AMENDED IN SENATE APRIL 14, 2016

AMENDED IN SENATE MARCH 29, 2016

AMENDED IN SENATE MARCH 28, 2016

SENATE BILL No. 1067

Introduced by Senator Huff

February 16, 2016

An act to amend Sections 113795, 113814, 113818, 113823, 113873, 113947, 113947.2, 114004, 114021, 114057.1, 114299, and 114419 of, to add Section 113820.5 to, and to repeal and add Section 114093 of, the Health and Safety Code, relating to food safety.

LEGISLATIVE COUNSEL'S DIGEST

SB 1067, as amended, 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 person in charge of a food facility and all food employees to have adequate knowledge of, and be properly trained in, food safety. The code also requires food facilities that prepare, handle, or serve nonprepackaged potentially hazardous food, except temporary food facilities, to have an owner or employee who has successfully passed an approved and accredited food safety certification examination. The code specifies the contents of that examination, including knowledge of foodborne illness, as specified.

This bill would require the person in charge of a food facility to have adequate knowledge of major food allergens, as defined, foods identified as major food allergens, and the symptoms that a major food allergen could cause in a sensitive individual who has an allergic reaction and to educate food facility employees regarding those matters. The bill would also require the food safety certification examination to include describing foods identified as major food allergens and the symptoms that a major food allergen could cause in a sensitive individual who has an allergic reaction.

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:

SECTION 1. Section 113795 of the Health and Safety Code is amended to read:

113795. (a) "Game animal" means an animal, the products of which are food, that is not classified as cattle, sheep, swine, goat, horse, mule, or other equine in Part 301 of Title 9 of the Code of Federal Regulations, as poultry in Part 381 of Title 9 of the Code of Federal Regulations, or as fish as defined under Subpart 1–201.10(B)(31) of the Food and Drug Administration 2001 Food Code.

(b) "Game animal" includes mammals such as reindeer, elk, deer, antelope, water buffalo, bison, rabbit, squirrel, opossum, raccoon, nutria, or muskrat, and nonaquatic reptiles such as land snakes.

(c) "Game animal" does not include ratites.

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

113814. "Injected" means manipulating meat to which a solution has been introduced into its interior by processes that are referred to as "injecting," "pinning," or "stitch pumping."

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

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

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

(2) Dispensing and portioning of nonpotentially hazardous food.

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

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

(5) Cooking and seasoning to order.

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

(b) "Limited food preparation" does not include any of the following:

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

(2) Thawing.

(3) Cooling of cooked, potentially hazardous food.

(4) Grinding raw ingredients or potentially hazardous food.

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

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

(7) Washing of foods.

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

SEC. 4. Section 113820.5 is added to the Health and Safety Code, to read:

113820.5. (a) "Major food allergen" means all of the following:

(1) Milk.

(2) Eggs.

(3) Fish, including, but not limited to, bass, flounder, and cod.

(4) Crustacean shellfish, including, but not limited ~~to~~ *to,* crab, lobster, and shrimp.

(5) Tree nuts, including, but not limited to, almonds, pecans, and walnuts.

(6) Wheat.

(7) Peanuts.

(8) Soybeans.

(9) A food ingredient that contains protein derived from a food listed in paragraphs (1) to (8), inclusive.

(b) Major food allergen does not include either of the following:

(1) A highly refined oil derived from a food specified in paragraphs (1) to (8), inclusive, of subdivision (a) and any ingredient derived from that highly refined oil.

(2) An ingredient that is exempt under the petition or notification process specified in the federal Food Allergen Labeling and Consumer Protection Act of 2004 (Public Law 108-282).

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

113823. "Meat" means the flesh of animals used as food, including the dressed flesh of cattle, swine, sheep, goats, and other edible animals, except fish, poultry, and wild game animals specified in subdivision (a) of Section 114031.

SEC. 6. Section 113873 of the Health and Safety Code is amended to read:

113873. "Poultry" means either of the following:

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

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

SEC. 7. Section 113947 of the Health and Safety Code is amended to read:

113947. (a) The person in charge and all food employees shall have adequate knowledge of, and shall be properly trained in, food safety as it relates to their assigned duties.

(b) The person in charge shall comply with both of the following:

(1) Have adequate knowledge of major food allergens, foods identified as major food allergens, and the symptoms that a major food allergen could cause in a sensitive individual who has an allergic reaction.

(2) Educate the employees at the food facility regarding the information described in paragraph (1), which the person in charge may elect to accomplish by, among other methods, using a poster or job aid to which the employee can refer.

(c) For purposes of this section, "person in charge" means a designated person who has knowledge of safe food handling

practices and the major food allergens as they relate to the specific food preparation activities that occur at the food facility.

