STATE OF CALIFORNIA

DEPARTMENT OF FOOD AND AGRICULTURE

MARKETING BRANCH

CALIFORNIA WINEGRAPE GROWERS COMMISSION

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California Winegrape Growers Commission Law

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CHAPTER 12.7 of Division 22
California Food and Agricultural Code

CALIFORNIA WINEGRAPE GROWERS COMMISSION

Article 1. Declaration and General Provisions

74801. The production and distribution of winegrapes constitute an important industry of this state which provides substantial and necessary revenues for the state and employment for its citizens. It also furnishes an important food which benefits the public health and welfare.

74802. The maintenance and expansion of the winegrape industry of California and of its local, national, and foreign markets is necessary to assure the consuming public of a continuous supply of these products and needed levels of income for those engaged in the winegrape industry in this state.

74803. It is in the public interest that the public be made aware of accurate and scientific information relating to the beneficial qualities of winegrapes and winegrape products.

74804. The production and marketing of winegrapes and winegrape products 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.

74805. No action taken by the commission nor by any individual in accordance with this chapter or with the rules and regulations adopted under the 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 17000) of that Part 2), or any statutory or common law against monopolies or combinations in restraint of trade. Proof that any action complained of was done in compliance with this chapter shall be a complete defense to the action or proceeding.

74806. This chapter shall be liberally construed. If any provision of this chapter or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

74807. 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, and that this representation and furtherance is intended to serve the public interest. Accordingly, the Legislature finds that with respect to persons who serve on the commission, the particular agricultural industry is tantamount to, and constitutes the public generally within the meaning of Section 87103 of the Government Code.

74807.5. The winegrape industry in this state is expanding. Opportunity exists for continued growth and expansion of the industry by creating new markets in areas of the state and the country. The success of an expansion program is uniquely dependent upon effective market development, promotion, and research because the creation of new markets is essentially a matter of educating and informing people of the use, nutritional value, and availability of a previously unrecognized food. The expansion of the winegrape industry also provides an important source of jobs for many people in this state, a high proportion of whom reside in historically depressed areas of the state, and serves to ensure the preservation of an agrarian society.

74808. The commission form of administration created by this chapter is uniquely situated to provide those engaged in the production of winegrapes the opportunity to avail themselves of the benefits of collective action in the broad fields of market development, marketing research, and production and processing research necessary to achieve the purposes stated herein.

Article 2. Definitions

74821. Unless the context otherwise requires, the definitions in this article govern the construction of this chapter.

74822. "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.

74823. "Brandy" means an alcoholic distillate or a mixture of distillates obtained from the fermented juice, mash, or wine of whole, sound, ripe grapes or from the residue thereof, distilled at not over 170 degrees proof.

74824. "Commission" means the California Winegrape Growers Commission.

74824.1. "Local commission" means any local commission created pursuant to this chapter.

74825. "Grape concentrate" or "concentrate" means unfermented grape juice from which the major portion of the original water content has been removed.

74826. "Grape juice" or "juice" means unfermented crushed grapes without solids containing the major portion of the original water content.

74826.5. "Person" means any individual, firm, corporation, association, or other entity doing business in California.

74827. "Producer" and "grower" are synonymous and, unless otherwise specified pursuant to Section 74922.1, mean any person who produced and marketed winegrapes in the preceding marketing season in a quantity of more than 25 tons. Unless otherwise exempted, producer also includes any person who receives winegrapes as payment for the use of his or her property in the production of winegrapes.

74828. "Producer districts" shall consist of the following:
(a) District 1 consists of Lake, Solano, Mendocino, Sonoma, Marin, and Napa Counties.
(b) District 2 consists of the City and County of San Francisco, Santa Barbara, San Luis Obispo, Ventura, Monterey, San Benito, Santa Clara, Santa Cruz, Alameda, San Mateo, and Contra Costa Counties.
(c) District 3 consists of Butte, Colusa, Glenn, Sacramento, Shasta, Tehama, Yolo, Yuba, Trinity, Siskiyou, Modoc, Lassen, Plumas, Sierra, Sutter, Humboldt, and Del Norte Counties, and that portion of San Joaquin County north of State Highway 4.
(d) District 4 consists of Merced, Stanislaus, Mariposa, Calaveras, Amador, El Dorado, Placer, Nevada, and Tuolumne Counties, and that portion of San Joaquin County south of State Highway 4.
(e) District 5 consists of Fresno, Alpine, Mono, Inyo, and Madera Counties, and that portion of Kings and Tulare Counties north of Nevada Avenue (Avenue 192).
(f) District 6 consists of Kern County and that portion of Kings and Tulare Counties south of Nevada Avenue (Avenue 192).
(g) District 7 consists of Los Angeles, Orange, Riverside, San Bernardino, Imperial, and San Diego Counties.

