

Department of Legislative Services
 Maryland General Assembly
 2015 Session

FISCAL AND POLICY NOTE

House Bill 760 (Delegate Luedtke, *et al.*)
 Environment and Transportation

Food Fish and Shellfish - Labeling and Identification Requirements (Maryland Seafood Authenticity Act)

This bill establishes the Maryland Seafood Authenticity Act, which (1) requires identification of the common name of the species of food fish or shellfish sold or offered for sale in the State at the point of sale; (2) prohibits identification of a crab product as “blue crab” unless it is *Callinectes sapidus*; (3) requires a seller to identify the country/countries of origin of a crab product at the point of sale; and (4) requires a seller to identify the country where a whole crab was landed to the buyer at the point of sale.

Fiscal Summary

State Effect: General fund expenditures increase by \$86,454 in FY 2016 to hire an additional inspector within the Department of Health and Mental Hygiene (DHMH) to enforce the bill. Future year expenditures reflect annualization and inflation. Existing penalties applicable to violations of the bill’s provisions are not anticipated to significantly affect State finances.

(in dollars)	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	86,500	78,600	82,000	85,700	89,400
Net Effect	(\$86,500)	(\$78,600)	(\$82,000)	(\$85,700)	(\$89,400)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: The bill is not anticipated to materially affect local health department expenditures; any increase in inspection can be handled with existing resources. Existing penalty provisions applicable to violations of the bill are not anticipated to significantly affect local finances.

Small Business Effect: Meaningful.

Analysis

Bill Summary:

Identification of Food Fish and Shellfish Species in General

A person may not sell or offer for sale within the State any food fish or shellfish unless the person identifies the species of the food fish or shellfish to the buyer at the point of sale. The species must be identified, as appropriate, on (1) a label on, or displayed with, the food fish or shellfish at the point of sale; (2) a sign displayed prominently at the point of sale; or (3) a menu. The Department of Natural Resources (DNR) may adopt regulations designating the common names of food fish and shellfish for the purposes of the species identification requirement. If applicable, the species must be identified by the common name provided in DNR regulations. If the regulations do not provide a common name for the species, the species must be identified by the common name provided by the U.S. Food and Drug Administration (FDA) in the publication, *Seafood List – FDA’s Guide to Acceptable Market Names for Seafood Sold in Interstate Commerce*. A person may not knowingly misidentify the species of a food fish or shellfish on a label, sign, or menu.

“Shellfish” means a crustacean or mollusk sold or offered for sale for human consumption. “Food fish” means any fish, other than a crustacean or mollusk, sold or offered for sale for human consumption.

Identification of Crab Products and Whole Crabs

A person may not knowingly sell or offer for sale within the State any crab product identified as “blue crab” unless the product is *Callinectes sapidus*. A person also may not knowingly sell or offer for sale within the State any crab product or whole crab unless the person identifies to the buyer at the point of sale (1) the country/countries of origin of the crab product or (2) the country in which the whole crab was landed. The country/countries of origin or landing must be identified, as appropriate, on (1) a label on, or displayed with, the whole crab or crab product at the point of sale; (2) a sign displayed prominently at the point of sale; or (3) a menu.

“Crab product” means a product sold or offered for sale for human consumption that contains meat from any species of the infraorder *Brachyura*. “Whole crab” means an unseparated raw or cooked crustacean of the infraorder *Brachyura* that is sold or offered for sale for human consumption.

Other Provisions

DNR may adopt any other regulations necessary to implement the bill and must develop a website that generally describes the bill's labeling requirements and explains the implications of the bill for restaurants, seafood packers and dealers, Maryland watermen, members of the aquaculture industry, and consumers.

The bill does not preclude the use of additional descriptive language or trade names to describe food fish or shellfish on a label, sign, or menu, as long as the requirements of the bill are met.

Enforcement

DHMH must enforce the bill's provisions and any regulations adopted in conjunction with the bill to the same extent and in the same manner as food establishments under the Health-General Article of the Maryland Annotated Code.

Current Law:

Food Establishments and Food Processing Plants

Generally, "food establishments" are regulated under the Health-General Article. A person must have a license from DHMH or a suitable license from a local health department in order to operate a food establishment. A representative of DHMH may enter any food establishment at a reasonable time to conduct inspections.

DHMH's Office of Food Protection and Consumer Health Services is responsible for assuring that all foods processed, prepared, stored, distributed, and served at both the retail and wholesale levels throughout the State are safe, wholesome, free of adulterants, and properly packaged and labeled. Food processing plants fall under DHMH's jurisdiction, and they are regulated under the Code of Maryland Regulations.

A food establishment licensee that violates any law or regulation relating to food establishments is guilty of a misdemeanor and on conviction is subject to a fine of up to \$1,000 and/or up to 90 days imprisonment for a first violation. For a second violation, the maximum penalty is a \$2,500 fine and/or one year imprisonment. In addition, a violator is subject to a civil penalty of up to \$5,000, to be collected by the District Court for any county, and may be enjoined from continuing the violation. Each day is a separate violation.

