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Chapter 415: Big Help for Small Businesses

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Health and Safety

Chapter 415: Big Help for Small Businesses

Matthew Read

Code Sections Affected

Government Code § 51035 (new); Health and Safety Code §§ 113758, 114088, 114365, 114365.2, 114365.5, 114365.6 (new), §§ 109947, 110050, 110460, 111955, 113789, 113851, 114021, 114023, 114390, 114405, 114409 (amended).

AB 1616 (Gatto); 2012 STAT. Ch. 415.

I. INTRODUCTION

Mark Stambler's homemade bread business was on the rise.¹ Each morning he baked fifty to sixty loaves of whole-wheat sourdough—named *pain Pagnol*²—for sale in high-end cheese markets and restaurants around Los Angeles.³ He and an apprentice were in the process of testing new recipes as they considered increasing their production and distribution.⁴

When a reporter for the *Los Angeles Times* wanted to profile his operation, Stambler was hesitant.⁵ He did not have the permits or inspected kitchen that the county health department required⁶ and worried that the story would draw scrutiny on his business and retailers.⁷ Nonetheless, Stambler agreed.⁸ His concerns were realized one month after the story was published, when Los Angeles County ordered him to shutter his operation.⁹ If Stambler wanted to open his business again, he would have only one option: rent space at a commercial

1. Jenn Garbee, *The Artisan: Bread Baker Mark Stambler*, L.A. TIMES (May 31, 2011), <http://articles.latimes.com/print/2011/may/31/food/la-fo-artisan-bread-20110530> (on file with the *McGeorge Law Review*).

2. Named for Marcel Pagnol, writer and director of *LA FEMME DE BOULANGER (THE BAKER'S WIFE)* (Les Films Marcel Pagnol, 1938). *Id.*

3. *Id.*

4. *Id.*

5. Catherine Green, *Kneading the System: Mark Stambler's Cottage Food Crusade*, NEON TOMMY (Dec. 11, 2011, 4:20 PM), <http://www.neontommy.com/news/2011/12/kneading-system-mark-stambler-cottage-food-crusade> (on file with the *McGeorge Law Review*).

6. See L.A., CAL., COUNTY CODE §§ 8.04.160, 11.11.020, 11.12.005 (2013), <http://library.municode.com/index.aspx?clientId=16274> (on file with the *McGeorge Law Review*) (requiring food safety certification and inspection of bakery operations that sell to retail establishments).

7. Green, *supra* note 5.

8. *Id.*

9. *Id.*; *California Bill Would Give Food Producers More Legitimacy*, S. CAL. PUB. RADIO (June 1, 2012), <http://www.scpr.org/programs/airtalk/2012/06/01/26714/stambler-bill/> (on file with the *McGeorge Law Review*).

2013 / Health and Safety

bakery.¹⁰ However, the volume of Stambler’s bakery business made this option cost-prohibitive.¹¹

California newsrooms and blogs reported similar stories.¹² “Microentrepreneurs,”¹³ capitalizing on increased interest in local and artisanal food, clash with health and safety laws enacted in response to rapid agricultural industrialization.¹⁴ Critics argue that a more nuanced approach to food regulation will help foster small food businesses.¹⁵ With that goal in mind, many states have adopted approaches to food regulation that acknowledge the varying levels of potential hazard in different foods.¹⁶

Stambler’s struggles with the Los Angeles County Health Department caught the attention of Assembly Member Mike Gatto.¹⁷ Gatto, in partnership with the Sustainable Economies Law Center, authored Chapter 415 to remove barriers that hold back “cottage food producers” from filling demand for homemade products.¹⁸

10. *California Bill Would Give Food Producers More Legitimacy*, *supra* note 9.

11. See Letter from Caleb Zigas, Exec. Dir., La Cocina San Francisco, to Cal. State Legislature, Mar. 23, 2012 [hereinafter Zigas Letter] (on file with the *McGeorge Law Review*) (supporting AB 1616).

