

AMENDED IN ASSEMBLY APRIL 21, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1039

Introduced by Committee on Agriculture

February 26, 2015

~~An act to amend Section 405 of the Food and Agricultural Code, relating to pest control.~~ *An act to amend Section 14651.5 of the Food and Agricultural Code, relating to fertilizing materials.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1039, as amended, Committee on Agriculture. ~~Pest control: biological control organisms.~~ *Fertilizing materials: violations: administrative penalty: filing of final judgment.*

Under existing law, it is unlawful for a person to manufacture or distribute in the state a fertilizing material without complying with specific laws. Existing law requires the Department of Food and Agriculture to levy a civil penalty against a person who violates these laws in an amount of not more than \$5,000 for each violation. Existing law requires a person, against whom a civil penalty is levied, to be afforded an opportunity for a hearing, as provided. Existing law authorizes these penalties to be recovered in a civil action brought in the name of the state.

This bill would change the reference "civil penalty" to "administrative penalty" and would instead authorize the Secretary of Food and Agriculture to file a certified copy of the department's final decision that directs payment of an administrative penalty with the clerk of the superior court of any county that has jurisdiction over the matter. The bill would require the court to enter judgment immediately upon that filing, and at no cost.

~~Existing law authorizes the Department of Food and Agriculture, with the prior approval of the Department of Fish and Wildlife and the State Department of Health Care Services, to reproduce or distribute biological control organisms that are not detrimental to the public health and safety that are known to be useful in reducing or preventing plant or animal damage due to pests or diseases.~~

~~This bill would prohibit the Department of Food and Agriculture from reproducing or distributing biological control organisms that are detrimental to the environment and would require the Department of Food and Agriculture to receive prior approval from the State Department of Public Health instead of the State Department of Health Care Services.~~

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 14651.5 of the Food and Agricultural
- 2 Code is amended to read:
- 3 14651.5. (a) The department shall levy ~~a civil~~ *an administrative*
- 4 penalty against ~~any~~ a person who violates this chapter in an amount
- 5 of not more than five thousand dollars (\$5,000) for each violation.
- 6 The amount of the penalty assessed for each violation shall be
- 7 based upon the nature of the violation, the seriousness of the effect
- 8 of the violation upon the effectuation of the purposes and
- 9 provisions of this chapter, and the impact of the penalty on the
- 10 violation, including the deterrent effect on future violations.
- 11 (b) Upon a finding that the violation is minor or unintentional,
- 12 in lieu of ~~a civil~~ *an administrative* penalty, the secretary may issue
- 13 a notice of warning.
- 14 (c) A person against whom ~~a civil~~ *an administrative* penalty is
- 15 levied shall be afforded an opportunity for a hearing before the
- 16 secretary, upon a request made within 30 days after the date of
- 17 issuance of the notice of penalty. At the hearing, the person shall
- 18 be given the right to present evidence on his or her own behalf. If
- 19 ~~no~~ a hearing is *not* requested, the ~~civil~~ *administrative* penalty shall
- 20 constitute a final and nonreviewable order.
- 21 (d) If a hearing is held, review of the decision of the secretary
- 22 may be sought by the person against whom the ~~civil~~ *administrative*
- 23 penalty is levied within 30 days of the date of the final order of

1 the secretary pursuant to Section 1094.5 of the Code of Civil
2 Procedure.

3 ~~(e) A civil penalty levied by the department pursuant to this~~
4 ~~section may be recovered in a civil action brought in the name of~~
5 ~~the state.~~

6 *(e) After completion of the hearing procedure pursuant to*
7 *subdivision (c), the secretary may file a certified copy of the*
8 *department's final decision that directs payment of an*
9 *administrative penalty, and if applicable, any order denying a*
10 *petition for a writ of administrative mandamus, with the clerk of*
11 *the superior court of any county that has jurisdiction over the*
12 *matter. Judgment shall be entered immediately by the clerk in*
13 *conformity with the decision or order. Fees shall not be charged*
14 *by the clerk of the superior court for performance of any official*
15 *services required in connection with the entry of judgment and the*
16 *satisfaction of the judgment pursuant to this section.*

17 ~~SECTION 1. Section 405 of the Food and Agricultural Code~~
18 ~~is amended to read:~~

19 ~~405. (a) With the prior approval of the Department of Fish~~
20 ~~and Wildlife and the State Department of Public Health, the~~
21 ~~department may reproduce or distribute biological control~~
22 ~~organisms that are not detrimental to the environment or the public~~
23 ~~health and safety that are known to be useful in reducing or~~
24 ~~preventing plant or animal damage due to pests or diseases.~~

25 ~~(b) The department shall not engage in the production of~~
26 ~~beneficial organisms when those organisms are available in~~
27 ~~sufficient amounts for purchase from commercial sources.~~