

ASSEMBLY BILL

No. 377

Introduced by Assembly Member Eduardo Garcia

February 5, 2019

An act to amend Sections 114367.1, 114367.2, 114367.3, 114367.5, and 114367.6 of, to add Section 114367.7 to, and to repeal and add Section 114367 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 introduced, 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 require an enforcement agency that is permitting and inspecting microenterprise home kitchen operations to annually report specified information about the operations within its jurisdiction and post a link to a report on the homepage of its internet website. The bill would modify the 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. 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: $\frac{2}{3}$. 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 ~~114367. (a) Except as provided in subdivision (b), the~~
4 ~~governing body of a city or county, or city and county, shall have~~
5 ~~full discretion to authorize, by ordinance or resolution, the~~
6 ~~permitting of microenterprise home kitchen operations in~~
7 ~~accordance with this chapter.~~

8 ~~(b) A permit issued by a county that has authorized the~~
9 ~~permitting of microenterprise home kitchen operations in~~
10 ~~accordance with this chapter shall be valid in any city within the~~
11 ~~county regardless of whether the city has separately enacted an~~
12 ~~ordinance or resolution to authorize or prohibit the permitting of~~
13 ~~microenterprise home kitchen operations within that city.~~

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

16 114367. The governing body of a city, county, or city and
17 county that is designated as the enforcement agency, as defined
18 in Section 113773, shall have full discretion to authorize, by
19 ordinance or resolution, the permitting of microenterprise home
20 kitchen operations in accordance with this chapter.

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

114367.1. (a) A microenterprise home kitchen operation, as defined in Section 113825, shall be considered a restricted food service facility for purposes of, and subject to all applicable requirements of, Chapter 1 (commencing with Section 113700) to Chapter 9 (commencing with Section 114265), inclusive, ~~Chapter 12.6 (commencing with Section 114377)~~, and Chapter 13 (commencing with Section 114380), except as otherwise provided in this chapter.

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

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

(2) Any provision in this part relating to sinks, warewashing machines, and manual or machine sanitation, ~~including~~ *including*, but not limited to, Sections 114099, 114099.2, 114099.4, 114099.6, 114099.7, 114101.1, 114101.2, 114103, 114107, 114123, 114125, 114163, and 114279, provided that ~~the~~ *all of the following conditions are met:*

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

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

(3) Prohibition on the presence of persons unnecessary to the food facility operation in the food preparation, food storage, or warewashing areas, as specified in Section ~~113945.1~~ *113945.1, except during hours of a microenterprise home kitchen operation.*

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

(5) Limitations on employee consumption of food, drink, or tobacco outside of designated areas, as specified in Sections 113977 and ~~114256~~ *114256, except during times when food is being prepared as part of a microenterprise home kitchen operation.*

(6) Limitations on consumer access to the food facility through food preparation areas, as specified in Section ~~113984.1~~ *113984.1, except during hours of a microenterprise home kitchen operation.*

(7) Display guard, cover, and container requirements, as specified in Section 114060, provided that any food on display that is not protected from the direct line of a consumer's mouth

1 by an effective means is not served or sold to any subsequent
2 consumer.

3 (8) Limitations on outdoor display and sale of foods, as specified
4 in Section 114069.

5 (9) Requirements to provide clean drinking cups and tableware
6 for second portions and beverage refills, as specified in Section
7 114075.

8 (10) Requirements pertaining to the characteristics and
9 certification of utensils and equipment, as specified in Sections
10 114130, 114130.1, and 114139, provided that utensils and
11 equipment are designed to retain their characteristic qualities under
12 normal use conditions.

13 (11) Requirements pertaining to the characteristics, construction,
14 and multiuse of food-contact and nonfood-contact surfaces, as
15 specified in Sections 114130.1, 114130.3, and 114130.4, provided
16 that food contact surfaces are smooth, easily cleanable, and in good
17 repair.

18 (12) Requirements pertaining to the characteristics, construction,
19 and disassembly of clean in place (CIP) equipment, as specified
20 in Section 114130.5.

21 (13) Limitations on the use of wood as a food contact surface
22 and in connection with other equipment, as specified in Section
23 114132.

24 (14) Any provision in this part relating to ventilation, including,
25 but not limited to, Article 2 (commencing with Section 114149)
26 of Chapter 6, provided that gases, odors, steam, heat, grease,
27 vapors, and smoke are able to escape from the kitchen.

28 (15) Requirements that cold or hot holding equipment used for
29 potentially hazardous food be equipped with integral or
30 permanently affixed temperature measuring device or product
31 mimicking sensors, as specified in subdivision (c) of Section
32 114157.

33 (16) Requirements pertaining to the installation of fixed,
34 floor-mounted, and table-mounted equipment, as specified in
35 Section 114169.

36 (17) Dedicated laundry facility requirements, as specified in
37 Section 114185.5, provided that linens used in connection with
38 the microenterprise home kitchen operation shall be laundered
39 separately from the household and other laundry.

1 (18) Requirements pertaining to water, plumbing, drainage, and
2 waste, as specified in Sections 114193, 114193.1, and 114245.7.

