

STATE OF OKLAHOMA

2nd Session of the 57th Legislature (2020)

HOUSE BILL 3420

By: Fincher

AS INTRODUCED

An Act relating to agriculture; amending Section 1, Chapter 40, O.S.L. 2013, as renumbered by Section 3, Chapter 85, O.S.L. 2017, 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, Section 3, Chapter 40, O.S.L. 2013, as amended by Section 2, Chapter 85, O.S.L. 2017, and as renumbered by Section 5, Chapter 85, O.S.L. 2017, Section 5, Chapter 40, O.S.L. 2013, as renumbered by Section 6, Chapter 85, O.S.L. 2017 and Section 6, Chapter 40, O.S.L. 2013, as renumbered by Section 6, Chapter 85, O.S.L. 2017 (2 O.S. Supp. 2019, Sections 5-4.1, 5-4.2, 5-4.3, 5-4.5 and 5-4.6), which relate to the Home Bakery Act of 2013; renaming act to Homemade Food Act of 2020; modifying definitions; defining terms; providing exemptions; construing act to not impede or precede certain investigation and inspection activities; updating reference; amending Section 2, Chapter 20, O.S.L. 2013 (63 O.S. Supp. 2019, Section 1-1331), which relates to beekeepers; modifying exemption; repealing Section 4, Chapter 40, O.S.L. 2013, as renumbered by Section 6, Chapter 40, O.S.L. 2017 (2 O.S. Supp. 2019, Section 5-4.4), which relates to Home Bakery Act of 2013 labeling requirements; 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~~ Homemade Food Act of ~~2013~~ 2020".

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~~ Homemade Food Act of ~~2013~~ 2020:

1. "Delivered" shall mean transferred to the consumer either immediately on sale or at a time thereafter;

2. "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 ~~or~~ for delivery, or other purposes, if the business has gross annual sales of prepared food of less than ~~Twenty Thousand Dollars (\$20,000.00)~~ One Hundred Thousand Dollars (\$100,000.00). Gross annual sales includes all sales of prepared food produced by the business at any location; and

~~2.~~ 3. "Prepared Homemade food item" shall mean a food item, including a nonalcoholic beverage, which is produced and, if packaged, packaged at the private residence of the producer ~~any~~

1 ~~baked goods except for products that contain meat products or fresh~~  
2 ~~fruit;~~

3 4. "Nonpotentially hazardous", in relation to food, shall mean  
4 food that does not require time or temperature control for safety to  
5 limit pathogenic microorganism growth or toxin formation;

6 5. "Potentially hazardous", in relation to food, shall mean  
7 food that requires time or temperature control for safety to limit  
8 pathogenic microorganism growth or toxin formation;

9 6. "Produce" shall mean to prepare a food item by cooking,  
10 baking, drying, mixing, cutting, canning, fermenting, preserving,  
11 dehydrating, growing, raising, or other process;

12 7. "Producer" shall mean the person who produces a homemade  
13 food item;

14 8. "Seller" shall mean the person who sells a homemade food  
15 item to a consumer. The seller of a nonpotentially hazardous  
16 homemade food item may be the producer of the item, an agent of the  
17 producer, or a third-party vendor, such as a retail shop or grocery  
18 store. The seller of a potentially hazardous homemade food item  
19 must be the producer of the item; and

20 9. "State" shall mean the State of Oklahoma and its political  
21 subdivisions.

