

Resolution 03-02-2009

Enforcement of Civil Penalty Judgments By County Agricultural Commissioners.

RESOLVED that the Conference of the Delegates of California Bar Associations recommends that legislation be sponsored to amend Food and Agricultural Code section 46017 to read as follows:

1 § 46017.

2 (a) In lieu of prosecution, the secretary or a county agricultural commissioner may
3 levy a civil penalty against any person under the enforcement jurisdiction of the secretary as
4 provided in Section 46000 who violates this act, or any regulation adopted pursuant thereto
5 or pursuant to this chapter, or regulations adopted by the NOP, in an amount not more than
6 five thousand dollars (\$5,000) for each violation. The amount of the penalty assessed for
7 each violation shall be based upon the nature of the violation, the seriousness of the effect of
8 the violation upon effectuation of the purposes and provisions of this chapter and the impact
9 of the penalty on the violator, including the deterrent effect on future violations.

10 (b) Notwithstanding the penalties prescribed in subdivision (a), if the secretary or
11 county agricultural commissioner finds that a violation was not intentional, the secretary or
12 county agricultural commissioner may levy a civil penalty of not more than two thousand
13 five hundred dollars (\$2,500) for each violation.

14 (c) For a first offense, in lieu of a civil penalty as prescribed in subdivision (a) or (b),
15 the secretary or county agricultural commissioner may issue a notice of violation if he or she
16 finds that the violation is minor.

17 (d) A person against whom a civil penalty is proposed shall be afforded an
18 opportunity for a hearing before the secretary or county agricultural commissioner, upon
19 request made in writing within 30 days after the issuance of the notice of penalty. At the
20 hearing, the person shall be given the right to review the secretary's or commissioner's
21 evidence of the violation and the right to present evidence on his or her own behalf. If no
22 hearing is requested, the civil penalty shall constitute a final and nonreviewable order.

23 (e) If a hearing is held, review of the final decision of the secretary or county
24 agricultural commissioner may be requested in writing by any person, pursuant to Section
25 1094.5 of the Code of Civil Procedure within 30 days of the date of the final order of the
26 secretary or county agricultural commissioner.

27 (f) A civil penalty levied by the secretary pursuant to this section may be recovered in
28 a civil action brought in the name of the state. A civil penalty levied by a county agricultural
29 commissioner pursuant to this section may be recovered in a civil action brought in the name
30 of the county. After the exhaustion of the review procedures provided in this section, the
31 commissioner or his or her representative may file a certified copy of a final decision of the
32 commissioner that directs the payment of a civil penalty and if applicable, a copy of any
33 order that denies a petition for a writ of administrative mandamus, with the clerk of the
34 superior court of any county. Judgment shall be entered immediately by the clerk in
35 conformity with the decision or order. No fees shall be charged by the clerk of the superior
36 court for the performance of any official service required in connection with the entry of
37 judgment pursuant to this section.

38 (g) The secretary shall maintain in a central location, and make publicly available for
39 inspection and copying upon request, a list of all civil penalties levied by the secretary and by
40 each county agricultural commissioner within the past five years, including the amount of
41 each penalty, the person against whom the penalty was levied, and the nature of the violation.
42 Copies of this list shall also be available by mail, upon written request and payment of a
43 reasonable fee, as set by the secretary.

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

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS:

Existing Law: Confers upon County Agricultural Commissioners the authority to issue civil penalties for violations of organic food laws and regulations. However, unlike other civil penalty provisions such as Section 12999.5(f) for violations of pesticide laws and regulations, or Section 46025(e) for violations of certified farmers market laws and regulations, there is no provision specifically enabling the Commissioner to enforce the decision by entering a judgment in superior court should the respondent fail to pay the penalty as ordered.

This Resolution: Amends subsection (f) to include language nearly identical to similar civil penalty provisions granting such authority to the County Agricultural Commissioners for other similar violations.

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

IMPACT STATEMENT:

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

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RESPONSIBLE FLOOR DELEGATE: