

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 58th Legislature (2021)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 1032

 By: Mize, **Davis** and **Bennett**

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9 COMMITTEE SUBSTITUTE

10 An Act relating to public health and safety; amending
11 Section 1, Chapter 40, O.S.L. 2013, as renumbered by
12 Section 3, Chapter 85, O.S.L. 2017 (2 O.S. Supp.
13 2020, Section 5-4.1), which relates to the Home
14 Bakery Act of 2013; renaming the Home Bakery Act of
15 2013; amending Section 2, Chapter 40, O.S.L. 2013, as
16 amended by Section 1, Chapter 85, O.S.L. 2017, and as
17 renumbered by Section 4, Chapter 85, O.S.L. 2017 (2
18 O.S. Supp. 2020, Section 5-4.2), which relates to
19 definitions; defining terms; amending Section 3,
20 Chapter 40, O.S.L. 2013, as amended by Section 2,
21 Chapter 85, O.S.L. 2017, and as renumbered by Section
22 5, Chapter 85, O.S.L. 2017 (2 O.S. Supp. 2020,
23 Section 5-4.3), which relates to licensing of home
24 food establishments; exempting certain entities from
 licensure and inspection; requiring certain labeling;
 amending Section 4, Chapter 40, O.S.L. 2013, as
 renumbered by Section 6, Chapter 85, O.S.L. 2017 (2
 O.S. Supp. 2020, Section 5-4.4), which relates to
 labeling; clarifying construction of amendments;
 amending Section 5, Chapter 40, O.S.L. 2013, as
 renumbered by Section 6, Chapter 85, O.S.L. 2017 (2
 O.S. Supp. 2020, Section 5-4.5), which relates to
 violations; modifying penalty; amending Section 6,
 Chapter 40, O.S.L. 2013, as renumbered by Section 6,
 Chapter 85, O.S.L. 2017 (2 O.S. Supp. 2020, Section
 5-4.6), which relates to county ordinances; updating
 term; prohibiting certain impediments and
 restrictions; amending Section 2, Chapter 20, O.S.L.

1 2013 (63 O.S. Supp. 2020, Section 1-1331), which
2 relates to regulation of beekeepers; updating
3 exemption reference; allowing for distribution; and
4 providing an effective date.

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

6 SECTION 1. AMENDATORY Section 1, Chapter 40, O.S.L.
7 2013, as renumbered by Section 3, Chapter 85, O.S.L. 2017 (2 O.S.
8 Supp. 2020, Section 5-4.1), is amended to read as follows:

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

11 SECTION 2. AMENDATORY Section 2, Chapter 40, O.S.L.
12 2013, as amended by Section 1, Chapter 85, O.S.L. 2017, and as
13 renumbered by Section 4, Chapter 85, O.S.L. 2017 (2 O.S. Supp. 2020,
14 Section 5-4.2), is amended to read as follows:

15 Section 5-4.2 As used in the ~~Home Bakery Act of 2013~~ Homemade
16 Food Freedom Act:

17 1. "Home food establishment" shall mean a business on the
18 premises of a residence in which ~~prepared~~ homemade food products ~~is~~
19 are created for sale or resale ~~at farmers markets, on site, at~~
20 ~~cooperatives, through membership-based buying clubs or for delivery,~~
21 if the business has gross annual sales of prepared food of less than
22 ~~Twenty Thousand Dollars (\$20,000.00)~~ One Hundred Twenty-five
23 Thousand Dollars (\$125,000.00). Gross annual sales includes all
24 sales of prepared food produced by the business at any location; ~~and~~

1 2. ~~"Prepared food" shall mean any baked goods except for~~
2 ~~products that contain meat products or fresh fruit~~ "Delivered" shall
3 mean transferred to the customer, either immediately upon sale or at
4 a time thereafter;

5 3. "Homemade food product" shall mean food, including a
6 beverage, which is produced and, if packaged, packaged at a
7 residence; provided, however, homemade food product shall not mean
8 alcoholic beverages or unpasteurized milk or cannabis or marijuana
9 products;

10 4. "Non-time- or temperature-controlled for safety" shall mean
11 food that does not require time or temperature control for safety to
12 limit the rapid and progressive growth of infectious or toxigenic
13 microorganisms, including foods that have a pH level of four and
14 six-tenths (4.6) or below or a water activity (aw) value of eighty-
15 five one-hundredths (0.85) or less;

