

PD/GWSS BOARD, ASSESSMENT, AND TASK FORCE LAW
(As amended by AB 1642; effective Jan. 1, 2015)

Food and Agricultural Code, Section 6047.1 - 6047.30
Article 8.5. Pierce's Disease and the Glassy-winged Sharpshooter

6047.1.

The Legislature finds and declares the following:

- (a) The state's agricultural business economy could be seriously damaged if measures are not taken to prevent the transmittal of the plant killing bacterium that causes Pierce's disease and to contain its vectors, particularly the glassy-winged sharpshooter, and if measures are not taken to prevent or inhibit infestations by other designated pests and diseases. Furthermore, progress made by winegrape growers and others in the adoption of integrated pest management and sustainable farming practices is threatened by these destructive pests and diseases.
- (b) The funding to accomplish the purposes of this article shall be derived from an assessment on all grapes grown in California and crushed for wine, wine vinegar, juice concentrate, or beverage brandy.
- (c) This article is not intended to establish a precedent, or to supersede, or to reduce or in any way alter government funding of the effort to combat Pierce's disease and other pests in this state.
- (d) The purposes of this article are enhanced by the many and varied efforts of other agricultural commodities' industries to combat this bacterium and its vectors and other designated pests and diseases.
- (e) This article is enacted for the protection of the winegrape industry and is also declared to be enacted in the public interest and in the exercise of the police power of the state for the purpose of protecting the health, peace, safety, and general welfare of the people of this state.
- (f) The assessments shall be collected and expended for purposes consistent with Section 6046 and 6047.30.

6047.2.

For the purposes of this article, the following definitions shall govern its construction:

- (a) "Board" means the Pierce's Disease and Glassy-winged Sharpshooter Board.
- (b) "Department" means the Department of Food and Agriculture.
- (c) "Marketing season" begins July 1 of each year and ends June 30 of the next year.
- (d) "Producer" means a grower, including a cooperative, of grapes in California for wine, wine vinegar, juice, concentrate, or beverage brandy.
- (e) "Processor" means a processor who crushes grapes in California for wine, wine vinegar, juice, concentrate, or beverage brandy.
- (f) "Person" means a producer, processor, or any other entity that holds title to grapes subject to assessment.
- (g) "Purchase" means the taking by sale, discount, negotiation, mortgage, pledge, lien, issue or reissue, gift, or any other voluntary transaction creating an interest in property. For purposes of this paragraph, "sale" shall consist of the passing of title from the seller to the buyer for a price.
- (h) "Purchased grapes" means grapes grown in California, crushed by a processor for wine, wine vinegar, juice, concentrate, or beverage brandy, and purchased from a person considered a separate entity from the purchaser.
- (i) "Grapes not purchased" means all other grapes grown in California and crushed by a processor for wine, wine vinegar, juice, concentrate, or beverage brandy, including, but not limited to, the following:

- (1) Grapes grown by a person who is not considered a separate entity from the processor or who is a member of the processor cooperative.
 - (2) Grapes not purchased and crushed to the account of a person who retains ownership of the grapes.
- (j) "Secretary" means the Secretary of Food and Agriculture.
- (k) "Other designated pests and diseases" means pests and diseases designated by the secretary as provided in Section 6047.30.

6047.3.

- (a) Within 90 days after the effective date of this section, the secretary shall create in the department the Pierce's Disease and Glassy-winged Sharpshooter Board, which shall consist of at least 14, but not more than 15 members, of which eight shall be representatives of producers who are not also processors and six shall be representatives of processors who are also producers.
- (b) The secretary shall appoint the members of the board from recommendations received from the industry. In making the appointments, the secretary shall select no more than one person from a producer or processor entity and shall ensure that there is representation on the board from each of the major grape production areas in the state.
- (c) The secretary may appoint one additional member to the board, from nominees received from the board, who shall serve as the public member. The public member shall represent the interests of the public in all matters coming before the board and shall have the same voting and other rights and immunities as other members of the board.
- (d) The secretary and other appropriate individuals, as determined by the board, shall be nonvoting ex officio members of the board.
- (e) It is hereby declared, as a matter of legislative determination, that persons appointed to the board are intended to represent and further the interests of the 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 appointed to the board, the industry concerned is tantamount to, and constitutes, the public generally within the meaning of Section 87103 of the Government Code.

6047.3.5.

Notwithstanding any other provision of law, the secretary, upon the recommendation of the board, may contract with any nonprofit authoritative scientific body with expertise in agricultural issues in order to expedite research relating to the eradication of Pierce's disease.

6047.4.

