

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

House Bill 728 (Delegate Love, *et al.*)
Health and Government Operations

Public Health - Sale of Baked Goods - Home Kitchens

This bill authorizes a person to sell “nonpotentially hazardous baked goods” made in a kitchen in a private home without a license to operate a food establishment. However, the baked goods must be sold to an individual for his or her own consumption and clearly labeled “not for resale” and “processed and prepared without government inspection.”

Fiscal Summary

State Effect: The bill does not materially affect State finances or operations since any such operations already in existence have likely not complied with the current licensure requirements.

Local Effect: The bill does not materially affect local government finances or operations.

Small Business Effect: Potential meaningful for small businesses that can sell baked goods without a license under the bill and therefore can be exempt from any inspections and penalties that apply to food service establishments subject to licensure.

Analysis

Current Law: With certain exceptions that allow for a waiver, a person has to be licensed by the Department of Health and Mental Hygiene (DHMH) to operate a food service establishment *unless* the food establishment is operated by an excluded organization. For example, DHMH may also waive the license requirement for (1) farmer’s markets, if the foods offered or sold are only fresh fruits and vegetables, and

other foods specified in regulations; and (2) for bake sales, where only nonpotentially hazardous bakery goods are sold in conjunction with a fundraising event.

Food establishment licensees that violate any laws 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.

A nonpotentially hazardous food is defined by the U.S. Food and Drug Administration and in regulations as a: hard-boiled shell egg that has been air-cooled with the shell intact; food with a water activity (aw) value of 0.85 or less; food with a pH level of 4.6 or below when measured at 75 degrees Fahrenheit; commercially sterile food in a hermetically sealed container; or food for which laboratory evidence demonstrates that the rapid and progressive growth of infectious and toxigenic microorganisms or the growth of *Salmonella Enteritidis* in eggs or *Clostridium botulinum* cannot occur.

Background: DHMH advises that it is not aware of any such home-based operations that are subject to licensure under current law. Because DHMH does not have oversight over food service establishments that are not subject to licensure, it would have no oversight over baked goods sold as a result of the bill.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Anne Arundel and Howard counties, Department of Health and Mental Hygiene, Department of Legislative Services

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ncs/mwc

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