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Agriculture

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Agriculture

Agriculture; fruit, nut, and vegetable standards-- statute of limitations

Food and Agricultural Code § 43004 (new).
AB 2668 (Kelley); 1990 STAT. Ch. 123
Support: Department of Food and Agriculture

Under existing law, any civil action must commence within one year of a violation unless another statute prescribes a different limitation.¹ Chapter 123 establishes a three year statute of limitations for violations of fruit, nut and vegetable² quality, maturity, or packing standards.³

RWL

Agriculture; marketing penalties

Food and Agricultural Code §§ 59234, 60013 (amended).
AB 3390 (Areias); 1990 STAT. Ch. 500
Support: California Cattleman's Association

Under existing law, violators of agricultural marketing laws¹ are subject to a civil penalty.² Chapter 500 increases the maximum

1. CAL. CIV. PROC. CODE § 340(1) (West Supp. 1990). See CAL. FOOD & AGRIC. CODE § 43001 (West 1986) (provisions for civil liability penalties).

2. See CAL. FOOD & AGRIC. CODE § 42510 (West 1986) (definition of fruits, nuts, or vegetables).

3. *Id.* § 43004 (enacted by Chapter 123). See generally *id.* §§ 42500-43571 (West Supp. 1990) (general provisions for fruit, nut and vegetable standards).

1. See generally CAL. FOOD & AGRIC. CODE §§ 58601-59281 (West 1986 & Supp. 1990) (encouraging and promoting the sale of California agricultural products in foreign markets); 59501-59988 (improving and expanding markets for California agricultural products).

2. *Id.* §§ 59234, 60013 (amended by Chapter 500). Under prior law, the maximum civil penalty was \$500. 1967 Cal. Stat. ch. 15, art. 21, at 712 (amending CAL. FOOD & AGRIC. CODE § 59234) (amended by Chapter 500); 1971 Cal. Stat. ch 1059, sec. 6, at 2020 (amending CAL. FOOD & AGRIC. CODE § 60013) (amended by Chapter 500).

Under existing law, violators of agricultural marketing laws¹ are subject to a civil penalty.² Chapter 500 increases the maximum amount of penalties to \$2,500.³ Chapter 500 also specifies that each day a person or marketing program is in violation is a separate offense subject to a civil penalty.⁴

RWL

Agriculture; organic foods¹

Food and Agricultural Code §§ 14904, 46000, 46002, 46003, 46003.5, 46004, 46005, 46006, 46007, 46008, 46009, 46010, 46010.5, 46011 (new); Health and Safety Code §§ 26469, 26569.11, 26569.12, 26569.13, 26569.15, 26569.16, 26569.17 (repealed); §§ 26569.20, 26569.21, 26569.22, 26569.23, 26569.24, 26569.25, 26569.28, 26569.29, 26569.30, 26569.31, 26569.32, 26569.33, 26569.34, 26569.35, 26569.36, 26569.37, 26569.38, 26569.39, 26569.40, 26569.41, 26569.42, 26569.43, 26569.435, 26569.44, 26569.45, 26569.46, 26569.47, 26569.48, 26569.49, 26569.50, (new); § 26850.5 (amended).

AB 2012 (Farr); 1990 STAT. Ch. 1262

Sponsor: California Certified Organic Farmers

1. See generally CAL. FOOD & AGRIC. CODE §§ 58601-59281 (West 1986 & Supp. 1990) (encouraging and promoting the sale of California agricultural products in foreign markets); 59501-59988 (improving and expanding markets for California agricultural products).

2. *Id.* §§ 59234, 60013 (amended by Chapter 500). Under prior law, the maximum civil penalty was \$500. 1967 Cal. Stat. ch. 15, art. 21, at 712 (amending CAL. FOOD & AGRIC. CODE § 59234) (amended by Chapter 500); 1971 Cal. Stat. ch. 1059, sec. 6, at 2020 (amending CAL. FOOD & AGRIC. CODE § 60013) (amended by Chapter 500).

