

Department of Legislative Services  
Maryland General Assembly  
2024 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 1098 (Delegate Alston, *et al.*)  
Health and Government Operations

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Public Health - Prohibited Ingredients in Food

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This bill prohibits a person from manufacturing, selling, delivering, holding, or offering for sale food that contains (1) brominated vegetable oil (BVO) (CAS No. 8016-94-2); (2) potassium bromate (CAS No. 7758-01-2); (3) propylparaben (CAS No. 94-13-3); or (4) red dye 3 (CAS No. 16423-68-0). Violations are subject to existing criminal and civil penalties. **The bill takes effect October 1, 2027.**

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Fiscal Summary

**State Effect:** The Maryland Department of Health (MDH) can likely handle enforcement with existing budgeted resources. The application of existing penalty provisions is not anticipated to materially affect State finances.

**Local Effect:** The bill is not anticipated to have a material impact on local governments. To the extent that local health departments must inspect food products sold in licensed food establishments such as grocery stores, expenditures may increase beginning in FY 2028. The application of existing penalty provisions is not expected to materially affect local government finances or operations.

**Small Business Effect:** Minimal overall due to the bill's delayed effective date, but potential meaningful for a small business that does not comply with the bill's requirements by October 1, 2027.

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Analysis

**Current Law:** "Food" means (1) any substance that is used as food or drink for human beings or as a component of food or drink for human being or (2) chewing gum or any substance that is used as a component of chewing gum.

MDH's Center for Food Processing is responsible for licensing and inspecting facilities that make, process, store, hold, or distribute food to sell wholesale to other businesses in Maryland. The Center for Facility and Process Review conducts a plan and process review for all food processing plants and prototypical food service facilities. Food processing plans are inspected to ensure compliance with applicable State and federal laws and regulations. Facilities that manufacture, process, pack, and hold food and operate (receive or distribute) across state lines fall under U.S. Food and Drug Administration (FDA) jurisdiction and must comply with federal regulations.

The federal Food, Drug, and Cosmetics Act prohibits the manufacture or sale of any food that is adulterated or misbranded. The Food Additives Amendment to the Act authorizes FDA to regulate food ingredients. MDH implements the Maryland Food, Drug, and Cosmetic Act, which conforms to the federal act.

A person who violates any Maryland Food, Drug, and Cosmetic Act prohibition, with specified exceptions, is subject to both criminal and civil penalties. More specifically, a violator is guilty of a misdemeanor, and upon conviction, a fine up to \$10,000 and imprisonment of up to a year for the first conviction, and a fine up to \$25,000 and imprisonment up to three years for a second or subsequent conviction. In addition, a person who violates the Maryland Food, Drug, and Cosmetic Act is subject to a civil penalty of up to \$5,000 in an action in any District Court and can be enjoined from continuing the violation. Each day that a violation occurs is a separate violation.

**Additional Comments:** FDA manages a Generally Recognized As Safe (GRAS) database and [Food Additive List](#) to approve intentionally added food ingredients that have been adequately tested and deemed safe. Potassium bromate and propylparaben are generally deemed safe. On November 2, 2023, FDA issued a proposed rule to [revoke](#) the authorization for the use of BVO in food. Additionally, the FDA manages a [Color Additive Status List](#); red dye 3 may not be used in cosmetics, external drugs, and lakes.

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### **Additional Information**

**Recent Prior Introductions:** Similar legislation has not been introduced within the last three years.

**Designated Cross File:** SB 1136 (Senator Benson) - Rules.

**Information Source(s):** Maryland Association of County Health Officers; Judiciary (Administrative Office of the Courts); Maryland Department of Health; Department of Legislative Services

**Fiscal Note History:** First Reader - February 28, 2024  
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