

AMENDED IN SENATE JUNE 23, 2015

AMENDED IN SENATE MAY 18, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 689**

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**Introduced by Assembly Member Dodd**

February 25, 2015

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An act to amend Section 27581.4 of, and to add Sections 27561.5, 27581.1, 27583, 27583.2, 27583.4, 27584, and 27585 to, the Food and Agricultural Code, relating to eggs.

LEGISLATIVE COUNSEL'S DIGEST

AB 689, as amended, Dodd. Marketing of eggs: violations: *administrative and 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 *authorize the department to refuse to issue, or to suspend or revoke, an egg handler or egg producer certificate of registration under certain circumstances and would require the department to adopt regulations to establish procedures for an appeals process to contest the refusal to issue a certificate of registration or the department's suspension or revocation of a certificate of registration.* The bill would increase ~~that~~ the civil penalty amount to \$10,000 and would also authorize a county agricultural commissioner to bring a civil

action. The bill would also authorize the secretary or a county agricultural commissioner, in lieu of prosecution, to levy an administrative penalty of up to \$10,000 for a violation of those provisions. The bill would require the secretary, on or before ~~July 1, 2016~~, *January 1, 2017*, to adopt regulations classifying violations of these egg provisions as either “minor,” “moderate,” or “serious,” with different penalty ranges applicable to each classification, as specified, and would apply these amounts to both civil ~~liability~~ penalties and administrative penalties. The bill would set forth notice and other procedural requirements for bringing and resolving an administrative 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~~ *fund, and funds collected by the secretary to be deposited into the Department of Food and Agriculture Fund for use by the department in administering these provisions, when appropriated to the department for that purpose.*

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 27561.5 is added to the Food and  
 2     Agricultural Code, to read:  
 3     27561.5. (a) The department may refuse to issue, or may  
 4     suspend or revoke, a certificate of registration if either of the  
 5     following occur:  
 6         (1) The applicant fails to pay in full by the due date a fine, fee,  
 7         assessment, or penalty levied by the department for a violation of  
 8         this chapter, including a violation that occurred before January  
 9         1, 2016.  
 10        (2) The applicant has violated a provision of this chapter or  
 11        any regulation adopted to implement this chapter.  
 12     (b) The department may reverse its refusal to issue or its  
 13     suspension or revocation of a certificate of registration if the  
 14     department finds substantial grounds to do so.  
 15     (c) (1) The department shall adopt regulations that do both of  
 16     the following:  
 17         (A) Establish procedures for an appeals process, including a  
 18         noticed hearing, for a person who wishes to contest the  
 19         department’s refusal to issue a certificate of registration or the

1 *department's suspension or revocation of a certificate of*  
2 *registration.*

3 (B) *Specify the maximum time period following the refusal to*  
4 *issue, suspension, or revocation of a certificate of registration*  
5 *during which the applicant shall not reapply for another egg*  
6 *handler or egg producer certificate of registration. The time period*  
7 *shall be based on the severity or number of violations of this*  
8 *chapter, and shall not exceed three years from the date of the*  
9 *original refusal to issue, suspension, or revocation of the certificate*  
10 *of registration.*

11 (2) *Regulations adopted pursuant to this section shall not be*  
12 *subject to Chapter 3.5 (commencing with Section 11340) of Part*  
13 *1 of Division 3 of Title 2 of the Government Code.*

14 ~~SECTION 1.~~

15 *SEC. 2.* Section 27581.1 is added to the Food and Agricultural  
16 Code, to read:

17 27581.1. (a) On or before ~~July 1, 2016,~~ *January 1, 2017*, the  
18 secretary shall adopt regulations classifying ~~certain~~ violations of  
19 this chapter, or any regulation adopted pursuant to this chapter, as  
20 "minor," subject to a penalty from fifty dollars (\$50) to four  
21 hundred dollars (\$400), inclusive, ~~certain violations as~~ "moderate,"  
22 subject to a penalty from four hundred one dollars (\$401) to one  
23 thousand dollars (\$1,000), inclusive, ~~and certain violations as or~~  
24 "serious," subject to a penalty from one thousand one dollars  
25 (\$1,001) to ten thousand dollars (\$10,000), inclusive.

26 (b) The penalty schedule described in this section shall apply  
27 to civil ~~liability~~ penalties imposed pursuant to Section 27581.4  
28 and administrative penalties imposed pursuant to Section 27583.

