

STATE OF CALIFORNIA
DEPARTMENT OF FOOD AND AGRICULTURE
MARKETING BRANCH



CALIFORNIA STRAWBERRY COMMISSION LAW

Chapter 17.5 of Part 2, Division 22 of the
California Food and Agricultural Code

*Originally enacted in 1993
With amendments effective through January 1, 1998*

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CALIFORNIA STRAWBERRY COMMISSION LAW

ARTICLE 1. Declaration and General Provisions

77401. Strawberry production an important California industry

The production and marketing of strawberries constitutes an important industry of this state that provides substantial and necessary revenues for the state and employment for its citizens.

77402. Commission efficient means to manage research; national and international marketing

The establishment of the commission is necessary for the efficient creation and management of a research program to develop improved varieties of strawberries, an integrated approach to control pests and diseases common to strawberries, and more efficient cultural practices. The commission is also necessary for the efficient development and management of a national and international advertising and promotion program which, combined with the research program, will enhance the competitiveness of the California strawberry industry within the national and international marketplace.

77403. Strawberry industry necessary for continuous supply; levels of income

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

77404. Production; public interest; exercise police power; public health, safety, welfare

The production and marketing of strawberries produced in this state is hereby declared to be affected with the 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.

77405. Commission; advertising; promotion; market and production research

A commission form of administration created by this chapter is designed to deal with the broad fields of advertising, promotion, marketing research, and production research.

77406. Actions taken; Cartwright Act; Unfair Practices Act; restraint of trade

No action taken by the commission, or by any individual in accordance with this chapter or with rules and regulations adopted under the chapter, shall be deemed 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 rule of statutory or common law against monopolies or combinations in restraint of trade.

77407. Commission members; represent interest of strawberry industry; public interest

It is hereby declared as a matter of legislative determination that members of the commission are intended to represent and further the interest of the particular 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 industry concerned is tantamount to, and constitutes the public generally within the meaning of Section 87103 of the Government Code.

ARTICLE 2. Definitions

77410. Definitions govern construction of chapter

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

77411. Strawberries

“Strawberries” mean all strawberries produced in California for commercial purposes.

(Amended by Stats. 1997, Ch. 531, Sec. 1. Effective January 1, 1998.)

77412. Books and Records

“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.

77413. Commission

“Commission” means the California Strawberry Commission.

77414. Crate

“Crate” means a shipping container holding more than six pint baskets, or the equivalent volume thereof, and no more than 12 pint baskets, or the equivalent volume thereof, used in preparing for market or marketing strawberries for fresh consumption. A shipping container holding six pint baskets, or the equivalent volume thereof, shall be considered to be a half-crate. Assessments on a half-crate shall be one-half of the rate for a crate of strawberries. A shipping container holding more than 12 pint baskets, or the equivalent volume thereof, shall be assessed at a rate determined by the commission.

77415. Director

“Director” means the Director of Food and Agriculture.

* 77416. Districts; boundaries; vote requirements to amend; Department concurrence

“Districts” consist of the following:

- (a) District 1 consists of San Diego, Imperial, and Riverside Counties.
- (b) District 2 consists of Los Angeles, Orange, and San Bernardino Counties.
- (c) District 3 consists of Santa Barbara and San Luis Obispo Counties.
- (d) District 4 consists of Ventura County.

(e) District 5 consists of Madera, Fresno, Kings, Tulare, Kern, Inyo, Merced, Stanislaus, San Joaquin, and Sacramento Counties and all other counties within the State of California not included in Districts 1 to 4, inclusive, and District 6.

(f) District 6 consists of Alameda, Monterey, San Benito, San Mateo, Santa Clara, and Santa Cruz Counties, and the City and County of San Francisco.

The boundaries of any district may be changed by a two-thirds vote of the commission, which is concurred in by the secretary, to ensure proper representation. The boundaries need not coincide with county lines.

(Amended by Stats. 1997, Ch. 531, Sec. 2. Effective January 1, 1998.)

****Modified by Commission Action***

Pursuant to the paragraph above, the Commission, by a two-thirds vote on October 1, 2008 and subsequent concurrence by the Secretary, modified district boundaries effective January 23, 2009, as follows:

District 1 – consists of San Diego, Orange, Imperial, Riverside, Los Angeles and San Bernardino Counties

District 2 – consists of Ventura County

District 3 – consists of Santa Barbara and San Louis Obispo Counties

District 4 – consists of Santa Cruz, Monterey, San Benito, Santa Clara, San Mateo, San Francisco and Alameda Counties

District 5 – consists of Sacramento, Madera, Merced, Fresno, and Tulare Counties

District 6 – consists of all California Counties

77417. Ex officio members

“Ex officio members” are nonvoting members of the commission.