3. CAL. FOOD & AGRIC. CODE §§ 59234, 60013 (amended by Chapter 500). *Cf.* COLO. REV. STAT. § 35-33-405(1) (Supp. 1990) (\$750 daily maximum placed on civil penalties for violations of similar laws).

4. CAL. FOOD & AGRIC. CODE §§ 59234, 60013 (amended by Chapter 500). *Cf.* 7 U.S.C. § 608c(14) (1988) (penalties for violating federal agriculture commodity marketing orders).

1. Chapter 1262 may be affected by the passage of a bill pending before Congress at the time of this writing (October, 1990). See S. 2108, 101st Cong., 2d Sess. § 105(a) (1990) (federal "Organic Foods Production Act of 1990" may dictate more stringent state requirements).

Support: California Farm Bureau, California Agriculture Counsel, Western Growers Association, California Dietetic Association, Committee For Sustainable Agriculture
Opposition: California League of Food Processors

Prior law regulated the labeling of food products sold as organic food.² Under Chapter 1262, no food may be sold as organic³ unless the food meets certain requirements.⁴

Prior law prohibited the application of synthetic materials⁵ to fields⁶ where organic crops were grown for a period of one year prior to the planting or flowering of organic crops.⁷ Chapter 1262 extends the period during which the application of synthetic materials is prohibited.⁸

2. 1982 Cal. Stat. ch. 1328, secs. 2-7, at 4899-4903 (amending and enacting CAL. HEALTH & SAFETY CODE §§ 26569.11-26569.17) (repealed by Chapter 1262). The regulations applied to products labeled as "organic," "organically grown," "naturally grown," "wild," "ecologically grown," or "biologically grown," but not where the term "natural" was used. *Id.* sec. 2, at 4901 (amending CAL. HEALTH & SAFETY CODE § 26569.11(h)) (repealed by Chapter 1262); *id.* sec. 4, at 4901 (enacting CAL. HEALTH & SAFETY CODE § 26569.12) (repealed by Chapter 1262).

3. See CAL. HEALTH & SAFETY CODE § 26569.21(r) (enacted by Chapter 1262) (definition of "sold as organic").

4. *Id.* §§ 26569.22, 26569.23, 26569.24 (enacted by Chapter 1262). Chapter 1262 lists materials that are prohibited from being used in connection with organic foods. *Id.* § 26569.21(o)(1)-(3) (enacted by Chapter 1262). *Cf.* CALIFORNIA CERTIFIED ORGANIC FARMERS 1990 CERTIFICATION HANDBOOK § 4.2.5 (materials listed as "allowed material" or "restricted materials"). See generally Comment, *State Mandated Pesticide Application and the Due Process Rights of Organic Farmers*, 17 PAC. L.J. 1301, 1303-11 (1986) (recent history of organic farming in California).

5. See 1982 Cal. Stat. ch. 1328, sec. 2, at 4899 (amending CAL. HEALTH & SAFETY CODE § 26569.11(a)(1)) (repealed by Chapter 1262) (definition of synthetic materials included fertilizers, pesticides, and growth regulators).

6. See CAL. HEALTH & SAFETY CODE § 26569.21(g) (enacted by Chapter 1262) (definition of field).

7. 1982 Cal. Stat. ch. 1328, sec. 2, at 4899 (amending CAL. HEALTH & SAFETY CODE § 26569.11(a)(2)-(3)) (repealed by Chapter 1262). The restricted period was one year prior to the planting of annual and two-year crops or one year prior to the flowering of perennial crops, and lasted throughout the entire growing and harvest season of the particular commodity. *Id.*

8. CAL. HEALTH & SAFETY CODE § 26569.22(a)(3)-(4) (enacted by Chapter 1262). The prohibition period is extended to two years prior to harvest in 1995, and to three years prior to harvest in 1996. *Id.* See *id.* (field includes any crop, field, management unit, or area where the commodity is grown). Compare 1982 Cal. Stat. ch. 1328, sec. 2, at 4899 (amending CAL. HEALTH & SAFETY CODE § 26569.11(a)(2)-(3)) (repealed by Chapter 1262) (prohibition period was in relation to planting or flowering times) with CAL. HEALTH & SAFETY CODE § 26569.22(a)(3)-(4) (enacted by Chapter 1262) (prohibition period is in relation to harvest times).

