

SUBJECT: Ban on foods containing trans fats in certain food service establishments

COMMITTEE: Public Health — favorable, without amendment

VOTE: 7 ayes — Kolkhorst, Naishtat, Coleman, Gonzales, Hopson, McReynolds,  
Zerwas

0 nays

4 absent — J. Davis, S. King, Laubenberg, Truitt

SENATE VOTE: On final passage, May 8 — 23-7 (Eltife, Estes, Fraser, Hegar, Jackson,  
Seliger, Williams)

WITNESSES: *(On House companion bill, HB 1523)*

For — *(Registered, but did not testify: Jaime Capelo, Texas Chapter of the American College of Cardiology; Veronica De La Garza, American Diabetes Association; Glen Garey, Texas Restaurant Association; Lee Lane, Texas Association of Local Health Officials; Melinda Moore, Texas Academy of Physician Assistants; Joel Romo, American Heart Association; Mike Shutley, Brinker International; John Paul Urban, Harris County; Katherine Zackel, Texans Care for Children)*

Against — *(Registered, but did not testify: Jennifer Holderead)*

On — Deborah Marlow, Texas Department of State Health Services

BACKGROUND: Trans fats are one of four types of fats. Trans fats can occur naturally in trace amounts or can be made artificially through a process called partial hydrogenation to change their texture and extend their shelf life.

DIGEST: SB 204 would establish a ban on serving foods containing trans fats in certain food service establishments. Trans fats would be defined as foods or food additives artificially created by partial hydrogenation. The ban would not apply to nonprofits, volunteer fire departments, shelters, private home kitchens, private catering, gasoline retailers, or grocery stores. From September 1, 2010, until August 31, 2011, SB 204 would prohibit chains and franchises of food service establishments that operated at 15 or

more Texas locations from packaging, storing, or using a trans fat to prepare or serve food. Exceptions would be made for a trans fat used to deep-fry dough or cake batter and for foods served in their original packaging that contained less than 0.5 grams of trans fat per serving.

On or after September 1, 2011, a food service establishment could not prepare, package, store, or serve a food that contained trans fat except for a food served in its original package that contained less than 0.5 grams of trans fat per serving.

A food service establishment that contracted with a food manufacturer for the provision of a prepared food would be exempted from the prohibition on serving foods containing trans fats until August 31, 2011, or the date the contract expired, if this date was later.

Food service establishments would have to maintain the original federally required food label for any food or food additive that contained fat. The establishment would make food labels available to any person conducting an inspection of the establishment for the Department of State Health Services.

The bill would take effect September 1, 2009.

**SUPPORTERS  
SAY:**

SB 204 would enhance the health of Texans by prohibiting food service establishments from selling most foods with artificial trans fats. Trans fats lower “good” cholesterol and raise “bad” cholesterol, leading to clogged arteries, insulin resistance, and serious health conditions such as heart disease, stroke, and type 2 diabetes. These conditions often are debilitating or deadly. Trans fats also contribute to the obesity epidemic in Texas. Almost 28 percent of Texas adults are obese, and that figure could climb to more than 42 percent by 2040, according to the state demographer.

The bill not only would increase quality of life by reducing the incidence of serious health problems associated with trans fats, but it could save Texans money. Both consumers and the state pay for health services that could have been avoided by diets that did not include artificial trans fats. Obesity-related issues could cost Texans as much as \$39 billion by 2040. In enacting SB 204, Texas would join California, as well as major cities such as New York, Philadelphia, and Boston, in providing citizens with healthier food options. Restaurant chains and major food manufacturers

already are shifting to trans fat-free foods because they are responding to what consumers want.

Because of the phased-in approach to this bill, it would not harm local businesses. They would have ample opportunity to make changes to their ingredients because the first prohibitions on serving foods with trans fats would not occur until September 1, 2010. Many businesses would not have to make changes to their ingredients until September 1, 2011, or after. In light of the movement toward trans fat-free foods, fewer businesses would have to change food suppliers to meet the requirements of the bill because food manufacturers are switching to trans fat-free foods as well.

OPPONENTS  
SAY:

SB 204 would be a government intrusion into Texans' right to choose what they eat and Texas businesses' right to choose the foods they serve. It is a matter of personal choice and responsibility for informed consumers to determine what they will eat, including what health risks they are willing to assume. If it was the will of consumers to stop eating trans fats, then the market would stop producing them. In fact, current market trends demonstrate declines in the amount of artificial trans fats being produced. This trend should be allowed to run its course until a natural equilibrium is established between consumer demand for trans fats and market supply.

SB 204 would harm many businesses that served food that was wholly or partly produced by a manufacturer that used trans fats. Even though this bill would provide an exemption from the trans fat prohibition to businesses with existing contracts for foods that included trans fats, businesses would be required to change their food suppliers as soon as existing contracts expired if their suppliers did not eliminate trans fats from the foods they produced. This could lead to losses for food businesses that relied on a customer-base that expected continuity in the taste of the foods they purchased. It also could increase contracting costs for businesses that had to switch to food distributors with which they lacked an established relationship from which to negotiate lower prices.

NOTES:

The House companion bill, HB 1523 by Alvarado, was reported favorably, as substituted, by the Public Health Committee on April 24 and placed on the May 11 General State Calendar.