22 SECTION 3. AMENDATORY Section 3, Chapter 40, O.S.L.  
23 2013, as amended by Section 2, Chapter 85, O.S.L. 2017, and as  
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renumbered by Section 5, Chapter 85, O.S.L. 2017 (2 O.S. Supp. 2019, Section 5-4.3), is amended to read as follows:

Section 5-4.3 A. ~~A home food establishment may sell prepared food on site, by delivery, at a farmers market, through a cooperative, or through a membership-based buying club. The Oklahoma Department of Agriculture, Food, and Forestry may promulgate rules to allow sales at other locations or by other means.~~

~~B.~~ A home food establishment that does not produce potentially hazardous homemade food items shall be exempt from the licensing and other requirements of the State Department of Health only if the following conditions are satisfied:

1. Nonpotentially hazardous food items are sold to the consumer:

- a. by the producer, whether in person or remotely,  
including but not limited to by telephone or Internet,
- b. at a farmers market, through a cooperative, through a membership-based buying club,
- c. by an agent of the producer, who:
  - (1) has full contact information, including telephone number and physical address of the producer, and
  - (2) has personally met the producer, or
- d. by a third-party vendor such as a retail shop or grocery store where the third-party vendor has:

- (1) at each location full contact information,  
including telephone number and physical address  
of the producer, and
- (2) the producer has provided a telephone number on  
the product for consumers to call, or
- (3) a representative who has personally met the  
producer and is available to the customer, in  
person, via phone, or other real-time audio or  
video link during normally scheduled hours;

2. Potentially hazardous homemade food items are sold by the  
producer to the consumer, either in person or remotely, including  
but not limited to by telephone or internet, and delivered by the  
producer to the consumer in person;

3. The following information is provided to the consumer:

- a. the name and contact information of the producer of  
the homemade item,
- b. the common or usual name of the homemade food item,
- c. the ingredients of the homemade food item in  
descending order of predominance,
- d. the following statement:
  - (1) for nonpotentially hazardous food items, "This  
product was produced in a private residence that  
is exempt from government licensing and

1                   inspection. This product may contain  
2                   allergens.", or

3           (2) for potentially hazardous food items: "This  
4           product required proper time and temperature  
5           control for safety and to avoid potential food-  
6           borne illness. This product was produced in a  
7           private residence that is exempt from government  
8           licensing and inspection. This product may  
9           contain allergens,

10       e. a link to a webpage with photographs, taken within one  
11       (1) year of the date of sales that accurately shows:  
12       (1) the part of the residence in which the homemade  
13       foods were produced,  
14       (2) the primary person, or persons, who produce the  
15       products sold by the home food establishment, and  
16       (3) if the photographs on the page do not have a  
17       minimum resolution of 1,024 pixels horizontally  
18       by 768 pixels vertically, the page will include a  
19       link to such photographs;

20       4. The information required by paragraph 3 of this subsection  
21       shall be provided:

22       a. a label affixed to the package, if the homemade food  
23       item is packaged,

- 1        b. on a label affixed to the container, if the homemade  
2        food item is offered for sale from a bulk container,  
3        c. on a placard displayed at the point of sale if the  
4        homemade food item is neither packaged nor offered for  
5        sale from a bulk container, or  
6        d. on the webpage on which the homemade food item is  
7        offered for sale, if the homemade food item is offered  
8        for sale on the Internet.

9        If the homemade food item is sold by telephone or custom order,  
10       the seller shall not be required to display the information required  
11       by paragraph 3 of this subsection, but the seller shall disclose to  
12       the consumer that the homemade food item is produced at a private  
13       residence and may contain allergens. If the homemade food item is  
14       potentially hazardous, the seller shall disclose that this product  
15       required proper time and temperature control for safety and to avoid  
16       potential food-borne illness. The seller shall have the information  
17       required by subparagraphs a, b and c of paragraph 3 of this  
18       subsection readily available and provide it to the consumer upon  
19       request; and

20       5. The homemade food item shall not be meat, meat byproduct,  
21       meat food product, poultry, poultry byproduct or poultry food  
22       product, or any term defined by the federal Meat Inspection Act and  
23       federal Poultry Products Inspection Act, unless the production and  
24       sale of the item:

- 1           (a) are within an exemption provided in 9 C.F.R. 303.1(d),  
2           9 C.F.R. 381.10(c) or 9 C.F.R. Section 381.10(d)3, and  
3           (b) comply with all other applicable federal regulations.

