

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

Senate Bill 101

(Senator Stone)

Finance

Public Health - Warning Labels and Prohibition on Color Additives in Food

This bill requires that, from January 1, 2010 to December 31, 2011, food products that contain specific color additives include the following warning label: “Warning: The color additives in this food may cause hyperactivity and behavioral problems in some children.” The labeling requirement also applies to all menus and food advertising notices. Beginning January 1, 2012, the bill prohibits the sale, purchase, use, or selling of food products containing the specified color additives. The Secretary of Health and Mental Hygiene may seize or condemn any violating food product. Violators are subject to the same penalties as those that apply to adulterated and misbranded foods.

The bill takes effect January 1, 2010.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues and expenditures beginning in FY 2010 due to the bill’s criminal penalty provisions. The Department of Health and Mental Hygiene (DHMH) can implement the bill with existing resources.

Local Effect: Potential minimal increase in revenues and expenditures due to the bill’s criminal penalty provisions. Local health departments can handle the bill’s requirements as part of its regular inspections.

Small Business Effect: Potential meaningful for small businesses, especially restaurants that must track ingredients and include the required notice on menus.

Analysis

Bill Summary: Eight color additives are specified in the bill:

- FD&C Blue No. 1;
- FD&C Blue No. 2;
- FD&C Green No. 3;
- FD&C Orange B;
- FD&C Red No. 3;
- FD&C Red No. 40;
- FD&C Yellow No. 5; and
- FD&C Yellow No. 6.

Current Law: The U.S. Food and Drug Administration (FDA) is responsible for regulating all color additives to ensure safety and accurate labeling. Nine certified color additives are approved for use in the United States.

Maryland Food, Drug, and Cosmetic Act

Any color additive must comply with State or federal rules or regulations authorizing both the color's quantity and substance.

If the Secretary of Health and Mental Hygiene finds grounds for action against a food, drug, device, or cosmetic, he or she attaches a tag giving notice that the article is suspected of being adulterated, misbranded, or otherwise in violation of the law, and that the article has been detained. The Secretary can then file a petition for an order with the circuit court for the county in which the article is located. If the court finds grounds for action against the article, the court can issue an order of forfeiture or destruction, or an order to have the article delivered to its claimant and have the violation corrected by proper labeling or processing. DHMH may also serve the person with a written order that directs him or her to abate the violation within a specific time.

A person who violates the Maryland Food, Drug, and Cosmetic Act is guilty of a misdemeanor and on conviction is subject to a fine of up to \$10,000 and/or imprisonment for up to one year. For the second violation, the maximum penalty is a \$25,000 fine and/or imprisonment for three years. In addition, violators are subject to civil penalties of up to \$5,000 and may be enjoined from continuing the violation.

Food Establishments

The Secretary has to notify the licensee of any food establishment in violation of the law of the specific findings. The notice must specify a reasonable date by which the licensee has to correct the specified violations or deficiencies and warn that, if the licensee does not make corrections by that date, DHMH can suspend or revoke the license. DHMH may also have the person served with a written order that directs him or her to abate the violation within a specific time.

Food establishment licensees that violate any laws regulating the industry are guilty of a misdemeanor and on conviction are subject to fines 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, violators are subject to civil penalties of up to \$5,000, collected by the District Court for any county, and may be enjoined from continuing the violation.

Background: A color additive is any dye, pigment, or substance which, when added or applied to a food, drug, or cosmetic, or to the human body, is capable (alone or through reactions with other substance) of revealing color.

Color additives are subject to approval by the FDA and may only be used in compliance with the approved uses, specifications, and restrictions. In the approval process, FDA evaluates safety data to ensure that a color additive is safe for its intended purposes. Since absolute safety of any substance can never be proven, decisions about the safety of color additives or other food ingredients are made on the best scientific evidence available.

FDA considers the nine certified artificial colors allowed in food to be safe, but recent studies have suggested a relationship between artificial colors and hyperactivity in children. The United Kingdom Food Standards Agency asked manufacturers to eliminate certain colors that showed adverse behavioral effects in children given drinks containing four artificial colors.

Of the nine certified artificial colors, two are restricted to specific uses. The bill encompasses the seven fully approved artificial colors, and one of the restricted colors, Orange B. Orange B is restricted to casings or surfaces of frankfurters and sausages. Citrus Red No. 2, which is not included in the bill, is restricted to being used on the skins of oranges not intended for processing.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Health and Mental Hygiene, Department of Legislative Services

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