

AMENDED IN SENATE AUGUST 19, 2015

AMENDED IN SENATE JUNE 29, 2015

AMENDED IN ASSEMBLY APRIL 16, 2015

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, Block, and Hueso)

February 3, 2015

An act to amend Sections 113779, 113789, 113839, 113984, and 114266 of, to add 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 or an entity representing two or more California-licensed commercial fishermen or California-licensed commercial fishermen and California-registered aquaculturists, that sells only raw edible aquatic plants, raw fresh fish, or fresh frozen fish, 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 or an entity representing two or more California-licensed commercial fishermen or California-licensed commercial fishermen and California-registered aquaculturists to act as the responsible person and sole permitholder for a fishermen’s market, and would require that fisherman or entity to submit a permit application and site plan, including specified information, to the enforcement agency at least 2 weeks prior to the operation of the fishermen’s market. The bill would define terms for its purposes and make conforming changes.

This bill would incorporate additional changes to Section 113789 of the Health and Safety Code proposed by AB 143 that would become operative if both this bill and AB 143 are enacted and this bill is enacted last.

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
7 represents the identity of the species to United States consumers
8 because it is not confusingly similar to the name of another species
9 and because it is not otherwise misleading. An acceptable market
10 name may be any of the following:

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

13 (b) The common name.

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

17 SEC. 2. Section 113779 of the Health and Safety Code is
18 amended to read:

19 113779. (a) “Fish” means fresh or saltwater finfish,
20 crustaceans, and other forms of aquatic life, other than birds or
21 mammals, and all molluscan shellfish, if intended for human
22 consumption. “Fish” also includes alligator, frog, aquatic turtle,
23 jellyfish, sea cucumber, and sea urchin, and the roe of these
24 animals.

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

27 SEC. 3. Section 113780 is added to the Health and Safety Code,
28 to read:

29 113780. “Fishermen’s market” means a location that is operated
30 by a commercial fisherman licensed by the Department of Fish
31 and Wildlife or an entity representing two or more
32 California-licensed commercial fishermen or California-licensed
33 commercial fishermen and California-registered aquaculturists,
34 that sells only raw edible aquatic plants, raw fresh fish, or fresh
35 frozen fish, caught by commercial fishermen licensed by the
36 Department of Fish and Wildlife or harvested by
37 California-registered aquaculturists, directly to consumers.

1 SEC. 4. Section 113789 of the Health and Safety Code is
2 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.

21 (7) Temporary food facilities.

22 (8) Vending machines.

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

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

27 (11) Fishermen’s markets.

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

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

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

33 (3) A church, private club, or other nonprofit association that
34 gives or sells food to its members and guests, and not to the general
35 public, at an event that occurs not more than three days in any
36 90-day period.

37 (4) A for-profit entity that gives or sells food at an event that
38 occurs not more than three days in a 90-day period for the benefit
39 of a nonprofit association, if the for-profit entity receives no

1 monetary benefit, other than that resulting from recognition from
2 participating in an event.

3 (5) Premises set aside for wine tasting, as that term is used in
4 Section 23356.1 of the Business and Professions Code and in the
5 regulations adopted pursuant to that section, that comply with
6 Section 118375, regardless of whether there is a charge for the
7 wine tasting, if no other beverage, except for bottles of wine and
8 prepackaged nonpotentially hazardous beverages, is offered for
9 sale for onsite consumption and no food, except for crackers, is
10 served.

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

15 (7) A commercial food processing establishment as defined in
16 Section 111955.

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

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

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

21 (11) A residential care facility for the chronically ill, which has
22 the same meaning as a residential care facility, as defined in Section
23 1568.01.

24 (12) Premises set aside by a beer manufacturer, as defined in
25 Section 25000.2 of the Business and Professions Code, that comply
26 with Section 118375, for the purposes of beer tasting, regardless
27 of whether there is a charge for the beer tasting, if no other
28 beverage, except for beer and prepackaged nonpotentially
29 hazardous beverages, is offered for sale for onsite consumption,
30 and no food, except for crackers, pretzels, or prepackaged food
31 that is not potentially hazardous food is offered for onsite
32 consumption.

33 (13) (A) An intermediate care facility for the developmentally
34 disabled, as defined in subdivisions (e), (h), and (m) of Section
35 1250, with a capacity of six beds or fewer.

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

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

1 SEC. 4.5. Section 113789 of the Health and Safety Code is
 2 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.

21 (7) Temporary food facilities.

22 (8) Vending machines.

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

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

27 (11) *Fishermen’s markets.*

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

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

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

33 (3) A church, private club, or other nonprofit association that
 34 gives or sells food to its members and guests, and not to the general
 35 public, at an event that occurs not more than three days in any
 36 90-day period.

37 (4) A for-profit entity that gives or sells food at an event that
 38 occurs not more than three days in a 90-day period for the benefit
 39 of a nonprofit association, if the for-profit entity receives no

1 monetary benefit, other than that resulting from recognition from
2 participating in an event.

