Agriculture

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Agriculture

Agriculture; aquaculture products

Fish and Game Code §§ 15800, 15801, 15802, 15803 (repealed); § 1123.5 (new); §§15000, 15101, 15700, 15701, 15702 (amended); Food and Agricultural Code § 25.5 (new); §§ 23.5, 54004, 55403, 56109, 56806, 57007, 58003, 58101.5, 58381, 58554, 58605, 59504 (amended); Public Resources Code § 30411 (amended).

AB 1636 (Cortese); 1995 STAT. Ch. 810

Under existing law, the business of aquaculture,1 including raising fish and aquatic plants, is exempt from the provisions of the Fish and Game Code relating to commercial fishing.2 Existing law also authorizes the Fish and Game Commission3 to establish hatcheries for stocking the waters of this state with fish and requires the Department of Fish and Game4 to maintain and operate those hatcheries.5

Chapter 810 enacts the California Aquaculture Promotion Act of 1995,6 which transfers the administration of the laws relating to processing, distribution, and marketing of aquaculture products from the Department of Fish and Game to the Secretary of Food and Agriculture.7 Furthermore, Chapter 810 establishes

1. See CAL. FOOD & AGRIC. CODE § 25.5 (enacted by Chapter 810) (defining “aquaculture” as that form of agriculture devoted to the propagation, cultivation, maintenance, harvesting, processing, distribution, and marketing of aquatic plants and animals in marine, brackish, and fresh water); cf. 16 U.S.C.A. § 2802(1) (West 1985) (defining “aquaculture” to mean the propagation and rearing of aquatic species in controlled or selected environments, including, but not limited to, ocean ranching); FLA. STAT. ANN. § 253.67(1) (West 1991) (defining “aquaculture” as the cultivation of animal and plant life in a water environment); WASH. REV. CODE ANN. § 15.85.020(1) (West 1993) (defining “aquaculture” as the process of growing, farming, or cultivating private sector cultured aquatic products in marine or freshwaters and includes management by an aquatic farmer).

2. CAL. FISH & GAME CODE § 15000 (amended by Chapter 810); see id. § 15000(a) (amended by Chapter 810) (mandating that aquaculture and its products are exempt from the provisions of the code dealing with commercial fishing and harvesting); see also ASSEMBLY COMMITTEE ON AGRICULTURE, COMMITTEE ANALYSIS OF AB 1636, at 1 (Apr. 17, 1995) (stating that aquaculture is exempt from the provisions of the Fish and Game Code relating to commercial fishing).

3. See CAL. FISH & GAME CODE § 101 (West 1984) (establishing that there is in the Resources Agency the Fish and Game Commission); CAL. CONST. art. IV, § 20(a), (b) (providing the Fish and Game Commission).

4. See CAL. FISH & GAME CODE § 700 (West Supp. 1995) (mandating that there is a Department of Fish and Game in the Resources Agency).

5. CAL. PUB. RES. CODE § 30411(a) (amended by Chapter 810); see ASSEMBLY COMMITTEE ON AGRICULTURE, COMMITTEE ANALYSIS OF AB 1636, at 1 (Apr. 17, 1995) (stating that existing law authorizes the Fish and Game Commission to establish, maintain, and operate hatcheries for the purpose of stocking California’s waters with fish).

6. See 1995 Cal. Legis. Serv. ch. 810, sec. 1, at 4844 (declaring that the statutory scheme enacted by Chapter 810 is known as the California Aquaculture Promotion Act of 1995).

7. See CAL. FISH & GAME CODE § 15000(b) (amended by Chapter 810) (establishing that the business of aquaculture processing, distribution, and marketing is administered by the Secretary of Food and Agriculture); cf. 1982 Cal. Stat. ch. 1486, sec. 25, at 5725 (providing that the Aquaculture Development Section is within the Department of Fish and Game).

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a requirement that all fish for stocking urban lakes be purchased from California aquaculturists if healthy fish are available from private growers.8

Chapter 810 also eliminates the Interagency Committee for Aquaculture Development and renames the Aquaculture Industry Advisory Committee as the Aquaculture Development Committee.9 This committee is charged with submitting a report to the Department of Fish and Game with recommendations for streamlining the overlapping of regulatory authority and improved efficiency.10

With the enactment of Chapter 810 comes the inclusion of aquaculture within the definition of agricultural farm products.11 Additionally, Chapter 810 requires

8. CAL. FISH & GAME CODE § 1123.5 (enacted by Chapter 810); see id. (allocating all funds for fish purchases for the Department of Fish and Game's urban fishing program to be used to purchase all fish by contract from private registered aquaculture facilities within the state); cf. 16 U.S.C.A. § 2801(a)(6) (West 1985) (finding that the principal responsibility for the development of aquaculture in the United States must rest with the private sector); ME. REV. STAT. ANN. tit. 12, § 7675(1) (West 1994) (permitting the Atlantic Sea Run Salmon Commission to accept salmon stock from commercial aquaculture hatcheries for release into state rivers).

9. 1995 Cal. Legis. Serv. ch. 810, sec. 7, at 4845 (amending CAL. FISH & GAME CODE § 15700); see CAL. FISH & GAME CODE § 15700(g) (amended by Chapter 810) (mandating that the director of the Aquaculture Development Committee appoint at least 12 members representing all sectors of the fresh and salt water industry); see also ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF AB 1636, at 1 (May 17, 1995) (noting the elimination of one Department of Fish and Game advisory committee and the renaming of the Aquaculture Advisory Committee); cf. FLA. STAT. ANN. § 597.0021(5) (West Supp. 1995) (establishing the Aquaculture Review Council and the Aquaculture Interagency Coordinating Council to provide a means of communication between the aquaculture industry and regulatory agencies); id. § 597.006(1) (West Supp. 1995) (finding that there is a need for interagency coordination with regard to aquaculture which justifies the creation of the Aquaculture Interagency Coordinating Council).

