STATE OF CALIFORNIA
AUTHENTICATED
ELECTRONIC LEGAL MATERIAL

Assembly Bill No. 689

CHAPTER 302

An act to amend Section 27581.4 of, and to add Sections 27561.5, 27581.1, 27583, 27583.2, 27583.4, 27584, and 27585 to, the Food and Agricultural Code, relating to eggs.

[Approved by Governor September 21, 2015. Filed with Secretary of State September 21, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

AB 689, Dodd. Marketing of eggs: violations: administrative and civil penalties.

Existing law establishes a regulatory scheme for the marketing of shell eggs, and requires egg producers and egg handlers to register with the Secretary of Food and Agriculture. A violation of those provisions or regulations adopted pursuant to those provisions is unlawful, and for certain violations, punishable as a misdemeanor. Existing law also authorizes the secretary, in lieu of seeking prosecution for the violation, to bring a civil action for up to $1,000 for the violation.

This bill would authorize the Department of Food and Agriculture to refuse to issue, or to suspend or revoke, an egg handler or egg producer certificate of registration under certain circumstances and would require the department to adopt regulations to establish procedures for an appeals process to contest the refusal to issue a certificate of registration or the department's suspension or revocation of a certificate of registration. The bill would increase the civil penalty amount to $10,000 and would also authorize a county agricultural commissioner to bring a civil action. The bill would also authorize the secretary or a county agricultural commissioner, in lieu of prosecution, to levy an administrative penalty of up to $10,000 for a violation of those provisions. The bill would require the secretary, on or before January 1, 2017, to adopt regulations classifying violations of these egg provisions as either "minor," "moderate," or "serious," with different penalty ranges applicable to each classification, as specified, and would apply these amounts to both civil penalties and administrative penalties. The bill would set forth notice and other procedural requirements for bringing and resolving an administrative action pursuant to those provisions, and would require the funds recovered by the county agricultural commissioner to be deposited in the county's general fund, and funds collected by the secretary to be deposited into the Department of Food and Agriculture Fund for use by the department in administering these provisions, when appropriated to the department for that purpose.

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

SECTION 1. Section 27561.5 is added to the Food and Agricultural Code, to read:

27561.5. (a) The department may refuse to issue, or may suspend or revoke, a certificate of registration if either of the following occur:

(1) The applicant fails to pay in full by the due date a fine, fee, assessment, or penalty levied by the department for a violation of this chapter, including a violation that occurred before January 1, 2016.

(2) The applicant has violated a provision of this chapter or any regulation adopted to implement this chapter.

(b) The department may reverse its refusal to issue or its suspension or revocation of a certificate of registration if the department finds substantial grounds to do so.

(c) (1) The department shall adopt regulations that do both of the following:

(A) Establish procedures for an appeals process, including a noticed hearing, for a person who wishes to contest the department's refusal to issue a certificate of registration or the department's suspension or revocation of a certificate of registration.

(B) Specify the maximum time period following the refusal to issue, suspension, or revocation of a certificate of registration during which the applicant shall not reapply for another egg handler or egg producer certificate of registration. The time period shall be based on the severity or number of violations of this chapter, and shall not exceed three years from the date of the original refusal to issue, suspension, or revocation of the certificate of registration.

(2) Regulations adopted pursuant to this section shall not be subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 2. Section 27581.1 is added to the Food and Agricultural Code, to read:

27581.1. (a) On or before January 1, 2017, the secretary shall adopt regulations classifying violations of this chapter, or any regulation adopted pursuant to this chapter, as "minor," subject to a penalty from fifty dollars ($50) to four hundred dollars ($400), inclusive, "moderate," subject to a penalty from four hundred one dollars ($401) to one thousand dollars ($1,000), inclusive, or "serious," subject to a penalty from one thousand one dollars ($1,001) to ten thousand dollars ($10,000), inclusive.

(b) The penalty schedule described in this section shall apply to civil penalties imposed pursuant to Section 27581.4 and administrative penalties imposed pursuant to Section 27583.

(c) The department shall post on its Internet Web site when the penalty schedule described in this section has been adopted.

SEC. 3. Section 27581.4 of the Food and Agricultural Code is amended to read:

27581.4. (a) The secretary, or a commissioner for violations in his or her county, may bring a civil action against any person who violates this chapter or any regulation adopted pursuant to this chapter, and any person who commits that violation is liable civilly in an amount not to exceed ten thousand dollars ($10,000). The court shall set the civil penalty imposed for a violation of this chapter, or any regulation adopted pursuant to this chapter, in accordance with the penalty schedule adopted by the secretary pursuant to Section 27581.1.

(b) Any money recovered by the secretary under this section shall be deposited in the Department of Food and Agriculture Fund for use by the department in administering this chapter, when appropriated to the department for that purpose.

