
UNFINISHED BUSINESS

Bill No: SB 972
Author: Gonzalez (D), et al.
Amended: 8/18/22
Vote: 21

SENATE HEALTH COMMITTEE: 9-1, 4/20/22

AYES: Pan, Eggman, Gonzalez, Grove, Leyva, Limón, Roth, Rubio, Wiener

NOES: Melendez

NO VOTE RECORDED: Hurtado

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

SENATE FLOOR: 29-5, 5/26/22

AYES: Allen, Archuleta, Bates, Becker, Borgeas, Bradford, Caballero, Cortese,
Dodd, Durazo, Eggman, Gonzalez, Hurtado, Kamlager, Laird, Leyva, Limón,
McGuire, Newman, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg,
Wieckowski, Wiener, Wilk

NOES: Dahle, Glazer, Grove, Melendez, Nielsen

NO VOTE RECORDED: Atkins, Hertzberg, Hueso, Jones, Min, Ochoa Bogh

ASSEMBLY FLOOR: 63-0, 8/24/22 - See last page for vote

SUBJECT: California Retail Food Code

SOURCE: California Insurance Commissioner Ricardo Lara
Coalition for Humane Immigrant Rights
Community Power Collective
Inclusive Action for the City
Public Counsel
Western Center on Law and Poverty

DIGEST: This bill establishes a new type of retail food facility called a “compact mobile food operation” (CMFO) as a subcategory of mobile food facility that is nonmotorized and operates from a pushcart or stand; exempts CMFOs from

various provisions of the retail food code law, including certain sink requirements; prohibits criminal penalties from applying to CMFOs and instead limits enforcement to administrative penalties; and exempts sales from CMFOs from counting toward the limits for cottage food operators or microenterprise home kitchens.

Assembly Amendments delete and recast many of the provisions of this bill into a new chapter in the California Retail Food Code, limited the ability to use microenterprise home kitchens as commissaries to only two CMFOs, and only if approved by the local jurisdiction, increased the fine authority to up to three times the cost of a permit, and made other narrowing and clarifying changes.

ANALYSIS:

- 1) Establishes the California Retail Food Code (CalCode) to regulate 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 “potentially hazardous food,” in part, as a food that requires time or temperature control to limit pathogenic micro-organism growth or toxin formation. Requires potentially hazardous food to be maintained at or above 135 degrees Fahrenheit, or at or below 41 degrees Fahrenheit. [HSC §113781]
- 3) Defines a “mobile food facility” as any vehicle used in conjunction with a commissary or other permanent food facility upon which food is sold or distributed at retail. Defines “commissary” as a food facility that services mobile food facilities, mobile support units, or vending machines where any of the following occur: food containers, or supplies are stored; food is prepared or prepackaged for sale or service at other locations; utensils are cleaned; or, liquid and solid wastes are disposed, or potable water is obtained. [HSC §113831, §113751]
- 4) Defines a “cottage food operation” (CFO), for purposes of the CalCode, as an enterprise that prepares or packages nonpotentially hazardous foods, and includes both “Class A” CFOs, which is restricted to direct sales of food products with up to \$75,000 in gross annual sales, and “Class B” CFOs which may engage in both direct sales and indirect sales through third-party retail food facilities with up to \$150,000 in sales. Requires the gross annual sales limits to be annually adjusted for inflation. [HSC §113758]

- 5) Defines a microenterprise home kitchen operation (MEHKO) as a food facility that is operated by a resident in a private home where food is stored, handled, and prepared for, and may be served to, consumers, and that meets certain requirements, including limiting food preparation to 30 meals per day, and 60 meals per week, and up to \$50,000 in annual gross sales. [HSC §113825]
- 6) Provides the governing body of a city or county with full discretion to authorize, by ordinance or resolution, the permitting of MEHKOs, and requires a permit issued by a county that has authorized the permitting of MEHKOs to be valid in any city within the county regardless of whether the city has separately enacted an ordinance or resolution to authorize or prohibit the permitting of MEHKOs within that city. [HSC §114367]
- 7) Establishes a misdemeanor penalty for a violation of any provision of the CalCode, punishable by a fine of not less than \$25 or more than \$1,000, or by imprisonment in the county jail for up to six months, or by both fine and imprisonment. [HSC §114395]

This bill:

