

STATE OF CALIFORNIA
DEPARTMENT OF FOOD AND AGRICULTURE
MARKETING BRANCH



CALIFORNIA PEPPER COMMISSION LAW

Chapter 17 of Part 2, Division 22 of the
California Food and Agricultural Code

January 1, 2018

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ARTICLE 1. Declaration and General Provisions

77201.

The production and marketing of peppers 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 furnishes essential food vital to the public health and welfare.

77202.

The maintenance of the pepper industry of California is necessary to assure the consuming public of a continuous supply of this vital food and the maintenance of needed levels of income for those engaged in the industry.

77203.

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

77204.

No action taken by the commission, nor by any individual in accordance with this chapter or with the rules and 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 Fair Trade Act (Chapter 3 (commencing with Section 16900) of that Part 2), the Unfair Practices Act (Chapter 4 (commencing with Section 1700) of that Part 2), or any statutory or common law against monopolies or combinations in restraint of trade.

77205.

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.

77206.

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.

77207.

A commission form of administration created by this chapter is designed to deal with the broad field of production research.

ARTICLE 2. Definitions**77221.**

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

77222.

"Pepper" means all types of fruit grown in California from the plant family Solanaceae, Genus Capsicum, including seed.

77223.

"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.

77224.

"Commission" means the California Pepper Commission.

77225.

(a) The commission shall be composed of five districts. The boundaries of each district shall be established by a two-thirds vote of the full commission, that is concurred in by the secretary. District boundaries shall be established to reflect similar total production among the districts in order to ensure proper representation by producers. These boundaries need not coincide with county lines.

(b) The boundaries of any district may be changed by a two-thirds vote of the full commission, that is concurred in by the secretary, when necessary to maintain similar total production among the districts and to ensure proper representation by producers.

(Amended by Stats. 2004, Ch. 167, Sec. 1. Effective January 1, 2005.)

77226.

(a) **"Handler"** means any person engaged in marketing of peppers which the person has produced, purchased, or acquired from a producer, or is marketing on behalf of a producer whether as owner, agent, employee, broker, or otherwise. "Handler" does not include any person who handles less than 100 tons of fresh peppers, or the equivalent in dehydrated peppers or pepper seed, in a marketing year.

(b) **"Handle"** means to engage in the business of a handler.

(c) The tonnage threshold specified in subdivision (a) may be increased by a two-thirds vote of the commission.

(d) The tonnage threshold specified in subdivision (a) may be decreased only if approved by referendum pursuant to Sections 77311 to 77316, inclusive. For purposes of a referendum conducted pursuant to this subdivision, the terms "producer" and "handler" in Section 77311 to 77316, inclusive, includes persons who would become subject to this chapter if the referendum is approved.
(Amended by Stats. 2004, Ch. 167, Sec. 2. Effective January 1, 2005.)

77227.

"Market" or **"marketing"** means to sell peppers.

77228.

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

77229.

"Marketing year" or **"fiscal year"** means the period beginning March 1 of any year and extending through the last day of February of the next year.
(Amended by Stats. 2004, Ch. 167, Sec. 3. Effective January 1, 2005.)

77230.

(a) **"Producer"** means any person in this state who grows peppers for market and who, upon request, provides proof of commodity sale. "Producer" does not include any person who grows less than 10 acres of peppers, or produces less than 100 tons of fresh peppers, or the equivalent in dry peppers or pepper seed, in the current marketing year.

(b) The acreage and tonnage thresholds specified in subdivision (a) may be decreased only if approved by referendum pursuant to Section 77311 to 77316, inclusive. For purposes of a referendum conducted pursuant to this subdivision, the terms "producer" and "handler" in Sections 77311 to 77316, inclusive, include persons who would become subject to this chapter if the referendum is approved.
(Amended by Stats. 2004, Ch. 167, Sec. 4. Effective January 1, 2005.)

77231.

"Ex officio member" means a nonvoting member of the commission.

ARTICLE 3. The California Pepper Commission**77251.**

(a) There is in the state government the California Pepper Commission. The commission shall be composed of five pepper producers, five pepper handlers, one public member, and may include two at-large members at the discretion of the commission.

