

ASSEMBLY BILL

No. 1871

Introduced by Assembly Member Dickinson

February 19, 2014

An act to amend Sections 43100, 47000, 47001, 47002, 47010, 47011, and 47021 of, to add Section 47000.5 to, to add Chapter 9 (commencing with Section 890) to Part 1 of Division 1 of, to repeal Sections 47004.1 and 47012 of, and to repeal and add Sections 47004 and 47020 of, the Food and Agricultural Code, relating to food and agriculture, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 1871, as introduced, Dickinson. Agricultural products: direct marketing: certified farmers' markets.

(1) Existing law authorizes the use of the term "California grown" and similar terms for marketing, advertising, or promotional purposes only to identify food or agricultural products that have been produced in the state or harvested in its surface or coastal waters, and makes the fraudulent use of the term or a deliberately misleading or unwarranted use of the term a misdemeanor punishable by a fine of not less than \$100 or more than \$3,000, or by imprisonment in the county jail for not more than 6 months, or by both the fine and imprisonment.

This bill would make it unlawful for any person or entity, or employee or agent of that person or entity, to make any statement, representation, or assertion relating to the sale or availability of agricultural products that is false, deceptive, or misleading, as specified, and would make a violation of those provisions a misdemeanor punishable by imprisonment in the county jail not exceeding 6 months, by a fine not exceeding

\$2,500, or both the fine and imprisonment. By creating a new crime, the bill would impose a state-mandated local program.

This bill would also authorize the Secretary of Food and Agriculture or a county agricultural commissioner, in lieu of prosecution, to levy a civil penalty, as specified, or take action against a license, permit, registration, or certification issued pursuant to the Food and Agricultural Code. The bill would make those penalties applicable to the fraudulent use of the term “California grown,” as specified above. The bill would require the civil penalties collected by a county agricultural commissioner to be paid to the county treasurer, and would require civil penalties collected by the secretary to be deposited in the Direct Agricultural Marketing Penalty Account, which would be created in the Department of Food and Agriculture Fund, as continuously appropriated funds to be used to conduct investigations and enforcement actions relating to false, deceptive, or misleading statements relating to agricultural products, and for other specified purposes. By establishing a continuously appropriated fund, the bill would make an appropriation.

(2) Existing law regulates the direct marketing of agricultural products, and provides for various findings and declarations in that regard. Existing law authorizes the secretary to adopt regulations relating to the direct marketing of agricultural products, authorizes a county agricultural commissioner to issue a certified farmers’ market certificate, and requires the county agricultural commissioner to inspect certified farmers’ markets within his or her jurisdiction. Existing law authorizes a county agricultural commissioner to charge certification and inspection fees, and provides for the assessment of penalties and fines relating to the certification, inspection, and regulation of certified farmers’ markets. These fees and penalties are deposited in the Department of Food and Agriculture Fund, and are required to be used, upon appropriation by the Legislature, for related administrative and regulatory purposes.

This bill would define the terms “producer,” “practice of agricultural arts,” and “agricultural product” for purposes of the provisions relating to direct marketing. The bill would authorize the secretary to enter into a cooperative agreement with any county agricultural commissioner for purposes relating to the direct marketing of agricultural products, and would require compensation to be paid under those cooperative agreements from moneys derived from assessments and fees collected pursuant to the provisions relating to direct marketing. The bill would authorize a certified farmers’ market operator to contract with a county agricultural commissioner for verification inspections, as specified.

(3) Existing law specifies that certified farmers' markets are locations established in accordance with local ordinances, and requires the governing body of a certified farmers' market with more than one participating certified producer to adopt written rules and procedures pertaining to the operation of the certified farmers' market.

This bill would instead provide that certified farmers' markets are California agricultural product point of sale locations that are registered and operated in accordance with specified provisions. The bill would require vendors of agricultural products selling within a certified farmers' market to comply with specified signage and labeling requirements, and would make those representations subject to criminal, civil, and administrative penalties, as specified. By creating a new crime, the bill would impose a state-mandated local program. The bill would repeal provisions authorizing an aggrieved certified producer to submit a request to the department for an advisory opinion, and for the department to issue the advisory opinion, and would repeal provisions requiring the department to provide for an informal hearing process for grievances relating to certified farmers' markets.

(4) Existing law authorizes the secretary to establish the Certified Farmers' Market Advisory Committee.

This bill instead would require the secretary to establish that committee, would specify the primary goals of the committee, and would revise the matters in which the committee may make recommendations to the secretary. The bill would decrease the number of members on the committee from 17 members to 14 members, as specified.

(5) Existing law requires a certified farmers' market certificate to be obtained from a county agricultural commissioner, and authorizes the county agricultural commissioner to assess a fee for the certificate and for inspections, as specified.

This bill would repeal those provisions and instead would require an operator of a certified farmers' market to annually register with the department and would require the county agricultural commissioner to issue a certified farmers' market certificate upon registration. The bill would require a producer to register with the department and obtain a certified producer's certificate. The bill would require a producer to submit specified information to the department, including, among other things, a declaration that he or she is knowledgeable of and intends to produce in accordance with good agricultural practices, as specified.

(6) Existing law requires, until January 1, 2018, that every operator of a certified farmers’ market remit to the department a fee equal to the number of certified producer certificates and other agricultural producers participating on each market day for the entire previous quarter, which shall be used by the department upon appropriation by the Legislature, as specified.

