

COOPERATIVE BARGAINING ASSOCIATION LAW

**DIVISION 20, CHAPTER 2, SECTION 54401 ET SEQ.
OF THE CALIFORNIA FOOD & AGRICULTURAL CODE**



JULY 2007

**EXTRACT OF THE FOOD AND AGRICULTURAL CODE REGARDING
COOPERATIVE BARGAINING ASSOCIATIONS**

Article 1. Definitions and General Provisions

54401. As used in this chapter, "cooperative bargaining association" means a farmer association which is organized and functioning pursuant to Chapter 1 (commencing with Section 54001) of this division, for the purpose of group bargaining between its producer members and the first handler or processor, with respect to the sale of any agricultural commodity except milk, cotton, or cottonseed.

54402. It is the public policy of the state to establish and support the right of any farmer to join voluntarily, belong to and freely participate in cooperative bargaining associations. Interference with producer rights set forth in this chapter, including the obligation of processors to negotiate and bargain with cooperative bargaining associations, is an unfair trade practice.

54404. For the purpose of enforcing this chapter, the director may receive complaints from producers against any processor, handler, distributor, or any agent of these persons, or from processors, handlers, distributors, or any agent of these persons against a cooperative bargaining association or any agent of an association, with respect to violations of the unfair trade practices which are specified in Section 54431.

Upon verification of the complaint, the director shall, or upon the director's own motion may, make any and all necessary investigations, examinations, or inspections of any transaction which involves a suspected violation of any provision of this chapter.

The director may thereafter take action against the processor, handler, distributor, or any agent of these persons, or the cooperative bargaining association or any agent of an association, in accordance with applicable provisions of this chapter.

54404.1. If, upon the investigation conducted under Section 54404, the director has reasonable cause to believe that the person charged has violated Section 54431, the director shall issue and cause to be served upon the person so charged a complaint stating the charges. The complaint shall summon the named person to a hearing before the director, which he or she shall call at a specific time and place.

54404.2. At the hearing called pursuant to Section 54404.1, the director may do all the following:

(a) Administer oaths and take testimony.

(b) Issue subpoenas requiring the attendance of witnesses before him or her, together with any books, memoranda, papers, and other documents, articles, or instruments that may be pertinent to the controversy as set forth in the complaint.

(c) Compel the disclosure by the witnesses of all facts known to them that relate to the controversy.

54404.3. The procedure for holding the hearing pursuant to Section 54404.2 is identical to hearings held pursuant to Article 13 (commencing with Section 55781) of Chapter 6.

54404.4. At the conclusion of the hearing called pursuant to Section 54404.1, the director shall enter in his or her office in Sacramento an order which dismisses the complaint, unless the director is satisfied that the person against whom the complaint was filed has violated Section 54431.

54404.5. (a) Notwithstanding Section 54404.1, if the director receives a verified complaint that a processor, handler, distributor, or any agent of any such person or a cooperative bargaining association or any agent of an association has violated subdivision (e) of Section 54431, the director shall conduct a hearing within 14 days of receiving the complaint. The director shall issue a notice of the hearing not less than five days prior to the commencement of the hearing. The director may, but is not required to, make any investigation in addition to the hearing. The director shall announce his or her decision on the complaint within five days after the conclusion of the hearing and may take any action that is authorized by this section.

(b) If the director determines that the person against whom the complaint was filed has violated subdivision (e) of Section 54431, the director may issue an order fashioned in a manner so as to expeditiously require that person to comply with the requirements of this chapter. If the person thereafter disobeys the order, the director, represented by the Attorney General, shall apply to the Superior Court of the County of Sacramento in order to obtain a court order requiring the person to obey the order of the director. The action shall be handled in an expeditious manner by the court and given calendar preference.

(c) The costs of the hearing held pursuant to subdivision (a) shall be assessed by the director and paid for by the party filing the complaint if the hearing results in a finding that no violation occurred. The costs of the hearing shall be paid for by the party against whom the complaint was filed if the hearing results in a finding that a violation had occurred.

(d) The hearing held pursuant to subdivision (a) shall be held in as expeditious a manner as possible under Sections 54404.2 and 54404.3. The hearing officer shall use his or her best efforts to ensure that the hearing will be conducted as quickly as possible consistent with the requirements of due process and this chapter.

(e) The record from the hearing held pursuant to subdivision (a) may be introduced by either party to that hearing at a hearing held pursuant to Section 54404. 1.

