

STATE OF CALIFORNIA
DEPARTMENT OF FOOD AND AGRICULTURE
MARKETING BRANCH



CALIFORNIA AVOCADO COMMISSION LAW

Chapter 5 of Part 2, Division 22 of the
California Food and Agricultural Code

Established January 1, 1978 and Including
Amendments Made Effective through January 1, 2018

CALIFORNIA AVOCADO COMMISSION LAW

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ARTICLE 1. Declaration and General Provisions

67001.

Avocados produced in this state constitute one of the state's principal tree fruit crops. The avocado industry in this state is expanding. The industry constitutes an important source of jobs for many people in the state, a high proportion of whom are from underprivileged and historically deprived segments of the population.

67002.

Opportunity exists for continued growth and expansion of the industry, by creating new markets. The success of an expansion program is uniquely dependent upon effective advertising, promotion, and collection and dissemination of public information, since the creation of new markets is essentially a matter of educating and informing people of the use, nutritional value, and availability of avocados.

(Amended by Stats. 2015, Ch. 307, Sec. 1. Effective January 1, 2016.)

67003.

The establishment of a commission is imperative for the efficient development and management of a national and international advertising program which will ensure that the California avocado industry can compete successfully in the marketplace and increase revenues to avocado producers.

(Amended by Stats. 2002, Ch. 946, Sec. 3. Effective January 1, 2003.)

67004.

The production and marketing of avocados produced in this state is hereby declared to be affected with public interest. The provisions of this chapter are 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.

67005.

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

(Amended by Stats. 2002, Ch. 946, Sec. 4. Effective January 1, 2003.)

67006.

No action taken by the commission, or by any person in accordance with this chapter or with rules or regulations adopted under this chapter, is 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 that Part 2), or any statutory or common law against monopolies or combinations in restraint of trade.

(Amended by Stats. 2002, Ch. 946, Sec. 5. Effective January 1, 2003.)

ARTICLE 2. Definitions

67021.

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

67022.

“Avocado” means any variety of avocado produced in the state, including any avocado delivered to a processor for processing into any avocado product.

67023.

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

(Amended by Stats. 1979, Ch. 373.)

67025.

“Commission” means the California Avocado Commission.

67028.

(a) (1) “Handler” means any person who engages, in this state, in the operation of selling, marketing, or distributing avocados which he or she has produced or purchased or acquired from a producer, or which he or she is marketing on behalf of a producer, whether as owner, agent, employee, broker, or otherwise.

(2) “Handler” also includes any person engaged as a processor in the business of processing avocados.

(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) (1) “Handler” does not include a cooperative bargaining association that recommends that its members market their avocados through specified handlers and which otherwise is not involved in the sale of avocados.

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

(Amended by Stats. 2002, Ch. 946, Sec. 9. Effective January 1, 2003.)

67030.

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

(Amended by Stats. 2002, Ch. 946, Sec. 10. Effective January 1, 2003.)

67034.

“Marketing research” means any research relating to the sale or inventory of avocados.

(Amended by Stats. 1983, Ch. 1279, Sec. 4.)

67035.

“Marketing season” or “fiscal year” means the period beginning November 1 of any year and extending through the last day of October of the following year.

67036.5.

“Person” means an individual, partnership, corporation, limited liability company, or other business entity.

(Amended by Stats. 2002, Ch. 946, Sec. 16. Effective January 1, 2003.)

67037.

“Processor” means any person engaged, within this state, in any of the activities with respect to avocados as set forth in Section 58619.

67038.

“Process” means to engage in the business of a processor.

67039.

“Producer” or “grower” means any person who is engaged within this state in the business of producing, or causing to be produced, avocados for market. “Producer” or “grower” does not include any person who has an average annual production of less than 10,000 pounds of avocados in the three preceding marketing years.

(Amended by Stats. 2016, Ch. 451, Sec. 4. Effective January 1, 2017)

67040.

“Production research” means any research related to the production of avocados other than marketing research.

67040.5.

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

(Added by Stats. 2002, Ch. 946, Sec. 18. Effective January 1, 2003.)

ARTICLE 2.5. Districts

(Article 2.5 added by Stats. 1980, Ch. 721.)

