

Senate Bill No. 1274

Passed the Senate May 24, 1999

Secretary of the Senate

Passed the Assembly August 19, 1999

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 1999, at _____ o'clock ____M.

Private Secretary of the Governor



CHAPTER _____

An act to amend Section 3482.6 of the Civil Code, to amend Sections 19213, 19300, 19302, 19304, 19305, 19306, and 19447 of, and to add Section 19300.5 to, the Food and Agricultural Code, relating to animal rendering.

LEGISLATIVE COUNSEL'S DIGEST

SB 1274, Costa. Animal rendering.

(1) Existing law specifies that no “agricultural processing activity, operation, facility, or appurtenances thereof,” as defined, that are conducted or maintained for commercial purposes, as specified, shall be or become a nuisance, private or public, due to any changed condition in or about the locality after it has been in continuous operation for more than 3 years if it was not a nuisance at the time it began.

This bill would add to that definition of “agricultural processing activity, operation, facility, or appurtenances thereof” rendering plants and collection centers required to be licensed under the provisions of the bill, as specified.

(2) Existing provisions of the Food and Agricultural Code regulate horsemeat and pet food and set forth definitions for this purpose, including “rendering,” which is defined to mean “the conversion of packinghouse waste, dead animal carcasses, and kitchen grease into industrial fats and oils inedible for human consumption and other products inedible for human consumption.”

This bill would redefine the term “rendering” to mean “the recycling, processing, and conversion of animal and fish byproducts and carcasses from the meat, poultry, and seafood industries, as well as used kitchen grease into fats, oils, and proteins that are used primarily as feed in the animal, poultry, and pet food industries.”

(3) Existing law requires every person engaged in the business of rendering to obtain a license from the Secretary of Food and Agriculture for each rendering plant and collection center operated. Existing law also sets forth criminal penalties for violating these and other



related provisions, as specified, regulating horsemeat and pet food.

This bill instead would require every person engaged in the business of rendering to obtain a license from the Department of Food and Agriculture for each rendering plant, and every person engaged in the business of operating a collection center to obtain a license from the department for each collection center operated. The bill would make other related changes. Because the bill would expand the scope of existing crimes, by requiring persons engaged in the business of operating collection centers to be licensed by the department and to come within the provisions of law regulating horsemeat and pet food, the bill would create a state-mandated local program.

(4) Existing law authorizes the Secretary of Food and Agriculture, in lieu of any civil action and in lieu of seeking prosecution, to levy a civil penalty against a person who violates certain of these provisions, or any regulation adopted, in an amount not to exceed \$1,000.

Existing law also specifies that before a civil penalty is levied, the person charged with the violation shall receive notice of the nature of the violation and shall be granted an opportunity to be heard, which shall include the right to review evidence and the right to present evidence on his or her own behalf.

This bill would change this latter provision to delete the provision that the person charged shall be granted the opportunity to be heard, and would provide, instead, that before a civil penalty is levied, the person charged with the violation shall receive notice of the nature of the violation and shall be granted the opportunity to review the department's evidence and to present written argument and evidence to the department as to why the civil penalty should not be imposed or should be reduced. The bill would specify that these provisions do not require the department to conduct either a formal or informal hearing, and that instead the department may dispose of the matter upon review of the documentation presented.



(5) 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.

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

SECTION 1. Section 3482.6 of the Civil Code is amended to read:

3482.6. (a) No agricultural processing activity, operation, facility, or appurtenances thereof, conducted or maintained for commercial purposes, and in a manner consistent with proper and accepted customs and standards, shall be or become a nuisance, private or public, due to any changed condition in or about the locality, after it has been in continuous operation for more than three years if it was not a nuisance at the time it began.

(b) If an agricultural processing activity, operation, facility, or appurtenances thereof substantially increases its activities or operations after January 1, 1993, then a public or private nuisance action may be brought with respect to those increases in activities or operations that have a significant effect on the environment. For increases in activities or operations that have been in effect more than three years, there is a rebuttable presumption affecting the burden of producing evidence that the increase was not substantial.

(c) This section does not supersede any other provision of law, except other provisions of this part, if the agricultural processing activity, operation, facility, or appurtenances thereof, constitute a nuisance, public or private, as specifically defined or described in the provision.

(d) This section prevails over any contrary provision of any ordinance or regulation of any city, county, city and county, or other political subdivision of the state, except regulations adopted pursuant to Section 41700 of the



Health and Safety Code as applied to agricultural processing activities, operations, facilities, or appurtenances thereof that are surrounded by housing or commercial development on January 1, 1993. However, nothing in this section precludes a city, county, city and county, or other political subdivision of this state, acting within its constitutional or statutory authority and not in conflict with other provisions of state law, from adopting an ordinance that allows notification to a prospective homeowner that the dwelling is in close proximity to an agricultural processing activity, operation, facility, or appurtenances thereof and is subject to provisions of this section consistent with Section 1102.6a.

(e) For the purposes of this section, the following definitions apply:

(1) “Agricultural processing activity, operation, facility, or appurtenances thereof” includes, but is not limited to rendering plants licensed pursuant to Section 19300 of the Food and Agricultural Code and collection centers licensed pursuant to Section 19300.5 of the Food and Agricultural Code, the canning or freezing of agricultural products, the processing of dairy products, the production and bottling of beer and wine, the processing of meat and egg products, the drying of fruits and grains, the packing and cooling of fruits and vegetables, and the storage or warehousing of any agricultural products, and includes processing for wholesale or retail markets of agricultural products.