(c) Any money recovered by a commissioner under this section shall be deposited in the county's general fund.

SEC. 4. Section 27583 is added to the Food and Agricultural Code, to read:

27583. (a) In lieu of prosecution, the secretary or the commissioner may levy an administrative penalty, in an amount not to exceed ten thousand dollars ($10,000) and in accordance with Section 27583.2 or 27583.4, as applicable, against a person who violates this chapter or any regulation implemented pursuant to this chapter. Commencing on the date the department posts notice of the adoption of the penalty schedule described in Section 27581.1, a penalty levied pursuant to this section shall be in accordance with that schedule.

(b) "Person," as used in this section, means anyone engaged in the business of producing, candling, grading, packing, or otherwise preparing shell eggs for market or who engages in the operation of selling or marketing eggs that he or she has produced, purchased, or acquired from a producer, or which he or she is marketing on behalf of a producer, whether as owner, agent, employee, or otherwise pursuant to this chapter.

SEC. 5. Section 27583.2 is added to the Food and Agricultural Code, to read:

27583.2. If the secretary levies an administrative penalty pursuant to Section 27583, the following shall apply:

(a) The person charged with the violation shall be notified of the proposed action in accordance with subdivision (b). The notice shall include the nature of the violation, the amount of the proposed administrative penalty, and the right to request a hearing to appeal the administrative action.

(b) (1) Notice shall be sent by certified mail to one of the following:

(A) The address of the person charged, as provided by any license or registration issued by the department, which is not limited to a certificate of registration issued pursuant to this chapter.

(B) The address of an agent for service of process for the person charged, as filed with the Secretary of State.

(C) If an address described in subparagraph (A) or (B) is not available, the last known address of the person charged.

(2) Notice that is sent to any of the addresses described in paragraph (1) shall be considered received, even if delivery is refused or if the notice is not accepted at that address.

(3) The person charged shall have the right to appeal the proposed action by requesting a hearing within 20 days of the issuance of the notice of the proposed action.

(c) If a hearing is requested, the secretary shall schedule a hearing within 45 days of the request, with notice of the time and place of the hearing given at least 10 days before the date of the hearing. At the hearing, the person charged shall be given an opportunity to review the secretary's evidence and to present evidence on his or her own behalf. If a hearing is not timely requested, the secretary may take the proposed action without a hearing.

(d) The secretary shall issue a decision within 30 days of the conclusion of the hearing, which shall become effective immediately.

(e) The secretary shall send a copy of the notice of the proposed action to the commissioner of the county in which the violation took place at the same time notice is sent pursuant to subdivision (b). Additionally, the secretary shall inform the commissioner of the county in which the action was initiated of violations for which a penalty has been assessed.

(f) If the proposed action is not overturned, in addition to the levy of an administrative penalty, the secretary may recover from the person charged any other reasonable costs incurred by the department in connection with administering the hearing to appeal the proposed action.

(g) Revenues collected by the secretary pursuant to this section shall be deposited into the Department of Food and Agriculture Fund for use by the department in administering this chapter, when appropriated to the department for that purpose.

SEC. 6. Section 27583.4 is added to the Food and Agricultural Code, to read:

27583.4. If a commissioner levies an administrative penalty pursuant to Section 27583, the following shall apply:

(a) (1) Before an administrative penalty is levied, the person charged with the violation shall receive written notice of the proposed action in accordance with paragraph (2). The notice shall include the nature of the violation, the amount of the proposed penalty, and the right to request a hearing to appeal the administrative action.

(2) (A) Notice shall be sent by certified mail to one of the following:

(i) The address of the person charged, as provided by any license or registration issued by the department, which is not limited to a certificate of registration issued pursuant to this chapter.

(ii) The address of an agent for service of process for the person charged, as filed with the Secretary of State.

(iii) If an address described in clause (i) or (ii) is not available, the last known address of the person charged.

(B) Notice that is sent to any of the addresses described in subparagraph (A) shall be considered received, even if delivery is refused or if the notice is not accepted at that address.

(C) The person charged shall have the right to appeal the proposed action by requesting a hearing within 20 days of the issuance of the notice of the proposed action.

(3) If a hearing is requested, the commissioner shall schedule a hearing within 45 days of the request, with notice of the time and place of the hearing given at least 10 days before the date of the hearing. At the hearing, the person charged shall be given an opportunity to review the commissioner's evidence and to present evidence on his or her own behalf. If a hearing is not timely requested, the commissioner may take the proposed action without a hearing. If the person charged, or his or her legal representative, fails to appear, the commissioner shall prevail in the proceedings.

(4) The commissioner shall issue a decision within 30 days of the conclusion of the hearing, which shall become effective immediately.

(5) The commissioner shall send a copy of the notice of the proposed action to the secretary at the same time notice is sent to the person charged with the violation.

