

Chapter 437

(Senate Bill 228)

AN ACT concerning

Agricultural Product Sales – Producer Mobile Farmer’s Market License – Public Festival and Event Authorization

FOR the purpose of altering a certain definition to exclude the sale of certain raw agricultural products at a public festival or event from regulation as a food service facility; prohibiting a local jurisdiction from requiring a license for the sale of raw agricultural products at a public festival or event; authorizing a producer mobile farmer’s market licensee to sell certain products at a public festival or event; authorizing a seasonal farmer’s market producer sampling licensee to prepare and offer samples of a farm product at a public festival or event; requiring a seasonal farmer’s market producer sampling license to be valid at any public festival or event in the county issuing the license; defining a certain term; and generally relating to the sale of agricultural products by farmers.

BY repealing and reenacting, without amendments,

Article – Health – General

Section 21–301(a), 21–304(a)(1), 21–305(c), and 21–308(a) and (c)

Annotated Code of Maryland

(2009 Replacement Volume and 2010 Supplement)

BY adding to

Article – Health – General

Section 21–301(i–1)

Annotated Code of Maryland

(2009 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, with amendments,

Article – Health – General

Section 21–301(h), 21–304(d), 21–309.1, and 21–309.2

Annotated Code of Maryland

(2009 Replacement Volume and 2010 Supplement)

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

Article – Health – General

21–301.

(a) In this subtitle the following words have the meanings indicated.

(h) (1) “Food service facility” means:

(i) A place where food or drink is prepared for sale or service on the premises or elsewhere; or

(ii) Any operation where food is served to or provided for the public, with or without charge.

(2) “Food service facility” does not include:

(i) A kitchen in a private home where food is prepared at no charge for guests in the home, for guests at a social gathering, or for service to unemployed, homeless, or other disadvantaged populations;

(ii) A food preparation or serving area where only nonpotentially hazardous food, as defined by the United States Food and Drug Administration, is prepared or served only by an excluded organization; or

(iii) A location in a farmer’s market **OR AT A PUBLIC FESTIVAL OR EVENT** where raw agricultural products, as defined in § 21–304(d)(1)(iii) of this subtitle, are sold.

(I–1) “PUBLIC FESTIVAL OR EVENT” MEANS A PLANNED GATHERING THAT IS OPEN TO THE PUBLIC AND IS REGULATED BY THE STATE OR LOCAL JURISDICTION IN WHICH IT TAKES PLACE.

21–304.

(a) (1) The Department shall adopt rules and regulations necessary to carry out the provisions of this subtitle.

(d) (1) (i) In this subsection the following words have the meanings indicated.

(ii) “Farmer’s market” means a public market in the State where producers of raw agricultural products sell the products directly to the public.

(iii) “Raw agricultural product” includes:

1. Whole, unprocessed grains, flowers, herbs, nuts, fruits, and vegetables supplied directly from the farm on which they were produced; and

2. Any agricultural products the Department identifies in regulation.

(2) A local jurisdiction may not require a license for the sale of raw agricultural products at a farmer's market **OR AT A PUBLIC FESTIVAL OR EVENT**.

21-305.

(c) A license is not transferable:

(1) Except as provided by regulation for transfer of the license on the death of the licensee from person to person; or

(2) From location to location, except for a producer mobile farmer's market license under § 21-309.1 of this subtitle.

21-308.

(a) In this section, "on-farm home processing facility" means a home or domestic kitchen located on an individual's farm that manufactures and processes foods for commercial sale.

(c) (1) An on-farm home processing facility may obtain an on-farm home processing plant license for a fee established in regulations.

(2) An on-farm home processing facility that obtains an on-farm home processing plant license may manufacture or process only foods provided for in regulations of the Department.

(3) A license or permit is not required to deliver prepackaged foods to fill an order of a customer.

21-309.1.

(a) (1) The Department shall establish a producer mobile farmer's market license.

(2) The fee for a producer mobile farmer's market license:

(i) Shall be based on the anticipated cost of licensing, inspecting, and regulating licensees; and

(ii) May not exceed \$100.

(3) A producer mobile farmer's market license shall be valid for a period of 1 year.

(b) A producer mobile farmer's market licensee may transport to and sell at a farmer's market **OR AT A PUBLIC FESTIVAL OR EVENT**:

(1) Products that were produced by the licensee under an on-farm home processing plant license;

(2) Products produced by the licensee, as authorized by the Department in regulation; or

(3) Farm products that have been inspected, licensed, or certified for food safety by the Maryland Department of Agriculture.

(c) (1) A producer mobile farmer's market license is valid in all jurisdictions in the State.

(2) A county or municipality may not require a producer mobile farmer's market licensee to obtain a separate permit or license to sell products authorized for sale under the producer mobile farmer's market license.

(d) The Department shall:

(1) Issue producer mobile farmer's market licenses;

(2) At least once a year, inspect each mobile unit that operates under a producer mobile farmer's market license; and

(3) Adopt regulations to implement this section.

(e) A producer mobile farmer's market license shall be displayed on any mobile unit operating under the license.

(f) (1) A person in violation of this section or a regulation adopted under this section is subject to a fine not to exceed \$1,000.

(2) A county health department shall enforce and levy fines for a violation of this section or any regulations adopted under this section.

(3) Fines assessed by a county health department shall be paid to the county in which the violation occurred.

(4) A county health department shall notify the Department of any violations occurring in the county.

21-309.2.

(a) A county may establish a seasonal farmer's market producer sampling license to be required for a producer of a farm product to prepare and offer samples of the farm product for human consumption at a farmer's market **OR AT A PUBLIC FESTIVAL OR EVENT**.

(b) A county seasonal farmer's market producer sampling license established under this section shall:

- (1) Be valid at all farmer's markets in the county;
- (2) **BE VALID AT ANY PUBLIC FESTIVAL OR EVENT IN THE COUNTY;**
- (3) Be valid for the entire season for which it is issued; and
- ~~[(3)]~~ (4) Have a single fee as set by the county.

(c) A seasonal farmer's market producer sampling licensee shall use the license only to offer samples of a farm product that has been produced by the licensee.

(d) The Department shall adopt regulations that:

- (1) Establish eligibility for the license;
- (2) Provide for the authorized uses of the license;
- (3) Establish standards and approved methods under which sampling shall be conducted;
- (4) Specify the duration of the season during which the license is valid; and
- (5) Include other provisions that are necessary to protect public health and control foodborne illnesses.

(e) A county issuing a **SEASONAL** farmer's market producer sampling license shall adopt an ordinance that:

- (1) Sets the fee for the license;
- (2) Provides for the enforcement of provisions of law under which the license is issued; and
- (3) Provides penalties for violations of provisions of law under which the license is issued.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.