

State of California

Department of Food and Agriculture

Marketing Branch



CALIFORNIA GRAPE ROOTSTOCK IMPROVEMENT COMMISSION LAW

Chapter 12.6 of Part 2, Division 22 of the
California Food and Agricultural Code

Effective: January 1, 1993

California Grape Rootstock Improvement Commission Law

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California Grape Rootstock Improvement Commission Law

ARTICLE 1. Declaration and General Provisions

(Article 1 added by Stats. 1992, Ch. 595, Sec. 1.)

74701.

The production of grape rootstock constitutes an important industry of this state that not only provides substantial and necessary revenues for the state and employment for its citizens, but also furnishes essential food vital to the public health and welfare.

74702.

The maintenance of the grape rootstock industry of California is necessary to assure the consuming public of a continuous supply of good fruit for the table, raisins, and wine grapes, and establishes consistent and needed levels of income for those engaged in the industry.

74702.5.

The successes that the grape rootstock industry has enjoyed have come in part through a commitment to industry funded research, which has led to significant improvements in the quality and variety of the grapes and grape products available to consumers. The establishment of the commission is intended to enhance this research effort and move the grape rootstock industry toward its potential, resulting in increased consumer value and enhanced grower returns.

(Added by Stats. 1995, Ch. 727, Sec. 49.3. Effective January 1, 1996.)

74703.

The production and marketing of grape rootstock produced in this state is hereby declared to be affected with a public interest. This chapter is enacted in the exercise of the police power of this state for the purpose of protecting the health, peace, safety, and general welfare of the people of this state.

74704.

No action taken by the commission, or by any individual commission board member in accordance with this chapter or with regulations adopted under this chapter, is a violation of the so-called Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), the Unfair Practices Act (Chapter 4 (commencing with Section 17000) of that Part 2), or any statutory or common law against monopolies or combinations in restraint of trade.

74705.

This chapter shall be liberally construed. If any provision of this chapter or the application thereof to any person or circumstances is held to be invalid, the invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

74706.

It is hereby declared as a matter of legislative determination that members of the commission are intended to represent and further the interest of the particular agricultural industry concerned and that this representation and furtherance is intended to serve the public interest. Accordingly, the Legislature finds that, with respect to persons who are elected or appointed to the commission, the particular agricultural industry concerned is tantamount to, and constitutes, the public generally within the meaning of Section 87103 of the Government Code.

74707.

A commission form of administration created by this chapter is designed to provide those engaged in the production and marketing of grape rootstock the opportunity to avail themselves of the benefits of collective action in the broad field of grape rootstock research necessary to achieve the purposes stated herein.

(Amended by Stats. 1995, Ch. 727, Sec. 49.5. Effective January 1, 1996.)

ARTICLE 2. Definitions

74710.

Unless the context otherwise requires, the definitions in this article govern the construction of this chapter.

74711.

“**Bearing acreage**” means a planting grape rootstock three years or older from which cuttings can be taken.

74712.

“**Board member**” means a nursery owner or representative of an owner elected pursuant to Section 74778.

74713.

“**Books and records**” means books, records, contracts, documents, memoranda, papers, correspondence, or other written data pertaining to matters relating to the activities subject to this chapter.

74714.

“**Commission**” means the California Grape Rootstock Improvement Commission.

74715.

“**Ex officio member**” means a nonvoting member of the commission.

74716.

“**Grafted**” means the art of joining parts of plants together in such a manner as they will unite and continue their growth as one plant.

74717.

“**Grafted grape rootstock**” means a rootstock that has been grafted with a fruiting grape variety.

74718.

“**Grape rootstock**” means the rootstock portion of grapevines grown in California as a single species or hybrid combination in the family Vitaceae.

74719.

“**Grape rootstock nursery**” or “**nursery**” means any person in this state which operates under a California state nursery license and grows grape rootstock for commercial use or distribution.

(Amended by Stats. 1997, Ch. 726, Sec. 14. Effective January 1, 1998.)

74720.

“**Grape rootstock research**” means any cultural and biological research relating to grape rootstock.

74721.

“**Invoiceable unit**” means any rootstock cutting, or rooted rootstock cutting, or grafted grape rootstock that is used or distributed by a nursery for commercial purposes.

