

AMENDED IN SENATE JUNE 22, 2009

AMENDED IN ASSEMBLY APRIL 16, 2009

AMENDED IN ASSEMBLY APRIL 2, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 606

Introduced by Assembly Member Ma

February 25, 2009

An act to add Chapter 26 (commencing with Section 79201) to Part 2 of Division 22 of the Food and Agricultural Code, relating to agriculture, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 606, as amended, Ma. California Blueberry Commission.

Existing law establishes various commissions to promote agricultural products from the state.

This bill would create the California Blueberry Commission in state government with a prescribed membership, and would specify the powers, duties, and responsibilities of the commission. The commission would be authorized to carry out programs of education, promotion, marketing, and research relating to blueberries. The bill would authorize the commission to levy an assessment, not to exceed a specified amount, according to the marketing season, on producers and handlers of blueberries, and would authorize the expenditure of 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 and handlers of blueberries, by referendum, 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. The bill would ~~make~~ *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 blueberries are received, a misdemeanor, thereby imposing a state-mandated local program by creating a new crime.* The bill would authorize the commission to bring certain civil actions to enforce the bill's provisions and regulations adopted pursuant to these provisions. The bill would also authorize the commission to recommend to the Secretary of Food and Agriculture the adoption of blueberry quality standards, product labeling, or marketing activity, as provided.

~~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: yes. Fiscal committee: yes.
State-mandated local program: ~~yes~~-no.

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

1 SECTION 1. Chapter 26 (commencing with Section 79201)
2 is added to Part 2 of Division 22 of the Food and Agricultural
3 Code, to read:

4
5 CHAPTER 26. CALIFORNIA BLUEBERRY COMMISSION

6
7 Article 1. Declaration and General Provisions

8
9 79201. The production and marketing of blueberries ~~constitutes~~
10 *constitute* an important industry of this state that provides
11 substantial and necessary revenues for the state and employment
12 for its citizens.

13 79202. The establishment of the commission is necessary for
14 the efficient creation and management of a research program to
15 develop improved varieties of blueberries, an integrated approach
16 to manage pests and diseases common to blueberries, and more
17 efficient cultural practices. The commission is also necessary for
18 the efficient development and management of a state, national,

1 and international advertising and promotion program that,
2 combined with the research program, will enhance the
3 competitiveness of the California blueberry industry within the
4 national and international marketplace.

5 79203. The maintenance of the blueberry industry in California
6 is necessary to assure the public of a continuous supply of this
7 important commodity and the maintenance of needed levels of
8 income for those engaged in the blueberry industry of this state.

9 79204. The production and marketing of blueberries produced
10 in this state is hereby declared to be affected with a public interest.
11 This chapter is enacted in the exercise of the police power of this
12 state for the purpose of protecting the health, peace, safety, and
13 general welfare of the people of this state.

14 79205. The commission form of administration created by this
15 chapter is uniquely situated to provide those engaged in the
16 production of blueberries the opportunity to avail themselves of
17 the benefits of collective action in the broad fields of transportation,
18 pest management, advertising, promotion, food safety, production
19 research, nutrition, marketing research, quality and maturity
20 standards, the collection and dissemination of crop volume and
21 related statistics, and public education.

22 79206. No action taken by the commission, or by any individual
23 in accordance with this chapter or with rules and regulations
24 adopted under this chapter, shall be deemed a violation of the
25 Cartwright Act (Chapter 2 (commencing with Section 16700) of
26 Part 2 of Division 7 of the Business and Professions Code), the
27 Unfair Practices Act (Chapter 4 (commencing with Section 17000)
28 of Part 2 of Division 7 of the Business and Professions Code), or
29 any rule of statutory or common law against monopolies or
30 combinations in restraint of trade.

31 79207. It is hereby declared as a matter of legislative
32 determination that members of the commission are intended to
33 represent and further the interest of the particular industry
34 concerned and that this representation and furtherance is intended
35 to serve the public interest. Accordingly, the Legislature finds that
36 with respect to persons who are elected or appointed to the
37 commission, the particular industry concerned is tantamount to,
38 and constitutes the public generally within the meaning of Section
39 87103 of the Government Code.

