

ASSEMBLY BILL

No. 443

Introduced by Assembly Members Galgiani and Tom Berryhill

February 24, 2009

An act to amend Sections 75507 and 75595.5 of, and to add Chapter 14 (commencing with Section 6300) to Part 1 of Division 4 of, the Food and Agricultural Code, relating to apple pests.

LEGISLATIVE COUNSEL'S DIGEST

AB 443, as introduced, Galgiani. Apple pests: pest and disease prevention.

Existing law provides that there is in state government the California Apple Commission, comprised of apple handlers and producers, which may recommend to the Secretary of Food and Agriculture maturity standards, enforce laws related to apple production, and promote the sale of apples.

This bill, the California Apple Pest and Disease Prevention Act of 2009 (the act), would provide that no person may handle apples in this state that were produced in a designated area, as defined, and to which certain adopted regulations apply, except as specified. The bill would also provide that it is a crime to handle apples from designated areas or to fail to meet specified reporting duties or pay required assessments in violation of these provisions. Because this bill would create new crimes, this bill would impose a state-mandated local program.

This bill would require the secretary to appoint a committee of 11 individuals from nominations received from the California Apple Commission to administer these provisions. The bill would provide that the duties of the committee, with concurrence by the secretary, include making recommendations to the secretary of designated pests and

diseases not already present or identified in California as of January 1, 2007, of designated areas to be defined by regulation, and the adoption of regulations establishing terms and conditions for handling apples from designated areas to prevent the introduction and spread of designated pests or diseases. The bill would also require the secretary to establish a panel to advise the committee and the secretary by providing information regarding the biology and known control methods for the pests and diseases under consideration by the committee.

This bill would provide that the Department of Food and Agriculture may investigate complaints referred by the commission and levy civil penalties against persons who violate the act not exceeding \$5,000, as specified. The bill would require the secretary to use all funds received under the act for purposes of the act. The bill would make other conforming changes.

Existing law authorizes the commission to establish an annual assessment rate to defray the operating costs of the commission.

This bill would instead require the commission to be responsible for funding the act and authorize the commission to establish an annual assessment rate to defray the costs of the act.

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.

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

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

1 SECTION 1. Chapter 14 (commencing with Section 6300) is
2 added to Part 1 of Division 4 of the Food and Agricultural Code,
3 to read:

4
5 CHAPTER 14. CALIFORNIA APPLE PEST AND DISEASE
6 PREVENTION ACT OF 2009
7

8 Article 1. Declarations and Legislative Intent
9

10 6300. This chapter shall be known, and may be cited, as the
11 California Apple Pest and Disease Prevention Act of 2009.

1 6300.01. The production and handling of apples constitute an
2 important industry of this state that provides substantial and
3 necessary revenues for the state and employment for its citizens.
4 The California apple industry has the potential to be one of the
5 leading segments of the state’s agricultural industry. To realize
6 this potential, there is a need to ensure that the integrity and
7 healthful properties of apples produced, either by conventional or
8 organic practices, and handled in this state, are preserved and
9 protected from pest infestation and disease.

10 6300.02. Destructive pests and diseases pose a significant and
11 imminent threat to California agriculture, including its important
12 apple industry, and serious damage could occur if measures are
13 not taken to mitigate this threat. If the threat is not mitigated,
14 progress made by the apple industry in the adoption of integrated
15 pest management and sustainable farming practices may be
16 adversely affected, the use of pesticides may increase, and the
17 quality of California’s apples may be harmed by these destructive
18 pests and diseases.

19 6300.03. The program established pursuant to this chapter is
20 essential to ensure that apples produced or handled in the state are
21 pest and disease free so that consumer confidence in California’s
22 apples is maintained throughout the nation and the world.

23 6300.04. This chapter is declared to be enacted in the public
24 interest and in the exercise of the police power of the state for the
25 purpose of protecting the health, peace, safety, and general welfare
26 of the people of this state.

27
28 Article 2. Definitions
29

30 6300.10. Unless the context otherwise requires, the definitions
31 in this article govern the construction of this chapter.

32 6300.11. “Apple” means any variety of apple, wherever grown,
33 and includes fresh and processed apples.

34 6300.12. “Chapter” means any provision of this act or
35 regulations adopted pursuant thereto.

