

HOUSE BILL 768

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HB 627/12 – HGO

3lr1350

By: **Delegates Hubbard, Bobo, Burns, Gutierrez, Lee, A. Miller,
Nathan–Pulliam, Oaks, Rosenberg, and V. Turner**

Introduced and read first time: February 6, 2013

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Food Service Facilities – Industrially Produced Trans Fat – Prohibition**

3 FOR the purpose of providing for the types of foods that contain industrially produced
4 trans fat; prohibiting a food service facility from using food containing
5 industrially produced trans fat for certain purposes; providing for a certain
6 exception to the use of trans fat by a food service facility; requiring a food
7 service facility to maintain on–site the original label for certain food under
8 certain circumstances; authorizing a food service facility to provide certain
9 documentation indicating the contents of a food instead of providing the original
10 label; requiring a food service facility to obtain certain documentation under
11 certain circumstances; requiring the Secretary of Health and Mental Hygiene to
12 adopt certain regulations; requiring the Department of Health and Mental
13 Hygiene to list certain food service facilities on the Department’s Web site
14 under certain circumstances; providing that a violation of certain provisions of
15 this Act shall have no effect on the issuance of a certain license; providing for
16 the applicability of certain penalties to certain provisions of this Act; providing
17 that certain provisions of this Act preempt certain local laws and ordinances;
18 and generally relating to prohibitions on the use of industrially produced trans
19 fat by food service facilities.

20 BY repealing and reenacting, without amendments,
21 Article – Health – General
22 Section 21–301(e), (f), and (h) and 21–304(a)(1)
23 Annotated Code of Maryland
24 (2009 Replacement Volume and 2012 Supplement)

25 BY repealing and reenacting, with amendments,
26 Article – Health – General
27 Section 21–314, 21–315, 21–318, and 21–1214
28 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2009 Replacement Volume and 2012 Supplement)

2 BY adding to

3 Article – Health – General

4 Section 21–353 through 21–357 to be under the new part “Part VIII.
5 Industrially Produced Trans Fat”

6 Annotated Code of Maryland

7 (2009 Replacement Volume and 2012 Supplement)

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

10 **Article – Health – General**

11 21–301.

12 (e) “Excluded organization” means:

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

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

20 (f) “Food establishment” means:

21 (1) A food service facility; or

22 (2) A food processing plant.

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

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

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

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

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

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; or

7 (iv) A cottage food business.

8 21-304.

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

11 21-314.

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

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

16 (1) Of the specific findings;

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

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

22 21-315.

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

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

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

28 (2) Fraudulently or deceptively obtains a license.

29 21-318.

1 **(3) CONTAINS:**

2 **(I) VEGETABLE SHORTENING;**

3 **(II) MARGARINE; OR**

4 **(III) ANY KIND OF PARTIALLY HYDROGENATED VEGETABLE**
5 **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 INDUSTRIALLY PRODUCED TRANS FAT.**

10 **21-354.**

11 **(A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, FOOD**
12 **CONTAINING INDUSTRIALLY PRODUCED TRANS FAT MAY NOT BE STORED,**
13 **DISTRIBUTED, HELD FOR SERVICE, USED IN PREPARATION OF ANY MENU ITEM,**
14 **OR SERVED IN ANY 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, 2015, THIS SECTION SHALL**
19 **APPLY TO FOOD THAT IS SERVED DIRECTLY TO PATRONS IN THE ORIGINAL**
20 **SEALED PACKAGE OF THE MANUFACTURER.**

21 **21-355.**

22 **(A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, A FOOD**
23 **SERVICE FACILITY SHALL MAINTAIN ON-SITE THE ORIGINAL LABEL FOR FOOD**
24 **THAT:**

25 **(1) CONTAINS FATS, OILS, OR SHORTENINGS;**

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

1 **(3) IS STORED, DISTRIBUTED, HELD FOR SERVICE, USED IN**
2 **PREPARATION OF ANY MENU ITEMS, OR SERVED OR SOLD BY THE FOOD SERVICE**
3 **FACILITY.**

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

7 **(1) VEGETABLE SHORTENING;**

8 **(2) MARGARINE; OR**

9 **(3) ANY KIND OF PARTIALLY HYDROGENATED VEGETABLE OIL.**

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

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

21 **21-356.**

22 **(A) (1) THE DEPARTMENT SHALL LIST ON THE DEPARTMENT'S WEB**
23 **SITE A FOOD SERVICE FACILITY THAT IS IN VIOLATION OF THIS PART.**

24 **(2) A FOOD SERVICE FACILITY LISTED ON THE DEPARTMENT'S**
25 **WEB SITE UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL REMAIN LISTED**
26 **ON THE WEB SITE UNTIL THE DEPARTMENT FINDS THAT THE FOOD SERVICE**
27 **FACILITY IS IN COMPLIANCE WITH THIS PART.**

28 **(B) A VIOLATION OF THIS PART SHALL HAVE NO EFFECT ON THE**
29 **LICENSE ISSUED BY THE DEPARTMENT TO THE FOOD SERVICE FACILITY UNDER**
30 **§ 21-305 OF THIS SUBTITLE.**

31 **21-357.**

1 **(A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, THIS**
2 **PART SHALL PREEMPT ANY LOCAL LAW OR ORDINANCE REGULATING THE USE**
3 **OF INDUSTRIALLY PRODUCED TRANS FAT BY FOOD SERVICE FACILITIES.**

4 **(B) THIS PART DOES NOT PREEMPT ANY LOCAL LAW OR ORDINANCE**
5 **REGULATING THE USE OF INDUSTRIALLY PRODUCED TRANS FAT BY FOOD**
6 **SERVICE FACILITIES ENACTED BEFORE OCTOBER 1, 2013.**

7 21–1214.

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

10 **[(a)] (B) (1)** Except as provided in paragraph (2) of this subsection, any
11 person who violates any provision of Subtitle 3 of this title or any rule or regulation
12 adopted under Subtitle 3 of this title is guilty of a misdemeanor and on conviction is
13 subject to:

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

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

18 (2) A person who violates § 21–330.1 of this title is not subject to
19 paragraph (1) of this subsection.

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

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

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

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

29 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
30 October 1, 2013.