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AB-1480 Pest control: violations and penalties: civil penalty. (2017-2018)

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Assembly Bill No. 1480

CHAPTER 152

An act to amend Sections 11792 and 12999.4 of the Food and Agricultural Code, relating to pesticides.

[Approved by Governor July 31, 2017. Filed with Secretary of State July 31, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1480, Quirk. Pest control: violations and penalties: civil penalty.

(1) Under existing law, it is unlawful to use any fraud or misrepresentation in making an application to the Department of Pesticide Regulation for a license or for renewal of a license to conduct specified pest control operations or activities. A violation of this provision is a crime.

This bill would revise this provision to provide that it is unlawful to make any false or fraudulent statement, record, report or use any fraud or misrepresentation in connection with meeting any license requirement to conduct pest control operations or activities, as specified. The bill would also make it unlawful to cheat on or subvert a licensing examination. Since a violation of these provisions would be a misdemeanor under existing law, the bill would impose a state-mandated local program by creating new crimes.

(2) Existing law authorizes the civil prosecution of persons who violate specified provisions regarding pesticides and economic poisons and authorizes the Director of the Department of Pesticide Regulation, in lieu of civil prosecution, to levy a civil penalty against that person, as provided.

This bill would also authorize the director to levy a civil penalty under these provisions for any violation specified in (1) above.

(3) 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 11792 of the Food and Agricultural Code is amended to read:

11792. It is also unlawful for any person that is subject to this division to do any of the following:

(a) Make any false or fraudulent record or report.

(b) Operate in any county without first having registered with the commissioner.

(c) Operate equipment with incompetent or unqualified persons in charge of the equipment.

(d) Make any false or fraudulent statement, record, report or use any fraud or misrepresentation in connection with meeting any license requirement found in this division.

(e) Cheat on or subvert a licensing examination. As used in this subdivision, "subvert" includes, but is not limited to, the unauthorized possession, reproduction, or distribution of any portion of the licensing examination.

(f) Fail to comply with the provisions of Chapter 3 (commencing with Section 14001) of Division 7.

SEC. 2. Section 12999.4 of the Food and Agricultural Code is amended to read:

12999.4. (a) In lieu of civil prosecution by the director, the director may levy a civil penalty against a person violating subdivision (d) or (e) of Section 11792 or Sections 12115, 12116, 12671, 12992, and 12993, Chapter 10 (commencing with Section 12400) of Division 6, Article 4.5 (commencing with Section 12841), Section 13186.5, Chapter 7.5 (commencing with Section 15300), or the regulations adopted pursuant to those provisions, of not more than five thousand dollars (\$5,000) for each violation.

(b) Before a civil penalty is levied, the person charged with the violation shall be given a written notice of the proposed action, including the nature of the violation and the amount of the proposed penalty, and shall have the right to request a hearing within 20 days after receiving notice of the proposed action. A notice of the proposed action that is sent by certified mail to the last known address of the person charged shall be considered received even if delivery is refused or the notice is not accepted at that address. If a hearing is requested, notice of the time and place of the hearing shall be given at least 10 days before the date set for the hearing. Before the hearing, the person shall be given an opportunity to review the director's evidence. At the hearing, the person shall be given the opportunity to present evidence on his or her own behalf. If a hearing is not timely requested, the director may take the action proposed without a hearing.

(c) If the person against whom the director levied a civil penalty requested and appeared at a hearing, the person may seek review of the director's decision within 30 days of the date of the decision pursuant to Section 1094.5 of the Code of Civil Procedure.

(d) After the exhaustion of the review procedure provided in this section, the director, or his or her representative, may file a certified copy of a final decision of the director that directs the payment of a civil penalty and, if applicable, 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, the clerk of the superior court shall not charge a fee for the performance of any official service required in connection with the entry of judgment pursuant to this section.

(e) Any money recovered under this section shall be paid into the Department of Pesticide Regulation Fund for use by the department, upon appropriation, in administering this division and Division 6 (commencing with Section 11401).

SEC. 3. 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.