

# SENATE BILL 101

J1, I3

9lr0450

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By: **Senator Stone**

Introduced and read first time: January 15, 2009

Assigned to: Finance

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## A BILL ENTITLED

1 AN ACT concerning

2 **Public Health – Warning Labels and Prohibition on Color Additives in Food**

3 FOR the purpose of prohibiting the sale of certain food products that contain or consist  
4 of certain color additives unless certain labeling requirements are met between  
5 certain dates; establishing that certain foods are misbranded if certain labeling  
6 requirements for certain color additives are not met within certain dates;  
7 prohibiting food service facilities from purchasing, selling, using, or serving  
8 certain food products that contain or consist of certain color additives unless  
9 certain menus and notices meet certain labeling requirements between certain  
10 dates; authorizing the Secretary of Health and Mental Hygiene to seize or  
11 condemn certain food containing certain color additives purchased, sold, used,  
12 or served by food service facilities in the State; prohibiting the sale of certain  
13 food products that contain or consist of certain color additives after a certain  
14 date; prohibiting food service facilities from purchasing, selling, using, or  
15 serving certain food products that contain or consist of certain color additives  
16 after a certain date; providing for the effective date of certain provisions of this  
17 Act; providing for the delayed effective date of certain provisions of this Act;  
18 providing for the termination of certain provisions of this Act; and generally  
19 relating to warning labels and prohibitions on color additives in food.

20 BY repealing and reenacting, without amendments,

21 Article – Health – General

22 Section 21–101(c), (i), (k), and (l), 21–207(b)(2) and (3), 21–239(a)(1), 21–253(a)  
23 through (d)(2), 21–261(a), 21–301(h), 21–314, 21–315, 21–318(a), and  
24 21–1214

25 Annotated Code of Maryland

26 (2005 Replacement Volume and 2008 Supplement)

27 BY repealing and reenacting, with amendments,

28 Article – Health – General

29 Section 21–210(b)(9) and (d)

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland  
2 (2005 Replacement Volume and 2008 Supplement)

3 BY adding to  
4 Article – Health – General  
5 Section 21–239(f); and 21–353 and 21–354 to be under the new part “Part VIII.  
6 Color Additives”  
7 Annotated Code of Maryland  
8 (2005 Replacement Volume and 2008 Supplement)

9 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
10 MARYLAND, That the Laws of Maryland read as follows:

11 **Article – Health – General**

12 21–101.

13 (c) (1) “Color additive” means any material that:

14 (i) Is a dye, pigment, or other substance made by a process of  
15 synthesis or similar artifice, or extracted, isolated, or otherwise derived, with or  
16 without intermediate or final change of identity, from a vegetable, animal, mineral, or  
17 other source; or

18 (ii) When added or applied to a food, drug, or cosmetic, or to any  
19 part of the human body, is capable, alone or through reaction with any other  
20 substance, of imparting color, including black, white, or intermediate grays, to the  
21 food, drug, cosmetic, or body.

22 (2) “Color additive” does not include any material that is not a color  
23 additive under the federal act.

24 (i) “Food” means:

25 (1) Any substance that is used as food or drink for human beings or as  
26 a component of food or drink for human beings; or

27 (2) Chewing gum or any substance that is used as a component of  
28 chewing gum.

29 (k) “Label” means a display of written, printed, or graphic matter on the  
30 container, other than the package liner, of a substance.

31 (1) “Labeling” means any label or other written or graphic material that:

32 (1) Is on a substance or its container or its wrapping; or

33 (2) Accompanies a substance.

1 21-207.

2 (b) A food is adulterated if:

3 (2) It contains any added poisonous or added deleterious substance:

4 (i) That is not a food or color additive; and

5 (ii) The particular use of which has not been found safe as  
6 provided under § 21-239 of this subtitle;

7 (3) It is or contains any food additive or color additive the particular  
8 use of which has not been found safe as provided under § 21-239 of this subtitle;

9 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland  
10 read as follows:

11 **Article - Health - General**

12 21-210.

13 (b) A food is misbranded if:

14 (9) Except as provided under subsections (c) and (e) of this section, it  
15 contains any artificial flavoring, artificial coloring, or chemical preservative, unless it  
16 bears labeling that states that fact **AND COMPLIES WITH § 21-239(F) OF THIS**  
17 **SUBTITLE;**

18 (d) **(1)** Notwithstanding the provisions of subsection (b)(7)(ii) of this  
19 section, **AND EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION,**  
20 regarding the labeling requirements for a food that is made from 2 or more  
21 ingredients, spices, flavorings, and coloring ingredients may be designated as “spices”,  
22 “flavorings”, and “colorings”, without naming each specific item.

