

Assembly Bill No. 2539

CHAPTER 907

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

[Approved by Governor September 30, 2014. Filed with
Secretary of State September 30, 2014.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2539, 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. 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 establishes 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 certain requirements imposed on temporary food facilities and certified farmers' markets. Among other things, the bill would 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. Among other things the bill would require that each food sample be distributed in a manner in which each sample is distributed without the possibility of a consumer touching the remaining samples. The bill would require that all harvested, cut, wrapped, or otherwise 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 imposing new enforcement requirements on local health agencies, and by creating a new crime, 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 114349 of the Health and Safety Code is amended to read:

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

(b) Temporary food facilities that handle nonprepackaged food shall also protect food from contamination in one of the following ways:

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

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

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

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

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

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

(a) All food shall be stored at least six inches off the floor or ground or under any other conditions that are approved. Tents, canopies, or other overhead coverings are not required for fresh whole produce sales displays or storage, except when specifically required pursuant to this chapter. Flavored nuts and dried fruits that are being sold on a bulk or nonprepackaged basis shall be displayed and dispensed by the producer from covered containers. All processed food products being sold shall be

in compliance with Section 113735 and the applicable provisions of Section 110460, 114365, or 114365.2.

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

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

(2) All food samples shall be distributed by the producer in a manner that is sanitary and in which each sample is distributed without the possibility of a consumer touching the remaining samples.

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

(4) Fresh, whole produce intended for sampling shall be washed or cleaned in another manner of any soil or other material by potable water in order that it is wholesome and safe for consumption.

(5) Notwithstanding Section 114205, available potable water may be required for handwashing and sanitizing; the need determined and manner approved by the enforcement agency.

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

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

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

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

(d) No live animals, birds, or fowl shall be kept or allowed, and no individual shall bring a live animal, bird, or fowl, within 20 feet of any area where food is stored or held for sale within a certified farmers' market. This subdivision does not apply to guide dogs, signal dogs, or service dogs when used in accordance with the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.), and as provided in Section 36.104 of Title 28 of the Code of Federal Regulations. All guide dogs, signal dogs, and service dogs shall be used and properly identified in accordance with Section 54.1 and subdivision (b) of Section 54.2 of the Civil Code, and Sections 30850, 30851, and 30852 of the Food and Agricultural Code.

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

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

(g) Notwithstanding Chapter 10 (commencing with Section 114294) vendors selling food adjacent to, and under the jurisdiction and management of, a certified farmers' market may store, display, and sell from a table or display fixture apart from the mobile facility in a manner approved by the enforcement agency.

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

(i) All harvested, cut, wrapped, or otherwise processed meat, poultry, and fish products shall be from approved sources as set forth in Section 113735, and shall be properly labeled or have documentation present at the point of sale that demonstrates compliance with this requirement. All harvested, cut, wrapped, or otherwise processed meat, poultry, and fish products offered for sale shall be transported, stored, displayed, and maintained at a temperature of 41° F or colder. The temperature holding capabilities of the storage containers used shall be sufficient to maintain safe product temperatures. Storage containers for meat, poultry, and fish products shall be insulated and have interior surfaces that are smooth, nonabsorbent, and easily cleanable. All meat, poultry, and fish products shall be stored in a manner that reduces the risk of cross-contamination.

SEC. 3. 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.