36 6300.13. “Commission” means the California Apple
37 Commission created pursuant to Chapter 13.5 (commencing with
38 Section 75501) of Part 2 of Division 22.

39 6300.14. “Commissioner” means a county agricultural
40 commissioner.

1 6300.15. “Committee” means the committee established in
2 Section 6300.30.

3 6300.16. “Department” means the Department of Food and
4 Agriculture.

5 6300.17. “Designated area” means areas outside of California
6 designated by the secretary by regulation as an area that contains
7 designated pests and diseases.

8 6300.18. “Designated pests and diseases” means pests and
9 diseases designated by the secretary by regulation as presenting a
10 threat to the California apple industry, public health and safety, or
11 the environment that are not federally regulated pests or diseases.

12 6300.19. “Handler or handling” means any person engaged in
13 the business of receiving, purchasing, importing, transporting,
14 shipping, grading, packing, storing, selling, marketing, distributing,
15 processing, or changing the form of apples in any manner for
16 commercial purposes.

17 6300.20. “Districts” are defined as follows:

18 (a) District 1 consists of the Counties of Imperial, Kern, Los
19 Angeles, Orange, Riverside, San Bernardino, San Diego, San Luis
20 Obispo, Santa Barbara, and Ventura.

21 (b) District 2 consist of the Counties of Alpine, Fresno, Inyo,
22 Kings, Madera, Mariposa, Merced, Mono, Monterey, San Benito,
23 Tulare, and Tuolumne.

24 (c) District 3 consists of the Counties of Alameda, Calaveras,
25 Contra Costa, El Dorado, Sacramento, San Francisco, San Joaquin,
26 San Mateo, Santa Clara, Santa Cruz, Sierra, Solano, Stanislaus,
27 and Yolo.

28 (d) District 4 consists of the Counties of Amador, Butte, Colusa,
29 Del Norte, Glenn, Humboldt, Lake, Lassen, Marin, Mendocino,
30 Modoc, Napa, Nevada, Placer, Plumas, Shasta, Siskiyou, Sonoma,
31 Sutter, Tehama, Trinity, and Yuba.

32 6300.21. “Panel” means the Scientific Advisory Panel created
33 pursuant to Article 5 (commencing with Section 6300.50).

34 6300.22. “Person” means any individual, partnership, limited
35 liability company, limited liability partnership, corporation, firm,
36 company, or any other entity doing business in California.

37 6300.23. “Secretary” means the Secretary of Food and
38 Agriculture.

Article 3. Administration

6300.30. The secretary shall appoint a committee of 11 individuals, from nominations received from the commission, to administer this chapter, except as otherwise provided. The committee shall consist of one pest licensed control adviser, four producers, and four handlers, one of which shall be a processor. One producer and one handler shall be nominated from each district. The secretary shall also appoint one representative from the University of California and one representative from the public. If the secretary finds any of those persons nominated to be unacceptable, he or she shall notify the commission and request that another person be nominated. The commission may appoint any other ex officio member deemed reasonably necessary to implement this chapter.

6300.31. (a) The committee shall meet periodically for the purposes specified in Article 4 (commencing with Section 6300.40).

(b) As a committee of the commission, the committee shall conduct itself according to the bylaws and procedures of the commission or any successor entity, except that the chair of the committee shall be nominated by the commission and appointed by the secretary.

(c) Sections 75532, 75535, 75543, and 75546 shall apply to the committee.

6300.32. (a) Upon receipt of a recommendation from the committee for the adoption of regulations describing designated pests and diseases, describing designated areas, or establishing terms and conditions for handling produce, the secretary shall do one of the following within 30 working days:

(1) Initiate the rulemaking process to adopt the recommendation of the committee.

(2) Decline to initiate the rulemaking process and provide the committee with a written statement of reasons for the decision.

(3) Request that the committee provide additional information regarding the recommended regulations.

(b) All regulations adopted pursuant to this chapter shall be adopted in compliance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of

1 Division 3 of Title 2 of the Government Code), and may be
2 subsequently repealed or amended as provided for in that chapter.

3 (c) In adopting regulations, the secretary shall consult with
4 appropriate federal and state government agencies regarding
5 applicable statutes, regulations, and scientific findings.

