

AMENDED IN ASSEMBLY JUNE 24, 2014

AMENDED IN ASSEMBLY JUNE 11, 2014

SENATE BILL

No. 1138

Introduced by Senator Padilla

February 20, 2014

An act to add 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 and ~~menu labeling~~ *identification*.

(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. *The bill would provide that knowingly selling or offering for sale any fish or shellfish that is labeled in violation of this requirement constitutes misbranding.* By creating a new crime, this bill would impose a state-mandated local program.

(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~~ *sells or offers for sale any* fresh, frozen, or processed fish or shellfish, wild or farm raised, to ~~clearly identify specified information on the menu, including at the point of sale~~ the species of fish or shellfish by its common name, as specified. *This bill would prohibit a retail food facility from knowingly misidentifying the country of origin of the fish or shellfish or whether the fish or shellfish was farm raised or wild caught.* 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 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 for
- 10 any seafood species identified in the Seafood List issued by the
- 11 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 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 (c) (1) ~~It is unlawful and constitutes~~ *shall constitute* misbranding
10 for any person to knowingly sell or offer for sale any fish or
11 shellfish that is labeled in violation of this section.

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

18 SEC. 2. Section 114092 is added to the Health and Safety Code,
19 to read:

20 ~~114092. (a) A retail food facility that offers or sells fresh,
21 frozen, or processed fish or shellfish, wild or farm raised, shall
22 clearly identify on the menu all of the following information:~~

23 ~~(1) The species of fish or shellfish by its common name. For
24 purposes of this subdivision, the “common name” means the
25 common name for any seafood species identified in the Seafood
26 List issued by the federal Food and Drug Administration.~~

27 ~~(2) Whether the fish or shellfish was farm raised or wild caught.~~

28 ~~(3) Whether the fish or shellfish was caught domestically or
29 imported.~~

30 *114092. (a) (1) A retail food facility that sells or offers for
31 sale any fresh, frozen, or processed fish or shellfish, wild or farm
32 raised, shall identify the species of fish or shellfish by its common
33 name for the consumer at the point of sale, so the consumer can
34 make an informed purchase decision. It is unlawful for a retail
35 food facility to knowingly misidentify the species of fish or shellfish
36 by its common name in violation of this subdivision.*

37 *(2) If the common name for a species of fish or other seafood
38 is not defined by the department pursuant to Section 110795, for
39 purposes of this subdivision, the “common name” means the*

1 *common name for any seafood species identified in the Seafood*
2 *List issued by the federal Food and Drug Administration.*

3 *(b) (1) A retail food facility that sells or offers for sale any*
4 *fresh, frozen, or processed fish or shellfish, wild or farm raised,*
5 *shall not knowingly misidentify either of the following:*

6 *(A) The country of origin of the fish or shellfish.*

7 *(B) Whether the fish or shellfish was farm raised or wild caught.*

8 *(2) This subdivision does not require a retail food facility that*
9 *sells or offers for sale any fresh, frozen, or processed fish or*
10 *shellfish to identify either the country of origin or whether the fish*
11 *or shellfish was farm raised or wild caught.*

12 *(c) For purposes of this section, knowledge shall be presumed*
13 *if the retail food facility fails to provide sufficient product*
14 *documentation that demonstrates the fish or shellfish was identified*
15 *in violation of subdivision (a) or (b) when the retail food facility*
16 *received the fish or shellfish. The presumption established by this*
17 *section is a presumption affecting the burden of proof.*

18 ~~(b)~~

19 *(d) For purposes of this section, “processed” means cooking,*
20 *baking, heating, drying, mixing, grinding, churning, separating,*
21 *extracting, cutting, fermenting, eviscerating, preserving,*
22 *dehydrating, freezing, or otherwise manufacturing, and includes*
23 *packaging, canning, jarring, or otherwise enclosing food in a*
24 *container.*

25 SEC. 3. No reimbursement is required by this act pursuant to
26 Section 6 of Article XIII B of the California Constitution for certain
27 costs that may be incurred by a local agency or school district
28 because, in that regard, this act creates a new crime or infraction,
29 eliminates a crime or infraction, or changes the penalty for a crime
30 or infraction, within the meaning of Section 17556 of the
31 Government Code, or changes the definition of a crime within the
32 meaning of Section 6 of Article XIII B of the California
33 Constitution.

34 However, if the Commission on State Mandates determines that
35 this act contains other costs mandated by the state, reimbursement
36 to local agencies and school districts for those costs shall be made
37 pursuant to Part 7 (commencing with Section 17500) of Division
38 4 of Title 2 of the Government Code.

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