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AB-2786 Certified mobile farmers' markets. (2023-2024)

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Assembly Bill No. 2786

CHAPTER 915

An act to add Article 1.6 (commencing with Section 47007) to Chapter 10.5 of Division 17 of the Food and Agricultural Code, and to amend Sections 114295 and 123279 of, and to add Sections 113743 and 123279.1 to, the Health and Safety Code, relating to certified mobile farmers' markets, and making an appropriation therefor.

[Approved by Governor September 28, 2024. Filed with Secretary of State September 28, 2024.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2786, Bonta. Certified mobile farmers' markets.

Existing law requires a certified farmers' market operator to annually register with the Department of Food and Agriculture by applying for and obtaining a certificate from a county agricultural commissioner that is valid for up to 12 months from the date of issue. Existing law requires a producer, as defined, to register with the department by applying for and obtaining a certificate from the county agricultural commissioner's office in the county in which the producer's land or facility is located before selling at a certified farmers' market. Existing law requires the county agricultural commissioner to issue to the producer a certified producer's certificate upon approval of an application. Existing law makes it unlawful for a person or entity, or employee or agent of that person or entity, to make a statement, representation, or assertion relating to the sale or availability of agricultural products that is false, deceptive, or misleading, as specified, and makes a violation of those provisions a misdemeanor, punishable by imprisonment in the county jail not exceeding 6 months, by a fine not exceeding \$2,500, or both the fine and imprisonment.

This bill would require an operator of a certified mobile farmers' market, as defined, to register annually with the department. The bill would require the operator of a certified mobile farmers' market to sell or distribute agricultural products, as defined, produced by a California producer with a valid certified producer's certificate, obtain from each producer an itemized list of all products, as specified, ensure that all processed agricultural products being sold comply with specified requirements, and ensure all products being represented or offered for sale as organic are clearly labeled or have conspicuous and posted point-of-sale signage identifying the products as organic. The bill would make a person who makes false, deceptive, or misleading representations, relating to the sale or availability of agricultural products, subject to the penalties mentioned above. By expanding the scope of an existing crime, this bill would impose a state-mandated local program.

Existing law requires a dealer, as defined, of any farm product to be licensed. Existing law makes it a misdemeanor for a person to, among other things, attempt to act or to act as a licensee or agent without a license.

This bill would require the operator of a certified mobile farmers' market who is selling agricultural products not of their own production to be licensed as a produce dealer. By expanding the scope of an existing crime, this bill would impose a state-mandated local program.

Existing law requires a registered California direct marketing producer to pay an annual registration fee of up to \$100, as provided, to be deposited in the Department of Food and Agriculture Fund, a continuously appropriated fund, which would be

used by the department for the administration of direct marketing of agricultural products, as specified. Existing law requires the Secretary of Food and Agriculture to file an order to adopt, amend, or repeal regulations relating to the fee with the Office of Administrative Law, and would require the order to be filed with the Secretary of State in accordance with specified provisions.

This bill would require a certified mobile farmers' market to pay an annual registration fee of up to \$200, as provided, to be deposited in the Department of Food and Agriculture Fund, a continuously appropriated fund, and used by the department for the administration of the certified mobile farmers' market registration program, as specified. The bill would require the Secretary of Food and Agriculture to file an order to adopt, amend, or repeal regulations relating to the fee with the Office of Administrative Law, and would require the order to be filed with the Secretary of State in accordance with specified provisions. By requiring the transfer of moneys into a continuously appropriated fund, and by expanding the purposes for which continuously appropriated fund moneys may be used, the bill would make an appropriation.

Existing law, the California Retail Food Code, establishes uniform health and sanitation standards for mobile food facilities and various types of food venues. Existing law authorizes local health agencies to be primarily responsible for enforcing the code, but requires the department to provide technical assistance, training, and standardization. A person who violates any provision of the code is guilty of a misdemeanor, except as otherwise provided.

This bill would require a certified mobile farmers' market to be permitted and operated as a mobile food facility and would impose upon the certified mobile farmers' market the uniform health and sanitation standards for mobile food facilities and general food safety requirements. By imposing new enforcement requirements on local health agencies, the bill would impose a state-mandated local program.

Existing federal law, the WIC Farmers' Market Nutrition Act of 1992, is designed to provide resources to persons who are nutritionally at risk, in the form of fresh, high-quality agricultural products from certified farmers' markets, expand the awareness and use of certified farmers' markets, and increase sales at those markets. Existing state law authorizes the State Department of Public Health to establish the California Special Supplemental Nutrition Food Program for Women, Infants, and Children (WIC Program) to implement the federal program.

