

STATE OF CALIFORNIA

DEPARTMENT OF FOOD AND AGRICULTURE

MARKET ENFORCEMENT BRANCH

CALIFORNIA FOOD AND AGRICULTURAL CODE EXCERPTS

NEW LEGISLATION INCORPORATED  
EFFECTIVE JANUARY 1, 2013

CHAPTER 6  
Processors of Farm Products  
(Chapter 6 enacted by Stats. 1967, Ch. 15.)

## 2013 FOOD AND AGRICULTURAL CODE

### Article 1. Definitions

(Article 1 enacted by Stats. 1967, Ch. 15.)

**55401.** Unless the context otherwise requires, the definitions in this article govern the construction of this chapter.  
(Enacted by Stats. 1967, Ch. 15.)

**55402.** "Agent" means any person that on behalf of any processor contracts for or solicits any farm product from a producer of the farm product, or that negotiates the purchase of any farm product on behalf of any processor.  
(Enacted by Stats. 1967, Ch. 15.)

**55402.3.** "Cash" means coin or currency of the United States, and does not include a check or money order.  
(Added by Stats. 1979, Ch. 871.)

**55402.5.** "Cash buying processor" means any person who is engaged in the business of processing or manufacturing any farm product; who obtains from the producer of any farm product, title to, or possession or control of the farm product; and who buys or agrees to buy any farm product, by cash payment of the full agreed price of such product to the producer at the time of obtaining possession or control or at the time of contracting for title to, or possession or control of any farm product.  
(Added by Stats. 1979, Ch. 871.)

**55403.** "Farm product" includes every agricultural, horticultural, viticultural, or vegetable product of the soil, honey and beeswax, oilseeds, poultry, poultry product, livestock product, and livestock for immediate slaughter. It does not include timber or any timber product, milk or any milk product, any aquacultural product, or cattle sold to any person who is bonded under the federal Packers and Stockyards Act, 1921 (7 U.S.C. Sec. 181, et seq.).  
(Amended by Stats. 1997, Ch. 696, Sec. 2. Effective January 1, 1998.)

**55404.** "Lender" includes any person that advances new value to a processor.  
(Enacted by Stats. 1967, Ch. 15.)

**55404.5.** "Licensee" means any person licensed under the provisions of this chapter as a processor or cash buying processor.  
(Added by Stats. 1979, Ch. 871.)

**55405.** "New value" includes any new advance or loan, whether in money or other property, which is made by a lender to a processor. It does not, however, include any extension or renewal of any existing obligation of the processor, nor any obligation which is substituted for such existing obligation.  
(Enacted by Stats. 1967, Ch. 15.)

**55406.** "Packout basis" means that payment for the farm product is based on the grade or quality of the finished product, as determined at the completion of the processing.  
(Enacted by Stats. 1967, Ch. 15.)

**55407.** "Processor" means any person that is engaged in the business of processing or manufacturing any farm product, that solicits, buys, contracts to buy, or otherwise takes title to, or possession or control of, any farm product from the producer of the farm product for the purpose of processing or manufacturing it and selling, reselling, or redelivering it in any dried, canned, extracted, fermented, distilled, frozen, eviscerated, or other preserved or processed form. It does not, however, include any retail merchant that has a fixed or established place of business in this state and does not sell at wholesale any farm product which is processed or manufactured by him.  
(Amended by Stats. 1967, Ch. 807.)

**55408.** "Producer" means any person that is engaged in the business of growing or producing any farm product.  
(Enacted by Stats. 1967, Ch. 15.)

**55409.** Juice or must used for wine which, as a condition of sale, is required to be pressed or crushed from grapes in the field or at a facility not owned by the purchasing vintner, is a farm product for purposes of this chapter. Juice or must which was not required to be pressed or crushed from grapes as a condition of a sale, and which is stored for the account of the producer who grew the grapes, is not a farm product when it is sold.  
(Added by Stats. 1986, Ch. 197, Sec. 1.)

### Article 2. General Provisions

(Article 2 enacted by Stats. 1967, Ch. 15.)

**55431.** The marketing of agricultural commodities within this state is hereby declared to be affected with the public interest. The provisions of this chapter are enacted in the exercise of the police powers of this state for the purpose of protecting the health, peace, safety, and general welfare of the people of this state.  
(Enacted by Stats. 1967, Ch. 15.)

**55432.** The director may publish in pamphlet form as often as he thinks necessary a list of processors that are licensed pursuant to this chapter, together with all necessary regulations which concern the enforcement of this chapter.  
(Enacted by Stats. 1967, Ch. 15.)

## 2013 FOOD AND AGRICULTURAL CODE

**55433.** Any money in the Department of Food and Agriculture Fund which was derived pursuant to this chapter, or Chapter 7 (commencing with Section 56101), may be expended for the administration and enforcement of these chapters and Chapter 7.5 (commencing with Section 56701), notwithstanding any other provision of law which limits the expenditure of any such money to the specific purposes or to the administration or enforcement of each of the chapters separately.

(Amended by Stats. 1984, Ch. 193, Sec. 27.)

**55435.** No provisions in any bond which is given pursuant to any provision of this chapter which attempts by contract to shorten the period which is prescribed for the commencement of an action on the bond by Section 337 of the Code of Civil Procedure, is valid if such provision attempts to limit the time for commencement of action on the bond to a shorter period than six months from the termination of the 35-day period which is covered by such bond.

(Enacted by Stats. 1967, Ch. 15.)

**55435.5.** (a) Except pursuant to an exemption granted by the department, no person licensed under this chapter shall employ as an agent any person who meets any of the following criteria:

(1) Whose license has been revoked, or is currently suspended.

(2) Who has committed any one flagrant or repeated violations of this chapter or Chapter 7 (commencing with Section 56101).

(3) Who failed to pay a producer's claims for which the person, or, where the person controlled the decision to pay, the person's employer, was liable, and which arose out of the conduct of a business licensed, or required to be licensed, under this chapter or Chapter 7 (commencing with Section 56101).

(4) Who has been convicted of a crime that includes as one of its elements the financial victimization of another person.

(b) The department may approve the employment of any person covered under subdivision (a), if the licensee furnishes and maintains a surety bond in the form and amount satisfactory to the department, but which shall not be less than ten thousand dollars (\$10,000), as assurance that the licensee's business will be conducted in accordance with this chapter and that the licensee will pay all amounts due California producers. The department may approve employment without a surety bond after the expiration of four years from the effective date of the applicable disciplinary order. The department, based on changes in the nature and volume of business conducted by the licensee, may require an increase or authorize a reduction in the amount of the bond, but in no case shall the bond be reduced below ten thousand dollars (\$10,000). A licensee who is notified by the department to provide a bond in an increased amount shall do so within a reasonable time to be specified by the department, and if the licensee fails to do so, the approval of employment shall automatically terminate. The department may suspend or revoke the license of any licensee who, after the date given in the notice, continues to employ any person in violation of this section.

(c) The department may obtain access to a licensee's or agent's criminal record during the course of a licensing investigation opened for other reasons or if the department is presented with a reasonable basis to believe an agent or licensee satisfies any of the criteria set forth in paragraphs (1) to (4), inclusive, of subdivision (a). The Department of Justice shall furnish criminal record information to the department at the department's request. If the information thereby obtained reveals a conviction for a crime that includes as one of its elements the financial victimization of another person, the department shall bring this to the attention of the licensee and the agent by a written notice. This written notice shall set out the charges against the licensee or agent, prohibit employment or revoke or deny the license effective if and when any rights to an administrative hearing have been exhausted, and set out the licensee's or agent's rights under this section.

(d) The department may grant an exemption on presentation of substantial, clear, and convincing evidence to support a reasonable belief as to any of the following:

(1) There has been a mistake of fact or identity.

(2) The present role as an agent provides no opportunity for a repeat of the prior behavior.

(3) The person has been rehabilitated.

All submissions shall be authenticated and verified under penalty of perjury. Unless the licensee or agent can prove one of these three elements by substantial, clear, and convincing evidence, the department shall deny the request for exemption.

(e) (1) A licensee or agent who has been identified by the department as satisfying any of the criteria set forth in paragraphs (1) to (4), inclusive, of subdivision (a) and who has not been granted an exemption by the department shall be afforded a hearing upon the licensee's or agent's request under this chapter. The licensee or agent shall not have a right of hearing if the department did not notify the employer or deny an exemption.

(2) At the hearing, the department shall have the burden to prove that any of the criteria set forth in paragraphs (1) to (4), inclusive, of subdivision (a) are satisfied by a preponderance of the evidence. It shall be the licensee's or agent's burden to prove rehabilitation by substantial, clear, and convincing evidence.

(3) In the case of a criminal conviction, "convicted of a crime" includes a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that the department is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, notwithstanding a subsequent order pursuant to Sections 1203.4 and 1203.4a of the Penal Code permitting the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. For purposes of this section or any other provision of this chapter, the record of a conviction, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, shall be conclusive evidence of the conviction.

(4) For purposes of this section or any other provision of this chapter, a certified copy of a decision and order or minutes of the court in which a finding is made concerning any of the criteria set forth in paragraphs (1) to (3), inclusive, of subdivision (a), is prima facie evidence of the truth of the charge and collateral estoppel applies.

(f) The documents and information procured pursuant to this section shall be considered the records of a consumer and shall not be construed to be a public record. The documents and information shall remain confidential, except in actions brought by the department to enforce this division, or as a result of the issuance of a subpoena in accordance with Section 1985.4 of the Code of Civil Procedure. The unauthorized release of the documents received from the Department of Justice or the information contained in those documents is a misdemeanor. (Amended by Stats. 1997, Ch. 696, Sec. 2/5. Effective January 1, 1998.)

**55436.** Civil suits and criminal prosecutions which arise by virtue of any provision of this chapter may be commenced and tried in any of the following:

- (a) The county where the products were received by the processor.
- (b) The county in which the principal place of business of such processor is located.
- (c) The county in which the violation of this chapter occurred.

(Enacted by Stats. 1967, Ch. 15.)

**55437.** The rights, remedies, and penalties which are provided for in this chapter are in addition to any other rights, remedies, or penalties which are provided for by law, and any acts or parts of acts in conflict therewith are hereby repealed.

(Enacted by Stats. 1967, Ch. 15.)

**55438.** Except as otherwise provided in this chapter, the provisions of Part 2 (commencing with Section 307) of the Code of Civil Procedure are applicable to, and constitute the rules of practice in, the proceedings which are mentioned in this chapter, and the provisions of Part 2 of the Code of Civil Procedure relative to new trials and appeals, except insofar as they are inconsistent with the provisions of this chapter, apply to the proceedings which are mentioned in this chapter.

(Enacted by Stats. 1967, Ch. 15.)

**55439.** If any clause, sentence, paragraph, or part of this chapter is for any reason adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this chapter, but shall be confined in its operation to the clause, sentence, paragraph, or part of this chapter which is directly involved in the controversy in which such judgment is rendered.

(Enacted by Stats. 1967, Ch. 15.)

### **Article 3. Exceptions**

(Article 3 enacted by Stats. 1967, Ch. 15.)

**55461.** This chapter does not apply to or include any nonprofit cooperative association which is organized and operating pursuant to Chapter 1 (commencing with Section 54001) or pursuant to similar laws of any other states, the District of Columbia, or the United States. This chapter also does not apply to the agents of these organizations in the performance of their duties. This chapter does apply to the activities of the organization, or agent, which involve the handling or dealing in any farm product of nonmembers of the organization, and activities of such an organization, or agent, which involve acting as a producer bargaining association asserting the lien rights of its members.

(Amended by Stats. 1986, Ch. 1109, Sec. 1.)

**55462.** For the purposes of trading in cattle, this chapter does not apply to or include any person who is bonded under the federal Packers and Stockyards Act, 1921 (7 U.S.C. Sec. 181, et seq.) who is engaged in the business of buying or selling cattle.

(Added by Stats. 1997, Ch. 651, Sec.5. Effective January 1, 1998. See identical section added by Stats. 1997,Ch.696.)

**55462.** For the purposes of trading in cattle, this chapter does not apply to or include any person who is bonded under the federal Packers and Stockyards Act, 1921 (7 U.S.C. Sec. 181, et seq.) who is engaged in the business of buying or selling cattle.

(Added by Stats. 1997,Ch.696,Sec.3. Effective January 1, 1998.)

### **Article 4. Agent's License**

(Article 4 enacted by Stats. 1967, Ch. 15.)

**55481.** A person shall not act as an agent unless such person has first obtained a license as provided in this chapter.

(Enacted by Stats.1967,Ch.15.)

**55482.** Every person, before acting as an agent, shall file an application with the director for a license to so act. The application shall be accompanied by the application fee which is prescribed by Article 16 (commencing with Section 55861) of this chapter.

(Enacted by Stats.1967,Ch.15.)

**55483.** (a) Each application shall include all of the following:

- (1) Such information as the department may consider proper or necessary.
- (2) The name and address of the applicant.
- (3) The name and address of the processor that is represented or sought to be represented by the agent.
- (4) The written endorsement or nomination of the processor.
- (5) A release authorizing the department, during consideration of the application and for the duration of licensure, to have access to and obtain financial information from both of the following:
  - (A) The applicant's files with credit reporting agencies.
  - (B) The applicant's files with banks, savings and loan associations, or any other financial institutions with whom the applicant has done business in the past or with whom the applicant intends to do business during the year of licensure.
- (6) A notice signed by the applicant that the department may obtain criminal record information during the course of a licensing investigation or upon presentation with a reasonable basis to believe the licensee has been convicted of a crime. An applicant whose application is incomplete shall be given written notice that a failure to complete it within 30 calendar days shall result in denial of the application.

