

Senate Bill No. 1235

Passed the Senate August 26, 2014

Secretary of the Senate

Passed the Assembly August 25, 2014

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2014, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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

LEGISLATIVE COUNSEL'S DIGEST

SB 1235, 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.

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

SECTION 1. Section 113789 of the Health and Safety Code is amended to read:

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

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

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

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

(1) Public and private school cafeterias.

(2) Restricted food service facilities.

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

(4) Commissaries.

(5) Mobile food facilities.

(6) Mobile support units.

(7) Temporary food facilities.

(8) Vending machines.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(12) Premises set aside by a beer manufacturer, as defined in Section 25000.2 of the Business and Professions Code, that comply with Section 118375, for the purposes of beer tasting, regardless of whether there is a charge for the 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 for crackers, pretzels, or prepackaged food that is not potentially hazardous food is offered for onsite consumption.

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

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

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

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

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

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

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

(1) Public and private school cafeterias.

(2) Restricted food service facilities.

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

(4) Commissaries.

(5) Mobile food facilities.

(6) Mobile support units.

(7) Temporary food facilities.

(8) Vending machines.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(12) Premises set aside by a beer manufacturer, as defined in Section 25000.2 of the Business and Professions Code, that comply with Section 118375, for the purposes of beer tasting, regardless of whether there is a charge for the 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 for crackers, pretzels, or prepackaged food that is not potentially hazardous food is offered for onsite consumption.

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

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

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

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

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

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

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

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

(1) Public and private school cafeterias.

(2) Restricted food service facilities.

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

(4) Commissaries.

(5) Mobile food facilities.

(6) Mobile support units.

(7) Temporary food facilities.

(8) Vending machines.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(12) Premises set aside by a beer manufacturer, as defined in Section 25000.2 of the Business and Professions Code, that comply with Section 118375, for the purposes of beer tasting, regardless of whether there is a charge for the 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 for crackers, pretzels, or prepackaged food that is not potentially hazardous food is offered for onsite consumption.

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

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

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

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

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

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

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

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

(1) Public and private school cafeterias.

(2) Restricted food service facilities.

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

(4) Commissaries.

(5) Mobile food facilities.

(6) Mobile support units.

(7) Temporary food facilities.

(8) Vending machines.

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

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

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

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

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

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

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

(5) Premises set aside for wine tasting, as that term is used in Section 23356.1 of the Business and Professions Code and in the

regulations adopted pursuant to that section, that comply with Section 118375, regardless of whether there is a charge for the wine tasting, if no other beverage, except for bottles of wine and prepackaged nonpotentially hazardous beverages, is offered for sale for onsite consumption and no food, except for crackers, is served.

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

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

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

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

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

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

(12) Premises set aside by a beer manufacturer, as defined in Section 25000.2 of the Business and Professions Code, that comply with Section 118375, for the purposes of beer tasting, regardless of whether there is a charge for the 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 for crackers, pretzels, or prepackaged food that is not potentially hazardous food is offered for onsite consumption.

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

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

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

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

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

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

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

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

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

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

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

(2) A permanent food facility with a food display area greater than 25 square feet, but less than 300 square feet, shall comply with all of the following:

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

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

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

SEC. 3. (a) Section 1.1 of this bill incorporates amendments to Section 113789 of the Health and Safety Code proposed by both this bill and Senate Bill 170. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2015, (2) each bill amends Section 113789 of the Health and Safety Code, and (3) Assembly Bill 1990 is not enacted or as enacted does not amend that section, and (4) this bill is enacted

after Senate Bill 170, in which case Sections 1, 1.2, and 1.3 of this bill shall not become operative.

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

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

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

Approved _____, 2014

Governor