

AMENDED IN SENATE MAY 14, 2013

AMENDED IN SENATE APRIL 10, 2013

SENATE BILL

No. 250

Introduced by Senator Wolk

February 12, 2013

An act to add Chapter 29 (commencing with Section 79800) to Part 2 of Division 22 of the Food and Agricultural Code, relating to olive oil, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 250, as amended, Wolk. Olive Oil Commission of California.

Under existing law, the Legislature finds and declares that the agricultural and seafood industries are vitally important elements of the state's economy. Existing law provides for various commissions and councils to promote the marketing and production of agricultural or seafood commodities.

This bill would create the Olive Oil Commission of California in the state government with a prescribed membership, and would specify the powers, duties, and responsibilities of the commission board of directors. The commission board of directors would be authorized to, among other things, ~~carry out programs of research relating to olive oil~~ *conduct research for specified purposes* and recommend to the Secretary of Food and Agriculture olive oil grades and labeling standards. The bill would authorize the commission to levy an annual assessment, not to exceed a specified amount *or the reasonable costs of implementing these provisions*, on producers, as defined, and would authorize the commission to ~~expand~~ *expend* those funds for purposes of implementing the bill, thereby making an appropriation.

The bill, except as necessary to conduct an election, would not become operative until the producers of olive oil vote in favor of the bill’s provisions, as prescribed. The bill would also provide for the suspension of the operation of its provisions and for concluding the operations of the commission under certain circumstances. The bill would authorize the commission to levy a civil penalty, as specified, on a person for rendering or furnishing false reports, secreting, destroying, or altering records, failing to furnish a report, or failing or refusing to furnish to the commission information concerning the name and address of persons from whom olive oil is received. The bill would authorize the commission to bring certain civil actions to enforce the bill’s provisions ~~and regulations adopted pursuant to these provisions.~~

Vote: majority. Appropriation: yes. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 29 (commencing with Section 79800)
2 is added to Part 2 of Division 22 of the Food and Agricultural
3 Code, to read:

4

5 CHAPTER 29. OLIVE OIL COMMISSION OF CALIFORNIA

6

7 Article 1. Declarations and General Provisions

8

9 79800. The production of *oil olives for processing into olive*
10 *oil* and marketing of *the* olive oil constitutes an important industry
11 of this state which provides substantial and necessary revenues for
12 the state and employment for its citizens.

13 79801. The establishment of the commission is necessary for
14 the efficient creation and management of the activities authorized
15 in this chapter. The commission is also necessary to enhance the
16 competitiveness of the ~~California olive oil~~ industry within the state,
17 national, and international marketplace.

18 79802. The maintenance of the ~~olive oil~~ industry in California
19 is necessary to ensure ~~the public has~~ a continuous supply of ~~this~~
20 ~~important commodity~~ *oil olives and the resulting olive oil* and to
21 ensure the needed levels of income *are maintained* for those
22 engaged in the *production of oil olives for processing into olive*

1 oil industry of this state are maintained and the marketing of olive
2 oil.

3 79803. The production and handling of oil olives for processing
4 into olive oil and the marketing of olive oil produced in this state
5 is hereby declared to be a public interest. This chapter is enacted
6 in the exercise of the police power of this state for the purpose of
7 protecting the health, peace, safety, and general welfare of the
8 people of this state.

9 79804. The commission form of administration created by this
10 chapter is uniquely situated to provide those engaged in the
11 ~~production of olive oil~~ the activities specified in this chapter the
12 opportunity to avail themselves of the benefits of collective action
13 in the broad fields of olive oil quality research, ~~nutritional research,~~
14 and grades and labeling standards.

15 79805. No action taken by the commission, or by any individual
16 in accordance with this chapter or with rules and regulations
17 adopted under this chapter, shall be deemed a violation of the
18 Cartwright Act (Chapter 2 (commencing with Section 16700) of
19 Part 2 of Division 7 of the Business and Professions Code), the
20 Unfair Practices Act (Chapter 4 (commencing with Section 17000)
21 of Part 2 of Division 7 of the Business and Professions Code), or
22 any rule of statutory or common law against monopolies or
23 combinations in restraint of trade.

24 79806. It is hereby declared as a matter of legislative
25 determination that members of the commission are intended to
26 represent and further the interest of the particular industry
27 concerned and that this representation and furtherance is intended
28 to serve the public interest. Accordingly, the Legislature finds that
29 with respect to persons who are elected or appointed to the
30 commission, the particular industry concerned is tantamount to,
31 and constitutes the public generally within the meaning of Section
32 87103 of the Government Code.

33

34 Article 2. Definitions

35

36 79811. Unless the context otherwise requires, the definitions
37 in this article govern the construction of this chapter.

38 79812. "Olive oil" means the oil obtained solely from the fruit
39 of the olive tree (*Olea europea* L.) which is produced in California
40 for commercial purposes.

1 79812.5. “Oil olives” means fruit of the olive tree (*Olea*
2 *europaea* L.) grown for the purpose of processing into olive oil.

