

## Assembly Bill No. 907

### CHAPTER 465

An act to amend Sections 55523.3, 55525.75, 55527.6, 55862.7, and 55922 of the Food and Agricultural Code, relating to processors of farm products, and making an appropriation therefor.

[Approved by Governor September 23, 2012. Filed with  
Secretary of State September 23, 2012.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 907, Ma. Processors of farm products.

(1) Existing law requires a processor of farm products, as defined, to be licensed by the Secretary of Food and Agriculture, and provides that an application for a license or for a renewal of a license that shows the applicant to be in an unsound financial condition is sufficient grounds to deny an application. Existing law provides that 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. Existing law also requires a licensee or applicant to furnish and maintain an irrevocable guarantee if the secretary determines that, in the preceding 4 years, the person has engaged in certain conduct, including a violation that resulted in license revocation.

This bill would specify that 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, in an amount that is at least sufficient to pay the obligations of the licensee at the time the guarantee is issued.

(2) Existing law requires a person found to be operating a business within the past 5 years without a license or who has failed to pay a license fee pursuant to a certain schedule to pay additional penalties to the secretary, including paying an amount equal to that portion of the fees that were not paid for the last 5 years the business has operated.

This bill would increase that penalty amount to 3 times the portion of the fees that were not paid for the last 5 years the business has operated.

(3) Under existing law, the funds collected pursuant to the provisions regulating processors of farm products are deposited in the Department of Food and Agriculture Fund in the State Treasury, and are continuously appropriated for the administration and enforcement of those provisions.

Because the additional penalties that would be authorized by this bill would be deposited in the Department of Food and Agriculture Fund in the State Treasury, the bill would make an appropriation.

The bill would make other technical, nonsubstantive changes.

Appropriation: yes.

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

SECTION 1. Section 55523.3 of the Food and Agricultural Code is amended to read:

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.

SEC. 2. Section 55525.75 of the Food and Agricultural Code is amended to read:

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.

(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.

SEC. 3. Section 55527.6 of the Food and Agricultural Code is amended to read:

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.

SEC. 4. Section 55862.7 of the Food and Agricultural Code is amended to read:

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.

SEC. 5. Section 55922 of the Food and Agricultural Code is amended to read:

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.