

Introduced by Senator HuffFebruary 16, 2016

An act to amend Sections 113795, 113814, 113818, 113823, 113873, 114004, 114021, 114057.1, 114299, and 114419 of, and to repeal and add Section 114093 of, the Health and Safety Code, relating to food safety.

LEGISLATIVE COUNSEL'S DIGEST

SB 1067, as introduced, Huff. Food facilities.

Existing law, the California Retail Food Code, establishes uniform health and sanitation standards for, and provides for regulation by the State Department of Public Health of, retail food facilities and the preparation of various types of defined foods. Under existing law, local health agencies are primarily responsible for enforcing the code. A person who violates any provision of the code is guilty of a misdemeanor, except as otherwise provided.

The code, among other things, defines various forms of animal-derived food, including, among others, meat, poultry, and game animal and terms related to food preparation. The code specifies requirements for obtaining, preparing, and serving animal-derived raw foods, and, among other things, allows specified foods that are raw or have not been thoroughly cooked, as specified, to be served if the consumer specifically orders the food to be individually prepared less than thoroughly cooked, or the food facility notifies the consumer that the food is raw or less than thoroughly cooked.

This bill would revise those definitions and the provisions regulating obtaining and preparing those raw foods. The bill would delete the provisions regarding consumer notice and instead require a retail food facility to inform consumers of the significantly increased risk of

consuming specified animal food that is served or sold raw, undercooked, or without otherwise being processed to eliminate pathogens through a disclosure and reminder, as specified.

The code requires a food facility that packages food using a reduced-oxygen packaging method, as specified, to have a hazard analysis critical control point (HACCP) plan, that satisfies specified criteria, approved by the department for all potentially hazardous foods that are packaged using reduced oxygen packaging.

This bill would provide that an HACCP plan is not required under specified circumstances, including, but not limited to, that the food is held at 41 degrees Fahrenheit or lower during refrigerated storage.

By imposing new enforcement requirements on local health agencies, and by creating a new crime, the 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 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.

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

1 SECTION 1. Section 113795 of the Health and Safety Code
2 is amended to read:
3 113795. (a) “Game animal” means an animal, the products of
4 which are food, that is not classified as cattle, sheep, swine, goat,
5 horse, mule, or other equine in 9 C.F.R. 301, as poultry in ~~9 C.F.R.~~
6 ~~384~~, *Section 381 of Title 9 of the Code of Federal Regulations*, or
7 as fish as defined under Subpart 1–201.10(B)(31) of the Food and
8 Drug Administration 2001 Food Code.
9 (b) “Game animal” includes mammals such as reindeer, elk,
10 deer, antelope, water buffalo, bison, rabbit, squirrel, opossum,
11 raccoon, nutria, or muskrat, and nonaquatic reptiles such as land
12 snakes.

1 (c) “Game animal” does not include ~~ratites such as ostrich, emu,~~
2 ~~and rhea. ratites.~~

3 SEC. 2. Section 113814 of the Health and Safety Code is
4 amended to read:

5 113814. “Injected” means manipulating a meat so that
6 ~~infectious or toxigenic microorganisms may be introduced from~~
7 ~~its surface to its~~ *to which a solution has been introduced into its*
8 ~~interior through tenderizing with deep penetration or injecting the~~
9 ~~meat by processes that may be~~ *are* referred to as “injecting,”
10 “pinning,” or “stitch pumping.”

11 SEC. 3. Section 113818 of the Health and Safety Code is
12 amended to read:

13 113818. (a) “Limited food preparation” means food preparation
14 that is restricted to one or more of the following:

15 (1) Heating, frying, baking, roasting, popping, shaving of ice,
16 blending, steaming or boiling of hot dogs, or assembly of
17 nonprepackaged food.

18 (2) Dispensing and portioning of nonpotentially hazardous food.

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

22 (4) Slicing and chopping of food on a heated cooking surface
23 during the cooking process.

24 (5) Cooking and seasoning to order.

25 (6) ~~Preparing~~ *Juicing or preparing* beverages that are for
26 immediate service, in response to an individual consumer order,
27 that do not contain frozen milk products.

28 (b) “Limited food preparation” does not include any of the
29 following:

30 (1) Slicing and chopping unless it is on the heated cooking
31 surface.

32 (2) Thawing.

