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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Food and Agriculture Code §§54403, 54433 (repealed); §§54404.1, 54404.2, 54404.3, 54404.4, 54404.5, 54441, 54442, 54443, 54444, 54445, 54463 (new); §§54402, 54404, 54431, 54435, 54461, 54462 (amended).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. An interference with this right or with other specified actions constitutes an unfair trade practice and is unlawful. Chapter 1100 supplements provisions that designate unfair trade practices and establishes substantially higher penalties for violating these provisions. 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, and sets forth the procedures for conducting hearings.

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 commodities 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.
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).

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coop erative bargaining associates or their agents. Although prior law did not limit these provisions to bargaining for certain commodities, 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. 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. 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.

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. Under prior law, these provisions applied only to persons dealing with cooperative bargaining associations. 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.

Revised Penalties and Remedies

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

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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).
17. CAL. FOOD & AGRIC. CODE §54461.
$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.\textsuperscript{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.\textsuperscript{20} Moreover, Chapter 1100 grants the option of seeking injunctive relief to compel compliance with the provisions governing unfair trade practices.\textsuperscript{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.\textsuperscript{22} Chapter 1100 now specifies the powers and duties of the Director when conducting hearings and investigations concerning cooperative bargaining associations.\textsuperscript{23}

Under existing law, the Director may receive complaints concerning violations of unfair trade practice provisions.\textsuperscript{24} After verification of a complaint, the Director must conduct investigations and examinations, or inspect the alleged violations, when necessary.\textsuperscript{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.\textsuperscript{26}

Chapter 1100 provides that if the Director has reasonable cause to believe a violation has occurred,\textsuperscript{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.\textsuperscript{28} At the hearing, the Director is empowered by Chapter 1100 to (1) administer oaths and take testimony,\textsuperscript{29} (2) issue subpoenas requiring the presence of witnesses and evidentiary materials,\textsuperscript{30} and (3) compel witnesses to disclose facts relating to the controversy.\textsuperscript{31} Unless the Director is satisfied that the person charged has violated the unfair trade practice provisions, the Director must order the complaint dismissed.\textsuperscript{32} If a violation is found, the
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Director may seek injunctive relief. The Director may also take action to secure the imposition of a criminal fine, a civil penalty, or both.

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, the Director must first conduct a separate hearing on this unfair trade practice as expeditiously as possible. 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. Additionally, the Director has the discretion to conduct an investigation. 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. 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. A record of this hearing may be used at a subsequent hearing on the violation.

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).