



Home	Bill Information	California Law	Publications	Other Resources	My Subscriptions	My Favorites
------	------------------	----------------	--------------	-----------------	------------------	--------------

AB-1144 Cottage food operations. (2021-2022)

SHARE THIS:  

Date Published: 09/17/2021 09:00 PM

Assembly Bill No. 1144

CHAPTER 178

An act to amend Sections 113758 and 114365 of the Health and Safety Code, relating to food.

[Approved by Governor September 16, 2021. Filed with Secretary of State September 16, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1144, Robert Rivas. Cottage food operations.

Existing law, the California Retail Food Code, establishes uniform health and sanitation standards for, and provides for regulation by the State Department of Public Health of, retail food facilities, as defined, and requires local health agencies to enforce these provisions. The code defines "cottage food operation" to mean an enterprise that does not have more than one full-time employee within the registered or permitted area of a private home where the cottage food operator resides and where cottage food products are prepared or packaged for direct, indirect, or direct and indirect sale to consumers, and prohibits the operation from having more than \$50,000 in gross annual sales in the calendar year. Existing law requires a "Class A" cottage food operation to register with the local enforcement agency in accordance with specified provisions, and to renew its registration annually. Existing law requires a "Class B" cottage food operation to obtain a permit from the local enforcement agency, as specified, and authorizes the operation to engage in the indirect sales of cottage food products within the county in which the operation is permitted. Existing law requires a registration or permit to be valid only for the person, location, type of food sales, and distribution activity specified by that registration or permit. A person who violates any provision of the code is guilty of a misdemeanor, except as otherwise provided, and violations of the California Retail Food Code are enforced by local health officers.

This bill would, among other things, increase the maximum gross annual sales amount to \$75,000 for a "Class A" cottage food operation and \$150,000 for a "Class B" cottage food operation and would require that amount to be annually adjusted for inflation based on the California Consumer Price Index. The bill would also require a "Class B" operation to renew its permit annually, and would authorize a "Class B" operation to engage in direct and indirect sales of, and a "Class A" operation to engage in direct sales of, cottage food products throughout the state. By changing the definition of a crime and increasing the duties of local officials, this 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 Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 113758 of the Health and Safety Code is amended to read:

113758. (a) "Cottage food operation" means an enterprise that has no more than the amount in gross annual sales that is specified in this subdivision, is operated by a cottage food operator, and has no more than one full-time equivalent cottage food employee, not including a family member or household member of the cottage food operator, within the registered or permitted area of a private home where the cottage food operator resides and where cottage food products are prepared or packaged for direct, indirect, or direct and indirect sale to consumers pursuant to this part. A "Class A" cottage food operation shall not have more than seventy-five thousand dollars (\$75,000) in verifiable gross annual sales. A "Class B" cottage food operation shall not have more than one hundred fifty thousand dollars (\$150,000) in verifiable gross annual sales. The gross annual sales for a "Class A" or "Class B" cottage food operation shall be annually adjusted for inflation based on the California Consumer Price Index. A cottage food operation includes both of the following:

(1) A "Class A" cottage food operation, which is a cottage food operation that may engage only in direct sales of cottage food products from the cottage food operation or other direct sales venues described in paragraph (4) of subdivision (b).

(2) A "Class B" cottage food operation, which is a cottage food operation that may engage in both direct sales and indirect sales of cottage food products from the cottage food operation, from direct sales venues described in paragraph (4) of subdivision (b), from offsite events, or from a third-party retail food facility described in paragraph (5) of subdivision (b).

(b) For purposes of this section, the following definitions shall apply:

(1) "Cottage food employee" means an individual, paid or volunteer, who is involved in the preparation, packaging, handling, and storage of a cottage food product, or otherwise works for the cottage food operation. An employee does not include an immediate family member or household member of the cottage food operator, nor an individual who delivers a cottage food product.

(2) "Cottage food operator" means an individual who operates a cottage food operation in their private home and is the owner of the cottage food operation.

(3) "Cottage food products" means nonpotentially hazardous foods, including foods that are described in Section 114365.5 and that are prepared for sale in the kitchen of a cottage food operation.

(4) "Direct sale" means a transaction within the state between a cottage food operation and a consumer, in which the consumer purchases the cottage food product directly from the cottage food operation. Direct sales include, but are not limited to, transactions at holiday bazaars or other temporary events, such as bake sales or food swaps, transactions at farm stands, certified farmers' markets, or through community-supported agriculture subscriptions, transactions occurring in person in the cottage food operation, and transactions made via the phone, internet, or any other digital method. A direct sale may be fulfilled in person, via mail delivery, or using any other third-party delivery service.