74828.1. "Producer region," for the purpose of establishing and operating a local commission, shall consist of one or more grape crush report districts.

74829. "Ex officio member" means a nonvoting member of the commission.

74829.5. "Handler" means any person engaged in the marketing of winegrapes or winegrape products that the person has produced, purchased, or acquired from a producer, or is marketing on behalf of a producer whether as owner, agent, employee, broker, processor, or otherwise.

74830. "High proof" means an alcoholic distillate or a mixture of distillates obtained from the fermented juice, mash, or wine of fresh winegrapes or from the residue thereof.

74831. "Market" means to sell, barter, trade, purchase, acquire, or otherwise distribute wine, winegrapes, or winegrape products.

74832. "Market development" includes, but is not limited to, trade promotion, public information, dissemination of information on health and social issues and other matters, and activities for the prevention, modification, or removal of trade barriers which restrict the free flow of winegrape products to market and may include the presentation of facts to state, federal, or foreign governmental agencies on matters which affect this chapter.

74833. "Market research" means any investigation, development, analysis, or implementation of information relating to the marketing of winegrapes and winegrape products including, but not limited to, trade practices, consumer trends, promotion, sales, and advertising.

74834. "Marketing season" or "fiscal year" means the period beginning July 1 of any year and extending through June 30 of the following years.

74835. "Must" means a mixture of unfermented crushed grapes, solid grape particles, and grape juice.

74835.5. "Processing" means any processing of winegrapes for the purpose of making must, grape juice, grape concentrate, wine, winegrape products, or products thereof, including high proof brandy.

74836. "Production research" means research relating to the production and processing of winegrapes, including, but not limited to, the development of new winegrape products and uses for these products.

74837. "Vintner" means a winegrower, as defined in Section 23013 of the Business and Professions Code, who holds a winegrower's license issued by the Department of Alcoholic Beverage Control pursuant to Chapter 3 (commencing with Section 23300) of Division 9 of the Business and Professions Code, and who is engaged in producing must, grape juice, grape concentrate, wine, or products thereof, including high proof and brandy by processing winegrapes or field crushed must.

74838. "Wine" means the product obtained by the fermentation of winegrapes or juice therefrom, with or without addition or abstracting, and includes any product made from winegrapes which is defined as a wine and permitted under Part III (commencing with Section 5381) of Subchapter F of Chapter 51 of Title 26 of the United States Code, and in the statutes of this state and regulations issued thereunder defining wine produced from grapes.

74839. "Winegrapes" means grapes produced in this state which are intended to be converted from their fresh form into grape juice, grape concentrate, wine, or products thereof, including, but not limited to, high proof and brandy produced from winegrapes.

74840. "Winegrape products" include, but are not limited to, must, grape juice, grape concentrate, wine, high proof, and brandy produced from winegrapes.

Article 3. California Winegrape Growers Commission

74861. There is in state government, the California Winegrape Growers Commission. The commission shall be composed of 18 producers and one public member.

(a) Producers within District 7 shall elect one producer member, producers within Districts 2, 3, 4, and 6 shall each elect two producer members, producers within District 5 shall elect four producer members, and producers within District 1 shall elect five producer members to serve on the commission. Alternate producer members shall be elected in the same manner. Each producer member and alternate producer member shall be elected from the district in which he or she produces the greatest portion of his or her winegrape tonnage.

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

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

74861.1. There are, in state government, local commissions for producer regions. The producers in any producer region of this state may, pursuant to this chapter, establish a local commission composed of not less than five and not more than 10 producers and may include one public member. The provisions of this chapter that are applicable to the commission, except Sections 74828, 74861, 74862, 74867, 74871, 74922, 74923, 74926, 74927, 74928, and 74951, shall apply to any local commission established and certified as operative pursuant to this chapter regardless of the certification of the commission.

(a) A producer member who produces more than 25 tons of winegrapes in a producer region shall be eligible to serve on the local commission in that producer region.