12. See, e.g., Patricia Leigh Barton, *Bay Area Underground Market Draws Authorities’ Attention*, N.Y. TIMES, June 18, 2011, at A18; Patricia Leigh Barton, *Across Country, They Gather Secretly at Night and Then They (Shhh!) Eat*, N.Y. TIMES, Apr. 15, 2011, at A16 (describing the plight of the Forage SF Underground Food Market. The market provided a central location for cottage food producers in the Bay Area to gather and sell homemade products. Food handling violations and source identification issues led to the market’s closure in 2011.).

13. See MICROENTERPRISE DEVELOPMENT IN THE UNITED STATES: AN OVERVIEW, ASS’N FOR ENTER. OPPORTUNITY 1 (2005), available at <http://oregon-microbiz.org/wp-content/uploads/2009/06/fact-sheet-series-1.pdf> (on file with the *McGeorge Law Review*) (“[A] microenterprise is any type of small business that has fewer than five employees and is small enough to benefit from loans of under \$35,000.”).

14. See MARION NESTLE, *SAFE FOOD: THE POLITICS OF FOOD SAFETY* 1–10 (2d ed. 2010) (describing development of food safety laws and influence of agribusiness lobby on production and safety standards).

15. Zigas Letter, *supra* note 11.

16. SUMMARY OF COTTAGE FOOD LAWS IN THE U.S., SUSTAINABLE ECONOMIES LAW CTR., available at <http://www.theselc.org/wp-content/uploads/2012/03/Summary-of-Cottage-Food-Laws-in-the-US-31.pdf> (on file with the *McGeorge Law Review*).

17. *California Bill Would Give Food Producers More Legitimacy*, *supra* note 9.

18. *Id.* Chapter 415 passed the Senate unanimously, the Assembly by a vote of 60 to 16, and Governor Brown approved the new law on September 21, 2012. Senate Floor Vote of AB 1616, Unofficial Ballot, (Aug. 30, 2012), http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_1601-1650/ab_1616_vote_20120830_0501PM_sen_floor.html (on file with the *McGeorge Law Review*); Assembly Floor Vote of AB 1616, Unofficial Ballot (Aug. 30, 2012), http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_1601-1650/ab_1616_vote_2012_0754PM_asm_floor.html (on file with the *McGeorge Law Review*). The Secretary of State chaptered the bill as Chapter 415, Statutes of 2012. CAL. GOV’T CODE § 51035; CAL. HEALTH & SAFETY CODE §§ 109947, 110050, 110460, 111955, 113789, 113851, 114021, 114023, 114390, 114405, 114409 (amended by Chapter 415); *id.* §§ 113758, 114088, 114365, 114365.2, 114365.5, 114365.6 (enacted by Chapter 415).

II. LEGAL BACKGROUND

The California Retail Food Code (CRFC) and provisions of the Sherman Food, Drug and Cosmetic Act regulate food production and sale at the state level.¹⁹ The CRFC is the state codification of the Model Food Code,²⁰ produced by the Food and Drug Administration to achieve uniformity of food safety laws across state lines.²¹ The California Department of Public Health (DPH) assigns enforcement and interpretation of the CRFC to local environmental health departments (LEHDs).²²

The CRFC provides, “food stored or prepared in a private home shall not be used or offered for sale in a food facility”²³ and requires any packaged foods offered for sale to be obtained from “food processing plant[s].”²⁴ These commercial food producers must obtain a Processed Food Registration from the DPH.²⁵ While there are some exemptions,²⁶ the sales provisions apply to foods sold in restaurants, stores, farmers’ markets, and farm stands.²⁷

Regulations differentiate between foods that are “nonhazardous” and “potentially hazardous.”²⁸ Potentially hazardous foods are those that, above certain temperatures, provide a breeding environment for food-borne illness.²⁹ Foods meeting this definition are subject to more stringent handling and production requirements.³⁰

19. HEALTH & SAFETY §§ 113700–114020 (West 2012); *id.* §§ 109875–111915. Federally, certain producers are required to meet labeling requirements for food products sold within the United States. 21 C.F.R. § 101.9(j) (2012) (exempting food retailers making under \$50,000 per year in gross sales from federal labeling requirements).

