

AMENDED IN SENATE MAY 20, 2019
AMENDED IN ASSEMBLY MARCH 25, 2019
AMENDED IN ASSEMBLY MARCH 11, 2019
CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

ASSEMBLY BILL

No. 377

Introduced by Assembly ~~Member~~ *Members Eduardo Garcia and Mayes*

February 5, 2019

An act to amend Sections 114367.1, 114367.2, 114367.5, and 114367.6 of, and to repeal and add Sections 114367 and 114367.3 of, the Health and Safety Code, relating to retail food facilities, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 377, as amended, Eduardo Garcia. Microenterprise home kitchen operations.

(1) The California Retail Food Code (code) authorizes the governing body of a city, county, or city and county, by ordinance or resolution, to permit microenterprise home kitchen operations if certain conditions are met. The code requires microenterprise home kitchen operations, as a restricted food service facility, to meet specified food safety standards. A violation of the code is generally a misdemeanor.

This bill would modify the conditions for a city, county, or city and county to permit microenterprise home kitchen operations within its jurisdiction. The bill would modify the inspections and food safety standards applicable to microenterprise home kitchen operations. The bill would prohibit an internet food service intermediary or a microenterprise home kitchen operation from using the word “catering”

or any variation of that word in a listing or advertisement of a microenterprise home kitchen operation’s offer of food for sale. The bill would require a microenterprise home kitchen operation to include specific information, including its permit number, in its advertising. The bill would prohibit a third-party delivery service from delivering food produced by a microenterprise home kitchen operation. By expanding the scope of a crime for a violation of the code, this bill would impose a state-mandated local program.

(2) 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.

(3) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3. 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 114367 of the Health and Safety Code
2 is repealed.

3 SEC. 2. Section 114367 is added to the Health and Safety Code,
4 to read:

5 114367. The governing body of a city, county, or city and
6 county that is designated as the enforcement agency, as defined
7 in Section 113773, may authorize, by ordinance or resolution,
8 within its jurisdiction the permitting of microenterprise home
9 kitchen operations in accordance with this chapter. If a governing
10 body of a city, county, or city and county authorizes the permitting
11 of microenterprise home kitchen operations, the authorization shall
12 apply to all areas within its jurisdiction, including being applicable
13 to all cities within a county that authorizes microenterprise home
14 kitchen operations, regardless of whether each city located within
15 the jurisdiction of the county separately authorizes them.

16 SEC. 3. Section 114367.1 of the Health and Safety Code is
17 amended to read:

18 114367.1. (a) A microenterprise home kitchen operation, as
19 defined in Section 113825, shall be considered a restricted food
20 service facility for purposes of, and subject to all applicable

1 requirements of, Chapter 1 (commencing with Section 113700) to
2 Chapter 9 (commencing with Section 114265), inclusive, and
3 Chapter 13 (commencing with Section 114380), except as
4 otherwise provided in this chapter.

5 (b) A microenterprise home kitchen operation shall be exempt
6 from all of the following provisions:

7 (1) Handwashing facilities requirements, as required in Section
8 113953, provided that a handwashing sink is supplied with warm
9 water and located in the toilet room and supplied, as specified in
10 Section 113953.2.

11 (2) Any provision in this part relating to sinks, warewashing
12 machines, and manual or machine sanitation, including, but not
13 limited to, Sections 114099, 114099.2, 114099.4, 114101.1,
14 114101.2, 114103, 114107, 114123, 114125, 114163, and 114279,
15 provided that all of the following conditions are met:

16 (A) Utensils and equipment are able to be properly cleaned and
17 sanitized.

18 (B) The sink in a microenterprise home kitchen operation has
19 hot and cold water and is fully operable.

20 (C) If a dishwasher is used, it shall be operated in accordance
21 with the manufacturer's specifications.

22 (3) Prohibition on the presence of persons unnecessary to the
23 food facility operation in the food preparation, food storage, or
24 warewashing areas, as specified in Section 113945.1, provided
25 that the permitholder takes steps to avoid any potential
26 contamination to food, clean equipment, utensils, and unwrapped
27 single-service and single-use articles and prevents a person
28 suffering from symptoms associated with acute gastrointestinal
29 illness or person known to be infected with a communicable disease
30 that is transmissible through food to enter the food preparation
31 area while food is being prepared as part of a microenterprise home
32 kitchen operation.

