

Date of Hearing: April 10, 2024

ASSEMBLY COMMITTEE ON AGRICULTURE
Esmeralda Soria, Chair
AB 2606 (Aguiar-Curry) – As Introduced February 14, 2024

SUBJECT: California Agave Commission

SUMMARY: This bill establishes the California Agave Commission (CAC) to engage in marketing of California Agave products. This bill authorizes CAC to levy an annual assessment, as specified, on producers, as defined. This bill becomes operative upon a favorable producer referendum vote. Specifically *this bill*:

- 1) Makes declarations and general provisions that among other thing states the establishment of CAC is necessary for the efficient management of activities authorized in this chapter. The CAC is also necessary to enhance the competitiveness of the industry within the state, national, and international marketplace.
- 2) Defines the following:
 - a) “Agave” means the species of plant in the genus Agave of the family Aparagaceae cultivated for their juice and fiber. Agave cultivated solely for ornamental purposes is not subject to this chapter.
 - b) “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.
 - c) “Commission” means the California Agave Commission.
 - d) “Ex officio members” means nonvoting members of the commission board of directors.
 - e) “Grower” means a person who commercially grows agave, or causes agave to be grown, on more than one acre, that is processed into agave products during the marketing season.
 - f) “Market or marketing” means to sell agave and agave products into commercial channels of trade.
 - g) “Marketing season or fiscal year” are synonymous terms and mean the period beginning April 1 of any year and extending through March 30 of the following year.
 - h) “Process or processing” means to engage in the business of a processor.
 - i) “Processor” means a person licensed to commercially process agave and who processes agave in an amount of more than three tons in the state in the preceding marketing season. When the processor is a corporation or a limited liability company, all of the directors, officers, managers, and members of the corporation or limited liability company shall be treated as individuals when determining compliance with this chapter.
 - j) “Public member” means a person appointed to the commission board of directors pursuant to the procedures specified in this chapter.
 - k) “Secretary” means the Secretary of CDFa.

- 3) Creates the CAC and the CAC board of directors, composed of six growers, two processors, and one public member.
- 4) Allows the CAC board of directors to modify the number of members who serve on the commission board of directors, as specified.
- 5) Allows the secretary to require the CAC to correct or cease any existing activity or function that is determined by the secretary to not be in the public interest or to be in violation of this chapter. Also allows the secretary, if the CAC board does not cease prohibited activities, upon written notice, suspend all or a portion of the activities or functions of the CAC, as specified.
- 6) Allows the CAC or the secretary to bring an action for judicial relief from the secretary's written notice or from noncompliance by the commission with the written notice, as specified.
- 7) Requires the CAC reimburse the secretary for all expenditures incurred by the secretary in carrying out their duties and responsibilities under this chapter, unless a court finds that the secretary's actions were not justified.
- 8) Requires that each member of the CAC board shall have an alternate member elected in the same manner as the member. An alternate member, in the absence of the member for whom they are an alternate, shall serve in place of the member, as specified.
- 9) Set up rules on replacing a member of the CAC board.
- 10) Requires grower member and their alternate on the CAC board of to be an individual, partner, or employee of a grower who has a financial interest in growing agave, or causing agave to be grown for their time on the CAC board.
- 11) Requires processor member and their alternate on the CAC board shall be an individual, partner, or employee of a processor who has a financial interest in processing agave, or causing agave to be processed for their time on the CAC board.
- 12) Requires the public member and their alternate on the CAC board to have all the powers, rights, and privileges of any other member on the commission board of directors and not have any financial interest in the growing or processing of agave or the marketing of agave products but may be an individual who provides services to individuals who do have a financial interest for their time on the CAC board.
- 13) Sets the term of office of each member of the CAC board and their alternate, except an ex officio member, to be three years from the date of their election and until their successor is

elected.