16 5. "Time- or temperature-controlled for safety" shall mean a
17 food that requires time or temperature control for safety to limit
18 infectious or toxigenic microorganisms and is in a form capable of
19 supporting rapid and progressive growth of infectious or toxigenic
20 microorganisms; provided, however, time- or temperature-controlled
21 for safety shall not include foods that have a pH level of four and
22 six-tenths (4.6) or below or a water activity (aw) value of eighty-
23 five one-hundredths (0.85) or less;

1 6. "Produce" shall mean to prepare a food product by cooking,
2 baking, drying, mixing, cutting, canning, fermenting, preserving,
3 dehydrating, growing, raising or other process; and

4 7. "Producer" shall mean the person who produces a homemade
5 food product in a home food establishment.

6 SECTION 3. AMENDATORY Section 3, Chapter 40, O.S.L.
7 2013, as amended by Section 2, Chapter 85, O.S.L. 2017, and as
8 renumbered by Section 5, Chapter 85, O.S.L. 2017 (2 O.S. Supp. 2020,
9 Section 5-4.3), is amended to read as follows:

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

16 ~~B. A home food establishment~~ The production and sale of
17 homemade food products that meet the following conditions shall be
18 exempt from ~~the~~ all licensing and other requirements of the State
19 Department of Health and the Oklahoma Department of Agriculture,
20 Food, and Forestry:

21 1. Non-time- or temperature-controlled-for-safety homemade food
22 products shall be sold:
23
24

1 a. by the producer directly to the consumer, either in
2 person or by remote means, including, but not limited
3 to, the Internet or telephone, or

4 b. by a producer's designated agent or a third-party
5 vendor, such as a retail or grocery store, farm, farm
6 stand, farmers market, membership-based buying club,
7 craft fair or flea market, to the consumer; provided,
8 the third-party vendor displays a placard where
9 homemade food products are displayed for sale with the
10 following disclosure: "This product was produced in a
11 private residence that is exempt from government
12 licensing and inspection. This product may contain
13 allergens.";

14 2. Non-time- or temperature-controlled-for-safety homemade food
15 products shall be delivered:

16 a. by the producer or producer's designated agent directly
17 to the consumer or third-party vendor, or

18 b. by a third-party vendor or a third-party carrier, such
19 as a parcel delivery service, to the consumer or a
20 third-party vendor;

21 3. Time- or temperature-controlled-for-safety homemade food
22 products shall be sold by the producer directly to the consumer,
23 either in person or by remote means, including, but not limited to,
24 the Internet or telephone;

1 4. Time- or temperature-controlled-for-safety homemade food
2 products shall be delivered by the producer directly to the
3 consumer;

4 5. Before a producer produces and sells time- or temperature-
5 controlled-for-safety homemade food products, the producer shall
6 complete and pass food safety training from a list of providers,
7 including the ServSafe Food Handler Training, approved by the
8 Oklahoma Department of Agriculture, Food, and Forestry. The food
9 safety training shall be available to complete online and shall not
10 exceed eight (8) hours in length. The Oklahoma Department of
11 Agriculture, Food, and Forestry shall make the list of approved
12 training available on its website by the effective date of this act;

13 6. The following information shall be provided to the consumer
14 in the format required by subsection B of this section:

15 a. the name and phone number of the producer,

16 b. the physical address where the product was produced or,
17 upon a producer's request for safety, personal
18 identification number provided by the Oklahoma
19 Department of Agriculture, Food, and Forestry for a fee
20 of Twenty-five Dollars (\$25.00),

21 c. a description of the homemade food product,

22 d. the ingredients of the homemade food product in
23 descending order of proportion,

- 1 e. a statement indicating the presence of any of the eight
2 most common allergens, including milk, eggs, peanuts,
3 tree nuts, soy and wheat, and
4 f. legible print stating, "This product was produced in a
5 private residence that is exempt from government
6 licensing and inspection.";

7 7. If the homemade food product is packaged and distributed in
8 interstate commerce, it shall also be sold and labeled in accordance
9 with federal law; and

10 8. Homemade food products shall not contain seafood or meat,
11 meat byproducts or meat food products as defined by Section 301.2 of
12 Title 9 of the Code of Federal Regulations or poultry, poultry
13 products or poultry food products as defined for purposes of the
14 federal Poultry Products Inspection Act.

