

AMENDED IN SENATE JULY 15, 2009

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 *annual* 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 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. 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.

Vote: majority. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: 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 constitute
10 an important industry of this state that provides substantial and
11 necessary revenues for the state and employment for its citizens.

12 79202. The establishment of the commission is necessary for
13 the efficient creation and management of a research program to
14 develop improved varieties of blueberries, an integrated approach
15 to manage pests and diseases common to blueberries, and more
16 efficient cultural practices. The commission is also necessary for
17 the efficient development and management of a state, national,
18 and international advertising and promotion program that,
19 combined with the research program, will enhance the
20 competitiveness of the California blueberry industry within the
21 national and international marketplace.

1 79203. The maintenance of the blueberry industry in California
2 is necessary to assure the public of a continuous supply of this
3 important commodity and the maintenance of needed levels of
4 income for those engaged in the blueberry industry of this state.

5 79204. The production and marketing of blueberries produced
6 in this state is hereby declared to be affected with a public interest.
7 This chapter is enacted in the exercise of the police power of this
8 state for the purpose of protecting the health, peace, safety, and
9 general welfare of the people of this state.

10 79205. The commission form of administration created by this
11 chapter is uniquely situated to provide those engaged in the
12 production of blueberries the opportunity to avail themselves of
13 the benefits of collective action in the broad fields of transportation,
14 pest management, advertising, promotion, food safety, production
15 research, nutrition, marketing research, quality and maturity
16 standards, the collection and dissemination of crop volume and
17 related statistics, and public education.

18 79206. No action taken by the commission, or by any individual
19 in accordance with this chapter or with rules and regulations
20 adopted under this chapter, shall be deemed a violation of the
21 Cartwright Act (Chapter 2 (commencing with Section 16700) of
22 Part 2 of Division 7 of the Business and Professions Code), the
23 Unfair Practices Act (Chapter 4 (commencing with Section 17000)
24 of Part 2 of Division 7 of the Business and Professions Code), or
25 any rule of statutory or common law against monopolies or
26 combinations in restraint of trade.

27 79207. It is hereby declared as a matter of legislative
28 determination that members of the commission are intended to
29 represent and further the interest of the particular industry
30 concerned and that this representation and furtherance is intended
31 to serve the public interest. Accordingly, the Legislature finds that
32 with respect to persons who are elected or appointed to the
33 commission, the particular industry concerned is tantamount to,
34 and constitutes the public generally within the meaning of Section
35 87103 of the Government Code.

36
37 Article 2. Definitions

38
39 79211. Unless the context otherwise requires, the definitions
40 in this article govern the construction of this chapter.

1 79212. “Advertising and promotion” mean, in addition to their
2 ordinarily accepted meaning, any plan directed toward increasing
3 the sale of blueberries in domestic or foreign markets and trade
4 promotion and activities for the prevention, modification, or
5 removal of trade barriers that affect the marketing of blueberries.

6 79213. “Blueberries” mean all blueberries produced in
7 California for commercial purposes.

8 79214. “Books and records” means books, records, contracts,
9 documents, memoranda, papers, correspondence, or other written
10 data pertaining to matters relating to the activities subject to this
11 chapter.

12 79215. “Commission” means the California Blueberry
13 Commission.

14 79216. (a) “Districts” consist of the following:

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

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

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

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

28 79217. “Ex officio members” are nonvoting members of the
29 commission.

30 79218. “Handle” means to engage in the business of a handler.

31 79219. (a) “Handler” means any person who engages, in this
32 state, in the operation of selling, marketing, or distributing
33 blueberries that he or she has produced or purchased or acquired
34 from a producer, or that he or she is marketing on behalf of a
35 producer, whether as owner, agent, employee, broker, or otherwise.