(Amended by Stats. 1997, Ch. 726, Sec. 14.5. Effective January 1, 1998.)

74721.5.

“**Distribute**” means to sell or otherwise transfer any rootstock cutting, rooted rootstock cutting, or grafted grape rootstock for commercial purposes.

(Added by Stats. 1997, Ch. 726, Sec. 15. Effective January 1, 1998.)

74722.

“**Marketing year**” or “**fiscal year**” means the period beginning April 1 of any year and extending through the last day of March of the next year.

74723.

“**Marketing year 1992–93**” means the period commencing August 1, 1992, to March 31, 1993, inclusive.

74723.5.

“**Person**” means an individual, partnership, limited liability company, corporation, firm, company, or other entity doing business in California.

(Added by Stats. 1995, Ch. 727, Sec. 50.1. Effective January 1, 1996.)

74724.

“**Rooted rootstock cutting**” means a rootstock cutting with roots destined to become a grafted unit.

74725.

“**Rootstock**” means the part of the graft combination which is to become the root system.

74726.

“**Rootstock cutting**” means a cutting of a rootstock variety that is at least 6 inches in length destined to become a grafted unit.

ARTICLE 3. The California Grape Rootstock Improvement Commission

74730.

- (a) There is in state government the California Grape Rootstock Improvement Commission. The commission shall be composed of nine grape rootstock nursery owners or representatives who shall be called members.
- (b) The director and other appropriate individuals, as determined by the commission, shall be ex officio members of the commission.

74731.

- (a) The director may require the commission to correct or cease any activity or function which is determined by the director not to be in the public interest or which is in violation of this chapter.
- (b) If the commission refuses or fails to cease these activities or functions or to make corrections required by the director, the director may, upon written notice, suspend all or a portion of the activities or functions of the commission until the time that the cessation or correction of the activities or functions, as required by the director, has been accomplished by the commission.
- (c) Any action of the commission in violation of the written notice is without legal force or effect. The director, to the extent feasible, shall issue the written notice prior to the commission entering into any contractual relationship affecting the existing or proposed activities or functions which are the subject of the written notice.
- (d) At the same time the written notice is provided to the commission, the director shall notify the commission in writing of the specific acts that the director determines are not in the public interest or are in violation of this chapter, the director's reasons for requiring a cessation or correction of specific existing or proposed activities or functions, and the director's recommendations with respect to any action that will make the activities or functions acceptable.

74732.

The commission or the director may bring an action for judicial relief from the director's written notice, or from noncompliance by the commission with the written notice, as the case may be, in a court of competent jurisdiction, which may issue a temporary restraining order, permanent injunction, or other appropriate relief.

74733.

When the director is required to concur in a decision of the commission, the director shall concur, refuse to concur, or request additional information from the commission within 15 working days from the date the director receives notification of the decision.

74734.

The commission shall reimburse the director for all expenditures incurred by the director in carrying out his or her duties and responsibilities pursuant to this chapter. However, a court may, if it finds that the director acted arbitrarily or capriciously in restricting the activities or functions of the commission, relieve the commission of the responsibility for payment of the director's legal costs with regard to that action.

74734.5.

(a) The director shall operate in the most efficient, cost-effective manner possible in carrying out his or her duties and responsibilities pursuant to this chapter.

(1) The director shall notify the commission of oversight activities and costs that will result in expenses reimbursable by the commission.

(2) The commission shall inform the director which of these activities it will engage in that require oversight and reimbursement of expenses.

(b) The director is not required to provide notification to the commission pursuant to paragraph (1) of subdivision (a) if the director determines that omission of notification is necessary to protect the confidentiality of the parties with respect to any investigation into the activities of the employees of the commission or the actions of the commission.

(Amended by Stats. 1993, Ch. 589, Sec. 67. Effective January 1, 1994.)

74735.

Each board member, except ex officio members, shall have an alternate board member selected by the board member. An alternate member shall, in the absence of the member for whom he or she is an alternate, serve in place of the board member and shall have and be able to exercise all of the rights, privileges, and powers of the member when serving on the commission. If the status of a member changes, thereby making a board member ineligible to serve, or in the event of death, removal, resignation, or disqualification of a member, the alternate member shall act as a board member until a qualified successor is elected or appointed. The commission may not have more than one board member and one alternate from one grape rootstock nursery.

