

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1357 (Delegate Qi)
Health and Government Operations

Public Health - Packaged Ice - Testing

This bill requires a person who manufactures packaged ice for sale in the State to (1) at least once every three months, test the final product for contamination in a manner determined by the Maryland Department of Health (MDH) to ensure that the ice is safe for human consumption; (2) maintain test results for at least two years; (3) provide the test results to an MDH representative upon request during an inspection; and (4) if the test results show that the packaged ice is not safe for human consumption, follow procedures developed by regulation. MDH must adopt implementing regulations that meet certain standards. Existing penalty provisions apply to the bill's provisions.

Fiscal Summary

State Effect: The bill is not anticipated to materially affect State finances or operations. MDH can promulgate regulations with existing budgeted resources. The application of existing penalty provisions is not anticipated to materially affect State revenues.

Local Effect: To the extent that local health departments (LHDs) are responsible for inspection of ice manufacturing facilities, local expenditures increase to hire staff. Local revenues are not anticipated to be materially affected.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The regulations developed by MDH must include (1) standards for the levels of contaminants in packaged ice that are at least as stringent as federal and State standards for selling ice in the State; (2) testing requirements; and (3) a procedure that is consistent with § 21-211 of the Health-General Article (which governs the control of food

that is subject to contamination with microorganisms) that must be followed by MDH and a manufacturer if the results of a test show that the packaged ice is not safe for human consumption.

Current Law:

Food Establishments Generally

A “food establishment” is a food service facility or a food processing plant. A “food service facility” is a place where food or drink is prepared for sale or service on the premises or elsewhere or any operation where food is served or provided to the public, regardless of whether there is a charge. A “food processing plant” is any place used for, or in connection with, the commercial manufacturing, preparing, processing, packaging, canning, freezing, storing, distributing, labeling, or holding of food or drink for human consumption. An ice manufacturing plant is a type of food processing plant.

Generally, a person may not operate a food establishment unless licensed (by MDH or an LHD) or exempt from licensure requirements. Generally, the licensing, inspection, and enforcement of statutory provisions related to food service facilities are delegated to LHDs. However, the Maryland Association of County Health Offices (MACHO) notes that LHDs do not currently inspect ice manufacturing plants. Each food establishment must be separately licensed. There are several exemptions, including food establishments considered to be an “excluded organization.”

Control of Food Subject to Contamination with Microorganisms

The Secretary of Health, by the issuance, denial, or suspension of permits, is authorized to regulate the distribution in the State of any class of food that may be contaminated with microorganisms. The Secretary is required to adopt rules and regulations that provide for the issuance of permits to food manufacturers, processors, or packers in any locality if, on investigation, the Secretary finds (1) the distribution in the State of any class of food manufactured, processed, or packed in that locality may be injurious to health because of possible contamination with microorganisms and (2) that the danger imposed by the food normally would not be determinable after the food has entered commerce. Further, a person may not introduce or deliver for introduction into commerce in the State, any food that was manufactured, processed, or packed by an establishment that was required by rule or regulation adopted under § 21-211 to hold a permit unless the person holds the required permit. The Secretary or a representative of MDH is authorized to enter a premises to determine permit compliance at any reasonable time. The Secretary is authorized to suspend a permit for permit violations and must reinstate the permit under circumstances.

Applicable Penalty Provisions

Any person who violates any provision of Title 21, Subtitle 3 of the Health-General Article, which governs food establishments, or any rule or regulation adopted under Title 21, Subtitle 3, is guilty of a misdemeanor and on conviction is subject to a fine of up to \$1,000 and/or up to 90 days imprisonment for a first violation. For a second violation, the maximum penalty is a \$2,500 fine and/or one year imprisonment. In addition, a violator is subject to a civil penalty of up to \$5,000, to be collected by the District Court for any county and may be enjoined from continuing the violation. Each day is a separate violation.

U.S. Food and Drug Administration

The U.S. Food and Drug Administration (FDA) regulates packaged ice in interstate commerce as a food, and like other foods, packaged ice must be produced according to FDA's regulation for current good manufacturing practices in manufacturing, packing, or holding human food. According to FDA, ice manufacturers must produce, hold, and transport ice in clean and sanitary conditions, monitor the cleanliness and hygiene of employees, use properly cleaned and maintained equipment, and use water that is safe and sanitary. When FDA investigators inspect packaged ice manufacturing plants, they look at, among other things, (1) whether the plumbing prevents contamination of the ice water supply or stored ice; (2) whether the water supply is safe and sanitary (*e.g.*, water that meets U.S. Environmental Protection Agency standards for drinking water); and (3) whether the manufacturing facility and grounds are maintained in sanitary condition. However, FDA does not inspect small packaged ice producers, like retail stores, that make and package ice directly for the consumer and only for intrastate sales. FDA also does not inspect food service establishments that make ice for direct use, such as for drinks or cooling food.

Private and Public Water Systems Water Quality Standards

The Maryland Department of the Environment is responsible for primary enforcement of the federal Safe Drinking Water Act, which, among other things, ensures that public water systems meet strict safe drinking water standards. These standards generally do not apply to private drinking water wells. Rather, private well owners are responsible for the safety of their own wells after initial construction and certification is completed. MDH advises that most commercial facilities that manufacturer packaged ice are serviced by public water systems and are routinely tested for potability.

Local Expenditures: As noted, MACHO advises that LHDs do not currently inspect ice manufacturing facilities. Thus, to the extent that LHDs are responsible for enforcing or implementing the bill's requirements, expenditures for LHDs increase. In general, LHDs are underfunded and understaffed and do not have the capacity to absorb additional duties.

Small Business Effect: For any small business packaged ice manufacturers, costs may increase to conduct the required testing and any necessary follow-up required for test results that indicate packaged ice is not safe for human consumption, to the extent this is not occurring under current practice.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Maryland Association of County Health Officers; Maryland Department of Health; U.S. Food and Drug Administration; Department of Legislative Services

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km/jc

Analysis by: Kathleen P. Kennedy

Direct Inquiries to:
(410) 946-5510
(301) 970-5510