

HOUSE BILL 50

M4, J1

9lr0104

By: **Chair, Environment and Transportation Committee (By Request –
Departmental – Agriculture)**

Introduced and read first time: January 14, 2019

Assigned to: Environment and Transportation

A BILL ENTITLED

1 AN ACT concerning

2 **Department of Agriculture – Maryland Produce Safety Program**

3 FOR the purpose of establishing the Maryland Produce Safety Program in the Department
4 of Agriculture to reduce the risk of adverse impacts on human health from the
5 consumption of contaminated produce; requiring the Program to conform with
6 certain federal standards for growing, harvesting, packing, and holding produce for
7 human consumption; requiring the Secretary of Agriculture to administer and
8 enforce the Program; authorizing the Secretary of Agriculture to delegate certain
9 enforcement authority to the Secretary of Health; authorizing the Secretary of
10 Agriculture to grant a certain exemption and suspend or revoke a certain exemption
11 in a certain manner; requiring certain farms to comply with the requirements of the
12 Program under certain circumstances; requiring certain farms to keep certain
13 records; specifying that certain records are confidential and not subject to disclosure
14 under the Maryland Public Information Act; authorizing the Secretary of Agriculture
15 to disclose certain records under certain circumstances, enter and inspect certain
16 farms for certain purposes, issue and enforce certain stop–sale orders, bring an
17 action for injunction under certain circumstances, and detain certain produce in a
18 certain manner under certain circumstances; establishing certain condemnation
19 procedures; authorizing the Secretary of Agriculture to issue a subpoena to compel
20 testimony and the production of certain records, file a petition in a certain court for
21 an order of contempt under certain circumstances, and apply for a certain
22 administrative search warrant in a certain manner under certain circumstances;
23 establishing certain penalties for certain violations; authorizing the Secretary of
24 Agriculture to adopt certain regulations; defining certain terms; providing for the
25 termination of this Act under certain circumstances; requiring the Department to
26 provide a certain notification; and generally relating to the Maryland Produce Safety
27 Program.

28 BY adding to
29 Article – Agriculture

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 16–101 through 16–111 to be under the new title “Title 16. Maryland Produce
2 Safety Program”
3 Annotated Code of Maryland
4 (2016 Replacement Volume and 2018 Supplement)

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

7 **Article – Agriculture**

8 **TITLE 16. MARYLAND PRODUCE SAFETY PROGRAM.**

9 **16–101.**

10 (A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS
11 INDICATED.

12 (B) “COVERED ACTIVITY” HAS THE MEANING STATED IN 21 C.F.R. § 112.3,
13 AS AMENDED.

14 (C) “COVERED FARM” MEANS A FARM OR A FARM MIXED–TYPE FACILITY
15 FOR WHICH, ON A ROLLING BASIS, THE AVERAGE ANNUAL MONETARY VALUE OF
16 PRODUCE SOLD DURING THE PREVIOUS 3–YEAR PERIOD IS MORE THAN \$25,000,
17 ADJUSTED FOR INFLATION USING 2011 AS THE BASELINE YEAR FOR CALCULATING
18 THE ADJUSTMENT.

19 (D) “COVERED PRODUCE” HAS THE MEANING STATED IN 21 C.F.R. § 112.3,
20 AS AMENDED.

21 (E) “FARM” HAS THE MEANING STATED IN 21 C.F.R. § 112.3, AS AMENDED.

22 (F) “FEDERAL STANDARDS” MEANS THE FEDERAL STANDARDS
23 ESTABLISHED BY THE U.S. FOOD AND DRUG ADMINISTRATION UNDER 21 C.F.R.
24 PART 112, AS AMENDED, FOR GROWING, HARVESTING, PACKING, AND HOLDING
25 PRODUCE FOR HUMAN CONSUMPTION.

26 (G) “MIXED–TYPE FACILITY” HAS THE MEANING STATED IN 21 C.F.R. §
27 112.3, AS AMENDED.

28 (H) “PROGRAM” MEANS THE MARYLAND PRODUCE SAFETY PROGRAM.

