

AMENDED IN ASSEMBLY JUNE 3, 2013

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, 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 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.

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 industry within the state, national, and
17 international marketplace.

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

23 79803. The production of ~~oil~~ olives for processing into olive
24 oil and the marketing of olive oil produced in this state is hereby

1 declared to be a public interest. This chapter is enacted in the
2 exercise of the police power of this state for the purpose of
3 protecting the health, peace, safety, and general welfare of the
4 people of this state.

5 79804. The commission form of administration created by this
6 chapter is uniquely situated to provide those engaged in the
7 activities specified in this chapter the opportunity to avail
8 themselves of the benefits of collective action in the broad fields
9 of olive oil ~~research~~, *research* and grades and labeling standards.

10 79805. No action taken by the commission, or by any individual
11 in accordance with this chapter or with rules and regulations
12 adopted under this chapter, shall be deemed a violation of the
13 Cartwright Act (Chapter 2 (commencing with Section 16700) of
14 Part 2 of Division 7 of the Business and Professions Code), the
15 Unfair Practices Act (Chapter 4 (commencing with Section 17000)
16 of Part 2 of Division 7 of the Business and Professions Code), or
17 any rule of statutory or common law against monopolies or
18 combinations in restraint of trade.

19 79806. It is hereby declared as a matter of legislative
20 determination that members of the commission are intended to
21 represent and further the interest of the particular industry
22 concerned and that this representation and furtherance is intended
23 to serve the public interest. Accordingly, the Legislature finds that
24 with respect to persons who are elected or appointed to the
25 commission, the particular industry concerned is tantamount to,
26 and constitutes the public generally within the meaning of Section
27 87103 of the Government Code.

28

29

Article 2. Definitions

30

31 79811. Unless the context otherwise requires, the definitions
32 in this article govern the construction of this chapter.

33 79812. "Olive oil" means the oil obtained solely from the fruit
34 of the olive tree (*Olea europea* L.) which is produced in California
35 for commercial purposes.

36 79812.5. ~~"Oil olives"~~ "*Olives*" means fruit of the olive tree
37 (*Olea europea* L.) ~~grown for the purpose of processing that are~~
38 *processed* into olive oil.

39 79813. "Books and records" means books, records, contracts,
40 documents, memoranda, papers, correspondence, or other written

1 data pertaining to matters relating to the activities subject to this
2 chapter.

3 79814. “Commission” means the Olive Oil Commission of
4 California.

5 79815. (a) “Districts” consist of the following:

6 (1) District 1 consists of the Counties of Butte, Del Norte, Glenn,
7 Humboldt, Lassen, Modoc, Plumas, Shasta, Siskiyou, Tehama,
8 and Trinity.

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

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

18 (b) The commission board of directors shall periodically
19 determine whether the olive oil acreage in any of the districts varies
20 by more than 20 percent from the olive oil acreage in other districts
21 and draw new district lines in the event a variance exists. This
22 action shall be approved by a two-thirds vote of the commission
23 board of directors.

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

29 79816. “Ex officio members” are nonvoting members of the
30 commission board of directors.

31 79817. “Handle” means to engage in the business of a handler.

32 79818. (a) “Handler” means a person who engages, in this
33 state, in the operation of marketing olive oil that he or she has
34 produced, or purchased or acquired from an ~~oil~~ olive producer, or
35 that he or she is marketing on behalf of an ~~oil~~ olive producer,
36 whether as owner, agent, employee, broker, or otherwise.

37 (b) When the handler is a corporation or a limited liability
38 company, all of the directors, officers, managers, and members of
39 the corporation or limited liability company in their capacity as
40 individuals shall be included, and any liability for failure to collect

1 or make payment of assessments to which a corporate handler or
2 a handler that is a limited liability company may be subject
3 pursuant to this chapter shall include identical liability upon each
4 individual director, officer, manager, or member of the corporation
5 or limited liability company.

