

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

House Bill 607 (Delegate Love, *et al.*)
Health and Government Operations

Public Health - Sale of Baked Goods - Private Home Kitchens

This bill authorizes a person to sell “nonpotentially hazardous baked goods” made in a kitchen in a private home without a license to operate a food establishment. A person must register with the Department of Health and Mental Hygiene (DHMH) prior to selling such baked goods, and the baked goods must be labeled with a list of ingredients and a statement that the baked goods have been produced in a private home kitchen, have not been inspected, and are not for resale. A person who registers with the department may only sell goods from the registrant’s home, at a farmer’s market, or at a roadside stand. Registration must be displayed in the registrant’s kitchen. Registration renewal requirements are also specified. DHMH has the authority to inspect a registered private kitchen under specified circumstances.

Fiscal Summary

State Effect: General fund revenues from registration fees and expenditures related to administering the registration program and inspecting private home kitchens increase beginning in FY 2011 and are expected to be roughly equivalent.

Local Effect: Assuming DHMH operates and administers the program at the State level rather than through local health departments, the bill does not materially affect local government finances or operations.

Small Business Effect: Potential meaningful for small businesses that are required to pay registration and certification fees under the bill.

Analysis

Bill Summary: To qualify for registration an applicant must:

- complete a ServSafe food safety course and have received a passing score on the ServSafe exam;
- comply with requirements of the bill;
- agree to permit access to the private home kitchen for the purpose of an inspection if DHMH believes the kitchen is unsanitary; and
- pay the registration fee set by the department.

To apply for registration an applicant must submit the necessary form to DHMH including the applicant's name and address and any other required information. DHMH has to issue a registration to an applicant who meets the necessary qualifications within 30 days of receiving the application. An applicant may be denied registration if the applicant does not meet the bill's requirements (or those of adjusted regulations) or attempts to obtain registration fraudulently or deceptively. Additionally, registration may be revoked if the registrant violates private home kitchen requirements or fraudulently or deceptively obtains a registration. If an application is denied, DHMH must notify the applicant within 30 days. After a notice of denial, DHMH may issue registration to an applicant if the applicant takes all actions specified in the note of denial and meets the necessary qualifications for registration. An applicant denied registration is entitled to a hearing before the Secretary of Health and Mental Hygiene.

If a registrant has violated the bill's provisions, DHMH must follow certain procedures and notify the registrant. The department may also serve the registrant with a written order that directs the person to abate the violation within a specified timeframe. After the hearing, the department may affirm, modify, or withdraw the order. Additionally, a person may not interfere with a private home kitchen inspection.

Current Law: With certain exceptions that allow for a waiver, a person has to be licensed by DHMH to operate a food service establishment *unless* the food establishment is operated by an excluded organization. For example, DHMH may also waive the license requirement for (1) farmer's markets, if the foods offered or sold are only fresh fruits and vegetables, and other foods specified in regulations; and (2) for bake sales, where only nonpotentially hazardous bakery goods are sold in conjunction with a fundraising event.

Food establishment licensees that violate any laws regulating the industry are guilty of a misdemeanor and on conviction are subject to fines 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, violators are subject to civil penalties of up to \$5,000 collected by the District Court and may be enjoined from continuing the violation.

A nonpotentially hazardous food is defined by the U.S. Food and Drug Administration and in regulations as a hard-boiled shell egg that has been air-cooled with the shell intact; food with a water activity (aw) value of 0.85 or less; food with a pH level of 4.6 or below when measured at 75 degrees Fahrenheit; commercially sterile food in a hermetically sealed container; or food for which laboratory evidence demonstrates that the rapid and progressive growth of infectious and toxigenic microorganisms or the growth of *Salmonella Enteritidis* in eggs or *Clostridium botulinum* cannot occur.

Background: ServSafe provides food safety training and is accredited by the American National Standards Institute Conference for Food Protection. More than 3 million ServSafe Food Protection Manager Certifications have been awarded. ServSafe examination booklets are available in English, Spanish, Chinese, Korean, Japanese, French Canadian, and large print. A ServSafe course can be completed online for \$125. ServSafe also offers courses at numerous locations throughout the State. Upon course completion, a certification exam is administered by a ServSafe proctor at a cost of \$36.

State Fiscal Effect: The volume of applicants expected under the bill's provisions is unknown, as it is likely that individuals who currently operate out of their private kitchens have not complied with current licensure requirements. *For illustrative purposes only*, for every 100 individuals who register with DHMH, general fund revenues increase by \$10,000 assuming a registration fee of \$100. General fund expenditures related to administering the registration program, and inspecting private home kitchens believed to be in violation of the bill's provisions, will be equivalent to revenues incurred through registration fees. DHMH advises up to 2,000 applicants may apply for registration with the department, resulting in a \$200,000 increase in general fund revenues. This volume of registrations would justify the addition of three positions, two sanitariums and an office secretary, that could be supported with revenues from the registration fees.

Small Business Effect: Registrants will experience a \$261 increase in expenditures as a result of the \$100 registration fee and a \$161 ServSafe certification cost. However, for private home kitchens currently licensed as food establishments or seeking licensure as food establishments, the bill represents a decrease in regulatory oversight.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Kent, Montgomery, and Worcester counties; Department of Health and Mental Hygiene; Judiciary (Administrative Office of the Courts); Department of Legislative Services

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