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**AB-831 California Retail Food Code.** (2021-2022)

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**Assembly Bill No. 831**

**CHAPTER 155**

An act to amend Sections 113818, 113819, 113846, 113899, 113953.3, 114057.1, 114309, 114353, 114365.2, 114378.1, and 114380 of the Health and Safety Code, relating to the California Retail Food Code.

[ Approved by Governor August 31, 2021. Filed with Secretary of State August 31, 2021. ]

**LEGISLATIVE COUNSEL'S DIGEST**

AB 831, Committee on Health. California Retail Food Code.

Existing law, the California Retail Food Code, establishes uniform health and sanitation standards for retail food facilities for regulation by the State Department of Public Health, and requires local enforcement agencies to enforce those provisions. A violation of the California Retail Food Code is generally a misdemeanor.

Existing law defines "limited food preparation" and "limited service charitable feeding operation" for purposes of the California Retail Food Code. Existing law requires a proposed new or remodeled food facility to meet specified structural and other building requirements, but specifies that existing private school cafeterias and licensed health care facilities presumptively meet these requirements. Existing law limits the use of an outdoor wood-burning oven to the same premises as a permanent food facility. Under existing law, a remote food service operation located within a fully enclosed permanent food facility is not a satellite food service. Existing law exempts mobile food facilities from specified requirements, including the provision of clean toilet rooms for use by employees. Existing law requires a cottage food operation to label prepackaged foods with a notice that it was made or repackaged in a home kitchen.

This bill would define "limited food preparation" to include holding, portioning, and dispensing foods prepared by a catering operation. The bill would expand the food service functions of a limited service charitable feeding operation to include, among other things, storage and distribution of commercially prepared and commercially packaged potentially hazardous cold or frozen foods, and would specify that an existing limited service charitable feeding operation facility is presumptively in compliance with structural and other building requirements for food facilities. The bill would expand the use of an outdoor wood-burning oven to additional facilities, including a temporary food facility or satellite food service. The bill would authorize a satellite food service to be temporarily located within a fully enclosed permanent food facility. The bill would authorize a local enforcement agency to exempt specified push carts operating outdoors from mechanical exhaust ventilation equipment requirements. The bill would require a cottage food operation that advertises to the public to indicate specified information on the advertisement, including that the food is made or repackaged in a home kitchen.

Existing law requires food packaged using a reduced-oxygen packaging method in which *Clostridium botulinum* is identified as a microbiological hazard in the final prepackaged form to have a refrigerated shelf life of no more than 14 days from packaging to consumption. Existing law authorizes fish sold in a fishermen's market to be displayed whole or eviscerated, and authorizes a fishermen's market to provide a separate service to fillet, cut, or package fish for customers as a specified type of facility.

This bill would extend the authorized refrigerated shelf life of food packaged using a reduced-oxygen packaging method in which *Clostridium botulinum* is identified as a microbiological hazard in the final prepackaged form to no more than 30 days from packaging to consumption. The bill would require a food facility that packages potentially hazardous foods using a cook-chill or sous vide process to meet specified requirements published by the United States Food and Drug Administration. The bill would authorize fish sold in a fishermen's market to be displayed packaged by an onsite permitted food facility or permitted food facility, and would authorize a fishermen's market to provide a separate service to fillet, cut, or package fish for customers at a fishermen's market booth.

Existing law requires employees to thoroughly wash their hands and arms that come into direct food contact. Existing law requires single-use nonlatex gloves to be worn when contacting food and food-contact surfaces when specified criteria are met, and requires gloves to be changed, replaced, or washed as often as handwashing is required.

This bill would authorize a food facility to incorporate an alternate double glove use procedure to handle raw animal proteins. By revising the standards that are enforced by local health agencies and by expanding the scope of existing crimes, 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 Local Program: yes

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## THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

**SECTION 1.** 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) Holding, portioning, and dispensing of any foods that are prepared by a catering operation.
- (5) Slicing and chopping of food on a heated cooking surface during the cooking process.
- (6) Cooking and seasoning to order.
- (7) 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.

