

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 820

Introduced by Assembly Member Mark Stone

February 26, 2015

~~An act relating to public health.~~ *An act to add Section 8379 to the Fish and Game Code, and to add Sections 110796 and 114092 to the Health and Safety Code, relating to fish and shellfish.*

LEGISLATIVE COUNSEL'S DIGEST

AB 820, as amended, Mark Stone. ~~Seafood labeling.~~ *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 provide that it is unlawful and constitutes misbranding to sell or offer for sale any fresh, frozen, or processed fish or shellfish intended for human consumption without clearly identifying at the point of sale whether the fish or shellfish was wild caught or farm raised. The bill would exempt a 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 from being found in violation of those requirements. The bill would state the intent of the Legislature to increase penalties for a violation of these requirements, as specified.

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 that sells or offers for sale any fresh, frozen, or processed fish or shellfish intended for human consumption to identify whether the fish or shellfish was wild caught or farm raised, and would prohibit a retail food facility from knowingly misidentifying that the fish or shellfish was wild caught or farm raised. The bill would exempt 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 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) Existing law regulates commercial fishing and imposes regulations on various salt water fish.

This bill would prohibit pacific red snapper or butterfish from being used as an alternate name for specified fish, including the sebastes entomelas (widow rockfish) and the anoplopoma fimbria (sablefish).

(4) 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.

~~Existing law, the Sherman Food, Drug, and Cosmetic Law, regulates the packaging, labeling, and advertising of food and is administered by the State Department of Public Health. Existing law provides that food is misbranded if its labeling is false or misleading.~~

~~This bill would state the intent of the legislature to enact legislation to clarify seafood labeling requirements and to increase penalties for seafood mislabeling violations.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

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

1 *SECTION 1. Section 8379 is added to the Fish and Game Code,*
2 *to read:*

3 8379. (a) *Pacific red snapper shall not be used as an alternate*
4 *name for any of the following fish:*

5 (1) *Sebastes entomelas (widow rockfish).*

6 (2) *Sebastes flavidus (yellowtail rockfish).*

7 (3) *Sebastes goodei (chilipepper).*

8 (4) *Sebastes jordani (shorbelly rockfish).*

9 (5) *Sebastes levis (cowcod).*

10 (6) *Sebastes melanops (black rockfish).*

11 (7) *Sebastes miniatus (vermillion rockfish).*

12 (8) *Sebastes ovalis (speckled rockfish).*

13 (9) *Sebastes paucispinis (bocaccio).*

14 (10) *Sebastes pinniger (canary rockfish).*

15 (11) *Sebastes ruberrimus (yelloweye rockfish).*

16 (12) *Sebastes rufus (bank rockfish).*

17 (13) *Sebastes serranoides (olive rockfish).*

18 (b) *Butterfish shall not be used as an alternate name for the*
19 *anoplopoma fimbria (sablefish).*

20 *SEC. 2. Section 110796 is added to the Health and Safety Code,*
21 *to read:*

22 110796. (a) *It is unlawful and constitutes misbranding for any*
23 *restaurant, retailer, wholesaler, distributor, processor, or*
24 *packager, to sell or offer for sale any fresh, frozen, or processed*
25 *fish or shellfish intended for human consumption without clearly*
26 *identifying at the point of sale whether the fish or shellfish was*
27 *wild caught or farm raised.*

28 (b) *For purposes of this section, "processed" means cooking,*
29 *baking, heating, drying, mixing, grinding, churning, separating,*
30 *extracting, cutting, fermenting, eviscerating, preserving,*
31 *dehydrating, freezing, or otherwise manufacturing, and includes*

1 *packaging, canning, jarring, or otherwise enclosing food in a*
2 *container.*

3 *(c) Notwithstanding subdivision (a), any person who sells or*
4 *offers for sale any fish or shellfish and acts in reasonable reliance*
5 *on the fish or shellfish package labeling and product invoice to*
6 *satisfy the requirements described in subdivision (a) shall not be*
7 *found in violation of this section. The burden of proving reasonable*
8 *reliance is upon the seller. Once a seller proves that he or she*
9 *reasonable relied on the fish or shellfish package labeling and*
10 *product invoice, the burden of proof shall shift to the previous*
11 *supplier in the supply chain until the violator is identified.*

12 *(d) It is the intent of the Legislature to provide additional*
13 *funding for spot inspections of retailers at the final point of sale*
14 *to verify compliance with this section, further investigation, and*
15 *DNA testing of samples as a followup to issues identified in the*
16 *inspections and in response to consumer complaints.*

17 *(e) It is the intent of the Legislature to increase penalties for a*
18 *violation of this section based on the fair market value of the fish*
19 *involved in the violation.*

20 *SEC. 3. Section 114092 is added to the Health and Safety Code,*
21 *to read:*

22 *114092. (a) A retail food facility that sells or offers for sale*
23 *any fresh, frozen, or processed fish or shellfish intended for human*
24 *consumption shall identify whether the fish or shellfish was wild*
25 *caught or farm raised, and shall not knowingly misidentify whether*
26 *the fish or shellfish was wild caught or farm raised.*

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

33 *(c) Notwithstanding subdivision (a), a retail food facility or*
34 *restaurant that sells or offers for sale any fish or shellfish and acts*
35 *in reasonable reliance on the fish or shellfish package labeling*
36 *and product invoice to satisfy the requirements described in*
37 *subdivision (a) shall not be found in violation of this section. The*
38 *burden of proving reasonable reliance is upon the seller. Once a*
39 *seller proves that he or she reasonable relied on the fish or shellfish*
40 *package labeling and product invoice, the burden of proof shall*

1 *shift to the previous supplier in the supply chain until the violator*
2 *is identified.*

3 *SEC. 4. No reimbursement is required by this act pursuant to*
4 *Section 6 of Article XIII B of the California Constitution for certain*
5 *costs that may be incurred by a local agency or school district*
6 *because, in that regard, this act creates a new crime or infraction,*
7 *eliminates a crime or infraction, or changes the penalty for a crime*
8 *or infraction, within the meaning of Section 17556 of the*
9 *Government Code, or changes the definition of a crime within the*
10 *meaning of Section 6 of Article XIII B of the California*
11 *Constitution.*

12 *However, if the Commission on State Mandates determines that*
13 *this act contains other costs mandated by the state, reimbursement*
14 *to local agencies and school districts for those costs shall be made*
15 *pursuant to Part 7 (commencing with Section 17500) of Division*
16 *4 of Title 2 of the Government Code.*

17 ~~SECTION 1. It is the intent of the Legislature to enact~~
18 ~~legislation to clarify seafood labeling requirements in order to~~
19 ~~facilitate and increase the enforcement of laws to combat seafood~~
20 ~~labeling fraud. It is further the intent of the Legislature to increase~~
21 ~~penalties for seafood mislabeling violations.~~