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Agriculture

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Agriculture

Agriculture; cooperative bargaining associations

Food and Agriculture Code §§54403, 54433 (repealed); §§54404.1, 54404.2, 54404.3, 54404.4, 54404.5, 54441, 54442, 54443, 54444, 54445, 54463 (new); §§54402, 54404, 54431, 54435, 54461, 54462 (amended).
AB 1944 (Willie Brown); 1983 STAT. Ch 1100
Support: Agricultural Council of California; California Farm Bureau; Department of Finance; Department of Food and Agriculture.

The California Legislature has declared a public policy to ensure farmers the right to voluntarily join, belong to, and freely participate in cooperative bargaining associations.¹ An interference with this right or with other specified actions constitutes an unfair trade practice,² and is unlawful.³ Chapter 1100 supplements provisions that designate unfair trade practices,⁴ and establishes substantially higher penalties for violating these provisions.⁵ In addition, Chapter 1100 details the powers and responsibilities of the Director of Food and Agriculture (hereinafter referred to as the Director) in handling and ascertaining complaints about possible violations,⁶ and sets forth the procedures for conducting hearings.⁷

Unfair Trade Practices

Under existing law, unfair trade practices include a refusal to negotiate or bargain for price, terms of sale, compensation for commodities produced under contract, and other contract provisions relating to commodities⁸ by either (1) processors, handlers, distributors, or their agents, or (2)

1. CAL. FOOD & AGRIC. CODE §§54401 (definition of cooperative bargaining association), 54402. The right to participate freely in cooperative bargaining associations was added by Chapter 1100. *Compare id. with* 1967 Cal. Stat. c. 15, §2, at 610 (amending CAL. FOOD & AGRIC. CODE §54402).

2. *See id.* §54431(a)-(f) (list of unfair trade practices).

3. *Id.* §54402; *see id.* §54431.

4. *Compare id.* §54431(a)-(f) with 1974 Cal. Stat. c. 510, §1, at 1189 (amending CAL. FOOD & AGRIC. CODE §54431).

5. *Compare* CAL. FOOD & AGRIC. CODE §§54461, 54462 with 1967 Cal. Stat. c. 15, §2, at 611 (amending CAL. FOOD & AGRIC. CODE §§54461, 54462).

6. *See* CAL. FOOD & AGRIC. CODE §§54404, 54404.1, 54404.4, 54404.5.

7. *See id.* §§54404.2, 54404.3; *see also id.* §§55781-55788.

8. *Id.* §54431(f). Before a violation can be found, the cooperative bargaining association involved in bargaining must meet several requirements regarding organization. *See id.* §54431(f)(1)-(5) (list of requirements).

cooperative bargaining associations or their agents.⁹ Although prior law did not limit these provisions to bargaining for certain commodities,¹⁰ Chapter 1100 specifies that these provisions apply only when bargaining for fresh grapes for wine, or for produce other than fruit, nuts, or vegetables for processing.¹¹ A new, but similar, provision enacted by Chapter 1100 provides that refusal to negotiate or bargain *in a sincere and cooperative manner* for fruits, nuts, or vegetables for processing by either (1) processors, handlers, distributors, or their agents, or (2) cooperative bargaining associations or their agents, is an unfair trade practice.¹² The processor and cooperative bargaining association are required to bargain at reasonable times, for reasonable lengths of time, with a genuine desire to reach agreement, and in a serious attempt to resolve differences.¹³

Existing law establishes the unfair trade practice of maliciously or knowingly giving false reports about the finances, management, or activities of persons affiliated with cooperative bargaining associations or processors.¹⁴ Under prior law, these provisions applied only to persons *dealing with* cooperative bargaining associations.¹⁵ With the enactment of Chapter 1100, criminal and civil liability can be imposed upon persons *from* cooperative bargaining associations who deal with processors, handlers, distributors, or their agents if these persons violate the unfair trade practice of giving false reports.¹⁶

Revised Penalties and Remedies

Existing law provides that willful violation of the provisions governing unfair trade practices is a misdemeanor.¹⁷ Chapter 1100 reinforces the seriousness of engaging in unfair trade practices by substantially raising the fine and penalty limits.¹⁸ The misdemeanor fines, limited to a minimum of

9. *Id.* §54431. Previous legislation did not include cooperative bargaining associations within §54431, but applied similar provisions for a separate unfair trade practice against cooperative bargaining associations in the California Food and Agriculture Code § 54433, repealed by Chapter 1100. *Compare id. with* 1974 Cal. Stat. c. 510, §1, at 1189 (amending CAL. FOOD & AGRIC. CODE §54431). *Compare* CAL. FOOD & AGRIC. CODE §54431 *with* 1974 Cal. Stat. c. 510, §3, at 1190 (enacting CAL. FOOD & AGRIC. CODE §54433).

10. *See* 1974 Cal. Stat. c. 510, §1, at 1189 (amending CAL. FOOD & AGRIC. CODE §54431).

11. CAL. FOOD & AGRIC. CODE §54431(f).

12. *Id.* §54431(e). Before a violation can be found, the cooperative bargaining association involved in bargaining must meet several requirements regarding organization. *See id.* §54431(e)(1)-(5) (list of requirements).

13. *Id.* §54431(e).

14. *Id.* §54431(d).

