

AMENDED IN ASSEMBLY AUGUST 19, 2014

AMENDED IN ASSEMBLY JUNE 26, 2014

AMENDED IN ASSEMBLY JUNE 19, 2014

AMENDED IN ASSEMBLY JUNE 11, 2014

AMENDED IN SENATE APRIL 21, 2014

SENATE BILL

No. 1235

Introduced by Senator Knight

February 20, 2014

An act to amend Sections 113789 and 114289 of the Health and Safety Code, relating to food.

LEGISLATIVE COUNSEL'S DIGEST

SB 1235, as amended, Knight. Prepackaged food.

Existing law, the California Retail Food Code, establishes uniform health and sanitation standards for retail food facilities, as defined. Existing law exempts from the definition of food facility a premises set aside by a beer manufacturer for the purposes of beer tasting, if no other beverage except for beer and prepackaged nonpotentially hazardous beverages is offered for sale for onsite consumption and no food, except crackers or pretzels, is served. Existing law defines "potentially hazardous food" and "prepackaged food" for these purposes. Existing law provides that local health agencies are primarily responsible for enforcing these provisions. A person who violates any provision of the code is guilty of a misdemeanor, except as otherwise provided.

This bill would additionally exclude from the definition of food facility a premises set aside by a beer manufacturer for the purposes of beer tasting that offers for onsite consumption prepackaged food that

is not potentially hazardous food. The bill would limit the food display area in these facilities to 25 square feet and would make these facilities subject to specified provisions of the retail food code. By expanding the definition of a crime, this bill would impose a state-mandated local program.

This bill would incorporate additional changes to Section 113789 of the Health and Safety Code, proposed by SB 170 and AB 1990, that would become operative only if this bill and either or both of those bills are chaptered and become effective January 1, 2015, 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. Section 113789 of the Health and Safety Code
- 2 is amended to read:
- 3 113789. (a) “Food facility” means an operation that stores,
- 4 prepares, packages, serves, vends, or otherwise provides food for
- 5 human consumption at the retail level, including, but not limited
- 6 to, the following:
- 7 (1) An operation where food is consumed on or off the premises,
- 8 regardless of whether there is a charge for the food.
- 9 (2) A place used in conjunction with the operations described
- 10 in this subdivision, including, but not limited to, storage facilities
- 11 for food-related utensils, equipment, and materials.
- 12 (b) “Food facility” includes permanent and nonpermanent food
- 13 facilities, including, but not limited to, the following:
- 14 (1) Public and private school cafeterias.
- 15 (2) Restricted food service facilities.
- 16 (3) Licensed health care facilities, except as provided in
- 17 paragraph (13) of subdivision (c).
- 18 (4) Commissaries.
- 19 (5) Mobile food facilities.
- 20 (6) Mobile support units.

- 1 (7) Temporary food facilities.
- 2 (8) Vending machines.
- 3 (9) Certified farmers' markets, for purposes of permitting and
4 enforcement pursuant to Section 114370.
- 5 (10) Farm stands, for purposes of permitting and enforcement
6 pursuant to Section 114375.
- 7 (c) "Food facility" does not include any of the following:
- 8 (1) A cooperative arrangement wherein no permanent facilities
9 are used for storing or handling food.
- 10 (2) A private home, including a cottage food operation that is
11 registered or has a permit pursuant to Section 114365.
- 12 (3) A church, private club, or other nonprofit association that
13 gives or sells food to its members and guests, and not to the general
14 public, at an event that occurs not more than three days in any
15 90-day period.
- 16 (4) A for-profit entity that gives or sells food at an event that
17 occurs not more than three days in a 90-day period for the benefit
18 of a nonprofit association, if the for-profit entity receives no
19 monetary benefit, other than that resulting from recognition from
20 participating in an event.
- 21 (5) Premises set aside for wine tasting, as that term is used in
22 Section 23356.1 of the Business and Professions Code and in the
23 regulations adopted pursuant to that section, that comply with
24 Section 118375, regardless of whether there is a charge for the
25 wine tasting, if no other beverage, except for bottles of wine and
26 prepackaged nonpotentially hazardous beverages, is offered for
27 sale for onsite consumption and no food, except for crackers, is
28 served.
- 29 (6) Premises operated by a producer, selling or offering for sale
30 only whole produce grown by the producer, or shell eggs, or both,
31 provided the sales are conducted on premises controlled by the
32 producer.
- 33 (7) A commercial food processing plant as defined in Section
34 111955.
- 35 (8) A child day care facility, as defined in Section 1596.750.
- 36 (9) A community care facility, as defined in Section 1502.
- 37 (10) A residential care facility for the elderly, as defined in
38 Section 1569.2.