(b) A public member may be appointed to the local commission by the secretary from nominees recommended by the local commission.

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

(d) There may be an alternate member for each member of the local commission.

The name of a local commission shall contain the words "local commission" and shall identify the producer region represented by the local commission. No local commission shall use the term "California Winegrape Growers Commission" as part of its name.

74862. Periodically, the number of producer members and their respective alternate members serving on the commission from any district shall be reapportioned in a manner that assures representation in accordance with the value of winegrapes produced in each district. However, no district shall have less than one member nor more than five members on the commission.

74863. (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 these corrections as 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) Any action of the commission in violation of the written notice is 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 which 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 which he or she determines are not in the public interest or are in violation of this chapter, the reasons for requiring a cessation or correction of specific existing or proposed activities or functions, and may make recommendations that will make the activities or functions acceptable.

74864. 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 appropriate relief.

74865. When the secretary is required to concur in a decision of the commission, the secretary shall concur, refuse to concur, or request additional information from the commission within 15 working days from notification of the decision.

74866. 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 has acted arbitrarily or capriciously in restricting the activities or functions of the commission, relieve the commission of the responsibility for the payment of the secretary's legal costs with regard to that action.

74866.1. (a) The secretary shall operate in the most efficient, cost-effective manner possible in carrying out his or her duties and responsibilities pursuant to this chapter.
(1) The secretary shall notify the local commissions of oversight activities and costs that will result in expenses reimbursable by the local commissions.
(2) The local commissions shall inform the secretary which of these activities they will engage in that require oversight and reimbursement of expenses.
(b) The secretary is not required to provide notification to the local commissions pursuant to paragraph (1) of subdivision (a) if the secretary determines that omission of notification is necessary to protect the confidentiality of the parties with respect to any investigation into the activities of the employees of the commission or the actions of the commission.

74867. Each member of the commission, except the ex officio members, shall have an alternate member to be elected in the same manner as the member. An alternate member shall, in the absence of the member of whom he or she is an alternate, serve in place of the member on the commission and have and be able to exercise all the rights, privileges, and powers of the member when serving on the commission. In the event of death, removal, resignation, or disqualification of a member, the alternate shall serve as a member on the commission until a successor is elected and has qualified.

74868. Any producer member and his or her alternate member shall be a person, or an employee representing a producer, who has a financial interest in producing, or causing to be produced, winegrapes for market. The qualifications of producer members and alternate members shall be maintained during the entire term of office. No more than one member and his or her alternate members shall be employed by or connected in a proprietary capacity with the same producer. However, producer membership in an agricultural nonprofit cooperative association or trade organization shall not be considered employment or being in a proprietary capacity.

74869. The public member and his or her alternate member shall have all the rights, privileges, and powers of any other member of the commission. The public member shall not have any financial interest in the wine or winegrape industry.

74870. The term of office of members and alternate members shall be for two years or until their successors have been elected and have qualified. However, of the first members of the commission, one-half of the producer members and their alternate members shall serve for one year, and one-half of the producer members and their alternate members shall serve for two years. The determination of the term of each member shall be made by lot. No member or alternate member shall serve more than four consecutive terms.

74871. No less than 10 producer members, including alternate members when acting in place of the members, shall constitute a quorum of the commission.

74871.1. Not less than one-half of the producer members of any local commission, including alternate members when acting in the place of the members, shall constitute a quorum of the local commission.

74872. The vote of a majority of the members, or alternate members when acting in the place of the members, present at the meeting at which there is a quorum shall constitute the act of the commission.

74873. 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 admissible in evidence in all courts of the state and shall be prima facie evidence of the truth of all statements therein.

74874. The secretary or his or her representatives shall be notified and may attend meetings of the commission and any committee meetings of the commission.

74875. 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, except ex officio government members, and each member of a committee established by the commission who is a nonmember of the commission, may receive an amount not to exceed one hundred dollars ($100) per day, as established by the commission. This amount shall be paid 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 necessary traveling expenses and meal allowances, as approved by the commission.

74876. All funds received from the assessments levied pursuant to 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. The agent or agents shall be bonded by a fidelity bond, executed by a surety company authorized to transact business in this state, in favor of the commission, in an amount of not less than twenty-five thousand dollars ($25,000).

74877. (a) 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.