Under prior law, a food product could be labeled “organic” only if the pesticide residue contained by the food was within accepted tolerances,⁹ and the food product label had clearly stated whether prohibited substances had been applied.¹⁰ Chapter 1262 reduces the amount of acceptable contamination and deletes the food product labeling requirement if an acceptable amount of prohibited material has been applied.¹¹

Prior law required the name of the organization certifying food as organic to be listed on the label of the organic food product.¹² Chapter 1262 establishes minimum qualifications for the registration of an organization that certifies food as organic and specifies the practices and procedures that certification organizations must follow.¹³

Chapter 1262 requires all producers,¹⁴ processors,¹⁵ or handlers¹⁶ of organic food to register with an appropriate official¹⁷ prior to the first sale of organic food.¹⁸ Chapter 1262

9. See 1982 Cal. Stat. ch. 1328, sec. 4, at 4901 (enacting CAL. HEALTH & SAFETY CODE § 26569.12(a)) (repealed by Chapter 1262) (residue present must be within 10% of the federal Food and Drug Administration (FDA) level of safety). See 21 C.F.R. § 509.6(b) (1989) (FDA tolerances for added poisonous or deleterious substances).

10. 1982 Cal. Stat. ch. 1328, sec. 4, at 4901 (enacting CAL. HEALTH & SAFETY CODE § 26569.12) (repealed by Chapter 1262).

11. CAL. HEALTH & SAFETY CODE § 26569.23 (enacted by Chapter 1262). Chapter 1262 specifically applies to contamination by prohibited materials resulting from spray drift or other contamination beyond the producer’s control. *Id.* After Jan. 1, 1992, the amount of residue must not exceed five percent of the federal Environmental Protection Agency (EPA) tolerance level. *Id.* § 26569.23(b) (enacted by Chapter 1262). If no EPA tolerance level exists, the residue must not exceed the FDA action level. *Id.* See 21 C.F.R. § 509.6(c) (1989) (FDA action levels for added poisonous or deleterious substances); 40 C.F.R. § 180.3 (1989) (EPA tolerance levels for pesticide chemicals).

12. 1982 Cal. Stat. ch. 1328, sec. 5, at 4902 (amending CAL. HEALTH & SAFETY CODE § 26569.15) (repealed by Chapter 1262).

13. CAL. HEALTH & SAFETY CODE §§ 26569.30-26569.34 (enacted by Chapter 1262). Only a registered certification organization, a county agricultural commissioner, or the director of the Department of Health and Safety may certify food as organic. *Id.* § 26569.30(b) (enacted by Chapter 1262); CAL. FOOD & AGRIC. CODE § 46009 (enacted by Chapter 1262). *Cf.* COLO. REV. STAT. §§ 35-11.5-101 to 35-11.5-115 (1990) (certification of organically grown products).

14. See CAL. HEALTH & SAFETY CODE § 26569.21(m) (enacted by Chapter 1262) (definition of produced).

15. See *id.* § 26569.21(l) (enacted by Chapter 1262) (definition of processed).

16. See *id.* § 26569.21(j) (enacted by Chapter 1262) (definition of handled).

17. All producers and handlers of raw agricultural commodities or eggs sold as organic and producers, handlers, and processors of meat, fowl, and dairy products sold as organic, but not retailers of food sold as organic, must register by March 1, 1991, with the county agricultural commissioner in the county of principal operation prior to the first sale of food. CAL. FOOD & AGRIC. CODE §

also establishes civil penalties for violations of the organic food regulations and procedures.¹⁹

RWL

Agriculture; pest control penalties

Food and Agricultural Code §§ 11791, 12999.4, 12999.5 (amended).