1 (11) A residential care facility for the chronically ill, which has
2 the same meaning as a residential care facility, as defined in Section
3 1568.01.

4 (12) Premises set aside by a beer manufacturer, as defined in
5 Section 25000.2 of the Business and Professions Code, that comply
6 with Section 118375, for the purposes of beer tasting, regardless
7 of whether there is a charge for the beer tasting, if no other
8 beverage, except for beer and prepackaged nonpotentially
9 hazardous beverages, is offered for sale for onsite consumption,
10 and no food, except for crackers, pretzels, or prepackaged food
11 that is not potentially hazardous food is offered for onsite
12 consumption.

13 (13) (A) An intermediate care facility for the developmentally
14 disabled, as defined in subdivisions (e), (h), and (m) of Section
15 1250, with a capacity of six beds or fewer.

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

20 *SEC. 1.1. Section 113789 of the Health and Safety Code is*
21 *amended to read:*

22 113789. (a) “Food facility” means an operation that stores,
23 prepares, packages, serves, vends, or otherwise provides food for
24 human consumption at the retail level, including, but not limited
25 to, the following:

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

28 (2) ~~Any~~—A place used in conjunction with the operations
29 described in this subdivision, including, but not limited to, storage
30 facilities for food-related utensils, equipment, and materials.

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

33 (1) Public and private school cafeterias.

34 (2) Restricted food service facilities.

35 (3) Licensed health care facilities, except as provided in
36 paragraph (13) of subdivision (c).

37 (4) Commissaries.

38 (5) Mobile food facilities.

39 (6) Mobile support units.

40 (7) Temporary food facilities.

1 (8) Vending machines.

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

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

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

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

9 (2) A private home, including a cottage food operation that is
10 registered or has a permit pursuant to Section 114365.

11 (3) A church, private club, or other nonprofit association that
12 gives or sells food to its members and guests, and not to the general
13 public, at an event that occurs not more than three days in any
14 90-day period.

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

20 (5) Premises set aside for wine tasting, as that term is used in
21 Section 23356.1 of the Business and Professions Code and in the
22 regulations adopted pursuant to that section, that comply with
23 Section 118375, regardless of whether there is a charge for the
24 wine tasting, if no other beverage, except for bottles of wine and
25 prepackaged nonpotentially hazardous beverages, is offered for
26 sale for onsite consumption and no food, except for crackers, is
27 served.

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

32 (7) A commercial food processing plant as defined in Section
33 111955.

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

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

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

38 (11) A residential care facility for the chronically ill, which has
39 the same meaning as a residential care facility, as defined in Section
40 1568.01.

1 (12) Premises set aside by a beer manufacturer, as defined in
2 Section 25000.2 of the Business and Professions Code, that comply
3 with Section 118375, for the purposes of beer tasting, regardless
4 of whether there is a charge for the beer tasting, if no other
5 beverage, except for beer and prepackaged nonpotentially
6 hazardous beverages, is offered for sale for onsite consumption,
7 and no food, except for ~~crackers or pretzels, is served.~~ *crackers,*
8 *pretzels, or prepackaged food that is not potentially hazardous*
9 *food is offered for onsite consumption.*

10 (13) (A) An intermediate care facility for the developmentally
11 disabled, as defined in subdivisions (e), (h), and (m) of Section
12 1250, with a capacity of six beds or fewer.

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

17 (14) *A water-driven grist mill that is on the National Register*
18 *of Historic Places and that has onsite sales of grain that is milled*
19 *at the facility.*

20 *SEC. 1.2. Section 113789 of the Health and Safety Code is*
21 *amended to read:*

22 113789. (a) “Food facility” means an operation that stores,
23 prepares, packages, serves, vends, or otherwise provides food for
24 human consumption at the retail level, including, but not limited
25 to, the following:

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

28 (2) ~~Any~~ A place used in conjunction with the operations
29 described in this subdivision, including, but not limited to, storage
30 facilities for food-related utensils, equipment, and materials.

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

33 (1) Public and private school cafeterias.

34 (2) Restricted food service facilities.

35 (3) Licensed health care facilities, except as provided in
36 paragraph (13) of subdivision (c).

37 (4) Commissaries.

38 (5) Mobile food facilities.

39 (6) Mobile support units.

40 (7) Temporary food facilities.

1 (8) Vending machines.

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

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

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

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

9 (2) A private home, including a cottage food operation that is
10 registered or has a permit pursuant to Section 114365.

11 (3) A church, private club, or other nonprofit association that
12 gives or sells food to its members and guests, and not to the general
13 public, at an event that occurs not more than three days in any
14 90-day period.