20. FOOD CODE, U.S. FOOD & DRUG ADMIN. (2009), available at <http://www.fda.gov/Food/FoodSafety/RetailFoodProtection/FoodCode/FoodCode2009/default.htm> (on file with *McGeorge Law Review*).

21. SENATE HEALTH COMMITTEE, COMMITTEE ANALYSIS OF AB 1616, at 5 (June 27, 2012).

22. HEALTH & SAFETY § 113713; SENATE HEALTH COMMITTEE, COMMITTEE ANALYSIS OF AB 1616, at 1 (June 27, 2012).

23. HEALTH & SAFETY § 114021.

24. *Id.* § 114023.

25. *Id.* § 110460; ASSEMBLY HEALTH COMMITTEE, COMMITTEE ANALYSIS OF AB 1616, at 2 (Apr. 10, 2012).

26. *See, e.g.*, HEALTH & SAFETY § 114332 (providing exemptions for temporary food facilities operated by non-profit organizations).

27. *Id.* § 113789.

28. *Id.* § 114332.3.

29. *Id.* § 113871.

30. *See id.* §§ 113996–114020 (outlining temperature guidelines for the storage, preparation, and disposal of potentially hazardous foods). These and other requirements are enforced by LEHDs and conveyed to food handlers around the state through county required food handler certification programs. *See, e.g.*, SAN FRANCISCO RETAIL FOOD SAFETY PROGRAM, S.F. CNTY. DEP’T OF PUB. HEALTH, available at <http://www.sfdph.org/dph/EH/Food/default.asp> (last visited Apr. 20, 2013) (on file with the *McGeorge Law Review*) (listing requirements for retail food operators and employees).

2013 / Health and Safety

The legislature has passed two similar statutory exemptions targeting certain types of businesses from CRFC regulation.³¹ Additionally, the legislature exempted businesses with fewer than three-hundred square feet of display area from multiple food handling and production requirements in 2009, and those with fewer than twenty-five square feet received an even broader pass.³² Apart from handling requirements, the legislature granted breweries and wineries complete exemption from food facility requirements in 2011.³³

III. CHAPTER 415

Chapter 415 defines a “cottage food operation” as an enterprise subject to gross sales caps that produces non-potentially hazardous foods in a home kitchen for either direct or indirect sale.³⁴ The gross sales caps grow incrementally from \$35,000 in 2013 to \$45,000 in 2014.³⁵ In 2015 and beyond, no cottage food operation may make more than \$50,000 in gross annual sales.³⁶ The law also exempts these operations from numerous food processing and storage requirements.³⁷ In addition to exempting them from existing requirements, Chapter 415 creates alternative levels of regulation for different tiers of operation.³⁸

The owners of “Class A” cottage food operations are required to self-certify compliance with health regulations and register with the local health enforcement agency.³⁹ Class A operations may only engage in direct sales (including farmers’ markets and internet sales) to customers.⁴⁰ “Class B” operations may sell products through a third-party, but Chapter 415 requires that the LEHD permit and inspect the premises.⁴¹ Chapter 415 also changes zoning law to require local governments to allow cottage food operations if they abide by other local ordinances.⁴² Lastly, it outlines the process by which local agencies may review and manage applications for necessary permits.⁴³

31. See HEALTH & SAFETY § 113789 (establishing different requirements for mobile food vendors); *id.* § 114427 (exempting the Mercado la Paloma community housing food court in Los Angeles).

32. See *id.* § 113789 (requiring larger facilities to take certain procedural and permit steps as well as comply with sanitary requirements related to toilet facilities; smaller facilities are exempt).

33. *Id.* § 113789(c)(5), (12).

34. *Id.* § 113758(a) (enacted by Chapter 415).

35. *Id.*

36. *Id.*

37. *Id.* § 111955 (amended by Chapter 415).

38. *Id.* § 114365 (enacted by Chapter 415) (distinguishing between “Class A” and “Class B” cottage food operations).

39. *Id.* § 114365(a)(1) (enacted by Chapter 415).

40. *Id.* § 113758(a)(1) (enacted by Chapter 415).

41. *Id.* § 114365(a)(2)(A) (enacted by Chapter 415).