(b) Five producers, one from each district, shall be elected by and from producers within the respective districts. Five handlers, representing the major categories of pepper handling as determined by the commission, shall be elected by and from other qualified handlers engaged in the same activity. The determination of what the major categories of pepper handling activities are, and any subsequent change to the categories shall be made by a two-thirds vote of the full commission that is concurred in by the secretary.

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

(d) Two at-large members may be elected by the producers and handlers on the commission from among individuals who have a financial interest in the California pepper industry but who are not necessarily producers or handlers as defined in this article.

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

(Amended by Stats. 2004, Ch. 167, Sec. 5. Effective January 1, 2005.)

77252.

(a) The secretary may require the commission to correct or cease any existing activity or function that is determined by the secretary not to be in the public interest or that 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 secretary, the secretary 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 activities or functions as required by the secretary has been accomplished by the commission.

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

(d) Upon service of the written notice, the secretary shall notify the commission in writing of the specific acts that the secretary determines are not in the public

interest or are in violation of this chapter, the secretary's reasons for requiring a cessation or correction of specific existing or proposed activities or functions, and the secretary's recommendations as to what will make the activities or functions acceptable.

(Amended by Stats. 2004, Ch. 167, Sec. 5.1. Effective January 1, 2005.)

77253.

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

(Amended by Stats. 2005, Ch. 22, Sec. 68. Effective January 1, 2006.)

77254.

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

(Amended by Stats. 2004, Ch. 167, Sec. 5.3. Effective January 1, 2005.)

77255.

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

(Amended by Stats. 2004, Ch. 167, Sec. 5.4. Effective January 1, 2005.)

77256.

Each member of the commission, except ex officio members, shall have an alternate member to be elected in the same manner as the member. Except as provided in Section 77264, 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 have and be able to exercise all the rights, privileges, and powers of the member when serving on the commission. In the event of a change in status making a member ineligible to serve, or due to death, removal, resignation, or disqualification of a member, the alternate member shall act as a member on the commission until a qualified successor is elected or appointed.

77257.

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 the person ineligible to serve, or due to death, removal, or resignation, shall be filled for the unexpired portion of the term by a majority vote of the remaining members of the commission. That person shall fulfill all the qualifications set forth in this article as required for the member whose office he or she is to fill.

77258.

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

(Amended by Stats. 2004, Ch. 167, Sec. 5.5. Effective January 1, 2005.)

77259.

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

77260.

Any handler member and his or her alternate member on the commission shall have a financial interest in handling peppers for market, or be an employee of a firm which handles peppers.

(Amended by Stats. 1991, Ch. 527, Sec. 4.)

77260.5.

Any at-large member elected to the commission, and his or her alternate shall have a financial interest in the California pepper industry and shall have all the rights and privileges of any other member or alternate member, respectively, of the commission.

(Added by Stats. 2004, Ch. 167, Sec. 6. Effective January 1, 2005.)

77261.

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 pepper industry.

77262.

The term of office of all members and alternate members of the commission, except ex officio members, shall be three years, beginning on the first day of February following his or her election and until qualified successors are elected.

(Amended by Stats. 2004, Ch. 167, Sec. 7. Effective January 1, 2005.)

77263.

The commission shall be and is hereby declared and created a corporate body. It shall have the power to sue and be sued, to contract and be contracted with, and to have and possess all of the powers of a corporation. It may adopt a corporate seal. Copies of its proceedings, records, and acts when authenticated, shall be prima facie evidence of the truth of all statements therein.

77264.

A quorum of the commission shall be seven voting members of the commission. An alternate producer or handler member, respectively, may serve in the absence of a member if the member's alternate is absent and the action is necessary to establish a quorum. Unless specified otherwise in this chapter, 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. 2004, Ch. 167, Sec. 8. Effective January 1, 2005.)

77265.

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

(Amended by Stats. 2005, Ch. 22, Sec. 69. Effective January 1, 2006.)

77266.

No member of the commission or member of a committee established by the commission who is a nonmember of the commission shall receive a salary. Each member of the commission or each alternate member serving in place of a member, except ex officio government members, and each member of a committee established by the commission who is a nonmember of the commission, may receive a sum not to exceed one hundred dollars (\$100) per day, as established by the commission. This per diem shall be paid to 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. Members shall also receive the necessary traveling expenses and meal allowances, as approved by the commission.