54405. The director may bring an action to enjoin the violation or threatened violation of any provision of this chapter in the superior court of the county in which such violation occurred or is about to occur. Actions against different defendants may be consolidated, in the discretion of the court, if the alleged violations are of the same provision, have occurred in the same or an adjoining county, relate to the same agricultural commodity, occurred in the same production season, and such consolidation can be done without prejudice to a substantial right of any defendant. Any proceedings which are brought pursuant to this section shall be governed in all other respects by Chapter 3 (commencing with Section 525), Title 7, Part 2 of the Code of Civil Procedure.

Article 2. Unfair Trade Practices

54431. It is an unfair trade practice, and unlawful, for any processor, handler, distributor, or agent of any such person, or, with regard to subdivisions (d), (e), and (f), for any cooperative bargaining association or any agent of an association, or for any other person to do any of the following:

(a) Interfere with, restrain, coerce, or boycott producers in the exercise of the rights which are guaranteed pursuant to Section 54402.

(b) Discriminate against any producer with respect to price or other terms of purchase of any raw agricultural commodity, by reason of the producer's membership in, or contract with, any cooperative bargaining association.

(c) Pay or loan money, or give any other thing of value, to a producer as an inducement or reward for refusing or ceasing to belong to, or for breaching one's membership agreement in, a cooperative bargaining association.

(d) Maliciously or knowingly give false reports about the finances, management, or activities of any person subject to this chapter.

(e) Refuse to negotiate or bargain, including refusing to comply with the procedure prescribed in Article 3.5 (commencing with Section 54451), at reasonable times and for reasonable periods of time with a genuine desire to reach agreement and a serious attempt to resolve differences with a cooperative bargaining association for price, terms of sale, compensation for commodities produced under contract, and other contract provisions relative to any commodity which a cooperative bargaining association represents, or refuse to negotiate or bargain, including refusing to comply with the procedure prescribed in Article 3.5 (commencing with Section 54451), at reasonable times and for reasonable periods of time with a genuine desire to reach agreement and a serious attempt to resolve differences with a processor for price, terms of sale, compensation for commodities produced under contract, and other contract provisions relative to any commodity which the cooperative bargaining association represents. This subdivision does not apply to fresh grapes

purchased for wine. Also, this subdivision is limited to processors, handlers, or agents of any of those persons who deal in fruits, nuts, or vegetables for processing and a cooperative bargaining association which meets all of the following:

(1) That, under the articles of incorporation or bylaws of the cooperative bargaining association, the association is producer owned and controlled exclusively by producers.

(2) The cooperative bargaining association has enforceable contracts with its members.

(3) The cooperative bargaining association has financial resources and management reasonably sufficient to accomplish the purpose for which it was organized.

(4) The cooperative bargaining association represents, through its own members, a sufficient number of producers or a sufficient quantity of any particular commodity, or both, to make it an effective agent for producers in bargaining with handlers.

(5) One of the functions of the cooperative bargaining association is acting as principal or agent for its producer members to negotiate or bargain with handlers for prices, terms of sale, compensation for commodities produced under contract and other terms of contracts with respect to the production, sale, and marketing of their commodities.

(f) Refuse to negotiate or bargain for price, terms of sale, compensation for commodities produced under contract, and other contract provisions relative to any commodity which a cooperative bargaining association represents. This subdivision only applies to a cooperative association whose members produce either fresh grapes purchased for wine or whose members produce any other commodity not specified in subdivision (e) and which meets all of the following:

(1) Under the articles of incorporation or bylaws of the cooperative bargaining association, the association is producer owned and controlled exclusively by producers.

(2) The cooperative bargaining association has enforceable contracts with its members.

(3) The cooperative bargaining association has financial resources and management reasonably sufficient to accomplish the purpose for which it was organized.

(4) The cooperative bargaining association represents, through its own members, a sufficient number of producers or a sufficient quantity of any particular commodity, or both, to make it an effective agent for producers in bargaining with handlers.

(5) One of the functions of the cooperative bargaining association is acting as principal or agent for its producer members to negotiate or bargain with handlers for prices, terms of sale, compensation for commodities produced under contract, and other terms of contracts with respect to the production, sale, and marketing of their commodity.

54432. The provisions of subdivision (e) of Section 54431 only apply to any processor, handler, distributor, or agent of any such person, who refuses to negotiate or bargain, as specified by such provisions, with a cooperative bargaining association which represents producers with whom such a processor, handler, distributor, or agent of any such person, has had a prior course of dealing.

For purposes of this section, "prior course of dealing" means that the processor, handler, distributor, or agent of any such person has purchased in any two of the immediate preceding five years a commodity from a producer which a cooperative bargaining association represents. However, a processor, handler, distributor, or agent of any such person is subject to subdivision (e) of Section 54431 if that person has newly gone into business in California by locating in this state from another state or country, by being created from other business entities which had a prior course of dealing with a bargaining association, or by being newly created and utilizing substantially the same processing facilities as a prior processor which itself was subject to subdivision (e) of Section 54431.

