

AMENDED IN SENATE AUGUST 15, 2016

AMENDED IN SENATE JUNE 15, 2016

AMENDED IN ASSEMBLY MAY 27, 2016

AMENDED IN ASSEMBLY MARCH 18, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2324**

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**Introduced by Assembly Member Eggman**

February 18, 2016

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An act to amend Sections ~~47000.5, 47001, and 47004~~ *47000.5 and 47001* of, and to add Section 47005.4 to, the Food and Agricultural Code, relating to certified farmers' markets.

LEGISLATIVE COUNSEL'S DIGEST

AB 2324, as amended, Eggman. Certified farmers' markets.

Existing law provides for the regulation of certified farmers' markets and authorizes the Secretary of Food and Agriculture to adopt regulations to encourage the direct sale by farmers to the public of all types of California agricultural products. ~~Existing law requires vendors of agricultural products selling within a certified farmers' market to comply with specified requirements. Existing law makes it unlawful to violate the provisions regulating certified farmers' markets, and authorizes the secretary or a county agricultural commissioner, in lieu of prosecution, to levy a civil penalty against a person who violates those provisions. Existing law defines "agricultural product" for purposes of the certified farmers' market provisions.~~

~~This bill would revise the definition of "agricultural product" to include raw sheared wool.~~

This bill would specify the Legislature’s intent that the secretary, in adopting those ~~regulations and regulations clarifying the provisions regulating certified farmers’ markets,~~ *regulations*, endeavor to keep costs incurred by farmers and certified farmers’ market operators at a ~~minimum.~~ *minimum, would authorize the secretary to adopt regulations clarifying the certified farmers’ market provisions, and would revise the term “agricultural product” for purposes of the certified farmers’ market provisions to include raw sheared wool. The bill would also add a provision specifying that nothing in the certified farmers’ market provisions shall be interpreted to preclude a certified farmers’ market operator from creating and keeping additional information or requiring a vendor to provide additional information, as specified.*

~~This bill would additionally require vendors of agricultural products at certified farmers’ markets to keep specified sales records for at least 12 months and would require a vendor to make those records available for inspection by any state or county enforcement agency within 24 hours of delivery of the request or within a reasonable time period, as specified. The bill would also require a certified farmers’ market operator, upon written request by a state or county enforcement agency pursuant to an investigation of an alleged violation of a specified law, to commence to note and make record of the product identity of all fresh fruits and vegetables offered for sale by a vendor, and to furnish the agency with a copy of those notes and records within 3 business days of a subsequent request or within a reasonable time period, as specified. By imposing additional requirements on vendors and operators of certified farmers’ markets, the violation of which would be a 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 no reimbursement is required by this act for a specified reason:~~

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

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

- 1 SECTION 1. Section 47000.5 of the Food and Agricultural
- 2 Code is amended to read:

1 47000.5. The following definitions apply to this chapter, unless  
2 otherwise specified:

3 (a) (1) “Agricultural product” means a fresh or processed  
4 product produced in California, including fruits, nuts, vegetables,  
5 herbs, mushrooms, dairy, shell eggs, honey, pollen, unprocessed  
6 bees wax, propolis, royal jelly, flowers, grains, nursery stock, raw  
7 sheared wool, livestock meats, poultry meats, rabbit meats, and  
8 fish, including shellfish that is produced under controlled  
9 conditions in waters located in California.

10 (2) Products that are characterized as services, arts, crafts,  
11 bakery, candies, soaps, balms, perfumes, cosmetics, pottery,  
12 clothing, fabrics, pastas, compost, fertilizers, candles, ceramics,  
13 foraged foods, and types of wares are not agricultural products for  
14 purposes of this chapter. A product that combines an agricultural  
15 product with a nonagricultural product or service in a manner that  
16 materially increases the purchase price of the product shall  
17 disqualify the product from being sold as an agricultural product  
18 for purposes of this chapter.

19 (b) “Practice of the agricultural arts” means the undertaking of  
20 being predominantly responsible for the decisions and actions  
21 encompassing the various phases of producing an agricultural  
22 product. The practice of the agricultural arts for fruit, floral, nut,  
23 vegetable, and other plant products includes directive or actual  
24 responsibility for all the actions of planting, growing, fertilizing,  
25 irrigating, cultivating, pest control, and harvesting. The practice  
26 of the agricultural arts for agricultural animal products includes  
27 directive or actual responsibility for a substantial time of the  
28 raising, feeding, veterinary care, and product harvesting.

