

Department of Legislative Services
 Maryland General Assembly
 2014 Session

FISCAL AND POLICY NOTE

House Bill 913 (Delegate Luedtke, *et al.*)
 Environmental Matters

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

This bill establishes the Maryland Seafood Authenticity and Enforcement 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*; and (3) requires the State of origin of a crab product sold or offered for sale in the State that originated in the United States, and the country of origin of a crab product sold or offered for sale in the State that originated outside the United States, to be identified at the point of sale.

Fiscal Summary

State Effect: General fund expenditures increase by \$75,200 in FY 2015 to hire an additional inspector within the Department of Health and Mental Hygiene (DHMH), which is assumed to contribute to enforcement, in coordination with the Department of Natural Resources (DNR). Future year general fund expenditures reflect annualization and inflation. Potential increase in general fund revenues due to penalties applicable to violations of the bill’s provisions.

(in dollars)	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
GF Revenue	-	-	-	-	-
GF Expenditure	\$75,200	\$76,200	\$79,600	\$83,200	\$86,900
Net Effect	(\$75,200)	(\$76,200)	(\$79,600)	(\$83,200)	(\$86,900)

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

Local Effect: Potential increase in local health department expenditures.

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. 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

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 unless the person identifies to the buyer at the point of sale (1) the State of origin of the crab product, if it originated in the United States, or (2) the country of origin of the crab product, if it originated outside the United States. The state or country of origin must be identified, as appropriate, on (1) a label on, or displayed with, the 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*.

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.

Current Law:

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 \$75,209 in fiscal 2015, which accounts for the bill’s October 1, 2014 effective date. This estimate reflects the cost of hiring an additional inspector in DHMH’s Office of Food Protection. 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, and ongoing operating expenses.

Position	1
Salary and Fringe Benefits	\$51,745
Operating Expenses	<u>23,464</u>
Total FY 2015 State Expenditures	\$75,209

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

While DHMH is not given any specific enforcement responsibility or authority under the bill, the Office of Food Protection currently inspects food processing facilities and wholesale distributors, and this analysis assumes, for practical purposes, that the office contributes to enforcement of the bill, in coordination with DNR. DNR indicates that enforcement of the bill by the Natural Resources Police (NRP) is done on normal patrols, but that NRP does not necessarily regularly go into food establishments. DHMH notes that its enforcement of the bill at this level of additional resources (one inspector) is limited to records review. By contrast, 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.

State Revenues: General fund revenues may increase as a result of the monetary penalties applicable to violations of the bill's provisions from cases heard in the District Court. The extent of any increase in revenues cannot be reliably estimated at this time.

Local Expenditures: Local health departments inspect restaurants and retailers and may incur increased personnel costs to incorporate verification of compliance with this bill into inspections. For example, Montgomery County indicates that personnel costs increase by \$60,000, and Harford County indicates that personnel costs increase by \$4,000 annually due to the additional time required for inspections. This analysis assumes, for practical purposes, that local health departments contribute to enforcement in coordination with DNR.

Small Business Effect: The bill is expected to have various small business impacts. Restaurants may be limited in their ability to offer crab products depending on the level of identifying information that is available for crab products the restaurant purchases and/or may have to incur increased costs to reprint menus when the restaurant changes the source of crab products.

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

Seafood processors, who buy crabs from different states, are affected by the bill's requirement that the state of origin 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 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: None.

Cross File: None.

Information Source(s): Department of Natural Resources; Department of Health and Mental Hygiene; Maryland Department of Agriculture; Baltimore, Harford, Kent, Montgomery, Somerset, and Worcester counties; town of Berlin; Restaurant Association of Maryland; Maryland Retailers Association; Chesapeake Bay Seafood Industries Association; National Fisheries Institute; Oceana; Department of Legislative Services

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