

STATE OF OKLAHOMA

1st Session of the 58th Legislature (2021)

HOUSE BILL 1032

By: Mize

AS INTRODUCED

An Act relating to public health and safety; amending Section 1, Chapter 40, O.S.L. 2013, as renumbered by Section 3, Chapter 85, O.S.L. 2017 (2 O.S. Supp. 2020, Section 5-4.1), which relates to the Home Bakery Act of 2013; renaming the Home Bakery Act of 2013; amending 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. 2020, Section 5-4.2), which relates to definitions; defining terms; amending 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 (2 O.S. Supp. 2020, Section 5-4.3), which relates to licensing of home 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. 2013 (63 O.S. Supp. 2020, Section 1-1331), which relates to regulation of beekeepers; updating exemption reference; allowing for distribution; and providing an effective date.

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

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

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

7 SECTION 2. AMENDATORY Section 2, Chapter 40, O.S.L.
8 2013, as amended by Section 1, Chapter 85, O.S.L. 2017, and as
9 renumbered by Section 4, Chapter 85, O.S.L. 2017 (2 O.S. Supp. 2020,
10 Section 5-4.2), is amended to read as follows:

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

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

21 2. "~~Prepared food~~" shall mean any baked goods except for
22 ~~products that contain meat products or fresh fruit~~

23 "Delivered" shall mean transferred to the customer, either
24 immediately upon sale or at a time thereafter;

1 3. "Homemade food product" shall mean food, including a
2 beverage, which is produced and, if packaged, packaged at a
3 residence; provided, however, homemade food product shall not mean
4 alcoholic beverages or unpasteurized milk;

5 4. "Nonpotentially hazardous" shall mean food that does not
6 require time or temperature control for safety to limit the rapid
7 and progressive growth of infectious or toxigenic microorganisms,
8 including foods that have a pH level of four and six-tenths (4.6) or
9 below or a water activity (aw) value of eighty-five one-hundredths
10 (0.85) or less;

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

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

22 7. "Producer" shall mean the person who produces a homemade
23 food product in a home food establishment.
24

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

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

11 B. ~~A home food establishment~~ The production and sale of
12 homemade food products that meet the following conditions shall be
13 exempt from ~~the~~ all licensing and other requirements of the State
14 Department of Health and the Oklahoma Department of Agriculture,
15 Food, and Forestry:

16 1. Nonpotentially hazardous homemade food products shall be
17 sold:

18 a. by the producer directly to the consumer, either in
19 person or by remote means, including, but not limited
20 to, the Internet or telephone, or

21 b. by a producer's designated agent or a third-party
22 vendor, such as a retail or grocery store, to the
23 consumer, provided the third-party vendor displays a
24 placard where homemade food products are displayed for

1 sale with the following disclosure: "This product was
2 produced in a private residence that is exempt from
3 government licensing and inspection. This product may
4 contain allergens.";

5 2. Nonpotentially hazardous homemade food products shall be
6 delivered:

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

9 b. by a third-party vendor or a third-party carrier, such
10 as a parcel delivery service, to the consumer or a
11 third-party vendor;

12 3. Potentially hazardous homemade food products shall be sold
13 by the producer directly to the consumer, either in person or by
14 remote means, including, but not limited to, the Internet or
15 telephone;

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

18 5. Before a producer produces and sells potentially hazardous
19 homemade food products, the producer shall complete food safety
20 training provided by Oklahoma State University Extension, ServSafe
21 or another provider approved by the Oklahoma Department of
22 Agriculture, Food, and Forestry, which shall be available online and
23 in-person, shall not exceed eight (8) hours, and the fee for which
24 shall not exceed Fifty Dollars (\$50.00). Upon request by the

1 Oklahoma Department of Agriculture, Food, and Forestry, a producer
2 shall provide documentation of completion of the training required
3 by this paragraph;

