

ASSEMBLY BILL

No. 689

Introduced by Assembly Member Dodd

February 25, 2015

An act to amend Sections 27581.2 and 27581.4 of, and to add Sections 27583, 27584, and 27585 to, the Food and Agricultural Code, relating to eggs.

LEGISLATIVE COUNSEL'S DIGEST

AB 689, as introduced, Dodd. Marketing of eggs: violations: civil actions: civil penalties.

Existing law establishes a regulatory scheme for the marketing of shell eggs, and requires egg producers and egg handlers to register with the Secretary of Food and Agriculture. A violation of those provisions or regulations adopted pursuant to those provisions is unlawful, and for certain violations, punishable as a misdemeanor. Existing law also authorizes the secretary, in lieu of seeking prosecution for the violation, to bring a civil action for up to \$1,000 for the violation.

This bill would increase that amount to \$10,000. The bill would also authorize a county agricultural commissioner, in lieu of prosecution, to levy a civil penalty of up to \$10,000 for a violation of those provisions. The bill would set forth notice and other procedural requirements for bringing and resolving an action pursuant to those provisions, and would require the funds recovered by the county agricultural commissioner to be deposited in the county's general fund.

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 27581.2 of the Food and Agricultural
2 Code is amended to read:

3 27581.2. (a) In lieu of seeking prosecution of any violation
4 of this chapter, or the regulations adopted pursuant to this chapter,
5 as a misdemeanor pursuant to Section 27671, the ~~director~~ *secretary*
6 may bring a civil action pursuant to Sections 27581 and 27581.4.

7 (b) *The person charged with the violation shall be notified of*
8 *the proposed action. The notice shall include the nature of the*
9 *violation, the amount of the proposed penalty, the right to request*
10 *a hearing to appeal the civil action, and the right to judicial review*
11 *of the decision within 30 days of the date of the decision, pursuant*
12 *to Section 1094.5 of the Code of Civil Procedure.*

13 (c) *The secretary shall send a copy of the notice of the proposed*
14 *action to the commissioner of the county in which the violation*
15 *took place at the same time notice is sent pursuant to subdivision*
16 *(b). Additionally, the secretary shall inform the commissioner of*
17 *the county in which the action was initiated of violations for which*
18 *a penalty has been assessed.*

19 SEC. 2. Section 27581.4 of the Food and Agricultural Code is
20 amended to read:

21 27581.4. (a) The ~~director~~ *secretary, or a commissioner for*
22 *violations in his or her county, may bring a civil action against*
23 *any person who violates this chapter or any regulation adopted*
24 *pursuant to this chapter, and any person who commits that violation*
25 *is liable civilly in an amount not to exceed ~~one~~ ten thousand dollars*
26 *(~~\$1,000~~); (\$10,000).*

27 (b) *Any money recovered by the secretary under this section*
28 *shall be deposited in the Department of Food and Agriculture Fund*
29 *for use by the department in administering this chapter, when*
30 *appropriated to the department for that purpose.*

31 (c) *Any money recovered by a county agricultural commissioner*
32 *under this section shall be deposited in the county's general fund.*

33 SEC. 3. Section 27583 is added to the Food and Agricultural
34 Code, to read:

35 27583. (a) In lieu of prosecution, the commissioner may levy
36 a civil penalty against a person who violates this chapter or any
37 regulation implemented pursuant to this chapter.

1 (b) “Person,” as used in this section, means anyone engaged in
2 the business of producing, candling, grading, packing, or otherwise
3 preparing shell eggs for market or who engages in the operation
4 of selling or marketing eggs that he or she has produced, purchased,
5 or acquired from a producer, or which he or she is marketing on
6 behalf of a producer, whether as owner, agent, employee, or
7 otherwise pursuant to this chapter.

8 (c) (1) Before a civil penalty is levied, the person charged with
9 the violation shall receive written notice of the proposed action
10 including the nature of the violation and the amount of the proposed
11 penalty. The person shall have the right to request a hearing within
12 20 days after receiving notice of the proposed action. A notice that
13 is sent by certified mail to the last known address of the person
14 charged shall be considered received even if delivery is refused
15 or if the notice is not accepted at that address. If a hearing is
16 requested, notice of the time and place of the hearing shall be given
17 at least 10 days before the date set for the hearing. At the hearing,
18 the person shall be given an opportunity to review the
19 commissioner’s evidence and to present evidence on his or her
20 own behalf. If a hearing is not timely requested, the commissioner
21 may take the action proposed without a hearing.

22 (2) The commissioner shall send a copy of the notice of the
23 proposed action to the secretary at the same time notice is sent to
24 the person charged with the violation.