10. CAL. FISH & GAME CODE § 15702(b) (amended by Chapter 810); see id. (requiring the Aquaculture Development Committee to assist the Department of Fish and Game in developing and implementing a state aquaculture plan, identify the opportunities for regulatory relief, assist in development of research and development priorities, assist in the development of criteria to assure that publicly financed pilot programs are compatible with industry needs, and identify other opportunities for industrial development as well as prepare a report with recommendations to improve the effectiveness and eliminate the overlapping responsibilities in state and local regulatory requirements on the commercial aquaculture industry); id. § 15702(c) (amended by Chapter 810) (mandating that on or before January 1, 1997, the committee must prepare and provide to the director a report with its recommendations to improve the effectiveness and eliminate overlapping responsibilities in state and local regulatory requirements on the commercial aquaculture industry in the state); cf. FLA. STAT. ANN. § 597.002 (West Supp.1995) (mandating that the Aquaculture Review Council make recommendations addressing the problems and opportunities in the state aquacultural plan).

11. CAL. FOOD & AGRIC. CODE § 54004 (amended by Chapter 810); see id. (defining "product" to include any horticultural, viticultural, aquacultural, forestry, dairy, livestock, poultry, bee, or farm product); see also id. § 56806 (amended by Chapter 810) (defining "farm product" to mean any fruit, nut, vegetable, berry, or aquacultural product); id. § 58554 (amended by Chapter 810) (defining "agricultural commodities" to mean the products of California farms and ranches and items processed from these products, and includes forest products, aquaculture products, and fish and fish products produced in California); cf. FLA. STAT. ANN. § 1.01(12) (West Supp.1995) (including aquaculture in the term agriculture); id. § 597.0021(4) (West Supp. 1995) (mandating that aquaculture be included as a form of agriculture for purposes of marketing, promotional activities, and financing); MISS. CODE ANN. § 57-10-303(b) (1994) (defining "farming" to include the cultivation of land for the production of aquaculture); id. § 69-7-501(a) (1991) (including aquaculture as a form of agriculture).
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the Department of Fish and Game to prepare programmatic environmental impact reports for commercial aquaculture operations.12

COMMENT

California’s aquaculture industry is valued at $50 million a year.13 Chapter 810 will aid the rapidly growing aquaculture industry by removing the impediments of the duplicate and costly regulations, and illegal importation and trading in aquaculture products. Proponents state that Chapter 810 will strengthen and clarify existing laws regarding California aquaculture.14

Chapter 810 has unknown costs to the Department of Fish and Game for the requirement to contract with the private sector to stock urban fishing lakes and ponds.15 The Department of Food and Agriculture will absorb some minor costs to assume the administration of laws relating to the processing, distribution, and marketing of aquaculture products.16 Including aquaculture in the definition of

12. CAL. PUB. RES. CODE § 30411(e)(1), (2) (amended by Chapter 810); see id. (requiring the Department of Fish and Game to prepare programmatic environmental impact reports for existing and potential commercial aquaculture operations in both coastal and inland areas of the state provided that funds are appropriated to the department for this purpose and matching funds are provided by the aquaculture industry).

13. ASSEMBLY COMMITTEE ON AGRICULTURE, COMMITTEE ANALYSIS OF AB 1636, at 2 (Apr. 17, 1995); see Jay Harlow, Gone Farmin’ Aquaculture is Transforming the Seafood Industry—But Not Everyone Likes It, S.F. CHRON., Oct. 27, 1993, at 1 (finding that the biggest impact of aquaculture on the West Coast has been the salmon market where farmed salmon has become competitively priced with wild salmon in season); Bob Kieckhefer, Farming Today, UNITED PRESS INTL., Feb. 19, 1994 (quoting Wisconsin Governor Tommy Thompson as saying aquaculture is the wave of the future for Wisconsin farmers as the industry is worth between $7 million and $12 million per year in the state alone); Glen Martin, Study Links Clean Beaches and Economy, S.F. CHRON., June 28, 1995, at A15 (finding that in California industries such as commercial fishing and aquaculture are making major contributions to the economy and job creation); cf. MISS. CODE ANN. § 79-22-3 (Supp. 1994) (recognizing that aquaculture is the fastest growing segment of the United States agriculture industry and declaring that it is the intent of the Mississippi Legislature to effectively encourage and support its citizens in increasing the use of aquaculture); H.R. REP. NO. 808, 100th Cong., 2d Sess., at 1 (1988) (citing that by 1988 aquaculture operations accounted for approximately 13% of the world’s fish production and 5% of the American fish harvest); James W. Miller, Florida Inst. of Oceanography & Florida Dep’t of Agric. & Consumer Serv., Florida Aquaculture Regulatory Sourcebook 1-1 (1990) (stating that aquaculture is the fastest growing agricultural industry in the United States).

14. 1995 Cal. Legis. Serv. ch. 810, sec. 2, at 4844 (repealing CAL. FISH & GAME CODE §§ 15800, 15801, 15802, 15803; enacting § 1123.5; amending §§ 15000, 15101, 15700, 15702; enacting CAL. FOOD & AGRIC. CODE § 25.5; amending §§ 23.5, 54004, 55403, 56109, 56806, 57007, 58003, 58101.5, 58381, 58554, 58605, 59504; amending CAL. PUB. RES. CODE § 30411); see id. (providing that the legislative intent behind Chapter 810 is to remove the duplicate and costly regulations that have impaired the aquaculture industry; Ronald J. Rychlak, Coastal Zone Management and the Search for Integration, 40 DEPAUL L. REV. 981, 994-95 (1991) (discussing the disadvantages of an integrated environmental protection program to include the following risks: (1) inconsistent obligations and requirements, (2) duplication among various levels of government, (3) less public participation, and (4) increased costs (as opposed to having one level of government handle the entire project)).

15. ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF AB 1636, at 2 (May 17, 1995).