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

8 (20) Light intensity, light source, and lightbulb requirements,
9 as specified in Sections 114252 and 114252.1, provided that food
10 preparation areas are well lighted by natural or artificial light
11 whenever food is being prepared.

12 (21) Requirements to provide and use lockers, storage facilities,
13 and designated dressing areas, and that food facility premises be
14 free of litter and items that are unnecessary to the operation, as
15 specified in Sections 114256.1 and 114257.1, provided that
16 personal effects and clothing not ordinarily found in a home kitchen
17 are placed or stored away from food preparation areas and dressing
18 takes place outside of the kitchen.

19 (22) Limitations on the presence and handling of animals, such
20 as domestic, service, or patrol animals, as specified in Sections
21 114259.4 and 114259.5, provided that all animals, other than
22 service animals, are kept outside of the kitchen and dining areas
23 during food service and preparation.

24 (23) Requirements pertaining to floor, wall, and ceiling surfaces,
25 as specified in Sections 114268, 114269, and 114271, provided
26 that the floor, wall, and ceiling surfaces of the kitchen, storage,
27 and toilet areas are smooth, of durable construction, and easily
28 cleanable with no limitations on the use of wood, tile, and other
29 nonfiber floor surfaces ordinarily used in residential settings.

30 (24) Any local evaluation or grading system for food facilities,
31 as authorized by Section 113709.

32 (25) All prohibitions and limitations on the use of a kitchen in
33 a private home as a food facility, including, but not limited to,
34 prohibitions and limitations specified in Section 114285, provided
35 that food is not prepared in designated sleeping quarters. Open
36 kitchens adjacent to living and sleeping areas, kitchens in
37 efficiency, studio, and loft-style residences, and kitchens without
38 doors at all points of ingress and egress may be used in
39 microenterprise home kitchen operations.

(26) Planning and permitting provisions of Sections 114380, 114381, and 114381.2.

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

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

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

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

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

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

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

(1) All food types or products that will be handled.

(2) The proposed procedures and methods of food preparation and handling.

(3) Procedures, methods, and schedules for cleaning utensils, equipment, and for the disposal of refuse.

(4) How food will be maintained at the required holding temperatures, as specified in Section 113996, pending pickup by consumer or during delivery.

(5) Days and times that the home kitchen will potentially be utilized as a microenterprise home kitchen operation.

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

1 (2) A ~~local~~ enforcement agency shall not require a
2 microenterprise home kitchen operation to comply with food safety
3 requirements that are different from, or in addition to, the
4 requirements of this chapter.

5 (e) For purposes of permitting, the permitted area includes the
6 home kitchen, onsite consumer eating area, food storage, utensils
7 and equipment, toilet room, janitorial or cleaning facilities, and
8 refuse storage area. Food operations shall not be conducted outside
9 of the permitted areas.

10 (f) A ~~local~~ enforcement agency may require a microenterprise
11 home kitchen operation to renew its permit annually.

12 (g) A permit, once issued, is nontransferable. A permit shall be
13 valid only for the person and location specified by that permit,
14 and, unless suspended or revoked for cause, for the time period
15 indicated.

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

19 (i) A ~~local~~ An enforcement agency may collect a fee for the
20 issuance of a permit pursuant to this chapter in an amount that
21 does not exceed the reasonable administrative costs by the ~~local~~
22 enforcement agency in issuing the permit.

23 (j) ~~Notwithstanding any other law, if there are multiple local~~
24 ~~agencies involved in the issuance of any type of permit, license,~~
25 ~~or other authorization to a microenterprise home kitchen operation,~~
26 ~~the governing body of the city or county, or city and county, shall~~
27 ~~designate one lead local agency that shall be vested with the sole~~
28 ~~authority to accept all applications for, to collect all fees for, and~~
29 ~~to issue, any permit, license, or other authorization required for a~~
30 ~~microenterprise home kitchen operation to operate in the city or~~
31 ~~county, or city and county. A local agency other than the lead local~~
32 ~~agency shall not accept any applications for, collect any fees for,~~
33 ~~nor issue, any permits for the same purpose.~~

34 SEC. 5. Section 114367.3 of the Health and Safety Code is
35 amended to read:

36 ~~114367.3. (a) Notwithstanding any other law, after the initial~~
37 ~~inspection for purposes of determining compliance with this~~
38 ~~chapter, a microenterprise home kitchen operation shall not be~~
39 ~~subject to routine inspections, except that a representative of a~~
40 ~~local enforcement agency may access, for inspection purposes, the~~

1 ~~permitted area of a microenterprise home kitchen operation after~~
2 ~~the occurrence of either of the following:~~

3 ~~(1) The representative has provided the microenterprise home~~
4 ~~kitchen operation with reasonable advance notice.~~

5 ~~(2) The representative has a valid reason, such as a consumer~~
6 ~~complaint, to suspect that adulterated or otherwise unsafe food has~~
7 ~~been produced or served by the microenterprise home kitchen~~
8 ~~operation, or that the microenterprise home kitchen operation has~~
9 ~~otherwise been in violation of this part.~~