This bill would instead require a fee equal to the number of vendors participating and selling goods under the authority and management of the certified farmers’ market operator participating on each market day for the entire previous quarter to be remitted to the department.

(7) Because the bill would create new crimes, and by imposing new requirements on county agricultural commissioners, the bill would impose 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 with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: yes. Fiscal committee: yes. State-mandated local program: yes.

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

1 SECTION 1. Chapter 9 (commencing with Section 890) is
2 added to Part 1 of Division 1 of the Food and Agricultural Code,
3 to read:

4

5 CHAPTER 9. INTENTIONALLY FALSE, DECEPTIVE, OR
6 MISLEADING MARKETING

7

8 890. (a) It is unlawful for any person or entity, or employee
9 or agent of that person or entity, to make any statement,
10 representation, or assertion orally, by public statement,
11 advertisement, signage, or by any means that relates to the sale or
12 availability of agricultural products that is false, deceptive, or
13 misleading regarding any of the following:

- 1 (1) The area of production of the agricultural product.
- 2 (2) The identity of the producer of the agricultural product.
- 3 (3) The manner and method of production of the agricultural

4 product.

5 (b) A violation of the provisions of this section is a misdemeanor
6 punishable by imprisonment in the county jail not exceeding six
7 months, or by a fine not exceeding two thousand five hundred
8 dollars (\$2,500), or by both that imprisonment and fine.

9 891. In lieu of prosecution, the secretary, or a county
10 agricultural commissioner under the authority of the secretary,
11 may levy a civil penalty against a person or entity that violates this
12 chapter in an amount not less than five hundred dollars (\$500) and
13 not more than five thousand dollars (\$5,000) for each violation.
14 The amount of the penalty assessed for each violation shall be
15 based upon the scope of the violation, the seriousness of the
16 deception, and the impact of the penalty on the violator, including
17 the deterrent effect on future violations. Subdivision (e) of Section
18 43003 shall apply to a fine or civil penalty levied pursuant to this
19 section.

20 892. (a) In addition to, or in lieu of, an action taken against a
21 person by the secretary or a county agricultural commissioner
22 pursuant to Section 890 or 891, the secretary or a county
23 agricultural commissioner may modify, suspend, revoke, or refuse
24 or condition the issuance of a license, permit, registration, or
25 certification issued under the provisions of this code.

26 (b) An action taken pursuant to this section shall be based upon
27 the scope of the violation, the seriousness of the deception, and
28 the corrective or deterrent effect on future violations.

29 (c) An action taken pursuant to this section shall be subject to
30 the due process and applicable civil remedy provisions of this code
31 that govern the issuance of the license, permit, registration, or
32 certification.

33 893. (a) All civil penalties collected pursuant to this chapter
34 by the secretary shall be deposited in the Direct Agricultural
35 Marketing Penalty Account, which is hereby created in the
36 Department of Food and Agriculture Fund, and shall be used to
37 conduct investigations and enforcement actions upon complaints
38 filed or pursuant to information received that results in the
39 investigation of a violation of Section 890. Money deposited
40 pursuant to this chapter also may be used to contract with county

1 agricultural commissioners for services that further the purposes
 2 of this chapter, and may be used for expenses incurred by county
 3 agricultural commissioners for investigative and enforcement
 4 actions conducted pursuant to this chapter. Notwithstanding Section
 5 13340 of the Government Code, all moneys deposited pursuant to
 6 this chapter shall be continuously appropriated to the department
 7 without regard to fiscal year for purposes of this chapter.

8 (b) All civil penalties collected pursuant to enforcement actions
 9 by a county agricultural commissioner pursuant to this chapter
 10 shall be paid to the county treasurer.

11 894. An action brought by the state or a county pursuant to
 12 Section 892 or 893 for a violation of Section 890 shall preclude a
 13 concurrent proceeding by the state or a county for the same act.

14 SEC. 2. Section 43100 of the Food and Agricultural Code is
 15 amended to read:

16 43100. (a) The terms “California grown,” “California-grown,”
 17 and similar terms with identical connotations shall be used in the
 18 labeling or advertising of agricultural products as follows:

19 (1) The terms “California grown,” “California-grown,” and
 20 similar terms with identical connotations may be used for
 21 marketing, advertising, or promotional purposes, only to identify
 22 food or agricultural products that have been produced in the state
 23 or harvested in its surface or coastal waters.

24 (2) The ~~Secretary of Food and Agriculture~~ *secretary* may adopt
 25 guidelines, rules, and regulations to further define acceptable uses
 26 of the terms “California grown,” “California-grown,” and similar
 27 terms with identical connotations, and to prevent any misleading
 28 use of the terms.