16. Id.

17. Id.

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farm products will likely make financial assistance more readily available to harvesters of aquatic products.\textsuperscript{18}

\textit{Todd D. Ruggiero}

\textbf{Agriculture; county agricultural commissioners—licensing}

Food and Agriculture Code § 2286 (new); § 2106 (amended). AB 816 (Murray); 1995 STAT. Ch. 818

Existing law provides that a person must possess a bachelor’s degree, with a focus upon agricultural or biological sciences, before being eligible for examination and licensing as a county agricultural commissioner,\textsuperscript{1} deputy commissioner, or county agricultural inspector.\textsuperscript{2} Chapter 818 provides that a

\begin{itemize}
\item \textsuperscript{1} Ronald J. Rychalk & Ellen M. Peel, \textit{Swimming Past the Hook: Navigating the Legal Obstacles In the Aquaculture Industry}, 23 ENVTL. L. 837, 840 (1993); see id. (finding that many states have provided aquaculturalists with the protections and benefits traditionally available only to terrestrial farmers by amending their statutes to include aquaculture as a form of agriculture which has benefitted aquaculturalists in increased financial assistance); see also Gordon Smith, \textit{Hope Catches on for Aquaculture Fish Farmers of State Part of Mainstream, Buoyant on Prospects}, SAN DIEGO UNION-TRIB., Feb. 18, 1994, at A3 (stating that officials in Imperial County have stopped requiring aquafarmers to apply for special conditional-use permits, which puts fish farmers on equal footing with traditional farmers and makes it easier to start an aqua-business).
\item \textsuperscript{2} \textsuperscript{1} CAT FOOD & AGIUC. CODE § 2121 (West 1986) (declaring that the county agricultural commissioner is to be appointed by the board of supervisors of the county); \textit{id.} § 2122 (West 1986) (providing that the term of office of the county agricultural commissioner is four years); \textit{id.} § 2123 (West Supp. 1995) (limiting appointees to the office of county agricultural commissioner or deputy commissioner to those possessing a license); \textit{id.} §2126 (West 1986) (authorizing the county agricultural commissioner to appoint deputy commissioners, inspectors and clerks).
\item \textsuperscript{2} \textsuperscript{1} Id. § 2106 (amended by Chapter 818); see \textit{id.} (providing that no person is eligible for the examination or given a license pursuant to the California Food and Agricultural Code §§ 2101, 2102, or 2103, unless they possess a bachelor’s degree from an accredited four-year college with a specialization in one or more appropriate disciplines in the physical, chemical, biological, agricultural, or other appropriate discipline, as determined by the secretary, unless that person is a senior in an accredited four-year institution at which time they are eligible to take the examination, but not to possess a license prior to graduation); see also \textit{id.} § 2101 (West Supp. 1995) (requiring persons applying for the position of commissioner or deputy commissioner to be examined, and successful candidates to be given a license valid for five years); \textit{id.} § 2102(a) (West Supp. 1995) (providing that the director must pass upon the qualifications of all those seeking the position of county agricultural inspector and issue a license to successful candidates); \textit{id.} § 2103 (West Supp. 1995) (stating that the director must issue a license for any chartered county providing civil service examinations for county agricultural inspectors having successfully completed the examination); CAL. CODE REGS. tit. 3, § 103 (1994) (providing that the minimum qualifications for admission to the certification exam for a county agricultural commissioner include (1) possession of a valid certificate for statewide deputy county agricultural commissioner, (2) four years of experience in agricultural or weights and measures enforcement, and (3) 80 hours of instruction in supervisory practices or management); \textit{id.} § 104 (1994) (stating that the minimum qualifications for a deputy county agricultural commissioner include (1) possession of a valid certificate for a county agricultural inspector; (2) two years of experience in agricultural or weights and measures law enforcement, agricultural pest control, or in the production, processing, or marketing of agricultural commodities; and (3) graduation from college or the equivalent in education with a focus in agriculture or biological sciences, or permanent employment as a certified deputy sealer, or agricultural or weights and
\end{itemize}
person is eligible for examination and licensing if that person has a bachelor's degree with a focus on chemical or physical science, or other appropriate discipline. Under prior law, a person was exempt from the above requirements if he or she held a certificate of qualification issued prior to January 1, 1985. Chapter 818 exempts from the above requirements any person holding a valid license of qualification in weights and measures employed prior to January 1, 1995, and possessing at least one license in an agricultural category no later than December 31, 1996. Additionally, existing law provides that a public employee is not liable for injury resulting from an act or omission when the same was the result of an exercise of discretion or that employee is immune from liability. Chapter 818 makes these provisions applicable to a county department of agriculture and its employees enforcing a state or local pest control or pest eradication ordinance, regulation, or statute.

measures inspector); id. § 105 (1992) (setting forth the minimum qualifications for a county agricultural inspector or biologist to include either (1) graduation from college or the equivalent in education with a focus in agriculture or biology; or (2) experience in agricultural or weights and measures enforcement, agricultural pest control, production, processing, or marketing of agricultural commodities or a minimum of 15 semester credits in agriculture or biology).

3. CAL. FOOD & AGRIC. CODE § 2106 (amended by Chapter 818); cf. ALA. CODE § 132 (1975) (providing that no person is eligible for the office of agricultural commissioner unless that person has been a citizen of the United State for a minimum of seven years, an Alabama resident for a minimum of five years, and at least 25 years of age); GA. CODE ANN. § 2-2-2 (1990) (stating that in order to be qualified for the position of agricultural commissioner one must be a practical farmer and elected by the voters of Georgia); S.C. CODE ANN. § 46-3-30 (Law. Co-op. 1976) (providing that the Commissioner of Agriculture must have competitive knowledge of manufacturing and general industries, agriculture, chemistry, commerce, and publicity).


5. CAL. FOOD & AGRIC. CODE § 2106 (amended by Chapter 818).

6. CAL. GOV'T CODE §§ 815.2(b), 820.2 (West 1980); see id. § 815 (West 1980) (providing that a public entity is not liable for injury arising out of an act or omission of that public entity and the liability of such public entity is subject to any immunity as provided by statute, and any defenses afforded a private person). id. § 815.2(a) (West 1980) (stating that a public entity is liable for an injury proximately caused by an act or omission of its employee, acting within the scope of employment, if that act or omission would, aside from this section, have given rise to a cause of action against the employee). See generally Howlett v. Rose, 496 U.S. 356, 367-83 (1990) (discussing the supremacy clause and federal civil rights claims versus sovereign immunity); Whitcombe v. Yolo County, 73 Cal. App. 3d 698, 709, 141 Cal. Rptr. 189, 195 (1977) (providing that immunities afforded to public entities and officers under the California Tort Claims Act do not deny equal protection and are constitutional); Stanley v. City and County of San Francisco, 48 Cal. App. 3d 575, 579, 121 Cal. Rptr. 842, 845 (1975) (finding that the California Torts Claims Act cannot be said to be unreasonable, arbitrary, or vague and therefore is not unconstitutional with regard to due process); Janell M. Byrd, Comment, Rejecting Absolute Governmental Immunity for Federal Officials, 71 CAL. L. REV. 1707 (1983) (discussing absolute governmental immunity for federal officials); Harold J. Krent, Preserving Discretion Without Sacrificing Deference: Federal Governmental Liability in Tort, 38 UCLA L. REV. 871 (1991) (discussing federal immunity against tort liability and the balance between deterrence and discretion); Gary T. Schwartz, Reality in the Economic Analysis of Tort Law: Does Tort Law Really Deter, 42 UCLA L. REV. 377 (1994) (discussing the economic analysis, and its history in tort law).

