

Date of Hearing: June 20, 2023

ASSEMBLY COMMITTEE ON HEALTH
Jim Wood, Chair
SB 476 (Limón) – As Introduced February 14, 2023

SENATE VOTE: 30-9

SUBJECT: Food safety: food handlers.

SUMMARY: Requires an employer to pay for the cost of a food handler card and for any cost associated with obtaining a food handler card; prohibits an employer from conditioning employment on an applicant or employee having an existing food handler card; and, requires the Department of Public Health (DPH) to make a list and the cost of all certified food handler training programs on its internet website, and for local public health departments to also make this information available on their internet website. Specifically, **this bill:**

- 1) Requires DPH by January 1, 2025, to make a list of all certified food handler training programs along with the cost of each program available on its internet website. Requires local public health departments to provide a link of this page on their internet website or provide the same list on their internet website.
- 2) Requires an employer to pay the employee for any cost associated with the employee obtaining a food handler card, including but not limited to, the time it takes for the employee to complete the training, the cost of the food handler certification program, and the time it takes to complete the certification program. Requires an employer to relieve an employee of all other work duties while the employee is taking the training course and examination.
- 3) Prohibits an employer from conditioning employment on an applicant or employee having an existing food handler card.

EXISTING LAW:

- 1) Establishes the California Retail Food Code (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). [Health & Safety Code (HSC) § 113700, *et. seq.*]
- 2) Defines a food handler as an individual who is involved in the preparation, storage, or service of in a food facility, as specified. [HSC § 113790]
- 3) Defines a food handler program as any city, county, or city and county program that requires that all or a substantial portion of the employees of a food facility who are involved in the preparation, storage, service, or handling of food products, engage in an approved safety training or pass an approved food safety certification examination , or both. [HSC §113794.1]

- 4) Requires a food handler hired on or after June 1, 2011 to obtain a food handler card within 30 days after the date of hire. Requires each food handler to maintain a valid food handler card for the duration of the food handler's employment as a food handler. [HSC 113948]
- 5) Requires food handler cards to be valid for three years from the date of issuance regardless of whether the food handler changes employers during that period. [*Id.*]
- 6) Requires a food handler card to be obtained from an American National Standards Institute (ANSI) accredited training program. [*Id.*]
- 7) Requires a food handler card to be issued upon successful completion of a food handler training course and examination that meet specified requirements. Requires the food handler course to provide basic, introductory instructions on specified elements of knowledge, including foodborne illness, the relationship between personal hygiene and food safety, methods of preventing food contamination, and procedures for cleaning and sanitizing equipment. [*Id.*]
- 8) Requires an employer to indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer. [Labor Code (LAB) §2802]
- 9) Specifies that the requirement in 8) above applies to any expense or cost of any employer-provided or employer-required educational program or training for an employee providing direct patient care, but excludes from the definition of "employer-provided or employer-required educational program or training" the requirements for a license, registration, or certification necessary to legally practice in a specific employee classification to provide direct patient care. [LAB §2802.1]
- 10) Requires an employer having five or more employees to provide at least two hours of classroom or other effective interactive training and education regarding sexual harassment to all supervisory employees, and at least one hour to all nonsupervisory employees, at least once every two years. [Government Code §12950.1]

FISCAL EFFECT: According to the Senate Appropriations Committee:

- 1) DPH estimates ongoing General Fund costs of \$159,000 to publish and maintain the list of food handler training programs.
- 2) Cost to counties for administration would be potentially reimbursable by the state, subject to a determination by the Commission on State Mandates.

COMMENTS:

- 1) **PURPOSE OF THIS BILL.** According to the author, currently, in California all foodservice workers are required to undergo a food safety training and receive a food handler card. A recent *New York Times (NYT)* article revealed that one of the most popular training services, ServSafe, was using some of the revenue to fund lobbying campaigns, often aimed at suppressing the wages of workers. ServSafe is the dominant food handling training company in the country controlling an estimated 70 percent of the market. They make money by

charging workers for food handling trainings in all 50 states. This bill would require employers pay for the food handler training, and the employees time within 30 days after hire. It also spurs more industry competition by requiring DPH to make public all accredited food handler training providers and the cost of their trainings on their website. The author concludes workers and employers can choose the best and most affordable or free trainer from a public list.