29 (b) ~~A fraudulent~~ *A false, deceptive, or misleading* use of the
 30 term “~~California-grown~~” *or grown,* “California-grown,” *or similar*
 31 *terms with identical connotations,* or of any seals or other identities
 32 officially adopted by the ~~Department of Food and Agriculture~~
 33 *department* in connection with these terms, or ~~a deliberately~~
 34 ~~misleading~~ *or any* unwarranted use of these items or terms, ~~is a~~
 35 ~~misdemeanor punishable by a fine of not less than one hundred~~
 36 ~~dollars (\$100) or more than three thousand dollars (\$3,000), or by~~
 37 ~~imprisonment in the county jail for not more than six months, or~~
 38 ~~by both the fine and imprisonment~~ *shall be subject to the provisions*
 39 *and penalties set forth in Chapter 9 (commencing with Section*
 40 *890) of Part 1 of Division 1.*

1 SEC. 3. Section 47000 of the Food and Agricultural Code is
2 amended to read:

3 47000. The Legislature finds and declares all of the following
4 with regard to the direct marketing of agricultural products:

5 (a) Direct marketing of agricultural products benefits the
6 agricultural community and the consumer by, among other things,
7 providing an alternative method for growers to sell their products
8 while benefiting the consumer by supplying quality produce at
9 reasonable prices.

10 (b) Direct marketing is a good public relations tool for the
11 agricultural industry that brings the farmer face-to-face with
12 consumers *and other end users*.

13 (c) The *direct* marketing potential of a wide variety of
14 California-produced agricultural products should be maximized
15 *and encouraged*.

16 (d) Farm stands allow farmers to sell fresh produce and eggs
17 grown on their farm as well as other food products made with
18 ingredients produced on or near the farm, thus enhancing their
19 income and the local economy.

20 ~~(e) The department should maintain a direct marketing program
21 and the industry should continue to encourage the sale of
22 California-grown fresh produce.~~

23 ~~(f) It is the intent of the state to promote the consumption of
24 California-grown produce and to promote access to
25 California-produced agricultural products. Restaurants and
26 nonprofit organizations can assist in bringing California-grown
27 products to all Californians.~~

28 ~~(g) A regulatory scheme should be developed that provides the
29 flexibility that will make direct marketing a viable marketing
30 system.~~

31 ~~(h) The department should assist producers in organizing
32 certified farmers' markets, field retail stands, farm stands,
33 community-supported agriculture, and other forms of direct
34 marketing by providing technical advice on marketing methods
35 and in complying with the regulations that affect direct marketing
36 programs.~~

37 ~~(i) The department is encouraged to establish an ad hoc advisory
38 committee to assist the department in establishing regulations
39 affecting direct marketing of products and to advise the secretary
40 in all matters pertaining to direct marketing.~~

1 (e) *The permitting, regulating, and operating of certified*
2 *farmers' markets provide the essential core and foundation for*
3 *the creation and operation of additional nonagricultural vending*
4 *activities that are ancillary but contiguous to the certified farmers'*
5 *market, thereby providing a larger community event amenity for*
6 *business districts and additional revenue for the operators of*
7 *certified farmers' markets.*

8 (f) *The department should maintain a direct marketing program*
9 *and encourage the sale and purchase of California-grown fresh*
10 *produce and other California-produced agricultural products.*

11 (g) *It is the intent of the state to promote the purchase and*
12 *consumption of California-grown produce and to promote access*
13 *to California-produced agricultural products. Restaurants and*
14 *nonprofit organizations can assist in bringing California-grown*
15 *products to all Californians.*

16 (h) *A regulatory scheme should be developed that provides the*
17 *flexibility that will make direct marketing a viable marketing*
18 *system.*

19 (i) *The department should assist producers in organizing*
20 *certified farmers' markets, field retail stands, farm stands,*
21 *community-supported agriculture, and other forms of direct*
22 *marketing by providing technical advice on marketing methods*
23 *and in complying with the regulations that affect direct marketing*
24 *programs.*

25 (j) *The department is encouraged to establish an ad hoc advisory*
26 *committee to assist the department in establishing regulations*
27 *affecting direct marketing of products and to advise the secretary*
28 *in all matters pertaining to direct marketing.*

29 SEC. 4. Section 47000.5 is added to the Food and Agricultural
30 Code, to read:

31 47000.5. The following definitions apply to this chapter, unless
32 otherwise specified:

33 (a) "Agricultural product" means a fresh or processed product
34 produced in California, including fruits, nuts, vegetables, herbs,
35 mushrooms, dairy, shell eggs, honey, flowers, grains, nursery
36 stock, livestock meats, poultry meats, rabbit meats, and fish,
37 including shellfish that is produced under controlled conditions in
38 waters located in California. Products that are characterized as
39 arts, crafts, bakery, candies, soaps, balms, perfumes, cosmetics,
40 clothing, fabrics, pastas, compost, fertilizers, candles, foraged, and

1 other types of wares are not agricultural products for purposes of
2 this chapter.

3 (b) “Practice of the agricultural arts” means the undertaking of
4 being predominantly responsible for the decisions and actions
5 encompassing the various phases of producing an agricultural
6 product. The practice of the agricultural arts for fruit, floral, nut,
7 vegetable, and other plant products includes directive or actual
8 responsibility for all the actions of planting, growing, fertilizing,
9 irrigating, cultivating, pest control, and harvesting. The practice
10 of the agricultural arts for agricultural animal products includes
11 directive or actual responsibility for a substantial time of the
12 raising, feeding, veterinary care, and product harvesting.

13 (c) “Producer” means a person, partnership, corporation, or an
14 otherwise legally formed farm or ranch that produces agricultural
15 products by the practice of the agricultural arts upon land that the
16 person or entity owns, rents, leases, sharecrops, or otherwise
17 controls and has the documented legal right to possession. A person
18 or entity that rents, leases, or otherwise acquires the right to
19 possession of property essentially only for or limited to the period
20 of the harvest season of the agricultural products produced on that
21 property shall not be considered a producer under the provisions
22 of this chapter.

