

AMENDED IN SENATE APRIL 10, 2013

**SENATE BILL**

**No. 250**

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**Introduced by Senator Wolk**

February 12, 2013

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An act to add Chapter 29 (commencing with Section 79800) to Part 2 of Division 22 of the Food and Agricultural Code, relating to olive oil, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 250, as amended, Wolk. ~~California Olive Oil Commission.~~  
*Commission of California.*

Under existing law, the Legislature finds and declares that the agricultural and seafood industries are vitally important elements of the state's economy. Existing law provides for various commissions and councils to promote the marketing and production of agricultural or seafood commodities.

This bill would create the ~~California~~ Olive Oil Commission of California in the state government *with a prescribed membership, and would specify the powers, duties, and responsibilities of the commission board of directors. The commission board of directors would be authorized to, among other things, carry out programs of research relating to olive oil and recommend to the Secretary of Food and Agriculture olive oil grades and labeling standards. The bill would authorize the commission to levy an annual assessment, not to exceed a specified amount, on producers, as defined, and would authorize the commission to expand 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 of olive oil 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 under certain circumstances. 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 olive oil is 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.*

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

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

1 SECTION 1. Chapter 29 (commencing with Section 79800)  
 2 is added to Part 2 of Division 22 of the Food and Agricultural  
 3 Code, to read:

4  
 5 CHAPTER 29. ~~CALIFORNIA~~ OLIVE OIL COMMISSION OF  
 6 CALIFORNIA

7  
 8 79800. ~~There is in the state government the California Olive~~  
 9 ~~Oil Commission.~~

10  
 11 Article 1. *Declarations and General Provisions*

12  
 13 79800. *The production and marketing of olive oil constitutes*  
 14 *an important industry of this state which provides substantial and*  
 15 *necessary revenues for the state and employment for its citizens.*

16 79801. *The establishment of the commission is necessary for*  
 17 *the efficient creation and management of the activities authorized*  
 18 *in this chapter. The commission is also necessary to enhance the*  
 19 *competitiveness of the California olive oil industry within the state,*  
 20 *national, and international marketplace.*

21 79802. *The maintenance of the olive oil industry in California*  
 22 *is necessary to ensure the public has a continuous supply of this*  
 23 *important commodity and to ensure the needed levels of income*  
 24 *for those engaged in the olive oil industry of this state are*  
 25 *maintained.*

1 79803. *The production and handling of olive oil produced in*  
2 *this state is hereby declared to be a public interest. This chapter*  
3 *is enacted in the exercise of the police power of this state for the*  
4 *purpose of protecting the health, peace, safety, and general welfare*  
5 *of the people of this state.*

6 79804. *The commission form of administration created by this*  
7 *chapter is uniquely situated to provide those engaged in the*  
8 *production of olive oil the opportunity to avail themselves of the*  
9 *benefits of collective action in the broad fields of olive oil quality*  
10 *research, nutritional research, and grades and labeling standards.*

11 79805. *No action taken by the commission, or by any individual*  
12 *in accordance with this chapter or with rules and regulations*  
13 *adopted under this chapter, shall be deemed a violation of the*  
14 *Cartwright Act (Chapter 2 (commencing with Section 16700) of*  
15 *Part 2 of Division 7 of the Business and Professions Code), the*  
16 *Unfair Practices Act (Chapter 4 (commencing with Section 17000)*  
17 *of Part 2 of Division 7 of the Business and Professions Code), or*  
18 *any rule of statutory or common law against monopolies or*  
19 *combinations in restraint of trade.*

20 79806. *It is hereby declared as a matter of legislative*  
21 *determination that members of the commission are intended to*  
22 *represent and further the interest of the particular industry*  
23 *concerned and that this representation and furtherance is intended*  
24 *to serve the public interest. Accordingly, the Legislature finds that*  
25 *with respect to persons who are elected or appointed to the*  
26 *commission, the particular industry concerned is tantamount to,*  
27 *and constitutes the public generally within the meaning of Section*  
28 *87103 of the Government Code.*

