

STATE OF CALIFORNIA
DEPARTMENT OF FOOD AND AGRICULTURE
MARKETING BRANCH



CALIFORNIA CUT FLOWER COMMISSION LAW
CHAPTER 20, DIVISION 22 OF THE
CALIFORNIA FOOD AND AGRICULTURAL CODE

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CALIFORNIA CUT FLOWER COMMISSION LAW

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CALIFORNIA CUT FLOWER COMMISSION

Article 1. Declaration and General Provisions

77901. The production and marketing of cut flowers and cut greens products constitute an important industry of this state which not only provides substantial and necessary revenues for the state and employment for its citizens, but also furnish cut flowers and cut greens products to the public.

77902. The maintenance of the cut flowers and cut greens industry of California is necessary to assure the consuming public of a continuous supply of this product and the maintenance of needed levels of income for those engaged in the industry.

77903. The production and marketing of cut flowers and cut greens produced in this state are 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.

77904. No action taken by the commission, or by any individual in accordance with this chapter or with regulations adopted under this chapter, is a violation of the so-called 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.

77905. This chapter shall be liberally construed. If any provision of this chapter or the application thereof to any person or circumstances is held to be invalid, the invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

77906. It is hereby declared as a matter of legislative determination that members of the commission are intended to represent and further the interest of a particular agricultural industry concerned and that this representation and furtherance is intended to serve the public interest. Accordingly, the Legislature finds that, with respect to persons who are elected or appointed to the commission, the particular agricultural industry concerned is tantamount to, and constitutes, the public generally within the meaning of Section 87103 of the Government Code.

77907. A commission form of administration created by this chapter is designed to deal with the broad field of production research, education, advertising, market research, promotion, and trade of flowers.

Article 2. Definitions

77910. Unless the context otherwise requires, the definitions in this article govern the construction of this chapter.

77911. "Flower" means all types of cut flowers and cut greens grown in California for decorative purposes.

77912. "Books and records" means books, records, contracts, documents, memoranda, papers, correspondence, or other written data pertaining to matters relating to the activities subject to this chapter.

77913. "Commission" means the California Cut Flower Commission.

77914. (a) "Districts" shall be based on the gross dollar value of the product grown in a geographical area as follows:

(1) District 1 consists of the Counties of Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Glenn, Humboldt, Lake, Lassen, Marin, Mendocino, Modoc, Mono, Napa, Nevada, Placer, Plumas, Sacramento, San Francisco, San Joaquin, San Mateo, Santa Clara, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tuolumne, Yolo, and Yuba.

(2) District 2 consists of the Counties of Fresno, Inyo, Kings, Madera, Mariposa, Merced, Monterey, San Benito, Santa Cruz, and Tulare.

(3) District 3 consists of the Counties of Kern, Los Angeles, San Bernardino, San Luis Obispo, Santa Barbara, and Ventura.

(4) District 4 consists of the Counties of Imperial, Orange, Riverside, and San Diego.

(b) The boundaries of any district or the number of board members, or both, may be changed by a two-thirds vote of the membership of the commission, which is concurred in by the director, when necessary to maintain similar total production that represents a gross dollar value among the districts and to ensure proper representation by producers. These boundaries need not coincide with county lines.

77915. "Market" or "marketing" means to sell flowers.

77916. "Production research" means any cultural and biological research relating to field production of flowers.

77917. "Marketing year" means the period beginning January 1 of any year and extending through the last day of December of that year.

77918. (a) "Producer" means any person in this state who grows flowers for market and who, upon request, provides proof of commodity sale. "Producer" does not include any person who has grown less than a gross value of two hundred fifty thousand dollars (\$250,000) of flowers in the preceding marketing year.

(b) The dollar amount specified in subdivision (a) may be increased by vote of two-thirds of the membership of the commission.

(c) The dollar amount specified in subdivision (a) may be decreased only if approved by referendum pursuant to Sections 77970 to 77974, inclusive. For purposes of a referendum conducted pursuant to this subdivision, the term "producer" in Sections 77970 to 77974, inclusive, includes persons who would become subject to this chapter if the referendum is approved.

77919. "Market analysis" means any marketing, sales, promotion, health, and social research relating to the marketing of flowers in this state and nationally and internationally.

