

Senate Bill No. 1138

Passed the Senate August 29, 2014

Secretary of the Senate

Passed the Assembly August 29, 2014

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2014, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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, 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. 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 by its common name 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. 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.

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

SECTION 1. Section 110796 is added to the Health and Safety Code, to read:

110796. (a) 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 all of the following information on the label:

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

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

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

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

(c) Notwithstanding subdivision (a), 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 requirements described in subdivision (a) shall not be found in violation of this section.

(d) This section does not apply to a restaurant.

(e) Nothing in this section shall be interpreted to prohibit the labeling of the species of fish or shellfish by its acceptable market name, as identified in the Seafood List issued by the federal Food and Drug Administration.

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

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

114092. (a) (1) 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, shall identify the species of fish or shellfish by its common name for the consumer in writing on the shelf tag, display tag, or any other labeling. It is unlawful for a retail food facility to knowingly misidentify the species of fish or shellfish in violation of this paragraph.

(2) 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, shall identify the species of fish or shellfish by its common name for the consumer in writing, or orally if not identified in writing, at the time the consumer orders the fish or shellfish. It is unlawful for a restaurant to knowingly misidentify the species of fish or shellfish in violation of this paragraph.

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

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

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

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

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

(c) Notwithstanding subdivision (a) or subdivision (b), 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 requirements described in subdivision (a) or (b) shall not be found in violation of this section.

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

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

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

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

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

Approved _____, 2014

Governor