6 6300.33. No member or agent of the committee or the
7 commission shall be personally liable for the actions of the
8 committee, the commission, or the department. No member or
9 agent of the committee or the commission is responsible
10 individually in any way to any other person for errors in judgment,
11 mistakes, or other acts, by either commission or omission, as a
12 principal, agent, or employee except for his or her own individual
13 acts of dishonesty or crime. No member or agent of the committee
14 or the commission is responsible individually for an act or omission
15 of any other member or agent of the committee, the commission,
16 or the department. Liability is several and not joint, and no member
17 or agent of the committee or the commission is liable for the default
18 of any other member or agent of the committee, the commission,
19 or the department.

20 21 Article 4. Duties

22
23 6300.40. The duties of the committee, with concurrence by the
24 secretary, shall include the following:

25 (a) Recommend to the secretary a process for any person located
26 within a designated area to petition the secretary to be exempt from
27 regulations adopted pursuant to this chapter. The process shall
28 include, but not be limited to, the providing of evidence that no
29 designated pests or diseases are present on the person's property
30 and that the person's agricultural practices are likely to prevent
31 the introduction of a designated pest or disease.

32 (b) Recommend to the secretary designated pests and diseases
33 not already present or identified in California as of January 1,
34 2007, and designated areas to be defined by regulation.

35 (c) (1) Recommend to the secretary the adoption of regulations
36 establishing terms and conditions for handling apples from
37 designated areas to prevent the introduction and spread of
38 designated pests and diseases.

39 (2) In determining whether to recommend to the secretary
40 adoption of regulations, the committee shall consider available

1 scientific information and other relevant factors, including, but
2 not limited to, whether it is reasonable to find that designated pests
3 or diseases will be introduced into the state and that the designated
4 pests or diseases will cause harm if introduced into the state.

5 (d) Periodically review the efficacy of the terms and conditions
6 using the most current industry standards and generally accepted
7 scientific principles.

8 (e) Provide recommendations to the secretary on all matters
9 pertaining to this chapter unless specific authority is reserved to
10 the commission.

11 6300.41. Recommendations by the committee to the secretary
12 and regulations adopted by the secretary shall be designed to
13 accomplish all of the following:

14 (a) Maintain the integrity of apples produced, whether by
15 conventional or organic practices, and handled in this state.

16 (b) Prevent the introduction and spread of designated pests and
17 diseases not already present or identified in California as of January
18 1, 2007.

19 (c) Ensure that all persons handling apples from designated
20 areas comply with all terms and conditions imposed pursuant to
21 this chapter in order to prevent the introduction or spread of
22 designated pests and diseases.

23 (d) Ensure the health and safety of California producers,
24 consumers, and the environment.

25 6300.42. No provision in this part may be construed as
26 authorizing the secretary or the committee to prevent or ban the
27 importation of apples into California.

28
29 Article 5. Scientific Advisory Panel
30

31 6300.50. (a) The secretary shall establish a panel of not less
32 than two and not more than five members, each of whom is
33 nationally recognized as an expert on the apple pests and diseases
34 under consideration by the committee and is not already a member
35 of the committee. The secretary may change the membership of
36 the panel as needed to obtain the best available scientific advice
37 with respect to the pests and diseases under consideration by the
38 committee.

39 (b) The panel shall advise the committee and the secretary by
40 providing information regarding biology, life cycle, range,

1 reproduction, and known control methods for the pests and diseases
2 under consideration by the committee pursuant to paragraph (2)
3 of subdivision (c) of Section 6300.40.

4
5 Article 6. Handling of Apples from Designated Areas
6

7 6300.60 No person may handle apples in this state that were
8 produced in a designated area and to which regulations adopted
9 pursuant to Section 6300.32 apply, except in compliance with this
10 part.

11
12 Article 7. Violations
13

14 6300.70. (a) It is unlawful for any person to do any of the
15 following acts:

16 (1) Handle apples from designated areas in violation of this
17 chapter.

18 (2) Render or furnish a false report, statement, or record required
19 pursuant to this chapter.

20 (3) Fail to obtain, render, or furnish a report, statement, or record
21 required pursuant to this chapter.

22 (4) Secrete, destroy, or falsely alter records required to be
23 maintained pursuant to this chapter.

24 (5) Fail or refuse to pay any assessments levied pursuant to this
25 chapter.

