
A BILL FOR AN ACT

RELATING TO HEALTH.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that seafood mislabeling
2 is a major issue worldwide. Studies by Oceana, a leading ocean
3 conservation foundation, have found that twenty-eight to thirty-
4 three per cent of seafood sold in the United States is
5 mislabeled at the point of retail sale. Oceana reports that up
6 to eighty-four per cent of fish labeled "white tuna" sold in the
7 United States between 2010 and 2012 were actually escolar, a
8 species that can cause serious digestive issues for some
9 individuals who eat more than a few ounces.

10 The legislature finds that the practice of mislabeling
11 seafood permits sale of threatened fish species under the labels
12 of more sustainable alternatives, sale of cheaper fish under the
13 labels of more expensive species, and sale of fish that can
14 cause illness under the label of safer fish.

15 The legislature further finds that over one thousand seven
16 hundred different species of seafood are available for purchase
17 in the United States. It is unrealistic to expect consumers to



1 individually and precisely determine what they are purchasing
2 without accurate labeling. Consequentially, mislabeling
3 prevents consumers from making informed purchasing decisions and
4 threatens individual and public health.

5 This Act shall be known and may be cited as "Mizutani's
6 Law".

7 The purpose of this Act is to permit the director of health
8 to effectively enforce safe seafood consumption by establishing
9 administrative fines for misbranding of fish and authorizing the
10 director to prohibit the sale within the State of fish that pose
11 a credible health concern to consumers.

12 SECTION 2. Chapter 328, Hawaii Revised Statutes, is
13 amended by adding three new sections to be appropriately
14 designated and to read as follows:

15 "§328-A Illness caused by the misbranding of fish or fish
16 products; administrative penalties. (a) The director may
17 impose administrative fines upon any person whose misbranding of
18 fish or fish products in violation of section 328-6 results in
19 the illness of a consumer of the product; provided that the
20 illness has been certified by a physician licensed under chapter



1 453. Any person who violates this section may be fined no more
2 than:

3 (1) \$ _____ for a first violation;

4 (2) \$ _____ for a second violation; and

5 (3) \$ _____ for a third or subsequent violation.

6 Any fines collected under this section shall be deposited into
7 the fish misbranding special fund established by section 328-B.

8 (b) The penalties under this section are in addition to
9 any other penalties provided by law.

10 **§328-B Fish misbranding special fund.** (a) There is
11 established the fish misbranding special fund to be administered
12 by the department and into which shall be deposited:

13 (1) Legislative appropriations to the special fund;

14 (2) All moneys received by the department from fines
15 imposed under section 328-A;

16 (3) All interest earned or accrued on moneys deposited in
17 the special fund; and

18 (4) Any other moneys made available to the special fund.

19 (b) Moneys in the special fund shall be expended to cover
20 the costs associated with carrying out the purpose of section
21 328-A.



1 §328-C Credible health concern; sale prohibited. (a) The
2 director may adopt rules in accordance with chapter 91 to
3 prohibit the sale of species of fish or fish products deemed to
4 present a credible health concern. The sale, delivery for sale,
5 holding for sale, or offering for sale of any fish or fish
6 product prohibited pursuant to this section shall be a violation
7 of section 328-6.

8 (b) Rules adopted by the director shall include rules for:
9 (1) Determining whether a species or product presents a
10 credible health concern;
11 (2) Identification and inspection of suspected violations;
12 (3) Administrative enforcement procedures; and
13 (4) Penalties, including fines, for violations."

14 SECTION 3. Section 328-6, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "§328-6 Prohibited acts. The following acts and the
17 causing thereof within the State by any person are prohibited:

18 (1) The manufacture, sale, delivery, holding, or offering
19 for sale of any food, drug, device, or cosmetic that
20 is adulterated or misbranded;



- 1 (2) The adulteration or misbranding of any food, drug,
2 device, or cosmetic;
- 3 (3) The receipt in commerce of any food, drug, device, or
4 cosmetic that is adulterated or misbranded, and the
5 delivery or proffered delivery thereof for pay or
6 otherwise;
- 7 (4) The sale, delivery for sale, holding for sale, or
8 offering for sale of any article in violation of
9 section 328-11, 328-12, [~~or~~] 328-17[+], or 328-C;
- 10 (5) The dissemination of any false advertisement;
- 11 (6) The refusal to permit entry or inspection, or to
12 permit the taking of a sample, as authorized by
13 sections 328-22 and 328-23 to 328-27, or to permit
14 access to or copying of any record as authorized by
15 section 328-23;
- 16 (7) The giving of a guaranty or undertaking which guaranty
17 or undertaking is false, except by a person who relied
18 on a guaranty or undertaking to the same effect signed
19 by, and containing the name and address of the person
20 residing in the State from whom the person received in
21 good faith the food, drug, device, or cosmetic;



- 1 (8) The removal or disposal of a detained or embargoed
2 article in violation of sections 328-25 to 328-27;
- 3 (9) The alteration, mutilation, destruction, obliteration,
4 or removal of the whole or any part of the labeling
5 of, or the doing of any other act with respect to a
6 food, drug, device, or cosmetic, if the act is done
7 while the article is held for sale and results in the
8 article being adulterated or misbranded;
- 9 (10) Forging, counterfeiting, simulating, or falsely
10 representing, or without proper authority using any
11 mark, stamp, tag, label, or other identification
12 device authorized or required by rules adopted under
13 this part or regulations adopted under the Federal
14 Act;
- 15 (11) The use, on the labeling of any drug or in any
16 advertisement relating to the drug, of any
17 representation or suggestion that an application with
18 respect to the drug is effective under section 328-17,
19 or that the drug complies with that section;
- 20 (12) The use by any person to the person's own advantage,
21 or revealing other than to the department of health or