3 79813. “Books and records” means books, records, contracts,
4 documents, memoranda, papers, correspondence, or other written
5 data pertaining to matters relating to the activities subject to this
6 chapter.

7 79814. “Commission” means the Olive Oil Commission of
8 California.

9 79815. (a) “Districts” consist of the following:

10 (1) District 1 consists of the Counties of Butte, Del Norte, Glenn,
11 Humboldt, Lassen, Modoc, Plumas, Shasta, Siskiyou, Tehama,
12 and Trinity.

13 (2) District 2 consists of the Counties of Amador, Colusa, El
14 Dorado, Lake, Marin, Mendocino, Napa, Nevada, Placer,
15 Sacramento, Sierra, Solano, Sonoma, Sutter, Yolo, and Yuba.

16 (3) District 3 consists of the Counties of Alameda, Calaveras,
17 Contra Costa, Fresno, Imperial, Inyo, Kern, Kings, Los Angeles,
18 Madera, Mariposa, Merced, Mono, Monterey, Orange, Riverside,
19 San Benito, San Bernardino, San Diego, San Francisco, San
20 Joaquin, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara,
21 Santa Cruz, Stanislaus, Tulare, Tuolumne, and Ventura.

22 ~~(b) The boundaries of a district may be changed and districts~~
23 ~~may be added or eliminated by a two-thirds vote of the commission~~
24 ~~board of directors, which is concurred in by the secretary, if proper~~
25 ~~notice is provided to all persons subject to this chapter prior to the~~
26 ~~action. The boundaries need not coincide with county lines.~~

27 (e)

28 (b) The commission board of directors shall periodically
29 determine whether the olive oil acreage in any of the districts varies
30 by more than 20 percent from the olive oil acreage in the other
31 districts and draw new district lines in the event ~~the~~ a variance
32 exists. This action shall be approved by a two-thirds vote of the
33 commission board of directors.

34 (c) *The boundaries of a district may be changed and districts*
35 *may be added or eliminated by a two-thirds vote of the commission*
36 *board of directors, which is concurred in by the secretary, if notice*
37 *is provided to all persons subject to this chapter prior to the action.*
38 *The boundaries need not coincide with county lines.*

39 79816. “Ex officio members” are nonvoting members of the
40 commission *board of directors*.

1 79817. “Handle” means to engage in the business of a handler.

2 79818. (a) “Handler” means a person who engages, in this
3 state, in the operation of ~~processing, selling, or~~ marketing olive
4 oil that he or she has produced, or purchased or acquired from a
5 *an oil olive* producer, or that he or she is marketing on behalf of
6 a *an oil olive* producer, whether as owner, agent, employee, broker,
7 or otherwise.

8 (b) When the handler is a corporation or a limited liability
9 company, all of the directors, officers, managers, and members of
10 the corporation or limited liability company in their capacity as
11 individuals shall be included, and any liability for failure to collect
12 or make payment of assessments to which a corporate handler or
13 a handler that is a limited liability company may be subject
14 pursuant to this chapter shall include identical liability upon each
15 individual director, officer, manager, or member of the corporation
16 or limited liability company.

17 (c) “Handler” does not include a retailer.

18 79819. “Market” or “marketing” means to sell ~~or otherwise~~
19 ~~distribute~~ olive oil into commercial channels ~~or trade, resulting in~~
20 ~~the sale of olive oil of trade.~~

21 79820. “Marketing season” or “fiscal year” are synonymous
22 terms and mean the period beginning July 1 of any year and
23 extending through June 30 of the following year.

24 79821. “Producer” means any person that produces or causes
25 to be produced *oil* olives that are processed into olive oil in ~~excess~~
26 ~~the amount~~ of 5,000 gallons *or more* during the marketing season
27 and that shall, upon request of the commission, provide proof of
28 commodity sale.

29 79822. “Secretary” means the Secretary of Food and
30 Agriculture.

31 79823. “Advisory committee” means a committee appointed
32 by the secretary from applications received from ~~producers~~ *persons*
33 that produce *or cause to be produced* *oil* olives that are processed
34 into less than 5,000 gallons of olive oil during the marketing
35 season.

36

37 Article 3. Olive Oil Commission of California

38

39 79831. (a) There is in the state government the Olive Oil
40 Commission of California. Except as provided in subdivision (d),

1 the commission board of directors shall be composed of the
2 following:

3 (1) Six producers, two from each district.

4 (2) Three handlers, one from each district.

5 (3) One public member who shall be appointed to the
6 commission *board of directors* by the secretary from nominees
7 recommended by the commission board of directors.

8 (b) The chair of the advisory committee shall be an ex officio
9 member of the commission board of directors.

10 (c) The secretary and other appropriate persons as determined
11 by the commission board of directors shall be ex officio members.