(b) The documents and information procured pursuant to this section shall be considered the records of a consumer and shall not be construed to be a public record. The documents and information shall remain confidential, except in actions brought by the department to enforce this division, or as a result of the issuance of a subpoena in accordance with Section 1985.4 of the Code of Civil Procedure. The unauthorized release of the documents received from the Department of Justice or the information contained in those documents is a misdemeanor.

## 2013 FOOD AND AGRICULTURAL CODE

(c) The department shall adopt regulations that specify the proper and necessary information and supporting documentation the department requires for an application to be considered complete.

(Amended by Stats.1997,Ch.696,Sec.3.5. Effective January 1, 1998.)

**55484.** The department shall accept or deny an application within 90 calendar days of receipt of a completed application. The department may deny, condition, suspend, or revoke a license issued pursuant to this chapter upon any of the following grounds and in the manner provided in this chapter:

(a) Upon one flagrant violation, as determined by the department, or upon repeated violations, by the holder or applicant, of any one or combination of the sections of this division or under any one or combination of the regulations promulgated by the department under the authority of this division.

(b) Upon one flagrant violation, as determined by the department, or upon repeated violations, by a holder's or applicant's agent, employee, or contractor, or of an organization or entity in which the holder or applicant holds a significant financial interest, of any one or combination of the sections of this division or any one or combination of the regulations promulgated under this division under circumstances where the holder or applicant knew or should have known and failed to take reasonable measures to prevent the violation or failed to report the violation to the department upon learning of the violation.

(c) On the conviction of the holder or applicant of a crime that includes as one of its elements the financial victimization of another person. However, if the licensee was licensed prior to January 1, 1998, and the department knew of, or was on notice of, the conviction, that conviction may not form the basis of a discipline under this subdivision.

(d) On the grounds of a false or misleading statement by a holder or applicant that the holder or applicant knew or should have known to be false or misleading, directed to any official of any government concerning the scope of any indicia of authority, including, but not limited to, the holder's or applicant's license associated with the holder's or applicant's business, the standards under which the indicia was authorized, the contents of the application for licensure, or the holder's or applicant's relationship to the indicia.

(e) On the grounds that a holder or applicant, or a holder's or applicant's agency, employee, or contractor, or an organization or entity in which a holder or applicant holds a significant financial interest, deceived a grower in any material matter. Deception, for purposes of this subdivision, does not require scienter, but requires active misrepresentation where the actor knew the representation to be false or where the actor should have known, with due consideration, that he or she did not know whether or not the representation was true or false.

(Repealed and added by Stats.1997,Ch.696,Sec.5. Effective January 1, 1998.)

**55484.5.** (a) The Legislature finds there to be a substantial nexus between the conduct specified in Section 55484 and an applicant's or holder's fitness for licensure.

(b) The department shall not dismiss an action where a violation, however minor, has been established. The department shall not dismiss an action because the applicant or holder establishes factors in mitigation.

(c) However, the department may impose discipline other than denial or revocation of the license. As an alternative to revocation of a license, the department may stay a revocation subject to terms for a period of probation. As an alternative to denial the department may issue a license subject to conditions. Terms of probation or terms of conditional licensure may include, but are not limited to, a requirement of restitution, payment for extra audits, immediate revocation on a new violation, or any other terms that respond to the particular violations or circumstances found.

(d) Once a finding of a violation has been made, the department may consider the following factors in assessing the appropriate level of discipline:

- (1) The relative isolation or infrequency of the conduct.
- (2) Whether the conduct was a part of a pattern or practice.
- (3) Whether the actor had been warned before.
- (4) Whether the actor considered the consequences of the conduct.
- (5) Whether the actor reasonably relied on others.
- (6) The severity of the consequences.
- (7) The mens rea of the actor.
- (8) In the case of a criminal conviction, evidence of rehabilitation.
- (9) The total licensing history.

(e) The following factors shall not be considered in assessing the appropriate level of discipline:

- (1) The social or economic contributions of the applicant or holder.
- (2) General testimonials as to good character and worthiness to be licensed.
- (3) Economic hardship on the licensee.
- (4) "Mercy of the court" pleas in connection with criminal convictions, pattern or practice violations, or deception.
- (5) In the case of a felony criminal conviction, the department shall not consider rehabilitation unless the convicted person has a valid certificate of rehabilitation.

(Added by Stats.1997,Ch.696,Sec.6. Effective January 1, 1998.)

**55484.75.** (a) If an application for a license indicates, or the department determines during the application review process, that the applicant was issued a license that was revoked within the preceding two years, the department shall cease any further review of the application until two years have elapsed from the date of the revocation. The cessation of review shall not constitute a denial of the application for the purposes of this chapter, or any other provision of law.

(b) If an application for a license indicates, or the department determines during the application review process, that the applicant had previously applied for a license and the application was denied within the last year, the department shall cease further review of the application until 30 days have elapsed from the date of the notification of the denial or from the effective date of the decision and order of the department upholding a denial. The cessation of review shall not constitute a denial of the new applicant for purposes of this chapter, or any other provision of law.

## 2013 FOOD AND AGRICULTURAL CODE

(c) Nothing in subdivision (a) or (b) prohibits the department from taking into account the basis for denial or revocation in considering any new application subsequent to the elapse of the applicable period of prohibition.

(Amended by Stats.1999,Ch.198,Sec.1. Effective January 1, 2000.)

**55485.** The applicant shall satisfy the department of the applicant's character, responsibility, and good faith in seeking to carry on the business that is stated in the application.

(Amended by Stats.1997,Ch.696,Sec.8. Effective January 1, 1998.)

**55485.5.** A license is forfeited by operation of law prior to its expiration date when one of the following occurs:

- (a) The holder surrenders the license to the department.
- (b) The holder dies.
- (c) The partnership holder dissolves.
- (d) The holder of a significant financial interest in a corporation transfers his or her interest to another person or entity, regardless of relationship.

(e) The holder files for bankruptcy under provisions other than those permitting and governing reorganization under bankruptcy.

(Added by Stats.1997,Ch.696,Sec.9. Effective January 1, 1998.)

**55485.75.** (a) The withdrawal of an application for a license after it has been filed with the department does not deprive the department of its authority to institute or continue a proceeding against the applicant or to enter an order denying the license, unless the department consents in writing to such a withdrawal.

(b) The expiration or forfeiture by operation of law of a license, or its forfeiture or cancellation by order of the department or by order of a court of law, or its surrender without the written consent of the department, does not deprive the department of its authority to institute or continue a disciplinary proceeding against the holder upon any ground provided by law or to enter an order revoking the license or otherwise taking disciplinary action against the holder.

(c) Any action brought by the department against an applicant or holder does not abate by reason of the sale or other transfer of ownership of the business that is a party to the action, except with the written consent of the department.

(d) Nothing in this division or in any other provision of this code deprives the department of the authority to settle or adjudicate a disposition of a case other than by revocation or denial. The department or the department's designee may compromise with the applicant or holder in a written stipulation and order. The department may, following a hearing, order probation on terms and conditions as determined by the department. The authority conferred by this subdivision shall include, but not be limited to, the authority to order payment of amounts determined owing, the authority to dismiss an action on the department's own initiative, the authority to order administrative penalties, the authority to order a respondent to pay for heightened audit scrutiny, the authority to suspend a license for a period of years, or any combination of remedies other than final revocation or denial of a license.

(Added by Stats.1997,Ch.696,Sec.10. Effective January 1, 1998.)

**55488.** (a) The department shall notify the applicant or holder in writing of the department's decision to bring charges to deny or revoke a license.

(1) The notice shall inform the applicant or holder of the charges against him or her, of the department's proposed disciplinary action, and of his or her rights under this chapter.

(2) The notice shall be served by certified mail to the applicant's or holder's last known address.

(3) The notice shall be mailed to the applicant or holder at least 30 calendar days in advance of the impending action.

(b) The department's proposed action shall become final unless the applicant or holder appeals prior to the end of the notice period by submitting a notice of defense to the department in a form specified by the department. The notice shall be transmitted to the department in a form that is written, including, but not limited to, by facsimile.

(c) If the department receives a timely notice of defense, the department shall schedule a hearing within 90 calendar days of receipt of the notice of defense. Pending the final decision at the conclusion of the hearing, a revocation shall be stayed.

(d) Proceedings for the revocation or denial of a license issued under this chapter shall be conducted by hearing officers appointed for that purpose by the department. The department may elect to use hearing officers employed by the Office of Administrative Hearings. The hearing officers shall be independent of the Market Enforcement Bureau, but may be employees of the department. The hearing officers shall be qualified administrative law judges.

(e) Proceedings shall be conducted generally in accordance with the provisions of Chapters 4.5 (commencing with Section 11400) and 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. However, proceedings need not conform strictly to any "rules of court" adopted as regulations by the Office of Administrative Hearings to guide the conduct of hearings conducted by the Office of Administrative Hearings. The department has all power granted by Chapters 4.5 (commencing with Section 11400) and 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(1) The sole parties to the proceedings shall be the department and the applicant or holder. Third party intervention shall not be permitted. The disputes, claims, and interests of third parties shall not be within the jurisdiction of the proceedings. However, nothing in this paragraph prohibits any interested party from submitting an amicus brief if the hearing officer requests written briefs.

(2) The validity of a department regulation or order shall not be within jurisdiction of the proceedings.

(3) Law and motion matters shall be handled by the assigned hearing officer.

(4) The hearing officer may not enter into settlement discussions.

(5) The hearing officer may not issue sanctions.

(f) In all proceedings conducted in accordance with this section, the standard of proof to be applied is the preponderance of the evidence. When the department seeks to revoke an existing license, the department shall have the burden of proof and the burden of producing evidence.

(g) Decisions following a hearing shall be adopted by the department or the department's designee and become final unless remanded for reconsideration or alternated in accordance with Chapters 4.5 (commencing with Section 11400) and 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(h) The department shall maintain a library of decisions that shall be made available to any person, including the parties to administrative actions during discovery.

(Repealed and added by Stats.1997,Ch.696,Sec.14. Effective January 1, 1998.)

**55491.** The director may issue to each agent a separate license card for each processor represented by the agent.

(Enacted by Stats. 1967, Ch.15.)

**55492.** Any agent that displays a void or expired license card is guilty of a misdemeanor.

(Enacted by Stats.1967,Ch.15.)

**55493.** Each agent shall show his license upon the request of any interested person.

(Enacted by Stats.1967,Ch.15.)

**Article 5. Processor's License**  
(Article 5 enacted by Stats. 1967, Ch. 15.)

**55521.** A person shall not act as a processor or a cash buying processor unless he has first obtained a license as provided in this chapter or in Section 56574.

(Amended by Stats.1979,Ch.871.)

**55522.** Every person, before acting as a processor or a cash buying processor, shall file an application with the director for a license to so act. The application, unless it is an application for a conjunctive processor's license pursuant to Section 56574, shall be accompanied by the application fee which is prescribed by Article 16 (commencing with Section 55861) of this chapter.

(Amended by Stats.1979,Ch.871.)

**55522.5.** (a) It is unlawful for a licensee that has changed its legal entity to do any of the following:

(1) Continue to operate after the change.

(2) Purchase or handle any farm product from a person who had a farm product contract with the former licensee at the time of the change in entity without notifying that person, in writing, of the change in entity.

(3) Use any invoice, contract, or other document associated with the purchase, consignment, or brokerage of any farm product that identifies the former licensee unless the new entity is conspicuously identified on the same invoice, contract, or other document as the entity responsible for the transaction.

(b) The new entity shall notify the director in writing of the change in legal entity within 15 days of the change. The new legal entity shall, before it conducts business that requires a license, obtain a new license for the business.

(c) Notwithstanding subdivision (b), if a licensee conducts business without a new license as a result of a change of legal entity, it may, within 120 days of the change, upon a showing of no substantial change in financial resources and liabilities, petition the director to grant a new license retroactive to the first day of the month during which the change occurred, and the director may grant the license with retroactive effect upon a finding that doing so would be consistent with the purposes of this chapter. Upon granting the petition, the director shall (1) require the licensee to pay an additional fee in an amount that will cover the expenses of the department in the matter, but not to exceed the fee for a new license, (2) place conditions on the license that are consistent with the purposes of this chapter as the director deems appropriate, and (3) require the licensee to pay an amount, for deposit in the Farm Products Trust Fund, equal to the amount that would have been required had the license been obtained in accordance with subdivision (b).

(Amended by Stats.1991,Ch.733,Sec.1.)

**55522.6.** (a) If the Secretary of State suspends the corporate status of any licensee or if the corporate status is forfeited, the license is revoked by operation of law. The former licensee shall provide written notice of the suspension or forfeiture to the director, and to each person with whom it has a farm product contract, within 15 days of the date the Secretary of State mails the notice of suspension or forfeiture.

(b) The former licensee, may, upon a showing of no substantial change in financial resources and liabilities, and within 90 days of the suspension or forfeiture of corporate status, petition the director for an order to reissue its license formerly held under this chapter. If the corporate status has been reinstated by the Secretary of State, the director may reissue the license if the director finds that doing so would be consistent with the purposes of this chapter. As a condition to reissuing the license, the director may (1) require the former licensee to undertake such financial guarantees, including the filing and maintaining bonds, as the director deems necessary to protect the interests of contracting parties, and (2) impose conditions on the license that are consistent with the purposes of this chapter as the director deems appropriate.

(Added by Stats.1991,Ch.733,Sec.2.)

**55523.** (a) Each application shall state all of the following:

(1) The full name of the applicant.

(2) If the applicant is a firm, exchange, association, or corporation, the full name of each member of the firm or the names of the officers of the exchange, association, or corporation.

(3) The principal business address of the applicant in this state.

