

Department of Legislative Services  
Maryland General Assembly  
2022 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 1302 (Delegates Mautz and Adams)  
Health and Government Operations

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Food Service Facility - Retailers of Prepackaged and Pre-Inspected Goods -  
Exclusion

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This bill excludes a retail business engaged in selling prepackaged or pre-inspected goods from the definition of “food service facility,” which exempts such establishments from licensing and other regulatory standards for food establishments.

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Fiscal Summary

**State Effect:** The bill is not anticipated to have a material impact on State finances or operations. The Maryland Department of Health (MDH) can update affected regulations with existing resources.

**Local Effect:** The bill expands the number of establishments that are excluded from the definition of food service facility, which likely results in a reduction in local revenues for local health departments (LHDs) and affects LHD workloads.

**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. 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. Maryland regulations (COMAR 10.15.03.02) exclude a facility that offers only prepackaged foods that are not potentially hazardous from the definition of a food service facility. 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.

**Local Fiscal Effect:** Revenues for LHDs decrease from a reduction in licensing fees from retail businesses that no longer need to obtain a license. Under the bill, retail businesses that sell both potentially hazardous and nonpotentially hazardous prepackaged goods, as well as pre-inspected goods, are exempt from licensing requirements and other regulations. A specific estimate of the number of retail businesses exempt under the bill is unknown, but the reduction in licensing revenues could be meaningful for LHDs. However, the bill also reduces the number of retail businesses that must be inspected by LHDs, thereby allowing LHD staff to focus on other responsibilities.

**Small Business Effect:** Potential minimal savings for any retail business that sells prepackaged or pre-inspected goods and no longer needs to obtain a license under the bill. The bill also has a beneficial operational impact on such businesses that no longer need to be licensed and inspected by LHDs and may make it easier to sell certain types of products at affected retail businesses.

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### **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** None.

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

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