

AMENDED IN ASSEMBLY AUGUST 24, 2012

AMENDED IN ASSEMBLY JUNE 27, 2012

AMENDED IN SENATE JANUARY 10, 2012

AMENDED IN SENATE JANUARY 4, 2012

SENATE BILL

No. 359

Introduced by Senator Hernandez

February 15, 2011

~~An act to amend Sections 113818, 113953.3, 113973, 114047, 114294, 114325, and 114335 of, and to add Section 113975 to, the Health and Safety Code, relating to food facilities. An act to amend Section 1371.4 of, and to add and repeal Article 3 (commencing with Section 127465) of Chapter 2.5 of Part 2 of Division 107 of, the Health and Safety Code, relating to health care.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 359, as amended, Hernandez. ~~Food facilities: hand washing. Hospital billing: emergency services and care.~~

Existing law provides for the licensure and regulation of health facilities by the State Department of Public Health and requires a licensed facility that maintains and operates an emergency department to provide emergency services and care to any person requesting the services or care for any condition in which the person is in danger of loss of life or serious injury or illness, as specified. Existing law requires hospitals to maintain a written policy regarding discount payments for financially qualified patients as well as a written charity care policy. Existing law requires a hospital to limit the expected payment for services it provides to certain low-income patients to the highest amount the hospital would expect to receive for providing services from a

government-sponsored program of health benefits in which the hospital participates.

This bill would require a hospital with an out-of-network emergency utilization rate, as defined, of 50% or more to notify payers that its total billed charges for emergency services and care provided to a patient prior to stabilization are subject to adjustment such that the hospital's total expected payment would be 60% of the payer's average in-network payments, as defined, for similar emergency services and care prior to stabilization. The bill would authorize a payer that receives this notice to reimburse hospitals in accordance with that adjustment. The bill would specify that these provisions do not apply to charges billed by physicians or other licensed professionals who are members of the hospital medical staff or to charges provided as treatment for an injury that is compensable for purposes of workers' compensation. The bill would also specify that its provisions do not apply in specified instances, including if any other law requires the hospital to limit expected payment for the emergency services and care to a lesser amount, if a contract governs the total billed charges for the emergency services and care, or if a government program of health benefits, as specified, is the primary payer for the emergency services and care. The bill would provide for the repeal of its provisions on January 1, 2017.

~~Existing law, the California Retail Food Code, establishes uniform health and sanitation standards for mobile food facilities and retail food facilities, as defined. The law requires the State Department of Public Health to adopt regulations to implement and administer those provisions, and delegates primary enforcement duties to local health agencies. A violation of any of these provisions is punishable as a misdemeanor.~~

~~The code requires food employees to report to the person in charge of a food facility when a food employee has a lesion or wound that is open or draining unless specified conditions to cover or protect the lesion are met. The code requires all employees to wash their hands in specified instances, including before donning gloves for working with food.~~

~~The code also requires gloves to be worn when contacting food and food-contact surfaces under specified conditions, including when the employee has any cuts, sores, or rashes. Gloves are required to be changed, replaced, or washed as often as hand washing is required.~~

~~This bill would revise requirements in connection with glove use and hand washing. This bill would revise the definition of "limited food~~

preparation,” and authorize a local enforcement agency to approve temporary alternative storage methods and locations. By imposing new duties upon local agencies, and expanding the definition of a crime, this bill would impose a state-mandated local program.

This bill would also specify that provisions relating to the labeling of food that is, or includes, any trans fats, as specified, applies to food that is stored, distributed, or served by, or used within mobile food facilities and temporary food facilities.

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

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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

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

- 1 SECTION 1. Section 1371.4 of the Health and Safety Code is
- 2 amended to read:
- 3 1371.4. (a) A health care service plan that covers hospital,
- 4 medical, or surgical expenses, or its contracting medical providers,
- 5 shall provide 24-hour access for enrollees and providers, including,
- 6 but not limited to, noncontracting hospitals, to obtain timely
- 7 authorization for medically necessary care, for circumstances where
- 8 the enrollee has received emergency services and care is stabilized,
- 9 but the treating provider believes that the enrollee may not be
- 10 discharged safely. A physician and surgeon shall be available for
- 11 consultation and for resolving disputed requests for authorizations.
- 12 A health care service plan that does not require prior authorization
- 13 as a prerequisite for payment for necessary medical care following
- 14 stabilization of an emergency medical condition or active labor
- 15 need not satisfy the requirements of this subdivision.
- 16 (b) A health care service plan, or its contracting medical
- 17 providers, shall reimburse providers for emergency services and
- 18 care provided to its enrollees, until the care results in stabilization

1 of the enrollee, except as provided in subdivision (c). As long as
2 federal or state law requires that emergency services and care be
3 provided without first questioning the patient's ability to pay, a
4 health care service plan shall not require a provider to obtain
5 authorization prior to the provision of emergency services and care
6 necessary to stabilize the enrollee's emergency medical condition.