29  
30 *Article 2. Definitions*

31  
32 79811. *Unless the context otherwise requires, the definitions*  
33 *in this article govern the construction of this chapter.*

34 79812. *“Olive oil” means the oil obtained solely from the fruit*  
35 *of the olive tree (Olea europea L.) which is produced in California*  
36 *for commercial purposes.*

37 79813. *“Books and records” means books, records, contracts,*  
38 *documents, memoranda, papers, correspondence, or other written*  
39 *data pertaining to matters relating to the activities subject to this*  
40 *chapter.*

1 79814. “Commission” means the Olive Oil Commission of  
2 California.

3 79815. (a) “Districts” consist of the following:

4 (1) District 1 consists of the Counties of Butte, Del Norte, Glenn,  
5 Humboldt, Lassen, Modoc, Plumas, Shasta, Siskiyou, Tehama,  
6 and Trinity.

7 (2) District 2 consists of the Counties of Amador, Colusa, El  
8 Dorado, Lake, Marin, Mendocino, Napa, Nevada, Placer,  
9 Sacramento, Sierra, Solano, Sonoma, Sutter, Yolo, and Yuba.

10 (3) District 3 consists of the Counties of Alameda, Calaveras,  
11 Contra Costa, Fresno, Imperial, Inyo, Kern, Kings, Los Angeles,  
12 Madera, Mariposa, Merced, Mono, Monterey, Orange, Riverside,  
13 San Benito, San Bernardino, San Diego, San Francisco, San  
14 Joaquin, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara,  
15 Santa Cruz, Stanislaus, Tulare, Tuolumne, and Ventura.

16 (b) The boundaries of a district may be changed and districts  
17 may be added or eliminated by a two-thirds vote of the commission  
18 board of directors, which is concurred in by the secretary, if proper  
19 notice is provided to all persons subject to this chapter prior to  
20 the action. The boundaries need not coincide with county lines.

21 (c) The commission board of directors shall periodically  
22 determine whether the olive oil acreage in any of the districts  
23 varies by more than 20 percent from the olive oil acreage in the  
24 other districts and draw new district lines in the event the variance  
25 exists. This action shall be approved by a two-thirds vote of the  
26 commission board of directors.

27 79816. “Ex officio members” are nonvoting members of the  
28 commission.

29 79817. “Handle” means to engage in the business of a handler.

30 79818. (a) “Handler” means a person who engages, in this  
31 state, in the operation of processing, selling, or marketing olive  
32 oil that he or she has produced or purchased or acquired from a  
33 producer, or that he or she is marketing on behalf of a producer,  
34 whether as owner, agent, employee, broker, or otherwise.

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

1 *pursuant to this chapter shall include identical liability upon each*  
2 *individual director, officer, manager, or member of the corporation*  
3 *or limited liability company.*

4 (c) *“Handler” does not include a retailer.*

5 79819. *“Market” or “marketing” means to sell or otherwise*  
6 *distribute olive oil into commercial channels or trade, resulting*  
7 *in the sale of olive oil.*

8 79820. *“Marketing season” or “fiscal year” are synonymous*  
9 *terms and mean the period beginning July 1 of any year and*  
10 *extending through June 30 of the following year.*

11 79821. *“Producer” means any person that produces or causes*  
12 *to be produced olives that are processed into olive oil in excess of*  
13 *5,000 gallons during the marketing season and that shall, upon*  
14 *request of the commission, provide proof of commodity sale.*

15 79822. *“Secretary” means the Secretary of Food and*  
16 *Agriculture.*

17 79823. *“Advisory committee” means a committee appointed*  
18 *by the secretary from applications received from producers that*  
19 *produce olives that are processed into less than 5,000 gallons of*  
20 *olive oil during the marketing season.*

21

22 *Article 3. Olive Oil Commission of California*

23

24 79831. (a) *There is in the state government the Olive Oil*  
25 *Commission of California. Except as provided in subdivision (d),*  
26 *the commission board of directors shall be composed of the*  
27 *following:*