33 (3) Cooling of cooked, potentially hazardous food.

34 (4) Grinding raw ingredients or potentially hazardous food.

35 (5) Reheating of potentially hazardous foods for hot holding,
36 except for steamed or boiled hot dogs and tamales in the original,
37 inedible wrapper.

38 (6) Except as authorized in paragraph (3) of subdivision (a), hot
39 holding of nonprepackaged, potentially hazardous food, except

1 for roasting corn on the cob, steamed or boiled hot dogs, and
 2 tamales in the original, inedible wrapper.

3 (7) Washing of foods.

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

5 SEC. 4. Section 113823 of the Health and Safety Code is
 6 amended to read:

7 113823. “Meat” means the flesh of animals used as food,
 8 including the dressed flesh of cattle, swine, sheep, goats, ~~game~~
 9 ~~animal~~, and other edible animals, except fish and ~~poultry~~,
 10 *and wild game animals specified in subdivision (a) of Section*
 11 *114031.*

12 SEC. 5. Section 113873 of the Health and Safety Code is
 13 amended to read:

14 113873. ~~(a)~~ “Poultry” means either of the following:

15 ~~(1)~~

16 (a) Any domesticated bird, including chickens, turkeys, ducks,
 17 geese, or guineas, whether live or dead, as defined in ~~9 C.F.R. 381~~
 18 ~~Poultry Products Inspection Regulations. Regulations (9 C.F.R.~~
 19 ~~381).~~

20 ~~(2)~~

21 (b) Any migratory waterfowl, game bird, including a pheasant,
 22 partridge, quail, grouse, or guinea, or pigeon, *ratites*, or squab,
 23 whether live or dead, as defined in ~~9 C.F.R. 362 the Voluntary~~
 24 ~~Poultry Inspection Program. Program (9 C.F.R. 362).~~

25 ~~(b) “Poultry” does not include ratites.~~

26 SEC. 6. Section 114004 of the Health and Safety Code is
 27 amended to read:

28 114004. (a) Except as specified in ~~subdivision (e), all~~
 29 ~~ready-to-eat foods prepared at a food facility from raw or~~
 30 ~~incompletely cooked food of animal origin subdivision (b) or (c),~~
 31 *raw animal foods such as eggs, fish, meat, poultry, and foods*
 32 *containing these raw animal foods shall be cooked to heat all parts*
 33 *of the food to a temperature and for a time that complies with the*
 34 *following methods based on the food that is cooked:*

35 (1) The following shall be heated to a minimum internal
 36 temperature of 145°F or above for 15 seconds:

37 (A) Raw shell eggs that are broken and prepared in response to
 38 a consumer’s order and for immediate service.

39 ~~(B) Fish.~~

1 ~~(C) Single pieces of meat, including beef, veal, lamb, pork, and~~
2 ~~game animals from approved sources.~~

3 *(B) Except as specified in paragraph (2) or (3) of subdivision*
4 *(a) or subdivision (b) or (c), fish and meat, including game animals*
5 *commercially raised for food.*

6 (2) The following foods shall be heated to a minimum internal
7 temperature of 155°F for 15 seconds or the temperature specified
8 in the following chart that corresponds to the holding time:

9 (A) Ratites and *mechanically tenderized* injected meats.

10 ~~(B) Comminuted meat or any food containing comminuted~~
11 ~~meat.~~

12 *(B) The following foods, if it is comminuted fish, meat, and game*
13 *animals commercially raised for food as specified in subparagraph*
14 *(B) of paragraph (1).*

15 (C) Raw eggs ~~and foods containing raw eggs~~ that are not
16 prepared as specified in paragraph (1).

Minimum	
Temperature (°F)	Time
145	3 minutes
150	1 minute
158	1 second 1 second (instantaneous)

24 (3) The following shall be heated to a minimum internal
25 temperature of 165°F for 15 seconds:

26 (A) Poultry.

27 ~~(B) Comminuted poultry.~~

28 (B) *Baluts.*

29 (C) Stuffed fish, stuffed meat, stuffed poultry, and stuffed ratites.

30 (D) Stuffing containing fish, meat, poultry, or ratites.

31 (E) Pasta and any other food stuffed with fish, meat, poultry,
32 or ratites.