74736.

(a) Any vacancy on the commission occurring by the failure of a board member to continue in his or her position due to a change in his or her status, thereby making the individual ineligible to serve, or due to death, removal, resignation, or disqualification, shall be filled with a qualified individual for the unexpired portion of the term by a majority vote of the remaining members of the commission.

(b) Any vacancy on the commission occurring by the failure of an alternate member to continue in his or her position due to a change in his or her status, thereby making the individual ineligible to serve, or due to death, removal, resignation, or disqualification, shall be filled with a qualified individual pursuant to Section 74735.

(Amended by Stats. 1995, Ch. 727, Sec. 50.2. Effective January 1, 1996.)

74737.

Any board member and his or her alternate member on the commission shall be an owner of a grape rootstock nursery or representative of an owner who has a financial interest in producing, or causing to be produced, grape rootstock for commercial use or distribution. Qualifications of grape rootstock nursery board members and their alternate members shall be maintained during their entire term of office.

(Amended by Stats. 1997, Ch. 726, Sec. 16. Effective January 1, 1998.)

74738.

The term of office of all board members and alternate board members of the commission, except ex officio members, is three years from the beginning of the marketing season in the year of their election and until qualified successors are elected.

74739.

Notwithstanding Section 74738, the initial term of members and alternates shall be divided by lot into three terms of one year, three terms of two years, and three terms of three years. At the end of each of these initial terms, the terms of office of all board members and alternates shall be three years. Terms of office of each board member and alternate board member of the commission shall be limited to three consecutive terms. However, members and alternates who serve initial one-year and two-year terms shall be eligible for three additional three-year terms.

(Amended by Stats. 1995, Ch. 727, Sec. 50.3. Effective January 1, 1996.)

74740.

The commission is hereby declared and created a corporate body. It may sue and be sued, enter into contracts, adopt a corporate seal, and possess all of the powers of a corporation. Copies of its proceedings, records, and acts, when authenticated, shall be prima facie evidence of the truth of all statements therein.

74741.

A quorum of the commission is seven voting members of the commission. The vote of a majority of the board members or alternate members present at a meeting at which there is a quorum shall constitute the act of the commission.

74742.

The director or his or her representatives shall be notified and may attend each meeting of the commission and any committee meeting of the commission.

74743.

No board member or alternate member or member of a committee established by the commission who is a nonmember of the commission shall receive any compensation. Each board member or each alternate member serving in place of a board member, except ex officio members who are state officers or employees, and each member of a committee established by the commission who is not a board member or alternate member, may receive per diem not to exceed one hundred dollars (\$100) per day, as established by the commission. In addition, board members and alternate members of the commission and members of committees established by the commission shall be reimbursed for actual and necessary travel expenses under the rules of the Department of Human Resources. The per diem and reimbursement for travel expenses shall be paid to those members for each day spent in actual attendance at, or in traveling to and from, meetings of the commission or committees of the commission, or on special assignment for the commission, as provided by the commission.

(Amended by Stats. 2012, Ch. 665, Sec. 28. (SB 1308) Effective January 1, 2013.)

74744.

All funds received by any person from the assessments levied under the authority of this chapter or otherwise received by the commission shall be deposited in banks that the commission may designate and shall be disbursed by order of the commission through an agent or agents designated by the commission for that purpose. The agent or agents shall be bonded by a fidelity bond, executed by a surety company authorized to transact business in this state, in favor of the commission, in an amount of not less than twenty-five thousand dollars (\$25,000).

74745.

The state is not liable for the acts of the commission or its contracts. Payments of all claims arising by reason of the administration of this chapter or acts of the commission are limited to the funds collected by the commission. No board member, alternate member, employee, or agent of the commission is responsible individually in any way to any nursery or any other person for errors in judgment, mistakes, or other acts, either of commission or omission, as a principal, agent, or employee, except for his or her own individual acts of dishonesty or crime. No board member, alternate member, employee, or agent of the commission, is responsible individually for any act or omission of any other member, alternate member, employee, or agent of the commission. Liability is several and not joint, and no member, alternate member, employee, or agent of the commission is liable for the default of any other member, alternate member, employee, or agent of the commission.