23 SEC. 5. Section 47001 of the Food and Agricultural Code is
24 amended to read:

25 47001. (a) The secretary may adopt regulations to encourage
26 the direct sale by farmers to the public of all types of California
27 agricultural products.

28 (b) These regulations may include provisions to ensure and
29 maintain *the* quality and wholesomeness of the products, and to
30 ensure that the selling activities are conducted without fraud,
31 deception, or misrepresentation.

32 (c) *The secretary may enter into a cooperative agreement with*
33 *a county agricultural commissioner to carry out the provisions of*
34 *this chapter, including, but not limited to, administration,*
35 *investigations, inspections, registrations, and assistance pertaining*
36 *to direct marketing producers and outlets. Compensation under*
37 *the cooperative agreement shall be paid from assessments and*
38 *fees collected and deposited pursuant to this chapter and shall*
39 *provide reimbursement to the county agricultural commissioner*

1 *for associated costs not otherwise adequately funded pursuant to*
 2 *Section 47020.*

3 *(d) Upon reasonable suspicion of a violation of Section 890, a*
 4 *certified farmers' market operator may contract with a county*
 5 *agricultural commissioner for a special onsite field or storage*
 6 *verification inspection of a direct marketing producer selling in a*
 7 *certified farmers' market operated and controlled by the operator.*
 8 *All contracts and contract fees are subject to the discretion of the*
 9 *county agricultural commissioner in the county where the*
 10 *verification inspections are being requested.*

11 SEC. 6. Section 47002 of the Food and Agricultural Code is
 12 amended to read:

13 47002. California farmers *registered or certified pursuant to*
 14 *this chapter as direct marketing producers* may transport for sale
 15 and sell California-grown fresh fruits, nuts, and vegetables that
 16 they produce, directly to the public, ~~which produce shall be exempt~~
 17 ~~from size, standard pack, container, and labeling requirements, at~~
 18 ~~a certified farmers' market, as defined in Section 47004, a field~~
 19 ~~retail stand, as defined in Section 47030, or a farm stand, as defined~~
 20 ~~in Section 47050; and shall be exempt from size, standard pack,~~
 21 ~~container, and labeling requirements at an outlet or location~~
 22 ~~operated by an individual, organization, or entity that is regulated~~
 23 ~~pursuant to this chapter or is recognized by a regulation adopted~~
 24 ~~pursuant to Section 47001 and is otherwise authorized by local~~
 25 ~~laws, subject to the following conditions:~~

26 (a) All fresh fruits, nuts, and vegetables sold shall comply with
 27 the California Code of Regulations governing maturity and quality.

28 (b) No exemption granted by this section supersedes the
 29 provisions of federal marketing orders, state marketing orders, or
 30 any health and safety laws, regulations, or ordinances.

31 (c) All fresh fruits, nuts, and vegetables sold in closed consumer
 32 containers shall be labeled with the name, address, and ZIP Code
 33 of the producer, and a declaration of identity and net quantity of
 34 the commodity in the package.

35 (d) If a farmer selling produce pursuant to this section
 36 implements any exemption to size, standard pack, container, or
 37 labeling requirements as provided by this section, those sales may
 38 only be conducted as direct sales to *any of* the following:

39 (1) Consumers who are end users.

1 (2) Individuals, organizations, or entities that subsequently sell
2 the produce directly to end users.

3 (3) Individuals, organizations, or entities that distribute the
4 produce directly to end users at no cost to those end users.

5 (e) A farmer selling produce under paragraph (2) or (3) of
6 subdivision (d) shall provide the individual, organization, or entity
7 a memorandum that lists the identity of the producer, the address
8 of the producer, and the identity and quantity of the produce
9 purchased. A bill of sale or a container label including this
10 information shall meet the requirements of this subdivision.

11 SEC. 7. Section 47004 of the Food and Agricultural Code is
12 repealed.

13 ~~47004. (a) Certified farmers' markets may establish rules and
14 procedures that are more restrictive or do not violate state law or
15 regulation governing or implementing this chapter.~~

16 ~~(b) Certified farmers' markets are locations established in
17 accordance with local ordinances, where California farmers may
18 transport and sell to the public California agricultural products that
19 they produced, that are exempt from the established grade, size,
20 labeling, packaging and other such requirements for fruits, nuts,
21 and vegetables, and operated in accordance with this chapter and
22 regulations adopted pursuant to this chapter.~~

23 ~~(c) The governing body of any certified farmers' market
24 operating with more than one participating certified producer shall
25 adopt written rules and procedures pertaining to the operation of
26 the market. The rules shall include a requirement that the governing
27 body and its designated agents establish, implement, and enforce
28 all rules and procedures pertaining to the operation of the certified
29 farmers' market in a fair, nondiscriminatory, and equitable manner.~~

30 SEC. 8. Section 47004 is added to the Food and Agricultural
31 Code, to read:

32 47004. (a) Certified farmers' markets are California
33 agricultural product point of sale locations that are registered under
34 the provisions of Section 47020 and operated in accordance with
35 this chapter and regulations adopted pursuant to this chapter.