28 (1) *Six producers, two from each district.*

29 (2) *Three handlers, one from each district.*

30 (3) *One public member who shall be appointed to the*  
31 *commission by the secretary from nominees recommended by the*  
32 *commission board of directors.*

33 (b) *The chair of the advisory committee shall be an ex officio*  
34 *member of the commission board of directors.*

35 (c) *The secretary and other appropriate persons as determined*  
36 *by the commission board of directors shall be ex officio members.*

37 (d) *The commission board of directors may modify the number*  
38 *of producers and handlers who serve on the commission board of*  
39 *directors by a two-thirds vote that is concurred in by the secretary,*

1 *if proper notice is provided to all persons subject to this chapter*  
2 *prior to the action.*

3 *(e) An advisory committee shall meet periodically to review*  
4 *issues affecting the purposes of this chapter and shall advise the*  
5 *commission board of directors. The committee shall consist of*  
6 *seven members who shall each serve three-year terms. The chair*  
7 *of the committee shall be selected by the members.*

8 79832. *(a) The secretary may require the commission to*  
9 *correct or cease any existing activity or function that is determined*  
10 *by the secretary not to be in the public interest or in violation of*  
11 *this chapter.*

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

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

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

31 79833. *The commission or the secretary may bring an action*  
32 *for judicial relief from the secretary's written notice, or from*  
33 *noncompliance by the commission with the written notice, in a*  
34 *court of competent jurisdiction, which may issue a temporary*  
35 *restraining order, permanent injunction, or other applicable relief.*

36 79834. *The commission shall reimburse the secretary for all*  
37 *expenditures incurred by the secretary in carrying out his or her*  
38 *duties and responsibilities under this chapter. However, a court*  
39 *may, if it finds that the secretary acted arbitrarily or capriciously*  
40 *in restricting the activities or functions of the commission, relieve*

1 *the commission of the responsibility for payment of the secretary's*  
2 *legal costs with regard to that action.*

3 79835. *Except for the ex officio members of the commission,*  
4 *each member of the commission board of directors shall have an*  
5 *alternate member elected in the same manner as the member. An*  
6 *alternate member, in the absence of the member for whom he or*  
7 *she is an alternate, shall serve in place of the member. An alternate*  
8 *member may also serve in place of any other absent member of*  
9 *the same classification, producer or handler, if the member's*  
10 *alternate is also absent. However, an alternate member may not*  
11 *serve in place of more than one absent member at a meeting. An*  
12 *alternate member serving in place of a member shall have and be*  
13 *able to exercise all rights, privileges, and powers of the member*  
14 *when serving. In the event of death, removal, resignation, or the*  
15 *disqualification of a member, the alternate for the member, or*  
16 *another alternate of the same classification if the alternate member*  
17 *for the member is absent, shall act as the member until a qualified*  
18 *successor is elected.*

19 79836. *Any vacancy on the commission board of directors,*  
20 *including, but not limited to, the failure of any person elected to*  
21 *the commission board of directors as a member or alternate*  
22 *member to continue in his or her position due to a change in status*  
23 *making him or her ineligible to serve, or due to death, removal,*  
24 *or resignation, shall be filled by the appointment of another person,*  
25 *for the unexpired portion of the term, by a majority vote of the*  
26 *commission board of directors. However, the appointee shall fulfill*  
27 *all the qualifications set forth in this article as required for the*  
28 *office he or she is to occupy. The qualifications of any person to*  
29 *fill a vacancy shall be certified in writing to the secretary. The*  
30 *secretary shall notify the commission if he or she determines that*  
31 *the person is not qualified.*

32 79837. *A producer member or his or her alternate on the*  
33 *commission board of directors shall be an individual, partner, or*  
34 *employee of a producer who has a financial interest in producing,*  
35 *or causing to be produced, olive oil for market. The producer*  
36 *member or his or her alternate shall be in compliance with this*  
37 *section during the entire term of his or her office.*