(4) The name of every person who is authorized to receive and accept service of summons for the applicant.

(5) A release authorizing the department, during consideration of the application and for the duration of licensure, to have access to and obtain financial information from both of the following:

(A) The applicant's files with credit reporting agencies.

(B) The applicant's files with banks, savings and loan associations, or any other financial institutions with whom the applicant has done business in the past or with whom the applicant intends to do business during the year of licensure.

## 2013 FOOD AND AGRICULTURAL CODE

(6) A notice signed by the applicant or the applicant's representative that the department may obtain criminal record information during the course of a licensing investigation or upon presentation with a reasonable basis to believe the licensee has been convicted of a crime. An applicant whose application is incomplete shall be given written notice that a failure to complete the application within 60 calendar days shall result in denial of the application.

(b) The documents and information procured pursuant to this section shall be considered the records of a consumer and shall not be construed to be a public record. The documents and information shall remain confidential, except in actions brought by the department to enforce this division, or as a result of the issuance of a subpoena in accordance with Section 1985.4 of the Code of Civil Procedure. The unauthorized release of the documents received from the Department of Justice or the information contained in those documents, is a misdemeanor.

(Amended by Stats.1999,Ch.198,Sec.2. Effective January 1, 2000.)

**55523.1.** In addition to the other requirements of this chapter, each application for a license, except for an application for a cash buying processor license, shall include an affidavit in which the applicant affirms that he or she is current in making all payments required under undisputed contract agreements, and that he or she will do all of the following:

(a) Abide by all provisions of this chapter and Chapter 7 (commencing with Section 56101).

(b) Prepare and retain financial records adequate to document all transactions with suppliers.

(c) Prepare and retain current financial information, including, but not limited to, profit and loss statements and a balance sheet that presents fairly the financial condition as of the end of the applicant's most recent fiscal year.

The affidavit shall be on a form prescribed by the secretary and shall be submitted under penalty of perjury.

(Amended by Stats.1996,Ch.620,Sec.2. Effective January 1, 1997.)

**55523.2.** Any balance sheet or financial information prepared, retained, or submitted as required by this chapter that shows the applicant to be in an unsound financial condition that impairs the ability to pay farm products creditors in full for farm products received or handled is sufficient grounds to deny the application for license or the renewal of a license. The denial of the application for a license or renewal of a license relating to an unsound financial condition shall include a notice and an opportunity for a hearing.

(Amended by Stats.1996,Ch.620,Sec.3. Effective January 1, 1997.)

**55523.3.** (a) If the secretary is not satisfied that an applicant or licensee is financially responsible, the secretary may, in lieu of denying, suspending, or revoking the license, accept an irrevocable guarantee of the obligations of the licensee to all California farm product creditors. The irrevocable guarantee may include a personal or corporate guarantee, a certificate of deposit, a bank letter of credit, or a surety bond, as determined to be appropriate by the secretary, and shall be in an amount that is at least sufficient to pay for the licensee's obligations at the time the guarantee is issued. The guarantee shall be for any period, in any form, and in any amount that the secretary may, from time to time, require. The secretary may, as a condition of accepting and maintaining the guarantee, require the guarantor to supply financial information to the secretary at times and to the extent the secretary deems advisable.

(b) A guarantee placed with the secretary pursuant to subdivision (a) shall support an action in a court of competent jurisdiction by a farm products creditor for obligations of the licensee to the creditor and by a state officer for the obligations of the licensee to the state related to transactions subject to the guarantee.

(c) An irrevocable guarantee accepted by the secretary pursuant to this section shall not operate as a release for purposes of Section 55637.

**55523.4.** If at any time the secretary has cause or reason to believe that any applicant or licensee is in an unsound financial condition so as to impair his or her ability to pay farm products creditors in full for farm products received or handled, or for any reason the secretary deems advisable, the secretary may require an applicant or licensee to file with him or her a balance sheet or statement of financial position that presents fairly the financial condition of the licensee. The financial statement, if not prepared by a public accountant or certified public accountant, shall be on a form prescribed by the secretary and shall be submitted under penalty of perjury. Any balance sheet submitted that does not provide the information required by the secretary may be rejected until the information is provided.

(Amended by Stats.1996,Ch.620,Sec.4. Effective January 1, 1997.)

**55523.5.** Failure to file a financial statement as required by this chapter or to comply with the affidavit requirements of Section 55523.1 is a violation of this chapter.

(Amended by Stats.1996,Ch.620,Sec.4.5. Effective January 1, 1997.)

**55523.6.** Any financial statement submitted to the secretary pursuant to this chapter is confidential and shall not be divulged except at a hearing before the secretary or under subpoena, if necessary, for the proper determination of any court proceedings.

(Amended by Stats.1996,Ch.620,Sec.5. Effective January 1, 1997.)

**55524.** The department shall accept or deny an application within 90 calendar days of receipt of a completed application. The department may deny, condition, suspend, or revoke a license issued pursuant to this chapter upon any of the following grounds and in the manner provided in this chapter:

(a) Upon one flagrant violation, as determined by the department, or repeated violations, by the holder or applicant, of any one or combination of the sections of this division or under any one or combination of the regulations promulgated by the department under the authority of this division.

(b) Upon one flagrant violation, as determined by the department, or repeated violations, by a holder's or applicant's agent, employee, or contractor, or of an organization or entity in which the holder or applicant holds a significant financial interest, of any one or combination of the sections of this division or any one or combination of the regulations promulgated under this division under circumstances where the holder or applicant knew or should have known and failed to take reasonable measures to prevent the violation or failed to report the violation to the department on learning of the violation.



## 2013 FOOD AND AGRICULTURAL CODE

(c) On the conviction of the holder or applicant of a crime that includes as one of its elements the financial victimization of another person. However, if the licensee was licensed prior to January 1, 1998, and the department knew of, or was on notice of, the conviction, that conviction may not form the basis of a discipline under this subdivision.

(d) On the grounds of a false or misleading statement by a holder or applicant that the holder or applicant knew or should have known to be false or misleading, directed to any official of any government concerning the scope of any indicia of authority, including, but not limited to, the holder's or applicant's license associated with the holder's or applicant's business, the standards under which the indicia was authorized, the contents of the application for licensure, or the holder's or applicant's relationship to the indicia.

(e) On the grounds that a holder or applicant, or a holder's or applicant's agency, employee, or contractor, or an organization or entity in which a holder or applicant holds a significant financial interest, deceived a grower in any material matter. Deception, for purposes of this subdivision, does not require scienter, but requires active misrepresentation where the actor knew the representation to be false or where the actor should have known, with due consideration, that he or she did not know whether or not the representation was true or false.

(Repealed and added by Stats.1997,Ch.696,Sec.19. Effective January 1, 1998.)

**55524.5.** (a) The Legislature finds there to be a substantial nexus between the conduct specified in Section 55524 and an applicant's or holder's fitness for licensure.

(b) The department shall not dismiss an action where a violation, however minor, has been established. The department shall not dismiss an action because the applicant or holder establishes factors in mitigation.

(c) However, the department may impose discipline other than denial or revocation of the license. As an alternative to revocation of a license, the department may stay a revocation subject to terms for a period of probation. As an alternative to denial the department may issue a license subject to conditions. Terms of probation or terms of conditional licensure may include, but are not limited to, a requirement of restitution, payment for extra audits, immediate revocation on a new violation, or any other terms that respond to the particular violations or circumstances found.

(d) Once a finding of a violation has been made, the department may consider the following factors in assessing the appropriate level of discipline:

- (1) The relative isolation or infrequency of the conduct.
- (2) Whether the conduct was a part of a pattern or practice.
- (3) Whether the actor had been warned before.
- (4) Whether the actor considered the consequences of the conduct.
- (5) Whether the actor reasonably relied on others.
- (6) The severity of the consequences.
- (7) The mens rea of the actor.
- (8) In the case of a criminal conviction, evidence of rehabilitation.
- (9) The total licensing history.

(e) The following factors shall not be considered in assessing the appropriate level of discipline:

- (1) The social or economic contributions of the applicant or holder.
- (2) General testimonials as to good character and worthiness to be licensed.
- (3) Economic hardship on the licensee.
- (4) "Mercy of the court" pleas in connection with criminal convictions, pattern or practice violations, or deception.
- (5) In the case of a felony criminal conviction, the department shall not consider rehabilitation unless the convicted person has a valid certificate of rehabilitation.

(Added by Stats.1997,Ch.696,Sec.20. Effective January 1, 1998.)

**55524.75.** (a) If an application for a license indicates, or the department determines during the application review process, that the applicant was issued a license that was revoked within the preceding two years, the department shall cease any further review of the application until two years have elapsed from the date of the revocation. The cessation of review shall not constitute a denial of the application for the purposes of this chapter, or any other provision of law.

(b) If an application for a license indicates, or the department determines during the application review process, that the applicant had previously applied for a license and the application was denied within the last year, the department shall cease further review of the application until one year has elapsed from the date of the notification of the denial or from the effective date of the decision and order of the department upholding a denial. The cessation of review shall not constitute a denial of the new applicant for purposes of this chapter, or any other provision of law.

(c) Nothing in subdivision (a) or (b) prohibits the department from taking into account the basis for denial or revocation in considering any new application subsequent to the elapse of the applicable period of prohibition.

(Added by Stats.1997,Ch.696,Sec.21. Effective January 1, 1998.)

**55525.** The applicant shall satisfy the department of the applicant's character, responsibility, and good faith in seeking to carry on the business that is stated in the application.

(Amended by Stats.1997,Ch.696,Sec.22. Effective January 1, 1998.)

**55525.75.** (a) The withdrawal of an application for a license after it has been filed with the department does not deprive the department of its authority to institute or continue a proceeding against the applicant or to enter an order denying the license, unless the department consents in writing to the withdrawal.

(b) The expiration or forfeiture by operation of law of a license, or its forfeiture or cancellation by order of the department or by order of a court of law, or its surrender without the written consent of the department, does not deprive the department of its authority to institute or continue a disciplinary proceeding against the holder upon any ground provided by law or to enter an order revoking the license or otherwise taking disciplinary action against the holder.

(c) Any action brought by the department against an applicant or holder does not abate by reason of the sale or other transfer of ownership of the business that is a party to the action, except with the written consent of the department.

## 2013 FOOD AND AGRICULTURAL CODE

(d) Nothing in this division or in any other provision of this code deprives the department of the authority to settle or adjudicate a disposition of a case other than by revocation or denial. The department or the department's designee may compromise with the applicant or holder in a written stipulation and order. The department may, following a hearing, order probation on terms and conditions as determined by the department. The authority conferred by this subdivision shall include, but is not limited to, the authority to order payment of amounts determined owing to California farm product creditors, the authority to dismiss an action on the department's own initiative, the authority to order administrative penalties, the authority to order a respondent to pay for heightened audit scrutiny, the authority to suspend a license for a period of years, or any combination of remedies other than final revocation or denial of a license.

**55527.5.** Any person who is adjudicated liable for payment of a claim for farm products which arose out of the conduct of a business licensed or required to be licensed under this chapter or Chapter 7 (commencing with Section 56101), and who has not made full settlement with all producer-creditors, shall not be licensed by the director as a principal for four years from the date of the adjudication.

(Amended by Stats.1987,Ch.662,Sec.9.)

**55527.6.** (a) Licensees or applicants for a license shall be required to furnish and maintain an irrevocable guarantee in a form and amount satisfactory to the secretary, if within the preceding four years the secretary determines that they have done any of the following:

(1) Engaged in conduct which demonstrates a lack of financial responsibility including, but not limited to, delinquent accounts payable, judgments of liability, insolvency, or bankruptcy.

(2) Failed to assure future financial responsibility unless an irrevocable guarantee is provided.

(3) Otherwise violated this chapter which resulted in license revocation.

(4) The irrevocable guarantee may include a personal or corporate guarantee, a certificate of deposit, a bank letter of credit, or a surety bond, as determined to be appropriate by the secretary.

(c) The guarantee shall not be less than ten thousand dollars (\$10,000) or 20 percent of the annual dollar volume of business based on farm product value returned to the grower, whichever is greater, as assurance that the licensee's or applicant's business will be conducted in accordance with this chapter and that the licensee or applicant will pay all amounts due farm products creditors.

(d) The secretary, based on changes in the nature and volume of business conducted by the licensee, may require an increase or authorize a reduction in the amount of the guarantee, but in no case shall the guarantee be reduced below ten thousand dollars (\$10,000). A licensee who is notified by the secretary to provide a guarantee in an increased amount shall do so within a reasonable time as specified by the secretary. If the licensee fails to do so, the secretary may, after a notice and opportunity for a hearing, suspend or revoke the license of the licensee.

**55528.** (a) The department shall notify the applicant or holder in writing of the department's decision to bring charges to deny or revoke a license.

(1) The notice shall inform the applicant or holder of the charges against him or her, of the department's proposed disciplinary action, and of his or her rights under this chapter.

(2) The notice shall be served by certified mail to the applicant's or holder's last known address.

(3) The notice shall be mailed to the applicant or holder at least 30 calendar days in advance of the impending action.

(b) The department's proposed action shall become final unless the applicant or holder appeals prior to the end of the notice period by submitting a notice of defense to the department in a form specified by the department. The notice shall be transmitted to the department in a form that is written, including, but not limited to, by facsimile.

(c) If the department receives a timely notice of defense, the department shall schedule a hearing within 90 calendar days of receipt of the notice of defense. Pending the final decision at the conclusion of the hearing, a revocation shall be stayed.

(d) Proceedings for the revocation or denial of a license issued under this chapter shall be conducted by hearing officers appointed for that purpose by the department. The department may elect to use hearing officers employed by the Office of Administrative Hearings. The hearing officers shall be independent of the Market Enforcement Bureau, but may be employees of the department. The hearing officers shall be qualified administrative law judges.