36 (b) The operator of a certified farmers' market shall establish
37 a clearly defined marketing area where only agricultural products
38 may be sold. Only the producer or the lawful authorized
39 representative of the producer may sell agricultural products within
40 the area defined as a certified farmers' market. Sales of agricultural

1 products purchased from another individual or entity shall not
2 occur within a certified farmers' market, and an agricultural product
3 producer or product dealer shall not sell his or her agricultural
4 products to another individual or entity with the understanding or
5 knowledge that the products are intended to be resold in a certified
6 farmers' market in violation of this chapter or the regulations
7 adopted pursuant to this chapter. Every producer selling within a
8 certified farmers' market shall comply with Section 47020.

9 (c) All vendors of agricultural products selling within a certified
10 farmers' market shall do all of the following:

11 (1) Post a conspicuous sign or banner at the point of sale that
12 states the name of the farm or ranch, the county where the farm
13 or ranch maintains the production grounds that produced the
14 products being offered for sale is located, and a statement that "We
15 Grew What We Are Selling" or "We Raised What We Are Selling"
16 or "We Grow What We Sell" or similar phrases that clearly
17 represent that the farm or ranch is only selling agricultural products
18 that they themselves have grown or raised on California land that
19 they possess or control. Product sales by different farms at the
20 same vendor stand shall separate the products from each farm or
21 ranch and correspondingly post the required sign or banner in
22 direct relationship with the sales display of the products produced
23 by each farm.

24 (2) Ensure that all processed agricultural products that they offer
25 for sale state in a clear manner by package label, container label,
26 or bulk sales signage that they consist only, with the exception of
27 incidental flavorings and necessary preservatives, of agricultural
28 products grown or raised by the farm or ranch selling them, the
29 farm or ranch name, and the city where the farm or ranch is located.
30 In addition, every processed product shall identify on a package
31 label, container label, or on bulk sales signage the registration
32 number or other identity reference of the facility where the food
33 was processed, or another required labeling statements or
34 information, in accordance with Sections 110460, 114365, and
35 114365.2 of the Health and Safety Code, or, in the case of meat
36 products, the identity of the facility where the meat products were
37 cut and wrapped, in accordance with the United States Department
38 of Agriculture or State of California inspection standards, or, in
39 the case of dairy products, the identity of the facility where the
40 dairy products were manufactured or processed.

1 (3) Ensure all products being represented or offered for sale as
2 organic are clearly labeled or have conspicuous and posted
3 point-of-sale signage identifying the products as organic.

4 (d) The representations required pursuant to subdivision (c)
5 shall be subject to the provisions and penalties specified in Section
6 890.

7 (e) An operator of a certified farmers' market that also operates,
8 manages, or otherwise controls a separate sales activity or vending
9 event or marketing area in close proximity, adjacent, or contiguous
10 to the operator's certified farmers' market shall not allow the sale
11 or distribution of fresh whole produce by vendors selling within
12 those sales activity or vending event or marketing areas.

13 (f) The operator of a certified farmers' market shall keep an
14 accurate participation record of the individual direct marketing
15 producers whose agricultural products were presented for sale in
16 their market each market day. The operators shall submit to the
17 department a quarterly report of the registration numbers and
18 participation frequency of the direct marketing producers whose
19 agricultural products were presented for sale in the operator's
20 market during that past quarter. The department shall create and
21 maintain online capability for reporting.

22 (g) Operators of certified farmers' markets may establish rules
23 and procedures that are more restrictive and stringent than state
24 laws or regulations governing or implementing this chapter, so
25 long as the rules and procedures are not in conflict with state laws
26 or regulations.

27 (h) Except for certified farmers' markets operated by
28 government agencies, nonprofit entities and other qualified
29 operators of certified farmers' markets shall be considered private
30 entities and may take actions, adopt rules, and impose requirements
31 they deem necessary for the proper and honest operation of their
32 market, subject to the application of any state or other laws.
33 Government agency operators of certified farmers' markets are
34 subject to applicable state laws, the regulations and laws of the
35 governing agency, and other laws governing the conduct and
36 actions they may take as a governmental entity.

37 SEC. 9. Section 47004.1 of the Food and Agricultural Code is
38 repealed.

39 ~~47004.1. (a) Any certified producer aggrieved by a rule or~~
40 ~~procedure of a certified farmers' market may submit a written~~

1 request to the department for an advisory opinion as to whether,
2 as a question of law, the rule or procedure in dispute is consistent
3 with this chapter and the regulations implementing this chapter.
4 Not later than 15 calendar days after the date on which the written
5 request is received, the department shall undertake its review and
6 issue an advisory opinion. The request for and issuance of an
7 advisory opinion is not a prerequisite to the pursuit of any civil
8 litigation. However, the advisory opinion shall be given substantial
9 weight in any subsequent civil or administrative proceeding
10 involving the parties and subject matter of the advisory opinion.
11 The department may adopt regulations providing for the precedent
12 value of its advisory opinions issued pursuant to this section.
13 Notwithstanding any other provision of law, the department shall
14 not incur liability in connection with the preparation and issuance
15 of any advisory opinion issued pursuant to this section.

16 (b) The department shall provide for an informal hearing
17 pursuant to Article 10 (commencing with Section 11445.10) of
18 Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government
19 Code, with regard to any grievance of a certified producer involving
20 questions of fact concerning any action taken by a certified farmers'
21 market against the producer, or any implementation of a rule or
22 procedure established by certified farmers' market against the
23 producer, or any other related issue, as to whether application of
24 the rule or procedure in dispute is consistent with this chapter and
25 the regulations implementing this chapter. The informal hearing
26 shall proceed without the option of conversion to a formal hearing.
27 The request for an informal hearing to resolve issues involving
28 disputes of fact is not a prerequisite to the pursuit of any civil
29 litigation.