67041.

The commission shall establish no fewer than three districts and no more than five districts within the state, each representing approximately the same percentage of avocado production in California.

(Amended by Stats. 2015, Ch. 307, Sec. 2. Effective January 1, 2016.)

67042.

Beginning in the 2000–01 marketing season, districts shall be reapportioned every fifth year in accordance with redistricting procedures adopted by a two-thirds vote of the commission and concurred in by the secretary.

(Amended by Stats. 2015, Ch. 307, Sec. 3. Effective January 1, 2016.)

ARTICLE 3. The California Avocado Commission

67051.

(a) There is in the state government the California Avocado Commission.

(b) The commission shall be composed of the following members:

(1) (A) If the commission consists of three districts, nine producers who are not handlers, three elected from each district.

(B) If the commission consists of four districts, eight producers who are not handlers, two elected from each district.

(C) If the commission consists of five districts, 10 producers who are not handlers, two elected from each district.

(2) Two avocado handlers elected on a statewide basis.

(3) One public member who shall be appointed to the commission by the secretary from nominees recommended by the commission.

(4) The secretary who shall be a nonvoting ex officio member of the commission.

(Amended by Stats. 2016, Ch. 451, Sec. 5. Effective January 1, 2017)

67051.5.

The secretary may require the commission to correct or cease any activity or function which is determined by the secretary not to be in the public interest or is in violation of this chapter.

If the commission refuses or fails to cease the 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 of the commission until the time that the cessation or correction of activities or functions as required by the secretary have been accomplished.

Any written notice, to cease any activity which is the subject of a contract of the commission entered into by the commission prior to the notice, shall not be effective until after the period of notice for termination provided in the contract or 120 days, whichever is shorter.

Upon service of the written notice, the secretary shall notify the commission in writing, of the specific acts which he or she determines are not in the public interest or are in violation of this chapter.

(Amended by Stats. 2002, Ch. 946, Sec. 26. Effective January 1, 2003.)

67051.6.

Either the commission or the secretary may bring an action for judicial relief in a court of competent jurisdiction, which may issue a temporary restraining order, permanent injunction, or other applicable relief.

(Amended by Stats. 2002, Ch. 946, Sec. 27. Effective January 1, 2003.)

67052.

(a) Each district shall have one alternate producer member, to be elected in the same manner as producer members.

(b) The alternate producer member shall, in the absence of a producer member from the same district, sit in place of the absent producer member on the commission and shall have, and be able to exercise, all the rights, privileges, and powers of the producer member when sitting on the commission.

(Amended by Stats. 2016, Ch. 451, Sec. 7. Effective January 1, 2017)

67052.3.

(a) There shall be one alternate handler member to be elected in the same manner as the handler members.

(b) The alternate handler member shall, in the absence of a handler member, sit in place of the absent handler member on the commission and shall have, and be able to exercise, all the rights, privileges, and powers of the handler member when sitting on the commission.

(Amended by Stats. 2016, Ch. 451, Sec. 8. Effective January 1, 2017)

67052.5.

(a) There shall be one alternate public member who shall be appointed by the secretary from nominees recommended by the commission.

(b) The alternate public member shall, in the absence of the public member, sit in place of the absent public member on the commission and shall have, and be able to exercise, all the rights, privileges, and powers of the public member when sitting on the commission.

(Amended by Stats. 2002, Ch. 946, Sec. 26. Effective January 1, 2003.)

67053.

(a) Any vacancy on the commission occurring by 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 through death, removal, or resignation, shall be filled, for the unexpired portion of the term, by a majority vote of the commission.

(b) Any person filling a vacant member or alternate 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.

(Amended by Stats. 2016, Ch. 451, Sec. 9. Effective January 1, 2017)

67054.

(a) Producer members and alternate producer members on the commission shall have a financial interest in producing, or causing to be produced, avocados for market. In order to be elected a member or alternate member, a producer shall, at the time of the election, have a financial interest in the production of avocados within the district in which the producer stands for election.

(b) A producer may stand for election in any district in which the producer has a financial interest in the production of avocados.