12 (d) The commission board of directors may modify the number
13 of producers and handlers who serve on the commission board of
14 directors by a two-thirds vote that is concurred in by the secretary,
15 if proper notice is provided to all persons subject to this chapter
16 prior to the action.

17 (e) An advisory committee shall meet periodically to review
18 issues affecting the purposes of this chapter and shall advise the
19 commission board of directors. The committee shall consist of
20 seven members who shall each serve three-year terms. The chair
21 of the committee shall be selected by the members.

22 79832. (a) The secretary may require the commission to correct
23 or cease any existing activity or function that is determined by the
24 secretary not to be in the public interest or in violation of this
25 chapter.

26 (b) If the commission refuses or fails to cease those activities
27 or functions or to make corrections as required by the secretary,
28 the secretary may, upon written notice, suspend all or a portion of
29 the activities or functions of the commission until such time as the
30 cessation or correction of activities or functions as required by the
31 secretary has been accomplished by the commission.

32 (c) Actions of the commission in violation of the secretary's
33 written notice shall be without legal force or effect. The secretary,
34 to the extent feasible, shall issue the written notice prior to the
35 commission entering into any contractual relationship affecting
36 the existing or proposed activities or functions that are the subject
37 of the written notice.

38 (d) Upon service of the written notice, the secretary shall notify
39 the commission in writing of the specific acts that he or she
40 determines are not in the public interest or are in violation of this

1 chapter, and his or her reasons for requiring a cessation or
2 correction of specific existing or proposed activities or functions,
3 and may make recommendations that will make those activities
4 or functions acceptable to the secretary.

5 79833. The commission or the secretary may bring an action
6 for judicial relief from the secretary's written notice, or from
7 noncompliance by the commission with the written notice, in a
8 court of competent jurisdiction, which may issue a temporary
9 restraining order, permanent injunction, or other applicable relief.

10 79834. The commission shall reimburse the secretary for all
11 expenditures incurred by the secretary in carrying out his or her
12 duties and responsibilities under this chapter. However, a court
13 may, if it finds that the secretary acted arbitrarily or capriciously
14 in restricting the activities or functions of the commission, relieve
15 the commission of the responsibility for payment of the secretary's
16 legal costs with regard to that action.

17 79835. Except for the ex officio members of the commission
18 *board of directors*, each member of the commission board of
19 directors shall have an alternate member elected in the same
20 manner as the member. An alternate member, in the absence of
21 the member for whom he or she is an alternate, shall serve in place
22 of the member. An alternate member may also serve in place of
23 any other absent member of the same classification, producer or
24 handler, if the member's alternate is also absent. However, an
25 alternate member may not serve in place of more than one absent
26 member at a meeting. An alternate member serving in place of a
27 member shall have and be able to exercise all rights, privileges,
28 and powers of the member when serving. In the event of death,
29 removal, resignation, or the disqualification of a member, the
30 alternate for the member, or another alternate of the same
31 classification if the alternate member for the member is absent,
32 shall act as the member until a qualified successor is elected.

33 79836. Any vacancy on the commission board of directors,
34 including, but not limited to, the failure of any person elected *or*
35 *appointed* to the commission board of directors as a member or
36 alternate member to continue in his or her position due to a change
37 in status making him or her ineligible to serve, or due to death,
38 removal, or resignation, shall be filled by the ~~appointment~~ *election*
39 of another person, *or appointment in the case of a public member,*
40 for the unexpired portion of the term, *with elected positions to be*

1 *filled* by a majority vote of the commission board of directors.
2 However, the ~~appointee~~ *person elected or appointed* shall fulfill
3 all the qualifications set forth in this article as required for the
4 office he or she is to occupy. The qualifications of any person to
5 fill a vacancy shall be certified in writing to the secretary. The
6 secretary shall notify the commission if he or she determines that
7 the person is not qualified.

8 79837. A producer member or his or her alternate on the
9 commission board of directors shall be an individual, partner, or
10 employee of a producer who has a financial interest in producing,
11 or causing to be produced, ~~olive oil for market~~ *oil olives for*
12 *processing into olive oil*. The producer member or his or her
13 alternate shall be in compliance with this section during the entire
14 term of his or her office.

15 79838. The public member, or his or her alternate on the
16 commission board of directors, shall have all the powers, rights,
17 and privileges of any other member on the commission board of
18 directors. The public member shall not have any financial interest
19 in the *production or processing of oil olives or the marketing of*
20 *olive oil industry* but may be an individual who provides services
21 to individuals who do have a financial interest. The public member
22 or his or her alternate shall be in compliance with this section
23 during the entire term of his or her office.

24 79839. (a) Except as provided in paragraphs (1) and (2), the
25 term of office of all members of the commission board of directors
26 and *their* alternates, except any ex officio member, shall be three
27 years from the date of their election and until their successors are
28 elected.

29 (1) Of the first producer members, one from each district shall
30 serve two years and one from each district shall serve three years.

31 (2) Of the first handler members, one shall serve one year, one
32 shall serve two years, and one shall serve three years.

