582 or 2583.~~  
32 ~~The guidelines may include monetary amounts or ranges of~~  
33 ~~monetary amounts that the commission finds are adequate to deter~~  
34 ~~illegal actions and partially compensate the people of California~~  
35 ~~for losses to the fish and wildlife resources from illegal transactions~~  
36 ~~described in Section 2582 or 2583 for profit or personal gain.~~

37 (b) ~~If the violation involves birds, mammals, amphibians,~~  
38 ~~reptiles, or fish with a value in the aggregate of less than four~~

1 hundred dollars (\$400) and involves only the transportation, taking,  
 2 or receipt of fish or wildlife taken or possessed in violation of this  
 3 code, the guidelines shall provide that the civil penalty shall not  
 4 exceed the maximum criminal fine provided by law for the  
 5 violation in this code or ten thousand dollars (\$10,000), whichever  
 6 is less. For purposes of this section, "value" means the retail market  
 7 value if a market value exists, the potential monetary gain to the  
 8 accused or, for commercial species, the established retail market  
 9 value.

10 (e) The guidelines shall include consideration of the nature,  
 11 circumstances, extent, and gravity of the prohibited acts committed,  
 12 and the degree of culpability of the violator, including lesser  
 13 penalties for acts which have little significant effect upon the  
 14 resources and greater penalties for acts which may cause serious  
 15 injury to the resources.

16 (d) Nothing in this chapter or in Chapter 6.5 (commencing with  
 17 Section 2580) of Division 3 shall be used to establish a monetary  
 18 value for fish or wildlife resources in connection with any  
 19 development, project, or land or water use plan or activity as  
 20 permitted by any federal, state, or local governmental activity.  
 21 This chapter does not apply to any action brought to recover civil  
 22 damages under Section 2014.

23 SEC. 3. Section 2580 of the Fish and Game Code is repealed.  
 24 2580. The definitions in this section govern the construction  
 25 of this chapter.

26 (a) "Qualified hearing officer" means an attorney admitted to  
 27 the State Bar of California who is knowledgeable in fish and  
 28 wildlife law.

29 (b) "Transport" means to move, convey, carry, or ship by any  
 30 means, or to deliver or receive for the purpose of movement,  
 31 conveyance, carriage, or shipment.

32 SEC. 4. Section 2581 of the Fish and Game Code is repealed.  
 33 2581. If the loss is lawful under this code and regulations  
 34 adopted under this code, this chapter does not apply to the loss of  
 35 any bird, mammal, amphibian, reptile, or fish as a result of any of  
 36 the following acts:

- 37 (a) Implementing lawful forestry practices.
- 38 (b) Implementing lawful agricultural practices.

1 ~~(e) Any development or maintenance activity carried out~~  
2 ~~pursuant to the terms of a permit issued by the federal government,~~  
3 ~~the state, or any city, county, or district, or any agency thereof.~~

4 SEC. 5. Section 2582 of the Fish and Game Code is repealed.

5 2582. ~~(a) The department may impose civil liability upon any~~  
6 ~~person pursuant to this chapter for any of the following acts done~~  
7 ~~for profit or personal gain:~~

8 ~~(1) Unlawfully export, import, transport, sell, possess, receive,~~  
9 ~~acquire, or purchase, or unlawfully assist, conspire, or aid in the~~  
10 ~~importing, exporting, transporting, sale, possession, receiving,~~  
11 ~~acquisition, or purchasing of, any bird, mammal, amphibian, reptile,~~  
12 ~~or fish which are taken or possessed in violation of this code or~~  
13 ~~the regulations adopted pursuant to this code.~~

14 ~~(2) Unlawfully export, import, transport, sell, possess, receive,~~  
15 ~~acquire, or purchase, or unlawfully assist, conspire, or aid in the~~  
16 ~~importing, exporting, transporting, sale, possession, receiving,~~  
17 ~~acquisition, or purchasing of any plants, insects, or other species~~  
18 ~~listed pursuant to the California Endangered Species Act (Chapter~~  
19 ~~1.5 (commencing with Section 2050)), which are taken or~~  
20 ~~possessed in violation of this code or the regulations adopted~~  
21 ~~pursuant to this code.~~