42. CAL. GOV’T CODE § 51035 (enacted by Chapter 415).

43. *Id.*

IV. ANALYSIS

Supporters of Chapter 415 contend that it frees cottage food businesses from onerous and unnecessary regulation,⁴⁴ while opponents of Chapter 415 focus on potential health risks,⁴⁵ costs,⁴⁶ and challenges associated with its implementation.⁴⁷

This section begins by exploring Chapter 415's potential to spur small business growth.⁴⁸ Part B discusses the nature and amount of anticipated costs, with particular focus on how public health concerns affect the cost calculus.⁴⁹

A. *Rise of the Microentrepreneur*

Microentrepreneurs operate small enterprises with few employees, usually with little to no outside investment.⁵⁰ Food microentrepreneurs may be recent immigrants with an authentic recipe⁵¹ or parents wanting to work from home to be near their children.⁵² Also, like Mark Stambler, microentrepreneurs might have

44. *Another Triumph for Texas: Best/Worst States for Business 2012*, CHIEF EXEC. (May 2, 2012), <http://chiefexecutive.net/best-worst-states-for-business-2012> (on file with the *McGeorge Law Review*); see also Kurt Badenhausen, *The Best States for Business*, FORBES (Nov. 22, 2011), <http://www.forbes.com/sites/kurtbadenhausen/2011/11/22/the-best-states-for-business/1/> (on file with the *McGeorge Law Review*) (ranking California thirty-ninth out of fifty states); *California Bill Would Give Food Producers More Legitimacy*, *supra* note 9.

45. *California Bill Would Give Food Producers More Legitimacy*, *supra* note 9 (interview with Assembly Member Curt Hagman); *Mark Stambler Bread Saga: LA County Responds!*, S. CAL. PUB. RADIO (July 16, 2012), <http://www.scpr.org/programs/offramp/2011/07/16/19907/mark-stambler-bread-sage-la-county-responds/> (on file with the *McGeorge Law Review*) (interview with the director of the Los Angeles County Health Department, Angelo Bellomo).

46. *California Bill Would Give Food Producers More Legitimacy*, *supra* note 9 (“[I]t would take significant state costs in the hundreds of thousands of dollars for the Department of Public Health to develop rules and regulations for this and at the time we have a \$16 billion dollar deficit.”)

47. Letter from Justin Malan, Exec. Dir. of the Cal. Alliance of Env'tl. Health Adm'rs to Mike Gatto, Assembly Member, Cal. State Assembly (June 13, 2012) (on file with the *McGeorge Law Review*).

48. *Infra* notes 49–65.

49. See SENATE HEALTH COMMITTEE, COMMITTEE ANALYSIS OF AB 1616, at 3 (June 27, 2012) (outlining the estimated costs associated with Chapter 415).

50. See MICROENTERPRISE DEVELOPMENT IN THE UNITED STATES: AN OVERVIEW, *supra* note 13 (“[A] microenterprise is any type of small business that has fewer than five employees and is small enough to benefit from loans of under \$35,000.”); Scott Shane, *Who Runs Most Business Establishments?*, FORBES (June 6, 2012), <http://www.forbes.com/sites/scottshane/2012/06/06/who-runs-most-business-establishments/> (on file with the *McGeorge Law Review*) (defining microentrepreneurial enterprises as those with fewer than ten employees; such firms make up almost sixty percent of the nation's businesses); Sara Terry, *Loans for the Little Guys*, CHRISTIAN SCI. MONITOR (Mar. 10, 2003), <http://www.csmonitor.com/2003/0310/p15s02-wmpi.html> (on file with the *McGeorge Law Review*) (limiting the definition to fewer than five employees).

51. Stephen Magagnini, *Mother Who Sold Tamales Outside Walmart on Florin Road Faces Deportation*, SACRAMENTO BEE, July 19, 2012, at B1.

52. Letter in Support of AB 1616 from Marcos Vargas, Exec. Dir., Los CAUSE (Mar. 30, 2012) (on file with the *McGeorge Law Review*).