- (a) The powers of the board shall be the following:
 - (1) Submit recommendations to the secretary on, but not limited to, the following:
 - (A) Selection of officers.
 - (B) Terms of office for board members.
 - (C) Annual assessment rate.
 - (D) Annual budget.
 - (E) Expenditures authorized under Section 6047.5 and 6047.30.
 - (2) Receive money from the assessment and other sources.
 - (3) Adopt, amend, and rescind all proper and necessary bylaws and procedures.
 - (4) Coordinate its activities with the secretary's science advisory board and agricultural / governmental advisory task force.
- (b) A majority of the members of the board shall constitute a quorum of the board. The vote of a majority of the members present at a meeting at which there is a quorum constitutes an act of

the board, except for actions taken pursuant to subdivision (a) of Section 6047.7, which shall require a majority of the vote of the board. The board may continue to transact business at a meeting where a quorum is initially present, notwithstanding the withdrawal of members, provided any action is approved by the requisite majority of the required quorum.

- (c) As authorized by the board, members of the board may receive per diem and mileage in accordance with the rules of the Department of Personnel Administration for attendance at meetings and other approved board activities.

6047.5.

- (a) Expenditure of the funds pursuant to this article shall be restricted to the following:
 - (1) Reasonable administrative expenses of the board and the department, subject to the limitation in Section 6047.12.
 - (2) The collection, enforcement, deposit, and handling of the assessments.
 - (3) Notwithstanding Section 6047.12, costs to conduct a referendum.
 - (4) Subject to subdivision (d) of Section 6047.1, research and other activities related to the transmittal of the plant killing Pierce's disease bacterium and its vectors, particularly the glassy-winged sharpshooter, including, but not limited to, research of integrated pest management and other sustainable industry practices. The disbursement of research funds collected pursuant to Section 6047.7 shall be on a competitive bid basis, shall be exempt from the requirements of Sections 12798 and 12798.6, and may be encumbered with existing resources beyond the termination date of this statute.
- (b) Except as provided in subdivision (c), data and related information and materials produced during the course of research conducted pursuant to this article that are in the possession of the department, the board, or any entity engaged in research funded pursuant to this article, shall be confidential and shall not be released for any purpose, except to the extent that they are included in any final publication of research, or except when required by a court order after a hearing in a judicial proceeding involving this article.
- (c) The restrictions in this section shall not apply to research conducted by the University of California or by other public agencies or public institutions that are subject to interagency agreements, except to the extent that they are consistent with policies of the entity engaged in research funded pursuant to this article on sponsored research and publication, which may allow for, among other things, a short period of review by the board in advance of publication.
- (d) Processors subject to this article and expenditure of the funds collected pursuant to this article are subject to audit by the department.

6047.6.

The secretary shall accept the recommendations of the board unless he or she determines that the recommendations are not practicable or in the interest of the industry or the public. The secretary shall provide the board with the reasons for his or her decision within 15 days if the secretary does not accept a recommendation of the board.

6047.7.

- (a) During the first marketing season, beginning July 1, 2001, and ending June 30, 2002, the annual assessment shall be three dollars (\$3) for each one thousand dollars (\$1,000) assessed pursuant to Section 6047.9 for all grapes subject to assessment under this article. The department shall notify each processor of the established assessment as soon as practicable. For each marketing season thereafter, the following shall apply:
 - (1) An annual assessment shall be recommended by the board and submitted to the secretary for approval in an amount not to exceed three dollars (\$3) for each one thousand dollars

(\$1,000) assessed pursuant to Section 6047.9 for all grapes subject to assessment under this article.

- (2) The department shall notify each processor of the established assessment rate by July 15, or as soon thereafter as possible.
- (b) In no event shall there be an assessment on the following:
 - (1) Material other than grapes, and defects, or other weight adjustments deducted from the gross weight ticket.
 - (2) Any raisin-distilling material.
 - (3) Grapes for which an assessment has been withheld, paid, or is already owed.

6047.8.

- (a) The assessment is the obligation of the producer.
- (b) For purchased grapes, the processor who purchases the grapes shall act on behalf of the person from whom the grapes were purchased in collecting and remitting the assessment, shall deduct the assessment from moneys owed by the processor, and shall pay the assessment as provided in this article.
- (c) For grapes not purchased, the processor who crushes the grapes shall do the following:
 - (1) Charge the person who retains ownership of the grapes the assessment and pay the assessment as provided in this article.
 - (2) Be responsible for the remittance of the assessment for the crushing of grapes from persons not considered a separate entity from the processor.

6047.9.

