

Chapter 256

(House Bill 399)

AN ACT concerning

Health – Cottage Food Businesses – Requirements

FOR the purpose of providing that a cottage food business is not required, under certain circumstances, to be licensed by the Department of Health and Mental Hygiene; providing that the owner of a cottage food business may sell only cottage food products that are stored on certain premises and prepackaged with a certain label; requiring the owner of a cottage food business to comply with certain county and municipal laws and ordinances; authorizing the Department to investigate certain complaints; authorizing a representative of the Department to enter and inspect, under certain circumstances, the premises of a cottage food business for a certain purpose; prohibiting the owner of a cottage food business from refusing to grant certain access to the premises and interfering with a certain inspection; providing that an investigation of a cottage food business conducted under a certain provision of this Act may include sampling of a cottage food product for certain purposes; requiring the Department to adopt regulations to carry out this Act; providing that a person who violates this Act is not subject to certain penalties; providing that certain provisions of this Act do not exempt a cottage food business from certain tax laws; providing for the application of this Act; defining certain terms; altering certain definitions; and generally relating to cottage food businesses.

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

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

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

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

Article – Health – General

21–301.

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

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

(1) PRODUCES OR PACKAGES COTTAGE FOOD PRODUCTS IN A RESIDENTIAL KITCHEN; ~~AND~~

(2) SELLS THE COTTAGE FOOD PRODUCTS IN ACCORDANCE WITH § 21–330.1 OF THIS SUBTITLE AND REGULATIONS ADOPTED BY THE DEPARTMENT; AND

(3) HAS ANNUAL ~~SALES~~ REVENUES ~~OF~~ FROM THE SALE OF COTTAGE FOOD PRODUCTS IN AN AMOUNT NOT EXCEEDING \$25,000.

(B–2) ~~(1)~~ “COTTAGE FOOD PRODUCT” MEANS A NONHAZARDOUS FOOD, AS SPECIFIED IN REGULATIONS ADOPTED BY THE DEPARTMENT, THAT IS SOLD BY A COTTAGE FOOD BUSINESS AT A FARMER’S MARKET OR PUBLIC EVENT IN ACCORDANCE WITH § 21–330.1 OF THIS SUBTITLE AND REGULATIONS ADOPTED BY THE DEPARTMENT.

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

(f) “Food establishment” means:

- (1) A food service facility; or
- (2) A food processing plant.

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

(2) “Food processing plant” includes:

- (i) A bakery plant;

- (ii) A cannery;
- (iii) A confectionery plant;
- (iv) A crab meat picking plant;
- (v) A food manufacturing plant;
- (vi) A food warehouse or distribution center;
- (vii) A frozen food processing plant;
- (viii) An ice manufacturing plant;
- (ix) A shellfish plant;
- (x) A soft drink manufacturing plant; or
- (xi) A bottled water plant.

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

(I) A warehouse or distribution center that:

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

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

(II) A COTTAGE FOOD BUSINESS.

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

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

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

(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;

(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 or at a public festival or event where raw agricultural products, as defined in § 21-304(d)(1)(iii) of this subtitle, are sold; OR

(IV) A COTTAGE FOOD BUSINESS.

21-330.1.

(A) THIS SECTION DOES NOT:

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

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

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

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

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

(2) PREPACKAGED WITH A LABEL THAT CONTAINS:

(I) THE FOLLOWING INFORMATION:

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

2. THE NAME OF THE COTTAGE FOOD PRODUCT;

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

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

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

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

(II) THE FOLLOWING STATEMENT PRINTED IN 10 POINT OR LARGER TYPE IN A COLOR THAT PROVIDES A CLEAR CONTRAST TO THE BACKGROUND OF THE LABEL: "MADE BY A COTTAGE FOOD BUSINESS THAT IS NOT SUBJECT TO MARYLAND'S FOOD SAFETY REGULATIONS."

(D) THE OWNER OF A COTTAGE FOOD BUSINESS SHALL COMPLY WITH ALL APPLICABLE COUNTY AND MUNICIPAL LAWS AND ORDINANCES REGULATING THE PREPARATION, PROCESSING, STORAGE, AND SALE OF COTTAGE FOOD PRODUCTS.

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

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

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

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

(II) INTERFERE WITH ANY INSPECTION UNDER PARAGRAPH (2) OF THIS SUBSECTION.

(4) AN INVESTIGATION OF A COTTAGE FOOD BUSINESS CONDUCTED UNDER THIS SUBSECTION MAY INCLUDE SAMPLING OF A COTTAGE FOOD PRODUCT TO DETERMINE IF THE COTTAGE FOOD PRODUCT IS MISBRANDED OR ADULTERATED.

(F) THE DEPARTMENT SHALL ADOPT REGULATIONS TO CARRY OUT THIS SECTION.

21-1214.

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

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

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

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

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

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

(2) May be enjoined from continuing the violation.

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

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

Approved by the Governor, May 2, 2012.