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

7 79819. “Market” or “marketing” means to sell olive oil into
8 commercial channels of trade.

9 79820. “Marketing season” or “fiscal year” are synonymous
10 terms and mean the period beginning July 1 of any year and
11 extending through June 30 of the following year.

12 79821. “Producer” means any person that produces or causes
13 to be produced ~~oil~~ olives that are processed into olive oil in the
14 amount of 5,000 gallons or more during the marketing season and
15 that shall, upon request of the commission, provide proof of
16 commodity sale.

17 79822. “Secretary” means the Secretary of Food and
18 Agriculture.

19 79823. “Advisory committee” means a committee appointed
20 by the secretary from applications received from persons that
21 produce or cause to be produced ~~oil~~ olives that are processed into
22 less than 5,000 gallons of olive oil during the marketing season.

23
24 Article 3. Olive Oil Commission of California

25
26 79831. (a) There is in the state government the Olive Oil
27 Commission of California. Except as provided in subdivision (d),
28 the commission board of directors shall be composed of the
29 following:

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

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

32 (3) One public member who shall be appointed to the
33 commission board of directors by the secretary from nominees
34 recommended by the commission board of directors.

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

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

39 (d) The commission board of directors may modify the number
40 of producers and handlers who serve on the commission board of

1 directors by a two-thirds vote that is concurred in by the secretary,
2 if proper notice is provided to all persons subject to this chapter
3 prior to the action.

4 (e) An advisory committee shall meet periodically to review
5 issues affecting the purposes of this chapter and shall advise the
6 commission board of directors. The committee shall consist of
7 seven members who shall each serve three-year terms. The chair
8 of the committee shall be selected by the members.

9 79832. (a) The secretary may require the commission to correct
10 or cease any existing activity or function that is determined by the
11 secretary not to be in the public interest or in violation of this
12 chapter.

13 (b) If the commission refuses or fails to cease those activities
14 or functions or to make corrections as required by the secretary,
15 the secretary may, upon written notice, suspend all or a portion of
16 the activities or functions of the commission until such time as the
17 cessation or correction of activities or functions as required by the
18 secretary has been accomplished by the commission.

19 (c) Actions of the commission in violation of the secretary's
20 written notice shall be without legal force or effect. The secretary,
21 to the extent feasible, shall issue the written notice prior to the
22 commission entering into any contractual relationship affecting
23 the existing or proposed activities or functions that are the subject
24 of the written notice.

25 (d) Upon service of the written notice, the secretary shall notify
26 the commission in writing of the specific acts that he or she
27 determines are not in the public interest or are in violation of this
28 chapter, and his or her reasons for requiring a cessation or
29 correction of specific existing or proposed activities or functions,
30 and may make recommendations that will make those activities
31 or functions acceptable to the secretary.

32 79833. The commission or the secretary may bring an action
33 for judicial relief from the secretary's written notice, or from
34 noncompliance by the commission with the written notice, in a
35 court of competent jurisdiction, which may issue a temporary
36 restraining order, permanent injunction, or other applicable relief.

37 79834. The commission shall reimburse the secretary for all
38 expenditures incurred by the secretary in carrying out his or her
39 duties and responsibilities under this chapter. However, a court
40 may, if it finds that the secretary acted arbitrarily or capriciously

1 in restricting the activities or functions of the commission, relieve
2 the commission of the responsibility for payment of the secretary's
3 legal costs with regard to that action.

4 79835. Except for the ex officio members of the commission
5 board of directors, each member of the commission board of
6 directors shall have an alternate member elected in the same
7 manner as the member. An alternate member, in the absence of
8 the member for whom he or she is an alternate, shall serve in place
9 of the member. An alternate member may also serve in place of
10 any other absent member of the same classification, producer or
11 handler, if the member's alternate is also absent. However, an
12 alternate member may not serve in place of more than one absent
13 member at a meeting. An alternate member serving in place of a
14 member shall have and be able to exercise all rights, privileges,
15 and powers of the member when serving. In the event of death,
16 removal, resignation, or the disqualification of a member, the
17 alternate for the member, or another alternate of the same
18 classification if the alternate member for the member is absent,
19 shall act as the member until a qualified successor is elected.