Article 2. Definitions

79211. Unless the context otherwise requires, the definitions in this article govern the construction of this chapter.

79212. “Advertising and promotion” mean, in addition to their ordinarily accepted meaning, any plan directed toward increasing the sale of blueberries in domestic or foreign markets and trade promotion and activities for the prevention, modification, or removal of trade barriers that affect the marketing of blueberries.

79213. “Blueberries” mean all blueberries produced in California for commercial purposes.

79214. “Books and records” means books, records, contracts, documents, memoranda, papers, correspondence, or other written data pertaining to matters relating to the activities subject to this chapter.

79215. “Commission” means the California Blueberry Commission.

79216. (a) “Districts” consist of the following:

(1) District 1 consists of all counties in the state along the coastline, including San Diego.

(2) District 2 consists of the counties in the state that do not border the coastline and lie north of a line drawn on the north boundaries of the Counties of Fresno, Inyo, and San Benito.

(3) District 3 consists of all counties in the state that do not border the coastline and lie south of the boundary line set forth in paragraph (2).

(b) The boundaries of any district may be changed and districts may be added or eliminated by a two-thirds vote of the commission, which is concurred in by the ~~secretary~~; *so secretary*; so long as proper notice is provided to all persons subject to this chapter prior to the action. The boundaries need not coincide with county lines.

79217. “Ex officio members” are nonvoting members of the commission.

79218. “Handle” means to engage in the business of a handler.

79219. (a) “Handler” means any person who engages, in this state, in the operation of selling, marketing, or distributing blueberries that he or she has produced or purchased or acquired from a producer, or that he or she is marketing on behalf of a producer, whether as owner, agent, employee, broker, or otherwise.

(b) When the handler is a corporation or a limited liability company, all of the directors, officers, managers, and members of the corporation or limited liability company in their capacity as individuals shall be included, and any liability for failure to collect or make payment of assessments to which a corporate handler or a handler that is a limited liability company may be subject pursuant to this chapter shall include identical liability upon each individual director, officer, manager, or member of the corporation or limited liability company.

(c) “Handler” does not include a retailer, except for a retailer who purchases or acquires from any producer, or handles on behalf of any producer, blueberries that were not previously subjected to regulation by the commission.

79220. “Market” or “marketing” means to sell or otherwise distribute blueberries into commercial channels or trade resulting in the sale of blueberries.

79221. “Marketing research” means any research relating to the sale of blueberries.

79222. “Marketing season” or “fiscal year” are synonymous terms and mean the period beginning March 1 of any year and extending through the last day of February of the following year.

79223. “Producer” and “grower” are synonymous terms and mean any person who produces or causes to be produced blueberries for market and who shall, upon request of the commission, provide proof of commodity sale.

79224. “Production research” means any research relating to the production, harvest, and post harvest handling of blueberries.

79225. “Secretary” means the Secretary of Food and Agriculture.

Article 3. The California Blueberry Commission

79231. (a) There is in the state government the California Blueberry Commission. Except as provided in subdivision (c), the commission shall be composed of five producers, four handlers, and one public member. Three producer members shall be elected by and from producers within the respective districts, one from each district, and two producer members shall be elected by and from producers on a statewide basis without reference to districts. The handler members shall be elected by and from handlers on a

1 statewide basis without reference to districts. The public member
2 shall be appointed to the commission by the secretary from
3 nominees recommended by the commission. Each entity subject
4 to this chapter is limited to two representatives, one representing
5 producers and one representing handlers.

6 (b) The secretary and other appropriate persons as determined
7 by the commission shall be ex officio members of the commission.

8 (c) The commission may modify the number of producers and
9 handlers who serve on the commission by a two-thirds vote of the
10 commission so long as proper notice is provided to all persons
11 subject to this chapter prior to the action and the number of
12 producers and the number of handlers who serve on the commission
13 remain equal.

14 79232. (a) The secretary may require the commission to correct
15 or cease any existing activity or function that is determined by the
16 secretary not to be in the public interest or in violation of this
17 chapter.

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

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

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

37 79233. The commission or the secretary may bring an action
38 for judicial relief from the secretary's written notice, or from
39 noncompliance by the commission with the written notice, in a

1 court of competent jurisdiction, which may issue a temporary
2 restraining order, permanent injunction, or other applicable relief.