7 (c) Payment for emergency services and care may be denied
8 only if the health care service plan, or its contracting medical
9 providers, reasonably determines that the emergency services and
10 care were never performed; provided that a health care service
11 plan, or its contracting medical providers, may deny reimbursement
12 to a provider for a medical screening examination in cases when
13 the plan enrollee did not require emergency services and care and
14 the enrollee reasonably should have known that an emergency did
15 not exist. A health care service plan may require prior authorization
16 as a prerequisite for payment for necessary medical care following
17 stabilization of an emergency medical condition.

18 (d) If there is a disagreement between the health care service
19 plan and the provider regarding the need for necessary medical
20 care, following stabilization of the enrollee, the plan shall assume
21 responsibility for the care of the patient either by having medical
22 personnel contracting with the plan personally take over the care
23 of the patient within a reasonable amount of time after the
24 disagreement, or by having another general acute care hospital
25 under contract with the plan agree to accept the transfer of the
26 patient as provided in Section 1317.2, Section 1317.2a, or other
27 pertinent statute. However, this requirement shall not apply to
28 necessary medical care provided in hospitals outside the service
29 area of the health care service plan. If the health care service plan
30 fails to satisfy the requirements of this subdivision, further
31 necessary care shall be deemed to have been authorized by the
32 plan. Payment for this care may not be denied.

33 (e) A health care service plan may delegate the responsibilities
34 enumerated in this section to the plan's contracting medical
35 providers.

36 (f) Subdivisions (b), (c), (d), ~~(g)~~, (h), and ~~(h)~~ (i) shall not apply
37 with respect to a nonprofit health care service plan that has
38 3,500,000 enrollees and maintains a prior authorization system
39 that includes the availability by telephone within 30 minutes of a
40 practicing emergency department physician.

1 (g) A health care service plan, or its contracting medical
2 providers, that is obligated to reimburse providers for emergency
3 services and care provided to its enrollees prior to stabilization
4 pursuant to subdivision (b) may adjust its reimbursement to
5 hospitals in accordance with Section 127466.

6 ~~(g)~~

7 (h) The Department of Managed Health Care shall adopt by
8 July 1, 1995, on an emergency basis, regulations governing
9 instances when an enrollee requires medical care following
10 stabilization of an emergency medical condition, including
11 appropriate timeframes for a health care service plan to respond
12 to requests for treatment authorization.

13 ~~(h)~~

14 (i) The Department of Managed Health Care shall adopt, by
15 July 1, 1999, on an emergency basis, regulations governing
16 instances when an enrollee in the opinion of the treating provider
17 requires necessary medical care following stabilization of an
18 emergency medical condition, including appropriate timeframes
19 for a health care service plan to respond to a request for treatment
20 authorization from a treating provider who has a contract with a
21 plan.

22 ~~(i)~~

23 (j) The definitions set forth in Section 1317.1 shall control the
24 construction of this section.

25 ~~(j)~~

26 (k) (1) A health care service plan that is contacted by a hospital
27 pursuant to Section 1262.8 shall, within 30 minutes of the time
28 the hospital makes the initial telephone call requesting information,
29 either authorize poststabilization care or inform the hospital that
30 it will arrange for the prompt transfer of the enrollee to another
31 hospital.

32 (2) A health care service plan that is contacted by a hospital
33 pursuant to Section 1262.8 shall reimburse the hospital for
34 poststabilization care rendered to the enrollee if any of the
35 following occur:

36 (A) The health care service plan authorizes the hospital to
37 provide poststabilization care.

38 (B) The health care service plan does not respond to the
39 hospital's initial contact or does not make a decision regarding

1 whether to authorize poststabilization care or to promptly transfer
2 the enrollee within the timeframe set forth in paragraph (1).

3 (C) There is an unreasonable delay in the transfer of the enrollee,
4 and the noncontracting physician and surgeon determines that the
5 enrollee requires poststabilization care.