77920. "Market development" means trade promotion, public information, dissemination of information on health and social issues and other matters, and activities related to the production of flowers in this state and nationally and internationally.

77921. "Market research" means any investigation, development, analysis, or use of information relating to the marketing, sales, or promotion of flower products in this state and nationally and internationally, including, but not limited to, trade practices, consumer trends, promotion, sales, and advertising.

77922. "Shipping research, analysis, and development" means the investigation, development, analysis, or use of information relating to the shipping of flower products and the development of shipping opportunities, practices, and methods in this state, nationally, and internationally.

77923. "Ship" means to transport flowers.

77924. "Advertising and sales promotion" means, in addition to its ordinarily accepted meaning, trade promotion and activities for the prevention, modification, or removal of trade barriers which restrict the free flow of flowers to market, including the presentation of facts to, and negotiations with, state, federal, and foreign governmental entities on matters which affect the marketing of flowers, to the extent permitted by federal law.

Article 3. The California Cut Flower Commission

77925. (a) There is in the state government the California Cut Flower Commission. The commission shall be composed of 13 members.

(b) Twelve producers, three each from Districts 1 to 4, inclusive, shall be elected by and from producers within the respective districts.

(c) One member shall be either a public member or a producer member, as determined by a majority of the producer members elected pursuant to subdivision (b).

If the producer members determine that the member shall be a public member, the public member shall be appointed by the director from the nominees recommended by the producer members.

If the producer members determine that the member shall be a producer, the producer members shall appoint a producer to the commission, who shall be known as the producer member-at-large.

(d) The director and other governmental officers, as determined by the commission, shall be ex officio members of the commission.

(e) The ex officio members are nonvoting members of the commission.

77926. (a) The director may require the commission to correct or cease any activity or function which is determined by the director not to be in the public interest or which is in violation of this chapter.

(b) If the commission refuses or fails to cease these activities or functions or to make corrections required by the director, the director may, upon written notice, suspend all or a portion of the activities or functions of the commission until the time that the cessation or correction of the activities or functions, as required by the director, has been accomplished by the commission.

(c) Any action of the commission in violation of the written notice is without legal force or effect. The director, to the extent feasible, shall issue the written notice prior to the commission entering into any contractual relationship affecting the existing or proposed activities or functions which are the subject of the written notice.

(d) At the same time the written notice is provided to the commission, the director shall notify the commission in writing of the specific acts which the director determines are not in the public interest or are in violation of this chapter, the director's reasons for requiring a cessation or correction of specific existing or proposed activities or functions, and the director's recommendations with respect to any action that will make the activities or functions acceptable.

77927. The commission or the director may bring an action for judicial relief from the director's written notice, or from noncompliance by the commission with the written notice, as the case may be, in a court of competent jurisdiction, which may issue a temporary restraining order, permanent injunction, or other appropriate relief.

77928. When the director is required to concur in a decision of the commission, the director shall concur, refuse to concur, or request additional information from the commission within 15 working days from the date the director receives notification of the decision.

77929. The commission shall reimburse the director for all expenditures incurred by the director in carrying out his or her duties and responsibilities pursuant to this chapter. However, a court may, if it finds that the director acted arbitrarily or capriciously in restricting the activities or functions of the commission, relieve the commission of the responsibility for payment of the director's legal costs with regard to that action.

77930. An alternate member to each member of the commission, except the ex officio members, shall be elected in the same manner and for the same term as the member. Except as provided in Section 77937, an alternate member shall, in the absence of the member for whom he or she is an alternate, serve in place of the member and shall exercise all of the rights, privileges, and powers of the member when serving on the commission. If the status of a member changes, thereby making the member ineligible to serve, or in the event of the death, removal, resignation, or disqualification of a member, the alternate member shall act as a member of the commission until a qualified successor is elected or appointed.

77931. Any vacancy on the commission occurring by the failure of any person elected to or serving on the commission as a member or alternate member to continue in his or her position due to a change in his or her status, thereby making the person ineligible to serve, or due to death, removal, resignation, or disqualification, shall be filled for the unexpired portion of the term by a majority vote of the remaining members of the commission. The appointee shall meet all of the qualifications set forth in this article as required for the member or alternate whose office he or she is to occupy.

