

AMENDED IN ASSEMBLY APRIL 10, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1616

Introduced by Assembly Member Gatto

February 8, 2012

An act to amend Sections 110460, 111940, 111955, 113789, 114021, and 114023 of, and to add Article 5 (commencing with Section 113400) to Chapter 11 of Part 6 of Division 104 of, the Health and Safety Code, relating to food safety.

LEGISLATIVE COUNSEL'S DIGEST

AB 1616, as amended, Gatto. Food safety: cottage food operations.

Existing law, the Sherman Food, Drug, and Cosmetic Law (Sherman Law), requires the State Department of Public Health to regulate the manufacture, sale, labeling, and advertising activities related to food, drugs, devices, and cosmetics in conformity with the Federal Food, Drug, and Cosmetic Act. The Sherman Law makes it unlawful to manufacture, sell, deliver, hold, or offer for sale any food that is misbranded. Food is misbranded if its labeling does not conform to specified federal labeling requirements regarding nutrition, nutrient content or health claims, and food allergens. Violation of this law is a misdemeanor.

The existing California Retail Food Code provides for the regulation of health and sanitation standards for retail food facilities, as defined by the State Department of Public Health. Under existing law, local health agencies are primarily responsible for enforcing the California Retail Food Code. That law also prohibits food stored or prepared in a private home from being used or offered for sale in a food facility. A violation of these provisions is a misdemeanor.

This bill would exempt a cottage food operation, as defined, from specified food processing establishment, Sherman Law, and California Retail Food Code requirements. This bill would ~~require a cottage food operation~~ *create a classification system for cottage food operations and would require these classifications to meet specified requirements relating to sanitation, packaging, and labeling training, sanitation, labeling, and permissible types of sales.* This bill would ~~authorize the State Public Health Officer~~ *require the local health department to adopt implementing regulations, as specified, and procedures for a registration system and permitting systems for each classification.* This bill would also ~~authorize the State Public Health Officer~~ *local health officials to access the registered or permitted area of a private home where a cottage food operation is located for purposes of inspection, as specified.* This bill would prescribe civil penalties for a violation of its provisions, ~~and would provide for local permitting of cottage food operations.~~

By imposing duties on local officials, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Small businesses have played an important role in helping
- 4 slow economies recover and prosper as an engine of job creation.
- 5 During the 1990s, small businesses created the majority of new
- 6 jobs and now account for 65 percent of United States employment.
- 7 (b) California, and the United States as a whole, are facing
- 8 growing obesity and obesity-related disease epidemics.
- 9 (1) Two-thirds of American adults and nearly one-third of
- 10 children and teens are obese or overweight, placing them at risk

1 for developing chronic diseases such as diabetes, heart disease,
2 and cancer.

3 (2) One in every nine California children, one in three teens,
4 and over half of adults are already overweight or obese. This
5 epidemic affects virtually all Californians.

6 (3) These health conditions are preventable and curable through
7 lifestyle choices that include consumption of healthy fresh foods.

8 (c) For decades, low-income and rural communities have faced
9 limited opportunities to purchase healthy foods. Often, without
10 cars or convenient public transportation options, low-income
11 residents in these areas must rely for much of their shopping on
12 expensive, fatty, processed foods sold at convenience and corner
13 stores.

14 (d) There is a growing movement in California to support
15 community-based food production, sometimes referred to as
16 “cottage food,” “artisanal food,” “slow food,” “locally based food,”
17 or “urban agriculture” movements. These movements seek to
18 connect food to local communities, small businesses, and
19 environmental sustainability.

20 (e) Increased opportunities for entrepreneur development
21 through microenterprises can help to supplement household
22 incomes, prevent poverty and hunger, and strengthen local
23 economies.

24 (f) At least 25 other states have passed laws that allow small
25 business entrepreneurs to use their home kitchens to prepare, for
26 sale, foods that are not potentially hazardous.

27 (g) Even some bake sales are currently illegal in California.

28 (h) It is the intent of the Legislature to enact a homemade food
29 act specifically designed to help address these challenges and
30 opportunities.

31 SEC. 2. Section 110460 of the Health and Safety Code is
32 amended to read:

33 110460. No person shall engage in the manufacture, packing,
34 or holding of any processed food in this state unless the person
35 has a valid registration from the department, except those engaged
36 exclusively in the storing, handling, or processing of dried beans.
37 The registration shall be valid for one calendar year from the date
38 of issue, unless it is revoked. The registration shall not be
39 transferable. This section shall not apply to a cottage food
40 operation, as defined in Section ~~113400~~ 113401.

