

AMENDED IN ASSEMBLY APRIL 7, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 226

Introduced by Assembly Member Atkins

**(Coauthors: Assembly Members Chávez, Jones, Maienschein,
Waldron, and Weber)**

(Coauthors: Senators Anderson, Bates, ~~and Block~~ *Block, and Hueso*)

February 3, 2015

An act to amend Sections 113779, 113789, ~~113818~~, 113839, 113984, ~~114053~~, and 114266 of, and to add ~~Section 113780~~ *Sections 113729.5, 113780, and 113794.3* to, and to add Chapter 12.7 (commencing with Section 114378) to Part 7 of Division 104 of, the Health and Safety Code, relating to food safety.

LEGISLATIVE COUNSEL'S DIGEST

AB 226, as amended, Atkins. Retail food safety: fishermen's markets.

Existing law, the California Retail Food Code, establishes uniform health and sanitation standards for, and provides for regulation by the State Department of Public Health of, retail food facilities and various types of food. Among other things, the code requires nonpermanent food facilities that handle nonprepackaged food to protect the food from contamination and limit the display and handling of nonprepackaged food. The code also establishes specified food safety and sanitation requirements for certified farmers' markets governing food preparation, storage, and sampling, among other things. Under existing law, local health agencies are primarily responsible for enforcing the code. A person who violates any provision of the code is guilty of a misdemeanor, except as otherwise provided.

This bill would create a new type of nonpermanent food facility, defined as a “fishermen’s market,” that would be a food facility operated by a licensed commercial fisherman, a registered aquaculturist, or an entity representing California seafood producers, that sells only ~~raw~~ ~~fresh or edible aquatic plants, raw fresh fish, or~~ fresh frozen fish, legally caught by California-licensed commercial fishermen or harvested by California-registered aquaculturists, directly to consumers. The bill would establish and impose food safety and sanitation requirements upon a fishermen’s market. The bill would authorize only a licensed commercial fisherman, a registered aquaculturist, or an entity representing California seafood producers to act as the responsible person and sole ~~permit holder~~ *permitholder* for a fishermen’s market, and would require that fisherman a registered aquaculturist, or entity to submit a permit application and site plan, including specified information, to the ~~local~~ enforcement agency at least ~~two~~ 2 weeks prior to the operation of the fishermen’s market. The bill would define terms for its purposes and make conforming changes.

By imposing new enforcement requirements on local health agencies, and by creating a new crime, the bill would impose 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 with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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 113729.5 is added to the Health and
- 2 Safety Code, to read:
- 3 113729.5. “Acceptable market name” means a name that the
- 4 FDA recognizes as a suitable statement of identity, as described
- 5 in Section 101.3 of Title 21 of the Code of Federal Regulations,
- 6 in the labeling of a species. An acceptable market name fairly

1 *represents the identity of the species to United States consumers*
2 *because it is not confusingly similar to the name of another species*
3 *and because it is not otherwise misleading. An acceptable market*
4 *name may be any of the following:*

5 (a) *A common or usual name established by either a history of*
6 *common usage in the United States or by regulation.*

7 (b) *The common name.*

8 (c) *A name specifically coined as the market name for a species.*
9 *For example, “basa” is the market name coined for Pangasius*
10 *bocourti.*

11 **SECTION 1.**

12 *SEC. 2.* Section 113779 of the Health and Safety Code is
13 amended to read:

14 113779. (a) “Fish” means fresh or saltwater finfish,
15 crustaceans, and other forms of aquatic life including edible aquatic
16 plants, life, other than birds or mammals, and all molluscan
17 shellfish, if intended for human consumption. “Fish” also includes
18 alligator, frog, aquatic turtle, jellyfish, sea cucumber, and sea
19 urchin, and the roe of these animals.

20 (b) “Fish” includes a product derived in whole or in part from
21 fish, including fish that have been processed in any manner.