33 (b) The determination of the term of each member shall be made
34 by lot at the time of election.

35 (c) *An alternate shall serve the same term as the member for*
36 *whom he or she serves as alternate.*

37 79840. The commission may sue and be sued and enter into
38 contracts. Copies of its proceedings, records, and acts, when
39 authenticated, shall be admissible in evidence in all courts of the

1 state, and shall be prima facie evidence of the truth of all statements
2 within the proceedings, records, and acts.

3 79841. A quorum of the commission board of directors is a
4 majority of the members *authorized to vote*. Except as otherwise
5 provided in this chapter, the vote of a majority of *these* members
6 present at a meeting at which there is a quorum shall constitute an
7 act of the commission.

8 79842. The secretary or his or her representatives shall be
9 notified and may attend each meeting of the commission board of
10 directors and any meetings of a committee established by the
11 commission. However, the secretary is not entitled to attend an
12 executive session of the commission board of directors called for
13 the purpose of discussing potential or actual litigation against the
14 department.

15 79843. A member of the commission board of directors or of
16 any committee established by the commission, which may include
17 nonmembers of the commission board of directors, shall not receive
18 a salary. Except for ex officio government members, ~~the members~~
19 *a member* may receive reasonable and necessary traveling
20 expenses and meal allowances, as established by the commission
21 board of directors, for each day spent in actual attendance at, or
22 in traveling to and from, meetings of the commission or committees
23 of the commission, or on special assignment for the commission.

24 79844. If the secretary is required to concur in a decision of
25 the commission, he or she shall indicate his or her response within
26 15 working days from notification of the decision. The response
27 may be a request that additional information be provided.

28 79845. All moneys received by any person from assessments
29 levied under the authority of this chapter or otherwise received by
30 the commission shall be deposited in banks designated by the
31 commission board of directors and shall be disbursed by order of
32 the commission board of directors through an agent or agents
33 designated for that purpose. Any authorized agent or agents shall
34 be bonded by a fidelity bond, executed by a surety company
35 authorized to transact business in the state, in favor of the
36 commission, in the amount of not less than twenty-five thousand
37 dollars (\$25,000).

38 79846. The state shall not be liable for the acts of the
39 commission or its contracts. Payments of all claims arising by
40 reason of the administration of this chapter or acts of the

1 commission shall be limited to the funds collected by the
 2 commission. ~~Members~~, *Members and* alternate members of the
 3 commission board of directors, employees, and agents of the
 4 commission shall not be personally liable for the contracts of the
 5 commission, and ~~members~~, *members and* alternate members of
 6 the commission board of directors, and employees of the
 7 commission shall not be responsible individually in any way to a
 8 producer, handler, or any other person for error in judgment,
 9 mistakes, or other acts, either of commission or omission, as
 10 principal, agent, or employee, except for his or her own individual
 11 acts of dishonesty or crime. Members and alternate members of
 12 the commission board of directors shall not be held responsible
 13 individually for any act or omission of any other member or
 14 alternate member. The liability of the members and alternate
 15 members of the commission *board of directors* shall be several
 16 and not joint, and a member or alternate member shall not be liable
 17 for the default of any other member or alternate member.

18

19

Article 4. Powers and Duties

20

21 79851. The powers and duties of the commission board of
 22 directors shall include, but are not limited to, all of the following:

23 (a) Adopt and from time to time alter, rescind, modify, and
 24 amend bylaws, rules, ~~regulations~~, and ~~orders~~ *orders, and*
 25 *recommend regulations in accordance with Article 9* for carrying
 26 out this chapter, including rules for appeals from any bylaw, rule,
 27 regulation, ~~or orders~~ *order, or recommended regulation*. These
 28 actions shall not be subject to Chapter 3.5 (commencing with
 29 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
 30 Code.

31 (b) Administer and enforce this chapter and perform all acts
 32 and exercise all powers incidental to, or in connection with, or
 33 determined reasonably necessary for, proper or advisable
 34 effectuation of the purposes of this chapter.

35 (c) Appoint its own officers *from the members of the commission*
 36 *board of directors*, including a chairperson, one or more vice
 37 chairpersons, and any other officers as it determines necessary.
 38 The officers shall have the powers and duties delegated to them
 39 by the commission board of directors.

1 (d) Employ a person to serve at the pleasure of the commission
2 as president and chief executive officer, and other personnel,
3 including legal counsel, necessary to carry out this chapter. The
4 commission may retain a management firm or staff from any board,
5 commission, or committee of the state to perform the functions
6 prescribed by this subdivision under control of the commission
7 board of directors. If a person subject to this subdivision engages
8 in conduct that the secretary determines to be in violation of this
9 chapter, or is not in the public interest, the secretary shall notify
10 the commission of the conduct and request that corrective, and if
11 appropriate, disciplinary action, be taken by the commission board
12 of directors. If the commission board of directors fails or refuses
13 to correct the situation or to take disciplinary action satisfactory
14 to the secretary, the secretary may suspend or discharge the person
15 subject to this subdivision.

