

AMENDED IN SENATE AUGUST 24, 2012

AMENDED IN ASSEMBLY MAY 15, 2012

AMENDED IN ASSEMBLY APRIL 24, 2012

AMENDED IN ASSEMBLY APRIL 11, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2297

Introduced by Assembly Member Hayashi

February 24, 2012

An act to amend Sections 113789 and 114380 of the Health and Safety Code, relating to food facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 2297, as amended, Hayashi. California Retail Food Code: skilled nursing facilities: intermediate care facilities for the developmentally disabled.

Existing law, the 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 and is primarily enforced by local health agencies. A violation of any provision of the code is a misdemeanor.

This bill would exclude from the definition of a retail food facility an intermediate care facility for the developmentally disabled, as defined, with a capacity of 6 beds or fewer. The bill would require an intermediate care facility for the developmentally disabled to notify the local health department and the State Department of Public Health within 24 hours of a foodborne illness or outbreak. By expanding the

definition of a crime, this bill would impose a state-mandated local program.

Existing law requires a person proposing to build or remodel a food facility to submit plans and specifications to the enforcement agency for review, and to receive plan approval before starting any new construction or remodeling of any facility for use as a retail food facility.

This bill would, notwithstanding these provisions, require that the Office of Statewide Health Planning and Development (OSHPD) maintain its primary jurisdiction over licensed skilled nursing facilities, and would require, when new construction, modernization, or remodeling must be undertaken, that a facility complete a building application and plan check process as required by OSHPD.

This bill would incorporate additional changes in Section 113789 of the Health and Safety Code, proposed by AB 1616, to be operative only if AB 1616 and this bill are both chaptered and become effective January 1, 2013, and this bill is chaptered last.

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:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) Skilled nursing facilities and intermediate care facilities for
4 the developmentally disabled are licensed by the State Department
5 of Public Health and are subject to annual licensing inspections
6 and federal certification surveys by the licensing and certification
7 division of the State Department of Public Health. These long-term
8 care providers pay annual licensing fees to the State Department
9 of Public Health to pay for these inspections, at a cost of
10 approximately \$25,000 per year for a typical 100-bed skilled
11 nursing facility and \$3,300 for a typical intermediate care facility
12 for the developmentally disabled.

13 (b) The State Department of Public Health is responsible for
14 measuring a facility’s compliance with all aspects of patient care,

1 including overseeing the food safety, preparation, storage, and
2 sanitation requirements prescribed by federal and state law.

3 (c) The physical infrastructure and related systems of
4 single-story, wood-frame, and light steel frame construction or
5 major renovations for skilled nursing facilities are governed by
6 the Office of Statewide Health Planning and Development
7 (OSHPD).

8 (d) Any new construction or major alteration of an existing
9 structure must conform to the latest edition of the California
10 Building Standards Code, and providers are required to go through
11 a building application and plan check process under the jurisdiction
12 of OSHPD.

13 (e) In 2006, the California Retail Food Code was changed to
14 include licensed health facilities within the definition of “retail
15 food facility.” This change subjected skilled nursing and
16 intermediate care facilities for the developmentally disabled to an
17 additional level of inspections, enforcement remedies, and permit
18 fees enforced by the county health departments.

19 (f) Sixty-four percent of California nursing facility residents
20 and 99 percent of intermediate care facility for the developmentally
21 disabled residents have their care paid for by Medi-Cal. The
22 additional permit fees, facility staff time spent on the new county
23 inspections, and conflicting building code enforcement have
24 resulted in an increase in facility costs and will increase the cost
25 to the Medi-Cal system, and the General Fund, as Medi-Cal is
26 required to pay its portion of any new state-mandated cost.

27 (g) It is, therefore, the intent of the Legislature to enact
28 legislation to decrease the cost to the state and to eliminate
29 duplicative inspections of these specific types of long-term care
30 facilities for compliance with the California Retail Food Code.

