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SENATE COMMITTEE REPORT
FIRST COMMITTEE OF REFERRAL

DATE: 3/21/90

FURTHER:

Date of 5-Day Notice: 3/22/90
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 3/27/90

Labor and Commerce Committee considered SB 531

Labeling and identification requirements for food products containing farmed finfish.

and recommended:

- replace with _____ CS SB 531 same title
- attached amendment(s) new title
- _____ letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

further referral to Finance

ATTACHES NEW FISCAL NOTE(S):

Department(s)/Date:

Department(s)/Date:

fiscal note(s) Dept of Env Conservation 3/23/90
(for SB 531 & SSSB 531)

zero fiscal note(s) _____

appropriation-no fiscal note

Governor's bill w/fiscal note

SIGNING DO PASS:

Patch Rodery
[Signature]
[Signature]

OTHER RECOMMENDATIONS:

Jan Feb No Rec

[Signature]
Chair: Signature and Recommendation

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: SB 531
PUBLISH DATE: 3/22/90

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Environ. Conservation
 Title: An act establishing certain BRU: Environmental Health
labeling for food containing farmed finfish
 Sponsor: Labor & Commerce Committee Components: Sanitation and Seafood
 Requestor: Senator Eliason

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	2.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.5	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND&STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS,CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	2.5	0.0	0.0	0.0	0.0	0.0
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE	0.0	0.0	0.0	0.0	0.0	0.0

FUNDING: (Thousands of Dollars)

GENERAL FUND	2.5	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
OTHER	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	2.5	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME	0.0	0.0	0.0	0.0	0.0	0.0
TEMPORARY	0.0	0.0	0.0	0.0	0.0	0.0

ANALYSIS: (Attach a separate page if necessary)

One time costs associated with development and distribution of notification to restaurants, retail grocery stores, wholesalers, food and seafood processors of labeling and identification requirements.

Prepared by: Douglas C. Donegan
 Division: Environmental Health

Phone: 465-2609
 Date: 3/23/90

Approved by Commissioner: ADH
 Agency: Environmental Conservation

Date: 3/23/90

Distribution (by preparer) :
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

SB 531, REQUIRING THE LABELING OF FARMED FISH

What the bill does:

Adds to the food, drug and cosmetics statutes regarding "mis-branding," the requirement that any farmed fish sold or being prepared for sale in Alaska be labeled to reveal that it is farmed fish farmed outside of the state.

Issues involved, and purpose of bill:

Consumers' Right to Know

In keeping with increasing consumer awareness of food safety issues, there are growing health concerns about the use of antibiotics and chemicals in farmed fish which are not found in wild fish. The consumer has the right to know which product they are buying.

Truth in Advertising

Without a farmed fish labeling requirement, when fish is sold out of state as a "product of Alaska," and when fish is sold in Alaskan stores or restaurants, the consumer is likely to believe that it is wild fish, and that it is Alaskan fish.

Besides that assumption being unfair to the consumer for the health reason explained above, it is unfair advertising to have the farmed product from out of state, riding on the reputation of Alaska's wild fish which is a different product. Alaska has spent years and millions of dollars promoting its fish as wild, natural fish grown in cold clean Alaskan waters.

This truth in advertising requirement will help preserve Alaska's ability to assure consumers worldwide that if you buy ALASKAN fish, it is natural and wild. It is important to avoid jeopardizing consumer confidence in Alaska's fish.

Examples of application:

If someone buys salmon in a store or orders salmon in a restaurant in Alaska, he or she is very likely to assume that it is pure wild Alaskan salmon. If they are really buying farm-grown Chilean salmon, they have a right to know that.

If an Alaskan seafood processing company buys farmed fish from British Columbia, smokes it, and ships it out of state for sale, should they be allowed to simply label it as a "product of Alaska?" They can now. If we add only a requirement to label it as "farmed fish," it implies that it was "farmed in Alaska." SB 531 requires that the labeling be fully truthful by letting the consumer know that the raw product was actually non-Alaskan farmed fish. This also prevents the public perception that some Alaskan fish is actually farmed.