20 79836. Any vacancy on the commission board of directors,
21 including, but not limited to, the failure of any person elected or
22 appointed to the commission board of directors as a member or
23 alternate member to continue in his or her position due to a change
24 in status making him or her ineligible to serve, or due to death,
25 removal, or resignation, shall be filled by the election of another
26 person, or appointment in the case of a public member, for the
27 unexpired portion of the term, with elected positions to be filled
28 by a majority vote of the commission board of directors. However,
29 the person elected or appointed shall fulfill all the qualifications
30 set forth in this article as required for the office he or she is to
31 occupy. The qualifications of any person to fill a vacancy shall be
32 certified in writing to the secretary. The secretary shall notify the
33 commission if he or she determines that the person is not qualified.

34 79837. A producer member or his or her alternate on the
35 commission board of directors shall be an individual, partner, or
36 employee of a producer who has a financial interest in producing,
37 or causing to be produced, ~~oil~~ olives for processing into olive oil.
38 The producer member or his or her alternate shall be in compliance
39 with this section during the entire term of his or her office.

1 79838. The public member, or his or her alternate on the
2 commission board of directors, shall have all the powers, rights,
3 and privileges of any other member on the commission board of
4 directors. The public member shall not have any financial interest
5 in the production or processing of ~~oil~~ olives or the marketing of
6 olive oil but may be an individual who provides services to
7 individuals who do have a financial interest. The public member
8 or his or her alternate shall be in compliance with this section
9 during the entire term of his or her office.

10 79839. (a) Except as provided in paragraphs (1) and (2), the
11 term of office of all members of the commission board of directors
12 and their alternates, except any ex officio member, shall be three
13 years from the date of their election and until their successors are
14 elected.

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

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

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

21 (c) An alternate shall serve the same term as the member for
22 whom he or she serves as alternate.

23 79840. The commission may sue and be sued and enter into
24 contracts. Copies of its proceedings, records, and acts, when
25 authenticated, shall be admissible in evidence in all courts of the
26 state, and shall be prima facie evidence of the truth of all statements
27 within the proceedings, records, and acts.

28 79841. A quorum of the commission board of directors is a
29 majority of the members authorized to vote. Except as otherwise
30 provided in this chapter, the vote of a majority of these members
31 present at a meeting at which there is a quorum shall constitute an
32 act of the commission.

33 79842. The secretary or his or her representatives shall be
34 notified and may attend each meeting of the commission board of
35 directors and any meetings of a committee established by the
36 commission. However, the secretary is not entitled to attend an
37 executive session of the commission board of directors called for
38 the purpose of discussing potential or actual litigation against the
39 department.

1 79843. A member of the commission board of directors or of
2 any committee established by the commission, which may include
3 nonmembers of the commission board of directors, shall not receive
4 a salary. Except for ex officio government members, a member
5 may receive reasonable and necessary traveling expenses and meal
6 allowances, as established by the commission board of directors,
7 for each day spent in actual attendance at, or in traveling to and
8 from, meetings of the commission or committees of the
9 commission, or on special assignment for the commission.

10 79844. If the secretary is required to concur in a decision of
11 the commission, he or she shall indicate his or her response within
12 15 working days from notification of the decision. The response
13 may be a request that additional information be provided.

14 79845. All moneys received by any person from assessments
15 levied under the authority of this chapter or otherwise received by
16 the commission shall be deposited in banks designated by the
17 commission board of directors and shall be disbursed by order of
18 the commission board of directors through an agent or agents
19 designated for that purpose. Any authorized agent or agents shall
20 be bonded by a fidelity bond, executed by a surety company
21 authorized to transact business in the state, in favor of the
22 commission, in the amount of not less than twenty-five thousand
23 dollars (\$25,000).

