

Date of Hearing: March 23, 2021

ASSEMBLY COMMITTEE ON HEALTH

Jim Wood, Chair

AB 831 (Committee on Health) – As Introduced February 17, 2021

**SUBJECT:** California Retail Food Code.

**SUMMARY:** Makes various technical and clarifying changes to the California Retail Food Code (CRFC). Specifically, **this bill**:

- 1) Clarifies that limited food preparation applies to any catering operation instead of just a catering operation for a host facility.
- 2) Specifies the types of same-day food service that may be conducted by a limited service charitable feeding operation as follows:
  - a) Heating, portioning, or assembling a small volume of commercially prepared foods means food preparation that is restricted to one or more of the following:
    - i) Assembly of ready-to-eat foods that require no further preparation aside from assembly;
    - ii) Heating, including boiling of pasta and grains, and serving; and/or,
    - iii) Dispensing, portioning, or repackaging of bulk foods.
  - b) Heating, portioning, or assembling a small volume of commercially prepared foods does not include any of the following:
    - i) Chopping or dicing.
    - ii) Cooking of raw animal products.
    - iii) Blending
    - iv) Other food processing as identified by the local enforcement agency.
- 3) Expands the definition of outdoor wood-burning oven to also mean a wood oven operated by a temporary food facility, mobile food facility that remains fixed during hours of operation at a community event, or satellite food service.
- 4) Clarifies that a satellite food service must be temporary by nature if located within a fully enclosed permanent food facility.
- 5) Allows a food facility to incorporate an alternate glove use procedure in which double gloves are worn to handle raw animal proteins. Requires the loose-fitting outer glove to be removed in a manner to prevent cross-contamination of the tight-fitting inner glove before the inner glove is used as a barrier to bare hand contact with ready-to-eat food.
- 6) Revises the Hazard Analysis and Critical Control Point (HACCP) plan for a food facility that packages food using reduced-oxygen packaging method, specifically extending from 14 days to 30 days when to discard food as specified in the label, and extending the refrigerated shelf life from 14 to no more than 30 days from packaging to consumption, as specified.

- 7) Requires a food facility that packages potentially hazardous foods using cook-chili or sous vide process to meet the requirements of the federal Food Code, as specified.
- 8) Allows local enforcement agencies to exempt a mobile food facility, other than a special purpose commercial modular and coach, as defined, that conducts only limited food preparation from specified mechanical ventilation requirements of the CRFC.
- 9) Clarifies that a temporary food facility may use multiuse utensils at an approved food facility that are kept free of becoming soiled or contaminated.
- 10) Requires a cottage food operation, for purposes of advertising to the public, including through an internet website, social media platform, newspaper, newsletter or other public announcement, to include the following on the advertisement:
  - a) The county of approval;
  - b) The permit or registration number; and,
  - c) A statement that the food prepared is “Made in a Home Kitchen” or “Repackaged in a Home Kitchen,” as applicable.
- 11) Permits fish sold in a fishermen’s market to be packaged by an onsite permitted temporary food facility or permitted food facility.
- 12) Deems existing limited service charitable feeding operation facilities as in compliance with construction or remodeling requirements, unless a determination is made that a nonconforming structural conditions pose a public health hazard.
- 13) Makes other technical and clarifying changes.

**EXISTING LAW:**

- 1) Establishes the CRFC to provide for the regulation of retail food facilities. Establishes health and sanitation standards at the state level through the CRFC, while enforcement is charged to local agencies, carried out by the 58 county environmental health departments, and four city environmental health departments (Berkeley, Long Beach, Pasadena, and Vernon).
- 2) Defines a food facility to mean an operation that stores, prepares, packages, serves, vends, or provides food for human consumption at the retail level, as specified. Includes in the definition of food facility private and public school cafeterias, commissaries, mobile food facilities, temporary food facilities, vending machines, catering operation, fishermen’s market, and host facility.
- 3) Establishes the U. S. Food and Drug Administration (FDA), which among other functions, publishes the Model Food Code, a model that assists food control jurisdictions at all levels of government by providing them with a scientifically sound technical and legal basis for regulating the retail and food service segment of the industry, as specified.

