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AB-264 Farm products: processors: produce dealers: seeds. (2015-2016)

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Assembly Bill No. 264

CHAPTER 294

An act to amend Sections 52332, 55631, and 56109 of the Food and Agricultural Code, relating to farm products.

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

LEGISLATIVE COUNSEL'S DIGEST

AB 264, Dahle. Farm products: processors: produce dealers: seeds.

(1) Existing law, the California Seed Law, requires the Secretary of Food and Agriculture, by regulation, to adopt, among other things, specified lists of plants and crops that the secretary finds are or may be grown in the state or that the secretary finds are detrimental to agriculture if they occur incidentally in other crops, as prescribed, a list of noxious weed seed that the secretary finds are prohibitive noxious weed seed, and methods and procedures, upon recommendation of the Seed Advisory Board, for the conciliation, mediation, or arbitration of disputes between labelers and any persons concerning conformance with label statements, advertisements, or other disputes regarding the quality or performance of seed.

This bill would expand this regulation authority to also make those methods and procedures for the conciliation, mediation, or arbitration of those disputes applicable to disputes concerning conformance with financial terms or the lack of payment by a dealer to a grower, as provided. By expanding the scope of that regulation authority, a violation of which is a crime, the bill would impose a state-mandated local program.

(2) Existing law specifies that every producer of any farm product that sells any farm product that is grown by him or her to any processor under contract, express or implied, in addition to all other rights and remedies that are provided by law, has a lien upon that product and upon all processed or manufactured forms of that farm product for his or her labor, care, and expense in growing and harvesting that product.

This bill would also specify that every producer of a flower, agricultural, or vegetable seed that sells seed that is grown by him or her, when the seed was purchased or supplied by the grower and not supplied by the dealer or an independent 3rd party who paid for the seed, to any seed dealer under contract, express or implied, in addition to all rights and remedies that are provided for by law, has a lien upon that product and upon all processed or manufactured forms of that product for his or her labor, care, and expense in growing and harvesting that product.

(3) Existing law requires that any person engaged in the business of buying, receiving on consignment, soliciting for sale on commission, or negotiating the sale of farm products from a licensee or producer for resale, to be licensed. Existing law, for purposes of those provisions, defines "farm product" to include every agricultural, horticultural, viticultural, and vegetable product of the soil, poultry and poultry products, livestock products and livestock not for immediate slaughter, bees and apiary products, hay, dried beans, honey, and cut flowers, but excludes from that definition any timber or timber product, flower or agricultural or vegetable seed not purchased from a producer, any milk product that is subject to specified licensing requirements, any aquacultural product, or cattle sold to any person who is bonded under a specified federal law.

This bill would revise that definition to exclude flower, agricultural, or vegetable seeds from the definition of farm products, rather than only those that have not been purchased from a producer.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 52332 of the Food and Agricultural Code is amended to read:

52332. The secretary, by regulation, may adopt all of the following:

- (a) A list of the plants and crops that the secretary finds are or may be grown in this state.
- (b) A list of the plants and crops that the secretary finds are detrimental to agriculture if they occur incidentally in other crops, and which, therefore, are classed as weed seed except if sold alone or as a specific constituent of a definite seed mixture.
- (c) A list of noxious weed seed that the secretary finds are prohibited noxious weed seed, as defined in this chapter.
- (d) A list of those noxious weed seed that are not classified as prohibited noxious weed seed and are classified by this chapter as restricted noxious weed seed.
- (e) A list of substances that are likely to be used for treating grain or other crop seed that the secretary finds and determines are toxic to human beings or animals if used, and an appropriate warning or caution statement for each substance.
- (f) (1) (A) Establish methods and procedures, upon the recommendation of the board, for the conciliation, mediation, or arbitration of disputes between labelers and any persons concerning conformance with label statements, advertisements, financial terms or the lack of payment by a dealer to a grower, or other disputes regarding the quality or performance of seed. The methods and procedures shall be a mandatory prerequisite to pursuing other dispute resolution mechanisms, including, but not limited to, litigation. However, if conciliation, mediation, or arbitration proceedings are commenced under this section to resolve a controversy, the statute of limitations that applies to a civil action concerning that controversy is tolled upon commencement of conciliation, mediation, or arbitration proceedings, and until 30 days after the completion of those proceedings. As used in this subdivision, "completion of those proceedings" means the filing of a statement of agreement or nonagreement by the conciliator or mediator, or the rendering of a decision by an arbitrator or arbitration committee.
 - (B) If a proceeding for the conciliation, mediation, or arbitration of a dispute between a dealer and a grower is commenced under this subdivision for conformance with the financial terms by a dealer to a grower, and the decision in the proceeding is in favor of the grower, the decision may include a provision requiring compensation to the grower for the estimated value of the seed production services a grower provides to a dealer, including, but not limited to, labor, care, and expense in growing and harvesting that product.
 - (C) If a dealer fails to comply with the financial obligations of a judgment rendered in a conciliation, mediation, or arbitration proceeding between a dealer and a grower commenced pursuant to this subdivision following the conclusion of all appeals in the proceeding, the secretary may revoke the dealer's registration and prevent the dealer from renewing his or her registration until the time the financial obligation is fulfilled.
- (2) Conciliation, mediation, or arbitration shall not affect any enforcement action by the secretary pursuant to this chapter. Regulations adopted by the secretary for the mandatory conciliation, mediation, or arbitration of disputes shall require that adequate notice be provided on the seed label notifying any buyer of the requirement to submit a dispute to mandatory conciliation, mediation, or arbitration as a prerequisite to other dispute resolution mechanisms, including litigation.
- (g) Establish additional labeling requirements for coated, pelleted, encapsulated, mat, tape, or any other germination medium or device used on seed in order that the purchaser or consumer will be informed as to the actual amount of seed purchased.

SEC. 2. Section 55631 of the Food and Agricultural Code is amended to read:

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

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

(b) Every producer of a flower, agricultural, or vegetable seed that sells seed that is grown by him or her, when the seed was purchased or supplied by the grower and not supplied by the dealer or an independent third party who paid for the seed, to any seed dealer under contract, express or implied, in addition to all other rights and remedies that are provided for by law, has a lien upon that product and upon all processed or manufactured forms of that product for his or her labor, care, and expense in growing and harvesting that product. The lien shall be to the extent of the agreed price, if any, for that product so sold. If there is no agreed price or a method for determining it that is agreed upon, the extent of the lien is the value of that product as of the date of the delivery. Any portion of that product or the processed or manufactured forms of that product, in excess of the amount necessary to satisfy the total amount owed to producers under contract, shall be free and clear of that lien.

SEC. 3. Section 56109 of the Food and Agricultural Code is amended to read:

56109. "Farm product" includes every agricultural, horticultural, viticultural, and vegetable product of the soil, poultry and poultry products, livestock products and livestock not for immediate slaughter, bees and apiary products, hay, dried beans, honey, and cut flowers. It does not, however, include any timber or timber product, flower or agricultural or vegetable seed, any milk product that is subject to the licensing and bonding provisions of Chapter 2 (commencing with Section 61801) of Part 3 of Division 21, 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.).

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.