7. CAL. FOOD & AGRIC. CODE § 2286 (enacted by Chapter 818); see id. (applying California Government Code §§ 815.2 and 820.2 to decisions of a county department of agriculture); see also CAL. CODE REGS. tit. 1, § 830 (1994) (defining the property of a public entity to mean the real or personal property controlled or owned by a public entity, but not encroachments, easements, and other property located on the property of a public entity, and not owned or controlled by the same public entity). See generally Stevenson
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COMMENT

Chapter 818, by expanding the number of disciplines eligible for employment, increases the applicant pool within the Agriculture Department and the Weights and Measures Department, hence reducing the time needed to fill positions, and eventually leading to a more qualified workforce.\textsuperscript{8} Furthermore, Chapter 818 affords county Departments of Agriculture the same liability protection afforded to state public entities and public employees.\textsuperscript{9} Expanding liability protection to county employees may lead to savings by reducing the number of claims against the county, however, this expanded liability protection will eliminate some of the accountability founded in a more limited liability protection policy.\textsuperscript{10}

Daniel L. Keller

Agriculture; pesticides—emergency registration

Food and Agricultural Code § 12833 (new).
SB 283 (Costa); 1995 STAT. Ch. 608

\textsuperscript{8} ASSEMBLY COMMITTEE ON AGRICULTURE, COMMITTEE ANALYSIS OF AB 816, at 2 (June 6, 1995); \textit{see id.} (providing that AB 816 will provide flexibility to utilize additional educational disciplines of licensed personnel in the agriculture and weights and measures departments); \textit{see also} Letter from Frank E. Carl, President, California Agricultural Commissioner's and Sealer's Association, to Governor Pete Wilson (Sept. 26, 1995) (copy on file with \textit{Pacific Law Journal}) (describing how AB 816 will help to ensure that the technical qualifications of the county Departments of Agriculture meet the evolving needs of California's agricultural industry).

\textsuperscript{9} ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF AB 816, at 2 (May 18, 1995); \textit{see id.} (noting that existing provisions of state law which provide liability protection to state public entities and their employees do not afford the same protection to the county Departments of Agriculture).

\textsuperscript{10} \textit{Id.}; \textit{see id.} (providing that county Departments of Agriculture were continually litigating civil actions resulting from the belief that counties are not authorized by law to take abatement action); \textit{see also} Letter from Frank E. Carl, \textit{supra} note 8 (asserting that AB 816 will serve as a disincentive to the filing of actions challenging the legal authority of county Departments of Agriculture to undertake eradication and pest control actions); Letter from Frank E. Carl, President, Sacramento Agricultural Commissioner's and Sealer's Association, to Assemblymember Phillip Eisenberg, Chair, Assembly Judiciary Committee (May 9, 1995) (copy on file with \textit{Pacific Law Journal}) (explaining that the Agricultural Commissioner, in order to protect the agricultural industry, is expected to act in a timely manner, and although there are strict procedures, counties remain continually challenged in civil court; while counties often prevail, they face substantial litigation costs).
Under existing state law, before economic poisons\(^1\) (pesticides) may be used in California, they must first pass the registration process of the Department of Pesticide Regulation (DPR).\(^2\) However, federal pesticide law provides for an emergency registration process.\(^3\) Under existing federal law, an economic poison may be sold and used in the state under a federal emergency registration which is issued in the absence of a normal Environmental Protection Agency (EPA) registration.\(^4\) Under the federal emergency registration, the economic poison may be used in the state until it is issued the normal registration\(^5\) by the EPA at which time California law bans further use and sales of the pesticide until registered by the DPR.\(^6\)

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1. See CAL. FOOD & AGRIC. CODE § 12753 (West Supp. 1995) (defining “economic poisons” to include any spray adjuvant and any substance, or mixture of substances which is intended to be used for defoliating plants, regulating plant growth, or for preventing, destroying, repelling, or mitigating any pest which may be detrimental to vegetation, man, animals, or households, or be present in any agricultural or any nonagricultural environment); see also id. § 12758 (West 1986) (defining “spray adjuvant” as any wetting agent, spreading agent, deposit builder, adhesive, emulsifying agent, deflocculating agent, water modifier, or similar agent, with or without toxic properties of its own, that is intended to be used with another economic poison as an aid to the application or effect of the other economic poison, and sold in a package that is separate from that of the economic poison other than the spray adjuvant with which it is to be used).

2. Id. § 12811 (West 1986); see id. (requiring every manufacturer of, importer of, or dealer in any economic poison, to obtain a certificate of registration from the Department of Pesticide Regulation (DPR) before the economic poison is offered for sale); see also id. § 11451 (West Supp. 1995) (creating the DPR); SENATE COMMITTEE ON TOXIC AND PUBLIC SAFETY MANAGEMENT, COMMITTEE ANALYSIS OF SB 283, at 1 (Apr. 17, 1995) (stating that existing law establishes a pesticide registration process that is administered by the DPR). See generally CAL. FOOD & AGRIC. CODE §§ 12812-12827 (West 1986 & Supp. 1995) (outlining the registration process for economic poisons in California).

3. 7 U.S.C.A. § 136p (West Supp. 1995); see id. (granting the Administrator of the Environmental Protection Agency (EPA) the ability to exempt a state agency from normal federal registration when an emergency pest control problem exists).


