

ASSEMBLY BILL

No. 1915

Introduced by Assembly Member Alejo

February 22, 2012

An act to amend Sections 110460, 111940, 111955, 113789, 114021, and 114023 of, and to add Article 5 (commencing with Section 113400) to Chapter 11 of Part 6 of Division 104 of, the Health and Safety Code, relating to food safety.

LEGISLATIVE COUNSEL'S DIGEST

AB 1915, as introduced, Alejo. Food safety: cottage food productions.

Existing law, the Sherman Food, Drug, and Cosmetic Law (Sherman Law), requires the State Department of Public Health to regulate the manufacture, sale, labeling, and advertising activities related to food, drugs, devices, and cosmetics in conformity with the Federal Food, Drug, and Cosmetic Act. The Sherman Law makes it unlawful to engage in the manufacturing, packing, or holding of processed food in this state without a valid registration from the department, or to manufacture, sell, deliver, hold, or offer for sale any food that is misbranded. Food is misbranded if its labeling does not conform to specified federal labeling requirements regarding nutrition, nutrient content or health claims, and food allergens. Violation of this law is a misdemeanor.

The existing California Retail Food Code provides for the regulation of health and sanitation standards for retail food facilities, as defined by the State Department of Public Health. Under existing law, local health agencies are primarily responsible for enforcing the California Retail Food Code. That law also prohibits food stored or prepared in a private home from being used or offered for sale in a food facility. A violation of these provisions is a misdemeanor.

This bill would exempt a cottage food production, as defined, from specified food processing establishment, Sherman Law, and California Retail Food Code requirements. This bill would require a cottage food production to meet specified requirements relating to where cottage foods may be sold and labeling of those foods. This bill would authorize the State Department of Public Health to sample and inspect the cottage foods for adulteration and misbranding, as specified. This bill would prescribe civil penalties for violation of its provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

1 SECTION 1. Section 110460 of the Health and Safety Code
2 is amended to read:

3 110460. No person shall engage in the manufacture, packing,
4 or holding of any processed food in this state unless the person
5 has a valid registration from the department, except those engaged
6 exclusively in the storing, handling, or processing of dried beans.
7 The registration shall be valid for one calendar year from the date
8 of issue, unless it is revoked. The registration shall not be
9 transferable. *This section shall not apply to a cottage food*
10 *production, as defined in Section 113400.*

11 SEC. 2. Section 111940 of the Health and Safety Code is
12 amended to read:

13 111940. (a) If any person violates any provision of Chapter 4
14 (commencing with Section 111950), Chapter 5 (commencing with
15 Section 112150), Chapter 6 (commencing with Section 112350),
16 Chapter 7 (commencing with Section 112500), Chapter 8
17 (commencing with Section 112650), Chapter 10 (commencing
18 with Section 113025), ~~or~~ Article 3 (commencing with Section
19 113250) of Chapter 11 of this part, *Article 5 (commencing with*
20 *Section 113400) of Chapter 11 of this part*, or Chapter 4
21 (commencing with Section 108100) of Part 3, or any regulation
22 adopted pursuant to these provisions, the department may assess
23 a civil penalty against that person as provided by this section.

24 (b) The penalty may be in an amount not to exceed one thousand
25 dollars (\$1,000) per day. Each day that a violation continues shall
26 be considered a separate violation.

1 (c) If, after examination of a possible violation and the facts
2 surrounding that possible violation, the department concludes that
3 a violation has occurred, the department may issue a complaint to
4 the person charged with the violation. The complaint shall allege
5 the acts or failures to act that constitute the basis for the violation
6 and the amount of the penalty. The complaint shall be served by
7 personal service or by certified mail and shall inform the person
8 so served of the right to a hearing.

9 (d) Any person served with a complaint pursuant to subdivision
10 (c) of this section may, within 20 days after service of the
11 complaint, request a hearing by filing with the department a notice
12 of defense. A notice of defense is deemed to have been filed within
13 the 20-day period if it is postmarked within the 20-day period. If
14 a hearing is requested by the person, it shall be conducted within
15 90 days after the receipt by the department of the notice of defense.
16 If no notice of defense is filed within 20 days after service of the
17 complaint, the department shall issue an order setting the penalty
18 as proposed in the complaint unless the department and the person
19 have entered into a settlement agreement, in which case the
20 department shall issue an order setting the penalty in the amount
21 specified in the settlement agreement. When the person has not
22 filed a notice of defense or where the department and the person
23 have entered into a settlement agreement, the order shall not be
24 subject to review by any court or agency.

