

Chapter 131

(House Bill 50)

AN ACT concerning

Department of Agriculture – Maryland Produce Safety Program

FOR the purpose of establishing the Maryland Produce Safety Program in the Department of Agriculture to reduce the risk of adverse impacts on human health from the consumption of contaminated produce; requiring the Program to conform with certain federal standards for growing, harvesting, packing, and holding produce for human consumption; requiring the Secretary of Agriculture to administer and enforce the Program; authorizing the Secretary of Agriculture to delegate certain enforcement authority to the Secretary of Health; authorizing the Secretary of Agriculture to grant a certain exemption and suspend or revoke a certain exemption in a certain manner; requiring certain farms to comply with the requirements of the Program under certain circumstances; requiring certain farms to keep certain records; specifying that certain records are confidential and not subject to disclosure under the Maryland Public Information Act; authorizing the Secretary of Agriculture to disclose certain records under certain circumstances, enter and inspect certain farms for certain purposes, issue and enforce certain stop–sale orders, bring an action for injunction under certain circumstances, and detain certain produce in a certain manner under certain circumstances; establishing certain condemnation procedures; authorizing the Secretary of Agriculture to issue a subpoena to compel testimony and the production of certain records, file a petition in a certain court for an order of contempt under certain circumstances, and apply for a certain administrative search warrant in a certain manner under certain circumstances; establishing certain penalties for certain violations; authorizing the Secretary of Agriculture to adopt certain regulations; defining certain terms; providing for the termination of this Act under certain circumstances; requiring the Department to provide a certain notification; and generally relating to the Maryland Produce Safety Program.

BY adding to

Article – Agriculture

Section 16–101 through 16–111 to be under the new title “Title 16. Maryland Produce Safety Program”

Annotated Code of Maryland

(2016 Replacement Volume and 2018 Supplement)

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

Article – Agriculture**TITLE 16. MARYLAND PRODUCE SAFETY PROGRAM.**

16-101.

(A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) “COVERED ACTIVITY” HAS THE MEANING STATED IN 21 C.F.R. § 112.3, AS AMENDED.

(C) “COVERED FARM” MEANS A FARM OR A FARM MIXED-TYPE FACILITY FOR WHICH, ON A ROLLING BASIS, THE AVERAGE ANNUAL MONETARY VALUE OF PRODUCE SOLD DURING THE PREVIOUS 3-YEAR PERIOD IS MORE THAN \$25,000, ADJUSTED FOR INFLATION USING 2011 AS THE BASELINE YEAR FOR CALCULATING THE ADJUSTMENT.

(D) “COVERED PRODUCE” HAS THE MEANING STATED IN 21 C.F.R. § 112.3, AS AMENDED.

(E) “FARM” HAS THE MEANING STATED IN 21 C.F.R. § 112.3, AS AMENDED.

(F) “FEDERAL STANDARDS” MEANS THE FEDERAL STANDARDS ESTABLISHED BY THE U.S. FOOD AND DRUG ADMINISTRATION UNDER 21 C.F.R. PART 112, AS AMENDED, FOR GROWING, HARVESTING, PACKING, AND HOLDING PRODUCE FOR HUMAN CONSUMPTION.

(G) “MIXED-TYPE FACILITY” HAS THE MEANING STATED IN 21 C.F.R. § 112.3, AS AMENDED.

(H) “PROGRAM” MEANS THE MARYLAND PRODUCE SAFETY PROGRAM.

(I) “QUALIFIED EXEMPTION” MEANS A QUALIFIED EXEMPTION GRANTED BY THE SECRETARY TO A FARM IN ACCORDANCE WITH 21 C.F.R. § 112.5, AS AMENDED.

16-102.

(A) THERE IS A MARYLAND PRODUCE SAFETY PROGRAM IN THE DEPARTMENT.

(B) THE PURPOSE OF THE PROGRAM IS TO REDUCE THE RISK OF ADVERSE IMPACTS ON HUMAN HEALTH FROM THE CONSUMPTION OF CONTAMINATED PRODUCE.

(C) THE PROGRAM SHALL CONFORM WITH THE FEDERAL STANDARDS FOR GROWING, HARVESTING, PACKING, AND HOLDING PRODUCE FOR HUMAN CONSUMPTION.

(D) (1) THE SECRETARY SHALL ADMINISTER AND ENFORCE THE PROGRAM.