36 (b) When the handler is a corporation or a limited liability
37 company, all of the directors, officers, managers, and members of
38 the corporation or limited liability company in their capacity as
39 individuals shall be included, and any liability for failure to collect
40 or make payment of assessments to which a corporate handler or

1 a handler that is a limited liability company may be subject
2 pursuant to this chapter shall include identical liability upon each
3 individual director, officer, manager, or member of the corporation
4 or limited liability company.

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

9 79220. "Market" or "marketing" means to sell or otherwise
10 distribute blueberries into commercial channels or trade resulting
11 in the sale of blueberries.

12 79221. "Marketing research" means any research relating to
13 the sale of blueberries.

14 79222. "Marketing season" or "fiscal year" are synonymous
15 terms and mean the period beginning March 1 of any year and
16 extending through the last day of February of the following year.

17 79223. "Producer" and "grower" are synonymous terms and
18 mean any person who produces or causes to be produced
19 blueberries for market and who shall, upon request of the
20 commission, provide proof of commodity sale.

21 79224. "Production research" means any research relating to
22 the production, harvest, and postharvest handling of blueberries.

23 79225. "Secretary" means the Secretary of Food and
24 Agriculture.

25
26 Article 3. The California Blueberry Commission
27

28 79231. (a) There is in the state government the California
29 Blueberry Commission. Except as provided in subdivision (c), the
30 commission shall be composed of five producers, four handlers,
31 and one public member. Three producer members shall be elected
32 by and from producers within the respective districts, one from
33 each district, and two producer members shall be elected by and
34 from producers on a statewide basis without reference to districts.
35 The handler members shall be elected by and from handlers on a
36 statewide basis without reference to districts. The public member
37 shall be appointed to the commission by the secretary from
38 nominees recommended by the commission. Each entity subject
39 to this chapter is limited to two representatives, one representing
40 producers and one representing handlers.

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

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

9 79232. (a) The secretary may require the commission to correct
10 or cease any existing activity or function that is determined by the
11 secretary not to be in the public interest or in violation of this
12 chapter.

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

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

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

32 79233. The commission or the secretary may bring an action
33 for judicial relief from the secretary's written notice, or from
34 noncompliance by the commission with the written notice, in a
35 court of competent jurisdiction, which may issue a temporary
36 restraining order, permanent injunction, or other applicable relief.

37 79234. The commission shall reimburse the secretary for all
38 expenditures incurred by the secretary in carrying out his or her
39 duties and responsibilities under this chapter. However, a court
40 may, if it finds that the secretary acted arbitrarily or capriciously

1 in restricting the activities or functions of the commission, relieve
2 the commission of the responsibility for payment of the secretary's
3 legal costs with regard to that action.

4 79235. Except for the ex officio members of the commission,
5 each member of the commission shall have an alternate member
6 elected in the same manner as the member. An alternate member,
7 in the absence of the member for whom he or she is an alternate,
8 shall serve in place of the member on the commission. An alternate
9 member may also serve in place of any other absent member of
10 the same classification, producer or handler, if the member's
11 alternate is also absent. However, an alternate may not serve in
12 place of more than one absent member at a meeting. An alternate
13 member serving in place of a member shall have and be able to
14 exercise all rights, privileges, and powers of the member when
15 serving on the commission. In the event of death, removal,
16 resignation, or the disqualification of a member, the alternate for
17 the member, or another alternate of the same classification if the
18 alternate for the member is absent, shall act as a member on the
19 commission until a qualified successor is elected.

20 79236. Any vacancy on the commission including, but not
21 limited to, the failure of any person elected to the commission as
22 a member or alternate member to continue in his or her position
23 due to a change in status making him or her ineligible to serve, or
24 due to death, removal, or resignation, shall be filled by the
25 appointment of another person, for the unexpired portion of the
26 term, by a majority vote of the commission. However, the
27 appointee shall fulfill all the qualifications set forth in this article
28 as required for the office he or she is to occupy. The qualifications
29 of any person to fill a vacancy on the commission shall be certified
30 in writing to the secretary. The secretary shall notify the
31 commission if he or she determines that the person is not qualified.