29 (I) “QUALIFIED EXEMPTION” MEANS A QUALIFIED EXEMPTION GRANTED
30 BY THE SECRETARY TO A FARM IN ACCORDANCE WITH 21 C.F.R. § 112.5, AS
31 AMENDED.

1 **16-102.**

2 (A) THERE IS A MARYLAND PRODUCE SAFETY PROGRAM IN THE
3 DEPARTMENT.

4 (B) THE PURPOSE OF THE PROGRAM IS TO REDUCE THE RISK OF ADVERSE
5 IMPACTS ON HUMAN HEALTH FROM THE CONSUMPTION OF CONTAMINATED
6 PRODUCE.

7 (C) THE PROGRAM SHALL CONFORM WITH THE FEDERAL STANDARDS FOR
8 GROWING, HARVESTING, PACKING, AND HOLDING PRODUCE FOR HUMAN
9 CONSUMPTION.

10 (D) (1) THE SECRETARY SHALL ADMINISTER AND ENFORCE THE
11 PROGRAM.

12 (2) THE SECRETARY MAY:

13 (I) DELEGATE THE SECRETARY'S AUTHORITY TO ENFORCE
14 THE STANDARDS FOR SPROUTS ESTABLISHED UNDER 21 C.F.R. PART 112, SUBPART
15 M, TO THE SECRETARY OF HEALTH;

16 (II) GRANT A QUALIFIED EXEMPTION TO A FARM; AND

17 (III) ON NOTICE AND OPPORTUNITY TO BE HEARD, AND IN
18 ACCORDANCE WITH 21 C.F.R. PART 112, SUBPART R, SUSPEND OR REVOKE A
19 QUALIFIED EXEMPTION GRANTED TO A FARM BY THE SECRETARY.

20 **16-103.**

21 (A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, WHEN
22 CONDUCTING A COVERED ACTIVITY ON COVERED PRODUCE, A COVERED FARM
23 SHALL COMPLY WITH THE REQUIREMENTS OF THE PROGRAM.

24 (B) WHEN CONDUCTING A COVERED ACTIVITY ON COVERED PRODUCE, A
25 FARM THAT HAS A QUALIFIED EXEMPTION SHALL COMPLY WITH:

26 (1) THE REQUIREMENTS ESTABLISHED UNDER 21 C.F.R. PART 112,
27 SUBPARTS A, O, Q, AND R, AS AMENDED; AND

28 (2) THE MODIFIED REQUIREMENTS ESTABLISHED UNDER 21 C.F.R. §
29 112.6(B).

1 **16-104.**

2 (A) A COVERED FARM, INCLUDING A FARM THAT HAS A QUALIFIED
3 EXEMPTION, SHALL:

4 (1) KEEP AND MAINTAIN ACCURATE RECORDS IN ACCORDANCE WITH
5 THE REQUIREMENTS OF THE PROGRAM; AND

6 (2) MAKE ANY RECORD REQUIRED TO BE KEPT UNDER ITEM (1) OF
7 THIS SUBSECTION AVAILABLE TO THE SECRETARY ON REQUEST.

8 (B) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION,
9 ANY RECORD SUBMITTED TO THE SECRETARY UNDER SUBSECTION (A) OF THIS
10 SECTION IS CONFIDENTIAL AND NOT SUBJECT TO DISCLOSURE UNDER THE
11 MARYLAND PUBLIC INFORMATION ACT.

12 (2) THE SECRETARY MAY DISCLOSE RECORDS:

13 (I) TO THE U.S. FOOD AND DRUG ADMINISTRATION; AND

14 (II) IN ANY ENFORCEMENT PROCEEDING BY THE SECRETARY.