1 SEC. 3. Section 111940 of the Health and Safety Code is
2 amended to read:

3 111940. (a) If any person violates any provision of Chapter 4
4 (commencing with Section 111950), Chapter 5 (commencing with
5 Section 112150), Chapter 6 (commencing with Section 112350),
6 Chapter 7 (commencing with Section 112500), Chapter 8
7 (commencing with Section 112650), Chapter 10 (commencing
8 with Section 113025), Article 3 (commencing with Section 113250)
9 of Chapter 11, or Article 5 (commencing with Section 113400) of
10 Chapter 11, of this part, or Chapter 4 (commencing with Section
11 108100) of Part 3, or any regulation adopted pursuant to these
12 provisions, the department may assess a civil penalty against that
13 person as provided by this section.

14 (b) The penalty may be in an amount not to exceed one thousand
15 dollars (\$1,000) per day. Each day that a violation continues shall
16 be considered a separate violation.

17 (c) If, after examination of a possible violation and the facts
18 surrounding that possible violation, the department concludes that
19 a violation has occurred, the department may issue a complaint to
20 the person charged with the violation. The complaint shall allege
21 the acts or failures to act that constitute the basis for the violation
22 and the amount of the penalty. The complaint shall be served by
23 personal service or by certified mail and shall inform the person
24 so served of the right to a hearing.

25 (d) Any person served with a complaint pursuant to subdivision
26 (c) of this section may, within 20 days after service of the
27 complaint, request a hearing by filing with the department a notice
28 of defense. A notice of defense is deemed to have been filed within
29 the 20-day period if it is postmarked within the 20-day period. If
30 a hearing is requested by the person, it shall be conducted within
31 90 days after the receipt by the department of the notice of defense.
32 If no notice of defense is filed within 20 days after service of the
33 complaint, the department shall issue an order setting the penalty
34 as proposed in the complaint unless the department and the person
35 have entered into a settlement agreement, in which case the
36 department shall issue an order setting the penalty in the amount
37 specified in the settlement agreement. When the person has not
38 filed a notice of defense or where the department and the person
39 have entered into a settlement agreement, the order shall not be
40 subject to review by any court or agency.

1 (e) Any hearing required under this section shall be conducted
2 pursuant to the procedures specified in Section 100171, except to
3 the extent they are inconsistent with the specific requirements of
4 this section.

5 (f) Orders setting civil penalties under this section shall become
6 effective and final upon issuance thereof, and payment shall be
7 made within 30 days of issuance. A copy of the order shall be
8 served by personal service or by certified mail upon the person
9 served with the complaint.

10 (g) Within 30 days after service of a copy of a decision issued
11 by the director after a hearing, any person so served may file with
12 the superior court a petition for writ of mandate for review of the
13 decision. Any person who fails to file the petition within this
14 30-day period may not challenge the reasonableness or validity of
15 the decision or order of the director in any judicial proceeding
16 brought to enforce the decision or order or for other remedies.
17 Section 1094.5 of the Code of Civil Procedure shall govern any
18 proceedings conducted pursuant to this subdivision. In all
19 proceedings pursuant to this subdivision, the court shall uphold
20 the decision of the director if the decision is based upon substantial
21 evidence in the whole record. The filing of a petition for writ of
22 mandate shall not stay any corrective action required pursuant to
23 the Miscellaneous Food, Food Facility, and Hazardous Substances
24 Act, as defined in subdivision (b) of Section 27, or the accrual of
25 any penalties assessed pursuant to this section. This subdivision
26 does not prohibit the court from granting any appropriate relief
27 within its jurisdiction.

28 (h) The remedies under this section are in addition to, and do
29 not supersede, or limit, any and all other remedies, civil or criminal.

30 SEC. 4. Section 111955 of the Health and Safety Code is
31 amended to read:

32 111955. "Food processing establishment," as used in this
33 chapter, shall mean any room, building, or place or portion thereof,
34 maintained, used, or operated for the purpose of commercially
35 storing, packaging, making, cooking, mixing, processing, bottling,
36 canning, packing, slaughtering, or otherwise preparing or handling
37 food except restaurants. "Food processing establishment" shall
38 not include a cottage food operation, as defined in Section ~~113400~~
39 *113401*.

