

Department of Legislative Services  
Maryland General Assembly  
2012 Session

FISCAL AND POLICY NOTE  
Revised

House Bill 399 (Delegate Pena-Melnyk, *et al.*)  
Health and Government Operations

Finance

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Health - Cottage Food Businesses - Requirements

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This bill establishes requirements with regard to cottage food businesses (*i.e.*, businesses that produce or package cottage food products in a residential kitchen for annual revenues of up to \$25,000 from the sale of those products). The bill specifies that a cottage food business in compliance with these requirements is not required to be licensed by the Department of Health and Mental Hygiene (DHMH). A “cottage food product” is a nonhazardous food that is sold at a farmer’s market or public event. DHMH must adopt specified regulations to carry out the bill.

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Fiscal Summary

**State Effect:** The bill does not substantively change State activities or operations.

**Local Effect:** Local health departments (LHDs) can use existing resources to enforce the bill’s requirements, since enforcement is complaint-based only.

**Small Business Effect:** Potential minimal increase in expenditures for cottage food businesses to comply with the bill’s labeling requirements. Because cottage food businesses are not currently required to be licensed by DHMH, the bill’s fiscal effect on such businesses is not anticipated to be significant.

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Analysis

**Bill Summary:** Under the bill, the owner of a cottage food business may sell only cottage food products that are stored on the premises of the business and prepackaged with a label that contains (1) the name and address of the business; (2) the name, ingredients, and net weight or net volume of the product; (3) allergen information as

specified by federal labeling requirements; (4) if any nutritional claim is made, nutritional information as specified by federal labeling requirements; and (5) a printed statement, as specified by the bill, that the product is made by a cottage food business that is not subject to Maryland's food safety regulations. In addition, the owner must comply with all applicable county and municipal laws and ordinances regulating the preparation, processing, storage, and sale of cottage food products.

The bill authorizes a representative of DHMH, upon receipt of a complaint and at a reasonable time, to enter and inspect the premises of a cottage food business to determine compliance. Such an investigation may include sampling of a cottage food product to determine if the product is misbranded or adulterated. The owner of the business may not interfere with the inspection or refuse to grant access to the inspector.

The bill exempts cottage food businesses from existing criminal penalties applicable to food establishment licensees that violate laws regulating the industry.

**Current Law/Background:** DHMH advises that it does not currently require home-based food businesses to be licensed by the department in order to make and/or sell items that, under the bill, would be considered cottage food products. DHMH further advises that LHDs do not currently inspect such businesses.

In general, however, a food establishment must be licensed by DHMH and is subject to inspections, which are typically conducted by LHDs. A food establishment is a food service facility or a food processing plant. If DHMH finds that a food establishment has violated the Maryland Food, Drug, and Cosmetic Act, or any regulation adopted under the Act, the licensee must be notified of the specific findings and the specific, reasonable date by which the licensee must correct the violations or deficiencies. If corrections are not made by the specified date, DHMH may suspend or revoke the food establishment's license.

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 "potentially hazardous food" is defined in regulation as a natural or synthetic food that requires temperature control because the food is in a form capable of supporting (1) the rapid and progressive growth of infectious or toxigenic microorganisms; (2) the growth and toxin production of *Clostridium botulinum*; or (3) in raw shell eggs, the growth of *Salmonella Enteritidis*. A "potentially hazardous food" generally includes a food of

animal origin that is raw or heat-treated, a food of plant origin that is heat-treated, raw seed sprouts, cut melons, cut raw tomatoes, certain garlic and oil mixtures, and cut leafy greens.

According to the National Conference of State Legislatures, cottage and home-based food production is an area of increasing legislative interest. In the past year, Arizona and Arkansas have passed laws exempting home-based kitchens and cottage food businesses from inspection and/or permitting requirements if certain conditions are met.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** SB 550 (Senator Montgomery, *et al.*) - Finance.

**Information Source(s):** National Conference of State Legislatures, Department of Health and Mental Hygiene, Maryland Association of County Health Officers, Maryland Association of Counties, Department of Legislative Services

**Fiscal Note History:** First Reader - February 10, 2012  
mc/mwc Revised - House Third Reader - March 22, 2012  
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