

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE

Senate Bill 504
 Finance

(Senator Forehand, *et al.*)

Food Service Facilities - Use of Artificial Trans Fat - Prohibition

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 violator is *not* subject to a fine or imprisonment. A violator would be subject to notification by the Department of Health and Mental Hygiene (DHMH) of corrective actions required or a DHMH order to abate the violation, including the potential suspension or revocation of a license.

The bill takes effect October 1, 2008.

Fiscal Summary

State Effect: Potential significant increase in DHMH general fund expenditures beginning in FY 2009 if grants to local health departments increase to cover additional staffing costs for inspections of food service facilities facing corrective actions. General fund expenditures for DHMH could increase by \$100,000 in FY 2009 only to print trans fat pamphlets. 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.

(in dollars)	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	100,000	-	-	-	-
Net Effect	(\$100,000)	\$0	\$0	\$0	\$0

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Potential increase in local health department expenditures for increased staffing costs if additional inspections of noncomplying food service facilities are required because a facility may face corrective actions for failure to comply with the bill. It is assumed that local health departments could distribute trans fat pamphlets to consumers and add a link on their web site to DHMH's list of noncompliant businesses with existing resources. Potential loss of revenues for any food service establishment license revoked as a result of the bill. A food service establishment license fee is \$300.

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.

Analysis

Bill Summary: A food contains artificial trans fat if the food is 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 applicable 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. Instead of providing the original label, a facility may provide manufacturer documentation 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 a food contains artificial trans fat. The Secretary of Health and Mental Hygiene must adopt regulations that provide the required documentation.

DHMH must maintain on its web site a list of food service facilities for each county that are in violation of the bill. DHMH must consult with the local health departments to provide an Internet link on each of the local health departments' web sites to the information on noncomplying facilities. DHMH also must coordinate with the local health departments to provide education and outreach on trans fat for consumers

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. A food establishment license fee is \$300 and is renewed annually. 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 it, food service establishments are already beginning to stock food items that comply with the artificial trans fat ban.

However, because a food service facility may face corrective actions, including the suspension or revocation of a license, local health department sanitarians may need to make additional inspections of any noncomplying facilities. As a result, general fund

expenditures could increase for DHMH to increase local health department grants to cover any additional staffing costs. 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.

Local Fiscal Effect: Since a food service facility may face corrective actions, including the suspension or revocation of a license, for not complying with the trans fat ban, local health department sanitarians may need to make additional inspections of any noncomplying facilities. As a result, local health department expenditures could increase to cover any related staffing costs.

There could be a potential loss of local health department revenues if a food service establishment license is revoked from a facility that does not comply with the bill. The license fee is \$300 paid annually.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Office of Administrative Hearings, 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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