23 **(2)** [However, this exception] **PARAGRAPH (1) OF THIS SUBSECTION**  
24 **does not apply if [the]:**

25 **(I) THE food product itself is sold as a spice, flavoring, or food**  
26 **coloring; OR**

27 **(II) THE FOOD PRODUCT CONTAINS A COLOR ADDITIVE**  
28 **LISTED UNDER § 21-239(F)(1) OF THIS SUBTITLE.**

29 21-239.

1 (a) (1) For purposes of §§ 21-207(b)(3), 21-216(b)(2), and 21-230(b)(5) of  
 2 this subtitle, regarding food, drugs, and cosmetics respectively, the use of any added  
 3 poisonous or otherwise deleterious substance, any food additive, or any color additive  
 4 is considered unsafe unless the use of the substance or additive for the particular  
 5 purpose is authorized by and the quantity of the substance that may be used for that  
 6 purpose is limited by:

7 (i) A State adopted federal rule or regulation, as provided  
 8 under subsection (b) of this section; or

9 (ii) A rule or regulation adopted by the Secretary under  
 10 subsection (c) of this section.

11 **(F) (1) FROM JANUARY 1, 2010, TO DECEMBER 31, 2011, UNLESS**  
 12 **THE PACKAGING OF A FOOD PRODUCT IS LABELED CLEARLY AND**  
 13 **CONSPICUOUSLY IN ACCORDANCE WITH PARAGRAPH (2) OF THIS SUBSECTION,**  
 14 **A FOOD PRODUCT CONTAINING OR CONSISTING OF ONE OF THE FOLLOWING**  
 15 **COLOR ADDITIVES MAY NOT BE SOLD IN THE STATE:**

16 (I) **FD&C BLUE NO. 1;**

17 (II) **FD&C BLUE NO. 2;**

18 (III) **FD&C GREEN NO. 3;**

19 (IV) **FD&C ORANGE B;**

20 (V) **FD&C RED NO. 3;**

21 (VI) **FD&C RED NO. 40;**

22 (VII) **FD&C YELLOW NO. 5; OR**

23 (VIII) **FD&C YELLOW NO. 6.**

24 **(2) LABELING FOR A FOOD PRODUCT CONTAINING A COLOR**  
 25 **ADDITIVE LISTED IN PARAGRAPH (1) OF THIS SUBSECTION SHALL STATE ON THE**  
 26 **PRINCIPAL DISPLAY PANEL, AS DEFINED BY 21 C.F.R. 101.1, "WARNING: THE**  
 27 **COLOR ADDITIVES IN THIS FOOD MAY CAUSE HYPERACTIVITY AND BEHAVIORAL**  
 28 **PROBLEMS IN SOME CHILDREN".**

29 SECTION 3. AND BE IT FURTHER ENACTED, That the Laws of Maryland  
 30 read as follows:

31 **Article - Health - General**

1 21–253.

2 (a) Under this section, there is a ground for action against a food, drug,  
3 device, or cosmetic if it is:

4 (1) Adulterated;

5 (2) So misbranded that it is dangerous or fraudulent;

6 (3) A food that violates any requirement imposed under § 21–211 of  
7 this subtitle; or

8 (4) A drug that violates the provisions on new drugs under § 21–223 of  
9 this subtitle.

10 (b) If the Secretary finds or has probable cause to believe that there is  
11 ground for action against a food, drug, device, or cosmetic, the Secretary shall attach  
12 to the article a tag or other appropriate marking that gives notice that the article is, or  
13 is suspected of being, adulterated, misbranded, or in violation of § 21–211 or § 21–223  
14 of this subtitle and that the article has been detained. The tag or other marking also  
15 shall warn all persons not to remove or dispose of the article, by sale or otherwise,  
16 until permission for removal or disposal is given by the Secretary, an authorized agent  
17 of the Secretary, or a court.

18 (c) If, after an article has been marked as provided in subsection (b) of this  
19 section, the Secretary finds that there is not a ground for action against the article, the  
20 Secretary shall remove the marking and release the article.

21 (d) (1) The Secretary may proceed further against any article as to which  
22 there is a ground for action by filing a petition for an order with the circuit court for  
23 the county in which the article is located. The petition may request any relief  
24 permitted by this subsection.

