

ATTACHMENT A

**2017 CA A 626: Bill Analysis - 04/21/2017 - Assembly Health Committee, Hearing Date
04/25/2017**

Date of Hearing: April 25, 2017

ASSEMBLY COMMITTEE ON HEALTH

Jim Wood, Chair

AB 626

Eduardo Garcia- As Amended Ver:April 6, 2017

SUBJECT: California Retail Food Code: microenterprise home kitchen operations.

SUMMARY: Permits microenterprise home kitchen operations to sell home cooked food to the public under specified situations. Specifically, this bill:

1) Defines microenterprise home kitchen operation (MEHKO) to mean a food facility that is operated by a resident in a private home where food is prepared for a consumer and meets all of the following requirements:

- a) The operation has no more than one full-time equivalent food employee, not including a family member or household member;
- b) Food is prepared, cooked, and served on the same day, picked up by the customer, or delivered within a safe time period based on holding equipment capacity;
- c) Food preparation does not involve processes that require a Hazard Analysis Critical Control Point (HACCP) plan, or the production, service, or sale of raw milk or raw milk products, as specified;
- d) There is no service and sale of raw oysters;
- e) Food preparation is limited to no more than 30 individual meals per day, and no more than 60 individual meals per week, unless otherwise approved by the local enforcement agency based on food preparation capacity of the operation; and,
- f) The operation has no more than \$50,000 in verifiable gross annual sales.

2) States that MEHKO does not include any of the following:

- a) A catering operation;
- b) A cottage food operation, as specified; and,
- c) An indirect sale.

3) Requires that equipment for holding cold and hot food in a restricted food service facility be sufficient in number and capacity to ensure proper food temperature control.

4) Grants to MEHKOs the same exemption enjoyed by restricted food service facilities that would otherwise prohibit a kitchen from directly opening into a room used as living or sleeping quarters. Prohibits any sleeping

accommodations from being allowed in any area where food is prepared or stored.

5) Provides that a MEHKO be considered a restricted food service facility for purposes of, and subject to all applicable requirements of specified provisions of the California Retail Food Code (CRFC).

6) Exempts a MEHKO from all of the following:

a) Handwashing sign posting requirements;

b) Handwashing facilities requirements, as specified, provided that a handwashing sink is supplied with warm water and located in the toilet room and supplied with hand cleanser and either a heated-air hand drying device or sanitary single use towels are available;

c) Installing a three-compartment sink provided that a two-compartment sink is available and used, as specified; and,

d) Installing a food preparation sink provided that produce is washed, as specified.

7) Requires any individual who is involved in the preparation, storage, or service of food in a MEHKO to obtain a food handler card.

8) Prohibits a MEHKO from being open for business unless it is operating under a permit issued from the local enforcement agency in a manner approved by the local enforcement agency.

9) Requires the applicant to submit to the local enforcement agency written standard operating procedures that include all of the following information:

a) All food products that will be handled;

b) The proposed procedures and methods of food preparation and handling;

c) Procedures, methods, and schedules for cleaning utensils, equipment, and for the disposal of refuse;

d) How food will be maintained at the required holding temperatures pending pickup by consumer or during delivery; and,

e) Days and times that the home kitchen will be utilized as a microenterprise home kitchen operation.

10) For purposes of permitting, the permitted area includes the home kitchen, onsite customer eating area, food storage, utensils and equipment, toilet room, janitorial or cleaning facilities, and refuse storage area. Food operations shall not be conducted outside of the permitted areas.

11) For purposes of determining compliance with the provisions of this bill, a representative of a local enforcement agency, for inspection purposes, may access the permitted area of a private home where a food operation is being conducted. Limits access to the permitted areas and solely for the purpose of enforcing or administering this part.

12) Permits a representative of a local enforcement agency to inspect a MEHKO on the basis of a consumer complaint, reason to suspect that adulterated or otherwise unsafe food has been produced by the operation, or that the operation has violated this part.

13) Permits the enforcement officer, for the purpose of determining compliance with the gross annual sales requirements for operating a MEHKO or a cottage food operation, require those operations to provide copies of documents related to determining gross annual sales.

EXISTING LAW:

- 1) Establishes the California Retail Food Code (CRFC), under the Department of Public Health. Includes uniform health and sanitation standards for retail food facilities, and requires local health agencies to enforce these provisions.
- 2) Defines "food facility" as an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption at the retail level, as specified. Exempts, among others, a private home, including a registered or permitted cottage food operation, from the definition of food facility.
- 3) Defines "restricted food service facility" to mean either of the following:
 - a) A food facility of 20 guestrooms or less that provides overnight transient occupancy accommodations, that serves food only to its registered guests, that serves only a breakfast or similar early morning meal and no other meals except light food or snacks presented to the guest for self-service, and that includes the price of food in the price of the overnight transient occupancy accommodation; or,
 - b) An agricultural homestay facility, as specified.
- 4) Establishes the California Homemade Food Act to regulate the production and sale of certain non-potentially hazardous foods prepared in a home kitchen.
- 5) Provides that a violation of any provision of the CRFC or regulation adopted pursuant to it is generally a misdemeanor.