38 79838. *The public member, or his or her alternate on the*  
39 *commission board of directors, shall have all the powers, rights,*  
40 *and privileges of any other member on the commission board of*

1 *directors. The public member shall not have any financial interest*  
2 *in the olive oil industry but may be an individual who provides*  
3 *services to individuals who do have a financial interest. The public*  
4 *member or his or her alternate shall be in compliance with this*  
5 *section during the entire term of his or her office.*

6 79839. (a) *Except as provided in paragraphs (1) and (2), the*  
7 *term of office of all members of the commission board of directors*  
8 *and alternates, except any ex officio member, shall be three years*  
9 *from the date of their election and until their successors are*  
10 *elected.*

11 (1) *Of the first producer members, one from each district shall*  
12 *serve two years and one from each district shall serve three years.*

13 (2) *Of the first handler members, one shall serve one year, one*  
14 *shall serve two years, and one shall serve three years.*

15 (b) *The determination of the term of each member shall be made*  
16 *by lot at the time of election.*

17 79840. *The commission may sue and be sued and enter into*  
18 *contracts. Copies of its proceedings, records, and acts, when*  
19 *authenticated, shall be admissible in evidence in all courts of the*  
20 *state, and shall be prima facie evidence of the truth of all*  
21 *statements within the proceedings, records, and acts.*

22 79841. *A quorum of the commission board of directors is a*  
23 *majority of the members. Except as otherwise provided in this*  
24 *chapter, the vote of a majority of members present at a meeting*  
25 *at which there is a quorum shall constitute an act of the*  
26 *commission.*

27 79842. *The secretary or his or her representatives shall be*  
28 *notified and may attend each meeting of the commission board of*  
29 *directors and any meetings of a committee established by the*  
30 *commission. However, the secretary is not entitled to attend an*  
31 *executive session of the commission board of directors called for*  
32 *the purpose of discussing potential or actual litigation against the*  
33 *department.*

34 79843. *A member of the commission board of directors or of*  
35 *any committee established by the commission, which may include*  
36 *nonmembers of the commission board of directors, shall not receive*  
37 *a salary. Except for ex officio government members, the members*  
38 *may receive reasonable and necessary traveling expenses and*  
39 *meal allowances, as established by the commission board of*  
40 *directors, for each day spent in actual attendance at, or in traveling*

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

3 79844. If the secretary is required to concur in a decision of  
4 the commission, he or she shall indicate his or her response within  
5 15 working days from notification of the decision. The response  
6 may be a request that additional information be provided.

7 79845. All moneys received by any person from assessments  
8 levied under the authority of this chapter or otherwise received  
9 by the commission shall be deposited in banks designated by the  
10 commission board of directors and shall be disbursed by order of  
11 the commission board of directors through an agent or agents  
12 designated for that purpose. Any authorized agent or agents shall  
13 be bonded by a fidelity bond, executed by a surety company  
14 authorized to transact business in the state, in favor of the  
15 commission, in the amount of not less than twenty-five thousand  
16 dollars (\$25,000).

17 79846. The state shall not be liable for the acts of the  
18 commission or its contracts. Payments of all claims arising by  
19 reason of the administration of this chapter or acts of the  
20 commission shall be limited to the funds collected by the  
21 commission. Members, alternate members of the commission board  
22 of directors, employees, and agents of the commission shall not  
23 be personally liable for the contracts of the commission, and  
24 members, alternate members of the commission board of directors,  
25 and employees of the commission shall not be responsible  
26 individually in any way to a producer, handler, or any other person  
27 for error in judgment, mistakes, or other acts, either of commission  
28 or omission, as principal, agent, or employee, except for his or  
29 her own individual acts of dishonesty or crime. Members and  
30 alternate members of the commission board of directors shall not  
31 be held responsible individually for any act or omission of any  
32 other member or alternate member. The liability of the members  
33 and alternate members of the commission shall be several and not  
34 joint, and a member or alternate member shall not be liable for  
35 the default of any other member or alternate member.

