

Assembly Bill No. 1558

Passed the Assembly September 11, 1997

Chief Clerk of the Assembly

Passed the Senate September 9, 1997

Secretary of the Senate

This bill was received by the Governor this ____ day
of _____, 1997, at ____ o'clock __M.

Private Secretary of the Governor



CHAPTER ____

An act to amend Sections 56621, 67055, 69022, 69044, 69051, 69081, 69085, 69091, 74719, 74721, 74737, 74785, 74786, 78623, and 78640 of, to amend and renumber Sections 69029 and 69084 of, to add Sections 63903, 69029, and 74721.5 to, and to repeal Section 69017 of, the Food and Agricultural Code, relating to agriculture.

LEGISLATIVE COUNSEL’S DIGEST

AB 1558, Committee on Agriculture. Agricultural commissions.

(1) Existing law establishes numerous marketing advisory and promotional councils and commissions to promote the state’s agricultural and seafood products.

This bill would authorize each commission established pursuant to specified provisions of existing law to commence or participate in administrative and civil actions relative to the activities of the commission.

(2) Existing law provides for the California Pistachio Commission in state government. The purpose of the commission is, among other things, to promote the sale of pistachios by advertising and other promotional means. Under existing law, the operating costs of the commission are financed by an assessment that is imposed on producers of pistachios. The assessment is based on the average price paid to producers, computed on a per pound or on a basis reasonably equivalent to the per pound computation, as determined by the commission.

This bill would require the assessment to be based on the average price received by producers. The bill would substitute the term “producer-supplier” for the term “handler” in the provisions governing the commission. The bill would permit the commission to require processors and producer-suppliers to provide records and other information necessary for the commission to carry out its duties, and would make it a misdemeanor to fail or refuse to furnish any report, statement, or record



required by the commission, thereby imposing a state-mandated local program.

(3) Existing law establishes the California Grape Rootstock Improvement Commission and defines terms for purposes of the law governing that commission.

Existing law defines “grape rootstock nursery” or “nursery,” for these purposes, as any person in this state which operates under a California state nursery license and grows grape rootstock for distribution or sale.

This bill, instead, would define these terms to mean any person in this state which operates under a California state nursery license and grows grape rootstock for commercial use or distribution.

Under these provisions, existing law defines “invoicable unit,” for these purposes, to mean any rootstock cutting, or rooted rootstock cutting, or bench grafted grape rootstock distributed or sold for which sales records are kept.

This bill, instead, would define “invoicable unit” to mean any rootstock cutting, or rooted rootstock cutting, or grafted grape rootstock that is used or distributed by a nursery for commercial purposes.

The bill also would define the term “distribute,” for these purposes.

(4) Under existing law, the California Avocado Commission consists of 10 avocado producers who are not handlers, 4 avocado handlers, and one public member. Existing law provides for the staggering of terms for the first members of the commission.

This bill would specify that subsequent to the election of the first members of the commission, the terms of commissioners shall continue to be staggered.

(5) Under existing law, the California Tomato Commission consists of 10 producers, 6 handlers, and may include one public member, at the discretion of the commission. Under these provisions, producers within the respective districts, as described, are required to elect producer members to the commission.

This bill would increase the handler members of the commission from 6 to 7, and would revise the makeup of



the districts and the election of producer members from those districts, as specified. In addition, the bill would designate a new District 3 as Baja California (Mexico) and would require handlers in California who exclusively handle tomatoes produced in this district to elect one handler as a member of the commission. The bill would require an individual serving on the commission as a representative of District 3 to be a United States citizen.

(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

SECTION 1. Section 56621 of the Food and Agricultural Code is amended to read:

56621. It is a violation of this chapter if a licensee fails, neglects, or refuses to collect or remit any assessments that have been levied in accordance with the assessment provisions of Article 10 (commencing with Section 58921) of Chapter 1 or Article 12 (commencing with Section 59941) of Chapter 2 of Part 2 of Division 21, or Article 8 (commencing with Section 64691) of Chapter 2, Article 5 (commencing with Section 66621) of Chapter 4, Article 6 (commencing with Section 67101) of Chapter 5, Article 6 (commencing with Section 68101) of Chapter 6, Article 6 (commencing with Section 69081) of Chapter 7, Article 6 (commencing with Section 72101) of Chapter 10, Article 6 (commencing with Section 75131) of Chapter 13, Article 6 (commencing with Section 76141) of Chapter 14, Article 6 (commencing with Section 78285) of Chapter 21, or Article 6 (commencing with Section 78700) of Chapter 24, of Part 2 of Division 22.

SEC. 2. Section 63903 is added to the Food and Agricultural Code, to read:

63903. In addition to the authority granted to any commission by Part 2 (commencing with Section 64001),



those commissions may commence or participate in administrative and civil actions relative to the activities of the commission.

