

## Senate Bill No. 1192

### CHAPTER 608

An act to add Chapter 12.8 (commencing with Section 114379) to Part 7 of Division 104 of the Health and Safety Code, relating to children's health.

[Approved by Governor September 20, 2018. Filed with  
Secretary of State September 20, 2018.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 1192, Monning. Children's meals.

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, as defined, and requires local enforcement agencies to enforce these provisions. Under existing law, a person who violates any provision of the code is guilty of a misdemeanor with each offense punishable by a fine of not less than \$25 or more than \$1,000, or by imprisonment in a county jail for a term not exceeding 6 months, or by both that fine and imprisonment.

This bill would require a restaurant, as defined, that sells a children's meal that includes a beverage, to make the default beverage water, sparkling water, or flavored water, as specified, or unflavored milk or a nondairy milk alternative, as specified. The bill would not prohibit a restaurant's ability to sell, or a customer's ability to purchase, an alternative beverage if the purchaser requests one. The bill would make a violation of its provisions an infraction, but would make the first violation subject to a notice of violation. Under the bill, the 2nd and 3rd violations would be punishable by fines of not more than \$250 and \$500, respectively. By imposing additional duties on local enforcement 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.

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

SECTION 1. The Legislature finds and declares all of the following:

(a) From 1990 to 2016, inclusive, the obesity rate in California increased by 250 percent. While the increase was greatest from 1990 until 2003, recent trends suggest a continued increase in obesity among children. In 2009, 10.9 percent of children zero to five years of age, inclusive, and 12.2 percent of children six to 11 years of age, inclusive, were overweight. In 2015, the percentage of children who were overweight or obese for their age increased in both groups to 13.7 percent for children zero to five years of age, inclusive, and 16 percent for children six to 11 years of age, inclusive.

(b) Obese children are at least twice as likely as nonobese children to become obese adults. Obese children and adults are at greater risk for numerous adverse health consequences, including type 2 diabetes, heart disease, stroke, high blood pressure, high cholesterol, certain cancers, asthma, low self-esteem, depression, and other debilitating diseases.

(c) In California, 55 percent of adults have prediabetes or diabetes, including 33 percent of young adults 18 to 39 years of age, inclusive.

(d) Obesity-related health conditions have serious economic costs. The medical burden of obesity in the United States is about \$147 billion annually, or almost 10 percent of all medical spending. Roughly one-half of these costs are paid through Medicare and Medicaid, which means that taxpayers assume much of the economic responsibility. Medicare and Medicaid spending would be reduced by 8.5 percent and 11.8 percent, respectively, in the absence of obesity-related spending. Obesity-related annual medical expenditures in California are estimated at \$9.1 billion.

(e) Many families lack adequate time to obtain and prepare healthy food, making dining out an appealing and often necessary option. As a result, more than one-half of food expenditures in the United States are spent outside the home. Nationwide, American children eat 25 percent of their calories at fast food and other restaurants. Children consume almost twice as many calories when they eat a meal at a restaurant as they do when they eat at home.

(f) By enacting this act, it is the intent of the Legislature to support parents' efforts to feed their children nutritiously by ensuring healthy beverages are the default options in children's meals in restaurants.

SEC. 2. Chapter 12.8 (commencing with Section 114379) is added to Part 7 of Division 104 of the Health and Safety Code, to read:

#### CHAPTER 12.8. CHILDREN'S MEALS

114379. The purpose of this chapter is to support children's health by setting nutritional standards for a restaurant's children's meals.

114379.10. For purposes of this chapter, the following terms have the following meanings:

(a) “Children’s meal” means a combination of food items and a beverage, or a single food item and a beverage, sold together at a single price, primarily intended for consumption by a child.

(b) “Default beverage” means the beverage automatically included or offered as part of a children’s meal, absent a specific request by the purchaser of the children’s meal for an alternative beverage.

(c) “Restaurant” means a retail food establishment that prepares, serves, and vends food directly to the consumer.

114379.20. (a) A restaurant that sells a children’s meal shall make the default beverage offered with the children’s meal one of the following:

(1) Water, sparkling water, or flavored water, with no added natural or artificial sweeteners.

(2) Unflavored milk.

(3) A nondairy milk alternative that contains no more than 130 calories per container or serving. For purposes of this paragraph, “nondairy milk alternative” means a non-dairy fluid milk substitute that meets the standards for the National School Lunch Program as set forth in Section 210.10 of Title 7 of the Code of Federal Regulations.

(b) The beverage listed or displayed on a restaurant menu or advertisement for a children’s meal shall be one of the default beverages listed in subdivision (a).

114379.30. This chapter does not prohibit a restaurant’s ability to sell, or a customer’s ability to purchase, an alternative beverage instead of the default beverage offered with the children’s meal, if requested by the purchaser of the children’s meal.

114379.40. The local enforcement agency, as set forth in Section 113713, shall implement, administer, and enforce this chapter. The department may issue rules and regulations as necessary to carry out the purposes of this chapter.

114379.50. A violation of this chapter is, notwithstanding Section 114395, an infraction, provided, however, that the first violation shall result in a notice of violation. A second violation within a five-year period from the notice of violation shall be punishable by a fine of not more than two hundred fifty dollars (\$250). For a third or subsequent violation within a five-year period, the fine shall be not more than five hundred dollars (\$500). A restaurant shall not be found to have committed a violation under this chapter more than once during an inspection visit.

114379.60. This chapter shall be construed so as not to conflict with any federal or state law, rule, or regulation. This chapter does not authorize a local agency to impose any duty or obligation in conflict with a limitation on a local authority established by a federal or state law. If a court or agency of competent jurisdiction holds that a federal or state law, rule, or regulation invalidates any clause, sentence, paragraph, or section of this chapter or the application thereof to any person or circumstances, it is the intent of the Legislature that the court or agency sever the clause, sentence, paragraph, or section so that the remainder of this chapter remains in effect.

SEC. 3. 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.