1 SEC. 5. Article 5 (commencing with Section 113400) is added
 2 to Chapter 11 of Part 6 of Division 104 of the Health and Safety
 3 Code, to read:

4

5 Article 5. Cottage Food Operations

6

7 113400. This article shall be known, and may be cited, as the
 8 California Homemade Food Act.

9 113401. Unless the context otherwise requires, the meaning
 10 of terms used in this article, as applicable, shall be the same as the
 11 definitions found under the California Retail Food Code (Part 7
 12 (commencing with Section 113700)). Additionally, for the purposes
 13 of this article, the following definitions apply:

14 (a) “Adulterated” means either of the following:

15 (1) Food that bears or contains any poisonous or deleterious
 16 substance that may render the food impure or injurious to health.

17 (2) Food that is manufactured, prepared, or stored in a manner
 18 that deviates from a HACCP plan, as defined in Section 113801,
 19 so as to pose a discernable increase in risk.

20 (b) “Cottage food operation” means *an enterprise operated in*
 21 *a private home where cottage food products are prepared or*
 22 *packaged to be sold directly to consumers, including through the*
 23 *Internet or mail order, and to in-state retail food facilities pursuant*
 24 *to this article.*

25 (1) “Class “A” cottage food operation” means *a type of cottage*
 26 *food operation that meets the requirements of Section 113411.*

27 (2) “Class “B” cottage food operation” means *a type of cottage*
 28 *food operation that meets the requirements of Section 113412.*

29 (c) “Cottage food operator” means *an individual who operates*
 30 *a cottage food operation in his or her private home and is the*
 31 *owner of the cottage food operation.*

32 (e)

33 (d) “Cottage food products” means foods that are prepared for
 34 sale in the home kitchen of a person’s primary private home and
 35 are not potentially hazardous food, as defined in Section 113871.
 36 ~~Cottage food products include, but are not limited to, nonpotentially~~
 37 ~~hazardous baked goods, jams, jellies, fruit butters, preserves,~~
 38 ~~pickles with a pH level of 4.6 or below when measured at 75~~
 39 ~~degrees Fahrenheit, candy, granola, dry cereals, popcorns, nut~~
 40 ~~mixes, dried fruit, chocolate covered nonperishable nuts and dried~~

1 fruit, dry baking mixes, roasted coffees, dry teas, honey, and similar
2 products specified in rules adopted by the department.

3 (e) “Direct sale” means a transaction between a cottage food
4 operation operator and a consumer, where the consumer is
5 purchasing the cottage food product directly from the cottage food
6 operation. Direct sales include, but are not limited to, holiday
7 bazaars, temporary events such as bake sales, farm stands, certified
8 farmers’ markets, community-supported agriculture subscriptions,
9 food swaps, and sales occurring directly in the home.

10 (f) “Employee” means an individual, paid or volunteer, who is
11 involved in the preparation, packaging, handling, and storage of
12 a cottage food product, or otherwise works for the cottage food
13 operation. An employee does not include an immediate family
14 member or household member of the cottage food operation
15 operator.

16 ~~(d)~~

17 (g) “Home kitchen” means a kitchen primarily intended for use
18 by residents of a private home. It may contain one or more stoves
19 or ovens, including a double oven, and shall be designed for
20 residential use.

21 (h) “Indirect sale” means an interaction between a cottage food
22 operation, a third-party retailer, and a consumer, where the
23 consumer is purchasing cottage food products, made by the cottage
24 food operation, from a third-party retailer. Indirect sales include,
25 but are not limited to, sales made to retail shops and restaurants,
26 sales through an Internet Web site operated by the cottage food
27 operation, and sales made through third-party-operated Internet
28 Web sites.

29 ~~(e)~~

30 (i) “Registered or permitted area” means the portion of a private
31 home ~~that contains a home kitchen~~ where the preparation,
32 packaging, storage, or handling of cottage food products,
33 ingredients, or equipment occurs.

34 ~~(f)~~

35 (j) “Potentially hazardous food” has the meaning provided in
36 Section 113871.

37 ~~(g)~~

38 (k) “Private home” means a dwelling, or an area within a rental
39 unit, where individuals reside.