54434. The provisions of subdivision (e) of Section 54431 shall not apply to cooperative associations in respect to business done with its own membership.

54435. Nothing in subdivision (e) or (f) of Section 54431 requires any processor, handler, distributor, or agent of any such person, to negotiate over any specific period of time, or to agree upon price, terms of sale, compensation for commodities produced under contract, and other contract provisions relative to any commodity which any cooperative bargaining association represents. However, nothing in this section relieves the parties from the requirement to negotiate and bargain pursuant to subdivision (e) or (f) of Section 54431 or to comply with the procedures prescribed in Article 3.5 (commencing with Section 54451) if applicable.

Article 3. Annual Report

54442. (a) To aid in preparation of the report required under this chapter, the secretary shall establish an advisory committee consisting of the following persons:

(1) Six representatives of cooperative bargaining associations from names submitted by cooperative bargaining associations, two of whom shall be appointed by the Governor, two of whom shall be appointed by the Speaker of the Assembly, and two of whom shall be appointed by the Senate Committee on Rules.

(2) Six representatives of processors from names submitted by processors, two of whom shall be appointed by the Governor, two of whom shall be appointed by the Speaker of the Assembly, and two of whom shall be appointed by the Senate Committee on Rules.

(b) The members of the advisory committee shall be reimbursed for travel expenses pursuant to the rules and regulations adopted by the Director of the Department of Personnel Administration pursuant to Section 19820 of the Government Code for attendance at a meeting approved by the Secretary of Food and Agriculture.

54443. The advisory committee shall study and report on all of the following issues:

- (a) Unfair trade practices.
- (b) Licensing.
- (c) Funding.
- (d) Investigation and hearing procedures.
- (e) The need for a mechanism to resolve bargaining disputes.
- (f) Any other issues relating to this chapter.
- (g) Any recommended changes to this chapter.

54444. The advisory committee shall meet not less than once annually.

54445. The advisory committee shall prepare and transmit a report to the secretary at a time fixed by the secretary so as to meet his or her obligation under this article.

54446. (a) The advisory committee shall prepare and submit a report to the secretary who, in turn, shall report to the Legislature on the effectiveness of subdivisions (a) and (e) of Section 54431 in successfully aiding the bargaining process between processors and cooperative bargaining associations. The secretary shall include any recommended changes to subdivisions (a) and (e) of Section 54431 as part of the report.

(b) After receiving the report, the Assembly Committee on Agriculture and the Senate Committee on Agriculture may hold hearings on the report.

(c) The report shall, among other things, focus on any specific abuses of subdivisions (a) and (e) of Section 54431.

(d) Annual progress reports on the report shall be submitted by the advisory committee to the secretary.

54447. This article shall be construed as a continuation of former Article 3 of Chapter 2 of Division 20.

Article 3.5. Conciliation

54451. The department shall order conciliation between any cooperative bargaining association and any processor subject to this chapter if it determines, after receiving a request under the procedure specified in Section 54452, that conciliation will materially assist the parties in negotiating an agreement. Either party may request at any time that conciliation be ordered.

54451.5. A conciliation service shall be appointed by the department if the parties cannot agree on a conciliator.

54452. The following procedure shall be used upon receipt by the department of a request for conciliation:

(a) The request from one of the parties to the negotiation, referred to as the requesting party, shall be presented on a form prescribed by the department.

(b) The requesting party shall submit, along with the request, the last offer made to the other party, referred to as the responding party, reasons for rejection of the responding party's last offer, and an indication as to what the requesting party believes would be required to reach an agreement. A copy of the request, as well as any information required pursuant to this subdivision, shall be express mailed to the responding party on the same day that the request is submitted to the department.

(c) On the next business day after receiving the request for conciliation, the department shall notify the responding party that a request for conciliation has been received. The responding party shall be required to respond to the department within three business days after receipt of notification that conciliation has been requested. The response from the responding party shall include the last offer made to the requesting party, reasons for rejection of the requesting party's last offer, and an indication as to what the responding party believes would be required to reach an agreement. The responding party's response shall be made on a form prescribed by the department. A copy of the response, as well as any information required pursuant to this subdivision, shall be express mailed to the requesting party on the same day that the response is submitted to the department.

(d) On the same day that the responding party is notified by the department that a request for conciliation has been made, the department shall notify the conciliation service designated by the department pursuant to Section 54451.5 that conciliation may be ordered.

(e) On the date that the department notifies the responding party that a conciliation has been requested, the department may also request additional information from either party and the department shall notify both parties of their right to use a conciliator agreed upon by the parties if the parties notify the department of their agreement before conciliation is ordered.