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

COMMENTS:

- 1) **PURPOSE OF THIS BILL.** According to the author, many of his constituents have expressed their concerns and frustrations trying to work in compliance with the existing, overly complicated cottage food laws. The author states that this measure aims to knock down barriers and expand opportunities for marginalized populations who often lack access to the professional food world. The author believes that with this bill, California will take a substantial step towards building a more inclusive food system. The aim of this bill is to support healthy, self-reliant communities, and economically empower talented home cooks with a pathway to attain income self-sufficiency and achieve their American dream of success.
- 2) **BACKGROUND.** Retail food sales in California, in both restaurants and grocery stores, are governed by CRFC. According to the California Retail Food Safety Coalition (CRFSC), a broad-based coalition of federal, state, and local regulators and the retail food industry, the CRFC is modeled after the federal Model Food Code, developed by the federal Food and Drug Administration and updated every two years to reflect the latest scientific and evidence-based practices. Local Environmental Health Directors have primacy in the enforcement of the CRFC and focus their food facility inspections on minimizing food-borne illness risk factors and maximizing public health interventions. CRFC inspection fees range from \$150-\$750 per inspection, depending on the size of the facility.
 - a) **California's Cottage Food Law.** In 2012, California enacted the California Homemade Food Act, also commonly known as the cottage food law. Thousands of small food businesses were formed under the law during its first year of implementation. However, the Homemade Food Act only allows certain nonpotentially hazardous foods such as breads, pies, fruit jams, and numerous dried foods to be made in a home kitchen and offered for sale. Selling hot meals, green salads, frozen foods, and many other foods prepared in a home kitchen are not allowed under the law. These foods must be made in an inspected commercial kitchen. The CRFC does not allow a home kitchen to be used as a commercial kitchen except under the parameters of the Homemade Food Act and very narrow occasional exceptions for bake sales organized by charitable organizations. Many consumers and food producers alike would prefer for the law to allow sales of homemade foods that are currently not allowed under the Homemade Food Act.
 - b) **Foodborne Illnesses.** According to estimates from the federal Centers for Disease Control and Prevention (CDC), one in six, or 48 million Americans will contract a foodborne illness this year. Most healthy individuals will

experience mild to moderate symptoms like diarrhea or vomiting depending on the specific organism. However, individuals with weakened immune systems, the very young, and the elderly are most susceptible to severe illnesses like blood infections, paralysis, and organ failure. CDC estimates that nationally, nearly 128,000 people will be hospitalized and 3,000 people will die as a result of a foodborne illness infection. There are 31 primary foodborne pathogens known to cause illness in humans.

3) SUPPORT. Supporters argue that this bill will enable home cooks, who are mostly women, immigrants, and people of color, to use their skills to generate income. Without the fear of fines, thousands of existing home cooks will be able to openly access business education and training on safe food handling practices. Small-scale microenterprises are an important tool for those who may want to grow their business and who would not otherwise have access to sufficient capital to enter the commercial food industry. Finally, supporters say this bill will protect consumers by ensuring public officials have access to the kitchens where the food is prepared and protecting their rights to use existing public health reporting mechanisms if concerns arise.

4) SUPPORT IF AMENDED. The American Planning Association, California Chapter requests an amendment so that any change in a MEHKO that increases the scale or modifies the conditions of operation requires the approval of the local enforcement agency.

5) OPPOSITION. The California State Association of Counties (CSAC), Urban Counties of California, Rural County Representatives of California, County Health Executives Association of California, and Health Officers Association of California (HOAC) all oppose this bill because of tremendous concerns about the preparation of potentially hazardous foods in home kitchens. Cooking, cooling, and reheating foods, as well as ensuring appropriate hot and cold temperature controls, is challenging in a commercial kitchen even with staff training and appropriate equipment and facilities. This danger increases exponentially in a home kitchen. Opponents state that when food is purchased by the public, they expect it has been prepared within a legal framework to prevent pathogens. Opponents argue that this bill broadens the existing cottage food law in a way that would put the public at risk. Furthermore, the operation of these enterprises in residential neighborhoods raises a host of other issues relating to trash, parking, noise, wastewater, septic sizing, water sources, fire hazards, and Americans with Disabilities Act accessibility, making enforcement and oversight difficult for a number of local governmental entities. HOAC also argues that local inspectors do not have the same expertise when examining home kitchen equipment, and that home kitchens may be used or visited by pets, young children, guests and others without food handling training, all of which increases the risk of foodborne infections.

