

Assembly Bill No. 1990

Passed the Assembly August 25, 2014

Chief Clerk of the Assembly

Passed the Senate August 21, 2014

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2014, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 27643 of the Food and Agricultural Code, and to amend Section 113789 of, to amend the heading of Chapter 12.5 (commencing with Section 114375) of Part 7 of Division 104 of, and to add Sections 113752, 113796, 114376, and 114376.5 to, the Health and Safety Code, relating to food production.

LEGISLATIVE COUNSEL'S DIGEST

AB 1990, Gordon. Food production.

Existing law, the California Retail Food Code, establishes uniform health and sanitation standards for retail food facilities and provides for the enforcement of those standards by local health agencies and by the State Department of Public Health, as specified. The code requires farm stands, as defined, to comply with specified requirements governing food safety and sanitation. A violation of the code is a crime.

This bill would authorize, except under a specified circumstance, a community food producer or a gleaner, as defined, to sell or provide whole uncut fruits or vegetables, or unrefrigerated shell eggs, directly to the public or to a permitted restaurant if the community food producer meets specified requirements, including that the produce is labeled with the name and address of the community food producer and that egg production is limited to 15 dozen eggs per month. The bill would authorize a city or county health enforcement office to require a community food producer or gleaner to register with the city or county and to provide specified information, including, but not limited to, the name, address, and telephone number of the community food producer or gleaner. The bill would also authorize an enforcement officer to enter into and inspect the operations of a community food producer or gleaner in response to a food safety recall or food safety complaint. The bill would authorize an enforcement officer to issue a cease and desist order for violations of these provisions, which would prohibit the community food producer or gleaner from further sales until the operations of the community food producer or gleaner are reinspected and cleared by the enforcement

officer's agency. The bill would also authorize the enforcement officer to recover reasonable costs associated with an inspection from the community food producer or gleaner.

Existing law makes it unlawful for an egg handler, as defined, to hold, store, transport, or display eggs that are packed or graded for human consumption unless the eggs are held, stored, transported, or displayed consistent with specified requirements. Existing law provides that certified farmers' markets, as defined, are not required to comply with that provision.

This bill would instead provide that direct marketing activities, including certified farmers' markets, community food producers, community-supported agriculture, and farm stands, as each of those terms are defined, are not required to comply with the above-described provision relating to an egg handler.

This bill would incorporate additional changes to Section 113789 of the Health and Safety Code, proposed by SB 170 and SB 1235, that would become operative only if this bill and either or both of those bills are chaptered and become effective January 1, 2015, and this bill is chaptered last.

Because the bill would create new crimes and would impose additional duties on local food inspectors, 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.

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

SECTION 1. Section 27643 of the Food and Agricultural Code is amended to read:

27643. (a) It is unlawful for an egg handler, as defined in Section 27510, to hold, store, transport, or display eggs that are

packed or graded for human consumption unless the eggs are held, stored, transported, or displayed consistent with both of the following requirements:

(1) At an average ambient temperature of 45 degrees Fahrenheit, or lower.

(2) At a temperature equal to or less than the temperature requirement for holding, storing, transporting, or displaying eggs established by regulations of the United States Department of Agriculture in Title 7 of Part 56 of the Code of Federal Regulations governing the grading of shell eggs.

(b) Retail outlets that are regulated by this chapter, except for retail outlets located in shell egg packing or distribution facilities, are exempt from subdivision (a).

(c) Direct marketing activities, including certified farmers' markets, as defined in Section 113742 of the Health and Safety Code, community food producers, as defined in Section 113752 of the Health and Safety Code, community-supported agriculture, as defined in Section 47060, and farm stands, as defined in Section 47050, are not required to comply with subdivision (a).

(d) Transport vehicles may exceed the 45 degree Fahrenheit maximum temperature required pursuant to subdivision (a) when eggs are either being loaded into the transport vehicle or unloaded from the transport vehicle. A transport vehicle shall be deemed to be in compliance with subdivision (a) if the transport vehicle is equipped and has in operation when eggs are in the transport vehicle a refrigeration unit delivering air at a temperature of 45 degrees Fahrenheit or lower.

SEC. 2. Section 113752 is added to the Health and Safety Code, to read:

113752. "Community food producer" means a producer of agricultural products on land that is not zoned for agricultural use but is otherwise in compliance with applicable local land use and zoning restrictions, including, but not limited to, restrictions governing personal gardens, community gardens, school gardens, and culinary gardens.

SEC. 3. Section 113789 of the Health and Safety Code is amended to read:

113789. (a) "Food facility" means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for

human consumption at the retail level, including, but not limited to, the following:

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

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

(b) “Food facility” includes permanent and nonpermanent food facilities, including, but not limited to, the following:

(1) Public and private school cafeterias.