22 ~~SEC. 2.~~

23 *SEC. 3.* Section 113780 is added to the Health and Safety Code,
24 to read:

25 113780. “Fishermen’s Market” means a ~~food facility~~ *location*
26 *that is operated by a licensed commercial fisherman licensed by*
27 *the Department of Fish and Wildlife or an entity representing*
28 *California seafood producers, that sells only raw fresh edible*
29 *aquatic plants, raw fresh fish, or fresh frozen fish, caught by*
30 ~~California-licensed~~ *commercial fishermen licensed by the*
31 *Department of Fish and Wildlife or harvested by*
32 *California-registered aquaculturists, directly to consumers.*

33 ~~SEC. 3.~~

34 *SEC. 4.* Section 113789 of the Health and Safety Code is
35 amended to read:

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

- 1 (1) An operation where food is consumed on or off the premises,
2 regardless of whether there is a charge for the food.
- 3 (2) A place used in conjunction with the operations described
4 in this subdivision, including, but not limited to, storage facilities
5 for food-related utensils, equipment, and materials.
- 6 (b) “Food facility” includes permanent and nonpermanent food
7 facilities, including, but not limited to, the following:
- 8 (1) Public and private school cafeterias.
9 (2) Restricted food service facilities.
10 (3) Licensed health care facilities, except as provided in
11 paragraph (13) of subdivision (c).
12 (4) Commissaries.
13 (5) Mobile food facilities.
14 (6) Mobile support units.
15 (7) Temporary food facilities.
16 (8) Vending machines.
17 (9) Certified farmers’ markets, for purposes of permitting and
18 enforcement pursuant to Section 114370.
19 (10) Farm stands, for purposes of permitting and enforcement
20 pursuant to Section 114375.
21 (11) Fishermen’s ~~market~~ *markets*.
- 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 operation that is
26 registered or has a permit pursuant to Section 114365.
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 establishment as defined in
9 Section 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, pretzels, or prepackaged food
24 that is not potentially hazardous food is offered for onsite
25 consumption.

26 (13) (A) An intermediate care facility for the developmentally
27 disabled, as defined in subdivisions (e), (h), and (m) of Section
28 1250, with a capacity of six beds or fewer.

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

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

34 ~~(d) "Fresh frozen" means that the food was quickly frozen while~~
35 ~~still fresh, including immediately after the food had been harvested~~
36 ~~or fish had been caught.~~

37 *SEC. 5. Section 113794.3 is added to the Health and Safety*
38 *Code, to read:*

1 113794.3. “Fresh frozen” means that the food was quickly
2 frozen while still fresh, including immediately after the food had
3 been harvested or fish had been caught.

4 ~~SEC. 4. Section 113818 of the Health and Safety Code is~~
5 ~~amended to read:~~

6 113818. (a) ~~“Limited food preparation” means food preparation~~
7 ~~that is restricted to one or more of the following:~~

8 (1) ~~Heating, frying, baking, roasting, popping, shaving of ice,~~
9 ~~blending, steaming or boiling of hot dogs, or assembly of~~
10 ~~nonprepackaged food.~~

11 (2) ~~Dispensing and portioning of nonpotentially hazardous food.~~

12 (3) ~~Holding, portioning, and dispensing of any foods that are~~
13 ~~prepared for satellite food service by the onsite permanent food~~
14 ~~facility or prepackaged by another approved source.~~

15 (4) ~~Slicing and chopping of food on a heated cooking surface~~
16 ~~during the cooking process.~~

17 (5) ~~Cooking and seasoning to order.~~

18 (6) ~~Preparing beverages that are for immediate service, in~~
19 ~~response to an individual consumer order, that do not contain~~
20 ~~frozen milk products.~~

21 (7) ~~Shucking oysters.~~

22 (8) ~~Eviscerating fish at a fishermen’s market.~~

23 (b) ~~“Limited food preparation” does not include any of the~~
24 ~~following:~~

25 (1) ~~Slicing and chopping unless it is on the heated cooking~~
26 ~~surface.~~