29 (c) “Producer” means a person, partnership, corporation, or an  
30 otherwise legally formed farm or ranch that produces agricultural  
31 products by the practice of the agricultural arts upon land that the  
32 person or entity owns, rents, leases, sharecrops, or otherwise  
33 controls and has the documented legal right to possession. A person  
34 or entity that rents, leases, or otherwise acquires the right to  
35 possession of property essentially only for or limited to the period  
36 of the harvest season of the agricultural products produced on that  
37 property shall not be considered a producer under the provisions  
38 of this chapter.

39 SEC. 2. Section 47001 of the Food and Agricultural Code is  
40 amended to read:

1 47001. (a) The secretary may adopt regulations to encourage  
2 the direct sale by farmers to the public of all types of California  
3 agricultural products. It is the intent of the Legislature that, in  
4 adopting those regulations, the secretary shall endeavor to keep  
5 costs incurred by farmers and certified farmers' market operators  
6 to a minimum, recognizing that any administrative costs imposed  
7 on farmers and certified farmers' market operators are generally  
8 passed on in the form of increased prices to the public, thus  
9 economically benefiting neither the public nor the farmer.

10 (b) In accordance with the intent expressed in subdivision (a),  
11 the secretary may adopt regulations clarifying the provisions of  
12 this chapter, including the adoption of regulations for maintaining  
13 the quality and wholesomeness of the products offered for sale  
14 and promoting and fostering honest selling activities for those  
15 products.

16 (c) The secretary may enter into a cooperative agreement with  
17 a county agricultural commissioner to carry out the provisions of  
18 this chapter, including, but not limited to, administration,  
19 investigations, inspections, registrations, and assistance pertaining  
20 to direct marketing producers and outlets. Compensation under  
21 the cooperative agreement shall be paid from assessments and fees  
22 collected and deposited pursuant to this chapter and shall provide  
23 reimbursement to the county agricultural commissioner for  
24 associated costs exclusive of the costs of certification and minimum  
25 inspections required pursuant to Section 47020.

26 (d) Upon reasonable suspicion of a violation of Section 890, a  
27 certified farmers' market operator may contract with a county  
28 agricultural commissioner for a special onsite field or storage  
29 verification inspection of a direct marketing producer selling in a  
30 certified farmers' market operated and controlled by the operator.  
31 All contracts and contract fees are subject to the discretion of the  
32 county agricultural commissioner in the county where the  
33 verification inspections are being requested.

34 ~~SEC. 3. Section 47004 of the Food and Agricultural Code is~~  
35 ~~amended to read:~~

36 ~~47004. (a) Certified farmers' markets are California~~  
37 ~~agricultural product point-of-sale locations that are registered under~~  
38 ~~the provisions of Section 47020 and operated in accordance with~~  
39 ~~this chapter and regulations adopted pursuant to this chapter.~~

1     ~~(b) The operator of a certified farmers’ market shall establish~~  
2 ~~a clearly defined marketing area where only agricultural products~~  
3 ~~may be sold. Only the producer or the lawful authorized~~  
4 ~~representative of the producer may sell agricultural products within~~  
5 ~~the area defined as a certified farmers’ market. Sales of agricultural~~  
6 ~~products purchased from another individual or entity shall not~~  
7 ~~occur within a certified farmers’ market, and an agricultural product~~  
8 ~~producer or product dealer shall not sell his or her agricultural~~  
9 ~~products to another individual or entity with the understanding or~~  
10 ~~knowledge that the products are intended to be resold in a certified~~  
11 ~~farmers’ market in violation of this chapter or the regulations~~  
12 ~~adopted pursuant to this chapter. Every producer selling within a~~  
13 ~~certified farmers’ market shall comply with Section 47020.~~

14     ~~(c) All vendors of agricultural products selling within a certified~~  
15 ~~farmers’ market shall do all of the following:~~

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

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

1 or poultry products, the identity of the facility where the meat or  
 2 poultry products were cut and wrapped, in accordance with the  
 3 applicable United States Department of Agriculture or State of  
 4 California inspection standards, or, in the case of dairy products,  
 5 the identity of the facility where the dairy products were  
 6 manufactured or processed.

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

10 (4) ~~Keep product identity, product variety, and quantity of sales  
 11 records for all agricultural product sales made to the public from  
 12 each certified farmers' market at which products were sold.  
 13 Records of these product sales shall be maintained by the vendor  
 14 for at least 12 months from the date of sale.~~

15 (5) ~~Keep product identity and relative measured weight or  
 16 volume records of all unprocessed agricultural product delivered  
 17 to a processing facility for purposes of creating processed  
 18 agricultural product intended for sale to the public at certified  
 19 farmers' markets, including the name and address of the processor,  
 20 the dates when the unprocessed product was delivered by the  
 21 vendor to the processor, the dates when the processed product was  
 22 delivered to the vendor by the processor, the character and type  
 23 of processed agricultural product produced by the processor for  
 24 the vendor, and the relative measured weight or volume of the  
 25 processed product delivered back to the vendor. These records  
 26 shall be maintained by the vendor for a minimum of 12 months  
 27 from the date the vendor received the product from the processor.~~