- 1) Creates a new type of retail food facility, for purposes of regulation by the Cal Code, called the “compact mobile food operation” as a subcategory of a mobile food facility, and defines a CMFO as a mobile food facility that operates from an individual or from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance.
- 2) Limits enforcement of violations of the CalCode for CMFOs, notwithstanding the existing misdemeanor penalties for all food facilities, to be punishable only by an administrative fine, consistent with provisions of law establishing an administrative fine structure for sidewalk vendors in the Government Code, which is subject to mandatory reductions based on an individual’s ability to pay. Specifies that operating a CMFO without a permit is punishable by a fine up to three times the cost of the permit. Prohibits CMFOs from being punishable as an infraction or misdemeanor, and prohibits CMFO operators from being subject to arrest except when independent grounds for that arrest exist under law.
- 3) Revises the definition of “limited food preparation” by doing the following:
 - a) Including the dispensing and portioning for immediate service to a customer of food that has been temperature controlled until immediately prior to portioning or dispensing;

- b) Including the slicing and chopping of nonpotentially hazardous food or produce that has been washed at an approved facility; and,
 - c) Permitting, by repealing prohibitions on these activities from being considered part of “limited food preparation,” the reheating of potentially hazardous foods for hot holding.
- 4) Limits CMFOs to only conducting limited food preparation, as defined, and permits them to display or sell food outdoors, under specified conditions including overhead protection for all food display areas.
 - 5) Permits a CFO or MEHKO to serve as a commissary or mobile support unit for up to two CMFOs if the CFO or MEHKO permit includes an endorsement from the local enforcement agency that the CFO or MEHKO is capable of supporting the preparation and storage of the food being sold from the CMFO and the storage and cleaning of the CMFO.
 - 6) Permits transaction at a CMFO to constitute “direct sales” for purposes law governing CFOs, and exempts transactions at CMFOs operated by a CFO from counting toward the annual gross sales restrictions that apply to CFOs under existing law, if the governing body of the jurisdiction where the CMFO is permitted has authorized this action.
 - 7) Permits food prepared in a MEHKO to be served from a CMFO operated by the MEHKO permitholder, and specifies the meal and gross annual sales limitations do not apply to sales of nonpotentially hazardous food or produce for up to two CMFOs operated by the MEHKO if the governing body of the jurisdiction where the MEHKO is permitted has authorized this action.
 - 8) Permits the governing body of a local jurisdiction that permits MEHKOs to set meal and income limitations at a higher level than existing law for MEHKOs that operate in conjunction with CMFOs.
 - 9) Permits permanent food facilities to be permitted to support the operations and storage of CMFOs.
 - 10) Permits an enforcement agency to allow the use of a private home for the storage of up to two CMFOs if it determines that it would not pose a public health hazard.
 - 11) Requires a CMFO that prepares raw meat, raw poultry, or raw fish to comply with warewashing and handwashing facility requirements outlined in existing law, but can satisfy the requirements by demonstrating access to a permitted

auxiliary conveyance containing the necessary handwashing and warewashing sinks.

- 12) Permits a CMFO that does not prepare raw meat, raw poultry, or raw fish to avoid having to provide a warewashing sink by maintaining an adequate supply of spare preparing and serving utensils to ensure that utensils are replaced every four hours or as needed, but is still required to provide an integral handwashing sink, as specified.
- 13) Permits an enforcement agency to waive the requirement that a mobile food facility be operated within 200 feet travel distance of an approved and readily available toilet and handwashing facility if the mobile food facility operates with multiple employees or operators and the facility may remain operable by a single employee so that employees or operators may alternate use of a restroom.
- 14) Permits an enforcement agency to preapprove a standard plan for a standardized or mass-produced facility intended to serve as a mobile food facility. Specifies that a person proposing to operate a mobile food facility for which plans have been preapproved is not required to submit plans for the individual unit, but is subject to a final inspection, at which time the enforcement agency can collect a fee. Specifies that the repair of this equipment or the replacement of equipment and fixtures with substantially similar equipment is not a remodel, and does not require the submission of plans to an enforcement agency.
- 15) Exempts CMFOs from a requirement that an owner or employee pass an approved food safety certification examination if they prepare, handle, or serve nonprepackaged potentially hazardous food, and specifies that CMFOs are deemed to comply with a requirement that the owner or person in charge demonstrate that they have an adequate knowledge of food safety principles as they relate to the specific food facility operation if the CMFO permitholder obtains a food handler card, as specified.

