



COUNTY OF HUMBOLDT

AGENDA ITEM NO.

C16

For the meeting of: February 27, 2018

Date: February 14, 2018
To: Board of Supervisors
From: Connie Beck, Director, Department of Health and Human Services
Subject: Letter of opposition to Assembly Bill 626 (Eduardo Garcia) related to Microenterprise Home Kitchen Operations

RECOMMENDATION(S): That the Board of Supervisors authorize the Chair to sign a letter of opposition to Assembly Bill 626.

SOURCE OF FUNDING: N/A

DISCUSSION: California Assembly Bill 626 (AB 626) seeks to create a new state category of food businesses called microenterprise home kitchen operations, and allow local jurisdictions to authorize them, by ordinance or resolution. AB 626 is opposed by the California State Association of Counties (CSAC), Rural County Representatives of California (RCRC), the County Health Executives Association of California (CHEAC), and the Health Officers Association of California (HOAC) because it fails to protect the public from foodborne illness.

Currently, the Cottage Food Law enacted in 2012 allows for certain non-potentially hazardous foods such as breads, pies, fruit jams and numerous dried foods to be made in a home kitchen and offered for sale. AB 626 however, would allow for potentially hazardous foods to be made in home kitchens and sold to the public, specifically foods such as meat, poultry, and shellfish, which require constant temperature control to prevent illnesses.

Prepared by Sharon Wolff, Legislative Analyst

CAO Approval

[Handwritten signature]

REVIEW:

Auditor County Counsel Human Resources Other

TYPE OF ITEM:

- X Consent
Departmental
Public Hearing
Other

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT

Upon motion of Supervisor Wilson Seconded by Supervisor Bass

- Ayes Bass, Fennell, Sundberg, Bohn, Wilson
Nays
Abstain
Absent

PREVIOUS ACTION/REFERRAL:

Board Order No.

Meeting of:

and carried by those members present, the Board hereby approves the recommended action contained in this Board report.

Dated: 2/27/18

By: Kathy Hayes, Clerk of the Board

The Department of Health and Human Services – Environmental Health is responsible for inspecting kitchen operations. Their primary concern is protecting the health and safety of the public. Cooking, cooling, reheating foods, and ensuring appropriate hot and cold temperature controls is challenging in a commercial kitchen even with trained staff and appropriate equipment and facilities. This danger increases exponentially in a home kitchen. AB 626 would not protect the public from costly foodborne illness, nor would it protect such illness from crossing county lines into a jurisdiction that has not authorized such enterprises to operate.

Additionally, according to CSAC, “Furthermore, the operation of these enterprises in residential neighborhoods raises a host of other issues relating to trash, parking, noise, wastewater, septic sizing, water sources, fire hazards, and ADA (Americans with Disabilities Act) accessibility, making enforcement and oversight difficult for a number of local governmental entities including local health departments, planning and building, fire services, and public works.”

FINANCIAL IMPACT: There is no financial impact to the General Fund associated with sending a letter.

OTHER AGENCY INVOLVEMENT: N/A

ALTERNATIVES TO STAFF RECOMMENDATIONS: The board could decline to send a letter opposing the bill.

ATTACHMENTS:

Letter of Opposition

County associations’ document, “Local Health Departments Oppose AB 626”

Text of AB 626 as amended January 22, 2018



BOARD OF SUPERVISORS
COUNTY OF HUMBOLDT

825 5TH STREET, ROOM 111
EUREKA, CALIFORNIA 95501 PHONE: (707) 476-2390

February 27, 2018

The Honorable Mike McGuire
California State Capitol
Room 5064
Sacramento, CA 95814

RE: AB 626 (Eduardo Garcia) - OPPOSE

Dear Senator McGuire,

The Humboldt County Board of Supervisors must respectfully oppose AB 626 (Eduardo Garcia), legislation related to home kitchen operations.

We have serious concerns about enforcement and oversight of home kitchens and believe AB 626 will ultimately endanger public health. When food is purchased by the public, they expect it has been prepared within a legal framework that prevents pathogens and foodborne illness. Cooking, cooling and reheating foods, and ensuring appropriate hot and cold temperature controls is challenging enough in a commercial kitchen even with trained staff and appropriate equipment and facilities. This danger increases exponentially in a home kitchen.