STATE OF ALASKA
THE LEGISLATURE

FOUCHY STATE CAPITOL
BUREAU ALASKA 99511
907 465 1800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 26, 1990

SUBJECT: Application of SB 531 to restaurants
(Work Order No. 6-2366A)

TO: Senator Dick Eliason
Chair, Senate Labor & Commerce Committee

FROM: Theresa L. Bannister *TB*
Legislative Counsel

You have requested an opinion from this office as to whether SB 531 prohibits the sale of certain farmed finfish products in restaurants.

SB 531 establishes a new category of misbranded foods under AS 17.20, specifically farmed finfish products that don't comply with certain labelling or disclosure requirements. AS 17.20.290(a)(1) contains an unqualified prohibition against the sale of misbranded foods. AS 17.20.340 indicates what a "sale" covers. AS 17.20.340 reads as follows:

Sec. 17.20.340. SCOPE OF PROVISIONS DEALING WITH SALE. The provisions of this chapter regarding the sale of food, drugs, devices, or cosmetics include the manufacture, production, processing, packing, exposure, offer, possession, and holding of them for sale; the sale, dispensing, and giving of them, and the supplying or applying of them in the conduct of a food, drug, or cosmetic establishment.

It is not clear whether all of the aspects of sale described in AS 17.20.340 are tied to the phrase "in the conduct of a food . . . establishment". If not, the section would clearly cover restaurants, since there would be no place limitation.

On the other hand, if sale is tied to food, drug, or cosmetic establishments, the coverage appears to include restaurants.

Senator Dick Eliason
Page 2
March 26, 1990

The term "food establishment" is not defined in the chapter. Although "establishment" is used in other sections, "food establishment" is not, and there do not appear to be any provisions expressly limiting the scope of "food establishment". In 18 AAC 34, the regulations that address misbranded food and that have been adopted under the authority of AS 17.20 are not particularly helpful on this issue. They do not state explicitly that they apply to restaurants but their definition of "establishment" (and its accompanying definition of "prepare" and "processing") appears to be broad enough to include restaurants. See 18 AAC 34.010, 18 AAC 34.140, and 18 AAC 34.910.

A reasonable interpretation of the broad term "food establishment" would include a place where food is prepared and sold, to-wit, a restaurant. If the legislature had intended to limit the term, such as to grocery stores, it could have done so easily by using a more limited term. The use of such a broad, inclusive term suggests that a broad coverage was intended.

Therefore, in light of the above it is my opinion that AS 17.20 covers the sale of misbranded products in restaurants, and that the sale of SB 531's new category of misbranded food in a restaurant is prohibited under AS 17.20.-290.

If I may be of further assistance, please advise.

TLB:pl:mi
WKP3/077

Statutes re:
Scope of
applicability of
"mis-branded"
17.20.290
17.20.340

§ 17.20.03v

§ 17.20.040

FOOD AND DRUGS

§ 17.20.040



Sec. 17.20.040. Misbranded foods. Food is misbranded if

- (1) its labeling is false or misleading in any particular;
- (2) it is offered for sale under the name of another food;
- (3) it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation" and, immediately thereafter, the name of the food imitated;
- (4) its container is made, formed, or filled so as to be misleading;
- (5) it is in package form unless it bears a label containing (A) the name and place of business of the manufacturer, packer, or distributor and (B) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; however, under (B) of this paragraph reasonable variations are permitted, and exemptions for small packages shall be established by regulations prescribed by the department;
- (6) a word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed with the conspicuousness (as compared with other words, statements, designs or devices, in the labeling) and in terms which make it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;
- (7) it purports to be or is represented as a food for which a definition and standard of identity has been prescribed by regulations as provided by AS 17.20.010, unless (A) it conforms to the definition and standard, and (B) its label bears the name of the food specified in the definition and standard and the common names of optional ingredients other than spices, flavoring, and coloring present in the food as required by regulation;
- (8) it purports to be or is represented as (A) a food for which a standard of quality has been prescribed by regulations, and its quality falls below that standard, unless its label bears, in the manner and form the regulations specify, a statement that it falls below that standard; or (B) a food for which a standard of fill of container has been prescribed by regulation as provided by AS 17.20.010 and it falls below the applicable standard of fill of container, unless its label bears, in the manner and form as the regulations specify, a statement that it falls below that standard;
- (9) it is not subject to the provisions of (7) of this section, unless it bears labeling clearly giving (A) the common or usual name of the food, if any, and (B) in case it is fabricated from two or more ingredients, the common or usual name of each ingredient; except that however spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings, without naming each; however, to the extent that compliance with the requirements of (B) of this paragraph is impracticable, or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the department, but the requirements of (B) of this paragraph do not

