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H.76

Introduced by Representative Partridge of Windham  
Referred to Committee on  
Date:  
Subject: Agriculture; miscellaneous subjects  
Statement of purpose of bill as introduced: This bill proposes to amend  
multiple provisions of law administered by the Agency of Agriculture, Food  
and Markets. The bill would amend provisions related to administrative  
penalties issued by the Agency. The bill would provide that rights or interests  
in real property acquired by the Secretary of Agriculture, Food and Markets  
through transactions funded in whole or in part by the Vermont Housing and  
Conservation Board are deemed as accepted by the Governor. The bill also  
would provide that an applicant for licensure or relicensure of a commercial  
slaughter facility has the option of submitting a good commercial practices  
plan for poultry instead of a livestock handling plan. In addition, the bill  
provides that a person who applies for a license to operate a weighing or  
measuring device after January 1 of each year shall be assessed a late fee  
according to the Agency's general authority for assessing late fees.

19 An act relating to miscellaneous agricultural subjects

1 It is hereby enacted by the General Assembly of the State of Vermont:

2 \* \* \* Administrative Penalty Process \* \* \*

3 Sec. 1. 6 V.S.A. § 13 is amended to read:

4 § 13. ASSURANCES OF DISCONTINUANCE

5 (a) As an alternative to administrative or judicial proceedings, the ~~secretary~~  
6 Secretary may accept an assurance of discontinuance of any violation. An  
7 assurance of discontinuance may include, ~~but need not be limited to:~~

8 (1) specific actions to be taken;

9 (2) abatement or mitigation schedules;

10 (3) payment of a civil or administrative penalty and the costs of  
11 investigation; or

12 (4) payment of an amount to be held in escrow pending the outcome of  
13 an action, or as restitution to aggrieved persons.

14 (b) An assurance of discontinuance shall be in writing, and may by its  
15 terms be filed with the ~~superior court~~ Superior Court having jurisdiction over  
16 the subject matter and become an order of the court. Evidence of a violation of  
17 an assurance of discontinuance shall be prima facie proof of the violation.

18 (c) Any violation of an assurance of discontinuance shall constitute a  
19 separate and distinct offense of the underlying regulatory program and shall be  
20 subject to the applicable general penalties for violations of the law under that  
21 program, in addition to any other applicable penalties.

1 (d) Costs of investigations collected under subsection (a) of this section  
2 shall be credited to a special fund and shall be available to the ~~agency~~ Agency  
3 to offset these costs.

4 Sec. 2. 6 V.S.A. § 15 is amended to read:

5 § 15. ADMINISTRATIVE PENALTIES

6 (a) In addition to other penalties provided by law, the ~~secretary~~ Secretary  
7 may assess administrative penalties, not to exceed ~~\$1,000.00~~ \$5,000.00, for  
8 each violation of this title and Titles 9 and 20, unless a higher administrative  
9 penalty amount is provided for therein.

10 (b) In determining the amount of the penalty to be assessed under this  
11 section, the ~~secretary~~ Secretary may give consideration to one or more of the  
12 following:

13 (1) the degree of actual and potential impact on public health, safety,  
14 and welfare resulting from the violation;

15 (2) the presence of mitigating or aggravating circumstances;

16 (3) whether the violator has been warned or found in violation of the  
17 same provisions of law in the past;

18 (4) the economic benefit gained by the violation;

19 (5) the deterrent effect of the penalty; and

20 (6) the financial condition of the violator.

1 (c) Each violation may be a separate and distinct offense and, in the case of  
2 a continuing violation, each day's continuance may be deemed to be a separate  
3 and distinct offense. In no event shall the maximum amount of the penalty  
4 assessed under this section exceed ~~\$25,000.00~~ \$50,000.00.

5 (d) In addition to the administrative penalties authorized by this section, the  
6 ~~secretary~~ Secretary may recover the costs of investigation, which shall be  
7 credited to a special fund and shall be available to the ~~agency~~ Agency to offset  
8 these costs.

9 (e) Any party aggrieved by a final decision of the ~~secretary~~ Secretary may  
10 appeal ~~de novo~~ to the ~~superior court~~ Civil Division of the Superior Court  
11 within 30 days of the final decision of the ~~secretary~~ Secretary.

12 (f) The ~~secretary~~ Secretary may enforce a final administrative penalty,  
13 abatement order, or mitigation order by filing a civil collection or other action  
14 in any ~~district or superior court~~ Superior Court.

