

STATE OF OKLAHOMA

2nd Session of the 57th Legislature (2020)

SENATE BILL 1765

By: Dossett

AS INTRODUCED

An Act relating to the home food production; amending Sections 1, 2, as amended by Section 1, Chapter 85, O.S.L. 2017, 3, as amended by Section 2, Chapter 85, O.S.L. 2017, 4, 5 and 6, Chapter 40, O.S.L. 2013, as renumbered by Sections 3, 4, 5, and 6, Chapter 85, O.S.L. 2017 (2 O.S. Supp. 2019, Sections 5-4.1, 5-4.2, 5-4.3, 5-4.4, 5-4.5, and 5-4.6), which relate to the Home Bakery Act of 2013; renaming act; adding and modifying definitions; modifying methods of selling food; providing requirements for sale of certain frozen foods; clarifying statutory language; providing requirements for sale of prepared foods through the Internet or mail order; requiring approved or tested recipes for the sale of certain prepared foods; requiring label for the sale of certain prepared foods; requiring the creation and maintenance of records; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY Section 1, Chapter 40, O.S.L. 2013, as renumbered by Section 3, Chapter 85, O.S.L. 2017 (2 O.S. Supp. 2019, Section 5-4.1), is amended to read as follows:

Section 5-4.1. This act shall be known and may be cited as the "~~Home Bakery~~ Cottage Food Act ~~of 2013~~".

SECTION 2. AMENDATORY Section 2, Chapter 40, O.S.L.

2013, as amended by Section 1, Chapter 85, O.S.L. 2017, and as renumbered by Section 4, Chapter 85, O.S.L. 2017 (2 O.S. Supp. 2019, Section 5-4.2), is amended to read as follows:

Section 5-4.2. As used in the ~~Home Bakery~~ Cottage Food Act ~~of 2013~~:

1. "Acidified canned goods" shall mean food with a finished equilibrium pH value of 4.6 or less that is thermally processed before being placed in an airtight container;

2. "Fermented vegetable product" shall mean a low-acid vegetable food product subjected to the action of certain microorganisms that produce acid during their growth and reduce the pH value of the food to 4.6 or less;

3. "Home food establishment" shall mean a business on the premises of a residence in which prepared food is created for sale or resale at farmers markets, on site, at cooperatives, through membership-based buying clubs, through the Internet or for delivery, if the business has gross annual sales of prepared food of less than ~~Twenty Thousand Dollars (\$20,000.00)~~ Fifty Thousand Dollars (\$50,000.00). Gross annual sales includes all sales of prepared food produced by the business at any location; ~~and~~

~~2. 4.~~ "Prepared food" shall mean any baked goods except for products that contain meat products or fresh fruit that are not time and temperature control for safety and the following foods:

- a. candy,
- b. coated and uncoated nuts,
- c. unroasted nut butters,
- d. fruit butters,
- e. canned jam or jelly,
- f. fruit pie,
- g. dehydrated fruit or vegetables, including dried beans,
- h. popcorn and popcorn snacks,
- i. cereal, including granola,
- j. dry mixes,
- k. vinegar,
- l. pickled fruit or vegetables that are preserved in
vinegar, brine or a similar solution at an equilibrium
pH value of 4.6 or less,
- m. mustard,
- n. roasted coffee or dry tea,
- o. dried herbs or dried herb mixes,
- p. plant based acidified canned goods,
- q. fermented vegetable products, including products that
are refrigerated to preserved quality,
- r. frozen raw and uncut fruit or vegetables, or
- s. any other food that is not a time and temperature
control for safety food; and

1 5. "Time and temperature control for safety food" shall mean a
2 food that requires time and temperature control for safety to limit
3 pathogen growth or toxin production. The term includes a food that
4 must be held under proper temperature controls, such as
5 refrigeration, to prevent the growth of bacteria that may cause
6 human illness. A time and temperature control for safety food may
7 include a food that contains protein and moisture and is neutral or
8 slightly acidic, such as meat, poultry, fish, and shellfish
9 products, pasteurized and unpasteurized milk and dairy products, raw
10 seed sprouts, baked goods that require refrigeration including cream
11 or custard pies or cakes and ice products. The term does not
12 include a food that uses time and temperature control for safety
13 food as ingredients if the final food product does not require time
14 or temperature control for safety to limit pathogen growth or toxin
15 production.

