

AMENDED IN ASSEMBLY APRIL 20, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

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 amended, 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:

CHAPTER 14. CALIFORNIA APPLE PEST AND DISEASE
PREVENTION ACT OF 2009

Article 1. Declarations and Legislative Intent

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

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

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

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

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

Article 2. Definitions

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

6300.11. "Apple" means any variety of apple, wherever grown, and includes fresh and processed apples.

1 6300.12. "Chapter" means any provision of this act or
2 regulations adopted pursuant thereto.

3 6300.13. "Commission" means the California Apple
4 Commission created pursuant to Chapter 13.5 (commencing with
5 Section 75501) of Part 2 of Division 22.

6 6300.14. "Commissioner" means a county agricultural
7 commissioner.

8 6300.15. "Committee" means the committee established in
9 Section 6300.30.

10 6300.16. "Department" means the Department of Food and
11 Agriculture.

12 6300.17. "Designated area" means areas outside of California
13 designated by the secretary by regulation as an area that contains
14 designated pests and diseases.

15 6300.18. "Designated pests and diseases" means pests and
16 diseases designated by the secretary by regulation as presenting a
17 threat to the California apple industry, public health and safety, or
18 the environment that are not federally regulated pests or diseases.

19 6300.19. "Handler or handling" means any person engaged in
20 the business of receiving, purchasing, importing, transporting,
21 shipping, grading, packing, storing, selling, marketing, distributing,
22 processing, or changing the form of apples in any manner for
23 commercial purposes.

24 6300.20. "Districts" are defined as follows:

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

28 (b) District 2 ~~consist~~ *consists* of the Counties of Alpine, Fresno,
29 Inyo, Kings, Madera, Mariposa, Merced, Mono, Monterey, San
30 Benito, Tulare, and Tuolumne.

31 (c) District 3 consists of the Counties of Alameda, Calaveras,
32 Contra Costa, El Dorado, Sacramento, San Francisco, San Joaquin,
33 San Mateo, Santa Clara, Santa Cruz, Sierra, Solano, Stanislaus,
34 and Yolo.

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

39 6300.21. "Panel" means the Scientific Advisory Panel created
40 pursuant to Article 5 (commencing with Section 6300.50).

1 6300.22. "Person" means any individual, partnership, limited
2 liability company, limited liability partnership, corporation, firm,
3 company, or any other entity doing business in California.

4 6300.23. "Secretary" means the Secretary of Food and
5 Agriculture.

6
7 Article 3. Administration
8

9 6300.30. The secretary shall appoint a committee of 11
10 individuals, from nominations received from the commission, to
11 administer this chapter, except as otherwise provided. The
12 committee shall consist of one ~~pest-licensed~~ *California licensed*
13 *agricultural pest* control adviser, four producers, and four handlers,
14 one of which shall be a processor. One producer and one handler
15 shall be nominated from each district. The secretary shall also
16 appoint one representative from the University of California and
17 one representative from the public. If the secretary finds any of
18 those persons nominated to be unacceptable, he or she shall notify
19 the commission and request that another person be nominated. The
20 commission may appoint any other ex officio member deemed
21 reasonably necessary to implement this chapter.

22 6300.31. (a) The committee shall meet periodically for the
23 purposes specified in Article 4 (commencing with Section
24 6300.40).

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

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

32 6300.32. (a) Upon receipt of a recommendation from the
33 committee for the adoption of regulations describing designated
34 pests and diseases, describing designated areas, or establishing
35 terms and conditions for handling produce, the secretary shall do
36 one of the following within 30 working days:

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

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

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

3 (b) All regulations adopted pursuant to this chapter shall be
4 adopted in compliance with the Administrative Procedure Act
5 (Chapter 3.5 (commencing with Section 11340) of Part 1 of
6 Division 3 of Title 2 of the Government Code), and may be
7 subsequently repealed or amended as provided for in that chapter.

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

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

25 Article 4. Duties

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28 6300.40. The duties of the committee, with concurrence by the
29 secretary, shall include the following:

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

37 (b) Recommend to the secretary designated pests and diseases
38 not already present or identified in California as of January 1,
39 2007, and designated areas to be defined by regulation.

1 (c) (1) Recommend to the secretary the adoption of regulations
2 establishing terms and conditions for handling apples from
3 designated areas to prevent the introduction and spread of
4 designated pests and diseases.

5 (2) In determining whether to recommend to the secretary
6 adoption of regulations, the committee shall consider available
7 scientific information and other relevant factors, including, but
8 not limited to, whether it is reasonable to find that designated pests
9 or diseases will be introduced into the state and that the designated
10 pests or diseases will cause harm if introduced into the state.