3 79234. The commission shall reimburse the secretary for all
4 expenditures incurred by the secretary in carrying out his or her
5 duties and responsibilities under this chapter. However, a court
6 may, if it finds that the secretary acted arbitrarily or capriciously
7 in restricting the activities or functions of the commission, relieve
8 the commission of the responsibility for payment of the secretary's
9 legal costs with regard to that action.

10 79235. Except for the ex officio members of the commission,
11 each member of the commission shall have an alternate member
12 elected in the same manner as the member. An alternate member,
13 in the absence of the member for whom he or she is an alternate,
14 shall serve in place of the member on the commission. An alternate
15 member may also serve in place of any other absent member of
16 the same classification, producer or handler, if the member's
17 alternate is also absent. However, an alternate may not serve in
18 place of more than one absent member at a meeting. An alternate
19 member serving in place of a member shall have and be able to
20 exercise all rights, privileges, and powers of the member when
21 serving on the commission. In the event of death, removal,
22 resignation, or the disqualification of a member, the alternate for
23 the member, or another alternate of the same classification if the
24 alternate for the member is absent, shall act as a member on the
25 commission until a qualified successor is elected.

26 79236. Any vacancy on the commission including, but not
27 limited to, the failure of any person elected to the commission as
28 a member or alternate member to continue in his or her position
29 due to a change in status making him or her ineligible to serve, or
30 due to death, removal, or resignation, shall be filled by the
31 appointment of another person, for the unexpired portion of the
32 term, by a majority vote of the commission. However, the
33 appointee shall fulfill all the qualifications set forth in this article
34 as required for the office he or she is to occupy. The qualifications
35 of any person to fill a vacancy on the commission shall be certified
36 in writing to the secretary. The secretary shall notify the
37 commission if he or she determines that the person is not qualified.

38 79237. A producer member or his or her alternate on the
39 commission shall be an individual, partner, or employee of a
40 producer who has a financial interest in producing, or causing to

1 be produced, blueberries for market. The producer member or his
2 or her alternate shall be so qualified during the entire term of office.

3 79238. A handler member or his or her alternate on the
4 commission shall be an individual, partner, or employee of a
5 handler who has a financial interest in handling blueberries for
6 market. The handler member or his or her alternate shall be so
7 qualified during the entire term of office.

8 79239. The public member, or his or her alternate on the
9 commission, shall have all the powers, rights, and privileges of
10 any other member on the commission. The public member shall
11 not have any financial interest in the blueberry industry.

12 79240. The term of office of all members of the commission
13 and alternates, except any ex officio member, shall be two years
14 from the date of their election and until their successors are elected,
15 except, that of the first members of the commission, one-half shall
16 serve one year and one-half shall serve two years. The
17 determination of the term of each member shall be made by lot at
18 the time of election.

19 79241. The commission may sue and be sued and enter into
20 contracts. Copies of its proceedings, records, and acts, when
21 authenticated, shall be admissible in evidence in all courts of the
22 state, and shall be prima facie evidence of the truth of all statements
23 therein.

24 79242. A quorum of the commission is a majority of the
25 producer members and a majority of the handler members on the
26 commission. Except as otherwise provided in this chapter, the vote
27 of a majority of members present at a meeting at which there is a
28 quorum shall constitute an act of the commission.

29 79243. The secretary or his or her representatives shall be
30 notified and may attend each meeting of the commission and any
31 committee meeting of the commission. However, the secretary is
32 not entitled to attend an executive session of the commission called
33 for the purpose of discussing potential or actual litigation against
34 the department.

35 79244. No member of the commission or of any committee
36 established by the commission, which may include nonmembers
37 of the commission, shall receive a salary. Except for ex officio
38 government members, the members may receive reasonable and
39 necessary traveling expenses and meal allowances, as established
40 by the commission, for each day spent in actual attendance at, or

1 in traveling to and from, meetings of the commission or committees
2 of the commission, or on special assignment for the commission.

3 79245. If the secretary is required to concur in a decision of
4 the commission, he or she shall indicate his or her response to the
5 commission within 15 working days from notification of the
6 decision. The response may be a request that additional information
7 be provided.