ARTICLE 4. Powers and Duties of the Commission

74750.

The powers and duties of the commission include, but are not limited to, all of those contained in this article.

74751.

The commission may adopt, amend, and repeal regulations and operating procedures necessary to carry out this chapter, including regulations governing appeals from actions taken by the commission pursuant to any of its regulations or operating procedures.

74752.

The commission may administer and enforce this chapter and perform all acts and exercise all powers incidental to, or in connection with, or deemed reasonably necessary for, the proper or advisable effectuation of this chapter.

74753.

The commission may appoint its own officers, including a chairperson, one or more vice chairpersons, and other officers as it deems necessary. The officers have the powers and duties delegated to them by the commission.

74754.

The commission may employ a person to serve at the pleasure of the commission as president and chief executive officer of the commission, and other personnel, including legal counsel, necessary to carry out this chapter.

The commission may retain a management firm or the staff from any board, commission, or agency of the state or federal government to perform the functions prescribed by this section under the control of the commission. If any person employed by the commission engages in any conduct that the director determines is not in the public interest or that is in violation of this chapter, the director shall notify the commission of the conduct and request that corrective and, if appropriate, disciplinary action be taken by the commission. If the commission fails or refuses to correct the situation or to take disciplinary action satisfactory to the director, the director may suspend or discharge the person.

74755.

The commission may fix the compensation for all employees of the commission.

74756.

The commission may appoint committees composed of both board members and nonmembers of the commission to advise the commission in carrying out this chapter.

74757.

The commission may establish offices and incur expenses, enter into any and all contracts and agreements, create liabilities, and borrow funds in advance of receipt of assessments as may be necessary, in the opinion of the commission, for the proper administration and enforcement of this chapter and the performance of its duties.

74758.

The commission shall keep accurate books, records, and accounts of all its dealings, which shall be subject to an annual audit by an auditing firm selected by the commission with the concurrence of the director. A summary of the audit shall be reported to all grape rootstock nurseries and a copy of the summary shall also be submitted to the department. In addition, the director may, as he or she determines necessary, conduct or cause to be conducted a fiscal and compliance audit of the commission.

74759.

The commission may present facts to, and negotiate with, state, federal, and foreign agencies on matters that affect this chapter, to the extent permitted by federal law.

74760.

The commission may make, in its name, contracts to receive or render services in formulating and conducting plans and programs and any other contracts or agreements that the commission deems necessary for carrying out this chapter.

74761.

The commission may conduct, and contract with others to conduct, production research, including the study, analysis, accumulation, and dissemination of information obtained from that research or otherwise, regarding this chapter.

74762.

The commission may accept contributions or matching private, state, or federal funds, and employ or make contributions of funds to other persons or state or federal agencies, for purposes of carrying out this chapter.

74763.

The commission may publish and distribute, without charge, bulletins or other communications for the dissemination of information to grape rootstock nurseries.

74764.

The commission shall establish an assessment rate to defray the operating costs of the commission.

74765.

The commission shall adopt an annual budget according to accepted accounting practices. The director shall concur in the adoption of the budget prior to the encumbrance of funds, except for encumbrances necessary to pay the compensation of employees of the commission.

74766.

The commission shall submit to the director, for his or her concurrence, an annual statement of contemplated activities authorized pursuant to this chapter.

74767.

All proprietary information obtained by the commission or the secretary from any source, including all lists of grape rootstock nurseries, shall be confidential and shall not be disclosed except when required by a court order after a hearing in a judicial proceeding involving this chapter. Information on volume shipments, crop value, and any other related information required for reports to governmental agencies, financial reports to the commission, or aggregate sales and inventory information, and any other information that gives only totals, but excludes individual information, may be disclosed by the commission.

(Repealed and added by Stats. 1995, Ch. 727, Sec. 50.5. Effective January 1, 1996.)

74768.

The commission may investigate and prosecute civil violations of this chapter and file complaints with appropriate law enforcement agencies or officers for suspected criminal violations of this chapter.