AB 3719 (Chandler); 1990 STAT. Ch. 1192

Sponsor: Department of Food & Agriculture

Under existing law, it is unlawful to refuse or neglect to comply with any lawful order of a county agricultural commissioner.¹ Chapter 1192 extends existing law to apply to any refusal or neglect to comply with lawful orders of the Director of the Department of Food and Agriculture (Director).²

46002(a) (enacted by Chapter 1262). On or after January 1, 1992, all processors and handlers of processed food sold as organic except for processors and handlers of processed meat, fowl, or dairy products must register with the director of the Department of Health and Safety prior to the first sale of food. CAL. HEALTH & SAFETY CODE § 26569.35(a) (enacted by Chapter 1262).

18. *Id.* § 26569.35 (enacted by Chapter 1262); CAL. FOOD & AGRIC. CODE § 46002 (enacted by Chapter 1262). Registration must be renewed annually. *Id.* § 46002(a) (enacted by Chapter 1262); CAL. HEALTH & SAFETY CODE § 26569.35(a) (enacted by Chapter 1262).

19. CAL. HEALTH & SAFETY CODE § 26569.43 (enacted by Chapter 1262); CAL. FOOD & AGRIC. CODE § 46007 (enacted by Chapter 1262). Distributors or retailers selling in good faith are not liable for violations unless they know, or should have known, that the food could not be sold as organic, were engaged in producing or processing food, or prescribed the manner in which the food was produced or processed. CAL. HEALTH & SAFETY CODE § 26569.38(b) (enacted by Chapter 1262). Chapter 1262 allows any person to file a complaint with the enforcement authority. *Id.* § 26569.47(a) (enacted by Chapter 1262); CAL. FOOD & AGRIC. CODE § 46004 (enacted by Chapter 1262).

1. CAL. FOOD & AGRIC. CODE § 11791(c) (amended by Chapter 1192). *See id.* §§ 2101-2284 (West 1986 & Supp. 1990) (provisions governing county agricultural commissioners and their employees). *See also* 3 CAL. CODE REGS. § 6130 (1990) (guidelines for fines assessed by county agricultural commissioners). *See generally* *Holt v. Dep't of Food and Agriculture*, 171 Cal. App. 3d 427, 433, 218 Cal. Rptr. 1, 4 (1985); *Medlock Dusters, Inc. v. Dooley*, 129 Cal. App. 3d 496, 501, 181 Cal. Rptr. 80, 83 (1982) (holding that California Food and Agricultural Code section 11791 is not unconstitutionally vague).

2. CAL. FOOD & AGRIC. CODE § 11791(c) (amended by Chapter 1192). *See id.* § 102 (West 1986) (definition of Director of the Department of Food and Agriculture).

Existing law provides for judicial review of a decision by the Director to levy civil penalties for violations of specified pesticide laws.³ Chapter 1192 requires a request for judicial review of a Director's decision to be sought within thirty days after the decision.⁴ Under Chapter 1192, once a certified copy of the Director's final decision is filed with a county superior court clerk, judgment conforming with the Director's decision must be immediately entered by the clerk.⁵

RWL

Agriculture; quarantine inspection stations

Food and Agricultural Code §§ 5350, 5351, 5352, 5353 (new).
SB 2772 (Torres); 1990 STAT. Ch. 1612
(Effective Date: 06/07/90)

Existing law requires the Director of Food and Agriculture (Director)¹ to maintain plant quarantine inspection stations in order to identify and to prevent shipments into California of any plants or other items infested with pests.² Chapter 1612 requires the Director to establish and maintain plant quarantine inspection

3. CAL. CIV. PROC. CODE § 1094.5 (West Supp. 1990). See CAL. FOOD & AGRIC. CODE §§ 12999.4, 12999.5 (amended by Chapter 1192) (allowing the Director to levy a civil penalty in lieu of civil prosecution); 12671 (West 1986) (prohibiting the packing, shipping, or selling of produce carrying pesticide residue); 12993 (prohibiting the manufacturing, delivery, or sale of economic poison without a license). See also *Review of Selected 1989 California Legislation*, 21 PAC. L.J. 333, 350 (1990) (analysis of California Food and Agricultural Code section 12999.4) Cf. 7 U.S.C. § 136(l)(a) (1988) (governing civil penalties for violations of federal pesticide laws).