32 79237. A producer member or his or her alternate on the
33 commission shall be an individual, partner, or employee of a
34 producer who has a financial interest in producing, or causing to
35 be produced, blueberries for market. The producer member or his
36 or her alternate shall be so qualified during the entire term of office.

37 79238. A handler member or his or her alternate on the
38 commission shall be an individual, partner, or employee of a
39 handler who has a financial interest in handling blueberries for

1 market. The handler member or his or her alternate shall be so
2 qualified during the entire term of office.

3 79239. The public member, or his or her alternate on the
4 commission, shall have all the powers, rights, and privileges of
5 any other member on the commission. The public member shall
6 not have any financial interest in the blueberry industry.

7 79240. The term of office of all members of the commission
8 and alternates, except any ex officio member, shall be two years
9 from the date of their election and until their successors are elected,
10 except, that of the first members of the commission, one-half shall
11 serve one year and one-half shall serve two years. The
12 determination of the term of each member shall be made by lot at
13 the time of election.

14 79241. The commission may sue and be sued and enter into
15 contracts. Copies of its proceedings, records, and acts, when
16 authenticated, shall be admissible in evidence in all courts of the
17 state, and shall be prima facie evidence of the truth of all statements
18 therein.

19 79242. A quorum of the commission is a majority of the
20 producer members and a majority of the handler members on the
21 commission. Except as otherwise provided in this chapter, the vote
22 of a majority of members present at a meeting at which there is a
23 quorum shall constitute an act of the commission.

24 79243. The secretary or his or her representatives shall be
25 notified and may attend each meeting of the commission and any
26 committee meeting of the commission. However, the secretary is
27 not entitled to attend an executive session of the commission called
28 for the purpose of discussing potential or actual litigation against
29 the department.

30 79244. No member of the commission or of any committee
31 established by the commission, which may include nonmembers
32 of the commission, shall receive a salary. Except for ex officio
33 government members, the members may receive reasonable and
34 necessary traveling expenses and meal allowances, as established
35 by the commission, for each day spent in actual attendance at, or
36 in traveling to and from, meetings of the commission or committees
37 of the commission, or on special assignment for the commission.

38 79245. If the secretary is required to concur in a decision of
39 the commission, he or she shall indicate his or her response to the
40 commission within 15 working days from notification of the

1 decision. The response may be a request that additional information
2 be provided.

3 79246. All moneys received by any person from assessments
4 levied under the authority of this chapter or otherwise received by
5 the commission shall be deposited in banks designated by the
6 commission and shall be disbursed by order of the commission
7 through an agent or agents designated for that purpose. Any
8 authorized agent or agents shall be bonded by a fidelity bond,
9 executed by a surety company authorized to transact business in
10 the state, in favor of the commission, in the amount of not less
11 than twenty-five thousand dollars (\$25,000).

12 79247. The state shall not be liable for the acts of the
13 commission or its contracts. Payments of all claims arising by
14 reason of the administration of this chapter or acts of the
15 commission shall be limited to the funds collected by the
16 commission. No member, alternate member, or any employee or
17 agent of the commission, shall be personally liable on the contracts
18 of the commission and no member, alternate member, or employee
19 of the commission shall be responsible individually in any way to
20 any producer, handler, or any other person for error in judgment,
21 mistakes, or other acts, either of commission or omission, as
22 principal, agent, or employee, except for his or her own individual
23 acts of dishonesty or crime. No member or alternate member shall
24 be held responsible individually for any act or omission of any
25 member or alternate member of the commission. The liability of
26 the members and alternate members shall be several and not joint,
27 and no member or alternate member shall be liable for the default
28 of any other member or alternate member.

29
30 Article 4. Powers and Duties of the Commission
31

32 79251. The powers and duties of the commission shall include,
33 but are not limited to, all of the following:

34 (a) Adopt and from time to time alter, rescind, modify, and
35 amend bylaws, rules, regulations, and orders for carrying out this
36 chapter, including rules for appeals from any bylaw, rule,
37 regulation, or order of the commission. These actions shall not be
38 subject to Chapter 3.5 (commencing with Section 11340) of Part
39 1 of Division 3 of Title 2 of the Government Code.

