

2024 Regular Session

SENATE BILL NO. 166

BY SENATORS CONNICK, ALLAIN AND FESI

PUBLIC HEALTH. Provides relative to seafood safety. (gov sig)

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AN ACT

To amend and reenact R.S. 39:2101 and R.S. 40:5.5.2 and 5.5.4, to enact R.S. 3:4706, and to repeal R.S. 40:4(A)(1)(b) and R.S. 56:578.14, relative to seafood safety; to provide for powers and duties of the commissioner of agriculture; to prohibit misleading packaging and marketing of seafood products; to provide for state procurement of seafood products; to provide for food establishment requirements; to provide for retailer requirements; to provide for powers and duties of the Louisiana Department of Health; to provide definitions; to provide for penalties; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 3:4706 is hereby enacted to read as follows:

§4706. Seafood; misleading packaging and marketing

A. The legislature finds that consumers must be protected from misleading and false labeling of seafood products. Louisiana's seafood culture is world renowned and is a vital part of our culture and heritage. It is not only potentially misleading but dangerous to public health to solely rely on names and phrases associated with Louisiana when purchasing or consuming seafood.

1 Phrases such as "Boudreauxs", "Gulf", and "Louisiana caught" are often on
2 products that are from foreign countries that are not adhering to the same
3 quality standards as Louisiana. Consumers need to be well informed on what
4 seafood they are purchasing and consuming.

5 B.(1) No person shall engage in marketing, labeling, packaging, or
6 advertising of crawfish, shrimp, or any product thereof, that implies or suggests
7 any association with Louisiana's culture and heritage if the association is likely
8 to deceive the public as to its origin.

9 (2) No person shall market crawfish, shrimp, or any product thereof
10 using any Louisiana-related imagery, phrases, colors, or styles if the products
11 are not genuinely linked to Louisiana's cultural heritage and produced within
12 the state or landed within the state.

13 (3) The prohibition in this Subsection shall not apply if the country of
14 origin appears on the front of the package in bold typed print of not less than
15 thirty point font.

16 C. The commissioner shall be responsible for ensuring compliance with
17 this Section. When the commissioner has reason to believe that a violation has
18 occurred, the commissioner may do any of the following:

19 (1) Issue a stop order prohibiting the continued distribution and sale of
20 the seafood product.

21 (a) Any violation of a stop order shall constitute a separate violation.

22 (b) A stop order may be released by the commissioner upon a
23 determination by the commissioner that the cause for issuing the stop order has
24 been remedied.

25 (c) Any person aggrieved by a stop order may petition the commissioner
26 for a hearing to contest the validity of the stop order by making a written
27 request within five calendar days after issuance of the stop order. The hearing
28 shall be held within ten calendar days of receipt of the written request for a
29 hearing. The commissioner may appoint a hearing officer to preside over the

1 matter. The commissioner shall issue a ruling in the matter. The hearing and
2 any subsequent appeal shall be held in accordance with the provisions of the
3 Administrative Procedure Act.

4 (d) Based upon the results of the hearing, or a consent agreement, the
5 commissioner may take one or more of the following actions:

6 (i) Release the stop order.

7 (ii) Require the cause for the stop order to be remedied prior to releasing
8 the stop order.

9 (iii) Amend the stop order.

10 (2) Issue fines for violations of this Section as follows:

11 (a) For a first offense, a fine of not more than fifteen thousand dollars for
12 each violation.

13 (b) For a second offense, a fine of not more than twenty-five thousand
14 dollars for each violation.

15 (c) For a third and subsequent offense, a fine of not more than fifty
16 thousand dollars for each violation.

17 D. If the commissioner issues a stop order for any crawfish, shrimp, or
18 any product thereof, a retailer shall have a claim for reimbursement against the
19 distributor that supplied the product in violation of this Section.

20 E. Penalties shall apply only to a person that places a label on crawfish,
21 shrimp, or any product thereof, and may be assessed only by a ruling of the
22 commissioner based upon an adjudicatory hearing held by the Louisiana
23 Commission of Weights and Measures pursuant to R.S. 3:4605.

24 F. The commissioner shall promulgate rules in accordance with the
25 Administrative Procedure Act as are necessary to enforce the provisions of this
26 Section.

27 Section 2. R.S. 39:2101 is hereby amended and reenacted to read as follows:

28 §2101. Food service facilities; use of certified meat, poultry, and seafood products

29 A.(1) All state agencies, state institutions, or local school districts operating

1 food service facilities for students, or for patients or inmates in their custody, shall
 2 utilize only those meat, poultry, and seafood products that have met all Louisiana
 3 Department of Agriculture and Forestry requirements for grading and certification
 4 service.