16 (e) Fix the compensation for all employees.

17 (f) Appoint committees composed of both members and
18 nonmembers of the commission board of directors to advise in
19 carrying out this chapter.

20 (g) Establish offices and incur expenses, invest funds, enter into
21 contracts and agreements, and create liabilities and borrow funds
22 in advance of receipt of assessments as determined necessary for
23 the proper administration and enforcement of this chapter and the
24 performance of its duties.

25 (h) Keep accurate books, records, and accounts of all of its
26 dealings, which shall be subject to an annual audit by an auditing
27 firm selected by the commission board of directors with the
28 concurrence of the secretary. The audit shall be made a part of an
29 annual report to all producers of ~~olive oil~~ *oil olives and handlers*
30 *subject to this chapter*, and, notwithstanding Sections 9795 and
31 10231.5 of the Government Code, copies of the audit shall be
32 submitted to the Legislature and the department. In addition, the
33 secretary may, as he or she determines necessary, conduct, or cause
34 to be conducted, a fiscal and compliance audit of the commission.

35 (i) Present facts to, and negotiate with, state, federal, and foreign
36 agencies on matters that affect the ~~handling of olive oil~~ *purposes*
37 *of this chapter*.

38 (j) Make, in the name of the commission, contracts to render
39 service in formulating and conducting plans and programs, and

1 any other contracts or agreements determined to be necessary for
2 the purposes specified in this chapter.

3 (k) Conduct, and contract with others to conduct, research,
4 including the study, analysis, dissemination, and accumulation of
5 information obtained from research or elsewhere ~~with respect to~~
6 ~~olive oil quality research and nutritional research~~ *for purposes*
7 *described in this chapter*. In connection with the research, accept
8 contributions of, or to match, private, state, or federal funds that
9 may be available for these purposes, and to employ or make
10 contributions of funds to other persons or state or federal agencies
11 conducting the research.

12 (l) Collect information and publish and distribute to producers
13 a bulletin or other communication for dissemination of ~~information,~~
14 ~~including, but not limited to, crop statistics relating to the olive~~
15 ~~oil industry~~ *information relating to this chapter*.

16 (m) Establish an assessment rate to defray operating costs.

17 (n) Establish an annual budget according to accepted accounting
18 practices. The budget shall be concurred in by the secretary prior
19 to disbursement of funds, except for disbursements made pursuant
20 to subdivision (e).

21 (o) Submit to the secretary for his or her concurrence, an annual
22 statement of contemplated activities authorized under this chapter.

23 (p) Investigate and prosecute civil violations of this chapter and
24 file complaints with appropriate law enforcement agencies or
25 officers for suspected criminal violations of this chapter.

26 (q) Engage in activities and administer any program authorized
27 in Article 9 (commencing with Section 79901) of this chapter.

28 (r) Prescribe the form and manner by which proponents and
29 opponents of the commission may contact producers so long as
30 all expenses associated with the contacts are paid in advance.

31

32 Article 5. Implementation and Voting Procedures

33

34 79861. (a) ~~Prior to January 15, Before February 1, 2014,~~ the
35 secretary shall establish a list of producers eligible to vote on the
36 implementation of this chapter. In establishing the list, the secretary
37 shall require that ~~producers of olive oil in California~~ *handlers of*
38 *oil olives* submit ~~their names, the names and~~ *the names and* mailing addresses of
39 *producers from whom oil olives are received,* and the volume of
40 olive oil ~~produced~~ *resulting from each producer's oil olives that*

1 *was marketed* during the preceding marketing season. The request
2 for the information shall be in writing. The information shall be
3 filed within 10 days following receipt of the written request for
4 information.

5 (b) A producer ~~of olive oil~~ whose name does not appear ~~upon~~
6 *on* the secretary's list may have his or her name placed on the list
7 by filing with the secretary a signed statement identifying himself
8 or herself as a producer. Failure to be on the list does not exempt
9 the producer from paying assessments under this chapter.

10 79862. This chapter, except as necessary to conduct an
11 implementation referendum vote, shall not become operative until
12 the secretary finds at least 40 percent of the total number of
13 producers from the list established by the secretary pursuant to
14 this article participate, and that either of the following occurs:

15 (a) Sixty-five percent of the producers who voted in the
16 referendum voted in favor of this chapter, and the producers so
17 voting produced a majority of the total quantity of *oil olives*
18 *processed into* olive oil ~~produced~~ in the preceding marketing season
19 by all of the producers voting in the referendum.

20 (b) A majority of the producers who voted in the referendum
21 voted in favor of this chapter, and the producers so voting produced
22 65 percent or more of the total quantity of *oil olives processed into*
23 olive oil ~~produced~~ in the preceding marketing season by all of the
24 producers voting in the referendum.