4. CAL. FOOD & AGRIC. CODE § 12999.4(c) (amended by Chapter 1192).

5. *Id.* §§ 12999.4(d), 12999.5(d) (amended by Chapter 1192). The clerk may not charge fees for performing official services in connection with a petition by the Director for the entering of a court order. *Id.*

1. See CAL. FOOD & AGRIC. CODE §§ 5303-5323 (West 1986) (quarantine powers and duties of the Director of Food and Agriculture).

2. *Id.* § 5341. See *id.* §§ 5006 (definition of pest); 5007 (definition of plant).

stations at all points of entry into California.³ Chapter 1612 also requires air and marine carriers engaged in foreign commerce that bring plants or animals into California to pay a fee upon each arrival of a plane or a marine vessel that originated from outside of the United States.⁴

UOR

Agriculture; supply liens

Food and Agricultural Code §§ 57501, 57502, 57503, 57504, 57505, 57506, 57507, 57510, 57511, 57512, 57513, 57514, 57515, 57516, 57517, 57518, 57519, 57525, 57530, 57531, 57535, 57536, 57537, 57540, 57541, 57545, 57551, 57552, 57553, 57554, 57555, 57561, 57562, 57563, 57564, 57564.5, 57565, 57566, 57567, 57568, 57569, 57570, 57575, 57581, 57582, 57585, 57586, 57587, 57590, 57591, 57595, 57700 (new).

AB 3043 (Johnston); 1990 STAT. Ch. 1502

3. *Id.* § 5350(a)-(b) (enacted by Chapter 1612). The program established by Chapter 1612 is known as the California Airport and Maritime Plant Quarantine, Inspection, and Plant Protection Act (Act). 1990 Cal. Stat. ch. 1612, sec. 1, at . The Director must disseminate information at airports and maritime terminals to educate users of the facilities about the quarantine requirements. CAL. FOOD & AGRIC. CODE § 5350(e) (enacted by Chapter 1612). The Director may recognize inspections that are conducted out of state if the out of state inspection and certification standards meet California standards, and exempt items thus inspected from inspection upon entry into California. *Id.* § 5350(d) (enacted by Chapter 1612).

4. *Id.* § 5351(a), 5352 (enacted by Chapter 1612). Upon establishing the fee rate, the Director must stay within the boundaries set by United States Code Title 49, section 1513(b). *Id.* § 5351(a) (enacted by Chapter 1612). *See* 49 U.S.C. 1513(d) (1983) (prohibiting state tax from unreasonably burdening and discriminating against interstate commerce). Carriers that fail to pay the fee will be fined an extra two percent of the monthly balance. CAL. FOOD & AGRIC. CODE § 5351(c) (enacted by Chapter 1612). The Director may increase the fees as the costs of enforcement increase. *Id.* § 5351(e) (enacted by Chapter 1612). The Director may also contract with federal and state agencies to enforce the provisions of Chapter 1612. *Id.* § 5351(f) (enacted by Chapter 1612). Each carrier must keep independent records of the amount of money owed to the Department of Food and Agriculture. *Id.* § 5353(c) (enacted by Chapter 1612).

Support: California Feed and Grain Association, California Fertilizer Association, California Seed Association

Opposition: California Tomato Growers Association, California Prune Commission, Canning Peach Association, California Pear Growers, Vegetable Bargaining Association, California Grape and Tree Fruit League

Under existing law, any person providing feed or materials¹ to aid in the raising or maintaining of dairy cattle² possesses a lien³ on the proceeds of the milk or milk products produced from the dairy cattle.⁴ Under Chapter 1502, any person supplying feed or materials⁵ to producers of eggs,⁶ fish, and poultry⁷ possesses a lien on the proceeds⁸ from the sale of those commodities.⁹ Chapter 1502 also grants a lien on the proceeds of the sale of crops¹⁰ to any person supplying agricultural seed¹¹ and labor¹² or agricultural chemicals¹³ and labor to producers of crops.¹⁴