4       B. Nothing in the Homemade Food Act shall be construed to  
5 impede the Department of Health in any investigation of a reported  
6 foodborne illness, including warrants to compel search or  
7 inspection, or to preclude an agency from providing assistance,  
8 consultation, or inspection at the request of the producer of a  
9 homemade item.

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

13       SECTION 4.       AMENDATORY       Section 5, Chapter 40, O.S.L.  
14 2013, as renumbered by Section 6, Chapter 85, O.S.L. 2017 (2 O.S.  
15 Supp. 2019, Section 5-4.5), is amended to read as follows:

16       Section 5-4.5 Violation of Section 4 of the ~~Home Bakery~~  
17 Homemade Food Act of ~~2013~~ 2020 shall be a misdemeanor and shall be  
18 punishable by a fine not exceeding One Hundred Dollars (\$100.00).

19       SECTION 5.       AMENDATORY       Section 6, Chapter 40, O.S.L.  
20 2013, as renumbered by Section 6, Chapter 85, O.S.L. 2017 (2 O.S.  
21 Supp. 2019, Section 5-4.6), is amended to read as follows:

22       Section 5-4.6 Nothing in the ~~Home Bakery~~ Homemade Food Act of  
23 ~~2013~~ 2020 shall be construed to prevent counties from enacting  
24 ordinances regulating the operation of home food establishments,



1 provided such ordinances do not conflict with the provisions of the  
2 ~~Home Bakery~~ Homemade Food Act of ~~2013~~ 2020.

3 SECTION 6. AMENDATORY Section 2, Chapter 20, O.S.L. 2013  
4 (63 O.S. Supp. 2019, Section 1-1331), is amended to read as follows:

5 Section 1-1331. A. Beekeepers with annual production of less  
6 than five hundred (500) gallons who do not qualify for the exemption  
7 under subsection A of Section 5-4.3 of Title 2 of the Oklahoma  
8 Statutes shall be exempt from regulation and inspection by the State  
9 Department of Health for the manufacture, sale, and distribution of  
10 honey and honeycomb products in Oklahoma if they meet the following  
11 requirements:

12 1. The beekeeper shall only sell or distribute honey or  
13 honeycomb produced from hives located wholly within the State of  
14 Oklahoma which are owned and managed by the beekeeper;

15 2. The honey, honeycomb, or combination thereof is raw and not  
16 blended with other products or otherwise adulterated. The honey may  
17 be in liquid or solid form or a combination of the two;

18 3. The honey or honeycomb shall only be sold or distributed ~~in~~  
19 person by the producer to the ~~end-use~~ customer ~~at the beekeeper's~~  
20 ~~home, farmer's markets, roadside stands, county fairs, or similar~~  
21 ~~events; by the beekeeper or members of the beekeeper's immediate~~  
22 ~~family~~ or by an agent of the producer, a third-party vendor or a  
23 third-party carrier to the customer; and

1       4. Honey products shall be labeled with the common food product  
2 name, net weight of the honey, the beekeeper's name, current ten  
3 (10) digit phone number, an address where the honey or honeycomb was  
4 produced, and shall include the statement, "Bottled or packaged in a  
5 facility not inspected by the Oklahoma Department of Health." The  
6 statement shall be in 10-point type or greater in a color that  
7 provides clear contrast to the background label.

8       B. No county, municipal corporation, consolidated government,  
9 or political subdivision of this state shall adopt or continue in  
10 effect any ordinance, rule, regulation, or resolution prohibiting,  
11 impeding, or restricting honey sales or distribution in compliance  
12 with this law.

13       SECTION 7.       REPEALER       Section 4, Chapter 40, O.S.L. 2013,  
14 as renumbered by Section 6, Chapter 85, O.S.L. 2017 (2 O.S. Supp.  
15 2019, Section 5-4.4), is hereby repealed.

16       SECTION 8. This act shall become effective November 1, 2020.  
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