6 (3) A health care service plan shall not require a hospital
7 representative or a noncontracting physician and surgeon to make
8 more than one telephone call pursuant to Section 1262.8 to the
9 number provided in advance by the health care service plan. The
10 representative of the hospital that makes the telephone call may
11 be, but is not required to be, a physician and surgeon.

12 (4) An enrollee who is billed by a hospital in violation of Section
13 1262.8 may report receipt of the bill to the health care service plan
14 and the department. The department shall forward that report to
15 the State Department of Public Health.

16 (5) For purposes of this section, “poststabilization care” means
17 medically necessary care provided after an emergency medical
18 condition has been stabilized.

19 *SEC. 2. Article 3 (commencing with Section 127465) is added*
20 *to Chapter 2.5 of Part 2 of Division 107 of the Health and Safety*
21 *Code, to read:*

22
23 *Article 3. Hospital Emergency Pricing*

24
25 *127465. (a) For purposes of this article, the following*
26 *definitions shall apply:*

27 (1) *“Average in-network payments” means the average amount*
28 *of payments made pursuant to a contract during the preceding*
29 *calendar year to hospitals in California that offer a comparable*
30 *range of services and, if applicable, education and research*
31 *programs, by a health care service plan or health insurer for*
32 *reimbursement of care provided by the hospital or hospitals at a*
33 *negotiated rate, provided that payments made by the plan or*
34 *insurer during the preceding calendar year for in-system care*
35 *shall not be included in the calculation of the average.*

36 (2) *“Health care service plan” has the same meaning as that*
37 *term is defined in Section 1345.*

38 (3) *“Health insurer” means an insurer that issues policies of*
39 *health insurance, as defined in Section 106 of the Insurance Code.*

1 (4) “Hospital” means a hospital licensed under subdivision (a)
2 or (f) of Section 1250, with an emergency department licensed by
3 the State Department of Public Health, with the following
4 exceptions:

5 (A) “Hospital” does not include designated public hospitals
6 described in subdivision (d) of Section 14166.1 of the Welfare and
7 Institutions Code.

8 (B) “Hospital” does not include a hospital owned and operated
9 by an entity that is a city, a county, a city and county, the State of
10 California, the University of California, a local health or hospital
11 authority, a health care district, any other political subdivision of
12 the state, any combination of political subdivisions of the state
13 organized pursuant to a joint powers agreement, or a new hospital
14 that is described in Section 14165.50 of the Welfare and Institutions
15 Code.

16 (C) “Hospital” does not include any of the following:

17 (i) A rural general acute care hospital, as defined in subdivision
18 (a) of Section 1250.

19 (ii) A small and rural hospital, as defined in Section 124840.

20 (iii) A general acute care hospital that is located within both
21 of the following:

22 (I) A county with a population of 1,500,000 or less according
23 to the 2010 federal census.

24 (II) A medically underserved population, a medically
25 underserved area, or a health professions shortage area, as
26 designated by the federal government pursuant to Section 254b,
27 254c-14, or 254e of Title 42 of the United States Code.

28 (D) “Hospital” does not include a hospital that is part of a
29 health system in which, as of January 1, 2013, at least 50 percent
30 of the hospitals are rural general acute care hospitals, as defined
31 in subdivision (a) of Section 1250, or small and rural hospitals,
32 as defined in Section 124840, provided that the health system
33 includes at least five hospitals that are either rural general acute
34 care hospitals or small and rural hospitals. For purposes of this
35 subparagraph, both of the following shall apply:

36 (i) Hospitals are part of the same health system if they are
37 owned, operated, or substantially controlled by the same person
38 or other legal entity or entities.

39 (ii) Hospitals are considered separate hospitals if they are
40 located at least one mile apart and each has at least 30 beds,

1 regardless of whether the hospitals operate under the same name
2 or license.

3 (5) “In-network” refers to care provided to a patient by a
4 hospital that has contracted with the patient’s health care service
5 plan or health insurer for reimbursement at a negotiated rate with
6 respect to the care provided.

7 (6) “In-system” refers to care provided to a patient by a hospital
8 that is affiliated with a health care service plan, and the hospital
9 and affiliated health care service plan are owned, operated, or
10 substantially controlled by the same person or persons or other
11 legal entity or entities.

12 (7) A “local” patient is a patient whose residence meets both
13 of the following requirements:

14 (A) Is in the same county as the hospital at which the patient
15 receives services and care or is in a county adjacent to the county
16 where the hospital at which the patient receives services and care
17 is located.

