

HOUSE BILL 627

J1
HB 1345/11 – HRU

2lr0802

By: **Delegate Hubbard**

Introduced and read first time: February 7, 2012

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Food Service Facilities and Retail Establishments – Artificial Trans Fats –**
3 **Prohibition**

4 FOR the purpose of providing for the types of foods that contain artificial trans fat;
5 prohibiting a food service facility from using food containing artificial trans fat
6 for certain purposes; providing for a certain exception to the use of trans fat by a
7 food service facility; prohibiting a retail establishment from selling certain food
8 containing artificial trans fat beginning on a certain date; requiring a food
9 service facility or retail establishment to maintain on-site the original label for
10 certain food under certain circumstances; authorizing a food service facility to
11 provide certain documentation indicating the contents of a food instead of
12 providing the original label; requiring a food service facility to obtain certain
13 documentation under certain circumstances; requiring the Secretary of Health
14 and Mental Hygiene to adopt certain regulations; requiring the Department of
15 Health and Mental Hygiene to list certain food service facilities and retail
16 establishments on the Department’s Web site under certain circumstances;
17 providing that a violation of this Act shall have no effect on the issuance of a
18 certain license; providing for the applicability of this Act to certain penalties;
19 providing that this Act preempts certain local laws and ordinances; defining a
20 certain term; and generally relating to the prohibition on the use of artificial
21 trans fat in a food service facility.

22 BY repealing and reenacting, without amendments,
23 Article – Health – General
24 Section 21–301(e), (f), and (h) and 21–304(a)(1)
25 Annotated Code of Maryland
26 (2009 Replacement Volume and 2011 Supplement)

27 BY repealing and reenacting, with amendments,
28 Article – Health – General
29 Section 21–314, 21–315, 21–318, and 21–1214

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland
2 (2009 Replacement Volume and 2011 Supplement)

3 BY adding to
4 Article – Health – General
5 Section 21–352 through 21–357 to be under the new part “Part VIII. Artificial
6 Trans Fat”
7 Annotated Code of Maryland
8 (2009 Replacement Volume and 2011 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 21–301.

13 (e) “Excluded organization” means:

14 (1) A bona fide nonprofit fraternal, civic, war veterans’, religious, or
15 charitable organization or corporation that does not serve food to the public more often
16 than 4 days per week except that once a year an organization may serve food to the
17 public for up to 14 consecutive days; and

18 (2) A volunteer fire company that does not serve food to the public
19 more often than 4 days per week except that once a year a volunteer fire company may
20 serve food to the public for up to 30 consecutive days.

21 (f) “Food establishment” means:

22 (1) A food service facility; or

23 (2) A food processing plant.

24 (h) (1) “Food service facility” means:

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

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

29 (2) “Food service facility” does not include:

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

1 (ii) A food preparation or serving area where only
2 nonpotentially hazardous food, as defined by the United States Food and Drug
3 Administration, is prepared or served only by an excluded organization; or

4 (iii) A location in a farmer's market or at a public festival or
5 event where raw agricultural products, as defined in § 21-304(d)(1)(iii) of this subtitle,
6 are sold.

7 21-304.

8 (a) (1) The Department shall adopt rules and regulations necessary to
9 carry out the provisions of this subtitle.

10 21-314.

11 **(A) THIS SECTION DOES NOT APPLY TO PART VIII OF THIS SUBTITLE.**

12 **(B)** If the Department finds that a food establishment is in violation of this
13 subtitle or any rule or regulation adopted under this subtitle, is in an unsanitary
14 condition, or is not equipped properly, the Secretary shall notify the licensee:

15 (1) Of the specific findings;

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

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

21 21-315.

22 **(A) THIS SECTION DOES NOT APPLY TO PART VIII OF THIS SUBTITLE.**

23 **(B)** The Department may suspend or revoke a license issued under this
24 subtitle if the licensee:

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

27 (2) Fraudulently or deceptively obtains a license.

28 21-318.

