

Assembly Bill No. 606

Passed the Assembly September 3, 2009

Chief Clerk of the Assembly

Passed the Senate September 1, 2009

Secretary of the Senate

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

Private Secretary of the Governor

CHAPTER _____

An act to 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, 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, 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.

Appropriation: yes.

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

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

CHAPTER 26. CALIFORNIA BLUEBERRY COMMISSION

Article 1. Declaration and General Provisions

79201. The production and marketing of blueberries constitute an important industry of this state that provides substantial and necessary revenues for the state and employment for its citizens.

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

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

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

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

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

79207. It is hereby declared as a matter of legislative determination that members of the commission are intended to represent and further the interest of the particular industry concerned and that this representation and furtherance is intended to serve the public interest. Accordingly, the Legislature finds that with respect to persons who are elected or appointed to the commission, the particular industry concerned is tantamount to, and constitutes the public generally within the meaning of Section 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 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 on land totaling more than five acres of 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 postharvest 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, five 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 statewide basis without reference to districts. The public member shall be appointed to the commission by the secretary from nominees recommended by the commission. Each entity subject to this chapter is limited to two representatives, one representing producers and one representing handlers.

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

(c) The commission may modify the number of producers and handlers who serve on the commission by a two-thirds vote of the commission that is concurred in by the secretary, so long as proper notice is provided to all persons subject to this chapter prior to the action and the number of producers and the number of handlers who serve on the commission remain equal.

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

(b) If the commission refuses or fails to cease those activities or functions or to make corrections as required by the secretary, the secretary may, upon written notice, suspend all or a portion of

the activities or functions of the commission until such time as the cessation or correction of activities or functions as required by the secretary has been accomplished by the commission.

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

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

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

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

79235. Except for the ex officio members of the commission, each member of the commission shall have an alternate member elected in the same manner as the member. An alternate member, in the absence of the member for whom he or she is an alternate, shall serve in place of the member on the commission. An alternate member may also serve in place of any other absent member of the same classification, producer or handler, if the member's alternate is also absent. However, an alternate may not serve in place of more than one absent member at a meeting. An alternate member serving in place of a member shall have and be able to exercise all rights, privileges, and powers of the member when serving on the commission. In the event of death, removal,

resignation, or the disqualification of a member, the alternate for the member, or another alternate of the same classification if the alternate for the member is absent, shall act as a member on the commission until a qualified successor is elected.

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

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

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

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

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

79241. The commission may sue and be sued and enter into contracts. Copies of its proceedings, records, and acts, when authenticated, shall be admissible in evidence in all courts of the

state, and shall be prima facie evidence of the truth of all statements therein.

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

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

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

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

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

79247. The state shall not be liable for the acts of the commission or its contracts. Payments of all claims arising by reason of the administration of this chapter or acts of the commission shall be limited to the funds collected by the commission. No member, alternate member, or any employee or

agent of the commission, shall be personally liable on the contracts of the commission and no member, alternate member, or employee of the commission shall be responsible individually in any way to any producer, handler, or any other person for error in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, or employee, except for his or her own individual acts of dishonesty or crime. No member or alternate member shall be held responsible individually for any act or omission of any member or alternate member of the commission. The liability of the members and alternate members shall be several and not joint, and no member or alternate member shall be liable for the default of any other member or alternate member.

Article 4. Powers and Duties of the Commission

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

(a) Adopt and from time to time alter, rescind, modify, and 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, and copies of the audit shall be submitted to the Legislature and the department. In addition, the secretary may, as he or she determines necessary, conduct, or cause to be conducted, a fiscal and compliance audit of the commission.

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

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

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

(l) Conduct, and contract with others to conduct, scientific research, including the study, analysis, dissemination, and

accumulation of information obtained from research or elsewhere with respect to cultural and production practices, good agricultural practices, and marketing and distribution of blueberries. In connection with the research, the commission shall have the power to accept contributions of, or to match, private, state, or federal funds that may be available for these purposes, and to employ or make contributions of funds to other persons or state or federal agencies conducting the research.

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

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

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

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

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

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

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

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

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

(b) The identity of each handler reporting information and the information reported under this section shall be kept confidential and not made public under any circumstances. Information that

gives industry totals, averages, and other similar data may be disclosed by the commission.

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

Article 5. Implementation and Voting Procedures

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

(b) Any producer or handler of blueberries whose name does not appear upon the secretary's list may have his or her name placed on the list by filing with the secretary a signed statement identifying himself or herself as a producer or handler. Failure to be on the list does not exempt the producer or handler from paying assessments under this chapter.

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

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

(1) Sixty-five percent of the producers who voted in the referendum voted in favor of this chapter, 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.

(2) A majority of the producers who voted in the referendum voted in favor of this chapter, 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.

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

(1) Sixty-five percent of the handlers who voted in the referendum voted in favor of this chapter, 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.

(2) A majority of the handlers who voted in the referendum voted in favor of this chapter, 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.

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

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

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

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

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

(b) Subsequent to the first selection of members of the commission, persons to be elected to the commission shall be

selected pursuant to nomination and election procedures established by the commission with the concurrence of the secretary.

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

Article 6. Assessments and Records

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

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

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

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

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

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

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

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

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

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

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

Article 7. Actions and Penalties

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

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

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

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

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

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

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

(b) A writ of attachment shall be issued pursuant to Chapter 5 (commencing with Section 485.010) of Title 6.5 of Part 2 of the Code of Civil Procedure, except that the showing specified in

Section 485.010 is not required. Injunctive relief shall be issued pursuant to Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that the showing of irreparable harm or of inadequate remedy at law specified by Section 526 or 527 is not required.

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

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

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

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

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

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

Article 8. Continuation or Suspension and Termination

79291. (a) Five years after implementation of this chapter, the secretary shall hold a public hearing, after providing proper notice

to all persons subject to this chapter and any other persons or entities who have requested, in writing, notice of the hearing, to determine whether the operation of this chapter should be continued. If the secretary finds after the hearing that a substantial question exists among the persons assessed under this chapter regarding whether the operation of this chapter should be continued, the secretary shall submit the chapter to a reapproval referendum to be conducted among producers and handlers to determine whether the operation of this chapter shall be reapproved and continued in effect.

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

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

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

(b) The secretary shall, upon receipt of a recommendation, or may, after a public hearing to review a petition filed with him or her requesting such suspension, signed by 15 percent of the producers by number who produced not less than 15 percent of the volume in the immediately preceding marketing season and

15 percent of the handlers by number who handled not less than 15 percent of the volume in the immediately preceding marketing season, cause a referendum to be conducted among the listed producers and handlers to determine if the operations of the commission shall be suspended. However, the secretary shall not hold a referendum as a result of the petition unless the petitioner shows by the weight of evidence that this chapter has not effectuated its declared purposes.

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

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

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

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

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

Approved _____, 2009

Governor