SEC. 3. Section 67055 of the Food and Agricultural Code is amended to read:

67055. The term of office of all commissioners, except the ex officio member, shall be for two years from the date of their election and until their successors are qualified; provided, however, that of the first members of the commission from each district, one shall serve for one year, and one shall serve for two years, with the determination of term of each such member to be made by lot. The same selection procedure shall apply to the two cooperative and two independent handler members. Subsequent to the election of the first members of the commission, the terms of the commissioners shall continue to be staggered, as provided in this section. Terms of office of each commissioner shall be limited to four consecutive terms.

SEC. 4. Section 69017 of the Food and Agricultural Code is repealed.

SEC. 5. Section 69022 of the Food and Agricultural Code is amended to read:

69022. "Processor" and "first handler" are synonymous and mean any person engaged, within this state, in the operation of hulling and drying pistachios that he or she has produced or purchased or acquired from a producer, or that he or she is hulling and drying on behalf of a producer, whether as owner, agent, employee, broker, or otherwise. "Processor" does not include, however, a retailer, except a retailer who purchases or acquires from, or hulls and dries on behalf of, any producer, pistachios that were not previously subject to regulation by the commission. When the processor is a corporation, all the directors and officers of the corporation in their capacity as individuals are included, and any liability for failure to collect or make payment of assessments to which a corporate processor may be subject pursuant to this chapter includes the same



liability for each individual director or officer of the corporation.

SEC. 6. Section 69029 of the Food and Agricultural Code is amended and renumbered to read:

69030. When the secretary is required to concur in a decision of the commission, the secretary shall indicate his or her response to the commission within 15 working days from notification of that decision. The response may be a request that additional information be provided.

SEC. 7. Section 69029 is added to the Food and Agricultural Code, to read:

69029. "Producer-supplier" means any producer who engages in the operation of selling, marketing, or distributing pistachios that he or she has produced, or has purchased or acquired from a processor. It does not, however, include a retailer, except a retailer who purchases or acquires from, or sells, markets, or distributes on behalf of any producer, pistachios that were not previously subject to regulation by the commission. When the producer-supplier is a corporation, all of the directors and officers of the corporation in their capacity as individuals shall be included, and any liability for failure to submit records pursuant to a requirement to which a corporate producer-supplier may be subject pursuant to this chapter shall include identical liability upon each individual director and officer of the corporation.

SEC. 8. Section 69044 of the Food and Agricultural Code is amended to read:

69044. The state is not liable for the acts of the commission or its contracts. Payments of all claims arising by reason of the administration of this chapter or acts of the commission shall be limited to the funds collected by the commission. No member of the commission or alternate member, or any employee or agent thereof, is personally liable on the contracts of the commission and no commissioner, alternate member, or employee of the commission is responsible individually in any way to any producer, processor, producer-supplier, or any other person for error in judgment, mistakes, or other acts,



either of commission or omission, as principal, agent, or employee, except for his or her own individual acts of dishonesty or crime. No commissioner or alternate member shall be held responsible individually for any act or omission of any member of the commission. The liability of the commissioners is several and not joint, and no commissioner is liable for the default of any other commissioner.

SEC. 9. Section 69051 of the Food and Agricultural Code is amended to read:

69051. The powers and duties of the commission, subject to Sections 69032 and 69033, include, but are not limited to, all of the following:

(a) To adopt and, from time to time, alter, rescind, modify, and amend all proper and necessary bylaws, rules, regulations, and orders for carrying out this chapter, including rules for appeals from any bylaw, rule, regulation, or order of the commission. The adoption, alteration, rescission, modification, or amendment of any bylaw, rule, regulation, or order implementing the brand-credit advertising program authorized pursuant to subdivision (i) is subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) To administer and enforce this chapter, and to do and perform all acts and exercise all powers incidental to, or in connection with, or determined reasonably necessary for, the proper or advisable effectuation of the purposes of this chapter.

(c) To appoint its own officers, including a chairperson, one or more vice chairpersons, and any other officers as it determines necessary. The officers have the powers and duties delegated to them by the commission.

(d) To employ a manager to serve at the pleasure of the commission as president and chief executive officer of the commission, and other personnel, including legal counsel, that are necessary to carry out this chapter. The commission may retain a management firm or the staff from any board, commission, or committee of the state to



perform the functions prescribed by this subdivision under the control of the commission. If the manager engages in any conduct that the secretary determines is not in the public interest or that is in violation of this chapter, the secretary shall notify the commission of the conduct and request that corrective and, if appropriate, disciplinary action be taken by the commission. If the commission fails or refuses to correct the situation or to take disciplinary action satisfactory to the secretary, the secretary may suspend or discharge the manager.

