

STATE OF OKLAHOMA

1st Session of the 59th Legislature (2023)

SENATE BILL 1041

By: Dahm

AS INTRODUCED

An Act relating to home food processing; amending 2 O.S. 2021, Sections 5-4.1, 5-4.2, 5-4.3, 5-4.4, 5-4.5, and 5-4.6, which relate to the Homemade Food Freedom Act; creating the Home Food Processing Act; adding and modifying definitions; requiring certain labeling; modifying certain misdemeanor penalty; updating statutory language; and providing an effective date.

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

SECTION 1. AMENDATORY 2 O.S. 2021, 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 "~~Homemade~~ Home Food Freedom Processing Act".

SECTION 2. AMENDATORY 2 O.S. 2021, Section 5-4.2, is amended to read as follows:

Section 5-4.2. As used in the ~~Homemade~~ Home Food Processing Freedom Act:

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

1 2. "Department" means the Oklahoma Department of Agriculture,
2 Food, and Forestry;

3 3. "Home food establishment" shall mean means a business on the
4 premises of a residence in which homemade non-time/temperature-
5 controlled for safety food products are is created for sale or
6 resale at farmers markets, on site, at cooperatives, through
7 membership-based buying clubs, at retail establishments, at
8 restaurants, or for delivery, if the business has gross annual sales
9 of prepared non-time/temperature-controlled for safety food of less
10 than Seventy-five Thousand Dollars (\$75,000.00) One Hundred Thousand
11 Dollars (\$100,000.00). Gross annual sales includes all sales of
12 prepared food produced by the business at any location;

13 ~~2. "Delivered" shall mean transferred to the customer, either~~
14 ~~immediately upon sale or at a time thereafter;~~

15 ~~3.~~ 4. "Homemade food product" shall mean food, including a
16 beverage, which is produced and, if packaged, packaged at a
17 residence; provided, however, homemade food product shall not mean
18 alcoholic beverages or unpasteurized milk or cannabis or marijuana
19 products;

20 ~~4.~~ 5. "Non-time- or -temperature-controlled for safety food"
21 shall mean means a food product that does is not require time or
22 temperature control time/temperature controlled for safety
23 including, but not limited to, baked goods, jams and jellies,
24 candies, dried mixes, spices, some sauces and liquids, pickles, and

~~acidified foods to limit the rapid and progressive growth of infectious or toxigenic microorganisms, including foods that have a pH level of four and six tenths (4.6) or below or a water activity (aw) value of eighty-five one-hundredths (0.85) or less;~~

5. ~~6.~~ "Time- or temperature-controlled for safety food" ~~shall~~
~~mean~~ means a food that requires time or temperature control for safety to limit ~~infectious or toxigenic microorganisms and is in a form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms; provided, however, time or temperature-controlled for safety shall not include foods that have a pH level of four and six tenths (4.6) or below or a water activity (aw) value of eighty-five one-hundredths (0.85) or less~~ pathogenic microorganism growth or toxin formation including, but not limited to, refrigerated or frozen products, low-acid canned foods, dairy products, seafood products, and bottled water, and:

a. time- or temperature-controlled for safety food includes an animal food, meaning a food of animal origin that is raw or heat-treated, a food of plant origin that is heat-treated or consists of raw seed sprouts, cut melons, cut leafy greens, cut tomatoes or mixtures of cut tomatoes that are not modified in a way so that they are unable to support pathogenic microorganism growth or toxic formation, or garlic-in-oil mixtures that are not modified in a way that

1 results in mixtures that do not support growth or
2 toxin formulation, and

3 b. time- or temperature-controlled for safety food does
4 not include an air-cooled hard-boiled egg with shell
5 intact, or a shell egg that is not hard-boiled but has
6 been treated to destroy all viable Salmonellae; a food
7 with a water activity (aw) value of 0.85 or less; a
8 food with a potential of Hydrogen (pH) level of 4.6 or
9 below when measured at twenty-four degrees Celsius
10 (24°C) or seventy-five degrees Fahrenheit (75°F); a
11 food, in an unopened hermetically sealed container,
12 that is commercially processed to achieve and maintain
13 commercial sterility under conditions of non-
14 refrigerated storage and distribution; a food for
15 which laboratory evidence demonstrates that the rapid
16 and progressive growth of infectious or toxigenic
17 microorganisms or the growth of S. Enteritidis in eggs
18 or C. botulinum cannot occur, such as a food that has
19 an aw and a pH that are above the levels identified in
20 this definition and that may contain a preservative,
21 other barrier to the growth of microorganisms, or a
22 combination of barriers that inhibit the growth of
23 microorganisms; or a food that does not support the
24 growth of microorganisms, even though the food may

1 contain an infectious or toxigenic microorganism or
2 chemical or physical contaminant at a level sufficient
3 to cause illness;

4 ~~6.~~ 7. "Produce" shall mean to prepare a food product by
5 cooking, baking, drying, mixing, cutting, canning, fermenting,
6 preserving, dehydrating, growing, raising or other process; and

7 ~~7.~~ 8. "Producer" shall mean the person who produces a homemade
8 food product in a home food establishment.