(Amended by Stats. 1994, Ch. 146, Sec. 56. Effective January 1, 1995.)

77417.5. Market; marketing

“Market” or “marketing” means to sell or otherwise distribute strawberries into commercial channels or trade resulting in the sale of strawberries.

77418. Marketing research

“Marketing research” means any research relating to the sale of strawberries.

77419. Marketing season; fiscal year

“Marketing season” or “fiscal year” are synonymous terms and mean the period beginning February 1 of any year and extending through the last day of January of the following year.

77420. Process; processing

“Process” and “processing” are synonymous terms and mean the operations of receiving, cleaning, grading, capping, slicing, canning, freezing, preserving, or otherwise changing the form of the strawberries in preparing them for market.

77421. Processor

“Processor” means any person who performs any of the functions of processing strawberries within California. When a processor 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 processor may be subject pursuant to this chapter shall include identical liability upon each individual director or officer of the corporation. It does not, however, include a retailer, except a retailer who purchases or acquires from, or processes on behalf of, any producer, strawberries that were not previously subject to assessment by the commission.

(Amended by Stats. 1997, Ch. 531, Sec. 3. Effective January 1, 1998.)

77422. Producer; grower

“Producer” and “grower” are synonymous terms and mean any person who produces or causes to be produced strawberries for market and who shall, upon request of the commission, provide proof of commodity sale.

77423. Production research

“Production research” means any research relating to the production, harvest, and post harvest handling of strawberries.

77424. Ship; shipping

“Ship” and “shipping” are synonymous terms and mean the operations of receiving, grading, cleaning, transporting, distributing, or otherwise preparing for market or marketing strawberries in other than processed form.

(Amended by Stats. 1995, Ch. 727, Sec. 113.5. Effective January 1, 1996.)

77425. Shipper

“Shipper” means any person who performs any of the functions of shipping strawberries within California. When the shipper 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 shipper may be subject pursuant to this chapter shall include identical liability upon each individual director or officer of the corporation. It does not, however, include a retailer, except a retailer who purchases or acquires from, or ships on behalf of, any producer, strawberries that were not previously subject to assessment by the commission.

(Amended by Stats. 1997, Ch. 531, Sec. 4. Effective January 1, 1998.)

ARTICLE 3. The California Strawberry Commission

***77430. Commission; composition; district representation; modification; maximum membership**

(a) There is in the state government the California Strawberry Commission. Except as provided in subdivision (d), the commission shall be composed of 13 producers, five shippers, five processors, and one public member.

(b) Except as provided in subdivision (d), producers within the respective districts shall elect one member from District 1, two members from District 2, two members from District 3, two members from District 4, one member from District 5, and five members from District 6. Shippers and processors shall be elected by and from shippers and processors, respectively, on a statewide basis without reference to districts. The public member shall be appointed to the commission by the secretary from nominees recommended by the commission.

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

(d) The commission may modify the number of producers in each district, and shippers and processors who serve on the commission, and may elect producers, shippers, and processors to serve as members at large of the commission. The total number of producer, shipper, and processor members shall not exceed 32.

(Amended by Stats. 1997, Ch. 531, Sec. 5. Effective January 1, 1998.)

****Modified by Commission Action***

Pursuant to the paragraph above, the Commission, by a two-thirds vote on October 1, 2008 and subsequent concurrence by the Secretary, modified the composition of the Commission effective January 23, 2009.

The modified alignment of districts and number of producer representatives on the Commission is as follows:

District 1 – San Diego, Orange, Imperial, Riverside, Los Angeles and San Bernardino Counties (2 members, 1 alternate)

District 2 – Ventura County (6 members, 3 alternates)

District 3 – Santa Barbara and San Louis Obispo Counties (4 members, 2 alternates)

District 4 – Santa Cruz, Monterey, San Benito, Santa Clara, San Mateo, San Francisco and Alameda Counties (6 members, 3 alternates)

District 5 – Sacramento, Madera, Merced, Fresno, and Tulare Counties (1 member, 1 alternate)

District 6 – All California Counties (1 member, 0 alternate)

The modified composition of the remainder of the Commission is without reference to districts and is as follows:

Shippers – 5 members, 3 alternates

Processors – 3 members, 2 alternates

Public Representatives – 1 member, 1 alternate

77431. Director; review of commission activities; remedies

The director may require the commission to correct or cease any existing activity or function that is determined by the director not to be in the public interest or in violation of this chapter. If the commission refuses or fails to cease those activities or functions or to make corrections as required by the director, the director may, upon written notice, suspend all or a portion of the activities or functions of the commission until such time as the cessation or correction of activities or functions as required by the director has been accomplished by the commission.