77932. Any vacancy on the commission occurring by the failure of the public member or his or her alternate member to continue in his or her position due to a change in his or her status, thereby making the member or alternate ineligible to serve, or due to death, removal, resignation, or disqualification, shall be filled for the unexpired portion of the term by the director from nominees recommended by the commission. The appointee shall meet all of the qualifications set forth in this article as required for the member or alternate whose office he or she is to occupy.

77933. Any producer member and his or her alternate member on the commission shall be an individual producer or an authorized representative of a producer who has a financial interest in producing, or causing to be produced, flowers for market. Qualifications of producer members and their alternate members shall be maintained during their entire term of office.

77934. The public member and his or her alternate member on the commission shall have all the powers, rights, and privileges of any other member or alternate member, respectively, on the commission. The public member and his or her alternate member shall not have any financial interest in the flower industry.

77935. (a) The term of office of all members and alternate members of the commission, except ex officio members, is three years commencing in the month of December prior to the beginning of the marketing year in the year of their election and until qualified successors are elected. However, with respect to the election of producer members in the 1993 marketing year, one member from each district specified in subdivision (b) of Section 77925 shall serve for one year, one member shall serve for two years, and one member shall serve for three years, with the determination of the term of each member from each district to be made in accordance with a procedure adopted by the commission with the concurrence of the secretary.

(b) The terms of office of each member and alternate member of the commission shall be limited to three consecutive terms. However, any term of less than three years served by a member or alternate member pursuant to subdivision (a) shall not be counted as one of the three consecutive terms.

77936. The commission is hereby declared and created a corporate body. It may sue and be sued, enter into contracts, adopt a seal, and has all of the powers of a corporation. Copies of its proceedings, records, and acts, when authenticated, shall be prima facie evidence of the truth of all statements therein.

77937. A quorum of the commission is a majority of the voting members of the commission. Any alternate member to any producer member may serve in the absence of any other member if that member's alternate is also absent, if that action is necessary to establish a quorum. Except as provided in Sections 77914 and 78002, the vote of a majority of the members present at a meeting at which there is a quorum shall constitute the act of the commission.

77938. The director or his or her representatives shall be notified and may attend each meeting of the commission and any committee meeting of the commission.

77939. Members and alternate members of the commission and members of committees established by the commission shall not receive any compensation but shall receive the per diem established by Section 11564.5 of the Government Code. Ex officio members who are state officers or employees and who are compensated by the state are not eligible for per diem pursuant to this section. In addition, members and alternate members of the commission and members of committees established by the commission shall be reimbursed for actual and necessary travel expenses under the rules of the Department of Personnel Administration. The per diem and reimbursement for travel expenses shall be paid to those members for each day spent in actual attendance at, or in traveling to and from, meetings of the commission or committees of the commission, or on special assignment for the commission, as approved by the commission.

77940. (a) All funds received by any person from the assessments levied under the authority of this chapter or otherwise received by the commission shall be deposited in banks that the commission may designate and shall be disbursed by order of the commission through an agent or agents designated by the commission for that purpose. The agent or agents shall be bonded by a fidelity bond, executed by a surety company authorized to transact business in this state, in favor of the commission, in an amount of not less than twenty-five thousand dollars (\$25,000).

(b) The commission may maintain a separate bank account in order to create a permanent research fund. The account shall be named the Kee Kitayama Memorial Research Foundation Account.

77941. The state is not liable for the acts of the commission or its contracts. Payments of all claims arising by reason of the administration of this chapter or acts of the commission are limited to the funds collected by the commission. No member, alternate member, employee, or agent of the commission is personally liable for the contracts of the commission nor is that person responsible individually in any way to any producer or any other person for errors in judgment, mistakes, or other acts, either of commission or omission, as a principal, agent, or employee, except for his or her own individual acts of dishonesty or crime. No member, alternate member, employee, or agent of the commission, is responsible individually for any act or omission of any other member, alternate member, employee, or agent of the commission. Liability is several and not joint, and no member, alternate member, employee, or agent of the commission is liable for the default of any other member, alternate member, employee, or agent of the commission.

Article 4. Powers and Duties of the Commission

77945. The powers and duties of the commission include, but are not limited to, all of those specified in this article.

77946. The commission may adopt, amend, and repeal regulations and operating procedures necessary to carry out this chapter, including regulations governing appeals from actions taken by the commission pursuant to any of its regulations or operating procedures.