29 **(A) THIS SECTION DOES NOT APPLY TO PART VIII OF THIS SUBTITLE.**

1 **[(a)] (B)** If the Department believes that a person is violating any provision
 2 of this subtitle or any regulation adopted under this subtitle, the Department may
 3 have 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 **[(b)] (C)** Except as otherwise provided in Title 10, Subtitle 2 of the State
 6 Government Article, the Department shall give any person served with an order under
 7 this section an opportunity for a hearing before the Department.

8 **[(c)] (D)** After a hearing under this section, the Department may affirm,
 9 modify, or withdraw the order.

10 **[(d)] (E)** A person who is served with an order under this section may not
 11 violate that order.

12 **21-351. RESERVED.**

13 **PART VIII. ARTIFICIAL TRANS FAT.**

14 **21-352.**

15 **IN THIS PART, “RETAIL ESTABLISHMENT” MEANS AN ESTABLISHMENT**
 16 **THAT SELLS GOODS OR SERVICES TO THE ULTIMATE CONSUMER FOR PERSONAL**
 17 **USE RATHER THAN BUSINESS USE.**

18 **21-353.**

19 **(A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, A FOOD**
 20 **CONTAINS ARTIFICIAL TRANS FAT IF THE FOOD:**

21 **(1) IS LABELED AS CONTAINING PARTIALLY HYDROGENATED:**

22 **(I) VEGETABLE SHORTENING;**

23 **(II) MARGARINE; OR**

24 **(III) VEGETABLE OIL;**

25 **(2) LISTS AS AN INGREDIENT PARTIALLY HYDROGENATED:**

26 **(I) VEGETABLE SHORTENING;**

27 **(II) MARGARINE; OR**

- 1 (III) VEGETABLE OIL; OR
- 2 (3) CONTAINS PARTIALLY HYDROGENATED:
- 3 (I) VEGETABLE SHORTENING;
- 4 (II) MARGARINE; OR
- 5 (III) VEGETABLE OIL.

6 (B) A FOOD WITH A NUTRITION FACTS LABEL OR OTHER
7 DOCUMENTATION FROM THE MANUFACTURER THAT LISTS THE TRANS FAT
8 CONTENT OF THE FOOD AS LESS THAN 0.5 GRAMS PER SERVING MAY NOT BE
9 CONSIDERED AS CONTAINING ARTIFICIAL TRANS FAT.

10 **21-354.**

11 (A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, FOOD
12 CONTAINING ARTIFICIAL TRANS FAT MAY NOT BE STORED, DISTRIBUTED, HELD
13 FOR SERVICE, USED IN PREPARATION OF ANY MENU ITEM, OR SERVED IN ANY
14 FOOD SERVICE FACILITY.

15 (B) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, THIS
16 SECTION DOES NOT APPLY TO FOOD THAT IS SERVED DIRECTLY TO PATRONS IN
17 THE ORIGINAL SEALED PACKAGE OF THE MANUFACTURER.

18 (2) BEGINNING ON OCTOBER 1, 2014, THIS SECTION SHALL
19 APPLY TO FOOD THAT IS SERVED DIRECTLY TO PATRONS IN THE ORIGINAL
20 SEALED PACKAGE OF THE MANUFACTURER.

21 (C) BEGINNING ON OCTOBER 1, 2014, FOOD CONTAINING ARTIFICIAL
22 TRANS FAT THAT IS IN THE ORIGINAL SEALED PACKAGE OF THE
23 MANUFACTURER MAY NOT BE SOLD IN RETAIL ESTABLISHMENTS.

24 **21-355.**

25 (A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, A FOOD
26 SERVICE FACILITY OR RETAIL ESTABLISHMENT SHALL MAINTAIN ON-SITE THE
27 ORIGINAL LABEL FOR FOOD:

28 (1) THAT CONTAINS FATS, OILS, OR SHORTENINGS;

1 **(2) THAT IS REQUIRED BY FEDERAL OR STATE LAW TO HAVE A**
2 **LABEL WHEN PURCHASED BY A FOOD SERVICE FACILITY; AND**

3 **(3) THAT IS STORED, DISTRIBUTED, HELD FOR SERVICE, USED IN**
4 **PREPARATION OF ANY MENU ITEMS, OR SERVED OR SOLD BY THE FOOD SERVICE**
5 **FACILITY OR RETAIL ESTABLISHMENT.**