- 14) Requires term of an alternate to be the same term as the member for whom they serve as alternate.
- 15) Allows the CAC to sue and be sued and enter into contracts.
- 16) Defines a quorum of the CAC board as a majority of the members authorized to vote, as specified
- 17) Requires the secretary, or his or her representative, to be notified and allows them to attend meetings of the board, except for executive sessions called for the purpose of discussing litigation against CDFFA.
- 18) Provides that no member of the CAC board or any committee shall receive a salary. Except for ex-officio members, members may receive reasonable and necessary traveling expenses and meal allowances for attendance at meetings or special assignment.
- 19) Requires that all monies received by any person from assessments levied under this chapter be deposited in banks of the CAC board's choosing.
- 20) Relieves the state of any liability for actions of CAC or its contracts. No member, employee or agent of CAC shall be personally liable for contracts or responsible individually for any error except for their own acts of dishonesty or crime.
- 21) Allows, but does not limit, the board to perform the following powers and duties:
 - a) Adopt and amend bylaws, rules, regulations, and orders.
 - b) Administer and enforce this chapter.
 - c) Appoint officers and employ persons to serve as president, chief executive officer, legal counsel, or other personnel.
 - d) Fix compensation for employees.
 - e) Appoint committees.
 - f) Establish offices and incur expenses, invest funds, enter into contracts and agreements, and create liabilities and borrow funds.
 - g) Record and keep accurate books and accounts, which are subject to an annual audit that shall be submitted to the Legislature and the department.
 - h) Present facts and negotiate with state, federal, and foreign agencies.
 - i) Make contracts to render service in formulating and conducting plans and programs, and any other contracts or agreements determined to be necessary, as specified.
 - j) Conduct and contract for research; collect contributions and funds for research purposes.
 - k) Collect information and distribute periodic communications to producers.
 - l) Establish an assessment rate.

- m) Establish an annual budget, which shall be concurred in by the secretary.
 - n) Submit an annual statement of activities for concurrence by the secretary.
 - o) Investigate and prosecute civil violations of this chapter and file complaints with law enforcement agencies.
 - p) Propose the form and manner by which proponents and opponents of the commission may contact growers if all expenses associated with the contacts are paid in advance.
 - q) Engage in communications with the public regarding activities authorized in this section.
- 22) Establishes implementation and voting procedures to be administered by the secretary and provides that the initial referendum vote be funded by proponents of this chapter.
- a) Requires 40% of the total number of growers to cast a referendum vote to begin operation of CAC and that either of the following must also occur:
 - i) Of those votes, 65% must vote in favor of CAC. That same 65% must also represent producers who, when total production volume is combined, grow the majority of agave of all those participating in the referendum vote; and,
 - ii) Of those votes, a majority of growers must vote in favor of CAC, and those producers must represent 65% or more of the total quantity of agave grown by those participating in the referendum vote.
 - b) Requires 40% of the total number of processors to cast a referendum vote to begin operation of CAC and that either of the following must also occur:
 - i) Of those votes, 65% must vote in favor of CAC. That same 65% must also represent producers who, when total production volume is combined, process the majority of agave of all those participating in the referendum vote; and,
 - ii) Of those votes, a majority of producers must vote in favor of CAC, and those producers must represent 65% or more of the total quantity of agave processed by those participating in the referendum vote.
- 23) Requires the secretary to declare this chapter inoperative upon a failed referendum vote. Allows the secretary to conduct another referendum vote no sooner than one year after the previous referendum.
- 24) Requires the CAC board to establish an assessment rate to be paid growers and processors. An increase in this rate must be approved by a referendum vote, and a penalty shall be paid on any past due assessment.
- 25) Requires assessment to not exceed the reasonable costs of achieving the purposes of this chapter.
- 26) Requires every grower and processor to keep complete and accurate records. Records must be kept for two years and available for inspection.

- 27) Provides that all proprietary information be confidential.
- 28) Allows CAC to levy civil penalties not exceeding \$1,000 for persons who furnish false documents to avoid paying assessment fees and for persons who destroy, alter, refuse, or fail to furnish reports or records required to be kept by this chapter.
- 29) Requires the CAC board to establish procedures for individuals aggrieved by its actions, including appeals and judicial review.
- 30) Allows CAC to commence civil actions and utilize all remedies provided in law for collection of assessments and civil penalties.
- 31) Provides for continuation, suspension, or termination of this chapter through CAC member referendum vote.
- 32) Requires the secretary to hold a public hearing once every five years to determine whether this chapter should be continued. Should a substantial question be raised, the secretary shall hold a referendum vote to determine if CAC shall be continued.
- 33) Authorizes the CAC board, upon two-thirds vote, to recommend to the secretary that CAC be suspended for failure to effectuate its declared purposes. The secretary shall then hold a referendum vote.

EXISTING LAW: Authorizes various marketing and promotion commissions (commissions) to promote the production and marketing of California agricultural commodities. Commissions have a variety of powers covering promotion, advertising, education, production or post-harvest research, and quality standards and inspections. Commissions cover a variety of commodities. (Food and Agriculture Code (FAC) 63901 – 63906)

FISCAL EFFECT: Unknown.