5 **(2) All state agencies, state institutions, or local school districts operating**
 6 **food service facilities for students, or for patients or inmates in their custody,**
 7 **shall only utilize domestic shrimp or domestic crawfish as defined in R.S.**
 8 **40:5.5.2.**

9 B.(1) No contract shall be entered into by any state agency, state institution,
 10 or local school district for the operation of any facility that includes a food service
 11 facility, unless the contract contains provisions requiring that any meat, poultry, or
 12 seafood utilized in such facility has met all Louisiana Department of Agriculture and
 13 Forestry requirements for grading and certification service.

14 **(2) No contract shall be entered into by any state agency, state**
 15 **institution, or local school district for the operation of any facility that includes**
 16 **a food service facility, unless the contract contains provisions requiring that any**
 17 **seafood shall only utilize domestic shrimp or domestic crawfish as defined in**
 18 **R.S. 40:5.5.2.**

19 Section 3. R.S. 40:5.5.2 and 5.5.4 are hereby amended and reenacted to read as
 20 follows:

21 §5.5.2. ~~Chinese seafood warning label program~~ **Seafood safety**

22 A. The legislature finds that serious risks to public health may be posed by
 23 radiation, antibiotics, such as chloramphenicol and fluoroquinolones, chemicals,
 24 malachite green, copper salts, and other residues found in ~~Chinese~~ seafood **that**
 25 **originates from outside of the United States.** The overexposure to antibiotics from
 26 such seafood may cause serious antibiotic resistance to the consumer. In addition,
 27 chemicals such as malachite green are known carcinogens. It is the intent of the
 28 legislature to protect the health and welfare of Louisiana consumers from potentially
 29 harmful residues in **imported** seafood ~~imported from the People's Republic of China~~

1 that ~~are~~ **is** sold or served in Louisiana. The legislature further recognizes that the
 2 magnitude of the health risks associated with imported seafood requires the full
 3 cooperation and collaboration of the Louisiana Department of Health,
 4 Louisiana Department of Agriculture and Forestry, Louisiana Department of
 5 Wildlife and Fisheries, the Department of Culture, Tourism and Recreation,
 6 and the Department of Environmental Quality. Therefore, the legislature finds
 7 that ~~Louisiana consumers have the right to know if seafood imported from the~~
 8 ~~People's Republic of China is being served in a food service establishment or is~~
 9 ~~available for purchase.~~

10 B.(1) The state health officer shall prepare and promulgate all rules and
 11 regulations necessary to ensure that all consumers of imported marine and freshwater
 12 seafood products ~~from the People's Republic of China~~ are warned about the potential
 13 health risks associated with the consumption of those products.

14 (2) The state health officer, **in consultation with the Seafood Safety Task**
 15 **Force, office of the lieutenant governor, the Louisiana Seafood Promotion and**
 16 **Marketing Board,** and the Louisiana Restaurant Association shall employ a
 17 marketing campaign that places an emphasis on highlighting the benefits of eating
 18 domestic seafood.

19 ~~C.~~**(3)** The state health officer shall produce a statement that may be included
 20 on labels, placards, menu boards, or other promotional signage that encourages
 21 consumers to consume Louisiana seafood and warns of the risks that may be
 22 associated with the consumption of ~~Chinese~~ **imported** seafood.

23 ~~D.~~**(4)** With the cooperation and assistance of the Louisiana Retailers
 24 Association, the Louisiana Restaurant Association, and other necessary
 25 organizations, the state health officer in conjunction with the Department of
 26 Agriculture and Forestry shall encourage the display of the signage and other
 27 promotional literature as provided for in ~~Subsection C~~ of this Section where seafood
 28 sales occur.

29 **C. As used in this Part, the following terms shall have the following**

1 meanings:

2 (1) "Commingle" means to cause to blend together, mix, or combine
3 domestic and imported seafood.

4 (2) "Domestic crawfish" means any food product that is derived from
5 red swamp crawfish (*Procambarus clarkii*), white river crawfish (*Procambarus*
6 zonangulus), or pond-raised crawfish and is either:

7 (a) Raised, harvested, and processed in Louisiana.

8 (b) Raised, harvested, and processed in the United States and has
9 satisfied the same or substantially equivalent testing and labeling requirements
10 of this state.