(2) Restricted food service facilities.

(3) Licensed health care facilities, except as provided in paragraph (13) of subdivision (c).

(4) Commissaries.

(5) Mobile food facilities.

(6) Mobile support units.

(7) Temporary food facilities.

(8) Vending machines.

(9) Certified farmers’ markets, for purposes of permitting and enforcement pursuant to Section 114370.

(10) Farm stands, for purposes of permitting and enforcement pursuant to Section 114375.

(c) “Food facility” does not include any of the following:

(1) A cooperative arrangement wherein no permanent facilities are used for storing or handling food.

(2) A private home, including a cottage food operation that is registered or has a permit pursuant to Section 114365.

(3) A church, private club, or other nonprofit association that gives or sells food to its members and guests, and not to the general public, at an event that occurs not more than three days in any 90-day period.

(4) A for-profit entity that gives or sells food at an event that occurs not more than three days in a 90-day period for the benefit of a nonprofit association, if the for-profit entity receives no monetary benefit, other than that resulting from recognition from participating in an event.

(5) Premises set aside for wine tasting, as that term is used in Section 23356.1 of the Business and Professions Code and in the regulations adopted pursuant to that section, that comply with Section 118375, regardless of whether there is a charge for the

wine tasting, if no other beverage, except for bottles of wine and prepackaged nonpotentially hazardous beverages, is offered for sale for onsite consumption and no food, except for crackers, is served.

(6) Premises operated by a producer, selling or offering for sale only whole produce grown by the producer or shell eggs, or both, provided the sales are conducted on premises controlled by the producer.

(7) A commercial food processing establishment as defined in Section 111955.

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

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

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

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

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

(13) (A) An intermediate care facility for the developmentally disabled, as defined in subdivisions (e), (h), and (m) of Section 1250, with a capacity of six beds or fewer.

(B) A facility described in subparagraph (A) shall report any foodborne illness or outbreak to the local health department and to the State Department of Public Health within 24 hours of the illness or outbreak.

(14) A community food producer, as defined in Section 113752.

SEC. 3.1. Section 113789 of the Health and Safety Code is amended to read:

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

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

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

(b) “Food facility” includes permanent and nonpermanent food facilities, including, but not limited to, the following:

- (1) Public and private school cafeterias.
- (2) Restricted food service facilities.
- (3) Licensed health care facilities, except as provided in paragraph (13) of subdivision (c).
- (4) Commissaries.
- (5) Mobile food facilities.
- (6) Mobile support units.
- (7) Temporary food facilities.
- (8) Vending machines.
- (9) Certified farmers’ markets, for purposes of permitting and enforcement pursuant to Section 114370.

(10) Farm stands, for purposes of permitting and enforcement pursuant to Section 114375.

(c) “Food facility” does not include any of the following:

- (1) A cooperative arrangement wherein no permanent facilities are used for storing or handling food.
- (2) A private home, including a cottage food operation that is registered or has a permit pursuant to Section 114365.
- (3) A church, private club, or other nonprofit association that gives or sells food to its members and guests, and not to the general public, at an event that occurs not more than three days in any 90-day period.
- (4) A for-profit entity that gives or sells food at an event that occurs not more than three days in a 90-day period for the benefit of a nonprofit association, if the for-profit entity receives no monetary benefit, other than that resulting from recognition from participating in an event.
- (5) Premises set aside for wine tasting, as that term is used in Section 23356.1 of the Business and Professions Code and in the regulations adopted pursuant to that section, that comply with Section 118375, regardless of whether there is a charge for the wine tasting, if no other beverage, except for bottles of wine and prepackaged nonpotentially hazardous beverages, is offered for sale for onsite consumption and no food, except for crackers, is served.

(6) Premises operated by a producer, selling or offering for sale only whole produce grown by the producer or shell eggs, or both, provided the sales are conducted on premises controlled by the producer.

(7) A commercial food processing establishment as defined in Section 111955.

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

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

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

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

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

(13) (A) An intermediate care facility for the developmentally disabled, as defined in subdivisions (e), (h), and (m) of Section 1250, with a capacity of six beds or fewer.

(B) A facility described in subparagraph (A) shall report any foodborne illness or outbreak to the local health department and to the State Department of Public Health within 24 hours of the illness or outbreak.

(14) A community food producer, as defined in Section 113752.

(15) A water-driven grist mill that is on the National Register of Historic Places and that has onsite sales of grain that is milled at the facility.