6) OPPOSE UNLESS AMENDED.

a) The California Association of Environmental Health Administrators (CAEHA) and the California Conference of Directors of Environmental Health (CCDEH) oppose this bill unless it is amended to address significant public health and safety concerns. CAEHA reports that while many representatives of CCDEH are very skeptical that food prepared in and sold from a residential property can be done so safely and with little or no disruption to the neighborhood, CCDEH as a body has committed to work with the sponsors and author to explore whether a pathway can be found to allow some limited food preparation and sales from private homes. To this end, CCDEH and CAEHA have taken a position of oppose unless several key issues are fully addressed. CAEHA states that it recognizes that there may be some economic and societal benefits to allowing restricted food preparation and sales from private homes, but is also acutely aware of the real and potentially serious risks associated with these enterprises, including: inadequate structural and equipment capacity to allow safe processing of potentially hazardous foods that require temperature control and protection against cross contamination; lack of adequate food safety training of amateur chefs and cooks; difficulty of regulatory oversight of operations based in private homes; and potential adverse neighborhood impact. Additional issues which CCDEH notes in a position statement on home kitchen operations include: assurance of strict liability for all engaged parties; including third-party intermediaries; ability to inspect; ability to recover costs; and, no formal opposition from HOAC, CSAC, and CRFSC.

b) The Sustainable Economies Law Center (SELC), although it supports the concept of further legalizing homemade food, opposes this bill unless it is amended to prevent exploitation of cooks by third party tech platforms. SELC proposes that the state regulate third-party web platforms in the homemade food economy as an additional critical level of consumer protection and to promote economic justice. SELC would restrict the ownership and governance

of the web platforms and any other third party intermediaries to corporate structures that are owned and controlled by a group of stakeholders other than shareholders. Specifically, SELC argues that web platforms should be organized as one of the following: worker cooperative, consumer cooperative, nonprofit mutual benefit corporation, nonprofit public benefit corporation, or a government agency. The Ecology Center, the Oakland Food Policy Council, Sierra Harvest, Cooperation Richmond, the Berkeley Student Food Coop and many individuals have also written requesting amendments to this bill so that it ensures community ownership of web platforms that act as intermediaries in the sale of homemade food.

7) PREVIOUS LEGISLATION.

a) AB 2593 (Brown) of 2016, was similar to this bill, was referred to the Assembly Health Committee but was not heard at the request of the author.

b) AB 1616 (Gatto), Chapter 415, Statutes of 2012, enacted the California Homemade Food Act.

8) COMMENTS. The author has agreed to take all amendments that are included in CCDEH's position statement, as follows:

a) Local governing bodies retain full discretion to allow or not allow such home kitchen operations;

b) All local business license, land use, fire safety and zoning requirements are fully satisfied;

c) A maximum number of meals to be prepared based on food preparation capacity (refrigeration storage, food storage, food preparation areas) that is prepared and provided for same day consumption and limited to direct sales only;

d) A maximum revenue income limit established at a level to ensure that such food operations are intended to serve as incubators or income augmentation and NOT to guarantee a living wage income that may result in the circumvention of the current and necessary commercial retail food safety requirements;

e) Basic regulatory requirements that address food safety practices, procedures, and equipment commensurate with the proposed menu;

f) Inclusion of additional food safety requirements, including but not limited to permitting and inspections, plan check approval, and food handler training;

g) Consider the role of third party intermediaries (i.e. website platforms) to include permitting and data sharing to assist with the investigations of consumer complaints, foodborne illness outbreaks and recalls;

h) Assurance of strict liability for all engaged parties, including third-party intermediaries;

i) Ability to inspect, investigate, and take enforcement when necessary to assure compliance with requirements;

j) Ability to recover costs for the inspection and enforcement of home kitchen operations; and

k) No formal opposition from HOAC, CSAC, and CRFSC.

9) ADDITIONAL AMENDMENTS. The author proposes the following additional amendments:

a) Require anyone doing delivery to have California ID on file with permit holder;

b) Third party platforms must have a photo of delivery person if applicable;

c) Delivery restricted to family members or employees;

- d) Third party platforms cannot require cooks to work certain days of the week or a certain number of hours;
- e) Third party platforms cannot require cooks to prepare certain meals or items; and,
- f) Third Party Platforms must cooperate with enforcement officials, including sharing information about cooks on their platform and removing cooks from a platform who have violated provisions of the Act.

REGISTERED SUPPORT / OPPOSITION:

Support

Border Grill

Cerplus

Community Food and Justice Coalition

Core Foods

Flavors of Oakland

Food Shift

Forage Kitchen

Gobee Group

Growing Leaders

LaCocina

Maize

Obsidian Farm

People's Community Market

Pit Stop Barbeque

The Town Kitchen

Several Individuals

Opposition

California State Association of Counties

County Health Executives Association of California

Health Officers Association of California

Rural County Representatives of California

Urban Counties of California

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Recommendation(s)/Next Step(s):

CONSIDER recommending to the Board of Supervisors a position of "Oppose" on AB 626 (Garcia):
Microenterprise Home Kitchen Operations, as recommended by the County Public Health Director and the County
Environmental Health Director.