22 ~~(3) Unlawfully export, import, transport, sell, possess, receive,~~  
23 ~~acquire, or purchase any bird, mammal, amphibian, reptile, or fish,~~  
24 ~~or any endangered or threatened species, or any fully protected~~  
25 ~~bird, mammal, or fish which has been taken, possessed, transported,~~  
26 ~~or sold in violation of this code or the regulations adopted pursuant~~  
27 ~~to this code.~~

28 ~~(4) Unlawfully possess any bird, mammal, amphibian, reptile,~~  
29 ~~or fish, or any endangered or threatened species, or any fully~~  
30 ~~protected bird, mammal, or fish which has been taken, possessed,~~  
31 ~~transported, or sold in violation of this code or any regulations~~  
32 ~~adopted pursuant to this code within the maritime and territorial~~  
33 ~~jurisdiction of the state or within the portions of the special~~  
34 ~~maritime jurisdiction of the United States upon which the State of~~  
35 ~~California exercises concurrent jurisdiction, either by statute,~~  
36 ~~deputization, or by contract with the United States.~~

37 ~~(5) Having exported, imported, transported, sold, purchased, or~~  
38 ~~received any bird, mammal, amphibian, reptile, or fish, or any~~  
39 ~~endangered or threatened species, or any fully protected bird,~~

1 mammal, or fish, unlawfully make or submit any false record,  
2 account, label, or identification thereof.

3 ~~(6) Attempt to commit any unlawful act, or unlawfully attempt~~  
4 ~~to commit any act, described in paragraphs (1) to (5), inclusive.~~

5 ~~(b) The department may impose civil liability upon any person~~  
6 ~~pursuant to this chapter for unlawfully exporting, importing,~~  
7 ~~possessing, receiving, or transporting in interstate commerce any~~  
8 ~~container or package containing any bird, mammal, amphibian,~~  
9 ~~reptile, or fish, or any endangered or threatened species, or any~~  
10 ~~fully protected bird, mammal, or fish unless the container or~~  
11 ~~package has previously been plainly marked, labeled, or tagged~~  
12 ~~in accordance with this code and the regulations adopted pursuant~~  
13 ~~to this code.~~

14 ~~(c) The department may impose civil liability upon any person~~  
15 ~~pursuant to this chapter for any unlawful failure or refusal to~~  
16 ~~maintain any records or paperwork as required by this code.~~

17 SEC. 6. Section 2582 is added to the Fish and Game Code, to  
18 read:

19 2582. The department may impose administrative civil penalties  
20 not to exceed twenty thousand dollars (\$20,000), or deny, suspend,  
21 or revoke any license, permit, or other entitlement issued by the  
22 department to any person who has violated any provision of this  
23 code or implementing regulations adopted pursuant to this code.  
24 Except as provided in Section 2583, the proceedings for all  
25 hearings conducted by the department shall be conducted in  
26 accordance with Chapter 5 (commencing with Section 11500) of  
27 Part 1 of Division 3 of Title 2 of the Government Code. The  
28 department shall have all of the powers granted in that chapter.

29 SEC. 7. Section 2583 of the Fish and Game Code is repealed.

30 ~~2583. (a) Except as provided in subdivision (b), any person~~  
31 ~~who violates this code or any regulation adopted to carry out this~~  
32 ~~code, and, with the exercise of due care, should have known that~~  
33 ~~the birds, mammals, amphibians, reptiles, or fish, or the endangered~~  
34 ~~or threatened species, or the fully protected birds, mammals, or~~  
35 ~~fish were taken, possessed, transported, imported, received,~~  
36 ~~purchased, acquired, or sold in violation of, or in a manner unlawful~~  
37 ~~under, this code, may be assessed a civil penalty. The civil penalty~~  
38 ~~imposed under this chapter by the department shall not be more~~  
39 ~~than ten thousand dollars (\$10,000) for each bird, mammal,~~  
40 ~~amphibian, reptile, or fish, or for each endangered or threatened~~

1 species, or each fully protected bird, mammal, or fish unlawfully  
2 taken, possessed, transported, imported, received, purchased,  
3 acquired, or sold. This civil penalty may be in addition to any other  
4 penalty, civil or criminal, provided in this code or otherwise by  
5 law.