24 79846. The state shall not be liable for the acts of the
25 commission or its contracts. Payments of all claims arising by
26 reason of the administration of this chapter or acts of the
27 commission shall be limited to the funds collected by the
28 commission. Members and alternate members of the commission
29 board of directors, employees, and agents of the commission shall
30 not be personally liable for the contracts of the commission, and
31 members and alternate members of the commission board of
32 directors, and employees of the commission shall not be responsible
33 individually in any way to a producer, handler, or any other person
34 for error in judgment, mistakes, or other acts, either of commission
35 or omission, as principal, agent, or employee, except for his or her
36 own individual acts of dishonesty or crime. Members and alternate
37 members of the commission board of directors shall not be held
38 responsible individually for any act or omission of any other
39 member or alternate member. The liability of the members and
40 alternate members of the commission board of directors shall be

1 several and not joint, and a member or alternate member shall not
2 be liable for the default of any other member or alternate member.

3

4

Article 4. Powers and Duties

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6 79851. The powers and duties of the commission board of
7 directors shall include, but are not limited to, all of the following:

8 (a) Adopt and from time to time alter, rescind, modify, and
9 amend bylaws, rules, and orders, and recommend regulations in
10 accordance with Article 9 for carrying out this chapter, including
11 rules for appeals from any bylaw, rule, regulation, order, or
12 recommended regulation. These actions shall not be subject to
13 Chapter 3.5 (commencing with Section 11340) of Part 1 of Division
14 3 of Title 2 of the Government Code.

15 (b) Administer and enforce this chapter and perform all acts
16 and exercise all powers incidental to, or in connection with, or
17 determined reasonably necessary for, proper or advisable
18 effectuation of the purposes of this chapter.

19 (c) Appoint its own officers from the members of the
20 commission board of directors, including a chairperson, one or
21 more vice chairpersons, and any other officers as it determines
22 necessary. The officers shall have the powers and duties delegated
23 to them by the commission board of directors.

24 (d) Employ a person to serve at the pleasure of the commission
25 as president and chief executive officer, and other personnel,
26 including legal counsel, necessary to carry out this chapter. The
27 commission may retain a management firm or staff from any board,
28 commission, or committee of the state to perform the functions
29 prescribed by this subdivision under control of the commission
30 board of directors. If a person subject to this subdivision engages
31 in conduct that the secretary determines to be in violation of this
32 chapter, or is not in the public interest, the secretary shall notify
33 the commission of the conduct and request that corrective, and if
34 appropriate, disciplinary action, be taken by the commission board
35 of directors. If the commission board of directors fails or refuses
36 to correct the situation or to take disciplinary action satisfactory
37 to the secretary, the secretary may suspend or discharge the person
38 subject to this subdivision.

39 (e) Fix the compensation for all employees.

1 (f) Appoint committees composed of both members and
2 nonmembers of the commission board of directors to advise in
3 carrying out this chapter.

4 (g) Establish offices and incur expenses, invest funds, enter into
5 contracts and agreements, and create liabilities and borrow funds
6 in advance of receipt of assessments as determined necessary for
7 the proper administration and enforcement of this chapter and the
8 performance of its duties.

9 (h) Keep accurate books, records, and accounts of all of its
10 dealings, which shall be subject to an annual audit by an auditing
11 firm selected by the commission board of directors with the
12 concurrence of the secretary. The audit shall be made a part of an
13 annual report to all producers of ~~oil~~ olives and handlers subject to
14 this chapter, and, notwithstanding Sections 9795 and 10231.5 of
15 the Government Code, copies of the audit shall be submitted to
16 the Legislature and the department. In addition, the secretary may,
17 as he or she determines necessary, conduct, or cause to be
18 conducted, a fiscal and compliance audit of the commission.