SEC. 3.2. Section 113789 of the Health and Safety Code is amended to read:

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

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

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

(b) “Food facility” includes permanent and nonpermanent food facilities, including, but not limited to, the following:

- (1) Public and private school cafeterias.
- (2) Restricted food service facilities.
- (3) Licensed health care facilities, except as provided in paragraph (13) of subdivision (c).
- (4) Commissaries.
- (5) Mobile food facilities.
- (6) Mobile support units.
- (7) Temporary food facilities.
- (8) Vending machines.
- (9) Certified farmers’ markets, for purposes of permitting and enforcement pursuant to Section 114370.

(10) Farm stands, for purposes of permitting and enforcement pursuant to Section 114375.

(c) “Food facility” does not include any of the following:

- (1) A cooperative arrangement wherein no permanent facilities are used for storing or handling food.
- (2) A private home, including a cottage food operation that is registered or has a permit pursuant to Section 114365.
- (3) A church, private club, or other nonprofit association that gives or sells food to its members and guests, and not to the general public, at an event that occurs not more than three days in any 90-day period.
- (4) A for-profit entity that gives or sells food at an event that occurs not more than three days in a 90-day period for the benefit of a nonprofit association, if the for-profit entity receives no monetary benefit, other than that resulting from recognition from participating in an event.
- (5) Premises set aside for wine tasting, as that term is used in Section 23356.1 of the Business and Professions Code and in the regulations adopted pursuant to that section, that comply with Section 118375, regardless of whether there is a charge for the wine tasting, if no other beverage, except for bottles of wine and prepackaged nonpotentially hazardous beverages, is offered for sale for onsite consumption and no food, except for crackers, is served.

(6) Premises operated by a producer, selling or offering for sale only whole produce grown by the producer or shell eggs, or both, provided the sales are conducted on premises controlled by the producer.

(7) A commercial food processing establishment as defined in Section 111955.

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

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

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

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

(12) Premises set aside by a beer manufacturer, as defined in Section 25000.2 of the Business and Professions Code, that comply with Section 118375, for the purposes of beer tasting, regardless of whether there is a charge for the beer tasting, if no other beverage, except for beer and prepackaged nonpotentially hazardous beverages, is offered for sale for onsite consumption, and no food, except for crackers, pretzels, or prepackaged food that is not potentially hazardous food is offered for onsite consumption.

(13) (A) An intermediate care facility for the developmentally disabled, as defined in subdivisions (e), (h), and (m) of Section 1250, with a capacity of six beds or fewer.

(B) A facility described in subparagraph (A) shall report any foodborne illness or outbreak to the local health department and to the State Department of Public Health within 24 hours of the illness or outbreak.

(14) A community food producer, as defined in Section 113752.

SEC. 3.3. Section 113789 of the Health and Safety Code is amended to read:

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

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

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

(b) “Food facility” includes permanent and nonpermanent food facilities, including, but not limited to, the following:

- (1) Public and private school cafeterias.
- (2) Restricted food service facilities.
- (3) Licensed health care facilities, except as provided in paragraph (13) of subdivision (c).
- (4) Commissaries.
- (5) Mobile food facilities.
- (6) Mobile support units.
- (7) Temporary food facilities.
- (8) Vending machines.
- (9) Certified farmers’ markets, for purposes of permitting and enforcement pursuant to Section 114370.

(10) Farm stands, for purposes of permitting and enforcement pursuant to Section 114375.

(c) “Food facility” does not include any of the following:

- (1) A cooperative arrangement wherein no permanent facilities are used for storing or handling food.
- (2) A private home, including a cottage food operation that is registered or has a permit pursuant to Section 114365.
- (3) A church, private club, or other nonprofit association that gives or sells food to its members and guests, and not to the general public, at an event that occurs not more than three days in any 90-day period.
- (4) A for-profit entity that gives or sells food at an event that occurs not more than three days in a 90-day period for the benefit of a nonprofit association, if the for-profit entity receives no monetary benefit, other than that resulting from recognition from participating in an event.
- (5) Premises set aside for wine tasting, as that term is used in Section 23356.1 of the Business and Professions Code and in the regulations adopted pursuant to that section, that comply with Section 118375, regardless of whether there is a charge for the wine tasting, if no other beverage, except for bottles of wine and prepackaged nonpotentially hazardous beverages, is offered for sale for onsite consumption and no food, except for crackers, is served.

(6) Premises operated by a producer, selling or offering for sale only whole produce grown by the producer or shell eggs, or both, provided the sales are conducted on premises controlled by the producer.

(7) A commercial food processing establishment as defined in Section 111955.

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

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

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

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

(12) Premises set aside by a beer manufacturer, as defined in Section 25000.2 of the Business and Professions Code, that comply with Section 118375, for the purposes of beer tasting, regardless of whether there is a charge for the beer tasting, if no other beverage, except for beer and prepackaged nonpotentially hazardous beverages, is offered for sale for onsite consumption, and no food, except for crackers, pretzels, or prepackaged food that is not potentially hazardous food is offered for onsite consumption.