27 (2) ~~Thawing.~~

28 (3) ~~Cooling of cooked, potentially hazardous food.~~

29 (4) ~~Grinding raw ingredients or potentially hazardous food.~~

30 (5) ~~Reheating of potentially hazardous foods for hot holding,~~
31 ~~except for steamed or boiled hot dogs and tamales in the original,~~
32 ~~inedible wrapper.~~

33 (6) ~~Except as authorized in paragraph (3) of subdivision (a), hot~~
34 ~~holding of nonprepackaged, potentially hazardous food, except~~
35 ~~for roasting corn on the cob, steamed or boiled hot dogs, and~~
36 ~~tamales in the original, inedible wrapper.~~

37 (7) ~~Washing of foods.~~

38 (8) ~~Cooking of potentially hazardous foods for later use.~~

1 ~~SEC. 5.~~

2 *SEC. 6.* Section 113839 of the Health and Safety Code is
3 amended to read:

4 113839. “Nonpermanent food facility” means a food facility
5 that operates from a mobile unit or at a nonpermanent location,
6 including, but not limited to, a certified farmers’ market, a
7 fishermen’s market, a mobile food facility, a mobile support unit,
8 a temporary food facility, or a vending machine.

9 ~~SEC. 6.~~

10 *SEC. 7.* Section 113984 of the Health and Safety Code is
11 amended to read:

12 113984. (a) Adequate and suitable counter space shall be
13 provided for all food preparation operations.

14 (b) Except as specified in subdivision ~~(e) or (h)~~, (c), food
15 preparation shall be conducted within a fully enclosed food facility.

16 (c) Limited food preparation shall be conducted within a food
17 compartment or as approved by the enforcement agency. Subject
18 to subdivision (g), this subdivision does not ~~to~~ require an additional
19 food compartment when ~~doing either of the following:~~

20 ~~(1) Eviscerating fish at a fishermen’s market.~~

21 ~~(2) Adding~~ *adding* ingredients to a beverage or dispensing into
22 a serving container when the beverage is prepared for immediate
23 service in response to an individual consumer order.

24 (d) Food shall be prepared with suitable utensils and on surfaces
25 that, prior to use, have been cleaned, rinsed, and sanitized as
26 specified in Section 114117 to prevent cross-contamination.

27 (e) Overhead protection shall be provided above all food
28 preparation, food display, warewashing, and food storage areas.

29 (f) All food shall be thawed, washed, sliced, and cooled within
30 an approved fully enclosed food facility.

31 (g) Based upon local environmental conditions, location, and
32 other similar factors, the enforcement officer may establish
33 additional structural or operational requirements, or both, for
34 mobile food facilities as necessary to ensure that foods,
35 food-contact surfaces, and utensils are of a safe and sanitary
36 quality.

37 ~~(h) Full enclosure of a food facility is not required for limited~~
38 ~~food preparation when the other requirements of this section are~~
39 ~~met and the food facility can be fully enclosed or placed within a~~
40 ~~fully enclosed facility during periods of non-operation.~~

1 ~~SEC. 7. Section 114053 of the Health and Safety Code is~~
2 ~~amended to read:~~

3 ~~114053. (a) Prepackaged food may not be stored in direct~~
4 ~~contact with ice or water if the food is subject to the entry of water~~
5 ~~because of the nature of its packaging, wrapping, or container, or~~
6 ~~its positioning in the ice or water.~~

7 ~~(b) Except as specified in subdivisions (c) and (d),~~
8 ~~nonprepackaged food may not be stored in direct contact with~~
9 ~~undrained ice.~~

10 ~~(c) Whole raw fruits or vegetables, cut raw vegetables, and tofu~~
11 ~~may be immersed in ice or water.~~

12 ~~(d) (1) Raw chicken and raw fish that are received immersed~~
13 ~~in ice in shipping containers may remain in that condition while~~
14 ~~in storage awaiting preparation, display, service, or sale.~~

15 ~~(2) Whole or eviscerated raw fresh fish may be placed on ice~~
16 ~~while on display for sale.~~

17 ~~SEC. 8. Section 114266 of the Health and Safety Code is~~
18 ~~amended to read:~~