11 (d) Periodically review the efficacy of the terms and conditions
12 using the most current industry standards and generally accepted
13 scientific principles.

14 (e) Provide recommendations to the secretary on all matters
15 pertaining to this chapter unless specific authority is reserved to
16 the commission.

17 6300.41. Recommendations by the committee to the secretary
18 and regulations adopted by the secretary shall be designed to
19 accomplish all of the following:

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

22 (b) Prevent the introduction and spread of designated pests and
23 diseases not already present or identified in California as of January
24 1, 2007.

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

29 (d) Ensure the health and safety of California producers,
30 consumers, and the environment.

31 6300.42. No provision in this ~~part~~ *chapter* may be construed
32 as authorizing the secretary or the committee to prevent or ban the
33 importation of apples into California.

34
35 Article 5. Scientific Advisory Panel
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37 6300.50. (a) The secretary shall establish a panel of not less
38 than two and not more than five members, each of whom is
39 nationally recognized as an expert on the apple pests and diseases
40 under consideration by the committee and is not already a member

1 of the committee. The secretary may change the membership of
2 the panel as needed to obtain the best available scientific advice
3 with respect to the pests and diseases under consideration by the
4 committee.

5 (b) The panel shall advise the committee and the secretary by
6 providing information regarding biology, life cycle, range,
7 reproduction, and known control methods for the pests and diseases
8 under consideration by the committee pursuant to paragraph (2)
9 of subdivision (c) of Section 6300.40.

10 11 Article 6. Handling of Apples from Designated Areas

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13 6300.60 No person may handle apples in this state that were
14 produced in a designated area and to which regulations adopted
15 pursuant to Section 6300.32 apply, except in compliance with this
16 ~~part~~ chapter.

17 18 Article 7. Violations

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20 6300.70. (a) It is unlawful for any person to do any of the
21 following acts:

22 (1) Handle apples from designated areas in violation of this
23 chapter.

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

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

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

30 (5) Fail or refuse to pay any assessments levied pursuant to this
31 chapter.

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

39 6300.71. All remedies provided by this chapter are cumulative
40 and not exclusive of any other remedy.

Article 8. Investigations and Actions by the Department

~~6300.90.~~

6300.80. The department may investigate complaints referred by the commission regarding alleged violations of this chapter. The department may enter and inspect the premises of any person subject to this chapter for the purpose of inspecting apples governed by this chapter. If the department determines that a violation has occurred, it may take action authorized by this chapter including, but not limited to, seizing and destroying apples. Apples may not be destroyed by the department without notice to the person whose apples were seized and an informal hearing before the secretary pursuant to procedures adopted by the department.

~~6300.91.~~

6300.81. The department may commence civil action and use all remedies provided in law or equity for obtaining a writ of attachment, specific performance, or injunctive relief regarding violations of this chapter.

~~6300.92.~~

6300.82. (a) The department may levy a civil penalty against any person who violates this chapter in an amount not exceeding five thousand dollars (\$5,000) for each violation. The amount of the penalty assessed for each violation shall be based upon the nature of the violation, the seriousness of the effect of the violation upon the effectuation of the purposes and provisions of this chapter, and the impact of the penalty on the violator, including the deterrent effect on future violations.

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

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

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

1 is requested, the civil penalty shall constitute a final and
2 nonreviewable order.

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

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

10 ~~6300.93.~~

11 6300.83. (a) The department shall be entitled to receive
12 reimbursement for any reasonable attorneys' fees and other actual
13 related costs, including, but not limited to, investigative costs,
14 involved in enforcement of this chapter.

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

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

19 75507. A commission form of administration created by this
20 chapter is designed to deal with the broad fields of advertising,
21 promotion, marketing research, and production research of apples,
22 and any other activity authorized in this chapter and in Chapter 14
23 (commencing with Section 6300) of Part 1 of Division 4.

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

26 75595.5. The commission shall be responsible for funding the
27 California Apple Pest and Disease Prevention Act of 2009 (Chapter
28 14 (commencing with Section 6300) of Part 1 of Division 4) and
29 may establish an annual assessment rate to defray the costs of that
30 act.

31 SEC. 4. No reimbursement is required by this act pursuant to
32 Section 6 of Article XIII B of the California Constitution because
33 the only costs that may be incurred by a local agency or school
34 district will be incurred because this act creates a new crime or
35 infraction, eliminates a crime or infraction, or changes the penalty
36 for a crime or infraction, within the meaning of Section 17556 of
37 the Government Code, or changes the definition of a crime within

- 1 the meaning of Section 6 of Article XIII B of the California
- 2 Constitution.

O