31 SEC. 2. Section 113789 of the Health and Safety Code is
32 amended to read:

33 113789. (a) “Food facility” means an operation that stores,
34 prepares, packages, serves, vends, or otherwise provides food for
35 human consumption at the retail level, including, but not limited
36 to, the following:

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

- 1 (2) Any place used in conjunction with the operations described
- 2 in this subdivision, including, but not limited to, storage facilities
- 3 for food-related utensils, equipment, and materials.
- 4 (b) “Food facility” includes permanent and nonpermanent food
- 5 facilities, including, but not limited to, the following:
- 6 (1) Public and private school cafeterias.
- 7 (2) Restricted food service facilities.
- 8 (3) Licensed health care facilities, *except as provided in*
- 9 *paragraph (13) of subdivision (c).*
- 10 (4) Commissaries.
- 11 (5) Mobile food facilities.
- 12 (6) Mobile support units.
- 13 (7) Temporary food facilities.
- 14 (8) Vending machines.
- 15 (9) Certified farmers’ markets, for purposes of permitting and
- 16 enforcement pursuant to Section 114370.
- 17 (10) Farm stands, for purposes of permitting and enforcement
- 18 pursuant to Section 114375.
- 19 (c) “Food facility” does not include any of the following:
- 20 (1) A cooperative arrangement wherein no permanent facilities
- 21 are used for storing or handling food.
- 22 (2) A private home.
- 23 (3) A church, private club, or other nonprofit association that
- 24 gives or sells food to its members and guests, and not to the general
- 25 public, at an event that occurs not more than three days in any
- 26 90-day period.
- 27 (4) A for-profit entity that gives or sells food at an event that
- 28 occurs not more than three days in a 90-day period for the benefit
- 29 of a nonprofit association, if the for-profit entity receives no
- 30 monetary benefit, other than that resulting from recognition from
- 31 participating in an event.
- 32 (5) Premises set aside for wine tasting, as that term is used in
- 33 Section 23356.1 of the Business and Professions Code and in the
- 34 regulations adopted pursuant to that section, that comply with
- 35 Section 118375, regardless of whether there is a charge for the
- 36 wine tasting, if no other beverage, except for bottles of wine and
- 37 prepackaged nonpotentially hazardous beverages, is offered for
- 38 sale for onsite consumption and no food, except for crackers, is
- 39 served.

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

5 (7) A commercial food processing plant as defined in Section
6 111955.

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

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

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

11 (11) A residential care facility for the chronically ill, which has
12 the same meaning as a residential care facility, as defined in Section
13 1568.01.

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

21 (13) (A) An intermediate care facility for the developmentally
22 disabled, as defined in subdivisions (e), (h), and (m) of Section
23 1250, with a capacity of six beds or fewer.

24 (B) A facility described in subparagraph (A) shall report any
25 foodborne illness or outbreak to the local health department and
26 to the State Department of Public Health within 24 hours of the
27 illness or outbreak.

28 *SEC. 2.5. Section 113789 of the Health and Safety Code is*
29 *amended to read:*

30 113789. (a) “Food facility” means an operation that stores,
31 prepares, packages, serves, vends, or otherwise provides food for
32 human consumption at the retail level, including, but not limited
33 to, the following:

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

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

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

- 1 (1) Public and private school cafeterias.
- 2 (2) Restricted food service facilities.
- 3 (3) Licensed health care facilities, *except as provided in*
- 4 *paragraph (13) of subdivision (c).*
- 5 (4) Commissaries.
- 6 (5) Mobile food facilities.
- 7 (6) Mobile support units.
- 8 (7) Temporary food facilities.
- 9 (8) Vending machines.
- 10 (9) Certified farmers' markets, for purposes of permitting and
- 11 enforcement pursuant to Section 114370.
- 12 (10) Farm stands, for purposes of permitting and enforcement
- 13 pursuant to Section 114375.
- 14 (c) "Food facility" does not include any of the following:
- 15 (1) A cooperative arrangement wherein no permanent facilities
- 16 are used for storing or handling food.
- 17 (2) A private home, *including a cottage food operation that is*
- 18 *registered or has a permit pursuant to Section 114365.*
- 19 (3) A church, private club, or other nonprofit association that
- 20 gives or sells food to its members and guests, and not to the general
- 21 public, at an event that occurs not more than three days in any
- 22 90-day period.
- 23 (4) A for-profit entity that gives or sells food at an event that
- 24 occurs not more than three days in a 90-day period for the benefit
- 25 of a nonprofit association, if the for-profit entity receives no
- 26 monetary benefit, other than that resulting from recognition from
- 27 participating in an event.
- 28 (5) Premises set aside for wine tasting, as that term is used in
- 29 Section 23356.1 of the Business and Professions Code and in the
- 30 regulations adopted pursuant to that section, that comply with
- 31 Section 118375, regardless of whether there is a charge for the
- 32 wine tasting, if no other beverage, except for bottles of wine and
- 33 prepackaged nonpotentially hazardous beverages, is offered for
- 34 sale for onsite consumption and no food, except for crackers, is
- 35 served.
- 36 (6) Premises operated by a producer, selling or offering for sale
- 37 only whole produce grown by the producer, or shell eggs, or both,
- 38 provided the sales are conducted on premises controlled by the
- 39 producer.