- 2) **BACKGROUND.** SB 602 (Padilla), Chapter 309, Statutes of 2010, sponsored by the California Restaurant Association (CRA), requires food handlers to obtain food handler cards. A food handler card can only be issued if the food handler completes a training course and examination that meets specified requirements. The intent of food handler certification is to provide employees who handle non-prepackaged food with an overview of key elements of food safety in order to prevent the transmission of foodborne illnesses. Both the course and test for food handlers is required to be available online, and the test does not require a proctor. Topics covered include foodborne illness, time and temperature control, personal hygiene, cross-contamination prevention, and proper cleaning and sanitizing techniques. To obtain a food handler card, applicants are required to take the food handler training course and pass the assessment test with a score of at least 70%. The food handler test and card are required to be provided by a training provider that is accredited by ANSI, and at least one vendor is required to offer the course for \$15 or less. There are many ANSI-accredited food handler training providers, and a number of them offer the course and card for around \$10. Food handler cards are valid for three years. The law requiring food facilities to have all food handlers obtain a food handler card does contain some exemptions, including those working in temporary food facilities, grocery stores, unionized food facilities, and food facilities with in-house training approved in another state (many chain restaurants, such as Burger King, Denny's, and McDonald's, are exempted under this provision). Additionally, food handlers that were subject to pre-existing local food handler programs in the counties of Riverside, San Bernardino, and San Diego are exempted. The restaurant worker generally pays for obtaining a food handler card.
- a) **NYT article on ServSafe food handler certification program.** On January 17, 2023, the *NYT* published "How Restaurant Workers Help Pay for Lobbying to Keep Their Wages Low." According to the article, when new restaurant workers pay \$15 to take the ServSafe online class in food safety, they are also helping to fund a nationwide lobbying campaign to keep their own wages from increasing. The article states that ServSafe doubles as a fund-raising arm of the National Restaurant Association (NRA), which has spent decades fighting increases to the minimum wage at the state and federal levels. According to the *NYT*, first, in 2007, the NRA took control of a training business, then they helped lobby states to mandate the kind of training they already provided, producing a flood of paying customers. According to the *NYT*, more than 3.6 million workers have taken this training, providing about \$25 million in revenue to the restaurant industry's lobbying arm since 2010, which was more than the NRA spent on lobbying in the same period based on filings with the Internal Revenue Service. The *NYT* article stated that other companies also offer this training, but cited restaurant industry veterans as saying that ServSafe is the dominant force in the market. The article quoted someone who runs a competing food handler program as stating that he believed ServeSafe had at least 70% of the market.

The NRA published a rebuttal of the article on its website entitled "6 Things the New

York Times Got Wrong,” which included the following primary points: i) the ServSafe training fees are used across the association for many purposes, not just for lobbying on certain topics; ii) restaurant workers are not required to choose ServSafe products and have their choice of where to obtain food handler training, and the costs are often reimbursed by employers; iii) NRA has never shied away from its connection to ServSafe, and are proud of its long history in helping prevent the risk of foodborne illness; and, iv) the NRA did not lobby for food handler mandates in any state, and believes food safety training is essential to the safety of everyone coming to a restaurant.

