

**AB-626 California Retail Food Code: microenterprise home kitchen operations.** (2017-2018)

SHARE THIS:



Date Published: 09/18/2018 09:00 PM

Assembly Bill No. 626

CHAPTER 470

An act to amend Sections 110460, 111955, 113789, and 114390 of, to add Section 113825 to, and to add Chapter 11.6 (commencing with Section 114367) 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 626, Eduardo Garcia. California Retail Food Code: microenterprise home kitchen operations.

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 these 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 exempts, among others, a private home, including a registered or permitted cottage food operation, from the definition of food facility. A violation of the California Retail Food Code is generally a misdemeanor.

This bill would, among other things, include a microenterprise home kitchen operation within the definition of a food facility, and would define a microenterprise home kitchen operation to mean a food facility that is operated by a resident in a private home where food is stored, handled, and prepared for, and may be served to, consumers, and that meets specified requirements, including, among others, that the operation has no more than one full-time equivalent food employee and has no more than \$50,000 in verifiable gross annual sales. The bill would specify that the governing body of a city or county, or city and county, shall have full discretion to authorize, by ordinance or resolution, the permitting of microenterprise home kitchen operations in accordance with the provisions of this bill, except as provided. The bill would require a microenterprise home kitchen operation to be considered a restricted food service facility for purposes of certain provisions of the code, except as otherwise provided, and would exempt a microenterprise home kitchen operation from various provisions applicable to food facilities, including, among others, provisions relating to handwashing, sinks, ventilation, and animals. The bill would require the applicant for a permit to operate a microenterprise home kitchen operation to submit to the local enforcement agency written standard operating procedures that include specified information, including all food types or products that will be handled and the days and times that the home kitchen will potentially be utilized as a microenterprise home kitchen operation.

The bill would require an Internet food service intermediary, as defined, that lists or promotes a microenterprise home kitchen operation on its Internet Web site or mobile application to, among other things, be registered with the department, to clearly and conspicuously post on its Internet Web site or mobile application the requirements for the permitting of a microenterprise home kitchen operation, as specified, prior to the publication of the microenterprise home kitchen operation's offer of food for sale, and to submit the name and permit number of a

microenterprise home kitchen operation to the local enforcement agency if it receives, through its Internet Web site or mobile application, 3 or more unrelated individual food safety or hygiene complaints in a calendar year from consumers who have made a purchase through its Internet Web site or mobile application. The bill would also make related findings and declarations.

By expanding the scope of a crime, this bill would impose a state-mandated local program.

This bill would incorporate additional changes to Section 113789 of the Health and Safety Code proposed by AB 2178 and AB 2524 to be operative only if this bill and AB 2178, 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 no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

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

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

- (1) California is the largest agricultural producer and exporter in the United States.
- (2) California is home to the "farm-to-table" movement, which embraces the idea that restaurants and other food sellers should prioritize locally and sustainably produced foods.
- (3) Many cities have embraced the idea of locally grown, produced, and prepared foods. Sacramento, for example, proclaimed itself the farm-to-fork capital of America.
- (4) Accordingly, Californians have shown a preference for supporting local agriculture and local business and for finding sustainable solutions to food insecurity.
- (5) The retail and commercial food market is an integral part of California's economy.
- (6) Small-scale, home-cooking operations can create significant economic opportunities for Californians that need them most — often women, immigrants, and people of color.
- (7) Under existing law, individuals can sell food through retail food facilities or cottage food operations, the latter of which being limited to a restricted list that primarily consists of nonperishable food items that can be prepared in the home. Both of these options make it difficult for the vast majority of home cooks to independently benefit from their labor, skills, and limited resources.
- (8) Because the bar for entry to restaurant ownership is high, and the cost of renting a retail kitchen is so great, an informal economy of locally produced and prepared hot foods exists in the form of meal preparation services, food carts, and communally shared meals.
- (9) However, due to a lack of appropriate regulations, many experienced cooks in California are unable to legally participate in the locally prepared food economy and to earn an income legally therein.
- (10) As a result, and because they feel they have no other option, thousands of private chefs, home caterers, and many other food microentrepreneurs cook out of private homes or unlicensed food facilities, with little access to education for best practices or safety guidelines.
- (11) Many of these cooks are unable to enter the traditional food economy based on disability, family responsibilities, or lack of opportunity.
- (12) Under existing law, preparing and selling food from a home kitchen normally can be treated as a criminal act and may be punishable as a misdemeanor.
- (13) Providing guidelines, training, and safety resources to home cooks would also increase public health safeguards in existing informal food economies.
- (14) The exchange of home-cooked food can also improve access to healthy foods for communities, particularly in food deserts with severely limited options.

(15) The California Retail Food Code establishes health and sanitation standards for retail food facilities. That law exempts private homes from the definition of a food facility and includes cottage food operations in that exemption.

(16) Therefore, the Legislature should create a framework that authorizes the safe preparation and sale of meals prepared in home kitchens, providing adequate regulations and requirements for food handling and safety.