30 (c) In addition to, or in lieu of, the alternatives set forth in
31 subdivisions (a) and (b), the parties may agree to employ mediation.
32 If mediation fails to resolve the dispute, the parties may agree to
33 employ binding arbitration. The department and the county
34 agricultural commissioners shall incur no expense or liability for
35 mediation or binding arbitration.

36 SEC. 10. Section 47010 of the Food and Agricultural Code is
37 amended to read:

38 47010. (a) The secretary may *shall* establish a committee
39 ~~which~~ *that* shall be known as the Certified Farmers' Market
40 Advisory Committee. The primary ~~goal~~ *goals* of the committee

1 shall be to ensure the integrity of certified farmers' markets: all of
2 the following:

3 (1) Promote the demand and consumption of agricultural
4 products purchased directly from producers at certified farmers'
5 markets.

6 (2) Ensure that existing and future certified farmers' markets
7 are primarily maintained for the benefit of the producers selling
8 their products within those markets.

9 (3) Ensure that honest and fair marketing of products occur
10 within certified farmers' markets and within an ancillary vending
11 activity under the operation and control of a certified farmers'
12 market operator.

13 (b) The committee shall be composed of ~~17~~ 14 members and
14 their alternates. ~~The secretary shall appoint the members of the~~
15 ~~committee from a list of nominees provided by the industry subject~~
16 ~~to this chapter.~~ The secretary shall endeavor to appoint eight six
17 members and their alternates who shall be active certified producers
18 or representatives of agricultural organizations that represent
19 producers, ~~four~~ six members and their alternates who shall be
20 certified farmers' market managers operators or representatives
21 of the operator, ~~two~~ representatives from different major state
22 direct marketing associations, one public member, and ~~two~~
23 members one member and their alternates his or her alternate who
24 shall be a county agricultural ~~commissioners~~ commissioner. An
25 alternate member shall serve at a committee meeting only in the
26 absence of, and shall have the same powers and duties as, the
27 member for whom he or she is designated as alternate. All
28 appointees shall serve two-year terms or at the pleasure of the
29 secretary. Members appointed to fill vacancies shall serve the
30 remainder of the term.

31 (c) The secretary ~~shall appoint only one certified producer,~~
32 ~~certified farmers' market manager, or representative to represent~~
33 ~~any one farm or certified farmers' market and shall make every~~
34 ~~an effort to ensure that there is include members who represent a~~
35 ~~diverse representation from major production and market areas~~
36 ~~state geographical and agricultural product.~~

37 (d) The committee shall meet at the request of the secretary, the
38 committee chairperson, or upon the request of four committee
39 members. It shall meet at least once each year.

1 (e) The committee ~~shall~~ *may* appoint its own officers, including
 2 a chairperson, a vice chairperson, a secretary, and any other officers
 3 it deems necessary. The committee may adopt rules that it deems
 4 are necessary for the conduct of its meetings and functions to carry
 5 out the objectives of this chapter.

6 SEC. 11. Section 47011 of the Food and Agricultural Code is
 7 amended to read:

8 47011. The ~~committee~~ *Certified Farmers’ Market Advisory*
 9 *Committee* shall be advisory to the secretary on ~~all~~ matters
 10 pertaining to direct marketing of agricultural products at certified
 11 farmers’ markets and may make ~~recommendations~~
 12 *recommendations*, including, but not limited to, the following:

13 (a) The amendment, repeal, or adoption of legislation and
 14 regulations that relate to the ~~administration and enforcement of~~
 15 ~~this chapter~~ *primary goals stated in subdivision (a) of Section*
 16 *47010*.

17 (b) Administrative policies and procedures that relate to *the*
 18 *primary goals stated in subdivision (a) of Section 47010, including*
 19 the inspection of ~~certified~~ producers and certified farmers’ markets.

20 (c) Administrative civil penalties for violations of ~~direct~~
 21 ~~marketing~~ *certified farmers’ market laws and regulations*.

22 (d) ~~Certification fees collected pursuant to Section 47020.~~

23 (d) *Program and enforcement fees collected pursuant to Section*
 24 *47021*.

25 (e) Statewide review of *certified farmers’ market promotion*
 26 *and enforcement actions*.

27 (f) The annual budget of the ~~department~~ *department’s certified*
 28 *farmers’ market program* to carry out *the goals and purposes* this
 29 chapter and the assessment of fees to pay for the costs incurred by
 30 the department to carry out this chapter.

31 (g) Alternative strategies for certification and investigation
 32 methodology, and methods for industry self-regulation and
 33 commission formation.

34 SEC. 12. Section 47012 of the Food and Agricultural Code is
 35 repealed.

36 47012. (a) ~~Except as provided in subdivisions (b) and (c), the~~
 37 ~~term of any member of the committee shall be two years.~~

38 (b) ~~With respect to the terms of initial members of the~~
 39 ~~committee, eight members shall serve for one year and nine~~
 40 ~~members shall serve for two years, with the determinations of the~~

1 term of each member to be made by lot. No member of the
2 committee shall serve more than four full consecutive two-year
3 terms.