6 ~~(b) No civil penalties shall be imposed under this chapter until~~  
7 ~~the guidelines for the imposition of the penalties are adopted by~~  
8 ~~the commission pursuant to Section 500.~~

9 SEC. 8. Section 2583 is added to the Fish and Game Code, to  
10 read:

11 2583. (a) Prior to the imposition of administrative penalties  
12 or any revocation or suspension of a license, permit, or other  
13 privilege, a person shall be given a written notice of the proposed  
14 action that includes the basis for the action. A person who is denied  
15 a license, permit, or other privilege, or who receives notice of a  
16 proposed penalty, revocation, or suspension, shall have the right  
17 to request a hearing before the department within 20 days after  
18 receiving the denial or notice of the proposed action. A notice of  
19 the proposed action that is sent by certified mail to the last known  
20 address of the person against whom the action is proposed shall  
21 be considered received even if delivery is refused or the notice is  
22 not accepted at that address.

23 (b) If a hearing is requested within 20 days of receipt of the  
24 notice of the proposed action, notice of the time and place of the  
25 hearing shall be given at least 10 days before the date set for the  
26 hearing. A deferral of the hearing shall be granted upon reasonable  
27 cause, not to exceed 20 days from the date of the original hearing  
28 date.

29 (c) (1) At the hearing, the person shall be given an opportunity  
30 to present any evidence or argument on his or her own behalf.

31 (2) If at the hearing the person is ordered to pay an  
32 administrative penalty or has his or her license, permit, or other  
33 privilege denied, suspended, or revoked, the person may appeal  
34 to the commission within 10 days of mailing or personal service  
35 of the department's decision.

36 (d) If a hearing is not requested in a timely manner, the  
37 department may take the action proposed without a hearing.

38 (e) The following shall apply to an appeal to the commission  
39 pursuant to paragraph (2) of subdivision (c):

1 (1) The appeal shall be in writing and signed by the appellant  
2 or his or her authorized agent and shall state the grounds for the  
3 appeal.

4 (2) Any party, at the time of filing the appeal or within 10 days  
5 of the filing, may present written evidence and a written argument  
6 to the secretary.

7 (3) The commission may grant oral arguments upon application  
8 made at the time written arguments are made.

9 (4) If an application to present an oral argument is granted,  
10 written notice of the time and place for the oral argument shall be  
11 given at least 10 days prior to the date set for the oral argument.  
12 This time requirement may be changed upon agreement between  
13 the commission and the person appealing.

14 (5) The commission shall decide the appeal based on any oral  
15 or written arguments, briefs, and evidence received.

16 (6) The commission shall render a written decision within 45  
17 days of the date of the appeal, or within 15 days of the date of oral  
18 arguments. A copy of the department’s decision shall be delivered  
19 or mailed to the appellant.

20 (7) The commission may sustain the decision, modify the  
21 decision by reducing the amount of the penalty levied, or reverse  
22 the decision.

23 (8) A review of the commission’s decision may be sought by  
24 the person against whom the penalty was levied pursuant to Section  
25 1094.5 of the Code of Civil Procedure.

26 SEC. 9. Section 2584 of the Fish and Game Code is repealed.

27 ~~2584. (a) Upon an actionable violation, the department shall~~  
28 ~~consult, as to the appropriate civil or criminal remedy, with the~~  
29 ~~district attorney in the jurisdiction where the violation was alleged~~  
30 ~~to have occurred. Before proceeding with a civil action, the~~  
31 ~~department shall seek the concurrence of the Attorney General.~~

32 ~~(b) The director shall appoint a qualified referee or hearing~~  
33 ~~board, composed of one or any combination of the following~~  
34 ~~persons:~~

35 ~~(1) A qualified hearing officer, as defined in subdivision (a) of~~  
36 ~~Section 2580.~~

37 ~~(2) A retired judge of the Superior Court who is knowledgeable~~  
38 ~~in fish and wildlife law.~~

39 ~~(3) A qualified neutral referee, appointed upon petition to the~~  
40 ~~Superior Court in which the violation was alleged to have occurred.~~