15 **16-105.**

16 (A) THE SECRETARY MAY:

17 (1) ENTER A COVERED FARM, INCLUDING A FARM THAT HAS A
18 QUALIFIED EXEMPTION, AT A REASONABLE TIME, TO INSPECT FARM FACILITIES,
19 COVERED PRODUCE INVENTORY, AND ANY RECORDS THAT ARE REQUIRED TO BE
20 KEPT UNDER § 16-104 OF THIS TITLE;

21 (2) COPY ANY RECORD THAT IS REQUIRED TO BE KEPT UNDER §
22 16-104 OF THIS TITLE;

23 (3) TAKE A REASONABLE SAMPLE OF COVERED PRODUCE INVENTORY
24 TO DETERMINE WHETHER THE FARM IS IN COMPLIANCE WITH THE REQUIREMENTS
25 OF THE PROGRAM; AND

26 (4) ENTER A FARM THAT CLAIMS IT IS NOT SUBJECT TO THE
27 REQUIREMENTS OF THE PROGRAM, BASED ON THE AVERAGE ANNUAL MONETARY
28 VALUE OF PRODUCE SOLD BY THE FARM DURING THE PREVIOUS 3-YEAR PERIOD, TO
29 INSPECT AND VERIFY THE FARM'S PRODUCE SALES RECORDS.

1 **(B) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, IF THE**
2 **SECRETARY FINDS THAT A FARM IS IN VIOLATION OF THE REQUIREMENTS OF THE**
3 **PROGRAM, THE SECRETARY MAY ISSUE AND ENFORCE A WRITTEN OR PRINTED**
4 **STOP-SALE ORDER TO THE FARM.**

5 **(2) A STOP-SALE ORDER ISSUED BY THE SECRETARY UNDER THIS**
6 **SUBSECTION SHALL REMAIN IN EFFECT UNTIL THE SECRETARY:**

7 **(I) FINDS THE FARM TO BE IN COMPLIANCE WITH THE**
8 **REQUIREMENTS OF THE PROGRAM; AND**

9 **(II) PROVIDES A WRITTEN RELEASE FROM THE**
10 **STOP-SALE ORDER.**

11 **16-106.**

12 **THE SECRETARY MAY ADOPT REGULATIONS TO CARRY OUT THIS TITLE,**
13 **INCLUDING REQUIREMENTS FOR THE REGISTRATION OF FARMS THAT ARE SUBJECT**
14 **TO THIS TITLE.**

15 **16-107.**

16 **(A) THE SECRETARY MAY BRING AN ACTION FOR AN INJUNCTION AGAINST**
17 **A PERSON TO:**

18 **(1) ENFORCE THE REQUIREMENTS OF THE PROGRAM;**

19 **(2) ENFORCE AN ORDER ISSUED BY THE SECRETARY UNDER THIS**
20 **TITLE; OR**

21 **(3) PREVENT OR RESTRAIN A VIOLATION OF THIS TITLE.**

22 **(B) IN AN ACTION FOR AN INJUNCTION BROUGHT UNDER THIS SECTION,**
23 **THE SECRETARY DOES NOT HAVE TO ALLEGE OR PROVE THAT:**

24 **(1) AN ADEQUATE REMEDY AT LAW DOES NOT EXIST; OR**

25 **(2) SUBSTANTIAL OR IRREPARABLE DAMAGE WOULD RESULT FROM**
26 **THE CONTINUED VIOLATIONS.**

27 **(C) AN INJUNCTION INSTITUTED UNDER THIS SECTION SHALL BE ISSUED**
28 **WITHOUT BOND.**

1 **16-108.**

2 (A) IF THE SECRETARY FINDS THAT COVERED PRODUCE IS IN VIOLATION OF
3 THE REQUIREMENTS OF THE PROGRAM, THE SECRETARY MAY DETAIN THE
4 COVERED PRODUCE FOR A PERIOD THAT DOES NOT EXCEED 30 CONSECUTIVE DAYS.

5 (B) ANY COVERED PRODUCE DETAINED BY THE SECRETARY UNDER THIS
6 SECTION SHALL BE DETAINED PENDING CONDEMNATION PROCEEDINGS OR
7 NOTIFICATION OF ANY FEDERAL OR OTHER GOVERNMENTAL AUTHORITY HAVING
8 JURISDICTION OVER THE COVERED PRODUCE.

9 (C) A PERSON MAY NOT REMOVE ANY COVERED PRODUCE DETAINED BY THE
10 SECRETARY UNDER THIS SECTION UNTIL THE SECRETARY RELEASES THE COVERED
11 PRODUCE.