(b) No member, alternate member, or any employee or agent of the commission, is personally liable for the contracts of the commission or for errors in judgment, mistakes or other acts, either of commission or omission, except for their own individual acts of dishonesty or crime. Liability is several and not joint, and no member, alternate member, or any employee or agent of the commission is liable individually for the default, act, or omission of any other member, alternate member, or any employee or agent of the commission.

Article 4. Powers and Duties of the Commission

74891. The powers and duties of the commission shall include, but are not limited to, all of those contained in this article.

74892. 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 appeals from any bylaws, rules, regulations, operating procedures, or orders of the commission.

74893. The commission may administer and enforce this chapter and do and perform all actions and exercise all powers incidental to, in connection with, or deemed reasonably necessary for, proper or advisable effectuation of this chapter, including, but not limited to, entering into contracts for services with public and private agencies which are deemed necessary by the commission to carry out this chapter.

74894. The commission may appoint its own officers, including a chairperson, one or more vice chairpersons, and other officers it deems necessary. The officers shall have the powers and duties delegated to them by the commission.

74895. The commission may employ a person to serve at the pleasure of the commission as president and other personnel, including legal counsel, necessary to carry out this chapter. 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 action 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 secretary, the secretary may suspend or discharge the person.

74896. The commission may fix the compensation for all employees of the commission.

74897. The commission may appoint committees composed of both members and nonmembers of the commission.

74898. The commission may establish offices, 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.

74899. 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 made a part of an annual report to all producers, copies of which shall also be submitted to the Legislature and 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.

74900. The commission may engage in market development and market research through plans and programs to enhance the sale of California winegrapes and winegrape products for the purpose of maintaining existing markets and creating new and larger domestic and foreign markets, and to educate and instruct the public with respect to the uses and value of California winegrapes and winegrape products. However, any plans and programs so developed and conducted shall not be directed towards a particular private brand or trade name, although private brands and trade names may be used in wine tastings and other similar programs authorized by the commission. In addition, the plans and programs shall make no use of false or unwarranted claims on behalf of California winegrapes or winegrape products, nor disparage the quality, value, sale, or use of any commodity. The commission shall not engage in collective bargaining issues, supply control, grades and quality standards, or price setting activities.

74900.1. Persons subject to any local commission established after January 1, 1993, may designate the manner in which assessments that he or she pays to the local commission may be used, including for market development, market research, or production research, or a combination thereof. Persons may so designate during a period specified by the local commission following its establishment, and following any referendums conducted pursuant to Article 8 (commencing with Section 74991).

74901. The commission may accept contributions of, or match, private, local, state, or federal funds and employ or make contributions of funds to other persons or local, state or federal agencies for purposes of maintaining, promoting, and enhancing the winegrape industry.

74901.5. The commission may present facts to, and negotiate with, local, state, federal, and foreign agencies on matters that affect the winegrape industry.

74902. The commission may undertake appropriate research relating to the production and processing of winegrapes, including the development of new winegrape products and uses for these products.

74903. The commission may publish and distribute bulletins or other communications relating to the California winegrape industry.

74904. The commission may establish an assessment rate to defray operating costs of the commission.

74905. The commission may 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 74896.

74906. The commission shall submit to the secretary, for his or her concurrence, an annual statement of contemplated activities authorized pursuant to this chapter.

74907. 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.

74908. The secretary may require that any contract to which the commission is a party be submitted to the secretary for concurrence prior to the commission entering into the contract. If the secretary requires the submission of a contract and does not concur in that contract, the secretary shall hold a public hearing within 14 days of the initial decision not to concur. In the notice of the hearing, the secretary shall present a written explanation of his or her decision. The secretary shall make a final decision on whether or not to concur in the contract within 30 days of the hearing. The contract may not be executed from the time that the secretary makes the initial decision not to concur to the time of the final decision.

Article 5. Implementation and Voting Procedures

74921. This chapter, except as necessary to conduct an implementation referendum, shall not become operative until the secretary finds, in a referendum conducted by him or her, or a person designated by the secretary, that a favorable vote has been given pursuant to this article.

74922. (a) Upon receipt of a petition that the secretary determines is acceptable, the secretary shall establish a list of producers who are eligible to vote to establish the commission. In establishing the list, the secretary may require producers, vintners, county agricultural commissioners, and others to submit the names and mailing addresses of all producers. The secretary also may require that the information provided include the quantity of winegrapes sold to vintners and the quantity of winegrapes processed by vintners or, in the alternative, may establish procedures for receiving the information at the time of the referendum. The request for this information shall be in writing. The information required by the secretary shall be filed within 30 days following receipt of the written notice.

