

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

House Bill 627 (Delegate Hubbard)
Health and Government Operations

**Food Service Facilities and Retail Establishments - Artificial Trans Fats -
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. This prohibition does not apply to food served directly to patrons in the original sealed manufacturer's package prior to October 1, 2014. The bill further prohibits food containing artificial trans fat from being sold in the original sealed manufacturer's package by a retail establishment on or after October 1, 2014. 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.

Fiscal Summary

State Effect: The bill's requirement for DHMH to maintain an online list of noncompliant facilities and establishments can be handled with existing resources. Due to an assumed increase in the availability of food products that do not contain artificial trans fat, the finances of State facilities that serve food are not expected to be materially affected. Revenues are not affected.

Local Effect: Local health departments (LHDs) can likely handle the bill's requirements with existing resources, assuming enforcement is complaint based. Revenues are not affected.

Small Business Effect: Potential meaningful for food service facilities and retail establishments that currently are using products with artificial trans fat.

Analysis

Bill Summary: A food contains artificial trans fat if the food is either labeled as containing, lists as an ingredient, or contains partially hydrogenated vegetable shortening, margarine, or vegetable oil. However, a 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 “retail establishment” is an establishment that sells goods or services to the ultimate consumer for personal (rather than business) use.

A food service facility may provide manufacturer documentation acceptable to DHMH indicating whether the food contains artificial trans fat. Otherwise, a food service facility or retail establishment 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 or establishment.

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 website a food service facility or retail establishment that violates the bill. The facility or establishment must remain listed on the website until found by DHMH to be in compliance with the bill.

The bill preempts any local law or ordinance regulating the use of artificial trans fat by food service facilities or retail establishments, unless the law or ordinance was enacted before October 1, 2012.

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. 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 for any county, and may be enjoined from continuing the violation.

LHDs license and inspect food service facilities, but do not regularly inspect most retail establishments.

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. FDA requires food manufacturers to list trans fat on all their products on the Nutrition Facts panel directly under the line for saturated fat.

During the 2009 legislative interim, DHMH convened a workgroup to study issues related to trans fat prohibition and menu labeling requirements in restaurants. In January 2010, DHMH reported that the department does not support a trans fat prohibition due to the failure of such a prohibition to prevent obesity, limited evidence that such a prohibition prevents cardiovascular events, and the complexity of implementation.

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. In July 2008, California became the first state to ban the use of trans fats by restaurants. California's law requires restaurants to use oils, margarines, and shortenings with less than half a gram of trans fat per serving. Thirty other states (including Maryland) have considered banning or restricting trans fat in food.

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 remove trans fats from their menus.

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. As a result, DLS assumes that existing DHMH staff can maintain an online list of any noncompliant food service facilities.

DHMH has advised that food costs for some State-run hospitals will increase by up to 35% under the bill. However, DLS advises that, given the increasing availability of trans fat-free foods, any increase in food expenditures for State facilities – such as State hospitals, residential facilities, prisons, and schools – is likely to be minimal and would likely occur regardless of whether this bill is enacted, due to increasing public concern about this food additive.

Local Fiscal Effect: Montgomery County has advised 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 will not require such training given the public attention on limiting trans fats even since Montgomery County passed its ban. Assuming that enforcement is complaint based, and given that LHD sanitarians can incorporate enforcement efforts into existing food service facility inspections, DLS advises that additional staff is unnecessary. In addition, while LHDs will have to report to DHMH more frequently under the bill, the reporting will not add significantly to current workloads. Any additional costs related to purchasing artificial trans fat-free food are not expected to materially affect local school system budgets.

Additional Information

Prior Introductions: HB 1345 of 2011, a similar bill, was referred to the House Rules and Executive Nominations Committee and received no further action. HB 567 of 2009, another similar bill, received a hearing in the House Health and Government Operations Committee and was subsequently withdrawn.

Cross File: None.

Information Source(s): National Conference of State Legislatures, Department of Health and Mental Hygiene, Maryland Association of Counties, Maryland Association of County Health Officers, Department of Legislative Services

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