77267.

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 which the commission may designate and shall be disbursed by order of the commission through an agent or agents as it may designate 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 the amount of not less than twenty-five thousand dollars (\$25,000).

77268.

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 of the commission, alternate member, or any employee or agent thereof, is personally liable for the contracts of the commission. No member of the commission, alternate member, or any employee or agent thereof, is responsible individually in any way to any producer, handler, or any other person for errors in judgment, mistakes, or other acts, either of the commission or omission, as principal, agent, or employee, except for his or her own individual acts of dishonesty or crime. No member of the commission, alternate member, or any employee or agent thereof, is responsible individually for any act or omission of any other member of the commission, alternate member, or any employee or agent thereof. Liability is several and not joint, and no member of the commission, alternate member, or any employee or agent thereof, is liable for the default of any other member of the commission, alternate member, or any employee or agent thereof.

ARTICLE 4. Powers and Duties of the Commission**77281.**

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

77282.

The commission may adopt and from time to time alter, rescind, modify, and amend all proper and necessary bylaws, rules, regulations, operating procedures, and orders for carrying out this chapter, including rules for appeals from any bylaw, rule, regulation, operating procedure, or order of the commission.

77283.

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

77284.

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

77285.

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 committee of the state or federal government to perform the functions prescribed by this section under the control of the commission. If the person engages in any conduct that the secretary determines is not in the public interest or that is in violation of this chapter, the secretary shall notify the commission of the conduct and request that corrective and, if appropriate, disciplinary action be taken by the commission. In the event that the commission fails or refuses to correct the situation or to take disciplinary action satisfactory to the secretary, the secretary may suspend or discharge the person.

(Amended by Stats. 2004, Ch. 167, Sec. 8.2. Effective January 1, 2005.)

77286.

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

77287.

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

77288.

The commission may establish offices and incur expenses, enter into any and all contracts and agreements, create liabilities, and borrow funds in advance of receipt of assessments 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.

77289.

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

(Amended by Stats. 2004, Ch. 167, Sec. 8.3. Effective January 1, 2005.)

77290.

The commission may present facts to, and negotiate with state, federal, and foreign agencies on matters which affect this chapter.

77291.

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 may deem necessary for carrying out this chapter.

77292.

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

77293.

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

77294.

The commission may publish and distribute, without charge, a bulletin or other communication for dissemination of information to producers and handlers.

77295.

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

77296.

The commission shall establish an annual budget according to accepted accounting practices. The budget shall be concurred in by the secretary prior to disbursement of funds, except for disbursements made pursuant to Section 77286.
(Amended by Stats. 2004, Ch. 167, Sec. 8.4. Effective January 1, 2005.)

77297.

The commission shall submit to the secretary for his or her concurrence, an annual statement of contemplated activities authorized pursuant to this chapter.
(Amended by Stats. 2004, Ch. 167, Sec. 8.5. Effective January 1, 2005.)

77298.

The commission and the secretary shall keep confidential and shall not disclose, except when required in a judicial proceeding, all lists of producers and handlers in their possession.
(Amended by Stats. 2004, Ch. 167, Sec. 8.6. Effective January 1, 2005.)

77299.

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.

ARTICLE 5. Implementation and Voting Procedures**77311.**

(a) Within 30 days of the effective date of this chapter, the secretary shall have established a list of producers and handlers eligible to vote on implementation of this chapter. In establishing the list, the secretary may require that producers, handlers, and others submit the names and mailing addresses of all producers and handlers. The secretary also may require that the information provided include the quantity of peppers produced by each producer and the quantity of peppers handled by each handler, or, in the alternative, may establish procedures for receiving the information at the time of the referendum vote specified in Section 77312. The request for the information shall be in writing and shall be filed within 10 days following receipt of the request.

(b) Any producer or handler whose name does not appear upon the appropriate list may have his or her name placed on the list by filing with the secretary a signed statement identifying himself or herself as a producer or handler. Failure to be on the list does not exempt the person 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 and handlers on the lists in a form and manner prescribed by the secretary so long as all expenses associated with the contacts are paid in advance.

