

HOUSE BILL 166

M4, J1, L1

0lr1378
CF 0lr0445

By: **Delegate Hubbard**

Introduced and read first time: January 20, 2010

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Farmer's Markets – Raw Agricultural Product Sales – Producer Mobile**
3 **Farmer's Market License**

4 FOR the purpose of altering a certain definition to exclude the sale of certain raw
5 agricultural products at a farmer's market from regulation as a food service
6 facility; prohibiting a local jurisdiction from requiring a license for the sale of
7 raw agricultural products at a farmer's market; clarifying that a license is not
8 required to deliver prepackaged food products; requiring the Department of
9 Health and Mental Hygiene to establish a producer mobile farmer's market
10 license; providing for the fee and duration of the license; authorizing a licensee
11 to sell certain products at a farmer's market; providing that the license is valid
12 in all jurisdictions in the State; prohibiting a local jurisdiction from requiring a
13 certain licensee to obtain a separate permit or a license to sell certain products;
14 requiring the Department to issue the license, conduct certain inspections, and
15 adopt certain regulations; requiring the license to be displayed in a certain
16 manner; establishing fines for violations of requirements relating to the license;
17 requiring county health departments to enforce provisions relating to the
18 license; establishing that certain fines for violations be paid to the county in
19 which the violation occurred; defining certain terms; making conforming
20 changes; making stylistic changes; and generally relating to the sale of raw
21 agricultural products and mobile food service facility licenses.

22 BY repealing and reenacting, with amendments,
23 Article – Health – General
24 Section 21–301(h)(2), 21–304, 21–305(b) and (c), and 21–308(c)
25 Annotated Code of Maryland
26 (2009 Replacement Volume)

27 BY repealing and reenacting, without amendments,
28 Article – Health – General
29 Section 21–305(a) and 21–309(a)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland
2 (2009 Replacement Volume)

3 BY adding to
4 Article – Health – General
5 Section 21–309.1
6 Annotated Code of Maryland
7 (2009 Replacement Volume)

8 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
9 MARYLAND, That the Laws of Maryland read as follows:

10 **Article – Health – General**

11 21–301.

12 (h) (2) “Food service facility” does not include:

13 (i) A kitchen in a private home where food is prepared at no
14 charge for guests in the home, for guests at a social gathering, or for service to
15 unemployed, homeless, or other disadvantaged populations; [or]

16 (ii) A food preparation or serving area where only
17 nonpotentially hazardous food, as defined by the United States Food and Drug
18 Administration, is prepared or served only by an excluded organization; OR

19 **(III) A LOCATION IN A FARMER’S MARKET WHERE RAW**
20 **AGRICULTURAL PRODUCTS ARE SOLD.**

21 21–304.

22 (a) (1) The Department shall adopt rules and regulations necessary to
23 carry out the provisions of this subtitle.

24 (2) For excluded organizations, the Department:

25 (i) Shall adopt separate regulations that establish minimum
26 standards that:

27 1. Ensure food integrity and safety;

28 2. Preserve public health; and

29 3. Control foodborne illnesses; and

30 (ii) May adopt separate regulations that establish a licensing
31 system, with appropriate standards, that excluded organizations may voluntarily

1 choose to submit to as a nonrescindable alternative to regulation under
2 [subparagraph] ITEM (i) of this paragraph.

3 (b) A political subdivision may not adopt a law, ordinance, rule, or regulation
4 that establishes a standard that is less stringent than rules and regulations adopted
5 under this subtitle.

6 (c) Except as otherwise provided in this section, this subtitle does not limit
7 the power of a home rule or charter county or Baltimore City to adopt and enforce
8 laws, ordinances, and regulations that are consistent with the purposes of this
9 subtitle, including the power to adopt local licensing and enforcement procedures.

10 (D) (1) (I) IN THIS SUBSECTION THE FOLLOWING WORDS HAVE
11 THE MEANINGS INDICATED.

12 (II) "FARMER'S MARKET" MEANS A PUBLIC MARKET IN THE
13 STATE WHERE PRODUCERS OF FRESH RAW AGRICULTURAL PRODUCTS SELL
14 THE PRODUCTS DIRECTLY TO THE PUBLIC.

15 (III) "RAW AGRICULTURAL PRODUCT" INCLUDES:

16 1. GRAINS, FLOWERS, FRUITS, AND VEGETABLES
17 SUPPLIED DIRECTLY FROM THE FARM ON WHICH THEY WERE PRODUCED; AND

18 2. ANY AGRICULTURAL PRODUCTS THE
19 DEPARTMENT IDENTIFIES IN REGULATION.

20 (2) A LOCAL JURISDICTION MAY NOT REQUIRE A LICENSE FOR
21 THE SALE OF RAW AGRICULTURAL PRODUCTS AT A FARMER'S MARKET.

22 21-305.

23 (a) Except as otherwise provided in this subtitle, a person may not operate a
24 food establishment unless the person is licensed by the Department.

25 (b) (1) A separate license is required for each food establishment that a
26 person owns or operates.

27 (2) Except in Baltimore City, the provisions of this subsection may
28 require a license for each location where vending machines are operated, but may not
29 require a separate license for each individual vending machine.

30 (3) Except in Baltimore City, vending machine locations used
31 exclusively for prepackaged and commercially sealed foods that are not potentially
32 hazardous, as defined by regulation, are not required to be licensed.

1 (4) In Baltimore City, a license may be required for each individual
2 vending machine.

3 (5) An excluded organization may operate a food establishment
4 without a license unless the excluded organization has been issued a license under §
5 21-304(a)(2)(ii) of this subtitle.

