

AMENDED IN SENATE JUNE 10, 2014

AMENDED IN ASSEMBLY MAY 5, 2014

AMENDED IN ASSEMBLY APRIL 21, 2014

AMENDED IN ASSEMBLY MARCH 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2539

Introduced by Assembly Member Ting

February 21, 2014

An act to amend ~~Section~~ *Sections 114349 and 114371* of the Health and Safety Code, relating to certified farmers' markets.

LEGISLATIVE COUNSEL'S DIGEST

AB 2539, as amended, Ting. Certified farmers' markets.

Existing law, the California Retail Food Code, establishes uniform health and sanitation standards for retail food facilities and various types of food venues, including food. Among other things, the code requires temporary food facilities that handle nonprepackaged food to protect the food from contamination by taking 3 specified actions, including enclosure of the food facility with 16 mesh per square inch screens and limiting the display and handling of nonprepackaged food. The code also sets forth specified food safety and sanitation requirements for certified farmers' markets governing food preparation, storage, and sampling, among other things. Existing law provides that local health agencies are primarily responsible for enforcing the code, but requires the State Department of Public Health to provide technical assistance, training, standardization, program evaluation, and other services to the local health agencies as necessary to ensure the uniform interpretation

and application of the code, and to adopt regulations to implement and administer the code. A person who violates any provision of the code is guilty of a misdemeanor, except as otherwise provided.

This bill would revise ~~the~~ *certain* requirements imposed on *temporary food facilities and certified farmers' markets*. Among other things, the bill would ~~provide~~ *require temporary food facilities that handle nonprepackaged food to protect the food from contamination by taking any, rather than all, of the 3 actions specified pursuant to existing law and make another change.*

The bill would also revise the food safety and sanitation requirements imposed upon certified farmers' markets. The bill would provide that trimming whole produce for sale is not food preparation for purposes of a provision generally prohibiting food preparation at certified farmers' markets. The bill would require that each food sample be distributed by the producer individually and directly to each consumer. The bill would require that all processed meat, poultry, and fish products offered for sale be transported, stored, displayed, and maintained at a temperature of 41°F or colder, and would require that all meat, poultry, and fish products be stored in a manner that reduces the risk of cross-contamination. The bill would also prohibit smoking within 25 feet of the common commerce area, as described, of a certified farmers' market. ~~By~~

By imposing new enforcement requirements on local health agencies, 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: no. Fiscal committee: yes.
State-mandated local program: yes.

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

- 1 *SECTION 1. Section 114349 of the Health and Safety Code is*
- 2 *amended to read:*

1 114349. (a) Temporary food facilities shall be equipped with
2 overhead protection for all food preparation, food storage, and
3 warewashing areas. Overhead protection shall be made of wood,
4 canvas, or other materials that protect the facility from
5 precipitation, dust, bird and insect droppings, and other
6 contaminants.

7 (b) Temporary food facilities that handle nonprepackaged food
8 ~~must~~ shall also protect food from contamination in ~~an~~ one of the
9 following ways:

10 (1) Enclosure of the food facility with 16 mesh per square inch
11 screens.

12 (2) Limiting display and handling of nonprepackaged food in
13 food compartments.

14 (3) Other *alternative*, effective means approved by the
15 enforcement officer.

16 (c) Notwithstanding Section 113984, this section does not apply
17 to temporary food facilities that are approved for limited food
18 preparation if flying insects, vermin, birds, and other pests are
19 absent due to the location of the facility or other limiting
20 conditions.

21 ~~SECTION 1.~~

22 *SEC. 2.* Section 114371 of the Health and Safety Code is
23 amended to read:

24 114371. Certified farmers' markets shall meet all of the
25 following requirements:

26 (a) All food shall be stored at least six inches off the floor or
27 ground or under any other conditions that are approved. *Tents,*
28 *canopies, or other overhead coverings are not required for fresh*
29 *whole produce sales displays or storage, except when specifically*
30 *required pursuant to this chapter. Flavored nuts and dried fruits*
31 *that are being sold on a bulk or nonprepackaged basis shall be*
32 *displayed and dispensed by the producer from covered containers.*
33 *All processed food products being sold shall be in compliance with*
34 *the applicable provisions of Section 110460, 114365, or 114365.2.*

35 (b) Food preparation is prohibited at certified farmers' markets
36 with the exception of food samples. Trimming whole produce for
37 sale shall not be considered food preparation. Distribution of food
38 samples may occur provided that the following sanitary conditions
39 exist:

1 (1) Samples shall be kept in clean, *nonabsorbent*, and covered
2 containers intended by *the manufacturer* for use with foods. *Any*
3 *cutting or distribution of samples shall only occur under a tent,*
4 *canopy, or other overhead covering.*

5 (2) All food samples shall be distributed by the producer in a
6 sanitary manner. Each sample shall be distributed by the producer
7 individually and directly to each consumer. No consumer
8 self-serving of samples shall be allowed.

9 (3) Clean, disposable plastic gloves shall be used when cutting
10 food samples.

