

House Bill 4068

Sponsored by Representative BOONE, Senator THOMSEN; Representatives BENTZ, CAMERON, COWAN, MCLANE, PARRISH, ROBLAN, WITT, Senators JOHNSON, KRUSE, OLSEN, PROZANSKI, ROSENBAUM, VERGER, WHITSETT (Pre-session 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 **as introduced**.

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.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to food banks; and declaring an emergency.

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

4 **SECTION 1. Section 2 of this 2012 Act is added to and made a part of ORS 616.205 to**
5 **616.385.**

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

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

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

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

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

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

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

22 (a) **The food establishment wraps or packages the reclaimed fish in a manner not de-**
23 **signed for retail sale; and**

24 (b) **Except as provided in subsection (5) of this section, the food establishment supplies**
25 **the wrapped or packaged reclaimed fish only to food banks.**

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

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 of the reclaimed fish if:

2 (a) The food bank that supplied the reclaimed fish and each nonsupplying food bank that
 3 paid all or part of the cost of the food establishment services receives a share of the pro-
 4 cessed reclaimed fish that is reasonable as determined under State Department of Agricul-
 5 ture rules; and

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

8 (A) For food bank purposes; and

9 (B) Without charge to the recipient.

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

14 (5)(a) Notwithstanding ORS 616.210 and except as provided in paragraph (d) of this sub-
 15 section, food establishment retention of a portion of or of byproducts of reclaimed fish sup-
 16 plied by a food bank is not a sale, dispensing or giving of food by the food bank to the food
 17 establishment.

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

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

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

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

30 (6) The distribution of reclaimed fish in this state by a food bank for food bank purposes
 31 without charge to the recipient is not distribution in commerce for purposes of ORS 616.215
 32 (4).

33 (7) The department may, by rule, exempt from one or more of the labeling requirements
 34 under ORS 616.205 to 616.385 processed reclaimed fish that a food establishment supplies to
 35 a food bank under this section. Any exemptions adopted under this subsection must be con-
 36 ditioned upon the reclaimed fish not being adulterated or misbranded as described in ORS
 37 616.205 to 616.385 at the time the food bank takes possession of the reclaimed fish from the
 38 food establishment. Reclaimed fish that a food establishment packages for use or distribution
 39 by a food bank are not considered salvage for purposes of ORS 616.250 (16).

40 (8) The department may, by rule, exempt from one or more of the labeling requirements
 41 under ORS 616.205 to 616.385 processed reclaimed fish that a food bank uses or distributes
 42 for food bank purposes without charge to the recipient, including but not limited to re-
 43 claimed fish that is repackaged by the food bank prior to use or distribution. Any exemptions
 44 adopted under this subsection must be conditioned upon the reclaimed fish not being
 45 adulterated or misbranded as described in ORS 616.205 to 616.385 at the time the food bank

1 uses or distributes the reclaimed fish. Reclaimed fish that a food bank uses or distributes
2 for food bank purposes without charge to the recipient are not considered salvage for pur-
3 poses of ORS 616.250 (16).

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

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

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