Comments

- 1) *Author's statement.* According to the author, sidewalk food vending is essential to California's economy, culture, and health. Sidewalk food vending allows low-income and immigrant workers, often excluded from other opportunities, to make a living and provide for their families, while building a successful business. Sidewalk food vendors provide healthy food in neighborhoods that lack access to healthy food retail, and they contribute

mightily to our local economies. In 2018, the Legislature enacted SB 946 (Lara, Chapter 459, Statutes of 2018), which established parameters for local regulations concerning vending location and manner of operations. After several years of local implementation of SB 946, it is apparent that outdated requirements found in the CalCode—including incompatible equipment and design standards, exorbitant costs, and punitive enforcement measures—are preventing the vast majority of all sidewalk food vendors from obtaining a local health permit to vend food. By reducing permit barriers, public health agencies will have a significantly greater ability to educate vendors and offer corrective measures to cart designs and operating procedures that will increase overall community health and safety. This bill promotes economic inclusion while improving public health by modernizing CalCode so that sidewalk food vendors can actually obtain a permit and join the regulated vending economy.

- 2) *Sidewalk vending decriminalization bill.* As noted in the author's statement, SB 946 was intended by the author and proponents to help sidewalk vendors support themselves and their families by prohibiting overly restrictive local ordinances that were making it difficult if not impossible to operate. Among other provisions, SB 946 prohibited a city or county from requiring sidewalk vendors to operate within specific parts of public right-of-way except where that restriction is directly related to objective health, safety, or welfare concerns. Local authorities cannot restrict the overall number of sidewalk vendors, nor restrict sidewalk vendors to operate only in a designated area, unless these restrictions are directly related to health, safety or welfare concerns. Significantly, SB 946 removed criminal penalties in place of administrative penalties, in part to prevent the federal government from using a criminal history in deportation proceedings. Specifically, it restricted penalties for violating the requirements of a local authority's compliant sidewalk vending program to an administrative penalty of \$100 for a first violation, \$200 for a second violation within one year of the first violation, and \$300 for each additional violation within one year of the first violation. Administrative penalties for vending without a permit are \$250, \$500, and \$1,000, respectively. A local authority is required to accept 20% of the fine in full satisfaction if the violator earns less than 125% of the federal poverty line. However, SB 946 did permit cities and counties to require compliance with any other licensing and permitting required by law, and specifically stated that nothing affects the applicability of the CalCode to a vendor who sells food. Therefore, a sidewalk vendor is still out of compliance, and subject to enforcement, if they are selling food without a permit as a food facility under the requirements of the CalCode.

- 3) *CFO law*. AB 1616 (Gatto, Chapter 415, Statutes of 2012) enacted the regulatory structure for CFOs. This law, for the first time, permitted the preparation of food in home kitchens for sale at the retail level, and initially set the cap at \$50,000 in gross annual sales. However, cottage food is limited to non-potentially hazardous foods: foods that by definition do not require refrigeration or to be kept hot in order to prevent the growth of micro-organisms or toxins. These foods include items such as baked goods (without custard or meat fillings), candy, dried fruit, dried pasta, dried baking mixes, fruit pies, granola, herb blends, and jams or jellies, among others. The law set up two categories of CFOs: Class A operations, which are limited to direct sales to consumers, and Class B operations, which are also permitted to sell through third-party retailers such as restaurants or coffee shops. AB 1144 (Rivas, Chapter 178, Statutes of 2021) increased the sales cap from \$50,000 for both license types to \$75,000 for Class A and \$150,000 for Class B, and required that these caps be adjusted annually for inflation.
- 4) *MEHKOs*. AB 626 (Garcia, Chapter 470, Statutes of 2018) established a regulatory structure for MEHKOs. The intent of the author was to establish a legal way for home cooks to benefit from their labor and skills and promote economic development in vulnerable communities where the sale of homemade food is popular. The general structure of AB 626 was to enact a permitting process that would be overseen by the same local health agencies that oversee fully-permitted restaurants, but to exempt these MEHKOs from requirements that would be difficult to meet in a home kitchen, such as sinks with multiple compartments and multiple drainboards, requirements related to the floor, wall and counter material, special plumbing requirements, limitations on who could be in the food preparation area, etc. AB 626 required jurisdictions to opt-in in order to authorize MEHKOs in any given area. There are 62 local environmental health agencies that enforce the CalCode in their respective jurisdictions (the 58 counties, plus the cities of Berkeley, Long Beach, Pasadena, and Vernon). According to the Cook Alliance, which was one of the sponsors of AB 626 and has been tracking its implementation, the following nine counties have authorized the permitting of MEHKOs: Riverside, Alameda, San Mateo, Santa Barbara, San Diego, Solano, Imperial, Lake, and Sierra.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Assembly Appropriations Committee, minor and absorbable costs to the Department of Public Health.

