

A-Engrossed
House Bill 4068

Ordered by the House February 9
Including House Amendments dated February 9

Sponsored by Representative BOONE, Senator THOMSEN; Representatives BENTZ, CAMERON, COWAN, KENY-GUYER, MCLANE, PARRISH, ROBLAN, WITT, Senators JOHNSON, KRUSE, OLSEN, PROZANSKI, ROSENBAUM, VERGER, WHITSETT (Presession filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Provides that food bank assumption or sharing of cost to process reclaimed fish for food bank use or distribution is not sale, purchase or other commerce making fish subject to labeling, packaging or similar requirements for commercially sold foods. [*Allows State Department of Agriculture to conditionally waive labeling requirements for reclaimed fish that food bank uses or distributes.*] **Exempts unadulterated reclaimed fish that food establishment distributes to food bank or that food bank uses or distributes without charge from certain labeling requirements.**

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to food banks; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 2 of this 2012 Act is added to and made a part of ORS 616.205 to 616.385.

SECTION 2. (1) As used in this section:

(a) **"Bycatch" means commercially caught fish of a species that was not targeted for harvesting.**

(b) **"Food bank" means a surplus food collection and distribution system operated and established to assist in bringing donated food to nonprofit charitable organizations and individuals for the purpose of reducing hunger and meeting nutritional needs.**

(c) **"Hold fish" means egg-bearing fish harvested as part of a species conservation, rehabilitation or enhancement program.**

(d) **"Reclaimed fish" means bycatch, hold fish or seized fish that a federal or state agency, or other persons acting pursuant to federal or state law, provides to a food bank.**

(e) **"Seized fish" means illegally caught fish confiscated by a federal or state agency.**

(2) **Notwithstanding ORS 616.210, if a food bank supplies reclaimed fish to a food establishment, payment by another food bank of all or part of the cost of the food establishment services does not cause the manufacturing, production, processing, packing, possession and holding of the reclaimed fish by the food establishment to be for purposes of sale or other commerce if:**

(a) **The food establishment wraps or packages the reclaimed fish in a manner not designed for retail sale; and**

(b) **Except as provided in subsection (5) of this section, the food establishment supplies**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 the wrapped or packaged reclaimed fish only to food banks.

2 (3) Notwithstanding ORS 616.210, if a food bank supplies reclaimed fish to a food estab-
3 lishment, payment to the supplying food bank or the food establishment by another food
4 bank of all or part of the cost of the food establishment services is not a sale or purchase
5 of the reclaimed fish if:

6 (a) The food bank that supplied the reclaimed fish and each nonsupplying food bank that
7 paid all or part of the cost of the food establishment services receives a share of the pro-
8 cessed reclaimed fish as mutually determined by the food banks; and

9 (b) All food banks receiving a share of the processed reclaimed fish repackage, use or
10 distribute the reclaimed fish only:

11 (A) For food bank purposes; and

12 (B) Without charge to the recipient.

13 (4) Payment by a food bank of all or part of the cost to process reclaimed fish may qualify
14 under subsections (2) and (3) of this section regardless of whether the payment of costs oc-
15 curs before, during or after the provision of processed reclaimed fish to the paying food
16 bank.

17 (5)(a) A processing agreement between a food establishment and a food bank may provide
18 for the food establishment to retain a mutually determined portion of reclaimed fish or to
19 retain the byproducts of reclaimed fish. Notwithstanding ORS 616.210 and except as provided
20 in paragraph (d) of this subsection, food establishment retention of a portion of or of by-
21 products of reclaimed fish supplied by a food bank is not a sale, dispensing or giving of food
22 by the food bank to the food establishment.

23 (b) Notwithstanding ORS 616.210 and except as provided in paragraph (d) of this sub-
24 section, the provision of processed reclaimed fish to a food bank by a food establishment
25 retaining a portion of or byproducts of the reclaimed fish is not a sale, dispensing or giving
26 of food by the food establishment to the food bank.

27 (c) Food establishment retention of a portion of or byproducts of reclaimed fish under
28 this subsection may include, but need not be limited to, retention for the purpose of offset-
29 ting all or part of the cost of food establishment services.

30 (d) This subsection does not apply to any retention of a portion of or byproducts of re-
31 claimed fish that is contrary to federal law, or to federal or state agency restrictions or
32 prohibitions, regarding the disposition of reclaimed fish or the byproducts of reclaimed fish.

33 (e) Any portion of or byproducts of reclaimed fish retained by a food establishment are
34 subject to ORS 616.205 to 616.385.

35 (6) The distribution of reclaimed fish in this state by a food bank for food bank purposes
36 without charge to the recipient is not distribution in commerce for purposes of ORS 616.215
37 (4).

38 (7)(a) Except as provided in paragraph (c) of this subsection, processed reclaimed fish
39 that a food establishment supplies to a food bank under this section is exempt from labeling
40 requirements under ORS 616.205 to 616.385. The exemption granted under this paragraph is
41 conditioned upon the reclaimed fish not being adulterated as described in ORS 616.205 to
42 616.385 at the time the food bank takes possession of the reclaimed fish from the food es-
43 tablishment.

44 (b) Except as provided in paragraph (c) of this subsection, processed reclaimed fish that
45 a food bank uses or distributes for food bank purposes without charge to the recipient, in-

1 **cluding but not limited to reclaimed fish that is repackaged or relabeled by the food bank**
2 **prior to use or distribution, is exempt from labeling requirements under ORS 616.205 to**
3 **616.385. The exemption granted under this paragraph is conditioned upon the reclaimed fish**
4 **not being adulterated as described in ORS 616.205 to 616.385 at the time the food bank uses**
5 **or distributes the reclaimed fish.**

6 **(c) Processed reclaimed fish described in paragraphs (a) and (b) of this subsection is not**
7 **exempt from any labeling requirement under ORS 616.205 to 616.385 regarding:**

8 **(A) The name and address of the food establishment;**

9 **(B) The common or usual name of the product;**

10 **(C) Ingredients;**

11 **(D) Manufacturing date or lot number; or**

12 **(E) Instructions for preservation, storage or other food safety measures.**

13 **SECTION 3. Section 2 of this 2012 Act applies to reclaimed fish that a food bank supplies**
14 **to a food establishment on or after the effective date of this 2012 Act.**

15 **SECTION 4. This 2012 Act being necessary for the immediate preservation of the public**
16 **peace, health and safety, an emergency is declared to exist, and this 2012 Act takes effect**
17 **on its passage.**

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