

AMENDED IN ASSEMBLY AUGUST 28, 2014

AMENDED IN ASSEMBLY AUGUST 21, 2014

AMENDED IN ASSEMBLY AUGUST 18, 2014

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 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, commencing July 1, 2016, would provide that it is unlawful to sell or offer for sale any fresh, frozen, or processed fish or shellfish intended for human consumption, wild caught or farm raised, without clearly identifying specified information, including the species of fish or shellfish by its common name, as specified. The 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 and product invoice to satisfy the above-described requirements from being found in violation of those requirements. The bill would specify that these provisions do not apply to a restaurant. 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, commencing July 1, 2016, would require a retail food facility, other than 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 in writing the species of fish or shellfish by its common name, as specified, and would prohibit a retail food facility from knowingly misidentifying the species of fish or shellfish by its common name. The bill, commencing July 1, 2016, 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. The bill, commencing July 1, 2016, 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. 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 and 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) It is unlawful to sell or offer for sale any fresh,
4 frozen, or processed fish or shellfish intended for human
5 consumption, wild caught or farm raised, without clearly
6 identifying all of the following information on the label:
7 (1) The species of fish or shellfish by its common name. If the
8 common name for a species of fish or other seafood is not defined
9 pursuant to existing state law, or regulations adopted pursuant
10 thereto, for purposes of this subdivision, the “common name”
11 means the common name for any seafood species identified in the
12 Seafood List issued by the federal Food and Drug Administration.
13 (2) Whether the fish or shellfish was wild caught or farm raised.
14 (3) Whether the fish or shellfish was caught or raised
15 domestically or imported.
16 (b) For purposes of this section, “processed” means cooking,
17 baking, heating, drying, mixing, grinding, churning, separating,
18 extracting, cutting, fermenting, eviscerating, preserving,
19 dehydrating, freezing, or otherwise manufacturing, and includes
20 packaging, canning, jarring, or otherwise enclosing food in a
21 container.
22 (c) Notwithstanding subdivision (a), any person who sells or
23 offers for sale any fish or shellfish and acts in reasonable reliance
24 on the fish or shellfish package labeling and product invoice to
25 satisfy the requirements described in subdivision (a) shall not be
26 found in violation of this section.
27 (d) This section does not apply to a restaurant.
28 (e) *Nothing in this section shall be interpreted to prohibit the*
29 *labeling of the species of fish or shellfish by its acceptable market*
30 *name, as identified in the Seafood List issued by the federal Food*
31 *and Drug Administration.*

1 (e)

2 (f) This section shall become operative on July 1, 2016.

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

5 114092. (a) (1) A retail food facility, other than a restaurant,
6 that sells or offers for sale any fresh, frozen, or processed fish or
7 shellfish intended for human consumption, wild caught or farm
8 raised, shall identify the species of fish or shellfish by its common
9 name for the consumer in writing on the shelf tag, display tag, or
10 any other labeling. It is unlawful for a retail food facility to
11 knowingly misidentify the species of fish or shellfish in violation
12 of this paragraph.

13 (2) A restaurant that sells or offers for sale any fresh, frozen, or
14 processed fish or shellfish intended for human consumption, wild
15 caught or farm raised, shall identify the species of fish or shellfish
16 by its common name for the consumer in writing, or orally if not
17 identified in writing, at the time the consumer orders the fish or
18 shellfish. It is unlawful for a restaurant to knowingly misidentify
19 the species of fish or shellfish in violation of this paragraph.

20 (3) If the common name for a species of fish or other seafood
21 is not defined pursuant to existing state law, or regulations adopted
22 pursuant thereto, for purposes of this subdivision, the “common
23 name” means the common name for any seafood species identified
24 in the Seafood List issued by the federal Food and Drug
25 Administration.

26 (b) (1) A retail food facility that sells or offers for sale any
27 fresh, frozen, or processed fish or shellfish intended for human
28 consumption, wild caught or farm raised, shall not knowingly
29 misidentify either of the following:

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

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

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

36 (c) Notwithstanding subdivision (a) or subdivision (b), a retail
37 food facility or restaurant that sells or offers for sale any fish or
38 shellfish and acts in reasonable reliance on the fish or shellfish
39 package labeling and product invoice to satisfy the requirements

1 described in subdivision (a) or (b) shall not be found in violation
2 of this section.

3 (d) 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 (e) *Nothing in this section shall be interpreted to prohibit a*
10 *retail food facility or a restaurant from labeling or identifying the*
11 *species of fish or shellfish by its acceptable market name, as*
12 *identified in the Seafood List issued by the federal Food and Drug*
13 *Administration.*

14 (e)

15 (f) This section shall become operative on July 1, 2016.

16 SEC. 3. No reimbursement is required by this act pursuant to
17 Section 6 of Article XIII B of the California Constitution for certain
18 costs that may be incurred by a local agency or school district
19 because, in that regard, this act creates a new crime or infraction,
20 eliminates a crime or infraction, or changes the penalty for a crime
21 or infraction, within the meaning of Section 17556 of the
22 Government Code, or changes the definition of a crime within the
23 meaning of Section 6 of Article XIII B of the California
24 Constitution.

25 However, if the Commission on State Mandates determines that
26 this act contains other costs mandated by the state, reimbursement
27 to local agencies and school districts for those costs shall be made
28 pursuant to Part 7 (commencing with Section 17500) of Division
29 4 of Title 2 of the Government Code.