(b) If the person, upon whom the commissioner levied an administrative penalty, requested and appeared at a hearing, the person may appeal the commissioner's decision to the secretary within 30 days of the date of receiving a copy of the commissioner's decision. The following procedures apply to the appeal:

(1) The appeal shall be in writing and signed by the appellant or his or her authorized agent, state the grounds for the appeal, and include a copy of the commissioner's decision. The appellant shall file a copy of the appeal with the commissioner at the same time it is filed with the secretary.

(2) The appellant and the commissioner, at the time of filing the appeal, within 10 days thereafter, or at a later time prescribed by the secretary, may present the record of the hearing and a written argument to the secretary stating the ground for affirming, modifying, or reversing the commissioner's decision.

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

(4) If an application to present an oral argument is granted, written notice of the time and place for the oral argument shall be given at least 10 days before the date set for oral argument. The times may be altered by mutual agreement of the appellant, the commissioner, and the secretary.

(5) The secretary shall decide the appeal on the record of the hearing, including the written evidence and the written argument described in paragraph (2), that he or she has received. If the secretary finds substantial evidence in the record to support the commissioner's decision, the secretary shall affirm the decision.

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

(7) On an appeal pursuant to this section, the secretary may affirm the commissioner's decision, modify the commissioner's decision by reducing or increasing the amount of the penalty levied so that it is consistent with

the penalty schedule described in Section 27581.1, or reverse the commissioner's decision. An administrative penalty increased by the secretary shall not be higher than that proposed in the commissioner's notice of proposed action given pursuant to subdivision (a). A copy of the secretary's decision shall be delivered or mailed to the appellant and the commissioner.

(8) Any person who does not request a hearing with the commissioner pursuant to an administrative penalty assessed under subdivision (a) shall not file an appeal to the secretary pursuant to this subdivision.

(c) If the proposed action is not overturned, in addition to the levy of an administrative penalty, the commissioner may recover from the person charged any other reasonable costs incurred by the commissioner in connection with administering the hearing to appeal the proposed action.

(d) Revenues from administrative penalties levied by the commissioner shall be deposited in the general fund of the county and, upon appropriation by the board of supervisors, shall be used by the commissioner to carry out his or her responsibilities under this chapter. The commissioner shall inform the secretary of any violations for which a penalty has been assessed.

SEC. 7. Section 27584 is added to the Food and Agricultural Code, to read:

27584. If a respondent in an administrative action agrees to stipulate to the notice of proposed action, a signed stipulation with the payment of the proposed administrative penalty shall be returned to the commissioner or secretary, as applicable, within 45 days of the postmark of the notice of the proposed action. If the stipulation and payment of the proposed administrative penalty are not received within 45 days, the commissioner or the secretary may file a certified copy of a final decision that directs the payment of an administrative penalty with the clerk of the superior court of any county. Judgment shall be entered immediately by the clerk in conformity with the decision. Pursuant to Section 6103 of the Government Code, no fees shall be charged by the clerk of the superior court for the performance of any official service required in connection with the entry of judgment pursuant to this section.

SEC. 8. Section 27585 is added to the Food and Agricultural Code, to read:

27585. After the exhaustion of the appeal and review of procedures provided in this article, the secretary or commissioner, or his or her representative, may file a certified copy of a final decision that directs the payment of an administrative penalty, and, if applicable, a copy of any decision of the secretary, or his or her authorized representative, and a copy of any order that denies a petition for a writ of administrative mandamus, with the clerk of the superior court of any county. Judgment shall be entered immediately by the clerk in conformity with the decision or order. Pursuant to Section 6103 of the Government Code, no fees shall be charged by the

clerk of the superior court for the performance of any official service required in connection with the entry of judgment pursuant to this section.

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CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE (CDFA)
ANIMAL HEALTH AND FOOD SAFETY SERVICES (AHFSS)
MEAT, POULTRY AND EGG SAFETY BRANCH (MPES)
SHELL EGG ADVISORY COMMITTEE (SEAC)
MEETING MINUTES
December 1, 2015

California Department of Food and Agriculture
2800 Gateway Oaks Drive, Room 173
Sacramento, CA 95833

Item
No.

(1) CALL TO ORDER

Michael Sencer, Chair, called the SEAC meeting to order at 10:00 a.m. and a quorum was established.

(2) ROLL CALL

Roll was taken by Tony Herrera, Egg Quality Manager, Egg Safety and Quality Management (ESQM).