Actions of the commission in violation of the written notice shall be 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 that are the subject of the written notice. Upon service of the written notice, the director shall notify the commission in writing of the specific acts that he or she determines are not in the public interest or are in violation of this chapter, and his or her reasons for requiring a cessation or correction of specific existing or proposed activities or functions, and may make recommendations that will make those activities or functions acceptable to the director.

77432. Judicial relief

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, in a court of competent jurisdiction, which may issue a temporary restraining order, permanent injunction, or other applicable relief.

77433. Reimbursement of departmental expenditures; court review of director's activities

The commission shall reimburse the director for all expenditures incurred by the director in carrying out his or her duties and responsibilities under 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.

77434. Alternate members; roles; restrictions; rights and privileges

Except for the ex officio members of the commission, an alternate member for each member shall be elected in the same manner as the member. An alternate member, in the absence of the member for whom he or she is an alternate, shall serve in place of the member on the commission. An alternate member may also serve in place of any other absent member of the same classification (producer, shipper, or processor) from the same district if that member's alternate is also absent. However, an alternate may not serve in place of more than one absent member at a meeting. An alternate member serving in place of a member shall have and be able to exercise all rights, privileges, and powers of the member when serving on the commission. In the event of death, removal, resignation, or the disqualification of a member, the alternate for that member, or another alternate of the same classification from the same district if the alternate for that member is absent, shall act as a member on the commission until a qualified successor is elected.

(Amended by Stats. 1997, Ch. 531, Sec. 6. Effective January 1, 1998.)

77435. Vacancies; filling vacancies, qualification; director's review

Any vacancy on the commission including, but not limited to, 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 due to death, removal, or resignation, shall be filled by the appointment of another person, for the unexpired portion of the term, by a majority vote of the commission. However, the appointee shall fulfill all the qualifications set forth in this article as required for the office he or she is to occupy. The qualifications of any person to fill a vacancy on the commission shall be certified in writing to the director. The director shall notify the commission if he or she determines that the person is not qualified.

77436. Producer member qualification

A producer member or his or her alternate on the commission shall be an individual, partner, or employee of a producer who has a financial interest in producing, or causing to be produced, strawberries for market. The producer member or his or her alternate shall be so qualified during the entire term of office.

77437. Shipper member qualification

A shipper member or his or her alternate on the commission shall be an individual, partner, or employee of a shipper who has a financial interest in shipping, or causing to be shipped, strawberries for market. The shipper member or his or her alternate shall be so qualified during the entire term of office.

77438. Processor member qualification

A processor member or his or her alternate on the commission shall be an individual, partner, or employee of a processor who has a financial interest in processing, or causing to be processed, strawberries for market. The processor member or his or her alternate shall be so qualified during the entire term of office.

77439. Public member; powers, rights and privileges; no financial interest in strawberry industry

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

77440. Term of Office

The term of office of all members of the commission and alternates, except any ex officio member, shall be two years from the date of their election and until their successors are elected.

77441. Corporate body; may sue and be sued; contracts; corporate powers; documentation of proceedings

The commission shall be and is hereby declared and created a corporate body. It may sue and be sued, enter into contracts, adopt a corporate seal, and has all of the powers of a corporation. Copies of its

proceedings, records, and acts, when authenticated, shall be admissible in evidence in all courts of the state, and shall be prima facie evidence of the truth of all statements therein.

77442. Quorum, vote required for actions except assessment rate and vote to suspend commission

A quorum of the commission is a majority of the voting producer members, a majority of the voting shipper members, and a majority of the voting processor members on the commission. Except as provided in Sections 77481.5 and 77499, the vote of a majority of members present at a meeting at which there is a quorum shall constitute an act of the commission.