18 (B) Has a five-digit ZIP Code that is the same as the five-digit
19 ZIP Code associated with the residences of patients involved in at
20 least 50 emergency department encounters during the most recently
21 completed calendar year.

22 (8) An “emergency department encounter” means the patient
23 has been registered in the emergency department for a period of
24 five hours or longer. An emergency department encounter does
25 not include an encounter that results from the receipt of patient
26 transfers pursuant to the transfer requirements of the federal
27 Emergency Medical Treatment and Active Labor Act (42 U.S.C.
28 Sec. 1395dd) from another hospital that is not affiliated with, or
29 owned, operated, or substantially controlled by, the same person
30 or persons or other legal entity or entities as the hospital receiving
31 the transfer.

32 (9) “Out-of-network” refers to care provided to a patient by a
33 hospital that has not contracted with the patient’s health care
34 service plan or health insurer for reimbursement at a negotiated
35 rate with respect to the care provided.

36 (10) “Out-of-network emergency utilization rate” means the
37 percentage of all emergency department encounters at a hospital
38 during the course of the rate reporting period that are
39 out-of-network for local, privately insured patients. This rate shall
40 be calculated by dividing a hospital’s total number of emergency

1 department encounters during the rate reporting period that
2 involved local, privately insured patients for whom the emergency
3 services and care provided were out-of-network by the hospital's
4 total number of emergency department encounters that involved
5 local, privately insured patients in the rate reporting period.

6 (11) "Primary payer" means the payer, other than the patient,
7 who is or was legally required or responsible to make payment
8 with respect to an item or service, or any portion thereof, before
9 any other payer, other than the patient.

10 (12) (A) "Privately insured patient" means a patient for whom
11 the primary payer is a health insurer, a health care service plan,
12 or an employer plan sponsor, and is not Medicare, Medi-Cal, the
13 Healthy Families Program, the Federal Temporary High Risk
14 Pool, the Major Risk Medical Insurance Program, or any other
15 government program of health benefits or managed care product
16 provided pursuant to any government program of health benefits.

17 (B) "Privately insured patient" does not include any patient
18 receiving emergency services and care prior to stabilization as
19 treatment for an injury that is compensable for purposes of
20 workers' compensation.

21 (13) "Rate reporting period" means, for the purposes of
22 calculating the out-of-network emergency utilization rate, a
23 three-year period, provided that if the most recent calendar year
24 ended within the previous 90 days, then data for the three-year
25 period used to calculate the out-of-network emergency utilization
26 rate shall be taken from the three calendar years preceding the
27 most recently completed calendar year.

28 (b) For purposes of this article, the following shall not be
29 considered to be a government program of health benefits:

30 (1) A health care service plan, qualified health plan, or health
31 insurance policy or product offered through the California Health
32 Benefit Exchange established pursuant to Section 100500 of the
33 Government Code.

34 (2) An employer-sponsored health benefit plan or contract
35 providing health benefits or coverage for state, local, or other
36 government employees, retirees, or their family members,
37 including, but not limited to, a health benefit plan or contract
38 entered into with the Board of Administration of the Public
39 Employees' Retirement System pursuant to the Public Employees'

1 *Medical and Hospital Care Act (Part 5 (commencing with Section*
2 *22750) of Division 5 of Title 2 of the Government Code).*

3 *(c) The definitions of Section 1317.1, with the exception of the*
4 *definition of “hospital,” shall control the construction of this*
5 *article, unless the context otherwise requires.*

6 *127466. (a) (1) A hospital with an out-of-network emergency*
7 *utilization rate of 50 percent or greater shall notify payers at the*
8 *time the hospital submits bills, statements, or other demands for*
9 *payment for emergency services and care provided to a patient*
10 *prior to stabilization, other than services and care described in*
11 *paragraph (5), (6), (7), or (9), that the hospital’s out-of-network*
12 *emergency utilization rate is 50 percent or greater and therefore*
13 *its total billed charges for emergency services and care provided*
14 *to a patient prior to stabilization may be subject to adjustment in*
15 *accordance with this section. This subdivision shall not apply to*
16 *any hospital that has an out-of-network emergency utilization rate*
17 *that is less than 50 percent, nor shall this subdivision apply to a*
18 *hospital if the hospital can establish that in the preceding six-month*
19 *period the percentage of all emergency department encounters at*
20 *the hospital that were out-of-network for local, privately insured*
21 *patients was less than 50 percent.*