6 (6) A license is not required for a person who:

7 (i) Produces shell eggs;

8 (ii) Sells the shell eggs directly to the public; and

9 (iii) Is registered with or inspected by the Secretary of
10 Agriculture under § 4-310 or § 4-311.1 of the Agriculture Article.

11 (7) [Nothing] **EXCEPT AS PROVIDED IN § 21-304 OF THIS**
12 **SUBTITLE, NOTHING** in this subtitle shall preempt the right of a county to require a
13 permit under the authority provided by a local law, ordinance, or regulation if this
14 subtitle does not require the food establishment to obtain a State license.

15 (c) A license is not transferable:

16 (1) Except as provided by regulation for transfer of the license on the
17 death of the licensee from person to person; or

18 (2) From location to location, **EXCEPT FOR A PRODUCER MOBILE**
19 **FARMER'S MARKET LICENSE UNDER § 21-309.1 OF THIS SUBTITLE.**

20 21-308.

21 (c) (1) An on-farm home processing facility may obtain an on-farm home
22 processing plant license for a fee established in regulations.

23 (2) An on-farm home processing facility that obtains an on-farm home
24 processing plant license may manufacture or process only foods provided for in
25 regulations of the Department.

26 (3) **A LICENSE OR PERMIT IS NOT REQUIRED TO DELIVER**
27 **PREPACKAGED FOODS TO FILL AN ORDER OF A CUSTOMER.**

28 21-309.

29 (a) (1) In this section the following terms have the meanings indicated.

1 (2) “Mobile food service facility” means a food service facility which is
2 a mechanically, electrically, manually, or otherwise propelled vehicle operating on
3 land or water.

4 (3) “On-farm food service facility” means a food service facility that:

5 (i) Is located on a farm;

6 (ii) Serves food as designated by the Department; and

7 (iii) Operates during a period of time of not more than 30
8 consecutive days with up to two renewals in a 1-year period.

9 (4) “Temporary food service facility” means a food service facility
10 which operates during a period of time of not more than 14 consecutive days at a fixed
11 location in conjunction with a fair, carnival, public exhibition, construction project,
12 recreational facility, or similar gathering.

13 **21-309.1.**

14 **(A) (1) THE DEPARTMENT SHALL ESTABLISH A PRODUCER MOBILE**
15 **FARMER’S MARKET LICENSE.**

16 **(2) THE FEE FOR A PRODUCER MOBILE FARMER’S MARKET**
17 **LICENSE:**

18 **(I) SHALL BE BASED ON THE ANTICIPATED COST OF**
19 **LICENSING, INSPECTING, AND REGULATING LICENSEES; AND**

20 **(II) MAY NOT EXCEED \$100.**

21 **(3) A PRODUCER MOBILE FARMER’S MARKET LICENSE SHALL BE**
22 **VALID FOR A PERIOD OF 1 YEAR.**

23 **(B) A PRODUCER MOBILE FARMER’S MARKET LICENSEE MAY**
24 **TRANSPORT TO AND SELL AT A FARMER’S MARKET:**

25 **(1) WHOLE PRODUCTS WHICH WERE PRODUCED BY THE**
26 **LICENSEE UNDER AN ON-FARM HOME PROCESSING PLANT LICENSE; OR**

27 **(2) ANY FARM PRODUCTS PRODUCED BY THE LICENSEE, AS**
28 **AUTHORIZED BY THE DEPARTMENT IN REGULATION.**

29 **(C) (1) A PRODUCER MOBILE FARMER’S MARKET LICENSE IS VALID**
30 **IN ALL JURISDICTIONS IN THE STATE.**

1 **(2) A COUNTY OR MUNICIPALITY MAY NOT REQUIRE A PRODUCER**
2 **MOBILE FARMER'S MARKET LICENSEE TO OBTAIN A SEPARATE PERMIT OR**
3 **LICENSE TO SELL PRODUCTS AUTHORIZED FOR SALE UNDER THE PRODUCER**
4 **MOBILE FARMER'S MARKET LICENSE.**

5 **(D) THE DEPARTMENT SHALL:**

6 **(1) ISSUE PRODUCER MOBILE FARMER'S MARKET LICENSES;**

7 **(2) AT LEAST ONCE A YEAR, INSPECT EACH MOBILE UNIT THAT**
8 **OPERATES UNDER A PRODUCER MOBILE FARMER'S MARKET LICENSE; AND**

9 **(3) ADOPT REGULATIONS TO IMPLEMENT THIS SECTION.**

10 **(E) A PRODUCER MOBILE FARMER'S MARKET LICENSE SHALL BE**
11 **DISPLAYED ON ANY MOBILE UNIT OPERATING UNDER THE LICENSE.**

12 **(F) (1) A PERSON IN VIOLATION OF THIS SECTION OR A REGULATION**
13 **ADOPTED UNDER THIS SECTION IS SUBJECT TO A FINE NOT TO EXCEED \$1,000.**

14 **(2) A COUNTY HEALTH DEPARTMENT SHALL ENFORCE AND LEVY**
15 **FINES FOR A VIOLATION OF THIS SECTION OR ANY REGULATIONS ADOPTED**
16 **UNDER THIS SECTION.**

17 **(3) FINES ASSESSED BY A COUNTY HEALTH DEPARTMENT SHALL**
18 **BE PAID TO THE COUNTY IN WHICH THE VIOLATION OCCURRED.**

19 **(4) A COUNTY HEALTH DEPARTMENT SHALL NOTIFY THE**
20 **DEPARTMENT OF ANY VIOLATIONS OCCURRING IN THE COUNTY.**

21 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
22 October 1, 2010.