ARTICLE 5. Implementation and Voting Procedures

74770.

(a) Within 30 days of the effective date of this chapter, the director shall establish a list of grape rootstock nurseries eligible to vote on the implementation of this chapter. In establishing the list, the director may require that all grape rootstock nurseries submit the names and mailing addresses of all grape rootstock nurseries. The director also may require that the information provided include the quantity of grape rootstock produced by each nursery or, in the alternative, may establish procedures for receiving the information at the time of the referendum vote specified in Section 74771. The request for the information shall be in writing, and the requested information shall be filed within 10 days following receipt of the request.

(b) Any grape rootstock nursery whose name does not appear upon the appropriate list may have his or her name placed on the list by filing with the director a signed statement identifying himself or herself as a nursery owner or representative of a nursery owner. The absence of an owner's name from the list does not exempt the person from paying assessments and does not invalidate any industry votes conducted pursuant to this article.

(c) Proponents and opponents of the commission may contact nurseries on the lists in a form and manner prescribed by the director if all expenses associated with the contacts are paid in advance.

74771.

This chapter, except as necessary to conduct an implementation referendum vote, shall not become operative until the director finds, in a referendum vote conducted by the director that at least 40 percent of the total number of grape rootstock nurseries from the list established by the director pursuant to this article have participated and that either of the following has occurred:

(a) Sixty-five percent of the nurseries that voted in the referendum voted in favor of this chapter, and the nurseries so voting marketed a majority of the total quantity of grape rootstock in the preceding marketing year by all of the nurseries that voted in the referendum.

(b) A majority of the grape rootstock nurseries that voted in the referendum voted in favor of this chapter, and the nurseries so voting marketed 65 percent or more of the total quantity of grape rootstock in the preceding marketing year by all of the nurseries that voted in the referendum.

74772.

The director shall use invoiceable units or grape rootstock acreage in calculating the volume voted pursuant to Section 74771.

74773.

The director shall establish a period to conduct the referendum which shall not be less than 10 days nor more than 60 days in duration, and may prescribe additional procedures that may be necessary to conduct the referendum. If the initial period established is less than 60 days, the director may extend the period to not more than 60 days.

74774.

The failure of a grape rootstock nursery to receive a ballot shall not invalidate a referendum.

74775.

If the director finds that a favorable vote has been given as provided in Section 74771, the director shall certify and give notice of the favorable vote to all affected nurseries whose names and addresses are on file with the director.

74776.

If the director finds that a favorable vote has not been given as provided in Section 74771, the director shall certify and declare this chapter inoperative. The director may conduct another implementation referendum vote one or more years after the previous vote has been taken.

74777.

Upon certification of the commission, the director shall contact all grape rootstock nurseries by mail, or call meetings of nurseries, for the purpose of nominating and electing persons to the commission. All nurseries on the director's list shall be given written notice of any election meetings at least 10 days prior to the meeting date. To be eligible for election to the commission, nominee nursery owners or nominee representatives of nursery owners shall present to the director a nomination petition with the signatures of at least three eligible grape rootstock nursery owners or representatives.

74778.

Subsequent to the first election of board members pursuant to this chapter, persons to be elected to the commission shall be selected pursuant to nomination and election procedures which are established by the commission with the concurrence of the director.

74779.

- (a) Prior to the referendum vote conducted by the director pursuant to Section 74771, the proponents of the commission shall deposit with the director the amount that the director determines necessary to defray the expenses of preparing the necessary lists and information and conducting the referendum.
- (b) Any funds not used in carrying out Section 74771 shall be returned to the proponents of the commission who deposited the funds with the director.
- (c) Upon the establishment of the commission, the commission may reimburse the proponents of the commission for any funds deposited with the director that were used in carrying out Section 74771 and for any legal expenses and other costs incurred in establishing the commission.

ARTICLE 6. Assessments and Records**74785.**

(a) The commission shall establish the assessment for the following marketing year not later than April 1 of each year, or as soon thereafter as is possible.