22 *(2) A hospital’s total billed charges subject to adjustment under*
23 *this subdivision shall not include charges billed by a physician*
24 *and surgeon licensed pursuant to Chapter 5 (commencing with*
25 *Section 2000) of Division 2 of the Business and Professions Code*
26 *or any other licensed professional who is a member of the hospital*
27 *medical staff.*

28 *(3) The adjustment made pursuant to this subdivision shall be*
29 *such that the hospital’s total expected payment from a payer for*
30 *emergency services and care prior to stabilization shall be 60*
31 *percent of the payer’s average in-network payments for similar*
32 *emergency services and care prior to stabilization. If the payer*
33 *does not have average in-network payments for similar emergency*
34 *services and care prior to stabilization, then the hospital’s total*
35 *expected payment shall be in accordance with existing law.*

36 *(4) A payer that receives the notification made by a hospital*
37 *pursuant to paragraph (1) may adjust the reimbursement to the*
38 *hospital pursuant to this section.*

39 *(5) If a contract, including a contract with a health insurer,*
40 *health care service plan, or other health care coverage provider,*

1 *governs the adjustment of the total billed charges for the emergency*
2 *services and care provided to a patient prior to stabilization by*
3 *the hospital, the contract shall control and the provisions of this*
4 *subdivision shall not apply.*

5 *(6) The adjustment required by this subdivision shall not apply*
6 *to a hospital's charges for emergency services and care provided*
7 *to a patient prior to stabilization as treatment for an injury that*
8 *is compensable for purposes of workers' compensation.*

9 *(7) The adjustment required by this subdivision shall not apply*
10 *to a hospital's charges for emergency services and care provided*
11 *to a patient prior to stabilization for whom Medicare, Medi-Cal,*
12 *or any other government program of health benefits, excluding*
13 *public employee benefit plans, is the primary payer for those*
14 *services and care.*

15 *(8) The adjustment required by this subdivision shall not apply*
16 *to a hospital's charges for emergency services and care provided*
17 *to a patient prior to stabilization where all of the following*
18 *conditions are met:*

19 *(A) The primary payer is a health insurer, health care service*
20 *plan, or other health care coverage provider.*

21 *(B) As of January 1, 2013, the primary payer and the hospital*
22 *are parties to a contract governing the adjustment of total billed*
23 *charges for emergency services and care provided to patients prior*
24 *to stabilization.*

25 *(C) On or after January 1, 2013, and before the provision of*
26 *the emergency services and care to the patient prior to*
27 *stabilization, the primary payer terminates the contract described*
28 *in subparagraph (B), except where the termination is due to the*
29 *hospital's breach of the contract, or the primary payer fails to*
30 *timely renew the contract described in subparagraph (B) after the*
31 *hospital makes a timely and binding offer to renew on substantially*
32 *the same terms and including reasonable rate adjustments. The*
33 *hospital shall have the burden of proving that it made a timely and*
34 *binding renewal offer that met the requirements of this paragraph*
35 *in any proceeding applying this subdivision.*

36 *(9) The adjustment required by this subdivision shall not apply*
37 *if existing law, including Article 1(commencing with Section*
38 *127400), requires a hospital to limit expected payment for*
39 *emergency services and care provided to a patient prior to*
40 *stabilization to an amount that is less than the hospital's total*

1 billed charges, as adjusted in accordance with paragraph (3).
2 Nothing in this article shall prevent a hospital from adjusting its
3 total billed charges to limit expected payments for emergency
4 services and care prior to stabilization to amounts that are less
5 than the total billed charges as adjusted in accordance with
6 paragraph (3).

7 (b) If application of federal law, including Section 2719A of the
8 federal Public Health Service Act (42 U.S.C. Sec. 300gg-19a), and
9 its implementing regulations, requires that a health care service
10 plan or health insurer provide payment for emergency services
11 and care prior to stabilization in an amount greater than the
12 hospital's total billed charges for those services and care as
13 adjusted in accordance with subdivision (a), the hospital's total
14 billed charges shall be adjusted such that its total expected payment
15 for the emergency services and care prior to stabilization shall be
16 the minimum amount that will comply with the applicable federal
17 law. Nothing in this subdivision shall be construed as confirming
18 any federal obligation of a health insurer or health care service
19 plan to provide payments of any particular amount for
20 out-of-network emergency services provided to its policyholders
21 or enrollees prior to stabilization.