8 79246. All moneys received by any person from assessments
9 levied under the authority of this chapter or otherwise received by
10 the commission shall be deposited in banks designated by the
11 commission and shall be disbursed by order of the commission
12 through an agent or agents designated for that purpose. Any
13 authorized agent or agents shall be bonded by a fidelity bond,
14 executed by a surety company authorized to transact business in
15 the state, in favor of the commission, in the amount of not less ~~that~~
16 *than* twenty-five thousand dollars (\$25,000).

17 79247. The state shall not be liable for the acts of the
18 commission or its contracts. Payments of all claims arising by
19 reason of the administration of this chapter or acts of the
20 commission shall be limited to the funds collected by the
21 commission. No member, alternate member, or any employee or
22 agent of the commission, shall be personally liable on the contracts
23 of the commission and no member, alternate member, or employee
24 of the commission shall be responsible individually in any way to
25 any producer, handler, or any other person for error in judgment,
26 mistakes, or other acts, either of commission or omission, as
27 principal, agent, or employee, except for his or her own individual
28 acts of dishonesty or crime. No member or alternate member shall
29 be held responsible individually for any act or omission of any
30 member or alternate member of the commission. The liability of
31 the members and alternate members shall be several and not joint,
32 and no member or alternate member shall be liable for the default
33 of any other member or alternate member.

34
35 Article 4. Powers and Duties of the Commission
36

37 79251. The powers and duties of the commission shall include,
38 but are not limited to, all of the following:

39 (a) Adopt and from time-to-time alter, rescind, modify, and
40 amend bylaws, rules, regulations, and orders for carrying out this

chapter, including rules for appeals from any bylaw, rule, regulation, or order of the commission. These actions shall not be subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

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

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

(d) Employ a person to serve at the pleasure of the commission as president and chief executive officer of the commission, and other personnel, including legal counsel, necessary to carry out this chapter. The commission may retain a management firm or staff from any board, commission, or committee of the state to perform the functions prescribed by this subdivision under control of the commission. If the person engages in any conduct that the secretary determines is not in the public interest or 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 person.

(e) Fix the compensation for all employees of the commission.

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

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

(h) 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 and handlers of blueberries,

1 and copies of the audit shall be submitted to the Legislature and
2 the department. In addition, the secretary may, as he or she
3 determines necessary, conduct, or cause to be conducted, a fiscal
4 and compliance audit of the commission.

5 (i) Promote the sale of blueberries by advertising and any other
6 promotional means, including cost-sharing advertising, for the
7 purpose of maintaining and expanding present markets and creating
8 new and larger intrastate, interstate, and foreign markets for
9 blueberries, and to educate and instruct the public with respect to
10 the uses, healthful properties, and nutritional value of blueberries.

11 (j) Educate and instruct the wholesale and retail trade with
12 respect to proper methods of handling and selling blueberries,
13 make market surveys and analyses, and present facts to, and
14 negotiate with, state, federal, and foreign agencies on matters that
15 affect the marketing of blueberries.

16 (k) Make, in the name of the commission, contracts to render
17 service in formulating and conducting plans and programs, and
18 any other contracts or agreements the commission determines
19 necessary for the promotion of blueberries.

20 (l) Conduct, and contract with others to conduct, scientific
21 research, including the study, analysis, dissemination, and
22 accumulation of information obtained from research or elsewhere
23 ~~respecting with respect to~~ cultural and production practices, and
24 marketing and distribution of blueberries. In connection with the
25 research, the commission shall have the power to accept
26 contributions of, or to match, private, state, or federal funds that
27 may be available for these purposes, and to employ or make
28 contributions of funds to other persons or state or federal agencies
29 conducting the research.

30 (m) Collect information and publish and distribute to producers
31 and handlers a bulletin or other communication for dissemination
32 of information, including, but not limited to, crop statistics relating
33 to the blueberry industry.

34 (n) Establish an assessment rate to defray operating costs of the
35 commission.

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

1 (p) Submit to the secretary for his or her concurrence, an annual
2 statement of contemplated activities authorized under this chapter.

3 (q) 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 (r) Administer any program authorized in Article 9 (commencing
7 with Section 79301).

8 (s) Prescribe the form and manner by which proponents and
9 opponents of the commission may contact producers and handlers
10 so long as all expenses associated with the contacts are paid in
11 advance.