5. See 7 U.S.C.A. § 136a(c) (West 1980 & Supp. 1995) (defining “normal registration” according to the EPA guidelines); see also SENATE COMMITTEE ON TOXIC AND PUBLIC SAFETY MANAGEMENT, COMMITTEE ANALYSIS OF SB 283, at 1 (Apr. 17, 1995) (requiring an applicant to submit a large amount of supporting documentation concerning the pesticide’s chemistry and toxicology, its potential risks to human health and safety, any environmental effect it may have—including to fish and wildlife and nontarget insects, and other studies assessing the safety and effectiveness of the pesticide for normal registration).

6. 7 U.S.C.A. § 136v(a) (West Supp. 1995); see id. § 136p (West Supp. 1995) (granting the EPA administrator discretion to determine if a state emergency exists which requires an emergency registration); id. § 136v(a) (West Supp. 1995) (permitting the states to impose more rigorous standards than the federal law as long as they do not permit sale or use prohibited by federal law); see also Wisconsin Pub. Intervenor v. Mortier, 501 U.S. 597, 606 (1991) (holding that the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) does not pre-empt local ordinances); SENATE FLOOR, COMMITTEE ANALYSIS OF SB 283, at 2 (Sept. 11, 1995) (finding standards for registration in California to be more strict than federal requirements); SENATE COMMITTEE ON TOXIC AND PUBLIC SAFETY MANAGEMENT, COMMITTEE ANALYSIS OF SB 283, at 3 (Apr. 17,
Chapter 608 allows for the emergency registration of an economic poison by the DPR. Furthermore, Chapter 608 creates a state emergency procedure that allows an economic poison to be used in the state for up to two years while it is completing the normal registration process.

**COMMENT**

Unlike most states, California has its own system for registering pesticides which augments the federal system. Chapter 608 is intended to undo the paradoxical situation in the existing regulatory scheme. With Chapter 608 in place, no longer will a pesticide be restricted from sale or use in the state once a federal emergency registration process ends because the state will be able to implement its own emergency registration process. Proponents contend that without Chapter 608, California is at an economic disadvantage since other states...

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7. See Senate Rules Committee, Committee Analysis of SB 283, at 2 (May 18, 1995) (defining "emergency registration" as one which occurs when the DPR requests the registration because an emergency pest control problem has occurred in the state).

8. Cal. Food & Agric. Code § 12833(c) (enacted by Chapter 608); see id. (stating that a certificate of emergency registration may be issued for a period not to exceed one year and may be renewed one time only); see also id. § 12833(a)(1)-(5) (enacted by Chapter 608) (outlining the five requirements which must be met to obtain state emergency registration as (1) the pesticide is currently registered by the EPA, (2) the pesticide was previously registered by the EPA in response to an emergency pest control problem, (3) it is probable that the pesticide will qualify for normal registration, (4) the applicant for emergency registration submits all state data required for registration, and (5) the director finds that the pesticide will not pose a potential significant risk to public health and the emergency registration is necessary in order to respond to an emergency pest control problem).

9. Id. § 12833(c) (enacted by Chapter 608); see id. § 12833(a)(5)(A), (B) (enacted by Chapter 608) (mandating that the director make the following findings before permitting an emergency registration: (1) The use of the pesticide must not pose a potential significant risk to public health or safety or to the environment, and (2) there is no alternative pest control method available for the infestation); see also Cal. Food & Agric. Code § 12833(e)(1) (enacted by Chapter 608) (providing that the director immediately revoke an emergency registration in the event that the EPA suspends or cancels the registration of the economic poison).

10. Assembly Committee on Agriculture, Committee Analysis of SB 283, at 3 (June 19, 1995); see id. (stating that unlike most states, California has its own system for registering pesticides which is somewhat different and generally stricter than those required by the EPA).

11. Senate Committee on Toxic and Public Safety Management, Committee Analysis of SB 283, at 2 (Apr. 17, 1995); see id. at 2-3 (identifying the paradox wherein the pesticide is available for use before a full review of registration data has been carried out by either the EPA or DPR and becomes unavailable once the EPA review has been completed and the risks associated are better understood); cf. Gregory J. Mertz, Note, Dead but Not Forgotten: California’s Big Green Initiative and the Need to Restrict State Regulation of Pesticides, 60 Geo. Wash. L. Rev. 506, 521 (1992) (stating that restrictive regulation of pesticides by individual states could lead to a disturbing patchwork of state laws that ultimately would hurt consumers by weakening the federal regulatory effort). See generally Pesticides, EPA, California Announces Initiative to Coordinate Programs, Registration, Daily Rep. for Executives, Feb. 16, 1994, available in LEXIS, News Library, Cumwss File (reporting that both the EPA and California agreed to work together on a uniform registration process in an effort to reduce conflicting regulations).

are able to use the pesticide due to its federal registration while California must wait one to two years for normal state registration procedures to be completed. Critics of Chapter 608 fear that it will allow state unapproved pesticides that pose a serious health threat to be used if the DPR declares an emergency. Further, there is the concern that the public will have no means of monitoring or preventing these pesticides before they are used in emergency situations.

Todd D. Ruggiero

Agriculture; quarantine

Food and Agricultural Code § 6301.1 (new); §§ 5028, 5311, 6301 (amended).
AB 1739 (Bordonaro); 1995 STAT. Ch. 157

Existing law prohibits the import of any plant, or other article, infested with pests, or by disease, able to cause the infestation, or cause an existing infestation to proceed beyond existing quarantine boundaries, and is punishable civilly by fine not to exceed $25,000 for each act. Chapter 157 provides that any person who intentionally violates quarantine regulations is subject to both criminal and civil penalties, and specifies factual findings which constitute prima facie evidence that a violation is intentional.

13. SENATE FLOOR, COMMITTEE ANALYSIS OF SB 283, at 3 (Sept. 11, 1995).
14. SENATE FLOOR, COMMITTEE ANALYSIS OF SB 283, at 3 (May 18, 1995); see id. (stating opponents are concerned about unapproved pesticides being used during DPR declared emergencies before the public has had any input and before thorough testing has been completed).
15. Id.; see id. (noting opponents are concerned with health hazards and no public means of monitoring emergency pesticide use).

