

By: Alvarado

H.B. No. 1523

A BILL TO BE ENTITLED

AN ACT

relating to a prohibition of foods containing trans fat; providing an administrative penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 438, Health and Safety Code, is amended by adding Subchapter H to read as follows:

SUBCHAPTER H. FOODS CONTAINING TRANS FAT

Sec. 438.121. DEFINITIONS. In this subchapter:

(1) "Commissioner" means the commissioner of state health services.

(2) "Department" means the Department of State Health Services.

(3) "Food" and "label" have the meanings assigned by Section 431.002.

(4) "Food service facility" means an establishment that sells or otherwise serves individual portions of food or drink, intended for human consumption, directly to the public or a consumer.

(5) "Trans fat" means a food or food additive artificially created by partial hydrogenation.

Sec. 438.122. EXEMPTIONS. This subchapter does not apply to:

(1) a nonprofit organization, as defined by Section 223.002, that serves food to the public only four days or less in

1 any week, except that once each year the organization may serve food
2 to the public for not more than 14 consecutive days;

3 (2) a volunteer fire department that serves food to
4 the public only four days or less in any week, except that once each
5 year the fire department may serve food to the public for not more
6 than 30 consecutive days;

7 (3) a kitchen in a private home where food is prepared
8 at no charge for guests in the home or at a social gathering;

9 (4) a shelter where food is prepared at no charge for
10 unemployed, homeless, or other disadvantaged populations;

11 (5) a caterer that prepares food for consumption by
12 persons in a private home or at a private social gathering; or

13 (6) a food preparation area or serving area where only
14 food that is not potentially hazardous food, as determined under
15 the 2005 Model Food Code of the United States Food and Drug
16 Administration and the guidelines interpreting that model code, or
17 a subsequent model food code and related guidelines adopted by rule
18 under Section 438.123, is prepared or served by an organization
19 described by Subdivision (1) or (2).

20 Sec. 438.123. RULES. The executive commissioner of the
21 Health and Human Services Commission shall adopt the rules
22 necessary to implement this subchapter.

23 Sec. 438.124. MAINTENANCE OF FOOD LABELS FOR INSPECTION.

24 (a) A food service facility shall maintain on the food service
25 facility's premises an original label for any food or food additive
26 that is required by federal or state law to have a label affixed to
27 it when purchased by the facility and that contains a fat for as

1 long as the food or food additive is used, stored, distributed, or
2 served by the food service facility.

3 (b) On request, a food service facility shall make a label
4 required under Subsection (a) available to a person conducting an
5 inspection under Section 437.009.

6 (c) If a food is not required to be labeled when purchased, a
7 food service facility shall obtain and maintain documentation from
8 the manufacturer of the food indicating whether the food contains
9 trans fat and the food's trans fat content.

10 Sec. 438.125. USE OF TRANS FAT PROHIBITED. (a) A food
11 service facility may not prepare, package, store, serve,
12 distribute, or use a trans fat to prepare or serve food.

13 (b) Subsection (a) does not apply to:

14 (1) a packaged food served directly to a consumer in
15 the original sealed package of the manufacturer; or

16 (2) a food with a nutrition facts label or other
17 documentation from the manufacturer indicating that the food has a
18 trans fat content of less than 0.5 grams per serving.

19 Sec. 438.126. INSPECTION. (a) To enforce this subchapter,
20 the commissioner, an authorized agent, or a health authority may,
21 on presenting appropriate credentials to the owner, operator, or
22 agent in charge of a food service facility, enter a facility to
23 conduct an inspection to determine compliance with this subchapter
24 and rules adopted under this subchapter.

25 (b) On finding an alleged violation, an authorized agent
26 conducting an inspection shall submit to the commissioner and the
27 owner or operator of the food service facility notice by certified

1 mail that includes:

- 2 (1) a brief summary of the alleged violation;
- 3 (2) the amount of the recommended penalty; and
- 4 (3) a statement informing the owner or operator of the
5 food service facility of the owner's or operator's right to a
6 hearing on the occurrence of the violation, the amount of the
7 penalty, or both.

8 Sec. 438.127. ADMINISTRATIVE PENALTY. (a) The
9 commissioner may assess an administrative penalty against a person
10 who violates this subchapter.

11 (b) In determining the amount of the penalty, the
12 commissioner shall consider:

- 13 (1) the seriousness of the violation;
- 14 (2) the person's previous violations;
- 15 (3) the amount necessary to deter a future violation;
- 16 (4) the person's demonstrated good faith; and
- 17 (5) such other matters as justice may require.

