
SENATE COMMITTEE ON EDUCATION

Senator Benjamin Allen, Chair

2017 - 2018 Regular

Bill No: SB 557 **Hearing Date:** April 26, 2017
Author: Hernandez
Version: April 17, 2017
Urgency: No **Fiscal:** Yes
Consultant: Brandon Darnell

Subject: Food donations: schools

SUMMARY

This bill authorizes local educational agencies to provide sharing tables where food service staff, pupils, and faculty may place appropriate food items to be donated to a food bank or any other nonprofit charitable organization.

BACKGROUND

Existing law:

- 1) Requires each school district or county superintendent of schools maintaining any kindergarten or any of grades 1 to 12, inclusive, to provide for each needy pupil one nutritionally adequate free or reduced-price meal during each schoolday. (Education Code § 49550)
- 2) Establishes the California Retail Food Code (CRFC), which governs all aspects of retail food safety and sanitation in California under the CRFC, and specifies that primary responsibility for enforcement of the CRFC is with local enforcement agencies. (Health and Safety Code § 113700 et seq.; § 113713)
- 3) Defines “food facility,” for purposes of the requirements of the CRFC, as an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption at the retail level, and specifically includes public and private school cafeterias. (HSC § 113789)
- 4) Permits any food facility to donate food to a food bank or to any other nonprofit charitable organization for distribution to persons free of charge. (HSC § 114432)
- 5) Provides immunity to food facilities that donate food from civil or criminal liability or penalty for violation of any laws regulating the labeling or packaging of the donated product, or with respect to any other law, for a violation occurring after the time of donation. (HSC § 114433)
- 6) Prohibits food that is unused or returned by the consumer, after it has been served or sold and is in the possession of a consumer, from being offered as food for human consumption, with the exception of a container of food that may be transferred from one consumer to another if the food is not potentially hazardous and is dispensed so that it is protected from contamination and the

container is closed between uses, such as bottles of catsup or steak sauce. (HSC § 114079)

- 7) Defines “produce” as any whole edible portion of a plant in its raw and natural state. (HSC § 113877)
- 8) Requires food facilities that prepare, handle, or serve nonprepackaged potentially hazardous food, except temporary food facilities, to have an owner or employee who has successfully passed an approved and accredited food safety certification examination, as specified. (HSC § 113947.1)

ANALYSIS

This bill authorizes local educational agencies to provide sharing tables where food service staff, pupils, and faculty may place appropriate food items to be donated to a food bank or any other nonprofit charitable organization. Specifically, this bill:

- 1) Requires the California Department of Education to update its guidance on the donation of leftover food to allow a public school cafeteria to donate food to a food bank or to any other nonprofit charitable organization for distribution to persons free of charge, consistent with this bill.
- 2) Revises the prohibition on food that has been sold or served to consumer and is unused or returned by the consumer from being offered as food for human consumption by permitting a local education agency to do both of the following:
 - a) Provide sharing tables where food service staff, pupils, and faculty may place appropriate food items to minimize waste.
 - b) Permit food placed on the sharing tables to be donated to a food bank or any other nonprofit charitable organization.
- 3) Permits the donations of food from a sharing table to include prepackaged, nonpotentially hazardous food with the packaging still in good condition, whole uncut produce and fruit that will be peeled, and unopened bags of sliced fruit and unopened containers of milk that are immediately stored in a cooling bin maintained at 41 degrees Fahrenheit or below.
- 4) Requires the donation of food by a local educational agency to be consistent with provisions of law requiring food facilities to have an employee who has successfully passed an approved and accredited food safety examination.
- 5) Defines “local educational agency” to mean a county office of education, school district, or charter school.

STAFF COMMENTS

- 1) ***Need for the bill.*** According to the author, “Los Angeles Unified School District (LAUSD) serves nearly 650,000 meals per day, and nearly \$100,000 worth of food is thrown in the trash per day. A 2015 study by LAUSD’s Office of

Environmental Health and Safety determined that, in any given week, LAUSD is throwing out approximately 600 tons of organic waste, including liquid. This issue of food waste is not specific to LAUSD. The California Retail Food code provides liability protection for donation of unserved food. However, current law discourages donation of food left on cafeteria share tables because it has been served. In addition, according to the California Department of Education, in many instances, food and beverage items remaining on a share table can be reused by food service operations, and can also be donated to a nonprofit organization. However, CDE notes that state food safety laws are more restrictive than federal guidelines, and that the use of share tables is permitted only if certain conditions are met, including that no food or beverage may ever be returned to the food preparation, food service, or food storage areas for any human consumption, except those items permitted in a specified provision of the California Retail Food Code, which is basically limited to bottles of condiments such as catsup. This bill would require the [California] Department of Education to update its guidelines to encourage schools districts to donate food left on share tables.”

