

RESOLUTION 03-04-05

DIGEST

Plant Quarantine Provisions: Enforcement of Civil Penalty Judgments

Amends Food and Agricultural Code section 5311 to provide a method to enforce a civil penalty for violation of plant quarantine laws.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Food and Agricultural Code section 5311 to provide a method to enforce a civil penalty for violation of plant quarantine laws. This resolution should be approved in principle because there currently is no streamlined method of enforcing civil penalties levied by the California Secretary of Agriculture or by County Agricultural Commissioners for the limited (\$2,500 per violation) penalties for violations of plant quarantine laws or regulations contained in Food and Agricultural Code section 5311. The similar laws cited by the proponent do contain such a streamlined method, in language nearly identical to that in the proposed resolution. This amendment adds a needed enforcement method to the code section.

TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of the California Bar Associations recommends that legislation be sponsored to amend Division 4, Plant Quarantine and Pest Control, of the Food and Agricultural Code section 5311 by adding a new subsection (f) to read as follows:

- 1 § 5311
- 2 (a) In lieu of any civil action pursuant to Section 5310, except as provided in Article 5
- 3 (commencing with Section 5781) of Chapter 8, the secretary or the commissioner may levy a civil
- 4 penalty against a person violating this division or any regulation adopted pursuant to this division in
- 5 an amount not to exceed two thousand five hundred dollars (2,500) for each violation.
- 6 (b) Before a civil penalty is levied, the person charged with the violation shall receive notice
- 7 of the nature of the violation and shall be given an opportunity to be heard. This shall include the
- 8 right to review the evidence and a right to present evidence on his or her own behalf.
- 9 (c) A review of the decision of the secretary to impose a penalty may be sought by the
- 10 person against whom a civil penalty was levied within 30 days of the date of the decision pursuant to
- 11 Section 1094.5 of the Code of Civil Procedure.
- 12 (d) The person against whom a civil penalty is levied by a commissioner may appeal to the
- 13 secretary within 10 days of the date of receiving notification of the penalty, as follows:
- 14 (1) The appeal need not be formal, but it shall be in writing and signed by the appellant or his
- 15 or her authorized agent, and shall state the grounds for the appeal.
- 16 (2) Any party, at the time of filing the appeal or within 10 days thereafter, may present written
- 17 evidence and a written argument to the secretary.
- 18 (3) The secretary may grant oral arguments upon application made at the time written
- 19 arguments are filed.
- 20 (4) If an application to present an oral argument is granted, written notice of the time and
- 21 place for the oral argument shall be given at least 10 days prior to the date set therefore. This time
- 22 requirement may be altered by an agreement between the secretary and the person appealing the
- 23 penalty.
- 24 (5) The secretary shall decide the appeal on any oral or written arguments, briefs, and
- 25 evidence that he or she has received.
- 26 (6) The secretary shall render a written decision within 45 days of the date of appeal or

27 within 15 days of the date of oral arguments.

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

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

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

38 (f) After the exhaustion of the appeal and review procedures provided in this section, the
39 commissioner or his or her representative may file a certified copy of a final decision of the
40 commissioner that directs the payment of a civil penalty and if applicable, a copy of any decision of
41 the secretary or his or her representative rendered on an appeal from the commissioner's decision
42 and a copy of any order that denies a petition for a writ of administrative mandamus, with the clerk of
43 the superior court of any county. Judgment shall be entered immediately by the clerk in conformity
44 with the decision or order. No fees shall be charged by the clerk of the superior court for the
45 performance of any official service required in connection with the entry of judgment pursuant to this
46 section.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS

Existing Law: Confers upon County Agricultural Commissioners the authority to issue civil penalties for violations of quarantine laws and regulations. However, unlike other civil penalty provisions such as Food and Agriculture Code section 12999.5(f) for violations of pesticide laws and regulations, or Business and Professions Code section 12015.3(d) for violations of weights and measures laws and regulations, there is no provision enabling the Commissioner to enforce the decision by entering the judgment in superior court should the respondent fail to pay the penalty as ordered.

This Resolution: Adds a new subsection (f) which includes language nearly identical to similar civil penalty provisions granting such authority to the Commissioners of Agriculture or the Sealers of Weights and Measures.

The Problem: Without this authority, the Commissioners have very little if any leverage short of going to the District Attorneys for criminal prosecution, or County Counsels to ask Superior Courts for an injunction when respondents fail to pay civil penalties. Once judgment is entered in Superior Court, the Revenue and Recovery Office of the County can proceed to enforce the Commissioner's Decision and Order, and relieve his or her staff of this burden.

IMPACT STATEMENT

This resolution does not affect any other law, statute or rule.

AUTHOR AND/OR PERMANENT CONTACT: Sally Lorang, Department of Agriculture, Weights and Measures, 5555 Overland Avenue, Suite 3101, San Diego, California 92123-1292, voice 858-694-3976, fax 858-505-6422, e-mail: sally.lorang@sdcounty.ca.gov

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