1 to the courts when relevant in any judicial proceeding
2 under this part, any information acquired under
3 authority of section 328-11, 328-12, 328-17, or 328-
4 23, concerning any method or process which as a trade
5 secret is entitled to protection;

6 (13) In the case of a prescription drug distributed or
7 offered for sale in this State, the failure of the
8 manufacturer, packer, or distributor thereof to
9 maintain for transmittal, or to transmit, to any
10 practitioner who makes written request for information
11 as to the drug, true and correct copies of all printed
12 matter which is required to be included in any package
13 in which that drug is distributed or sold, or such
14 other printed matter as is approved under the Federal
15 Act. Nothing in this paragraph shall be construed to
16 exempt any person from any labeling requirement
17 imposed by or under other provisions of this part;

18 (14) (A) Placing or causing to be placed upon any drug or
19 device or container thereof, with intent to
20 defraud, the trade name or other identifying



1 mark, or imprint of another or any likeness of
2 any of the foregoing; or
3 (B) Selling, dispensing, disposing of, or causing to
4 be sold, dispensed, or disposed of, or concealing
5 or keeping in possession, control, or custody,
6 with intent to sell, dispense, or dispose of, any
7 drug, device, or any container thereof, with
8 knowledge that the trade name or other
9 identifying mark or imprint of another or any
10 likeness of any of the foregoing has been placed
11 thereon in a manner prohibited by subparagraph
12 (A); or
13 (C) Making, selling, disposing of, or causing to be
14 made, sold, or disposed of, or keeping in
15 possession, control, or custody, or concealing,
16 with intent to defraud, any punch, die, plate, or
17 other thing designed to print, imprint, or
18 reproduce that trade name or other identifying
19 mark or imprint of another or any likeness of any
20 of the foregoing upon any drug, device, or
21 container thereof;



- 1 (15) Except as provided in part VI and section 461-1,
2 dispensing or causing to be dispensed a different drug
3 or brand of drug in place of the drug or brand of drug
4 ordered or prescribed without express permission in
5 each case of the person ordering or prescribing;
- 6 (16) The distribution in commerce of a consumer commodity
7 as defined in this part, if such commodity is
8 contained in a package, or if there is affixed to that
9 commodity a label, which does not conform to this part
10 and of rules adopted under authority of this part;
11 provided that this prohibition shall not apply to
12 persons engaged in business as wholesale or retail
13 distributors of consumer commodities except to the
14 extent that such persons:
- 15 (A) Are engaged in the packaging or labeling of such
16 commodities; or
- 17 (B) Prescribe or specify by any means the manner in
18 which such commodities are packaged or labeled;
- 19 (17) The selling or dispensing in restaurants, soda
20 fountains, drive-ins, lunch wagons, or similar public
21 eating establishments of imitation milk and imitation



1 milk products in place of fresh milk and fresh milk
2 products respectively; of liquid or dry products which
3 simulate cream but do not comply with content
4 requirements for cream in place of cream; of non-dairy
5 frozen desserts which do not comply with content
6 requirements for dairy frozen desserts in place of
7 dairy frozen desserts; and of any other imitation food
8 or one made in semblance of a genuine food in place of
9 such genuine food, unless the consumer is notified by
10 either proper labeling or conspicuous posted signs or
11 conspicuous notices on menu cards and advertisements
12 informing of such substitution, to include but not
13 limited to the substitution of imitation milk in milk
14 shake and malted milk drinks;

15 (18) Wilfully and falsely representing or using any
16 devices, substances, methods, or treatment as
17 effective in the diagnosis, cure, mitigation,
18 treatment, or alleviation of cancer. This paragraph
19 shall not apply to any person who depends exclusively
20 upon prayer for healing in accordance with teachings
21 of a bona fide religious sect, denomination, or



1 organization, nor to a person who practices such
2 teachings;

3 (19) The selling or offering for sale at any food facility
4 which serves or sells over the counter directly to the
5 consumer an unlabeled or unpackaged food that is a
6 confectionery which contains alcohol in excess of one-
7 half of one per cent by weight unless the consumer is
8 notified of that fact by either proper labeling or
9 conspicuous posted signs or conspicuous notices on
10 menu cards and advertisements; or

11 (20) The sale to a person below the age of twenty-one years
12 of any food which is a confectionery which contains
13 alcohol in excess of one-half of one per cent by
14 weight."

15 SECTION 4. This Act does not affect rights and duties that
16 matured, penalties that were incurred, and proceedings that were
17 begun before its effective date.

18 SECTION 5. In codifying the new sections added by section
19 2 of this Act, the revisor of statutes shall substitute
20 appropriate section numbers for the letters used in designating
21 the new sections in this Act.



H.B. NO. 1899

1 SECTION 6. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 7. This Act shall take effect upon its approval.

4

INTRODUCED BY:

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JAN 18 2018



H.B. NO. 1899

Report Title:

Fish Labeling; Fines; Special Fund; Prohibition; Public Health

Description:

Establishes penalties for the misbranding of fish or fish products that results in consumer illness. Creates the Fish Misbranding Special Fund. Authorizes the Director of Health to prohibit the sale of fish or fish products deemed to be a credible health concern.

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