SEC. 8. Section 113947.2 of the Health and Safety Code is amended to read:

113947.2. The food safety certification examination for purposes of Section 113947.1 shall include, but need not be limited to, all of the following elements of knowledge:

(a) Foodborne illness, including terms associated with foodborne illness, micro-organisms, hepatitis A, and toxins that can contaminate food and the illness that can be associated with contamination, definition and recognition of potentially hazardous foods, chemical, biological, and physical contamination of food, and the illnesses that can be associated with food contamination, and major contributing factors for foodborne illness.

(b) The relationship between time and temperature with respect to foodborne illness, including the relationship between time and temperature and micro-organisms during the various food handling, preparation, and serving states, and the type, calibration, and use of thermometers in monitoring food temperatures.

(c) The relationship between personal hygiene and food safety, including the association of hand contact, personal habits and behaviors, and food employee health to foodborne illness, and the recognition of how policies, procedures, and management contribute to improved food safety practices.

(d) Methods of preventing food contamination in all stages of food handling, including terms associated with contamination and potential hazards prior to, during, and after delivery.

(e) Procedures for cleaning and sanitizing equipment and utensils.

(f) Problems and potential solutions associated with facility and equipment design, layout, and construction.

(g) Problems and potential solutions associated with temperature control, preventing cross-contamination, housekeeping, and maintenance.

(h) Describing foods identified as major food allergens and the symptoms that a major food allergen could cause in a sensitive individual who has an allergic reaction.

SEC. 9. Section 114004 of the Health and Safety Code is amended to read:

114004. (a) Except as specified in subdivision (b) or (c), raw animal foods such as eggs, fish, meat, poultry, and foods containing these raw animal foods shall be cooked to heat all parts of the food to a temperature and for a time that complies with the following methods based on the food that is cooked:

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

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

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

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

(A) Ratites and mechanically tenderized and injected meats.

(B) The following foods, if they are comminuted: fish, meat, and game animals commercially raised for food as specified in subparagraph (B) of paragraph (1).

(C) Raw eggs that are not prepared as specified in paragraph (1).

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

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

(A) Poultry.

(B) Baluts.

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

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

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

(F) Wild game animals.

(b) Whole beef roasts, corned beef roasts, pork roasts, lamb roasts, and cured pork roasts, such as ham, shall be cooked as specified in both of 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 percent for at least 1 hour measured in the cooking chamber or exit of the oven; or in a moisture-impermeable bag that provides 100 percent 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.			

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

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

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

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

(1) All of the following requirements are met:

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

(B) The food, if served or offered for service by consumer selection from a children's menu, does not contain comminuted meat.

(C) The consumer is informed pursuant to Section 114093 to ensure its safety, the food should be cooked as specified in subdivision (a) or (b).

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

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

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

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

SEC. 10. Section 114021 of the Health and Safety Code is amended to read:

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

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

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

(c) Whole-muscle, intact beef steaks that are intended for consumption in an undercooked form that does not satisfy the conditions for service pursuant to ~~subdivision (c) of~~ Section ~~114004~~ *114093* shall satisfy all of the following conditions:

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

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

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

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

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

SEC. 11. Section 114057.1 of the Health and Safety Code is amended to read:

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

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

(1) Contains the information specified under Section 114419.1.

(2) Identifies the food to be prepackaged.

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

(A) Has an a_w of 0.91 or less.

(B) Has a pH of 4.6 or less.

(C) Is a meat or poultry product cured at a food processing plant regulated by the United States Department of Agriculture and is received in an intact package.

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

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

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

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

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

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

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

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

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

(2) The food is held at 41ºF or lower during refrigerated storage.

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

SEC. 12. Section 114299 of the Health and Safety Code is amended to read:

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

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

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

SEC. 13. Section 114093 of the Health and Safety Code is repealed.

SEC. 14. Section 114093 is added to the Health and Safety Code, to read:

114093. (a) Except as specified in subdivision (c) and paragraph (4) of subdivision (d) of Section 114004 and pursuant to subdivision (e) of Section 114091, if an animal food, including beef, eggs, fish, lamb, milk, pork, poultry, or shellfish, is served or sold raw, undercooked, or without otherwise being processed to eliminate pathogens, either in ready-to-eat form or as an ingredient in another ready-to-eat food, the permitholder shall inform consumers of the significantly increased risk of consuming those foods by way of a disclosure pursuant to subdivision (b) and reminder pursuant to subdivision (c), using brochures, deli case or menu advisories, label statements, table tents, placards, or other effective written means.

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

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

(2) Identification of the animal-derived foods marked by an asterisk denoting a footnote that states that the items are served

raw or undercooked, or contain or may contain raw or undercooked ingredients.

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

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

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

SEC. 15. Section 114419 of the Health and Safety Code is amended to read:

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

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

(2) Curing food.

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

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

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

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

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

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

(2) Packaging potentially hazardous food using a reduced-oxygen packaging method as specified in Section 114057.1, except if the food facility uses a reduced-oxygen packaging method to package hazardous food that always complies with the following standards with respect to packaging the hazardous food:

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

(B) The food is held at 41ºF or lower during refrigerated storage.

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

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

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

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