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AB-2178 Limited service charitable feeding operation. (2017-2018)

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Assembly Bill No. 2178

CHAPTER 489

An act to amend Section 113789 of, to add Section 113819 to, and to add Chapter 10.6 (commencing with Section 114333) to Part 7 of Division 104 of, the Health and Safety Code, relating to the California Retail Food Code.

[Approved by Governor September 18, 2018. Filed with Secretary of State September 18, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2178, Limón. Limited service charitable feeding operation.

Existing law, the California Retail Food Code, establishes uniform health and sanitation standards for retail food facilities for regulation by the State Department of Public Health, and requires local enforcement agencies to enforce those provisions. Existing law defines "food facility" as an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption at the retail level, as specified. Existing law regulates temporary food facilities and nonprofit charitable temporary food facilities, as specified. Existing law exempts, among others, a nonprofit association that gives or sells food to its members and guests and not to the general public, as specified, from the definition of food facility. A violation of the California Retail Food Code is generally a misdemeanor.

This bill would exempt a limited service charitable feeding operation from the definition of food facility. The bill would define that operation as an operation for food service to a consumer solely for providing charity, that is conducted by a nonprofit charitable organization, as defined, and whose food service is limited to any of specified functions. The bill would specify that the operation would not include a temporary food facility or a nonprofit charitable temporary food facility, as specified. The bill would prohibit the operation from providing food service unless it has registered with the local enforcement agency, with specified exceptions involving performance of a certain function or operation in conjunction with a food bank, and would require a limited service charitable feeding operation subject to registration, or a food bank, if applicable, to submit certain information to the agency.

The bill would exempt a limited service charitable feeding operation from the requirements of the California Retail Food Code, except for specified general food safety and other requirements. The bill would require the operation to comply with best management practices approved by the local enforcement agency. The bill would, among other things, authorize the operation to distribute food in an outdoor location, as specified, in compliance with the approved best management practices and subject to approval by the local enforcement agency, with food service limited to no more than 4 hours per day.

By creating a new crime and by imposing duties on local officials, this bill would impose a state-mandated local program.

This bill would authorize the local enforcement agency to recover the reasonable regulatory costs of the administration, implementation, investigation, and enforcement of the above-described provisions from a limited service charitable feeding operation.

This bill would incorporate additional changes to Section 113789 of the Health and Safety Code proposed by AB 626 and AB 2524 to be operative only if this bill and AB 626, this bill and AB 2524, or all 3 bills are enacted and this bill is enacted 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 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 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 (12) 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 markets.

(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) An outlet or location, including, but not limited to, 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 at an outlet or location 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.

(14) A limited service charitable feeding operation, as defined in Section 113819.

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 (12) 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 markets.

(12) Microenterprise home kitchen operations.

(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 when used for private, noncommercial purposes or when used as 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) An outlet or location, including, but not limited to, 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 at an outlet or location 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.

(14) A limited service charitable feeding operation, as defined in Section 113819.

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 (12) 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 markets.

(12) Catering operation.

(13) Host facility.

(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) An outlet or location, including, but not limited to, 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 at an outlet or location 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.

(14) A limited service charitable feeding operation, as defined in Section 113819.

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 (12) 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 markets.
- (12) Microenterprise home kitchen operations.
- (13) Catering operation.
- (14) Host facility.

(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 when used for private, noncommercial purposes or when used as 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) An outlet or location, including, but not limited to, 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 at an outlet or location 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.

(14) A limited service charitable feeding operation, as defined in Section 113819.

SEC. 2. Section 113819 is added to the Health and Safety Code, to read:

113819. (a) "Limited service charitable feeding operation" means an operation for food service to a consumer solely for providing charity, that is conducted by a nonprofit charitable organization operating pursuant to Chapter 10.6 (commencing with Section 114333), and whose food service is limited to any of the following functions:

(1) Storage and distribution of whole, uncut produce, or of prepackaged, nonpotentially hazardous foods in their original manufacturer's packaging.

(2) Heating, portioning, or assembly of a small volume of commercially prepared foods or ingredients that are not prepackaged.

(3) Reheating or portioning of only commercially prepared foods with no further processing, for purposes of hot holding and no longer than same-day food service to the consumer.

(4) Storage or distribution of commercially prepared and commercially packaged potentially hazardous cold or frozen foods for distribution to the consumer, according to the Comprehensive Resource for Food Recovery Programs, as most recently updated by the Conference for Food Protection, or according to another nationally recognized guidance resource as approved by the local enforcement agency.

(b) "Limited service charitable feeding operation" does not include a nonprofit charitable temporary food facility operating pursuant to Chapter 10.5 (commencing with Section 114332), or a temporary food facility operating pursuant to Chapter 11 (commencing with Section 114335). A limited service charitable feeding operation shall operate pursuant to Chapter 10.5 (commencing with Section 114332) or Chapter 11 (commencing with Section 114335) if it operates a nonprofit charitable temporary food facility or a temporary food facility, respectively.

