

SUBJECT: Regulating certain direct sales of food to consumers; limiting permit fees

COMMITTEE: Public Health — favorable, without amendment

VOTE: 10 ayes — Klick, Guerra, Allison, Campos, Collier, Jetton, Oliverson, Price, Smith, Zwiener

0 nays

1 absent — Coleman

SENATE VOTE: On final passage, April 29 — 31-0, on Local and Uncontested Calendar

WITNESSES: No public hearing.

BACKGROUND: Health and Safety Code sec. 437.020 defines "farmers' market" as a designated location used primarily for the distribution and sale directly to consumers of food by farmers or other producers.

Health and Safety Code sec. 437.0065 governs permits for certain farmers and food producers and establishes that applicable permits must be valid for a term of not less than one year, may impose an annual issuance or renewal fee of up to \$100, and must cover sales at all locations within the jurisdiction of the permitting authority.

The statute applies only to a permit issued to:

- a farmer for the sale of food directly to consumers at a farmers' market, a farm stand, or the farmer's farm; and
- an individual who prepares food for sale at a farmers' market.

Interested parties have noted that while local health departments can charge a farmers' market vendor \$100 per year for a permit, there have been reports of some local jurisdictions charging other individuals who sell food at farmers' markets a larger amount due to an unclear reference to "food producer" in statute. Some have called for providing statutory

clarification and providing an avenue for the recovery by vendors of permit fees that exceeded the \$100 cap.

DIGEST:

SB 617 would revise statutory provisions for permits issued to certain farmers and food producers who sold food at a farmers' market, farm stand, or farm.

Under the bill, a permit issued to a farmer or food producer at a farmers' market would have to cover sales at all locations the permit holder was authorized to sell food within the jurisdiction of the permitting authority, including farmers' markets, farm stands, and farms.

Fees. A farmer or food producer who was charged an annual fee in an amount that exceeded \$100 for issuance or renewal, or whose permit did not otherwise comply with the bill's provisions, would be authorized to bring an action against the governmental entity that charged the fee or issued the permit to recover:

- the amount the farmer or food producer was charged in excess of the \$100 annual fee; and
- reasonable and necessary attorney's fees incurred in bringing the action.

The bill would change provisions for individuals other than farmers to make provisions applicable to a permit issued to a food producer for the sale of food directly to consumers at a farmers' market, and would define "food producer" as a person who grew, raised, processed, prepared, manufactured, or otherwise added value to the food product the person was selling. The term would not include a person who only packaged or repackaged a food product.

The bill also would redefine "farmers' market" as a designated location used for a recurring event at which a majority of the vendors were farmers or other food producers who sold food directly to consumers.

The bill would apply only to an original or renewal permit issued on or

after the bill's effective date. A permit issued before the effective date would be covered by the law in effect at the time of the permit's issuance, and the former law would be continued in effect for that purpose.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2021, and would apply only to a cause of action that accrued on or after the effective date.

NOTES:

The House companion bill, HB 1652 by Wilson, was considered by the House Public Health Committee in a public hearing on April 28 and left pending.