(e) Proceedings shall be conducted generally in accordance with the provisions of Chapters 4.5 (commencing with Section 11400) and 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. However, proceedings need not conform strictly to any "rules of court" adopted as regulations by the Office of Administrative Hearings to guide the conduct of hearings conducted by the Office of Administrative Hearings. The department has all power granted by Chapters 4.5 (commencing with Section 11400) and 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(1) The sole parties to the proceedings shall be the department and the applicant or holder. Third party intervention shall not be permitted. The disputes, claims, and interests of third parties shall not be within the jurisdiction of the proceedings. However, nothing in this paragraph prohibits any interested party from submitting an amicus brief if the hearing officer requests written briefs.

(2) The validity of a department regulation or order shall not be within jurisdiction of the proceedings.

(3) Law and motion matters shall be handled by the assigned hearing officer.

(4) The hearing officer may not enter into settlement discussions.

(5) The hearing officer may not issue sanctions.

(f) In all proceedings conducted in accordance with this section, the standard of proof to be applied is the preponderance of the evidence. When the department seeks to revoke an existing license, the department shall have the burden of proof and the burden of producing evidence.

(g) Decisions following a hearing shall be adopted by the department or the department's designee and become final unless remanded for reconsideration or alternated in accordance with Chapters 4.5 (commencing with Section 11400) and 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(h) The department shall maintain a library of decisions that shall be made available to any person, including the parties to administrative actions during discovery.

(Repealed and added by Stats.1997,Ch.696,Sec.27. Effective January 1, 1998.)

**55530.** Each licensed processor shall post his license, or a copy of it, in his office or salesroom in plain view of the public.  
(Enacted by Stats.1967,Ch.15.)

**Article 7. Sale of Farm Products by Weight**  
(Article 7 enacted by Stats. 1967, Ch. 15.)

**55581.** If any farm product is sold to and purchased by any processor on the basis of weight, such product shall be weighed by a weighmaster licensed under the laws of this state, and a certificate as to such weight issued by him shall be delivered to the seller by the processor or by the weighmaster as agent for the processor. Settlement for such product shall be made on the basis of the weight which is shown on the certificate.  
(Enacted by Stats.1967,Ch.15.)

**Article 8. Processors**  
(Article 8 enacted by Stats. 1967, Ch. 15.)

**55601.** Every processor shall pay for any farm product which is delivered to the processor at the time and in the manner which is specified in the contract with the producer. If no time is set by such contract, or at the time of delivery, then the processor shall pay for the farm product within 30 days of the delivery or taking possession of such farm product.  
(Enacted by Stats.1967,Ch.15.)

**55601.1.** Section 55601.5 shall be known, and may be cited as, the "Clare Berryhill Grape Crush Report Act of 1976."  
(Added by Stats.1996,Ch.604,Sec.1. Effective January 1, 1997.)

**55601.3.** Upon the following, the processor shall notify the seller, on a form to be prescribed by the department, as to the requirements set forth in Sections 55601 and 55881:

- (a) Upon delinquency of a contract.
- (b) If payment is not made within 30 days when the contract does not specify time of payment or if there is no contract.
- (c) If payment is not made within 30 days when the contract is oral, irrespective of the agreed time of payment.

The processor shall have the burden of proof as to the timely delivery of such a notice. Such a notice shall only be required as to the first contract between any particular seller and processor during any one calendar year.  
(Added by Stats.1977,Ch.400.)

**55601.4.** Notwithstanding the provisions of Section 55601, every processor who purchases livestock for slaughter shall make full payment of such livestock, by the transfer of collected funds to the seller's account, within two business days from the delivery of such livestock to the processor.  
For purposes of this section, "business day" means any day which is a business day under the provisions of Section 9 of the Civil Code.  
(Added by Stats.1979,Ch.497.)

**55601.5.** (a) (1) Notwithstanding Section 55461, on or before January 10 of every year, every processor who crushes grapes in this state shall furnish to the secretary, on forms provided by the secretary, a report that includes all of the following:

- (A) The total number of tons of grapes purchased by the processor in this state during the preceding crush within each grape-pricing district, broken down by total tons purchased, variety, and price, including any bonuses or allowances, and sugar calculations.
- (B) The total number of tons of grapes purchased by the processor in this state in nonrelated purchases during the preceding crush within each grape-pricing district, broken down by total tons purchased, variety, and price, including any bonuses or allowances, and sugar calculations.
- (C) The total number of tons of each variety of grape crushed within each grape-pricing district and the average sugar content of each variety within each grape-pricing district.
- (D) The total number of tons of grapes purchased and crushed that are expected, as of the date of reporting by the processor, to be marketed as grape concentrate. In reporting tons purchased and crushed that are expected to be marketed as grape concentrate, processors may estimate equivalent tonnage. In estimating the equivalent tonnage, the processor shall include all equivalent tons crushed for the production of grape concentrate for wine and all other purposes marketed outside the state and the equivalent tons crushed for the production of grape concentrate for all purposes other than wine marketed within the state. In determining the estimated equivalent tons, processors shall make their best estimate of the gallons of concentrate per ton of grapes crushed based upon the Brix level of the grapes used in concentrate production.

(2) (A) When reporting price within the category of all tonnage purchased, processors shall include grapes purchased from (i) growers for wine, wine vinegar, juice, concentrate, and beverage brandy, (ii) another processor only if that processor was also the grower of the grapes, (iii) growers that are considered separate entities from the processor operation, or (iv) growers or other processors, but not by the reporting processor; and shall exclude (i) material other than grapes, and defects, or other weight adjustments deducted from the gross-weight ticket, (ii) any raisin-distilling material, (iii) grapes grown by the processor from vineyards that are not considered separate entities, (iv) grapes purchased from other processors that were previously purchased from growers, or (v) grapes crushed to grower accounts or crushed for other wineries. If several varieties were packaged together and purchased for one price, the processor shall report the average price per ton as one mixed lot, and when reporting crush information, shall report individual variety and tonnage information.

(B) When reporting price within the category of nonrelated purchases, processors shall exclude tonnage of grapes purchased from a grower if, during the reporting year (i) the grower or an affiliate of the grower, or both the grower and the affiliate of the grower, owned, directly or indirectly, at least 5 percent of the indicia of ownership or voting authority of the processor, (ii) the processor or an affiliate of the processor, or both the processor and the affiliate of the processor, owned, directly or indirectly, at least 5 percent of the indicia of

ownership or voting authority of the grower, or (iii) the processor or an affiliate of the processor, or both the processor and the affiliate of the processor, provided long-term financing to the grower in exchange for rights or options to purchase a significant portion of the grower's harvest.

(b) On or before February 25 of every year, each processor who crushes grapes in this state shall furnish to the secretary information concerning the final prices, including any bonuses or allowances, paid by variety and grape-pricing district to all growers holding reference price contracts in effect prior to January 1, 1977, which payments have not been reported on January 10.

(c) (1) The secretary may not release or otherwise make available any information furnished by an individual processor under this section, except in proceedings brought against the processor by the secretary for the purpose of enforcing this section, or except in the case of a producer who holds any reference price-grape purchase contract, to whom the secretary may furnish, upon request and at a reasonable cost, the information needed to verify the reference price, including any bonuses or allowances, set forth in the contract.

(2) The secretary shall not release or otherwise make available any information furnished by an individual processor under this section to any other division of the department except in accordance with a subpoena issued in accordance with Section 1985.3 of the Code of Civil Procedure.

(3) The secretary shall release only aggregate figures for grapes crushed that are expected to be marketed as grape concentrate and shall not include information by district, types, or variety.

(d) The secretary shall enforce the collection of the information and, on or before February 10 of each year, shall publish a preliminary summary report on the preceding crush. The report shall include all of the following information:

(1) The weighted average price paid on the basis of the prices, including any bonuses or allowances, reported and average sugar content for each grape variety purchased within each grape-pricing district.

(2) The total number of tons of grapes crushed and the average sugar content for each grape variety within each grape-pricing district.

(3) Each price category paid, separated by sugar calculations, if any, and the percentage each represents of the total for each variety within each grape-pricing district.

(4) Commencing with the report for the 1997 crush, in a separate and independent table without affecting or modifying existing tables, by weighted average price only, nonrelated purchases, by variety within each grape-pricing district excluding any bonuses, allowances, sugar calculations, and tonnage.

(e) On or before March 10 of each year, the secretary shall publish a final summary report, which shall contain all of the data furnished by the processors on or before January 10 and on or before February 25 of each year covering purchases under reference price contracts. The secretary may publish an addendum or supplemental report when reasonably necessary to correct any erroneous or misleading information contained in the annual report required by this section.

(f) The forms provided to processors by the secretary pursuant to this section shall provide for the separate reporting of grapes used by a processor (1) as distilling material and (2) for both beverage brandy and other than beverage brandy. A processor shall report all grapes used as distilling material by variety. The secretary, in determining the weighted average price paid for each grape variety purchased within each grape-pricing district, shall not include the prices paid for grapes of any variety used as distilling material for other than beverage brandy in determining the weighted average price. The secretary's report shall include a separate summary regarding grapes used by processors as distilling material.

(g) All grape purchase contracts entered into on or after January 1, 1977, shall provide for a final price, including any bonuses or allowances, to be set on or before the January 10 following delivery of the grapes purchased. Any grape purchase contract entered into in violation of this subdivision is illegal and unenforceable. For the purpose of this section, a grape purchase contract shall not include any existing supply contract between a nonprofit cooperative association and a commercial processor.

(h) (1) If the department reasonably believes that a processor has failed, refused, or neglected to provide the information required by this section, or if the department finds apparent discrepancies in the information reported, the department may audit or investigate in accordance with Article 11 (commencing with Section 55721) or proceed in accordance with Article 5 (commencing with Section 55522.5), except as specified in paragraph (6). Injunctive relief under Section 55921 shall issue only upon a finding by a court of competent jurisdiction that a processor has done any of the following:

(A) Refused to submit required information after the department provides reasonable notice to the processor of the processor's obligations and rights under this chapter.

(B) Misreported a fact, knowing that fact to be false, or in reckless disregard for whether the fact was true.

(2) Both the refusal to submit after the provision of reasonable notice and the misreporting of a fact under the circumstances set forth in this subdivision shall constitute violations of this chapter. Neither a refusal to submit nor a misreporting of a fact under this subdivision shall be prosecuted pursuant to Article 18 (commencing with Section 55901) or subject to civil penalties under Article 19 (commencing with Section 55921).

(3) In the case of misreporting in any action authorized by this section, it shall be a defense for a processor to rely on information provided to the processor by a producer with respect to whether a purchase is a related purchase.

(4) In the case of a refusal to report or misreporting, the department shall not commence an audit or investigation, other than a routine audit based on scientifically proven random sampling methods, without first disclosing to the processor being audited or investigated any and all information that constitutes the department's belief that the processor has not complied, including the identities of all persons providing information on potential violations to the department.

(5) Anonymous complaints, unattributable information, or undocumented information shall not constitute reasonable belief and shall not be the basis for any investigation or audit action brought under this section. The department shall inform the processor of its reasons for auditing.

(6) No action shall be taken pursuant to Article 5 (commencing with Section 55522.5), Article 18 (commencing with Section 55901), or Article 19 (commencing with Section 55921) based on the reporting of grape concentrate pursuant to subparagraph (D) of paragraph (1) of subdivision (a).

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

## 2013 FOOD AND AGRICULTURAL CODE

(1) "Affiliate" or "affiliated with" means a person who directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control of another person. For the purposes of this paragraph, "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of any person.

(2) "Estimated equivalent tons," when used in the context of reporting tons purchased and crushed that will be marketed as grape concentrate, shall be determined by use of the following formulas:

(A) Gallons of concentrate (approximately 20\* Brix) produced divided by 40 equals equivalent tons.

(B) Gallons of concentrate (approximately 68\* Brix) divided by 170 equals equivalent tons.

(3) "Grape-pricing district" means a district used by the federal-state cooperative market news services, as provided in Section 58231.

(4) "Long-term financing" means financing that by its terms is due over a period of more than one year, or more than 180 days if there is a purchase agreement between a grower and a processor, or if there is a farming agreement where the purchase price is on a per-acre basis.

(5) "Person" includes an individual, partnership, corporation, limited liability company, firm, company, or other entity.

(6) "Purchase" means the taking by sale, discount, negotiation, mortgage, pledge, lien, issue or reissue, gift, or any other voluntary transaction creating an interest in property. For purposes of this paragraph, "sale" shall consist of the passing of title from the seller to the buyer for a price.

(Amended by Stats.1999,Ch.1999,Sec.1. Effective January 1, 2000.)

**55601.6.** (a) To provide funds to carry out Section 55601.5, each processor who crushes more than 100 tons of grapes in California shall pay to the secretary the amount determined by the secretary to be necessary to cover these costs, but not to exceed ten cents (\$0.10) per ton of grapes received for crushing, fresh weight equivalent, during each marketing season beginning July 1 and ending the following June 30. However, five cents (\$0.05) per ton of grapes received for crushing, or one-half of the fee if the fee is less than ten cents (\$0.10), shall be paid by the processor who crushes grapes and five cents (\$0.05) per ton of grapes received for crushing, including any grapes produced by the processor, or one-half of the fee if the fee is less than ten cents (\$0.10), shall be paid by the processor who crushes grapes and may be deducted from moneys owed to the producer.

(b) The amount of the fee shall be paid to the secretary on or before January 10 of each year on all grapes received for crushing through December 15. The amount of the fee on any grapes received for crushing after December 15 shall be paid to the secretary on or before June 30 of that marketing season.