3 (5) Premises set aside for wine tasting, as that term is used in
4 Section 23356.1 of the Business and Professions Code and Code,
5 or premises set aside by a beer manufacturer, as defined in Section
6 25000.2 of the Business and Professions Code, and in the
7 regulations adopted pursuant to that section; those sections, that
8 comply with Section 118375, regardless of whether there is a
9 charge for the wine or beer tasting, if no other beverage, except
10 for bottles of wine and prepackaged nonpotentially hazardous
11 beverages, is offered for sale for onsite consumption and no food,
12 except for crackers, ~~is served.~~ pretzels, or prepackaged food that
13 is not potentially hazardous food is offered for sale or for onsite
14 consumption.

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

19 (7) A commercial food processing establishment as defined in
20 Section 111955.

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

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

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

25 (11) A residential care facility for the chronically ill, which has
26 the same meaning as a residential care facility, as defined in Section
27 1568.01.

28 ~~(12) Premises set aside by a beer manufacturer, as defined in
29 Section 25000.2 of the Business and Professions Code, that comply
30 with Section 118375, for the purposes of beer tasting, regardless
31 of whether there is a charge for the beer tasting, if no other
32 beverage, except for beer and prepackaged nonpotentially
33 hazardous beverages, is offered for sale for onsite consumption,
34 and no food, except for crackers, pretzels, or prepackaged food
35 that is not potentially hazardous food is offered for onsite
36 consumption.~~

37 ~~(13)~~

38 (12) (A) An intermediate care facility for the developmentally
39 disabled, as defined in subdivisions (e), (h), and (m) of Section
40 1250, with a capacity of six beds or fewer.

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

5 ~~(14)~~

6 (13) A community food producer, as defined in Section 113752.

7 SEC. 5. Section 113794.3 is added to the Health and Safety
8 Code, to read:

9 113794.3. “Fresh frozen” means that the food was quickly
10 frozen while still fresh, including immediately after the food had
11 been harvested or fish had been caught.

12 SEC. 6. Section 113839 of the Health and Safety Code is
13 amended to read:

14 113839. “Nonpermanent food facility” means a food facility
15 that operates from a mobile unit or at a nonpermanent location,
16 including, but not limited to, a certified farmers’ market, a
17 fishermen’s market, a mobile food facility, a mobile support unit,
18 a temporary food facility, or a vending machine.

19 SEC. 7. Section 113984 of the Health and Safety Code is
20 amended to read:

21 113984. (a) Adequate and suitable counter space shall be
22 provided for all food preparation operations.

23 (b) Except as specified in subdivision (c), food preparation shall
24 be conducted within a fully enclosed food facility.

25 (c) Limited food preparation shall be conducted within a food
26 compartment or as approved by the enforcement agency. Subject
27 to subdivision (g), this subdivision does not require an additional
28 food compartment when adding ingredients to a beverage or
29 dispensing into a serving container when the beverage is prepared
30 for immediate service in response to an individual consumer order.

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

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

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

38 (g) Based upon local environmental conditions, location, and
39 other similar factors, the enforcement officer may establish
40 additional structural or operational requirements, or both, for

1 mobile food facilities as necessary to ensure that foods,
2 food-contact surfaces, and utensils are of a safe and sanitary
3 quality.

4 SEC. 8. Section 114266 of the Health and Safety Code is
5 amended to read:

6 114266. (a) Each permanent food facility shall be fully
7 enclosed in a building consisting of permanent floors, walls, and
8 an overhead structure that meet the minimum standards as
9 prescribed by this part. Food facilities that are not fully enclosed
10 on all sides and that are in operation on January 1, 1985, shall not
11 be required to meet the requirements of this section until the facility
12 is remodeled or has a significant menu change or significant change
13 in its method of operation.

14 (b) Notwithstanding subdivision (a), this section does not require
15 the enclosure of dining areas or any other operation approved for
16 outdoor food service.

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

20 SEC. 9. Chapter 12.7 (commencing with Section 114378) is
21 added to Part 7 of Division 104 of the Health and Safety Code, to
22 read:

23
24 CHAPTER 12.7. FISHERMEN'S MARKETS
25

26 114378. A fishermen's market shall meet the applicable
27 requirements of Chapter 1 (commencing with Section 113700),
28 Chapter 2 (commencing with Section 113728), Chapter 3
29 (commencing with Section 113945), Chapter 4 (commencing with
30 Section 113980), Chapter 5 (commencing with Section 114095),
31 Chapter 6 (commencing with Section 114130), Chapter 7
32 (commencing with Section 114189), Chapter 8 (commencing with
33 Section 114250), and Chapter 13 (commencing with Section
34 114380), unless exempted as provided in this chapter.

35 114378.1. (a) Fish sold in a fishermen's market shall be raw
36 and may be displayed whole or eviscerated. A fisherman selling
37 fish in a fishermen's market shall only sell raw edible aquatic
38 plants or fish that he or she caught legally, or that was caught by
39 one or two other licensed commercial fishermen. If a fisherman
40 sells fish caught by another licensed commercial fisherman, the

1 fisherman shall provide a copy of that other fisherman's
2 commercial license and contact information upon the request of
3 the enforcement agency.