1 113402. (a) The department shall establish a list of permissible
2 foods to be sold by a cottage food operation. The list shall be
3 limited to foods that are not potentially hazardous and shall
4 include, but not be limited to, all of the following:

5 (1) Baked goods without cream, custard, or meat fillings, such
6 as breads, tortillas, cookies, churros, and pastries.

7 (2) Jams, jellies, preserves, and fruit butter.

8 (3) Candy, such as toffee and brittle.

9 (4) Fruit pies, and fruit or vegetable tamales and empanadas.

10 (5) Granola and other dried cereal.

11 (6) Popcorn.

12 (7) Waffle cones and pizelles.

13 (8) Nut mixes.

14 (9) Chocolate-covered nonperishable foods, such as nuts and
15 dried fruit.

16 (10) Roasted coffee and dried tea.

17 (11) Dry baking mixes.

18 (12) Herb blends and dried mole paste.

19 (13) Honey and sweet sorghum syrup.

20 (14) Dried fruit.

21 (15) Dried pasta.

22 (16) Rice cakes and rice noodles.

23 (17) Vinegar and mustard.

24 (18) Kombucha.

25 (b) The list of permissible foods described in subdivision (a)
26 shall not be restricted by a local government.

27 113403. The local health department shall adopt regulations
28 reasonably necessary to implement this article. The regulations
29 shall include, but are not limited to, all of the following:

30 (a) (1) Procedures for a registration system, including
31 provisions for reasonable fees, for Class "A" cottage food
32 operations. The fees shall not exceed the reasonable regulatory
33 costs of administering the registration system.

34 (2) The registration system shall include the following:

35 (A) A self-certification checklist, verifying that the cottage food
36 operation will follow best management practices, as determined
37 by the local health department. The best management practices
38 shall further the intent and purpose of this article.

39 (B) Notice to the applicant that the local health department may
40 seek recovery for the costs associated with an inspection of a Class

1 “A” cottage food operation found to be in violation of this article
2 or regulations adopted pursuant to this article. The recovery shall
3 not exceed the local health department’s reasonable costs incurred
4 inspecting the cottage food operation.

5 (b) (1) Procedures for a permitting system, including provisions
6 for reasonable fees, for Class “B” cottage food operations. The
7 fees shall not exceed the reasonable regulatory costs of
8 administering the permitting system.

9 (2) The permitting system shall include an initial inspection of
10 the cottage food operation premises before a permit is issued to
11 the applicant.

12 (c) Appropriate and reasonable sanitary procedures, in addition
13 to those required by this article.

14 ~~113402.~~

15 113404. A cottage food operation is subject to the following
16 requirements:

17 (a) Preparation, packaging, or handling of cottage food products
18 shall not occur in the home kitchen simultaneously with any other
19 domestic activities. Prohibited activities may include, but are not
20 limited to:

21 (1) Family meal preparation.

22 (2) Dishwashing unrelated to cottage food production.

23 (3) Clothes washing or ironing.

24 (4) Kitchen cleaning unrelated to cottage food production.

25 (b) Infants, small children, or pets shall not be allowed in the
26 home kitchen during the preparation, packaging, or handling of
27 any cottage food products.

28 (c) All food contact surfaces, equipment, and utensils used for
29 the preparation, packaging, or handling of any cottage food
30 products shall be washed, rinsed, and sanitized before each use.

31 (d) All food preparation and food equipment storage areas shall
32 be maintained free of rodents and insects.

33 (e) A person involved in the preparation and packaging of
34 cottage food products shall comply with all of the following:

35 (1) The person may not work in the home kitchen when sick
36 with a contagious illness.

37 (2) The person shall wash his or her hands before any food
38 preparation and food packaging activity.

1 (f) Preparation, packaging, handling, or storage of cottage food
 2 products shall take place only within the registered or permitted
 3 area.

4 113405. Water used during the preparation of cottage food
 5 products shall meet the potable drinking water standards in the
 6 California Safe Drinking Water Act (Chapter 4 (commencing with
 7 Section 116270)) and any other requirements with regard to
 8 potable water, as defined by Section 113869. This includes water
 9 used for all of the following:

10 (a) The washing, sanitizing, and drying of any equipment used
 11 in the preparation of a cottage food product.

12 (b) The washing, sanitizing, and drying of hands and arms.

13 (c) The preparation of the cottage food products.