33 (4) No smoking sign posting requirements, as specified in
34 Section 113978.

35 (5) Limitations on employee consumption of food, drink, or
36 tobacco outside of designated areas, as specified in Sections 113977
37 and 114256, provided that the permitholder takes steps to avoid
38 any potential contamination to food, clean equipment, utensils,
39 and unwrapped single-service and single-use articles and prevents
40 a person suffering from symptoms associated with acute

1 gastrointestinal illness or person known to be infected with a
2 communicable disease that is transmissible through food to enter
3 the food preparation area while food is being prepared as part of
4 a microenterprise home kitchen operation.

5 (6) Limitations on consumer access to the food facility through
6 food preparation areas, as specified in Section 113984.1, provided
7 that the permit holder takes steps to avoid any potential
8 contamination to food, clean equipment, utensils, and unwrapped
9 single-service and single-use articles and prevents a person
10 suffering from symptoms associated with acute gastrointestinal
11 illness or person known to be infected with a communicable disease
12 that is transmissible through food to enter the food preparation
13 area while food is being prepared as part of a microenterprise home
14 kitchen operation.

15 (7) Display guard, cover, and container requirements, as
16 specified in Section 114060, provided that any food on display
17 that is not protected from the direct line of a consumer's mouth
18 by an effective means is not served or sold to any subsequent
19 consumer.

20 (8) Requirements to provide clean drinking cups and tableware
21 for second portions and beverage refills, as specified in Section
22 114075.

23 (9) Requirements pertaining to the characteristics and
24 certification of utensils and equipment, as specified in Sections
25 114130 and 114139, provided that utensils and equipment are
26 designed to retain their characteristic qualities under normal use
27 conditions.

28 (10) Requirements pertaining to the characteristics, construction,
29 and multiuse of food-contact and nonfood-contact surfaces, as
30 specified in Sections 114130.3 and 114130.4, provided that food
31 contact surfaces are smooth, easily cleanable, and in good repair.

32 (11) Requirements pertaining to the characteristics, construction,
33 and disassembly of clean in place (CIP) equipment, as specified
34 in Section 114130.5.

35 (12) Limitations on the use of wood as a food contact surface
36 and in connection with other equipment, as specified in Section
37 114132, provided that hard maple or equivalent wood is approved
38 for use in direct contact with food during preparation.

39 (13) Any provision in this part relating to ventilation, including,
40 but not limited to, Article 2 (commencing with Section 114149)

1 of Chapter 6, provided that gases, odors, steam, heat, grease,
2 vapors, and smoke are able to escape from the kitchen.

3 (14) Requirements that cold or hot holding equipment used for
4 potentially hazardous food be equipped with integral or
5 permanently affixed temperature measuring device or product
6 mimicking sensors, as specified in subdivision (c) of Section
7 114157.

8 (15) Requirements pertaining to the installation of fixed,
9 floor-mounted, and table-mounted equipment, as specified in
10 Section 114169.

11 (16) Dedicated laundry facility requirements, as specified in
12 Section 114185.5, provided that linens used in connection with
13 the microenterprise home kitchen operation shall be laundered
14 separately from the household and other laundry.

15 (17) Requirements pertaining to water, plumbing, drainage, and
16 waste, as specified in Sections 114193, 114193.1, and 114245.7.

17 (18) Any requirement that a microenterprise home kitchen
18 operation have more than one toilet facility or that access to the
19 toilet facility not require passage through the food preparation,
20 food storage, or utensil washing areas, including, but not limited
21 to, the requirements specified in Sections 114250 and 114276.

22 (19) Light intensity, light source, and lightbulb requirements,
23 as specified in Sections 114252 and 114252.1, provided that food
24 preparation areas are well lighted by natural or artificial light
25 whenever food is being prepared.

26 (20) Requirements to provide and use lockers, storage facilities,
27 and designated dressing areas, and that food facility premises be
28 free of litter and items that are unnecessary to the operation, as
29 specified in Sections 114256.1 and 114257.1, provided that
30 personal effects and clothing not ordinarily found in a home kitchen
31 are placed or stored away from food preparation areas and dressing
32 takes place outside of the kitchen.

33 (21) Limitations on the presence and handling of animals, such
34 as domestic, service, or patrol animals, as specified in Sections
35 114259.4 and 114259.5, provided that all animals are kept outside
36 of the kitchen during food service and preparation.

