

Department of Legislative Services
 Maryland General Assembly
 2020 Session

FISCAL AND POLICY NOTE
 First Reader

Senate Bill 188 (Senator Gallion, *et al.*)
 Finance

Public Health - Misbranded Food - Meat Products

This bill establishes, for purposes of Maryland’s Food, Drug, and Cosmetic Act, that a food is misbranded if it is offered for sale in the State with a label that identifies the product as a meat or a meat product and the product (1) contains animal tissue cultured from animal cells outside the animal from which the tissue is derived; or (2) is made from plants or insects.

Fiscal Summary

State Effect: General fund expenditures increase by \$66,500 in FY 2021 for staff. Future year expenditures reflect ongoing staff costs, with a reduction from a full-time to a part-time position. Potential minimal increase in general fund revenues and expenditures due to existing penalty provisions.

(in dollars)	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	66,500	40,800	28,900	29,900	31,000
Net Effect	(\$66,500)	(\$40,800)	(\$28,900)	(\$29,900)	(\$31,000)

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Local expenditures increase to conduct additional enforcement and inspection activities. The impact is likely most significant in FY 2021 and 2022, as discussed below. Potential minimal increase in revenues and expenditures due to existing penalty provisions.

Small Business Effect: Potential meaningful.

Analysis

Current Law:

Federal Food, Drug, and Cosmetics Act and Maryland Food, Drug, and Cosmetic Act

The federal Food Drug, and Cosmetics Act prohibits the manufacture or sale of any food that is adulterated or misbranded. The Maryland Department of Health (MDH) implements the Maryland Food, Drug, and Cosmetic Act, which conforms to the federal act. Among other things, a food is misbranded if (1) its labeling or packaging is false or misleading in any way; (2) it is an imitation of another food and does not have a label that bears the word “imitation” followed immediately by the name of the food imitated; and (3) it purports to be or is represented as a food for which a definition and standard identity has been set under State law or regulation and the food does not conform to that definition or standard. State law specifies that any definition or standard of identity or quality for a meat or poultry product that is adopted under a rule or regulation of the Maryland Department of Agriculture (MDA) is the definition or standard of identity or quality for that product in the State.

Under § 21-1214 of the Health-General Article, the prohibitions under the Act are subject to criminal penalties, including (1) for a first offense, imprisonment for up to three months and/or a fine of up to \$1,000 and (2) for a second violation, imprisonment for up to one year and/or a fine of up to \$2,500. Additionally, a person who violates the Act is liable for a civil penalty of up to \$5,000.

Federal Meat Inspection Act and Maryland Wholesome Meat Act

The U.S. Department of Agriculture’s (USDA) Food Safety and Inspection Service (FSIS) enforces the Federal Meat Inspection Act (FMIA), which requires federal inspection and regulation of meat products prepared for distribution in interstate commerce for use as human food. The Maryland Wholesome Meat Act authorizes MDA to inspect establishments engaged in the slaughtering of livestock or the processing of livestock carcasses, parts of carcasses, or meat or meat food products capable of use as human food solely for intrastate commerce. However, MDA advises that it has not inspected establishments since the early 1990s when the department’s inspection program ended for budgetary reasons and establishments were advised to seek federal authorization to continue operating.

The Maryland Wholesome Meat Act defines “meat” as the edible part of the muscle of livestock that is skeletal or which is found in the tongue, diaphragm, heart, or esophagus, with or without the accompanying or overlying fat, and the portions of bone, skin, sinew, nerve, and blood vessels that normally accompany the muscle tissue and which are not

separated from it in the process of dressing. Meat does not include the muscle found in the lips, snout, or ears. A person is prohibited from selling, offering to sell, or donating in intrastate commerce meat under any false or misleading name, other marketing, or labeling, or in any container of a misleading form or size.

FMIA defines “meat food product” as any product capable of use as human food that is made wholly or in part from any meat or other portion of the carcass of any cattle, sheep, swine, or goats, excepting products that contain meat or other portions of such carcasses only in a relatively small proportion or historically have not been considered by consumers as products of the meat food industry, and that are exempt from definition as a meat food product by the Secretary of Agriculture, as specified.

Background:

Federal Oversight of Cell-cultured Food Products

In March, 2019, FSIS and the U.S. Food and Drug Administration (FDA) announced a formal agreement to jointly oversee the production of human food products derived from the cells of livestock and poultry. The agreement describes the oversight roles and responsibilities for both agencies and how the agencies will collaborate to regulate the development and entry of these products into commerce. Under the agreement, the agencies agree to a joint regulatory framework wherein FDA oversees cell collection, cell banks, and cell growth and differentiation. A transition from FDA to FSIS oversight will occur during the cell harvest stage. FSIS will oversee the production and labeling of human food products derived from the cells of livestock and poultry.