2013 / Health and Safety

an interest in making and preserving food and may want to expand their hobby into a business venture.⁵³

The \$50,000 ultimate gross annual sales cap on cottage food producers was not included merely to avoid federal labeling requirements.⁵⁴ The Sustainable Economies Law Center designed the low sales cap to facilitate entry into the food sector.⁵⁵ Some businesses could opt to remain “cottage” and provide operators with a subsistence income, while others could use the flexibility of a cottage food designation to grow a business in an industry with high start-up and overhead costs.⁵⁶ The high start-up costs of food businesses create significant barriers to entry for people of low and moderate income in part due to difficulties in obtaining loans.⁵⁷ Through Chapter 415’s exemptions to costly CRFC equipment and siting requirements, starting a compliant business will be an attainable goal for more entrepreneurs.⁵⁸

Two of Chapter 415’s provisions demonstrate that the legislation’s regulatory easing was meant to be limited to only the smallest businesses: the low gross-sales cap and the restriction on the number and type of employees.⁵⁹ While other states have limited the gross sales of cottage-food-style programs to as low as \$5,000 per year,⁶⁰ Chapter 415 uses an increasing gross-sales limit that fixes at \$50,000 in 2015.⁶¹ The term “gross sales” helps elucidate exactly how a \$50,000 cap will limit cottage food operations to microentrepreneurs.⁶² Because gross sales represent the entire revenue stream of a business, the potential payout for a cottage food operator would only be the cap less any costs (ingredients, packaging, utilities, and farmer’s market stall fees).⁶³

Chapter 415 also contains employment restrictions that limit a cottage food operation to one employee in addition to the operator.⁶⁴ While this restriction

53. Green, *supra* note 5; *see also* Barton, *Across Country, They Gather Secretly at Night and Then They (Shhh!) Eat*, *supra* note 12 (describing the plight of the Forage SF Underground Food Market. The market provided a central location for cottage food producers in the Bay Area to gather and sell homemade products. Food handling violations and source identification issues led to the market’s closure in 2011.).

54. *See* 21 C.F.R. § 101.9(j) (2012) (exempting food retailers making under \$50,000 per year in gross sales from federal labeling requirements).

55. *See* Interview with Christina Oatfield, Food Policy Dir., Sustainable Economies Law Ctr. in Oakland, Cal. (July 10, 2012) [hereinafter Oatfield Interview] (notes on file with the *McGeorge Law Review*) (noting that Texas’s cottage food law also capped sales at \$50,000, in part to avoid federal labeling requirements).

56. *Id.*

57. *Id.*; Zigas Letter, *supra* note 11.

58. *See* SENATE FLOOR ANALYSIS OF AB 1616, at 3 (Aug. 8, 2012) (listing the facility requirements exempted under Chapter 415).

59. CAL. HEALTH & SAFETY CODE § 113758(a) (enacted by Chapter 415).

60. SUMMARY OF COTTAGE FOOD LAWS IN THE U.S., *supra* note 16.

61. HEALTH & SAFETY § 113758(a) (enacted by Chapter 415).

62. BLACK’S LAW DICTIONARY 455 (9th ed. 2009).

63. *Id.*

64. HEALTH & SAFETY § 113758(a) (enacted by Chapter 415).

McGeorge Law Review / Vol. 44

does not apply to family members,⁶⁵ it confirms that Chapter 415 seeks to develop small, home-based businesses without creating a lucrative loophole around food safety regulations.⁶⁶

B. Implications for Costs

As the legislature again confronted an overall budget deficit, much of the opposition to Chapter 415 focused on potential costs to state and local governments.⁶⁷ There are two ways that the provisions of Chapter 415 could incur costs: the potential for statewide response to food-borne illness and the development of statewide regulations.⁶⁸

1. The Price of Protecting Consumers

When health authorities determine that food products are tainted, they must act quickly to control the spread of food-borne illnesses such as E. coli and salmonella.⁶⁹ To be effective, these efforts need to be comprehensive.⁷⁰ As a result, they can be expensive, not just for the producing company to recall the product, but also for the DPH.⁷¹ The DPH estimated that a response to forty-five cottage-food related outbreaks per year would cost the state \$200,000 annually.⁷²