1. CAL. FOOD & AGRIC. CODE § 5028(c) (amended by Chapter 157).
2. Id. § 5028(a), (b) (amended by Chapter 157); see id. (providing that any person who is intentionally in violation of a state or federal quarantine law or regulation is liable civilly as provided under the California Food and Agricultural Code §§ 5310 and 5311, and is subject to both civil and criminal sanctions under the Unfair Practices Act of the California Business and Professions Code, and that either of the following will constitute prima facie evidence of an intentional violation: (1) A violation of the California Food and Agricultural Code § 6401 and possession of a shipment, plant, or thing regulated by state or federal quarantine law, that has not been inspected and released by a quarantine official and is concealed from view or the possessor has been found repeatedly in possession of such thing; or (2) a combination of findings showing that a person in possession of a shipment, plant, or thing, regulated by state or federal quarantine laws, fraudulently or secretly brought into California, and that person is involved in a business or commercial activity that would lead to a reasonable expectation that such a person is aware of quarantine laws; id. § 5310(a) (West Supp. 1995) (making any person in violation of quarantine regulations set forth in the California Food and Agricultural Code §§ 5001-8808 liable civilly in an amount not to exceed $10,000 for each violation in addition to any other penalties); id. § 5311(a) (amended by Chapter 157) (authorizing fines of not more than $2500 for each violation of any quarantine regulation set forth in the California Food and Agricultural Code to be assessed in addition to those fines levied pursuant to the California Food and Agricultural Code § 5310); see also CAL. BUS. & PROF. CODE § 17001 (West 1987) (declaring that it is the purpose of the California

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Under existing law, the Secretary of Food and Agriculture, or a county agricultural commissioner, may levy a civil penalty for each violation of plant quarantine or pest control regulation. Chapter 157 increases the maximum civil penalty from $500 to $2500 for each violation.

Existing law allows a person to appeal such civil penalties within ten days of the date of receiving notice of a penalty. Chapter 157 applies these terms of appeal to penalties imposed by a county agricultural commissioner, and would additionally allow one to appeal for review of a penalty decision by the Secretary of Food and Agriculture within thirty days of a decision.

Business and Professions Code §§ 17000-17100 to safeguard the public against the creation or perpetuation of monopolies, and to foster and encourage competition by prohibiting deceptive, dishonest, destructive, unfair, discriminatory, and fraudulent practices that prevent or destroy fair and honest competition; id. § 17082 (West 1987) (providing that in any action under the California Business and Professions Code §§ 17000-17100, any plaintiff is entitled to three times the amount of actual damages sustained by the plaintiff or by any person who has assigned their claim to the plaintiff, along with attorney's fees and costs of the suit); id. § 17100 (West 1987) (providing that any person in violation of the California Business and Professions Code §§ 17000-17100 is guilty of a misdemeanor punishable by a fine not less than $100 and no more than $1000 or 6 months imprisonment, or both); CAL. FOOD & AGRIC. CODE § 6410 (West 1986) (making it unlawful for any person to import, transport, or receive any plant or thing that is already under quarantine in California without first notifying the agricultural commissioner in the county in which such thing is received, and allowing for immediate inspection of such thing); ASSEMBLY JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 1739, at 3 (Apr. 19, 1995) (suggesting that cross-reference to the Unfair Trade Practices Act in the California Business and Professions Code § 5028(a) may be overly broad, since this section covers unlawful trade practices, including monopolies, unlawful rebates, and tie-in schemes, and that the sponsor's intent was to permit local district attorneys to recover prosecution costs, attainable by seeking treble damages under the California Business and Professions Code § 17082), See generally Joseph Zuber, Review of Selected 1989 California Legislation, 21 PAC. L.J. 331, 349 (1990) (discussing civil penalties for the violation of plant quarantine regulations).

3. See CAL. FOOD & AGRIC. CODE § 102 (West Supp. 1995) (providing that the California Department of Food and Agriculture is under the control of a civil executive officer known as the Secretary of Food and Agriculture).

4. See id. § 2124 (West 1986) (stating that a county agricultural commissioner has the powers conferred upon a commissioner by the California Food and Agricultural Code).

5. Id. § 5311(a) (amended by Chapter 157); see id. (authorizing fines of not more than $2500 for each violation of any quarantine regulation set forth in the California Food and Agricultural Code, and to be assessed in addition to those fines levied pursuant to the California Food and Agricultural Code § 5310).

6. Id.; see 1989 Cal. Stat. ch.746, sec.1, at 2452 (amending CAL. FOOD & AGRIC. CODE § 5311(a)) (setting forth the fine amounts under prior law).

7. CAL. FOOD & AGRIC. CODE § 5311(g) (amended by Chapter 157); see id. (establishing the procedure through which one may appeal as follows: (1) The appeal may be informal, but must be in writing and signed by the appellant or authorized agent, stating the grounds for appeal; (2) written evidence, and a written argument may be submitted at the time or within 10 days of the filing of appeal by any person; (3) oral argument may be granted by the Secretary at the time written arguments are filed; (4) upon the granting of an application for oral arguments, written notice of the time and place for such arguments must be provided a minimum of 10 days prior to the date set for such arguments; (5) the appeal is to be decided by the Secretary based on any oral or written arguments, and evidence received; (6) a written decision is to be issued by the Secretary within 45 days of the date of appeal or 15 days of the date of the oral arguments; (7) the Secretary, on appeal, may modify through reduction of the penalty, sustain, or reverse the decision; and (8) review of the Secretary's decision may be pursued through the California Civil Procedure Code §1094.5).

8. Id.§ 5311(e) (amended by Chapter 157); see id. (providing that a review of decision may be sought pursuant to the California Civil Procedure Code § 1094.5); see also CAL. CIV. PROC. CODE § 1094.5 (West Supp. 1995) (setting forth guidelines for the review of administrative orders and decisions).
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Under existing law, any article transported into California from any other state, territory, or district of the United States in violation of plant quarantine or pest control regulations is subject to seizure, destruction, or other disposition. Chapter 157 applies these same conditions to any article imported from any other country.

Furthermore, Chapter 157 requires the Secretary of Food and Agriculture to adopt specified federal quarantine regulations, as well as all applicable criminal and civil penalties and provides that such penalties may be applied by the Secretary and other authorized plant quarantine officers.