Lawsuits on Meat Labels and Related Legislation in other States

The American Civil Liberties Union (ACLU) reported in December 2019 that a federal court issued a preliminary injunction blocking the state of Arkansas from enforcing a meat label law against the Tofurkey Company. The law makes it illegal for companies to use words like “burger,” “sausage,” and “roast” to describe products that are not made from animals, such as veggie burgers. This injunction was issued pursuant to an ongoing legal challenge to the Arkansas law by ACLU, ACLU of Arkansas, The Good Food Institute, and Animal Legal Defense Fund on behalf of the Tofurkey Company, arguing that the law violates the First Amendment and the Fourteenth Amendment’s due process clause by improperly censoring truthful speech and creating consumer confusion in order to shore up the state’s meat and other industries. Similar litigation is pending regarding a 2018 law from Missouri.

The National Conference of State Legislatures notes that, in addition to the 2019 Arkansas and 2018 Missouri bills, related legislation was passed in 2019 in Alabama, Colorado,

Kentucky, Louisiana, Mississippi, Montana, North Dakota, Oklahoma, South Carolina, South Dakota, and Wyoming.

State Expenditures: General fund expenditures for MDH increase by \$66,473 in fiscal 2021, which accounts for the bill’s October 1, 2020 effective date. This estimate reflects the cost of hiring one full-time sanitarian to conduct education and outreach, develop regulations and an enforcement plan, and inspect affected entities and conduct investigations. It includes a salary, fringe benefits, one-time start-up costs (including costs to mail educational materials to all licensed food manufacturing facilities in the State), and ongoing operating expenses. The information and assumptions used in calculating the estimate are stated below:

- there are 1,376 food service facilities in the State that could be affected by the bill’s changes;
- MDH must establish an enforcement and inspection plan, and provide guidance to local health departments that will conduct most of the licensing and inspection activities; and
- MDH must develop and conduct an outreach campaign to notify manufacturers and distributors in Maryland on the bill’s changes.

Position	1
Salary and Fringe Benefits	\$60,047
Mailing Costs	1,060
Other Operating Expenses	<u>5,366</u>
Total FY 2021 State Expenditures	\$66,473

Future year expenditures reflect a full salary with annual increases and employee turnover and ongoing operating expenses. However, it is assumed that, after guidelines, regulations, and initial outreach activities are completed and affected food service facilities, manufacturers, and distributors become aware of the bill’s labeling requirements, the sanitarian is able to transition from a full-time basis to a part-time basis after the first year.

General fund expenditures may increase, likely minimally, as a result of the application of existing incarceration penalties due to more people being committed to State correctional facilities for convictions in Baltimore City. The number of people convicted of this proposed crime is expected to be minimal.

Generally, persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to a local detention facility. The Baltimore Pretrial Complex, a State-operated facility, is used primarily for pretrial detentions.

State Revenues: General fund revenues may increase minimally as a result of the application of existing monetary penalty provisions from cases heard in the District Court.

Local Expenditures: Local governments license and inspect retail food stores and will be responsible for enforcing the labeling requirements at these facilities. Thus, local expenditures increase for additional enforcement actions. Any increase in expenditures is potentially significant, particularly in the first year or two after the labeling changes go into effect. It is assumed that as food stores and manufacturers become aware of the bill's requirements and voluntarily come into compliance, local expenditures related to the bill decrease.

Expenditures may increase, likely minimally, as a result of application of existing incarceration penalties. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. Per diem operating costs of local detention facilities have ranged from approximately \$40 to \$170 per inmate in recent years.

Local Revenues: Revenues may increase, likely minimally, as a result of the application of existing monetary penalty provisions from cases heard in the circuit courts.

Small Business Effect: Potential meaningful impact on small businesses that make, sell, or distribute food products that are currently labeled as "meat" or a "meat product" and contain animal tissue cultured from animal cells outside the animal from which the tissue is derived or are made from plants or insects. These small businesses may need to create or change current product labels. Additionally, changing the description or title of a product may negatively affect sales. Potential indirect benefit to small businesses that make, sell, or distribute meat or meat products from a decrease in sales competition from nontraditional meat or meat product businesses.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Maryland Department of Agriculture; Maryland Department of Health; National Conference of State Legislatures; U.S. Department of Agriculture; U.S. Food and Drug Administration; American Civil Liberties Union; Department of Legislative Services

Fiscal Note History: First Reader - February 3, 2020
mr/jc

Analysis by: Kathleen P. Kennedy

Direct Inquiries to:
(410) 946-5510
(301) 970-5510