6 **(B) A FOOD SERVICE FACILITY MAY PROVIDE DOCUMENTATION**
7 **ACCEPTABLE TO THE DEPARTMENT FROM THE MANUFACTURER OF A FOOD,**
8 **INDICATING TRANS FAT CONTENT OR WHETHER THE FOOD CONTAINS**
9 **PARTIALLY HYDROGENATED:**

10 **(1) VEGETABLE SHORTENING;**

11 **(2) MARGARINE; OR**

12 **(3) VEGETABLE OIL.**

13 **(C) (1) IF A FOOD THAT IS RESTRICTED UNDER § 21-354 OF THIS**
14 **PART CONTAINS FATS, OILS, OR SHORTENINGS AND THE FOOD IS NOT REQUIRED**
15 **TO BE LABELED WHEN PURCHASED, A FOOD SERVICE FACILITY SHALL OBTAIN**
16 **AND MAINTAIN DOCUMENTATION FROM THE MANUFACTURER OF THE FOOD**
17 **INDICATING WHETHER THE FOOD CONTAINS PARTIALLY HYDROGENATED**
18 **VEGETABLE SHORTENING, PARTIALLY HYDROGENATED MARGARINE, OR ANY**
19 **KIND OF PARTIALLY HYDROGENATED VEGETABLE OIL, OR INDICATING TRANS**
20 **FAT CONTENT.**

21 **(2) THE SECRETARY SHALL ADOPT REGULATIONS THAT PROVIDE**
22 **FOR THE DOCUMENTATION TO BE OBTAINED BY A FOOD SERVICE FACILITY**
23 **FROM THE MANUFACTURER UNDER PARAGRAPH (1) OF THIS SUBSECTION.**

24 **21-356.**

25 **(A) (1) THE DEPARTMENT SHALL LIST ON THE DEPARTMENT'S WEB**
26 **SITE A FOOD SERVICE FACILITY OR RETAIL ESTABLISHMENT THAT IS IN**
27 **VIOLATION OF THIS PART.**

28 **(2) A FOOD SERVICE FACILITY LISTED ON THE DEPARTMENT'S**
29 **WEB SITE UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL REMAIN LISTED**
30 **ON THE WEB SITE UNTIL THE DEPARTMENT FINDS THAT THE FOOD SERVICE**
31 **FACILITY OR RETAIL ESTABLISHMENT IS IN COMPLIANCE WITH THIS PART.**

1 **(B) A VIOLATION OF THIS PART SHALL HAVE NO EFFECT ON THE**
2 **LICENSE ISSUED BY THE DEPARTMENT TO THE FOOD SERVICE FACILITY UNDER**
3 **§ 21-305 OF THIS SUBTITLE.**

4 **21-357.**

5 **(A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, THIS**
6 **PART SHALL PREEMPT ANY LOCAL LAW OR ORDINANCE REGULATING THE USE**
7 **OF ARTIFICIAL TRANS FAT BY FOOD SERVICE FACILITIES OR RETAIL**
8 **ESTABLISHMENTS.**

9 **(B) THIS PART DOES NOT PREEMPT ANY LOCAL LAW OR ORDINANCE**
10 **REGULATING THE USE OF ARTIFICIAL TRANS FAT BY FOOD SERVICE FACILITIES**
11 **ENACTED BEFORE OCTOBER 1, 2012.**

12 **21-1214.**

13 **(A) THIS SECTION DOES NOT APPLY TO A VIOLATION OF SUBTITLE 3,**
14 **PART VIII OF THIS TITLE.**

15 **[(a)] (B)** Any person who violates any provision of Subtitle 3 of this title or
16 any rule or regulation adopted under Subtitle 3 of this title is guilty of a misdemeanor
17 and on conviction is subject to:

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

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

22 **[(b)] (C)** In addition to any criminal penalties imposed under this section, a
23 person who violates any provision of Subtitle 3 of this title or any rule or regulation
24 adopted under Subtitle 3 of this title or any term, condition, or limitation of any
25 license or registration issued under Subtitle 3 of this title:

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

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

29 **[(c)] (D)** Each day on which a violation occurs is a separate violation under
30 this section.

31 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
32 October 1, 2012.