COMMENT

In an effort to deter violations of federal and state quarantine regulations, Chapter 157 increases the severity of civil penalties considered no longer

9. CAL. FOOD & AGRIC. CODE § 6301 (amended by Chapter 157); cf. ARK. CODE ANN. § 2-16-209(a) (Michie 1987) (prohibiting the transportation through or into, distribution, or sale of any insect pest, plant disease, or noxious weed within Arkansas, except as provided by the Arkansas Agricultural Board); COLO. REV. STAT. ANN. § 35-4-108 (West 1984) (making it unlawful for any person to knowingly transport live pests or host material potentially injurious to agriculture or horticulture, into or within Colorado without permission from the Agricultural Commissioner); HAW. REV. STAT. § 150A-8 (1985) (prohibiting the transportation of specified flora and fauna between or on the islands of Hawaii without the express permission of the Hawaii Department of Agriculture); MICH. COMP. LAWS ANN. § 286.216 (West 1979) (making it unlawful to accept shipment or transportation of, or to transport nursery stock within Michigan without the appropriate certificates); MICH. STAT. ANN. § 18.82(1) (West Supp. 1995) (prohibiting the transportation of noxious weeds along public highways of Minnesota without written permission from an agricultural inspector or county agricultural commissioner); N.M. STAT. ANN. § 76-5-23 (Michie 1981) (requiring any person transporting, producing, or selling nursery or florist stock within New Mexico to first obtain the appropriate certification statement); W. VA. CODE § 19-12-14 (1993) (providing that no person may transport, deliver, or offer for shipment into or within West Virginia, any plant pest or insects, or noxious weed in any living stage without first obtaining permission from the federal or state government).

10. CAL. FOOD & AGRIC. CODE § 6301 (amended by Chapter 157).

11. Id. § 6301.1 (enacted by Chapter 157); see id. (requiring the Secretary of Food and Agriculture to adopt by reference, by regulation, federal quarantine regulations in §§ 301 and 369 of Title 7 of the Federal Code of Regulations and authorizing the imposition of civil and criminal penalties by both the Secretary and plant quarantine officers pursuant to the same); see also 7 U.S.C.A. § 150bb (West Supp. 1995) (prohibiting any person from importing any plant pest into the United States unless in accordance with those regulations preventing the dissemination of plant pests into the United States); id. § 150ff (West Supp. 1995) (authorizing any properly identified employee of the Department of Agriculture to stop and inspect, without warrant, any person or vehicle entering the United States to determine if transported products are carrying any plant pests in violation of the United States Code Annotated §§ 150aa-150jj); id. § 154 (West Supp. 1995) (prohibiting any person from importing or accepting delivery of nursery stock unless in accordance with regulations governing prevention of dissemination of plant pests, plant diseases, or insect pests); id. §164 (West 1980) (authorizing employees of the United States Department of Agriculture to stop and inspect any person or vehicle without a warrant, and to seize any nursery stock under quarantine, so long as such employee has probable cause to do so); People v. Dickinson, 104 Cal. App. 3d 505, 512, 163 Cal. Rptr. 575, 579 (1980) (holding that a plant quarantine officer may stop motorists at inspection stations and request to search the trunk of their vehicle, and if the motorist opens the trunk voluntarily, the officer may remove any plant material on plain view in order to inspect more thoroughly).
Agriculture

punitive. Deterrence of such violations is essential to the preservation of the farming industry, one of the larger industries in California. Moreover, Chapter 157 reduces the time and cost of prosecution by establishing guidelines for prima facie evidence of intentional violations. Chapter 157 will also allow the California Department of Food and Agriculture to enforce federal quarantines currently not administered due to lack of jurisdiction.

Daniel L. Keller

Agriculture; seed labeling

Food and Agriculture Code §§ 52254.4, 52257.8, 52401, 52402, 52403, 52404, 52405, 52406, 52456 (new); §§ 52332, 52453, 52455 (amended). AB 510 (Battin); 1995 STAT. Ch. 714

Existing law requires a viability assurance statement on seed that is sold for

12. ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF AB 1739, at 2 (May 18, 1995); see id. (stating that an increase in penalties is necessary since a fine of $500 is no longer punitive, and no longer serves as a deterrent, but instead is considered a minor business expense by most businesses because the rewards for selling such prohibited articles are so high; for example in 1993, in Los Angeles, 10,000 pounds of prohibited longans retailed for $8.25 per pound, a gross earning of $82,500 of which a $500 fine is merely .06%); see also ASSEMBLY JUDICIARY COMMITTEE, REPUBLICAN ANALYSIS OF AB 1739, at 1 (Apr. 16, 1995) (providing that AB 1739 addresses a recent increase in the smuggling activity of foreign origin, agricultural produce, and the need for additional enforcement in the area of exotic plant pest control).

13. ASSEMBLY JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 1739, at 3 (Apr. 19, 1995); see id. (providing that California has a competitive edge in the global marketplace because of its strict regulation of produce that prevents serious pests from entering California to damage produce); see also ASSEMBLY JUDICIARY COMMITTEE, REPUBLICAN ANALYSIS OF AB 1739, at 1 (Apr. 16, 1995) (finding that AB 1739 will assist California in maintaining a competitive edge in the global marketplace for agricultural produce by facilitating the prosecution of plant quarantine violators); Emma Suarez Pawlicki, Governor Signs Key CDFA Legislation, CAL FOOD & AGRIC. NEWS, July 25, 1995, at 2 (stating that Chapter 157 makes it easier to protect California's food supply from pests and diseases, while providing regulatory relief to California's agriculture industry); Letter from Karen Barrett Ross, Vice President of Governmental Affairs, Agricultural Council of California, to the Members of the Assembly Judiciary Committee (Apr. 12, 1995) (copy on file with the Pacific Law Journal) (concluding that an effective pest exclusion program is essential to the long-term economic and environmental welfare of California).

14. ASSEMBLY JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 1739 at 2 (Apr. 19, 1995); see Man Pleads Guilty to Smuggling Medfly-Infested Berries into State, L.A. TIMES, Feb. 19, 1992, at B2 (stating that this is the first criminal prosecution case against a nursery owner involving medflies).

15. CAL. FOOD & AGRIC. CODE § 6301.1 (enacted by Chapter 157); see Pawlicki, supra note 13 (providing that the California Department of Food and Agriculture may join forces with federal quarantine agencies in the protection of California from pests).