(9) Handling, manufacturing, freezing, processing, or packaging of milk, milk products, or products resembling milk products subject to licensing under Division 15 (commencing with Section 32501) of the Food and Agricultural Code.

**SEC. 2.** Section 113819 of the Health and Safety Code is amended to read:

**113819.** (a) "Limited service charitable feeding operation" means an operation for food service to a consumer solely for providing charity, that is conducted by a nonprofit charitable organization operating pursuant to Chapter 10.6 (commencing with Section 114333), and whose food service is limited to any of the following functions:

(1) Storage and distribution of whole, uncut produce, or of prepackaged, nonpotentially hazardous foods in their original manufacturer's packaging.

(2) Storage and distribution of commercially prepared and commercially packaged potentially hazardous cold or frozen foods.

(3) Heating, portioning, or assembling a small volume of commercially prepared foods or ingredients for same-day food service to the consumer, 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.

(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.

(4) Reheating or portioning of only commercially prepared foods with no further processing, for same-day food service to the consumer.

(b) "Limited service charitable feeding operation" does not include a nonprofit charitable temporary food facility operating pursuant to Chapter 10.5 (commencing with Section 114332), or a temporary food facility operating pursuant to Chapter 11 (commencing with Section 114335). A limited service charitable feeding operation shall operate pursuant to Chapter 10.5 (commencing with Section 114332) or Chapter 11 (commencing with Section 114335) if it operates a nonprofit charitable temporary food facility or a temporary food facility, respectively.

**SEC. 3.** Section 113846 of the Health and Safety Code is amended to read:

**113846.** "Outdoor wood-burning oven" means an oven located out of doors, that utilizes wood as the primary fuel for cooking and is operated by a temporary food facility, mobile food facility that remains fixed during hours of operation at a community event, permanent food facility, satellite food service, or catering operation.

**SEC. 4.** Section 113899 of the Health and Safety Code is amended to read:

**113899.** "Satellite food service" means a remotely located food service operation that is conducted on the same property as, in reasonable proximity to, and in conjunction with and by, a fully enclosed permanent food facility. Satellite food service located within a fully enclosed permanent food facility shall be temporary by nature.

**SEC. 5.** Section 113953.3 of the Health and Safety Code is amended to read:

**113953.3.** (a) Except as specified in subdivisions (b) and (c), all employees shall thoroughly wash their hands and that portion, if any, of their arms exposed to direct food contact with cleanser and warm water by vigorously rubbing together the surfaces of their lathered hands and arms for at least 10 to 15 seconds and thoroughly rinsing with clean running water followed by drying of

cleaned hands and that portion, if any, of their arms exposed. Employees shall pay particular attention to the areas underneath the fingernails and between the fingers. Employees shall wash their hands in all of the following instances:

- (1) Immediately before engaging in food preparation, including working with nonprepackaged food, clean equipment and utensils, and unwrapped single-use food containers and utensils.
- (2) After touching bare human body parts other than clean hands and clean, exposed portions of arms.
- (3) After using the toilet room.
- (4) After caring for or handling any animal allowed in a food facility pursuant to this part.
- (5) After coughing, sneezing, using a handkerchief or disposable tissue, using tobacco, eating, or drinking.
- (6) After handling soiled equipment or utensils.
- (7) During food preparation, as often as necessary to remove soil and contamination and to prevent cross-contamination when changing tasks.
- (8) When switching between working with raw food and working with ready-to-eat food.
- (9) Before initially donning gloves for working with food.
- (10) Before dispensing or serving food or handling clean tableware and serving utensils in the food service area.
- (11) After engaging in other activities that contaminate the hands.

(b) If approved and capable of removing the types of soils encountered in the food operations involved, an automatic handwashing facility may be used by food employees to clean their hands.

(c) A food facility may incorporate an alternate glove use procedure in which double gloves are worn to handle raw animal proteins. The loose-fitting outer glove shall 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.