(b) It is the intent of the Legislature that this act authorize the use of home kitchens for small-scale, direct food sales by home cooks to consumers, providing appropriate flexibility in food types and appropriate health and sanitation standards.

SEC. 2. Section 110460 of the Health and Safety Code is amended to read:

110460. No person shall engage in the manufacture, packing, or holding of any processed food in this state unless the person has a valid registration from the department, except those engaged exclusively in the storing, handling, or processing of dried beans. The registration shall be valid for one calendar year from the date of issue, unless it is revoked. The registration shall not be transferable. This section shall not apply to a cottage food operation that is registered or has a permit pursuant to Section 114365 or a microenterprise home kitchen, as defined in Section 113825.

SEC. 3. Section 111955 of the Health and Safety Code is amended to read:

111955. "Food processing establishment," as used in this chapter, shall mean any room, building, or place or portion thereof, maintained, used, or operated for the purpose of commercially storing, packaging, making, cooking, mixing, processing, bottling, canning, packing, slaughtering, or otherwise preparing or handling food except restaurants. "Food processing establishment" shall not include a cottage food operation that is registered or has a permit pursuant to Section 114365 or a microenterprise home kitchen, as defined in Section 113825.

SEC. 4. 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.

SEC. 4.1. 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. 4.2. 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) 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.

SEC. 4.3. 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. 5. Section 113825 is added to the Health and Safety Code, to read:

113825. (a) "Microenterprise home kitchen operation" means a food facility that is operated by a resident in a private home where food is stored, handled, and prepared for, and may be served to, consumers, and that meets all of the following requirements:

(1) The operation has no more than one full-time equivalent food employee, not including a family member or household member.

(2) Food is prepared, cooked, and served on the same day.

(3) Food is consumed onsite at the microenterprise home kitchen operation or offsite if the food is picked up by the consumer or delivered within a safe time period based on holding equipment capacity.

(4) Food preparation does not involve processes that require a HACCP plan, as specified in Section 114419, or the production, service, or sale of raw milk or raw milk products, as defined in Section 11380 of Title 17 of the California Code of Regulations.

(5) The service and sale of raw oysters is prohibited.

(6) Food preparation is limited to no more than 30 individual meals per day, or the approximate equivalent of meal components when sold separately, and no more than 60 individual meals, or the approximate equivalent of meal components when sold separately, per week. The local enforcement agency may decrease the limit of the number of individual meals prepared based on food preparation capacity of the operation, but shall not, in any case, increase the limit of the number of individual meals prepared.

(7) The operation has no more than fifty thousand dollars (\$50,000) in verifiable gross annual sales, as adjusted annually for inflation based on the California Consumer Price Index.

(8) The operation only sells food directly to consumers and not to any wholesaler or retailer. For purposes of this paragraph, the sale of food prepared in a microenterprise home kitchen operation through the Internet Web site or mobile application of an Internet food service intermediary, as defined in Section 114367.6, is a direct sale to

consumers. An operation that sells food through the Internet Web site or mobile application of an Internet food service intermediary shall consent to the disclosures specified in paragraphs (6) and (7) of subdivision (a) of Section 114367.6.

(b) "Microenterprise home kitchen operation" does not include either of the following:

- (1) A catering operation.
- (2) A cottage food operation, as defined in Section 113758.

(c) For purposes of this section, "resident of a private home" means an individual who resides in the private home when not elsewhere for labor or other special or temporary purpose.

SEC. 6. Chapter 11.6 (commencing with Section 114367) is added to Part 7 of Division 104 of the Health and Safety Code, to read:

CHAPTER 11.6. Microenterprise Home Kitchen Operation

114367. (a) Except as provided in subdivision (b), the governing body of a city or county, or city and county, shall have full discretion to authorize, by ordinance or resolution, the permitting of microenterprise home kitchen operations in accordance with this chapter.

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

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 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 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.

(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.

(6) Limitations on consumer access to the food facility through food preparation areas, as specified in Section 113984.1.

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

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

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

(10) Requirements pertaining to the characteristics and certification of utensils and equipment, as specified in Sections 114130, 114130.1, and 114139, provided that utensils and equipment are designed to retain their

characteristic qualities under normal use conditions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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 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 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.

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

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

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

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

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

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

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

114367.3. (a) Notwithstanding any other law, after the initial inspection for purposes of determining compliance with this chapter, a microenterprise home kitchen operation shall not be subject to routine inspections, except

that a representative of a local enforcement agency may access, for inspection purposes, the permitted area of a microenterprise home kitchen operation after the occurrence of either of the following:

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

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

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

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

(d) Access provided under this section is limited to the permitted area of the microenterprise home kitchen operation, during the posted operating hours of the microenterprise home kitchen operation, and solely for the purpose of enforcing or administering this part.