22 127467. Nothing in this article shall be construed to require
23 a hospital to modify its uniform schedule of charges or published
24 rates, nor shall this article preclude the recognition of a hospital's
25 established charge schedule or published rates for purposes of
26 applying any payment limit, interim payment amount, or other
27 payment calculation based upon a hospital's rates or charges
28 under the Medi-Cal program, the Medicare Program, workers'
29 compensation, or other federal, state, or local public program of
30 health benefits.

31 127468. A hospital subject to Section 127466 shall provide
32 reimbursement for any amount actually paid in excess of the
33 amount due under this article, including interest. Interest owed by
34 the hospital shall accrue at the rate set forth in Section 685.010
35 of the Code of Civil Procedure, beginning on the date payment is
36 received by the hospital. However, a hospital is not required to
37 provide a reimbursement if the amount due is less than five dollars
38 (\$5).

1 127469. *Nothing in this article shall be construed to supersede*
2 *or repeal Section 1371, 1371.35, 1371.36, 1371.37, 1371.38, or*
3 *1371.39.*

4 127470. *This article shall remain in effect only until January*
5 *1, 2017, and as of that date is repealed, unless a later enacted*
6 *statute, that is enacted before January 1, 2017, deletes or extends*
7 *that date.*

8 SECTION 1. ~~Section 113818 of the Health and Safety Code~~
9 ~~is amended to read:~~

10 113818. (a) ~~“Limited food preparation” means food preparation~~
11 ~~that is restricted to one or more of the following:~~

12 ~~(1) Heating, frying, baking, roasting, popping, shaving of ice,~~
13 ~~blending, steaming or boiling of hot dogs, or assembly of~~
14 ~~nonprepackaged food.~~

15 ~~(2) Dispensing and portioning of nonpotentially hazardous food.~~

16 ~~(3) Holding, portioning, and dispensing of any foods that are~~
17 ~~prepared for satellite food service by the onsite permanent food~~
18 ~~facility or prepackaged by another approved source.~~

19 ~~(4) Slicing and chopping of food on a heated cooking surface~~
20 ~~during the cooking process.~~

21 ~~(5) Cooking and seasoning to order.~~

22 ~~(6) Preparing beverages that are for immediate service, in~~
23 ~~response to an individual consumer order, that do not contain~~
24 ~~frozen milk products.~~

25 (b) ~~“Limited food preparation” does not include any of the~~
26 ~~following:~~

27 ~~(1) Slicing and chopping unless it is on the heated cooking~~
28 ~~surface.~~

29 ~~(2) Thawing.~~

30 ~~(3) Cooling of cooked, potentially hazardous food.~~

31 ~~(4) Grinding raw ingredients or potentially hazardous food.~~

32 ~~(5) Reheating of potentially hazardous foods for hot holding,~~
33 ~~except for steamed or boiled hot dogs and tamales in the original,~~
34 ~~inedible wrapper.~~

35 ~~(6) Except as allowed in paragraph (3) of subdivision (a), hot~~
36 ~~holding of nonprepackaged, potentially hazardous food, except~~
37 ~~for roasting corn on the cob, steamed or boiled hot dogs, and~~
38 ~~tamales in the original, inedible wrapper.~~

39 ~~(7) Washing of foods.~~

40 ~~(8) Cooking of potentially hazardous foods for later use.~~

1 ~~SEC. 2. Section 113953.3 of the Health and Safety Code is~~
2 ~~amended to read:~~

3 ~~113953.3. (a) Except as specified in subdivision (b), all~~
4 ~~employees shall thoroughly wash their hands and that portion, if~~
5 ~~any, of their arms exposed to direct food contact with cleanser and~~
6 ~~warm water by vigorously rubbing together the surfaces of their~~
7 ~~lathered hands and arms for at least 10 to 15 seconds and~~
8 ~~thoroughly rinsing with clean running water followed by drying~~
9 ~~of cleaned hands and that portion, if any, of their arms exposed.~~
10 ~~Employees shall pay particular attention to the areas underneath~~
11 ~~the fingernails and between the fingers. Employees shall wash~~
12 ~~their hands in all of the following instances:~~

13 ~~(1) Immediately before engaging in food preparation, including~~
14 ~~working with nonprepackaged food, clean equipment and utensils,~~
15 ~~and unwrapped single-use food containers and utensils.~~

16 ~~(2) After touching bare human body parts other than clean hands~~
17 ~~and clean, exposed portions of arms.~~