(2) THE SECRETARY MAY:

(I) DELEGATE THE SECRETARY'S AUTHORITY TO ENFORCE THE STANDARDS FOR SPROUTS ESTABLISHED UNDER 21 C.F.R. PART 112, SUBPART M, TO THE SECRETARY OF HEALTH;

(II) GRANT A QUALIFIED EXEMPTION TO A FARM; AND

(III) ON NOTICE AND OPPORTUNITY TO BE HEARD, AND IN ACCORDANCE WITH 21 C.F.R. PART 112, SUBPART R, SUSPEND OR REVOKE A QUALIFIED EXEMPTION GRANTED TO A FARM BY THE SECRETARY.

16-103.

(A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, WHEN CONDUCTING A COVERED ACTIVITY ON COVERED PRODUCE, A COVERED FARM SHALL COMPLY WITH THE REQUIREMENTS OF THE PROGRAM.

(B) WHEN CONDUCTING A COVERED ACTIVITY ON COVERED PRODUCE, A FARM THAT HAS A QUALIFIED EXEMPTION SHALL COMPLY WITH:

(1) THE REQUIREMENTS ESTABLISHED UNDER 21 C.F.R. PART 112, SUBPARTS A, O, Q, AND R, AS AMENDED; AND

(2) THE MODIFIED REQUIREMENTS ESTABLISHED UNDER 21 C.F.R. § 112.6(B).

16-104.

(A) A COVERED FARM, INCLUDING A FARM THAT HAS A QUALIFIED EXEMPTION, SHALL:

(1) KEEP AND MAINTAIN ACCURATE RECORDS IN ACCORDANCE WITH THE REQUIREMENTS OF THE PROGRAM; AND

(2) MAKE ANY RECORD REQUIRED TO BE KEPT UNDER ITEM (1) OF

THIS SUBSECTION AVAILABLE TO THE SECRETARY ON REQUEST.

(B) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, ANY RECORD SUBMITTED TO THE SECRETARY UNDER SUBSECTION (A) OF THIS SECTION IS CONFIDENTIAL AND NOT SUBJECT TO DISCLOSURE UNDER THE MARYLAND PUBLIC INFORMATION ACT.

(2) THE SECRETARY MAY DISCLOSE RECORDS:

(I) TO THE U.S. FOOD AND DRUG ADMINISTRATION; AND

(II) IN ANY ENFORCEMENT PROCEEDING BY THE SECRETARY.

16-105.

(A) THE SECRETARY MAY:

(1) ENTER A COVERED FARM, INCLUDING A FARM THAT HAS A QUALIFIED EXEMPTION, AT A REASONABLE TIME, TO INSPECT FARM FACILITIES, COVERED PRODUCE INVENTORY, AND ANY RECORDS THAT ARE REQUIRED TO BE KEPT UNDER § 16-104 OF THIS TITLE;

(2) COPY ANY RECORD THAT IS REQUIRED TO BE KEPT UNDER § 16-104 OF THIS TITLE;

(3) TAKE A REASONABLE SAMPLE OF COVERED PRODUCE INVENTORY TO DETERMINE WHETHER THE FARM IS IN COMPLIANCE WITH THE REQUIREMENTS OF THE PROGRAM; AND

(4) ENTER A FARM THAT CLAIMS IT IS NOT SUBJECT TO THE REQUIREMENTS OF THE PROGRAM, BASED ON THE AVERAGE ANNUAL MONETARY VALUE OF PRODUCE SOLD BY THE FARM DURING THE PREVIOUS 3-YEAR PERIOD, TO INSPECT AND VERIFY THE FARM'S PRODUCE SALES RECORDS.

(B) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, IF THE SECRETARY FINDS THAT A FARM IS IN VIOLATION OF THE REQUIREMENTS OF THE PROGRAM, THE SECRETARY MAY ISSUE AND ENFORCE A WRITTEN OR PRINTED STOP-SALE ORDER TO THE FARM.

(2) A STOP-SALE ORDER ISSUED BY THE SECRETARY UNDER THIS SUBSECTION SHALL REMAIN IN EFFECT UNTIL THE SECRETARY:

(I) FINDS THE FARM TO BE IN COMPLIANCE WITH THE

REQUIREMENTS OF THE PROGRAM; AND

(II) PROVIDES A WRITTEN RELEASE FROM THE STOP-SALE ORDER.

16-106.

THE SECRETARY MAY ADOPT REGULATIONS TO CARRY OUT THIS TITLE, INCLUDING REQUIREMENTS FOR THE REGISTRATION OF FARMS THAT ARE SUBJECT TO THIS TITLE.

16-107.