4 (e) Any vacancy that occurs during an unexpired term shall be
5 filled by appointment for the unexpired term.

6 SEC. 13. Section 47020 of the Food and Agricultural Code is
7 repealed.

8 47020. (a) A certified farmers' market certificate issued by a
9 county agricultural commissioner shall be valid for 12 months
10 from the date of issue. The county agricultural commissioner shall
11 inspect every certified farmers' market within his or her jurisdiction
12 at least once, in every six months of operation. The county
13 agricultural commissioner may charge a certification and inspection
14 fee up to a maximum rate of sixty dollars (\$60) per hour, unless
15 the county board of supervisors elects not to charge inspection and
16 certificate costs. Inspections shall be required notwithstanding a
17 county board of supervisors' election not to charge certificate and
18 inspection fees. If a fee is charged for conducting the certification
19 and inspection, it shall include either the itemized actual costs, or
20 the weighted average hourly rate, as determined on an annual basis
21 by the county, which shall be provided to the certified farmers'
22 market manager prior to the payment of the fee.

23 (b) A certified producer's certificate issued by a county
24 agricultural commissioner may be valid for up to 12 months from
25 the date of issue. The county agricultural commissioner in each
26 county shall perform at least one annual onsite inspection of the
27 property or properties listed on every certified producer's certificate
28 issued in their county to verify production of the commodities
29 listed on the certificate or the existence in storage of the harvested
30 production, or both. If the certificate is issued for a period of seven
31 months or more, the county agricultural commissioner in each
32 county shall perform at least one additional onsite inspection or
33 other equally appropriate measure to verify production or storage,
34 or both. The county agricultural commissioner may charge a
35 certificate and inspection fee up to a maximum rate of sixty dollars
36 (\$60) per hour, unless the county board of supervisors elects not
37 to charge inspection and certificate costs. Inspections shall be
38 required notwithstanding a county board of supervisors' election
39 not to charge certificate and inspection fees. If a fee is charged for
40 conducting the certification and inspection, it shall include either

1 the itemized actual costs, or the weighted average hourly rate, as
 2 determined on an annual basis by the county, which shall be
 3 provided to the producer prior to the payment of the fee.

4 ~~(e) Renewal of a certified farmers' market certificate or certified
 5 producer's certificate may be denied by either the department or
 6 a county agricultural commissioner if a certified farmers' market
 7 or a certified producer is delinquent in the payment of the required
 8 state fee or any county certification and inspection fee or
 9 administrative civil penalty authorized under this chapter. The
 10 certificate shall be eligible for renewal when all outstanding
 11 balances and associated penalties or administrative fines have been
 12 paid to the department or the respective county or counties.~~

13 SEC. 14. Section 47020 is added to the Food and Agricultural
 14 Code, to read:

15 47020. (a) An operator of a certified farmers' market shall
 16 annually register with the department the times and location of the
 17 market, the name and contact information for the operator of the
 18 market, and the agent for service of process for the operator. Upon
 19 completion of a proper application, the county agricultural
 20 commissioner shall issue to the operator a certified farmers' market
 21 certificate.

22 (b) A certified farmers' market certificate issued by a county
 23 agricultural commissioner shall be valid for 12 months from the
 24 date of issue and may be renewed annually thereafter. The county
 25 agricultural commissioner shall inspect every certified farmers'
 26 market within his or her jurisdiction at least once for every six
 27 months of operation. The county agricultural commissioner shall
 28 provide an estimate of expenses for inspections at the time of
 29 application or renewal and may charge a certification and
 30 inspection fee reflecting or equal to the actual expenses incurred.

31 (c) (1) (A) A producer wishing to sell at a certified farmers'
 32 market shall apply and register with the department and obtain a
 33 certified producer's certificate. Each registration shall include a
 34 declaration by the producer that he or she is knowledgeable of and
 35 intends to produce in accordance with good agricultural practices,
 36 as outlined in the Small Farm Food Safety Guidelines published
 37 by the department.

38 (B) A declaration made pursuant to subparagraph (A) shall not
 39 be used to infer that the producer is not required to comply with

1 other state or federal laws relative to food safety and good
2 agricultural practices.

3 (2) Once certified, a producer farming fruit, vegetables, nuts,
4 herbs, and similar crops shall annually submit to the department
5 required information about the specific crops that he or she will
6 harvest or intends to harvest for sales directly to the public. The
7 secretary may promulgate regulations to define the information
8 required by this paragraph.

9 (3) A certified producer's certificate issued by a county
10 agricultural commissioner shall be valid for up to 12 months from
11 the date of issue and may be renewed annually thereafter. The
12 county agricultural commissioner in each county shall perform at
13 least one onsite inspection for all new certified producer's
14 certificate applicants and may perform additional inspections as
15 needed of the property or properties listed on the certified
16 producer's certificate issued in his or her county as deemed
17 appropriate by the county agricultural commissioner to verify
18 production of the commodities being sold at a certified farmers'
19 market or the existence in storage of the producer's actual harvested
20 production, or both, of any product being sold at a certified
21 farmers' market. Where practical or purposeful, verification
22 inspections shall be made when the actual harvest or sale of the
23 commodity in question is occurring. The county agricultural
24 commissioner shall furnish the producer an estimate of expenses
25 for certification or inspection at the time of application or renewal
26 or before any needed additional verification inspection, and may
27 charge a certification and inspection fee reflecting or equal to the
28 actual expenses incurred.