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

20 (5) Premises set aside for wine tasting, as that term is used in
21 Section 23356.1 of the Business and Professions Code and in the
22 regulations adopted pursuant to that section, that comply with
23 Section 118375, regardless of whether there is a charge for the
24 wine tasting, if no other beverage, except for bottles of wine and
25 prepackaged nonpotentially hazardous beverages, is offered for
26 sale for onsite consumption and no food, except for crackers, is
27 served.

28 (6) Premises operated by a producer, selling or offering for sale
29 only whole produce grown by the ~~producer~~, *producer* or shell eggs,
30 or both, provided the sales are conducted on premises controlled
31 by the producer.

32 (7) A commercial food processing ~~plant~~ *establishment* as defined
33 in Section 111955.

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

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

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

38 (11) A residential care facility for the chronically ill, which has
39 the same meaning as a residential care facility, as defined in Section
40 1568.01.

1 (12) Premises set aside by a beer manufacturer, as defined in
2 Section 25000.2 of the Business and Professions Code, that comply
3 with Section 118375, for the purposes of beer tasting, regardless
4 of whether there is a charge for the beer tasting, if no other
5 beverage, except for beer and prepackaged nonpotentially
6 hazardous beverages, is offered for sale for onsite consumption,
7 and no food, except for ~~crackers or pretzels, is served.~~ *crackers,*
8 *pretzels, or prepackaged food that is not potentially hazardous*
9 *food is offered for onsite consumption.*

10 (13) (A) An intermediate care facility for the developmentally
11 disabled, as defined in subdivisions (e), (h), and (m) of Section
12 1250, with a capacity of six beds or fewer.

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

17 (14) *A community food producer, as defined in Section 113752.*

18 *SEC. 1.3. Section 113789 of the Health and Safety Code is*
19 *amended to read:*

20 113789. (a) “Food facility” means an operation that stores,
21 prepares, packages, serves, vends, or otherwise provides food for
22 human consumption at the retail level, including, but not limited
23 to, the following:

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

26 (2) ~~Any~~ A place used in conjunction with the operations
27 described in this subdivision, including, but not limited to, storage
28 facilities for food-related utensils, equipment, and materials.

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

31 (1) Public and private school cafeterias.

32 (2) Restricted food service facilities.

33 (3) Licensed health care facilities, except as provided in
34 paragraph (13) of subdivision (c).

35 (4) Commissaries.

36 (5) Mobile food facilities.

37 (6) Mobile support units.

38 (7) Temporary food facilities.

39 (8) Vending machines.

- 1 (9) Certified farmers’ markets, for purposes of permitting and
2 enforcement pursuant to Section 114370.
- 3 (10) Farm stands, for purposes of permitting and enforcement
4 pursuant to Section 114375.
- 5 (c) “Food facility” does not include any of the following:
- 6 (1) A cooperative arrangement wherein no permanent facilities
7 are used for storing or handling food.
- 8 (2) A private home, including a cottage food operation that is
9 registered or has a permit pursuant to Section 114365.
- 10 (3) A church, private club, or other nonprofit association that
11 gives or sells food to its members and guests, and not to the general
12 public, at an event that occurs not more than three days in any
13 90-day period.
- 14 (4) A for-profit entity that gives or sells food at an event that
15 occurs not more than three days in a 90-day period for the benefit
16 of a nonprofit association, if the for-profit entity receives no
17 monetary benefit, other than that resulting from recognition from
18 participating in an event.
- 19 (5) Premises set aside for wine tasting, as that term is used in
20 Section 23356.1 of the Business and Professions Code and in the
21 regulations adopted pursuant to that section, that comply with
22 Section 118375, regardless of whether there is a charge for the
23 wine tasting, if no other beverage, except for bottles of wine and
24 prepackaged nonpotentially hazardous beverages, is offered for
25 sale for onsite consumption and no food, except for crackers, is
26 served.
- 27 (6) Premises operated by a producer, selling or offering for sale
28 only whole produce grown by the ~~producer~~, *producer* or shell eggs,
29 or both, provided the sales are conducted on premises controlled
30 by the producer.
- 31 (7) A commercial food processing ~~plant~~ *establishment* as defined
32 in Section 111955.
- 33 (8) A child day care facility, as defined in Section 1596.750.
- 34 (9) A community care facility, as defined in Section 1502.
- 35 (10) A residential care facility for the elderly, as defined in
36 Section 1569.2.
- 37 (11) A residential care facility for the chronically ill, which has
38 the same meaning as a residential care facility, as defined in Section
39 1568.01.