(b) The assessment shall not exceed fifty dollars (\$50) per bearing acreage of grape rootstock and two cents (\$0.02) per invoiceable unit of grape rootstock and grafted grape rootstock used or distributed for commercial purposes. The commission may establish different invoiceable unit assessment rates for rootstock cuttings, rooted rootstock cuttings, and grafted grape rootstocks, provided that the rates do not exceed the maximum assessment authorized by this subdivision.

(c) A fee greater than the amount specified in subdivision (b) may not be charged unless approved pursuant to procedures specified in Section 74771.

(Amended by Stats. 2003, Ch. 179, Sec. 1. Effective January 1, 2004.)

Note: By referendum vote pursuant to this section, as certified by the Department of Food and Agriculture on November 28, 2018, the maximum allowable assessment rates were increased to one-hundred dollars (\$100.00) per bearing acre and ten cents (\$0.10) per invoiceable unit.

74786.

Every nursery, including nurseries exempt from the payment of assessments, shall keep a complete and accurate record of its acreage of grape rootstock and its grape rootstock used or distributed for commercial purposes. The records shall be in simple form and contain information as the commission shall prescribe. The records shall be retained by the nursery for five years and shall be offered and submitted for inspection at any reasonable time upon written demand of the commission or its duly authorized agent.

(Amended by Stats. 1997, Ch. 726, Sec. 16.6. Effective January 1, 1998.)

74787.

Any assessment which is levied pursuant to this chapter is a personal debt of every nursery so assessed.

74788.

Any nursery that fails to file a return or pay any assessment within the time required by the commission shall pay the commission a penalty of 10 percent of the amount of the assessment determined to be due and, in addition, pay 1¹/₂ percent interest per month on the unpaid balance.

ARTICLE 7. Actions and Penalties

74790.

It is unlawful for any person to do any of the following:

- (a) Refuse to render a report, statement, or record required by the commission.
- (b) Furnish a false report, statement, or record required by the commission.
- (c) Secrete, destroy, or alter records required to be kept under this chapter.

74791.

The commission shall adopt procedures to grant individuals aggrieved by its actions or determinations an informal hearing before the commission or before a committee of the commission designated for this purpose. Appeals from decisions of the commission may be made to the director. The determination of the director shall be subject to judicial review upon petition filed with the appropriate superior court.

74792.

(a) The commission may commence civil actions and utilize all remedies provided in law or equity for the collection of assessments and civil penalties and for obtaining injunctive relief or specific performance regarding this chapter and the regulations adopted pursuant to this chapter. A court shall issue to the commission any requested writ of attachment or injunctive relief upon a prima facie showing by verified complaint that a named defendant has violated this chapter or any regulation of the commission, including, but not limited to, the nonpayment of assessments or the intentional submission of false information to the commission. No bond shall be required to be posted by the commission as a condition for the issuance of any writ of attachment or injunctive relief.

(b) A writ of attachment shall be issued pursuant to Chapter 4 (commencing with Section 485.010) of Title 6.5 of Part 2 of the Code of Civil Procedure, except that the showing specified in Section 485.010 of the Code of Civil Procedure is not required. Injunctive relief shall be issued pursuant to Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that the showing of irreparable harm or inadequate remedy at law specified in Sections 526 and 527 of the Code of Civil Procedure is not required.

(c) Upon entry of any final judgment on behalf of the commission against any defendant, the court shall enjoin the defendant from conducting any type of business involving grape rootstock until there is full compliance and satisfaction of the judgment. Upon a favorable judgment for the commission, it is entitled to receive reimbursement for any reasonable attorney's fees and other actual related costs. Venue for these actions may be established at the domicile or place of business of the defendant or in the county of the principal office of the commission. The commission may be sued only in the county of its principal office.

74793.

The suspension or termination of this chapter shall not affect or waive any right, duty, obligation, or liability which has arisen or which may thereafter arise in connection with this chapter, release or extinguish any violation of this chapter, or affect or impair any right or remedies of the commission with respect to any violation.

ARTICLE 8. Continuation or Suspension and Termination

74795.

The commission shall conduct a referendum pursuant to Section 74771 no less frequently than every five years, commencing in 1998.

74796.

To dissolve the commission, a simple majority vote of the nine board members is required, or the vote of five of a quorum of members present and voting.