- (a) For purposes of calculating the amount to be collected by the processor for purchased grapes, the assessment shall be based on the gross dollar value of the grapes, which is the gross dollar amount payable for the grapes before any deductions for governmental assessments and fees.
- (b) For purposes of calculating the assessment for grapes not purchased, the assessment shall be based on the following:
 - (1) The tonnage of grapes delivered less material other than grapes and defects or other weight adjustments deducted from gross weight.
 - (2) The weighted average price per ton delivered basis purchased from all nonrelated sources for wine, concentrate, juice, wine vinegar, and beverage brandy by processors, by type, variety and reporting district where grown for the grapes delivered, sources as reported by the secretary pursuant to Section 55601.5 for the immediately preceding marketing season.

6047.10.

- (a) All assessments payable under this article shall be remitted to the department no later than January 10 of each year. The department shall deposit the assessments remitted in the Department of Food and Agriculture Fund.
- (b) In no event shall any proprietary information specified in Section 6047.13 that is received by the department in collecting assessments be transferred to the board.
- (c) Processors shall not charge producers an administrative fee for collecting and remitting assessments.

6047.11.

Any producer who disputes the amount of the assessment may file a claim with the department. The producer shall prove his or her claim by a preponderance of the evidence.

6047.12.

- (a) Expenditures charged by the department and the board for administrative purposes shall not exceed a total of 14 percent of the assessments collected pursuant to this article. Administrative purposes shall include, but not be limited to, all auditing expenses and all costs and attorneys fees resulting from, or relating to, litigation involving this article against the department, or the board and its members and agents, and expenses associated with Section 6047.4 and paragraphs (1) and (2) of subdivision (a) of Section 6047.5.
- (b) Notwithstanding subdivision (a), the Joint Legislative Audit Committee and the State Auditor shall maintain independent authority to audit the expenditure of industry assessments.

6047.13.

- (a) All proprietary information obtained by the board or the department from producers, processors, or any other source, including, but not limited to, the name, addresses, and assessments collected from individual producers and processors in the possession of the board or the department, including processors' lists of their producers and the assessment of individual producers, is confidential and shall not be disclosed, except when required by a court order issued upon a showing of good cause and that the information is necessary to a judicial proceeding involving this article.
- (b) Disclosure, as permitted under this section, shall be conducted in camera by the court.
- (c) The court shall, in the court's discretion, issue orders restraining a party or parties to a judicial proceeding involving this article from disseminating any proprietary information to the public or any other person not a party to that judicial proceeding.

6047.14.

- (a) The sole remedy against any producer who fails to pay the assessment and against any processor who fails to collect and remit assessments within the time required by the secretary shall be an action to collect the delinquent assessments and payment to the secretary a penalty of 10 percent of the amount of the assessment determined to be due and, in addition, payment to the secretary of 11/2 percent interest per month on the unpaid balance.
- (b) A producer may not bring any claim against a processor for damages, or otherwise, in connection with the assessment or the required deduction by the processor of the moneys owed to the producer as provided in this article.

6047.15.

Upon termination of this article, and based upon a recommendation of the board subject to approval by the secretary, any collected assessments not required to defray financial obligations incurred pursuant to this article shall be returned on a pro rata basis to all persons from whom assessments were collected during the marketing season immediately preceding the date of termination or paid to any existing state or federal program engaged in disease prevention or research activities in the grape industry. The assessments refunded to processors shall be paid to producers if the assessment was previously deducted from moneys owed to the producer by the processor.

6047.16.

No action in law or equity may be brought against any members or agent of the board, nor shall any member or agent of the board be personally liable for the actions of the board or the department. No member or agent of the board is responsible individually in any way to any other person for errors in judgment, mistakes, or other acts, either of commission or omission, as a principal, agent, or

employee, except for his or her own individual acts of dishonesty or crime. No member or agent of the board, is responsible individually for an act or omission of any other member or agent of the board, or the department. Liability is several and not joint, and no member or agent of the board is liable for the default of any other member or agent of the board, or the department.

6047.17.

This article 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.

6047.18.

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

6047.19.

- (a) On or before December 31st of every other year, the secretary, after consultation with the board, shall report on the status of this article to the chairs of the policy and fiscal committees that have the appropriate subject matter jurisdiction in the Assembly and the Senate.
- (b) The report shall include a financial accounting, including the distribution of industry assessments and any unexpended amount on deposit, of the department's efforts to contain Pierce's disease and its vectors.
- (c) This article shall remain in effect only until March 1, 2021, and as of that date is repealed, unless a later enacted statute, that is enacted before March 1, 2021, deletes or extends that date.

6047.20.

This article shall become inoperative, as of March 1, 2016, unless the secretary finds, in a referendum conducted by him or her, or a person designated by him or her, subsequent to the operative date of the amendments to this section adopted in 2014, that a favorable vote has been given pursuant to this article.

6047.21.