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

114367.4. (a) (1) A city, county, or city and county shall not prohibit the operation of, require a permit to operate, require a rezone of the property for, or levy any fees on, or impose any other restriction on, a microenterprise home kitchen operation in any residential dwelling for zoning purposes. A microenterprise home kitchen operation shall be a permitted use of residential property in any residential dwelling for zoning purposes if the microenterprise home kitchen operation complies with both of the following criteria:

(A) Abstain from posting signage or other outdoor displays advertising the microenterprise home kitchen operation.

(B) Be in compliance with applicable local noise ordinances.

(2) This subdivision does not supersede or otherwise limit the investigative and enforcement authority of the city, county, or city and county with respect to violations of its nuisance ordinances.

(b) The use of a residence for the purposes of a microenterprise home kitchen operation shall not constitute a change of occupancy for purposes of the State Housing Law (Part 1.5 (commencing with Section 17910) of Division 13 of the Health and Safety Code), or for purposes of local building and fire codes.

(c) A microenterprise home kitchen operation shall be considered a residence for the purposes of the State Uniform Building Standards Code and local building and fire codes.

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

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

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

(1) Be registered with the department.

(2) Prior to the listing or publication of a microenterprise home kitchen operation's offer of food for sale, clearly and conspicuously post on its Internet Web site or mobile application the requirements for the permitting of a

microenterprise home kitchen specified in this chapter, which shall be written at the high school level and be provided by the department.

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

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

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

(6) Clearly and conspicuously post on its Internet Web site or mobile application how a consumer can contact the Internet food service intermediary through its Internet Web site or mobile application if the consumer has a food safety or hygiene complaint and a link to the department's Internet Web site that contains information for how to file a complaint with the local enforcement agency.

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

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

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

(b) For purposes of this chapter, an "Internet food service intermediary" means an entity that provides a platform on its Internet Web site or mobile application through which a microenterprise home kitchen operation may choose to offer food for sale and from which the Internet food service intermediary derives revenues, including, but not limited to, revenues from advertising and fees for services offered to a microenterprise home kitchen operation. Services offered by an Internet food service intermediary to a microenterprise home kitchen operation may include, but are not limited to, allowing a microenterprise home kitchen operation to advertise its food for sale and providing a means for potential consumers to arrange payment for the food, whether the consumer pays directly to the microenterprise home kitchen operation or to the Internet food service intermediary. Merely publishing an advertisement for the microenterprise home kitchen operation or food cooked therein does not make the publisher an Internet food service intermediary.

SEC. 7. Section 114390 of the Health and Safety Code is amended to read:

114390. (a) Enforcement officers shall enforce this part and all regulations adopted pursuant to this part.

(b) (1) For purposes of enforcement, any authorized enforcement officer may, during the facility's hours of operation and other reasonable times, enter, inspect, issue citations to, and secure any sample, photographs, or other evidence from a food facility, cottage food operation, or any facility suspected of being a food facility or cottage food operation, or a vehicle transporting food to or from a retail food facility, when the vehicle is stationary at an agricultural inspection station, a border crossing, or at any food facility under the jurisdiction of the enforcement agency, or upon the request of an incident commander.

(2) If a food facility is operating under an HACCP plan, the enforcement officer may, for the purpose of determining compliance with the plan, secure as evidence any documents, or copies of documents, relating to the facility's adherence to the HACCP plan. Inspection may, for the purpose of determining compliance with this

part, include any record, file, paper, process, HACCP plan, invoice, or receipt bearing on whether food, equipment, or utensils are in violation of this part.

(3) The enforcement officer may, for the purpose of determining compliance with the gross annual sales requirements for operating a microenterprise home kitchen operation or a cottage food operation, require those operations to provide copies of documents related to determining gross annual sales.

(c) Notwithstanding subdivision (a), an employee may refuse entry to an enforcement officer who is unable to present official identification showing the enforcement officer's picture and enforcement agency name. In the absence of the identification card, a business card showing the enforcement agency's name plus a picture identification card such as a driver's license shall meet this requirement.

(d) It is a violation of this part for any person to refuse to permit entry or inspection, the taking of samples or other evidence, access to copy any record as authorized by this part, to conceal any samples or evidence, withhold evidence concerning them, or interfere with the performance of the duties of an enforcement officer, including making verbal or physical threats or sexual or discriminatory harassment.

(e) A written report of the inspection shall be made, and a copy shall be supplied or mailed to the owner, manager, or operator of the food facility.

SEC. 8. (a) Section 4.1 of this bill incorporates amendments to Section 113789 of the Health and Safety Code proposed by both this bill and Assembly Bill 2178. 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 2178, in which case Sections 4, 4.2, and 4.3 of this bill shall not become operative.

(b) Section 4.2 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 2178 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 4, 4.1, and 4.3 of this bill shall not become operative.

(c) Section 4.3 of this bill incorporates amendments to Section 113789 of the Health and Safety Code proposed by this bill, Assembly Bill 2178, 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 2178 and Assembly Bill 2524, in which case Sections 4, 4.1, and 4.2 of this bill shall not become operative.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because 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.