

Assembly Bill No. 393

CHAPTER 409

An act to amend Sections 77001, 77003.6, 77004, 77028, 77029, 77031, 77032, 77051, 77057, 77058, 77065, 77091, 77123, 77151, 77152, and 77193 of, to add Section 77103 to, to repeal Sections 77025, 77032.5, 77122, 77128, and 77129 of, and to repeal and add Section 77026 to, the Food and Agricultural Code, relating to agriculture, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 22, 2006. Filed with
Secretary of State September 22, 2006.]

LEGISLATIVE COUNSEL'S DIGEST

AB 393, Frommer. Agriculture: California Walnut Commission.

Existing law provides for the creation of the California Walnut Commission.

This bill would define "handle," "handling," "marketing research," and "pack" for the purpose of these provisions, would change various references from "market" to "handle," and would make other conforming changes.

This bill would delete provisions relating to the nomination and election of persons to the committee by producers who are not affiliated with any cooperative handling walnuts, independent producers, and cooperative handlers, as specified.

Existing law provides that the marketing year or fiscal year for the purpose of these provisions means the period of August 1, of any year to July 31, inclusive, of the next year.

This bill would instead provide that, beginning September 1, 2008, this period runs from September 1, of any year, to August 31, inclusive, of the next year.

Existing law provides that the commission shall be composed of 13 members, including producers who are not handlers or producer-handlers, and walnut producer-handlers.

This bill would delete the term "producer-handler" from these provisions and make other conforming changes, as specified.

This bill would specify additional duties for the executive committee of the commission for the 2006 marketing year.

Existing law provides that implementation of the provisions relating to the California Walnut Commission shall depend upon the outcome of a referendum vote of walnut producers. Existing law provides that the vote of any nonprofit agricultural cooperative marketing association authorized by members shall be considered as being the approval or rejection of those members.

This bill would remove provisions permitting a nonprofit agricultural cooperative marketing association to vote on behalf of its members.

Existing law relating to the California Walnut Commission provides that any cooperative handler who represents at least 30% of the producers shall be subject to specified rights and responsibilities, including serving on the commission as the cooperative handler member and being entitled to select 4 producers and one producer-handler who are affiliated with the handler to serve on the commission.

This bill would remove these provisions.

Existing law provides that these provisions shall be continued in existence if, after holding a hearing that shall occur every 6 years, the secretary finds that a substantial question exists among producers whether it should continue and a referendum is held at which a majority of producers vote in favor of its continuance.

This bill would remove the distinction between producers who are not affiliated with a cooperative handling walnuts and those who are, as specified.

This bill would declare that it is to take effect immediately as an urgency statute.

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

SECTION 1. Section 77001 of the Food and Agricultural Code is amended to read:

77001. The production and handling of walnuts constitute an important industry of this state. This industry not only provides substantial and necessary revenues for the state and employment for its citizens, but also furnishes essential food vital to the public health and welfare.

SEC. 2. Section 77003.6 of the Food and Agricultural Code is amended to read:

77003.6. The successes that the walnut industry of California have enjoyed have come about in part through a commitment to industry-funded research that has led to significant improvements in the quality of the walnuts available to consumers and increasingly efficient cultural practices resulting in increased awareness of, and a more receptive environment for, the production and handling of walnuts in domestic and foreign markets. It has also led to walnuts being a better consumer value. The establishment of the commission will maintain and enhance this research effort and make it possible for the walnut industry to realize its potential, resulting in increased consumer value and enhanced producer returns.

SEC. 3. Section 77004 of the Food and Agricultural Code is amended to read:

77004. The production and handling of walnuts 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.

SEC. 4. Section 77025 of the Food and Agricultural Code is repealed.

SEC. 5. Section 77026 of the Food and Agricultural Code is repealed.

SEC. 6. Section 77026 is added to the Food and Agricultural Code, to read:

77026. “Handle” or “handling” means to market, pack, sell, consign, transport, or ship, except as a common or contract carrier of walnuts owned by another person, or in any other way place walnuts, inshell or shelled, into commerce either within the area of production or from the area of production to any other point outside thereof, or for a manufacturer or retailer within the area of production to purchase directly from a producer. “Handle” or “handling” does not include sales and deliveries within the area of production by producers to handlers, or between handlers.

SEC. 7. Section 77028 of the Food and Agricultural Code is amended to read:

77028. “Handler” means any person who handles inshell or shelled walnuts.

SEC. 8. Section 77029 of the Food and Agricultural Code is amended to read:

77029. “Pack” means to bleach, clean, grade, shell, or otherwise prepare walnuts for market as inshell or shelled walnuts.

SEC. 9. Section 77031 of the Food and Agricultural Code is amended to read:

77031. “Marketing year” or “fiscal year” means the period from August 1 of any year to July 31, inclusive, of the next year. Beginning September 1, 2008, “marketing year” or “fiscal year” means the period from September 1 of any year to August 31, inclusive, of the next year.

SEC. 10. Section 77032 of the Food and Agricultural Code is amended to read:

77032. “Producer” means any person in this state who grows walnuts for market and who, upon request, provides proof of commodity sale. “Producer” does not include any person who handles 2,000 pounds or less of walnuts during a market year.

SEC. 11. Section 77032.5 of the Food and Agricultural Code is repealed.

SEC. 12. Section 77051 of the Food and Agricultural Code is amended to read:

77051. (a) There is in state government the California Walnut Commission. The commission shall be composed of eight walnut producers who are not handlers, four walnut handlers, and one public member.