77443. Notice to director; right to attend meetings; except closed sessions for pending litigation

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. However, the director is not entitled to attend an executive session of the commission called for the purpose of discussing potential or actual litigation against the department.

77444. No salary; reimbursement of travel, meal expenses; \$100 per day

No member of the commission or of any committee established by the commission, which may include nonmembers of the commission, shall receive a salary. Except ex officio government members, the members may receive an amount 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 special assignment for the commission, as approved by the commission, together with the necessary traveling expenses and meal allowances, as approved by the commission.

77445. Director concurrence in 15 days; may request additional information

If the director is required to concur in a decision of the commission, he or she shall indicate 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.

77446. Moneys received; deposit in banks; disbursement of funds; fidelity bond

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

77447. State not liable for acts of commission; payments limited to funds collected; individual members not liable for commission actions; liability is several, not joint

The state shall not be 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 shall be limited to the funds collected by the commission. No member of the commission, alternate member, or any employee or agent thereof, shall be personally liable on the contracts of the commission and no member, alternate member, or employee of the commission shall be responsible individually in any way to any producer, processor, shipper 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 or alternate member of the commission. The liability of the members and alternate members shall be several and not joint, and no member or alternate member shall be liable for the default of any other member or alternate member.

ARTICLE 4. Powers and Duties of the Commission

77451. The powers and duties of the commission shall include, but are not limited to, all of the

(a) Adopt, alter, rescind, modify bylaws; exemption from Government Code

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

(b) Administer; enforce chapter

Administer and enforce this chapter and do and perform all acts and exercise all powers incidental to, or in connection with, or determined reasonably necessary for, proper or advisable effectuation of the purposes of this chapter.

(c) Appoint officers; powers and duties

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

(d) Employ president; other necessary personnel; legal counsel; management firm; staff of another state program; disciplinary action

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 to perform the functions prescribed by this subdivision under control of the commission. If the person engages in any conduct that the director determines is not in the public interest or 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.

(e) Fix employee compensation

Fix the compensation for all employees of the commission.

(f) Appoint committees

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

(g) Establish offices; incur expenses, invest funds; contracts; liabilities; borrow funds

Establish offices and incur expenses, invest funds, enter into contracts and agreements, and create liabilities and borrow funds in advance of receipt of assessments as determined necessary by the commission for the proper administration and enforcement of this chapter and the performance of its duties.

(h) Books; records; annual audit, director concurrence; report to industry; audit by director

Keep accurate books, records, and accounts of all of its dealings, which books, records, and accounts shall be subject to an annual audit by an auditing firm selected by the commission with the concurrence of the director. The audit shall be made a part of an annual report to all producers, processors, and shippers of strawberries, and copies of the audit shall be submitted to the Legislature and 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.

(i) Promotion; creating, maintaining and expanding markets; education of public

Promote the sale of strawberries by advertising and any other promotional means, including cost-sharing advertising, for the purpose of maintaining and expanding present markets and creating new and larger intrastate, interstate, and foreign markets for strawberries, and to educate and instruct the public with respect to the uses, healthful properties, and nutritional value of strawberries.

(j) Education of wholesale, retail trade; presenting facts, negotiate with government agencies

Educate and instruct the wholesale and retail trade with respect to proper methods of handling and selling strawberries, make market surveys and analyses, and present facts to, and negotiate with, state, federal, and foreign agencies on matters that affect the marketing of strawberries.

(k) Contracts for services

Make, in the name of the commission, contracts to render service in formulating and conducting plans and programs, and any other contracts or agreements the commission determines necessary for the promotion of the sale of strawberries.

(l) Scientific Research; contributions; matching funds; commission contribution

Conduct, and contract with others to conduct, scientific research, including the study, analysis, dissemination, and accumulation of information obtained from research or elsewhere, respecting cultural and production practices, and marketing and distribution of strawberries. In connection with the research, the commission shall have the power to accept contributions of, or to match, private, state, or federal funds that may be available for these purposes, and to employ or make contributions of funds to other persons or state or federal agencies conducting the research.

(m) Collect and distribute information

Collect information and publish and distribute, without charge, to producers, processors, and shippers a bulletin or other communication for dissemination of information, including, but not limited to, crop statistics relating to the strawberry industry.

(n) Assessment rate

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

(o) Annual budget; director's concurrence

Establish an annual budget according to accepted accounting practices. The budget shall be concurred in by the director prior to disbursement of funds, except for disbursements made pursuant to subdivision (e).

