

**ASSEMBLY BILL**

**No. 688**

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**Introduced by Assembly Member Pan**

February 17, 2011

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An act to add Chapter 3.5 (commencing with Section 110286) to Part 5 of Division 104 of the Health and Safety Code, relating to food and drug safety.

LEGISLATIVE COUNSEL'S DIGEST

AB 688, as introduced, Pan. Food and drugs: sale.

The Sherman Food, Drug, and Cosmetic Law contains various provisions regarding the contents, packaging, labeling, and advertising of food, drugs, and cosmetics. A violation of any of these provisions is punishable as a misdemeanor.

This bill would prohibit a retailer from selling or permitting to be sold after the “use by” date infant formula or baby food that is required to have this date on its packaging pursuant to federal law. It would also prohibit a retailer from selling or permitting to be sold after the expiration date an over-the-counter drug, as defined, that is required to have this expiration date on its packaging pursuant to that federal law. By creating a new crime, this bill would create 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.

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

SECTION 1. Chapter 3.5 (commencing with Section 110286) is added to Part 5 of Division 104 of the Health and Safety Code, to read:

CHAPTER 3.5. EXPIRATION AND USE BY DATES

110286. (a) A retailer shall not sell or permit to be sold after the “use by” date infant formula or baby food that is required to have this date on its packaging pursuant to the federal act and federal regulations adopted pursuant to the federal act, including, but not limited to, Section 107.20 of Title 21 of the Code of Federal Regulations.

(b) A retailer shall not sell or permit to be sold after the expiration date an over the counter drug.

(c) This section shall not be construed to preclude any other action authorized by law.

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

(1) “Baby food” shall mean the processing of canned fresh fruits and vegetables, meats, eggs, fruit juices, cereal, formulated entrees, and desserts and snacks using ingredients that are fresh, preprocessed, or any combination of these, and other food ingredients necessary for the production of infant foods.

(2) “Infant formula” shall have the meaning given in subdivision (z) of Section 321 of Title 21 of the United States Code.

(3) “Over-the-counter drug” means a nonprescription drug regulated by the federal Food and Drug Administration that is required to have an expiration date on its packaging pursuant to the federal act and federal regulations adopted pursuant to the federal act, including, but not limited to, Section 211.137 of Title 21 of the Code of Federal Regulations.

SEC. 2. 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

1 the meaning of Section 6 of Article XIII B of the California  
2 Constitution.

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