36  
37 Article 4. Powers and Duties

38  
39 79851. The powers and duties of the commission board of  
40 directors shall include, but are not limited to, all of the following:

1 (a) Adopt and from time to time alter, rescind, modify, and  
2 amend bylaws, rules, regulations, and orders for carrying out this  
3 chapter, including rules for appeals from any bylaw, rule,  
4 regulation, or orders. These actions shall not be subject to Chapter  
5 3.5 (commencing with Section 11340) of Part 1 of Division 3 of  
6 Title 2 of the Government Code.

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

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

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

30 (e) Fix the compensation for all employees.

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

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

39 (h) Keep accurate books, records, and accounts of all of its  
40 dealings, which shall be subject to an annual audit by an auditing

1 *firm selected by the commission board of directors with the*  
2 *concurrence of the secretary. The audit shall be made a part of*  
3 *an annual report to all producers of olive oil, and, notwithstanding*  
4 *Sections 9795 and 10231.5 of the Government Code, copies of the*  
5 *audit shall be submitted to the Legislature and the department. In*  
6 *addition, the secretary may, as he or she determines necessary,*  
7 *conduct, or cause to be conducted, a fiscal and compliance audit*  
8 *of the commission.*

9 *(i) Present facts to, and negotiate with, state, federal, and*  
10 *foreign agencies on matters that affect the handling of olive oil.*

11 *(j) Make, in the name of the commission, contracts to render*  
12 *service in formulating and conducting plans and programs, and*  
13 *any other contracts or agreements determined to be necessary for*  
14 *the purposes specified in this chapter.*

15 *(k) Conduct, and contract with others to conduct, research,*  
16 *including the study, analysis, dissemination, and accumulation of*  
17 *information obtained from research or elsewhere with respect to*  
18 *olive oil quality research and nutritional research. In connection*  
19 *with the research, accept contributions of, or to match, private,*  
20 *state, or federal funds that may be available for these purposes,*  
21 *and to employ or make contributions of funds to other persons or*  
22 *state or federal agencies conducting the research.*

23 *(l) Collect information and publish and distribute to producers*  
24 *a bulletin or other communication for dissemination of information,*  
25 *including, but not limited to, crop statistics relating to the olive*  
26 *oil industry.*

27 *(m) Establish an assessment rate to defray operating costs.*

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

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

34 *(p) Investigate and prosecute civil violations of this chapter and*  
35 *file complaints with appropriate law enforcement agencies or*  
36 *officers for suspected criminal violations of this chapter.*

37 *(q) Engage in activities and administer any program authorized*  
38 *in Article 9 (commencing with Section 79901) of this chapter.*

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

4  
5 *Article 5. Implementation and Voting Procedures*  
6

7 79861. (a) *Prior to January 15, 2014, the secretary shall*  
8 *establish a list of producers eligible to vote on the implementation*  
9 *of this chapter. In establishing the list, the secretary shall require*  
10 *that producers of olive oil in California submit their names, mailing*  
11 *addresses, and the volume of olive oil produced during the*  
12 *preceding marketing season. The request for the information shall*  
13 *be in writing. The information shall be filed within 10 days*  
14 *following receipt of the written request for information.*

15 (b) *A producer of olive oil whose name does not appear upon*  
16 *the secretary's list may have his or her name placed on the list by*  
17 *filing with the secretary a signed statement identifying himself or*  
18 *herself as a producer. Failure to be on the list does not exempt the*  
19 *producer from paying assessments under this chapter.*

20 79862. *This chapter, except as necessary to conduct an*  
21 *implementation referendum vote, shall not become operative until*  
22 *the secretary finds at least 40 percent of the total number of*  
23 *producers from the list established by the secretary pursuant to*  
24 *this article participate, and that either of the following occurs:*