77947. The commission may administer and enforce this chapter and perform all acts and exercise all powers incidental to, or in connection with, or deemed reasonably necessary for, the proper or advisable effectuation of this chapter.

77948. The commission may appoint its own officers, including a chairperson, one or more vice chairpersons, and other officers as it deems necessary. The officers have the powers and duties delegated to them by the commission.

77949. The commission may employ a person to serve at the pleasure of the commission as president and chief executive officer of the commission, and other personnel, including legal counsel, necessary to carry out this chapter. The commission may retain a management firm or the staff from any board, commission, or agency of the state or federal government to perform the functions prescribed by this section under the control of the commission. If any person employed by the commission engages in any conduct which the director determines is not in the public interest or which is in violation of this chapter, the director shall notify the commission of the conduct and request that corrective and, if appropriate, disciplinary action be taken by the commission. If the commission fails or refuses to correct the situation or to take disciplinary action satisfactory to the director, the director may suspend or discharge the person.

77950. The commission may fix the compensation for all employees of the commission.

77951. The commission may appoint committees composed of both members and nonmembers of the commission to advise the commission in carrying out this chapter.

77952. The commission may establish offices and incur expenses, enter into any and all contracts and agreements, create liabilities, borrow funds in advance of receipt of assessments, and repay producers for costs incurred during the initial formation of the commission, as may be necessary, in the opinion of the commission, for the proper administration and enforcement of this chapter and the performance of its duties.

77953. The commission shall keep accurate books, records, and accounts of all its dealings which shall be subject to an annual audit by an auditing firm selected by the commission with the concurrence of the director. A summary of the audit shall be reported to all producers and a copy of the summary shall also be submitted to the department. In addition, the director may, as he or she determines necessary, conduct or cause to be conducted a fiscal and compliance audit of the commission.

77954. (a) The commission may present facts to, and negotiate with, state, federal, and foreign agencies on matters which affect this chapter, to the extent permitted by federal law.

(b) The commission shall not expend more than 10 percent of its annual budget during the 1991 to 1995, calendar years, inclusive, on activities for the modification or removal of trade barriers that restrict the free flow of flowers to market, including litigation involving trade practices, to the extent permitted by federal law.

77955. The commission may make, in its name, contracts to receive or render services in formulating and conducting plans and programs and any other contracts or agreements that the commission deems necessary for carrying out this chapter.

77956. The commission may conduct, and contract with others to conduct, production research, including the study, analysis, accumulation, and dissemination of information obtained from that research or otherwise, regarding this chapter.

The commission may implement and conduct, and contract with others to implement and conduct, market analysis, market development, market research, and shipping research, analysis, and development. The commission may study, analyze, accumulate, and disseminate any and all information obtained from those activities.

77957. The commission may accept contributions or matching private, state, or federal funds, and employ or make contributions of funds to other persons or state or federal agencies, for purposes of this chapter.

77958. The commission may publish and distribute, without charge, bulletins and other communications for the dissemination of information to producers.

77959. The commission shall establish an assessment rate to defray the operating costs of the commission.

77960. The commission shall adopt an annual budget according to accepted accounting practices. The director shall concur in the adoption of the budget prior to the encumbrance of funds, except for encumbrances necessary to pay the compensation of employees of the commission.

77961. (a) The commission may advertise or otherwise promote the sale of flowers.

(b) The commission may jointly advertise or otherwise promote the sale of flowers with any other corporation or organization advertising or otherwise promoting the sale of any other product or commodity.

(c) The commission may work, and cooperate with others, to develop and arrange for shipping alternatives for producers in order to improve the quality of flowers and access to markets.

77962. The commission shall annually prepare and submit to the director, for his or her concurrence, a statement of contemplated activities authorized pursuant to this chapter.

77963. The commission and the secretary shall keep confidential and shall not disclose, except when required by court order in a judicial proceeding, all lists of producers in their possession.

77964. The commission may 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.

77965. (a) To prevent unfair trade practices which are detrimental to California's cut flower industry, including, but not limited to, deception and misinformation, the commission shall annually specify the types and varieties of cut flowers for which it shall collect from producers who participate, and disseminate to these producers, market price information based on sales which have occurred.

(b) The identity of each producer reporting the information and the information reported pursuant to this section and Section 6254 of the Government Code 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 specified in this section shall be adopted by the commission and approved by the secretary.