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(c) Handler members and the alternate handler members shall have a financial interest in handling avocados for markets. To be nominated and elected, a handler or alternate handler shall handle no less than 1 percent of the total industry volume of avocados in the preceding marketing year. Any handler elected to the commission pursuant to this section shall be required to maintain his or her eligibility under this section during his or her entire term of office.

(d) The public member shall not have any financial interest in the avocado industry. Except for the nomination of another public member, the public member and his or her alternate member on the commission shall have all the powers, rights, and privileges of any other member on the commission.

(Amended by Stats. 2016, Ch. 451, Sec. 10. Effective January 1, 2017)

67055.

(a) Except as specified in subdivision (b), the term of office of all members and alternate members, except the ex officio member, shall be for two years from the date of their election or appointment and until their successors are qualified.

(b) Of the first members of the commission from each district, one shall serve for one year, and the remaining member or members shall serve for two years, with the determination of the term of each member to be made by lot. Subsequent to the election of the first members from each district, the terms of the members shall continue to be staggered, as provided in this subdivision.

(c) Terms of office of each member and alternate member shall be limited to four consecutive terms.

(Amended by Stats. 2015, Ch. 307, Sec. 12. Effective January 1, 2016.)

67056.

The commission shall have the power to sue and be sued and to contract and be contracted with. Copies of its proceedings, records, and acts, when certified by an officer, are admissible in evidence in all courts of the state, and are prima facie evidence of the truth of all statements therein.

(Amended by Stats. 2015, Ch. 307, Sec. 13. Effective January 1, 2016.)

67057.

The commission may appoint its own officers, including a chairman, one or more vice chairmen, and such other officers as it deems necessary. The officers shall have the powers and duties as may be delegated to them by the commission.

67058.

The commission shall have the power to appoint committees composed of both members and nonmembers of the commission to advise the commission in carrying out this chapter.

(Amended by Stats. 2002, Ch. 946, Sec. 35. Effective January 1, 2003.)

67059.

Unless otherwise specified, a quorum of the commission shall be any nine voting members if the commission consists of three or four districts and any 10 voting members if the commission consists of five districts. The vote of a majority of members present at a meeting at which there is a quorum shall constitute the act of the commission.

(Amended by Stats. 2016, Ch. 451, Sec. 11. Effective January 1, 2017)

67059.5.

The secretary or his or her representatives shall be notified and may attend each meeting of the commission.

(Amended by Stats. 2002, Ch. 946, Sec. 37. Effective January 1, 2003.)

67060.

A member, alternate member, or member of a committee who is a nonmember of the commission shall not receive a salary, but may receive a sum of not to exceed one hundred dollars (\$100) per day, 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 authorized assignment for the commission, together with the necessary traveling expenses and meal allowances, as approved by the commission.

(Amended by Stats. 2015, Ch. 307, Sec. 15. Effective January 1, 2016.)

67061.

All moneys received by any person from the assessments levied under the authority of this chapter or otherwise received by the commission, shall be deposited in such financial institutions as the commission may designate and shall be disbursed by order of the commission through a member, officer, or employee designated for that purpose. Any such person shall be bonded by a fidelity bond, executed by a surety company authorized to transact business as such in the State of California, in favor of the commission, conditioned upon the strict accounting of all funds of the commission in the penal sum of not less than five hundred thousand dollars (\$500,000).

(Amended by Stats. 2002, Ch. 946, Sec. 39. Effective January 1, 2003.)

67062.

The state is not liable for the acts of the commission or its contracts, except for state-directed supervision of the avocado inspection program, as specified in Chapter 9 (commencing with Section 44971) of Division 17, which is performed under an agreement that specifies that each of the parties shall be responsible and liable for that party's decisions made pursuant to the agreement, and that each of the parties shall not be held liable by the other party for the decisions made pursuant to the agreement. Payment 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 of the commission or alternate member, or any employee or agent thereof, shall be personally liable on the contracts of the commission nor shall a member, alternate member, or employee of the commission be responsible individually in any way to any producer or 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 of the commission. The liability of the members shall be several and not joint, and no member shall be liable for the default of any other members.

(Amended by Stats. 2002, Ch. 946, Sec. 40. Effective January 1, 2003.)

ARTICLE 4. Voting Procedures

67081.