(p) Statement of contemplated activities; director's concurrence

Submit to the director for his or her concurrence, an annual statement of contemplated activities authorized under this chapter, including advertising, promotion, marketing research, and production research.

(q) Investigate; prosecute violations

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

77461. List of producers, processors and shippers; handler reports; notice to file

Within 90 days after the effective date of this chapter, the director shall establish a list of producers, processors, and shippers eligible to vote on the implementation of this chapter. In establishing the list, the director shall require that processors and shippers of strawberries in California submit the names, mailing addresses, and the volume of strawberries received during the preceding marketing season from each producer of strawberries in California. The request for the information shall be in writing. The information shall be filed within 30 days following receipt of the written request for information.

Any producer, processor, or shipper of strawberries, whose name does not appear upon the director's 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, processor, or shipper. Failure to be on the list does not exempt the producer, processor, or shipper from paying assessments under this chapter.

77462. Restrictions on implementation prior to vote; required vote to fully implement

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

(a) Sixty-five percent or more of the producers, processors, and shippers who voted in the referendum voted in favor of this chapter, and the producers, processors, and shippers so voting each marketed a majority of the total quantity of strawberries in the preceding season by all producers, processors, and shippers who voted in the referendum.

(b) A majority of each of the producers, processors, and shippers who voted in the referendum voted in favor of this chapter, and the producers, processors, and shippers so voting marketed 65 percent or more of the total quantity of strawberries in the preceding season by all producers, processors, or shippers who voted in the referendum.

77463. Voting period; extension

The director shall establish a period in which to conduct the referendum which shall not be less than 10 days or more than 60 days in duration and may prescribe additional procedures necessary to conduct the referendum. If the initial period established is less than 60 days, the director may extend the period. However, the total referendum period may not exceed 60 days.

77464. Nonreceipt of ballot

Nonreceipt of a ballot shall not invalidate a referendum.

77464.5. Bloc vote of nonprofit cooperative marketing associations

In finding whether the commission is approved pursuant to this article, the vote of any nonprofit agricultural cooperative marketing association that is authorized by its members to so vote, shall be considered as being the approval or rejection by the individual members of, or the individual stockholders in, the nonprofit agricultural cooperative marketing association.

77465. Certification of favorable vote by director; notice

If the director finds that a favorable vote has been given as provided in Section 77462, he or she shall so certify and give notice of the vote to all producers, processors, and shippers whose names and addresses are on file with the director.

77466. Certification of unfavorable vote; subsequent vote

If the director finds that a favorable vote has not been given as provided in this article, he or she shall so 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.

77467. Initial commission; membership of existing marketing order; director concurrence

Upon certification of the commission, the members and alternates of anybody operating pursuant to an existing state marketing order affecting the same subject matter of this chapter shall comprise the initial membership of the commission. Thereafter, persons to be elected to the commission shall be selected pursuant to nomination and election procedures established by the commission with the concurrence of the director.

77468. Deposit by proponents; return of unspent funds; Commission authority to reimburse proponents

Prior to the referendum vote conducted by the director pursuant to this article, the proponents of the commission shall deposit with the director an amount of funds determined necessary by the director to defray the expenses of preparing the necessary lists and information and conducting the vote. Any funds not used for this purpose shall be returned to the proponents of the commission who deposited the funds with the director. Upon establishment of the commission, the commission may reimburse the proponents of the commission for any funds deposited with the director and for any legal expenses and costs incurred in establishing the commission.

ARTICLE 6. Assessments and Records

77481. Assessment; maximum assessment; required vote to raise maximum

The commission shall, not later than February 1 of each year, establish the assessment for the marketing season that begins February 1 and continues through January 31 of the following year. The assessment shall not exceed the following amounts:

- (a) Two and one-half cents (\$0.025) per crate, or the equivalent, for strawberries delivered for shipping by producers.
- (b) Two and one-half cents (\$0.025) per crate, or the equivalent, for strawberries received by shippers from producers.
- (c) Two and one-half cents (\$0.025) per 14 pounds for strawberries delivered for processing by producers.
- (d) Two and one-half cents (\$0.025) per 14 pounds for strawberries received by processors for processing from producers.

An assessment greater than the amounts in this section may not be charged unless it is approved in accordance with the voting requirements of Section 77462.

(Amended by Stats. 1997, Ch. 531, Sec. 8. Effective January 1, 1998.)