37 (22) Requirements pertaining to floor, wall, and ceiling surfaces,
38 as specified in Sections 114268, 114269, and 114271, provided
39 that the floor, wall, and ceiling surfaces of the kitchen, storage,
40 and toilet areas are smooth, of durable construction, and easily

1 cleanable with no limitations on the use of wood, tile, and other
2 nonfiber floor surfaces ordinarily used in residential settings.

3 (23) Any local evaluation or grading system for food facilities,
4 as authorized by Section 113709.

5 (24) All prohibitions and limitations on the use of a kitchen in
6 a private home as a food facility, including, but not limited to,
7 prohibitions and limitations specified in Section 114285, provided
8 that food is not prepared in designated sleeping quarters. Open
9 kitchens adjacent to living and sleeping areas, kitchens in
10 efficiency, studio, and loft-style residences, and kitchens without
11 doors at all points of ingress and egress may be used in
12 microenterprise home kitchen operations.

13 (25) Planning and permitting provisions of Sections 114380
14 and 114381.2.

15 (c) A microenterprise home kitchen operation may operate an
16 open-air barbecue or outdoor wood-burning oven, pursuant to the
17 requirements of Section 114143.

18 (d) The operator of a microenterprise home kitchen operation
19 shall successfully pass an approved and accredited food safety
20 certification examination, as specified in Section 113947.1.

21 (e) Any individual, other than the operator, who is involved in
22 the preparation, storage, or service of food in a microenterprise
23 home kitchen operation shall be subject to the food handler card
24 requirements specified in Section 113948.

25 (f) A microenterprise home kitchen operation shall only offer
26 for sale or sell food that was prepared during a food demonstration
27 or preparation event to a consumer who was present at that food
28 demonstration or preparation event.

29 SEC. 4. Section 114367.2 of the Health and Safety Code is
30 amended to read:

31 114367.2. (a) A microenterprise home kitchen operation shall
32 not be open for business unless it has obtained a permit issued
33 from the enforcement agency.

34 (b) The department shall post on its internet website the
35 requirements for the permitting of a microenterprise home kitchen
36 operation, pursuant to this chapter and any ordinance, resolution,
37 or rules adopted by any city, county, or city and county, that has
38 authorized the permitting of microenterprise home kitchen
39 operations, which shall be written at a high school level.

1 (c) The applicant shall submit to the enforcement agency written
2 standard operating procedures that include all of the following
3 information:

- 4 (1) All food types or products that will be handled.
- 5 (2) The proposed procedures and methods of food preparation
6 and handling.
- 7 (3) Procedures, methods, and schedules for cleaning utensils,
8 equipment, and for the disposal of refuse.
- 9 (4) How food will be maintained at the required holding
10 temperatures, as specified in Section 113996, pending pickup by
11 consumer or during delivery.
- 12 (5) Days and times that the home kitchen may potentially be
13 utilized as a microenterprise home kitchen operation. The stated
14 days and times are not binding on the permitholder and shall be
15 used for information purposes only.

16 (d) (1) The enforcement agency shall issue a permit after an
17 initial inspection has determined that the proposed microenterprise
18 home kitchen operation and its method of operation comply with
19 the requirements of this chapter.

20 (2) An enforcement agency shall not require a microenterprise
21 home kitchen operation to comply with food safety requirements
22 that are different from, or in addition to, the requirements of this
23 chapter.

24 (e) For purposes of permitting, the permitted area includes the
25 home kitchen, onsite consumer eating area, food storage, utensils
26 and equipment, toilet room, janitorial or cleaning facilities, and
27 refuse storage area. Food operations shall not be conducted outside
28 of the permitted areas.

29 (f) An enforcement agency may require a microenterprise home
30 kitchen operation to renew its permit annually.

31 (g) A permit, once issued, is nontransferable. A permit shall be
32 valid only for the person and location specified by that permit,
33 and, unless suspended or revoked for cause, for the time period
34 indicated.

35 (h) The permit, or an accurate copy thereof, shall be retained
36 by the operator onsite and displayed at all times the microenterprise
37 home kitchen operation is in operation.

38 (i) An enforcement agency may collect a fee for the issuance
39 of a permit pursuant to this chapter in an amount that does not

1 exceed the reasonable administrative costs by the enforcement
2 agency in issuing the permit.