25 (a) *Sixty-five percent of the producers who voted in the*  
26 *referendum voted in favor of this chapter, and the producers so*  
27 *voting produced a majority of the total quantity of olive oil*  
28 *produced in the preceding marketing season by all of the producers*  
29 *voting in the referendum.*

30 (b) *A majority of the producers who voted in the referendum*  
31 *voted in favor of this chapter, and the producers so voting produced*  
32 *65 percent or more of the total quantity of olive oil produced in*  
33 *the preceding marketing season by all of the producers voting in*  
34 *the referendum.*

35 79863. *The secretary shall establish a period in which to*  
36 *conduct the referendum which shall not be less than 10 days or*  
37 *more than 60 days in duration and may prescribe additional*  
38 *procedures necessary to conduct the referendum. If the initial*  
39 *period established is less than 60 days, the secretary may extend*

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

3 *79864. Nonreceipt of a ballot shall not invalidate a referendum.*

4 *79865. If the secretary finds that a favorable vote has been*  
5 *given as provided in this article, he or she shall certify the vote*  
6 *and give notice of the vote to all producers whose names and*  
7 *addresses are on file with the secretary.*

8 *79866. If the secretary finds that a favorable vote has not been*  
9 *given as provided in this article, he or she shall certify the vote*  
10 *and declare this chapter inoperative. The secretary may conduct*  
11 *another implementation referendum vote one or more years after*  
12 *the previous vote has been taken.*

13 *79867. (a) Upon certification of the commission, the secretary*  
14 *shall contact all producers and handlers in a manner determined*  
15 *by the secretary for the purpose of nominating and electing persons*  
16 *to the commission board of directors.*

17 *(b) Subsequent to the first selection of members of the*  
18 *commission board of directors, producers and handlers shall be*  
19 *selected pursuant to nomination and election procedures*  
20 *established by the commission board of directors with the*  
21 *concurrence of the secretary.*

22 *79868. Prior to the referendum vote conducted by the secretary*  
23 *pursuant to this article, the proponents of the commission shall*  
24 *deposit with the secretary an amount of funds determined necessary*  
25 *by the secretary to defray the expenses of preparing the necessary*  
26 *lists and information and conducting the vote. Any funds not used*  
27 *for this purpose shall be returned to the proponents of the*  
28 *commission who deposited the funds with the secretary. Upon*  
29 *establishment of the commission, the commission board of directors*  
30 *may reimburse the proponents of the commission for any funds*  
31 *deposited with the secretary and for any legal expenses and costs*  
32 *incurred in establishing the commission.*

33

34 *Article 6. Assessments and Records*

35

36 *79871. (a) The commission board of directors shall, no later*  
37 *than the beginning of each marketing season, or as soon thereafter*  
38 *as possible, establish the assessment to be paid by the producers*  
39 *for the marketing season. The assessment shall not be more than*

1 *twenty-five cents (\$0.25) per gallon for all olive oil handled as*  
2 *specified in this chapter.*

3 *(b) An assessment greater than the amounts in this section shall*  
4 *not be charged unless it is approved in accordance with the voting*  
5 *requirements provided in Section 79862.*

6 *79872. This chapter does not apply to olive oil produced only*  
7 *for a producer's home use.*

8 *79873. Handlers of olive oil shall keep a complete and accurate*  
9 *record of all olive oil handled by them with the name of the*  
10 *producer or producers whose olive oil was handled. A producer*  
11 *that delivers or markets olive oil to persons other than to a handler*  
12 *shall keep a complete and accurate record of all that olive oil. The*  
13 *records shall contain information required by the commission.*  
14 *The records shall be preserved by the producer or handler for a*  
15 *period of two years and shall be offered and submitted for*  
16 *inspection at any reasonable time upon written demand by the*  
17 *commission or its duly authorized agent.*

18 *79874. (a) All proprietary information obtained by the*  
19 *commission or the secretary from any source, including the names*  
20 *and addresses of producers, shall be confidential and shall not be*  
21 *disclosed except if required by court order in a judicial proceeding.*

