

ASSEMBLY BILL

No. 226

Introduced by Assembly Member Atkins
(Coauthors: Assembly Members Chávez, Jones, Maienschein,
Waldron, and Weber)
(Coauthors: Senators Anderson, Bates, and Block)

February 3, 2015

An act to amend Sections 113779, 113789, 113818, 113839, 113984, 114053, and 114266 of, and to add Section 113780 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 introduced, 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 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 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 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 113779 of the Health and Safety Code
- 2 is amended to read:
- 3 113779. (a) "Fish" means fresh or saltwater finfish,
- 4 crustaceans, and other forms of aquatic life *including edible aquatic*
- 5 *plants*, other than birds or mammals, and all molluscan shellfish,
- 6 if intended for human consumption. "Fish" also includes alligator,
- 7 frog, aquatic turtle, jellyfish, sea cucumber, and sea urchin, and
- 8 the roe of these animals.

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

SEC. 2. Section 113780 is added to the Health and Safety Code, to read:

113780. “Fishermen’s Market” means a food facility that is operated by a licensed commercial fisherman or an entity representing California seafood producers, that sells only raw fresh or fresh frozen fish, caught by California-licensed commercial fishermen or harvested by California-registered aquaculturists, directly to consumers.

SEC. 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.

(11) *Fishermen’s market*.

(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.

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

3 (3) A church, private club, or other nonprofit association that
4 gives or sells food to its members and guests, and not to the general
5 public, at an event that occurs not more than three days in any
6 90-day period.

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

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

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

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

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

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

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

30 (11) A residential care facility for the chronically ill, which has
31 the same meaning as a residential care facility, as defined in Section
32 1568.01.

33 (12) Premises set aside by a beer manufacturer, as defined in
34 Section 25000.2 of the Business and Professions Code, that comply
35 with Section 118375, for the purposes of beer tasting, regardless
36 of whether there is a charge for the beer tasting, if no other
37 beverage, except for beer and prepackaged nonpotentially
38 hazardous beverages, is offered for sale for onsite consumption,
39 and no food, except for crackers, pretzels, or prepackaged food

1 that is not potentially hazardous food is offered for onsite
2 consumption.

3 (13) (A) An intermediate care facility for the developmentally
4 disabled, as defined in subdivisions (e), (h), and (m) of Section
5 1250, with a capacity of six beds or fewer.

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

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

11 (d) *“Fresh frozen” means that the food was quickly frozen while*
12 *still fresh, including immediately after the food had been harvested*
13 *or fish had been caught.*

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

16 113818. (a) “Limited food preparation” means food preparation
17 that is restricted to one or more of the following:

18 (1) Heating, frying, baking, roasting, popping, shaving of ice,
19 blending, steaming or boiling of hot dogs, or assembly of
20 nonprepackaged food.

21 (2) Dispensing and portioning of nonpotentially hazardous food.

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

25 (4) Slicing and chopping of food on a heated cooking surface
26 during the cooking process.

27 (5) Cooking and seasoning to order.

28 (6) Preparing beverages that are for immediate service, in
29 response to an individual consumer order, that do not contain
30 frozen milk products.

31 (7) *Shucking oysters.*

32 (8) *Eviscerating fish at a fishermen’s market.*

33 (b) “Limited food preparation” does not include any of the
34 following:

35 (1) Slicing and chopping unless it is on the heated cooking
36 surface.

37 (2) Thawing.

38 (3) Cooling of cooked, potentially hazardous food.

39 (4) Grinding raw ingredients or potentially hazardous food.

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

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

(7) Washing of foods.

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

SEC. 5. Section 113839 of the Health and Safety Code is amended to read:

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

SEC. 6. Section 113984 of the Health and Safety Code is amended to read:

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

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

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

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

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

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

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

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

(g) Based upon local environmental conditions, location, and other similar factors, the enforcement officer may establish

1 additional structural or operational requirements, or both, for
2 mobile food facilities as necessary to ensure that foods,
3 food-contact surfaces, and utensils are of a safe and sanitary
4 quality.

5 *(h) Full enclosure of a food facility is not required for limited*
6 *food preparation when the other requirements of this section are*
7 *met and the food facility can be fully enclosed or placed within a*
8 *fully enclosed facility during periods of non-operation.*

9 SEC. 7. Section 114053 of the Health and Safety Code is
10 amended to read:

11 114053. (a) Prepackaged food may not be stored in direct
12 contact with ice or water if the food is subject to the entry of water
13 because of the nature of its packaging, wrapping, or container, or
14 its positioning in the ice or water.

15 (b) Except as specified in subdivisions (c) and (d),
16 nonprepackaged food may not be stored in direct contact with
17 undrained ice.

18 (c) Whole raw fruits or vegetables, cut raw vegetables, and tofu
19 may be immersed in ice or water.

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

23 (2) *Whole or eviscerated raw fresh fish may be placed on ice*
24 *while on display for sale.*

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

27 114266. (a) Each permanent food facility shall be fully
28 enclosed in a building consisting of permanent floors, walls, and
29 an overhead structure that meet the minimum standards as
30 prescribed by this part. Food facilities that are not fully enclosed
31 on all sides and that are in operation on January 1, 1985, shall not
32 be required to meet the requirements of this section until the facility
33 is remodeled or has a significant *change in its menu-change* or its
34 method of operation.