18 ~~(3) After using the toilet room.~~

19 ~~(4) After caring for or handling any animal allowed in a food~~
20 ~~facility pursuant to this part.~~

21 ~~(5) After coughing, sneezing, using a handkerchief or disposable~~
22 ~~tissue, using tobacco, eating, or drinking.~~

23 ~~(6) After handling soiled equipment or utensils.~~

24 ~~(7) During food preparation, as often as necessary to remove~~
25 ~~soil and contamination and to prevent cross-contamination when~~
26 ~~changing tasks.~~

27 ~~(8) When switching between working with raw food and~~
28 ~~working with ready-to-eat food.~~

29 ~~(9) Before dispensing or serving food or handling clean~~
30 ~~tableware and serving utensils in the food service area.~~

31 ~~(10) After engaging in other activities that contaminate the~~
32 ~~hands.~~

33 ~~(11) Before initially donning gloves for working with food and~~
34 ~~when changing gloves as required in Section 113973. Handwashing~~
35 ~~is not required between glove changes when no contamination of~~
36 ~~the gloves or hands has occurred.~~

37 ~~(b) If approved and capable of removing the types of soils~~
38 ~~encountered in the food operations involved, an automatic~~
39 ~~handwashing facility may be used by food employees to clean~~
40 ~~their hands.~~

1 SEC. 3. ~~Section 113973 of the Health and Safety Code is~~
2 ~~amended to read:~~

3 ~~113973. (a) Notwithstanding Section 113975, single-use gloves~~
4 ~~shall be worn when contacting food and food-contact surfaces if~~
5 ~~the employee has any cuts, sores, rashes, artificial nails, nail polish,~~
6 ~~rings (other than a plain ring, such as a wedding band), uncleanable~~
7 ~~orthopedic support devices, or fingernails that are not clean,~~
8 ~~smooth, or neatly trimmed:~~

9 ~~(b) Whenever gloves, except single-use gloves, are worn, they~~
10 ~~shall be changed, replaced, or washed as often as handwashing is~~
11 ~~required by this part.~~

12 ~~(c) If single-use gloves are used, single-use gloves shall be used~~
13 ~~for only one task, such as working with ready-to-eat food or with~~
14 ~~raw food of animal origin, used for no other purpose, and shall be~~
15 ~~discarded when damaged or soiled, or when interruptions in the~~
16 ~~food handling occur. Single-use gloves shall not be washed.~~

17 ~~(d) Except as specified in subdivision (c), slash-resistant gloves~~
18 ~~that are used to protect the hands during operations requiring~~
19 ~~cutting shall be used only with food that is subsequently cooked~~
20 ~~as specified in Section 114004, such as frozen food or a primal~~
21 ~~cut of meat.~~

22 ~~(e) Slash-resistant gloves may be used with ready-to-eat food~~
23 ~~that will not be subsequently cooked if the slash-resistant gloves~~
24 ~~have a smooth, durable, and nonabsorbent outer surface or if the~~
25 ~~slash-resistant gloves are covered with a smooth, durable,~~
26 ~~nonabsorbent glove, or a single-use glove.~~

27 ~~(f) Cloth gloves may not be used in direct contact with food~~
28 ~~unless the food is subsequently cooked.~~

29 SEC. 4. ~~Section 113975 is added to the Health and Safety Code,~~
30 ~~to read:~~

31 ~~113975. (a) Except as provided in subdivision (b), an employee~~
32 ~~who has a lesion or wound that is open or draining shall not handle~~
33 ~~food.~~

34 ~~(b) A food employee who has a cut, sore, rash, lesion, or wound~~
35 ~~is restricted from food handling unless the food employee complies~~
36 ~~with the following:~~

37 ~~(1) If the lesion is located on the hand or wrist, an impermeable~~
38 ~~cover, such as a finger cot or stall shall protect the lesion. A~~
39 ~~single-use glove shall be worn over the impermeable cover.~~

1 (2) If the lesion is located on exposed portions of the arms, an
2 impermeable cover shall protect the lesion.

3 (3) If the lesion is located on other parts of the body, a dry,
4 durable, tight-fitting bandage shall cover the lesion.

5 SEC. 5. Section 114047 of the Health and Safety Code is
6 amended to read:

7 114047. (a) Adequate and suitable space shall be provided for
8 the storage of food.

