

Stricken language would be deleted from and underlined language would be added to present law.
Act 1040 of the Regular Session

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93rd General Assembly

A Bill

Regular Session, 2021

SENATE BILL 248

By: Senators B. Davis, B. Ballinger

By: Representative Payton

For An Act To Be Entitled

AN ACT TO CREATE THE FOOD FREEDOM ACT; TO EXEMPT
CERTAIN PRODUCERS OF HOMEMADE FOOD OR DRINK PRODUCTS
FROM LICENSURE, CERTIFICATION, AND INSPECTION; AND
FOR OTHER PURPOSES.

Subtitle

TO CREATE THE FOOD FREEDOM ACT; AND TO
EXEMPT CERTAIN PRODUCERS OF HOMEMADE FOOD
OR DRINK PRODUCTS FROM LICENSURE,
CERTIFICATION, AND INSPECTION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 20-57-201(1) and (2), concerning the definitions of "cottage food production operation" and "food service establishment", are amended to read as follows:

~~(1) "Cottage food production operation" means a person who produces food items in the person's home that are not potentially hazardous foods, including without limitation:~~

~~(A) Bakery products;~~

~~(B) Candy;~~

~~(C) Fruit butter;~~

~~(D) Jams;~~

~~(E) Jellies;~~

~~(F) Chocolate covered fruit and berries that are not cut;~~

and



~~(C) Similar products specified in rules adopted by the Department of Health;~~

~~(2)(A)(i)(1)(A)(i)~~ “Food service establishment” means any place where food is prepared, processed, stored, or intended for use or consumption by the public regardless of whether there is a charge for the food.

(ii) “Food service establishment” includes wholesale and retail food stores, convenience stores, food markets, delicatessens, restaurants, food processing or manufacturing plants, bottling and canning plants, wholesale and retail block and prepackaged ice manufacturing plants, food caterers, and food warehouses.

(iii) “Food service establishment” does not include supply vehicles or locations of vending machines.

(B) The following are also exempt:

(i) Group homes routinely serving ten (10) or fewer persons;

(ii) Daycare centers routinely serving ten (10) or fewer persons;

(iii) Potluck suppers, community picnics, or other group gatherings where food is served but not sold;

(iv) A person at a farmers’ market that offers for sale only one (1) or more of the following:

(a) Fresh unprocessed fruits or vegetables;

(b) Maple syrup, sorghum, or honey that is produced by a maple syrup or sorghum producer or beekeeper; ~~or~~

(c) Commercially prepackaged food that is not potentially hazardous, ~~on the condition that the food is contained in displays, the total space of which equals less than one hundred cubic feet (100 cu. ft.) on the premises where the person conducts business at the farmers’ market; or~~

(d) Homemade food or drink products under the Food Freedom Act, § 20-57-501 et seq.;

(v) A person who offers for sale at a roadside stand only fresh fruits and fresh vegetables that are unprocessed or a homemade food or drink product under the Food Freedom Act, § 20-57-501 et seq.;

~~(vi)(a) A cottage food production operation, on the condition that the operation offers its products directly to the consumer;~~

~~(1) From the site where the products are produced;~~

~~(2) At a physical or online farmers' market;~~

~~(3) At a county fair;~~

~~(4) At a special event; or~~

~~(5)(A) At a pop up shop within another established business.~~

~~(B) As used in this subdivision~~

~~(2)(B)(vi)(a), "pop up shop" means a cottage food production operation selling items in an unaffiliated established business for a limited time period with the consent of the owner of the unaffiliated established business and the owner or employee of the cottage food production operation being present at the point of sale.~~

~~(b)(1) Upon request, each product offered under subdivision (2)(B)(vi)(a) of this section shall be made available to the department for sampling.~~

~~(2) Each product shall be clearly labeled and shall make no nutritional claims.~~

~~(3) The label required under subdivision (2)(B)(vi)(b)(2) of this section shall include the following:~~

~~(A) The name and address of the business;~~

~~(B) The name of the product;~~

~~(C) The ingredients in the product; and~~

~~(D) The following statement in 10-point type: "This Product is Home Produced";~~

~~(vii)(vi) A maple syrup and sorghum processor and beekeeper if the processor or beekeeper offers only maple syrup, sorghum, or honey directly to the consumer from the site where those products are processed or homemade food or drink products under the Food Freedom Act, § 20-57-501 et seq., or both;~~

~~(viii)(vii) A person who offers for sale only one (1) or more of the following foods at a festival or celebration, on the condition that the festival or celebration is organized by a political~~

subdivision of the state and lasts for a period not longer than seven (7) consecutive days:

(a) Fresh unprocessed fruits or vegetables;
(b) Maple syrup, sorghum, or honey if produced by a maple syrup or sorghum processor or beekeeper; ~~or~~

(c) Commercially prepackaged food that is not potentially hazardous, ~~on the condition that the food is contained in displays, the total space of which equals less than one hundred cubic feet (100 cu. ft.);~~ or

(d) Homemade food or drink products under the Food Freedom Act, § 20-57-501 et seq.;