29 (d) Renewal of a certified farmers' market certificate or certified
30 producer's certificate may be denied by either the department or
31 a county agricultural commissioner if a certified farmers' market
32 or a producer is delinquent in the payment of the required state fee
33 or a county certification and inspection fee or administrative civil
34 penalty authorized pursuant to this chapter. The certificate shall
35 be eligible for renewal when all outstanding balances and
36 associated penalties or administrative fines have been paid to the
37 department or the respective county or counties.

38 SEC. 15. Section 47021 of the Food and Agricultural Code is
39 amended to read:

1 47021. (a) Every operator of a certified farmers' market shall
2 remit to the department, within 30 days after the end of each
3 quarter, a fee equal to the number of ~~certified producer certificates~~
4 ~~and other agricultural producers~~ *vendors participating and selling*
5 *goods under the authority and management of the certified farmers'*
6 *market operator* participating on each market day for the entire
7 previous quarter. ~~The fee shall be established by January 1 of each~~
8 ~~year by the department upon the receipt of a budget~~
9 ~~recommendation from the advisory committee.~~ The fee shall not
10 exceed sixty cents (\$0.60) for each certified producer certificate
11 ~~and other agricultural producers participating~~ *be two dollars (\$2)*
12 *for each vendor whose products were presented for sale* on each
13 market day. A certified farmers' market *operator* may directly
14 recover all or part of the fee from the participating ~~certified and~~
15 ~~other agricultural producers~~ *vendors*.

16 (b) ~~Any~~ *An* operator of a certified farmers' market who fails to
17 pay the required fee within 30 days after the end of the quarter in
18 which it is ~~due~~, *due* shall pay to the department a monthly interest
19 charge on the unpaid balance and a late penalty charge, to be
20 determined by the department and not to exceed the maximum
21 amount permitted by law.

22 (c) All fees collected pursuant to this section shall be deposited
23 in the Department of Food and Agriculture Fund. The money
24 generated by the imposition of the fees shall be used, upon
25 appropriation by the Legislature, by the ~~department~~, *department*
26 to cover the reasonable costs to carry out this chapter, including
27 all of the following actions undertaken by the department:

28 (1) The coordination of the *Certified Farmers' Market Advisory*
29 *Committee* or any *ad hoc direct marketing* advisory committee.

30 (2) The evaluation of county enforcement actions and assistance
31 with regard to multiple county enforcement problems.

32 (3) The adoption of regulations to carry out ~~this chapter~~ *the*
33 *provisions of this chapter pertaining to certified farmers' markets*.

34 (4) ~~Hearing appeals~~ *Hearings* from actions taken by county
35 ~~agricultural commissioners~~ to enforce this chapter.

36 (5) ~~The review of rules or procedures established by a certified~~
37 ~~farmers' market and the issuance of advisory opinions and the~~
38 ~~provision of informal hearings pursuant to Section 47004.1 as to~~
39 ~~whether the rules or procedures are consistent with this chapter~~
40 ~~and implementing regulations.~~

1 (5) *The maintenance of a current statewide listing of certified*
2 *farmers' markets locations.*

3 (6) ~~The maintenance of a current statewide listing of certified~~
4 ~~farmers' markets with schedules of operations and locations~~
5 ~~producers who have been certified.~~

6 ~~(7) The maintenance of a current statewide listing of certified~~
7 ~~producers.~~

8 ~~(8) The dissemination to all certified farmers' markets~~
9 ~~information regarding the suspension or revocation of any~~
10 ~~producer's certificate and the imposition of administrative~~
11 ~~penalties.~~

12 ~~(9) Other actions, including the maintenance of special fund~~
13 ~~reserves, that are recommended by the advisory committee and~~
14 ~~approved by the department for the purpose of carrying out this~~
15 ~~chapter.~~

16 ~~(d) This section shall remain in effect only until January 1, 2018,~~
17 ~~and as of that date is repealed, unless a later enacted statute, that~~
18 ~~is enacted before January 1, 2018, deletes or extends that date.~~

19 (7) *The dissemination to all certified farmers' markets*
20 *information regarding the suspension or revocation of any*
21 *producer's certificate and the imposition of administrative*
22 *penalties.*

23 (8) *Other actions, including the maintenance of special fund*
24 *reserves, that are recommended by the Certified Farmers' Market*
25 *Advisory Committee or any ad hoc direct marketing advisory*
26 *committee and approved by the department for purposes of*
27 *carrying out this chapter pertaining to certified farmers' markets.*

28 SEC. 16. No reimbursement is required by this act pursuant to
29 Section 6 of Article XIII B of the California Constitution for certain
30 costs that may be incurred by a local agency or school district
31 because, in that regard, this act creates a new crime or infraction,
32 eliminates a crime or infraction, or changes the penalty for a crime
33 or infraction, within the meaning of Section 17556 of the
34 Government Code, or changes the definition of a crime within the
35 meaning of Section 6 of Article XIII B of the California
36 Constitution.

37 However, if the Commission on State Mandates determines that
38 this act contains other costs mandated by the state, reimbursement
39 to local agencies and school districts for those costs shall be made

- 1 pursuant to Part 7 (commencing with Section 17500) of Division
- 2 4 of Title 2 of the Government Code.

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