1. See CAL. FOOD & AGRIC. CODE § 52455(a) (amended by Chapter 714) (defining a "viability assurance statement" as a "sell by" or "use before" statement); see also id. § 52261 (West 1986) (describing "viability" as living seeds capable of germinating).
nonfarm usage. However, prior law made an exception for vegetable seed sold in containers of one-half pound (227 grams) or less. Additionally, each container of vegetable seed must meet additional specifications regarding labeling of the product. The Secretary of Food and Agriculture (Secretary) may adopt additional regulations binding upon the industry, as well as establish methods and procedures for alternative dispute resolution between labelers and other persons.

2. Id. § 52455 (amended by Chapter 714); see id. (setting out the need for a viability assurance statement by retail merchants selling for nonfarm usage, in addition to other labeling requirements in the code, as well as giving requirements for the viability assurance statement); see also id. § 52288 (amended by Chapter 714) (indicating the Legislature's intent to be consumer protection and the continued effort by the State and the industry to improve the quality and variety of seed available to the consumer-buyer); Pennington Enters. v. United States, No. 90-1067, 1992 U.S. Dist. LEXIS 21959, at *8 (D.C. Cir. 1992) (stating that the Federal Seed Act, which is similar to the California Seed Act, was designed to correct abuses in the merchandising of agricultural and vegetable seed in interstate commerce and to prevent the importation of seed that is adulterated, mislabeled, or unfit for seeding purposes); id. at *16 (stating that all agricultural and vegetable seeds are subject to the Federal Seed Act for labeling purposes); cf. 7 U.S.C.A. § 1561(a)(4) (West 1988) (imposing, among other things, labeling requirements on vegetable or agricultural seed).


4. See CAL. FOOD & AGRIC. CODE § 52259 (West 1986) (defining “vegetable seed” as the seed of any crop which is or may be grown in gardens or on truck farms and which is generally known and sold under the name vegetable seed); cf. ALA. CODE § 2-26-1(3) (1975) (defining “vegetable seed” with virtually the same definition as that used by California); ARIZ. REV. STAT. ANN. § 3-231(2) (1995) (defining “agricultural seed” as the seeds of grass, forage, cereal, and fiber crops).

5. CAL. FOOD & AGRIC. CODE § 52453 (amended by Chapter 714); see id. (requiring a printed label or tag to fulfill the following requirements: (1) name of kind and variety of seed, (2) percentage of germination and hard seed and dates the test were completed, (3) name and address of person that labeled the seed, (4) lot number and lot identification if the container is more than ½ pound, and (5) a statement with the year for which the container was packed); id. § 52482(a) (West 1986) (stating that it is unlawful for any person to sell any agricultural product or vegetable seed that is not labeled in accordance with the California Seed Law); see also id. § 52255 (West 1986) (defining “labeling” as all written, printed, graphic representations pertaining to any order of seed which includes an invoice); cf. 7 U.S.C.A. § 1571(d) (West 1988) (indicating the prohibitions which exist for false labeling or advertisement); ALA. CODE § 2-26-7(b) (1) (1975) (providing a list of six labeling elements which must be satisfied prior to the sale of vegetable seed, including name of kind and variety, net weight, lot identification, percentage of germination, exclusive of hard seed, date of germination test, and name and address of person responsible for the information); ARIZ. REV. STAT. ANN. § 3-237 (1995) (giving labeling requirements for vegetable, agricultural and ornamental seed); CONN. GEN. STAT. § 22-56(a) (1985) (giving Connecticut's version of seed labeling requirements, requiring a number of items, including the kind and variety of seed, percent of germination and percent of hard seed). See generally Indiana Crop Improvement Ass'n, Inc. v. Commissioner, 76 T.C. 394, 398 (1981) (commenting that it was clear that the laws requiring official labeling for certified seed were passed in order to better protect the purchasing public, which are generally farmers and gardeners).

6. See CAL. FOOD & AGRIC. CODE § 102 (West Supp. 1995) (defining the power of the Secretary and his or her control over the Department of Food and Agriculture); see also id. § 52332 (amended by Chapter 714) (stating that the Secretary, by regulation, can adopt all or any of the listed options). See generally id. § 40531 (West Supp. 1995) (providing for the Secretary's authority).

7. See Edward Brunet, Questioning the Quality of Alternate Dispute Resolution, 62 Tul. L. Rev. 1, n.1 (1987) (describing the term “Alternative Dispute Resolution” as referring to dispute processing techniques which include mediation, arbitration, mini-trial, and summary jury trial); see also COLO. REV. STAT. ANN. § 13-22-302(1) (West Supp. 1994) (defining “arbitration” as the referral of a dispute to one or more neutral third parties for a decision based on evidence and testimony provided by the disputants); id. § 13-22-302(2)(a) (West Supp. 1994) (defining “mediation” as the interference by a trained third party with the purpose of helping the parties come to their own solution.); GA. A.D.R. RULE 1 (1994) (defining “alternative dispute resolution” as referring to any method other than litigation for resolution of disputes). See generally C. Edward Fletcher, III, Privatizing Securities Disputes Through the Enforcement of Arbitration Agreements, 71 Minn. L. Rev. 393, 394 (1987) (discussing the increased usage of arbitration in the securities industry because of the selected 1995 legislation 395
Chapter 714 amends existing law by requiring that the viability assurance statement be conspicuously labeled upon all seed at the time of sale, by a retail merchant, for nonfarm usage. Chapter 714 also allows the Secretary to create methods and procedures for arbitration of disputes, in addition to his/her powers to regulate mandatory conciliation and mediation. Next, Chapter 714 provides that the statute of limitations for any civil action will be tolled upon commencement of the conciliation, mediation, or arbitration proceeding. Finally, Chapter 714 authorizes the Secretary to establish a list of substances likely to be used for treating grain or other crop seed. Chapter 714 also provides for certain conduct with which the seed certifying agency must comply.

COMMENT

Chapter 714 was enacted so that the mandatory mediation programs, which were intended to cover all seed sales to commercial growers, would also apply to sales of small quantities of hybrid seeds sold to commercial growers. The
increased emphasis on alternative dispute resolution provides for faster, more efficient resolution of controversies.\textsuperscript{15}

\textit{Andrei F.B. Behdjet}