19 (i) Present facts to, and negotiate with, state, federal, and foreign
20 agencies on matters that affect the purposes of this chapter.

21 (j) Make, in the name of the commission, contracts to render
22 service in formulating and conducting plans and programs, and
23 any other contracts or agreements determined to be necessary for
24 the purposes specified in this chapter.

25 (k) Conduct, and contract with others to conduct, research,
26 including the study, analysis, dissemination, and accumulation of
27 information obtained from research or elsewhere for purposes
28 described in this chapter. In connection with the research, accept
29 contributions of, or to match, private, state, or federal funds that
30 may be available for these purposes, and to employ or make
31 contributions of funds to other persons or state or federal agencies
32 conducting the research.

33 (l) Collect information and publish and distribute to producers
34 a bulletin or other communication for dissemination of information
35 relating to this chapter.

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

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

- 1 (o) Submit to the secretary for his or her concurrence, an annual
- 2 statement of contemplated activities authorized under this chapter.
- 3 (p) Investigate and prosecute civil violations of this chapter and
- 4 file complaints with appropriate law enforcement agencies or
- 5 officers for suspected criminal violations of this chapter.
- 6 (q) Engage in activities and administer any program authorized
- 7 in Article 9 (commencing with Section 79901) of this chapter.
- 8 (r) Prescribe the form and manner by which proponents and
- 9 opponents of the commission may contact producers so long as
- 10 all expenses associated with the contacts are paid in advance.

11
 12 Article 5. Implementation and Voting Procedures

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 14 79861. (a) Before February 1, 2014, the secretary shall
 15 establish a list of producers eligible to vote on the implementation
 16 of this chapter. In establishing the list, the secretary shall require
 17 that handlers of ~~oil~~ olives submit the names and mailing addresses
 18 of producers from whom ~~oil~~ olives are received, and the volume
 19 of olive oil resulting from each producer's ~~oil~~ olives that was
 20 marketed during the preceding marketing season. The request for
 21 the information shall be in writing. The information shall be filed
 22 within 10 days following receipt of the written request for
 23 information.

24 (b) A producer whose name does not appear on the secretary's
 25 list may have his or her name placed on the list by filing with the
 26 secretary a signed statement identifying himself or herself as a
 27 producer. Failure to be on the list does not exempt the producer
 28 from paying assessments under this chapter.

29 79862. This chapter, except as necessary to conduct an
 30 implementation referendum vote, shall not become operative until
 31 the secretary finds at least 40 percent of the total number of
 32 producers from the list established by the secretary pursuant to
 33 this article participate, and that either of the following occurs:

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

39 (b) A majority of the producers who voted in the referendum
 40 voted in favor of this chapter, and the producers so voting produced

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

4 79863. The secretary shall establish a period in which to
5 conduct the referendum which shall not be less than 10 days or
6 more than 60 days in duration and may prescribe additional
7 procedures necessary to conduct the referendum. If the initial
8 period established is less than 60 days, the secretary may extend
9 the period. However, the total referendum period may not exceed
10 60 days.

11 79864. Nonreceipt of a ballot shall not invalidate a referendum.

12 79865. If the secretary finds that a favorable vote has been
13 given as provided in this article, he or she shall certify the vote
14 and give notice of the vote to producers whose names and addresses
15 are on file with the secretary.

16 79866. If the secretary finds that a favorable vote has not been
17 given as provided in this article, he or she shall certify the vote
18 and declare this chapter inoperative. The secretary may conduct
19 another implementation referendum vote one or more years after
20 the previous vote has been taken.

21 79867. (a) Upon certification of the commission, the secretary
22 shall contact producers and handlers in a manner determined by
23 the secretary for the purpose of nominating and electing persons
24 to the commission board of directors.