Food and Crab Meat Labeling

Misbranding of food is prohibited under the Maryland Food, Drug, and Cosmetic Act. A food is misbranded if, among other things, (1) the food's labeling or packaging is false or misleading in any way; (2) for foods that do not have a definition and standard of identity set by a rule or regulation, the food does not bear labeling that clearly gives the common or usual name of the food, if there is such a name; or (3) it is offered for sale under the name of another food. Under provisions of law governing food establishments (including food service facilities and food processing plants), specific labeling requirements are established for containers of crab meat. Among other requirements, each container of crab meat sold in the State containing crab meat picked from a crab, packed, repacked, or processed outside of the United States must be marked with the words "This product contains crab meat from (name of country of origin)." All crab meat sold in the State, whether processed in a crab meat plant in the State or in a crab meat plant outside the State, must comply with the labeling requirements and standards set by regulations adopted under the law governing food establishments.

DHMH regulations contain further requirements applicable to labeling and marking of crabmeat containers, including that a container of crab meat containing crab meat picked from a crab other than a "blue crab" (*C. sapidus*) is marked with the common name and scientific name of the crab picked into the container.

DHMH regulations also require that food service facilities and food processing plants comply with applicable federal law and regulations, including the federal Food, Drug, and Cosmetic Act.

Fisheries Penalties

Under Title 4 of the Natural Resources Article (which the bill's provisions are included under), except as otherwise provided for specific offenses, a person who violates any provision of the title is guilty of a misdemeanor and subject to a fine of up to \$1,000, with costs imposed in the discretion of the court. A person found guilty of a second or subsequent violation within two years of a prior violation is subject to a fine of up to \$2,000 and/or imprisonment of up to one year, with costs imposed in the discretion of the court. Fish and property involved in the violation are subject to seizure.

Background: DNR administers a "True Blue" certification program that allows restaurants serving department-verified Maryland blue crab product to use a special logo to market or advertise the product. According to DNR, in many cases, crab cakes sold as Maryland crab cakes may be made Maryland-style but not necessarily with Maryland crab meat, or even crab meat from the United States.

A 2013 study by Oceana, an international advocacy group, found that one-third of seafood samples analyzed by the group across the country were mislabeled according to FDA guidelines. The State of Washington enacted a law in 2013 regarding seafood identification that is similar to this bill. The law requires identification of the common name of the species of food fish and shellfish at the point of sale and includes specific provisions regarding halibut and salmon.

State Fiscal Effect: General fund expenditures increase by \$85,642 in fiscal 2016, which accounts for the bill’s October 1, 2015 effective date. This estimate reflects the cost of hiring an additional inspector in DHMH’s Office of Food Protection within the Prevention and Health Promotion Administration to enforce the bill. The additional DHMH inspector provides additional capacity for the Office of Food Protection inspection staff to verify compliance with the bill’s provisions. It includes a salary, fringe benefits, one-time start-up costs including the purchase of a vehicle, and ongoing operating and vehicle maintenance expenses.

Position	1
Salary and Fringe Benefits	\$52,342
Operating Expenses	<u>34,112</u>
Total FY 2016 State Expenditures	\$86,454

Future year expenditures reflect a full salary with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

This analysis assumes that any enforcement of the bill by the Natural Resources Police within DNR is done on normal patrols. DHMH notes that its enforcement of the bill at this level of additional resources (one inspector) includes inspection of food service facilities and ensuring that seafood products are properly identified and labeled. However, the Office of Food Protection does not have the capacity to verify seafood species through laboratory analysis. Thus, if sampling and analysis of seafood is required, more significant costs are incurred.

Adoption of regulations and website development is handled by DNR with existing resources.

Penalty provisions applicable to the bill are not anticipated to have a significant impact on State finance.

Small Business Effect: The bill is expected to have various small business impacts. Restaurants may be limited in their ability to offer crab products and whole crabs depending on the level of identifying information that is available for crab products and

whole crabs the restaurant purchases and/or may have to incur increased costs to reprint menus when the restaurant changes the source of crab products and whole crabs.

Grocery stores and other retailers may also be limited in their ability to offer crab products and whole crabs if sufficient identifying information is not available for crab products and whole crabs the retailers purchase. Seafood distributors may be impacted to the extent the identification requirements limit the distributors' ability to distribute crab products and whole crabs in Maryland or increase the distributors' costs to do so.

Seafood processors, who buy whole crabs landed in different countries, are affected by the bill's requirement that the country where the crab was landed be included on a label, which goes beyond current requirements for crab meat containers.

The impact on the Maryland crab industry overall is unclear. It appears that the bill's identification requirements may increase demand in the State for Maryland crabs and crab meat but also potentially reduce restaurant and retailer demand for crab products and whole crabs in the State overall to the extent that the bill's identification requirements are difficult to comply with.

It is unclear whether the bill's requirement that the common name of the species of food fish or shellfish be identified may meaningfully impact small businesses.

Additional Information

Prior Introductions: HB 913 of 2014 received a hearing in the House Environmental Matters Committee, but no further action was taken.

Cross File: SB 557 (Senator Guzzone, *et al.*) - Education, Health, and Environmental Affairs.

Information Source(s): Department of Natural Resources, Department of Health and Mental Hygiene, Maryland Association of County Health Officers, Department of Legislative Services

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