10 ~~(b)~~

11 *114367.3. (a) Notwithstanding any other law, a microenterprise*
12 *home kitchen operation shall not be subject to more than one*
13 *routine inspection each year by the local enforcement agency,*
14 *except in cases in which the local enforcement agency has valid*
15 *reason, such as a consumer complaint, to suspect that adulterated*
16 *or otherwise unsafe food has been produced or served by the*
17 *microenterprise home kitchen operation, operation or that the*
18 *microenterprise home kitchen operation has otherwise been in*
19 *violation of this part.*

20 ~~(c) The local enforcement agency shall document the reason~~
21 ~~for the inspection, keep that documentation on file with the~~
22 ~~microenterprise home kitchen operation's permit, and provide the~~
23 ~~reason in writing to the operator of the microenterprise home~~
24 ~~kitchen operation.~~

25 ~~(d)~~

26 *(b) (1) Access provided under this section is limited to the*
27 *permitted area of the microenterprise home kitchen operation,*
28 *during the posted operating hours of the microenterprise home*
29 *kitchen operation, and solely for the purpose of enforcing or*
30 *administering this part.*

31 *(2) Notwithstanding paragraph (1), a local enforcement agency*
32 *may inspect a microenterprise home kitchen operation outside its*
33 *posted operating hours under the following conditions:*

34 *(A) The enforcement agency determines an urgent public health*
35 *and safety issue requires inspection outside the posted operating*
36 *hours.*

37 *(B) The microenterprise home kitchen operation is not open*
38 *during the regular business hours of the enforcement agency.*

39 ~~(e)~~

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

7 SEC. 6. Section 114367.5 of the Health and Safety Code is
8 amended to read:

9 114367.5. (a) A person delivering food on behalf of a
10 microenterprise home kitchen operation with a permit issued
11 pursuant to Section 114367.2 shall be an employee of the operation
12 or a family member or household member of the ~~permitholder~~,
13 ~~and, if the person drives a motor vehicle in the delivery of the food,~~
14 ~~the person shall have a valid driver's license.~~ *permitholder.*

15 (b) ~~The microenterprise home kitchen operation shall keep on~~
16 ~~file a copy of the valid driver's license of a person delivering food~~
17 ~~on behalf of the operation.~~

18 SEC. 7. Section 114367.6 of the Health and Safety Code is
19 amended to read:

20 114367.6. (a) An ~~Internet~~ *internet* food service intermediary
21 that lists or promotes a microenterprise home kitchen operation
22 on its ~~Internet Web site~~ *internet website* or mobile application shall
23 meet all of the following requirements:

24 (1) Be registered with the department.

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

31 (3) Clearly and conspicuously post on its ~~Internet Web site~~
32 *internet website* or mobile application the fees associated with
33 using its platform in a manner that allows both the consumer and
34 the microenterprise home kitchen operation to see and understand
35 the amount being charged for the services provided by the ~~Internet~~
36 *internet* food service intermediary. The ~~Internet~~ *internet* food
37 service intermediary shall notify microenterprise home kitchen
38 operations of any changes to these fees exceeding a 2-percent
39 increase in writing and no later than one month before the changes
40 take effect.

1 (4) Clearly and conspicuously post on its ~~Internet Web site~~
2 *internet website* or mobile application whether or not it has liability
3 insurance that would cover any incidence arising from the sale or
4 consumption of food listed or promoted on its ~~Internet Web site~~
5 *internet website* or mobile application.

6 (5) Provide a dedicated field on its platform for a microenterprise
7 home kitchen operation to post the permit number, and shall
8 provide notice to the microenterprise home kitchen operation of
9 the requirement that the permit number be updated annually.

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

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

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

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

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

27 (A) *Name of the enforcement agency.*

28 (B) *Permit number.*

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

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

37 SEC. 8. Section 114367.7 is added to the Health and Safety
38 Code, to read:

39 114367.7. (a) (1) On or before January 1, 2021, and annually
40 thereafter, an enforcement agency permitting and inspecting

1 microenterprise home kitchen operations in accordance with this
2 chapter shall report to the Legislature all of the following relating
3 to microenterprise home kitchen operations within its jurisdiction:

4 (A) Number of permits issued.

5 (B) Foods authorized to be prepared.

6 (C) Number and nature of violations of this chapter.

7 (2) Each report shall be submitted in compliance with Section
8 9795 of the Government Code.

9 (b) Within seven business days of submitting a report pursuant
10 to subdivision (a), an enforcement agency shall post a conspicuous
11 link on the homepage of its internet website to an electronic copy
12 of the report.

13 SEC. 9. No reimbursement is required by this act pursuant to
14 Section 6 of Article XIII B of the California Constitution because
15 the only costs that may be incurred by a local agency or school
16 district will be incurred because this act creates a new crime or
17 infraction, eliminates a crime or infraction, or changes the penalty
18 for a crime or infraction, within the meaning of Section 17556 of
19 the Government Code, or changes the definition of a crime within
20 the meaning of Section 6 of Article XIII B of the California
21 Constitution.

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

26 To ensure a uniform implementation of the health and food safety
27 responsibilities of microenterprise home kitchen operations
28 throughout the state, it is necessary that this act take effect
29 immediately.