

AMENDED IN SENATE JANUARY 9, 2012

AMENDED IN SENATE JANUARY 4, 2012

SENATE BILL

No. 625

Introduced by Senator Hernandez

February 18, 2011

An act to amend Sections 6701, 6722, 6727, 6728, 6761, 6901, 6902, 6903, 6904, 6921, 6922, 6923, 6925, 6961, and 6968 of the Food and Agricultural Code, relating to agriculture.

LEGISLATIVE COUNSEL'S DIGEST

SB 625, as amended, Hernandez. Nursery stock.

Existing law specifies the duties of the Secretary of Food and Agriculture and county agricultural commissioners with respect to the sale and control of nursery stock, as defined. Existing law requires a person to hold a valid license in order to sell nursery stock and makes a violation of these provisions a crime. Under existing law, the secretary is prohibited from refunding more than $\frac{1}{2}$ of the minimum license fee to any person who applies for a license to sell nursery stock and who later decides not to do so.

This bill would prohibit the secretary from returning more than 25% of the minimum license fee.

Existing law requires the secretary, by regulation, to provide for periodic inspections of nurseries and authorizes the secretary to prescribe standards of cleanliness for nursery stock. Existing law sets forth suggestions for the standards of cleanliness.

This bill would *instead require the secretary to prescribe standards of cleanliness for nursery stock and would make specified standards of cleanliness, including, but not limited to, being free of pests and isolation of infested or infected plants, mandatory.*

Under existing law, it is unlawful to move nursery stock without a valid nursery certificate unless the person has forwarded to the county agricultural commissioner, at or prior to the time of shipment, a manifest stating prescribed information. Under existing law, it is also unlawful to ship, or cause to be shipped, nursery stock from one county to another without a nursery stock certificate or shipping permit. Existing law authorizes the county agricultural commissioner to revoke or suspend the right to use a nursery stock certificate or shipping permit if the person fails to comply with the statutory provisions applicable to nursery stock.

This bill would require the person to forward the manifest to the county agricultural commissioner prior to shipment. The bill would require the county agricultural commissioner to revoke or suspend the right to use a nursery stock certificate if the person fails to comply with the statutory provisions applicable to nursery stock. The bill would also make technical, nonsubstantive changes to the nursery stock provisions. By expanding the definition of a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

- 1 SECTION 1. Section 6701 of the Food and Agricultural Code
- 2 is amended to read:
- 3 6701. The secretary may publish in pamphlet form, as often
- 4 as he or she deems necessary, a list of all persons that are licensed
- 5 pursuant to this chapter. The pamphlet may also contain such
- 6 additional information as the secretary deems advisable concerning
- 7 the enforcement of laws and regulations which pertain to nursery
- 8 stock.
- 9 SEC. 2. Section 6722 of the Food and Agricultural Code is
- 10 amended to read:
- 11 6722. Except as provided in Section 6761, the secretary, upon
- 12 receipt of the total license fee which is established pursuant to

1 Section 6723, shall issue a license to sell nursery stock for the
2 appropriate period as established pursuant to Section 6724 to any
3 person that sells or seeks to sell plants, as defined in Section 5007,
4 for planting, propagation, or ornamentation. Plants for
5 ornamentation shall include cut flowers and cut greens. The
6 applicant shall further satisfy the secretary of his or her character
7 and good faith in seeking to carry on the business of selling nursery
8 stock.

9 SEC. 3. Section 6727 of the Food and Agricultural Code is
10 amended to read:

11 6727. No restoration fee is required of a person whose
12 application for renewal of a license is accompanied by his or her
13 signed statement that the licensee did not sell nursery stock during
14 the time the license was lapsed and for which the licensee is
15 applying for renewal. The secretary also may accept, at his or her
16 discretion, the licensee's affidavit that the minimum license fee
17 was not paid within the time limits specified in Section 6724 for
18 reasons beyond the licensee's control.

19 SEC. 4. Section 6728 of the Food and Agricultural Code is
20 amended to read:

21 6728. The secretary shall not refund more than 25 percent of
22 the minimum license fee to any person who applies for a license
23 to sell nursery stock and who later decides not to engage in the
24 sale of nursery stock. No portion of the minimum license fee shall
25 be refunded to any person who is denied a license pursuant to
26 Section 6761.

27 SEC. 5. Section 6761 of the Food and Agricultural Code is
28 amended to read:

29 6761. The secretary, after investigation and hearing, may refuse
30 to issue or renew a license, or may suspend or revoke a license, if
31 he or she determines that the licensee or the applicant has done
32 any of the following:

33 (a) Willfully refused to comply with the laws and regulations
34 relative to nursery stock or to any pest which might be carried by
35 nursery stock.

36 (b) Intentionally committed fraud or deception in the
37 procurement of the license.

38 (c) Been found guilty of fraud or misrepresentation in the
39 handling or sale of nursery stock.

1 (d) Failed to maintain nursery stock produced or sold by him
2 or her in accordance with the standards of cleanliness that are
3 prescribed by the secretary.

4 (e) Failed to comply with any lawful order that is issued by the
5 secretary or commissioner.

6 SEC. 6. Section 6901 of the Food and Agricultural Code is
7 amended to read:

8 6901. The secretary by regulation shall provide for periodic
9 inspections of nurseries and ~~may~~ *shall* prescribe standards of
10 cleanliness for nursery stock that is produced or sold within the
11 state.

