AMENDED IN SENATE JUNE 27, 1995

AMENDED IN ASSEMBLY APRIL 26, 1995

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL No. 1739

Introduced by Assembly Member Bordonaro

February 24, 1995

An act to amend Sections 5028, 5311, and 6301 of, and to add Section 6301.1 to, the Food and Agricultural Code, relating to agriculture.

LEGISLATIVE COUNSEL'S DIGEST

AB 1739, as amended, Bordonaro. Agriculture: quarantine.

(1) Existing law provides that any person who negligently or intentionally violates any state or federal law or regulation, including any quarantine regulation, by importing any plant, or other article, that, by virtue of being pest or disease infested, causes an infestation of a plant, pest, or disease, or causes an existing infestation to spread beyond any quarantine boundaries, is liable civilly in an amount not to exceed $25,000 for each act that constitutes a violation of the law or regulation.

This bill, in addition, would provide that any person who intentionally violates any state or federal quarantine law or regulation is liable civilly as provided in specified sections of the Food and Agricultural Code and is subject to criminal or civil penalties, or both, pursuant to the existing Unfair

Practices Act. The bill also would specify certain factual findings that would constitute prima facie evidence that a violation of any state or federal quarantine law or regulation is an intentional violation.

(2) Existing provisions of the Food and Agricultural Code specify that, in lieu of specified civil actions, and except as specified, the Secretary of Food and Agriculture or a county agricultural commissioner may levy a civil penalty against a person violating any provision in that code or any regulation adopted pursuant thereto relating to plant quarantine and pest control, not to exceed $500 for each violation.

This bill would increase the above-specified penalty to an amount not to exceed $2,500.

(3) Existing law provides that a person penalized pursuant to (2) above may appeal to the secretary within 10 days of the date of receiving notification of the penalty, as specified.

This bill would apply these provisions to a person penalized by a county agricultural commissioner. In addition, the bill would provide that review of a decision of the secretary to impose a penalty may be sought by the person against whom the penalty was levied within 30 days of the date of the decision, as specified.

(4) Existing law provides that if any article is found to have been transported into this state from any other state, territory, or district of the United States, in violation of any provision of a quarantine that is established by the Secretary of Agriculture of the United States, the article is subject to seizure, destruction, or other disposition to the same extent and in the same manner as if the article had originated in this state and was in violation of provisions of state law regulating plant quarantine and pest control.

This bill also would apply these provisions to any article that is found to have been transported into this state from any other country.

The bill also would require the secretary to adopt, by reference, by regulation, specified federal quarantine regulations and any subsequent amendments, and would provide that civil and criminal penalties applicable to the federal quarantine regulations may be applied by the secretary and other duly authorized plant quarantine officers.

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

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

SECTION 1. Section 5028 of the Food and Agricultural Code is amended to read:

5028. (a) Any person who intentionally violates any state or federal quarantine law or regulation is liable civilly as provided in Sections 5310 and 5311, and subdivision (c) of this section, and is subject to criminal or civil penalties, or both, pursuant to the Unfair Practices Act (Chapter 4 (commencing with Section 17000) of Part 2 of Division 7) of the Business and Professions Code.

(b) Either of the following factual findings shall constitute prima facie evidence that a violation of any state or federal quarantine law or regulation pursuant to subdivision (a) is an intentional violation:

(1) A violation of Section 6401 and possession of a shipment, plant, or thing that is regulated by a state or federal quarantine law or regulation and that has not been inspected and released by a federal, state, or county quarantine official in either of the following circumstances:

(A) The plant or thing is found concealed from view.

(B) The person in possession has been found repeatedly in possession of those plants or things.

(2) A combination of findings showing that a person is in possession of a shipment, plant, or thing that is regulated by a state or federal quarantine law or regulation and that was fraudulently or secretly brought into the state and the person in possession is engaged in a business or other commercial activity where a reasonable expectation exists that the person was aware of the state or federal quarantine laws or regulations.

(c) Any person who negligently or intentionally violates any state or federal law or regulation, including any quarantine regulation, by importing any plant, or other article, that, by virtue of being pest or disease infested, causes an infestation of a plant, pest, or disease,

or causes an existing infestation to spread beyond any quarantine boundaries, is liable civilly in a sum not to exceed twenty-five thousand dollars ($25,000) for each act that constitutes a violation of the law or regulation.