(Amended by Stats. 2004, Ch. 167, Sec. 8.7. Effective January 1, 2005.)

77312.

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

(a) At least 40 percent of the total number of producers from the list established by the secretary pursuant to this article have participated and that either of the following has occurred:

(1) 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 total quantity of peppers 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 this chapter, and the producers so voting marketed 65 percent or more of the total quantity of peppers in the preceding marketing year by all of the producers who voted in the referendum.

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

(1) Sixty-five percent of the handlers who voted in the referendum voted in favor of this chapter, and the handlers so voting handled a majority of the total quantity of peppers in the preceding marketing year by all of the handlers who voted in the referendum.

(2) A majority of the handlers who voted in the referendum voted in favor of this chapter, and the handlers so voting handled 65 percent or more of the total quantity of peppers in the preceding marketing year by all of the handlers who voted in the referendum.

(Amended by Stats. 2004, Ch. 167, Sec. 8.8. Effective January 1, 2005.)

77313.

The secretary shall use fresh weight in calculating the volume voted pursuant to Section 77312. For converting dry weight and seed weight to fresh equivalent weight the secretary shall use the following ratios: 5.3 to 1 for dry weight and 220 to 1 for seed weight.

(Amended by Stats. 2004, Ch. 167, Sec. 8.9. Effective January 1, 2005.)

77314.

The secretary shall establish a period in that 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 secretary may extend the period, however, the total referendum period may not exceed 60 days.

(Amended by Stats. 2004, Ch. 167, Sec. 8.91. Effective January 1, 2005.)

77315.

Nonreceipt of a ballot shall not invalidate a referendum.

77316.

If the secretary finds that a favorable vote has been given as provided in Section 77312, the secretary shall certify and give notice of the favorable vote to all affected producers and handlers whose names and addresses are on file with the secretary.

(Amended by Stats. 2004, Ch. 167, Sec. 8.92. Effective January 1, 2005.)

77317.

If the secretary finds that a favorable vote has not been given as provided in Section 77312, the secretary shall certify and declare this chapter inoperative. The director may conduct another implementation referendum vote one year or more after the previous vote has been taken.

(Amended by Stats. 2004, Ch. 167, Sec. 8.93. Effective January 1, 2005.)

77318.

Upon certification of the commission, the secretary shall do the following:

(a) 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 secretary'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 must present to the secretary a nomination petition with the signatures of at least three eligible producers from the district from which the nominee is seeking election.

(b) Contact all handlers by mail or by calling a meeting for the purpose of nominating and electing persons to the commission. All handlers on the secretary'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, handler nominees must present to the secretary a nomination petition with the signatures of at least two eligible handlers who are engaged in the same type of handler activity as the handler seeking nomination.

(Amended by Stats. 2004, Ch. 167, Sec. 8.94. Effective January 1, 2005.)

77319.

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 that are established by the commission with the concurrence of the secretary.

(Amended by Stats. 2004, Ch. 167, Sec. 8.95. Effective January 1, 2005.)

77320.

(a) Prior to the referendum vote conducted by the secretary pursuant to Section 77312, the proponents of the commission shall deposit with the secretary the amount that the secretary deems necessary to defray the expenses of preparing the necessary lists and information and conducting the vote.

(b) Any funds not used in carrying out Section 77312 shall be returned to the proponents of the commission who deposited the funds with the secretary.

(c) Upon establishment of the commission, the commission is authorized to reimburse the proponents of the commission for any funds deposited with the secretary that were used in carrying out Section 77312 and for any legal expenses and costs incurred in establishing the commission.

(Amended by Stats. 2004, Ch. 167, Sec. 8.96. Effective January 1, 2005.)

ARTICLE 6. Assessments and Records**77331.**

(a) The commission shall establish the assessment for the following marketing year not later than March 1 of each year, or as soon thereafter as is possible.