(b) Eight producer members, four from each district, shall be elected by producers. In accordance with procedures adopted by the commission, no more than two producers from each district who ship the largest percentage of their walnuts in the preceding marketing year to the same

handler may be elected to the commission as members. Producers who ship to two or more handlers in equal percentages shall declare which handler they are affiliated with, for purposes of this section. No producer member shall be connected in a proprietary capacity with a handler.

(c) In accordance with procedures adopted by the commission, four handler members shall be elected on a weighted basis by all other handlers to serve on the commission. No handler member shall be connected in a proprietary capacity or in any other manner with any handler member serving on the commission.

(d) The public member shall be appointed to the commission by the secretary from nominees recommended by the commission.

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

SEC. 13. Section 77057 of the Food and Agricultural Code is amended to read:

77057. Any vacancy on the commission occurring by the failure of any person elected to the commission as a producer member or alternate producer 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 for the unexpired portion of the term by a majority vote of the remaining producer members of the commission. Any person filling a vacant producer member or alternate producer member position shall meet all the qualifications set forth in this article as required for the member whose office he or she is to fill.

SEC. 14. Section 77058 of the Food and Agricultural Code is amended to read:

77058. Any vacancy on the commission occurring by the failure of any person elected to the commission as a handler member or alternate handler 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 for the unexpired portion of the term by a majority vote of the remaining handler members of the commission. Any person filling a vacant handler member or alternate handler member position shall meet all the qualifications set forth in this article as required for the member whose office he or she is to fill.

SEC. 15. Section 77065 of the Food and Agricultural Code is amended to read:

77065. A quorum of the commission shall be eight voting members of the commission. Except as provided in Section 77027, a vote in favor of a motion by nine members present at a meeting shall constitute the act of the commission.

SEC. 16. Section 77091 of the Food and Agricultural Code is amended to read:

77091. The commission may educate and instruct the wholesale and retail trade in domestic and foreign markets with respect to proper methods of handling walnuts.

SEC. 16.5. Section 77103 is added to the Food and Agricultural Code, to read:

77103. (a) Notwithstanding any other provision of this chapter, the following duties are imposed upon the executive committee of the commission, established in the commission's bylaws, for the 2006 marketing year:

(1) Continue any and all existing contracts and agreements necessary for the operation of the commission.

(2) Establish the annual budget according to accepted accounting practices.

(3) Establish the assessment rate not later than the first day of the marketing year or as soon thereafter as possible. The assessment rate shall not exceed the 2005 marketing year assessment rate.

(b) In fulfilling the duties of this section, except for the disbursements made pursuant to Section 77086, the executive committee shall obtain concurrence by the secretary.

(c) This section shall become inoperative on July 1, 2007.

SEC. 17. Section 77122 of the Food and Agricultural Code is repealed.

SEC. 18. Section 77123 of the Food and Agricultural Code is amended to read:

77123. This chapter, except as necessary to conduct an implementation referendum vote, shall not become operative until the secretary finds in a referendum vote conducted by the secretary that at least 40 percent of the total number of producers from the list established by the secretary pursuant to this article participate, and that a majority of the producers voting in the referendum voted in favor of this chapter, and the producers so voting handled a majority of the total quantity of walnuts handled in the preceding marketing year by all those producers who voted in the referendum.

SEC. 19. Section 77128 of the Food and Agricultural Code is repealed.

SEC. 20. Section 77129 of the Food and Agricultural Code is repealed.

SEC. 21. Section 77151 of the Food and Agricultural Code is amended to read:

77151. (a) The commission shall establish the assessment for the following marketing year not later than the first day of each marketing year or as soon thereafter as is possible.

(b) The assessment shall not exceed one cent (\$0.01) per inshell pound on all walnuts shipped by producers to handlers or handled by producers.

(c) Assessments provided for in this section shall be levied on the producer. The handler 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.

(d) A fee greater than the amount provided for in subdivision (b) may not be charged unless and until a greater fee is approved by producers pursuant to the procedures specified in Section 77123.

SEC. 22. Section 77152 of the Food and Agricultural Code is amended to read:

77152. This chapter does not apply to the walnuts produced only for the producer's home use and to producers who handle 2,000 pounds or less of walnuts in the preceding marketing year. However, the producer shall file an affidavit with the commission establishing that he or she has not handled walnuts. The commission shall then determine whether the affidavit should be approved.

SEC. 23. Section 77193 of the Food and Agricultural Code is amended to read:

77193. (a) Every six years, beginning in the 1992-93 marketing year, the secretary shall hold a hearing to determine whether operation of this chapter should be continued. If the secretary finds after the hearing that a substantial question exists among the producers assessed under this chapter regarding whether operation of this chapter should be continued, the secretary shall cause a referendum vote to be conducted among producers. If a referendum is required, the operation of this chapter shall continue if the secretary finds that a majority of producers voting in the referendum voted in favor of the continuation of this chapter, and those so voting handled a majority of the total quantity of walnuts handled in the preceding marketing years by all such producers voting in the referendum.

(b) If the secretary finds that a favorable vote has been given, the secretary shall so certify and this chapter shall remain in operation. If the secretary finds that a favorable vote has not been given, the secretary shall so certify and declare the operation of this chapter suspended upon expiration of the then current marketing year.

SEC. 24. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that any modification to the legal structure of specified entities representing producers of walnuts will not deprive those producers of their rights to participate in the activities of the California Walnut Commission, including, but not limited to, serving as members of the commission or participating in votes of the commission, it is necessary that this act take effect immediately.