25 (b) Subsequent to the first election of members of the
26 commission board of directors, or appointment in cases of a public
27 member, producers and handlers shall be selected pursuant to
28 nomination and election procedures established by the commission
29 board of directors with the concurrence of the secretary.

30 79868. Prior to the referendum vote conducted by the secretary
31 pursuant to this article, the proponents of the commission shall
32 deposit with the secretary an amount of funds determined necessary
33 by the secretary to defray the expenses of preparing the necessary
34 lists and information and conducting the vote. Any funds not used
35 for this purpose shall be returned to the proponents of the
36 commission who deposited the funds with the secretary. Upon
37 establishment of the commission, the commission board of
38 directors may reimburse the proponents of the commission for any
39 funds deposited with the secretary and for any legal expenses and
40 costs incurred in establishing the commission.

Article 6. Assessments and Records

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3 79871. (a) The commission board of directors shall, no later
4 than the beginning of each marketing season, or as soon thereafter
5 as possible, establish the assessment to be paid by producers and
6 collected by handlers for the marketing season. The assessment
7 shall not be more than twenty-five cents (\$0.25) per gallon for all
8 olive oil handled as specified in this chapter and shall not exceed
9 the reasonable costs of implementing this chapter.

10 (b) An assessment greater than the amounts in this section shall
11 not be charged unless it is approved in accordance with the voting
12 requirements provided in Section 79862. If a handler purchases
13 ~~oil~~ olives and processes the ~~oil~~ olives into olive oil, the handler
14 shall pay an equivalent assessment for the ~~oil~~ olives processed.

15 79872. This chapter does not apply to a producer's ~~oil~~ olives
16 processed into olive oil for his or her home use.

17 79873. (a) Handlers of olive oil shall keep a complete and
18 accurate record of all ~~oil~~ olives purchased by them and olive oil
19 handled by them with the name of the producer or producers whose
20 ~~oil~~ olives were purchased or handled.

21 (b) A producer who handles olive oil made from his or her ~~oil~~
22 olives shall keep a complete and accurate record of the olive oil
23 handled.

24 (c) The records described in subdivisions (a) and (b) shall
25 contain information required by the commission. The records shall
26 be preserved by the producer or handler for a period of two years
27 and shall be offered and submitted for inspection at any reasonable
28 time upon written demand by the commission or its duly authorized
29 agent.

30 79874. (a) All proprietary information obtained by the
31 commission or the secretary from any source, including the names
32 and addresses of producers, shall be confidential and shall not be
33 disclosed except if required by court order in a judicial proceeding.

34 (b) Information on volume shipments and any other related
35 information that is required for reports to governmental agencies,
36 financial reports to the commission on aggregate sales and
37 inventory information, and any other information that gives only
38 totals, but excludes individual information, may be disclosed by
39 the commission.

1 79875. The first handler of olive oil being assessed shall deduct
2 the assessment from amounts paid by him or her to the producer,
3 and shall be a trustee of the funds until they are paid to the
4 commission at the time and in the manner prescribed by the
5 commission board of directors. A producer who handles olive oil
6 made from his or her ~~oil~~ olives shall pay an assessment directly to
7 the commission at the time and in the manner prescribed by the
8 commission board of directors.

9 79876. Every handler shall be personally liable for the payment
10 of the assessments collected from producers, and failure to collect
11 the assessment from any producer shall not exempt the handler
12 from liability.

13 79877. An assessment that is levied as provided in this chapter
14 is a personal debt of the producer assessed.

15 79878. (a) A person who fails to file a return or pay an
16 assessment within the time required by the commission shall pay
17 to the commission a penalty of 10 percent of the amount of the
18 assessment determined to be past due and, in addition, interest on
19 the unpaid balance at the rate of 1.5 percent per month.