12 79252. (a) To prevent unfair trade practices which are
13 detrimental to California's blueberry industry, including, but not
14 limited to, deception and misinformation, the commission shall
15 collect and disseminate to any and all interested persons, handler
16 f.o.b. (free on board), market price information based on sales that
17 have occurred.

18 (b) The identity of each handler reporting information and the
19 information reported under this section shall be kept confidential
20 and not made public under any circumstances. Information that
21 gives industry totals, averages, and other similar data may be
22 disclosed by the commission.

23 (c) The procedure for the collection and dissemination of the
24 information pursuant to this section shall be approved by the
25 secretary.

26 Article 5. Implementation and Voting Procedures

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29 79261. (a) Within 15 days after the effective date of this
30 chapter, the secretary shall establish a list of producers and handlers
31 eligible to vote on the implementation of this chapter. In
32 establishing the list, the secretary shall require that producers and
33 handlers of blueberries in California submit the names, mailing
34 addresses, and the volume of blueberries produced by each
35 producer and handled by each handler during the preceding
36 marketing season. The request for the information shall be in
37 writing. The information shall be filed within 10 days following
38 receipt of the written request for information.

39 (b) Any producer or handler of blueberries whose name does
40 not appear upon the secretary's list may have his or her name

1 placed on the list by filing with the secretary a signed statement
2 identifying himself or herself as a producer or handler. Failure to
3 be on the list does not exempt the producer or handler from paying
4 assessments under this chapter.

5 79262. This chapter, except as necessary to conduct an
6 implementation referendum vote, shall not become operative until
7 the secretary finds the following in a referendum vote conducted
8 by the secretary:

9 (a) At least 40 percent of the total number of producers from
10 the list established by the secretary pursuant to this article
11 participate, and that either of the following occurs:

12 (1) Sixty-five percent of the producers who voted in the
13 referendum voted in favor of this chapter, and the producers so
14 voting produced a majority of the total quantity of blueberries
15 produced in the preceding marketing season by all of the producers
16 voting in the referendum.

17 (2) A majority of the producers who voted in the referendum
18 voted in favor of this chapter, and the producers so voting produced
19 65 percent or more of the total quantity of blueberries produced
20 in the preceding marketing season by all of the producers voting
21 in the referendum.

22 (b) At least 40 percent of the total number of handlers from the
23 list established by the secretary pursuant to this article participate,
24 and that either of the following occurs:

25 (1) Sixty-five percent of the handlers who voted in the
26 referendum voted in favor of this chapter, and the handlers so
27 voting handled a majority of the total quantity of blueberries
28 handled in the preceding marketing season by all of the handlers
29 voting in the referendum.

30 (2) A majority of the handlers who voted in the referendum
31 voted in favor of this chapter, and the handlers so voting handled
32 65 percent or more of the total quantity of blueberries handled in
33 the preceding marketing season by all of the handlers voting in
34 the referendum.

35 79263. The secretary shall establish a period in which to
36 conduct the referendum which shall not be less than 10 days or
37 more than 60 days in duration and may prescribe additional
38 procedures necessary to conduct the referendum. If the initial
39 period established is less than 60 days, the secretary may extend

1 the period. However, the total referendum period may not exceed
2 60 days.

3 79264. Nonreceipt of a ballot shall not invalidate a referendum.

4 79265. If the secretary finds that a favorable vote has been
5 given as provided in Section 79262, he or she shall so certify and
6 give notice of the vote to all producers and handlers whose names
7 and addresses are on file with the secretary.

8 79266. If the secretary finds that a favorable vote has not been
9 given as provided in this article, he or she shall so certify and
10 declare this chapter inoperative. The secretary may conduct another
11 implementation referendum vote one or more years after the
12 previous vote has been taken.

13 79267. (a) Upon certification of the commission, the secretary
14 shall contact all producers and handlers in a manner determined
15 by the secretary for the purpose of nominating and electing persons
16 to the commission. To be eligible for election to the commission,
17 nominees shall present to the secretary a nomination petition with
18 the signatures of at least three eligible persons.

19 (b) Subsequent to the first selection of members of the
20 commission, ~~ersons~~ *persons* to be elected to the commission shall
21 be selected pursuant to nomination and election procedures
22 established by the commission with the concurrence of the
23 secretary.