1 (7) A commercial food processing plant as defined in Section
2 111955.

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

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

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

7 (11) A residential care facility for the chronically ill, which has
8 the same meaning as a residential care facility, as defined in Section
9 1568.01.

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

17 (13) (A) *An intermediate care facility for the developmentally*
18 *disabled, as defined in subdivisions (e), (h), and (m) of Section*
19 *1250, with a capacity of six beds or fewer.*

20 (B) *A facility described in subparagraph (A) shall report any*
21 *foodborne illness or outbreak to the local health department and*
22 *to the State Department of Public Health within 24 hours of the*
23 *illness or outbreak.*

24 SEC. 3. Section 114380 of the Health and Safety Code is
25 amended to read:

26 114380. (a) A person proposing to build or remodel a food
27 facility shall submit complete, easily readable plans drawn to scale,
28 and specifications to the enforcement agency for review, and shall
29 receive plan approval before starting any new construction or
30 remodeling of any facility for use as a retail food facility.

31 (b) Plans and specifications may also be required by the
32 enforcement agency if the agency determines that they are
33 necessary to assure compliance with the requirements of this part,
34 including, but not limited to, a menu change or change in the
35 facility's method of operation.

36 (c) (1) All new school food facilities or school food facilities
37 that undergo modernization or remodeling shall comply with all
38 structural requirements of this part. Upon submission of plans by
39 a public school authority, the Office of the State Architect and the
40 local enforcement agency shall review and approve all new and

1 remodeled school facilities for compliance with all applicable
2 requirements.

3 (2) Notwithstanding subdivision (a), the Office of Statewide
4 Health Planning and Development (OSHPD) shall maintain its
5 primary jurisdiction over licensed skilled nursing facilities, and
6 when new construction, modernization, or remodeling must be
7 undertaken to repair existing systems or to keep up the course of
8 normal or routine maintenance, the facility shall complete a
9 building application and plan check process as required by OSHPD.
10 Approval of the plans by OSHPD shall be deemed compliance
11 with the plan approval process required by the local county
12 enforcement agency described in this section.

13 (3) Except when a determination is made by the enforcement
14 agency that the nonconforming structural conditions pose a public
15 health hazard, existing public and private school cafeterias and
16 licensed health care facilities shall be deemed to be in compliance
17 with this part pending replacement or renovation.

18 (d) Except when a determination is made by the enforcement
19 agency that the nonconforming structural conditions pose a public
20 health hazard, existing food facilities that were in compliance with
21 the law in effect on June 30, 2007, shall be deemed to be in
22 compliance with the law pending replacement or renovation. If a
23 determination is made by the enforcement agency that a structural
24 condition poses a public health hazard, the food facility shall
25 remedy the deficiency to the satisfaction of the enforcement
26 agency.

27 (e) The plans shall be approved or rejected within 20 working
28 days after receipt by the enforcement agency and the applicant
29 shall be notified of the decision. Unless the plans are approved or
30 rejected within 20 working days, they shall be deemed approved.
31 The building department shall not issue a building permit for a
32 food facility until after it has received plan approval by the
33 enforcement agency. Nothing in this section shall require that plans
34 or specifications be prepared by someone other than the applicant.

35 *SEC. 4. Section 2.5 of this bill incorporates amendments to*
36 *Section 113789 of the Health and Safety Code proposed by both*
37 *this bill and Assembly Bill 1616. It shall only become operative if*
38 *(1) both bills are enacted and become effective on or before*
39 *January 1, 2013, (2) each bill amends Section 113789 of the Health*
40 *and Safety Code, and (3) this bill is enacted after Assembly Bill*

1 1616, in which case Section 2 of this bill shall not become
2 operative.

3 ~~SEC. 4.~~

4 SEC. 5. No reimbursement is required by this act pursuant to
5 Section 6 of Article XIII B of the California Constitution because
6 the only costs that may be incurred by a local agency or school
7 district will be incurred because this act creates a new crime or
8 infraction, eliminates a crime or infraction, or changes the penalty
9 for a crime or infraction, within the meaning of Section 17556 of
10 the Government Code, or changes the definition of a crime within
11 the meaning of Section 6 of Article XIII B of the California
12 Constitution.

O