- (a) No later than April 15, 2015, the secretary shall establish a list of those persons eligible to vote on the continued implementation of this article.
- (b) Eligibility shall be limited to the producers, processors, and persons who paid the assessment on grapes crushed in the immediately preceding season.
- (c)
 - (1) In establishing the list, the secretary may require processors, producers, and others to submit the names, mailing addresses, and assessment values of all producers who paid the assessment on grapes crushed in the immediately preceding marketing season.
 - (2) The information required by the secretary shall be filed either with the annual assessment report or no later than 30 days following receipt of a written notice from the secretary requesting the information.
- (d) Any producer whose name does not appear on the secretary's list may have his or her name added to the list by filing with the secretary a signed statement identifying himself or herself as a producer that paid an assessment during the most recent marketing season.

6047.22.

For the purpose of voting in the referendum required in Section 6047.20, only a person required to pay the assessment pursuant to Section 6047.8 shall have the right to vote.

6047.23.

In determining whether this article shall become inoperative, the secretary shall find that at least 40 percent of the total number of persons from the list established by the secretary participated in the referendum, and that either one of the following occurred:

- (a) 65 percent or more of the persons who voted in the referendum voted in favor of this article, and the persons who voted paid a majority of the assessment dollars on grapes in the preceding marketing season that were paid by all the persons who voted in the referendum.
- (b) A majority of the persons who voted in the referendum voted in favor of this article, and the persons who voted paid 65 percent or more of the assessment dollars on grapes in the preceding marketing season that were paid by all the persons who voted in the referendum.

6047.24.

In determining whether the referendum is approved by producers pursuant to the provisions of this article, the secretary shall consider the vote in favor of the referendum of any nonprofit agricultural cooperative marketing association, which is authorized by its members so to assent, as being the assent, approval, or favor of the producers that are members of, or stockholders in, that nonprofit agricultural cooperative marketing association.

6047.25.

The secretary shall establish a period in which to conduct the referendum that shall not be less than 10 days nor more than 60 days in duration. The secretary 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.

6047.26.

Nonreceipt of a ballot shall not invalidate a referendum.

6047.27.

- (a) If the secretary finds that a favorable vote as provided in this article has not been given subsequent to the operative date of the amendments to this section adopted in 2014, this article shall become inoperative as of March 1, 2016.
- (b) If the secretary finds that a favorable vote has been given as provided in this article, he or she shall certify and give notice of the favorable vote to all persons whose names and addresses may be on file with the secretary as provided in Section 6047.21.

6047.28.

- (a) The provisions of this article are severable.
- (b) If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

6047.29.

- (a) The secretary shall appoint an advisory task force consisting of scientific experts, including, but not limited to, university researchers and agricultural representatives, for the purpose of advising the secretary on the control and management of Pierce's disease.
- (b) Members of the advisory task force, or alternate members when acting as members, may be reimbursed, upon request, for necessary expenses incurred by them in the performance of their duties.
- (c) Notwithstanding Sections 6047.20 and 6047.27, this section shall remain in effect until March 1, 2021, and as of that date is repealed, unless a later enacted statute, that is enacted before March 1, 2021, deletes or extends that date.

6047.30

- (a) The board may, after consulting with the advisory task force and upon making findings as described in this section, recommend to the secretary, and the secretary may determine, that a pest or disease affecting grapes grown in California and crushed for wine, wine vinegar, juice, concentrate, or beverage brandy be designated as an other designated pest or disease, and that money should be expended on research and outreach programs for purposes consistent with Sections 6046 and 6047.1 relating to the other designated pest or disease. However, no General Fund moneys shall be expended after March 1, 2011, on new research and outreach programs relating to other designated pests or diseases.
- (b) The board's findings in support of a recommendation under this section shall include all of the following:
 - (1) The pest or disease would adversely affect the health of grape vines, the yield from grape vines, or the quality of grapes grown on the vines if the pest or disease becomes established in California or expands to new areas of the state.
 - (2) The pest or disease would significantly damage the state's agricultural business economy if allowed to become established in California or expand to new areas of the state.
 - (3) Significant portions of the grape producing areas of the state are now affected, or reasonably likely to be adversely affected in the future, by the spread of the pest or disease.
 - (4) Expenditures of money approved by the secretary based on the findings and recommendations described in this section will not, to a substantial degree, diminish any expenditures under Article 8 (commencing with Section 6045) or this article on Pierce's disease and its vectors, particularly the glassy-winged sharpshooter, research, work plans, and program activities.
 - (5) Scientific experts, including, but not limited to, university researchers, entomologists, plant pathologists, economists, and other agricultural representatives have provided information and advice in support of the findings described in paragraphs (1), (2), (3), and (4). For purposes of this paragraph, it is not required that all scientific experts consulted by the board agree or provide similar advice.