**FISCAL EFFECT:** Unknown. This bill has not been analyzed by a fiscal committee.

**COMMENTS:**

- 1) **PURPOSE OF THIS BILL.** According to the authors, there are no regulations adopted to implement the CRFC so a bill is necessary to codify clean-up or technical changes to the

CRFC. This bill is sponsored by the California Retail Food Safety Coalition and is a consensus among retail food stakeholders, including federal, state and local regulators, other state agencies, the restaurant and grocery industry and other stakeholders in the retail food arena.

**2) BACKGROUND.** The changes to existing law are summarized below:

- a) Limited food preparation/Section 113818.** A limited food preparation is food preparation that is limited to specific activities, including heating, roasting, dispensing, on nonprepackaged foods, nonpotentially hazardous foods, or food prepared by a catering operation for a host facility. According to the sponsor, the current definition is only permissible for a satellite operation or a catering operation that works in conjunction with a permitted host facility. Existing law defines a host facility as facility located in a brewery, winery, commercial building, or another location that supports a catering operation that provides food for a limited period of time, up to four hours, as specified. The changes to this section would clarify that limited food preparation would be allowed at all catered events, including traditional caterers.
- b) Limited service charitable feeding operation/Section 113819.** In 2018, AB 2178 (Limon), Chapter 489, Statutes of 2018, expanded the definition of a food facility to include a limited service charitable feeding operation whose purpose is to feed food-insecure individuals and requires limited service charitable feeding operations to register with the local enforcement agency. AB 2178 allowed these organizations to obtain a registration instead of a health permit and did not require compliance with plan review or the need to meet full commercial kitchen requirements. This bill would clarify what type of food processing would be allowed at a limited service charitable feeding operation to decrease ambiguity. Food banks and other operations have requested this clarification to allow them to serve specific food items.
- c) Outdoor wood burning oven/Section 113846.** Existing law defines an outdoor wood burning oven as an oven located out of the doors that utilizes wood as primary fuel for cooking (ex. pizza ovens). These outdoor wood ovens are widely used in food preparation and are currently only allowed to operate on the same premises as, and in conjunction with, a permanent food facility or a catering operation. This bill allows mobile food facilities or temporary food facilities to use wood burning oven when operating as part of a community event. According to the sponsor, the CRFC is not sufficiently clear on what local enforcement agencies can allow and these provisions will attempt to provide more consistency amongst jurisdictions. It should be noted that these changes would not approve wood-burning ovens that may be prohibited or restricted by air quality control agencies.
- d) Satellite food service/Section 113899.** Existing law defines satellite food service as a remotely located food service operation that is conducted on the same property with a fully enclosed permanent food facility. This definition excludes remote food service operations within a fully enclosed permanent food facility. This bill allows satellite operations that are temporary in nature (such as guacamole stations that are common practice throughout the state) to have a food service operation inside food facilities, like grocery stores. According to the sponsor, the existing definition of satellite food service would require these temporary operations (such as seasonal, weekends only, special menu item features) to be permanently plumbed and built into the food facilities and this interpretation did not align with industry's need to have these temporary operations constructed to be easily broken down and moved.

- e) **Glove use requirements/Section 113953.3.** Existing law establishes requirements for handwashing and glove use requirements but does not allow the use of more than one pair of gloves or double glove. Generally, to use double glove, a variance must be obtained and approved by DPH. According to the sponsor, the practice of double glove use has become widely used within California and the procedures followed are almost always approved and variance granted. The variance process is time consuming and expensive for both industry and local regulators. This bill authorizes the use of double glove and eliminate the need for industry to obtain a variance for this widely used practice by adding it into the description of approved hand washing and glove use procedures in the CRFC.
- f) **HACCP/Section 114057.1.** Existing law establishes requirements for HACCP which is a systematic approach for the identification, evaluation, and control of food safety hazards. Under California law, a food facility that packages food using reduced oxygen packing, among other requirements, the HACCP plan must describe packaging label requirements and include instructions on maintaining food temperature and to discard food within 14 calendar days if food is not served or consumed and limits refrigeration shelf life to no more than 14 calendar days. This bill proposes to replace the 14 calendar days with 30 calendar days to be consistent with the FDA Food Code standards.