The experience of states with longstanding cottage food laws⁷³ provides some empirical data about the level of risk posed by relaxed health standards.⁷⁴ The Pennsylvania Department of Agriculture's Home Food Processing Program is forty years old⁷⁵ and is markedly similar to Chapter 415 in foods covered and

65. *Id.*

66. Oatfield Interview, *supra* note 55.

67. *California Bill Would Give Food Producers More Legitimacy*, *supra* note 9; see also Don Thompson, *State Legislative Debate to Revolve Around Fiscal Crisis*, DAVIS ENTER., Jan. 3, 2012, at A1 (describing the centrality of cost and revenue generation to contemporary legislative debates).

68. ASSEMBLY APPROPRIATIONS COMMITTEE, COMMITTEE ANALYSIS OF AB 1616, at 1 (May 3, 2012).

69. See generally Libby Sander, *Source of Deadly E. Coli Is Found*, N.Y. TIMES (Oct. 6, 2008), <http://www.nytimes.com/2006/10/13/us/13spinach.html> (on file with the *McGeorge Law Review*); Libby Sander, *Company Acts in Outbreak from Spinach*, N.Y. TIMES (Sept. 26, 2008), <http://www.nytimes.com/2006/09/29/us/29ecoli.html?fta=y> (on file with the *McGeorge Law Review*); Jesse McKinley, *Officials Narrow Investigation After Finding Bad Spinach*, N.Y. TIMES (Sept. 21, 2006), <http://www.nytimes.com/2006/09/21/us/21spinach.html?fta=y> (on file with the *McGeorge Law Review*) (reporting that the 2006 E. coli outbreak traced back to California spinach growers and that new technology allowed more precise investigations and faster identification of viral strains).

70. Sander, *Source of Deadly E. Coli Is Found*, *supra* note 69; Sander, *Company Acts in Outbreak from Spinach*, *supra* note 69; McKinley, *supra* note 69.

71. *Id.*

72. ASSEMBLY APPROPRIATIONS COMMITTEE, COMMITTEE ANALYSIS OF AB 1616, at 1 (May 3, 2012).

73. SUMMARY OF COTTAGE FOOD LAWS IN THE U.S., *supra* note 16.

74. See, e.g., Letter from Sheri L. Morris, Food Program Dir., Commonwealth of Pa. Dep't of Agric. to Mark Stambler, Baker, June 25, 2012 [hereinafter Morris Letter] (on file with the *McGeorge Law Review*).

75. *Id.*

2013 / Health and Safety

sanitation standards exempted.⁷⁶ The similarities are notable because Pennsylvania officials have reported no instances of tainted products coming from registered cottage-food kitchens.⁷⁷ If California's experience with cottage food businesses is similar to Pennsylvania's, the substantial cost of coordinated statewide health response may be unlikely to occur at all.⁷⁸

2. *The Cost of Inclusion and Training*

Other areas of concern for proponents and skeptics alike were the list of foods able to be made by cottage producers⁷⁹ and the level of training food processors must undergo.⁸⁰ Although a comprehensive list of pre-approved foods is the most administratively efficient solution, advocates recognize that too much rigidity disenfranchises producers of obscure or ethnic foods.⁸¹ Chapter 415's required inclusion of "ethnic variations" should strike a necessary balance between administrative efficiency and cultural equity.⁸² In addition to the preapproved items, DPH retains authority to include new items to the list of eligible foods.⁸³

Before final passage of both houses, the DPH proposed an amendment to remove the requirement that cottage food operators undergo food-handler training.⁸⁴ Instead, Chapter 415 requires the DPH to develop a new "food processor" training curriculum and requires new cottage food operators to undergo the training.⁸⁵ While food-handler training is widely available across the state, the nature and availability of the new food-processor training is unclear.⁸⁶ Unless food-processor courses are widely available throughout the state, these

76. HOME FOOD PROCESSOR APPLICATION PACKET, PA. DEP'T OF AGRIC. (2013), available at http://www.agriculture.state.pa.us/portal/server.pt/gateway/PTARGS_0_2_24476_10297_0_43/agwebsite/Files/Forms/HomeFoodProcessorsApplication.pdf (on file with the *McGeorge Law Review*).

