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Agriculture

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Agriculture

Agriculture; civil penalties for violation of regulations

Food and Agricultural Code §§ 5311, 53601, 53602, 53603, 53604 (new).

AB 1956 (Kelley); 1989 STAT. Ch. 746

Existing law regulates plant¹ quarantines² and pest³ control.⁴ Under existing law, a violation of plant quarantine or pest control regulations is punishable as an infraction and⁵ by imposition of civil liability up to \$10,000 through an action for civil penalties brought by the Director of the Department of Food and Agriculture.⁶ Under Chapter 746, in lieu of filing a civil action, the Director may assess a civil penalty of up to \$500 against the violator.⁷

Existing law regulates the inspection and grading of field crops,⁸ seeds,⁹ seed potatoes,¹⁰ cotton,¹¹ and nursery stock.¹² Under Chapter 746, a person who violates those regulations is subject to civil liability

1. See CAL. FOOD & AGRIC. CODE § 5007 (West 1986) (definition of plant).

2. See *id.* §§ 5001-5349 (West 1986 & Supp. 1989) (procedures for quarantines).

3. See *id.* § 5006 (West 1986) (definition of pest).

4. *Id.* §§ 5001-8759 (West 1986 & Supp. 1989) (pest control regulations).

5. *Id.* § 5309 (West 1986). The infraction is punishable by a \$75 fine. *Id.* A second or subsequent violation within three years of the first conviction is a misdemeanor. *Id.*

6. *Id.* § 5310(a) (West Supp. 1989). See *id.* §§ 5310(b) (procedure for filing and disposition of civil penalties); 102 (West 1986) (definition of Director of the Department of Food and Agriculture).

7. 1989 Cal. Stat. ch. 746, sec. 1, at ____ (enacting CAL. FOOD & AGRIC. CODE § 5311(a)). Before the penalty is assessed, the alleged violator must be given notice and an opportunity to be heard and present evidence. *Id.* (enacting CAL. FOOD & AGRIC. CODE § 5311(b)). The violator may appeal the penalty by filing an informal written appeal within ten days of being informed of the penalty. *Id.* (enacting CAL. FOOD & AGRIC. CODE § 5311(c)). The violator may provide written evidence or a written argument within ten days after filing the appeal, and, upon the Director's approval, the violator may submit oral arguments. *Id.* After the Director renders a decision on the appeal, the violator may file a writ of review of the Director's decision in court. *Id.* See CAL. CIV. PROC. CODE § 1094.5 (West Supp. 1989) (procedure for court review of administrative orders).

8. CAL. FOOD & AGRIC. CODE §§ 52001-52091 (West 1986). See *id.* § 52001 (definition of field crops).

9. *Id.* §§ 52251-52515 (West 1986 & Supp. 1989). See *id.* §§ 52254, 52256, 52257, 52258-52260 (West 1986) (definitions of seed).

10. *Id.* §§ 52651-52742 (West 1986).

11. *Id.* §§ 52851-52976 (West 1986 & Supp. 1989).

12. *Id.* §§ 53301-53564 (West 1986). See *id.* § 53306 (definition of nursery stock).

of up to \$10,000 per violation.¹³ Chapter 746 provides that the Director of the Department of Food and Agriculture may cause a court action to be filed,¹⁴ or, in the alternative, the director may impose a civil penalty of up to \$500 for each violation.¹⁵

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13. 1989 Cal. Stat. ch. 746, sec. 2, at ____ (enacting CAL. FOOD & AGRIC. CODE § 53601(a)).

14. *Id.* (enacting CAL. FOOD & AGRIC. CODE § 53601(b)). The Director must make a complaint to the attorney general. *Id.* The attorney general may request an injunction in superior court to enjoin the violator for continuing any activities which violate the regulations. *Id.* (enacting CAL. FOOD & AGRIC. CODE § 53601(c)).

15. *Id.* (enacting CAL. FOOD & AGRIC. CODE § 53603(a)). The procedure for levying the fine is the same as for violations of provisions concerning plant quarantines and pest control. 1989 Cal. Stat. ch. 746, sec. 1, at ____ (enacting CAL. FOOD & AGRIC. CODE § 53603(a)). The penalty may only be imposed for violations of certain provisions concerning seeds, seed potatoes, or nursery stock. *Id.* See, e.g., CAL. FOOD & AGRIC. CODE §§ 52351 (registration of seed vendors), 52391 (stop-sale orders to seed vendors), 52741 (inspection of seed potatoes), 52742 (misrepresentation of grade or quality of seed potatoes), 53422 (improper movement of nursery stock) (West 1986).

Agriculture; violation of pesticide and economic poison laws—penalty

Food and Agricultural Code § 12999.4 (new); §§ 12996, 12997, 12999.5 (amended).

AB 1873 (Jones); 1989 STAT. Ch. 843

Sponsor: California Department of Food & Agriculture

Support: California League of Food Processors

Existing law provides a criminal penalty for the intentional and negligent violation of specified pesticide and economic poison¹ laws which creates, or reasonably could create, a hazard to the environment or human health.² Chapter 843 increases the penalty for a negligent violation of these pesticide laws.³

1. See CAL. FOOD & AGRIC. CODE § 12753 (West Supp. 1989) (definition of economic poison).

2. *Id.* § 12996(b) (West 1986) (amended by 1989 Cal. Stat. ch. 843, sec. 1, at ____). A person who intentionally violates any provision of Division 7 of the California Food and Agricultural Code relating to pesticides, or a regulation issued pursuant to Division 7, is guilty of a misdemeanor and may be punished by imprisonment of up to one year, a fine of \$5000 to \$50,000, or both. *Id.* See generally Postell, *Pesticides: How Many Injuries Do They Cause?*, 24 TRIAL 92 (October 1988) (noting that 85,000 cases of pesticide exposure were reported in 1985).

3. 1989 Cal. Stat. ch. 843, sec. 1, at ____ (amending CAL. FOOD & AGRIC. CODE § 12996(b)). The penalty for a negligent violation is the same as for an intentional violation.

In lieu of criminal prosecution for any misdemeanor violation of these pesticide laws, existing law provides that the Director of Food and Agriculture may initiate a civil action against the perpetrator.⁴ Chapter 843 allows the Director, instead of initiating this civil action, to impose a civil penalty of up to \$5000 for each violation.⁵

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Id. Under prior law, a negligent violation which created, or reasonably could have created, a hazard to human health or the environment was a misdemeanor punishable only by a fine of \$500 to \$5000, imprisonment up to six months, or both. CAL. FOOD & AGRIC. CODE § 12996(a) (West Supp. 1989).

4. CAL. FOOD & AGRIC. CODE § 12997 (West 1986). The perpetrator may be civilly liable for up to \$10,000 for each violation, and up to \$25,000 for subsequent violations. *Id.* The civil action is brought by the attorney general upon a complaint by the Director. *Id.* § 12999. *See id.* (allowing an action for civil penalties to be brought by the attorney general's own initiative).

5. 1989 Cal. Stat. ch. 843, sec. 3, at ____ (amending CAL. FOOD & AGRIC. CODE § 12999.4(a)). Before the penalty is levied, the perpetrator must receive notice of the violation and be given an opportunity to be heard, which includes the right to present evidence and to review the Director's evidence. *Id.* (enacting CAL. FOOD & AGRIC. CODE § 12999.4(b)). The decision of the Director may be appealed pursuant to section 1094.5 of the California Code of Civil Procedure relating to the review of administrative decisions. *Id.* (enacting CAL. FOOD & AGRIC. CODE § 12999.4(c)).