This bill would require the department to include criteria in the next state plan submission to the United States Department of Agriculture to authorize certified mobile farmers' markets to participate in the WIC Farmers' Market Nutrition Program. If the state plan is approved, the bill would require the department to establish the criteria for authorization of certified mobile farmers' markets to participate in the program, as specified.

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: yes Fiscal Committee: yes Local Program: yes

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

SECTION 1. It is the intent of the Legislature that certified mobile farmers' markets provide accessibility to foods that are grown, harvested, and produced in California by reaching residents in communities that have limited access to nutritious foods, supermarkets, and grocery stores, including communities in rural, underserved, and tribal areas.

SEC. 2. Article 1.6 (commencing with Section 47007) is added to Chapter 10.5 of Division 17 of the Food and Agricultural Code, to read:

Article 1.6. Certified Mobile Farmers' Markets

47007. (a) A "certified mobile farmers' market" means a mobile food facility, as defined in Section 113831 of the Health and Safety Code, that moves to various California agricultural product point-of-sale locations at predetermined and regular intervals operated by a California producer, a local government agency, or a nonprofit organization that is incorporated in California, upon which agricultural products are sold or distributed at retail directly to communities, and is registered under the provisions of Section 47008 and operated in accordance with this chapter and regulations adopted pursuant to this chapter.

(b) Certified mobile farmers' market operators shall comply with all of the following:

(1) Sell or distribute agricultural products, as defined in paragraph (1) of subdivision (a) of Section 47000.5, produced by a California producer with a valid certified producer's certificate.

(2) Obtain from each producer an itemized list of all products purchased in accordance with subdivision (e) of Section 47002.

(3) Ensure that all processed agricultural products being sold comply with the requirements set forth in Section 113735 of the Health and Safety Code, and the applicable provisions of Section 110460, 114365, or 114365.2 of the Health and Safety Code.

(4) Comply with all labeling and identification requirements for shell eggs and processed foods imposed pursuant to the provisions of the Health and Safety Code, including, but not limited to, the farm's name, physical address, and telephone number.

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

(c) The representations required pursuant to subdivision (b) shall be subject to the provisions and penalties specified in Section 890.

(d) This article shall not be construed to remove the responsibility of a certified mobile farmers' market from obtaining all required permits, registrations, certificates, and licenses, including, but not limited to, a produce dealer license, a mobile food facility permit, a processed food permit, a cannery license, a shellfish handling and marketing certificate, an organic processed product registration, or any other requirement from the State Department of Public Health or local jurisdiction, or from complying with the requirements of the California Retail Food Code (Part 7 (commencing with Section 113700) of Division 104 of the Health and Safety Code) and local jurisdictions, including payment of all applicable fees.

47008. An operator of a certified mobile farmers' market shall register annually with the department as a certified mobile farmers' market, which shall include all of the following:

(a) A statement specifying the location from where the agricultural products are sourced, including a certified farmers' market or a certified producer with a valid certified producers' certificate.

(b) A schedule of point-of-sale locations and expected sales intervals.

(c) All other required permitting related to the mobile food facility.

47009. (a) The fee for, or the fee for amendment to, the annual registration of a certified mobile farmers' market shall be set by regulation enacted by the secretary that is reflective of the actual cost of the processing of registration or amendment to the registration, but in no event shall either fee exceed two hundred dollars (\$200) annually.

(b) Fees collected pursuant to this article shall be deposited in the Department of Food and Agriculture Fund and shall be used by the department for the administration of this article.

(c) The adoption, amendment, or repeal of any fee pursuant to this section shall not be subject to the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. An order to adopt, amend, or repeal regulations concerning the fee pursuant to this section shall be transmitted within 30 days by the secretary to the Office of Administrative Law. The Office of Administrative Law shall file the order promptly with the Secretary of State without further review pursuant to Article 6 (commencing with Section 11349) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code. The order shall do all of the following:

(1) Indicate that the regulations are adopted, amended, or repealed pursuant to this chapter.

(2) State that the order is being transmitted for filing.

(3) Request that the Office of Administrative Law publish a notice of the filing of the order and print an appropriate reference in Title 3 of the California Code of Regulations.

SEC. 3. Section 113743 is added to the Health and Safety Code, to read:

113743. "Certified mobile farmers' market" means a mobile food facility, as defined in Section 113831, that sells agricultural products, as defined in paragraph (1) of subdivision (a) of Section 47000.5 of the Food and Agricultural Code, prepackaged nonpotentially hazardous foods, cottage food products, processed foods, or a combination thereof, and meets all of the requirements set forth in Section 123279.1.

SEC. 4. Section 114295 of the Health and Safety Code is amended to read:

114295. (a) Except as specified in subdivision (b), all mobile food facilities shall operate in conjunction with a commissary, mobile support unit, or other facility approved by the enforcement agency.

