

1 STATE OF OKLAHOMA

2 2nd Session of the 57th Legislature (2020)

3 SENATE BILL 1799

By: Bergstrom

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5
6 AS INTRODUCED

7 An Act relating to homemade food products; amending
8 Sections 1, 2, as amended by Section 1, Chapter 85,
9 O.S.L. 2017, 3, as amended by Section 2, Chapter 85,
10 O.S.L. 2017, 4, 5 and 6, Chapter 40, O.S.L. 2013, as
11 renumbered by Sections 3, 4, 5 and 6, Chapter 85,
12 O.S.L. 2017 (2 O.S. Supp. 2019, Sections 5-4.1, 5-
13 4.2, 5-4.3, 5-4.4, 5-4.5 and 5-4.6), which relate to
14 the Home Bakery Act of 2013; renaming act; removing
15 definitions; adding definitions; removing authority
16 of the Department of Agriculture, Food, and Forestry
17 to promulgate rules; modifying exemptions from
18 licensing and regulations; removing authority of the
19 Department to request certain verification; modifying
20 labeling requirements; stating act shall not be
21 construed to impede investigation by state agencies
22 under certain circumstances; clarifying statutory
23 reference; amending Section 2, Chapter 20, O.S.L.
24 2013 (63 O.S. Supp. 2019, Section 1-1331), which
relates to beekeepers; providing exception; modifying
requirements for exemption; updating statutory
language; 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:

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

3 SECTION 2. AMENDATORY Section 2, Chapter 40, O.S.L.
4 2013, as amended by Section 1, Chapter 85, O.S.L. 2017, and as
5 renumbered by Section 4, Chapter 85, O.S.L. 2017 (2 O.S. Supp. 2019,
6 Section 5-4.2), is amended to read as follows:

7 Section 5-4.2. As used in the ~~Home Bakery Act of 2013~~ Homemade
8 Food Freedom Act:

9 1. ~~"Home food establishment" shall mean a business on the~~
10 ~~premises of a residence in which prepared food is created for sale~~
11 ~~or resale at farmers markets, on site, at cooperatives, through~~
12 ~~membership-based buying clubs or for delivery, if the business has~~
13 ~~gross annual sales of prepared food of less than Twenty Thousand~~
14 ~~Dollars (\$20,000.00). Gross annual sales includes all sales of~~
15 ~~prepared food produced by the business at any location; and~~
16 "Delivered" shall mean transferred to the consumer, either
17 immediately upon sale or at a time thereafter;

18 2. ~~"Prepared food" shall mean any baked goods except for~~
19 ~~products that contain meat products or fresh fruit. "Homemade food~~
20 ~~product" shall mean food, including a non-alcoholic beverage, which~~
21 is produced and, if packaged, packaged at the private residence of
22 the producer;

23 3. "Non-potentially hazardous" shall mean food that does not
24 require time/temperature control for safety to limit the rapid and

1 progressive growth of infectious or toxigenic microorganisms. The
2 term includes foods which have a pH level of four and six-tenths
3 (4.6) or below and a water activity (a) value of eighty-five one
4 hundredths (0.85) or less;

5 4. "Potentially hazardous" shall mean food that requires
6 time/temperature control for safety to limit infectious or toxigenic
7 microorganisms and is in a form capable of supporting rapid and
8 progressive growth of infectious or toxigenic microorganisms. The
9 term does not include foods which have a pH level of four and six-
10 tenths (4.6) or below and a water activity (a) value of eighty-five
11 one hundredths (0.85) or less;

12 5. "Produce" shall mean to prepare a food product by cooking,
13 baking, drying, mixing, cutting, canning, fermenting, preserving,
14 dehydrating, growing, raising or other process; and

15 6. "Producer" shall mean the person who produces a homemade
16 food product;

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

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

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

3 ~~B. A home food establishment~~ The production and sale of
4 homemade food products that meet the following conditions shall be
5 exempt from ~~the~~ all licensing and other requirements of the State
6 Department of Health.

