

AMENDED IN SENATE MARCH 26, 2012

SENATE BILL

No. 1106

Introduced by Senator Strickland

February 17, 2012

An act to ~~amend Section 110480~~ add Chapter 20 (commencing with Section 26250) to Division 20 of the Health and Safety Code, relating to ~~food safety~~ environmental health.

LEGISLATIVE COUNSEL'S DIGEST

SB 1106, as amended, Strickland. ~~Food safety.~~ Reusable bags.

Existing law, the Sherman Food, Drug, and Cosmetic Law, provides for regulation by the State Department of Public Health of the packaging, labeling, and advertising of food, drugs, and cosmetics.

This bill would prohibit the manufacture, sale, and distribution of a reusable bag, as defined, without a specified warning label. This bill would subject a violator to an action for injunctive relief and for civil penalties, which may be brought by the Attorney General, local officials, or private persons acting in the public intent after a prescribed notice is given to the Attorney General and local officials and other conditions are met. By imposing additional duties on local officials. This bill would impose a state-mandated local program.

This bill would also state findings and declarations of the Legislature relative to food-borne illness and reusable grocery bags.

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, if the Commission on State Mandates determines that the bill contains costs mandated by the state,

reimbursement for those costs shall be made pursuant to these statutory provisions.

~~Existing law, the Sherman Food, Drug, and Cosmetic Law, prohibits, with specified exceptions, a person from engaging in the manufacture, packing, or holding of any processed food in this state unless the person has a valid registration from the State Department of Public Health.~~

~~This bill would make a technical, nonsubstantive change to the exceptions to the registration requirement.~~

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

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

1 *SECTION 1. This act shall be known and may be cited as the*
2 *Safety Labeling of Reusable Grocery Bag Act.*

3 *SEC. 2. The Legislature finds and declares all of the following:*

4 *(a) Most consumers are unaware of the United States*
5 *Department of Agriculture and federal Food and Drug*
6 *Administration guidelines regarding food safety when shopping.*

7 *(b) The federal Centers for Disease Control and Prevention*
8 *reports that in the United States, contaminated food causes*
9 *approximately 1,000 reported disease outbreaks and an estimated*
10 *48 million illnesses, 128,000 hospitalizations, and 3,000 deaths*
11 *annually.*

12 *(c) Most food-borne infections cause diarrheal illness, ranging*
13 *from mild to severe. Also, persons in susceptible populations and*
14 *some healthy persons can develop severe complications, such as*
15 *hemorrhagic colitis, bloodstream infection, meningitis, joint*
16 *infection, kidney failure, paralysis, miscarriage, and other*
17 *problems.*

18 *(d) A potential significant risk of bacterial cross contamination*
19 *exists from using reusable bags to carry groceries.*

20 *(e) Foods, including safely cooked and ready-to-eat foods, can*
21 *become cross contaminated with pathogens transferred from raw*
22 *egg, meat, poultry, and seafood products, and their juices and*
23 *their containers.*

24 *(f) Given the right circumstances, harmful bacteria can quickly*
25 *multiply on food and food containers in large numbers.*

26 *(g) Cross contamination problems associated with reusable*
27 *bags for carrying groceries has been recognized by health*

1 departments (Minnesota Department of Health, 2007; Health
2 Canada, 2010) that have made recommendations about proper
3 handling and cleaning of reusable grocery bags.

4 (h) Hand or machine washing reduced the numbers of bacteria
5 in reusable bags by 99.9 percent.

6 (i) Consumers almost never wash reusable bags and those who
7 chose to use reusable bags should be made aware of possible food
8 safety health risks.

9 (j) A sudden or significant increase in the use of reusable bags
10 without a major public education campaign on how to reduce the
11 risk of cross contamination would create the risk of significant
12 adverse public health impacts.

13 (k) It is important to require printed instructions on reusable
14 bags that direct that they be washed between uses and that raw
15 foods be separated from other food products.

16 SEC. 3. Chapter 20 (commencing with Section 26250) is added
17 to Division 20 of the Health and Safety Code, to read:

18

19

CHAPTER 20. REUSABLE BAGS

20

21

22 26250. (a) No person shall manufacture, sell, or distribute in
23 commerce a reusable bag that does not contain the following
24 warning label in 10-point type:

25

26 WARNING: Reusable bags must be cleaned and disinfected
27 between uses to prevent food cross contamination. Failure to do
28 so can cause serious illness, cancer, or birth defects resulting from
29 food-borne pathogens. Once used for other purposes, reusable
30 bags should not be used for carrying groceries.

31

32 (b) The warning shall be conspicuously displayed on a five-inch
33 by eight-inch sign with 18 point type near any display where
34 reusable bags are sold to consumers.

35

36 (c) For the purposes of this chapter, “reusable bag” means a
37 washable bag used by consumers to transport food from retail
38 food facilities, intended to be used repeatedly, and made from a
39 durable material, such as canvas, cloth, polypropylene, polyester,
40 or polyethylene.