Our environmental health staffs' primary concern is the health and safety of the public and this bill does not reasonably ensure our ability to protect the public from foodborne illness. A county-by-county approach will not appropriately protect public health, as foodborne illness outbreaks travel across county lines. In addition, cottage food laws already allow for the sale of foods that have been deemed non-hazardous, and the State Department of Public Health has the discretion to allow new foods under that framework.

For these reasons, the Humboldt County Board of Supervisors joins-the California State Association of Counties (CSAC), Rural County Representatives of California (RCRC), the County Health Executives Association of California (CHEAC), and the Health Officers Association of California (HOAC) in opposing AB 626. If I can provide further information, please do not hesitate to contact me.

Sincerely,


Ryan Sundberg Chair

Cc: Shaw/Yoder/Antwih, Inc.
California State Association of Counties
Rural County Representatives of California



Local Health Departments Oppose AB 626 (E. Garcia)

Say No to Foodborne Illness

AB 626 (E. Garcia) is a dangerous expansion of California's current cottage food laws and would allow for the preparation and sale of potentially hazardous foods in private homes, thereby increasing the risk of foodborne-related illnesses.

What are potentially hazardous foods and why do they increase the risk of foodborne illnesses?

According to the U.S. Food and Drug Administration, potentially hazardous foods are foods—such as meat, poultry, milk and dairy products, fish, shellfish, crabs, and lobsters (raw or heat-treated), cut leafy greens, cut melons, and other types of cut produce—that require temperature and time controls to limit the growth of harmful and infectious microorganisms.

Foods allowed to be prepared and sold from private homes included in this bill are the foods most commonly associated with foodborne illness.

According to the Centers for Disease Control and Prevention (CDC), the foods most commonly associated with foodborne illness include: raw foods of animal origin, filter-feeding shellfish, animal products, fruits and vegetables consumed raw, and unpasteurized juices.

The California Department of Public Health (CDPH) provides a listing of the top ten most common foodborne pathogens, which include E. coli, hepatitis A, salmonella, and norovirus. Each pathogen listed is associated with foods that AB 626 would allow to be cooked and sold in private homes.

Economic opportunity exists today.

Approved foods can be sold from the home. Today, individuals can cook and sell from the home non-potentially hazardous foods approved by CDPH. There are over 30 CDPH-approved food products, and individuals may petition CDPH to add new items to the approved list.

Other permit classifications. Individuals can also apply for a catering license, which allows individuals to prepare foods in permitted kitchen sites and sell foods at public or private functions. Likewise, mobile food licenses allow individuals to prepare foods in permitted kitchen sites for sale at public locations and/or permitted routes and parks.

Foodborne illnesses adversely impact California's most vulnerable.

The CDC estimates that each year 48 million people get sick from a foodborne illness, 128,000 are hospitalized, and 3,000 die. The CDC also notes that the groups most likely to develop a

foodborne illness include: young children, older adults, pregnant women, and those with weakened immune systems due to medical conditions.

Furthermore, according to CDPH, these same groups are at highest risk for potentially life-threatening complications resulting from foodborne illnesses.

Foodborne illnesses know no boundaries.

While AB 626 gives local jurisdictions the discretion to allow in-home food sales in their communities, jurisdictions that do not allow these activities are likely to still be impacted. A prime example is the 2017 botulism case stemming from nacho cheese served at a gas station in Sacramento County. Ten patients from four counties were reported with suspected or confirmed botulism cases and hospitalized; one patient died. Foodborne illnesses can travel quickly and easily beyond county boundaries.

Local enforcement cannot regulate the home environment to minimize the risk of foodborne illness.

Restaurants must meet a series of stringent health, safety, and sanitation requirements to reduce the risk of foodborne illnesses and protect the public. These requirements include the use of commercial grade equipment, separate sinks for designated food preparation activities, consistent hours of operation, limited access to food preparation areas, and physical facility infrastructure features related to building layout, restrooms, plumbing, and lighting.