25 (e) Any hearing required under this section shall be conducted
26 pursuant to the procedures specified in Section 100171, except to
27 the extent they are inconsistent with the specific requirements of
28 this section.

29 (f) Orders setting civil penalties under this section shall become
30 effective and final upon issuance thereof, and payment shall be
31 made within 30 days of issuance. A copy of the order shall be
32 served by personal service or by certified mail upon the person
33 served with the complaint.

34 (g) Within 30 days after service of a copy of a decision issued
35 by the director after a hearing, any person so served may file with
36 the superior court a petition for writ of mandate for review of the
37 decision. Any person who fails to file the petition within this
38 30-day period may not challenge the reasonableness or validity of
39 the decision or order of the director in any judicial proceeding
40 brought to enforce the decision or order or for other remedies.

1 Section 1094.5 of the Code of Civil Procedure shall govern any
 2 proceedings conducted pursuant to this subdivision. In all
 3 proceedings pursuant to this subdivision, the court shall uphold
 4 the decision of the director if the decision is based upon substantial
 5 evidence in the whole record. The filing of a petition for writ of
 6 mandate shall not stay any corrective action required pursuant to
 7 the Miscellaneous Food, Food Facility, and Hazardous Substances
 8 Act, as defined in subdivision (b) of Section 27, or the accrual of
 9 any penalties assessed pursuant to this section. This subdivision
 10 does not prohibit the court from granting any appropriate relief
 11 within its jurisdiction.

12 (h) The remedies under this section are in addition to, and do
 13 not supersede, or limit, any and all other remedies, civil or criminal.

14 SEC. 3. Section 111955 of the Health and Safety Code is
 15 amended to read:

16 111955. “Food processing establishment,” as used in this
 17 chapter, shall mean any room, building or place or portion thereof,
 18 maintained, used or operated for the purpose of commercially
 19 storing, packaging, making, cooking, mixing, processing, bottling,
 20 canning, packing, slaughtering or otherwise preparing or handling
 21 food except restaurants. *“Food processing establishment” shall*
 22 *not include a cottage food production, as defined in Section*
 23 *113400.*

24 SEC. 4. Article 5 (commencing with Section 113400) is added
 25 to Chapter 11 of Part 6 of Division 104 of the Health and Safety
 26 Code, to read:

27
 28 Article 5. Cottage Food Productions

29
 30 113400. Unless otherwise provided, terms used in this article
 31 have the same meanings as those found under the California Retail
 32 Food Code (Part 7 (commencing with Section 113700)).
 33 Additionally, for purposes of this article, the following definitions
 34 apply:

35 (a) “Adulterated” means either of the following:

- 36 (1) Food that bears or contains any poisonous or deleterious
 37 substance that may render the food impure or injurious to health.
- 38 (2) Food that is manufactured, prepared, or stored in a manner
 39 that deviates from a HACCP plan, as defined in Section 113801,
 40 as to pose a discernable increase in risk.

1 (b) “Cottage food” means home produced food that is not
2 potentially hazardous, as defined by Section 113871, and is offered
3 for retail sale. Nonpotentially hazardous foods include, but are not
4 limited to, baked products that do not have cream, custard, or meat
5 fillings; jams; jellies; candy; granola and other dry cereal; popcorn;
6 fruit butter; waffle cones and pizzelles; nut mixes; chocolate
7 covered nonperishables, including nuts and dried fruit; roasted
8 coffee; dry baking mixes; herb blends; dry teas; and honey.

9 (c) “Cottage food production” means the production of food by
10 a person who, in his or her own home, produces nonpotentially
11 hazardous food items to be sold to consumers.

12 (d) “Director” means the Director of the State Department of
13 Public Health.

14 (e) “Potentially hazardous foods” has the same meaning as
15 provided in Section 113871.

16 113401. A cottage food production shall be subject to the
17 following labeling requirements:

18 (a) A cottage food production shall package and label any food
19 it produces or packages for sale in compliance with the labeling
20 requirements of the Federal Food, Drug, and Cosmetic Act (21
21 U.S.C. Sec. 343-1, et seq.).

22 (b) All cottage food product labels shall contain the statement,
23 “This Product is Home Produced.”

24 113402. Cottage foods may only be sold at facilities licensed
25 to sell food or at the site of the cottage food production.

26 113403. A cottage food production shall not be subject to
27 registration or fee requirements of the Sherman Food, Drug, and
28 Cosmetic Law (Part 5 (commencing with Section 109875)).