Article 5. Implementation and Voting Procedures

77970. (a) Within 45 days of the effective date of this chapter, the director shall establish a list of producers eligible to vote on the implementation of this chapter. In establishing the list, the director may require that producers submit the names and mailing addresses of all known producers. The director shall receive suggestions for inclusion on that list from any organization of producers, and may verify the eligibility of any person so suggested. The director also may require that the information provided include the quantity of flowers produced by each producer or, in the alternative, may establish procedures for receiving the information at the time of the referendum vote conducted pursuant to Section 77971. The request for the information shall be in writing, and the requested information shall be filed within 10 days following receipt of the request.

(b) Any producer whose name does not appear upon the appropriate list may have his or her name placed on the list by filing with the director a signed statement identifying himself or herself as a producer. The absence of a producer's name from the list does not exempt the producer from paying assessments and does not invalidate any industry votes conducted pursuant to this article.

(c) Proponents and opponents of the commission may contact producers on the lists in a form and manner prescribed by the director so long as all expenses associated with the contacts are paid in advance.

(d) Any proponent or opponent of the commission may submit to the director a statement of his or her position on the matter, and the director shall include these statements with the referendum ballots.

77971. This chapter, except as necessary to conduct an implementation referendum vote, shall not become operative until the director finds, in a referendum vote conducted by the director that at least 40 percent of the total number of producers from the list established by the director pursuant to this article have participated and that either of the following has occurred:

(a) Sixty-five percent of the producers who voted in the referendum voted in favor of this chapter, and the producers so voting marketed a majority of the gross dollar value of flowers in the preceding marketing year by all of the producers who voted in the referendum.

(b) A majority 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 gross dollar value of flowers in the preceding marketing year by all of the producers who voted in the referendum.

77972. The director shall establish a period to conduct the referendum which shall not be less than 10 days nor more than 60 days in duration, and may prescribe additional procedures that may be necessary to conduct the referendum. If the initial period established is less than 60 days, the director may extend the period to not more than 60 days.

77973. The failure of a producer to receive a ballot shall not invalidate a referendum.

77974. If the director finds that a favorable vote has been given as provided in Section 77971, the director shall certify and give notice of the favorable vote to all producers whose names and addresses are on file with the director.

77975. If the director finds that a favorable vote has not been given as provided in Section 77971, the director shall certify and declare this chapter inoperative. The director may conduct another implementation referendum vote one or more years after the previous vote has been taken.

77976. Upon certification of the commission, the director shall contact all producers in each district by mail, or call meetings of producers in each district, for the purpose of nominating and electing persons to the commission. All producers on the director's list shall be given written notice of any election meetings at least 10 days prior to the meeting date. To be eligible for election to the commission, producer nominees shall present to the director a nomination petition with the signatures of at least three eligible producers from the district from which the nominee is seeking election.

77977. Subsequent to the first election of members of the commission pursuant to this chapter, persons to be elected to the commission shall be selected pursuant to nomination and election procedures which are adopted by the commission with the concurrence of the director.

77978. (a) Prior to the director holding the referendum pursuant to Section 77971, the proponents of the commission shall deposit with the director the amount that the director determines necessary to defray the expenses of preparing the necessary lists and information and conducting the referendum.

(b) Any funds not used in carrying out Section 77971 shall be returned to the proponents of the commission who deposited the funds with the director.

(c) Upon the establishment of the commission, the commission may reimburse the proponents of the commission for any funds deposited with the director which were used in carrying out Section 77971 and for any legal expenses and other costs incurred in establishing the commission.

Article 6. Assessments and Records

77985. (a) The commission shall establish the assessment for the following marketing year not later than January 1 of each year, or as soon thereafter as is possible. The commission shall adopt bylaws that indicate when payment is due.

(b) The assessment for the 1991 marketing year shall not be less than one-half of 1 percent, nor more than 1 percent, of the gross dollar value of flowers grown and shipped by a producer. In any subsequent marketing year, the assessment shall not be more than 1 percent of the gross dollar value of flowers grown and shipped by a producer.

(c) A fee greater than the amount specified in subdivision (b) may not be charged unless approved by the vote specified in Section 77971.

(d) No producer shall be assessed more than one hundred thousand dollars (\$100,000) for any marketing year, except that this limitation shall not be applicable for the entire marketing year in which a producer does not comply with the assessment collection requirements established in this article and as prescribed by the commission.