25 79863. The secretary shall establish a period in which to
26 conduct the referendum which shall not be less than 10 days or
27 more than 60 days in duration and may prescribe additional
28 procedures necessary to conduct the referendum. If the initial
29 period established is less than 60 days, the secretary may extend
30 the period. However, the total referendum period may not exceed
31 60 days.

32 79864. Nonreceipt of a ballot shall not invalidate a referendum.

33 79865. If the secretary finds that a favorable vote has been
34 given as provided in this article, he or she shall certify the vote
35 and give notice of the vote to ~~all~~ producers whose names and
36 addresses are on file with the secretary.

37 79866. If the secretary finds that a favorable vote has not been
38 given as provided in this article, he or she shall certify the vote
39 and declare this chapter inoperative. The secretary may conduct

1 another implementation referendum vote one or more years after
2 the previous vote has been taken.

3 79867. (a) Upon certification of the commission, the secretary
4 shall contact ~~all~~ producers and handlers in a manner determined
5 by the secretary for the purpose of nominating and electing persons
6 to the commission board of directors.

7 (b) Subsequent to the first ~~selection~~ *election* of members of the
8 commission board of directors, *or appointment in cases of a public*
9 *member*, producers and handlers shall be selected pursuant to
10 nomination and election procedures established by the commission
11 board of directors with the concurrence of the secretary.

12 79868. Prior to the referendum vote conducted by the secretary
13 pursuant to this article, the proponents of the commission shall
14 deposit with the secretary an amount of funds determined necessary
15 by the secretary to defray the expenses of preparing the necessary
16 lists and information and conducting the vote. Any funds not used
17 for this purpose shall be returned to the proponents of the
18 commission who deposited the funds with the secretary. Upon
19 establishment of the commission, the commission board of
20 directors may reimburse the proponents of the commission for any
21 funds deposited with the secretary and for any legal expenses and
22 costs incurred in establishing the commission.

23

24 Article 6. Assessments and Records

25

26 79871. (a) The commission board of directors shall, no later
27 than the beginning of each marketing season, or as soon thereafter
28 as possible, establish the assessment to be paid by ~~the~~ producers
29 *and collected by handlers* for the marketing season. The
30 assessment shall not be more than twenty-five cents (\$0.25) per
31 gallon for all olive oil handled as specified in this chapter *and shall*
32 *not exceed the reasonable costs of implementing this chapter.*

33 (b) An assessment greater than the amounts in this section shall
34 not be charged unless it is approved in accordance with the voting
35 requirements provided in Section 79862. *If a handler purchases*
36 *oil olives and processes the oil olives into olive oil, the handler*
37 *shall pay an equivalent assessment for the oil olives processed.*

38 79872. This chapter does not apply to *a producer's oil olives*
39 *processed into olive oil produced only for a producer's his or her*
40 *home use.*

1 79873. (a) Handlers of olive oil shall keep a complete and
2 accurate record of all *oil olives purchased by them and* olive oil
3 handled by them with the name of the producer or producers whose
4 ~~olive oil was~~ *oil olives were purchased or handled.* ~~A~~

5 (b) ~~A producer that delivers or markets olive oil to persons other~~
6 ~~than to a handler who handles olive oil made from his or her oil~~
7 *olives* shall keep a complete and accurate record of ~~all that the~~
8 *olive oil handled.* ~~The~~

9 (c) *The records described in subdivisions (a) and (b)* shall
10 contain information required by the commission. The records shall
11 be preserved by the producer or handler for a period of two years
12 and shall be offered and submitted for inspection at any reasonable
13 time upon written demand by the commission or its duly authorized
14 agent.

15 79874. (a) All proprietary information obtained by the
16 commission or the secretary from any source, including the names
17 and addresses of producers, shall be confidential and shall not be
18 disclosed except if required by court order in a judicial proceeding.

19 (b) Information on volume shipments and any other related
20 information that is required for reports to governmental agencies,
21 financial reports to the commission ~~or~~ *on* aggregate sales and
22 inventory information, and any other information that gives only
23 totals, but excludes individual information, may be disclosed by
24 the commission.

25 79875. The first handler of olive oil being assessed shall deduct
26 the assessment from amounts paid by him or her to the producer,
27 and shall be a trustee of the funds until they are paid to the
28 commission at the time and in the manner prescribed by the
29 commission *board of directors*. A producer who handles olive oil
30 *made from his or her oil olives* shall pay an assessment directly to
31 the commission at the time and in the manner prescribed by the
32 commission board of directors.

33 79876. Every handler shall be personally liable for the payment
34 of the *assessments* collected ~~assessments~~ from producers, and
35 failure to collect the assessment from any producer shall not exempt
36 the handler from liability.

37 79877. An assessment that is levied as provided in this chapter
38 is a personal debt of the producer assessed.

39 79878. (a) A person who fails to file a return or pay an
40 assessment within the time required by the commission shall pay

1 to the commission a penalty of 10 percent of the amount of the
2 assessment determined to be past due and, in addition, interest on
3 the unpaid balance at the rate of 1.5 percent per month.