18 (c) The penalty may not exceed \$1,000 for each violation.

19 (d) The assessment of a penalty under this subchapter does
20 not affect the status of a license issued to a food service facility
21 by the department under Chapter 437.

22 Sec. 438.128. ADMINISTRATIVE PENALTY ASSESSMENT PROCEDURE.

23 (a) An administrative penalty may be assessed only after a person
24 charged with a violation is given an opportunity for a hearing.

25 (b) If a hearing is held, the commissioner shall make
26 findings of fact and shall issue a written decision regarding the
27 occurrence of the violation and the amount of the penalty that may

1 be warranted.

2 (c) If the person charged with the violation does not
3 request a hearing, the commissioner may assess a penalty after
4 determining that a violation has occurred and the amount of the
5 penalty that may be warranted.

6 (d) After making a determination under this section that a
7 penalty is to be assessed against a person, the commissioner shall
8 issue an order requiring that the person pay the penalty.

9 (e) The commissioner may consolidate a hearing held under
10 this section with another proceeding.

11 Sec. 438.129. PAYMENT AND COLLECTION OF ADMINISTRATIVE
12 PENALTY; JUDICIAL REVIEW. (a) Within 30 days after the date an
13 order of the commissioner under Section 438.128(d) that imposes an
14 administrative penalty becomes final, the person shall:

15 (1) pay the penalty; or

16 (2) file a petition for judicial review of the
17 commissioner's order contesting the occurrence of the violation,
18 the amount of the penalty, or both.

19 (b) Within the 30-day period prescribed by Subsection (a), a
20 person who files a petition for judicial review may:

21 (1) stay enforcement of the penalty by:

22 (A) paying the penalty to the court for placement
23 in an escrow account; or

24 (B) giving the court a supersedeas bond approved
25 by the court that:

26 (i) is for the amount of the penalty; and

27 (ii) is effective until all judicial review

1 of the commissioner's order is final; or

2 (2) request the court to stay enforcement of the
3 penalty by:

4 (A) filing with the court a sworn affidavit of
5 the person stating that the person is financially unable to pay the
6 penalty and is financially unable to give the supersedeas bond; and

7 (B) sending a copy of the affidavit to the
8 commissioner by certified mail.

9 (c) If the commissioner receives a copy of an affidavit
10 under Subsection (b)(2), the commissioner may file with the court,
11 within five days after the date the copy is received, a contest to
12 the affidavit. The court shall hold a hearing on the facts alleged
13 in the affidavit as soon as practicable and shall stay the
14 enforcement of the penalty on finding that the alleged facts are
15 true. The person who files an affidavit has the burden of proving
16 that the person is financially unable to pay the penalty or to give
17 a supersedeas bond.

18 (d) If the person does not pay the penalty and the
19 enforcement of the penalty is not stayed, the penalty may be
20 collected. The attorney general may sue to collect the penalty.

21 (e) If the court sustains the finding that a violation
22 occurred, the court may uphold or reduce the amount of the penalty
23 and order the person to pay the full or reduced amount of the
24 penalty.

25 (f) If the court does not sustain the finding that a
26 violation occurred, the court shall order that a penalty is not
27 owed.

1 (g) If the person paid the penalty and if the amount of the
2 penalty is reduced or the penalty is not upheld by the court, the
3 court shall order, when the court's judgment becomes final, that
4 the appropriate amount plus accrued interest be remitted to the
5 person within 30 days after the date that the judgment of the court
6 becomes final. The interest accrues at the rate charged on loans to
7 depository institutions by the New York Federal Reserve Bank. The
8 interest shall be paid for the period beginning on the date the
9 penalty is paid and ending on the date the penalty is remitted.

10 (h) If the person gave a supersedeas bond and the penalty is
11 not upheld by the court, the court shall order, when the court's
12 judgment becomes final, the release of the bond. If the person gave
13 a supersedeas bond and the amount of the penalty is reduced, the
14 court shall order the release of the bond after the person pays the
15 reduced amount.

16 Sec. 438.130. INTERNET POSTING. The department shall
17 maintain on the department's Internet website a list of food
18 service facilities that are in violation of this subchapter. The
19 department may not remove a food service facility from the list
20 until the department determines the food service facility is in
21 compliance with this subchapter.

22 SECTION 2. This Act takes effect September 1, 2009, except
23 that Section 438.125, Health and Safety Code, as added by this Act,
24 takes effect September 1, 2010.