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## SENATE COMMITTEE ON HEALTH

Senator Dr. Richard Pan, Chair

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**BILL NO:** AB 831  
**AUTHOR:** Committee on Health  
**VERSION:** February 17, 2021  
**HEARING DATE:** June 9, 2021  
**CONSULTANT:** Vincent D. Marchand

**SUBJECT:** California Retail Food Code

**SUMMARY:** Makes a variety of clarifying and technical changes to the provisions of law governing retail food facilities.

**Existing law:**

- 1) Establishes the California Retail Food Code (CalCode) to provide for the regulation of retail food facilities. Health and sanitation standards are established at the state level through the CalCode, 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). [HSC §113700, et seq.]
- 2) Defines a “food facility” as an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption at the retail level. Excludes various entities from the definition of a “food facility,” including a cottage food operation, and a church, private club, or other nonprofit association that gives or sells food to its members and guests, and not to the general public, at an event that occurs no more than three days in any 90 day period. [HSC §113789]
- 3) Defines a “cottage food operation” as an enterprise that prepares or packages nonpotentially hazardous foods, and that has no more than \$50,000 in gross annual sales, and includes both “Class A” cottage food operations, which is restricted to direct sales of food products, and “Class B” cottage food operations, which may engage in both direct sales and indirect sales through third-party retail food facilities. [HSC §113758]
- 4) Defines “limited service charitable feeding operation” as an operation for food service to a consumer solely for providing charity, that is conducted by a nonprofit charitable organization, and whose food service is limited to the following:
  - a) Storage and distribution of whole, uncut produce, or of prepackaged, nonpotentially hazardous foods in their original packaging;
  - b) Heating, portioning, or assembly of a small volume of commercially prepared foods or ingredients that are not prepackaged;
  - c) Reheating or portioning of only commercially prepared foods with no further processing, for purposes of hot holding and no longer than same day food service to the consumer; and,
  - d) Storage or distribution of commercially prepared and commercially packaged potentially hazardous cold or frozen foods for distribution to the consumer, in accordance with specified guidance programs.

- 5) Defines a Hazard Analysis Critical Control Point (HACCP) plan as a document that delineates the formal procedures for maintaining control of potentially hazardous food at the critical control points of food preparation or processing. [HSC §113801]

**This bill:**

- 1) Revises the definition of “limited food preparation” to clarify that it includes, among other things, the holding, portioning, and dispensing of any foods that are prepared by any catering operation, and not just a catering operation for a host facility.
- 2) Revises the definition of “limited service charitable feeding operation,” for purposes of the CalCode, to clarify and further limit the type of food service that can be conducted by this type of operation, by doing the following:
  - a) Specify that 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,
    - iii) Dispensing, portioning, or repackaging of bulk foods.
  - b) Prohibit the inclusion of the following from what is considered heating, portioning, or assembling a small volume of commercially prepared food:
    - i) Chopping or dicing;
    - ii) Cooking raw animal products;
    - iii) Blending; or,
    - iv) Other food processing as defined by the local enforcement agency.
- 3) Expands the definition of “outdoor wood-burning oven,” which currently requires it to be operated on the same premises as, or in conjunction with, a permanent food facility or a catering operation, so that it may also be operated by a temporary food facility, a mobile food facility that remains fixed during hours of operation at a community event, or a satellite food service.
- 4) Revises the definition of “satellite food service,” which current law prohibits from including remote food service operations located within a fully enclosed permanent food facility, to instead require satellite food services that are located within a fully enclosed permanent food facility to be “temporary by nature.”
- 5) Permits food facilities, as an alternative to the requirement for employees to wash their hands if exposed to direct food contact, 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 required provisions of an HACCP plan, for when a food facility packages food using a reduced-oxygen packaging method and *Clostridium botulinum* is identified as a microbiological hazard in the final prepackaged form, to require food to be labeled with instructions that it be discarded within 30 days of its packaging, rather than 14 days, and permits the refrigerated shelf life to be up to 30 calendar days or the manufacturer’s “use by” date, whichever occurs first, rather than 14 days.

- 7) Requires food facilities that package potentially hazardous foods using a cook-chill or sous vide process to meet reduced oxygen packaging requirements published by the federal Food and Drug Administration (FDA), as specified.
- 8) Permits a local enforcement agency to exempt a mobile food facility, other than a special purpose commercial modular and coach, as defined, that conducts only limited food preparation, from requirements related to mechanical exhaust ventilation.
- 9) Requires a cottage food operation that advertises to the public, including through an internet website, social media platform, newspaper, newsletter, or other public announcement, to indicate the following on the advertisement: the county of approval; the permit or registration number; and, a statement that the food prepared is “Made in a Home Kitchen” or “Repackaged in a Home Kitchen,” as applicable.
- 10) Permits fish sold in a fishermen’s market, in addition to being displayed whole or eviscerated, to also be displayed packaged by an onsite permitted food facility.
- 11) Requires limited service charitable feeding operation facilities to be deemed to be in compliance with specified structural requirements, pending replacement or renovation, unless a determination is made by the enforcement agency that the nonconforming structural conditions pose a public health hazard.
- 12) Makes other technical and clarifying changes to the CalCode.