12 SEC. 7. Section 6902 of the Food and Agricultural Code is
13 amended to read:

14 6902. The standards of cleanliness shall do, but not be limited
15 to, the following:

16 (a) Provide that all nursery stock shall be kept free from pests
17 of limited distribution or pests that are not known to be established
18 in this state and commercially clean in respect to established pests
19 of general distribution.

20 (b) Prescribe methods of treatment of various types of nursery
21 stock for control of pests.

22 (c) Require isolation of infested or infected nursery stock
23 pending treatment or other disposal.

24 (d) Make other provisions as are reasonably necessary to ensure
25 the relative freedom from pests of all nursery stock that is produced
26 or sold within the state.

27 SEC. 8. Section 6903 of the Food and Agricultural Code is
28 amended to read:

29 6903. The commissioner shall inspect all nurseries within his
30 or her jurisdiction when and as required by the regulations of the
31 secretary.

32 SEC. 9. Section 6904 of the Food and Agricultural Code is
33 amended to read:

34 6904. The commissioner shall issue orders as may reasonably
35 be necessary to ensure compliance with the standards of
36 cleanliness.

37 Any interested person, upon request, is entitled to a hearing
38 before the secretary to review any order issued by a commissioner
39 pursuant to this section.

1 SEC. 10. Section 6921 of the Food and Agricultural Code is
2 amended to read:

3 6921. It is unlawful for any person to ship, or cause to be
4 shipped, any nursery stock from one county or locality of the state
5 to another county or locality within the state unless he or she has
6 marked upon the nursery stock, in a conspicuous manner and place,
7 both of the following:

8 (a) The name and address of the shipper, owner, or person that
9 is forwarding the nursery stock.

10 (b) The name of the person, or his or her agent, to whom the
11 nursery stock is forwarded.

12 SEC. 11. Section 6922 of the Food and Agricultural Code is
13 amended to read:

14 6922. Except as otherwise provided in Sections 6502, 6504,
15 6505, 6506, and 6924, it is unlawful for a person to sell, deliver,
16 or transport nursery stock from one county to another county within
17 the state unless he or she has affixed to the nursery stock in a
18 conspicuous place one of the following, which is issued by the
19 commissioner of the county of origin:

20 (a) A shipping permit that warns that inspection at destination
21 is required.

22 (b) A valid nursery stock certificate.

23 SEC. 12. Section 6923 of the Food and Agricultural Code is
24 amended to read:

25 6923. Except as otherwise provided in Section 6502 or 6506,
26 it is unlawful for a person to sell, deliver, or transport from one
27 locality to another locality within the same county nursery stock
28 that the commissioner considers and designates to be liable to be
29 infested with any pest, unless he or she has affixed to the nursery
30 stock in a conspicuous place one of the following:

31 (a) A shipping permit that warns that inspection at destination
32 is required.

33 (b) A valid nursery stock certificate issued by the commissioner
34 of the county, which gives notice that inspection at destination is
35 not required.

36 SEC. 13. Section 6925 of the Food and Agricultural Code is
37 amended to read:

38 6925. It is unlawful for a person to move nursery stock from
39 one locality to another locality within the same county under
40 conditions provided in Section 6926, or from one county to another

1 county within the state, except nursery stock that is accompanied
2 by a valid nursery stock certificate, unless the person forwards,
3 prior to the time of shipment, to the commissioner who has
4 jurisdiction at the destination, a manifest stating all of the
5 following:

6 (a) Name and address of the shipper.

7 (b) Name and address of the person to whom the shipment is
8 being forwarded.

9 (c) Name and quantity of each kind of plant contained in the
10 shipment.

11 (d) Name of the locality where each kind of nursery stock was
12 grown.

13 (e) Name of the carrier by which the shipment is being
14 transported, whether by freight, express, mail, truck, boat, airplane,
15 or otherwise.

16 The requirement for a manifest does not apply to the shipment
17 of seeds.

18 SEC. 14. Section 6961 of the Food and Agricultural Code is
19 amended to read:

20 6961. The secretary may issue regulations that will govern the
21 issuance and form of nursery stock certificates and shipping permits
22 and their use on shipments of nursery stock, to ensure the relative
23 freedom from pests of all nursery stock that is produced or sold
24 within the state, and which will evidence compliance with the
25 following:

26 (a) The inspections and standards of cleanliness in Article 1
27 (commencing with Section 6901).

28 (b) The nursery stock grades and standards in Chapter 5
29 (commencing with Section 53301) of Division 18.

30 (c) Any other law, or lawful order that is issued by the secretary
31 or the commissioner, relating to the production or sale of nursery
32 stock within the state, or any shipment thereof except where a
33 specific certificate or permit is required by a quarantine regulation
34 that is issued pursuant to Section 5301, 5302, or 5322.

35 SEC. 15. Section 6968 of the Food and Agricultural Code is
36 amended to read:

37 6968. The commissioner shall revoke or suspend the right to
38 use a nursery stock certificate or shipping permit that is issued to
39 a person that fails to comply with the provisions of this chapter,

1 Chapter 5 (commencing with Section 53301) of Division 18, or
2 any regulation issued pursuant thereto.
3 SEC. 16. No reimbursement is required by this act pursuant to
4 Section 6 of Article XIII B of the California Constitution because
5 the only costs that may be incurred by a local agency or school
6 district will be incurred because this act creates a new crime or
7 infraction, eliminates a crime or infraction, or changes the penalty
8 for a crime or infraction, within the meaning of Section 17556 of
9 the Government Code, or changes the definition of a crime within
10 the meaning of Section 6 of Article XIII B of the California
11 Constitution.