33 (F) *Wild game animals.*

34 (b) Whole beef roasts, corned beef roasts, pork roasts, and cured
35 pork roasts, such as ham, shall be cooked as specified in both of
36 the following:

(1) In an oven that is preheated to the temperature specified for the roast's weight in the following chart and that is held at that temperature:

Oven Type	Oven Temperature Based on Roast Weight	
	Less than 10 lbs	10 lbs or more
Still Dry	350°F or more	250°F or more
Convection	325°F or more	250°F or more
High Humidity*	250°F or less	250°F or less

*Relative humidity greater than 90% for at least 1 hour measured in the cooking chamber or exit of the oven; or in a moisture-impermeable bag that provides 100% humidity.

(2) As specified in the following chart, to heat all parts of the food to a temperature and for the holding time that corresponds to that temperature:

Temperature (°F)	Time* in Minutes	Temperature (°F)	Time* in Seconds
130	112	147	134
131	89	149	85
133	56	151	54
135	36	153	34
136	28	155	22
138	18	157	14
140	12	158	0
142	8		
144	5		
145	4		

* Holding time may include postoven heat rise.

~~(e) The department may approve alternative time and temperature minimum heating requirements to thoroughly cook the foods identified in this section when the food facility or person demonstrates to the department that the alternative heating requirements provide an equivalent level of food safety.~~

(c) A raw or undercooked whole-muscle, intact beef steak may be served or offered for sale in a ready-to-eat form if all of the following conditions are satisfied:

1 (1) The food facility serves a population that is not a highly
2 susceptible population.

3 (2) The steak is labeled to indicate that it meets the definition
4 of “whole-muscle, intact beef” as specified in subdivision (c) of
5 Section 114021.

6 (3) The steak is cooked on both the top and bottom to a surface
7 temperature of 145°F or above and a cooked color change is
8 achieved on all external surfaces.

9 (d) A raw animal food such as raw egg, raw fish, raw marinated
10 fish, raw molluscan shellfish, or steak tartare, or a partially cooked
11 food such as lightly cooked fish, soft cooked eggs, or rare meat
12 other than whole-muscle, intact beef steaks as specified in
13 subdivision (c), may be served or offered for sale upon consumer
14 request or selection in a ready-to-eat form if all of the following
15 conditions are satisfied:

16 (1) As specified in paragraph (1) or (2) of subdivision (e) of
17 Section 114091, the food facility serves a population that is not a
18 highly susceptible population.

19 (2) The food, if served or offered for service by consumer
20 selection from a children’s menu, does not contain comminuted
21 meat.

22 (3) The consumer is informed pursuant to Section 114091 to
23 ensure its safety, the food should be cooked as specified in
24 subdivision (a) or (b).

25 (4) The department grants a variance from subdivision (a) or
26 (b) pursuant to Section 114417 based on a HACCP plan that
27 satisfies all of the following conditions:

28 (A) It is submitted by the permitholder and approved pursuant
29 to Sections 114417.1 and 114417.3.

30 (B) It documents scientific data or other information showing
31 that a lesser time and temperature regimen results in safe food.

32 (C) It verifies that equipment and procedures for food prepared
33 and training of food employees at the food facility meet the
34 conditions of the variance.

35 SEC. 7. Section 114021 of the Health and Safety Code is
36 amended to read:

37 114021. (a) Food shall be obtained from sources that comply
38 with all applicable laws.

39 (b) Food stored or prepared in a private home shall not be used
40 or offered for sale in a food facility, unless that food is prepared

1 by a cottage food operation that is registered or has a permit
2 pursuant to Section 114365.

3 *(c) Whole-muscle, intact beef steaks that are intended for*
4 *consumption in an undercooked form that does not satisfy the*
5 *conditions for service pursuant to subdivision (c) of Section 114004*
6 *shall satisfy all of the following conditions:*

7 *(1) Either of the food has been obtained from a food processing*
8 *plant that, upon request by the purchaser, packages the steaks and*
9 *labels them to indicate that the steak meets the definition of*
10 *whole-muscle, intact beef, or is deemed acceptable by the*
11 *enforcement agency based on other evidence, such as written buyer*
12 *specifications or invoices, that indicate that the steaks meet the*
13 *definition of whole-muscle intact beef.*

14 *(2) If the food is individually cut in a food facility, all of the*
15 *following conditions are satisfied:*

16 *(A) The food is cut from whole-muscle intact beef that is labeled*
17 *by a food processing plant as specified in paragraph (1).*

18 *(B) The food is prepared so it remains intact.*

19 *(C) If the food is packaged for undercooking in a food facility,*
20 *the food is labeled as specified in paragraph (1).*

21 SEC. 8. Section 114057.1 of the Health and Safety Code is
22 amended to read:

23 114057.1. (a) A food facility that packages food using a
24 reduced-oxygen packaging method and Clostridium botulinum is
25 identified as a microbiological hazard in the final prepackaged
26 form shall ensure that there are at least two barriers in place to
27 control the growth and toxin formation of Clostridium botulinum.