(A) THE SECRETARY MAY BRING AN ACTION FOR AN INJUNCTION AGAINST A PERSON TO:

- (1) ENFORCE THE REQUIREMENTS OF THE PROGRAM;**
- (2) ENFORCE AN ORDER ISSUED BY THE SECRETARY UNDER THIS TITLE; OR**
- (3) PREVENT OR RESTRAIN A VIOLATION OF THIS TITLE.**

(B) IN AN ACTION FOR AN INJUNCTION BROUGHT UNDER THIS SECTION, THE SECRETARY DOES NOT HAVE TO ALLEGE OR PROVE THAT:

- (1) AN ADEQUATE REMEDY AT LAW DOES NOT EXIST; OR**
- (2) SUBSTANTIAL OR IRREPARABLE DAMAGE WOULD RESULT FROM THE CONTINUED VIOLATIONS.**

(C) AN INJUNCTION INSTITUTED UNDER THIS SECTION SHALL BE ISSUED WITHOUT BOND.

16-108.

(A) IF THE SECRETARY FINDS THAT COVERED PRODUCE IS IN VIOLATION OF THE REQUIREMENTS OF THE PROGRAM, THE SECRETARY MAY DETAIN THE COVERED PRODUCE FOR A PERIOD THAT DOES NOT EXCEED 30 CONSECUTIVE DAYS.

(B) ANY COVERED PRODUCE DETAINED BY THE SECRETARY UNDER THIS SECTION SHALL BE DETAINED PENDING CONDEMNATION PROCEEDINGS OR NOTIFICATION OF ANY FEDERAL OR OTHER GOVERNMENTAL AUTHORITY HAVING

JURISDICTION OVER THE COVERED PRODUCE.

(C) A PERSON MAY NOT REMOVE ANY COVERED PRODUCE DETAINED BY THE SECRETARY UNDER THIS SECTION UNTIL THE SECRETARY RELEASES THE COVERED PRODUCE.

16-109.

(A) IF THE SECRETARY FINDS THAT COVERED PRODUCE IS IN VIOLATION OF THE REQUIREMENTS OF THE PROGRAM, THE SECRETARY MAY FILE A PETITION FOR CONDEMNATION OF THE COVERED PRODUCE IN THE CIRCUIT COURT OF THE COUNTY IN WHICH THE COVERED PRODUCE WAS FOUND.

(B) IF A CIRCUIT COURT ISSUES AN ORDER FOR CONDEMNATION OF COVERED PRODUCE BASED ON A FINDING THAT THE PRODUCE IS ADULTERATED AND UNFIT FOR HUMAN CONSUMPTION, THE FINDING SHALL BE BASED ON SCIENTIFIC FACT, INFORMATION, OR CRITERIA.

(C) (1) SUBJECT TO PARAGRAPHS (2) AND (3) OF THIS SUBSECTION, IF A CIRCUIT COURT ISSUES AN ORDER FOR CONDEMNATION OF COVERED PRODUCE UNDER THIS SECTION, THE COVERED PRODUCE SHALL BE DISPOSED OF IN THE MANNER THE COURT ORDERS.

(2) IF A CIRCUIT COURT ORDERS THE SALE OF COVERED PRODUCE:

(I) THE PROCEEDS FROM THE SALE, LESS THE EXPENSES ASSOCIATED WITH THE CONDEMNATION PROCEDURE, INCLUDING COURT COSTS, FEES, AND STORAGE COSTS, SHALL BE PAID INTO THE GENERAL FUND OF THE STATE; AND

(II) THE SALE OF COVERED PRODUCE SHALL COMPLY WITH THE REQUIREMENTS OF THE PROGRAM.

(3) ON EXECUTION AND DELIVERY OF A GOOD AND SUFFICIENT BOND PROHIBITING THE SALE OR ANY OTHER DISPOSAL OF THE COVERED PRODUCE THAT WOULD VIOLATE THE REQUIREMENTS OF THE PROGRAM, THE CIRCUIT COURT MAY ORDER THAT THE COVERED PRODUCE BE DELIVERED TO THE OWNER OF THE COVERED PRODUCE, SUBJECT TO THE SUPERVISION OF THE SECRETARY.

(D) IF THE CIRCUIT COURT ORDERS COVERED PRODUCE TO BE CONDEMNED, AFTER THE COVERED PRODUCE IS RELEASED UNDER BOND OR DESTROYED, THE PERSON INTERVENING AS A CLAIMANT OF THE COVERED PRODUCE IS RESPONSIBLE FOR EXPENSES ASSOCIATED WITH THE CONDEMNATION

PROCEDURE, INCLUDING COURT COSTS, FEES, AND STORAGE COSTS.

(E) (1) ALL PROCEEDINGS HELD UNDER THIS SECTION SHALL BE AT THE SUIT OF AND IN THE NAME OF THE STATE.

(2) SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, TO THE EXTENT POSSIBLE, THE PROCEEDINGS FOR LIBEL ACTIONS SHALL CONFORM TO THE PROCEEDINGS FOR ADMIRALTY ACTIONS.