16 SECTION 3. AMENDATORY Section 3, Chapter 40, O.S.L.
17 2013, as amended by Section 2, Chapter 85, O.S.L. 2017, and as
18 renumbered by Section 5, Chapter 85, O.S.L. 2017 (2 O.S. Supp. 2019,
19 Section 5-4.3), is amended to read as follows:

20 Section 5-4.3. A. A home food establishment may sell prepared
21 food on site, by delivery, at a farmers market, through a
22 cooperative, through the Internet or through a membership-based
23 buying club. The Oklahoma Department of Agriculture, Food, and
24

1 Forestry may promulgate rules to allow sales at other locations or
2 by other means.

3 B. A home food establishment shall be exempt from the licensing
4 and other requirements of the State Department of Health.

5 C. The Oklahoma Department of Agriculture, Food, and Forestry
6 may, upon a consumer complaint, request written documentation to
7 verify the gross annual sales of a home food establishment.

8 SECTION 4. AMENDATORY Section 4, Chapter 40, O.S.L.
9 2013, as renumbered by Section 6, Chapter 40, O.S.L. 2017 (2 O.S.
10 Supp. 2019, Section 5-4.4), is amended to read as follows:

11 Section 5-4.4. A. A home food establishment that sells
12 prepared food shall affix a label that contains the following
13 information:

- 14 1. The name and address of the home food establishment;
- 15 2. The name of the prepared food; and
- 16 3. The following statement printed in at least 10-point type in
17 a color that provides a clear contrast to the background of the
18 label: "Made in a home food establishment that is not licensed by
19 the State Department of Health."

20 B. A home food establishment that sells frozen raw and uncut
21 fruit or vegetables shall:

- 22 1. Only be delivered by the operator of the home food
23 establishment directly to the customer;

1 2. Store the frozen fruit or vegetables at an air temperature
2 no greater than thirty-two (32) degrees Fahrenheit until received by
3 the customer; and

4 3. include on the label of the frozen fruit or vegetables or on
5 an invoice or receipt provided with the frozen fruit or vegetables
6 when sold the following statement in at least 12-point type: "SAFE
7 HANDLING INSTRUCTIONS: To prevent illness from bacteria, keep this
8 food frozen until preparing for consumption".

9 SECTION 5. AMENDATORY Section 5, Chapter 40, O.S.L.
10 2013, as renumbered by Section 6, Chapter 40, O.S.L. 2017 (2 O.S.
11 Supp. 2019, Section 5-4.5), is amended to read as follows:

12 Section 5-4.5. ~~Violation of Section 4 of~~ Violations of the Home
13 Bakery Cottage Food Act of 2013 shall be a misdemeanor and shall be
14 punishable by a fine not exceeding One Hundred Dollars (\$100.00).

15 SECTION 6. AMENDATORY Section 6, Chapter 40, O.S.L.
16 2013, as renumbered by Section 6, Chapter 40, O.S.L. 2017 (2 O.S.
17 Supp. 2019, Section 5-4.6), is amended to read as follows:

18 Section 5-4.6. Nothing in the ~~Home Bakery Cottage Food Act of~~
19 ~~2013~~ shall be construed to prevent counties from enacting ordinances
20 regulating the operation of home food establishments, provided such
21 ordinances do not conflict with the provisions of the ~~Home Bakery~~
22 Cottage Food Act of 2013.

1 SECTION 7. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 5-4.7 of Title 2, unless there
3 is created a duplication in numbering, reads as follows:

4 A home food establishment that sells prepared food through the
5 Internet or by mail order shall:

6 1. Only accept purchases through the Internet on the home food
7 establishment's website;

8 2. Be delivered by the operator of the home food establishment;
9 and

10 3. Before the operator of the home food establishment accepts
11 payment, provide all labeling information required by subsections A
12 and B of Section 5-4.4 of Title 2 of the Oklahoma Statutes, except
13 the home food establishment's address, to the customer by:

14 a. posting a legible statement on the home food
15 establishment's website, or

16 b. publishing the information in a catalog.

17 SECTION 8. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 5-4.8 of Title 2, unless there
19 is created a duplication in numbering, reads as follows:

20 A home food establishment that sells to consumers pickled fruit
21 or vegetables, fermented vegetable products or plant-based acidified
22 canned goods shall:

23 1. Use a recipe approved by the Robert M. Kerr Food and
24 Agriculture Products Center at Oklahoma State University or a recipe

1 tested by the Robert M. Kerr Food and Agriculture Products Center at
2 Oklahoma State University or a food laboratory approved by the
3 Oklahoma Department of Agriculture, Food, and Forestry to confirm
4 the finished product has an equilibrium pH value of 4.6 or less; and

5 2. For each batch:

- 6 a. affix a label to the units produced in each batch with
7 a unique batch number, and
8 b. create and maintain a record of each batch, for a
9 period of at least twelve (12) months, containing the
10 batch number, recipe used, the source of the recipe or
11 test results and the date the batch was prepared.

12 SECTION 9. This act shall become effective November 1, 2020.

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