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

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

9 (d) Employ a person to serve at the pleasure of the commission
10 as president and chief executive officer of the commission, and
11 other personnel, including legal counsel, necessary to carry out
12 this chapter. The commission may retain a management firm or
13 staff from any board, commission, or committee of the state to
14 perform the functions prescribed by this subdivision under control
15 of the commission. If the person engages in any conduct that the
16 secretary determines is not in the public interest or in violation of
17 this chapter, the secretary shall notify the commission of the
18 conduct and request that corrective, and if appropriate, disciplinary
19 action, be taken by the commission. If the commission fails or
20 refuses to correct the situation or to take disciplinary action
21 satisfactory to the secretary, the secretary may suspend or discharge
22 the person.

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

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

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

32 (h) Keep accurate books, records, and accounts of all of its
33 dealings, which books, records, and accounts shall be subject to
34 an annual audit by an auditing firm selected by the commission
35 with the concurrence of the secretary. The audit shall be made a
36 part of an annual report to all producers and handlers of blueberries,
37 and copies of the audit shall be submitted to the Legislature and
38 the department. In addition, the secretary may, as he or she
39 determines necessary, conduct, or cause to be conducted, a fiscal
40 and compliance audit of the commission.

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

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

12 (k) Make, in the name of the commission, contracts to render
13 service in formulating and conducting plans and programs, and
14 any other contracts or agreements the commission determines
15 necessary for the promotion of blueberries.

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

26 (m) Collect information and publish and distribute to producers
27 and handlers a bulletin or other communication for dissemination
28 of information, including, but not limited to, crop statistics relating
29 to the blueberry industry.

30 (n) Establish an assessment rate to defray operating costs of the
31 commission.

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

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

38 (q) Investigate and prosecute civil violations of this chapter and
39 file complaints with appropriate law enforcement agencies or
40 officers for suspected criminal violations of this chapter.

1 (r) Administer any program authorized in Article 9 (commencing
2 with Section 79301).

3 (s) Prescribe the form and manner by which proponents and
4 opponents of the commission may contact producers and handlers
5 so long as all expenses associated with the contacts are paid in
6 advance.

7 (t) *Develop and promote good agricultural practices and other*
8 *food safety practices for the production of blueberries.*

9 79252. (a) To prevent unfair trade practices which are
10 detrimental to California's blueberry industry, including, but not
11 limited to, deception and misinformation, the commission shall
12 collect and disseminate to any and all interested persons, handler
13 f.o.b. (free on board), market price information based on sales that
14 have occurred.

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

20 (c) The procedure for the collection and dissemination of the
21 information pursuant to this section shall be approved by the
22 secretary.

23 24 Article 5. Implementation and Voting Procedures

25
26 79261. (a) Within 15 days after the effective date of this
27 chapter, the secretary shall establish a list of producers and handlers
28 eligible to vote on the implementation of this chapter. In
29 establishing the list, the secretary shall require that producers and
30 handlers of blueberries in California submit the names, mailing
31 addresses, and the volume of blueberries produced by each
32 producer and handled by each handler during the preceding
33 marketing season. The request for the information shall be in
34 writing. The information shall be filed within 10 days following
35 receipt of the written request for information.

36 (b) Any producer or handler of blueberries whose name does
37 not appear upon the secretary's list may have his or her name
38 placed on the list by filing with the secretary a signed statement
39 identifying himself or herself as a producer or handler. Failure to

1 be on the list does not exempt the producer or handler from paying
2 assessments under this chapter.

