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AB-143 Food facilities. (2015-2016)

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Assembly Bill No. 143

CHAPTER 164

An act to amend Sections 113755, 113789, 114276, and 114289 of the Health and Safety Code, relating to food facilities.

[Approved by Governor August 11, 2015. Filed with Secretary of State August 11, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

AB 143, Wood. Food facilities.

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 premises set aside for wine tasting, 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. Existing law prohibits certain premises from having a food display area that exceeds 25 square feet, and subjects certain facilities or premises with a food display area of 25 square feet or less to specified provisions of the code. Existing law imposes certain enforcement duties on the State Department of Public Health, but 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 for wine tasting that offers pretzels or prepackaged nonpotentially hazardous food for sale or for onsite consumption. The bill would limit the food display area in premises set aside for wine tasting to 25 square feet and subject those premises to specified provisions of the California Retail Food Code. By imposing new duties on local health agencies, and by expanding the definition of a crime, the bill would impose a state-mandated local program.

Existing law, for the purposes of the California Retail Food Code, defines "community event" to mean an event that is of a civic, political, public, or educational nature.

This bill would limit the definition of a community event to include only an event of a civic, political, public, or educational nature conducted for not more than 25 consecutive or nonconsecutive days in a 90-day period.

Under existing law, a permanent food facility is required to provide clean toilet facilities in good repair for consumers, guests, and invitees, except that a building constructed before January 1, 2004, that has a food facility that provides space for the consumption of food on the premises may either provide clean toilet facilities in good repair or prominently post a sign in a public area stating that toilet facilities are not provided.

This bill would limit the above exemption to food facilities that have been in continuous operation since January 1, 2004.

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 Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 113755 of the Health and Safety Code is amended to read:

113755. "Community event" means an event conducted for not more than 25 consecutive or nonconsecutive days in a 90-day period and that is of a civic, political, public, or educational nature, including state and county fairs, city festivals, circuses, and other public gathering events approved by the local enforcement agency.

SEC. 2. Section 113789 of the Health and Safety Code, as amended by Section 1.2 of Chapter 927 of the Statutes of 2014, 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, or premises set aside by a beer manufacturer, as defined in Section 25000.2 of the Business and Professions Code, and in the regulations adopted pursuant to those sections, that comply with Section 118375, regardless of whether there is a charge for the wine or beer tasting, if no other beverage, except for bottles of wine or beer and prepackaged nonpotentially hazardous

beverages, is offered for sale or for onsite consumption and no food, except for crackers, pretzels, or prepackaged food that is not potentially hazardous food is offered for sale or for onsite consumption.

(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) (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.

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

SEC. 3. Section 114276 of the Health and Safety Code is amended to read:

114276. (a) A permanent food facility shall provide clean toilet facilities in good repair for use by employees.

(b) (1) A permanent food facility shall provide clean toilet facilities in good repair for consumers, guests, or invitees when there is onsite consumption of foods or when the food facility was constructed after July 1, 1984, and has more than 20,000 square feet of floor space.

(2) Notwithstanding Section 113984.1, toilet facilities that are provided for use by consumers, guests, or invitees shall be in a location where consumers, guests, and invitees do not pass through food preparation, food storage, or utensil washing areas to reach the toilet facilities.

(3) For purposes of this section, a building subject to paragraph (1) that has a food facility with more than 20,000 square feet of floor space shall provide at least one separate toilet facility for men and one separate toilet facility for women.

(4) For purposes of this section, the gas pump area of a service station that is maintained in conjunction with a food facility shall not be considered as property used in connection with the food facility or be considered in determining the square footage of floor space of the food facility.

(c) (1) Toilet rooms shall be separated by well-fitted, self-closing doors that prevent the passage of flies, dust, or odors.

(2) Toilet room doors shall be kept closed except during cleaning and maintenance operations.

(d) Handwashing facilities, in good repair, shall be provided as specified in Sections 113953 and 113953.3.

(e) A city, county, or city and county may enact ordinances that are more restrictive than this section.

(f) (1) Except as provided in paragraph (1) of subdivision (b), a food facility that was constructed before January 1, 2004, that has been in continuous operation since January 1, 2004, and that provides space for the consumption of food on the premises shall either provide clean toilet facilities in good repair for consumers, guests, or invitees on property used in connection with, or in, the food facility or prominently post a sign within the food facility in a public area stating that toilet facilities are not provided.

(2) The first violation of paragraph (1) shall result in a warning. Subsequent violations shall constitute an infraction punishable by a fine of not more than two hundred fifty dollars (\$250).

(3) The requirements of this section for toilet facilities that are accessible to consumers, guests, or invitees on the property may be satisfied by permitting access by those persons to the toilet and handwashing facilities that are required by this part.

SEC. 4. Section 114289 of the Health and Safety Code, as amended by Section 2 of Chapter 927 of the Statutes of 2014, 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 for beer or wine tasting, as that term is defined in Section 23356.1 or 23357.3 of the Business and Professions Code, that complies with Section 118375, for the purposes of wine or beer tasting, regardless of whether there is a charge for the wine or beer tasting, if no other beverage, except for bottles of wine or beer and prepackaged nonpotentially hazardous beverages, is offered for sale or for onsite consumption, and crackers, pretzels, or prepackaged food that is not potentially hazardous food is offered for sale or 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. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, 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.

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