(c) The secretary may fix the fee at a lesser amount and may adjust the fee from marketing season to marketing season.

(d) Any processor who crushes grapes who fails, neglects, or refuses to pay the required fee shall be in violation of this chapter. Any processor who crushes grapes shall not be entitled to pass the penalty on to the producer of the grapes.

(e) If the secretary conducts an acreage survey pursuant to Section 55613, the secretary may increase the fee charged pursuant to subdivision (a) by not more than four cents (\$0.04) per ton of grapes received for crushing, fresh weight equivalent, to cover costs of the survey. The same ratio of payment between processor and producer shall be maintained if the fee is increased pursuant to this subdivision.

(f) The fee authorized by subdivision (a) for the reports required to be prepared by the secretary pursuant to Section 55601.5 and the increase in that fee authorized by subdivision (e) for the survey authorized by Section 55613 shall be established by the secretary so as to generate only the amount of revenue that the secretary reasonably anticipates will be needed to cover the cost incurred by the secretary in gathering and producing the reports required by Section 55601.5, in conducting the survey authorized by Section 55613, and in conducting related enforcement activities. The funds generated by the fees authorized by this section shall be used only for the purpose of gathering the information and producing the reports required to be prepared by the secretary pursuant to Section 55601.5 and conducting the survey authorized by Section 55613.

(g) All moneys received under this section shall be deposited in the State Treasury to the credit of the Department of Food and Agriculture Fund.

(Amended by Stats.1997,Ch.135,Sec.2. Effective July 28, 1997.)

**55601.7.** Notwithstanding Section 55461, every processor who handles freestone peaches for freezing and drying in California shall furnish to the director, on or before December 10 of each year, and every processor who handles walnuts, raisins, or prunes in California annually shall furnish to the director, on or before August 31 of each year, on forms provided by the director, the reporting information specified below showing the number of tons purchased by the processor in that marketing season. In the report, the tonnage shall be broken down by at least major varieties and weighted average price paid for the tonnage acquired (including any bonuses or allowances) and may contain other information required by the director, including, but not limited to, the following:

(a) For walnuts, including inshell acquisitions and shelling stock acquisitions, the color, size, percentage of edible yield, and percentage of offgrade.

(b) For raisins, the percentage of mold, moisture content, sand, offgrade, or micro-organisms on offgrade acquisitions.

(c) For prunes, by size and percentage offgrade.

(d) For freestone peaches, by type of utilization on a fresh weight basis and percentage of offgrade.

The above reporting shall be on a statewide basis.

(Amended by Stats.1984,Ch.713,Sec.1.)

**55601.8.** (a) The secretary shall not release, or otherwise make available, any information furnished by a cooperative or an individual processor under Section 55601.7 or this section, including information relating to the weighted average prices paid, except in proceedings brought against the processor by the secretary for the purpose of enforcing this section.

(b) The secretary shall (1) enforce the collection of the information required in Section 55601.7, (2) on or before January 15, publish a summary report for freestone peaches used for freezing and drying and, (3) on or before October 20, publish a summary report for walnuts, raisins, and prunes, reflecting the statistics derived from the processor reports. The summary reports shall include summaries of all information required to be furnished to the secretary.

## 2013 FOOD AND AGRICULTURAL CODE

(c) The secretary may dispense with the reporting requirements and his or her duties to enforce the collection of this information and the publishing of summary reports if the secretary determines that the same or similar information is made public information within the same time periods of subdivision (b) by any federal or state committee or organization responsible for regulating the handling of any of the commodities subject to this section.

(d) (1) To provide funds to carry out Section 55601.7 and this section, each processor, including agricultural cooperatives, subject to these reporting requirements shall pay to the secretary the amount determined by the secretary to be necessary to cover these costs, but not to exceed twelve cents (\$0.12) per fresh ton for freestone peaches, twelve cents (\$0.12) per dry ton for raisins and prunes, and twelve cents (\$0.12) per inshell dry ton for walnuts handled by the processor during each marketing season.

(2) (A) The amount of the fee for freestone peaches used for freezing and drying shall be paid to the secretary on or before December 10 for all freestone peaches used for freezing and drying received from April 1 through November 30.

(B) The amount of the fee for any freestone peaches used for freezing and drying received from December 1 to March 31, inclusive, shall be paid to the secretary on or before May 1 of the next marketing season.

(C) The amount of the fee shall be paid to the secretary on or before May 1 of each year for all other commodities received from September 1 to March 31, inclusive.

(D) The amount of the fee for any other commodity received from April 1 to August 31, inclusive, shall be paid to the secretary on or before September 1 of the next marketing season.

(3) The secretary may fix the fee at a lesser amount and may adjust the fee from marketing season to marketing season. Any processor who fails, neglects, or refuses to pay the required fee is in violation of this chapter. Any such processor shall not pass the penalty on to the producer of the commodity.

(4) All funds received under this subdivision shall be deposited in the State Treasury to the credit of the Department of Food and Agriculture Fund.

(e) If the secretary finds that any processor has failed, refused, or neglected to provide the information required by this section, the secretary may proceed in accordance with Article 11 (commencing with Section 55721).

(f) Any cooperative subject to the reporting provisions of this section shall, in lieu of reporting prices, report all advances and other payments made as of the reporting date and its good faith estimate of the market value of the commodity for the crop year.

(g) The willful failure of any processor to report to the secretary, as required by this section, is a violation of this chapter and is a separate and distinct violation of this chapter for each day the processor fails to meet the reporting requirements.

(h) For the purpose of Section 55601.7 and this section, "marketing season" means the crop year that runs from September 1 to August 31, inclusive, for walnuts, raisins, and prunes, and the crop year that runs from April 1 to March 31, inclusive, for freestone peaches.

(Amended by Stats.1997,Ch.135,Sec.3. Effective July 28, 1997.)

**55602.** Every processor except a licensed winegrower, that purchases for freezing any farm product from the producer of the farm product on a packout basis shall promptly upon completion of the processing of each lot or day's delivery inform the producer of the results obtained.

(Amended by Stats.1967,Ch.807.)

**55603.** If a specific grade or quality is a condition of a packout basis contract between the producer and the processor, such grade or quality shall be determined at the completion of the processing.

(Amended by Stats.1967,Ch.807.)

**55604.** Every contract between a processor and a producer which covers the purchase of any farm product on a packout basis shall designate the price to be paid for each grade purchased.

(Amended by Stats.1967,Ch.807.)

**55604.1.** Where the processor is operating under continuous United States Department of Agriculture inspection, the United States Department of Agriculture grade determination shall be accepted as final in accounting to the producer.

Where the processor is not operating under continuous United States Department of Agriculture inspection, any dispute as to grade shall be settled by lot inspection to be made by the United States Department of Agriculture. In the event any lot is shipped within 30 days of processing, the processor shall draw representative samples in accordance with United States Department of Agriculture sampling procedures, and the samples shall be held for a period of not less than 30 days from the date of processing for the inspection if necessary.

(Amended by Stats.1967,Ch.807.)

**55604.2.** The provisions of Section 55581 of the Agricultural Code and Section 12713 of the Business and Professions Code do not apply to farm products purchased and accounted for on a packout basis, pursuant to this section.

(Amended by Stats.1967,Ch.807.)

**55605.** Every processor, except a licensed winegrower, that receives any farm product from the producer of the farm product for processing on a consigned basis shall promptly make and keep a correct record which shows in detail all of the following with reference to the processing, handling, storage, and sale of such farm product:

- (a) The name and address of the consignor.
- (b) The date received.
- (c) The quantity received.
- (d) The size of the containers into which the finished product is packed.
- (e) The grade and quality of the finished product.
- (f) The price which is obtained from the sale of the finished product.

## 2013 FOOD AND AGRICULTURAL CODE

(g) An itemized statement of costs and charges which the processor paid in connection with the processing, handling, storage, and sale of the farm product. Any services rendered for which charges are made, if not filed with the director, shall be charged at cost, if not covered by a written contract. Cost-supporting data shall be available for verification.

(Amended by Stats.1976,Ch.632.)

**55606.** If the processor has entered into a contract with two or more producers or consignors, which provides that the returns for any farm product which is handled and sold for the account of such producers or consignors shall be pooled on a definite basis as to grade or quality, or both, during a specific period of time, then the processor shall render a true account of sale which shows the net average pool return on each grade and quality from the sales that are made, which shows in detail all charges in connection with the handling, processing, and selling of such farm product. The processor shall keep a correct record of such sales and charges.

(Amended by Stats.1967,Ch.807.)

**55607.** Every processor shall keep accurate books and records which show the name and address of any producer that is selling and making delivery of any farm product to him, including the dates of deliveries, the quantities of the farm product which is delivered, and the agreed price to be paid for such farm product. If no agreed price has been arrived at, or a method for determining it agreed upon, such agreed price shall be considered the value of such product as of date of delivery. For the purpose of ascertaining such value and in addition to other evidence, reference may be had to price quotations from the federal-state market news service.

(Enacted by Stats.1967,Ch.15.)

**55608.** Accurate grading and weight receipts shall be given by all processors to each producer, or his agent, upon each and every delivery. Each receipt shall state all of the following:

- (a) The date of the receipt.
- (b) The name and address of the producer.
- (c) The name of the processor.

(Enacted by Stats.1967,Ch.15.)

**55609.** Not later than five days after demand, the processor shall give to every such producer so requesting a full and complete statement of such producer's account, which shows all of the following:

- (a) The entire quantities of the product which has been delivered by the producer.
- (b) The grades of the product which has been delivered by the producer.
- (c) The amount which is owing for every lot and for the total amount of the product which has been delivered by the producer.

(Enacted by Stats.1967,Ch.15.)

**55609.1.** Remittance in full of the amount which is realized from such sales, including all collections, overcharges, and damages, less the agreed commission and other charges, together with a complete account of sales, shall be made to the consignor within 10 days after receipt of the moneys by the consignee, unless otherwise agreed in writing.

The burden of proof is upon the consignee to prove the correctness of his accounting as to any transaction which may be questioned.

(Added by Stats.1976,Ch.632.)

**55610.** A processor, in order to prevent loss or economic waste, may resell or redeliver any raw product purchased and received from the producer of the raw product to another processor for the purpose of processing and such act is not an act which requires licensing pursuant to Chapter 7 (commencing with Section 56101) of this division. The processor who resells or redelivers any raw product remains liable to the producer for the full value of the raw product.

(Amended by Stats.1979,Ch.871.)

**55611.** All records required to be kept under this chapter shall be kept for a period of four years.

(Added by Stats.1976,Ch.632.)

**55613.** (a) If the secretary determines by February 1 of any year, commencing in 1992, that an acreage survey of the grape crop is desired by the processors and producers of grapes for wine, and if the producers and processors of grapes for raisins and the producers and packers of grapes for fresh market use agree to pay their proportionate share of the cost of the survey, as determined by the secretary, the secretary shall conduct the survey. The secretary shall implement subdivision (e) of Section 55601.6 to fund the wine industry's proportionate costs of the survey. If an acreage survey is conducted, the results of the survey shall be printed and made available on or before May 30 of the year in which it is conducted.

(b) The department shall reimburse any processor or producer of grapes for wine to cover the costs incurred by any of those persons to fund the wine industry's proportionate share of an acreage survey in 1991, from funds collected pursuant to subdivision (e) of Section 55601.6.

(c) For purposes of this section, "acreage survey" means an accumulation of plant removals, new plantings, and graftings to provide reliable information on the changing character of the state's grape industry. This information shall be tabulated for each county and on a statewide basis and for each variety of grapes.

(Amended by Stats.1996,Ch.737,Sec.4. Effective January 1, 1997.)

### **Article 9. Producer's Lien** (Article 9 enacted by Stats. 1967, Ch. 15.)

**55631.** Every producer of any farm product that sells any product which is grown by him to any processor under contract, express or implied, in addition to all other rights and remedies which are provided for by law, has a lien upon such product and upon all processed or manufactured forms of such farm product for his labor, care, and expense in growing and harvesting such product. The lien shall be to the extent of the agreed price, if any, for such product so sold. If there is no agreed price or a method for determining it which is agreed upon, the extent of the lien is the value of the farm product as of the date of the delivery. Any portion of such product or the

## 2013 FOOD AND AGRICULTURAL CODE

processed or manufactured forms of such product, in excess of the amount necessary to satisfy the total amount owed to producers under contract, shall be free and clear of such lien.

(Amended by Stats.1979,Ch.969.)

**55631.5.** Notwithstanding Section 55461, a nonprofit cooperative association acting as a producer bargaining association may assert producer's lien rights for, or on behalf of, its members.

(Added by Stats.1986,Ch.1109,Sec.2.)

**55632.** This producer's lien attaches on all of such delivered product from the date of delivery of such farm product or any portion of it by a producer to any processor.

(Enacted by Stats.1967,Ch.15.)

**55633.** The producer's lien is a preferred lien prior in dignity to all other liens, claims, or encumbrances except the following:

(a) Labor claims for wages and salaries for personal services which are rendered by any person to any processor in connection with such processing business after the delivery of any such product for processing.

(b) The lien of a warehouseman as provided by Division 7 (commencing with Section 7101) of the Uniform Commercial Code.

(Amended by Stats.1979,Ch.969.)

**55634.** Every lien which is provided for in this article is on every farm product and any processed form of the farm product which is in the possession of the processor without segregation of the product. For purposes of this chapter, any and all farm products or processed form of farm products deposited by a processor with a warehouse, whether or not warehouse receipts are given as security to a lender, shall be considered as being in the possession of the processor and subject to the lien.

(Amended by Stats.1986,Ch.1109,Sec.3.)

