

Chapter 246

(Senate Bill 198)

AN ACT concerning

Farmer's Markets – ~~Raw~~ Agricultural Product Sales – Producer Mobile Farmer's Market License

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

BY repealing and reenacting, with amendments,

Article – Health – General

Section 21–301(h)(2), 21–304, 21–305(b) and (c), and 21–308(c)

Annotated Code of Maryland

(2009 Replacement Volume)

BY repealing and reenacting, without amendments,

Article – Health – General

Section 21–305(a) and 21–309(a)

Annotated Code of Maryland

(2009 Replacement Volume)

BY adding to

Article – Health – General

Section 21–309.1

Annotated Code of Maryland

(2009 Replacement Volume)

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

Article – Health – General

21–301.

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

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

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

(III) A LOCATION IN A FARMER’S MARKET WHERE RAW AGRICULTURAL PRODUCTS, AS DEFINED IN § 21–304(D)(1)(III) OF THIS SUBTITLE, ARE SOLD.

21–304.

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

(2) For excluded organizations, the Department:

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

1. Ensure food integrity and safety;
2. Preserve public health; and
3. Control foodborne illnesses; and

(ii) May adopt separate regulations that establish a licensing system, with appropriate standards, that excluded organizations may voluntarily choose to submit to as a nonrescindable alternative to regulation under **[subparagraph] ITEM (i)** of this paragraph.

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

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

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

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

(III) "RAW AGRICULTURAL PRODUCT" INCLUDES:

1. ~~GRAINS, FLOWERS~~ WHOLE, UNPROCESSED GRAINS, FLOWERS, HERBS, NUTS, FRUITS, AND VEGETABLES SUPPLIED DIRECTLY FROM THE FARM ON WHICH THEY WERE PRODUCED; AND

2. ANY AGRICULTURAL PRODUCTS THE DEPARTMENT IDENTIFIES IN REGULATION.

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

21-305.

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

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

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

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

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

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

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

(i) Produces shell eggs;

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

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

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

(c) A license is not transferable:

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

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

21-308.

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

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

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

21-309.

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

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

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

- (i) Is located on a farm;
- (ii) Serves food as designated by the Department; and
- (iii) Operates during a period of time of not more than 30 consecutive days with up to two renewals in a 1–year period.

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

21–309.1.

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

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

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

(II) MAY NOT EXCEED \$100.

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

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

(1) ~~WHOLE PRODUCTS~~ PRODUCTS WHICH WERE PRODUCED BY THE LICENSEE UNDER AN ON–FARM HOME PROCESSING PLANT LICENSE; ~~OR~~

(2) ~~ANY FARM PRODUCTS~~ PRODUCTS PRODUCED BY THE LICENSEE, AS AUTHORIZED BY THE DEPARTMENT IN REGULATION; OR

(3) FARM PRODUCTS THAT HAVE BEEN INSPECTED, LICENSED, OR CERTIFIED FOR FOOD SAFETY BY THE MARYLAND DEPARTMENT OF AGRICULTURE.

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

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

(D) THE DEPARTMENT SHALL:

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

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

(3) ADOPT REGULATIONS TO IMPLEMENT THIS SECTION.

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

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

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

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

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

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

Approved by the Governor, May 4, 2010.