9 SECTION 3. AMENDATORY 2 O.S. 2021, Section 5-4.3, is
10 amended to read as follows:

11 Section 5-4.3. A. The production and sale of homemade food
12 products that meet the following conditions shall be exempt from all
13 licensing and other requirements of the State Department of Health
14 and the Oklahoma Department of Agriculture, Food, and Forestry:

15 1. Non-time- or -temperature-controlled-for-safety homemade
16 food products shall be sold:

- 17 a. by the producer directly to the consumer, either in
18 person or by remote means, including, but not limited
19 to, the Internet or telephone, or
20 b. by a producer's designated agent or a third-party
21 vendor, such as a retail or grocery store, farm, farm
22 stand, farmers market, membership-based buying club,
23 craft fair or flea market, to the consumer; provided,
24 the third-party vendor displays a placard where

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

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

- 8 a. by the producer or producer's designated agent
9 directly to the consumer or third-party vendor, or
10 b. by a third-party vendor or a third-party carrier, such
11 as a parcel delivery service, to the consumer or a
12 third-party vendor;

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

17 4. Time- or temperature-controlled-for-safety homemade food
18 products shall be delivered by the producer directly to the
19 consumer;

20 5. Before a producer produces and sells time- or temperature-
21 controlled-for-safety homemade food products, the producer shall
22 complete and pass food safety training from a list of providers,
23 including the ServSafe Food Handler Training, approved by the
24 ~~Oklahoma Department of Agriculture, Food, and Forestry~~. The food

1 safety training shall be available to complete online and shall not
2 exceed eight (8) hours in length. The Oklahoma Department of
3 Agriculture, Food, and Forestry shall make the list of approved
4 training available on its website by ~~the effective date of this act~~
5 November 1, 2021;

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

- 8 a. the name and phone number of the producer,
- 9 b. the physical address where the product was produced,
- 10 c. a description of the homemade food product,
- 11 d. the ingredients of the homemade food product in
12 descending order of proportion,
- 13 e. a statement indicating the presence of any of the
14 eight most common allergens, including milk, eggs,
15 peanuts, tree nuts, soy and wheat, and
- 16 f. legible print stating, "This product was produced in a
17 private residence that is exempt from government
18 licensing and inspection.";

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

22 8. Homemade food products shall not contain seafood or meat,
23 meat by-products or meat food products as defined by Section 301.2
24 of Title 9 of the Code of Federal Regulations or poultry, poultry

1 products or poultry food products as defined for purposes of the
2 federal Poultry Products Inspection Act.

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

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

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

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

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

18 C. A home food establishment may sell non-time/non-temperature
19 controlled for safety food on site, by delivery, at a farmers
20 market, through a cooperative, at retail establishments, at
21 restaurants, or through a membership-based buying club. The
22 Department may promulgate rules to allow sales at other locations or
23 by other means.
24

1 D. A home food establishment shall be exempt from the licensing
2 and other requirements of the State Department of Health.

3 E. The Department may, upon a consumer complaint, request
4 written documentation to verify the gross annual sales of a home
5 food establishment.

6 SECTION 4. AMENDATORY 2 O.S. 2021, Section 5-4.4, is
7 amended to read as follows:

8 Section 5-4.4. A. Nothing in the ~~Homemade~~ Home Food ~~Freedom~~
9 Processing Act shall be construed to impede the State Department of
10 Health in any investigation of a reported foodborne illness. Upon
11 receipt of a consumer complaint, the Oklahoma Department of
12 Agriculture, Food, and Forestry shall have the authority to request
13 proof of completion of the food safety training, verify a producer's
14 gross sales, and ensure a producer has complied with the act's
15 labeling and delivery requirements. The Oklahoma Department of
16 Agriculture, Food, and Forestry may fine a producer who violates
17 this act in accordance with Section 5-4.5 of this title.

18 B. A home food establishment that sells non-time or non-
19 temperature controlled for safety food shall affix a label, in a
20 format approved by the Food and Drug Administration, that contains
21 the following information:

22 1. The name, address, and telephone number or web address of
23 the home food establishment;

24 2. The name of the prepared food;

1 3. Batch code documentation with matching records maintained on
2 file at the home food establishment; and

3 4. A list of ingredients.

4 C. The following statement printed in at least 10-point type in
5 a color that provides a clear contrast to the background of the
6 label: "Made in a home food establishment that is not licensed by
7 the State Department of Health." must be affixed.

8 SECTION 5. AMENDATORY 2 O.S. 2021, Section 5-4.5, is
9 amended to read as follows:

10 Section 5-4.5. Violation of the ~~Homemade~~ Home Food Processing
11 ~~Freedom~~ Act shall be a misdemeanor and shall be punishable by a fine
12 not exceeding ~~Three Hundred Dollars (\$300.00)~~ One Hundred Dollars
13 (\$100.00).

14 SECTION 6. AMENDATORY 2 O.S. 2021, Section 5-4.6, is
15 amended to read as follows:

16 Section 5-4.6. Nothing in the ~~Homemade~~ Home Food Processing
17 ~~Freedom~~ Act shall be construed to prevent counties from enacting
18 ordinances regulating the operation of home food establishments,
19 provided such ordinances do not conflict with the provisions of the
20 ~~Homemade~~ Home Food Processing ~~Freedom~~ Act or impede or restrict the
21 sale of homemade food products in compliance with the law.

22 SECTION 7. This act shall become effective November 1, 2023.

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