SB
531

apply to food products which are packaged at the direction of purchasers at retail at the time of sale, the ingredients of which are disclosed to the purchasers by other means in accordance with regulations adopted by the department;

(10) it purports to be or is represented for special dietary uses, unless its label bears information concerning its vitamin, mineral, and other dietary properties the commissioner determines to be, and by regulations prescribes as, necessary in order fully to inform purchasers as to its value for those uses;

(11) it bears or contains artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact; however, to the extent that compliance with the requirements of this paragraph is impracticable, exemption shall be established by regulations adopted by the department. (§ 11 ch 129 SLA 1949)

Collateral references. — Validity and construction of regulations dealing with misrepresentation in the sale of Kosher food, 52 ALR3d 959.

Sec. 17.20.045. Misbranding halibut. No person may label or offer for sale any food fish product designated as halibut, with or without additional descriptive words, unless the food fish product is *Hippoglossus* or *Hippoglossus Stenolepis*. A person who violates this section is guilty of misbranding food under provisions of this chapter. (§ 1 ch 59 SLA 1968)

Sec. 17.20.050. Emergency permit control. When the department finds after investigation that the distribution in the state of a class of food may, by reason of contamination with microorganisms during the manufacture, processing, or packing, be injurious to health, and that the injurious nature cannot be adequately determined after the articles have entered commerce, it, in that case only, shall adopt regulations providing for the issuance of permits to manufacturers, processors, or packers of that class of food, to which shall be attached the conditions governing the manufacture, processing, or packing of that class of food, for a temporary period of time as may be necessary to protect the public health. After the effective date of the regulations, and during the temporary period, no person may introduce or deliver for introduction into commerce the food so manufactured, processed or packed by any manufacturer, processor, or packer unless the manufacturer, processor, or packer of it holds a permit issued by the commissioner. (§ 12(a) ch 129 SLA 1949)

Sec. 17.20.060. Suspension and reinstatement of emergency permit. The commissioner may suspend immediately upon notice a permit issued under AS 17.20.050 if it is found that the conditions of the permit have been violated. The holder of a suspended permit may apply for the reinstatement of the permit, and the commissioner, immediately after prompt hearing and an inspection of the estab-

adulterated or on the superior 1 that commis- adulterated or other marking. § 25 (1981))

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any room, building, vehicle of transportation or other structure which is unsound, or contains filthy, decomposed, or putrid substance, or a substance that may be poisonous or deleterious to health or otherwise unsafe, is a nuisance. Whenever the commissioner of environmental conservation finds such an article, the commissioner shall immediately condemn or destroy it or in any other manner render it unsalable as human food. (§ 6(d) ch 129 SLA 1949; am Executive Order No. 51, § 28 (1981))

Effect of amendments. — The 1981 amendment added "of environmental con- servation" following "the commissioner" in the second sentence.

Sec. 17.20.280. Injunction proceedings. The commissioner of environmental conservation and the commissioner of health and social services may apply to the superior court for, and the court has jurisdiction to grant, a temporary or permanent injunction restraining a person from violating their respective portions of AS 17.20.290. (§ 4 ch 129 SLA 1949; am Executive Order No. 51, § 29 (1981))

Effect of amendments. — The 1981 amendment added "of environmental con- servation and the commissioner of health and social services" following "commis- sioner" and added "their respective portions of" following "person from violating."