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

74922.1. (a) Upon petition of at least three producers from any one producer region of this state, the secretary shall establish a list of producers who are eligible to vote in a referendum to establish a local commission in that producer region. In establishing the list, the secretary may require the producers signing the petition and producers, vintners, county agricultural commissioners, and others to submit the names and mailing addresses of all producers in that producer region. The secretary also may require that the information provided include the quantity of winegrapes sold to vintners and the quantity of winegrapes processed by vintners from that producer region and the names and addresses of the vintners, or, in the alternative, may establish procedures for receiving the information at the time of the referendum. The request for this information shall be in writing. The information required by the secretary shall be filed within 30 days following receipt of the written notice.

(b) Any producer whose name does not appear on the secretary's list may have his or her name included on the appropriate list by filing with the secretary a signed statement identifying himself or herself as a producer of a given producer region. Failure to be on the appropriate list does not exempt any producer from paying assessments under this chapter.

(c) Notwithstanding any other provision of this chapter, the petition may designate producers exempt from this chapter, but no producer shall be exempt who has produced and marketed more than 25 tons of winegrapes in the preceding marketing season.

74922.5. For the purpose of voting in the referendum required in Section 74921, only a person who would be required to pay the assessment as a producer pursuant to Section 74952.5 shall be considered a producer.

74923. In determining whether this chapter is applicable to growers, the secretary shall find that at least 40 percent of the total number of growers from the list established by the secretary participated in the referendum, and that either one of the following has occurred:

(a) Sixty-five percent or more of the growers who voted in the referendum voted in favor of this chapter, and the growers so voting marketed a majority of the volume of winegrapes in the preceding marketing season, or in the current marketing season if the harvest is completed prior to the vote, by all the producers who voted in the referendum.

(b) A majority of the growers who voted in the referendum voted in favor of this chapter, and the growers so voting marketed 65 percent or more of the volume of winegrapes in the preceding marketing season, or in the current marketing season if the harvest is completed prior to the vote, by all the producers who voted in the referendum.

74923.1. In determining whether this chapter is applicable to growers in a producer region, the secretary shall find that at least 40 percent of the total number of growers from the list established by the secretary for the producer region participated in the referendum, and that either one of the following has occurred:

(a) Sixty-five percent or more of the growers in the producer region who voted in the referendum voted in favor of the local commission, and the growers so voting marketed a majority of the volume of winegrapes in the producer region in the preceding marketing season, or in the current marketing season if the harvest is completed prior to the vote, by all the producers who voted in the referendum.

(b) A majority of the growers in the producer region who voted in the referendum voted in favor of the local commission, and the growers so voting marketed 65 percent or more of the volume of winegrapes in the producer region in the preceding marketing season, or in the current marketing season if the harvest is completed prior to the vote, by all the producers who voted in the referendum.

74924. The secretary 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 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.

74925. Nonreceipt of a ballot shall not invalidate a referendum.

74926. If the secretary finds that a favorable vote has not been given to the establishment of the commission as provided in this chapter, the secretary shall so certify and declare that result. If the secretary finds that a favorable vote has been given as provided in this chapter, he or she shall so certify and give notice of the favorable vote to all producers and vintners whose names and addresses may be on file with the secretary.

74926.1. If the secretary finds that a favorable vote has not been given to the establishment of any local commission as provided in this chapter, the secretary shall so certify and declare that result.

If the secretary finds that a favorable vote has been given, the secretary shall so certify and give notice of the favorable vote to all producers whose names and addresses may be on file with the secretary. If this chapter is certified as establishing the commission, any local commission shall be abolished unless its producers vote by referendum pursuant to Section 74923.1 in favor of that local commission remaining in operation.

74927. The petition to establish the commission shall name the persons designated to serve as producer members and their alternate members in the event the commission is approved by referendum. Upon the certification of the establishment of the commission, the producer members and their alternates named in the petition shall become the initial members and alternate members of the commission.

74927.1. The petition to establish a local commission shall name the persons designated to serve as producer members and their alternate members, if any, in the event that local commission is approved by referendum. Upon certification of the establishment of a local commission, the producer members and their alternates named in the petition shall become the initial members and alternate members of the local commission.