15. *See* 1974 Cal. Stat. c. 510, §1, at 1189 (amending CAL. FOOD & AGRIC. CODE §54431).

16. *Compare* CAL. FOOD & AGRIC. CODE §54431 *with* 1974 Cal. Stat. c. 510, §1, at 1189 (amending CAL. FOOD & AGRIC. CODE §54431).

17. CAL. FOOD & AGRIC. CODE §54461.

18. *Compare id.* §§54461, 54462 *with* 1967 Cal. Stat. c. 15, §2, at 611 (amending CAL. FOOD & AGRIC. CODE §54461, 54462).

\$50 and a maximum of \$500 under prior law, are raised by Chapter 1100 to a minimum of \$500 and a maximum of \$5000 for each violation.¹⁹ Under prior law, the civil penalty had a maximum limit of \$500, but now has a maximum of \$5000 for each violation under Chapter 1100.²⁰ Moreover, Chapter 1100 grants the option of seeking injunctive relief to compel compliance with the provisions governing unfair trade practices.²¹

Powers of the Director

Prior to the enactment of Chapter 1100, the Director's powers to conduct hearings and investigations were the same as the powers conferred upon the head of a state department.²² Chapter 1100 now specifies the powers and duties of the Director when conducting hearings and investigations concerning cooperative bargaining associations.²³

Under existing law, the Director may receive complaints concerning violations of unfair trade practice provisions.²⁴ After verification of a complaint, the Director must conduct investigations and examinations, or inspect the alleged violations, when necessary.²⁵ Chapter 1100, by specifically referring to cooperative bargaining associations, clearly allows the Director to receive complaints and take action against cooperative bargaining associations or their agents.²⁶

Chapter 1100 provides that if the Director has reasonable cause to believe a violation has occurred,²⁷ a person charged with an unfair trade practice must receive service of a complaint that (1) states the charges, and (2) summons that person to a hearing before the Director.²⁸ At the hearing, the Director is empowered by Chapter 1100 to (1) administer oaths and take testimony,²⁹ (2) issue subpoenas requiring the presence of witnesses and evidentiary materials,³⁰ and (3) compel witnesses to disclose facts relating to the controversy.³¹ Unless the Director is satisfied that the person charged has violated the unfair trade practice provisions, the Director must order the complaint dismissed.³² If a violation is found, the

19. CAL. FOOD & AGRIC. CODE §54461.

20. *Id.* §54462.

21. *Id.* §54463.

22. 1967 Cal. Stat. c. 15, §2, at 610 (amending CAL. FOOD & AGRIC. CODE §54403).

23. See CAL. FOOD & AGRIC. CODE §§54404, 54404.1-54404.5, 54441, 54442; see also 1983 Cal. Stat. c. 1100, §2, at ____ (repealing CAL. FOOD & AGRIC. CODE §54403).

24. CAL. FOOD & AGRIC. CODE. §54404.

25. *Id.*

26. Compare *id.* with 1967 Cal. Stat. c. 15, §2, at 610-11 (amending CAL. FOOD & AGRIC. CODE §54404).

27. CAL. FOOD & AGRIC. CODE §54404.1.

28. *Id.* The Director is to call the hearing at a specific time and place. *Id.*

29. *Id.* §54404.2(a).

30. *Id.* §54404.2(b).

31. *Id.* §54404.2(c).

32. *Id.* §54404.4.

Director may seek injunctive relief.³³ The Director may also take action to secure the imposition of a criminal fine, a civil penalty, or both.³⁴

If the Director receives a verified complaint concerning a violation of the provisions prohibiting a refusal to bargain in a sincere and cooperative manner for fruit, nuts, or vegetables for processing,³⁵ the Director must first conduct a separate hearing on this unfair trade practice as expeditiously as possible.³⁶ The Director must hold the hearing within fourteen days of receiving the verified complaint. A notice of the hearing must be issued at least five days before the hearing commences.³⁷ Additionally, the Director has the discretion to conduct an investigation.³⁸ If the alleged violator is found to have engaged in an unfair trade practice, the Director may fashion a remedy that orders the violator to comply quickly with the requirements of the provisions.³⁹ Furthermore, the Director is empowered by Chapter 1100 to assess the costs of this hearing against either (1) the party filing the complaint, if a violation is not found, or (2) the party named in the complaint, if a violation is found.⁴⁰ A record of this hearing may be used at a subsequent hearing on the violation.⁴¹

33. *See id.* §54463.

34. *See id.* §54404.

35. *Id.* §54404.5(a) (the violation must be of CAL. FOOD & AGRIC. CODE §54431(e)); *see also id.* §54431(e).

36. *See id.* §54404.5(a), (d). The hearing must be held pursuant to procedures specified in California Food and Agriculture Code sections 54404.2, 54404.3, and in a manner consistent with due process and provisions of Chapter 1100. *Id.* §54404.5(d).

37. *Id.* §54404.5(a).

38. *Id.*

39. *Id.* §54404.5(b). If the violator disobeys the order, the Director, represented by the Attorney General, shall obtain a court order from the superior court of Sacramento County requiring compliance; the action must be given calendar preference and handled in an expeditious manner. *Id.*

40. *Id.* §54404.5(c).

41. *Id.* §54404.5(e).