Article 6. Prohibited Acts and Penalties.

<p>Section</p> <p>290. Prohibited acts</p> <p>300. Determination of misleading labeling or advertisement</p> <p>310. Penalties</p>	<p>Section</p> <p>320. Effect of written guaranty</p> <p>330. Liability for dissemination of false advertising</p>
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Collateral references. — 25 Am. Jur. 2d, Drugs, Narcotics, and Poisons, § 40 et seq; 35 Am. Jur. 2d, Food, §§ 63 et seq., 74 et seq.

Sec. 17.20.290. Prohibited acts. (a) The following acts and the causing thereof are prohibited:

- (1) the manufacture, or sale, or delivery, holding, or offering of sale of food, drug, device, or cosmetic that is adulterated or misbranded;
- (2) the adulteration or misbranding of food, drug, device or cosmetic;
- (3) the receipt in commerce of food, drug, device, or cosmetic that is adulterated or misbranded, and the delivery or proffered delivery of them for pay or otherwise;
- (4) the sale, delivery for sale, holding for sale, or offering for sale of an article in violation of AS 17.20.050 — 17.20.070 and 17.20.100;

- (5) the dissemination of a false advertisement;
- (6) the refusal to permit entry or inspection, or to permit the taking of a sample, as authorized by AS 17.20.200;
- (7) the giving of a guaranty or undertaking which is false, except by a person who relied on a guaranty or undertaking to the same effect signed by and containing the name and address of the person residing in the state from whom the person who relied on the guarantee or undertaking received the food, drug, device, or cosmetic in good faith;
- (8) the removal or disposal of a detained or embargoed article in violation of AS 17.20.230 — 17.20.270;
- (9) the alteration, mutilation, destruction, obliteration, or removal of the whole or part of the labeling of, or the doing of any other act with respect to, a food, drug, device, or cosmetic, if the act is done while the article is held for sale and results in the article being misbranded;
- (10) forging, counterfeiting, simulating, or falsely representing, or without proper authority using a mark, stamp, tag, label or other identification device authorized or required by regulations adopted under AS 17.20.230 — 17.20.270;
- (11) the using, on the labeling of a drug or in an advertisement relating to a drug, of a representation or suggestion that an application with respect to the drug is effective under AS 17.20.110 or that the drug complies with the provisions of that section;
- (12) the sale or offering for sale of frozen fish as fresh fish;
- (13) the improper labeling and drug substitution by pharmacists under AS 17.20.105.

(b) The commissioner of environmental conservation or a designee of the commissioner is responsible for enforcing the provisions of paragraphs (a)(1), (2), (3), (4), (6), (7), (8), (9), and (10) of this section, if the subject of the prohibited act involves food or cosmetics, and the provisions of paragraph (a)(12) of this section. This subsection does not limit the authority of peace officers.

(c) The commissioner of health and social services or a designee of the commissioner is responsible for enforcing the provisions of paragraphs (a)(1), (2), (3), (4), (6), (7), (8), (9), and (10) of this section, if the subject of the prohibited act involves drugs or devices, and the provisions of paragraphs (a)(5), (11), and (13) of this section. This subsection does not limit the authority of peace officers. (§ 3 ch 129 SLA 1949; am § 1 ch 119 SLA 1967; am § 2 ch 17 SLA 1971; am Executive Order No. 51, § 30 (1981))

Cross references. — For adulteration of food and its sale, see AS 17.05.020.

Effect of amendments. — The 1981 amendment added subsections (b) and (c).

Sec. 17.20.300. Determination of misleading labeling or advertisement. If an article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false

Effect of amendments. — The 1981 amendment deleted "on" preceding "the request of," added "of health and social services" following "the request of the commissioner" and deleted "the commissioner" preceding "the name and

post office address."

