

Department of Legislative Services  
Maryland General Assembly  
2007 Session

FISCAL AND POLICY NOTE

House Bill 91 (Delegate Hubbard)  
Health and Government Operations

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Food Service Facilities - Artificial Trans Fat - Prohibition

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This bill prohibits food containing artificial trans fat from being stored, distributed, held for service, used in preparation of any menu item, or served in any food service facility. The prohibition does *not* apply to food served directly to patrons in the original sealed manufacturer's package. A violation will *not* affect a food service facility's license. A violator is *not* subject to: a fine or imprisonment; any notification by the Department of Health and Mental Hygiene (DHMH) of corrective actions required; or a DHMH order to abate the violation.

The bill takes effect October 1, 2008.

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Fiscal Summary

**State Effect:** The bill's requirement to maintain an online list of noncompliant food service facilities could be handled with existing DHMH budgeted resources. Expenditures at State facilities serving food are not expected to increase as a result of this bill because of an assumed increase in availability of food products that do not contain artificial trans fat. No effect on revenues.

**Local Effect:** Existing local health department staff could monitor compliance within existing resources.

**Small Business Effect:** Meaningful for food service facilities that currently are using specified products with artificial trans fat and would not stop using those products without the bill.

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## Analysis

**Bill Summary:** A food contains artificial trans fat if the food is either labeled as containing, lists as an ingredient, or contains vegetable shortening, margarine, or any kind of partially hydrogenated vegetable oil. Any food with a nutrition facts label or other manufacturer documentation that lists less than 0.5 grams of trans fat per serving is *not* considered to contain artificial trans fat under the bill.

A food service facility must maintain on-site the original label for food that: contains fats, oils, or shortenings; is required by federal or State law to have a label when purchased; and is stored, distributed, held for service, used in preparation of any menu items, or served by the facility. A facility may provide manufacturer documentation acceptable to DHMH indicating whether the food contains artificial trans fat.

If a food is restricted under the bill and is not required to be labeled when purchased, a facility must obtain and maintain manufacturer documentation of whether the food contains artificial trans fat. The Secretary of Health and Mental Hygiene must adopt regulations that provide for a food service facility to obtain manufacturer documentation of food ingredients.

DHMH must list on its web site a food service facility that violates this bill. The facility must remain listed on the web site until DHMH finds the facility is in compliance with the bill.

**Current Law:** A food establishment must be licensed by DHMH and is subject to inspections. A food establishment is a food service facility or a food processing plant. If DHMH finds that a food establishment has violated the Maryland Food, Drug, and Cosmetic Act, or any regulation adopted under the Act, the licensee must be notified of the specific findings and the specific, reasonable date by which the licensee must correct the violations or deficiencies. If corrections are not made by the specified date, DHMH may suspend or revoke the food establishment's license.

**Background:** Trans fat increases a person's low-density lipoprotein (LDL), also known as "bad cholesterol," levels which increases a person's risk of coronary heart disease.

Trans fat is made when hydrogen is added to vegetable oil. Food manufacturers use trans fat because it increases a food's shelf life and stabilizes its flavors, according to the U.S. Food and Drug Administration (FDA). Trans fat can be found in vegetable shortenings, some margarines, crackers, cookies, snack foods, and other foods that are made with or fried in partially hydrogenated oils. The FDA requires food manufacturers

to list trans fat on all their products on the Nutrition Facts panel directly under the line for saturated fat.

The New York City Board of Health voted December 5, 2006 to require all restaurants in the city to remove artificial trans fat over an 18-month period. Effective July 1, 2007, with some exceptions, no foods containing artificial trans fat that are used for frying or in spreads may be stored, distributed, held for service, used in preparation of any menu item, or served in any food service establishment or by any mobile food unit commissary. This restriction applies to oils or shortenings used for deep frying of yeast dough or cake batter and all other foods containing artificial trans fat beginning July 1, 2008. A food with less than 0.5 grams per serving of trans fat is not considered to contain artificial trans fat. Establishments and commissaries must maintain food product labels or approved documentation for specified food products.

Any violation of the New York City health code carries a potential penalty of \$200 to \$2,000 depending on the egregiousness of the violation. A violation of the artificial trans fat ban would not count against a restaurant or bakery during the inspection process. The city's Department of Health and Mental Hygiene is providing restaurants and bakeries with technical assistance to help them comply with the ban's requirements.

**State Expenditures:** The Department of Legislative Services (DLS) assumes that given the increased public attention on limiting artificial trans fat and an increasing number of products that are available without artificial trans fat, food service establishments are already beginning to stock food items that comply with the artificial trans fat ban.

As a result, general fund expenditures for DHMH would not be affected by the ban because existing local health department sanitarians could incorporate the artificial trans fat ban into their existing inspections of food service facilities. DLS further assumes that existing DHMH staff could maintain an online list of any noncompliant food service facilities. Additionally, DLS assumes an increase in food expenditures for the State, such as State residential facilities, prisons, and schools, would be minimal and would likely occur regardless of this bill as more food items are made without artificial trans fat due to increasing public concern about this food additive.

DHMH's Community Health Administration (CHA) estimates that general fund expenditures could increase by \$1,412,968 in fiscal 2009 for grants to local health departments to collectively hire 33 sanitarians to inspect food service establishments because the time it would take to inspect these establishments would increase. The estimate also assumes DHMH hiring a sanitarian at CHA to maintain the restaurant database and provide technical support and training to the local health department

sanitarians. CHA estimates that of the approximately 30,000 retail and food service outlets, approximately 15,000 of those would be affected by the artificial trans fat ban.

CHA advises that it currently takes a sanitarian from two to three hours to conduct a food service facility inspection and that most facilities are inspected at least two times per year. If sanitarians were required to review product food labels as well, DHMH estimates that the time it takes a sanitarian to complete his inspection would increase to four to five hours.

DHMH's Developmental Disabilities Administration estimates that the artificial trans fat prohibition could increase the cost for ingredients and food preparation from 40% to 75% at its State residential facilities for individuals with developmental disabilities.

However, DHMH's Mental Hygiene Administration advises that it does not expect the bill to affect food expenditures at its State residential facilities because it anticipates that by the bill's October 1, 2008 effective date, many products without trans fats will be available.

The Department of Public Safety and Correctional Services' Division of Correction states that the bill is not expected to increase its expenditures.

**Local Fiscal Effect:** DLS assumes that given the increased public attention on limiting artificial trans fat and an increasing number of products that are available without artificial trans fat, food service establishments are already beginning to stock food items that comply with the artificial trans fat ban.

Existing local health department sanitarians could incorporate the artificial trans fat ban into their existing inspections of food service facilities.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Judiciary (Administrative Office of the Courts); Department of Health and Mental Hygiene; Office of the Attorney General (Consumer Protection Division); Department of Public Safety and Correctional Services; New York City Department of Health and Mental Hygiene Board of Health; *Revealing Trans Fats*, U.S. Food and Drug Administration; Department of Legislative Services

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