25 (2) If the court finds that there is a valid ground for action against the  
26 article, the court may proceed by issuing an order:

27 (i) Of forfeiture for destruction; or

28 (ii) To have the article delivered to its claimant and have the  
29 violation corrected by proper labeling or processing.

30 21–261.

31 (a) If the Department believes that a person is violating any provision of this  
32 subtitle or any regulation adopted under this subtitle, the Department may have the  
33 person served with a written order that directs the person served to abate the  
34 violation within a time specified in the order.

1 21-301.

2 (h) (1) "Food service facility" means:

3 (i) A place where food or drink is prepared for sale or service on  
4 the premises or elsewhere; or

5 (ii) Any operation where food is served to or provided for the  
6 public, with or without charge.

7 (2) "Food service facility" does not include:

8 (i) A kitchen in a private home where food is prepared at no  
9 charge for guests in the home, for guests at a social gathering, or for service to  
10 unemployed, homeless or other disadvantaged populations; or

11 (ii) A food preparation or serving area where only  
12 nonpotentially hazardous food, as defined by the United States Food and Drug  
13 Administration, is prepared or served only by an excluded organization.

14 21-314.

15 If the Department finds that a food establishment is in violation of this subtitle  
16 or any rule or regulation adopted under this subtitle, is in an unsanitary condition, or  
17 is not equipped properly, the Secretary shall notify the licensee:

18 (1) Of the specific findings;

19 (2) Of a specific, reasonable date by which the licensee shall correct  
20 the violations or deficiencies specified in the notice; and

21 (3) That, if the licensee fails to correct the conditions by the date  
22 specified, the Department may suspend or revoke the license issued under this  
23 subtitle.

24 21-315.

25 The Department may suspend or revoke a license issued under this subtitle if  
26 the licensee:

27 (1) Violates or fails to meet the requirements of this subtitle or any  
28 regulation adopted under this subtitle; or

29 (2) Fraudulently or deceptively obtains a license.

30 21-318.

1 (a) If the Department believes that a person is violating any provision of this  
2 subtitle or of any regulation adopted under this subtitle, the Department may have  
3 the person served with a written order that directs the person served to abate the  
4 violation within a time specified in the order.

5 SECTION 4. AND BE IT FURTHER ENACTED, That the Laws of Maryland  
6 read as follows:

7 **Article - Health - General**

8 **21-351. RESERVED.**

9 **21-352. RESERVED.**

10 **PART VIII. COLOR ADDITIVES.**

11 **21-353.**

12 (A) FROM JANUARY 1, 2010, THROUGH DECEMBER 31, 2011, UNLESS  
13 ALL MENUS AND NOTICES ADVERTISING A FOOD CONTAINING OR CONSISTING  
14 OF ONE OF THE FOLLOWING COLOR ADDITIVES ARE LABELED CLEARLY AND  
15 CONSPICUOUSLY IN ACCORDANCE WITH SUBSECTION (B) OF THIS SECTION, A  
16 FOOD SERVICE FACILITY MAY NOT PURCHASE, SELL, USE, OR SERVE THE FOOD  
17 IN THE STATE:

- 18 (1) **FD&C BLUE No. 1;**  
19 (2) **FD&C BLUE No. 2;**  
20 (3) **FD&C GREEN No. 3;**  
21 (4) **FD&C ORANGE B;**  
22 (5) **FD&C RED No. 3;**  
23 (6) **FD&C RED No. 40;**  
24 (7) **FD&C YELLOW No. 5; OR**  
25 (8) **FD&C YELLOW No. 6.**

26 (B) LABELING ON MENUS AND NOTICES FOR A FOOD CONTAINING A  
27 COLOR ADDITIVE LISTED IN SUBSECTION (A) OF THIS SECTION SHALL STATE  
28 "WARNING: THE COLOR ADDITIVES IN THIS FOOD MAY CAUSE HYPERACTIVITY  
29 AND BEHAVIORAL PROBLEMS IN SOME CHILDREN".

1 **21-354.**

2 **IN ADDITION TO THE PENALTIES IMPOSED UNDER THIS SUBTITLE, THE**  
3 **SECRETARY MAY SEIZE OR CONDEMN ANY FOOD PRODUCT PURCHASED, SOLD,**  
4 **USED, OR SERVED IN VIOLATION OF THIS PART.**

5 SECTION 5. AND BE IT FURTHER ENACTED, That the Laws of Maryland  
6 read as follows:

7 **Article - Health - General**

8 21-1214.