29 113404. (a) The provisions of this article shall be administered
30 by the State Department of Public Health.

31 (b) For purposes of determining compliance with this article,
32 based on a consumer complaint, the director, or his or her
33 representative, may sample and inspect the cottage food for
34 misbranding and adulteration. Notwithstanding any other law, the
35 authorization to inspect the cottage food is limited to after the
36 cottage food has left the cottage food production site.

37 SEC. 5. Section 113789 of the Health and Safety Code is
38 amended to read:

39 113789. (a) “Food facility” means an operation that stores,
40 prepares, packages, serves, vends, or otherwise provides food for

1 human consumption at the retail level, including, but not limited
2 to, the following:

3 (1) An operation where food is consumed on or off the premises,
4 regardless of whether there is a charge for the food.

5 (2) Any place used in conjunction with the operations described
6 in this subdivision, including, but not limited to, storage facilities
7 for food-related utensils, equipment, and materials.

8 (b) “Food facility” includes permanent and nonpermanent food
9 facilities, including, but not limited to, the following:

10 (1) Public and private school cafeterias.

11 (2) Restricted food service facilities.

12 (3) Licensed health care facilities.

13 (4) Commissaries.

14 (5) Mobile food facilities.

15 (6) Mobile support units.

16 (7) Temporary food facilities.

17 (8) Vending machines.

18 (9) Certified farmers’ markets, for purposes of permitting and
19 enforcement pursuant to Section 114370.

20 (10) Farm stands, for purposes of permitting and enforcement
21 pursuant to Section 114375.

22 (c) “Food facility” does not include any of the following:

23 (1) A cooperative arrangement wherein no permanent facilities
24 are used for storing or handling food.

25 (2) A private home, *including a cottage food production, as*
26 *defined in Section 113400.*

27 (3) A church, private club, or other nonprofit association that
28 gives or sells food to its members and guests, and not to the general
29 public, at an event that occurs not more than three days in any
30 90-day period.

31 (4) A for-profit entity that gives or sells food at an event that
32 occurs not more than three days in a 90-day period for the benefit
33 of a nonprofit association, if the for-profit entity receives no
34 monetary benefit, other than that resulting from recognition from
35 participating in an event.

36 (5) Premises set aside for wine tasting, as that term is used in
37 Section 23356.1 of the Business and Professions Code and in the
38 regulations adopted pursuant to that section, that comply with
39 Section 118375, regardless of whether there is a charge for the
40 wine tasting, if no other beverage, except for bottles of wine and

1 prepackaged nonpotentially hazardous beverages, is offered for
2 sale for onsite consumption and no food, except for crackers, is
3 served.

4 (6) Premises operated by a producer, selling or offering for sale
5 only whole produce grown by the producer, or shell eggs, or both,
6 provided the sales are conducted on premises controlled by the
7 producer.

8 (7) A commercial food processing plant as defined in Section
9 111955.

10 (8) A child day care facility, as defined in Section 1596.750.

11 (9) A community care facility, as defined in Section 1502.

12 (10) A residential care facility for the elderly, as defined in
13 Section 1569.2.

14 (11) A residential care facility for the chronically ill, which has
15 the same meaning as a residential care facility, as defined in Section
16 1568.01.

17 (12) Premises set aside by a beer manufacturer, as defined in
18 Section 25000.2 of the Business and Professions Code, that comply
19 with Section 118375, for the purposes of beer tasting, regardless
20 of whether there is a charge for the beer tasting, if no other
21 beverage, except for beer and prepackaged nonpotentially
22 hazardous beverages, is offered for sale for onsite consumption,
23 and no food, except for crackers or pretzels, is served.

24 SEC. 6. Section 114021 of the Health and Safety Code is
25 amended to read:

26 114021. (a) Food shall be obtained from sources that comply
27 with all applicable laws.

28 (b) Food stored or prepared in a private home shall not be used
29 or offered for sale in a food facility, *unless that food is produced*
30 *by a cottage food production that meets the requirements of Article*
31 *5 (commencing with Section 113400) of Chapter 11 of Part 6.*

32 SEC. 7. Section 114023 of the Health and Safety Code is
33 amended to read:

34 114023. Food in a hermetically sealed container shall be
35 obtained from a food processing plant that is regulated by the food
36 regulatory agency that has jurisdiction over the plant, *or from a*
37 *cottage food production that meets the requirements of Article 5*
38 *(commencing with Section 113400) of Chapter 11 of Part 6.*

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