74928. Subsequent to the action taken pursuant to Section 74927, persons to be elected to the commission upon expiration of existing terms shall be selected pursuant to the nomination and election procedures established by the commission with the concurrence of the secretary.

74928.1. Subsequent to the action taken pursuant to Section 74927.1, persons to be elected to a local commission shall be selected pursuant to the nomination and election procedures established by the local commission with the concurrence of the secretary.

74929. (a) Prior to the implementation referendum conducted by the secretary, the proponents of the commission shall deposit with the secretary the amount that the secretary deems necessary to defray the expenses in creating the commission, including, but not limited to, preparing the necessary producer and vintner lists and conducting the referendum.
(b) Any funds remaining after paying expenses shall be returned to the proponents of the commission who deposited the funds with the secretary.
(c) The commission may reimburse the proponents of the commission for any funds deposited with the secretary that were used in carrying out this article and for any legal expenses and costs incurred in establishing the commission.

Article 6. Assessments and Records

74951. (a) Prior to the beginning of each marketing season or as soon thereafter as possible, the commission shall establish an assessment rate for the marketing season.
(b) The assessment rate for producers shall not exceed 1 percent of the gross dollar value of winegrapes marketed by producers to vintners. If a producer sells winegrapes for a specified sum in a bona fide sale, the gross dollar amount of this sum is the gross dollar value of the winegrapes.

74951.1. (a) The petition for a referendum to establish a local commission shall set forth the assessment rate which shall become effective during the first marketing season in which the local commission is operative. Thereafter, prior to the beginning of each marketing season or as soon thereafter as possible, the local commission shall establish an assessment rate for the marketing season. Assessment rates set by local commissions which vote to continue in operation after the certification of the commission shall be independent of, and additional to, any assessment rate established by the commission.
(b) The assessment rate for producers shall not exceed 1 percent of the gross dollar value of winegrapes grown in the producer region and marketed by producers to vintners. If a producer sells winegrapes for a specified sum in a bona fide sale, the gross dollar amount of this sum is the gross dollar value of the winegrapes.

74952.5. (a) Unless exempted by this chapter, the commission shall levy the assessment on the producer if he or she does any of the following:
(1) Sells to a vintner or to a handler for processing.
(2) Contracts or otherwise arranges with a vintner for processing into wine, with the producer retaining ownership of the wine for sale other than in bottled form.
(3) Is a member of an agricultural nonprofit cooperative association for processing.
(4) Processes winegrapes that he or she has grown and that are included in the petition specified in Section 74922.1.
(b) If a producer delivers winegrapes to a vintner or handler for processing without selling them to the vintner or handler, the "weighted average producer returns per ton" by district as published in the most recent Final Grape Crush Report issued annually for the current marketing season by the department shall be used as the basis for determining the gross dollar value of the winegrapes for the purpose of determining the amount of the assessment.

74952.7. (a) Any producer who meets any of the requirements specified by subdivision (b) may apply to the secretary prior to the formation of the commission, or apply to the commission after its formation, for, and, if found eligible, shall, at the discretion of the commission, receive either an exemption from, or a refund of, the assessment.
(b) A producer shall be eligible to claim an exemption from, or refund of, the assessment for winegrapes grown by the producer, with regard to which the producer does any of the following:
(1) Processes winegrapes that are grown by the producer. However, the producer shall not be eligible for an exemption or refund of assessments on winegrapes that are grown and sold, but a producer who is also a vintner, and who commercially sells less than 25 tons of winegrapes in a marketing season, is not subject to assessment.
(2) Sells to a related vintner or a related handler.