19 ~~114266. (a) Each permanent food facility shall be fully~~
20 ~~enclosed in a building consisting of permanent floors, walls, and~~
21 ~~an overhead structure that meet the minimum standards as~~
22 ~~prescribed by this part. Food facilities that are not fully enclosed~~
23 ~~on all sides and that are in operation on January 1, 1985, shall not~~
24 ~~be required to meet the requirements of this section until the facility~~
25 ~~is remodeled or has a significant *menu* change in its menu or~~
26 ~~*significant change in* its method of operation.~~

27 ~~(b) Notwithstanding subdivision (a), this section does not require~~
28 ~~the enclosure of dining areas or any other operation approved for~~
29 ~~outdoor food service, or limited food preparation operations.~~
30 ~~*service.*~~

31 ~~(c) Notwithstanding subdivision (a), a produce stand that was~~
32 ~~in operation prior to January 1, 2007, shall have no more than one~~
33 ~~side open to the outside air during business hours.~~

34 ~~SEC. 9. Chapter 12.7 (commencing with Section 114378) is~~
35 ~~added to Part 7 of Division 104 of the Health and Safety Code, to~~
36 ~~read:~~

CHAPTER 12.7. FISHERMEN’S MARKETS

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114378. A fishermen’s market shall meet the *applicable* requirements of ~~this chapter and Chapter 13 (commencing with Section 114380), and the applicable requirements of Chapter 1 (commencing with Section 113700), Chapter 2 (commencing with Section 113728), Chapter 3 (commencing with Section 113945), Chapter 4 (commencing with Section 113980), Chapter 5 (commencing with Section 114095), Chapter 6 (commencing with Section 114130), Chapter 7 (commencing with Section 114189), and Chapter 8 (commencing with Section 114250), and Chapter 13 (commencing with Section 114380), unless specifically exempt or otherwise exempted as provided in this chapter.~~

114378.1. (a) Fish sold in a fishermen’s market shall be raw and may be displayed whole or eviscerated. A fisherman selling fish in a fishermen’s market shall only sell *raw edible aquatic plants or* fish that he or she caught legally, or that was caught by one or two other licensed commercial fishermen. If a fisherman sells fish caught by another licensed commercial fisherman, the fisherman shall provide a copy of that other fisherman’s commercial license and contact information upon the request of the ~~local~~ enforcement agency.

(b) A fishermen’s market may provide a separate service that fillets, cuts, or packages fish for customers who purchase direct sales of fish within the fishermen’s market as a temporary food facility, mobile food facility, or other facility approved by the ~~local~~ enforcement agency. A separate health permit is required and applicable requirements for that category of permit shall be met.

(c) Fish parts from the day’s operations may be used for bait by a licensed commercial fisherman or registered aquaculturist.

(d) Ice used for refrigeration purposes shall not be used for consumption in food or beverages.

~~(e) Except as otherwise provided in Section 113996, during operating hours of a fishermen’s market, potentially hazardous food may be held at a temperature not to exceed 45 degrees Fahrenheit for up to 12 hours during a 24-hour period.~~

(e) Notwithstanding subdivision (b) and Section 113818, raw fish may be eviscerated at a fishermen’s market.