26 (b) Notwithstanding subdivision (a), a person engaged in the
27 retail sale of apples who, in good faith, sells, offers for sale, labels,
28 or advertises any apples in California by relying on the
29 representations of a producer or handler that the apples are in
30 compliance with this chapter shall not be found in violation unless
31 he or she knew or should have known that the sale of apples was
32 in violation of this chapter.

33 6300.71. All remedies provided by this chapter are cumulative
34 and not exclusive of any other remedy.

35
36 Article 8. Investigations and Actions by the Department
37

38 6300.90. The department may investigate complaints referred
39 by the commission regarding alleged violations of this chapter.
40 The department may enter and inspect the premises of any person

1 subject to this chapter for the purpose of inspecting apples governed
2 by this chapter. If the department determines that a violation has
3 occurred, it may take action authorized by this chapter including,
4 but not limited to, seizing and destroying apples. Apples may not
5 be destroyed by the department without notice to the person whose
6 apples were seized and an informal hearing before the secretary
7 pursuant to procedures adopted by the department.

8 6300.91. The department may commence civil action and use
9 all remedies provided in law or equity for obtaining a writ of
10 attachment, specific performance, or injunctive relief regarding
11 violations of this chapter.

12 6300.92. (a) The department may levy a civil penalty against
13 any person who violates this chapter in an amount not exceeding
14 five thousand dollars (\$5,000) for each violation. The amount of
15 the penalty assessed for each violation shall be based upon the
16 nature of the violation, the seriousness of the effect of the violation
17 upon the effectuation of the purposes and provisions of this chapter,
18 and the impact of the penalty on the violator, including the deterrent
19 effect on future violations.

20 (b) Upon a finding that a violation was unintentional, the
21 department may levy a civil penalty of not more than two thousand
22 five hundred dollars (\$2,500) for each violation.

23 (c) For a first offense, and upon a finding that the violation is
24 minor and unintentional, in lieu of a civil penalty as described in
25 subdivisions (a) and (b), the department may issue a notice of
26 violation.

27 (d) A person against whom a civil penalty is levied shall be
28 afforded an opportunity for a hearing before the secretary, upon a
29 request made within 30 days after the date of issuance of the notice
30 of penalty. At the hearing, the person, the person's representative,
31 or both, shall be given the right to present evidence. If no hearing
32 is requested, the civil penalty shall constitute a final and
33 nonreviewable order.

34 (e) If a hearing is held, review of the decision of the secretary
35 may be sought by the person against whom the civil penalty is
36 levied within 30 days of the date of the final order of the secretary
37 pursuant to Section 1094.5 of the Code of Civil Procedure.

38 (f) A civil penalty levied by the department pursuant to this
39 section may be recovered in a civil action brought in the name of
40 the state.

1 6300.93. (a) The department shall be entitled to receive
2 reimbursement for any reasonable attorneys' fees and other actual
3 related costs, including, but not limited to, investigative costs,
4 involved in enforcement of this chapter.

5 (b) The secretary shall use all funds received pursuant to this
6 chapter for the purposes of this chapter.

7 SEC. 2. Section 75507 of the Food and Agricultural Code is
8 amended to read:

9 75507. A commission form of administration created by this
10 chapter is designed to deal with the broad fields of advertising,
11 promotion, marketing research, and production research of apples,
12 and any other activity authorized in this chapter *and in Chapter*
13 *14 (commencing with Section 6300) of Part 1 of Division 4.*

14 SEC. 3. Section 75595.5 of the Food and Agricultural Code is
15 amended to read:

16 75595.5. The commission *shall be responsible for funding the*
17 *California Apple Pest and Disease Prevention Act of 2009 (Chapter*
18 *14 (commencing with Section 6300) of Part 1 of Division 4) and*
19 *may establish an annual assessment rate to defray the*~~operating~~
20 ~~costs of the commission~~ *costs of that act.*

21 SEC. 4. No reimbursement is required by this act pursuant to
22 Section 6 of Article XIII B of the California Constitution because
23 the only costs that may be incurred by a local agency or school
24 district will be incurred because this act creates a new crime or
25 infraction, eliminates a crime or infraction, or changes the penalty
26 for a crime or infraction, within the meaning of Section 17556 of
27 the Government Code, or changes the definition of a crime within
28 the meaning of Section 6 of Article XIII B of the California
29 Constitution.