11 (4) Food intended for sampling shall be washed or cleaned in
12 another manner of any soil or other material by potable water in
13 order that it is wholesome and safe for consumption.

14 (5) Notwithstanding Section 114205, potable water shall be
15 available for handwashing and sanitizing as approved by the
16 enforcement agency.

17 (6) Potentially hazardous food samples shall be maintained at
18 or below 45°F and shall be disposed of within two hours after
19 cutting. *A certified farmers' market or an enforcement officer may*
20 *cause immediate removal and disposal, or confiscate and destroy,*
21 *any potentially hazardous food samples found not in compliance*
22 *with this paragraph.*

23 (7) Wastewater shall be disposed of in a facility connected to
24 the public sewer system or in a manner approved by the
25 enforcement agency.

26 (8) Utensils and cutting surfaces shall be smooth, nonabsorbent,
27 and easily cleanable, or single-use articles shall be utilized. If the
28 producer uses only single use articles or maintains an adequate
29 supply of clean replacement articles readily available at the site at
30 the time of use, warewashing facilities shall not be required.

31 (c) Approved toilet and handwashing facilities shall be available
32 within 200 feet travel distance of the premises of the certified
33 farmers' market or as approved by the enforcement officer.

34 (d) No live animals, birds, or fowl shall be kept or allowed, and
35 no individual shall bring a live animal, bird, or fowl, within 20
36 feet of any area where food is stored or held for sale within a
37 certified farmers' market. This subdivision does not apply to guide
38 dogs, signal dogs, or service dogs when used in accordance with
39 the federal Americans with Disabilities Act of 1990 (42 U.S.C.
40 Sec. 12101 et seq.), and as provided in Section 36.104 of Title 28

1 of the Code of Federal Regulations. All guide dogs, signal dogs,
2 and service dogs shall be used and properly identified in accordance
3 with Section 54.1 and subdivision (b) of Section 54.2 of the Civil
4 Code, and Sections 30850, 30851, and 30852 of the Food and
5 Agricultural Code.

6 (e) All garbage and refuse shall be stored and disposed of in a
7 manner approved by the enforcement officer.

8 (f) Smoking of cigarettes, cigars, pipe tobacco, and other
9 nicotine products shall not be permitted within 25 feet of the
10 common commerce area comprised of sales personnel and shopping
11 customers of the certified farmers' market.

12 (g) Notwithstanding Chapter 10 (commencing with Section
13 114294) vendors selling food adjacent to, and under the jurisdiction
14 and management of, a certified farmers' market may store, display,
15 and sell from a table or display fixture apart from the mobile
16 facility in a manner approved by the enforcement agency. *Vendors*
17 *qualifying under this subdivision may also prepare and distribute*
18 *samples of their products in a manner that complies with the*
19 *requirements set forth in subdivision (b).* If none of the vendors
20 selling food adjacent to and under a certified farmers' market's
21 jurisdiction and management sell potentially hazardous foods or
22 engage in food preparation, *other than cutting product for purposes*
23 *of providing samples in accordance with this section,* the certified
24 farmers' market shall not be required to obtain a permit for these
25 vendors ~~in compliance with~~ *pursuant to* Section 114381.1.

26 (h) Temporary food facilities may be operated at a separate
27 community event adjacent to, and in conjunction with, certified
28 farmers' markets. The organization in control of the community
29 event at which one or more of these temporary food facilities
30 operate shall comply with Section 114381.1.

31 (i) All *processed* meat, poultry, and fish products *shall be from*
32 *approved sources as set forth in Section 113734, and shall be*
33 *properly labeled or have documentation present at the point of*
34 *sale that demonstrates compliance with this requirement. All*
35 *processed meat, poultry, and fish products* offered for sale shall
36 be transported, stored, displayed, and maintained at a temperature
37 of 41° F or colder. The temperature holding capabilities of the
38 storage containers used shall be sufficient to maintain safe product
39 temperatures. Storage containers for meat, poultry, and fish
40 products shall *be insulated and* have interior surfaces that are

1 smooth, nonabsorbent, and easily cleanable. All meat, poultry, and
2 fish products shall be stored in a manner that reduces the risk of
3 cross-contamination.

4 ~~SEC. 2.~~

5 *SEC. 3.* No reimbursement is required by this act pursuant to
6 Section 6 of Article XIII B of the California Constitution for certain
7 costs that may be incurred by a local agency or school district
8 because, in that regard, this act creates a new crime or infraction,
9 eliminates a crime or infraction, or changes the penalty for a crime
10 or infraction, within the meaning of Section 17556 of the
11 Government Code, or changes the definition of a crime within the
12 meaning of Section 6 of Article XIII B of the California
13 Constitution.

14 However, if the Commission on State Mandates determines that
15 this act contains other costs mandated by the state, reimbursement
16 to local agencies and school districts for those costs shall be made
17 pursuant to Part 7 (commencing with Section 17500) of Division
18 4 of Title 2 of the Government Code.