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

26

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Article 7. Actions and Penalties

28

29 79881. A civil penalty not exceeding one thousand dollars
30 (\$1,000) may be levied by the commission upon a person who
31 does any of the following:

32 (a) Willfully render or furnish a false report, statement, or record
33 required by the commission, or in any way to affect the shipment
34 and marketing of olive oil in order to avoid payment of assessments
35 on the product's highest value.

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

38 (c) When engaged in the producing of ~~oil~~ olives for processing
39 into olive oil or handling of olive oil, fail or refuse to furnish to
40 the commission or its duly authorized agents, upon request,

1 information concerning the name and address of the persons from
2 whom he or she has received olive oil and the quantity so received.

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

5 79882. For purposes of according individuals aggrieved by its
6 actions or determinations, the commission board of directors shall
7 establish procedures for an informal hearing before the commission
8 or before a committee of the commission established for this
9 purpose. Appeals from the decision of the commission board of
10 directors may be made to the secretary. The determination of the
11 secretary shall be subject to judicial review upon petition filed
12 with the appropriate superior court.

13 79883. (a) The commission may commence civil actions and
14 utilize all remedies provided in law or equity for the collection of
15 assessments and civil penalties, and for obtaining injunctive relief
16 or specific performance, relating to this chapter and the rules and
17 regulations adopted under this chapter. A court shall issue to the
18 commission any requested writ of attachment or injunctive relief
19 upon a prima facie showing by verified complaint that a named
20 defendant has violated this chapter or any other rule or regulation
21 of the commission, including, but not limited to, the nonpayment
22 of assessments. No bond shall be required to be posted by the
23 commission as a condition for the issuance of any writ of
24 attachment or injunctive relief.

25 (b) A writ of attachment shall be issued pursuant to Chapter 5
26 (commencing with Section 485.010) of Title 6.5 of Part 2 of the
27 Code of Civil Procedure, except that the showing specified in
28 Section 485.010 is not required. Injunctive relief shall be issued
29 pursuant to Chapter 3 (commencing with Section 525) of Title 7
30 of Part 2 of the Code of Civil Procedure, except that the showing
31 of irreparable harm or of inadequate remedy at law specified by
32 Section 526 or 527 is not required.

33 (c) Upon entry of any final judgment on behalf of the
34 commission against any defendant, the court shall enjoin the
35 defendant from conducting any type of business regarding the
36 production of ~~oil~~ olives or handling of olive oil until there is full
37 compliance with, and satisfaction of, the judgment.

38 (d) Upon a favorable judgment for the commission, the court
39 may order that the commission be reimbursed for reasonable
40 attorney's fees and other related costs actually incurred. Venue

1 for these actions is at the domicile or place of business of the
2 defendant or in the county of the principal office of the
3 commission. The commission may be sued only in the county of
4 its principal office.

5 79884. Any action by the commission for any penalty or other
6 remedy that is prescribed under this chapter shall be commenced
7 within two years from the date of discovery of the alleged violation.
8 Any action against the commission by any person shall be
9 commenced within two years from the date of the alleged violation.

10 79885. The commission shall not be required to allege or prove
11 that an adequate remedy at law does not exist in any action brought
12 under this chapter.

13 79886. This chapter shall be liberally construed. If any section,
14 clause, or part of this chapter is for any reason held unconstitutional
15 or invalid as applied to any person or as applied under certain
16 circumstances, that decision shall not affect the remaining portions
17 of this chapter or the application of this chapter to any other persons
18 or under any other circumstance.

19 79887. The termination of this chapter shall not affect or waive
20 any right, duty, obligation, or liability that has arisen or that may
21 thereafter arise in connection with this chapter, release or
22 extinguish any violation of this chapter, or affect or impair any
23 right or remedies of the commission with respect to any violation.
24

25 Article 8. Continuation or Suspension and Termination

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27 79891. (a) Five years after implementation of this chapter, the
28 secretary shall hold a public hearing, after providing proper notice
29 to persons subject to this chapter and any other persons or entities
30 who have requested, in writing, notice of the hearing, to determine
31 whether the operation of this chapter should be continued. If the
32 secretary finds after the hearing that a substantial question exists
33 among the producers assessed under this chapter regarding whether
34 the operation of this chapter should be continued, the secretary
35 shall submit the chapter to a reapproval referendum to be conducted
36 among producers to determine whether the operation of this chapter
37 shall be reapproved and continued in effect.