4 (b) In addition to any other penalty imposed, the commission
5 may require a person who fails to pay an assessment or related
6 charge pursuant to this article to furnish and maintain a surety
7 bond in a form and amount and for a period of time specified by
8 the commission board of directors as assurance that all payments
9 to the commission will be made when due.

10

11 Article 7. Actions and Penalties

12

13 79881. A civil penalty not exceeding one thousand dollars
14 (\$1,000) may be levied by the commission upon a person who
15 does any of the following:

16 (a) Willfully ~~to~~ render or furnish a false report, statement, or
17 record required by the commission, or in any way to affect the
18 shipment and marketing of olive oil in order to avoid payment of
19 assessments on the product’s highest value.

20 (b) Fail to render or furnish a report, statement, or record
21 required by the commission.

22 (c) When engaged in the producing *of oil olives for processing*
23 *into olive oil* or handling of olive oil, ~~to~~ fail or refuse to furnish to
24 the commission or its duly authorized agents, upon request,
25 information concerning the name and address of the persons from
26 whom he or she has received olive oil and the quantity so received.

27 (d) Secrete, destroy, or alter records required to be kept by this
28 chapter.

29 79882. For purposes of according individuals aggrieved by its
30 actions or determinations, the commission board of directors shall
31 establish procedures for an informal hearing before the commission
32 or before a committee of the commission established for this
33 purpose. Appeals from the decision of the commission board of
34 directors may be made to the secretary. The determination of the
35 secretary shall be subject to judicial review upon petition filed
36 with the appropriate superior court.

37 79883. (a) The commission may commence civil actions and
38 utilize all remedies provided in law or equity for the collection of
39 assessments and civil penalties, and for obtaining injunctive relief
40 or specific performance, relating to this chapter and the rules and

1 regulations adopted under this chapter. A court shall issue to the
2 commission any requested writ of attachment or injunctive relief
3 upon a prima facie showing by verified complaint that a named
4 defendant has violated this chapter or any other rule or regulation
5 of the commission, including, but not limited to, the nonpayment
6 of assessments. No bond shall be required to be posted by the
7 commission as a condition for the issuance of any writ of
8 attachment or injunctive relief.

9 (b) A writ of attachment shall be issued pursuant to Chapter 5
10 (commencing with Section 485.010) of Title 6.5 of Part 2 of the
11 Code of Civil Procedure, except that the showing specified in
12 Section 485.010 is not required. Injunctive relief shall be issued
13 pursuant to Chapter 3 (commencing with Section 525) of Title 7
14 of Part 2 of the Code of Civil Procedure, except that the showing
15 of irreparable harm or of inadequate remedy at law specified by
16 Section 526 or 527 is not required.

17 (c) Upon entry of any final judgment on behalf of the
18 commission against any defendant, the court shall enjoin the
19 defendant from conducting any type of business regarding *the*
20 *production of oil olives or handling of olive oil* until there is full
21 compliance with, and satisfaction of, the judgment.

22 (d) Upon a favorable judgment for the commission, the court
23 may order that the commission be reimbursed for reasonable
24 attorney's fees and other related costs actually incurred. Venue
25 for these actions is at the domicile or place of business of the
26 defendant or in the county of the principal office of the
27 commission. The commission may be sued only in the county of
28 its principal office.

29 79884. Any action by the commission for any penalty or other
30 remedy that is prescribed under this chapter shall be commenced
31 within two years from the date of discovery of the alleged violation.
32 Any action against the commission by any person shall be
33 commenced within two years from the date of the alleged violation.

34 79885. The commission shall not be required to allege or prove
35 that an adequate remedy at law does not exist in any action brought
36 under this chapter.

37 79886. This chapter shall be liberally construed. If any section,
38 clause, or part of this chapter is for any reason held unconstitutional
39 or invalid as applied to any person or as applied under certain
40 circumstances, that decision shall not affect the remaining portions

1 of this chapter or the application of this chapter to any other persons
2 or under any other circumstance.

3 79887. The termination of this chapter shall not affect or waive
4 any right, duty, obligation, or liability that has arisen or that may
5 thereafter arise in connection with this chapter, release or
6 extinguish any violation of this chapter, or affect or impair any
7 right or remedies of the commission with respect to any violation.

8

9 Article 8. Continuation or Suspension and Termination

10

11 79891. (a) Five years after implementation of this chapter, the
12 secretary shall hold a public hearing, after providing proper notice
13 to ~~all~~ persons subject to this chapter and any other persons or
14 entities who have requested, in writing, notice of the hearing, to
15 determine whether the operation of this chapter should be
16 continued. If the secretary finds after the hearing that a substantial
17 question exists among the ~~persons~~ *producers* assessed under this
18 chapter regarding whether the operation of this chapter should be
19 continued, the secretary shall submit the chapter to a reapproval
20 referendum to be conducted among producers to determine whether
21 the operation of this chapter shall be reapproved and continued in
22 effect.