24 79268. Prior to the referendum vote conducted by the secretary
25 pursuant to this article, the proponents of the commission shall
26 deposit with the secretary an amount of funds determined necessary
27 by the secretary to defray the expenses of preparing the necessary
28 lists and information and conducting the vote. Any funds not used
29 for this purpose shall be returned to the proponents of the
30 commission who deposited the funds with the secretary. Upon
31 establishment of the commission, the commission may reimburse
32 the proponents of the commission for any funds deposited with
33 the secretary and for any legal expenses and costs incurred in
34 establishing the commission.

35 Article 6. Assessments and Records

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38 79271. (a) The commission shall, not later than March 1 of
39 each year, or as soon thereafter as possible, establish the assessment
40 to be paid by the producers and handlers for the marketing season.

1 The assessment shall not be more than two and one-half cents
2 (\$.025) per pound for blueberries handled. Of the assessment
3 one-half shall be assessed to producers, and one-half shall be
4 assessed to handlers.

5 (b) An assessment greater than the amounts in this section may
6 not be charged unless it is approved in accordance with the voting
7 requirements of Section 79262.

8 79272. This chapter does not apply to blueberries produced
9 only for a producer's home use or to blueberries that are used only
10 for ornamental purposes.

11 79273. Every person who handles blueberries shall keep a
12 complete and accurate record of all blueberries handled by him or
13 her with the name of the producer whose blueberries were handled.
14 A producer who delivers or markets blueberries to persons other
15 than to a handler shall keep a complete and accurate record of all
16 those blueberries. The records shall contain information required
17 by the commission. The records shall be preserved by the producer
18 or handler for a period of two years and shall be offered and
19 submitted for inspection at any reasonable time upon written
20 demand of the commission or its duly authorized agent.

21 79274. (a) All proprietary information obtained by the
22 commission or the secretary from any source, including the names
23 and addresses of producers and handlers, shall be confidential and
24 shall not be disclosed except when required by court order in a
25 judicial proceeding.

26 (b) Information on volume shipments, crop value, and any other
27 related information that is required for reports to governmental
28 agencies, financial reports to the commission or aggregate sales
29 and inventory information, and any other information that gives
30 only totals, but excludes individual information, may be disclosed
31 by the commission.

32 79275. The first handler of blueberries being assessed shall
33 deduct the assessment from amounts paid by him or her to the
34 producer, and shall be a trustee of the funds until they are paid to
35 the commission at the time and in the manner prescribed by the
36 commission. A producer who handles blueberries shall pay an
37 assessment directly to the commission at the time and in the manner
38 prescribed by the commission.

39 79276. Every handler shall be personally liable for the payment
40 of the collected assessments from producers, and failure to collect

1 the assessment from any producer shall not exempt the handler
2 from liability.

3 79277. Any assessment that is levied as provided in this chapter
4 is a personal debt of every producer and handler so assessed.

5 79278. (a) Any person who fails to file a return or pay any
6 assessment within the time required by the commission shall pay
7 to the commission a penalty of 10 percent of the amount of the
8 assessment determined to be past due and, in addition, interest on
9 the unpaid balance at the rate of 1.5 percent per month.

10 (b) In addition to any other penalty imposed, the commission
11 may require any person who fails to pay any assessment or related
12 charge pursuant to this article to furnish and maintain a surety
13 bond in a form and amount and for a period of time specified by
14 the commission as assurance that all payments to the commission
15 will be made when due.

16 Article 7. Actions and Penalties

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19 ~~79281. It is a misdemeanor punishable by imprisonment in the~~
20 ~~county jail not exceeding six months, or by a fine not exceeding~~
21 ~~one thousand dollars (\$1,000), or by both fine and imprisonment,~~
22 ~~for any person to do any of the following:~~

23 *79281. A civil penalty not exceeding one thousand dollars*
24 *(\$1,000) may be levied by the commission upon a person who does*
25 *any of the following:*

26 (a) Willfully to render or furnish a false report, statement, or
27 record required by the commission, or in any way to affect the
28 shipment and marketing of blueberries in order to avoid payment
29 of assessments on the product's highest value.

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

32 (c) When engaged in the shipping or processing of blueberries
33 or in the wholesale or retail trade of blueberries, to fail or refuse
34 to furnish to the commission or its duly authorized agents, upon
35 request, information concerning the name and address of the
36 persons from whom he or she has received blueberries and the
37 quantity so received.