3 79262. This chapter, except as necessary to conduct an
4 implementation referendum vote, shall not become operative until
5 the secretary finds the following in a referendum vote conducted
6 by the secretary:

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

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

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

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

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

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

33 79263. The secretary shall establish a period in which to
34 conduct the referendum which shall not be less than 10 days or
35 more than 60 days in duration and may prescribe additional
36 procedures necessary to conduct the referendum. If the initial
37 period established is less than 60 days, the secretary may extend
38 the period. However, the total referendum period may not exceed
39 60 days.

40 79264. Nonreceipt of a ballot shall not invalidate a referendum.

1 79265. If the secretary finds that a favorable vote has been
2 given as provided in Section 79262, he or she shall so certify and
3 give notice of the vote to all producers and handlers whose names
4 and addresses are on file with the secretary.

5 79266. If the secretary finds that a favorable vote has not been
6 given as provided in this article, he or she shall so certify and
7 declare this chapter inoperative. The secretary may conduct another
8 implementation referendum vote one or more years after the
9 previous vote has been taken.

10 79267. (a) Upon certification of the commission, the secretary
11 shall contact all producers and handlers in a manner determined
12 by the secretary for the purpose of nominating and electing persons
13 to the commission. To be eligible for election to the commission,
14 nominees shall present to the secretary a nomination petition with
15 the signatures of at least three eligible persons.

16 (b) Subsequent to the first selection of members of the
17 commission, persons to be elected to the commission shall be
18 selected pursuant to nomination and election procedures established
19 by the commission with the concurrence of the secretary.

20 79268. Prior to the referendum vote conducted by the secretary
21 pursuant to this article, the proponents of the commission shall
22 deposit with the secretary an amount of funds determined necessary
23 by the secretary to defray the expenses of preparing the necessary
24 lists and information and conducting the vote. Any funds not used
25 for this purpose shall be returned to the proponents of the
26 commission who deposited the funds with the secretary. Upon
27 establishment of the commission, the commission may reimburse
28 the proponents of the commission for any funds deposited with
29 the secretary and for any legal expenses and costs incurred in
30 establishing the commission.

31 Article 6. Assessments and Records

32
33
34 79271. (a) The commission shall, not later than March 1 of
35 each year, or as soon thereafter as possible, establish the assessment
36 to be paid by the producers and handlers for the marketing season.
37 The assessment shall not be more than two and one-half cents
38 (\$0.025) per pound for blueberries handled. Of the assessment
39 one-half shall be assessed to producers, and one-half shall be
40 assessed to handlers.

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

4 79272. This chapter does not apply to blueberries produced
5 only for a producer's home use or to blueberries that are used only
6 for ornamental purposes.

7 79273. Every person who handles blueberries shall keep a
8 complete and accurate record of all blueberries handled by him or
9 her with the name of the producer whose blueberries were handled.
10 A producer who delivers or markets blueberries to persons other
11 than to a handler shall keep a complete and accurate record of all
12 those blueberries. The records shall contain information required
13 by the commission. The records shall be preserved by the producer
14 or handler for a period of two years and shall be offered and
15 submitted for inspection at any reasonable time upon written
16 demand of the commission or its duly authorized agent.

17 79274. (a) All proprietary information obtained by the
18 commission or the secretary from any source, including the names
19 and addresses of producers and handlers, shall be confidential and
20 shall not be disclosed except when required by court order in a
21 judicial proceeding.

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

28 79275. The first handler of blueberries being assessed shall
29 deduct the assessment from amounts paid by him or her to the
30 producer, and shall be a trustee of the funds until they are paid to
31 the commission at the time and in the manner prescribed by the
32 commission. A producer who handles blueberries shall pay an
33 assessment directly to the commission at the time and in the manner
34 prescribed by the commission.

35 79276. Every handler shall be personally liable for the payment
36 of the collected assessments from producers, and failure to collect
37 the assessment from any producer shall not exempt the handler
38 from liability.

39 79277. Any assessment that is levied as provided in this chapter
40 is a personal debt of every producer and handler so assessed.

