

1-1-1987

Agriculture

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Recommended Citation

University of the Pacific; McGeorge School of Law, *Agriculture*, 18 PAC. L. J. 461 (1987).

Available at: <https://scholarlycommons.pacific.edu/mlr/vol18/iss2/12>

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Agriculture

Agriculture; economic poisons—registration

Food and Agriculture Code § 12825.5 (new); § 12825 (amended).

SB 1046 (Torres); 1986 STAT. Ch. 1234

Sponsor: Author

Support: Department of Food and Agriculture; Department of Finance; Department of Health Services

Under existing law, the Director of the Department of Food and Agriculture (Director) may cancel any existing economic poison¹ registration,² or refuse to register a new economic poison, if certain specified findings are made.³ Chapter 1234 provides that if a registrant⁴ of an economic poison has factual or scientific evidence of any adverse effect or risk to human health, livestock, crops, or the environment, and that evidence has not been previously submitted to the Director, the registrant must submit the evidence in a timely manner.⁵ Furthermore, the Director is authorized to cancel the registration of a poison, or refuse to register a poison, if the registrant has evidence of an adverse effect or risk that has not previously been submitted to the Department, and that evidence has not been reported to the Director in a timely manner.⁶

SDS

1. CAL. FOOD & AGRIC. CODE § 12753 (definition of economic poison).

2. See generally *id.* §§ 12811-12828 (registration requirements and procedures).

3. *Id.* § 12825. The Director may cancel or refuse to register an economic poison if any of the following findings are made: (1) the economic poison has demonstrated uncontrollable adverse effects; (2) using the economic poison is of less public value, or a greater detriment to the environment, than the benefit received by use of the poison; (3) a reasonably effective alternate material or procedure exists that is demonstrably less destructive to the environment; (4) the economic poison, when used properly, is detrimental to vegetation, domestic animals, or the public health and safety; (5) the poison is of little value for the intended purpose; or (6) false or misleading statements concerning the poison have been made or implied by the registrants or their agents. *Id.* § 12825(a)-(f).

4. *Id.* § 12755 (definition of registrant).

5. *Id.* § 12825.5(a). The Director may adopt regulations that are reasonably necessary to carry out this section. *Id.* § 12825.5(b).

6. *Id.* § 12825(g). The Director may require practical demonstrations as necessary to determine the facts of a case. *Id.*

Agriculture; foreign trade agreements—enforcement

Food and Agricultural Code §§ 701, 702, 703, 704, 705 (new).
SB 2357 (McCorquodale); 1986 STAT. Ch. 1358
(Effective September 30, 1986)
Sponsor: Author

Under existing federal law, any interested person may file a petition with the United States Trade Representative requesting the President to enforce the rights of the United States under any trade agreement.¹ In addition, the petition may request the President to respond to any act, policy, or practice of a foreign government that is either inconsistent with, or denies benefits to, the United States under a trade agreement,² or is unjustified,³ unreasonable,⁴ or discriminatory⁵ and restricts United States commerce.⁶ Under Chapter 1358, the California Department of Agriculture (the Department) may, upon the request of a California agricultural interest that is pursuing a case under specified sections of Federal law,⁷ gather and provide analytical

1. Trade Act of 1974, 19 U.S.C. §§ 2411(a)(1), 2412(a) (1984). The Trade Representative must review the allegations contained in the petition within 45 days, and determine whether to initiate an investigation. *Id.* § 2412(a). If the determination is affirmative, the Trade Representative must institute an investigation and provide an opportunity for presentation of views concerning the issues raised in the petition, including a public hearing. *Id.* § 2412(b)(2). Upon an affirmative determination, the Trade Representative must request consultations with the foreign country concerned, regarding the issues raised in the petition. *Id.* § 2413(a).

2. *Id.* § 2411(a)(1)(B)(i).

3. The term "unjustifiable" means any act, policy, or practice which is in violation of, or inconsistent with, the international legal rights of the United States. The term includes, but is not limited to, any act, policy, or practice that denies national or most-favored-nation treatment, the right of establishment, or protection of intellectual property rights. *Id.* § 2411(e)(4)(A), (B).