15 B. The information required by paragraph 6 of subsection A of
16 this section shall be provided in a legible format of at least 10-
17 point font, in the following manner:

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

20 2. On a label affixed to a container, if the homemade food
21 product is offered for sale from a bulk container directly to the
22 consumer;

1 3. On a placard displayed at the point of sale, and on a card
2 or other item that is made available to the consumer and is readily
3 carriable if the homemade food product is not packaged; and

4 4. Displayed on the webpage from which the homemade food
5 product is offered for sale if it is sold on the Internet, provided
6 that each item sold over the Internet shall be properly labeled or
7 shall have a label included in the shipping container.

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

11 SECTION 4. AMENDATORY Section 4, Chapter 40, O.S.L.
12 2013, as renumbered by Section 6, Chapter 85, O.S.L. 2017 (2 O.S.
13 Supp. 2020, Section 5-4.4), is amended to read as follows:

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

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

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

18 ~~3. The following statement printed in at least 10-point type in~~
19 ~~a color that provides a clear contrast to the background of the~~
20 ~~label: "Made in a home food establishment that is not licensed by~~
21 ~~the State Department of Health." Nothing in the Homemade Food~~
22 Freedom Act shall be construed to impede the State Department of
23 Health in any investigation of a reported foodborne illness.

1 SECTION 5. AMENDATORY Section 5, Chapter 40, O.S.L.
2 2013, as renumbered by Section 6, Chapter 85, O.S.L. 2017 (2 O.S.
3 Supp. 2020, Section 5-4.5), is amended to read as follows:

4 Section 5-4.5 Violation of ~~Section 4 of the Home Bakery Act of~~
5 ~~2013~~ Homemade Food Freedom Act shall be ~~a misdemeanor and shall be~~
6 ~~punishable by a fine not exceeding One Hundred Dollars (\$100.00)~~
7 Three Hundred Dollars (\$300.00).

8 SECTION 6. AMENDATORY Section 6, Chapter 40, O.S.L.
9 2013, as renumbered by Section 6, Chapter 85, O.S.L. 2017 (2 O.S.
10 Supp. 2020, Section 5-4.6), is amended to read as follows:

11 Section 5-4.6 Nothing in the ~~Home Bakery Act of 2013~~ Homemade
12 Food Freedom Act shall be construed to prevent counties from
13 enacting ordinances regulating the operation of home food
14 establishments, provided such ordinances do not conflict with the
15 provisions of the ~~Home Bakery Act of 2013~~ Homemade Food Freedom Act
16 or impede or restrict the sale of homemade food products in
17 compliance with the law.

18 SECTION 7. AMENDATORY Section 2, Chapter 20, O.S.L. 2013
19 (63 O.S. Supp. 2020, Section 1-1331), is amended to read as follows:

20 Section 1-1331. A. Beekeepers with annual production of less
21 than five hundred (500) gallons who do not qualify for the exemption
22 provided in Section 5-4.3 of Title 2 of the Oklahoma Statutes shall
23 be exempt from regulation and inspection by the State Department of
24 Health for the manufacture, sale, and distribution of honey and

1 honeycomb products in Oklahoma if they meet the following
2 requirements:

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

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

9 3. The honey or honeycomb shall ~~only~~ be sold in-person or by a
10 designated agent of the beekeeper to the end-use customer, or online
11 by the beekeeper, or distributed in person to the end-use customer
12 ~~at the beekeeper's home, farmer's markets, roadside stands, county~~
13 ~~fairs, or similar events; by the beekeeper or members of the~~
14 ~~beekeeper's immediate family~~ by an employee of the beekeeper, or
15 distributed by a carrier, such as a parcel delivery service, to the
16 end-use customer or to a vendor or retail establishment for resale;
17 and

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

1 B. No county, municipal corporation, consolidated government,
2 or political subdivision of this state shall adopt or continue in
3 effect any ordinance, rule, regulation, or resolution prohibiting,
4 impeding, or restricting honey sales or distribution in compliance
5 with this law.

6 SECTION 8. This act shall become effective November 1, 2021.

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8 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS AND COMMERCE, dated
9 02/24/2021 - DO PASS, As Amended and Coauthored.

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