77986. This chapter does not apply to any person who grows flowers only for his or her own home use or who is not a producer. However, any such person who markets flowers shall submit all required reports and shall file an affidavit with the commission establishing that the person grows flowers valued at less than the gross value established pursuant to Section 77918. The commission shall then determine whether the affidavit should be approved.

The commission may terminate the collection of assessments directly from producers and, instead, collect producer assessments from shippers or handlers who shall deduct the assessment from amounts paid by the shippers or handlers to the producers and who shall be trustees of the funds until they are paid to the commission at the time and in the manner prescribed by the commission.

77987. Every person in this state who grows flowers for market, whether or not the flowers grown are valued at less than the gross value established pursuant to Section 77918, shall keep a complete and accurate record of the gross dollar value of all flowers grown and cut. The records shall be in simple form and contain information as the commission shall prescribe. The records shall be retained by the person for 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.

77988. (a) The commission may specify, by regulation, the conditions under which proprietary information obtained from producers may be disclosed. Otherwise, all proprietary information obtained by the commission or the secretary from producers is confidential and shall not be disclosed except when required by court order in a judicial proceeding.

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

77989. Any assessment that is levied pursuant to this chapter is a personal debt of every producer so assessed. If the producer is a corporation, all of the directors and officers of the corporation in their capacity as individuals shall be included, and any liability for failure to collect or make payment of assessments for which a corporate producer may be subject pursuant to this chapter shall include identical liability upon each individual director or officer of the corporation.

77990. Any producer who fails to file a return or pay any assessment within the time required by the commission shall pay the commission a penalty of 10 percent of the amount of the assessment determined to be due and, in addition, pay 11/2 percent interest per month on the unpaid balance.

Article 7. Actions and Penalties

77995. It is unlawful for any person to do any of the following:

- (a)** Fail or refuse to render a report, statement, or record required by the commission.
- (b)** Furnish a false report, statement, or record required by the commission.
- (c)** When engaged in the handling of flowers, to fail or refuse to furnish the commission or its duly authorized agents, information concerning the names and addresses of persons from whom the flowers have been received and the quantity so received.
- (d)** Secrete, destroy, or alter records required to be kept under this chapter.

77996. The commission shall adopt procedures to grant individuals aggrieved by its actions or determinations an informal hearing before the commission or before a committee of the commission designated for this purpose. Appeals from decisions of the commission may be made to the director. The determination of the director shall be subject to judicial review upon petition filed with the appropriate superior court.

77997. (a) The commission may commence civil actions and utilize all remedies provided in law or equity for the collection of assessments and civil penalties and for obtaining injunctive relief or specific performance regarding this chapter and the regulations adopted pursuant to this chapter. A court shall issue to the commission any requested writ of attachment or injunctive relief upon a prima facie showing by verified complaint that a named defendant has violated this chapter or any regulation of the commission, including, but not limited to, the nonpayment of assessments, the failure or refusal to submit required records to the commission, or the intentional submission of false information to the commission. No bond shall be required to be posted by the commission as a condition for the issuance of any writ of attachment or injunctive relief.

(b) A writ of attachment shall be issued pursuant to Chapter 4 (commencing with Section 485.010) of Title 6.5 of Part 2 of the Code of Civil Procedure, except that the showing specified in Section 485.010 of the Code of Civil Procedure is not required. Injunctive relief shall be issued pursuant to Chapter 3 (commencing with Section 525) of Title 7 of that part, except that the showing of irreparable harm or inadequate remedy at law specified in Sections 526 and 527 is not required.

(c) Upon entry of any final judgment on behalf of the commission against any defendant, the court shall enjoin the defendant from conducting any type of business involving flowers until there is full compliance and satisfaction of the judgment. Upon a favorable judgment for the commission, it is entitled to receive reimbursement for any reasonable attorney's fees and other actual related costs. Venue for these actions 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.

77998. The suspension or termination of this chapter shall not affect or waive any right, duty, obligation, or liability which has arisen or which may thereafter arise in connection with this chapter, release or extinguish any violation of this chapter, or affect or impair any right or remedies of the commission with respect to any violation.