14 ~~113403.~~

15 113406. (a) A cottage food operation shall package and label
 16 any food it produces or packages for sale in compliance with
 17 labeling requirements of the Federal Food, Drug, and Cosmetic
 18 Act (21 U.S.C. Sec. 343-1 et seq.).

19 (b) A cottage food operation shall include on its cottage food
 20 package a statement of disclosure informing the consumer that
 21 the cottage food product was prepared in a private home.

22 113407. A cottage food operation shall not have more than
 23 one employee, not including the cottage food operator.

24 113408. An employee, or persons who otherwise work for the
 25 cottage food operation, shall complete a food handler course, as
 26 approved by the local health department, prior to commencing
 27 employment or work with the cottage food operation.

28 113409. A cottage food operation shall not have more than
 29 fifty thousand dollars (\$50,000) in gross annual sales.

30 ~~113404. (a) The director may adopt regulations reasonably~~
 31 ~~necessary to implement this article. The regulations may include,~~
 32 ~~but are not limited to, all of the following:~~

33 ~~(1) Sanitary procedures, in addition to those required by this~~
 34 ~~article.~~

35 ~~(2) Labeling requirements, which shall be in compliance with~~
 36 ~~applicable regulations adopted pursuant to the Federal Food, Drug,~~
 37 ~~and Cosmetic Act (21 U.S.C. Sec. 343-1 et seq.).~~

38 ~~(3) Procedures for a registration system, including provisions~~
 39 ~~for reasonable fees so that individuals may obtain a registration to~~

1 operate a cottage food operation. The director, however, shall not
2 require an inspection prior to allowing a food operation to register.

3 ~~(4) If a registration system and provisions for reasonable fees
4 are established, these fees shall not exceed the reasonable
5 regulatory costs of administering the registration program.~~

6 ~~(b) The director may not set a maximum annual gross sales
7 amount for a cottage food operation.~~

8 ~~113405. (a) For purposes of determining compliance with this
9 article, the director may access, for inspection purposes, the
10 registered area of a private home where a cottage food operation
11 is located only if the director has, on the basis of a consumer
12 complaint, reason to suspect that adulterated or otherwise unsafe
13 food has been produced in the home kitchen. The director shall
14 not conduct routine inspections of cottage food operations.~~

15 ~~(b) All inspections shall be made at reasonable times and, when
16 possible, during regular business hours.~~

17 ~~(c) If the director is denied access to the registered area where
18 access was sought for the purpose of enforcing this article, the
19 director may apply to any court of competent jurisdiction for a
20 search warrant authorizing access to the registered area, and a court
21 may issue a search warrant for the purpose requested.~~

22 ~~(d) Access under this section is limited to the registered area
23 and solely for the purpose of enforcing or administering this article.~~

24 ~~113406.~~

25 *113410.* All of the following shall apply to cottage food
26 operations:

27 (a) A city, county, or city and county shall not prohibit cottage
28 food operations in any residential dwellings, but shall do one of
29 the following:

30 (1) Classify these operations as a permitted use of residential
31 property for zoning purposes.

32 (2) Grant a nondiscretionary permit to use a residence as any
33 cottage food operation that complies with local ordinances
34 prescribing reasonable standards, restrictions, and requirements
35 concerning spacing and concentration, traffic control, parking, and
36 noise control relating to those homes. Any noise standards shall
37 be consistent with local noise ordinances implementing the noise
38 element of the general plan. The permit issued pursuant to this
39 paragraph shall be granted by the zoning administrator, or if there
40 is no zoning administrator, by the person or persons designated

1 by the planning agency to grant these permits, upon the certification
2 without a hearing.

3 (3) Require any cottage food operation to apply for a permit to
4 use a residence for its operation. The zoning administrator, or if
5 there is no zoning administrator, the person or persons designated
6 by the planning agency to handle the use permits, shall review and
7 decide the applications. The use permit shall be granted if the
8 cottage food operation complies with local ordinances, if any,
9 prescribing reasonable standards, restrictions, and requirements
10 concerning the following factors: spacing and concentration, traffic
11 control, parking, and noise control relating to those homes. Any
12 noise standards shall be consistent with local noise ordinances
13 implementing the noise element of the general plan. The local
14 government shall process any required permit as economically as
15 possible. Fees charged for review shall not exceed the costs of the
16 review and permit process. An applicant may request a verification
17 of fees, and the city, county, or city and county shall provide the
18 applicant with a written breakdown within 45 days of the request.
19 The application form for cottage food operation permits shall
20 include a statement of the applicant's right to request the written
21 fee verification.