29 (c) *The department shall post on its Internet Web site when the*  
30 *penalty schedule described in this section has been adopted.*

31 ~~SEC. 2.~~

32 *SEC. 3.* Section 27581.4 of the Food and Agricultural Code is  
33 amended to read:

34 27581.4. (a) The secretary, or a commissioner for violations  
35 in his or her county, may bring a civil action against any person  
36 who violates this chapter or any regulation adopted pursuant to  
37 this chapter, and any person who commits that violation is liable  
38 civilly in an amount not to exceed ten thousand dollars (\$10,000).  
39 The court shall set the civil ~~liability~~ *penalty* imposed ~~on a violator~~  
40 *for a violation* of this chapter, or any regulation adopted pursuant

1 to this chapter, in accordance with the penalty schedule adopted  
2 by the secretary pursuant to Section 27581.1.

3 (b) Any money recovered by the secretary under this section  
4 shall be deposited in the Department of Food and Agriculture Fund  
5 for use by the department in administering this chapter, when  
6 appropriated to the department for that purpose.

7 (c) Any money recovered by a commissioner under this section  
8 shall be deposited in the county's general fund.

9 ~~SEC. 3.~~

10 *SEC. 4.* Section 27583 is added to the Food and Agricultural  
11 Code, to read:

12 27583. (a) In lieu of prosecution, the secretary or the  
13 commissioner may levy an administrative penalty, in an amount  
14 not to exceed ten thousand dollars (\$10,000) and in accordance  
15 with Section 27583.2 or Section 27583.4, as applicable, against a  
16 person who violates this chapter or any regulation implemented  
17 pursuant to this chapter. ~~An administrative penalty levied pursuant~~  
18 ~~to this section shall be set in accordance with the penalty schedule~~  
19 ~~adopted by the secretary pursuant to Section 27581.1. Commencing~~  
20 ~~on the date the department posts notice of the adoption of the~~  
21 ~~penalty schedule described in Section 27581.1, a penalty levied~~  
22 ~~pursuant to this section shall be in accordance with that schedule.~~

23 (b) "Person," as used in this section, means anyone engaged in  
24 the business of producing, candling, grading, packing, or otherwise  
25 preparing shell eggs for market or who engages in the operation  
26 of selling or marketing eggs that he or she has produced, purchased,  
27 or acquired from a producer, or which he or she is marketing on  
28 behalf of a producer, whether as owner, agent, employee, or  
29 otherwise pursuant to this chapter.

30 ~~SEC. 4.~~

31 *SEC. 5.* Section 27583.2 is added to the Food and Agricultural  
32 Code, to read:

33 27583.2. If the secretary levies an administrative penalty  
34 pursuant to Section 27583, the following provisions shall apply:

35 (a) The person charged with the violation shall be notified of  
36 the proposed action *in accordance with subdivision (b)*. The notice  
37 shall include the nature of the violation, the amount of the proposed  
38 administrative penalty, *and* the right to request a hearing to appeal  
39 the administrative action, ~~and the right to judicial review of the~~

1 ~~decision within 30 days of the date of the decision, pursuant to~~  
2 ~~Section 1094.5 of the Code of Civil Procedure.~~ *action.*

3 *(b) (1) Notice shall be sent by certified mail to one of the*  
4 *following:*

5 *(A) The address of the person charged, as provided by any*  
6 *license or registration issued by the department, which is not*  
7 *limited to a certificate of registration issued pursuant to this*  
8 *chapter.*

9 *(B) The address of an agent for service of process for the person*  
10 *charged, as filed with the Secretary of State.*

11 *(C) If an address described in subparagraph (A) or (B) is not*  
12 *available, the last known address of the person charged.*

13 *(2) Notice that is sent to any of the addresses described in*  
14 *paragraph (1) shall be considered received, even if delivery is*  
15 *refused or if the notice is not accepted at that address.*

16 *(3) The person charged shall have the right to appeal the*  
17 *proposed action by requesting a hearing within 20 days of the*  
18 *issuance of the notice of the proposed action.*

19 *(c) If a hearing is requested, the secretary shall schedule a*  
20 *hearing within 45 days of the request, with notice of the time and*  
21 *place of the hearing given at least 10 days before the date of the*  
22 *hearing. At the hearing, the person charged shall be given an*  
23 *opportunity to review the secretary's evidence and to present*  
24 *evidence on his or her own behalf. If a hearing is not timely*  
25 *requested, the secretary may take the proposed action without a*  
26 *hearing.*

27 *(d) The secretary shall issue a decision within 30 days of the*  
28 *conclusion of the hearing, which shall become effective*  
29 *immediately.*