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

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

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

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

16 114378.2. A fishermen's market shall meet all of the following
17 requirements:

18 (a) Each fishermen's market food booth shall post the name of
19 the fisherman, vessel or farm, and acceptable market name of fish
20 sold so they are legible and clearly visible to patrons.

21 (b) Notwithstanding Section 113953, handwashing facilities for
22 a fishermen's market food booth that operates for three consecutive
23 days or less may include a container capable of providing a
24 continuous stream of water from an approved source that leaves
25 both hands free to allow vigorous rubbing with soap and warm
26 water for 10 to 15 seconds, inclusive. A catch basin shall be
27 provided to collect wastewater, and the wastewater shall be
28 properly disposed of according to Section 114197.

29 (c) Handwashing facilities shall be equipped with handwashing
30 cleanser and single-use sanitary towels. A separate receptacle shall
31 be available for towel waste.

32 (d) Notwithstanding Section 114205, potable water shall be
33 available for handwashing and sanitizing as approved by the
34 enforcement agency.

35 (e) Approved toilet and handwashing facilities shall be available
36 within 200 feet of the premises of a fishermen's market or as
37 approved by the enforcement agency.

38 (f) All garbage and refuse shall be stored and disposed of in a
39 manner approved by the enforcement agency.

1 (g) Wastewater shall be disposed of in a facility connected to
2 the public sewer system or in a manner approved by the
3 enforcement agency.

4 (h) Floors shall be constructed of concrete, asphalt, tight wood,
5 or other similar cleanable material kept in good repair.

6 (i) Overhead protection shall be provided over the evisceration
7 process, food storage, food display, and warewashing areas.
8 Overhead protection shall be made of wood, canvas, or other
9 materials that protect the facility from precipitation, dust, bird and
10 insect droppings, and other contaminants.

11 (j) Notwithstanding Section 114095, approved warewashing
12 facilities may be shared if the sink is centrally located and is
13 adjacent to the sharing facilities. The enforcement agency may
14 also approve use of warewashing facilities within a permanent
15 facility if it is located within 200 feet of the premises of the
16 fishermen's market or as approved by the enforcement agency.

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

19 (l) During periods of inoperation, food, food equipment, and
20 utensils shall be stored within a fully enclosed facility approved
21 by the enforcement agency, or in approved food compartments
22 where the food, food equipment, and utensils are protected at all
23 times from contamination, exposure to the elements, ingress of
24 rodents or other vermin, and temperature abuse.

25 114378.3. (a) A permit application and site plan shall be
26 submitted to the enforcement agency at least two weeks prior to
27 the operation of a fishermen's market. Only California-licensed
28 commercial fishermen or an entity representing two or more
29 California-licensed commercial fishermen or California-licensed
30 commercial fishermen and California-registered aquaculturists
31 may act as the responsible person and sole permitholder for a
32 fishermen's market. The site plan shall include all of the following:

33 (1) A map with proposed locations of the fishermen's market
34 food booths, boundaries of the fishermen's market, restrooms,
35 refuse containers, potable water supply faucets, wastewater disposal
36 facilities, and all shared warewashing and handwashing facilities
37 as applicable.

38 (2) Details of the materials and methods used to construct the
39 food booths.

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

1 (4) Procedures for food handling, food temperature control,
2 refuse management, cleaning and sanitizing utensils and equipment,
3 and cleaning structures and premises.

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

6 (6) List of names of licensed commercial fishermen or registered
7 aquaculturists, copies of their licenses or registrations, and a
8 document authorizing the organizer to act as the responsible person
9 and permitholder on their behalf.

10 (b) A fishermen’s market may operate adjacent to, or in
11 conjunction with, a food facility or a community event. In those
12 situations, the fishermen’s market is only subject to the limitations
13 and requirements of a fishermen’s market. The other food facilities
14 remain subject to the limitations and requirements, including
15 separate permit requirements, that are applicable to the type of
16 facility being operated.

17 *SEC. 10. Section 4.5 of this bill incorporates amendments to*
18 *Section 113789 of the Health and Safety Code proposed by both*
19 *this bill and Assembly Bill 143. It shall only become operative if*
20 *(1) both bills are enacted and become effective on or before*
21 *January 1, 2016, (2) each bill amends Section 113789 of the Health*
22 *and Safety Code, and (3) this bill is enacted after Assembly Bill*
23 *143, in which case Section 4 of this bill shall not become operative.*

24 ~~SEC. 10.~~

25 *SEC. 11.* No reimbursement is required by this act pursuant to
26 Section 6 of Article XIII B of the California Constitution for certain
27 costs that may be incurred by a local agency or school district
28 because, in that regard, this act creates a new crime or infraction,
29 eliminates a crime or infraction, or changes the penalty for a crime
30 or infraction, within the meaning of Section 17556 of the
31 Government Code, or changes the definition of a crime within the
32 meaning of Section 6 of Article XIII B of the California
33 Constitution.

34 However, if the Commission on State Mandates determines that
35 this act contains other costs mandated by the state, reimbursement
36 to local agencies and school districts for those costs shall be made
37 pursuant to Part 7 (commencing with Section 17500) of Division
38 4 of Title 2 of the Government Code.

O