

AMENDED IN SENATE AUGUST 15, 2011

AMENDED IN SENATE JULY 12, 2011

AMENDED IN SENATE JUNE 23, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 688**

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**Introduced by Assembly Member Pan  
(Coauthor: Assembly Member Mitchell)**

February 17, 2011

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An act to add Chapter 3.5 (commencing with Section 110286) to Part 5 of Division 104 of the Health and Safety Code, relating to food and drug safety.

LEGISLATIVE COUNSEL'S DIGEST

AB 688, as amended, Pan. Food and drugs: sale.

The Sherman Food, Drug, and Cosmetic Law contains various provisions regarding the contents, packaging, labeling, and advertising of food, drugs, and cosmetics. A violation of any of these provisions is punishable as a misdemeanor.

This bill would prohibit a retailer from selling after the expiration or "use by" or "use before" date infant formula or baby food that is required to have this date on its packaging pursuant to federal law. It would also prohibit a retailer from selling after the expiration or "use by" or "use before" date an over-the-counter drug, as defined, that is required to have this expiration date on its packaging pursuant to that federal law. This bill would make a violation of its provisions an infraction, punishable by a fine of not more than \$10 per day, calculated as prescribed. *This bill would also authorize the department and local enforcement entities to assess administrative penalties on a retailer*

who violates these provisions in the amount of \$10 per day for each item sold or offered for sale in addition to other penalties authorized by law, to be deposited as specified. By creating a new crime, this bill would create 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.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

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

1 SECTION 1. Chapter 3.5 (commencing with Section 110286)  
2 is added to Part 5 of Division 104 of the Health and Safety Code,  
3 to read:

4  
5 CHAPTER 3.5. EXPIRATION, ~~USE BY, AND USE BEFORE DATES~~  
6 AND USE BY DATES  
7

8 110286. (a) A retailer shall not sell after the expiration or “use  
9 by” ~~or “use before”~~ date infant formula or baby food that is  
10 required to have this date on its packaging pursuant to the federal  
11 act and federal regulations adopted pursuant to the federal act,  
12 including, but not limited to, Section 107.20 of Title 21 of the  
13 Code of Federal Regulations.

14 (b) A retailer shall not sell after the expiration or “use by” ~~or~~  
15 “use before” date an over-the-counter drug.

16 (c) This section shall not be construed to preclude any other  
17 action authorized by law.

18 (d) Notwithstanding Section 111825, any retailer who violates  
19 this section is guilty of an infraction, punishable by a fine of not  
20 more than ten dollars (\$10) per day for each item sold after the  
21 expiration or “use by” ~~or “use before”~~ date. The fine shall be  
22 calculated based upon the number of days between the expiration  
23 or “use by” ~~or “use before”~~ date and the date of sale. The date of  
24 sale shall be established by evidence of the proof of purchase,  
25 including, but not limited to, a sales receipt. ~~Notwithstanding~~  
26 ~~Section 111835, the moneys from fines collected pursuant to this~~

1 section shall be deposited in the General Fund, except that when  
2 fines are collected pursuant to this section by a local jurisdiction;  
3 the moneys collected shall be deposited into the general fund of  
4 the local jurisdiction.

5 (e) The department and local enforcement entities may assess  
6 administrative penalties on a retailer who violates this section in  
7 the amount of ten dollars (\$10) per day for each item sold in  
8 addition to other penalties authorized by law.

9 (1) Moneys from penalties collected pursuant to this subdivision  
10 by the department shall be deposited into the General Fund.

11 (2) Moneys from penalties collected pursuant to this subdivision  
12 by a local enforcement entity shall be deposited into the general  
13 fund of the local jurisdiction.

14 (e)

15 (f) For purposes of this section, the following definitions shall  
16 apply:

17 (1) “Baby food” shall have the meaning given to “baby foods”  
18 in paragraph (c) of Section 407.81 of Title 40 of the Code of  
19 Federal Regulations.

20 (2) “Infant formula” shall have the meaning given in subdivision  
21 (z) of Section 321 of Title 21 of the United States Code.

22 (3) “Over-the-counter drug” means a nonprescription drug  
23 regulated by the federal Food and Drug Administration that is  
24 required to have an expiration date on its packaging pursuant to  
25 the federal act and federal regulations adopted pursuant to the  
26 federal act, including, but not limited to, Section 211.137 of Title  
27 21 of the Code of Federal Regulations.

28 *SEC. 2. It is the intent of the Legislature in adding Chapter*  
29 *3.5 (commencing with Section 110286) to the Sherman Food, Drug,*  
30 *and Cosmetic Act (Part 5 (commencing with Section 109875) of*  
31 *Division 104 of the Health and Safety Code) that the department*  
32 *and local enforcement entities rely on existing enforcement*  
33 *authority and procedures to enforce this section.*

34 ~~SEC. 2.~~

35 *SEC. 3. No reimbursement is required by this act pursuant to*  
36 *Section 6 of Article XIII B of the California Constitution because*  
37 *the only costs that may be incurred by a local agency or school*  
38 *district will be incurred because this act creates a new crime or*  
39 *infraction, eliminates a crime or infraction, or changes the penalty*  
40 *for a crime or infraction, within the meaning of Section 17556 of*

- 1 the Government Code, or changes the definition of a crime within
- 2 the meaning of Section 6 of Article XIII B of the California
- 3 Constitution.

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