(a) The secretary shall establish a list of producers in each district. In establishing the lists, the secretary shall require that handlers in the state submit the names, mailing addresses, grove location, and handled volume of each producer from whom they purchased or handled avocados in the preceding marketing season. The request for information from handlers shall be in writing and shall be filed by the handlers within 60 days following receipt of the written request.

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

(Amended by Stats. 2016, Ch. 451, Sec. 12. Effective January 1, 2017)

67082.

Subsequent to the first election of members under this chapter, persons to be elected to the commission shall be selected pursuant to nomination and election procedures adopted by the commission and concurred in by the secretary.

(Amended by Stats. 2002, Ch. 946, Sec. 42. Effective January 1, 2003.)

ARTICLE 5. Duties and Powers of the Commission

67091.

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

(a) Adopt and, from time to time, alter, rescind, modify, and amend all proper and necessary rules, procedures, and orders to carry out this chapter and in the exercise of its powers and the performance of its duties, including the adoption of rules to regulate appeals from any rule, procedure, or order of the commission.

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

(c) 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.

(d) Establish offices, incur expenses, enter into any and all contracts and agreements, and create liabilities and borrow funds in advance of receipt of assessments that may be necessary, at the discretion of the commission, for the proper administration and enforcement of this chapter and the performance of its duties.

(e) Keep accurate books, records, and accounts of all of its dealings, which books, records, and accounts are subject to an annual independent audit by an auditing firm approved by the secretary. The independent audit shall be made a part of an annual report to all producers and handlers of avocados, copies of which shall also be submitted to the Legislature. 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.

(f) Promote the sale of avocados by advertising and other promotional means for the purpose of maintaining and expanding present markets and creating new and larger intrastate, interstate, and foreign markets for avocados and to educate and instruct the public with respect to avocados and the uses of the several varieties and the healthful properties and nutritional value of avocados.

(g) Enter into cost-sharing advertising with other products considered, by the commission, to be fair and equitable to both parties.

(h) Educate and instruct the wholesale and retail trade with respect to proper methods of handling and selling avocados; arrange for the performance of dealer service work providing display and other promotional materials; make market and inventory surveys and analyses; present facts to and negotiate with state, federal, and foreign agencies on matters which affect the avocado industry; and undertake any other activities which the commission may determine appropriate for the maintenance and expansion of present markets and the creation of new markets for avocados.

(i) Make, in the name of the commission, contracts to render service in formulating and conducting plans and programs, and any other contracts or agreements that the commission may deem necessary for the promotion of the sale of avocados.

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(j) Conduct and contract with others to conduct scientific research, including the study, analysis, dissemination, and accumulation of information obtained from the research or elsewhere respecting the inventory, marketing, and distribution of avocados. The results of any research conducted by or on behalf of the commission may be used by the commission in any way it deems appropriate, and notwithstanding any other provision of law, may be maintained in confidence by the commission and not disseminated to any person not subject to this chapter.

(k) Accept and match contributions of private, local, state, or federal funds and make contributions of commission funds to other persons or to local, state, or federal agencies for purposes of promoting, enhancing, and maintaining the California avocado industry.

(l) Publish and distribute without charge, a bulletin or other communication for dissemination of information relating to inventory, marketing, and other information of value to the commission and the avocado industry to producers, handlers, and the public.

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

(n) Establish an annual budget.

(o) 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.

(p) Carry out the requirements prescribed in Chapter 9 (commencing with Section 44971) of Division 17.

(q) To provide to the secretary, on a quarterly basis, a summary of the programs, activities, and costs under review for the next marketing season.

(r) Require producers to provide information as determined by the commission pertaining to the locations at which avocados are produced and the annual volume of avocados produced at each location. The information shall be provided in a time and manner prescribed by the commission and shall be subject to the confidentiality provisions of Section 67104.

(s) Utilize information provided to the commission for the purposes of food safety, communications, reapportionment of districts, and the conduct of elections and referenda. *(Amended by Stats. 2011, Ch. 322, Sec. 2. Effective January 1, 2012.)*

67094.

(a) To prevent unfair trade practices which are detrimental to California's avocado 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., market price information based on sales which 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.