(5) "Indirect sale" means a transaction within the state between a cottage food operation, a third-party retailer, and a consumer, in which the consumer purchases cottage food products made by the cottage food operation from a third-party retailer that holds a valid permit issued pursuant to Section 114381. Indirect sales include, but are not limited to, sales made to retail shops or to retail food facilities where food may be immediately consumed on the premises. An indirect sale may be fulfilled in person, via mail delivery, or using any other third-party delivery service.

(6) "Private home" means a dwelling, including an apartment or other leased space, where individuals reside.

(7) "Registered or permitted area" means the portion of a private home that contains the private home's kitchen used for the preparation, packaging, storage, or handling of cottage food products and related ingredients or equipment, or both, and attached rooms within the home that are used exclusively for storage.

SEC. 2. Section 114365 of the Health and Safety Code is amended to read:

114365. (a) (1) (A) A "Class A" cottage food operation shall not be open for business unless it is registered with the local enforcement agency and has submitted a completed, self-certification checklist approved by the local enforcement agency. The self-certification checklist shall verify that the cottage food operation conforms to this chapter, including the following requirements:

(i) No cottage food preparation, packaging, or handling may occur in the home kitchen concurrent with any other domestic activities, such as family meal preparation, dishwashing, clothes washing or ironing, kitchen cleaning, or guest entertainment.

(ii) No infants, small children, or pets may be in the home kitchen during the preparation, packaging, or handling of cottage food products.

(iii) Kitchen equipment and utensils used to produce cottage food products shall be clean and maintained in a good state of repair.

(iv) All food contact surfaces, equipment, and utensils used for the preparation, packaging, or handling of cottage food products shall be washed, rinsed, and sanitized before each use.

(v) All food preparation and food and equipment storage areas shall be maintained free of rodents and insects.

(vi) Smoking shall be prohibited in the portion of a private home used for the preparation, packaging, storage, or handling of cottage food products and related ingredients or equipment, or both, while cottage food products are being prepared, packaged, stored, or handled.

(B) (i) The department shall post the requirements described in subparagraph (A) on its internet website.

(ii) The local enforcement agency shall issue a registration number to a "Class A" cottage food operation that meets the requirements of subparagraph (A).

(C) (i) Except as provided in clause (ii), a "Class A" cottage food operation shall not be subject to initial or routine inspections.

(ii) For purposes of determining compliance with this chapter, a representative of a local enforcement agency may access, for inspection purposes, the registered area of a private home where a cottage food operation is located only if the representative has, on the basis of a consumer complaint, reason to suspect that adulterated or otherwise unsafe food has been produced by the cottage food operation or that the cottage food operation has violated this chapter.

(iii) Access under this subparagraph is limited to the registered area and solely for the purpose of enforcing or administering this chapter.

(iv) A local enforcement agency may seek recovery from a "Class A" cottage food operation of an amount that does not exceed the local enforcement agency's reasonable costs of inspecting the "Class A" cottage food operation for compliance with this chapter, if the "Class A" cottage food operation is found to be in violation of this chapter.

(D) A "Class A" cottage food operation shall be authorized to engage in the direct sales of cottage food products throughout the state.

(2) (A) A "Class B" cottage food operation shall not be open for business unless it obtains a permit from the local enforcement agency in a manner approved by the local enforcement agency to engage in the direct and indirect sale of cottage food products.

(B) (i) A "Class B" cottage food operation shall comply with the requirements described in clauses (i) to (vi), inclusive, of subparagraph (A) of paragraph (1) in addition to the other requirements of this chapter.

(ii) The local enforcement agency shall issue a permit number after an initial inspection has determined that the proposed "Class B" cottage food operation and its method of operation conform to this chapter.

(C) (i) Except as provided in clause (ii), a "Class B" cottage food operation shall not be subject to more than one inspection per year by the local enforcement agency.

(ii) For purposes of determining compliance with this chapter, a representative of a local enforcement agency, for inspection purposes, may access the permitted area of a private home where a cottage food operation is located only if the representative has, on the basis of a consumer complaint, reason to suspect that adulterated or otherwise unsafe food has been produced by the cottage food operation, or that the cottage food operation has violated this chapter.

(iii) Access under this subparagraph is limited to the permitted area and solely for the purpose of enforcing or administering this chapter.

(D) A "Class B" cottage food operation shall be authorized to engage in the direct and indirect sales of cottage food products throughout the state.

(b) (1) A registration or permit, once issued, is nontransferable. A registration or permit shall be valid only for the person, location, type of food sales, and distribution activity specified by that registration or permit, and, unless suspended or revoked for cause, for the time period indicated.

(2) The registration or permit or an accurate copy thereof shall be retained by the operator onsite at the time of either direct or indirect cottage food sale.

(3) A registration or permit shall be renewed annually.

(4) A registration or permit from one county shall be sufficient for a cottage food operation to operate throughout the state.

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.