(b) The assessment for the 1989–90 marketing year shall not exceed twenty-five cents (\$0.25) per ton for producers and twenty-five cents (\$0.25) per ton for handlers on all peppers grown and shipped on a wet pound or ton basis by producers and handled by handlers. Thereafter, the assessment shall not exceed one dollar (\$1) per ton for producers and one dollar (\$1) per ton for handlers.

(c) The assessment for the 1989–90 marketing year shall not exceed \$0.00065 per pound for producers and \$0.00065 per pound for handlers on all peppers grown and shipped on a dry pound basis by producers and handled by handlers. Thereafter, the assessment shall not exceed a maximum of \$0.0026 per pound for producers and \$0.0026 per pound for handlers.

(d) The assessment for the 1989–90 marketing year shall not exceed two cents (\$0.02) per pound for producers and two cents (\$0.02) per pound for handlers on all planting seed grown by producers and handled by handlers. Thereafter, the assessment shall not exceed a maximum of eight cents (\$0.08) per pound for producers and eight cents (\$0.08) per pound for handlers.

(e) The handler shall deduct the producer assessment from amounts paid by him or her to the producer and shall be a trustee of these funds and the assessment owed by the handler until they are paid to the commission at the time and in the manner prescribed by the commission.

(f) A fee greater than the amount provided in this section may not be charged unless and until a greater fee is approved pursuant to the procedures specified in Section 77312.

(Amended by Stats. 2004, Ch. 167, Sec. 9. Effective January 1, 2005.)

77332.

(a) Unless specified otherwise, this chapter does not apply to persons who grow peppers only for the producer's home use or who grow or produce less than the number of acres or tons established pursuant to Section 77230 of fresh peppers, or the equivalent in dry peppers or pepper seed, in the current marketing year. However, any such person who markets peppers shall file an affidavit with the commission establishing that the person grows less than 10 acres of peppers or produces less than 100 tons of fresh peppers, or the equivalent in dry peppers or pepper seed. The commission shall then determine whether the affidavit should be approved.

(b) Unless specified otherwise, this chapter does not apply to any person who handles less than the number of tons of fresh peppers established pursuant to Section 77226, or the equivalent in dehydrated peppers or pepper seed, in the current marketing year. However, any person who is handling peppers shall file an affidavit with the commission specifying that the person handles less than the number of tons of peppers established pursuant to Section 77226. The commission shall, upon receipt of the affidavit, determine whether this chapter applies to that person.

(Amended by Stats. 2004, Ch. 167, Sec. 10. Effective January 1, 2005.)

77333.

Every person who handles peppers in California, including persons who handle less than the tonnage threshold established pursuant to Section 77226, shall keep a complete and accurate record of all peppers handled with the name of the producer whose peppers were handled. The records shall be in simple form and contain 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. 2004, Ch. 167, Sec. 11. Effective January 1, 2005.)

77334.

(a) All proprietary information obtained by the commission or the director from producers or handlers is confidential and shall not be disclosed except when required in a judicial proceeding.

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

77335.

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

77336.

Every handler shall be personally liable for the payment of collected assessments to the commission. Failure of a handler to collect the assessment shall not exempt the handler from liability and shall not relieve any person subject to this chapter from the obligation to pay the assessment.

77337.

Any producer or handler who fails to file a return or pay any assessment within the time required by the commission shall pay to the commission a penalty of 10 percent of the amount of the assessment determined to be due and, in addition, pay 1½ percent interest per month on the unpaid balance.

77338.

When the producer or handler is a corporation, all of the directors and officers of the corporation in their capacity as individuals shall be included, and any liability for violating this chapter, including but not limited to, failing to pay assessments or to collect assessments, shall also include identical liability upon each director or officer of the corporation.

ARTICLE 7. Actions and Penalties

77351.

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

- (a) 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 peppers, to fail or refuse to furnish the commission or its duly authorized agents, information concerning the names and addresses of persons from whom peppers have been received and the quantity so received.
- (d) Secrete, destroy, or alter records required to be kept under this chapter.

77352.

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

(Amended by Stats. 2004, Ch. 167, Sec. 12. Effective January 1, 2005.)

77353.

(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 the obtaining for injunctive relief or specific performance regarding this chapter and the rules and 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 other rule or regulation of the commission, including, but not limited to, the nonpayment of assessments. No bond shall be required to be posted by the commission as a condition for the issuance of any writ of attachment or injunctive relief.