12 **16-109.**

13 (A) IF THE SECRETARY FINDS THAT COVERED PRODUCE IS IN VIOLATION OF
14 THE REQUIREMENTS OF THE PROGRAM, THE SECRETARY MAY FILE A PETITION FOR
15 CONDEMNATION OF THE COVERED PRODUCE IN THE CIRCUIT COURT OF THE
16 COUNTY IN WHICH THE COVERED PRODUCE WAS FOUND.

17 (B) IF A CIRCUIT COURT ISSUES AN ORDER FOR CONDEMNATION OF
18 COVERED PRODUCE BASED ON A FINDING THAT THE PRODUCE IS ADULTERATED
19 AND UNFIT FOR HUMAN CONSUMPTION, THE FINDING SHALL BE BASED ON
20 SCIENTIFIC FACT, INFORMATION, OR CRITERIA.

21 (C) (1) SUBJECT TO PARAGRAPHS (2) AND (3) OF THIS SUBSECTION, IF A
22 CIRCUIT COURT ISSUES AN ORDER FOR CONDEMNATION OF COVERED PRODUCE
23 UNDER THIS SECTION, THE COVERED PRODUCE SHALL BE DISPOSED OF IN THE
24 MANNER THE COURT ORDERS.

25 (2) IF A CIRCUIT COURT ORDERS THE SALE OF COVERED PRODUCE:

26 (I) THE PROCEEDS FROM THE SALE, LESS THE EXPENSES
27 ASSOCIATED WITH THE CONDEMNATION PROCEDURE, INCLUDING COURT COSTS,
28 FEES, AND STORAGE COSTS, SHALL BE PAID INTO THE GENERAL FUND OF THE
29 STATE; AND

30 (II) THE SALE OF COVERED PRODUCE SHALL COMPLY WITH THE
31 REQUIREMENTS OF THE PROGRAM.

32 (3) ON EXECUTION AND DELIVERY OF A GOOD AND SUFFICIENT BOND
33 PROHIBITING THE SALE OR ANY OTHER DISPOSAL OF THE COVERED PRODUCE THAT

1 WOULD VIOLATE THE REQUIREMENTS OF THE PROGRAM, THE CIRCUIT COURT MAY
2 ORDER THAT THE COVERED PRODUCE BE DELIVERED TO THE OWNER OF THE
3 COVERED PRODUCE, SUBJECT TO THE SUPERVISION OF THE SECRETARY.

4 (D) IF THE CIRCUIT COURT ORDERS COVERED PRODUCE TO BE
5 CONDEMNED, AFTER THE COVERED PRODUCE IS RELEASED UNDER BOND OR
6 DESTROYED, THE PERSON INTERVENING AS A CLAIMANT OF THE COVERED
7 PRODUCE IS RESPONSIBLE FOR EXPENSES ASSOCIATED WITH THE CONDEMNATION
8 PROCEDURE, INCLUDING COURT COSTS, FEES, AND STORAGE COSTS.

9 (E) (1) ALL PROCEEDINGS HELD UNDER THIS SECTION SHALL BE AT THE
10 SUIT OF AND IN THE NAME OF THE STATE.

11 (2) SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, TO THE
12 EXTENT POSSIBLE, THE PROCEEDINGS FOR LIBEL ACTIONS SHALL CONFORM TO THE
13 PROCEEDINGS FOR ADMIRALTY ACTIONS.

14 (3) EITHER PARTY IN A LIBEL ACTION MAY DEMAND A JURY TRIAL OF
15 ANY ISSUE OF FACT JOINED IN ANY CASE.

16 (F) THIS SECTION MAY NOT BE CONSTRUED TO LIMIT OR ALTER ANY OTHER
17 AUTHORITY PROVIDED IN STATE OR FEDERAL LAW FOR CONDEMNATION OR
18 SEIZURE.

19 16-110.

20 (A) THE SECRETARY MAY:

21 (1) ISSUE A SUBPOENA TO COMPEL TESTIMONY OR THE PRODUCTION
22 OF ANY RECORD REQUIRED TO BE KEPT UNDER § 16-104 OF THIS TITLE; AND

23 (2) FILE A PETITION IN A COURT OF COMPETENT JURISDICTION FOR
24 AN ORDER OF CONTEMPT AGAINST A PERSON THAT, WITHOUT LAWFUL EXCUSE,
25 FAILS TO OBEY THE SUBPOENA.