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

28 *79875. The first handler of olive oil being assessed shall deduct*  
29 *the assessment from amounts paid by him or her to the producer,*  
30 *and shall be a trustee of the funds until they are paid to the*  
31 *commission at the time and in the manner prescribed by the*  
32 *commission. A producer who handles olive oil shall pay an*  
33 *assessment directly to the commission at the time and in the manner*  
34 *prescribed by the commission board of directors.*

35 *79876. 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 *79877. An assessment that is levied as provided in this chapter*  
40 *is a personal debt of the producer assessed.*

1 79878. (a) A person who fails to file a return or pay an  
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 a person who fails to pay an 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 board of directors as assurance that all payments  
11 to the commission will be made when due.

12  
13 Article 7. Actions and Penalties  
14

15 79881. A civil penalty not exceeding one thousand dollars  
16 (\$1,000) may be levied by the commission upon a person who does  
17 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 olive oil in order to avoid payment of  
21 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 producing or handling of olive oil, to  
25 fail or refuse to furnish to the commission or its duly authorized  
26 agents, upon request, information concerning the name and address  
27 of the persons from whom he or she has received olive oil and the  
28 quantity so received.

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

31 79882. For purposes of according individuals aggrieved by  
32 its actions or determinations, the commission board of directors  
33 shall establish procedures for an informal hearing before the  
34 commission or before a committee of the commission established  
35 for this purpose. Appeals from the decision of the commission  
36 board of directors may be made to the secretary. The determination  
37 of the secretary shall be subject to judicial review upon petition  
38 filed with the appropriate superior court.

39 79883. (a) The commission may commence civil actions and  
40 utilize all remedies provided in law or equity for the collection of

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

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

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

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

30 79884. Any action by the commission for any penalty or other  
31 remedy that is prescribed under this chapter shall be commenced  
32 within two years from the date of discovery of the alleged violation.  
33 Any action against the commission by any person shall be  
34 commenced within two years from the date of the alleged violation.

35 79885. The commission shall not be required to allege or prove  
36 that an adequate remedy at law does not exist in any action brought  
37 under this chapter.

38 79886. This chapter shall be liberally construed. If any section,  
39 clause, or part of this chapter is for any reason held  
40 unconstitutional or invalid as applied to any person or as applied

1 *under certain circumstances, that decision shall not affect the*  
2 *remaining portions of this chapter or the application of this chapter*  
3 *to any other persons or under any other circumstance.*

4 79887. *The termination of this chapter shall not affect or waive*  
5 *any right, duty, obligation, or liability that has arisen or that may*  
6 *thereafter arise in connection with this chapter; release or*  
7 *extinguish any violation of this chapter; or affect or impair any*  
8 *right or remedies of the commission with respect to any violation.*

9  
10 *Article 8. Continuation or Suspension and Termination*

11  
12 79891. (a) *Five years after implementation of this chapter,*  
13 *the secretary shall hold a public hearing, after providing proper*  
14 *notice to all persons subject to this chapter and any other persons*  
15 *or entities who have requested, in writing, notice of the hearing,*  
16 *to determine whether the operation of this chapter should be*  
17 *continued. If the secretary finds after the hearing that a substantial*  
18 *question exists among the persons assessed under this chapter*  
19 *regarding whether the operation of this chapter should be*  
20 *continued, the secretary shall submit the chapter to a reapproval*  
21 *referendum to be conducted among producers to determine whether*  
22 *the operation of this chapter shall be reapproved and continued*  
23 *in effect.*

24 (b) *If the secretary finds after conducting a hearing that no*  
25 *substantial question exists or, if a reapproval referendum is*  
26 *required, that a majority of the eligible producers voting in the*  
27 *referendum voted in favor of continuing the operation of this*  
28 *chapter, the secretary shall certify the vote and this chapter shall*  
29 *remain operative. If the secretary finds that a favorable vote has*  
30 *not been given, he or she shall certify the vote and declare the*  
31 *operation of this chapter suspended upon the expiration of the*  
32 *current marketing season. Thereupon, the operations of the*  
33 *commission shall be concluded and funds distributed in the manner*  
34 *provided in Section 79894. A bond or security shall not be required*  
35 *for the referendum.*