77481.5. Required vote to establish assessment rate

An assessment established by the commission shall require a favorable vote of not less than two-thirds of the voting producer members, a majority of the voting shipper members, and a majority of the voting processor members on the commission.

(Amended by Stats. 1994, Ch. 1048, Sec. 4. Effective September 29, 1994.)

77482. Assessment exemption; home use; ornamental use

This chapter does not apply to strawberries produced only for a producer's home use or to strawberries that are used only for ornamental purposes.

77483. Handler records; maintain for two years; inspection by commission

Every shipper and processor shall keep a complete and accurate record of all strawberries shipped or processed by him or her with the name of the producer whose strawberries were shipped or processed. A producer who delivers or markets strawberries to persons other than to a shipper or processor shall keep a complete and accurate record of all those strawberries. The records shall contain information required by the commission. The records shall be preserved by the producer, shipper, or processor 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. 1997, Ch. 531, Sec. 9. Effective January 1, 1998.)

77484. Confidentiality of proprietary information; authority to release aggregate data

All proprietary information obtained by the commission or the director from any source, including the names and addresses of producers, shall be confidential and shall not be disclosed except when required by court order in a judicial proceeding. Information on volume shipments, crop 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 gives only totals, but excludes individual information, may be disclosed by the commission.

77485. Producer liability; first handler shall deduct assessment; trustee; sales to non-handlers

Producer assessments shall be upon the producer. The first shipper or processor of strawberries being assessed shall deduct the assessment from amounts paid by him or her to the producer, and shall be a trustee of the funds until they are paid to the commission at the time and in the manner prescribed by the commission. A producer who delivers or markets strawberries to persons other than to a shipper or processor shall pay an assessment directly to the commission at the time and in the manner prescribed by the commission.

(Amended by Stats. 1997, Ch. 531, Sec. 10. Effective January 1, 1998.)

77486. Handler liability for payment of producer assessment; regardless of whether assessment was deducted

Every shipper or processor shall be personally liable for the payment of the collected assessments from producers, and failure to collect the assessment from any producer shall not exempt the processor or shipper from liability.

77487. Assessment is personal debt of every producer, handler

Any assessment that is levied as provided in this chapter is a personal debt of every producer, processor, or shipper so assessed. Failure of a shipper or processor to make payment of the collected producer assessment to the commission shall not relieve the producer of this obligation.

77488. Penalties and interest for late, unpaid assessments; surety bond

(a) Any producer, shipper, or processor 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 past due and, in addition, interest on the unpaid balance at the rate of 1.5 percent per month.

(b) In addition to any other penalty imposed, the commission may require any person who fails to pay any assessment or related charge pursuant to this article to furnish and maintain a surety bond in a form and amount and for a period of time specified by the commission as assurance that all payments to the commission will be made when due.

ARTICLE 7. Actions and Penalties

77491. Violation; misdemeanor crime; false report; failure to report; destruction of records

It is a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding one thousand dollars (\$1,000) or by both 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, or in any way to affect the shipment and marketing of strawberries in order to avoid payment of assessments on the product's highest value.
- (b) Fail to render or furnish a report, statement, or record required by the commission.
- (c) When engaged in the shipping or processing of strawberries or in the wholesale or retail trade of strawberries, to fail or refuse to furnish to the commission or its duly authorized agents, upon request, information concerning the name and address of the persons from whom he or she has received strawberries and the quantity so received.
- (d) Secrete, destroy, or alter records required to be kept by this chapter.

77492. Grievance procedures; appeals from commission decisions

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 director. The determination of the director shall be subject to judicial review upon petition filed with the appropriate superior court.

77493. Civil actions; remedies available to commission

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, relating to this chapter and the rules and regulations adopted under 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. 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 in 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. 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 strawberries until there is full compliance with, and

satisfaction of, the judgment. Upon a favorable judgment for the commission, the court may order that the commission be reimbursed for reasonable attorney's fees and other actual related costs. Venue for these actions is 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.

77494. Two year limit on action for penalty or other remedy

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

77495. Proof of adequate remedy not required

The commission is not required to allege or prove that an adequate remedy at law does not exist in any action brought under this chapter.