28 (b) A food facility that packages food using a reduced-oxygen
29 packaging method and Clostridium botulinum is identified as a
30 microbiological hazard in the final prepackaged form shall have
31 an approved HACCP plan that does all of the following:

32 (1) Contains the information specified under Section 114419.1.

33 (2) Identifies the food to be prepackaged.

34 (3) Limits the food prepackaged to a food that does not support
35 the growth of Clostridium botulinum because it complies with one
36 of the following:

37 (A) Has an a_w of 0.91 or less.

38 (B) Has a pH of 4.6 or less.

39 (C) Is a meat or poultry product cured at a food processing plant
40 regulated by the U.S.D.A. and is received in an intact package.

1 (D) Is a food with a high level of competing organisms, such
2 as raw meat or raw poultry.

3 (4) Specifies methods for maintaining food at 41°F or below.

4 (5) Describes how the packages shall be prominently and
5 conspicuously labeled on the principal display panel in bold type
6 on a contrasting background, with instructions to maintain the food
7 at 41°F or below and discard the food if within 14 calendar days
8 of its packaging it is not served for on-premises consumption, or
9 consumed if served or sold for off-premises consumption.

10 (6) Limits the refrigerated shelf life to no more than 14 calendar
11 days from packaging to consumption, except the time product is
12 maintained frozen, or the original manufacturer’s “sell by” or “use
13 by” date, whichever occurs first.

14 (7) Includes operational procedures that prohibit contacting
15 food with bare hands, identify a designated area and the method
16 by which physical barriers or methods of separation of raw foods
17 and ready-to-eat foods minimize cross-contamination and access
18 to the processing equipment is restricted to responsible trained
19 personnel familiar with the potential hazards of the operation, and
20 delineate cleaning and sanitization procedures for food-contact
21 surfaces.

22 (8) Describes the training program that ensures that individuals
23 responsible for the reduced-oxygen packaging operation understand
24 the concepts required for a safe operation, the equipment and
25 facilities, and the procedures specified under paragraph (7) and
26 Section 114419.1.

27 (c) Except for fish that is frozen before, during, and after
28 packaging, a food facility shall not package fish using a
29 reduced-oxygen packaging method.

30 (d) *A food facility is not required to have an HACCP plan if the*
31 *food facility uses a reduced-oxygen packaging method to package*
32 *hazardous food that always complies with the following standards*
33 *with respect to packaging the hazardous food:*

34 (1) *The food is labeled with the production time and date.*

35 (2) *The food is held at 41°F or lower during refrigerated*
36 *storage.*

37 (3) *The food is removed from its package in the food facility*
38 *within 48 hours after packaging.*

39 SEC. 9. Section 114299 of the Health and Safety Code is
40 amended to read:

1 114299. (a) Except as specified in subdivision (c), the business
2 name or name of the operator, city, state, ZIP Code, and name of
3 the ~~permittee~~, *permitholder*, if different from the name of the food
4 facility, shall be legible, clearly visible to consumers, and
5 permanently affixed on the consumer side of the mobile food
6 facility and on a mobile support unit.

7 (b) The business name shall be in letters at least 3 inches high.
8 Letters and numbers for the city, state, ~~and ZIP Code~~ *ZIP code*,
9 *and permitholder name, if different from the business name*, shall
10 not be less than one inch high. The color of each letter and number
11 shall contrast with its background.

12 (c) Notwithstanding subdivision (a), motorized mobile food
13 facilities and mobile support units shall have the required
14 identification on two sides.