- 2) ***Share tables and federal guidance.*** According to federal guidance from the United States Department of Agriculture (USDA) issued in June of 2016, (https://www.fns.usda.gov/sites/default/files/cn/SP41_CACFP13_SFSP15_2016os.pdf) “share tables are tables or stations where children may return whole food or beverage items they choose not to eat, if it is in compliance with local and state health and food safety codes. These food and beverage items are then available to other children who may want additional servings.” Items that remain on the share table may also be served and claimed for reimbursement during another meal service or donated to a nonprofit organization. According to USDA, “using share tables is an innovative strategy to encourage the consumption of nutritious foods and reduce food waste in the National School Lunch Program, School Breakfast Program, Child and Adult Care Food Program, and Summer Food Service Program (collectively, Child Nutrition Programs, or CNP).” CNP operators are required to plan, prepare, and order food with the goal of providing one meal per child at each meal service, but if a CNP has leftover or unusable foods on a frequent basis, menu planning and production practices should be adjusted to reduce leftovers or unusable foods. In addition to food on share tables being available for children to take additional helpings at no cost, USDA guidelines permit food or beverage items to be donated to a nonprofit organization, such as a community food bank or homeless shelter. The USDA requires CNP operators to comply with all local and state health and food safety codes, and recommends sharing unopened pre-packaged items, such as a bag of baby carrots or sliced apples stored in a cooling bin, whole pieces of fruit, and unopened milk, if immediately stored in a cooling bin maintained at 41 degrees Fahrenheit or below.
- 3) ***Share tables and state guidance.*** The California Department of Education (CDE) issued a bulletin in September of 2016 (<http://www.cde.ca.gov/ls/nu/cc/mbcnp042016.asp>) providing guidance regarding the use of share tables in CNPs, and extending the use of share tables to the At-risk Afterschool Meals Program. According to CDE, in many instances, food and beverage items remaining on a share table can be reused by food service operations, and can also be donated to a nonprofit organization. However, CDE notes that state food

safety laws are more restrictive than federal guidelines, and that the use of share tables is permitted only if certain conditions are met, including that no food or beverage may ever be returned to the food preparation, food service, or food storage areas for any human consumption, except those items permitted in a specified provision of the California Retail Food Code (CRFC) law, which is basically limited to bottles of condiments such as catsup. This is the primary problem being remedied by this bill: revising this provision in the CRFC law to allow more food items to be placed on a share table, and to be donated to a food bank.

- 5) ***Double referred.*** This bill was heard in the Senate Committee on Health on April 5, 2017, where it was amended and passed with a unanimous vote, 13-0.
- 4) ***Related and previous legislation.***

RELATED LEGISLATION

AB 1219 (Stone, 2017) would expand existing provisions of the Civil Code, Food and Agricultural Code, and Health and Safety Code, relating to civil immunities and liabilities of entities that donate food fit for human consumption, to charitable organizations and food banks. AB 1219 is pending in the Assembly Appropriations Committee.

PREVIOUS LEGISLATION

AB 234 (Gordon, Chapter 616, Statutes of 2015) revised provisions of law governing community food producers and gleaners by allowing community food producers to sell whole uncut fruits or vegetables, or unrefrigerated shell eggs, directly to a permitted food facility, not just a restaurant, and by limiting the ability of a local environmental health officer to require community food producers or gleaners to register with the local enforcement under specified conditions.

SB 144 (Runner, Chapter 23, Statutes of 2006) established the CRFC 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.

SUPPORT

California Association of Environmental Health Administrators
 California Association of Nonprofits (CalNonprofits)
 California Food Policy Advocates
 Californians Against Waste
 California School Nutrition Association
 Los Angeles Unified School District
 National Association of Social Workers – California Chapter
 Oakland Unified School District

OPPOSITION

None Received.

-- END --