28 (d) ~~Upon a written request that specifically identifies the  
 29 information desired, the records required to be kept pursuant to  
 30 paragraphs (4) and (5) of subdivision (c) shall be made available  
 31 for inspection during normal business hours to any state or county  
 32 enforcement agency charged with enforcement of this chapter  
 33 within 24 hours of the delivery of the request, or within a similar  
 34 period of time that is reasonable for the circumstances prevailing  
 35 at the time.~~

36 (e) ~~The representations required pursuant to subdivision (c)  
 37 shall be subject to the provisions and penalties specified in Section  
 38 890.~~

39 (f) ~~An operator of a certified farmers' market that also operates,  
 40 manages, or otherwise controls a separate sales activity or vending~~

1 event or marketing area in close proximity, adjacent, or contiguous  
2 to the operator's certified farmers' market shall not allow the sale  
3 or distribution of fresh whole fruits, nuts, vegetables, cultivated  
4 mushrooms, herbs, and flowers by vendors selling within those  
5 sales activity or vending event or marketing areas.

6 ~~(g) The operator of a certified farmers' market shall keep an~~  
7 ~~accurate participation record of the individual direct marketing~~  
8 ~~producers whose agricultural products were presented for sale in~~  
9 ~~their market each market day. The operators shall submit to the~~  
10 ~~department a quarterly report of the registration numbers and~~  
11 ~~participation frequency of the direct marketing producers whose~~  
12 ~~agricultural products were presented for sale in the operator's~~  
13 ~~market during that past quarter. The department shall create and~~  
14 ~~maintain online capability for reporting.~~

15 ~~(h) Operators of certified farmers' markets may establish rules~~  
16 ~~and procedures that are more restrictive and stringent than state~~  
17 ~~laws or regulations governing or implementing this chapter, so~~  
18 ~~long as the rules and procedures are not in conflict with state laws~~  
19 ~~or regulations.~~

20 ~~(i) Except for certified farmers' markets operated by government~~  
21 ~~agencies, nonprofit entities and other qualified operators of certified~~  
22 ~~farmers' markets shall be considered private entities and may take~~  
23 ~~actions, adopt rules, and impose requirements they deem necessary~~  
24 ~~for the proper and honest operation of their market, subject to the~~  
25 ~~application of any state or other laws. Government agency~~  
26 ~~operators of certified farmers' markets are subject to applicable~~  
27 ~~state laws, the regulations and laws of the governing agency, and~~  
28 ~~other laws governing the conduct and actions they may take as a~~  
29 ~~governmental entity.~~

30 ~~SEC. 4.~~

31 ~~SEC. 3. Section 47005.4 is added to the Food and Agricultural~~  
32 ~~Code, to read:~~

33 ~~47005.4. (a) Pursuant to an investigation of an alleged violation~~  
34 ~~of Section 890, and upon a request by a state or county enforcement~~  
35 ~~agency specifying the vendor's name, farmers' market location,~~  
36 ~~and farmers' market date, the operator of a certified farmers'~~  
37 ~~market shall commence to note and make record of the product~~  
38 ~~identity of all fresh fruits and vegetables that the vendor offered~~  
39 ~~for sale on the specified farmers' market date. The operator shall~~  
40 ~~furnish to the agency copies of those notes and records within three~~

1 ~~business days of the delivery of a subsequent written request or~~  
2 ~~within a similar period of time that is reasonable for the~~  
3 ~~circumstances prevailing at the time of request.~~

4 ~~(b)~~

5 47005.4. Nothing in this chapter shall be interpreted to preclude  
6 the creation and keeping of additional information that a certified  
7 farmers' market operator may endeavor itself to create and keep,  
8 or to contractually require a vendor to provide additional  
9 information as a condition to selling in the operator's farmers'  
10 market.

11 ~~SEC. 5. No reimbursement is required by this act pursuant to~~  
12 ~~Section 6 of Article XIII B of the California Constitution because~~  
13 ~~the only costs that may be incurred by a local agency or school~~  
14 ~~district will be incurred because this act creates a new crime or~~  
15 ~~infraction, eliminates a crime or infraction, or changes the penalty~~  
16 ~~for a crime or infraction, within the meaning of Section 17556 of~~  
17 ~~the Government Code, or changes the definition of a crime within~~  
18 ~~the meaning of Section 6 of Article XIII B of the California~~  
19 ~~Constitution.~~