1 79278. (a) Any person who fails to file a return or pay any
2 assessment within the time required by the commission shall pay
3 to the commission a penalty of 10 percent of the amount of the
4 assessment determined to be past due and, in addition, interest on
5 the unpaid balance at the rate of 1.5 percent per month.

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

12 Article 7. Actions and Penalties

13
14
15 79281. A civil penalty not exceeding one thousand dollars
16 (\$1,000) may be levied by the commission upon a person who
17 does any of the following:

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

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

24 (c) When engaged in the shipping or processing of blueberries
25 or in the wholesale or retail trade of blueberries, to fail or refuse
26 to furnish to the commission or its duly authorized agents, upon
27 request, information concerning the name and address of the
28 persons from whom he or she has received blueberries and the
29 quantity so received.

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

32 79282. The commission shall establish procedures for the
33 purpose of according individuals aggrieved by its actions or
34 determinations an informal hearing before the commission, or
35 before a committee of the commission designated for this purpose.
36 Appeals from decisions of the commission may be made to the
37 secretary. The determination of the secretary shall be subject to
38 judicial review upon petition filed with the appropriate superior
39 court.

1 79283. (a) The commission may commence civil actions and
2 utilize all remedies provided in law or equity for the collection of
3 assessments and civil penalties, and for obtaining injunctive relief
4 or specific performance, relating to this chapter and the rules and
5 regulations adopted under this chapter. A court shall issue to the
6 commission any requested writ of attachment or injunctive relief
7 upon a prima facie showing by verified complaint that a named
8 defendant has violated this chapter or any other rule or regulation
9 of the commission, including, but not limited to, the nonpayment
10 of assessments. No bond shall be required to be posted by the
11 commission as a condition for the issuance of any writ of
12 attachment or injunctive relief.

13 (b) A writ of attachment shall be issued pursuant to Chapter 5
14 (commencing with Section 485.010) of Title 6.5 of Part 2 of the
15 Code of Civil Procedure, except that the showing specified in
16 Section 485.010 is not required. Injunctive relief shall be issued
17 pursuant to Chapter 3 (commencing with Section 525) of Title 7
18 of Part 2 of the Code of Civil Procedure, except that the showing
19 of irreparable harm or of inadequate remedy at law specified by
20 Section 526 or 527 is not required.

21 (c) Upon entry of any final judgment on behalf of the
22 commission against any defendant, the court shall enjoin the
23 defendant from conducting any type of business regarding
24 blueberries until there is full compliance with, and satisfaction of,
25 the judgment.

26 (d) Upon a favorable judgment for the commission, the court
27 may order that the commission be reimbursed for reasonable
28 attorney's fees and other actual related costs. Venue for these
29 actions is at the domicile or place of business of the defendant or
30 in the county of the principal office of the commission. The
31 commission may be sued only in the county of its principal office.

32 79284. Any action by the commission for any penalty or other
33 remedy that is prescribed under this chapter shall be commenced
34 within two years from the date of discovery of the alleged violation.
35 Any action against the commission by any person shall be
36 commenced within two years from the date of the alleged violation.

37 79285. The commission is not required to allege or prove that
38 an adequate remedy at law does not exist in any action brought
39 under this chapter.

1 79286. This chapter shall be liberally construed. If any section,
2 clause, or part of this chapter is for any reason held unconstitutional
3 or invalid as applied to any person or as applied under certain
4 circumstances, that decision shall not affect the remaining portions
5 of this chapter or the application of this chapter to any other persons
6 or under any other circumstance.

7 79287. The termination of this chapter shall not affect or waive
8 any right, duty, obligation, or liability that has arisen or that may
9 thereafter arise in connection with this chapter, release or
10 extinguish any violation of this chapter, or affect or impair any
11 right or remedies of the commission with respect to any violation.
12

13 Article 8. Continuation or Suspension and Termination 14

15 79291. (a) Five years after implementation of this chapter, the
16 secretary shall hold a public hearing, after providing proper notice
17 to all persons subject to this chapter and any other persons or
18 entities who have requested, in writing, notice of the hearing, to
19 determine whether the operation of this chapter should be
20 continued. If the secretary finds after the hearing that a substantial
21 question exists among the persons assessed under this chapter
22 regarding whether the operation of this chapter should be
23 continued, the secretary shall submit the chapter to a reapproval
24 referendum to be conducted among producers and handlers to
25 determine whether the operation of this chapter shall be reapproved
26 and continued in effect.

