

AMENDED IN ASSEMBLY JUNE 11, 2014

**SENATE BILL**

**No. 1138**

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**Introduced by Senator Padilla**

February 20, 2014

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An act to add ~~Section~~ *Sections 110796 and 114092* to the Health and Safety Code, relating to fish and shellfish.

LEGISLATIVE COUNSEL'S DIGEST

SB 1138, as amended, Padilla. Fish and shellfish: ~~labeling~~ *labeling and menu labeling*.

~~Existing~~

(1) *Existing* federal law, the Federal Food, Drug, and Cosmetic Act, regulates, among other things, the labeling of foods introduced or delivered for introduction into interstate commerce and generally prohibits the misbranding of food. Existing state law, the Sherman Food, Drug, and Cosmetic Law, generally regulates misbranded food, which includes food that is not properly labeled. A violation of these provisions is a crime.

This bill would require any label of fresh, frozen, or processed fish or shellfish, wild or farm raised, offered for sale at wholesale or retail to clearly identify *specified information, including* the species of fish or shellfish by its common name, as specified. By creating a new 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.~~

(2) Existing law, the California Retail Food Code, provides for the regulation of health and sanitation standards for retail food facilities, as defined, by the State Department of Public Health. Under existing law, local health agencies are primarily responsible for enforcing the California Retail Food Code. A violation of any of these provisions is punishable as a crime. Existing law requires fish that are received for sale or service to be commercially and legally caught or harvested.

This bill would require a retail food facility that offers or sells fresh, frozen, or processed fish or shellfish, wild or farm raised, to clearly identify specified information on the menu, including the species of fish or shellfish by its common name, as specified. By expanding the definition of an existing crime and imposing additional duties on local health officers, this bill would impose a state-mandated local program.

(3) 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 with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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. Section 110796 is added to the Health and Safety
- 2 Code, to read:
- 3 110796. (a) Any label of fresh, frozen, or processed fish or
- 4 shellfish, wild or farm raised, offered for sale at wholesale or retail
- 5 shall clearly identify ~~the~~ *all of the following information:*
- 6 (1) The species of fish or shellfish by its common name. If the
- 7 common name for a species of fish or other seafood is not defined
- 8 by the department pursuant to Section 110795, for purposes of this
- 9 subdivision, the “common name” means the common name ~~or~~
- 10 ~~market name~~ for any seafood species identified in the Seafood List
- 11 issued by the federal Food and Drug Administration.
- 12 (2) *Whether the fish or shellfish was farm raised or wild caught.*

1 (3) Whether the fish or shellfish was caught domestically or  
2 imported.

3 (b) For purposes of this section, “processed” means ~~food fish~~  
4 ~~or shellfish processed by heat for human consumption, such as~~  
5 ~~food fish or shellfish that is kippered, smoked, boiled, canned,~~  
6 ~~cleaned, portioned, or prepared for sale or attempted sale for human~~  
7 ~~consumption.~~ *cooking, baking, heating, drying, mixing, grinding,*  
8 *churning, separating, extracting, cutting, fermenting, eviscerating,*  
9 *preserving, dehydrating, freezing, or otherwise manufacturing,*  
10 *and includes packaging, canning, jarring, or otherwise enclosing*  
11 *food in a container.*

12 (c) (1) It is unlawful and constitutes misbranding for any person  
13 to knowingly sell or offer for sale any fish or shellfish that is  
14 labeled in violation of this section.

15 (2) *For purposes of paragraph (1), knowledge shall be presumed*  
16 *if the person fails to provide sufficient product documentation that*  
17 *demonstrates the fish or shellfish was labeled in violation of this*  
18 *section when the person received the fish or shellfish. The*  
19 *presumption established by this section is a presumption affecting*  
20 *the burden of proof.*

21 ~~SEC. 2. No reimbursement is required by this act pursuant to~~  
22 ~~Section 6 of Article XIII B of the California Constitution because~~  
23 ~~the only costs that may be incurred by a local agency or school~~  
24 ~~district will be incurred because this act creates a new crime or~~  
25 ~~infraction, eliminates a crime or infraction, or changes the penalty~~  
26 ~~for a crime or infraction, within the meaning of Section 17556 of~~  
27 ~~the Government Code, or changes the definition of a crime within~~  
28 ~~the meaning of Section 6 of Article XIII B of the California~~  
29 ~~Constitution.~~

30 *SEC. 2. Section 114092 is added to the Health and Safety Code,*  
31 *to read:*

32 *114092. (a) A retail food facility that offers or sells fresh,*  
33 *frozen, or processed fish or shellfish, wild or farm raised, shall*  
34 *clearly identify on the menu all of the following information:*

35 (1) *The species of fish or shellfish by its common name. For*  
36 *purposes of this subdivision, the “common name” means the*  
37 *common name for any seafood species identified in the Seafood*  
38 *List issued by the federal Food and Drug Administration.*

39 (2) *Whether the fish or shellfish was farm raised or wild caught.*

1 (3) Whether the fish or shellfish was caught domestically or  
2 imported.

3 (b) For purposes of this section, “processed” means cooking,  
4 baking, heating, drying, mixing, grinding, churning, separating,  
5 extracting, cutting, fermenting, eviscerating, preserving,  
6 dehydrating, freezing, or otherwise manufacturing, and includes  
7 packaging, canning, jarring, or otherwise enclosing food in a  
8 container.

9 SEC. 3. No reimbursement is required by this act pursuant to  
10 Section 6 of Article XIII B of the California Constitution for certain  
11 costs that may be incurred by a local agency or school district  
12 because, in that regard, this act creates a new crime or infraction,  
13 eliminates a crime or infraction, or changes the penalty for a crime  
14 or infraction, within the meaning of Section 17556 of the  
15 Government Code, or changes the definition of a crime within the  
16 meaning of Section 6 of Article XIII B of the California  
17 Constitution.

18 However, if the Commission on State Mandates determines that  
19 this act contains other costs mandated by the state, reimbursement  
20 to local agencies and school districts for those costs shall be made  
21 pursuant to Part 7 (commencing with Section 17500) of Division  
22 4 of Title 2 of the Government Code.