114378.2. A fishermen’s market shall meet all of the following requirements:

- 1 (a) ~~The~~ *Each fisherman's market food booth shall post the name*
2 *of the fisherman, vessel or farm, and ~~species acceptable market~~*
3 *name of fish sold, shall be sold so they are legible and clearly*
4 *visible to patrons.*
- 5 (b) Notwithstanding Section 113953, handwashing facilities for
6 a fisherman's market *food both* that operates for three *consecutive*
7 days or less may include a container capable of providing a
8 continuous stream of water from an approved source that leaves
9 both hands free to allow vigorous rubbing with soap and warm
10 water for 10 to 15 seconds, inclusive. A catch basin shall be
11 provided to collect wastewater, and the wastewater shall be
12 properly disposed of according to Section 114197.
- 13 (c) Handwashing facilities shall be equipped with handwashing
14 cleanser and single-use sanitary towels. A separate receptacle shall
15 be available for towel waste.
- 16 (d) Notwithstanding Section 114205, potable water shall be
17 available for handwashing and sanitizing as approved by the ~~local~~
18 enforcement agency.
- 19 (e) Approved toilet and handwashing facilities shall be available
20 within 200 feet of the premises of a fisherman's market or as
21 approved by the ~~local~~ enforcement agency.
- 22 (f) All garbage and refuse shall be stored and disposed of in a
23 manner approved by the ~~local~~ enforcement agency.
- 24 (g) Wastewater shall be disposed of in a facility connected to
25 the public sewer system or in a manner approved by the ~~local~~
26 enforcement agency.
- 27 (h) Floors shall be constructed of concrete, asphalt, tight wood,
28 or other similar cleanable material kept in good repair.
- 29 (i) Overhead protection shall be provided ~~for all food~~
30 ~~preparation, over the evisceration process,~~ food storage, *food*
31 *display,* and warewashing areas. Overhead protection shall be
32 made of wood, canvas, or other materials that protect the facility
33 from precipitation, dust, bird and insect droppings, and other
34 contaminants.
- 35 (j) Notwithstanding Section 114095, approved warewashing
36 facilities may be shared if the sink is centrally located and is
37 adjacent to the sharing facilities. The ~~local~~ enforcement agency
38 may also approve use of warewashing facilities within a permanent
39 facility if it is located within 200 feet of the premises of the

1 fishermen’s market or as approved by the ~~local~~ enforcement
2 agency.

3 (k) Food-related and utensil-related equipment shall be located
4 and installed to prevent food contamination.

5 (l) During periods of ~~nonoperation~~, *food inoperation, food, food*
6 *equipment, and utensils* shall be stored within a fully enclosed
7 facility approved by the ~~local~~ enforcement agency, or in approved
8 food compartments where the ~~food is food, food equipment, and~~
9 *utensils are* protected at all times from contamination, exposure
10 to the elements, ingress of rodents or other vermin, and temperature
11 abuse.

12 114378.3. (a) A permit application and site plan shall be
13 submitted to the ~~local~~ enforcement agency at least two weeks prior
14 to the operation of a fishermen’s market. Only California-registered
15 commercial fishermen, California-registered aquaculturists, or an
16 entity representing California seafood producers may act as the
17 responsible person and sole ~~permit holder~~ *permitholder* for a
18 fishermen’s market. The site plan shall include all of the following:

19 (1) A map with proposed locations of the *fishermen’s market*
20 food booths, boundaries of the fishermen’s market, restrooms,
21 refuse containers, potable water supply faucets, ~~waste water~~
22 *wastewater* disposal facilities, and all shared warewashing and
23 hand washing facilities as applicable.

24 (2) Details of the materials and methods used to construct the
25 food booths.

26 (3) Foods that will be handled and dispensed.

27 (4) Procedures for food handling, food temperature control,
28 refuse management, cleaning and sanitizing utensils and equipment,
29 and cleaning structures and premises.

30 (5) Procedures for transporting food to and from the fishermen’s
31 market and actions taken to prevent contamination.

32 (6) List of names of licensed commercial fishermen or registered
33 aquaculturists, copies of their licenses or registrations, and a
34 document authorizing the organizer to act as the responsible person
35 and permit holder on their behalf.

36 (b) A fishermen’s market may operate ~~adjacent, to adjacent to,~~
37 or in conjunction with, a food facility or a community event. In
38 those situations, the fishermen’s market is only subject to the
39 limitations and requirements of a fishermen’s market. The other
40 food facilities remain subject to the limitations and requirements,

1 including separate permit requirements, that are applicable to the
2 type of facility being operated.

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

12 However, if the Commission on State Mandates determines that
13 this act contains other costs mandated by the state, reimbursement
14 to local agencies and school districts for those costs shall be made
15 pursuant to Part 7 (commencing with Section 17500) of Division
16 4 of Title 2 of the Government Code.