(3) Contracts or otherwise arranges with a related vintner for processing into wine, with the producer retaining ownership of the wine for sale other than in bottled form.
(4) Is a producer who is also a vintner and who contracts or otherwise arranges with a nonrelated vintner for processing his or her winegrapes into wine and retains ownership of the wine for sale other than in bottled form.
(c) For the purpose of this section, an agricultural nonprofit cooperative association is not a "related vintner" or a "related handler." A vintner or handler is a "related vintner" or "related handler" if any one of the following relationships exists:
(1) The producer has an ownership interest in the vintner or handler processing the winegrapes. For purposes of this paragraph, the term "ownership interest" does not include an interest that is limited to ownership of shares of stock in a vintner or handler that is a publicly traded stock corporation, unless the ownership interest includes a right to management or control in the corporation.
(2) The vintner or handler processing the winegrapes has an ownership interest in the producer.
(3) The producer, or any person controlling the producer, if the producer is not a natural person, is a member of the immediate family of the vintner or handler processing the winegrapes, or of any person controlling the vintner or handler, if the vintner or handler is not a natural person. For the purpose of this paragraph, "member of the immediate family" means parents, spouses, and children.
(d) In order to be eligible for the exemption or refund, the producer shall file a claim with the secretary prior to formation of the commission and with the commission after its formation on a form prescribed by the commission attesting to the facts establishing the producer's right to the exemption or refund. The secretary or the commission shall then determine whether the claim should be granted.
(e) The commission shall serve written notice on the claimant of its decision within 30 days of receipt of the claim. All approved claims shall be subject to verification through an independent audit of the claimant and the related vintner's or handler's business records by the commission or its duly authorized agent or, in the case of a local commission, by the secretary or his or her duly authorized agent. The local commission shall not serve as the secretary's duly authorized agent for purposes of auditing business records.
(f) Every producer receiving an exemption or refund shall, in addition to the requirements of Section 74954, maintain sales invoices, and all other business documents specified by the commission as necessary to verify the claim. The records shall be preserved 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 or, in the case of a local commission, by the secretary or his or her duly authorized agent. The local commission shall not serve as the secretary's duly authorized agent for purposes of records inspection.
(g) No claim of exemption or refund shall be approved by the commission after two years from the date the assessment was due. Failure to file a claim of exemption or refund within that two-year period constitutes a waiver of all claims or demands for an exemption or refund against the commission.

74953. This chapter shall not apply to winegrapes produced only for a producer's home use. However, any producer claiming this exemption shall file an affidavit with the commission establishing the manner in which the winegrapes are used. The commission shall then determine whether the affidavit should be approved.

74954. Every producer subject to this chapter and every vintner who purchases winegrapes from or processes winegrapes for producers shall maintain normal commercial records of all winegrapes grown for market or processed. The records shall be in simple form and contain information as the commission shall prescribe. The records shall be preserved 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 or, in the case of a local commission, by the secretary or his or her duly authorized agent. The local commission shall not serve as the secretary's duly authorized agent for purposes of records inspection.

74954.5. Producers subject to this chapter shall provide to local commissions the names of the vintners who purchase winegrapes from or process winegrapes for the producers. Vintners shall provide to local commissions the names of the producers subject to this chapter from whom they purchase or for whom they process winegrapes and the amount of assessment remitted to the local commission for each producer.

74955. All proprietary information obtained by the commission or the secretary from producers or vintners, and all lists of producers in the possession of the commission or the secretary are confidential and shall not be disclosed except when required by a court order after a hearing in a judicial proceeding involving this chapter. Information on volume shipments, commodity value, and other related information that is required for reports to governmental agencies, financial reports made to the commission or aggregate sales and inventory information, and any other information which is requested from the commission, except individual producer or vintner information, may be disclosed by the commission.

74956. Any assessment levied by the commission, pursuant to this chapter, is a personal debt of every person so assessed and is due and payable to the commission within 30 days after the date the vintner deducts the assessment from the amounts paid by the vintner to the producer. The vintner first acquiring the grapes being assessed shall deduct the assessments from amounts paid by the vintner to the producer and shall be a trustee of the funds until they are paid to the commission. The vintner responsible for deducting the assessment may deduct and retain an amount not in excess of that reasonably necessary to cover the actual cost of services provided by the vintner, as determined by the commission. Failure of a vintner to collect the assessment from a producer shall not exempt the vintner from liability nor relieve the producer of the obligation to pay the assessment.

74957. Any person who fails to file a return, or remit 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, 11/2 percent interest per month on the unpaid balance.

Article 7. Actions and Penalties

74971. It is a misdemeanor for any person to do any of the following:
(a) Render or furnish a false report, statement, or record required by the commission.
(b) When engaged in the marketing, processing, or other activities related to winegrapes, to fail or refuse to furnish the commission or its duly authorized agents, information concerning the name and address of the persons to whom winegrapes were delivered or from whom winegrapes have been received.
(c) Secrete, destroy, or alter records required to be maintained under this chapter.
(d) Refuse to render a report, statement, or record required by the commission.