SUPPORT: (Verified 8/24/22)

California Insurance Commissioner Ricardo Lara (co-source)
Coalition for Humane Immigrant Rights (co-source)
Community Power Collective (co-source)
Inclusive Action for the City (co-source)
Public Counsel (co-source)
Western Center on Law and Poverty (co-source)
Active San Gabriel Valley
African American Chamber of Commerce of San Joaquin County
Alliance San Diego
Beverly-Vermont Community Land Trust
Brown Issues
California Asian Pacific Chamber of Commerce
California Association for Micro Enterprise Opportunity
California Calls
California Coalition for Community Investment
California Community Economic Development Association
California Community Foundation
California Environmental Voters
California Immigrant Policy Center
California League of United Latin American Citizens
California Reinvestment Coalition
Californians for Economic Justice
Central American Resource Center
Central Coast Alliance United for a Sustainable Economy
City of Cudahy
cityLAB UCLA
Climate Resolve
Community Action Board of Santa Cruz County, Inc.
Community Health Councils
Comunidades Indígenas en liderazgo
Council of Mexican Federations in North America
County of Los Angeles
Courage California
Cultiva La Salud
Drug Policy Alliance
East LA Community Corporation
Eastmont Community Center
Eastside Leadership for Equitable and Accountable Development Strategies
El Concilio California

End Poverty in California
Esperanza Community Housing Corporation
Having Our Say Coalition
Hispanic Chambers of Commerce of San Francisco
Housing Now!
Inland Coalition for Immigrant Justice
Inland Empire Immigrant Youth Collective
LA Más
LAC+USC Medical Center Foundation
Latino Coalition for a Healthy California
Latino Coalition of Los Angeles
Latino Community Foundation
Local Initiatives Support Corporation
Los Angeles Area Chamber of Commerce
Los Angeles Food Policy Council
Los Angeles Walks
Loyola Immigrant Justice Clinic
Mayor of Los Angeles, Eric Garcetti
National Lawyers Guild, Los Angeles Chapter
PICO California
Pilipino Workers Center
Pomona Economic Opportunity Center
Safe Place for Youth
SALVA
San Diego Immigrant Rights Consortium
Small Business Majority
South Asian Network
Strategic Actions for a Just Economy
Thai Community Development Center
TransLatin@ Coalition
UCLA Center for Labor Research and Education
United Way of Greater Los Angeles
Urban Movement Labs
10 individuals

OPPOSITION: (Verified 8/24/22)

Blue Gold Fleet
California Attractions and Parks Association
California Contract Cities Association
California Travel Association

City of Downey
City of Paramount
City of Whittier
Civic Center Community Benefit District
Fisherman's Wharf
Golden Gate Restaurant Association
Hotel Council of San Francisco
Pacific Park Santa Monica
Pier 39
San Diego Tourism Authority
San Francisco Chamber of Commerce
San Francisco Travel Association
Santa Cruz Beach Boardwalk
Santa Monica Chamber of Commerce
Santa Monica Pier
Santa Monica Travel and Tourism
Tandem
Union Square Alliance
Visit Sacramento

ASSEMBLY FLOOR: 63-0, 8/24/22

AYES: Aguiar-Curry, Alvarez, Arambula, Bauer-Kahan, Bennett, Berman, Bloom, Boerner Horvath, Mia Bonta, Bryan, Calderon, Carrillo, Cervantes, Cooley, Cunningham, Daly, Flora, Mike Fong, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia, Gipson, Grayson, Haney, Holden, Jones-Sawyer, Kalra, Lackey, Lee, Levine, Low, Maienschein, Mathis, Mayes, McCarty, McKinnor, Medina, Mullin, Muratsuchi, Nazarian, Patterson, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Stone, Ting, Valladares, Villapudua, Waldron, Akilah Weber, Wicks, Wilson, Wood, Rendon

NO VOTE RECORDED: Bigelow, Chen, Choi, Cooper, Megan Dahle, Davies, Fong, Gallagher, Gray, Irwin, Kiley, Nguyen, O'Donnell, Seyarto, Smith, Voepel, Ward

Prepared by: Vincent D. Marchand / HEALTH / (916) 651-4111
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**** END ****