3 SEC. 5. Section 114367.3 of the Health and Safety Code is
4 repealed.

5 SEC. 6. Section 114367.3 is added to the Health and Safety
6 Code, to read:

7 114367.3. (a) Notwithstanding any other law, a microenterprise
8 home kitchen operation shall only be subject to the three following
9 types of inspections by the enforcement agency:

10 (1) A routine inspection for the purpose of allowing the
11 enforcement agency to observe the permitholder engage in the
12 usual activities of a microenterprise home kitchen operation,
13 including, but not limited to, active food preparation. The
14 enforcement agency shall provide notice to a permitholder before
15 a routine inspection and shall conduct the routine inspection at a
16 mutually agreeable date and time. A microenterprise home kitchen
17 operation shall not be subject to more than one routine inspection
18 within 12 months. This paragraph shall not be deemed to require
19 the enforcement agency to conduct a routine inspection.

20 (2) An investigation inspection for the purpose of allowing the
21 enforcement agency to perform an inspection when the enforcement
22 agency has just cause that adulterated or otherwise unsafe food
23 has been produced or served by the microenterprise home kitchen
24 operation or that the permitholder has otherwise violated this part.
25 One or more consumer complaints may constitute just cause for
26 an investigation inspection. The enforcement agency shall provide
27 notice to a permitholder before an investigation inspection and
28 shall conduct the investigation inspection at a mutually agreeable
29 date and time.

30 (3) An emergency inspection for the purpose of allowing the
31 enforcement agency to perform a limited inspection when the
32 enforcement agency has just cause that the microenterprise home
33 kitchen operation poses a serious hazard or immediate threat to
34 public health. To the extent that notice of an emergency inspection
35 is reasonable under the circumstances, the enforcement agency
36 shall provide notice to a permitholder before an emergency
37 inspection. The scope of emergency inspection shall be limited in
38 duration and scope to address the facts giving just cause that the
39 microenterprise home kitchen operation poses a serious hazard or
40 immediate threat to public health.

1 (b) The enforcement agency shall only inspect the permitted
2 area of the microenterprise home kitchen operation for the purpose
3 of enforcing or administering this part.

4 (c) The enforcement agency may seek recovery from a
5 microenterprise home kitchen operation of an amount that does
6 not exceed the enforcement agency's reasonable costs of inspecting
7 the microenterprise home kitchen operation for compliance with
8 this part if the microenterprise home kitchen operation is found to
9 be in violation of this part.

10 SEC. 7. Section 114367.5 of the Health and Safety Code is
11 amended to read:

12 114367.5. (a) A person delivering food on behalf of a
13 microenterprise home kitchen operation with a permit issued
14 pursuant to Section 114367.2 shall be an employee of the
15 microenterprise home kitchen operation or a family member or
16 household member of the permitholder.

17 (b) Food produced in a microenterprise home kitchen operation
18 shall not be delivered by a third-party delivery service.

19 SEC. 8. Section 114367.6 of the Health and Safety Code is
20 amended to read:

21 114367.6. (a) An internet food service intermediary that lists
22 or promotes a microenterprise home kitchen operation on its
23 internet website or mobile application shall meet all of the
24 following requirements:

25 (1) Be registered with the department. A registration, once
26 issued, is nontransferable. A registration shall be valid only for
27 the person and type of business specified by that registration, and
28 unless suspended or revoked for cause by the department.

29 (2) Prior to the listing or publication of a microenterprise home
30 kitchen operation's offer of food for sale, clearly and conspicuously
31 post on its internet website or mobile application the requirements
32 for the permitting of a microenterprise home kitchen specified in
33 this chapter, which shall be written at the high school level and be
34 provided by the department.

35 (3) Clearly and conspicuously post on its internet website or
36 mobile application the fees associated with using its platform in a
37 manner that allows both the consumer and the microenterprise
38 home kitchen operation to see and understand the amount being
39 charged for the services provided by the internet food service
40 intermediary. The internet food service intermediary shall notify

1 the microenterprise home kitchen operation of any changes to these
2 fees exceeding a 2-percent increase in writing and no later than
3 one month before the changes take effect.

4 (4) Clearly and conspicuously post on its internet website or
5 mobile application whether or not it has liability insurance that
6 would cover any incidence arising from the sale or consumption
7 of food listed or promoted on its internet website or mobile
8 application.