On average, private homes do not have proper controls mentioned above to minimize the risk of food contamination and foodborne illness among consumers. Home kitchens are typically common areas that are frequented by children, pets, and/or guests - and not limited to designated individuals for the purposes of preparing food for public consumption. Further, in-home kitchen operations would not have standard operating hours that would be conducive to unannounced visits by regulators. With the potential that in-home kitchen operations could grow substantially under this measure, the public's health and safety will be at serious risk.

AMENDED IN ASSEMBLY JANUARY 22, 2018

AMENDED IN ASSEMBLY MAY 2, 2017

AMENDED IN ASSEMBLY APRIL 6, 2017

AMENDED IN ASSEMBLY MARCH 23, 2017

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL

No. 626

Introduced by Assembly Members Eduardo Garcia and Arambula

February 14, 2017

An act to amend Sections 113789, 114101, 114285, 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.

LEGISLATIVE COUNSEL'S DIGEST

AB 626, as amended, 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 ~~health 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 ~~any provision of the California Retail Food Code or regulation adopted pursuant to it~~ 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 ~~of~~ *in* a private home where food is prepared for a consumer 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 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. 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. 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 products that will be handled and the days and ~~time~~ *times* that the home kitchen will be utilized as a microenterprise home kitchen operation.

The bill would require ~~a 3rd-party intermediary~~ *an Internet food service intermediary, as defined*, that lists or promotes a microenterprise home kitchen operation on its Internet Web site or mobile ~~application~~; ~~among other things, application~~ to be registered with the department and specified local enforcement agencies and to only list and promote microenterprise home kitchen operations with permits in good standing. ~~to inform the microenterprise home kitchen operation of all requirements specified in these provisions prior to the publication of the microenterprise home kitchen operation's offer of food for sale.~~ The bill would ~~make a permitted microenterprise home kitchen operation and any affiliated 3rd-party intermediary strictly liable~~ *prohibit an Internet food service intermediary from being held liable* for any personal injury resulting from the ~~ordering or consuming~~ *consumption* of food from a microenterprise home kitchen ~~operation~~; ~~operation~~, or ~~from the failure of a microenterprise home kitchen operation to comply with federal, state, or local laws, among other things.~~ The bill would also make conforming changes and related findings and declarations.

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

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

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

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

3 (1) California is the largest agricultural producer and exporter
4 in the United States.

5 (2) California is home to the “farm-to-table” movement, which
6 embraces the idea that restaurants and other food sellers should
7 prioritize locally and sustainably produced foods.

8 (3) Many cities have embraced the idea of locally grown,
9 produced, and prepared foods. Sacramento, for example,
10 proclaimed itself the farm-to-fork capital of America.

11 (4) Accordingly, Californians have shown a preference for
12 supporting local agriculture and local business and for finding
13 sustainable solutions to food insecurity.

14 (5) The retail and commercial food market is an integral part
15 of California’s economy.

16 (6) Small-scale, home-cooking operations can create significant
17 economic opportunities for Californians that need them most —
18 often women, immigrants, and people of color.

19 (7) Under existing law, individuals can sell food through retail
20 food facilities or cottage food operations, the latter of which being
21 limited to a restricted list that primarily consists of nonperishable
22 food items that can be prepared in the home. Both of these options
23 make it difficult for the vast majority of home cooks to
24 independently benefit from their labor, skills, and limited resources.

25 (8) Because the bar for entry to restaurant ownership is high,
26 and the cost of renting a retail kitchen is so great, an informal
27 economy of locally produced and prepared hot foods exists in the
28 form of meal preparation services, food carts, and communally
29 shared meals.

1 (9) However, due to a lack of appropriate regulations, many
2 experienced cooks in California are unable to legally participate
3 in the locally prepared food economy and to earn an income legally
4 therein.

5 (10) As a result, and because they feel they have no other option,
6 thousands of private chefs, home caterers, and many other food
7 microentrepreneurs cook out of private homes or unlicensed food
8 facilities, with little access to education for best practices or safety
9 guidelines.

10 (11) Many of these cooks are unable to enter the traditional food
11 economy based on disability, family responsibilities, or lack of
12 opportunity.