(e) To fix the compensation for all employees of the commission.

(f) To appoint committees composed of both members and nonmembers of the commission, such as a processor advisory committee, to advise the commission in carrying out this chapter.

(g) To establish offices and incur expenses, invest funds in the permissible investments as specified in Section 58939, enter into any and all contracts and agreements, and create liabilities and borrow funds in advance of receipt of assessments as may be necessary, in the opinion of the commission, for the proper administration and enforcement of this chapter and the performance of its duties.

(h) To keep accurate books, records, and accounts of all of its dealings, which books, records, and accounts shall be subject to an annual audit by an auditing firm selected by the commission with the concurrence of the secretary. The audit shall be made a part of an annual report to all producers of pistachios, copies of which shall also be submitted to the Legislature and the department. In addition, the secretary may, as the secretary determines necessary, conduct or cause to be conducted a fiscal and compliance audit of the commission. The Department of Finance may audit books, records, and accounts of the commission at any time.

(i) To promote the sale of pistachios by advertising and other promotional means, including cost-sharing advertising of pistachios or other complementary products and brand-credit advertising, for the purpose of



maintaining and expanding present markets and creating new and larger intrastate, interstate, and foreign markets for pistachios, and to educate and instruct the public with respect to the uses, healthful properties, and nutritional value of pistachios. Any decision to implement a brand-credit advertising program shall be ratified by a vote of producers conducted pursuant to Section 69062.

(j) To require processors and producer-suppliers to provide records and other information necessary for the commission to carry out the purposes of this chapter, including, but not limited to, records and information regarding inventories, shipment destinations, and related information. Such records and information shall be preserved by the processor or producer-supplier for a period of two years and shall be offered and submitted for inspection at any reasonable time upon written demand of the commission or its duly authorized agent.

(k) To educate and instruct the wholesale and retail trade with respect to proper methods of handling and selling pistachios, make market surveys and analyses, and present facts to, and negotiate with, state, federal, and foreign agencies on matters that affect the marketing of pistachios.

(l) To make, in the name of the commission, contracts to render service in formulating and conducting plans and programs, and any other contracts or agreements as the commission may determine necessary for the promotion of the sale of pistachios.

(m) To conduct and contract with others to conduct scientific research, including the study, analysis, dissemination, and accumulation of information obtained from the research or elsewhere, respecting cultural and production practices, and marketing and distribution of pistachios. In connection with the research, the commission may accept contributions of, or match, private, state, or federal funds that may be available for these purposes, and employ or make contributions of funds to other persons or state or federal agencies conducting the research.



(n) To publish and distribute, without charge, a bulletin or other communication for dissemination of information relating to the pistachio industry to producers, processors, and producer-suppliers.

(o) To establish an assessment rate to defray operating costs of the commission. Any assessment rate established pursuant to this chapter may be modified in accordance with Section 69081.

(p) To establish an annual budget according to accepted accounting practices. The budget shall be concurred in by the secretary prior to disbursement of funds, except for disbursements made pursuant to subdivision (e).

(q) To submit to the secretary, for his or her concurrence, an annual statement of contemplated activities authorized under this chapter, including advertising, promotion, marketing research, and production research.

(r) To administer any governmental program establishing quality standards for the pistachio industry upon request of an authorized agent of a governmental agency.

SEC. 10. Section 69081 of the Food and Agricultural Code is amended to read:

69081. The commission, not later than October 1 of each year, shall establish the assessment for the marketing season that begins September 1 and continues through August 31 of the following year, which shall not exceed 5 percent of the average price received by producers, computed on a per pound basis or computed in any other manner determined by the commission to be reasonably equivalent to the per pound computation. The commission may revise the assessment established prior to October 1 of each year if it determines, based on information including crop volume, that the action is necessary, and if the revision does not exceed the assessment limitations specified in this section and the modification is made prior to the date established by the commission for payment of the assessment.



SEC. 11. Section 69084 of the Food and Agricultural Code is amended and renumbered to read:

69045. All proprietary information obtained by the commission or the secretary from producers, processors, or producer-suppliers shall be confidential and shall not be disclosed except when required by a court order after a hearing in a judicial proceeding involving this chapter. Information on volume shipments, crop value, and any other related information that is required for reports to governmental agencies, financial reports to the commission or aggregate sales and inventory information, and any other information that the processors or producer-suppliers request from the commission to receive in total, excluding individual processor or producer-supplier information, may be disclosed by the commission.

SEC. 12. Section 69085 of the Food and Agricultural Code is amended to read:

69085. Assessments shall be upon the producer. The first handler of pistachios being assessed shall deduct the assessment from amounts paid by him or her to the producer, or shall collect the assessment from the producer, and shall be a trustee of the funds until they are paid to the commission at the time and in the manner prescribed by the commission.