11 (3) "Domestic shrimp" means any food product that is derived from the
12 species *Litopenaeus setiferus*, *Farfantepenaeus aztecus*, *Farfantepenaeus*
13 *duorarum*, *Sicyonia brevirostris*, *Pandalus borealis*, and *Pleoticus robustus* and
14 is either:

15 (a) Caught in Louisiana waters, the Gulf of Mexico, or any other
16 adjacent state waters and landed and processed in Louisiana.

17 (b) Caught, landed, and processed in the United States and has satisfied
18 the same or substantially equivalent testing and labeling requirements of this
19 state.

20 * * *

21 §5.5.4. Imported crawfish and shrimp; notice to patrons of food service
22 establishments required

23 A. ~~As reflected in Act No. 330 of the 2009 Regular Session of the~~
24 ~~Legislature, this state recognizes that serious risks to public health may be posed by~~
25 ~~antibiotics, radiation, and numerous toxins found in seafood products, including but~~
26 ~~not limited to crawfish and shrimp, that originate outside of the United States. It~~
27 ~~remains the intent of the legislature to protect Louisiana consumers from potentially~~
28 ~~harmful chemicals and residues in seafood products that are imported from foreign~~
29 ~~countries and sold or served in food service establishments in this state. Therefore,~~

1 ~~the legislature declares that Louisiana consumers have the right to know if crawfish~~
2 ~~or shrimp imported from a foreign country is being served in a food service~~
3 ~~establishment, as the consumption of such seafood may pose a health risk.~~

4 B.(1) Any food service establishment that uses a menu as a standard business
5 practice and sells or provides cooked or prepared crawfish or shrimp that originate
6 outside of the United States shall display **the following disclaimer in a clearly**
7 **visible location on the menu:**

8 **"Some items served at this establishment may contain imported crawfish**
9 **or shrimp. Ask for more information."**

10 ~~on all menus the country of origin of such crawfish or shrimp, or denote that the~~
11 ~~crawfish or shrimp are imported, in letters no smaller than the same size, font, and~~
12 ~~shade as the product being offered, immediately adjacent to the menu listing of the~~
13 ~~seafood item being sold. In lieu of this requirement, the notice shall be paper-clipped~~
14 ~~to the menu, with the same location, size, font, and shade restrictions required when~~
15 ~~the notice is listed directly on the menu.~~

16 (2)**B.(1)** Any food service establishment that does not use a menu as a
17 standard business practice and sells or provides cooked or prepared crawfish or
18 shrimp that originate outside of the United States shall display **the following**
19 **disclaimer** on a sign posted at the main entrance to the establishment:

20 **"Some items served at this establishment may contain imported seafood.**
21 **Ask for more information."**

22 ~~that certain crawfish or shrimp, as applicable, being served within originate from a~~
23 ~~foreign country.~~

24 (2) Each sign shall be at least eighteen inches tall and eighteen inches wide
25 and shall be written in the English language in letters not less than one inch in size.
26 The sign shall be placed in an open area and in a conspicuous position not less than
27 thirty-six inches from the floor so that it is visible to all patrons.

28 C. ~~Any violation of this Section shall constitute a violation of the state~~
29 ~~sanitary code.~~

1 C.(1) No owner or employee of a restaurant or other retailer that sells
2 imported seafood shall misrepresent to the public, either verbally, on a menu,
3 or on signs displayed on the premises, that the crawfish or shrimp being sold is
4 domestic.

5 (2) All representations, notices, and declarations made to the general
6 public under this provision shall state clearly whether or not the crawfish or
7 shrimp being sold to the consumer at the point of purchase is either domestic
8 or imported.

9 D. For any seafood that is sold unpackaged, a food establishment shall
10 clearly display the country of origin in a manner that is easily visible to the
11 consumer.

12 E.(1) The Louisiana Department of Health shall be responsible for
13 ensuring compliance with this Section. Any violation of this Section shall
14 constitute a violation of the state Sanitary Code. The department shall issue
15 finest for violations of this Section as follows:

16 (a) For a first offense, a fine of not less than two hundred dollars and not
17 more than five hundred dollars per violation. The department, in its discretion,
18 may provide an opportunity for corrective action in lieu of a fine for a first
19 offense.

20 (b) For a second offense, a fine of not less than five hundred dollars and
21 not more than one thousand dollars per violation.

22 (c) For a third and subsequent offense, a fine of not less than one
23 thousand dollars and not more than two thousand dollars per violation.