Article 8. Continuation or Suspension and Termination

78000. From January 1, 1995, to December 30, 1995, inclusive, the commission shall conduct a referendum among the producers to determine whether the operations of this chapter shall be approved and continued in effect. There is a favorable vote under this chapter if the director determines from the referendum that a majority of the eligible producers voting in the referendum voted in favor of continuing the operations of this chapter. If the director finds that a favorable vote has been given, the director shall so certify and this chapter shall remain effective. If the director finds that a favorable vote has not been given, the director shall so certify and declare the operations of this chapter suspended on December 31, 1995. Thereupon, operation of the commission shall be concluded and funds distributed in the manner provided in Section 78004. No bond or security shall be required for any such referendum.

78001. Following a favorable referendum conducted prior to December 31, 1995, the commission shall conduct a referendum every fifth year thereafter, unless a referendum is conducted as the result of a petition filed pursuant to this article. In that case, the referendum shall be held pursuant to procedures provided in Section 78000 every fifth year following the industry petitioned referendum.

78002. (a) Upon a finding by a two-thirds vote of the membership of the commission that the operation of this chapter has not tended to effectuate its declared purposes, the commission may recommend to the director that the operation of this chapter be suspended. However, any suspension shall not become effective until the expiration of the current marketing year.

(b) The director shall, upon receipt of the recommendation, or may, after a public hearing to review a petition filed with the director requesting a suspension signed by not less than 20 percent of the producers by number who produced not less than 20 percent of the gross dollar value of flowers in the immediately preceding marketing year, hold a referendum among the producers to determine if the operations of the commission shall be suspended. However, the director shall not hold a referendum as a result of the petition unless the petitioner shows, by a preponderance of evidence, that the operation of this chapter has not tended to effectuate its declared purposes.

(c) The director shall establish a referendum period, which shall not be less than 10 days nor more than 60 days in duration. The director may prescribe additional procedures as may be necessary to conduct the referendum. At the close of the established referendum period, the director shall tabulate the ballots filed during the period. The director shall suspend the operation of this chapter if the director finds that at least 40 percent of the total number of producers from the list established by the director have participated in the referendum and either one of the following has occurred:

(1) Sixty-five percent or more of the producers who voted in the referendum voted in favor of suspension, and the producers so voting marketed a majority of the total gross dollar value of flowers in the preceding marketing year by all of the producers who voted in the referendum.

(2) A majority 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 gross dollar value of flowers in the preceding marketing year by all of the producers who voted in the referendum.

78003. (a) The director shall terminate the commission at the end of the then current marketing year if the director finds that the termination of the commission is requested in writing, within a 90-day period, by at least 51 percent of the eligible producers that produce at least 51 percent of the total gross dollar value of flowers.

(b) The person or persons originating the request shall file a written notice with the director in a manner that establishes the date the request is initiated. Any person may withdraw his or her name from the petition requesting the termination prior to the time the request is presented to the director.

(c) The signatures to the petition requesting the termination need not all be appended to one sheet of paper. Each person signing the petition shall specify his or her place of business in a manner that will enable the location to be readily ascertained.

(d) The petition shall bear a copy of the notice of intention to terminate the commission. Signatures shall be secured within the time limit specified in this section.

78004. After the effective date of suspension, the operation of the commission shall be concluded and any and all funds remaining held by the commission and not required to defray the expenses of concluding and terminating operations of the commission may be returned upon a pro rata basis to all persons from whom assessments were collected in the immediately preceding marketing year. However, if the commission finds that the amounts so returnable are so small as to make impractical the computation and remitting of the pro rata refund to these persons, any funds remaining after payment of all expenses of winding up and terminating operations may be withdrawn from the approved depository and paid into the Kee Kitayama Research Foundation, or an appropriate program conducted by the University of California or the California State University, another state agency, or a federal agency that deals with the purposes of this chapter. If no such program exists, the funds shall be paid into the State Treasury as unclaimed trust funds.

78005. Upon suspension of the operation of this chapter, the commission shall mail a copy of the notice of suspension to all producers whose names and addresses are on file with the commission and to the appropriate policy committees in both the Assembly and Senate.

78006. Upon the suspension of the operation of this chapter, the commission shall appoint a committee of cut flower producers to oversee and manage the Kee Kitayama Research Foundation Account and, notwithstanding Section 78004, the funds in that account shall not be returned to the persons from whom collected.