

HOUSE BILL 399

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CF 2lr1552

By: **Delegates Pena–Melnyk, Bromwell, Cullison, Hubbard, A. Kelly, Kipke,
Love, Nathan–Pulliam, and Oaks**

Introduced and read first time: February 1, 2012

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Health – Cottage Food Businesses – Requirements**

3 FOR the purpose of providing that a cottage food business is not required, under
4 certain circumstances, to be licensed by the Department of Health and Mental
5 Hygiene; providing that the owner of a cottage food business may sell only
6 cottage food products that are stored on certain premises and prepackaged with
7 a certain label; requiring the owner of a cottage food business to comply with
8 certain county and municipal laws and ordinances; authorizing the Department
9 to investigate certain complaints; authorizing a representative of the
10 Department to enter and inspect, under certain circumstances, the premises of
11 a cottage food business for a certain purpose; prohibiting the owner of a cottage
12 food business from refusing to grant certain access to the premises and
13 interfering with a certain inspection; providing that a person who violates this
14 Act is not subject to certain penalties; providing that certain provisions of this
15 Act do not exempt a cottage food business from certain tax laws; providing for
16 the application of this Act; defining certain terms; altering certain definitions;
17 and generally relating to cottage food businesses.

18 BY repealing and reenacting, without amendments,
19 Article – Health – General
20 Section 21–301(a) and (f)
21 Annotated Code of Maryland
22 (2009 Replacement Volume and 2011 Supplement)

23 BY adding to
24 Article – Health – General
25 Section 21–301(b–1) and (b–2) and 21–330.1
26 Annotated Code of Maryland
27 (2009 Replacement Volume and 2011 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY repealing and reenacting, with amendments,
2 Article – Health – General
3 Section 21–301(g) and (h) and 21–1214
4 Annotated Code of Maryland
5 (2009 Replacement Volume and 2011 Supplement)

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

8 **Article – Health – General**

9 21–301.

10 (a) In this subtitle the following words have the meanings indicated.

11 **(B–1) “COTTAGE FOOD BUSINESS” MEANS A BUSINESS THAT:**

12 **(1) PRODUCES OR PACKAGES COTTAGE FOOD PRODUCTS IN A**
13 **RESIDENTIAL KITCHEN; AND**

14 **(2) SELLS THE COTTAGE FOOD PRODUCTS IN ACCORDANCE WITH**
15 **§ 21–330.1 OF THIS SUBTITLE.**

16 **(B–2) (1) “COTTAGE FOOD PRODUCT” MEANS A FOOD THAT IS SOLD BY**
17 **A COTTAGE FOOD BUSINESS IN ACCORDANCE WITH § 21–330.1 OF THIS**
18 **SUBTITLE.**

19 **(2) “COTTAGE FOOD PRODUCT” DOES NOT INCLUDE A**
20 **POTENTIALLY HAZARDOUS FOOD, AS DEFINED IN COMAR 10.15.03.02.**

21 (f) “Food establishment” means:

22 (1) A food service facility; or

23 (2) A food processing plant.

24 (g) (1) “Food processing plant” means any place used for, or in connection
25 with, the commercial manufacturing, preparing, processing, packaging, canning,
26 freezing, storing, distributing, labeling, or holding of food or drink for human
27 consumption.

28 (2) “Food processing plant” includes:

29 (i) A bakery plant;

30 (ii) A cannery;

- 1 (iii) A confectionery plant;
- 2 (iv) A crab meat picking plant;
- 3 (v) A food manufacturing plant;
- 4 (vi) A food warehouse or distribution center;
- 5 (vii) A frozen food processing plant;
- 6 (viii) An ice manufacturing plant;
- 7 (ix) A shellfish plant;
- 8 (x) A soft drink manufacturing plant; or
- 9 (xi) A bottled water plant.

10 (3) “Food processing plant” does not include [a]:

11 (I) A warehouse or distribution center that:

12 [(i)] 1. Does not process food; and

13 [(ii)] 2. Stores only sealed containers of whole bean,
14 ground or instant coffee, leaf or instant teas, nondairy dehydrated whiteners, sugar, or
15 sugar-free sweeteners; OR

16 (II) A COTTAGE FOOD BUSINESS.

17 (h) (1) “Food service facility” means:

18 (i) A place where food or drink is prepared for sale or service on
19 the premises or elsewhere; or

20 (ii) Any operation where food is served to or provided for the
21 public, with or without charge.

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

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

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

4 (iii) A location in a farmer's market or at a public festival or
5 event where raw agricultural products, as defined in § 21-304(d)(1)(iii) of this subtitle,
6 are sold; OR

7 (IV) A COTTAGE FOOD BUSINESS.

8 **21-330.1.**

9 (A) THIS SECTION DOES NOT:

10 (1) APPLY TO A FOOD ESTABLISHMENT THAT IS REQUIRED TO
11 HAVE A LICENSE UNDER § 21-305 OF THIS SUBTITLE; OR

12 (2) EXEMPT A COTTAGE FOOD BUSINESS FROM ANY APPLICABLE
13 STATE OR FEDERAL TAX LAWS.

