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Requirements for Grain Dealers

State of California

Bonding

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Requirements for Grain Dealers

STATE OF CALIFORNIA

Current with legislation from the 2014 Reg.Sess..

West's Ann.Cal.Food & Agric.Code § 56133.5

§ 56133.5. Employment as agent; criteria for disqualification; surety bonds; criminal records; exemptions; hearings; records

(a) Except pursuant to an exemption granted by the department, no person licensed under this chapter shall employ any person as an agent, or who previously was an agent, who meets any of the following criteria:

- (1) Whose license has been revoked or is currently suspended.
- (2) Who has committed any one flagrant or repeated violations of this chapter or Chapter 6 (commencing with Section 55401).
- (3) Who failed to pay a producer's claims for which the person, or, where the person controlled the decision to pay, the person's employer, was liable, and which arose out of the conduct of a business licensed or required to be licensed under this chapter or Chapter 6 (commencing with Section 55401).
- (4) Who has been convicted of a crime that includes as one of its elements the financial victimization of another person.

(b) The department may approve employment of any person covered by subdivision (a) if the licensee furnishes and maintains a surety bond in form and amount satisfactory to the department, but that shall not be less than ten thousand dollars (\$10,000), as assurance that the licensee's business will be conducted in accordance with this chapter and that the licensee will pay all amounts due farm products creditors. The department may approve employment without a surety bond after the expiration of four years from the effective date of the applicable disciplinary order. The department, 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 bond, but in no case shall the bond be reduced below ten thousand dollars (\$10,000). A licensee who is notified by the department to provide a bond in an increased amount shall do so within a reasonable time to be specified by the department. If the licensee fails to do so, the approval of employment shall automatically terminate. The department may suspend or revoke the license of any licensee who, after the date given in the notice, continues to employ any person in violation of this section.

(c) The department may obtain access to a licensee's or person's criminal record during the course of a licensing investigation opened for other reasons or if the department is presented with a reasonable basis to believe a person or licensee satisfies any of the criteria set forth in paragraphs (1) to (4), inclusive, of subdivision (a). The Department of Justice shall furnish criminal record information to the department at the department's request. If the information thereby obtained reveals a conviction for a crime that includes as one of its elements the financial victimization of another person, the department shall bring this to the attention of the licensee and the person by a written notice. This written notice shall set out the charges against the licensee or person, prohibit employment or revoke or deny the

license effective if and when any rights to an administrative hearing have been exhausted, and set out the licensee's or person's rights under this section.

(d) The department may grant an exemption on presentation of substantial, clear, and convincing evidence to support a reasonable belief as to any of the following:

- (1) There has been a mistake of fact or identity.
- (2) The present role of the person provides no opportunity for a repeat of the prior behavior.
- (3) The person has been rehabilitated.

All submissions shall be authenticated and verified under penalty of perjury. Unless the licensee or person can prove one of these three elements by substantial, clear, and convincing evidence, the department shall deny the request for exemption.

(e)

(1) A licensee or person who has been identified by the department as satisfying any of the criteria set forth in paragraphs (1) to (4), inclusive, of subdivision (a) and who has not been granted an exemption by the department shall be afforded a hearing upon the licensee's or person's request under this chapter. The licensee or person shall not have a right of hearing if the department did not notify the employer or deny an exemption.

(2) At the hearing, the department shall have the burden to prove that any of the criteria set forth in paragraphs (1) to (4), inclusive, of subdivision (a) are satisfied by a preponderance of the evidence. It shall be the licensee's or person's burden to prove rehabilitation by substantial, clear, and convincing evidence.

(3) In the case of a criminal conviction, "convicted of a crime" includes a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that the department is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, notwithstanding a subsequent order pursuant to Sections 1203.4 and 1203.4a of the Penal Code permitting the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. For purposes of this section or any other provision of this chapter, the record of a conviction, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, shall be conclusive evidence of the conviction.

(4) For purposes of this section or any other provision of this chapter, a certified copy of a decision and order or minutes of court in which a finding is made concerning any of the criteria set forth in paragraphs (1) to (3), inclusive, of subdivision (a), is prima facie evidence of the truth of the charge and collateral estoppel applies.

(f) The documents and information procured pursuant to this section shall be considered the records of a consumer and shall not be construed to be a public record. The documents and information shall remain confidential, except in actions brought by the department to enforce this division, or as a result of the issuance of a subpoena in accordance with Section 1985.4 of the Code of Civil Procedure. The unauthorized release of the documents received from the Department of Justice or the information contained in those documents, is a misdemeanor.

West's Ann.Cal.Food & Agric.Code § 56189.5
§ 56189.5. Bond

- (a) Licensees or applicants for a license shall be required to furnish and maintain a surety bond in a form and amount satisfactory to the director, if within the preceding four years the director 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 a surety bond is posted.
 - (3) Otherwise violated this chapter which resulted in license revocation.
- (b) The bond 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.
- (c) The director, 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 bond, but in no case shall the bond be reduced below ten thousand dollars (\$10,000). A licensee who is notified by the director to provide a bond in an increased amount shall do so within a reasonable time as specified by the director. If the licensee fails to do so, the director may, after notice and opportunity for hearing, suspend or revoke the license of any licensee.