**55635.** The lien of a producer, unless sooner released by payment or by security which is given for the payment as provided in this article, attaches from the date of delivery of the product, or if there is a series of deliveries, it attaches from the date of the last delivery.

(Amended by Stats.1986,Ch.1109, Sec.4.)

**55636.** If suit is commenced by any such producer to enforce any lien, such lien shall remain in effect until one of the following occurs:

(a) The payment of the agreed price or the value of such product.

(b) Deposit of the amount of the lien or claims with the clerk of the court in which any such action is pending.

(c) The final determination of such court proceeding.

(Amended by Stats.1979,Ch.969.)

**55637.** Any lien on any product or processed product may, however, be released, to the extent the value of the claim upon such product is secured, by a surety bond or a cash deposit or other security given as provided in this article. Any producer may also release any lien which is possessed by him upon payment being made to him for the agreed or reasonable value of the product which is so sold and delivered, or upon arrangements being made for such payment which are satisfactory to the producer.

(Enacted by Stats.1967,Ch.15.)

**55638.** It is unlawful for any processor to remove, from this state or beyond his ownership or control, any farm product which is delivered to him, or any processed form of the farm product, to which any of the liens provided for in this chapter has attached, except for any of such product or processed product as may be in excess of a quantity on hand which is of a value that is sufficient to satisfy all existing liens. Furthermore, this section shall not prohibit the sale of any farm product or processed form of the product to which such a lien has attached, so long as the total proceeds of the sale are used to satisfy obligations to producers which are secured by a lien established pursuant to this chapter.

(Amended by Stats.1979,Ch.969.)

**55638.5.** The director, within 15 days of the filing of a verified complaint by a producer, shall investigate any charge that a purchaser of a farm product to which a lien has attached has removed any farm product, or any processed form of a farm product, in violation of Section 55638.

(Added by Stats.1986,Ch.1109,Sec.5.)

**55639.** Any processor that desires to secure a release of any or all of such liens on any product or processed product may do so in any of the following ways:

(a) By paying the agreed or actual value of any farm product which is purchased by such processor within 20 days from the date of delivery of the farm product unless the date of payment is otherwise agreed upon in writing or such payment is secured other than by lien.

(b) By depositing with the director a surety bond which is executed by such processor as principal and by a surety company which is qualified and authorized to do business in this state as surety in an amount which equals the current market value of the product or processed product which is intended by such processor to be sold or otherwise disposed of, as such value may appear by the sworn statement of such processor in accordance with quotations from the federal-state market news service or other evidence which is satisfactory to the director. The bond shall be conditioned that if the processor fails to pay up to the amount of such bond the lawful claims of all producers whose liens have been released by the bond, within 35 days after date of the bond, the surety shall be liable to and shall pay to the state on behalf of such claimants all such lawful claims as may be covered by the amount of the bond, together with costs of suit if an action is filed on the bond.



## 2013 FOOD AND AGRICULTURAL CODE

(c) By depositing with the director a cash sum in lawful money of the United States which is expressly set apart by an instrument in writing that is signed by the processor for the purpose of guaranteeing to the extent of such sum, payment of all existing claims of producers whose liens are released by the deposit, within 35 days from the date of such deposit. The director shall be named in such instrument as trustee to carry out the purpose and intent of the instrument.

(d) By designating, setting apart, and depositing in a public warehouse a quantity of any processed farm products and indorsing over to the director and delivering to him the warehouse receipt for such products for the purpose of guaranteeing to the extent of the value of such deposit, payment within 35 days from the date of such deposit, all existing claims of producers and labor claimants whose liens are released by it.

(e) By securing a release from the director after payment in full for such farm product.

(Enacted by Stats.1967,Ch.15.)

**55640.** If all lawful claims of the producers have been paid in accordance with this article by any processor, any product which is released by such action may be sold, transported, or otherwise disposed of.

(Enacted by Stats.1967,Ch.15.)

**55641.** If a bond, cash deposit, or security is given to the director by any processor as provided in this article, such processor may sell, transport, or otherwise dispose of the product or processed product to the value which is represented by such security as such value may appear by the sworn statement of such processor in accordance with quotations from the federal-state market news service or other evidence satisfactory to the director.

(Enacted by Stats.1967,Ch.15.)

**55642.** The director may accept such bond, if approved by him, and such other security. If the claims or any of them are not paid in accordance with the condition of such security, the director may, on proof being made to his satisfaction of the amounts which are due such claimants, pay all such unpaid claims insofar as possible out of the deposit money, or proceeds from any sale made by him of any securities or processed products which are given as security.

(Enacted by Stats.1967,Ch.15.)

**55643.** If a bond has been given as security, the director shall notify the principal and surety of any default on the part of the principal under the bond, and make demand for payment on behalf of such unpaid claimants. If payment is not made, the director may take any legal action he may deem necessary to enforce payment under such bond.

(Enacted by Stats.1967,Ch.15.)

**55644.** If the director has received warehouse receipts for any processed product as security, and the processor giving them has failed to pay the claims in accordance with the terms of such security, the director may sell such security with or without notice, and in such manner as he shall determine.

(Enacted by Stats.1967,Ch.15.)

**55645.** All claims in relation to payment shall have equal standing and payment shall be prorated if necessary among the claimants.

(Enacted by Stats.1967,Ch.15.)

**55646.** This article does not prevent the director if in his opinion the rights of all of the claimants are fully protected, as provided for in this article, from issuing a certificate in the name of the department and signed by him which releases any specific lot or quantity of any product or processed product from all liens of the claimants. No security which is held by the director shall, however, be released by him to any processor unless and until it is made to appear to his satisfaction that all claims have been fully paid, or that the rights of all of the claimants are fully protected.

A fee of five dollars (\$5) shall be paid to the director for issuing any certificate or release which is provided for in this section.

(Enacted by Stats.1967,Ch.15.)

**55647.** This article does not impair or affect the right of any claimant that possesses a lien to maintain a personal action to recover such debt against a processor, either in an action to foreclose his lien or in a separate action. He is not required to state in his affidavit to procure an attachment that his demand is not secured by a lien.

(Enacted by Stats.1967,Ch.15.)

**55648.** The judgment, if any, which is obtained by the plaintiff in such personal action, or personal judgment which is obtained in such lien action, does not impair or merge any lien right or claim which is held by such plaintiff. Any money, however, which is collected on the judgment shall be credited on the amount of such lien or claims in any action which is brought to enforce the lien or in any action which is filed pursuant to this article by the director.

(Enacted by Stats.1967,Ch.15.)

**55649.** In an action that is filed by any such lien claimant, the defendant processor may file with the court in which the action is pending a surety bond in an amount that is sufficient to cover the demand of plaintiff's complaint, including the costs, whereupon the court may order the release of a portion or the whole of any product or processed product upon which the lien of plaintiff has attached.

(Amended by Stats.1982,Ch.517,Sec.234.)

**55650.** Such processor may also, on motion duly noticed, introduce evidence to the court before whom any such action is pending to the effect that he has sufficient security or money on deposit with the director to protect the lien or other rights of plaintiff. If he does so, the court may order the release of a portion or the whole of such product upon which the lien of plaintiff is attached, and deny to plaintiff any recovery in such action. Such action by the court does not, however, prejudice any other rights or remedies which are possessed by the plaintiff.

(Enacted by Stats.1967,Ch.15.)

**55651.** The plaintiff in an action which is brought to foreclose any of the liens which are provided for in this article may, in a proper case, and upon proper allegations, secure an injunction against the processor in accordance with the provisions of Chapter 3 (commencing with Section 525), Title 7, Part 2 of the Code of Civil Procedure to restrain the doing of any acts on the part of such processor which are designed to or which would, in effect, remove any processed product in his possession or under his control and upon which valid liens exist, beyond the process of the court, to plaintiff's injury.

(Enacted by Stats.1967,Ch.15.)

**55652.** If in a court proceeding to foreclose such lien, it is found and determined by the court that there is no cash, bond, or other deposit placed with the director as security for the payment of any of the lien claims as set out in the complaint, the judgment of foreclosure shall be against a sufficient quantity in value of such farm product or processed product in the possession or under the control of the defendant processor, as may be necessary to satisfy such claim or render judgment and declare forfeited any bond which is deposited in the court by such processor to secure the lawful claims of the plaintiff as determined by the court.

(Enacted by Stats.1967,Ch.15.)

**55653.** All actions filed by the director or producers against any processor for the foreclosure of the liens or other security which are provided for in this article may be consolidated by the court and all persons that are necessary to a determination of such action may be made parties to such actions. Any judgment which is rendered shall determine the lawfulness of the amount of each claim as represented by the pleadings.

(Enacted by Stats.1967,Ch.15.)

**Article 10.5. Liens on Livestock Sold or Delivered to Meatpackers**

(Article 10.5 added by Stats. 1979, Ch. 497.)

**55701.** As used in this article, the following definitions shall apply:

(a) "Livestock" means any cattle, sheep, swine, goat, or any horse, mule, or other equine, whether living or dead.

(b) "Meatpacker" means an establishment where livestock are either slaughtered, the carcasses thereof are prepared, or meat is processed and where state or federal inspection is maintained.

(Added by Stats.1979,Ch.497.)

**55702.** (a) Except as otherwise provided in this section, any person who sells or furnishes livestock to a meatpacker, shall have a lien, not dependent upon possession, on the livestock and upon the identifiable proceeds and products thereof, for the unpaid part of the purchase price, or for the unpaid value of the livestock at the time of the transfer of possession if no purchase price has been agreed upon. The lien shall commence on the date of the transfer of possession of the livestock to the meatpacker and shall have priority over all other liens upon, and security interests in, the livestock and the identifiable proceeds and products thereof, without regard to the time of attachment or perfection of such other liens or security interests and shall remain a lien upon the livestock and the identifiable proceeds and products thereof notwithstanding sale, exchange, or other disposition thereof.

(b) Notwithstanding the provisions of subdivision (a), a buyer in the ordinary course of business, as that term is defined in subdivision (9) of Section 1201 of the Commercial Code, shall take free of such lien even though the buyer knows of the existence of the lien.

(c) Notwithstanding the provisions of subdivision (a), the lien shall cease to be of any force or effect after the expiration of 21 days from the date of delivery of the livestock unless a notice of lien is filed pursuant to subdivision (e), in which case the lien shall remain effective as long as such notice shall remain effective.

(d) No person shall have a lien pursuant to subdivision (a) to the extent that the person shall have made the livestock available to the meatpacker on credit terms.

(e) Any person selling or delivering livestock who claims a lien under this article shall file a statement with the Secretary of State and a copy thereof with the director, both within 21 days after delivery of the livestock to the meatpacker. The statement shall be in writing, verified by the oath of the person filing, and shall contain all of the following:

(1) The name and address of the person filing.

(2) A statement of the amount demanded by the person filing the statement after deducting all credits and offsets.

(3) The name and address of the meatpacker who received the livestock.

(4) A description of the livestock delivered to the meatpacker and the date of delivery.

(5) A statement that the amount claimed is a true and bona fide existing debt as of the date of the statement.

(6) A statement that the amount claimed is a true and bona fide existing debt as of the date on which payment was due for the livestock.

(f) Every statement that is filed shall be accompanied by the fees required by Chapter 5 (commencing with Section 9501) of Division 9 of the Commercial Code in the case of a financing statement not on the standard form and shall remain effective for a period of five years from the date of filing.

(Added by Stats.1979,Ch.497. Superseded on July 1, 2001; see amendment by Stats.1999,Ch.991.)

**55702.** (a) Except as otherwise provided in this section, any person who sells or furnishes livestock to a meatpacker, shall have a lien, not dependent upon possession, on the livestock and upon the identifiable proceeds and products thereof, for the unpaid part of the purchase price, or for the unpaid value of the livestock at the time of the transfer of possession if no purchase price has been agreed upon. The lien shall commence on the date of the transfer of possession of the livestock to the meatpacker and shall have priority over all other liens upon, and security interests in, the livestock and the identifiable proceeds and products thereof, without regard to the time of attachment or perfection of such other liens or security interests and shall remain a lien upon the livestock and the identifiable proceeds and products thereof notwithstanding sale, exchange, or other disposition thereof.

(b) Notwithstanding the provisions of subdivision (a), a buyer in the ordinary course of business, as that term is defined in subdivision (9) of Section 1201 of the Commercial Code, shall take free of such lien even though the buyer knows of the existence of the lien.

(c) Notwithstanding the provisions of subdivision (a), the lien shall cease to be of any force or effect after the expiration of 21 days from the date of delivery of the livestock unless a notice of lien is filed pursuant to subdivision (e), in which case the lien shall remain effective as long as such notice shall remain effective.

(d) No person shall have a lien pursuant to subdivision (a) to the extent that the person shall have made the livestock available to the meatpacker on credit terms.

(e) Any person selling or delivering livestock who claims a lien under this article shall file a statement with the Secretary of State and a copy thereof with the director, both within 21 days after delivery of the livestock to the meatpacker. The statement shall be in writing, verified by the oath of the person filing, and shall contain all of the following:

- (1) The name and address of the person filing.
- (2) A statement of the amount demanded by the person filing the statement after deducting all credits and offsets.
- (3) The name and address of the meatpacker who received the livestock.
- (4) A description of the livestock delivered to the meatpacker and the date of delivery.
- (5) A statement that the amount claimed is a true and bona fide existing debt as of the date of the statement.
- (6) A statement that the amount claimed is a true and bona fide existing debt as of the date on which payment was due for the livestock.

(f) Every statement that is filed shall be accompanied by the fees required by Chapter 5 (commencing with Section 9501) of Division 9 of the Commercial Code in the case of a financing statement not on the standard form and shall remain effective for a period of five years from the date of filing.