- b) Training requirements in employment settings.** According to the Senate Health Committee, if an employer requires employees to obtain training, the employer is required to pay for that training. This is both a federal requirement under the Fair Labor Standards Act, as well as a state requirement under Labor Code § 2802. However, if a certification is required by the state in order to be employed in a given employment category, there is no requirement that an employer pay for training leading to licensure or certification. California’s Division of Occupational Health and Safety specifies training requirements for many types of industries. These training requirements are designed to ensure safe practices at those places of employment, and employees are obligated to provide the training at the employer’s cost. The key distinction is these cases where the state requires training is that the statute or regulation makes it clear that the burden is on the employer to provide the training, while the statute on the current food handler's requirements places the burden on the worker to obtain the certificate.
- 3) SUPPORT.** The California Labor Federation (CLF), One Fair Wage, and the Service Employees International Union are the sponsors of this bill. They state that this bill prevents employers from using workers’ money for corporate lobbying purposes; and, brings transparency to the food handler training industry to give workers and employers more choice in training providers. CLF points out that the *NYT* article referenced above exposed how the National Restaurant Association “runs a racket to use worker’s wages to fund lobbying campaign against legislation like wage increases and paid sick days. Workers have collectively paid \$25 million to ServSafe for training without knowing their money was being used against them.” CLF concludes that this bill will put an end to workers funding of corporate lobbying, and increases transparency by having DPH post accredited food handler trainers on their website along with the cost of training, increasing both worker and employer choice.
- 4) OPPOSITION.** The CRA and the California Chamber of Commerce oppose this bill because this bill forces employers to pay for the existing mandated food safety training, as well as the time required for team members to complete the training. They state this bill imposes significant new costs on restaurant employers at a time when they are still dealing with pandemic-related losses. They point out that Neighborhood restaurants continue to face operating challenges including workforce shortages, supply chain issues, and inflationary costs that have not been seen in 40 years. All of this is in addition to the financial debt that was incurred during the pandemic due to government ordered restaurant closures and new operational requirements. They conclude that any new cost increase will create further strain as restaurants simply try to get back on a solid financial and operational footing.
- 5) RELATED LEGISLATION.**

- a) AB 1325 (Waldron) increases from \$50,000 to \$100,000 the maximum verifiable gross annual sales for purposes of the microenterprise home kitchen operation (MEHKO). Increases the number of meals that a MEHKO can prepare for a week from 60 to 90 individual meals. AB 1325 is pending in Senate Floor.
- b) AB 1217 (Gabriel) extends until July 1, 2026 the following COVID-19 pandemic authorizations: i) allowing a permitted food facility to operate without obtaining a separate satellite service permit or submitting written operating procedures to prepare and serve food as a temporary satellite food service; and, ii) allowing licensees of the Department of Alcoholic Beverage Control to continue to exercise license privileges in an expanded license area, as authorized. AB 1217 is pending in Senate Governmental Organization Committee.

6) PREVIOUS LEGISLATION.

- a) AB 1532 (Bauer-Kahan), Chapter 131, Statutes of 2019, enacted the Natalie Giorgi Sunshine Act to require the food handler training course to include instructions on safe handling food practices for major food allergens.
- b) SB 1067 (Huff), Chapter 195, Statutes of 2016, requires the food safety certification examination, which must be completed by at least one person at every retail food facility, to include major food allergens and the symptoms that these allergens could cause in individuals who have allergic reactions. Revises and recasts provisions of law governing the serving of raw and undercooked meat, and makes various other updates and minor changes to the laws governing retail food facilities.
- c) SB 602 (Padilla), Chapter 309, Statutes of 2010, requires a food handler, as defined, to obtain a food handler card within 30 days from the date of hire at a food facility, with specified exceptions, and requires at least one of the accredited food safety certification examinations to be offered for no more than \$15.
- d) AB 1978 (Campbell), Chapter 72, Statutes of 1998, requires food facilities to have an owner or employee who has successfully passed an approved and accredited food safety certification examination. Requires at least one exam to cost no more than \$60 including the certificate.

REGISTERED SUPPORT / OPPOSITION:

Support

California Labor Federation (cosponsor)
One Fair Wage (cosponsor)
Service Employees International Union (cosponsor)
California Distributors Association
California Conference Board of the Amalgamated Transit Union
California Conference of Machinists
California Employment Lawyers Association
California Immigrant Policy Center
California School Employees Association
California Teamsters Public Affairs Council

California Work & Family Coalition
Consumer Attorneys of California
Engineers and Scientists of California, Local 20, AFL-CIO
Equal Rights Advocates
Greater Sacramento Urban League
Unite Here
United Food and Commercial Workers Union, Western States Council
Utility Workers of America

Opposition

California Chamber of Commerce
California Restaurant Association

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