13 (12) Under existing law, preparing and selling food from a home
14 kitchen normally can be treated as a criminal act and may be
15 punishable as a misdemeanor.

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

20 (14) Providing guidelines, training, and safety resources to home
21 cooks would also increase public health safeguards in existing
22 informal food economies.

23 (15) The exchange of home-cooked food can also improve
24 access to healthy foods for communities, particularly in food
25 deserts with severely limited options.

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

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

34 SEC. 2. Section 113789 of the Health and Safety Code is
35 amended to read:

36 113789. (a) "Food facility" means an operation that stores,
37 prepares, packages, serves, vends, or otherwise provides food for
38 human consumption at the retail level, including, but not limited
39 to, the following:

- 1 (1) An operation where food is consumed on or off the premises,
2 regardless of whether there is a charge for the food.
- 3 (2) A place used in conjunction with the operations described
4 in this subdivision, including, but not limited to, storage facilities
5 for food-related utensils, equipment, and materials.
- 6 (b) "Food facility" includes permanent and nonpermanent food
7 facilities, including, but not limited to, the following:
 - 8 (1) Public and private school cafeterias.
 - 9 (2) Restricted food service facilities.
 - 10 (3) Licensed health care facilities, except as provided in
11 paragraph (12) of subdivision (c).
 - 12 (4) Commissaries.
 - 13 (5) Mobile food facilities.
 - 14 (6) Mobile support units.
 - 15 (7) Temporary food facilities.
 - 16 (8) Vending machines.
 - 17 (9) Certified farmers' markets, for purposes of permitting and
18 enforcement pursuant to Section 114370.
 - 19 (10) Farm stands, for purposes of permitting and enforcement
20 pursuant to Section 114375.
 - 21 (11) Fishermen's markets.
 - 22 (12) Microenterprise home kitchen operations.
- 23 (c) "Food facility" does not include any of the following:
 - 24 (1) A cooperative arrangement wherein no permanent facilities
25 are used for storing or handling food.
 - 26 (2) A private home, which includes a cottage food operation
27 that is registered or has a permit pursuant to Section 114365, but
28 does not include a microenterprise home kitchen operation that
29 has a permit issued pursuant to Section 114367.2.
 - 30 (3) A church, private club, or other nonprofit association that
31 gives or sells food to its members and guests, and not to the general
32 public, at an event that occurs not more than three days in any
33 90-day period.
 - 34 (4) A for-profit entity that gives or sells food at an event that
35 occurs not more than three days in a 90-day period for the benefit
36 of a nonprofit association, if the for-profit entity receives no
37 monetary benefit, other than that resulting from recognition from
38 participating in an event.
 - 39 (5) Premises set aside for wine tasting, as that term is used in
40 Section 23356.1 of the Business and Professions Code, or premises

1 set aside by a beer manufacturer, as defined in Section 25000.2 of
2 the Business and Professions Code, and in the regulations adopted
3 pursuant to those sections, that comply with Section 118375,
4 regardless of whether there is a charge for the wine or beer tasting,
5 if no other beverage, except for bottles of wine or beer and
6 prepackaged nonpotentially hazardous beverages, is offered for
7 sale or for onsite consumption and no food, except for crackers,
8 pretzels, or prepackaged food that is not potentially hazardous
9 food is offered for sale or for onsite consumption.

10 (6) An outlet or location, including, but not limited to, premises,
11 operated by a producer, selling or offering for sale only whole
12 produce grown by the producer or shell eggs, or both, provided
13 the sales are conducted at an outlet or location controlled by the
14 producer.

15 (7) A commercial food processing establishment, as defined in
16 Section 111955.

17 (8) A child day care facility, as defined in Section 1596.750.

18 (9) A community care facility, as defined in Section 1502.

19 (10) A residential care facility for the elderly, as defined in
20 Section 1569.2.

21 (11) A residential care facility for the chronically ill, which has
22 the same meaning as a residential care facility, as defined in Section
23 1568.01.

