STATE OF CALIFORNIA
LEGISLATIVE COUNSEL BUREAU
AUTHENTICATED
ELECTRONIC LEGAL MATERIAL

Assembly Bill No. 899

CHAPTER 668

An act to add Article 8.5 (commencing with Section 110962) to Chapter 5 of Part 5 of Division 104 of the Health and Safety Code, relating to food.

[Approved by Governor October 10, 2023. Filed with Secretary of State October 10, 2023.]

LEGISLATIVE COUNSEL'S DIGEST

AB 899, Muratsuchi. Food safety: baby food.

Existing law, the Sherman Food, Drug, and Cosmetic Law, provides for the regulation of various subjects relating to the manufacturing, processing, labeling, advertising, and sale of food, drugs, and cosmetics, under the administration and enforcement of the State Department of Public Health. A violation of these provisions is punishable as a misdemeanor.

This bill would require a manufacturer of baby food for sale or distribution in this state, beginning on January 1, 2024, to test a representative sample of each production aggregate of the manufacturer's final baby food product, at a proficient laboratory meeting certain criteria, for toxic elements, as defined, at least once per month. The bill would require a manufacturer to provide test results to any authorized agent of the department upon their request, as specified. The bill would require a manufacturer of a final baby food product sold, manufactured, delivered, held, or offered for sale in the state on and after January 1, 2025, to provide specified information disclosures to consumers, including making publicly available on its internet website the name and level of each toxic element present in each production aggregate of the final baby food product.

If a product is tested for a certain toxic element subject to an action level, regulatory limit, or tolerance established by the United States Food and Drug Administration, the bill would require manufacturers to include on the product label a quick response (QR) code that links to a page on the manufacturer's internet website containing, among other information, test results for the toxic element and a link to related FDA guidance, as specified.

The bill would prohibit a person or entity from selling in the state or manufacturing, delivering, holding, or offering for sale in the state any baby food that does not comply with these provisions. By creating a new crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Article 8.5 (commencing with Section 110962) is added to Chapter 5 of Part 5 of Division 104 of the Health and Safety Code, to read:

Article 8.5. Baby Food

110962. (a) For purposes of this section, the following definitions apply:

(1) "Baby food" means food packaged in jars, pouches, tubs, and boxes represented or purported to be specifically for babies and young children less than two years of age. "Baby food" does not include infant formula, as defined in Section 321(z) of Title 21 of the United States Code.

(2) "Final baby food product" means the finished product of baby food with a unique universal product code (UPC). "Final baby food product" does not mean the constituent ingredients of baby food.

(3) "Product label" means a display of written, printed, or graphic material that is affixed to a product or its immediate container.

(4) "Product shelf life" means the time, measured in the number of months, between the date of manufacture and the expiration date for a final baby food product.

(5) "Production aggregate" means a quantity of product that is intended to have uniform composition, character, and quality, and is produced according to a master manufacturing order.

(6) "Proficient laboratory" is a laboratory that meets the criteria listed in subdivision (c).

(7) "Quick response (QR) code" means a machine-readable code, consisting of an array of squares, used for storing an internet website in order to access a web page.

(8) "Representative sample" means a sample that consists of a number of units that are drawn based on rational criteria, such as random sampling, and intended to ensure that the sample accurately portrays the material being sampled.

(9) "Toxic elements" means arsenic, cadmium, lead, and mercury.

(b) A manufacturer of baby food for sale or distribution in this state shall comply with all of the following:

(1) (A) Beginning on January 1, 2024, test a representative sample of each production aggregate of the manufacturer's final baby food product, at a proficient laboratory, for toxic elements.

(B) A manufacturer may test the final baby food product pursuant to subparagraph (A) before packaging individual units of baby food for sale or distribution.

(C) A manufacturer shall test each final baby food product for toxic elements pursuant to subparagraph (A) at least once per month.

(D) A manufacturer shall provide test results to any authorized agent of the department upon their request, pursuant to Article 2 (commencing with

Section 110140) of Chapter 2 or Article 11 (commencing with Section 111015) of this chapter.

(2) For final baby food products sold, manufactured, delivered, held, or offered for sale in the state on and after January 1, 2025, disclose product information to consumers consistent with all of the following:

(A) (i) Make publicly available on the manufacturer's internet website, for the duration of the product shelf life for a final baby food product plus one month, the name and level of each toxic element present in each production aggregate of a final baby food product.

(ii) Provide descriptive information on the internet website to enable accurate identification of the final baby food product by consumers. Descriptive information may include, but is not limited to, product name, UPC, size, lot numbers, or batch numbers.

(B) If a product is tested for a certain toxic element subject to an action level, regulatory limit, or tolerance established by the United States Food and Drug Administration (FDA) pursuant to Part 109 (commencing with Section 109.3) of Title 21 of the Code of Federal Regulations, include on the product label both of the following:

(i) A QR code or other machine-readable code that links to a page on the manufacturer's internet website containing all of the following information:

(I) Test results for the toxic element, as provided pursuant to subparagraph (A).

(II) An internet website link to a website of the FDA where consumers can find the most recent FDA guidance and information about the health effects of the toxic element on children.

(ii) A statement that reads: "For information about toxic element testing on this product, scan the QR code."

(c) The proficient laboratory that analyzes the final baby food product for toxic elements shall meet all of the following criteria:

(1) Be accredited under the standards of the International Organization for Standardization (ISO) / International Electrotechnical Commission (IEC) 17025:2017 regarding the general requirements for the competence of testing and calibration laboratories.

(2) Use an analytical method that is at least as sensitive as that described in the FDA Elemental Analysis Manual 4.7.

(3) Demonstrate proficiency in quantifying each toxic element to at least six micrograms of the toxic element to kilogram of food (µg/kg) through an independent proficiency test. Proficiency means that laboratories achieve a z-score that is less than, or equal to, plus or minus two ($\leq \pm 2$).

110963. No person or entity shall sell in the state or manufacture, deliver, hold, or offer for sale in the state any baby food that does not comply with the requirements described in Section 110962.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of

Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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