23 (b) If the secretary finds after conducting a hearing that no
24 substantial question exists or, if a reapproval referendum is
25 required, that a majority of the eligible producers voting in the
26 referendum voted in favor of continuing the operation of this
27 chapter, the secretary shall certify the vote and this chapter shall
28 remain operative. If the secretary finds that a favorable vote has
29 not been given, he or she shall certify the vote and declare the
30 operation of this chapter suspended upon the expiration of the
31 current marketing season. Thereupon, the operations of the
32 commission shall be concluded and funds distributed in the manner
33 provided in Section 79894. A bond or security shall not be required
34 for the referendum.

35 79892. Following a hearing, and favorable referendum if
36 required, the process specified in Section 79891 shall be conducted
37 by the secretary every five years thereafter between July 1 and
38 June 30 of the following year, unless a referendum is conducted
39 as the result of a petition pursuant to Section 79893. In that case,

1 the hearing, and referendum if required, shall be conducted every
2 five years following the industry petitioned referendum.

3 79893. (a) Upon a finding by a two-thirds vote of the
4 commission board of directors that the operation of this chapter
5 has not tended to effectuate its declared purposes, the commission
6 may recommend to the secretary that the commission be suspended.
7 Any suspension shall not become effective until expiration of the
8 current marketing season.

9 (b) (1) The secretary shall, upon receipt of a recommendation,
10 or may, after a public hearing to review a petition filed with him
11 or her requesting the suspension, signed by 15 percent of the
12 producers by number that produced not less than 15 percent of the
13 volume in the immediately preceding marketing season, described
14 in paragraph (2) requesting the suspension, cause a referendum
15 to be conducted among the listed producers to determine if the
16 operations of the commission shall be suspended. However, the
17 The secretary shall not hold a referendum as a result of the a
18 petition described in paragraph (2) unless the petitioner shows by
19 the weight of evidence that the implementation of this chapter has
20 not effectuated its declared purposes.

21 (2) A petition filed requesting suspension of the commission
22 shall be signed by at least 15 percent of the producers, by number,
23 who also produce at least 15 percent of the total volume of oil
24 olives marketed in the preceding marketing season.

25 (c) The secretary shall establish a referendum period, which
26 shall not be less than 10 days or more than 60 days in duration.
27 The secretary may prescribe additional procedures necessary to
28 conduct the referendum. At the close of the established referendum
29 period, the secretary shall tabulate the ballots filed during the
30 period. The secretary shall suspend the operation of this chapter,
31 if the secretary finds at least 40 percent of the total number of
32 producers from the list established by the secretary participate,
33 and that either of the following occurs:

34 (1) Sixty-five percent of the producers that voted in the
35 referendum voted in favor of suspension, and the producers so
36 voting produced a majority of the total quantity of oil olives
37 processed into olive oil produced in the preceding marketing season
38 by all of the producers voting in the referendum.

39 (2) A majority of the producers that voted in the referendum
40 voted in favor of suspension, and the producers so voting produced

1 65 percent or more of the total quantity of *oil olives processed into*
2 olive oil ~~produced~~ in the preceding marketing season by all of the
3 producers voting in the referendum.

4 79894. After the effective date of suspension of this chapter,
5 the operations of the commission shall be concluded and all moneys
6 held by the commission, and moneys collected by assessment and
7 not required to defray the expenses of concluding and terminating
8 operations of the commission, shall be returned upon a pro rata
9 basis to all persons from whom assessments were collected in the
10 immediately preceding marketing season. However, if the
11 commission board of directors finds that the amounts returnable
12 are so small as to make impractical the computation and remitting
13 of the pro rata refund to those persons, any moneys remaining after
14 payment of all expenses of winding up and terminating operations
15 shall be withdrawn from the approved depository and paid into an
16 appropriate state or federal program or used to fund activities
17 related to the subject matter of this chapter.

18 79895. Upon suspension of the operation of this chapter, the
19 commission shall mail a copy of the notice of suspension to all
20 producers affected by the suspension whose names and addresses
21 are on file.

22

23 Article 9. Quality Standards

24

25 79901. The commission board of directors may recommend
26 to the secretary the adoption *and amendment* of olive oil grades
27 and labeling standards, ~~the amendment of the standards when~~
28 ~~appropriate, and the adoption of inspection procedures,~~
29 ~~enforcement, and fees associated with the activity~~ in accordance
30 with the California Marketing Act of 1937 (Chapter 1 (commencing
31 with Section 58601) of Part 2 of Division 21), unless otherwise
32 specified in this article.

33 ~~79902. Grades and standards adopted pursuant to this article~~
34 ~~shall be implemented by the secretary at the beginning of the~~
35 ~~marketing season following the date on which the activity is~~
36 ~~approved by the secretary.~~

1 ~~79903.~~
2 79902. The commission *board of directors* shall serve as the
3 advisory body to the secretary on all matters pertaining to this
4 article.

O