24 (12) (A) An intermediate care facility for the developmentally
25 disabled, as defined in subdivisions (e), (h), and (m) of Section
26 1250, with a capacity of six beds or fewer.

27 (B) A facility described in subparagraph (A) shall report any
28 foodborne illness or outbreak to the local health department and
29 to the State Department of Public Health within 24 hours of the
30 illness or outbreak.

31 (13) A community food producer, as defined in Section 113752.

32 SEC. 3. Section 113825 is added to the Health and Safety Code,
33 to read:

34 113825. (a) "Microenterprise home kitchen operation" means
35 a food facility that is operated by a resident in a private home
36 where food is prepared for a consumer and meets all of the
37 following requirements:

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

1 (2) Food is prepared, cooked, and served on the same day,
2 picked up by the customer, or delivered within a safe time period
3 based on holding equipment capacity.

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

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

9 (5) Food preparation is limited to no more than 30 individual
10 meals per day, and no more than 60 individual meals per week.
11 The local enforcement agency may decrease the limit of the number
12 of individual meals prepared based on food preparation capacity
13 of the operation, but shall not, in any case, increase the limit of
14 the number of individual meals prepared.

15 (6) The operation has no more than fifty thousand dollars
16 (\$50,000) in verifiable gross annual sales.

17 (b) "Microenterprise home kitchen operation" does not include
18 any of the following:

19 (1) A catering operation.

20 (2) A cottage food operation, as defined in Section 113758.

21 (3) An indirect sale. *For purposes of this paragraph, the sale*
22 *of food prepared in a microenterprise home kitchen operation on*
23 *the Internet Web site or mobile application of an Internet food*
24 *service intermediary, as defined in Section 114367.5, shall not*
25 *constitute indirect sales.*

26 SEC. 4. Section 114101 of the Health and Safety Code is
27 amended to read:

28 114101. (a) Mechanical machine warewashing shall be
29 accomplished by using an approved machine installed and operated
30 in accordance with the manufacturer's specifications.

31 (b) Soiled items to be cleaned in a warewashing machine shall
32 be loaded in racks, trays, or baskets or onto conveyors in a position
33 that exposes the items to the unobstructed spray during all cycles
34 and allows the items to drain.

35 (c) The velocity, quantity, and distribution of the washwater,
36 type, and concentration of detergent used therein, and the time the
37 utensils are exposed to the water shall be sufficient to clean the
38 utensils.

39 (d) Restricted food service facilities need not comply with
40 Section 114130 if the domestic or commercial dishwasher utilized

1 for warewashing is used in accordance with the manufacturer's
2 specifications and achieves a utensil surface temperature of at least
3 160°F.

4 SEC. 5. Section 114285 of the Health and Safety Code is
5 amended to read:

6 114285. (a) Except as specified in subdivision (b), a private
7 home, a room used as living or sleeping quarters, or an area directly
8 opening into a room used as living or sleeping quarters shall not
9 be used for conducting food facility operations.

10 (b) (1) Nonperishable, prepackaged food may be given away,
11 sold, or handled from a private home. No food that has exceeded
12 the labeled shelf life date recommended by the manufacturer shall
13 be deemed to be nonperishable food.

14 (2) For purposes of this subdivision, "nonperishable food" means
15 a food that is not a potentially hazardous food, and that does not
16 show signs of spoiling, becoming rancid, or developing
17 objectionable odors during storage at ambient temperatures.

18 (c) Restricted food service facilities and microenterprise home
19 kitchen operations are exempt from subdivision (a) provided that
20 no sleeping accommodations shall be allowed in any area where
21 food is prepared or stored.

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

25

26 CHAPTER 11.6. MICROENTERPRISE HOME KITCHEN OPERATION

27

28 114367. A city or county, or city and county, shall have full
29 discretion to authorize, by ordinance or resolution, the permitting
30 of microenterprise home kitchen operations in accordance with
31 this chapter.

32 114367.1. (a) A microenterprise home kitchen operation, as
33 defined in Section 113825, shall be considered a restricted food
34 service facility for purposes of, and subject to all applicable
35 requirements of, Chapter 1 (commencing with Section 113700) to
36 Chapter 9 (commencing with Section 114265), inclusive, Chapter
37 12.6 (commencing with Section 114377), and Chapter 13
38 (commencing with Section 114380), except as otherwise provided
39 in this chapter.