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

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

7 b. the producer's mailing address or personal
8 identification number provided by the Oklahoma
9 Department of Agriculture, Food, and Forestry,

10 c. a description of the homemade food product,

11 d. the ingredients of the homemade food products in
12 descending order of proportion, and

13 e. legible print stating, "This product was produced in a
14 private residence that is exempt from government
15 licensing and inspection. This product may contain
16 allergens.";

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

20 8. Homemade food products shall not contain meat, meat
21 byproducts or meat food products as defined by Section 301.2 of
22 Title 9 of the Code of Federal Regulations or poultry, poultry
23 products or poultry food products as defined for purposes of the
24 federal Poultry Products Inspection Act; provided, however, if only

1 poultry products that have passed federal or state inspection in
2 accordance with Section 381.10(d) of Title 9 of the Code of Federal
3 Regulations are used, or poultry products are used that are exempted
4 pursuant to Section 381.10(c) of Title 9 of the Code of Federal
5 Regulations, and all other exemption requirements of Section
6 381.10(d) of Title 9 of the Code of Federal Regulations are met,
7 this prohibition shall not apply.

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

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

13 2. On a label affixed to a container, if the homemade food
14 product is offered for sale from a bulk container directly to the
15 consumer;

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

18 4. Displayed on the webpage from which the homemade food
19 product is offered for sale if it is sold on the Internet.

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

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1 SECTION 4. AMENDATORY Section 4, 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 5-4.4), is amended to read as follows:

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

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

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

8 3. ~~The following statement printed in at least 10-point type in~~

9 ~~a color that provides a clear contrast to the background of the~~

10 ~~label: "Made in a home food establishment that is not licensed by~~

11 ~~the State Department of Health."~~ Nothing in the Homemade Food

12 Freedom Act shall be construed to impede the State Department of

13 Health in any investigation of a reported foodborne illness.

14 SECTION 5. AMENDATORY Section 5, Chapter 40, O.S.L.

15 2013, as renumbered by Section 6, Chapter 85, O.S.L. 2017 (2 O.S.

16 Supp. 2020, Section 5-4.5), is amended to read as follows:

17 Section 5-4.5 Violation of ~~Section 4 of the Home Bakery Act of~~

18 ~~2013~~ Homemade Food Freedom Act shall be ~~a misdemeanor and shall be~~

19 punishable by a fine not exceeding One Hundred Dollars (\$100.00).

20 SECTION 6. AMENDATORY Section 6, Chapter 40, O.S.L.

21 2013, as renumbered by Section 6, Chapter 85, O.S.L. 2017 (2 O.S.

22 Supp. 2020, Section 5-4.6), is amended to read as follows:

23 Section 5-4.6 Nothing in the ~~Home Bakery Act of 2013~~ Homemade

24 Food Freedom Act shall be construed to prevent counties from

1 enacting ordinances regulating the operation of home food
2 establishments, provided such ordinances do not conflict with the
3 provisions of the ~~Home Bakery Act of 2013~~ Homemade Food Freedom Act
4 or impede or restrict the sale of homemade food products in
5 compliance with the law.

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

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

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

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

21 3. The honey or honeycomb shall ~~only~~ be sold in-person or by a
22 designated agent of the beekeeper to the end-use customer, or online
23 by the beekeeper, or distributed in person to the end-use customer
24 ~~at the beekeeper's home, farmer's markets, roadside stands, county~~

1 ~~fairs, or similar events, by the beekeeper or members of the~~
2 ~~beekeeper's immediate family~~ by a designated agent of the beekeeper,
3 or distributed by a carrier such as a parcel delivery service to the
4 end-use customer or to a vendor or retail establishment for resale;
5 and

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

13 B. No county, municipal corporation, consolidated government,
14 or political subdivision of this state shall adopt or continue in
15 effect any ordinance, rule, regulation, or resolution prohibiting,
16 impeding, or restricting honey sales or distribution in compliance
17 with this law.

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

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