38 (b) If the secretary finds after conducting a hearing that no
39 substantial question exists or, if a reapproval referendum is
40 required, that a majority of the eligible producers voting in the

1 referendum voted in favor of continuing the operation of this
2 chapter, the secretary shall certify the vote and this chapter shall
3 remain operative. If the secretary finds that a favorable vote has
4 not been given, he or she shall certify the vote and declare the
5 operation of this chapter suspended upon the expiration of the
6 current marketing season. Thereupon, the operations of the
7 commission shall be concluded and funds distributed in the manner
8 provided in Section 79894. A bond or security shall not be required
9 for the referendum.

10 79892. Following a hearing, and favorable referendum if
11 required, the process specified in Section 79891 shall be conducted
12 by the secretary every five years thereafter between July 1 and
13 June 30 of the following year, unless a referendum is conducted
14 as the result of a petition pursuant to Section 79893. In that case,
15 the hearing, and referendum if required, shall be conducted every
16 five years following the industry petitioned referendum.

17 79893. (a) Upon a finding by a two-thirds vote of the
18 commission board of directors that the operation of this chapter
19 has not tended to effectuate its declared purposes, the commission
20 may recommend to the secretary that the commission be suspended.
21 Any suspension shall not become effective until expiration of the
22 current marketing season.

23 (b) (1) The secretary shall, upon receipt of a recommendation,
24 or may, after a public hearing to review a petition described in
25 paragraph (2) requesting the suspension, cause a referendum to be
26 conducted among the listed producers to determine if the operations
27 of the commission shall be suspended. The secretary shall not hold
28 a referendum as a result of a petition described in paragraph (2)
29 unless the petitioner shows by the weight of evidence that the
30 implementation of this chapter has not effectuated its declared
31 purposes.

32 (2) A petition filed requesting suspension of the commission
33 shall be signed by at least 15 percent of the producers, by number,
34 who also produce at least 15 percent of the total volume of ~~oil~~
35 olives marketed in the preceding marketing season.

36 (c) The secretary shall establish a referendum period, which
37 shall not be less than 10 days or more than 60 days in duration.
38 The secretary may prescribe additional procedures necessary to
39 conduct the referendum. At the close of the established referendum
40 period, the secretary shall tabulate the ballots filed during the

1 period. The secretary shall suspend the operation of this chapter,
2 if the secretary finds at least 40 percent of the total number of
3 producers from the list established by the secretary participate,
4 and that either of the following occurs:

5 (1) Sixty-five percent of the producers that voted in the
6 referendum voted in favor of suspension, and the producers so
7 voting produced a majority of the total quantity of ~~oil~~ olives
8 processed into olive oil in the preceding marketing season by all
9 of the producers voting in the referendum.

10 (2) A majority of the producers that voted in the referendum
11 voted in favor of suspension, and the producers so voting produced
12 65 percent or more of the total quantity of ~~oil~~ olives processed into
13 olive oil in the preceding marketing season by all of the producers
14 voting in the referendum.

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

29 79895. Upon suspension of the operation of this chapter, the
30 commission shall mail a copy of the notice of suspension to
31 producers affected by the suspension whose names and addresses
32 are on file.

33

34 Article 9. Quality Standards

35

36 79901. The commission board of directors may recommend
37 to the secretary the adoption and amendment of olive oil grades
38 and labeling standards, in accordance with the California Marketing
39 Act of 1937 (Chapter 1 (commencing with Section 58601) of Part
40 2 of Division 21), unless otherwise specified in this article.

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

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