30 ~~(b)~~

31 *(e) The secretary shall send a copy of the notice of the proposed*  
32 *action to the commissioner of the county in which the violation*  
33 *took place at the same time notice is sent pursuant to subdivision*  
34 ~~(a)-(b)~~. *Additionally, the secretary shall inform the commissioner*  
35 *of the county in which the action was initiated of violations for*  
36 *which a penalty has been assessed.*

37 *(f) If the proposed action is not overturned, in addition to the*  
38 *levy of an administrative penalty, the secretary may recover from*  
39 *the person charged any other reasonable costs incurred by the*

1 *department in connection with administering the hearing to appeal*  
2 *the proposed action.*

3 *(g) Revenues collected by the secretary pursuant to this section*  
4 *shall be deposited into the Department of Food and Agriculture*  
5 *Fund for use by the department in administering this chapter, when*  
6 *appropriated to the department for that purpose.*

7 ~~SEC. 5.~~

8 *SEC. 6.* Section 27583.4 is added to the Food and Agricultural  
9 Code, to read:

10 27583.4. If a commissioner levies an administrative penalty  
11 pursuant to Section 27583, the following ~~provisions~~ shall apply:

12 (a) (1) Before an administrative penalty is levied, the person  
13 charged with the violation shall receive written notice of the  
14 proposed action ~~including in accordance with paragraph (2). The~~  
15 ~~notice shall include the nature of the violation and violation, the~~  
16 ~~amount of the proposed penalty penalty, and the right to request~~  
17 ~~a hearing to appeal the administrative action.~~ The person shall  
18 have the right to request a hearing within 20 days after receiving  
19 notice of the proposed action. ~~A notice that is sent by certified~~  
20 ~~mail to the last known address of the person charged shall be~~  
21 ~~considered received even if delivery is refused or if the notice is~~  
22 ~~not accepted at that address. If a hearing is requested, notice of the~~  
23 ~~time and place of the hearing shall be given at least 10 days before~~  
24 ~~the date set for the hearing. At the hearing, the person shall be~~  
25 ~~given an opportunity to review the commissioner's evidence and~~  
26 ~~to present evidence on his or her own behalf. If a hearing is not~~  
27 ~~timely requested, the commissioner may take the action proposed~~  
28 ~~without a hearing.~~

29 (2) (A) *Notice shall be sent by certified mail to one of the*  
30 *following:*

31 *(i) The address of the person charged, as provided by any license*  
32 *or registration issued by the department, which is not limited to a*  
33 *certificate of registration issued pursuant to this chapter.*

34 *(ii) The address of an agent for service of process for the person*  
35 *charged, as filed with the Secretary of State.*

36 *(iii) If an address described in clause (i) or (ii) is not available,*  
37 *the last known address of the person charged.*

38 *(B) Notice that is sent to any of the addresses described in*  
39 *subparagraph (A) shall be considered received, even if delivery*  
40 *is refused or if the notice is not accepted at that address.*

1 (C) *The person charged shall have the right to appeal the*  
2 *proposed action by requesting a hearing within 20 days of the*  
3 *issuance of the notice of the proposed action.*

4 (3) *If a hearing is requested, the commissioner shall schedule*  
5 *a hearing within 45 days of the request, with notice of the time*  
6 *and place of the hearing given at least 10 days before the date of*  
7 *the hearing. At the hearing, the person charged shall be given an*  
8 *opportunity to review the commissioner's evidence and to present*  
9 *evidence on his or her own behalf. If a hearing is not timely*  
10 *requested, the commissioner may take the proposed action without*  
11 *a hearing. If the person charged, or his or her legal representative,*  
12 *fails to appear, the commissioner shall prevail in the proceedings.*

13 (4) *The commissioner shall issue a decision within 30 days of*  
14 *the conclusion of the hearing, which shall become effective*  
15 *immediately.*

16 (2)

17 (5) *The commissioner shall send a copy of the notice of the*  
18 *proposed action to the secretary at the same time notice is sent to*  
19 *the person charged with the violation.*

20 (b) *If the person, upon whom the commissioner levied an*  
21 *administrative penalty, requested and appeared at a hearing, the*  
22 *person may appeal the commissioner's decision to the secretary*  
23 *within 30 days of the date of receiving a copy of the*  
24 *commissioner's decision. The following procedures apply to the*  
25 *appeal:*

26 (1) *The appeal shall be in writing and signed by the appellant*  
27 *or his or her authorized agent, state the grounds for the appeal, and*  
28 *include a copy of the commissioner's decision. The appellant shall*  
29 *file a copy of the appeal with the commissioner at the same time*  
30 *it is filed with the secretary.*

31 (2) *The appellant and the commissioner, at the time of filing*  
32 *the appeal, within 10 days thereafter, or at a later time prescribed*  
33 *by the secretary, may present the record of the hearing and a written*  
34 *argument to the secretary stating the ground for affirming,*  
35 *modifying, or reversing the commissioner's decision.*

36 (3) *The secretary may grant oral arguments upon application*  
37 *made at the time written arguments are filed.*

38 (4) *If an application to present an oral argument is granted,*  
39 *written notice of the time and place for the oral argument shall be*  
40 *given at least 10 days before the date set for oral argument. The*

1 times may be altered by mutual agreement of the appellant, the  
2 commissioner, and the secretary.