9 (b) Except as specified in subdivisions (c) and (d), food shall
10 be protected from contamination by storing the food in a clean,
11 dry location, where it is not exposed to splash, dust, vermin, or
12 other forms of contamination or adulteration, and at least six inches
13 above the floor.

14 (c) Food in packages and working containers may be stored less
15 than six inches above the floor on case lot handling equipment as
16 specified under Section 114165.

17 (d) Pressurized beverage containers, cased food in waterproof
18 containers such as bottles or cans, and milk containers in plastic
19 crates may be stored on a floor that is clean and not exposed to
20 moisture.

21 (e) Temporary alternative storage methods and locations may
22 be approved by the local enforcement agency.

23 SEC. 6. Section 114294 of the Health and Safety Code is
24 amended to read:

25 114294. (a) All mobile food facilities and mobile support units
26 shall meet the applicable requirements in Chapter 1 (commencing
27 with Section 113700) to Chapter 8 (commencing with Section
28 114250), inclusive, and Chapter 12.6 (commencing with Section
29 114377) and Chapter 13 (commencing with Section 114380),
30 unless specifically exempted from any of these provisions as
31 provided in this chapter.

32 (b) The enforcement agency shall initially approve all mobile
33 food facilities and mobile support units as complying with the
34 provisions of this chapter and may require reapproval if deemed
35 necessary.

36 (c) Each mobile food facility that is either a special purpose
37 commercial modular and coach as defined by Section 18012.5 or
38 a commercial modular coach as defined by Section 18001.8 shall
39 be certified by the Department of Housing and Community
40 Development, consistent with Chapter 4 (commencing with Section

1 18025) of Part 2 of Division 13, and regulations promulgated
2 pursuant to that chapter. In addition, the enforcement agency shall
3 approve all equipment installation prior to operation.

4 SEC. 7. Section 114325 of the Health and Safety Code is
5 amended to read:

6 114325. (a) Except on a mobile food facility that only utilizes
7 the water for handwashing purposes, a water heater or an
8 instantaneous heater capable of heating water to a minimum of
9 120°F, interconnected with a potable water supply, shall be
10 provided and shall operate independently of the vehicle engine.
11 On a mobile food facility that only utilizes the water for
12 handwashing purposes, a minimum one-half-gallon capacity water
13 heater or an instantaneous water heater capable of heating water
14 to a minimum of 100°F, interconnected with a potable water
15 supply, shall be provided and shall operate independently of the
16 vehicle engine.

17 (b) A water heater with a minimum capacity of four gallons
18 shall be provided for mobile food facilities with one or more
19 warewashing sinks.

20 (c) A mobile food facility equipped with a three-gallon water
21 heater that was approved prior to adoption of this section need not
22 provide a four-gallon water heater.

23 SEC. 8. Section 114335 of the Health and Safety Code is
24 amended to read:

25 114335. (a) Temporary food facilities that operate at a swap
26 meet are limited to only prepackaged nonpotentially hazardous
27 food and whole uncut produce, and shall meet the applicable
28 requirements in Chapter 1 (commencing with Section 113700) to
29 Chapter 8 (commencing with Section 114250), inclusive, and
30 Chapter 12.6 (commencing with Section 114377) and Chapter 13
31 (commencing with Section 114380), unless specifically exempted
32 from any of these provisions:

33 (b) Temporary food facilities that operate at a community event
34 shall meet the applicable requirements in Chapter 1 (commencing
35 with Section 113700) to Chapter 8 (commencing with Section
36 114250), inclusive, and Chapter 12.6 (commencing with Section
37 114377) and Chapter 13 (commencing with Section 114380);
38 unless specifically exempted from any of these provisions.

39 (c) Food facility requirements shall be determined by the
40 enforcement agency based on the food service activity to be

1 conducted, the type of food that is to be prepared or served, the
2 length of the event, and the extent of food preparation that is to be
3 conducted at a community event within a temporary food facility.

4 (d) Notwithstanding subdivision (a), the enforcement agency
5 may allow temporary food facilities at a swap meet, depending on
6 the food service activity to be conducted, the type of food that is
7 to be prepared or served, the duration of the swap meet, and the
8 extent of food preparation that is to be conducted at the swap meet.

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

18 ~~However, if the Commission on State Mandates determines that
19 this act contains other costs mandated by the state, reimbursement
20 to local agencies and school districts for those costs shall be made
21 pursuant to Part 7 (commencing with Section 17500) of Division
22 4 of Title 2 of the Government Code.~~