

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 409

(Senators Raskin and Shank)

Finance

Health and Government Operations

Health - Food Allergy Awareness

This bill requires that, beginning March 1, 2015, all restaurants request that patrons with known food allergies notify their server of the allergies prior to ordering food. Additionally, the bill authorizes a county to require restaurants in its jurisdiction to have an employee on the premises who has completed a food allergen awareness training course and passed an accredited test approved by the Department of Health and Mental Hygiene (DHMH) beginning March 1, 2015. Finally, the bill requires DHMH to establish online lists of (1) approved food allergen awareness training courses and accredited tests and (2) resources about food safety and food handling related to food allergies.

Fiscal Summary

State Effect: DHMH can handle the bill's requirements with existing budgeted resources. The bill is not anticipated to materially affect general fund fine revenues.

Local Effect: Local health departments can assess, in the course of their regular inspections, whether a restaurant is in compliance with the bill. Thus, enforcement can be handled within existing budgeted resources.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: A "restaurant" means a food establishment that accommodates the public, is equipped with facilities for preparing and serving regular meals, and provides seating or has access to shared seating for use of its customers. It does not include a

convenience or grocery store or a service section. Additionally, the bill's provisions do not apply to a food establishment vendor at a carnival or a fair.

Restaurants may request that a customer inform them of any known food allergies in two ways – either by posting a query on the restaurant's menu or menu board or through a verbal request made by the employee taking the customer's food order.

If required by a county to have an employee with food allergen awareness training on the premises at all times when food is being prepared or served, a restaurant must ensure that the employee is available to discuss meal options with customers who have food allergies.

If local laws require a certified food service manager to be on the premises, such an employee can satisfy a county's food allergen accreditation requirement if he or she has completed a department-approved food allergen awareness training course.

Current Law: Chapters 251 and 252 of 2013 required food establishments to prominently display a specified poster relating to food allergies that includes information about the risk of an allergic reaction beginning March 1, 2014. DHMH had to create and display the poster on its website by January 1, 2014. A food establishment (including a food service facility or a food processing plant) must be licensed by DHMH and is subject to inspections.

Food establishment licensees that violate any law 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: Chapters 251 and 252 of 2013 also required DHMH to establish the Task Force on Food Allergy Awareness, Food Safety, and Food Service Facility Letter Grading to examine issues related to food service in Maryland and generate a report with recommendations. The task force released its report in January 2014. The bill adopts several of the task force's recommendations including that (1) restaurants post or directly ask restaurant patrons to inform employees of food allergies before ordering; (2) that food service facilities have a staff member available who has taken a food allergen awareness course to discuss food options with customers, and (3) that DHMH establish online lists of qualifying courses and resources for restaurants regarding food allergies. Although not addressed in the bill, the task force also recommended that DHMH initiate tracking of food allergy complaints as new resources are made available to the department to do so.

The U.S. Centers for Disease Control and Prevention report that the prevalence of food allergies is increasing in America, but the causes are uncertain. There is currently no preventative treatment for food allergies, so the only way to avoid a reaction is strict avoidance of allergens. Allergic reactions can cause broad-range symptoms with varying degrees of severity from itching to potentially fatal reactions such as anaphylaxis. According to the task force report, the eight most common food allergens are cow's milk, eggs, peanuts, tree nuts, fish, shellfish, soy, and wheat. The task force found that, while food service industry staff think food allergies are a serious concern, many do not understand how to accurately respond to inquiries from food-allergic customers, how to help them select safe menu items, or how to properly separate allergens from a meal.

Small Business Impact: Restaurants that are small businesses in a county that adopts the requirements to do so incur costs for employees to complete the food allergen awareness training course and pass an accredited test. Since a qualified employee must be available at all times to discuss meal options with customers that have food allergies, small businesses likely have to pay for training and testing for several employees. Depending on the costs of this process, the bill may have a meaningful impact on small businesses.

Additional Information

Prior Introductions: None.

Cross File: HB 1197 (Delegate Hixson, *et al.*) - Health and Government Operations.

Information Source(s): Department of Health and Mental Hygiene; Maryland Association of County Health Officers; Maryland Association of County Health Officers; Task Force on Food Allergy Awareness, Food Safety, and Food Service Facility Letter Grading; U.S. Centers for Disease Control and Prevention; Department of Legislative Services

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