1. See CAL. FOOD & AGRIC. CODE § 57401(b) (West Supp. 1990) (definition of feed or materials).

2. See *id.* § 57401(d) (definition of raising and maintaining dairy cattle).

3. See CAL. CIV. CODE § 2872 (West 1983) (definition of lien). See also *id.* § 2881 (lien created by contract of the parties or operation of law). See generally *McGregor Co. v. Heritage*, 291 Or. 420, 431, 631 P.2d 1355, 1361 (1981) (agricultural service lien not a common law or equitable lien, but statutory in nature).

4. CAL. FOOD & AGRIC. CODE § 57402 (West Supp. 1990). See *Review of Selected California Legislation*, 19 PAC. L.J. 467-68 (1987) (summarizing the dairy proceeds lien bill). See generally *McGregor*, 291 Or. at 422-25, 631 P.2d at 1356-58 (substantial compliance with agricultural service lien satisfied statutory compliance). Cf. OR. REV. STAT. § 87.226 (1989). Persons performing labor, supplying materials, or providing services on farmland, range, ranch, or orchard to aid the growing or harvesting of crops or the raising of animals possess a lien upon the crops or animals or proceeds of crops or animals for the reasonable or agreed charges. *Id.*

5. See CAL. FOOD & AGRIC. CODE § 57502 (enacted by Chapter 1502) (definition of feed or materials).

6. See *id.* § 57501 (enacted by Chapter 1502) (definition of eggs or egg). See also *id.* §§ 27512, 27513, 27514 (West 1986) (definitions of eggs or egg).

7. See *id.* § 57504 (enacted by Chapter 1502) (definition of poultry).

8. See *id.* § 57505 (enacted by Chapter 1502) (definition of proceeds of fish, egg, or poultry product sales). See also *McGregor*, 291 Or. at 431-32, 631 P.2d at 1361-62. Agricultural liens attach to proceeds of sales of crops only if there is compliance with the statutory provisions. *Id.*

9. *Id.* §§ 57510, 57511, 57512 (enacted by Chapter 1502).

10. See *id.* § 57554 (enacted by Chapter 1502) (definition of proceeds of the sale of crops).

11. See *id.* § 57552 (enacted by Chapter 1502) (definition of agricultural seed).

12. See *id.* § 57553 (enacted by Chapter 1502) (definition of labor).

13. See *id.* § 57551 (enacted by Chapter 1502) (definition of agricultural chemicals).

Chapter 1502 allows only two suppliers of feed or materials, and two suppliers of seed and labor or chemicals and labor, to have liens against any one debtor at the same time.¹⁵ These agricultural liens are assignable or transferable by the holder of the lien with full rights of enforcement.¹⁶ In addition, the lien claimant may only foreclose on the lien in an action to recover the reasonable or agreed charges¹⁷ for commodities delivered.¹⁸

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14. *Id.* §§ 57561, 57562, 57563 (enacted by Chapter 1502). The provider of agricultural seed or chemicals must first send the debtor a written notice that the payment of the reasonable or agreed charges is more than 30 days overdue. *Id.* § 57561(a)(1) (enacted by Chapter 1502). The notice must inform the debtor that he or she has 10 days to choose whether to allow the lien to be filed, to enter into a consensual security interest under the California Commercial Code, or to pay the charges that are overdue. *Id.* § 57561(a)(3) (enacted by Chapter 1502). The director of the Department of Food and Agriculture is required to establish methods and procedures for settling disputes between a lien claimant supplying agricultural chemicals and labor and a lien debtor. *Id.* § 57564.5(a) (enacted by Chapter 1502). *See id.* § 102 (West 1986) (powers and duties of the director of the Department of Food and Agriculture). *Cf.* 7 U.S.C. § 499e (1988) (perishable agricultural commodities held in trust by brokers and dealers for the benefit of suppliers).