26 (B) (1) THE SECRETARY MAY APPLY TO A JUDGE OF THE DISTRICT
27 COURT OR A CIRCUIT COURT FOR AN ADMINISTRATIVE SEARCH WARRANT TO ENTER
28 A PRIVATE PREMISES TO CONDUCT ANY INSPECTION REQUIRED OR AUTHORIZED BY
29 LAW TO DETERMINE COMPLIANCE WITH THE REQUIREMENTS OF THE PROGRAM.

30 (2) AN APPLICATION FOR AN ADMINISTRATIVE SEARCH WARRANT
31 UNDER THIS SECTION SHALL:

32 (I) BE IN WRITING;

1 (II) BE VERIFIED BY THE APPLICANT; AND

2 (III) DESCRIBE THE PREMISES TO BE SEARCHED AND THE
3 NATURE, SCOPE, AND PURPOSE OF THE SEARCH.

4 (3) A JUDGE WHO RECEIVES AN APPLICATION FOR AN
5 ADMINISTRATIVE SEARCH WARRANT MAY ISSUE A WARRANT ON A FINDING THAT:

6 (I) THE SCOPE OF THE PROPOSED SEARCH IS REASONABLE;
7 AND

8 (II) A REQUEST TO ENTER THE PREMISES HAS OTHERWISE
9 BEEN DENIED.

10 (4) (I) AN ADMINISTRATIVE SEARCH WARRANT ISSUED UNDER
11 THIS SECTION SHALL SPECIFY THE LOCATION OF THE PREMISES TO BE SEARCHED.

12 (II) A SEARCH CONDUCTED IN ACCORDANCE WITH AN
13 ADMINISTRATIVE SEARCH WARRANT ISSUED UNDER THIS SECTION MAY NOT
14 EXCEED THE LIMITS SPECIFIED IN THE WARRANT.

15 (5) AN ADMINISTRATIVE SEARCH WARRANT ISSUED UNDER THIS
16 SECTION SHALL BE EXECUTED AND RETURNED TO THE ISSUING JUDGE:

17 (I) WITHIN THE PERIOD SPECIFIED IN THE WARRANT, WHICH
18 MAY NOT EXCEED 30 DAYS AFTER THE DATE OF ISSUANCE; OR

19 (II) WITHIN 15 DAYS AFTER THE DATE OF ISSUANCE, IF NO
20 PERIOD IS SPECIFIED IN THE WARRANT.

21 16-111.

22 (A) A PERSON THAT VIOLATES THIS TITLE IS SUBJECT TO THE PENALTIES
23 AND FINES SET FORTH IN TITLE 12 OF THIS ARTICLE.

24 (B) (1) INSTEAD OF OR IN ADDITION TO ANY OTHER PENALTY
25 AUTHORIZED UNDER THIS ARTICLE, THE SECRETARY MAY IMPOSE A CIVIL PENALTY
26 ON A PERSON NOT EXCEEDING \$5,000 FOR EACH VIOLATION OF:

27 (I) THIS TITLE; OR

28 (II) ANY ORDER ISSUED BY THE SECRETARY UNDER THIS TITLE.

1 **(2) PENALTIES COLLECTED BY THE SECRETARY UNDER THIS**
2 **SUBSECTION SHALL BE PAID INTO THE GENERAL FUND OF THE STATE.**

3 SECTION 2. AND BE IT FURTHER ENACTED, That:

4 (a) This Act shall be abrogated and of no further force and effect if:

5 (1) 21 C.F.R. Part 112 is repealed;

6 (2) the Department of Agriculture does not receive federal funding to
7 implement this Act; or

8 (3) any federal funding received by the Department of Agriculture to
9 implement this Act is exhausted.

10 (b) The Secretary of Agriculture shall notify the Department of Legislative
11 Services within 5 days after an action under subsection (a) of this section occurs.

12 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July
13 1, 2019.