15 SEC. 10. Section 114093 of the Health and Safety Code is
16 repealed.

17 ~~114093. Notwithstanding Section 114004, a ready-to-eat salad~~
18 ~~dressing or sauce containing a raw or less than thoroughly cooked~~
19 ~~egg as an ingredient, and other ready-to-eat foods made from or~~
20 ~~containing eggs, comminuted meat, or single pieces of meat,~~
21 ~~including beef, veal, lamb, pork, poultry, fish, and seafood, that~~
22 ~~are raw or have not been thoroughly cooked as specified in Section~~
23 ~~114004 may be served if either of the following requirements is~~
24 ~~met:~~

25 ~~(a) The consumer specifically orders that the food be~~
26 ~~individually prepared less than thoroughly cooked.~~

27 ~~(b) The food facility notifies the consumer, orally or in writing,~~
28 ~~at the time of ordering, that the food is raw or less than thoroughly~~
29 ~~cooked.~~

30 SEC. 11. Section 114093 is added to the Health and Safety
31 Code, to read:

32 114093. (a) Except as specified in subdivision (c) and
33 paragraph (4) of subdivision (d) of Section 114004 and pursuant
34 to subdivision (e) of Section 114091, if an animal food, including
35 beef, eggs, fish, lamb, milk, pork, poultry, or shellfish is served
36 or sold raw, undercooked, or without otherwise being processed
37 to eliminate pathogens, either in ready-to-eat form or as an
38 ingredient in another ready-to-eat food, the permitholder shall
39 inform consumers of the significantly increased risk of consuming
40 those foods by way of a disclosure pursuant to subdivision (b) and

1 reminder pursuant to subdivisions (c), using brochures, deli case
2 or menu advisories, label statements, table tents, placards, or other
3 effective written means.

4 (b) “Disclosure” means a written statement that clearly includes
5 either of the following:

6 (1) A description of the animal-derived foods, such as “oysters
7 on the half shell (raw oysters),” “raw-egg Caesar salad,” and
8 “hamburgers (can be cooked to order).”

9 (2) Identification of the animal-derived foods marked by an
10 asterisk denoting a footnote that states that the items are served
11 raw or undercooked, or contain or may contain raw or undercooked
12 ingredients.

13 (c) “Reminder” means a written statement that identifies the
14 animal-derived foods by an asterisk that denotes a footnote that
15 includes either of the following disclosure statements:

16 (1) Written information regarding the safety of these food items
17 is available upon request.

18 (2) Consuming raw or undercooked meats, poultry, seafood,
19 shellfish, or eggs may increase your risk of foodborne illness,
20 especially if you have certain medical conditions.

21 SEC. 12. Section 114419 of the Health and Safety Code is
22 amended to read:

23 114419. (a) Food facilities may engage in any of the following
24 activities only pursuant to an HACCP plan as specified in Section
25 114419.1:

26 (1) Smoking food as a method of food preservation rather than
27 as a method of flavor enhancement.

28 (2) Curing food.

29 (3) Using food additives or adding components such as vinegar
30 as a method of food preservation rather than as a method of flavor
31 enhancement, or to render a food so that it is not potentially
32 hazardous.

33 (4) Operating a molluscan shellfish life support system display
34 tank used to store and display shellfish that are offered for human
35 consumption.

36 (5) Custom processing animals that are for personal use as food
37 and not for sale or service in a food facility.

38 (6) Preparing food by another method that is determined by the
39 enforcement agency to require an HACCP plan.

1 (b) Food facilities may engage in the following only pursuant
2 to an HACCP plan that has been approved by the department:

3 (1) Using acidification or water activity to prevent the growth
4 of *Clostridium botulinum*.

5 (2) Packaging potentially hazardous food using a
6 reduced-oxygen packaging method as specified in Section
7 ~~114057.1~~. *114057.1, except if the food facility uses a*
8 *reduced-oxygen packaging method to package hazardous food*
9 *that always complies with the following standards with respect to*
10 *packaging the hazardous food:*

11 (A) *The food is labeled with the production time and date.*

12 (B) *The food is held at 41°F or lower during refrigerated*
13 *storage.*

14 (C) *The food is removed from its package in the food facility*
15 *within 48 hours after packaging.*

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

25 However, if the Commission on State Mandates determines that
26 this act contains other costs mandated by the state, reimbursement
27 to local agencies and school districts for those costs shall be made
28 pursuant to Part 7 (commencing with Section 17500) of Division
29 4 of Title 2 of the Government Code.