COMMENTS:

Agave is a genus of succulent plants native to the hot and arid regions of the Americas, particularly Mexico and the southwestern United States. There are over 200 species of agave, ranging from small ornamental plants to large and impressive specimens. One of the most well-known species is *Agave tequilana*, also known as blue agave, which is cultivated for the production of tequila. The heart of the blue agave plant, called the piña, is harvested and processed to extract the sweet sap, which is then fermented and distilled to make tequila. Agave plants are characterized by their thick, fleshy leaves that often end in sharp points or spines. They typically grow in rosette formations close to the ground, although some species can develop tall flower stalks. Agaves are valued for their various commercial uses, including the production of sweeteners, fibers, and alcoholic beverages like mezcal and tequila.

Agave is an expanding agricultural crop in California that is resilient to many of the state's climatic extremes and may serve as an excellent replacement crop for drought or water-stricken production regions. While this is a nascent industry, agave spirits are quickly becoming one of the fastest growing spirits, according to the Distilled Spirits Council of U.S.

The agave industry wants an opportunity to self-organize and pool grower and distiller resources to invest collectively in education, research, and marketing. Current law has precedent to allow, with statutory authority, the formation of a commodity commission, which may with an affirmative vote of the existing industry to form under the auspices of CDFA, determine and collect assessments and determine how those resources are expended for the benefit of the industry. This bill would offer statutory authority to allow for the creation of such a commission.

This bill would authorize, upon an affirmative referendum vote of all growers and distillers in California, to establish the CAC. The CAC can then set an assessment on growers and processors; the CAC can invest in research, educate the industry about sustainable farming and processing practices, and enhance market competitiveness and consumer education of California agave spirits and products. The bill prescribes membership, the makeup of the board of directors, CAC authorities and obligations, voting procedures, assessments, and penalties. This bill authorizes the CAC, once formed, to levy an annual assessment on growers and processors to support the CAC's work on the industry's behalf. The CAC can be disbanded after a hearing by CDFA and a vote of the membership. This bill would have a positive impact on small-scale farmers and farm employees, many of whom are in disadvantaged communities, to bring research and promotional opportunities for culturally relevant foods, such as agave spirits, to the market.

The purpose of marketing programs is to provide agricultural producers and handlers an organizational structure, operating under government sanction, which allows them to solve production and marketing problems collectively that they could not address individually. Current marketing programs' activities include commodity promotion, research, and maintenance of quality standards. Commissions provide a structure for solving problems and provide a vehicle for collecting funds to support activities.

For accomplishing the purposes stated by the author for this industry, a commission may be an appropriate entity. Current commissions and marketing orders have been successful in expanding markets, improving product quality, and providing more research for pests and disease prevention. In recent years, one commission was terminated by the industry and another had an audit by the secretary, which revealed potential misuse of funds. This bill has language requiring annual audits, and upon determination of the need, the secretary may conduct a fiscal and administrative audit of the CAC.

PREVIOUS LEGISLATION:

AB 858 (Levine) of 2019 created the Emerald Triangle Sun-Grown Cannabis Commission, consisting of cannabis grows in the Counties of Humboldt, Mendocino, and Trinity for the purpose of conducting research, examining the impact of local and state regulations on the

cannabis products industries, and tracking market price information to prevent unfair trade practices. *Author revamped this bill to add to CDFA type 1C (specialty cottage) cannabis cultivation license a limit of 2,500 square feet of canopy for an outdoor grow.*

AB 2810 (Levine) of 2018 would have created the Sun-Grown Cannabis Commission and the Indoor-Grown Cannabis commission for the purpose of conducting research, examining the impact of local and state regulations on the cannabis products industries, and tracking market price information to prevent unfair trade practices. *This bill was held in Assembly Business and Professions Committee.*

SB 250 (Wolk), Chapter 344, Statutes of 2013, created the Olive Oil Commission of California with prescribed membership, powers, duties, and responsibilities of the commission. This bill also authorized the commission to engage in outreach, education, promotion, marketing, and research relating to olive oil. *This is an active commission.*

AB 2695 (Hernandez), Chapter 605, Statutes of 2010, created the California Nursery Producers Commission with prescribed membership, powers, duties, and responsibilities of the commission. This bill also authorized the commission to engage in outreach, education, promotion, marketing, and research relating to nursery products. *The referendum for this commission failed.*

AB 1912 (Evans), Chapter 585, Statutes of 2010, created the California Apiary Research Commission with prescribed membership, powers, duties and responsibilities of the commission. This bill authorized the commission to engage in research and education programs relating to honeybees. *The referendum for this commission failed.*

AB 606 (Ma), Chapter 366, Statutes of 2009, created the California Blueberry Commission with prescribed membership, powers, duties, and responsibilities of the commission. This bill authorized the commission to engage in education, promotion, marketing, and research relating to blueberries. *This is an active commission.*

REGISTERED SUPPORT / OPPOSITION:

Support

California Agave Council

Opposition

None on file.

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