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

3 (1) Handwashing sign posting requirements, as specified in
4 Section 113953.5.

5 (2) Handwashing facilities requirements, as required in Section
6 113953, provided that a handwashing sink is supplied with warm
7 water and located in the toilet room and supplied, as specified in
8 Section 113953.2.

9 (3) Installing a three-compartment sink, as required in Section
10 114099, provided that a two-compartment sink is available and
11 used, as specified in Section 114099.3.

12 (4) Installing a food preparation sink, as required in Section
13 114163, provided that produce is washed, as specified in Section
14 113992.

15 (c) Any individual who is involved in the preparation, storage,
16 or service of food in a microenterprise home kitchen operation
17 shall be subject to the food handler card requirements specified in
18 Section 113948.

19 114367.2. (a) A microenterprise home kitchen operation in a
20 city or county, or city and county, that has authorized the permitting
21 of such an operation shall not be open for business unless it is
22 operating under a permit issued from the local enforcement agency
23 in a manner approved by the local enforcement agency.

24 (b) The applicant shall submit to the local enforcement agency
25 written standard operating procedures that include all of the
26 following information:

27 (1) All food products that will be handled.

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

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

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

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

37 (c) (1) For purposes of permitting, the permitted area includes
38 the home kitchen, onsite customer eating area, food storage,
39 utensils and equipment, toilet room, janitorial or cleaning facilities,

1 and refuse storage area. Food operations shall not be conducted
2 outside of the permitted areas.

3 (2) For purposes of determining compliance with this part, a
4 representative of a local enforcement agency, for inspection
5 purposes, may access the permitted area of a private home where
6 a food operation is being conducted. Access is limited to the
7 permitted areas and solely for the purpose of enforcing or
8 administering this part.

9 (d) A local enforcement agency in a city or county, or city and
10 county, that has authorized the permitting of microenterprise home
11 kitchen operations may issue a permit pursuant to this section after
12 it has determined all of the following:

13 (1) After an initial inspection, the proposed microenterprise
14 home kitchen operation and its method of operation conform to
15 this part.

16 (2) All local building, business, land use, zoning, and fire safety
17 requirements are fully satisfied.

18 114367.3. (a) A person delivering food on behalf of a
19 microenterprise home kitchen operation with a permit issued
20 pursuant to Section 114367.2 shall be an employee of the operation
21 or a family member or household member of the permitholder,
22 and shall have a valid driver's license.

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

26 114367.4. A local enforcement agency in a city or county, or
27 city and county, that has authorized the permitting of
28 microenterprise home kitchen operations may seek recovery of a
29 fee from a microenterprise home kitchen operation of an amount
30 that does not exceed the local enforcement agency's reasonable
31 costs of inspection and enforcement of this part.

32 ~~114367.5. (a) A third-party intermediary that lists or promotes
33 a microenterprise home kitchen operation on its Internet Web site
34 or mobile application shall meet all of the following requirements:~~

35 ~~(1) Be registered with the department and any local enforcement
36 agency that has jurisdiction over a microenterprise home kitchen
37 operation that is listed or promoted on the third-party
38 intermediary's Internet Web site or mobile application.~~

1 ~~(2) Make available to the consumer a photo of the delivery~~
2 ~~person when there is a delivery of food from the microenterprise~~
3 ~~home kitchen operation to the consumer.~~

4 ~~(3) Only list and promote microenterprise home kitchen~~
5 ~~operations with permits that are issued pursuant to Section~~
6 ~~114367.2 and are in good standing. A microenterprise home kitchen~~
7 ~~operation shall notify each affiliated third-party intermediary if its~~
8 ~~permit has been suspended or revoked.~~

9 ~~(4) Cooperate with local enforcement officials with the~~
10 ~~investigation of consumer complaints, foodborne illness outbreaks,~~
11 ~~and food recalls.~~

12 ~~(b) A third-party intermediary registered pursuant to subdivision~~
13 ~~(a) shall not do either of the following:~~