36 79892. *Following a hearing, and favorable referendum if*  
37 *required, the process specified in Section 79891 shall be conducted*  
38 *by the secretary every five years thereafter between July 1 and*  
39 *June 30 of the following year, unless a referendum is conducted*  
40 *as the result of a petition pursuant to Section 79893. In that case,*

1 *the hearing, and referendum if required, shall be conducted every*  
2 *five years following the industry petitioned referendum.*

3 79893. (a) *Upon a finding by a two-thirds vote of the*  
4 *commission board of directors that the operation of this chapter*  
5 *has not tended to effectuate its declared purposes, the commission*  
6 *may recommend to the secretary that the commission be suspended.*  
7 *Any suspension shall not become effective until expiration of the*  
8 *current marketing season.*

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

19 (c) *The secretary shall establish a referendum period, which*  
20 *shall not be less than 10 days or more than 60 days in duration.*  
21 *The secretary may prescribe additional procedures necessary to*  
22 *conduct the referendum. At the close of the established referendum*  
23 *period, the secretary shall tabulate the ballots filed during the*  
24 *period. The secretary shall suspend the operation of this chapter,*  
25 *if the secretary finds at least 40 percent of the total number of*  
26 *producers from the list established by the secretary participate,*  
27 *and that either of the following occurs:*

28 (1) *Sixty-five percent of the producers that voted in the*  
29 *referendum voted in favor of suspension, and the producers so*  
30 *voting produced a majority of the total quantity of olive oil*  
31 *produced in the preceding marketing season by all of the producers*  
32 *voting in the referendum.*

33 (2) *A majority of the producers that voted in the referendum*  
34 *voted in favor of suspension, and the producers so voting produced*  
35 *65 percent or more of the total quantity of olive oil produced in*  
36 *the preceding marketing season by all of the producers voting in*  
37 *the referendum.*

38 79894. *After the effective date of suspension of this chapter,*  
39 *the operations of the commission shall be concluded and all moneys*  
40 *held by the commission, and moneys collected by assessment and*

1 *not required to defray the expenses of concluding and terminating*  
2 *operations of the commission, shall be returned upon a pro rata*  
3 *basis to all persons from whom assessments were collected in the*  
4 *immediately preceding marketing season. However, if the*  
5 *commission board of directors finds that the amounts returnable*  
6 *are so small as to make impractical the computation and remitting*  
7 *of the pro rata refund to those persons, any moneys remaining*  
8 *after payment of all expenses of winding up and terminating*  
9 *operations shall be withdrawn from the approved depository and*  
10 *paid into an appropriate state or federal program or used to fund*  
11 *activities related to the subject matter of this chapter.*

12 79895. *Upon suspension of the operation of this chapter, the*  
13 *commission shall mail a copy of the notice of suspension to all*  
14 *producers affected by the suspension whose names and addresses*  
15 *are on file.*

16

17

Article 9. *Quality Standards*

18

19 79901. *The commission board of directors may recommend to*  
20 *the secretary the adoption of olive oil grades and labeling*  
21 *standards, the amendment of the standards when appropriate, and*  
22 *the adoption of inspection procedures, enforcement, and fees*  
23 *associated with the activity in accordance with the California*  
24 *Marketing Act of 1937 (Chapter 1 (commencing with Section*  
25 *58601) of Part 2 of Division 21), unless otherwise specified in this*  
26 *article.*

27 79902. *Grades and standards adopted pursuant to this article*  
28 *shall be implemented by the secretary at the beginning of the*  
29 *marketing season following the date on which the activity is*  
30 *approved by the secretary.*

31 79903. *The commission shall serve as the advisory body to the*  
32 *secretary on all matters pertaining to this article.*

O