9 (a) Any person who violates any provision of Subtitle 3 of this title or any  
10 rule or regulation adopted under Subtitle 3 of this title is guilty of a misdemeanor and  
11 on conviction is subject to:

12 (1) For a first offense, a fine not exceeding \$1,000 or imprisonment not  
13 exceeding 90 days, or both; and

14 (2) For a second offense, a fine not exceeding \$2,500 or imprisonment  
15 not exceeding 1 year, or both.

16 (b) In addition to any criminal penalties imposed under this section, a person  
17 who violates any provision of Subtitle 3 of this title or any rule or regulation adopted  
18 under Subtitle 3 of this title or any term, condition or limitation of any license or  
19 registration issued under Subtitle 3 of this title:

20 (1) Is liable for a civil penalty not exceeding \$5,000, to be collected in a  
21 civil action in the District Court for any county; and

22 (2) May be enjoined from continuing the violation.

23 (c) Each day on which a violation occurs is a separate violation under this  
24 section.

25 SECTION 6. AND BE IT FURTHER ENACTED, That the Laws of Maryland  
26 read as follows:

27 **Article - Health - General**

28 21-239.

29 (a) (1) For purposes of §§ 21-207(b)(3), 21-216(b)(2), and 21-230(b)(5) of  
30 this subtitle, regarding food, drugs, and cosmetics respectively, the use of any added  
31 poisonous or otherwise deleterious substance, any food additive, or any color additive



1 is considered unsafe unless the use of the substance or additive for the particular  
2 purpose is authorized by and the quantity of the substance that may be used for that  
3 purpose is limited by:

4 (i) A State adopted federal rule or regulation, as provided  
5 under subsection (b) of this section; or

6 (ii) A rule or regulation adopted by the Secretary under  
7 subsection (c) of this section.

8 (F) **ON OR AFTER JANUARY 1, 2012, A FOOD PRODUCT CONTAINING OR**  
9 **CONSISTING OF ONE OF THE FOLLOWING COLOR ADDITIVES MAY NOT BE SOLD**  
10 **IN THE STATE:**

- 11 (1) **FD&C BLUE NO. 1;**  
12 (2) **FD&C BLUE NO. 2;**  
13 (3) **FD&C GREEN NO. 3;**  
14 (4) **FD&C ORANGE B;**  
15 (5) **FD&C RED NO. 3;**  
16 (6) **FD&C RED NO. 40;**  
17 (7) **FD&C YELLOW NO. 5; OR**  
18 (8) **FD&C YELLOW NO. 6.**

19 **21-351. RESERVED.**

20 **21-352. RESERVED.**

21 **PART VIII. COLOR ADDITIVES.**

22 **21-353.**

23 **ON OR AFTER JANUARY 1, 2012, A FOOD SERVICE FACILITY IN THE STATE**  
24 **MAY NOT PURCHASE, SELL, USE, OR SERVE A FOOD CONTAINING OR CONSISTING**  
25 **OF ONE OF THE FOLLOWING COLOR ADDITIVES:**

- 26 (1) **FD&C BLUE NO. 1;**  
27 (2) **FD&C BLUE NO. 2;**

- 1           **(3) FD&C GREEN NO. 3;**  
2           **(4) FD&C ORANGE B;**  
3           **(5) FD&C RED NO. 3;**  
4           **(6) FD&C RED NO. 40;**  
5           **(7) FD&C YELLOW NO. 5; OR**  
6           **(8) FD&C YELLOW NO. 6.**
- 7 **21-354.**

8           **IN ADDITION TO THE PENALTIES IMPOSED UNDER THIS SUBTITLE, THE**  
9 **SECRETARY MAY SEIZE OR CONDEMN ANY FOOD PRODUCT PURCHASED, SOLD,**  
10 **USED, OR SERVED IN VIOLATION OF THIS PART.**

11           SECTION 7. AND BE IT FURTHER ENACTED, That Sections 2 and 4 of this  
12 Act shall take effect January 1, 2010. They shall remain effective for a period of 2  
13 years and, at the end of December 31, 2011, with no further action required by the  
14 General Assembly, Sections 2 and 4 of this Act shall be abrogated and of no further  
15 force and effect.

16           SECTION 8. AND BE IT FURTHER ENACTED, That Section 6 of this Act shall  
17 take effect January 1, 2012.

18           SECTION 9. AND BE IT FURTHER ENACTED, That, except as provided in  
19 Sections 7 and 8 of this Act, this Act shall take effect January 1, 2010.