(Amended by Stats. 1999, Ch.991, Sec.43.2. Effective January 1, 2000. Operative July 1, 2001, by Sec.75 of Ch. 991.)

**55703.** Except as provided in this section, any lien created under Section 55702 shall continue in force for a period of five years from the date of filing of the notice of lien. The lien shall cease at the expiration of five years unless the claimant thereof, or his assignee, or successor in interest, brings suit to foreclose the lien, in which case the lien continues in force until such lien foreclosure suit is finally determined and closed. If such foreclosure proceeding is not prosecuted to trial within two years after the commencement thereof, the court may in its discretion dismiss the foreclosure suit.

The plaintiff in any such lien foreclosure suit may have the property upon which such lien subsists attached, as provided in the Code of Civil Procedure.

Any number of persons claiming liens under this article may join in the same action and when separate actions are commenced, the court may consolidate them. Whenever the sale of the property subject to any lien or liens provided for in this article, under the judgment or decree of foreclosure of such lien or liens, results in a deficiency of proceeds, the proceeds shall be divided pro rata among the lien claimants whose liens are established, regardless of the order in which the liens were created or the order in which the suits to foreclose same were commenced, and the judgment or decree for the deficiency may be docketed against the party personally liable therefor and his sureties, in the same manner and with the same effect as in actions for the foreclosure of security interests.

Nothing contained in this article shall be construed to impair or affect the right of any person to whom any debt may be due for livestock sold or delivered to maintain a personal action to recover such debt against the person liable therefor, or his sureties, either in connection with a suit to foreclose the lien or in a separate action. Any person bringing such personal action may take out a separate attachment therefor, notwithstanding his lien or the amount of his debt. In the affidavit to procure an attachment pursuant to such personal action, such person shall state that the attachment is made pursuant to this section, and the judgment, if any, obtained by the plaintiff in such personal action shall not be construed to impair or merge any lien held by such person under this article. Any money collected on such personal judgment shall be credited on the amount of such lien in any action brought to enforce the lien.

(Added by Stats.1979,Ch.497.)

**55704.** Any rights or remedies granted to a person who sells livestock pursuant to this article, are in addition to any other rights or remedies provided by law for such seller.

(Added by Stats.1979,Ch.497.)

### **Article 11. Examinations and Audits of the Books and Records of Licensees**

(Article 11 enacted by Stats. 1967, Ch. 15.)

**55721.** (a) If, in the opinion of the department, there appears to be reasonable grounds for investigating a complaint or notification made under the provisions of this chapter, the department shall investigate the complaint or notification. In the course of the investigation, if the department determines that violations of this chapter are indicated other than alleged violations specified in the complaint or notification that served as the basis for the investigation, the department may expand the investigation to include the additional violations.

(b) In the opinion of the department, if an investigation substantiates the existence of violations of this chapter, the department may cause a complaint to be issued.

(c) The investigation may include, but shall not be construed to require, examinations and audits of the books and records of any processor that pertain to the solvency of the processor of, or to the purchase of, or to the handling and accounting for, any farm product that is purchased or received on a pack-out or other basis from the producer of the farm product. The department may examine and audit all pertinent books, records, weight certificates, receipts, ledgers, journals, papers, contracts, bank statements, canceled checks and other documents of the processor that show or tend to show facts regarding the financial condition and the number and status of accounts of growers and others that are doing business with the processor.

(Amended by Stats.1997, Ch.696,Sec.31. Effective January 1, 1998.)

**55722.** If the examination discloses evidence of any violation of this chapter, the department may issue a complaint detailing the charges and the discipline sought in accordance with this chapter.

(Amended by Stats.1997, Ch.696,Sec.32. Effective January 1, 1998.)

**55722.5.** (a) An aggrieved grower or licensee with a complaint that is not subject to the federal Packers and Stockyards Act, 1921 (7 U.S.C. Sec. 181 et seq.) or the federal Perishable Agricultural Commodities Act, 1930 (7 U.S.C. Sec. 499a et seq.) may seek resolution of that complaint by filing a complaint with the department within nine months from the date a complete account of sales was due. The complaint shall be accompanied by two copies of all documents in the complainant's possession that are relevant to establishing the complaint, a filing fee of one hundred dollars (\$100), and a written denial of jurisdiction from the appropriate federal agency unless the commodity involved clearly does not fall under either the federal Packers and Stockyards Act, 1921 (7 U.S.C. Sec. 181 et seq.) or the federal Perishable Agricultural Commodities Act, 1930 (7 U.S.C. Sec. 499a et seq.). Within five business days of receipt of a signed and verified complaint, the filing fee, and the denials of federal jurisdiction, the department shall serve the verified complaint on the respondent. Service shall be by certified mail. The department, the secretary, the department's employees, the department's agents, the boards and commissions associated with the department, their employees or agents, and the State of California are not parties to the dispute in a proceeding brought under this section.

(b) The respondent served shall answer within 30 calendar days of service. The respondent's response shall include two copies of all relevant documentation of the transactions referred to in the verified complaint.

(c) Within 30 calendar days of receipt of the answer, the department shall issue to both parties a written factual summary on the basis of the documents that have been filed with the department.

(d) If a settlement is not reached within 30 calendar days after the department's summary is issued, the department, on request of the claimant or respondent and upon payment of a filing fee of three hundred dollars (\$300), shall schedule alternate dispute resolution, to commence within 90 calendar days. The department shall serve both parties with a notice of hearing, which sets out the time, date, street address, room number, telephone number, and name of the hearing officer. Service of the notice of hearing shall be by certified mail.

(e) The alternate dispute resolution shall proceed as follows:

(1) The hearing shall be conducted by hearing officers in accordance with standard procedures promulgated by the American Arbitration Association or other acceptable alternative dispute resolution entities.

(2) The hearing officers shall be familiar with the type of issues presented by those claims, but need not be attorneys.

(3) The sole parties to the proceedings shall be the complainant and the respondent.

(4) The disputes, claims, and interests of the department or the State of California are not within the jurisdiction of the proceedings.

(5) The validity of a regulation of the department or order promulgated pursuant to this code is not within the jurisdiction of the proceedings.

(6) Law and motion matters shall be handled by the assigned hearing officer.

(7) The hearing officer has no authority to enter into settlement discussions except upon stipulation of the parties involved.

(8) The parties may represent themselves in propria persona or may be represented by a licensed attorney at law. A party may not be represented by a representative who is not licensed to practice law.

(9) To the extent of any conflict between any provision of Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code and this article, this article shall prevail.

(10) The hearing officer may order a review of records or an audit of records by a certified public accountant. The review or audit shall be conducted under generally accepted auditing standards of the American Institute of Certified Public Accountants, and upon completion of the review or audit the nature and extent of the review or audit shall be disclosed to the parties by the auditor in the audit report. The audit report shall disclose the number of transactions reviewed and the rationale for selecting those transactions. The department shall advance the costs of the audit or review of records, but the hearing officer shall apportion the costs at the conclusion of the hearing. The department shall pursue repayment in accordance with the hearing officer's apportionment and may bring an action in a court of competent jurisdiction to recover funds advanced. Nothing in this subdivision shall be construed to require the department to pursue any specific remedy or to prohibit the department from accepting a reasonable repayment plan.

(f) The hearing officer shall render a written decision within 60 days of submission of the case for decision. In addition to rendering a written finding as to what is owed by whom on the substantive allegations of the complaint, the hearing officer shall decide whether or not to order the full cost of the alternative dispute resolution proceeding, and in what ratio or order the losing party is to pay the costs of the proceeding. For these purposes, the cost of the alternative dispute resolution proceeding does not include the filing fee, the parties' attorney fees, or expert witness fees. The hearing officer may also award a sanction against a complainant for filing a frivolous complaint or against a respondent for unreasonable delay tactics, bad faith bargaining, or resistance to the claim, of either 10 percent of the amount of the award or a specific amount, up to a maximum of one thousand dollars (\$1,000). Any sanction award shall not be deemed to be res judicata or collateral estoppel in any subsequent case in which either the complainant or respondent are charged with filing a frivolous complaint, unreasonable delay tactics, bad faith bargaining, or resistance to the claim. The department may consider the written decision of the hearing officer in determining any related licensing action. The written decision of the hearing officer may be introduced as evidence at a court proceeding.

(g) Nothing in this section prohibits the parties to the dispute from settling their dispute prior to, during, or after the hearing.

(h) Nothing in this section alters, precludes, or conditions the exercise, during any stage of the proceedings provided by this chapter, of any other rights to relief a party may have through petition to a court of competent jurisdiction, including, but not limited to, small claims court.

**55724.** (a) Every licensee shall prepare and preserve the accounts, records, and memoranda required by this chapter which shall fully and correctly disclose all transactions involved in his business. Licensees shall keep records which are adapted to the particular business that the licensee is conducting and in each case such record shall fully disclose all transactions in the business in sufficient detail as to be readily understood and audited. Minimum records required under this chapter are:

1. A record of cash received.
2. A record of cash disbursed.
3. A general ledger or its equivalent.
4. A record of amounts due California producers.

## 2013 FOOD AND AGRICULTURAL CODE

5. A record of amounts due others.

(b) Every licensee shall prepare and preserve records and memoranda required by this chapter which shall fully and correctly disclose the true ownership and management of such business.

(Added by Stats.1976, Ch.632.)

**55725.** The failure or refusal of any licensee to produce and make available to the director any books or records requested pursuant to this article, or otherwise to obstruct the examination or audit, is sufficient ground to suspend or revoke the license issued pursuant to this chapter.

(Added by Stats.1986, Ch.942,Sec.2.)

### Article 12. Investigations and Hearings

(Article 12 enacted by Stats. 1967, Ch. 15.)

**55741.** The department, upon its own motion, may, or upon the verified complaint of any interested party and within 30 days of the filing of that complaint, shall, commence to investigate, examine, or inspect any of the following:

(a) A transaction that involves the failure of the processor to make payment for any farm product within the time that is specified for payment in the contract of sale and purchase between the producer and the processor, in accordance with the terms of the contract or in accordance with this chapter.

(b) A transaction that involves the failure of a processor who contracts to harvest a producer's crop to fulfill the terms of the contract.

(c) A charge that a processor may be insolvent or in an unsound financial condition.

(Amended by Stats.1997, Ch.696,Sec.34. Effective January 1, 1998.)

**55742.** Except as otherwise provided in Section 55743 or 55744, if the complaint is a bona fide dispute that involves any of the following, the department has no jurisdiction to act upon the complaint if the processor or complainant within 10 days after receiving notice of the filing of the verified complaint has notified the department of his or her election to submit the dispute to alternative dispute resolution procedures in accordance with the provisions of a written contract:

(a) The rejection of any farm product.

(b) The failure or refusal to accept and pay for any farm product that is bought or contracted to be bought from a producer by a processor.

(c) The failure or refusal by the processor to furnish or provide boxes or other containers, or hauling, harvesting, or any other service that is contracted to be done by the processor in connection with the acceptance, harvesting, or other handling of the farm product.

(d) The terms and conditions of the written contract.

(Amended by Stats.1997, Ch.696,Sec.35. Effective January 1, 1998.)

**55743.** The jurisdiction that is otherwise reserved to the department in this chapter, however, is restored for the purposes of this chapter if the authorities responsible for the alternative dispute resolution procedures, without reasonable cause, fail, refuse, or neglect to adjudicate the matter of dispute within 90 days from the date of the notification to the department.

(Amended by Stats.1997, Ch.696,Sec.36. Effective January 1, 1998.)

**55744.** The department also has jurisdiction over any such complaint or dispute if the processor has failed to perform in accordance with any alternative dispute resolution procedure award that is made in accordance with the terms of the written contract.

(Amended by Stats.1997, Ch.696,Sec.37. Effective January 1, 1998.)

**55745.** Any verified complaint filed with the department pursuant to this chapter shall be filed not later than nine months from the date a complete account of sales was due. This period, however, does not include the length of time it takes to secure a written letter of denial from the federal agencies responsible for administering the federal Packers and Stockyards Act, 1921 (7 U.S.C. Sec. 181, et seq.) or the federal Perishable Agricultural Commodities Act, 1930 (7 U.S.C. Sec. 499a et seq.).

(Added by renumbering Sections 55751 by Stats.1997, Ch.696,Sec.45. Effective January 1, 1998.)

### Article 14. Contempt

(Article 14 enacted by Stats. 1967, Ch. 15.)

**55811.** If any person in any proceedings before the director disobeys or resists any lawful order or refuses to respond to a subpoena, or refuses to take the oath or affirmation as a witness or thereafter refuses to be examined, or is guilty of misconduct during a hearing or so near the place of a hearing as to obstruct the proceeding, the director shall certify the facts to the superior court in and for the county where the proceedings are held.

(Enacted by Stats.1967, Ch.15.)

**55812.** The court shall thereupon issue an order which directs the person to appear before the court and show cause why he should not be punished as for contempt. The order and a copy of the certified statement shall be served on the person. Thereafter the court shall have jurisdiction of the matter.

(Enacted by Stats.1967, Ch.15.)

**55813.** The same proceedings shall be had, the same penalties may be imposed, and the person charged may purge himself of the contempt in the same way, as in the case of a person who has committed a contempt in the trial of a civil action before a superior court.

(Enacted by Stats.1967, Ch.15.)

## 2013 FOOD AND AGRICULTURAL CODE

### Article 16. Fees

(Article 16 enacted by Stats. 1967, Ch. 15.)

**55861.** (a) Except as otherwise provided in this article or in Section 56574, each applicant for a license shall pay to the department a fee in accordance with the schedule in subdivision (b), except that an agent shall pay fifty-five dollars (\$55) for each license period of the principal.