77496. Chapter liberally construed; severability

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

77497. Termination of chapter; duties, obligations, violations

The termination of this chapter shall not affect or waive any right, duty, obligation, or liability that has arisen or that 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**77498. Continuation hearing every five years; substantial question; favorable finding; subsequent vote**

Every five years, commencing with the 1999–2000 marketing season, the director shall hold a hearing to determine whether the operation of this chapter should be continued. If the director finds after the hearing that a substantial question exists among the producers, processors, and shippers assessed under this chapter regarding whether the operation of this chapter should be continued, the director shall submit the chapter to a reapproval referendum. If a reapproval referendum is required, the operation of this chapter shall be continued in effect if the director finds that a majority of the eligible producers, processors, and shippers voting in the referendum voted in favor of continuing this chapter. In finding whether the commission is continued pursuant to this article, the vote of any nonprofit agricultural cooperative marketing association that is authorized by its members to so vote shall be considered as being the approval or rejection by the individual members of, or the individual stockholders in, the nonprofit agricultural cooperative marketing association.

If the director finds after conducting a hearing that no substantial question exists or that a favorable vote has been given, the director shall so certify and this chapter shall remain operative. If the director finds that a favorable vote has not been given, he or she shall so certify and declare the operation of this chapter and the commission suspended upon the expiration of the marketing season ending January 31, 2000. Thereupon, the operations of the commission shall be concluded and funds distributed in the manner provided in Section 77499.5. No bond or security shall be required for any such referendum.

(Added by renumbering Section 77501 (as added by Stats. 1993, Ch. 805) by Stats. 1994, Ch. 146, Sec. 58. Effective January 1, 1995.)

77498.5. Interim referendum; reset five-year continuation hearing requirement

Following a hearing, and favorable referendum if required, conducted prior to January 31, 2000, the process specified in Section 77498 shall be conducted by the commission every fifth year thereafter between February 1 and June 30, unless a referendum is conducted as the result of a petition pursuant to Section 77499. In that case, the hearing, and referendum if required, shall be conducted every fifth year following the industry petitioned referendum.

(Added by renumbering Section 77502 (as added by Stats. 1993, Ch. 805) by Stats. 1994, Ch. 146, Sec. 59. Effective January 1, 1995.)

77499. Commission action to suspend; petition to suspend; requirements; referendum; vote

(a) Upon a finding by a two-thirds vote 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 commission be suspended. Any suspension shall not become effective until the expiration of the current marketing season.

(b) The director shall, upon receipt of a recommendation, or may, after a public hearing to review a petition filed with him or her requesting such suspension, signed by 15 percent of the producers, processors, or shippers by number who produced, processed, or shipped not less than 15 percent of the volume in the immediately preceding season, cause a referendum to be conducted among the listed producers, processors, and shippers 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 the weight of evidence that this chapter has not effectuated its declared purposes.

(c) The director shall establish a referendum period, which shall not be less than 10 or more than 60 days in duration. The director may prescribe additional procedures necessary to conduct the referendum. At the close of the established referendum period, the director shall tabulate the ballots filed during the period. If at least 40 percent of the total number of producers, processors, and shippers from the list established by the director participate in the referendum, the director shall suspend the operation of this chapter, if the director finds either one of the following:

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

(2) That a majority of the producers, processors, and shippers who voted in the referendum voted in favor of suspension, and that the producers, processors, and shippers so voting marketed 65 percent or more of the total quantity of strawberries marketed in the preceding season by all of the producers, processors, and shippers who voted in the referendum.

(Added by renumbering Section 77503 (as added by Stats. 1993, Ch. 805) by Stats. 1994, Ch. 146, Sec. 60. Effective January 1, 1995.)

77499.5. Conclusion of operations; refund of uncommitted funds

After the effective date of suspension of this chapter and of the commission, the operations of the commission shall be concluded and all moneys held by the commission, and moneys collected by assessment 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 current marketing season. However, if the commission finds that the amounts returnable are so small as to make impractical the computation and remitting of the pro rata refund to those persons, any moneys remaining and any moneys remaining after payment of all expenses of winding up and terminating operations shall be withdrawn from the approved depository and paid into an appropriate state or federal program or used to fund activities related to the subject matter of this chapter.

(Added by renumbering Section 77504 (as added by Stats. 1993, Ch. 805) by Stats. 1994, Ch. 146, Sec. 61. Effective January 1, 1995.)

77500. Notice of suspension

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

(Added by renumbering Section 77505 (as added by Stats. 1993, Ch. 805) by Stats. 1994, Ch. 146, Sec. 62. Effective January 1, 1995.)