27 (b) If the secretary finds after conducting a hearing that no
28 substantial question exists or, if a reapproval referendum is
29 required, that a majority of the eligible producers and a majority
30 of eligible handlers voting in the referendum voted in favor of
31 continuing the operation of this chapter, the secretary shall so
32 certify and this chapter shall remain operative. If the secretary
33 finds that a favorable vote has not been given, he or she shall so
34 certify and declare the operation of this chapter and the commission
35 suspended upon the expiration of the current marketing season.
36 Thereupon, the operations of the commission shall be concluded
37 and funds distributed in the manner provided in Section 79294.
38 No bond or security shall be required for any such referendum.

39 79292. Following a hearing, and favorable referendum if
40 required, the process specified in Section 79291 shall be conducted

1 by the secretary every five years thereafter between March 1 and
2 February 28, unless a referendum is conducted as the result of a
3 petition pursuant to Section 79293. In that case, the hearing, and
4 referendum if required, shall be conducted every five years
5 following the industry petitioned referendum.

6 79293. (a) Upon a finding by a two-thirds vote of the
7 commission that the operation of this chapter has not tended to
8 effectuate its declared purposes, the commission may recommend
9 to the secretary that the commission be suspended. Any suspension
10 shall not become effective until the expiration of the current
11 marketing season.

12 (b) The secretary shall, upon receipt of a recommendation, or
13 may, after a public hearing to review a petition filed with him or
14 her requesting such suspension, signed by 20 percent of the
15 producers by number who produced not less than 20 percent of
16 the volume in the immediately preceding marketing season and
17 20 percent of the handlers by number who handled not less than
18 20 percent of the volume in the immediately preceding marketing
19 season, cause a referendum to be conducted among the listed
20 producers and handlers to determine if the operations of the
21 commission shall be suspended. However, the secretary shall not
22 hold a referendum as a result of the petition unless the petitioner
23 shows by the weight of evidence that this chapter has not
24 effectuated its declared purposes.

25 (c) The secretary shall establish a referendum period, which
26 shall not be less than 10 days or more than 60 days in duration.
27 The secretary may prescribe additional procedures necessary to
28 conduct the referendum. At the close of the established referendum
29 period, the secretary shall tabulate the ballots filed during the
30 period. The secretary shall suspend the operation of this chapter,
31 if the secretary finds the following:

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

35 (A) Sixty-five percent of the producers who voted in the
36 referendum voted in favor of suspension, and the producers so
37 voting produced a majority of the total quantity of blueberries
38 produced in the preceding marketing season by all of the producers
39 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 appropriate state or federal program or used to fund activities related to the subject matter of this chapter.

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

Article 9. Quality Standards

1 79301. The commission may recommend to the secretary that
2 he or she adopt blueberry quality standards, product labeling, or
3 engage in any other activity authorized pursuant to the California
4 Marketing Act of 1937 (Chapter 1 (commencing with Section
5 58601) of Part 2 of Division 21). The adoption of standards or any
6 of these activities shall be in accordance with the procedures
7 specified in that act unless otherwise specified in this article.

8 79302. Any activity recommended by the commission shall
9 not become operative until approved in the manner specified in
10 Section 79262.

11 79303. Any activity adopted pursuant to this article shall be
12 implemented by the secretary at the beginning of the marketing
13 season next succeeding the date on which the activity is approved
14 by the secretary.

15 79304. The commission shall serve as the advisory body to the
16 secretary on all matters pertaining to this article.