1 ~~(e) The director, after investigation of the facts and~~  
2 ~~circumstances, may issue a complaint to any person on whom a~~  
3 ~~civil penalty may be imposed pursuant to Section 2582 or 2583.~~  
4 ~~The complaint shall allege the acts or failures to act that constitute~~  
5 ~~a basis for a civil penalty and the amount of the proposed civil~~  
6 ~~penalty. The complaint shall be served by personal service or~~  
7 ~~certified mail and shall inform the person so served that a hearing~~  
8 ~~shall be conducted within 60 days after the person has been served,~~  
9 ~~unless the person waives the right to a hearing. If the person waives~~  
10 ~~the right to a hearing, the department shall issue an order setting~~  
11 ~~liability in the amount proposed in the complaint. If the person has~~  
12 ~~waived the right to a hearing or if the department and the person~~  
13 ~~have entered into a settlement agreement, the order shall be final.~~

14 ~~(d) Any hearing required under this section shall be conducted~~  
15 ~~by a referee or hearing board according to the procedures specified~~  
16 ~~in Sections 11507 to 11517, inclusive, of the Government Code,~~  
17 ~~except as otherwise provided in this section. In making a~~  
18 ~~determination, the hearing officer may consider the records of the~~  
19 ~~department in the matter, the complaint, and any new facts brought~~  
20 ~~to his or her attention by that person. The hearing officer shall be~~  
21 ~~the sole trier of fact as to the existence of a basis for liability under~~  
22 ~~Section 2582 or 2583. The hearing officer shall make the~~  
23 ~~determination of the facts of the case and shall prepare and submit~~  
24 ~~the proposed decision, including recommended penalty assessment,~~  
25 ~~to the director for his or her review and assistance in the penalty~~  
26 ~~assessment process.~~

27 ~~(e) The director may assess the civil penalty, and may reduce~~  
28 ~~the amount, or not impose any assessment, of civil penalties based~~  
29 ~~upon the nature, circumstances, extent, and gravity of the prohibited~~  
30 ~~acts alleged, and the degree of culpability of the violator; or the~~  
31 ~~director may enter into a settlement agreement with the person in~~  
32 ~~the best interests of the state or confirm the amount of civil~~  
33 ~~penalties contained in the complaint. If the director reduces the~~  
34 ~~amount of the civil penalty, does not impose the civil penalty, or~~  
35 ~~enters into a settlement agreement, the director shall seek the~~  
36 ~~recommendation of the hearing officer and enter into the records~~  
37 ~~of the case the reasons for that action, including the hearing~~  
38 ~~officer's recommendation. The decision of the director assessing~~  
39 ~~the civil penalty is final. The proposed decision is a public record~~  
40 ~~and shall be served upon the person. The director may approve the~~

1 ~~proposed decision in its entirety, or the director may reduce the~~  
2 ~~proposed penalty and adopt the balance of the proposed decision.~~  
3 ~~(f) Upon the final assessment of the civil penalty, the department~~  
4 ~~shall issue an order setting the amount of the civil penalty to be~~  
5 ~~imposed. An order setting civil liability under this section becomes~~  
6 ~~effective and final upon the issuance thereof, and payment shall~~  
7 ~~be made within 30 days of issuance. Copies of the order shall be~~  
8 ~~served by personal service or by certified mail upon the person~~  
9 ~~served with the complaint and upon other persons who appeared~~  
10 ~~before the director and requested a copy. Copies of the order shall~~  
11 ~~be provided to any person within 10 days of receipt of a written~~  
12 ~~request from that person.~~  
13 ~~(g) Within 30 days after service of a copy of an order setting~~  
14 ~~the amount of the civil penalty, any person so served may file with~~  
15 ~~the superior court a petition for a writ of mandate for review of~~  
16 ~~the order. In all proceedings pursuant to this subdivision, the court~~  
17 ~~shall exercise its independent judgment on the evidence in the~~  
18 ~~whole record. The filing of a petition for a writ of mandate shall~~  
19 ~~not stay any other civil or criminal action.~~  
20 ~~(h) The records of the case, after all appeals are final, are public~~  
21 ~~records, as defined in subdivision (d) of Section 6252 of the~~  
22 ~~Government Code.~~