

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
Third Reader

House Bill 522 (Delegate Krebs, *et al.*)
Health and Government Operations

Finance

Public Health - Food Establishments - Licensing

This bill makes several changes related to excluded organizations and temporary food service facilities that generally increase the authorized scope of operation for such facilities.

Fiscal Summary

State Effect: The Maryland Department of Health (MDH) can update food establishment regulations and implement the bill with existing budgeted staff and resources. Revenues are not affected.

Local Effect: Local health departments (LHDs) can likely implement the bill's changes with existing budgeted staff and resources. Revenues are not affected.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The definition of "excluded organization" is altered to allow food to be served by one of a number of specified bona fide nonprofit organizations for up to 30 consecutive days once a year. An excluded organization is authorized to sell *all* food, not just non-potentially hazardous food. An excluded organization may submit to a *rescindable* license. MDH is authorized to adopt regulations governing excluded organizations serving potentially hazardous food prepared in a private kitchen, which excluded organizations serving potentially hazardous food prepared in a private kitchen must follow.

The definition of “temporary food service facility” is altered to allow such a facility to operate for up to 30 consecutive days at a fixed location in conjunction with specified activities. The license term for a temporary food service facility correspondingly terminates after 30 consecutive days of operation, as specified.

Current Law:

Food Service Facilities Generally

A “food service facility” is a place where food or drink is prepared for sale or service on the premises or elsewhere or any operation where food is served or provided to the public, regardless of whether there is a charge. Food service facilities are a type of “food establishment” regulated under the Health-General Article. A person must have a license from MDH or an LHD to operate a food establishment. A representative of MDH may enter any food establishment at a reasonable time to conduct inspections. “Food service facility” does not include (1) a kitchen in a private home where food is prepared at no charge for guests in the home, at a social gathering, or for service to unemployed, homeless, or other disadvantaged populations; (2) a food preparation or serving area where only non-potentially hazardous food is prepared or served only by an excluded organization; (3) a hotel, lodging, or rooming house that serves only a continental breakfast; (4) a farmer’s market or public event where raw agricultural products are sold; (5) specified bake sales; or (6) a cottage food business.

A food establishment licensee that violates any law or regulation relating to food establishments is guilty of a misdemeanor and on conviction is subject to a fine 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, a violator is subject to a civil penalty of up to \$5,000, to be collected by the District Court for any county, and may be enjoined from continuing the violation. Each day is a separate violation.

Excluded Organizations

Maryland regulations define an “excluded organization” as a (1) bona fide nonprofit fraternal, civic, war veterans’, religious, or charitable organization or corporation that does not serve food to the public more than 4 days per week, except that once a year an organization may serve food to the public for up to 14 consecutive days or (2) a volunteer fire company that does not serve food to the public more than 4 days a week, except that once a year, an organization may serve food to the public for up to 30 consecutive days.

Regulations require an excluded organization to operate either (1) with a food service facility license in full compliance with applicable regulations or (2) without a license and

in compliance with specified minimum requirements to ensure food safety at a food service facility that is operated by an excluded organization without a license. Among other things, if an excluded organization is serving food to the public, the food must be wholesome and free from contamination, not adulterated, safe for human consumption, obtained from an approved source, and packaged and labeled in accordance with regulations. Further, food must be protected during storage, service, and transport and be stored and held at specified temperatures.

Temporary Events

A “temporary food service facility” is a food service facility that operates for up to 14 consecutive days at a fixed location in conjunction with a fair, carnival, public exhibition, construction project, recreational facility, fundraising event, or similar event for typically no longer than two weeks. A license to operate a temporary food service facility expires at the conclusion of the underlying event, or after 14 consecutive days of operations (or 30 consecutive days if the temporary food service facility is a volunteer fire company), whichever is earlier, or as provided in local law or regulation. Temporary food service facilities are exempt from certain regulations because those regulations are applicable primarily to food service facilities that have permanent physical infrastructure.

Background: Chapter 90 of 2018 established the Workgroup on the Licensing of Food Service Facilities within MDH to study, evaluate, and make recommendations on whether (1) certain entities should be exempt from the requirement to obtain a food service license; (2) special circumstances may warrant an exemption from the requirement to obtain a food service license; and (3) food service facility laws may be simplified or clarified. The workgroup submitted the required [report](#) of its findings and recommendations in January 2019. The bill implements several of the recommendations of the workgroup, including:

- allow temporary food service facility permits to last 30 consecutive days to reduce the administrative burden for recurring events;
- allow licensing decisions for excluded organizations to be rescindable; and
- amend regulations to exempt excluded organizations from restrictions on serving potentially hazardous foods prepared in private kitchens if certain food safety measures are taken (specifically, (1) a certified food manager is at the event and trains food preparation workers in safe food handling practices prior to preparing any foods; (2) the event manager keeps a record of the foods served and who prepared each food; (3) signage clearly indicates the foods were prepared in a facility not subject to inspection; and (4) LHDs are notified of the event in advance).

Small Business Effect: The bill has a beneficial operational impact on temporary food service facilities, some of which are likely small businesses, and may result in an increase in sales.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Association of County Health Officers; Maryland Department of Agriculture; Maryland Department of Health; Department of Legislative Services

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