(Amended by Stats. 2002, Ch. 946, Sec. 46. Effective January 1, 2003.)

67095.

In order to avoid excessive administrative charges which adversely impact avocado producers, handlers, and consumers, the commission may decide, not later than February 1 of any year, to exercise its authority prescribed in Chapter 9 (commencing with Section 44971) of Division 17 during the next succeeding marketing season.

(Added by Stats. 1985, Ch. 953, Sec. 10. Effective September 26, 1985.)

ARTICLE 6. Assessments and Records

67101.

The commission shall, not later than November 1 of each year, establish the assessment for the following marketing season beginning November 1st and ending October 31st. In no event shall the assessment exceed $6\frac{1}{2}$ percent of the gross dollar value of the year's sales of avocados by all producers to handlers, or which are sold by handlers on behalf of producers. Expenditures for administrative purposes within the maximum assessment shall not exceed $2\frac{1}{2}$ percent of the gross dollar value of sales of avocados by all producers to handlers, or which are sold by handlers on behalf of producers. Assessments provided for in this section shall be upon the producer. The handler shall deduct that assessment from either amounts paid by him or her to the producer or amounts retained by him or her if the handler is also the producer, and the handler shall be a trustee of those funds until they are paid to the commission at the time and in the manner prescribed by the commission.

In no event shall the combined assessment of the commission and any state marketing order exceed $6\frac{1}{2}$ percent of the gross value of the year's sales of avocados by all producers to handlers, or which are sold by handlers on behalf of producers.

(Amended by Stats. 2002, Ch. 946, Sec. 47. Effective January 1, 2003.)

67102.

This chapter does not apply to producers who produce avocados on a noncommercial basis for the producer's home use or where the avocado trees are used only for ornamental purposes. Producers from whom assessments are collected may apply for the refund of assessment payments following the close of any marketing season in which payments have been made, and the commission shall refund assessment payments if the producer demonstrates to the satisfaction of the commission that the avocados were produced for noncommercial purposes.

(Amended by Stats. 2002, Ch. 946, Sec. 48. Effective January 1, 2003.)

67103.

Handlers shall keep a complete and accurate record of all avocados shipped by him or her and the name of the producer whose avocados were shipped. The records shall be in simple form and contain such information as the commission shall prescribe. The records shall be preserved by the 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.

(Amended by Stats. 2002, Ch. 946, Sec. 49. Effective January 1, 2003.)

67104.

All the proprietary information obtained by the commission or the secretary from handlers, including, but not limited to, the names and addresses of producers, is confidential and shall not be disclosed except when required by a court order in a judicial proceeding involving this chapter. Information on volume shipments, inventory, crop value, and any other information which is required for reports to governmental agencies and the commission, and other information which the handlers request from the commission that gives only totals, excluding individual handler

information, may be disclosed by the commission so long as the information excludes individual handler data which shall be kept confidential as provided in this section.

(Amended by Stats. 2002, Ch. 946, Sec. 50. Effective January 1, 2003.)

67105.

All assessments shall be paid to the commission by the handler first handling avocados who shall be primarily and personally liable for the payment of the assessment. Failure of the handler to collect the assessment from any producer shall not exempt the handler from that primary liability. Any producer or handler subject to this section who fails to file a return or pay any assessment within the time required shall pay to the commission a penalty of 10 percent of the amount of the assessment determined to be due, and, in addition, 1¹/₂-percent interest per month on the unpaid balance.

(Amended by Stats. 2002, Ch. 946, Sec. 51. Effective January 1, 2003.)

67107.

The commission shall reimburse the secretary for all expenditures incurred by the secretary carrying out his or her duties and responsibilities under this chapter, except for the expenses incurred for any action under Section 67051.6.

(Amended by Stats. 2002, Ch. 946, Sec. 53. Effective January 1, 2003.)

ARTICLE 7. Actions and Penalties

67111.

It shall be a misdemeanor punishable by imprisonment in the county jail not exceeding six months, by a fine not exceeding five thousand dollars (\$5,000), or by both the fine and imprisonment, for any person to do any of the following:

- (a) Willfully to render or furnish a false report, statement, or record required by the commission.
- (b) Willfully fail to render or furnish a report, statement, or record required by the commission.
- (c) Secrete, destroy, or alter records required to be kept under this chapter.