(f) Both parties have three business days after the date of the request made pursuant to subdivision (e) in which to respond to the request for additional information.

(g) Within three business days after final receipt from the parties of all information requested by the department, the department shall determine whether conciliation shall be conducted.

54453. (a) If conciliation is ordered, the department shall, on the day the department determines that conciliation shall be conducted, notify both parties that the conciliation will take place and direct the conciliator agreed to by the parties to commence the conciliation process in accordance with its commercial mediation rules. If the parties have not agreed upon a conciliator, the department shall appoint the conciliation service designated by the department

pursuant to Section 54451.5, and direct that conciliation service to commence the conciliation process in accordance with its commercial mediation rules. However, this article prevails if there is any conflict between those rules and this article.

(b) Confidential information disclosed to a conciliator by the parties or by any other person in the course of the conciliation shall not be divulged by the conciliator. All statements, oral or written, records, reports, or other documents received or made by a conciliator while serving in that capacity, or by any other person, shall be confidential. The conciliator shall not be compelled to divulge the information or to testify in regard to the conciliation in any proceeding or judicial forum. The parties shall maintain the confidentiality of the conciliation, and shall not rely on, or introduce as evidence in any proceeding or forum, any of the following:

- (1) Views expressed or suggestions made by any party in the course of conciliation proceedings with respect to a possible settlement of the dispute.
- (2) Admissions by any party in the course of conciliation proceedings.
- (3) Proposals made or views expressed by the conciliator.
- (4) The fact that any party in the course of conciliation proceedings had or had not indicated willingness to accept a proposal for settlement made by the conciliator or other party.

54454. The conciliator shall perform the following duties:

(a) Meet with the parties involved in the bargaining process in an attempt to resolve the dispute.

(b) Participate in negotiations and have authority to offer suggestions and recommendations to resolve the dispute.

(c) The total time allotted for conciliation shall not exceed 10 calendar days unless the conciliator feels that an additional period of five calendar days is likely to resolve the dispute. The determination of the conciliator on whether to extend the period of conciliation shall be based on the progress of negotiations during the conciliation process, the impact of a time delay on the parties, and other relevant factors.

(d) If a settlement has not been arrived at through the conciliation process, upon the conclusion of the process and within the time requirements of subdivision (c), the conciliator shall make a final recommendation to the parties as to what he or she believes will equitably resolve the dispute and result in a negotiated settlement. Each party shall be required to respond to the other party, and to the conciliator with their position and response to the conciliator's final recommendations.

54455. If the dispute has not been resolved by the completion of the conciliation process, the conciliator shall file a final report with the department within three business days after the close of conciliation. The report shall include only the following:

(a) A factual summary of the events that occurred during conciliation, including all of the following:

- (1) The dates on which conciliation occurred.

- (2) The amount of time expended in conciliation on each of those dates.
- (3) The location of the conciliation on each of those dates.
- (4) The names of the individuals present during conciliation on each of those dates.
- (b) The final proposals of each of the parties.
- (c) The response, as expressed by each party, to the other party's final proposal.
- (d) A description of the remaining unresolved issues, as expressed by each party.
- (e) A copy of the original request and response specified in Section 54452.

54456. All reasonable costs incurred in carrying out the conciliation prescribed in this article shall be shared equally by each party to the negotiations.

54457. (a) In the report submitted to the Legislature pursuant to Section 54441, the department shall include a section on this article, which shall consist of the following items:

- (1) The number of requests for conciliation.
 - (2) The number of conciliation cases handled.
 - (3) The number of conciliation cases reaching settlement through the process prescribed by this article.
 - (4) The parties involved in conciliation.
 - (5) Recommended changes to this article that would improve its effectiveness.
- (b) The report shall not include any information otherwise confidential pursuant to subdivision (b) of Section 54453.

54458. Any person who violates any provision of this article is liable civilly for a penalty in an amount not to exceed the sum of ten thousand dollars (\$10,000) for each and every violation.

Article 4. Penalties

54461. The willful violation of any provision of this chapter is a misdemeanor punishable by a fine of not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000) for each and every violation. This section does not apply to Article 3.5 (commencing with Section 54451).

54462. In addition to the penalty which is provided by Section 54461, any person who violates any provision of this chapter is liable civilly for a penalty in an amount not to exceed the sum of five thousand dollars (\$5,000) for each and every violation. This section does not apply to Article 3.5 (commencing with Section 54451).

54463. In addition to any other remedies provided under this article, the director may seek to obtain injunctive relief in the proper court to require any person subject to this chapter to comply with any applicable requirement in this chapter.