SEC. 13. Section 69091 of the Food and Agricultural Code is amended to read:

69091. It is a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding five hundred dollars (\$500), or by both such fine and imprisonment, for any person to do any of the following:

(a) Willfully to render or furnish a false report, statement, or record required by the commission.

(b) When engaged in the processing or marketing of pistachios or in the wholesale or retail trade of pistachios, to fail or refuse to furnish to the commission or its duly authorized agents, upon request, information concerning the name and address of the persons from whom he or she has received pistachios and the quantity so received, or



any other report, statement, or record required by the commission.

(c) Secrete, destroy, or alter records required to be kept under the provisions of this chapter.

SEC. 14. Section 74719 of the Food and Agricultural Code is amended to read:

74719. “Grape rootstock nursery” or “nursery” means any person in this state which operates under a California state nursery license and grows grape rootstock for commercial use or distribution.

SEC. 14.5. Section 74721 of the Food and Agricultural Code is amended to read:

74721. “Invoicable unit” means any rootstock cutting, or rooted rootstock cutting, or grafted grape rootstock that is used or distributed by a nursery for commercial purposes.

SEC. 15. Section 74721.5 is added to the Food and Agricultural Code, to read:

74721.5. “Distribute” means to sell or otherwise transfer any rootstock cutting, rooted rootstock cutting, or grafted grape rootstock for commercial purposes.

SEC. 16. Section 74737 of the Food and Agricultural Code is amended to read:

74737. Any board member and his or her alternate member on the commission shall be an owner of a grape rootstock nursery or representative of an owner who has a financial interest in producing, or causing to be produced, grape rootstock for commercial use or distribution. Qualifications of grape rootstock nursery board members and their alternate members shall be maintained during their entire term of office.

SEC. 16.5. Section 74785 of the Food and Agricultural Code is amended to read:

74785. (a) The commission shall establish the assessment for the following marketing year not later than April 1 of each year, or as soon thereafter as is possible.

(b) The assessment for the 1992–93 marketing year shall not exceed twenty-five dollars (\$25) per bearing acreage of grape rootstock and 1 percent per invoicable



unit of grape rootstock used or distributed for commercial purposes. Thereafter, the assessment shall not exceed fifty dollars (\$50) per bearing acreage of grape rootstock and two cents (\$0.02) per invocable unit of grape rootstock used or distributed for commercial purposes.

(c) A fee greater than the amount specified in subdivision (b) may not be charged unless approved pursuant to procedures specified in Section 74771.

SEC. 16.6. Section 74786 of the Food and Agricultural Code is amended to read:

74786. Every nursery, including nurseries exempt from the payment of assessments, shall keep a complete and accurate record of its acreage of grape rootstock and its grape rootstock used or distributed for commercial purposes. The records shall be in simple form and contain information as the commission shall prescribe. The records shall be retained by the nursery for five years and shall be offered and submitted for inspection at any reasonable time upon written demand of the commission or its duly authorized agent.

SEC. 17. Section 78623 of the Food and Agricultural Code is amended to read:

78623. "Districts" shall consist of the following:

(a) District 1 consists of Imperial and Riverside Counties.

(b) District 2 consists of Los Angeles, Orange, San Diego, San Luis Obispo, Santa Barbara, and Ventura Counties.

(c) District 3 consists of Baja California (Mexico).

(d) District 4 consists of Fresno, Kern, Kings, and Tulare Counties.

(e) District 5 consists of Monterey County.

(f) District 6 consists of Madera, Merced, and Stanislaus Counties.

(g) District 7 consists of San Joaquin County.

(h) District 8 consists of all counties in the State of California.

The boundaries of any district may be changed by a two-thirds vote of the commission, which is concurred in



by the secretary. These boundaries need not coincide with county lines.

SEC. 18. Section 78640 of the Food and Agricultural Code is amended to read:

78640. There is in the state government the California Tomato Commission. The commission shall be composed of 10 producers, seven handlers, and may include one public member, at the discretion of the commission.

(a) Producers within the respective districts shall elect one producer from District 1, one producer from District 2, one producer from District 4, one producer from District 5, one producer from District 6, one producer from District 7, and four at-large producers from District 8.

(b) Handlers within Districts 1 and 2, and Districts 4 to 7, inclusive, shall elect one handler from each district. Handlers in California who exclusively handle tomatoes produced in District 3 shall elect one handler. An individual serving on the commission as a representative of District 3 shall be a United States citizen.

(c) The public member shall be appointed to the commission by the secretary from nominees recommended by the commission.

(d) The secretary and other appropriate individuals, as determined by the commission, shall be ex officio members of the commission.

SEC. 19. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.



Approved _____, 1997

Governor