(13) (A) An intermediate care facility for the developmentally disabled, as defined in subdivisions (e), (h), and (m) of Section 1250, with a capacity of six beds or fewer.

(B) A facility described in subparagraph (A) shall report any foodborne illness or outbreak to the local health department and to the State Department of Public Health within 24 hours of the illness or outbreak.

(14) A community food producer, as defined in Section 113752.

(15) A water-driven grist mill that is on the National Register of Historic Places and that has onsite sales of grain that is milled at the facility.

SEC. 4. Section 113796 is added to the Health and Safety Code, to read:

113796. "Gleaner" means a person who legally gathers remnants of an agricultural crop or harvests part of, or all of, an agricultural crop made available by the owner of the agricultural crop.

SEC. 5. The heading of Chapter 12.5 (commencing with Section 114375) of Part 7 of Division 104 of the Health and Safety Code is amended to read:

CHAPTER 12.5. FARM STANDS AND COMMUNITY FOOD
PRODUCTION

SEC. 6. Section 114376 is added to the Health and Safety Code, to read:

114376. (a) Unless a local jurisdiction adopts an ordinance regulating community food production or agricultural production that prohibits the activity, a community food producer or gleaner may sell or provide whole uncut fruits or vegetables, or unrefrigerated shell eggs, directly to the public, to a permitted restaurant, or a cottage food operation if the community food producer meets all of the following requirements in addition to any requirements imposed by an ordinance adopted by a local jurisdiction:

(1) Agricultural products shall be grown or produced in compliance with subdivision (b) of Section 113735.

(2) Agricultural products shall be labeled with the name and address of the community food producer.

(3) Conspicuous signage shall be provided in lieu of a product label if the agricultural product is being sold by the community food producer on the site of production. The signage shall include, but not be limited to, the name and address of the community food producer.

(4) Best management practices as described by the Department of Food and Agriculture regarding small farm food safety guidelines on, but not limited to, safe production, processing, and handling of both nonpotentially hazardous and potentially hazardous foods.

(5) Egg production shall be limited to 15 dozen eggs per month.

(b) A local city or county health enforcement office may require a community food producer or gleaner to register with the city or county and to provide specified information, including, but not limited to, the name, address, and telephone number of the community food producer or gleaner.

SEC. 7. Section 114376.5 is added to the Health and Safety Code, to read:

114376.5. (a) An enforcement officer, as defined in Section 113774, may enter into and inspect the operations of a community food producer or gleaner in response to a food safety recall or food safety complaint. The enforcement officer may recover reasonable costs associated with an inspection from the community food producer or gleaner.

(b) (1) An enforcement officer may issue a community food producer or gleaner a cease and desist order for violations of Section 114376, upon which the community food producer or gleaner shall be prohibited from further sales until the operations of the community food producer or gleaner have been reinspected and cleared by the enforcement officer's agency.

(2) At any time within 15 calendar days after issuance of the cease and desist order, the community food producer or gleaner may request in writing a hearing before a hearing officer to show cause why the prohibition of further sales is not warranted. The hearing shall be held within 15 calendar days of the receipt of a request for a hearing. A failure to request a hearing within 15 calendar days shall be deemed a waiver of the right to a hearing.

(c) Violations of Section 114376 shall be subject to the penalties specified in Section 114395.

SEC. 8. (a) Section 3.1 of this bill incorporates amendments to Section 113789 of the Health and Safety Code proposed by both this bill and Senate Bill 170. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2015, (2) each bill amends Section 113789 of the Health and Safety Code, and (3) Senate Bill 1235 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after Senate Bill 170, in which case Sections 3, 3.2, and 3.3 of this bill shall not become operative.

(b) Section 3.2 of this bill incorporates amendments to Section 113789 of the Health and Safety Code proposed by both this bill and Senate Bill 1235. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2015, (2) each bill amends Section 113789 of the Health and Safety Code, (3) Senate Bill 170 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after Senate Bill 1235 in which case Sections 3, 3.1, and 3.3 of this bill shall not become operative.

(c) Section 3.3 of this bill incorporates amendments to Section 113789 of the Health and Safety Code proposed by this bill, Senate Bill 170, and Senate Bill 1235. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2015, (2) all three bills amend Section 113789 of the Health and Safety Code, and (3) this bill is enacted after Senate Bill 170 and Senate Bill 1235, in which case Sections 3, 3.1, and 3.2 of this bill shall not become operative.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

Approved _____, 2014

Governor