(b) A writ of attachment shall be issued pursuant to Chapter 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 regarding peppers until there is full compliance and satisfaction of the judgment. Upon a favorable verdict for the commission, it shall be 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.

77354.

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**77371.**

Between May 1, 1993, and April 30, 1994, the commission shall cause a referendum to be conducted among producers and handlers to determine whether the operations of this chapter shall be approved and continued in effect. A favorable vote under this chapter shall be found if the secretary determines from the referendum that a majority of the eligible producers and handlers 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, the secretary shall so certify and this chapter shall remain effective. If the secretary finds that a favorable vote has not been given, the secretary shall so certify and declare the operations of this chapter suspended upon expiration of the marketing season ending April 30, 1994. Thereupon, the operation of the commission shall be concluded and funds distributed in the manner provided in Section 77375. No bond or security shall be required for any such referendum.

(Amended by Stats. 2004, Ch. 167, Sec. 13. Effective January 1, 2005.)

77372.

Following a favorable referendum conducted prior to April 30, 1994, a referendum shall be conducted by the commission every fifth year thereafter unless a referendum is conducted as the result of a petition pursuant to this article. In that case, the referendum shall be every fifth year following the industry petitioned referendum following the procedures provided in Section 77371.

(Amended by Stats. 1991, Ch. 527, Sec. 8.)

77373.

(a) Upon a finding by a two-thirds vote of the full commission that the operation of this chapter has not tended to effectuate its declared purposes, the commission may recommend to the secretary 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 secretary 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 20 percent of the producers by number who produced not less than 20 percent of the volume of peppers in the immediately preceding marketing year, and 20 percent of the handlers by number who handled not less than 20 percent of the volume of peppers in the immediately preceding marketing year, hold a referendum among the producers and handlers to determine if the operations of the commission shall be suspended. However, the secretary shall not hold a referendum as a result of the petition unless the petitioner shows, by the weight of evidence, that the operation of this chapter has not tended to effectuate its declared purposes.

(c) The secretary shall establish a referendum period, that 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 secretary shall tabulate the ballots filed during the period. The secretary shall suspend operation of this chapter if the director finds either one of the following has occurred:

(1) At least 40 percent of the total number of producers from the list established by the director have participated in the referendum:

(A) 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 quantity of peppers 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 suspension, and the producers so voting marketed 65 percent or more of the total quantity of peppers in the preceding marketing year by all of the producers who voted in the referendum.

(2) At least 40 percent of the total number of handlers from the list established by the director have participated in the referendum:

(A) Sixty-five percent or more of the handlers who voted in the referendum voted in favor of suspension, and the handlers so voting handled a majority of the total quantity of peppers in the preceding marketing year by all of the handlers who voted in the referendum.

(B) A majority of the handlers who voted in the referendum voted in favor of suspension, and the handlers so voting handled 65 percent or more of the total quantity of peppers in the preceding marketing year by all of the handlers who voted in the referendum.

(Amended by Stats. 2006, Ch. 538, Sec. 212. Effective January 1, 2007.)

77374.

(a) The secretary 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 volume of peppers and at least 51 percent of the eligible handlers that handle at least 51 percent of the total volume of peppers.

(b) The person or persons originating the request shall file a written notice with the secretary 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 secretary.

(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. Signatures shall be secured within the time limit specified in this section.

(Amended by Stats. 2004, Ch. 167, Sec. 15. Effective January 1, 2005.)

77375.

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, shall 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 prorated refund to these persons, any funds remaining after payment of all expenses of winding up and terminating operations shall be withdrawn from the approved depository and paid into an appropriate program conducted by the University of California or the California State University system, another state agency, or a federal agency that deals with the purposes of this chapter. If an appropriate program does not exist, the funds shall be paid into the State Treasury as unclaimed trust funds.

(Amended by Stats. 2006, Ch. 538, Sec. 213. Effective January 1, 2007.)

77376.

Upon suspension of the operation of this chapter, the commission shall mail a copy of the notice of suspension to all persons affected by the suspension whose names and addresses are on file.