39

40 26251. (a) Any person who violates Section 26250 may be
enjoined in any court of competent jurisdiction.

1 **(b) (1)** Any person who violates Section 26250 shall be liable
2 for a civil penalty not to exceed two thousand five hundred dollars
3 (\$2,500) per day for each violation in addition to any other penalty
4 established by law. That civil penalty may be assessed and
5 recovered in a civil action brought in any court of competent
6 jurisdiction.

7 **(2)** In assessing the amount of a civil penalty for a violation of
8 this chapter, the court shall consider all of the following:

9 **(A)** The nature and extent of the violation.

10 **(B)** The number of, and severity of, the violations.

11 **(C)** The economic effect of the penalty on the violator.

12 **(D)** Whether the violator took good faith measures to comply
13 with this chapter and the time these measures were taken.

14 **(E)** The willfulness of the violator's misconduct.

15 **(F)** The deterrent effect that the imposition of the penalty would
16 have on both the violator and the regulated community as a whole.

17 **(G)** Any other factor that justice may require.

18 **(c)** Actions pursuant to this section may be brought by the
19 Attorney General in the name of the people of the State of
20 California, by any district attorney, by any city attorney of a city
21 having a population in excess of 750,000, or, with the consent of
22 the district attorney, by a city prosecutor in any city or city and
23 county having a full-time city prosecutor, or as provided in
24 subdivision (d).

25 **(d)** Actions pursuant to this section may be brought by any
26 person in the public interest if both of the following requirements
27 are met:

28 **(1)** The private action is commenced more than 60 days from
29 the date that the person has given notice of an alleged violation
30 of Section 26250 that is the subject of the private action to the
31 Attorney General and the district attorney, city attorney, or
32 prosecutor in whose jurisdiction the violation is alleged to have
33 occurred, and to the alleged violator.

34 **(2)** Neither the Attorney General, any district attorney, any city
35 attorney, nor any prosecutor has commenced and is diligently
36 prosecuting an action against the violation.

37 **(e)** Any person bringing an action in the public interest pursuant
38 to subdivision (d) and any person filing any action in which a
39 violation of this chapter is alleged shall notify the Attorney General
40 that the action has been filed.

1 (f) (1) Any person filing an action in the public interest pursuant
2 to subdivision (d), any private person filing any action in which a
3 violation of this chapter is alleged, or any private person settling
4 any violation of this chapter alleged in a notice given pursuant to
5 paragraph (1) of subdivision (d), shall, after the action or violation
6 is subject either to a settlement or to a judgment, submit to the
7 Attorney General a reporting form that includes the results of that
8 settlement or judgment and the final disposition of the case, even
9 if dismissed. At the time of the filing of any judgment pursuant to
10 an action brought in the public interest pursuant to subdivision
11 (d), or any action brought by a private person in which a violation
12 of this chapter is alleged, the plaintiff shall file an affidavit
13 verifying that the report required by this subdivision has been
14 accurately completed and submitted to the Attorney General.

15 (2) Any person bringing an action in the public interest pursuant
16 to subdivision (d), or any private person bringing an action in
17 which a violation of this chapter is alleged, shall, after the action
18 is either subject to a settlement, with or without court approval,
19 or to a judgment, submit to the Attorney General a report that
20 includes information on any corrective action being taken as a
21 part of the settlement or resolution of the action.

22 (3) The Attorney General shall develop a reporting form that
23 specifies the information that shall be reported, including, but not
24 limited to, for purposes of subdivision (e), the date the action was
25 filed, the nature of the relief sought, and for purposes of this
26 subdivision, the amount of the settlement or civil penalty assessed,
27 other financial terms of the settlement, and any other information
28 the Attorney General deems appropriate.

29 (4) If there is a settlement of an action brought by a person in
30 the public interest under subdivision (d), the plaintiff shall submit
31 the settlement, other than a voluntary dismissal in which no
32 consideration is received from the defendant, to the court for
33 approval upon noticed motion, and the court may approve the
34 settlement only if the court makes all of the following findings:

35 (A) Any warning that is required by the settlement complies
36 with this chapter.

37 (B) Any award of attorney's fees is reasonable under California
38 law.

39 (C) Any penalty amount is reasonable based on the criteria set
40 forth in paragraph (2) of subdivision (b).

1 (5) The plaintiff subject to paragraph (4) has the burden of
 2 producing evidence sufficient to sustain each required finding.
 3 The plaintiff shall serve the motion and all supporting papers on
 4 the Attorney General, who may appear and participate in any
 5 proceeding without intervening in the case.

6 (g) The Attorney General shall maintain a record of the
 7 information submitted pursuant to subdivisions (e) and (f) and
 8 shall make this information available to the public.