(b) (1) This section does not apply to mobile food facilities that operate at community events as defined in Section 113755 and that remain in a fixed position during food preparation and its hours of operation, if potable water and liquid waste disposal facilities are available to mobile food facilities requiring potable water.

(2) This section does not apply to mobile food facilities that are certified mobile farmers' markets, as defined in Section 113743, that only sell whole fruit and vegetables, cottage food products, and prepackaged nonpotentially hazardous foods.

(c) Mobile food facilities shall be stored at or within a commissary or other location approved by the enforcement agency in order to have protection from unsanitary conditions.

(d) Mobile support units shall be operated from and stored at a designated commissary and shall be subject to permitting and plan review.

(e) Notwithstanding any other provisions of this section, a mobile food facility that is engaged in food preparation, other than limited food preparation, as defined in Section 113818, shall not operate in conjunction with a mobile support unit.

SEC. 5. Section 123279 of the Health and Safety Code is amended to read:

123279. (a) It is the intent of the Legislature in adding this section to authorize the establishment of a program designed to implement the federal WIC Farmers' Market Nutrition Act of 1992 (Public Law 102-314), which is designed to accomplish the following:

(1) Provide resources to persons who are nutritionally at risk, in the form of fresh, high-quality agricultural products from certified farmers' markets, including certified mobile farmers' markets.

(2) Expand the awareness and use of certified farmers' markets, including certified mobile farmers' markets, and increase sales at those markets.

(b) The department may establish a program designed to implement the federal WIC Farmers' Market Nutrition Act of 1992.

(c) If the program is established, the department shall develop criteria to permit any producer authorized by the department to participate in the program to sell fresh nutritious foods to recipients in exchange for nutrition coupons.

(d) If the program is established, the department shall authorize local agencies to distribute nutrition coupons to all recipients, as defined by subdivision (c) of Section 123285 of the Health and Safety Code.

(e) If the program is established, the department shall design the nutrition coupon issuance process to ensure that nutrition coupons are bearer-only, nonnegotiable, and nontransferable by the recipient and that they may be redeemed by recipients only to purchase fresh produce and redeemed for reimbursement only by authorized producers.

(f) It is the intent of the Legislature that the program established by this section to implement the federal WIC Farmers' Market Nutrition Act of 1992 (Public Law 102-314) be funded 70 percent by federal funds and 30 percent by private or other funds, as specified by the federal act.

SEC. 6. Section 123279.1 is added to the Health and Safety Code, to read:

123279.1. (a) For the purposes of this article, a "certified mobile farmers' market" has the same meaning as defined in Section 113743, subject to paragraph (2) of subdivision (b) of Section 114295.

(b) A certified mobile farmers' market shall meet all of the following requirements:

(1) The certified mobile farmers' market shall be permitted and operated as a mobile food facility under the California Retail Food Code (Part 7 (commencing with Section 113700) of Division 104) and regulations adopted pursuant to that part.

(2) The mobile food facility shall be registered with the Department of Food and Agriculture as a certified mobile farmers' market and comply with Chapter 10.5 (commencing with Section 47000) of Division 17 of the Food and Agricultural Code and regulations adopted pursuant to that chapter.

(3) An operator of a certified mobile farmers' market selling agricultural products not of their own production shall be licensed as a produce dealer pursuant to Article 1 (commencing with Section 56101) of Chapter 7 of Division 20 of the Food and Agricultural Code.

(4) The certified mobile farmers' market shall sell agricultural products, including fruits, vegetables, and herbs, that are grown by California producers with a valid certified producer's certificate pursuant to Article 3 (commencing with Section 47020) of Chapter 10.5 of Division 17 of the Food and Agricultural Code.

(5) The certified mobile farmers' market shall be operated by either a California producer, a local government agency, or a nonprofit organization that is incorporated in California.

(c) Following the enactment of this section, at the time of the next state plan submission to the Food and Nutrition Service of the United States Department of Agriculture pursuant to Section 248.4 of Title 7 of the Code of Federal Regulations, the State Department of Public Health shall include criteria to authorize certified mobile farmers' markets to participate in the WIC Farmers' Market Nutrition Program.

(d) (1) If the state plan is approved as described in subdivision (c), the department shall establish the criteria for authorization of certified mobile farmers' markets to participate in the WIC Farmers' Market Nutrition Program in California, consistent with this article and federal requirements set forth in Part 248 (commencing with Section 248.1) of Title 7 of the Code of Federal Regulations.

(2) This subdivision shall be implemented only to the extent that any necessary federal approvals are obtained and federal funding is available and not otherwise jeopardized.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because 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.