24 (2) Notwithstanding any provision of law to the contrary, including R.S.
25 40:6(D), prior issuance of a notice of violation or compliance order shall not be
26 a prerequisite to imposing the fines authorized by this Subsection, which may
27 be imposed by issuance of a notice and order of imposition of penalties. The
28 notice shall state with specificity the nature of the violation, shall be served on
29 the violator by any means authorized by the Sanitary Code, and shall be subject

1 to the same administrative appeal procedures and delays as provided for
2 compliance orders in the Sanitary Code.

3 F. The department shall establish a reporting mechanism for members
4 of the public to report suspected violations of this Section.

5 G. Reports to the department of suspected violations may be made
6 anonymously. No person who in good faith reports a suspected violation to the
7 department shall be liable for any civil damages. This Subsection shall not
8 exempt from liability those individuals who intentionally cause damages to
9 another individual, business, or entity.

10 ~~D.H.~~ The Louisiana Department of Health shall promulgate all such rules in
11 accordance with the Administrative Procedure Act as are necessary to enforce the
12 provisions of this Section.

13 ~~E.I.~~ For purposes of this Section, "food service establishment" shall ~~have the~~
14 ~~meaning ascribed in R.S. 40:5.5.~~ mean any establishment provided for in R.S.
15 40:5.5 and any seafood market, grocer, vehicle, or other entity or person that
16 sells food directly to the public for consumption.

17 Section 4. R.S. 40:4(A)(1)(b) and R.S. 56:578.14 are repealed.

18 Section 5. The Louisiana Department of Health and the Louisiana Department of
19 Agriculture and Forestry shall individually promulgate, in accordance with the
20 Administrative Procedure Act, any emergency rules necessary to implement the provisions
21 of this Act relevant to that department.

22 Section 6. This Act shall become effective upon signature by the governor or, if not
23 signed by the governor, upon expiration of the time for bills to become law without signature
24 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
25 vetoed by the governor and subsequently approved by the legislature, this Act shall become
26 effective on the day following such approval.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Amanda Trapp.

DIGEST

SB 166 Engrossed

2024 Regular Session

Connick

Proposed law prohibits potentially misleading packaging and marketing of seafood products as Louisiana products.

Proposed law requires the commissioner of agriculture to ensure compliance and issue fines for violation of proposed law.

Present law requires all state agencies, state institutions, and local school districts that operate food service facilities for students, patients, or inmates to only utilize meat, poultry, and seafood products that have met all Louisiana Department of Agriculture and Forestry requirements for grading and certification.

Proposed law adds that those entities only utilize domestic shrimp or domestic crawfish as defined in proposed law.

Present law establishes a Chinese seafood warning label program.

Proposed law modernizes the warning label program to include all imported seafood.

Proposed law provides definition for "domestic shrimp" and "domestic crawfish".

Present law requires food service establishments that sell or provide cooked or prepared crawfish or shrimp that originate outside of the United States to notify patrons that the seafood is imported or to provide the country of origin for seafood. Present law requires the Louisiana Department of Health to ensure compliance with present law.

Present law prohibits an owner or manager of a restaurant that sells imported crawfish or shrimp from misrepresenting to the public, either verbally, on a menu, or on signs displayed on the premises, that the crawfish or shrimp is domestic. Present law requires the district attorney of the district where the restaurant is located to have jurisdiction over violations.

Proposed law combines the present law provisions and grants enforcement authority of both provisions to the Louisiana Department of Health and increases fines issued by the department.

Proposed law changes the notification requirement to require a disclaimer that imported crawfish or shrimp may be sold at the establishment to be printed on a menu or placed on a sign displayed at the front of the establishment.

Proposed law provides additional notification requirements for food establishments that sell unpackaged crawfish or shrimp.

Proposed law requires the Louisiana Department of Health to establish a reporting mechanism for members of the public to report suspected violations and provides for limitations on liability for individuals who report.

Proposed law repeals provisions in the Sanitary Code relative to Chinese seafood.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 39:2101 and R.S. 40:5.5.2 and 5.5.4; adds R.S. 3:4706; repeals R.S. 40:4(A)(1)(b) and R.S. 56:578.14)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Health and Welfare to the original bill

1. Changes requirements for certain seafood products that are labeled or marketed in association with Louisiana's culture and heritage.
2. Provides for the powers of the commissioner of agriculture in regulating the products.
3. Changes notification requirements for food service establishments that serve imported crawfish or shrimp.
4. Adds discretion of the Louisiana Department of Health in assessing fines for first offense violations of the notification requirements.
5. Makes technical changes.