9 (h) In any action brought by the Attorney General, a district
 10 attorney, a city attorney, or a prosecutor pursuant to this chapter,
 11 the Attorney General, district attorney, city attorney, or prosecutor
 12 may seek and recover costs and attorney's fees on behalf of any
 13 party who provides a notice pursuant to subdivision (d) and who
 14 renders assistance in that action.

15 SEC. 4. If the Commission on State Mandates determines that
 16 this act contains costs mandated by the state, reimbursement to
 17 local agencies and school districts for those costs shall be made
 18 pursuant to Part 7 (commencing with Section 17500) of Division
 19 4 of Title 2 of the Government Code.

20 SECTION 1. ~~Section 110480 of the Health and Safety Code~~
 21 ~~is amended to read:~~

22 ~~110480. The registration provisions of this article shall not~~
 23 ~~apply to any person whose manufacturing, packing, or holding of~~
 24 ~~processed food is limited solely to temporarily holding processed~~
 25 ~~foods for up to seven days for further transport if the foods are not~~
 26 ~~potentially hazardous foods, as defined in Section 110005, or to~~
 27 ~~any person whose manufacturing, packing, or holding of processed~~
 28 ~~food is limited solely to activities authorized by any of the~~
 29 ~~following:~~

30 ~~(a) A valid bottled water or water vending machine license~~
 31 ~~issued pursuant to Article 12 (commencing with Section 111070).~~

32 ~~(b) A valid pet food license issued pursuant to Chapter 10~~
 33 ~~(commencing with Section 113025) of Part 6.~~

34 ~~(c) A valid permit issued pursuant to Part 7 (commencing with~~
 35 ~~Section 113700) to a food facility including a food facility that~~
 36 ~~manufactures, packs, or holds processed food for sale at wholesale,~~
 37 ~~provided the food facility that manufactures, packs, or holds~~
 38 ~~processed food for sale at wholesale does not meet any of the~~
 39 ~~following conditions:~~

- 1 ~~(1) Has gross annual wholesale sales of processed foods of more~~
2 ~~than 25 percent of total food sales.~~
- 3 ~~(2) Sells processed foods outside the jurisdiction of the local~~
4 ~~health department.~~
- 5 ~~(3) Sells processed foods that require labeling pursuant to this~~
6 ~~part.~~
- 7 ~~(4) Processes or handles fresh seafood, frozen seafood held in~~
8 ~~bulk for further processing, or fresh or frozen raw shellfish.~~
- 9 ~~(5) Salvages processed foods for sale other than at the retail~~
10 ~~food facility.~~
- 11 ~~(d) A valid cold storage license issued pursuant to Chapter 6~~
12 ~~(commencing with Section 112350) of Part 6.~~
- 13 ~~(e) A valid cannery license issued pursuant to Chapter 8~~
14 ~~(commencing with Section 112650) of Part 6.~~
- 15 ~~(f) A valid shellfish certificate issued pursuant to Chapter 5~~
16 ~~(commencing with Section 112150) of Part 6.~~
- 17 ~~(g) A valid frozen food locker plant license issued pursuant to~~
18 ~~Chapter 7 (commencing with Section 112500) of Part 6.~~
- 19 ~~(h) A valid winegrower's license or wine blender's license~~
20 ~~pursuant to Division 9 (commencing with Section 23000) of the~~
21 ~~Business and Professions Code.~~
- 22 ~~(i) A valid milk products plant, margarine, imitation ice cream,~~
23 ~~imitation ice milk, or a products resembling milk products plant~~
24 ~~license, issued pursuant to Division 15 (commencing with Section~~
25 ~~32501) of the Food and Agricultural Code.~~
- 26 ~~(j) A valid permit issued by a local health department to operate~~
27 ~~a processing establishment, as defined in Section 111955, that only~~
28 ~~holds or warehouses processed food, pursuant to Article 1~~
29 ~~(commencing with Section 111950) of Chapter 4 of Part 6,~~
30 ~~provided that all of the following conditions are met:~~
 - 31 ~~(1) The warehouse does not manufacture or pack processed~~
32 ~~food.~~
 - 33 ~~(2) The warehouse does not hold fresh seafood, frozen seafood~~
34 ~~held in bulk for further processing, or fresh or frozen raw shellfish.~~
 - 35 ~~(3) The warehouse is not operated as an integral part of a food~~
36 ~~processing facility required to be registered pursuant to Section~~
37 ~~110460.~~
 - 38 ~~(4) The warehouse facilities are located entirely within the area~~
39 ~~under the jurisdiction of the local health department.~~

1 ~~(5) The warehouse does not salvage food as the primary~~
2 ~~business.~~
3 ~~(k) This section shall not be construed to limit the authority of~~
4 ~~Los Angeles, San Bernardino, and Orange Counties, or of the City~~
5 ~~of Vernon, to conduct any inspections otherwise authorized by~~
6 ~~Chapter 4 (commencing with Section 111950) of Part 6.~~

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