

Assembly Bill No. 121

Passed the Assembly September 6, 2005

Chief Clerk of the Assembly

Passed the Senate August 31, 2005

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2005, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Section 110552 to the Health and Safety Code, relating to lead contamination of candy.

LEGISLATIVE COUNSEL'S DIGEST

AB 121, Vargas. Adulterated candy: maximum allowable lead levels.

Existing law, the Sherman Food, Drug, and Cosmetic Law, requires the State Department of Health Services to regulate manufacture, sale, labeling, and advertising activities related to food, drugs, devices, and cosmetics in conformity with the federal Food, Drug, and Cosmetic Act. The law makes it unlawful for any person to adulterate food and defines adulterated food to include a confectionary containing a nonnutritious substance. Violation of these provisions is a crime.

This bill would require the department to regulate lead in chili, tamarind, and other candy, as defined. The bill would prohibit the sale of adulterated candy and would require the department to test and retest the candy to determine the presence of lead at levels above naturally occurring levels, as determined by the Office of Environmental Health Hazard Assessment. The bill would require the department to adopt related regulations and would require the department to convene an interagency collaborative. By changing the definition of a crime, this 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 no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 110552 is added to the Health and Safety Code, to read:

110552. (a) The department shall regulate candy to ensure that the candy is not adulterated.

(b) For the purposes of this chapter, “candy” means any confectionary intended for individual consumption that contains chili, tamarind, or any other ingredient identified as posing a health risk in regulations adopted by the office or department.

(c) For purposes of this section the following terms have the following meanings:

(1) “Office” means the Office of Environmental Health Hazard Assessment.

(2) “Adulterated candy” means any candy with lead in excess of the naturally occurring level. Moreover, candy is adulterated if its wrapper or the ink on the wrapper contains lead in excess of standards which the office, in consultation with the department and the Attorney General shall establish by July 1, 2006.

(3) “Naturally occurring level” of lead in candy shall be determined by regulations adopted by the office after consultation with the department and the Attorney General. For purposes of this section, the “naturally occurring level” of lead in candy is only naturally occurring to the extent that it is not avoidable by good agricultural, manufacturing, and procurement practices, or by other practices currently feasible. The producer and manufacturer of candy and candy ingredients shall at all times use quality control measures that reduce the natural chemical contaminants to the “lowest level currently feasible” as this term is used in subsection (c) of Section 110.110 of Title 21, Code of Federal Regulations. The “naturally occurring level” of lead shall not include any lead in an ingredient resulting from agricultural equipment, fuels used on or around soils or crops, fertilizers, pesticides or other materials that are applied to soils or crops or added to water used to irrigate soils or crops. The office shall determine the naturally occurring levels of lead in candy containing chili and tamarind no later than July 1, 2006. The office shall determine the naturally occurring levels of lead in candy containing other ingredients upon request by the department or the Attorney General, and in the absence of a request, when the office determines that the presence of the ingredient in candy may pose a health risk. Until the office adopts regulations determining the naturally occurring level of lead, the Attorney General’s written determination, if any, including any determination set forth in a consent judgment entered into by the Attorney General, of the naturally occurring

level of lead in candy or in a candy ingredient shall be binding for purposes of this section.

(4) “Wrapper” means all packaging materials in contact with the candy, including, but not limited to, the paper cellophane, plastic container, stick handle, spoon, small pot (olla), and squeeze tube, or similar devices. “Wrapper” does not include any part of the packaging from which lead will not leach, as demonstrated by the manufacturer, to the satisfaction of the office.

(d) The standards adopted pursuant to paragraphs (2) and (3) of subdivision (c) shall be reviewed by the office every three-year to five-year period in order to determine whether advances in scientific knowledge, the development of better agricultural or manufacturing practices, or changes in detection limits require revision of the standards.

(e) The department shall do all of the following:

(1) Ensure that the candy is not adulterated.

(2) Establish procedures for the testing of candy and the certification of unadulterated candy products. The procedures shall require candy manufacturers to certify candy as being unadulterated. The certification shall be based on appropriate sampling and testing protocols as determined by the office in consultation with the Attorney General’s office.

(3) Through its Food and Drug Branch, test the samples of candy collected pursuant to this article. The department may test any candy, including candy tested pursuant to paragraph (3) of subdivision (e) in order to ensure the candy is unadulterated.

(4) Adopt regulations necessary for the enforcement of this article.

(5) Evaluate the regulatory process, identify problems, and make changes or report to the Legislature, as necessary.

(f) If the candy tested pursuant paragraphs (2) or (3) of subdivision (e) is found to be adulterated, the department shall do both of the following:

(1) Issue health advisory notices to county health departments alerting them to the danger posed by consumption of the candy.

(2) Notify the manufacturer and the distributor of the candy that the candy is adulterated, and that the candy may not be sold or distributed in the state until further testing proves that the candy is unadulterated.

(g) (1) For any candy found to be adulterated, the manufacturer or distributor may request that the department test a subsequent sample of candy. The department shall select the candy to be tested. The cost of any subsequent sampling and testing shall be borne by the manufacturer or distributor requesting the additional testing.

(2) If the candy is found to be unadulterated when it is retested, the department shall provide the manufacturer or distributor and the county health department with a letter stating that the candy has been retested and determined to be unadulterated, and that the sale and distribution of the candy in the state may resume.

(3) If the candy is found to remain adulterated when retested, the manufacturer or distributor may take corrective measures and continue to resubmit samples for testing until tests prove the candy unadulterated.

(h) The department shall convene an interagency collaborative which is hereby established to serve as an oversight committee for the implementation of this section and to work with the office in establishing and revising the required standards. The interagency collaborative shall be composed of the following members:

- (1) The department.
- (2) The Childhood Lead Poisoning Branch of the department.
- (3) The Food and Drug Branch of the department.
- (4) The office.
- (5) The office of the Attorney General.

(i) The interagency collaborative may confer with the United States Consumer Product Safety Commission, the United States Food and Drug Administration, recognized experts in the field, representatives of California community environmental justice organizations and candy manufacturers.

(j) (1) The sale of adulterated candy to California consumers is a violation of this section. Any person knowingly and intentionally selling adulterated candy shall be subject to a civil penalty of up to five hundred dollars (\$500) per violation. The regulations adopted shall provide that funding for this section shall be met in part or in whole by those penalties, upon appropriation by the Legislature.

(2) In the event that a candy product is found to be adulterated, the department may recover the costs incurred in the chemical analysis of that product from the manufacturer or distributor.

(3) Except as expressly set forth in this section, nothing in this section shall alter or diminish any legal obligation otherwise required in common law or by statute or regulation, and nothing in this section shall create or enlarge any defense in any action to enforce that legal obligation. Penalties imposed under this section shall be in addition to any penalties otherwise prescribed by law.

(4) This section shall not be the basis for any stay of proceedings or other order limiting or delaying the prosecution of any action to enforce Section 25249.6.

SEC. 2. (a) Section 110552 of the Health and Safety Code shall, upon appropriation by the Legislature, be funded in part or in whole by any of the following:

(1) Civil penalties imposed under that section.

(2) Cost recovery required by that section for the department's testing of adulterated candy.

(3) Grant funding.

(b) Section 110552 of the Health and Safety Code shall be implemented in any fiscal year only if sufficient funding becomes available to fund the requirements of that section for that fiscal year.

SEC. 3. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because 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.

Approved _____, 2005

Governor