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

11 1. For the sale of non-potentially hazardous homemade food
12 products that:

13 a. shall be sold by the producer directly to the
14 consumer, either in person or by remote means
15 including, but not limited to, the Internet or
16 telephone, or

17 b. shall be sold by a producer's designated agent or a
18 third-party vendor, such as a retail or grocery store,
19 to the consumer;

20 2. For the delivery of non-potentially hazardous homemade food
21 products:

22 a. by the producer or producer's designated agent
23 directly to the consumer or third-party vendor, or
24

1 b. delivered by a third-party vendor or a third-party
2 carrier, such as a parcel delivery service, to the
3 consumer or third-party vendor;

4 3. Potentially hazardous homemade food products shall be sold
5 by the producer directly to the consumer, either in person or by
6 remote means including, but not limited to, the Internet or
7 telephone; and

8 4. Potentially hazardous homemade food products shall be
9 delivered by the producer directly to the consumer;

10 5. The following information shall be provided to the consumer
11 in the format required in subsection B of this section:

12 a. the name, phone number and mailing address of the
13 producer,

14 b. a description of the homemade food product,

15 c. the ingredients of the homemade food products in a
16 descending order of proportion, and

17 d. legible print stating, "This product was produced in a
18 private residence that is exempt from government
19 licensing and inspection. This product may contain
20 allergens."; and

21 6. Homemade food products shall not contain meat, meat
22 byproducts or meat food products as defined by 9 CFR, Section 301.2
23 or poultry, poultry products or poultry food products as defined by
24

1 9, CFR, Section 381.1 unless the production and sale of the
2 products:

3 a. are exempted by 9 CFR, Sections 303.1 and 381.10, and

4 b. comply with all other applicable federal regulations.

5 B. The information required in paragraph 5 of subsection A of
6 this section shall be provided in a legible format of at least ten
7 (10) point font, in the following manner:

8 1. On a label affixed to the package if the homemade food
9 product is packaged;

10 2. On a label affixed to a container, if the homemade food
11 product is offered for sale from a bulk container directly to the
12 consumer;

13 3. On a placard displayed at the point of sale, if the homemade
14 food product is not packaged; and

15 4. If selling on the Internet, displayed on the webpage from
16 which the homemade food product is offered for sale.

17 SECTION 4. AMENDATORY Section 4, Chapter 40, O.S.L.
18 2013, as renumbered by Section 6, Chapter 85, O.S.L. 2017 (2 O.S.
19 Supp. 2019, Section 5-4.4), is amended to read as follows:

20 Section 5-4.4. ~~A home food establishment that sells prepared~~
21 ~~food shall affix a label that contains the following information:~~

22 1. ~~The name and address of the home food establishment;~~

23 2. ~~The name of the prepared food; and~~

1 3. ~~The following statement printed in at least 10-point type in~~
2 ~~a color that provides a clear contrast to the background of the~~
3 ~~label: "Made in a home food establishment that is not licensed by~~
4 ~~the State Department of Health."~~ Nothing in the Homemade Food
5 Freedom Act shall be construed to impede the State Department of
6 Health in any investigation of a reported foodborne illness, or to
7 preclude a state agency from providing assistance, consultation or
8 an inspection at the request of the producer.

9 SECTION 5. AMENDATORY Section 5, Chapter 40, O.S.L.
10 2013, as renumbered by Section 6, Chapter 85, 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~~ Violations of the ~~Home~~
13 ~~Bakery Act of 2013~~ Homemade Food Freedom Act shall be a misdemeanor
14 and shall be punishable by a fine not exceeding One Hundred Dollars
15 (\$100.00).

16 SECTION 6. AMENDATORY Section 6, Chapter 40, O.S.L.
17 2013, as renumbered by Section 6, Chapter 85, O.S.L. 2017 (2 O.S.
18 Supp. 2019, Section 5-4.6), is amended to read as follows:

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

1 SECTION 7. AMENDATORY Section 2, Chapter 20, O.S.L. 2013
2 (63 O.S. Supp. 2019, Section 1-1331), is amended to read as follows:

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

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

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

16 3. The honey or honeycomb shall only be sold or distributed in
17 person to the end-use customer ~~at the beekeeper's home, farmer's~~
18 ~~markets, roadside stands, county fairs, or similar events; by the~~
19 ~~beekeeper or members of the beekeeper's immediate family~~ by a
20 designated agent of the beekeeper to the end-use customer, by a
21 carrier such as a parcel delivery service, to the end-use customer
22 or to a vendor or retail establishment for resale; and

23 4. Honey products shall be labeled with the common food product
24 name, net weight of the honey, the beekeeper's name, current ten

1 (10) digit phone number, an address where the honey or honeycomb was
2 produced, and shall include the statement, "Bottled or packaged in a
3 facility not inspected by the Oklahoma Department of Health." The
4 statement shall be in 10-point type or greater in a color that
5 provides clear contrast to the background label.

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

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

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