**FISCAL EFFECT:** According to the Assembly Appropriations Committee, negligible fiscal effect; the CalCode is enforced locally.

**PRIOR VOTES:**

Assembly Floor:	77 - 0
Assembly Appropriations Committee:	16 - 0
Assembly Health Committee:	15 - 0

**COMMENTS:**

- 1) *Author’s statement.* According to the author, because there are no regulations adopted to implement the CalCode, a bill is necessary to codify clean-up or technical changes to the CalCode. 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 on the changes proposed by this bill.*
  - a) *Limited food preparation.* A limited food preparation service is food preparation that is limited to specific activities, including heating and dispensing of 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.* 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 ovens.* Existing law defines an outdoor wood burning oven as an oven located out of doors that utilizes wood as the primary fuel for cooking (such as 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 ovens when operating as part of a community event. According to the sponsor, the CalCode is not sufficiently clear on what local enforcement agencies can allow and these provisions will attempt to provide more consistency among jurisdictions.
- d) *Satellite food service.* 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.* 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 the California Department of Public Health (CDPH). 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 eliminates 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 CalCode.

- f) *HACCP for reduced oxygen packaging.* Existing law establishes requirements for HACCP plans, which is a systematic approach for the identification, evaluation, and control of food safety hazards. When a food facility packages food using reduced oxygen packaging, among other requirements, the HACCP plan describes label requirements and includes 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 federal 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 for *Clostridium botulinum* (bacteria that produces foodborne botulism), the FDA Food Code requires reduced oxygen packaging, which includes cook-chill packaging or sous vide packaging. Cook-chill is when 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 pathogens. Sous vide packaging is when 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 pathogens.
- g) *Mobile food facilities.* 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 allows local enforcement agencies to exempt push carts from the ventilation requirements of the CalCode, since push carts are primarily outdoors and venting is the same as the ambient air.
- h) *Cottage food operations.* Current law establishes requirements for cottage food operations, which are limited home-based food operations, including requiring these operations to obtain a registration or permit. This bill proposes that for purposes of advertising to the public, 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.
- i) *Fish sold in a fisherman’s market.* Existing law requires fish sold in a fisherman’s market to be raw and to 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.
- j) *Structural requirements for charitable feeding organizations.* 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) *Related legislation.* AB 1144 (R. Rivas) increases the verifiable gross annual sales of a Class A cottage food operation to no more than \$75,000 and a Class B cottage food operation to no more than \$150,000. Specifies that a Class A or Class B registration or permit in one county is sufficient for the cottage operation to operate throughout the state. *AB 1144 is set for hearing on June 16, 2021 in this Committee.*
- 4) *Prior legislation.* 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 2524 (Wood, Chapter 493, Statutes of 2018) enacted a regulatory structure, within the provisions of law governing retail food facilities, for a catering operation, as well as for a host facility that supports a catering operation.

AB 1616 (Gatto, Chapter 415, Statutes of 2012) enacted the California Homemade Food Act, also known as the cottage food bill, which provided a regulatory structure to allow the production and sale of nonpotentially hazardous food in a home kitchen.

SB 144 (Runner, Chapter 23, Statutes of 2006) established the CalCode in order to create uniformity between California's retail food safety laws and those of other states, as well as to enhance food safety laws based on the best available science.

- 5) *Support.* This bill is sponsored by the California Retail Food Safety Coalition (Coalition) to make a series of updates and improvements to CalCode that seek to clarify the interpretation of the existing law or to make CalCode more consistent with the federal Model Food Code. The Coalition states that all of the provisions in this bill have been approved by the Coalition, which is composed of 60 participants representing a wide cross section of the retail food industry. The California Association of Environmental Health Administrators states in support that these proposed amendments to CalCode are non-controversial and largely technical, and will enhance food safety and improve compliance with the law. The Nutrition and Fitness Collaborative of the Central Coast and Roots of Change both write in support of the provision permitting fish sold in a fishermen's market to be displayed packaged by an onsite permitted food facility. This clarification will enhance the ability of the public to purchase seafood in a more convenient format.
- 6) *Support if amended.* The 350 Ventura County Climate HUB (HUB) submitted a letter requesting that this bill add solar cooking devices to the provision of this bill authorizing mobile and temporary food facilities to use wood burning ovens. According to the HUB, because the CalCode does not mention solar cooking devices, Ventura County has prohibited public solar cooking demonstrations at a park, where muffins baked in portable solar ovens would be served to the public. The HUB points out that solar cooking devices are safer and cleaner than any other cooking device that uses fossil fuel or wood combustion, are very inexpensive, and reduce emissions.

**SUPPORT AND OPPOSITION:**

**Support:** California Retail Food Safety Coalition (sponsor)  
California Association of Environmental Health Administrators  
Nutrition and Fitness Collaborative of the Central Coast  
Roots of Change  
San Diego County

**Oppose:** None received

**-- END --**