(3) EITHER PARTY IN A LIBEL ACTION MAY DEMAND A JURY TRIAL OF ANY ISSUE OF FACT JOINED IN ANY CASE.

(F) THIS SECTION MAY NOT BE CONSTRUED TO LIMIT OR ALTER ANY OTHER AUTHORITY PROVIDED IN STATE OR FEDERAL LAW FOR CONDEMNATION OR SEIZURE.

16-110.

(A) THE SECRETARY MAY:

(1) ISSUE A SUBPOENA TO COMPEL TESTIMONY OR THE PRODUCTION OF ANY RECORD REQUIRED TO BE KEPT UNDER § 16-104 OF THIS TITLE; AND

(2) FILE A PETITION IN A COURT OF COMPETENT JURISDICTION FOR AN ORDER OF CONTEMPT AGAINST A PERSON THAT, WITHOUT LAWFUL EXCUSE, FAILS TO OBEY THE SUBPOENA.

(B) (1) THE SECRETARY MAY APPLY TO A JUDGE OF THE DISTRICT COURT OR A CIRCUIT COURT FOR AN ADMINISTRATIVE SEARCH WARRANT TO ENTER A PRIVATE PREMISES TO CONDUCT ANY INSPECTION REQUIRED OR AUTHORIZED BY LAW TO DETERMINE COMPLIANCE WITH THE REQUIREMENTS OF THE PROGRAM.

(2) AN APPLICATION FOR AN ADMINISTRATIVE SEARCH WARRANT UNDER THIS SECTION SHALL:

(I) BE IN WRITING;

(II) BE VERIFIED BY THE APPLICANT; AND

(III) DESCRIBE THE PREMISES TO BE SEARCHED AND THE NATURE, SCOPE, AND PURPOSE OF THE SEARCH.

(3) A JUDGE WHO RECEIVES AN APPLICATION FOR AN

ADMINISTRATIVE SEARCH WARRANT MAY ISSUE A WARRANT ON A FINDING THAT:

(I) THE SCOPE OF THE PROPOSED SEARCH IS REASONABLE;
AND

**(II) A REQUEST TO ENTER THE PREMISES HAS OTHERWISE
BEEN DENIED.**

**(4) (I) AN ADMINISTRATIVE SEARCH WARRANT ISSUED UNDER
THIS SECTION SHALL SPECIFY THE LOCATION OF THE PREMISES TO BE SEARCHED.**

**(II) A SEARCH CONDUCTED IN ACCORDANCE WITH AN
ADMINISTRATIVE SEARCH WARRANT ISSUED UNDER THIS SECTION MAY NOT
EXCEED THE LIMITS SPECIFIED IN THE WARRANT.**

**(5) AN ADMINISTRATIVE SEARCH WARRANT ISSUED UNDER THIS
SECTION SHALL BE EXECUTED AND RETURNED TO THE ISSUING JUDGE:**

**(I) WITHIN THE PERIOD SPECIFIED IN THE WARRANT, WHICH
MAY NOT EXCEED 30 DAYS AFTER THE DATE OF ISSUANCE; OR**

**(II) WITHIN 15 DAYS AFTER THE DATE OF ISSUANCE, IF NO
PERIOD IS SPECIFIED IN THE WARRANT.**

16-111.

**(A) A PERSON THAT VIOLATES THIS TITLE IS SUBJECT TO THE PENALTIES
AND FINES SET FORTH IN TITLE 12 OF THIS ARTICLE.**

**(B) (1) INSTEAD OF OR IN ADDITION TO ANY OTHER PENALTY
AUTHORIZED UNDER THIS ARTICLE, THE SECRETARY MAY IMPOSE A CIVIL PENALTY
ON A PERSON NOT EXCEEDING \$5,000 FOR EACH VIOLATION OF:**

(I) THIS TITLE; OR

(II) ANY ORDER ISSUED BY THE SECRETARY UNDER THIS TITLE.

**(2) PENALTIES COLLECTED BY THE SECRETARY UNDER THIS
SUBSECTION SHALL BE PAID INTO THE GENERAL FUND OF THE STATE.**

SECTION 2. AND BE IT FURTHER ENACTED, That:

(a) This Act shall be abrogated and of no further force and effect if:

(1) 21 C.F.R. Part 112 is repealed;

(2) the Department of Agriculture does not receive federal funding to implement this Act; or

(3) any federal funding received by the Department of Agriculture to implement this Act is exhausted.

(b) The Secretary of Agriculture shall notify the Department of Legislative Services within 5 days after an action under subsection (a) of this section occurs.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2019.

Approved by the Governor, April 18, 2019.