25 (d) If the person, upon whom the commissioner levied a civil
26 penalty, requested and appeared at a hearing, the person may appeal
27 the commissioner’s decision to the secretary within 30 days of the
28 date of receiving a copy of the commissioner’s decision. The
29 following procedures apply to the appeal:

30 (1) The appeal shall be in writing and signed by the appellant
31 or his or her authorized agent, states the grounds for the appeal,
32 and includes a copy of the commissioner’s decision. The appellant
33 shall file a copy of the appeal with the commissioner at the same
34 time it is filed with the secretary.

35 (2) The appellant and the commissioner, at the time of filing
36 the appeal or within 10 days thereafter or at a later time prescribed
37 by the secretary, may present the record of the hearing and a written
38 argument to the secretary stating the ground for affirming,
39 modifying, or reversing the commissioner’s decision.

1 (3) The secretary may grant oral arguments upon application
2 made at the time written arguments are filed.

3 (4) If an application to present an oral argument is granted,
4 written notice of the time and place for the oral argument shall be
5 given at least 10 days before the date set for oral argument. The
6 times may be altered by mutual agreement of the appellant, the
7 commissioner, and the secretary.

8 (5) The secretary shall decide the appeal on the record of the
9 hearing, including the written evidence and the written argument
10 described in paragraph (2), that he or she has received. If the
11 secretary finds substantial evidence in the record to support the
12 commissioner's decision, the secretary shall affirm the decision.

13 (6) The secretary shall render a written decision within 45 days
14 of the date of appeal or within 15 days of the date of oral arguments
15 or as soon thereafter as practical.

16 (7) On an appeal pursuant to this section, the secretary may
17 affirm the commissioner's decision, modify the commissioner's
18 decision by reducing or increasing the amount of the penalty levied
19 so that it is within the secretary's guidelines for imposing civil
20 penalties, or reverse the commissioner's decision. Any civil penalty
21 increased by the secretary shall not be higher than that proposed
22 in the commissioner's notice of proposed action given pursuant
23 to subdivision (c). A copy of the secretary's decision shall be
24 delivered or mailed to the appellant and the commissioner.

25 (8) Any person who does not request a hearing with the
26 commissioner pursuant to a penalty assessed under subdivision
27 (c) may not file an appeal to the secretary pursuant to this
28 subdivision.

29 (9) Review of a decision of the secretary may be sought by the
30 appellant within 30 days of the date of the decision pursuant to
31 Section 1094.5 of the Code of Civil Procedure.

32 (e) After the exhaustion of the appeal and review of procedures
33 provided in this section, the commissioner, or his or her
34 representative, may file a certified copy of a final decision of the
35 commissioner that directs the payment of a civil penalty, and, if
36 applicable, a copy of any decision of the secretary, or his or her
37 authorized representative, rendered on an appeal from the
38 commissioner's decision and a copy of any order that denies a
39 petition for a writ of administrative mandamus, with the clerk of
40 the superior court of any county. Judgment shall be entered

1 immediately by the clerk in conformity with the decision or order.
2 No fees shall be charged by the clerk of the superior court for the
3 performance of any official service required in connection with
4 the entry of judgment pursuant to this section.

5 (f) If the person fails to pay the penalty and fails to timely file
6 a written appeal, the commissioner may take the action described
7 in subdivision (e).

8 (g) In addition to the civil penalties, the appellant may be
9 required to cover the cost of the administrative hearing unless the
10 decision of the secretary or commissioner is overturned.

11 (h) Revenues from civil penalties levied by the commissioner
12 shall be deposited in the general fund of the county and, upon
13 appropriation by the board of supervisors, shall be used by the
14 commissioner to carry out his or her responsibilities under this
15 chapter. The commissioner shall inform the secretary of any
16 violations for which a penalty has been assessed.

17 SEC. 4. Section 27584 is added to the Food and Agricultural
18 Code, to read:

19 27584. If a respondent in an administrative action agrees to
20 stipulate to the notice of proposed action, a signed stipulation with
21 the payment of the proposed administrative penalty shall be
22 returned to the commissioner or secretary, as applicable, within
23 45 days of the postmark of the notice of the proposed action. If
24 the stipulation and payment of the proposed administrative penalty
25 are not received within 45 days, the commissioner or the secretary
26 may file a certified copy of a final decision that directs the payment
27 of a civil penalty with the clerk of the superior court of any county.
28 Judgement shall be entered immediately by the clerk in conformity
29 with the decision. No fees shall be charged by the clerk of the
30 superior court for the performance of any official service required
31 in connection with the entry of judgment pursuant to this section.

32 SEC. 5. Section 27585 is added to the Food and Agricultural
33 Code, to read:

34 27585. If an administrative hearing is requested pursuant to
35 Section 27581.2 or 27583, a final decision and order shall be made
36 by either the secretary or commissioner, as applicable, within 60
37 days of the conclusion of the hearing. The order shall be mailed

- 1 to the respondent, and any penalty imposed shall be due and
- 2 payable within 45 days of the postmark of the order.

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