Collateral references. — What constitutes "false advertising" of food products or cosmetics within §§ 5 and 12 of the Federal Trade Commission Act (15 USCS §§ 45, 52), 50 ALR Fed. 16

Article 7. General Provisions.

Section

- 340. Scope of provisions dealing with sale
- 350. Report of minor violations
- 360. Hearing before report of criminal violation

Section

- 370. Definitions
- 380. Short title

Sec. 17.20.340. Scope of provisions dealing with sale. The provisions of this chapter regarding the sale of food, drugs, devices, or cosmetics include the manufacture, production, processing, packing, exposure, offer, possession, and holding of them for sale; the sale, dispensing, and giving of them, and the supplying or applying of them in the conduct of a food, drug, or cosmetic establishment. (§ 2(q) ch 129 SLA 1949)

Sec. 17.20.350. Report of minor violations. Nothing in this chapter requires either the commissioner of environmental conservation or the commissioner of health and social services, as the case may be, to report minor violations of their respective portions of this chapter for prosecution, or for the institution of libel or injunction proceedings, when that commissioner believes that the public interest will be adequately served by a suitable written notice or warning. (§ 8 ch 129 SLA 1949; am Executive Order No. 51, § 32 (1981))

Effect of amendments. — The 1981 amendment added "either" following "chapter requires," added "of environmental conservation or the commissioner of health and social services, as the case may

be" following "the commissioner," added "of their respective portions" following "report minor violations" and substituted "that" for "the" preceding "commissioner believes that."

Sec. 17.20.360. Hearing before report of criminal violation. The attorney general, to whom the commissioner of environmental conservation or the commissioner of health and social services, as the case may be, reports a violation of this chapter, shall institute appropriate proceedings in the superior court without delay and prosecutes them in the manner required by law. Before a violation of this chapter is reported to the attorney general, the person against whom the proceeding is contemplated shall be given appropriate notice and an opportunity to respond to the appropriate commissioner, orally or in writing, in person or by attorney, with regard to the contemplated proceeding. (§ 7 ch 129 SLA 1949; am Executive Order No. 51, § 3 (1981))

(2) "food bank" means an organization recognized by the state or federal government as a nonprofit organization and that operates principally to collect, inspect, and salvage donated food for free distribution to needy persons. (§ 1 ch 75 SLA 1984)

Sec. 17.20.370. Definitions. In this chapter

(1) "advertisement" means a representation disseminated, other than by labeling, for the purpose of inducing, or which is likely to induce directly or indirectly the purchase of food, drugs, devices or cosmetics;

(2) "antiseptic", in the labeling or advertisement of a drug, is a representation that it is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or other use involving prolonged contact with the body;

(3) "contaminated with filth" means food, drug, device, or cosmetic not securely protected from dust, dirt, and as far as necessary by all reasonable means, from foreign or injurious contamination;

(4) "cosmetic" means an article intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body for cleansing, beautifying, promoting attractiveness, or altering the appearance, and an article intended for use as a component of an article enumerated in this paragraph; except that the term does not include soap intended for cleansing purposes only;

(5) "device" except when used in AS 17.20.040(6), 17.20.090(3), 17.20.150(3), 17.20.290(a)(10) and 17.20.300 means an instrument, apparatus, and contrivance, including its components, parts, and accessories, intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animal; or to affect the structure or function of the body of man or animal;

(6) "drug" means an article recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary; an article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animal; an article other than food, intended to affect the structure or function of the body of man or animal; and an article intended for use as component of an article specified in this paragraph but does not include devices or their components, parts, or accessories;

(7) "federal act" means the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 — 392; 52 Stat. 1040 — 1059;

(8) "food" means an article used for food or drink for man or animal, chewing gum, and articles used for components of either of them;

(9) "immediate container" does not include a package liner;

(10) "label" means a display of written, printed or graphic matter upon the immediate container of an article; however, a requirement made by or under authority of this chapter that a word, statement, or