Additionally, this bill requires a food facility that packages potentially hazardous foods using a cook-chill or sous vide process to meet the requirements of the FDA Food Code. To control the and toxin formation of *Clostridium botulinum* (bacteria that produces foodborne botulism), the FDA Food Code requires reduced oxygen packaging, which includes cook chill packaging (in which cooked food is hot filled into impermeable bags which have the air expelled and are then sealed or crimped closed. The bagged food is rapidly chilled and refrigerated at temperatures that inhibit the growth of psychrotrophic pathogens; or sous vide packaging (in which raw or partially cooked food is vacuum packaged in an impermeable bag, cooked in the bag, rapidly chilled, and refrigerated at temperatures that inhibit the growth of psychrotrophic pathogens).

- g) **Mobile food facilities/Section 114309.** Mobile food facilities are vehicles used to sell or distribute food at retail. Existing law requires mobile food facilities to be licensed as food facilities, and are exempt from certain requirements including toilet facilities, dressing room and lockers and curbed cleaning facilities (janitorial sink). This bill proposes to allow local enforcement agencies to exempt push carts from the ventilation requirements of CRFC since push carts are primarily outdoors and venting is the same as the ambient air.
- h) **Multiuse utensils/Section 114353.** The CRFC requires a temporary food facility to provide only single-use utensils for use by the consumer. In 2019, AB 619 (Chiu), Chapter 93, Statutes of 2019, permitted a temporary food facility to use multiuse utensils that are clean, rinsed, and sanitized, as an alternative to single-use utensils. This bill proposes to allow the use of multiuse utensils at an approved facility.
- i) **Cottage food operation/Section 114365.2.** Current law defines cottage food operation (home based food operation) and require these operations to obtain a registration or permit. This bill proposes that for purposes of advertising to the public (through website, social media platform, newspaper, newsletter, or other public announcement), a cottage food operator must include the following on the advertisement: the county of approval, permit or registration number and a statements that the food prepared is “Made in a Home Kitchen” or “Repackaged in a Home Kitchen.” These changes are necessary to verify that the operation

has been permitted and to trace-back any unsafe product.

- j) **Fish sold in a fisherman's market/Section 114378.1.** Existing law requires fish sold in a fisherman's market to be raw and may be displayed whole or eviscerated. This bill clarifies that fishermen can process and sell packaged fish from their booth, subject to prescribed safe handling requirements.
  - k) **Structural requirements Section 114380.** Existing law establishes structural requirements for the building or remodeling (including submission of plans) of retail food facilities, except for schools and churches. This bill proposes to give local enforcement agencies flexibility for plan check requirements for limited service charitable feeding organizations. This flexibility is necessary since most of these charitable organizations are run out of facilities like schools or churches that are not necessarily designed primarily to be food facilities. Since these charitable organizations are only permitted to prepare limited food preparation, local enforcement agencies would be able to allow some structural requirements necessary in a full-service food facility to be waived without compromising food safety of charitable operations that do not engage in full food preparation. This exemption is necessary to keep these charitable feeding organizations open and continue feeding those in need.
- 3) **SUPPORT.** According to the sponsor, the California Retail Food Safety Coalition, this bill makes a series of updates and improvements to CRFC that seek to clarify the interpretation of the existing law or to make the CRFC more consistent with the federal Model Food Code. It states that as representatives of the local retail food inspectors that conduct over 350,000 of retail food inspections in California each year, they believe that this measure will enhance food safety and improve compliance with the CRFC.
- 4) **RELATED LEGISLATION.** AB 1144 (R. Rivas) among other provisions increases the maximum annual sales amount for cottage food operations from \$50,000 to \$100,000.

#### **REGISTERED SUPPORT / OPPOSITION:**

##### **Support**

California Retail Food Safety Coalition (sponsor)  
California Association of Environmental Health Administrators

##### **Opposition**

None on file.

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