(Amended by Stats. 2002, Ch. 946, Sec. 54. Effective January 1, 2003.)

67112.

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 that 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 a petition filed with the appropriate superior court.

(Amended by Stats. 2002, Ch. 946, Sec. 55. Effective January 1, 2003.)

67112.5.

(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 to obtain injunctive relief or specific performance, with respect to this chapter and the rules and regulations adopted under this chapter.

(b) 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.

(c) 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 by 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.

(d) 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 avocados until there is full compliance with and satisfaction of the judgment.

(e) The commission is entitled, upon a favorable judgment for the commission, to receive reimbursement for any reasonable attorney's fees and other actual related costs incurred in any action commenced by the commission for the enforcement of this chapter. Venue for actions commenced by the commission may be established 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.

(Added by Stats. 2002, Ch. 946, Sec. 56. Effective January 1, 2003.)

67113.

It is not necessary for the commission to allege or prove that an adequate remedy at law does not exist in any action brought under this chapter.

(Added by Stats. 1983, Ch. 1279, Sec. 14.)

67114.

This chapter shall be liberally construed. If any section, clause, or part of this chapter is for any reason held to be 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.0

(Added by Stats. 1983, Ch. 1279, Sec. 15.)

ARTICLE 8. Implementation, Continuation, or Suspension and Termination

67121.

This chapter, except as necessary to conduct such vote, shall not become operative until the secretary finds, in a referendum conducted by the secretary in which at least 40 percent of the total number of producers, from the list established by the secretary, producing at least 40 percent of the total volume of avocados marketed during the last completed marketing season participate, either one of the following:

(a) Sixty-five percent or more of the producers certified by the secretary who voted in the referendum, voted in favor of this chapter, and the producers so voting marketed 51 percent or more of the total quantity of avocados marketed in the preceding marketing season by all of the producers who voted in the referendum.

(b) Fifty-one percent or more of the producers who voted in the referendum voted in favor of this chapter and the producers so voting marketed 65 percent or more of the total quantity of avocados marketed in the preceding marketing season by all of the producers who voted in the referendum.
(Amended by Stats. 2002, Ch. 946, Sec. 57. Effective January 1, 2003.)

67122.

The secretary shall establish a period in which to conduct the referendum which shall not be less than 10 days nor more than 60 days in duration, and may prescribe any additional procedure as may be necessary to conduct the referendum.

(Amended by Stats. 2002, Ch. 946, Sec. 59. Effective January 1, 2003.)

67123.

Nonreceipt of a ballot shall not invalidate the referendum.

(Amended by Stats. 2002, Ch. 946, Sec. 60. Effective January 1, 2003.)

67124.

If the secretary finds that a favorable vote has been given as provided in Section 67122, he or she shall certify and give notice of that favorable vote to all producers and handlers whose names and addresses may be on file with the secretary. This chapter shall become operative on the 15th day after certification by the secretary and publication to producers and handlers.

(Amended by Stats. 2002, Ch. 946, Sec. 61. Effective January 1, 2003.)

67125.

If the secretary finds that assent has not been given as provided in Section 67121, he or she shall so certify and declare all provisions of this chapter inoperative.

(Amended by Stats. 2002, Ch. 946, Sec. 62. Effective January 1, 2003.)

67126.

Prior to holding the referendum, sureties shall post a bond or security, acceptable to the secretary, in an amount which the secretary shall determine to be sufficient to pay the cost of the referendum should the election determine that the operation of this chapter is to be suspended.

(Amended by Stats. 2002, Ch. 946, Sec. 63. Effective January 1, 2003.)

ARTICLE 9. Continuation and Suspension and Termination

67131.

Between November 1, 1980, and October 31, 1981, and every fifth year thereafter, the secretary shall cause a referendum to be conducted by the commission among producers to determine whether this chapter shall be reapproved and continued in effect. The operations of this chapter shall be reapproved and continued in effect if the secretary finds that a majority of the eligible growers voting in the referendum voted in favor of continuing the operations of this chapter. If the secretary finds that a favorable vote has been given, he or she shall so certify and this chapter shall remain effective. If the secretary finds that a favorable vote has not been given, he or she shall so certify and declare this chapter and the commission suspended upon the expiration of the then-current marketing season. Thereupon, the operations of the commission shall be wound up and funds distributed in the manner provided in Section 67133. No bond or security shall be required for the referendum.