22 (b) In connection with any action taken pursuant to paragraph
23 (2) or (3) of subdivision (a), a city, county, or city and county shall
24 do all of the following:

25 (1) Upon the request of an applicant, provide a list of the permits
26 and fees that are required by the city, county, or city and county,
27 including information about other permits that may be required
28 by other departments in the city, county, or city and county, or by
29 other public agencies. The city, county, or city and county shall,
30 upon request of any applicant, also provide information about the
31 anticipated length of time for reviewing and processing the permit
32 application.

33 (2) Upon the request of an applicant, provide information on
34 the breakdown of any individual fees charged in connection with
35 the issuance of the permit.

36 (3) If a deposit is required to cover the cost of the permit,
37 provide information to the applicant about the estimated final cost
38 to the applicant of the permit, and procedures for receiving a refund
39 from the portion of the deposit not used.

1 (c) Use of a residence for the purposes of a cottage food
2 operation shall not constitute a change of occupancy for purposes
3 of the State Housing Law (Part 1.5 (commencing with Section
4 17910) of Division 13), or for purposes of local building and fire
5 codes.

6 (d) Cottage food operations shall be considered residences for
7 the purposes of the State Uniform Building Standards Code and
8 local building and fire codes.

9 *113411. In addition to other requirements imposed by this*
10 *article, a Class “A” cottage food operation shall be subject to all*
11 *of the following conditions:*

12 (a) *Shall engage only in the direct sale of cottage food products.*

13 (b) *Shall register with the local health department in accordance*
14 *with regulations implemented pursuant to Section 113403.*

15 (c) (1) *Shall not be subject to initial or routine inspections.*

16 (2) (A) *For purposes of determining compliance with this*
17 *article, a local health official may access, for inspection purposes,*
18 *the registered area of a private home where a cottage food*
19 *operation is located only if the official has, on the basis of a*
20 *consumer complaint, reason to suspect that adulterated or*
21 *otherwise unsafe food has been produced by the cottage food*
22 *operation, or that the cottage food operation has violated this*
23 *article.*

24 (B) *An inspection pursuant to this subdivision shall be made at*
25 *a reasonable time and during regular business hours.*

26 (C) *If the official is denied access to the registered area where*
27 *access was sought for the purpose of enforcing this article, the*
28 *official may apply to a court of competent jurisdiction for, and the*
29 *court may issue, a search warrant authorizing access to the*
30 *registered area.*

31 (D) *Access under this subdivision is limited to the registered*
32 *area and solely for the purpose of enforcing or administering this*
33 *article.*

34 (E) *Pursuant to Section 113403, a Class “A” cottage food*
35 *operation found to be in violation of this article, or regulations*
36 *adopted pursuant to this article, shall be responsible for the costs*
37 *incurred by the local health department in executing the inspection.*

38 *113412. In addition to other requirements imposed by this*
39 *article, a Class “B” cottage food operation shall be subject to all*
40 *of the following conditions:*

1 (a) Shall be permitted to engage in the direct and indirect sale
2 of cottage food products.

3 (b) Shall obtain a permit from the local health department in
4 accordance with regulations implemented pursuant to Section
5 113403. The permit shall authorize the cottage food operation to
6 prepare and sell cottage food products through direct or indirect
7 sales.

8 (c) (1) Shall be subject to no more than one inspection per year
9 by the local health department except as provided under paragraph
10 (2).

11 (2) (A) For purposes of determining compliance with this
12 article, a local health official may access, for inspection purposes,
13 the permitted area of a private home where a cottage food
14 operation is located only if the official has, on the basis of a
15 consumer complaint, reason to suspect that adulterated or
16 otherwise unsafe food has been produced by the cottage food
17 operation, or that the cottage food operation has violated this
18 article.

19 (B) An inspection pursuant to this subdivision shall be made at
20 a reasonable time and during regular business hours.

21 (C) If the official is denied access to the permitted area where
22 access was sought for the purpose of enforcing this article, the
23 official may apply to court of competent jurisdiction for, and the
24 court may issue, a search warrant authorizing access to the
25 permitted area.

26 (D) Access under this subdivision is limited to the permitted
27 area and solely for the purpose of enforcing or administering this
28 article.