(d) The Attorney General, upon request of the secretary, shall petition the superior court to impose, assess, and recover the sum imposed pursuant to subdivision (c). In determining the amount to be imposed, the court shall take into consideration all relevant circumstances, including, but not limited to, the extent of harm caused by the violation and the nature and persistence of the violation.

(e) The remedy under this section is in addition to, and does not supersede or limit, any and all other remedies, civil or criminal, that are otherwise available to the state.

(f) Any funds recovered pursuant to this section shall be deposited in the Department of Food and Agriculture Fund for emergency pest or disease exclusion, detection, eradication, or research of agricultural plant or animal pests or diseases. These funds may be allocated to cover costs related to the enforcement of this division. These funds are in addition to any funds appropriated for those purposes pursuant to Section 224.

SEC. 2. Section 5311 of the Food and Agricultural Code is amended to read:

5311. (a) In lieu of any civil action pursuant to Section 5310, except as provided in Article 5 (commencing with Section 5781) of Chapter 8, the secretary or the commissioner may levy a civil penalty against a person violating this division or any regulation adopted pursuant to this division in an amount not to exceed two thousand five hundred dollars ($2,500) for each violation.

(b) Before a civil penalty is levied, the person charged with the violation shall receive notice of the nature of the violation and shall be given an opportunity to be heard. This shall include the right to review the evidence and a right to present evidence on his or her own behalf.

(c) A review of the decision of the secretary to impose a penalty may be sought by the person against whom the

penalty was levied within 30 days of the date of the decision pursuant to Section 1094.5 of the Code of Civil Procedure.

(d) The person against whom a civil penalty is levied by a commissioner may appeal to the secretary within 10 days of the date of receiving notification of the penalty, as follows:

(1) The appeal need not be formal, but it shall be in writing and signed by the appellant or his or her authorized agent, and shall state the grounds for the appeal.

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

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

(4) If an application to present an oral argument is granted, written notice of the time and place for the oral argument shall be given at least 10 days prior to the date set therefor. This time requirement may be altered by an agreement between the secretary and the person appealing the penalty.

(5) The secretary shall decide the appeal on any oral or written arguments, briefs, and evidence that he or she has received.

(6) The secretary shall render a written decision within 45 days of the date of appeal or within 15 days of the date of oral arguments.

(7) On an appeal pursuant to this section, the secretary may sustain, modify by reducing the amount of the penalty levied, or reverse the decision. A copy of the secretary's decision shall be delivered or mailed to the appellant and the commissioner who levied the penalty, if this is the case.

(8) Review of the decision of the secretary may be sought by the appellant pursuant to Section 1094.5 of the Code of Civil Procedure.

(e) Any funds recovered by the commissioner pursuant to this section shall be deposited in the county general fund in the county in which the action is brought

and shall be allocated to the commissioner to cover costs related to the enforcement of this division. Any funds recovered by the secretary pursuant to this section shall be deposited in the Department of Food and Agriculture Fund to cover costs related to the enforcement of this division.

SEC. 3. Section 6301 of the Food and Agricultural Code is amended to read:

6301. If any article is found to have been transported into this state from any other country or state, or territory or district of the United States, in violation of any provision of a quarantine that is established by the Secretary of Agriculture of the United States, the article is subject to seizure, destruction, or other disposition to the same extent and in the same manner as if the article had originated in this state and was in violation of a provision of this division.

SEC. 4. Section 6301.1 is added to the Food and Agricultural Code, to read:

6301.1. (a) The secretary shall adopt, by reference, by regulation, those federal quarantine regulations and any subsequent amendments in ~~Part 301~~ *Parts 301 to 369, inclusive,* of Title 7 of the Code of Federal Regulations. Civil and criminal penalties applicable to a violation of those federal quarantine regulations may be imposed by the secretary and other duly authorized plant quarantine officers in conformity with that other law.

(b) Any funds recovered by the commissioner pursuant to this section shall be deposited in the county general fund in the county in which the action is brought and shall be allocated to the commissioner to cover costs related to the enforcement of this division. Any funds recovered by the secretary pursuant to this section shall be deposited in the Department of Food and Agriculture Fund to cover costs related to the enforcement of this division.

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