

Assembly Bill No. 443

Passed the Assembly September 2, 2009

Chief Clerk of the Assembly

Passed the Senate August 31, 2009

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2009, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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, 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 to which certain adopted regulations apply, except as specified. The bill would also provide that it is a crime to handle apples 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, and of the adoption of regulations establishing terms and conditions for handling apples 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 all costs associated with the act and require the commission to establish an annual assessment rate to defray the costs of the act if the commission's current assessment is deemed not sufficient to cover the costs of the commission or the department associated with 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.

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

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

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

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

6300.14. "Commissioner" means a county agricultural commissioner.

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

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

6300.17. "Designated pests and diseases" means pests and diseases presenting a threat to the California apple industry, public health and safety, or the environment that are not federally regulated pests or diseases.

6300.18. “Handler or handling” means any person engaged in the business of receiving, purchasing, importing, transporting, shipping, grading, packing, storing, selling, marketing, distributing, processing, or changing the form of apples in any manner for commercial purposes.

6300.19. “Districts” are defined as follows:

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

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

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

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

6300.20. “Panel” means the Scientific Advisory Panel created pursuant to Article 5 (commencing with Section 6300.50).

6300.21. “Person” means any individual, partnership, limited liability company, limited liability partnership, corporation, firm, company, or any other entity doing business in California.

6300.22. “Secretary” means the Secretary of Food and 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 California licensed agricultural pest 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, 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 Division 3 of Title 2 of the Government Code), and may be subsequently repealed or amended as provided for in that act.

(c) In adopting regulations, the secretary shall consult with appropriate federal and state government agencies regarding applicable statutes, regulations, and scientific findings. Any recommendation which includes a federal quarantine of a significant pest or disease shall not be considered by the secretary.

6300.33. No member or agent of the committee or the commission shall be personally liable for the actions of the committee, the commission, or the department. No member or agent of the committee or the commission is responsible individually in any way to any other person for errors in judgment, mistakes, or other acts, by either commission or omission, as a

principal, agent, or employee except for his or her own individual acts of dishonesty or crime. No member or agent of the committee or the commission is responsible individually for an act or omission of any other member or agent of the committee, the commission, or the department. Liability is several and not joint, and no member or agent of the committee or the commission is liable for the default of any other member or agent of the committee, the commission, or the department.

Article 4. Duties

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

(a) Recommend to the secretary designated pests and diseases not already present or identified in California as of January 1, 2007.

(b) (1) Recommend to the secretary the adoption of regulations establishing terms and conditions for handling apples to prevent the introduction and spread of designated pests and diseases.

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

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

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

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

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

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

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

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

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

Article 5. Scientific Advisory Panel

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

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

Article 6. Handling of Apples

6300.60. No person may handle apples in this state to which regulations adopted pursuant to Section 6300.32 apply, except in compliance with this chapter.

Article 7. Violations

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

- (1) Handle apples in this state in violation of this chapter.
- (2) Render or furnish a false report, statement, or record required pursuant to this chapter.
- (3) Fail to obtain, render, or furnish a report, statement, or record required pursuant to this chapter.

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

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

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

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

Article 8. Investigations and Actions by the Department

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.

6300.81. 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.

6300.82. (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 is requested, the civil penalty shall constitute a final and nonreviewable order.

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

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

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

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

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

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

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

75595.5. (a) The commission shall be responsible for all costs associated with the California Apple Pest and Disease Prevention Act of 2009 (Chapter 14 (commencing with Section 6300) of Part

1 of Division 4), including any administrative, regulatory, and enforcement costs incurred by the department.

(b) If the assessment, established pursuant to Article 6 (commencing with Section 75630), is deemed not sufficient to cover the costs of the commission or the department associated with the California Apple Pest and Disease Prevention Act of 2009, the commission shall establish an annual assessment rate to defray the costs of that act.

SEC. 4. 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.

Approved _____, 2009

Governor