4. The term "unreasonable" means any act, policy, or practice which, while not necessarily in violation of, or inconsistent with, the international legal rights of the United States, is otherwise unfair and inequitable. The term includes, but is not limited to, any act, policy, or practice which denies fair and equitable market opportunities, opportunities for the establishment of an enterprise, or provision of adequate and effective protection of intellectual property rights. *Id.* § 2411(e)(3)(A)-(C).

5. The term "discriminatory" includes, where appropriate, any act, policy, or practice which denies national or most-favored-nation treatment to United States goods, services, or investment. *Id.* § 2411(e)(5).

6. *Id.* § 2411(a)(1)(B)(ii). The term "commerce" includes, but is not limited to, services associated with international trade, including transfers of information, whether or not such services are related to specific goods, and foreign direct investment by people of the United States with implications on trade in goods or services. *Id.* § 2411(e)(1)(A), (B). *See id.* § 2411(b), (c) (additional actions available to the President once a favorable determination has been made that action by the United States is appropriate).

7. CAL. FOOD & AGRIC. CODE § 703 (the specified sections are sections 301 and 302 of the Federal Trade Act of 1974).

assistance, information, and data in support of the case.⁸ Furthermore, the Director of the Department is required to set a reasonable schedule of fees to cover the amount expended for providing such assistance.⁹

SDS

8. *Id.* Chapter 1358 was enacted in response to a finding by the legislature that agricultural parties are encountering difficulties in obtaining federal remedies, due to a lengthy and costly political process which requires extensive factfinding to show a significant interest and substantial damage. *Id.* § 701(c). With the enactment of Chapter 1358, the legislature intends to provide agricultural parties with additional support, through state involvement and unified statistical data compilation and analysis, to contribute to a more effective and persuasive presentation of cases brought by California agricultural interests. *Id.* § 702.

9. *Id.* § 704. *See id.* § 705 (all state agencies must cooperate with the Director, and respond to requests in a timely manner).

Agriculture; theft prevention

Food and Agricultural Code §§ 851, 861, 862, 863, 864, 865, 866, 871, 881, 882, 883, 884 (new).

AB 1010 (N. Waters); 1986 STAT. Ch. 661

(Effective September 9, 1986)

Sponsor: California Farm Bureau

Support: California Highway Patrol; Department of Food and Agriculture

With the enactment of Chapter 661, the legislature intends to establish a means of identifying the owners of specific agricultural commodities¹ to provide additional control over thefts of these commodities within the State.² Chapter 661 requires every person who sells,³ buys for resale,⁴ or transports for commercial purposes,⁵ com-

1. CAL. FOOD & AGRIC. CODE § 851 (fruits, nuts, or vegetables which are the product of any tree, vine, or plant).

2. *Id.*

3. *Id.* § 861(a).

4. *Id.* § 861(b).

5. *Id.* § 861(c).

mercial lots of fruits, nuts, or vegetables weighing over 200 pounds, to provide or obtain a record of ownership⁶ for each lot of the commodity.⁷ In addition, Chapter 661 authorizes a peace officer to stop a vehicle and request proof of ownership of the commodity if probable cause exists to believe any fruits, nuts, or vegetables are being unlawfully transported.⁸ Furthermore, upon probable cause to believe such a commodity is unlawfully possessed, proof of ownership must be made available for inspection upon the request of the Director of the Department of Agriculture (Director), the County Agriculture Commissioner (Commissioner), or of any peace officer.⁹ Under Chapter 661, if a person is reasonably believed to unlawfully possess a commodity, the commodity may be held by the Director, Commissioner, or any peace officer, and turned over to the custody of the Commissioner.¹⁰ If the commodity is not released to the rightful owner after being in the custody of the Commissioner for forty-eight hours,¹¹ the Commissioner may sell the commodity by public auction or private sale,¹² donate the commodity to a nonprofit charitable organization if the commodity remains unsold,¹³ or destroy

6. The record of ownership must contain (1) the name, address, telephone number, and signature of the seller or the seller's authorized representative; (2) the generic name and quantity of the commodity involved; (3) the date of the transaction and commencement of transportation; and (4) the name, address, and telephone number of the buyer or consignee if the commodity is not sold. *Id.* § 862(a)-(d). *See id.* § 863 (a bill of lading, bill of sale, certified farmers certificate, or a similar type of document is considered proof of ownership). *See also id.* §§ 864 (Chapter 661 prohibits any person from knowingly falsifying information pertaining to proof of ownership); 865 (copies of the record must be retained by buyer and seller for 60 days after delivery).