3 (5) The secretary shall decide the appeal on the record of the  
4 hearing, including the written evidence and the written argument  
5 described in paragraph (2), that he or she has received. If the  
6 secretary finds substantial evidence in the record to support the  
7 commissioner’s decision, the secretary shall affirm the decision.

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

11 (7) On an appeal pursuant to this section, the secretary may  
12 affirm the commissioner’s decision, modify the commissioner’s  
13 decision by reducing or increasing the amount of the penalty levied  
14 so that it is consistent with the penalty schedule described in  
15 Section 27581.1, or reverse the commissioner’s decision. An  
16 administrative penalty increased by the secretary shall not be higher  
17 than that proposed in the commissioner’s notice of proposed action  
18 given pursuant to subdivision (a). A copy of the secretary’s  
19 decision shall be delivered or mailed to the appellant and the  
20 commissioner.

21 (8) Any person who does not request a hearing with the  
22 commissioner pursuant to an administrative penalty assessed under  
23 subdivision (a) shall not file an appeal to the secretary pursuant to  
24 this subdivision.

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

28 ~~(e) After the exhaustion of the appeal and review of procedures  
29 provided in this section, the commissioner, or his or her  
30 representative, may file a certified copy of a final decision of the  
31 commissioner that directs the payment of an administrative penalty,  
32 and, if applicable, a copy of any decision of the secretary, or his  
33 or her authorized representative, rendered on an appeal from the  
34 commissioner’s decision and a copy of any order that denies a  
35 petition for a writ of administrative mandamus, with the clerk of  
36 the superior court of any county. Judgment shall be entered  
37 immediately by the clerk in conformity with the decision or order.  
38 No fees shall be charged by the clerk of the superior court for the  
39 performance of any official service required in connection with  
40 the entry of judgment pursuant to this section.~~

1 ~~(d) If the person fails to pay the administrative penalty and fails~~  
2 ~~to timely file a written appeal, the commissioner may take the~~  
3 ~~action described in subdivision (c).~~

4 ~~(e) In~~

5 *(c) If the proposed action is not overturned, in addition to the*  
6 ~~administrative penalties, the appellant may be required to cover~~  
7 ~~the cost of the administrative hearing unless the decision of the~~  
8 ~~secretary or commissioner is overturned~~ *levy of an administrative*  
9 *penalty, the commissioner may recover from the person charged*  
10 *any other reasonable costs incurred by the commissioner in*  
11 *connection with administering the hearing to appeal the proposed*  
12 *action.*

13 ~~(f)~~

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

20 ~~SEC. 6.~~

21 *SEC. 7.* Section 27584 is added to the Food and Agricultural  
22 Code, to read:

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

37 ~~SEC. 7.~~

38 *SEC. 8.* Section 27585 is added to the Food and Agricultural  
39 Code, to read:

1     ~~27585. If an administrative hearing is requested pursuant to~~  
2     ~~Section 27583.2 or 27583.4, a final decision and order shall be~~  
3     ~~made by either the secretary or commissioner, as applicable, within~~  
4     ~~60 days of the conclusion of the hearing. The order shall be mailed~~  
5     ~~to the respondent, and any penalty imposed shall be due and~~  
6     ~~payable within 45 days of the postmark of the order.~~

7     27585. *After the exhaustion of the appeal and review of*  
8     *procedures provided in this article, the secretary or commissioner,*  
9     *or his or her representative, may file a certified copy of a final*  
10    *decision that directs the payment of an administrative penalty,*  
11    *and, if applicable, a copy of any decision of the secretary, or his*  
12    *or her authorized representative, and a copy of any order that*  
13    *denies a petition for a writ of administrative mandamus, with the*  
14    *clerk of the superior court of any county. Judgment shall be entered*  
15    *immediately by the clerk in conformity with the decision or order.*  
16    *No fees shall be charged by the clerk of the superior court for the*  
17    *performance of any official service required in connection with*  
18    *the entry of judgment pursuant to this section.*