35 (b) Notwithstanding subdivision (a), this section ~~shall~~ *does not*
36 ~~be construed to~~ require the enclosure of dining areas or any other
37 operation approved for outdoor food service, *or limited food*
38 *preparation operations.*

39 (c) Notwithstanding subdivision (a), a produce stand that was
40 in operation prior to the effective date of this part *January 1, 2007,*

1 shall have no more than one side open to the outside air during
2 business hours.

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

6

7

CHAPTER 12.7. FISHERMEN'S MARKETS

8

9 114378. A fishermen's market shall meet the requirements of
10 this chapter and Chapter 13 (commencing with Section 114380),
11 and the applicable requirements of Chapter 1 (commencing with
12 Section 113700), Chapter 2 (commencing with Section 113728),
13 Chapter 3 (commencing with Section 113945), Chapter 4
14 (commencing with Section 113980), Chapter 5 (commencing with
15 Section 114095), Chapter 6 (commencing with Section 114130),
16 Chapter 7 (commencing with Section 114189), and Chapter 8
17 (commencing with Section 114250), unless specifically exempt
18 or otherwise provided in this chapter.

19 114378.1. (a) Fish sold in a fishermen's market shall be raw
20 and may be displayed whole or eviscerated. A fisherman selling
21 fish in a fishermen's market shall only sell fish that he or she
22 caught legally, or that was caught by one or two other licensed
23 commercial fishermen. If a fisherman sells fish caught by another
24 licensed commercial fisherman, the fisherman shall provide a copy
25 of that other fisherman's commercial license and contact
26 information upon the request of the local enforcement agency.

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

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

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

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

1 114378.2. A fishermen's market shall meet all of the following
2 requirements:

3 (a) The name of the fisherman, vessel or farm, and species of
4 fish sold, shall be legible and clearly visible to patrons.

5 (b) Notwithstanding Section 113953, handwashing facilities for
6 a fishermen's market that operates for three days or less may
7 include a container capable of providing a continuous stream of
8 water from an approved source that leaves both hands free to allow
9 vigorous rubbing with soap and warm water for 10 to 15 seconds,
10 inclusive. A catch basin shall be provided to collect wastewater,
11 and the wastewater shall be properly disposed of according to
12 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 fishermen'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, food storage, and warewashing areas. Overhead
31 protection shall be made of wood, canvas, or other materials that
32 protect the facility from precipitation, dust, bird and insect
33 droppings, and other contaminants.

34 (j) Notwithstanding Section 114095, approved warewashing
35 facilities may be shared if the sink is centrally located and is
36 adjacent to the sharing facilities. The local enforcement agency
37 may also approve use of warewashing facilities within a permanent
38 facility if it is located within 200 feet of the premises of the
39 fishermen's market or as approved by the local enforcement
40 agency.

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

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

8 114378.3. (a) A permit application and site plan shall be
9 submitted to the local enforcement agency at least two weeks prior
10 to the operation of a fishermen's market. Only California-registered
11 commercial fishermen, California-registered aquaculturists, or an
12 entity representing California seafood producers may act as the
13 responsible person and sole permit holder for a fishermen's market.
14 The site plan shall include all of the following:

15 (1) A map with proposed locations of the food booths,
16 boundaries of the fishermen's market, restrooms, refuse containers,
17 potable water supply faucets, waste water disposal facilities, and
18 all shared warewashing and hand washing facilities as applicable.

19 (2) Details of the materials and methods used to construct the
20 food booths.

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

22 (4) Procedures for food handling, food temperature control,
23 refuse management, cleaning and sanitizing utensils and equipment,
24 and cleaning structures and premises.

25 (5) Procedures for transporting food to and from the fishermen's
26 market and actions taken to prevent contamination.

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

31 (b) A fishermen's market may operate adjacent, to or in
32 conjunction with, a food facility or a community event. In those
33 situations, the fishermen's market is only subject to the limitations
34 and requirements of a fishermen's market. The other food facilities
35 remain subject to the limitations and requirements, including
36 separate permit requirements, that are applicable to the type of
37 facility being operated.

38 SEC. 10. No reimbursement is required by this act pursuant to
39 Section 6 of Article XIII B of the California Constitution for certain
40 costs that may be incurred by a local agency or school district

1 because, in that regard, this act creates a new crime or infraction,
2 eliminates a crime or infraction, or changes the penalty for a crime
3 or infraction, within the meaning of Section 17556 of the
4 Government Code, or changes the definition of a crime within the
5 meaning of Section 6 of Article XIII B of the California
6 Constitution.

7 However, if the Commission on State Mandates determines that
8 this act contains other costs mandated by the state, reimbursement
9 to local agencies and school districts for those costs shall be made
10 pursuant to Part 7 (commencing with Section 17500) of Division
11 4 of Title 2 of the Government Code.

O