

Department of Legislative Services  
Maryland General Assembly  
2010 Session

FISCAL AND POLICY NOTE

House Bill 727 (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 does *not* affect a food service facility's license. Moreover, 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, 2011.

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**Fiscal Summary**

**State Effect:** The bill's requirement to maintain an online list of noncompliant food service facilities can 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 the availability of food products that do not contain artificial trans fat. No effect on revenues.

**Local Effect:** Local health departments (LHDs) can likely handle the bill's requirements as part of their regular inspections, although workloads may increase minimally with the added inspection responsibility and resulting need to report violations.

**Small Business Effect:** Potential meaningful for food service facilities that currently are using 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 may provide manufacturer documentation acceptable to DHMH indicating whether the food contains artificial trans fat. Otherwise, a facility must maintain on-site the original label for food that (1) contains fats, oils, or shortenings; (2) is required by federal or State law to have a label when purchased; and (3) is stored, distributed, held for service, used in preparation of any menu items, or served by the facility.

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 such documentation of food ingredients.

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

The bill does not preempt a county or municipal government from enacting or enforcing more stringent measures regulating the use of artificial trans fat by food service facilities.

**Current Law:** A food establishment, including a food service facility, must be licensed by DHMH and is subject to inspections. A “food service facility” is a place where food or drink is prepared for sale or service on the premises or elsewhere or any operation where food is served to or provided for the public, with or without charge. “Food service facility” does not include a kitchen in a private home where food is prepared at no charge for guests in the home, for guests at a social gathering, or for service to unemployed, homeless, or other disadvantaged populations. Likewise, it does not include a food preparation or serving area where only nonpotentially hazardous food is prepared or served by specified volunteer fire companies or nonprofit fraternal, civic, war veterans’, religious, or other charitable organizations.

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.

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, and may be enjoined from continuing the violation.

LHDs license and inspect food service facilities.

**Background:** Trans fat increases a person's low-density lipoprotein, 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. FDA requires food manufacturers to list trans fat on all their products on the Nutrition Facts panel directly under the line for saturated fat.

In 2006, the New York City Board of Health voted 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. The cities of Philadelphia and Seattle also passed laws limiting the use of trans fat.

In July 2008, California became the first state to ban the use of trans fat by restaurants. The law requires restaurants to use oils, margarines, and shortening with less than half a gram of trans fat per serving by January 1, 2010, and applies the standard to deep-fried bakery goods by January 1, 2011.

The Montgomery County Council approved a trans fat ban for restaurants and grocery store bakeries in May 2007. DHMH is required to investigate possible violations and take appropriate action, including civil citations or license suspensions. Baltimore City

passed a ban on trans fats on March 17, 2008. In addition, Howard County recognizes restaurants that voluntarily remove trans fat from items on their menus.

During the 2009 legislative interim, the Food Policy Workgroup within DHMH conducted a study to consider issues surrounding trans fats prohibition and menu labeling, as well as a comprehensive approach to healthy eating. The department issued a report in January 2010 noting there are no randomized controlled trials that demonstrate a direct cause-and-effect relationship between reduced trans and/or saturated fatty acids and clinical end points, such as major cardiac events. Therefore, population-based health benefits associated with artificial trans fat prohibitions are unknown at this time. Furthermore, DHMH stated that, if trans fats are removed from an ingredient, it is necessary to replace them with another type of fat. Gram for gram, trans fats have a more adverse effect on the lipid profile than saturated fat; however, saturated fat is still identified as a cause for high blood cholesterol.

**State Fiscal Effect:** 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 under the bill. This trend is expected to continue, making bill implementation easier given the bill's effective date of October 1, 2011.

As a result, DLS assumes that existing DHMH staff can maintain an online list of any noncompliant food service facilities. Additionally, DLS assumes that any increase in food expenditures for the State, such as State residential facilities, prisons, and schools, will be minimal and will 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:** Montgomery County advises that, to enforce its trans fat ban passed in 2007, it added one sanitarian to its LHD staff to conduct training and inspections. However, DLS advises that a statewide ban should not require such training given the increased public attention on limiting trans fats even since Montgomery County passed its ban. Further, while there will be a minimal workload increase given the added inspection responsibility, LHD sanitarians should be able to incorporate the trans fat ban into existing food service facility inspections, making additional staff unnecessary. In addition, while LHDs will have to report violations to DHMH, that reporting is not likely to add significantly to current workloads.

Any additional costs related to purchasing artificial trans fat-free food is not expected to materially affect local school system budgets.

## **Additional Information**

**Prior Introductions:** HB 567 of 2009 was heard in the House Health and Government Operations Committee, but was subsequently withdrawn. HB 91 of 2007 was heard in the House Health and Government Operations Committee, but no further action was taken.

**Cross File:** None.

**Information Source(s):** U.S. Food and Drug Administration; Kent, Montgomery, Washington, and Worcester counties; Baltimore City; Department of Health and Mental Hygiene; Department of Legislative Services

**Fiscal Note History:** First Reader - February 19, 2010  
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