(b) The amount of the fee due each year from the applicant shall be determined by the annual dollar volume of business based on the value of the farm products that is returned to the grower, as follows:

(1) For a dollar volume of less than twenty thousand dollars (\$20,000), the fee shall be one hundred thirty-six dollars (\$136).

(2) For a dollar volume of twenty thousand dollars (\$20,000) and over, but less than fifty thousand dollars (\$50,000), the fee shall be two hundred dollars (\$200).

(3) For a dollar volume of fifty thousand dollars (\$50,000) and over, but less than two million dollars (\$2,000,000), the fee shall be three hundred dollars (\$300).

(4) For a dollar volume of two million dollars (\$2,000,000) and over, the fee shall be four hundred dollars (\$400).

(c) The department may reevaluate the fee structure based on operating costs. The fees shall adequately cover the costs to fully administer and operate the program in an effective and efficient manner.

**55861.5.** The fees provided by Section 55861 are maximum fees. The director may fix such fees at a lesser amount, and may adjust such fees from time to time, whenever he finds that the cost of administering this chapter can be defrayed with such below-maximum fees.

(Added by Stats.1971, Ch.915.)

**55862.** (a) (1) If any processor does not apply for the renewal of a preexisting license on or before the date of expiration of the license, a penalty of twenty-five dollars (\$25) shall be added to the fee provided for under Section 55861 or 55861.5. That penalty shall be paid within 30 days immediately following the license expiration date. Payment of the penalty shall entitle the applicant to 60 days from the date of the penalty payment to complete the application. If the application is not completed within that time, the application shall be denied and all fees retained by the department.

(2) If the penalty described in paragraph (1) is not paid within the 30-day period, any application for renewal of a preexisting license shall be treated as a new application.

(b) A new applicant shall have 60 days from the date of filing the application form and payment of the fee to complete the application. After the 60-day period has elapsed, if the application remains incomplete, the application may be denied and the application fee may be retained by the department.

(Amended by Stats.1999, Ch.198, Sec.3. Effective January 1, 2000.)

**55862.7.** (a) If any person is found to be operating a business without the license required by Section 55521, or failed to pay a fee in accordance with the schedule in subdivision (b) of Section 55861, that person shall pay to the secretary double the amount of the license fee due pursuant to this chapter.

(b) In addition to subdivision (a), if any person is found to be operating a business within the past five years without a license required by Section 55521, or failed to pay the fees in accordance with the schedule in subdivision (b) of Section 55861, that person shall pay to the secretary an amount equal to three times that portion of the fees that were not paid for the last five years the business has operated.

**55863.** Any person that has applied for and obtained a license pursuant to this chapter may apply for and secure a license under Chapter 7 (commencing with Section 56101) by filing an application which is accompanied by a fee determined by the dollar volume of business based on the value of the farm products that is returned to the grower or licensee, as follows:

(a) For a dollar volume of less than fifty thousand dollars (\$50,000), the fee shall be fifty dollars (\$50).

(b) For a dollar volume of fifty thousand dollars (\$50,000) and over, but less than two million dollars (\$2,000,000), the fee shall be one hundred forty-five dollars (\$145).

(c) For a dollar volume of two million dollars (\$2,000,000) and over, the fee shall be two hundred dollars (\$200).

This license shall be known as a "conjunctive license."

(Amended by Stats.1986, Ch.537, Sec.2. Effective August 21, 1986.)

**55863.5.** Any person who has applied for and obtained a license as agent, in the manner and upon the payment of the fee which is set forth in Section 55861, whose principal has applied for and obtained a conjunctive dealer's, commission merchant's, broker's, or cash buyer's license, as the case may be, shall be deemed to be licensed to represent his principal under Chapter 7 (commencing with Section 56101) of this division, and no other fee shall be required of such agent.

(Added by Stats.1972, Ch.667.)

**55864.** All fees which are collected pursuant to this chapter shall be paid into the State Treasury monthly and shall be credited to the Department of Agriculture Fund and, except as otherwise provided in Section 55433, shall be expended in carrying out this chapter.

(Enacted by Stats.1967, Ch.15.)

## 2013 FOOD AND AGRICULTURAL CODE

### Article 17. Violations

(Article 17 enacted by Stats. 1967, Ch. 15.)

**55872.** It is a violation of this chapter if the applicant, or licensee, has failed or refused to pay for any farm product at the time and in the manner which is specified in the contract with the producer, or as is otherwise provided in this chapter.

(Enacted by Stats.1967, Ch.15.)

**55873.** It is a violation of this chapter if the applicant, or licensee, has rejected, without reasonable cause, or has refused to accept, without reasonable cause, any farm product which is bought or contracted to be bought from a producer by such applicant or licensee, or failed or refused, without reasonable cause, to furnish or provide boxes or other containers, or hauling, harvesting, or any other service which is contracted to be done by the licensee in connection with the acceptance, harvesting, or other handling of such farm product which is bought or handled or contracted to be bought or handled.

(Enacted by Stats.1967, Ch.15.)

**55874.** It is a violation of this chapter if the licensee has knowingly employed an agent without causing the agent to comply with the licensing requirements of this chapter which are applicable to agents.

(Enacted by Stats.1967, Ch.15.)

**55875.** It is a violation of this chapter if the licensee has failed or refused, upon demand, to permit the director or his agents to make the investigations, examinations, or audits as provided in this chapter, or that the licensee has removed or sequestered any books, records, or papers necessary to any such investigations, examinations, or audits, or has otherwise obstructed them.

(Enacted by Stats.1967, Ch.15.)

**55876.** It is a violation of this chapter if the applicant, or licensee, has otherwise violated any provision of this chapter or Chapter 7 (commencing with Section 56101) of this division.

(Enacted by Stats.1967, Ch.15.)

**55877.** It is a violation of this chapter if the licensee licensed as a cash buying processor has bought or otherwise taken title to, or possession of, any farm product from the producer of the farm product, except by cash payment to the producer, at the time of obtaining such possession or control, of the full agreed price.

(Amended by Stats.1979, Ch.871.)

**55878.** The failure or refusal of a processor to make payment for any farm product within the time which is specified for such payment in the contract of sale and purchase between the producer and the processor, and in accordance with the terms of the contract, is a violation of this chapter.

(Enacted by Stats.1967, Ch.15.)

**55879.** It is a violation of this chapter if the applicant or licensee has failed or refused to render a true and correct account of sales or make settlement thereon or to pay for farm products received on consignment within the time and in the manner required by this chapter.

(Added by Stats.1967, Ch.807.)

**55880.** It is a violation of this chapter if the licensee or applicant has failed or refused to file with the director a schedule of his charges for services in connection with any farm product which is handled on account of, or as agent for another. Any services rendered for which charges are made, if not filed with the director, shall be charged at cost, if not covered by a written contract. Cost-supporting data shall be available for verification.

(Added by Stats.1976, Ch.632.)

**55881.** Under a contract for the purchase or handling of any farm product, any delinquent payment of money under this chapter shall also include a late charge of 5 percent per month of the unpaid balance calculated on a daily basis for the period of the delinquency for the first month and an additional 1 percent per month of the unpaid balance calculated on a daily basis for the remaining period of the delinquency. Any such late charge shall be payable to the person from whom the farm product was purchased, unless the person waives, in writing, his right to such payment. Such waiver shall be valid and effective only when given after a delinquency has occurred.

This section does not affect the time of payment provided for in this chapter or in any contract for the purchase or handling of any farm product.

(Added by Stats.1977, Ch.400.)

**55882.** It is a violation of this chapter if a licensee fails, neglects, or refuses to collect or remit any assessments that have been levied in accordance with the assessment provisions of Article 10 (commencing with Section 58921) of Chapter 1 or Article 12 (commencing with Section 59941) of Chapter 2 of Part 2 of Division 21, or Article 8 (commencing with Section 64691) of Chapter 2, Chapter 3, (commencing with Section 65500), Article 5 (commencing with Section 66621) of Chapter 4, Article 6 (commencing with Section 67101) of Chapter 5, Article 6 (commencing with Section 68101) of Chapter 6, Article 6 (commencing with Section 69081) of Chapter 7, Chapter 9.5 (commencing with Section 71000), Article 6 (commencing with Section 72101) of Chapter 10, Chapter 12.6 (commencing with Section 74701), Chapter 12.7 (commencing with Section 74801), Article 6 (commencing with Section 75131) of Chapter 13, Article 8 (commencing with Section 75631) of Chapter 13.5, Article 6 (commencing with Section 76141) of Chapter 14, Chapter 15 (commencing with Section 76201), Chapter 16.5 (commencing with Section 77001), Chapter 17 (commencing with Section 77201), Chapter 17.5 (commencing with Section 77401), Chapter 19 (commencing with Section 77701), Chapter 20 (commencing with Section 77901), Article 6 (commencing with Section 78285) of Chapter 21, or Article 6 (commencing with Section 78700) of Chapter 24, of Part 2 of Division 22.

(Amended by Stats.1992, Ch.868, Sec.1.7. Effective January 1, 1993.)

## 2013 FOOD AND AGRICULTURAL CODE

### **Article 18. Criminal Penalties** (Article 18 enacted by Stats. 1967, Ch. 15.)

**55901.** (a) Except as specified in Section 55902, any misdemeanor which is prescribed by this article is punishable by a fine of not less than five hundred dollars (\$500) or more than five thousand dollars (\$5,000), by imprisonment in the county jail for not more than one year, or by both that fine and imprisonment.

(b) For a violation of the offense described in subdivision (a), the department may recover investigative costs, excluding attorneys' fees and administrative overhead, for those charges where there has been a conviction in a court of law, or a court-supervised settlement has been reached. Nothing in this section allows the department to recover investigative costs for an administrative licensing action or any action that has not been filed in a court of law.

(c) Any person or entity responsible for investigative costs under this section shall be allowed to audit the department's investigative costs. The audit must be performed by a third-party certified public accountant and paid for by the person or entity requesting the audit. The department shall promulgate regulations to implement this subdivision by June 1, 2002.

(Amended by Stats.1986, Ch.942, Sec.8.)

**55902.** It is a misdemeanor for any person subject to this chapter to act as a processor or agent without a license, and is punishable by a fine of not less than ten thousand dollars (\$10,000), by imprisonment in the county jail for not more than one year, or by both the fine and imprisonment.

(Amended by Stats.1986, Ch.942, Sec.9.)

**55902.2.** It is a misdemeanor for any person subject to this chapter to pay license fees in an amount less than that amount established under subdivision (b) of Section 55861. Any person who pays less than the amount established under subdivision (b) of Section 55861 for two or more consecutive years shall pay to the director treble the amount of the license fees due pursuant to this chapter.

(Added by Stats.1991, Ch.733, Sec.3.)

**55902.5.** It is a misdemeanor for any person licensed as a cash buying processor to buy or otherwise take title to, or possession of, any farm product from a producer of the product, except by cash payment of the full agreed price to the producer at the time of obtaining possession or control.

(Added by Stats.1986, Ch.942, Sec.9.5.)

**55903.** It is a misdemeanor for any person that is subject to this chapter to willfully refuse to pay for any farm product which such person purchases within 20 days after the date of the delivery of such product by the producer if he has the ability to pay and demand for payment is made, except in the case of a bona fide dispute, unless the time of payment is otherwise agreed upon in writing, or the payment of the purchase price is secured other than by a lien.

(Enacted by Stats.1967, Ch.15.)

**55904.** It is a misdemeanor for any person that is subject to this chapter to falsely deny the amount, or the validity, of any producer's claim, or that it is due, with the intent to secure for himself, his employer or other person, any discount upon such indebtedness, or with the intent to annoy, harass, oppress, hinder, delay, or defraud the person to whom such indebtedness is due.

(Enacted by Stats.1967, Ch.15.)

**55905.** It is a misdemeanor for any person that is subject to this chapter to sell, hypothecate, sequester with intent to defraud any producer, or in any manner place or attempt to place any product upon which liens in favor of any producer have attached, beyond the control, reach, or recovery of any such claimant.

(Enacted by Stats.1967, Ch.15.)

**55906.** It is a misdemeanor for any person that is subject to this chapter to fail to comply with this chapter.

(Enacted by Stats.1967, Ch.15.)

### **Article 19. Civil Remedies and Penalties** (Article 19 enacted by Stats. 1967, Ch. 15.)

**55921.** The director may bring an action to enjoin the violation or the threatened violation of any provision of this chapter or of any order which is made pursuant to this chapter in the superior court in the county in which such violation occurs or is about to occur. There may be enjoined in one proceeding any number of defendants alleged to be violating the same provisions or orders, although their properties, interests, residences, or places of business may be in several counties and the violations separate and distinct. Any proceeding which is brought pursuant to this section shall be governed in all other respects by the provisions of Chapter 3 (commencing with Section 525), Title 7, Part 2 of the Code of Civil Procedure.

(Enacted by Stats.1967, Ch.15.)

**55922.** (a) Any person that violates any provision of this chapter is liable civilly in the sum of not less than five hundred dollars (\$500) or more than one thousand dollars (\$1,000) for each violation, to be recovered in an action by the secretary in any court of competent jurisdiction. All sums which are recovered under this section shall be deposited in the State Treasury to the credit of the Department of Food and Agriculture Fund.

(b) The department may recover investigative costs, excluding attorney's fees and administrative overhead, for those charges where there has been a conviction in a court of law, or a court-supervised settlement has been reached. Nothing in this section allows the department to recover investigative costs for an administrative licensing action or any action that has not been filed in a court of law.

(c) Any person or entity responsible for investigative costs under this section shall be allowed to audit the department's investigative costs. The audit shall be performed by a third-party certified public accountant and paid for by the person or entity requesting the audit. The department shall promulgate regulations to implement this subdivision by June 1, 2002.