74972. The commission shall establish procedures for the purpose of according individuals aggrieved by its acts or determinations an informal hearing. Appeals from decisions of the commission may be made to the secretary. The determination of the secretary shall be subject to judicial review upon petition filed with the appropriate superior court. Pending disposition of any appeal and judicial review, the parties shall abide by the acts or determinations of the commission.

74973. (a) The commission may commence civil action and utilize all remedies provided in law or equity for the collection of assessments and civil penalties and the obtaining of injunctive relief or specific performance regarding this chapter and the rules and regulations adopted pursuant to this chapter.

(b) 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 the commodity subject to this chapter until there is full compliance and satisfaction of the judgment. Upon a favorable judgment for the commission, it shall be entitled to receive reimbursement for any reasonable attorney's fees and other actual related costs. Venue 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.

74974. Suspension or termination of this chapter in accordance with Article 8 (commencing with Section 74991) shall not result in any of the following:

(a) Affecting, waiving, or termination of any right, duty, obligation, or liability which may have arisen or may thereafter arise in connection with this chapter.

(b) Releasing, condoning, or dismissal of any violation of this chapter.

Article 8. Continuation or Suspension and Termination

74991. During the fifth year of operation of the commission, the commission shall cause a referendum to be conducted among producers to determine whether the commission shall be reapproved and continued to operate. A favorable vote shall be found if the secretary determines from the referendum that a majority of the eligible producers who voted in the referendum voted in favor of continuing the operations. If the secretary finds that a favorable vote has been given, he or she shall so certify that result. If the secretary finds that a favorable vote has not been given, the secretary shall so certify and declare the operations of the commission suspended upon expiration of the marketing season. No bond or security shall be required for any referendum.

74992. Following an initial favorable referendum, a referendum shall be conducted by the commission every fifth year thereafter unless a referendum is conducted as a result of a petition pursuant to this article. In that case, the referendum shall be every fifth year following the industry petitioned referendum following procedures provided in this article.

74993. (a) Upon a finding by a two-thirds vote of the commission that this chapter has not tended to effectuate its declared purposes, the commission may recommend to the secretary that this chapter be suspended. However, any suspension shall not become effective until the expiration of the current marketing season.

(b) Alternatively, the secretary may be petitioned to suspend this chapter. The petition shall be signed by 20 percent of the producers by number who produced not less than 20 percent of the volume of winegrapes in the immediately preceding marketing season. The secretary shall hold a hearing on the petition after receiving it.

(c) The secretary shall, upon receipt of the recommendation to suspend this chapter from the commission, or may, after holding the hearing on the petition to suspend this chapter, hold a referendum among producers to determine if 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 this chapter has not tended to effectuate its declared purposes.

(d) The secretary shall establish a referendum period, which shall not be less than 10 days or more than 60 days in duration. The secretary may prescribe additional procedures as may be necessary to conduct the referendum. At the close of the referendum period, the secretary shall tabulate the ballots filed during the period. If at least 40 percent of the total number of producers from the lists established by the secretary participate in the referendum, the secretary shall suspend this chapter if he or she finds either of the following has occurred:

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

(2) A majority of the producers who voted in the referendum voted in favor of suspension; and the producers so voting marketed 65 percent or more of the total quantity of winegrapes marketed in the preceding marketing season by all of the producers who voted in the referendum.

74994. (a) The secretary shall terminate the commission at the end of the current marketing season if the secretary finds that termination is requested in writing, within a 90-day period, by at least 51 percent of the eligible producers that are directly affected that market at least 51 percent of the volume of the product.

(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 termination need not all be appended to one sheet of paper. Each person signing the petition shall add his or her signature and business address. If no business address is given, a designation of the place of business shall be given that will enable the location to be readily ascertained.

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

74995. After the effective date of suspension of this chapter, the operations 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 the commission shall be returned on a pro rata basis to all persons from whom assessments were collected in the immediately preceding marketing season. However, if the commission finds that the amounts so returnable are so small as to make impractical the computation and remitting of the pro rata refund to these persons, any funds shall be paid into an appropriate program conducted by the University of California or the California State University, another state agency, or a federal agency which deals with the purposes of this chapter. If no program exists, the funds shall be paid into the State Treasury as unclaimed trust funds.

74996. Upon suspension of this chapter, the commission shall mail a copy of the notice of suspension to all producers and vintners affected by the suspension whose names and addresses are on file.