(Amended by Stats. 2002, Ch. 946, Sec. 64. Effective January 1, 2003.)

67132.

Upon the finding of nine voting members of the commission if the commission consists of three or four districts, or of 10 voting members of the commission if the commission consists of five districts, that this chapter has not tended to effectuate its declared purposes, the commission may recommend to the secretary that the operations of the commission shall be suspended, provided that the suspension shall not become effective until the expiration of the current marketing season. The secretary shall, upon receipt of the recommendation, or upon a petition filed with him or her requesting the suspension, signed by 15 percent of the producers by number who produced not less than 15 percent of the volume in the immediately preceding year, cause a referendum to be conducted among the listed producers to determine if the operation of this chapter and the operations of the commission shall be suspended, and shall establish a referendum period, which shall not be less than 10 days nor more than 60 days in duration. The secretary is authorized to prescribe any additional procedure necessary to conduct the referendum. At the close of the established referendum period, the secretary shall tabulate the ballots filed during the period. If at least 40 percent of the total number of producers, on a list established by the secretary marketing 40 percent of the total volume marketed by all producers during the last completed marketing season, participate in the referendum, the secretary shall suspend this chapter upon the expiration of the current marketing season, if he or she finds either one of the following:

(a) Sixty-five percent or more of the producers who voted in the referendum voted in favor of the suspension, and the producers so voting marketed 51 percent or more of the total quantity of avocados marketed in the preceding marketing season by all of the producers who voted in the referendum.

(b) Fifty-one percent or more of the producers who voted in the referendum voted in favor of suspension, and the producers so voting marketed 65 percent or more of the total quantity of avocados marketed in the preceding season by all of the producers who voted in the referendum.

(Amended by Stats. 2017, Ch. 561, Sec. 66. Effective January 1, 2018)

67133.

After the effective date of suspension of this chapter and of the commission, the operations of the commission shall be wound up, and any asset of the commission shall be liquidated and the proceeds, along with any and all moneys remaining held by the commission, collected by assessment and not required to defray the expenses of winding up 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 so returnable are so small as to make impractical the computation and remitting of a pro rata refund to those persons, any moneys remaining after payment of all expenses of winding up and terminating operations shall be withdrawn from the approved depository and paid to any existing state or federally authorized avocado program. If no program exists, the moneys shall be paid into the State Treasury as unclaimed trust moneys.

(Amended by Stats. 2002, Ch. 946, Sec. 68. Effective January 1, 2003.)

67134.

Upon suspension of this chapter and the commission, a notice shall be issued by the secretary, and a copy of the notice shall be published in a newspaper of general circulation in each district. The commission shall provide a copy of the notice of suspension to all producers and handlers affected by the suspension whose names and addresses are on file.

(Amended by Stats. 2015, Ch. 307, Sec. 17. Effective January 1, 2016.)

ARTICLE 10. Quality Standards

(Article 10 added by Stats. 1985, Ch. 953, Sec. 11.)

67140.

The commission may recommend to the secretary the adoption of avocado quality standards 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) that is in accordance with the procedures specified in that act, unless otherwise specified in this article.

(Amended by Stats. 2002, Ch. 946, Sec. 70. Effective January 1, 2003.)

67141.

Any standards or activities adopted pursuant to this article shall be implemented by the secretary at the beginning of the marketing season next succeeding the date in which they were approved by the secretary.

(Amended by Stats. 2002, Ch. 946, Sec. 71. Effective January 1, 2003.)

67142.

Any standards or activities recommended by the commission and concurred in by the secretary, shall not be operative until approved in the manner specified in Section 67121.

(Amended by Stats. 2002, Ch. 946, Sec. 72. Effective January 1, 2003.)

67143.

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

(Amended by Stats. 2002, Ch. 946, Sec. 73. Effective January 1, 2003.)