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

1 79282. The commission shall establish procedures for the
2 purpose of according individuals aggrieved by its actions or
3 determinations an informal hearing before the commission, or
4 before a committee of the commission designated for this purpose.
5 Appeals from decisions of the commission may be made to the
6 secretary. The determination of the secretary shall be subject to
7 judicial review upon petition filed with the appropriate superior
8 court.

9 79283. (a) The commission may commence civil actions and
10 utilize all remedies provided in law or equity for the collection of
11 assessments and civil penalties, and for obtaining injunctive relief
12 or specific performance, relating to this chapter and the rules and
13 regulations adopted under this chapter. A court shall issue to the
14 commission any requested writ of attachment or injunctive relief
15 upon a prima facie showing by verified complaint that a named
16 defendant has violated this chapter or any other rule or regulation
17 of the commission, including, but not limited to, the nonpayment
18 of assessments. No bond shall be required to be posted by the
19 commission as a condition for the issuance of any writ of
20 attachment or injunctive relief.

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

29 (c) Upon entry of any final judgment on behalf of the
30 commission against any defendant, the court shall enjoin the
31 defendant from conducting any type of business regarding
32 blueberries until there is full compliance with, and satisfaction of,
33 the judgment.

34 (d) Upon a favorable judgment for the commission, the court
35 may order that the commission be reimbursed for reasonable
36 attorney's fees and other actual related costs. Venue for these
37 actions is at the domicile or place of business of the defendant or
38 in the county of the principal office of the commission. The
39 commission may be sued only in the county of its principal office.

1 79284. Any action by the commission for any penalty or other
2 remedy that is prescribed under this chapter shall be commenced
3 within two years from the date of discovery of the alleged violation.

4 Any action against the commission by any person shall be
5 commenced within two years from the date of the alleged violation.

6 79285. The commission is not required to allege or prove that
7 an adequate remedy at law does not exist in any action brought
8 under this chapter.

9 79286. This chapter shall be liberally construed. If any section,
10 clause, or part of this chapter is for any reason held unconstitutional
11 or invalid as applied to any person or as applied under certain
12 circumstances, that decision shall not affect the remaining portions
13 of this chapter or the application of this chapter to any other persons
14 or under any other circumstance.

15 79287. The termination of this chapter shall not affect or waive
16 any right, duty, obligation, or liability that has arisen or that may
17 thereafter arise in connection with this chapter, release or
18 extinguish any violation of this chapter, or affect or impair any
19 right or remedies of the commission with respect to any violation.

20 21 Article 8. Continuation or Suspension and Termination 22

23 79291. (a) Five years after implementation of this chapter, the
24 secretary shall hold a public hearing, after providing proper notice
25 to all persons subject to this chapter and any other persons or
26 entities who have requested, in writing, notice of the hearing, to
27 determine whether the operation of this chapter should be
28 continued. If the secretary finds after the hearing that a substantial
29 question exists among the persons assessed under this chapter
30 regarding whether the operation of this chapter should be
31 continued, the secretary shall submit the chapter to a reapproval
32 referendum to be conducted among producers and handlers to
33 determine whether the ~~operations~~ *operation* of this chapter shall
34 be reapproved and continued in effect.

35 (b) If the secretary finds after conducting a hearing that no
36 substantial question exists or, if a reapproval referendum is
37 required, that a majority of the eligible producers and a majority
38 of eligible handlers voting in the referendum voted in favor of
39 continuing the ~~operations~~ *operation* of this chapter, the secretary
40 shall so certify and this chapter shall remain operative. If the

1 secretary finds that a favorable vote has not been given, he or she
2 shall so certify and declare the operation of this chapter and the
3 commission suspended upon the expiration of the current marketing
4 season. Thereupon, the operations of the commission shall be
5 concluded and funds distributed in the manner provided in Section
6 79294. No bond or security shall be required for any such
7 referendum.

8 79292. Following a hearing, and favorable referendum if
9 required, the process specified in Section 79291 shall be conducted
10 by the secretary every five years thereafter between March 1 and
11 February 28, unless a referendum is conducted as the result of a
12 petition pursuant to Section 79293. In that case, the hearing, and
13 referendum if required, shall be conducted every five years
14 following the industry petitioned referendum.