**SEC. 6.** 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 aw 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 degrees Fahrenheit 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 30 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 30 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 41 degrees Fahrenheit or lower during refrigerated storage.

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

(e) A food facility that packages potentially hazardous foods using a cook-chill or sous vide process shall meet the requirements of Section 3-502.12 (D) of the Food Code published by the FDA.

**SEC. 7.** Section 114309 of the Health and Safety Code is amended to read:

**114309.** (a) Mobile food facilities and mobile support units shall be exempt from the requirements of Sections 114250, 114256.1, and 114279. A local enforcement agency may exempt a push cart operating outdoors, other than a special purpose commercial modular and coach, as defined by Section 18012.5, or a commercial modular coach, as defined by Section 18001.8, that conducts only limited food preparation from Section 114149.1.

(b) This chapter does not require any person to replace or modify an existing mobile food facility approved for operation prior to adoption of this part, so long as the facility is operated in accordance with the conditions of approval. Plans and specifications may be required by the enforcement agency if it determines that they are necessary to assure compliance with this part.

(c) Mobile food facilities equipped with a one-compartment sink or two-compartment sink that was approved for operation prior to adoption of this part need not provide a three-compartment sink.

**SEC. 8.** Section 114353 of the Health and Safety Code is amended to read:

**114353.** (a) Except as provided in subdivision (b), a temporary food facility shall provide only single-use articles for use by the consumer.

(b) Notwithstanding subdivision (a), based on local environmental conditions, location, and similar factors, including the type and number of utensils, as defined in Section 113934, the volume and storage of potable water for warewashing, as defined in Section 113940, and waste water capacity, storage, and disposal, the local enforcement agency may allow a temporary food facility to use multiuse utensils that have been properly washed, rinsed, and sanitized pursuant to Chapter 5 (commencing with Section 114095), as applicable, at an approved food facility and are kept free of becoming soiled or contaminated.

**SEC. 9.** Section 114365.2 of the Health and Safety Code is amended to read:

**114365.2.** A cottage food operation that is registered or has a permit issued pursuant to Section 114365 shall be considered a restricted food service facility for purposes of, and subject to, Sections 113953.3, 114259.5, 114285, and 114286. A cottage food operation that is registered or has a permit also shall be subject to Sections 113967, 113973, 113980, 114259.5, 114405, 114407, 114409, 114411, and 114413, and to all of the following requirements:

(a) A person with a contagious illness shall refrain from work in the registered or permitted area of the cottage food operation.

(b) A person involved in the preparation or packaging of cottage food products shall keep their hands and exposed portions of their arms clean and shall wash their hands before any food preparation or packaging activity in a cottage food operation.

(c) Water used during the preparation of cottage food products shall meet the potable drinking water standards described in Section 113869, or in accordance with the local regulatory authority. A cottage food operation shall not be required to have an indirect sewer connection. Water used during the preparation of cottage food products includes all of the following:

(1) The washing, sanitizing, and drying of any equipment used in the preparation of a cottage food product.

(2) The washing, sanitizing, and drying of hands and arms.

(3) Water used as an ingredient.

(d) A person who prepares or packages cottage food products shall complete a food processor course approved by the department and posted on the department's internet website to protect the public health within three months of becoming registered and every three years during operation. The course shall not exceed four hours in length. The department shall work with the local enforcement agency to ensure that cottage food operators are properly notified of the location, date, and time of the classes offered.

(e) A cottage food operation shall properly label all cottage food products in compliance with the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 343 et seq.). Additionally, to the extent permitted by federal law, the label shall include, but is not limited to, all of the following:

(1) The words "Made in a Home Kitchen" or "Repackaged in a Home Kitchen," as applicable, with a description of any purchased whole ready-to-eat product not used as an ingredient in 12-point type on the cottage food product's primary display panel.

(2) The name commonly used for the food product or an adequately descriptive name.

(3) The name of the cottage food operation which produced the cottage food product.

(4) The registration or permit number of the "Class A" or "Class B" cottage food operation, respectively, which produced the cottage food product and the name of the county of the local enforcement agency that issued the permit or registration number.