15. *Id.* §§ 57510, (enacted by Chapter 1502). No more than two liens are enforceable against any one lien debtor, even when filed by different lien claimants. *Id.* § 57700 (enacted by Chapter 1502).

16. *Id.* §§ 57540, 57590 (enacted by Chapter 1502). A lienholder's statement of assignment or transfer must be filed with the Secretary of State in the same manner as a secured party's statement of assignment or transfer. *Id.* *See* CAL. COM. CODE § 9406 (West 1990) (manner of filing statement).

17. *See* CAL. FOOD & AGRIC. CODE §§ 57507, 57555 (enacted by Chapter 1502) (definitions of reasonable or agreed charges). The amount of charges secured by the lien may not exceed an amount equal to the reasonable or agreed charges for feed or material or agricultural seeds furnished within a 45 day period, or for agricultural chemicals furnished within a 60 day period. *Id.* §§ 57510, 57561(d) (enacted by Chapter 1502).

18. *Id.* §§ 57536, 57586 (enacted by Chapter 1502). The final judgment must be enforced pursuant to Title 9 of the California Civil Procedure Code. *Id.* *See* CAL. CIV. PROC. CODE § 681.010 (West 1987) (provision for enforcing judgments).

Agriculture; unharvested produce seizures--pesticide residue

Food and Agricultural Code §§ 12601, 12604, 12672 (amended).

AB 3149 (Jones); 1990 STAT. Ch. 288

Sponsor: Department of Food and Agriculture

Support: Western Growers Association

Existing law empowers the Director of Food and Agriculture (Director)¹⁹ to seize harvested lots of produce²⁰ carrying or showing signs of carrying pesticide residue²¹ or other added harmful ingredients.²² Existing law also allows the Director to prohibit the harvest of produce if the grower has not complied with the preharvest waiting interval specified on the pesticide's registered labeling.²³

Under Chapter 288, the Director may seize unharvested produce lots suspected of containing pesticide residue or other deleterious ingredients.²⁴ Chapter 288 also allows the Director to prohibit the harvest of produce and seize harvested produce lots that are not in compliance with the preharvest waiting interval.²⁵ Chapter 288 requires produce lots seized for noncompliance with the preharvest waiting interval to be held until the preharvest

19. See CAL. FOOD & AGRIC. CODE § 102 (West 1986) (definition of Director).

20. See *id.* § 12504 (definition of produce).

21. See *id.* § 12505 (definition of pesticide residue).

22. *Id.* § 12601 (amended by Chapter 288). See generally *id.* §§ 12602-12606 (West 1986) (procedures for Director to follow upon seizing of produce). Cf. *Menefee & Son v. Dep't of Food & Agric.*, 199 Cal. App. 3d 774, 245 Cal. Rptr. 166 (1988) (analysis of constitutionality of seizure and destruction of crops without prior hearing).

23. CAL. FOOD & AGRIC. CODE § 12672 (amended by Chapter 288). Pesticide use must not conflict with Food and Agricultural Code labeling requirements that are delivered with the pesticide, nor may it conflict with other limitations imposed by any conditional permits issued. *Id.* § 12973 (West 1986). See also *id.* § 12604 (amended by Chapter 288) (procedures for determining amount of pesticide residue).

24. *Id.* § 12601 (amended by Chapter 288). Chapter 288 requires that the produce be within one week of being in a harvestable condition in order for the department to lawfully seize it. *Id.*

25. *Id.* § 12672 (amended by Chapter 288).

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interval has expired and the Director has determined that any pesticide residue is within permissible tolerances.²⁶

Existing law requires sampling and testing of seized produce to be conducted within twenty-four hours to determine the amount of pesticide residue actually present.²⁷ Under Chapter 288, the procedures required for analysis of seized produce also apply to unharvested produce.²⁸

RWL

26. *Id.*

27. *Id.* § 12604 (amended by Chapter 288). Existing law also requires the Director to immediately notify the produce owner or bailee in person or by telegram as to whether the produce carries excessive residue. *Id.*

28. *Id.*