14 ~~(1) Require an affiliated microenterprise home kitchen operation~~
15 ~~to be open certain days of the week or a certain number of hours~~
16 ~~each day.~~

17 ~~(2) Require an affiliated microenterprise home kitchen operation~~
18 ~~to prepare certain food items or meals.~~

19 ~~114367.6. A microenterprise home kitchen operation that has~~
20 ~~a permit pursuant to Section 114367.2 and any affiliated third-party~~
21 ~~intermediary shall be strictly liable for any personal injury resulting~~
22 ~~from the ordering or consuming of food from a microenterprise~~
23 ~~home kitchen operation.~~

24 ~~114367.5. An "Internet food service intermediary" means an~~
25 ~~entity that provides a platform on its Internet Web site or mobile~~
26 ~~application through which a microenterprise home kitchen~~
27 ~~operation may offer food for sale and from which the Internet food~~
28 ~~service intermediary derives revenues, including, but not limited~~
29 ~~to, revenues from advertising and fees for services offered to a~~
30 ~~microenterprise home kitchen operation. Services offered by an~~
31 ~~internet food service intermediary to a microenterprise home~~
32 ~~kitchen operation may include, but are not limited to, allowing a~~
33 ~~microenterprise home kitchen operation to advertise its food for~~
34 ~~sale and providing a means for potential consumers to arrange~~
35 ~~payment for the food, whether the consumer pays directly to the~~
36 ~~microenterprise home kitchen operation or to the Internet food~~
37 ~~service intermediary. Merely publishing an advertisement for the~~
38 ~~microenterprise home kitchen operation or food cooked therein~~
39 ~~does not make the publisher an Internet food service intermediary.~~

1 114367.6. (a) *An Internet food service intermediary that lists*
2 *or promotes a microenterprise home kitchen operation on its*
3 *Internet Web site or mobile application shall meet all of the*
4 *following requirements:*

5 (1) *Be registered with the department.*

6 (2) *Inform the microenterprise home kitchen operation of all*
7 *requirements specified in this chapter prior to the publication of*
8 *the microenterprise home kitchen operation's offer of food for*
9 *sale.*

10 (3) *Be required to submit the name and permit number of a*
11 *microenterprise home kitchen operation to the local enforcement*
12 *agency if it receives food safety-related complaints from the local*
13 *enforcement agency or a consumer that has made a purchase*
14 *through its Internet Web site or mobile application.*

15 (b) *An Internet food service intermediary shall not be held liable*
16 *for any of the following:*

17 (1) *Any personal injury resulting from the consumption of food*
18 *from a microenterprise home kitchen operation, or from the failure*
19 *of a microenterprise home kitchen operation to comply with*
20 *federal, state, or local laws.*

21 (2) *For a microenterprise home kitchen operation's violation*
22 *of federal, state, or local laws, except to the extent that the Internet*
23 *food service intermediary knowingly and actively participated in*
24 *the violation.*

25 (3) *Any nuisance caused by a microenterprise home kitchen*
26 *operation.*

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

29 114390. (a) Enforcement officers shall enforce this part and
30 all regulations adopted pursuant to this part.

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

1 (2) If a food facility is operating under an HACCP plan, the
2 enforcement officer may, for the purpose of determining
3 compliance with the plan, secure as evidence any documents, or
4 copies of documents, relating to the facility's adherence to the
5 HACCP plan. Inspection may, for the purpose of determining
6 compliance with this part, include any record, file, paper, process,
7 HACCP plan, invoice, or receipt bearing on whether food,
8 equipment, or utensils are in violation of this part.

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

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

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

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

31 SEC. 8. No reimbursement is required by this act pursuant to
32 Section 6 of Article XIII B of the California Constitution because
33 the only costs that may be incurred by a local agency or school
34 district will be incurred because this act creates a new crime or
35 infraction, eliminates a crime or infraction, or changes the penalty
36 for a crime or infraction, within the meaning of Section 17556 of
37 the Government Code, or changes the definition of a crime within

1 the meaning of Section 6 of Article XIII B of the California
2 Constitution.

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