(5) The ingredients of the cottage food product, in descending order of predominance by weight, if the product contains two or more ingredients.

(f) A cottage food operation that advertises to the public, including through an internet website, social media platform, newspaper, newsletter, or other public announcement, shall indicate the following on the advertisement:

(1) The county of approval.

(2) The permit or registration number.

(3) A statement that the food prepared is "Made in a Home Kitchen" or "Repackaged in a Home Kitchen," as applicable.

**SEC. 10.** Section 114378.1 of the Health and Safety Code is amended to read:

**114378.1.** (a) Fish sold in a fishermen's market shall be raw and may be displayed whole, eviscerated, or packaged by an onsite permitted temporary food facility or permitted food facility. A fisherman selling fish in a fishermen's market shall only sell raw edible aquatic plants or fish that the fisherman caught legally, or that was caught by one or two other licensed commercial fishermen. If a fisherman sells fish caught by another licensed commercial fisherman, the fisherman shall provide a copy of that other fisherman's commercial license and contact information upon the request of the enforcement agency.

(b) A fishermen's market may provide a separate service that fillets, cuts, or packages fish for customers who purchase direct sales of fish within the fishermen's market as a temporary food facility, mobile food facility, fishermen's market booth, or other facility approved by the enforcement agency. A separate health permit is required and applicable requirements for that category of permit shall be met.

(c) Fish parts from the day's operations may be used for bait by a licensed commercial fisherman or registered aquaculturist.

(d) Ice used for refrigeration purposes shall not be used for consumption in food or beverages.

(e) Notwithstanding subdivision (b) and Section 113818, raw fish may be eviscerated at a fishermen's market.

**SEC. 11.** Section 114380 of the Health and Safety Code is amended to read:

**114380.** (a) A person proposing to build or remodel a food facility shall submit complete, easily readable plans drawn to scale, and specifications to the enforcement agency for review, and shall receive plan approval before starting any new construction or remodeling of a facility for use as a retail food facility.

(b) Plans and specifications may also be required by the enforcement agency if the agency determines that they are necessary to ensure compliance with the requirements of this part, including, but not limited to, a menu change or change in the facility's

method of operation.

(c) (1) All new school food facilities or school food facilities that undergo modernization or remodeling shall comply with all structural requirements of this part. Upon submission of plans by a public school authority, the Division of the State Architect and the local enforcement agency shall review and approve all new and remodeled school facilities for compliance with all applicable requirements.

(2) Notwithstanding subdivision (a), the Office of Statewide Health Planning and Development (OSHPD) shall maintain its primary jurisdiction over licensed skilled nursing facilities, and when new construction, modernization, or remodeling must be undertaken to repair existing systems or to keep up the course of normal or routine maintenance, the facility shall complete a building application and plan check process as required by OSHPD. Approval of the plans by OSHPD shall be deemed compliance with the plan approval process required by the local county enforcement agency described in this section.

(3) Except when a determination is made by the enforcement agency that the nonconforming structural conditions pose a public health hazard, existing public and private school cafeterias, limited service charitable feeding operation facilities, and licensed health care facilities shall be deemed to be in compliance with this part pending replacement or renovation.

(d) Except when a determination is made by the enforcement agency that the nonconforming structural conditions pose a public health hazard, existing food facilities that were in compliance with the law in effect on June 30, 2007, shall be deemed to be in compliance with the law pending replacement or renovation. If a determination is made by the enforcement agency that a structural condition poses a public health hazard, the food facility shall remedy the deficiency to the satisfaction of the enforcement agency.

(e) The plans shall be approved or rejected within 20 working days after receipt by the enforcement agency and the applicant shall be notified of the decision. Unless the plans are approved or rejected within 20 working days, they shall be deemed approved. The building department shall not issue a building permit for a food facility until after it has received plan approval by the enforcement agency. This section does not require that plans or specifications be prepared by someone other than the applicant.

**SEC. 12.** 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.