9 (5) Provide a dedicated field on its platform for a microenterprise
10 home kitchen operation to post the permit number and the name
11 ~~of the county~~ of the enforcement agency that issued the permit.

12 (6) Clearly and conspicuously post on its internet website or
13 mobile application how a consumer can contact the internet food
14 service intermediary through its internet website or mobile
15 application if the consumer has a food safety or hygiene complaint
16 and a link to the department's internet website that contains
17 information for how to file a complaint with the enforcement
18 agency.

19 (7) Submit the name and permit number of a microenterprise
20 home kitchen operation to the enforcement agency that issued the
21 permit to the microenterprise home kitchen operation if the internet
22 food service intermediary receives, through its internet website or
23 mobile application, three or more unrelated individual food safety
24 or hygiene complaints in a calendar year from consumers that have
25 made a purchase through its internet website or mobile application.
26 The internet food service intermediary shall submit this information
27 to the enforcement agency within two weeks of the third complaint
28 received.

29 (8) If it is notified by the enforcement agency of significant
30 food safety related complaints from a verified consumer that has
31 made a purchase through its internet website or mobile application,
32 submit to the enforcement agency the name and permit number of
33 microenterprise home kitchen operation where the food was
34 purchased, and a list of consumers who purchased food on the
35 same day from that microenterprise home kitchen operation through
36 its internet website or mobile application.

37 (9) Prior to the listing or publication of a microenterprise home
38 kitchen operation's offer of food for sale, obtain consent from the
39 microenterprise home kitchen operation to make the disclosures
40 to government entities required pursuant to this section.

1 (10) Shall not permit the use of the word “catering” or any
2 variation of that word in a listing or publication of a
3 microenterprise home kitchen operation’s offer of food for sale.

4 (11) Shall not use, or knowingly facilitate the use of, a
5 third-party delivery service for food produced by the
6 microenterprise home kitchen operation.

7 (b) For purposes of this chapter, an “internet food service
8 intermediary” means an entity that provides a platform on its
9 internet website or mobile application through which a
10 microenterprise home kitchen operation may choose to offer food
11 for sale and from which the internet food service intermediary
12 derives revenues, including, but not limited to, revenues from
13 advertising and fees for services offered to a microenterprise home
14 kitchen operation. Services offered by an internet food service
15 intermediary to a microenterprise home kitchen operation may
16 include, but are not limited to, allowing a microenterprise home
17 kitchen operation to advertise its food for sale and providing a
18 means for potential consumers to arrange payment for the food,
19 whether the consumer pays directly to the microenterprise home
20 kitchen operation or to the internet food service intermediary.
21 Merely publishing an advertisement for the microenterprise home
22 kitchen operation or food cooked therein does not make the
23 publisher an internet food service intermediary.

24 (c) (1) A microenterprise home kitchen operation that advertises
25 to the public, including, but not limited to, advertising by website,
26 internet, social media platform, newspaper, newsletter, or other
27 public announcement, shall include all of the following within the
28 advertisement:

29 (A) Name of the enforcement agency that issued the permit.

30 (B) Permit number.

31 (C) Statement that the food prepared is “Made in a Home
32 Kitchen” in a clear and conspicuous font and location within a
33 written advertisement and an audible and comprehensible manner
34 in a verbal advertisement.

35 (2) A microenterprise home kitchen operation shall not use the
36 word “catering” or any variation of that word in an advertisement
37 relating to the microenterprise home kitchen operation’s offer of
38 food for sale.

39 SEC. 9. No reimbursement is required by this act pursuant to
40 Section 6 of Article XIII B of the California Constitution because

1 the only costs that may be incurred by a local agency or school
2 district will be incurred because this act creates a new crime or
3 infraction, eliminates a crime or infraction, or changes the penalty
4 for a crime or infraction, within the meaning of Section 17556 of
5 the Government Code, or changes the definition of a crime within
6 the meaning of Section 6 of Article XIII B of the California
7 Constitution.

8 SEC. 10. This act is an urgency statute necessary for the
9 immediate preservation of the public peace, health, or safety within
10 the meaning of Article IV of the California Constitution and shall
11 go into immediate effect. The facts constituting the necessity are:

12 To ensure a uniform implementation of the health and food safety
13 responsibilities of microenterprise home kitchen operations
14 throughout the state, it is necessary that this act take effect
15 immediately.