Committee Members Present:
Michael Sencer, Chair
Wayne Winslow, Vice Chair
Gary Foster, Southern California Egg Cooperative
Michael Gemperle, Gemperle Enterprises
Glenn Hickman, Hickman Eggs
David Will, Chino Valley Ranchers
Steve Mahrt, Petaluma Farms
Kaliko Orian, Kaliko Farms
Tom Silva, Alternate
Richard Jenkins, Alternate
Dr. Richard Breitmeyer, Public Member
Milton O'Haire, CACASA Representative

Interested Parties:
Lupe Gutierrez, NuCal Foods
Richard Christner, Sparobe Foods
Josh Karch, Norco Ranch

CDFA:
Dr. Annette Jones, AHFSS Director
Dr. Douglas Hepper, Branch Chief
Tony Herrera, Egg Quality Manager
William Rohner, Southern District Supervisor

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Dr. Ken Takeshita, Veterinarian
Rosie Martin, Office Technician

(3) APPROVAL OF MINUTES – October 21, 2015

Chair Sencer asked the committee to review the October meeting minutes.

Motion #1: A motion was made by Dr. Breitmeyer to accept the minutes. Mr. Mahrt seconded. Chair Sencer, Vice Chair Winslow, Mr. Will, Mr. Hickman, Mr. Gemperle, Mr. Foster, and Ms. Orian agreed. The motion passed unanimously.

(4) HOUSING SYSTEMS AND EGG PROJECTIONS

Dr. Takeshita presented a PowerPoint presentation on egg housing systems and the production levels of different housing types. Recommendations were to use the PowerPoint graph when conducting desk audits, to use an additional two percent tolerances, and/or create more graphs for enriched cages. After discussion by the committee and Dr. Takeshita, it was decided to keep the current system that auditors are using in order to collect more data and revisit if needed. Additionally, Dr. Takeshita will provide a report by housing type at the next SEAC meeting.

(5) COUNTY CONTRACTS SUB-COMMITTEE REPORT

An update will be given at the next SEAC meeting.

(6) ADMINISTRATIVE CIVIL PENALTY (ACP) MATRIX SUB-COMMITTEE REPORT

Mr. Mahrt and the committee discussed ACP matrix changes proposed by the sub-committee. Updated matrix includes additions highlighted in yellow and items to be removed are crossed out.

Motion #2: A motion was made by Mr. Foster to accept the changes to the matrix and send to CDFA's Legal Office for review and approval. Mr. Hickman seconded. Chair Sencer, Vice Chair Winslow, Mr. Will, Dr. Breitmeyer, Mr. Gemperle, Mr. Mahrt, and Ms. Orian agreed. The motion passed unanimously.

(7) ESQM PROGRAM UPDATE

Mr. Herrera began with updating the committee on investigations regarding illegal egg loads being shipped into California. ESQM staff is working with MPES investigators to compile reports to send to CDFA's Legal Office which will then be submitted to the Attorney General's Office. Additionally, he spoke about current audits being performed as well as the new staff that will be hired in December 2015. Mr. Hickman requested a border station report for the next SEAC meeting in February 2016.

(8) MPES BRANCH UPDATE

Dr. Hepper spoke about the branch meeting that was held in November 2015 in Pismo Beach. Also, he spoke about reclassifying inspectors and investigators to more appropriate classifications which are unknown at this time.

(9) AHFSS DIVISION AND CDFA DEPARTMENT UPDATE

Dr. Jones began by speaking about a letter the Department of Public Health issued encouraging employees, especially those working out in the field, to get the influenza vaccination as a precaution. To date, there have been no animal to human avian influenza cases. She also mentioned a new North/South Poultry Task Force which used to be the Avian Health Industry Advisory Committee. She will meet with them to discuss preparations for avian influenza. Additionally, she suggested keeping organic laying birds housed inside until April 2016.

(10) ELECTION OF NEW CHAIR AND VICE CHAIR

After discussion by the committee members, Mr. Gemperle was elected as new Chair, and Mr. Will as Vice Chair.

(11) PUBLIC COMMENTS

Mr. Karch asked about the non-compliance timeframe listed on the ACP matrix. Mr. Herrera advised that the timeframes are either 12 months, if listed, or as long as the company is registered.

(12) FUTURE SEAC MEETING AGENDA ITEMS

Mr. Herrera listed county contracts, as well as recommendations or updates CDFA's Legal Office has for the ACP matrix. Ms. Orian would like future updates on avian influenza.

(13) UPCOMING SEAC MEETING DATES

The next SEAC meeting will be held in Santa Barbara on Wednesday, February 24, 2016. Specific time and place will be provided by Debbie Murdock.

The following meeting will be held on April 19, 2016, at Gateway Oaks at 10:00 a.m.

(14) ADJOURN

Chair Gemperle asked for a motion to adjourn the meeting.

Motion #3: Mr. Foster made a motion to adjourn the meeting. Mr. Mahrt seconded. Vice Chair Will, Mr. Winslow, Mr. Hickman, Dr. Breitmeyer, Ms. Orian and Mr. Sencer agreed. The motion passed unanimously. The meeting was adjourned at 1:15 p.m.

Respectfully Submitted:

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Rosie Martin