

AMENDED IN ASSEMBLY AUGUST 18, 2014

AMENDED IN ASSEMBLY JUNE 24, 2014

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 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 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~~ *provide that it is unlawful to sell or offer for sale any fresh, frozen, or processed fish or shellfish, shellfish intended for human consumption, wild caught or farm raised, offered for sale at wholesale or retail to* ~~without clearly identify~~ *identifying* 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 prohibit any person who sells or offers for sale any fish*

*or shellfish and acts in reasonable reliance on the fish or shellfish package labeling or product invoice to satisfy the above-described requirements from being found in violation of those requirements. Because any violation of these provisions would be a 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, other than a restaurant, that sells or offers for sale any fresh, frozen, or processed fish or shellfish, shellfish intended for human consumption, wild caught or farm raised, to identify at the point of sale in writing the species of fish or shellfish by its common name, as specified. specified, and would prohibit a retail food facility from knowingly misidentifying the species of fish or shellfish by its common name. The bill would require a restaurant that sells or offers for sale any fresh, frozen, or processed fish or shellfish intended for human consumption, wild caught or farm raised, to identify the species of fish or shellfish in writing, or orally if not identified in writing, as specified, and would prohibit a restaurant from knowingly misidentifying the species of fish or shellfish by its common name. 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 The bill would prohibit a retail food facility or restaurant that sells or offers for sale any fish or shellfish and acts in reasonable reliance on the fish or shellfish package labeling or product invoice to satisfy the above-described requirements from being found in violation of those requirements. Because any violation of these provisions would be a crime, and by 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 *110796. (a) It is unlawful to sell or offer for sale any fresh,*  
7 *frozen, or processed fish or shellfish intended for human*  
8 *consumption, wild caught or farm raised, without clearly*  
9 *identifying all of the following information on the label:*

10 (1) The species of fish or shellfish by its common name. If the  
11 common name for a species of fish or other seafood is not defined  
12 by the department pursuant to Section 110795, for purposes of this  
13 subdivision, the “common name” means the common name for  
14 any seafood species identified in the Seafood List issued by the  
15 federal Food and Drug Administration.

16 (2) Whether the fish or shellfish was ~~farm raised or wild caught.~~  
17 *wild caught or farm raised.*

18 (3) Whether the fish or shellfish was caught *or raised*  
19 *domestically or imported.*

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

26 ~~(c) (1) It shall constitute misbranding for any person to~~  
27 ~~knowingly sell or offer for sale any fish or shellfish that is labeled~~  
28 ~~in violation of this section.~~

29 ~~(2) For purposes of paragraph (1), knowledge shall be presumed~~  
30 ~~if the person fails to provide sufficient product documentation that~~  
31 ~~demonstrates the fish or shellfish was labeled in violation of this~~

1 ~~section when the person received the fish or shellfish. The~~  
 2 ~~presumption established by this section is a presumption affecting~~  
 3 ~~the burden of proof.~~

4 *(c) Notwithstanding subdivision (a), any person who sells or*  
 5 *offers for sale any fish or shellfish and acts in reasonable reliance*  
 6 *on the fish or shellfish package labeling or product invoice to*  
 7 *satisfy the requirements described in subdivision (a) shall not be*  
 8 *found in violation of this section.*

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

11 114092. (a) (1) ~~A retail food facility that sells or offers for~~  
 12 ~~sale any fresh, frozen, or processed fish or shellfish, wild or farm~~  
 13 ~~raised, shall identify the species of fish or shellfish by its common~~  
 14 ~~name for the consumer at the point of sale, so the consumer can~~  
 15 ~~make an informed purchase decision. It is unlawful for a retail~~  
 16 ~~food facility to knowingly misidentify the species of fish or~~  
 17 ~~shellfish by its common name in violation of this subdivision.~~  
 18 *facility, other than a restaurant, that sells or offers for sale any*  
 19 *fresh, frozen, or processed fish or shellfish intended for human*  
 20 *consumption, wild caught or farm raised, shall identify the species*  
 21 *of fish or shellfish by its common name for the consumer in writing*  
 22 *on the shelf tag, display tag, or any other labeling. It is unlawful*  
 23 *for a retail food facility to knowingly misidentify the species of*  
 24 *fish or shellfish in violation of this paragraph.*

25 *(2) A restaurant that sells or offers for sale any fresh, frozen,*  
 26 *or processed fish or shellfish intended for human consumption,*  
 27 *wild caught or farm raised, shall identify the species of fish or*  
 28 *shellfish by its common name for the consumer in writing, or orally*  
 29 *if not identified in writing, at the time the consumer orders the fish*  
 30 *or shellfish. It is unlawful for a restaurant to knowingly misidentify*  
 31 *the species of fish or shellfish in violation of this paragraph.*

32 ~~(2)~~

33 *(3) If the common name for a species of fish or other seafood*  
 34 *is not defined by the department pursuant to Section 110795, for*  
 35 *purposes of this subdivision, the “common name” means the*  
 36 *common name for any seafood species identified in the Seafood*  
 37 *List issued by the federal Food and Drug Administration.*

38 *(b) (1) A retail food facility that sells or offers for sale any*  
 39 *fresh, frozen, or processed fish or ~~shellfish~~, shellfish intended for*

1 *human consumption*, wild *caught* or farm raised, shall not  
2 knowingly misidentify either of the following:

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

4 (B) Whether the fish or shellfish was ~~farm raised or wild caught.~~  
5 *wild caught or farm raised.*

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

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

17 *(c) Notwithstanding subdivision (a) or subdivision (b), a retail*  
18 *food facility or restaurant that sells or offers for sale any fish or*  
19 *shellfish and acts in reasonable reliance on the fish or shellfish*  
20 *package labeling or product invoice to satisfy the requirements*  
21 *described in subdivision (a) or (b) shall not be found in violation*  
22 *of this section.*

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

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

38 However, if the Commission on State Mandates determines that  
39 this act contains other costs mandated by the state, reimbursement  
40 to local agencies and school districts for those costs shall be made

- 1 pursuant to Part 7 (commencing with Section 17500) of Division
- 2 4 of Title 2 of the Government Code.

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