77. Morris Letter, *supra* note 74.

78. See ASSEMBLY APPROPRIATIONS COMMITTEE, COMMITTEE ANALYSIS OF AB 1616, at 1 (May 3, 2012) (estimating costs based on the assumption of forty-five food illness outbreaks per year). *But see* MARION NESTLE, SAFE FOOD: THE POLITICS OF FOOD SAFETY 27–30 (2010) (disputing accuracy of foodborne illness reporting statistics).

79. See Oatfield Interview, *supra* note 55 (dismissing the low-risk food lists circulated by some environmental health organizations as culturally biased toward typically Anglo foods).

80. *Infra* notes 84–87 and accompanying text.

81. Oatfield Interview, *supra* note 55.

82. CAL. HEALTH & SAFETY CODE § 114365.5 (enacted by Chapter 415).

83. *Id.*

84. ASSEMBLY FLOOR ANALYSIS OF AB 1616, at 2 (Aug. 30, 2012).

85. HEALTH & SAFETY § 114365(d) (enacted by Chapter 415).

86. See *id.* (describing conditions for obtaining a permit). *But see, e.g.*, Cottage Food Operator Training Press Release, Cal. Dep't Public Health, available at <http://www.cdph.ca.gov/programs/Documents/fdbCFOTrain.pdf> (on file with the *McGeorge Law Review*) (acknowledging that, because food processor certification was unavailable at the time the law was required to be implemented, cottage food producers may fulfill the statutory requirements by completing the more accessible food handler certification).

McGeorge Law Review / Vol. 44

new programs risk disadvantaging rural cottage food producers in much the same way that commercial kitchen requirements did.⁸⁷

V. CONCLUSION

With Chapter 415, private kitchens are open for business.⁸⁸ By exempting cottage food producers from prohibitions on the sale of homemade food, Chapter 415 allows the state's smallest food producers to operate at a scale that was previously unfeasible.⁸⁹ California's effort is nothing new, as similar laws have been on the books in other states for decades.⁹⁰ However, the experiences of earlier-adopting states should address some of the concerns that critics of the new law raised during the legislative process.⁹¹ By embracing similar foods⁹² and discriminating between businesses (both by size and type),⁹³ Chapter 415 is unlikely to create widespread public-health emergencies.⁹⁴ Allowing microentrepreneurs to open their kitchen doors should mean that local governments are in a position to generate revenue from these enterprises.⁹⁵ In addition, Chapter 415 outlines a system to regulate what was, before its passage, a purely underground economy.⁹⁶

87. See SENATE HEALTH COMMITTEE, COMMITTEE ANALYSIS OF AB 1616, at 6 (June 27, 2012) (discussing disparate access to commercial kitchens for rural food producers).

88. See HEALTH & SAFETY § 114021 (amended by Chapter 415) (allowing the sale of certain non-potentially hazardous foods produced in home kitchens).

89. See *supra* notes 50–53 and accompanying text (discussing the availability and cost of commercial kitchens).

90. SUMMARY OF COTTAGE FOOD LAWS IN THE U.S., *supra* note 16.

91. See *supra* notes 75–78 and accompanying text (discussing a similar cottage food law in Pennsylvania).

92. Compare HEALTH & SAFETY § 114365.5 (enacted by Chapter 415), and HOME FOOD PROCESSOR APPLICATION PACKET, *supra* note 76 (illustrating that both states' lists of nonpotentially hazardous food include primarily baked or dry goods).

93. HEALTH & SAFETY § 113758(a) (enacted by Chapter 415).

94. See *supra* notes 75–78 and accompanying text (looking at a similar Pennsylvania law).

95. See HEALTH & SAFETY § 114365 (a)(1)(C)(iv) (enacted by Chapter 415) (allowing LEHDs to recoup the costs of enforcement).

96. Barton, *Across Country, They Gather Secretly at Night and Then They (Shhh!) Eat*, *supra* note 12; Barton, *Bay Area Underground Market Draws Authorities' Attention*, *supra* note 12.