29 SEC. 6. Section 113789 of the Health and Safety Code is
30 amended to read:

31 113789. (a) “Food facility” means an operation that stores,
32 prepares, packages, serves, vends, or otherwise provides food for
33 human consumption at the retail level, including, but not limited
34 to, the following:

35 (1) An operation where food is consumed on or off the premises,
36 regardless of whether there is a charge for the food.

37 (2) Any place used in conjunction with the operations described
38 in this subdivision, including, but not limited to, storage facilities
39 for food-related utensils, equipment, and materials.

- 1 (b) “Food facility” includes permanent and nonpermanent food
2 facilities, including, but not limited to, the following:
3 (1) Public and private school cafeterias.
4 (2) Restricted food service facilities.
5 (3) Licensed health care facilities.
6 (4) Commissaries.
7 (5) Mobile food facilities.
8 (6) Mobile support units.
9 (7) Temporary food facilities.
10 (8) Vending machines.
11 (9) Certified farmers’ markets, for purposes of permitting and
12 enforcement pursuant to Section 114370.
13 (10) Farm stands, for purposes of permitting and enforcement
14 pursuant to Section 114375.
15 (c) “Food facility” does not include any of the following:
16 (1) A cooperative arrangement wherein no permanent facilities
17 are used for storing or handling food.
18 (2) A private home, including a cottage food operation, as
19 defined in Section ~~113400~~ 113401.
20 (3) A church, private club, or other nonprofit association that
21 gives or sells food to its members and guests, and not to the general
22 public, at an event that occurs not more than three days in any
23 90-day period.
24 (4) A for-profit entity that gives or sells food at an event that
25 occurs not more than three days in a 90-day period for the benefit
26 of a nonprofit association, if the for-profit entity receives no
27 monetary benefit, other than that resulting from recognition from
28 participating in an event.
29 (5) Premises set aside for wine tasting, as that term is used in
30 Section 23356.1 of the Business and Professions Code and in the
31 regulations adopted pursuant to that section, that comply with
32 Section 118375, regardless of whether there is a charge for the
33 wine tasting, if no other beverage, except for bottles of wine and
34 prepackaged nonpotentially hazardous beverages, is offered for
35 sale for onsite consumption and no food, except for crackers, is
36 served.
37 (6) Premises operated by a producer, selling or offering for sale
38 only whole produce grown by the producer, or shell eggs, or both,
39 provided the sales are conducted on premises controlled by the
40 producer.

1 (7) A commercial food processing plant as defined in Section
2 111955.

3 (8) A child day care facility, as defined in Section 1596.750.

4 (9) A community care facility, as defined in Section 1502.

5 (10) A residential care facility for the elderly, as defined in
6 Section 1569.2.

7 (11) A residential care facility for the chronically ill, which has
8 the same meaning as a residential care facility, as defined in Section
9 1568.01.

10 (12) Premises set aside by a beer manufacturer, as defined in
11 Section 25000.2 of the Business and Professions Code, that comply
12 with Section 118375, for the purposes of beer tasting, regardless
13 of whether there is a charge for the beer tasting, if no other
14 beverage, except for beer and prepackaged nonpotentially
15 hazardous beverages, is offered for sale for onsite consumption,
16 and no food, except for crackers or pretzels, is served.

17 SEC. 7. Section 114021 of the Health and Safety Code is
18 amended to read:

19 114021. (a) Food shall be obtained from sources that comply
20 with all applicable laws.

21 (b) Food stored or prepared in a private home shall not be used
22 or offered for sale in a food facility, unless that food is prepared
23 by a cottage food operation that meets the requirements of Article
24 5 (commencing with Section 113400) of Chapter 11 of Part 6.

25 SEC. 8. Section 114023 of the Health and Safety Code is
26 amended to read:

27 114023. Food in a hermetically sealed container shall be
28 obtained from a food processing plant that is regulated by the food
29 regulatory agency that has jurisdiction over the plant, or from a
30 cottage food operation that meets the requirements of Article 5
31 (commencing with Section 113400) of Chapter 11 of Part 6.

32 SEC. 9. If the Commission on State Mandates determines that
33 this act contains costs mandated by the state, reimbursement to
34 local agencies and school districts for those costs shall be made
35 pursuant to Part 7 (commencing with Section 17500) of Division
36 4 of Title 2 of the Government Code.

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