

FOOD AND AGRICULTURAL CODE - FAC

DIVISION 1. STATE ADMINISTRATION [101 - 1501]

(Division 1 enacted by Stats. 1967, Ch. 15.)

PART 1. THE DEPARTMENT OF FOOD AND AGRICULTURE [101 - 894]

(Heading of Part 1 amended by Stats. 1976, Ch. 1079.)

CHAPTER 8. Agriculture Theft Prevention [851 - 885]

(Chapter 8 added by Stats. 1986, Ch. 661, Sec. 1.)

ARTICLE 1. General Provisions [851- 851.]

(Article 1 added by Stats. 1986, Ch. 661, Sec. 1.)

851.

It is the intent of this chapter to establish a means of identifying the owner of any fruits, nuts, or vegetables which are the food product of any tree, vine, or plant so as to provide an additional control over thefts of these commodities within the state.

(Added by Stats. 1986, Ch. 661, Sec. 1.)

ARTICLE 2. Proof of Ownership [861 - 866]

(Article 2 added by Stats. 1986, Ch. 661, Sec. 1.)

861.

For lots of over 25 pounds of any fruits, nuts, or vegetables that are the food product of any tree, vine, or plant, or for lots of over 200 pounds of any burl wood from a walnut tree, living or dead, and that are marketed for commercial purposes, all of the following apply:

(a) Every person who sells the commodity for resale, processing, or further distribution through any commercial or nonprofit enterprise shall provide the buyer or transporter with a record of proof of ownership for each lot of the commodity.

(b) Every person who buys the commodity for resale, processing, or further distribution through any commercial or nonprofit enterprise shall obtain from the previous buyer or from the transporter a record of proof of ownership for each lot of the commodity.

(c) Every person who transports for commercial purposes shall possess a record showing proof of ownership for each lot of the commodity during transportation.

(Amended by Stats. 2009, Ch. 487, Sec. 1. (AB 905) Effective January 1, 2010.)

862.

Upon probable cause to believe any fruits, nuts, vegetables, or walnut burl regulated pursuant to this chapter is in unlawful possession, proof of ownership shall be made available for inspection upon request of the secretary, the commissioner, or by any peace officer. If the secretary or the commissioner has probable cause to believe that any fruits, nuts, vegetables, or walnut burl regulated pursuant to this chapter is in unlawful possession, he or she may request a peace

officer to stop the vehicle pursuant to Section 881 for inspection. The record shall contain the following information:

- (a) Name, address, telephone number, and signatures of the seller or the seller's authorized representative.
- (b) Name, address, and telephone number of the buyer or consignee if not sold.
- (c) Common or generic name and quantity of the commodity involved.
- (d) Date of transaction and date of commencement of transportation.

(Amended by Stats. 1996, Ch. 238, Sec. 2. Effective January 1, 1997.)

863.

A bill of lading, bill of sale, certified farmers certificate, data obtainable by electronic transmission which is accessible to a common carrier, or a similar type document shall be considered proof of ownership for purposes of this chapter.

(Added by Stats. 1986, Ch. 661, Sec. 1.)

864.

It is unlawful for any person to knowingly falsify or cause to be falsified any information in a record intended to show proof of ownership.

(Added by Stats. 1986, Ch. 661, Sec. 1.)

865.

A copy of the record shall be retained by the buyer and seller for a period of 60 days after delivery.

(Added by Stats. 1986, Ch. 661, Sec. 1.)

866.

This chapter establishes minimal requirements for the transportation and identification of agricultural commodities. A county may, by ordinance, impose additional requirements regarding this transportation and identification.

(Added by Stats. 1986, Ch. 661, Sec. 1.)

ARTICLE 3. Exceptions [871- 871.]

(Article 3 added by Stats. 1986, Ch. 661, Sec. 1.)

871.

This chapter does not apply to the following agricultural commodities:

- (a) Commodities transported from the farm or ranch where they are produced to a commercial packing plant within this state for processing or packing.

(b) Commodities transported and accompanied by a valid permit, disposal order, or certificate issued by the director or the commissioner for any reason other than to comply with this chapter.

(Added by Stats. 1986, Ch. 661, Sec. 1.)

ARTICLE 4. Enforcement [881 - 885]

(Article 4 added by Stats. 1986, Ch. 661, Sec. 1.)

881.

Any peace officer, upon probable cause to believe an agricultural commodity regulated pursuant to this chapter is being unlawfully transported, may stop the vehicle and request proof of ownership of the commodity.

(Added by Stats. 1986, Ch. 661, Sec. 1.)

882.

Upon reasonable belief that a person is in unlawful possession of a commodity regulated by this chapter, the commodity may be held or seized by the secretary, the commissioner, or any peace officer and shall be turned over to the custody of the commissioner. The commissioner may hold the commodity on the premises where it was seized or may take possession of the commodity and maintain custody until disposed of according to the requirements of Section 884.

(Amended by Stats. 2009, Ch. 487, Sec. 2. (AB 905) Effective January 1, 2010.)

883.

The director, the commissioner, or a peace officer may investigate to ascertain the ownership of any commodity that has been held pursuant to this chapter. If the lawful owner is located, the commodity shall be released to the owner, or his or her agent. The commissioner may require reasonable payment to cover costs incurred in the storing of the commodity, but not to exceed the value of the commodity being held.

(Added by Stats. 1986, Ch. 661, Sec. 1.)

884.

(a) If for any reason the commodity is not released to the rightful owner after being in the custody of the commissioner for 48 hours or, in the case of a highly perishable commodity, any shorter period of time that the commissioner deems necessary, the commissioner may either sell the commodity by public auction or by private sale at fair market value to a commercial packer of the commodity, or, after 72 hours from the time of seizure, may donate the commodity to a nonprofit charitable organization. If donated, the commodity shall not be sold by the receiving party. If sold, all of the proceeds derived from the sale of the commodity

shall be held by the commissioner for a period of not less than six months, during which time the lawful owner of the commodity may submit satisfactory proof of ownership and obtain possession of the proceeds. The commissioner may require the payment by the owner of an amount sufficient to cover the costs incurred for a storage and sale of the commodity, but not to exceed the sale price of the commodity. If, after retention of the proceeds for a period of at least six months, no demand is made or if proof of ownership is not supplied, the commissioner shall deposit the proceeds of the sale of the commodity in the general fund of the county.

(b) If the commodity is unfit for human consumption, the commissioner may destroy it.

(Amended by Stats. 2002, Ch. 946, Sec. 1. Effective January 1, 2003.)

885.

In lieu of civil prosecution, the secretary or the commissioner may levy a civil penalty against any person violating the provisions of this chapter or any regulation adopted pursuant to its provisions. The civil penalty for each violation shall be, for a first violation, a fine of not more than five hundred dollars (\$500). For a second or subsequent violation, the fine shall be not less than one hundred dollars (\$100), nor more than one thousand dollars (\$1,000). Before a civil penalty is levied, the person charged with the violation shall receive notice of the nature of the violation and shall be given an opportunity to be heard. This shall include the right to review the evidence and a right to present evidence on his or her own behalf. Subdivision (e) of Section 43003 shall apply to any fine levied pursuant to this section.

(Added by Stats. 2005, Ch. 220, Sec. 1. Effective January 1, 2006.)