14 (B) A COTTAGE FOOD BUSINESS IS NOT REQUIRED TO BE LICENSED BY
15 THE DEPARTMENT IF THE OWNER OF THE COTTAGE FOOD BUSINESS COMPLIES
16 WITH THIS SECTION.

17 (C) THE OWNER OF A COTTAGE FOOD BUSINESS MAY SELL ONLY
18 COTTAGE FOOD PRODUCTS THAT ARE:

19 (1) STORED ON THE PREMISES OF THE COTTAGE FOOD BUSINESS;
20 AND

21 (2) PREPACKAGED WITH A LABEL THAT CONTAINS:

22 (I) THE FOLLOWING INFORMATION:

23 1. THE NAME AND ADDRESS OF THE COTTAGE FOOD
24 BUSINESS;

25 2. THE NAME OF THE COTTAGE FOOD PRODUCT;

26 3. THE INGREDIENTS OF THE COTTAGE FOOD
27 PRODUCT IN DESCENDING ORDER OF THE AMOUNT OF EACH INGREDIENT BY
28 WEIGHT;

1 4. **THE NET WEIGHT OR NET VOLUME OF THE**
2 **COTTAGE FOOD PRODUCT;**

3 5. **ALLERGEN INFORMATION AS SPECIFIED BY**
4 **FEDERAL LABELING REQUIREMENTS; AND**

5 6. **IF ANY NUTRITIONAL CLAIM IS MADE,**
6 **NUTRITIONAL INFORMATION AS SPECIFIED BY FEDERAL LABELING**
7 **REQUIREMENTS; AND**

8 (ii) **THE FOLLOWING STATEMENT PRINTED IN 10 POINT OR**
9 **LARGER TYPE IN A COLOR THAT PROVIDES A CLEAR CONTRAST TO THE**
10 **BACKGROUND OF THE LABEL: “MADE BY A COTTAGE FOOD BUSINESS THAT IS**
11 **NOT SUBJECT TO MARYLAND’S FOOD SAFETY REGULATIONS.”.**

12 (d) **THE OWNER OF A COTTAGE FOOD BUSINESS SHALL COMPLY WITH**
13 **ALL APPLICABLE COUNTY AND MUNICIPAL LAWS AND ORDINANCES**
14 **REGULATING THE PREPARATION, PROCESSING, STORAGE, AND SALE OF**
15 **COTTAGE FOOD PRODUCTS.**

16 (e) (1) **THE DEPARTMENT MAY INVESTIGATE ANY COMPLAINT**
17 **ALLEGING THAT A COTTAGE FOOD BUSINESS HAS VIOLATED THIS SECTION.**

18 (2) **ON RECEIPT OF A COMPLAINT, A REPRESENTATIVE OF THE**
19 **DEPARTMENT, AT A REASONABLE TIME, MAY ENTER AND INSPECT THE**
20 **PREMISES OF A COTTAGE FOOD BUSINESS TO DETERMINE COMPLIANCE WITH**
21 **THIS SECTION.**

22 (3) **THE OWNER OF A COTTAGE FOOD BUSINESS MAY NOT:**

23 (i) **REFUSE TO GRANT ACCESS TO A REPRESENTATIVE WHO**
24 **REQUESTS TO ENTER AND INSPECT THE PREMISES OF THE COTTAGE FOOD**
25 **BUSINESS UNDER PARAGRAPH (2) OF THIS SUBSECTION; OR**

26 (ii) **INTERFERE WITH ANY INSPECTION UNDER PARAGRAPH**
27 **(2) OF THIS SUBSECTION.**

28 21-1214.

29 (a) (1) **[Any] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**
30 **SUBSECTION, ANY person who violates any provision of Subtitle 3 of this title or any**
31 **rule or regulation adopted under Subtitle 3 of this title is guilty of a misdemeanor and**
32 **on conviction is subject to:**

1 [(1) (I)] For a first offense, a fine not exceeding \$1,000 or
2 imprisonment not exceeding 90 days, or both; and

3 [(2) (II)] For a second offense, a fine not exceeding \$2,500 or
4 imprisonment not exceeding 1 year, or both.

5 **(2) A PERSON WHO VIOLATES § 21-330.1 OF THIS TITLE IS NOT**
6 **SUBJECT TO PARAGRAPH (1) OF THIS SUBSECTION.**

7 (b) In addition to any criminal penalties imposed under this section, a person
8 who violates any provision of Subtitle 3 of this title or any rule or regulation adopted
9 under Subtitle 3 of this title or any term, condition, or limitation of any license or
10 registration issued under Subtitle 3 of this title:

11 (1) Is liable for a civil penalty not exceeding \$5,000, to be collected in a
12 civil action in the District Court for any county; and

13 (2) May be enjoined from continuing the violation.

14 (c) Each day on which a violation occurs is a separate violation under this
15 section.

16 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
17 October 1, 2012.