

**Department of Legislative Services**  
Maryland General Assembly  
2021 Session

**FISCAL AND POLICY NOTE**  
**First Reader**

House Bill 1077 (Delegate Saab)  
Health and Government Operations

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**Health - Licensing of Food Establishments - Exemption for Open-Air Food Markets**

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This bill exempts a person from the requirement to obtain a food establishment license if the person (1) operates an open-air food market at the person's place of business and (2) obtains an exemption from the requirement to obtain a license from the Maryland Department of Health (MDH).

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**Fiscal Summary**

**State Effect:** Since MDH delegates licensing authority for food establishments to local health departments (LHDs), the bill is not anticipated to have a material impact on State expenditures or revenues. MDH can review and approve exemption requests with existing budgeted staff and resources.

**Local Effect:** LHDs can likely implement the bill with existing budgeted staff and resources. Potential minimal decrease in local revenues from food establishment licensing fees.

**Small Business Effect:** Potential meaningful.

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## Analysis

### Current Law:

#### *Food Establishments Generally*

Generally, a person may not operate a food establishment unless licensed (by MDH or an LHD) or exempt from licensure requirements. MDH notes that, in practice, the licensing, inspection, and enforcement of statutory provisions related to food service facilities are delegated to LHDs. Each food establishment must be separately licensed. There are several exemptions, including food establishments considered to be an “excluded organization,” as discussed below. A “food establishment” is a “food service facility” or a “food processing plant.” 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. A food processing plant is 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.

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 volunteer fire company or bona fide nonprofit fraternal, civic, war veterans’, religious, or charitable organization or corporation that does not serve food to the public more often than 4 days per 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 (rescindable) 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 30 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 30 consecutive days of operations, 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.

**Small Business Effect:** The bill has a beneficial operational impact and may expand business opportunities for open-air food markets. The bill could also result in minimal savings for businesses that would otherwise have needed to obtain a license. Some of these businesses are likely small businesses.

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## **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** None.

**Information Source(s):** Harford and Montgomery counties; Maryland Association of County Health Officers; Maryland Department of Agriculture; Maryland Department of Health; Department of Legislative Services

**Fiscal Note History:** First Reader - March 5, 2021  
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