7. *Id.* § 861(a)-(c). Chapter 661 establishes minimum requirements for the transportation and identification of agricultural commodities, and a county may impose additional requirements. *Id.* § 866.

8. *Id.* § 881.

9. *Id.* § 862.

10. *Id.* § 882 (the Commissioner may hold the commodity on the premises where they were seized until sold, donated, or disposed of).

11. *Id.* § 884(a) (if the commodity is highly perishable, any shorter period of time the Commissioner deems necessary).

12. *Id.* (sell at fair market value to a commercial packer of the commodity). All of the proceeds derived from the sale must be held for at least six months, during which time the lawful owner may submit proof of ownership and obtain possession of the proceeds. If no demand is made for the proceeds, or no proof of ownership is supplied, the Commissioner must deposit the proceeds in the county general fund. *Id.* The Director, the Commissioner, or a peace officer may investigate to ascertain the ownership of a seized commodity. *Id.* § 883. If the lawful owner is located, the Commissioner may require reasonable payment to cover the costs incurred in storing or selling the commodity not to exceed the value of the commodity held or sold. *Id.* §§ 883, 884(a).

13. *Id.* § 884(b).

the commodity if unfit for human consumption.¹⁴

SDS

14. *Id.* § 884(c). Chapter 661 does not apply to commodities transported from the farm where they are produced to any commercial packing plant within California for processing or packing, or commodities transported or accompanied by a valid permit, disposal order, or certificate issued by the Director or Commissioner. *Id.* § 871(a), (b).

Agriculture; water transfer—conveyance facilities

Water Code §§ 1810, 1811, 1812, 1813, 1814 (new).

AB 2746 (Katz); 1986 STAT. Ch. 918

(Effective September 22, 1986)

Sponsor: Author

Support: San Diego County; Western Growers Association; California Farm Bureau

Opposition: Resources Agency; Association of California Water Agencies; California Chamber of Commerce

Chapter 918 was enacted in apparent response to findings by the legislature that agricultural operations and public agencies are experiencing financial difficulties or facing default, and that the marketing of water may provide financial relief or supplement income during these periods of economic hardship.¹ With the enactment of Chapter 918, the legislature declares that the policy of the state is to facilitate the voluntary sale, lease, or exchange of water or water rights in order to promote efficient use.² Chapter 918 prohibits any state, regional, or local public agency from denying a bona fide transferor³

1. 1986 Cal. Stat. ch. 918, sec. 1(b), (c), at ____.

2. 1986 Cal. Stat. ch. 918, sec. 1(d), at _____. While facilitating the voluntary transfer of water and water rights, Chapter 918 specifies that use of a water conveyance facility must be made without injuring any legal user of water, without unreasonably affecting fish, wildlife, or other instream beneficial uses, and without unreasonably affecting the overall economy or the environment of the county from which the water is being transferred. CAL. WATER CODE § 1810(d).

3. *Id.* § 1811(a) (definition of bona fide transferor).

of water the use of a water conveyance facility that has unused capacity,⁴ for the period of time that capacity is available, if fair compensation⁵ is paid for that use.⁶ In addition, Chapter 918 provides that any person or public agency that has a long-term water service contract, or the right to receive water from a conveyance facility, has the right to use any unused capacity before a bona fide transferor.⁷ Furthermore, Chapter 918 permits any person with a long-term water contract or the right to receive water, who has an emergency⁸ need, to utilize the unused capacity for the duration of the emergency.⁹

SDS

4. *Id.* § 1811(e) (definition of unused capacity).

5. *Id.* § 1811(c) (definition of fair compensation). *See id.* § 1811(d) (definition of replacement costs).

6. *Id.* § 1810.

7. *Id.* § 1810(a).

8. *Id.* § 1811(b) (definition of emergency).

9. *Id.* § 1810(c). The provisions of Chapter 918 only apply to 70% of the unused capacity of a water conveyance facility. *Id.* § 1814. Commingling transferred water with water in the transfer facility may not result in a diminution of the beneficial uses or quality of the water in the facility. *Id.* § 1810(b).