15 79293. (a) Upon a finding by a two-thirds vote of the
16 commission that the operation of this chapter has not tended to
17 effectuate its declared purposes, the commission may recommend
18 to the secretary that the commission be suspended. Any suspension
19 shall not become effective until the expiration of the current
20 marketing season.

21 (b) The secretary shall, upon receipt of a recommendation, or
22 may, after a public hearing to review a petition filed with him or
23 her requesting such suspension, signed by 20 percent of the
24 producers by number who produced not less than 20 percent of
25 the volume in the immediately preceding marketing season and
26 20 percent of the handlers by number who handled not less than
27 20 percent of the volume in the immediately preceding marketing
28 season, cause a referendum to be conducted among the listed
29 producers and handlers to determine if the operations of the
30 commission shall be suspended. However, the secretary shall not
31 hold a referendum as a result of the petition unless the petitioner
32 shows by the weight of evidence that this chapter has not
33 effectuated its declared purposes.

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

(1) At least 40 percent of the total number of producers from the list established by the secretary participate, and that either of the following occurs:

(A) Sixty-five percent of the producers who voted in the referendum voted in favor of suspension, and the producers so voting produced a majority of the total quantity of blueberries produced in the preceding marketing season by all of the producers voting in the referendum.

(B) A majority of the producers who voted in the referendum voted in favor of suspension, and the producers so voting produced 65 percent or more of the total quantity of blueberries produced in the preceding marketing season by all of the producers voting in the referendum.

(2) At least 40 percent of the total number of handlers from the list established by the secretary participate, and that either of the following occurs:

(A) Sixty-five percent of the handlers who voted in the referendum voted in favor of suspension, and the handlers so voting handled a majority of the total quantity of blueberries handled in the preceding marketing season by all of the handlers voting in the referendum.

(B) A majority of the handlers who voted in the referendum voted in favor of suspension, and the handlers so voting handled 65 percent or more of the total quantity of blueberries handled in the preceding marketing season by all of the handlers voting in the referendum.

79294. After the effective date of suspension of this chapter and of the commission, the operations of the commission shall be concluded and all moneys held by the commission, and moneys collected by assessment and not required to defray the expenses of concluding and terminating operations of the commission, shall be returned upon a pro rata basis to all persons from whom assessments were collected in the immediately preceding current marketing season. However, if the commission finds that the amounts returnable are so small as to make impractical the computation and remitting of the pro rata refund to those persons, any moneys remaining and any moneys remaining after payment of all expenses of winding up and terminating operations shall be withdrawn from the approved depository and paid into an

1 appropriate state or federal program or used to fund activities
2 related to the subject matter of this chapter.

3 79295. Upon suspension of the operation of this chapter and
4 of the commission, the commission shall mail a copy of the notice
5 of suspension to all producers and handlers affected by the
6 suspension whose names and addresses are on file.

7
8 Article 9. Quality Standards
9

10 79301. The commission may recommend to the secretary that
11 he or she adopt blueberry quality standards, product labeling, or
12 engage in any other activity authorized pursuant to the California
13 Marketing Act of 1937 (Chapter 1 (commencing with Section
14 58601) of Part 2 of Division 21). The adoption of standards or any
15 of these activities shall be in accordance with the procedures
16 specified in that act unless otherwise specified in this article.

17 79302. Any activity recommended by the commission shall
18 not become operative until approved in the manner specified in
19 Section 79262.

20 79303. Any activity adopted pursuant to this article shall be
21 implemented by the secretary at the beginning of the marketing
22 season next succeeding the date on which the activity is approved
23 by the secretary.

24 79304. The commission shall serve as the advisory body to the
25 secretary on all matters pertaining to this article.

26 ~~SEC. 2. No reimbursement is required by this act pursuant to~~
27 ~~Section 6 of Article XIII B of the California Constitution because~~
28 ~~the only costs that may be incurred by a local agency or school~~
29 ~~district will be incurred because this act creates a new crime or~~
30 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
31 ~~for a crime or infraction, within the meaning of Section 17556 of~~
32 ~~the Government Code, or changes the definition of a crime within~~
33 ~~the meaning of Section 6 of Article XIII B of the California~~
34 ~~Constitution.~~