15 Sec. 3. 6 V.S.A. § 16 is amended to read:

16 § 16. NOTICE AND FAIR HEARING REQUIREMENTS

17 (a) The ~~secretary~~ Secretary shall use the following procedures in assessing  
18 the penalty under section 15 of this title: the alleged violator shall be given an  
19 opportunity for hearing after reasonable notice and the notice shall be served  
20 by personal service or by certified mail, ~~return receipt requested~~ sent to the last  
21 address of record on file with the Agency. If the alleged violator is not an

1 applicant for or holder of a license, permit, registration, or certification issued  
2 by the Agency, the notice shall be served by personal service or by certified  
3 mail, return receipt requested. The notice shall include:

4 (1) a A statement of the legal authority and jurisdiction under which the  
5 hearing is to be held;

6 (2) a A statement of the matter at issue, including reference to the  
7 particular statute or administrative rule allegedly violated and a factual  
8 description of the alleged violation;

9 (3) ~~the~~ The amount of the proposed administrative penalty; and required  
10 corrective action, abatement, or mitigation.

11 (4) a A warning that the decision shall become final and the penalty  
12 imposed if no hearing is requested within 15 days of ~~receipt~~ service of the  
13 notice. The notice shall specify the requirements ~~which~~ that must be met in  
14 order to avoid being deemed to have waived the right to a hearing, or the  
15 manner of payment if the person elects to pay the penalty and waive a hearing.

16 (b) Any person who receives notification pursuant to this section shall be  
17 deemed to have waived the right to a hearing unless, within 15 days of the  
18 receipt of the notice, the person requests a hearing in writing. If the person  
19 waives the right to a hearing, the ~~secretary~~ Secretary shall issue a final order  
20 finding the person in default and imposing the penalty and any required  
21 corrective action, abatement, or mitigation. A copy of the final default order

1 shall be ~~sent to~~ served upon the violator by certified mail, return receipt  
2 requested or by personal service.

3 (c) When an alleged violator requests a hearing in a timely fashion, the  
4 ~~secretary~~ Secretary shall hold the hearing pursuant to 3 V.S.A. chapter 25.

5 Sec. 4. 6 V.S.A. § 17 is amended to read:

6 § 17. COLLECTIONS

7 (a) The ~~secretary~~ Secretary may collect an unpaid administrative or civil  
8 penalty by filing a civil collection action in any ~~district or superior court,~~  
9 Superior Court or through any other means available to ~~state~~ State agencies.

10 (b) The ~~secretary~~ Secretary may, subject to 3 V.S.A. chapter 25, suspend  
11 any license, certificate, registration, or permit issued pursuant to his or her  
12 authority for failure to pay a penalty under this chapter more than ~~60~~ 45 days  
13 after the penalty was ~~issued~~ imposed by order and served.

14 \* \* \* Antibiotic Residue \* \* \*

15 Sec. 5. 6 V.S.A. § 2744a is amended to read:

16 § 2744a. DRUGS

17 \* \* \*

18 (b)(1) No producer shall sell for slaughter livestock with bodily tissue  
19 containing any drug or drugs in excess of tolerances established by the U.S.  
20 Food and Drug Administration in the Code of Federal Regulations.

1           (2) In the event that bodily tissue obtained from livestock intended for  
2           slaughter is found to contain a drug or drugs in excess of levels established by  
3           the U.S. Food and Drug Administration in the Code of Federal Regulations at  
4           the time of sale, the Secretary may assess an administrative penalty ~~not to~~  
5           ~~exceed \$1,000.00 for each violation~~ under section 15 of this title and may  
6           require the farm to participate in a program approved by the Agency intended  
7           to mitigate further selling of animals for food that contain violative drug  
8           residues in their tissue.

9           (c) Before issuing an order or administrative penalty under this section, the  
10          Secretary shall provide the producer and the handler or dealer an opportunity  
11          for hearing.

12                           \* \* \* Acceptance of Gifts of Real Property \* \* \*

13          Sec. 6. 6 V.S.A. § 14 is amended to read:

14          § 14. ACCEPTANCE OF GIFTS OF REAL PROPERTY

15          The ~~secretary~~ Secretary, with the approval of the ~~governor~~ Governor, may  
16          accept gifts of the rights and interests in real property in the manner provided  
17          by 10 V.S.A. chapter 155. Rights or interests in real property acquired by the  
18          Secretary through transactions funded in whole or in part by the Vermont  
19          Housing and Conservation Board are deemed as accepted by the Governor.