(2) “Continuous operation” means at least 30 days of agricultural processing operations per year.

(3) “Proper and accepted customs and standards” means the compliance with all applicable state and federal statutes and regulations governing the operation of the agricultural processing activity, operation, facility, or appurtenances thereof with respect to the condition or effect alleged to be a nuisance.

(f) This section does not apply to any litigation pending or cause of action accruing prior to January 1, 1993.



SEC. 2. Section 19213 of the Food and Agricultural Code is amended to read:

19213. “Rendering” means the recycling, processing, and conversion of animal and fish byproducts and carcasses from the meat, poultry, and seafood industries, as well as used kitchen grease into fats, oils, and proteins that are used primarily as feed in the animal, poultry, and pet food industries.

SEC. 3. Section 19300 of the Food and Agricultural Code is amended to read:

19300. Every person engaged in the business of rendering shall obtain a license from the department for each rendering plant.

SEC. 4. Section 19300.5 is added to the Food and Agricultural Code, to read:

19300.5. Every person engaged in the business of operating a collection center shall obtain a license from the department for each collection center operated.

SEC. 5. Section 19302 of the Food and Agricultural Code is amended to read:

19302. The department, after notice and hearing, may refuse to issue a license unless the department finds that the applicant satisfies both of the following:

(a) Is properly equipped to engage in the business of rendering or operating a collection center. For these purposes, the department shall consult with the rendering industry to determine the equipment that shall be required.

(b) Has never been convicted of a felony involving adulterated or misbranded food.

SEC. 6. Section 19304 of the Food and Agricultural Code is amended to read:

19304. All records required to be retained pursuant to this chapter shall be maintained at the regular place of business of every renderer and collection center operator licensed pursuant to this article and every transporter registered pursuant to Article 6.5 (commencing with Section 19310). Those records shall be exhibited on demand to any peace officer of this state or any employee of the department.



SEC. 7. Section 19305 of the Food and Agricultural Code is amended to read:

19305. Any peace officer of this state, or any employee of the department, during normal business hours, may inspect any premises maintained by a renderer or collection center operator licensed pursuant to this article or a transporter registered pursuant to Article 6.5 (commencing with Section 19310), and any inedible kitchen grease located on the premises, for the purpose of determining whether that renderer, collection center operator, or transporter is complying with the record maintenance requirements of this article.

SEC. 8. Section 19306 of the Food and Agricultural Code is amended to read:

19306. (a) Any renderer or collection center operator licensed pursuant to this article or transporter registered pursuant to Article 6.5 (commencing with Section 19310) who fails in any respect to keep the written records required by this article, or to set out in that written record any matter required by this article to be set out in the record, is guilty of a misdemeanor.

(b) Every renderer, collection center operator, or transporter who refuses, upon demand of any peace officer of this state or any employee of the department, to exhibit any written record required by this article, or who destroys that record within one year after making the final entry of any information required by this article, is guilty of a misdemeanor.

(c) Any violation of subdivision (b) is punishable as follows:

(1) For a first offense, by a fine of not less than five hundred dollars (\$500), or by imprisonment in a county jail for not more than 30 days, or by both the fine and imprisonment.

(2) For a second offense within a period of one year, by a fine of not less than one thousand dollars (\$1,000), or by imprisonment in a county jail for not more than 30 days, or by both the fine and imprisonment. In addition to any other punishment imposed pursuant to this paragraph, the court may order the defendant to stop



engaging in the business as a renderer, collection center operator, or transporter for a period not to exceed 30 days.

(3) For a third or any subsequent offense within a period of two years, by a fine of not less than two thousand dollars (\$2,000), or by imprisonment in a county jail for not more than six months, or by both the fine and imprisonment. In addition to any other sentence imposed pursuant to this paragraph, the court shall order the defendant to stop engaging in the business as a renderer, collection center operator, or transporter for a period of 30 days.

SEC. 9. Section 19447 of the Food and Agricultural Code is amended to read:

19447. (a) In lieu of any civil action pursuant to Section 19445, and in lieu of seeking prosecution, the secretary may levy a civil penalty against a person who violates Article 6 (commencing with Section 19300), Article 6.5 (commencing with Section 19310), or any regulation adopted pursuant to those articles, in an amount not to exceed one thousand dollars (\$1,000) 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 granted the opportunity to review the department's evidence and, for up to 30 days following the issuance of the notice, the opportunity to present written argument and evidence to the department as to why the civil penalty should not be imposed or should be reduced from the amount specified in the penalty notice. Notwithstanding Chapter 4.5 (commencing with Section 11400) of, and Chapter 5 (commencing with Section 11500) of, Part 1 of Division 3 of Title 2 of the Government Code or any other provision of law, this section does not require the department to conduct either a formal or informal hearing. The department instead may dispose of the matter upon review of the documentation presented.

(c) Any person upon whom a civil penalty is levied may appeal to the secretary within 10 days of the date of receiving notification of the penalty, as follows:



(1) The appeal 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 made.

(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. A copy of the secretary's decision shall be delivered or mailed to the appellant.

(7) The secretary may sustain the decision, modify the decision by reducing the amount of the penalty levied, or reverse the decision.

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

(d) Any penalties levied by the secretary pursuant to this section shall be deposited in the General Fund.

SEC. 10. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.



Approved _____, 1999

Governor

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