1 (12) Premises set aside by a beer manufacturer, as defined in
2 Section 25000.2 of the Business and Professions Code, that comply
3 with Section 118375, for the purposes of beer tasting, regardless
4 of whether there is a charge for the beer tasting, if no other
5 beverage, except for beer and prepackaged nonpotentially
6 hazardous beverages, is offered for sale for onsite consumption,
7 and no food, except for ~~crackers or pretzels, is served.~~ *crackers,*
8 *pretzels, or prepackaged food that is not potentially hazardous*
9 *food is offered for onsite consumption.*

10 (13) (A) An intermediate care facility for the developmentally
11 disabled, as defined in subdivisions (e), (h), and (m) of Section
12 1250, with a capacity of six beds or fewer.

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

17 (14) *A water-driven grist mill that is on the National Register*
18 *of Historic Places and that has onsite sales of grain that is milled*
19 *at the facility.*

20 (15) *A community food producer, as defined in Section 113752.*

21 SEC. 2. Section 114289 of the Health and Safety Code is
22 amended to read:

23 114289. (a) Notwithstanding any law to the contrary, a
24 permanent food facility that has less than 300 square feet of display
25 area and that sells only prepackaged food that is not potentially
26 hazardous food shall be exempt from the requirements of this part
27 except as set forth in subdivision (c).

28 (b) Notwithstanding any law to the contrary, a premises set
29 aside by a beer manufacturer, as defined in Section 25000.2 of the
30 Business and Professions Code, that complies with Section 118375,
31 for the purposes of beer tasting, regardless of whether there is a
32 charge for the beer tasting, if no other beverage, except for beer
33 and prepackaged nonpotentially hazardous beverages, is offered
34 for sale for onsite consumption, and prepackaged food that is not
35 potentially hazardous food is offered for onsite consumption shall
36 be subject to the requirements set forth in paragraph (1) of
37 subdivision (c). These facilities shall not have a food display area
38 greater than 25 square feet.

39 (c) (1) A facility or premises with a food display area of 25
40 square feet or less shall comply with all of the following:

1 (A) Sections 113980, 114047, 114049, 114390, 114393, 114395,
2 114397, and 114399.

3 (B) Chapter 1 (commencing with Section 113700).

4 (C) Chapter 2 (commencing with Section 113728).

5 (2) A *permanent food facility* ~~or premises~~ with a food display
6 area greater than 25 square feet, but less than 300 square feet, shall
7 comply with all of the following:

8 (A) Sections 113980, 114047, 114049, 114250, 114266, 114381,
9 114387, 114390, 114393, 114395, 114397, 114399, 114405,
10 114407, 114409, 114411, and 114413.

11 (B) Chapter 1 (commencing with Section 113700).

12 (C) Chapter 2 (commencing with Section 113728).

13 *SEC. 3. (a) Section 1.1 of this bill incorporates amendments*
14 *to Section 113789 of the Health and Safety Code proposed by both*
15 *this bill and Senate Bill 170. It shall only become operative if (1)*
16 *both bills are enacted and become effective on or before January*
17 *1, 2015, (2) each bill amends Section 113789 of the Health and*
18 *Safety Code, and (3) Assembly Bill 1990 is not enacted or as*
19 *enacted does not amend that section, and (4) this bill is enacted*
20 *after Senate Bill 170, in which case Sections 1, 1.2, and 1.3 of this*
21 *bill shall not become operative.*

22 *(b) Section 1.2 of this bill incorporates amendments to Section*
23 *113789 of the Health and Safety Code proposed by both this bill*
24 *and Assembly Bill 1990. It shall only become operative if (1) both*
25 *bills are enacted and become effective on or before January 1,*
26 *2015, (2) each bill amends Section 113789 of the Health and Safety*
27 *Code, (3) Senate Bill 170 is not enacted or as enacted does not*
28 *amend that section, and (4) this bill is enacted after Assembly Bill*
29 *1990 in which case Sections 1, 1.1, and 1.3 of this bill shall not*
30 *become operative.*

31 *(c) Section 1.3 of this bill incorporates amendments to Section*
32 *113789 of the Health and Safety Code proposed by this bill, Senate*
33 *Bill 170, and Assembly Bill 1990. It shall only become operative*
34 *if (1) all three bills are enacted and become effective on or before*
35 *January 1, 2015, (2) all three bills amend Section 113789 of the*
36 *Health and Safety Code, and (3) this bill is enacted after Senate*
37 *Bill 170 and Assembly Bill 1990, in which case Sections 1, 1.1,*
38 *and 1.2 of this bill shall not become operative.*

1 ~~SEC. 3.~~

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

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