SEC. 3. Chapter 10.6 (commencing with Section 114333) is added to Part 7 of Division 104 of the Health and Safety Code, to read:

CHAPTER 10.6. Limited Service Charitable Feeding Operation

114333. (a) (1) Except as specified in subdivision (b), a limited service charitable feeding operation shall not provide food service unless it has registered with the local enforcement agency in a manner prescribed by that agency, including, but not limited to, payment of a fee not to exceed the reasonable costs of administering and enforcing this chapter if that fee is imposed by the agency.

(2) A limited service charitable feeding operation that is subject to registration shall submit to the local enforcement agency all of the following information:

(A) The name, physical address, Internet Web site, and telephone number of the nonprofit charitable organization conducting the limited service charitable feeding operation.

(B) The name and contact information of a site representative of the limited service charitable feeding operation.

(C) The operating days and hours of the limited service charitable feeding operation.

(b) (1) (A) A limited service charitable feeding operation that performs the function described in paragraph (1) of, and does not perform the functions described in paragraphs (2) to (4), inclusive, of, subdivision (a) of Section 113819, shall be exempt from the requirements described in subdivision (a) regardless of whether it operates in conjunction with a food bank as described in subparagraph (B).

(B) A limited service charitable feeding operation that performs the function described in paragraph (4) of, and does not perform the functions described in paragraphs (2) and (3) of, subdivision (a) of Section 113819, and that operates in conjunction with a food bank that has a valid operating permit issued by the local enforcement agency or the State Department of Public Health shall be exempt from the requirements described in subdivision (a).

(C) A limited service charitable feeding operation that performs the function described in paragraph (2) or (3) of subdivision (a) of Section 113819, or the function described in paragraph (4) of subdivision (a) of Section 113819 without operating in

conjunction with a food bank as described in subparagraph (B), shall be subject to the requirements described in subdivision (a).

(2) (A) For purposes of subparagraph (B) of paragraph (1), the food bank shall ensure that the limited service charitable feeding operation is operating under a current agreement with the food bank and is compliant with the food bank's best management practices approved by the local enforcement agency.

(B) On at least an annual basis, or more frequently if requested by the local enforcement agency, the food bank shall submit to the local enforcement agency a current list of the limited service charitable feeding operations that operate in conjunction with that food bank.

(c) Notwithstanding any other law, a limited service charitable feeding operation shall be exempt from the requirements of this part, except as set forth in this chapter.

(d) A limited service charitable feeding operation shall comply with all of the following:

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

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

(3) Sections 113952, 113953.1, 113953.2, 113953.3, 113980, 113982, 113984, 113988, 113990, 113992, 113996, 113998, 114000, 114002, 114002.1, 114014, 114016, 114018, 114020, 114021, 114023, 114024, 114025, 114027, 114031, 114035, 114037, 114041, 114047, 114049, 114051, 114053, 114055, and 114079.

(4) Article 2 (commencing with Section 114390) and Article 3 (commencing with Section 114405) of Chapter 13. A registration issued pursuant to this chapter shall have the same meaning as provided in subdivision (b) of Section 113851.

(5) Best management practices approved by the local enforcement agency.

(6) Limitations on the duration of food service, as determined by the local enforcement agency based on the requirements set forth in paragraphs (1) to (5), inclusive.

(e) A limited service charitable feeding operation may prepare and distribute food from a nonresidential building or structure that meets minimum structural and operating requirements as determined by the local enforcement agency.

(f) A limited service charitable feeding operation may distribute food in an outdoor location, not in or adjacent to the registered location, in compliance with the approved best management practices and subject to approval by the local enforcement agency. Food service under this subdivision shall be limited to no more than four hours per day.

114333.1. Nothing in this chapter is intended to replace or supersede a permit for any food facility when required by the local enforcement agency pursuant to any other law.

114333.2. The local enforcement agency may recover the reasonable regulatory costs of the administration, implementation, investigation, and enforcement of this chapter from a limited service charitable feeding operation.

SEC. 4. (a) Section 1.1 of this bill incorporates amendments to Section 113789 of the Health and Safety Code proposed by both this bill and Assembly Bill 626. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2019, (2) each bill amends Section 113789 of the Health and Safety Code, (3) Assembly Bill 2524 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after Assembly Bill 626, 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 2524. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2019, (2) each bill amends Section 113789 of the Health and Safety Code, (3) Assembly Bill 626 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after Assembly Bill 2524, 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, Assembly Bill 626, and Assembly Bill 2524. That section of this bill shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2019, (2) all three bills amend Section 113789 of the Health and Safety Code, and (3) this bill is enacted after Assembly Bill 626 and Assembly Bill 2524, in which case Sections 1, 1.1, and 1.2 of this bill shall not become operative.

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.