~~(ix)~~(viii) A farm market that offers for sale at the farm market only one (1) or more of the following:

(a) Fresh unprocessed fruits or vegetables;
(b) Maple syrup, sorghum, or honey that is produced by a maple syrup or sorghum producer or beekeeper; ~~or~~

(c) Commercially prepackaged food that is not potentially hazardous, ~~on the condition that the food is contained in displays, the total space of which equals less than one hundred cubic feet (100 cu. ft.) on the premises where the person conducts business at the farm market;~~ or

(d) Homemade food or drink products under the Food Freedom Act, § 20-57-501 et seq.;

~~(x)~~(ix) An establishment that offers only prepackaged foods that are not potentially hazardous as defined by the State Board of Health; ~~and~~

~~(xi)~~(x) Ice vending machines or kiosks where ice is dispensed in the open air and that are totally self-contained; and

(xi) A producer or informed end consumer engaged in transactions under the Food Freedom Act, § 20-57-501 et seq.; and

SECTION 2. Arkansas Code § 20-57-209 is repealed.

~~20-57-209. Pop-up shop inspections and restrictions.~~

~~(a) The Department of Health may inspect a cottage food production operation that operates as a pop-up shop as defined in § 20-57-201(2)(B)(vi)(a)(5) within another established business.~~

~~(b) A cottage food production operation that operates as a pop-up shop shall not sell or offer for sale foods at wholesale distribution.~~

SECTION 3. Arkansas Code Title 20, Chapter 57, is amended to add an additional subchapter to read as follows:

Subchapter 5 – Food Freedom Act

20-57-501. Title.

This subchapter shall be known and may be cited as the "Food Freedom Act".

20-57-502. Purpose.

The purpose of this subchapter is to allow for a producer's production and sale of homemade food or drink products for an informed end consumer and to encourage the expansion of agricultural sales at farmers' markets, ranches, farms, and producers' homes or offices by:

- (1) Facilitating the purchase and consumption of fresh and local agricultural products;
- (2) Enhancing the agricultural economy; and
- (3) Providing citizens of Arkansas with unimpeded access to healthy food and drink products from known sources.

20-57-503. Definitions.

As used in this subchapter:

(1)(A) "Delivery" means the transfer of a homemade food or drink product resulting from a transaction between a producer and an informed end consumer.

(B) "Delivery" includes the transfer of a homemade food or drink product to an informed end consumer by the producer or producer's designated agent at a farm, ranch, farmers' market, home, office, or any location permitted under this subchapter or agreed to between the producer and the informed end consumer;

(2) "Farmers' market" means a common facility or area where several vendors may gather on a regular, recurring basis to sell a variety of fresh fruits and vegetables, locally grown farm products, and other items permitted under this subchapter directly to consumers;

(3) "Homemade food or drink product" means a food or drink product that is processed at the private residence of the producer, including a farm or ranch where the producer resides, that is exempt from state licensure, inspection, certification, and packaging and labeling requirements, and that is non-time/temperature control for safety food;

(4) "Informed end consumer" means a person who:

(A) Is the last person to purchase any homemade food or drink product;

(B) Does not resell the homemade food or drink product;

and

(C) Has been informed that the homemade food or drink product:

(i) Is not regulated, inspected, certified, or subject to state packaging or labeling requirements; and

(ii) Has not been processed in a facility that is subject to state licensing, permitting, inspection, or regulation;

(5)(A) "Non-time/temperature control for safety food" means food that does not require time or temperature control for safety to limit pathogenic microorganism growth or toxin formation and as defined in the rules of the Department of Health.

(B) "Non-time/temperature control for safety food" includes without limitation pickled cucumbers and other acidified vegetables that have an equilibrium pH of 4.6 or less if:

(i)(a) The recipe:

(1) Is from a source approved by the department; or

(2) Has been tested by an appropriately certified laboratory that confirmed the finished product has an equilibrium pH value of 4.6 or less,

(b) If a recipe is not as described in subdivision (5)(B)(i)(a), the producer shall test each batch of the recipe with a calibrated pH meter to confirm the finished product has an equilibrium pH value of 4.6 or less;

(ii) The batch is labelled with a unique number; and

(iii) The producer maintains records that include:

(a) The batch number;

(b) The recipe used by the producer;
(c) The source of the recipe or testing results if applicable; and

(d) The date that the batch was prepared;

(6) "Process" means operations a producer performs in the preparing, producing, or processing of the producer's homemade food or drink products and includes cooking, baking, drying, mixing, cutting, fermenting, preserving, dehydrating, growing, and raising;

(7) "Producer" means a person who processes homemade food or drink products on the person's private residence;

(8)(A) "Time/temperature control for safety food" means food that requires time or temperature control for safety to limit pathogenic microorganism growth or toxin formation and as defined in the rules of the department.

(B) "Time/temperature control for safety food" includes:

(i) An animal food that is raw or heat treated;

(ii) Food of plant origin that is heat treated or consists of raw seed sprouts;

(iii) Cut leafy greens;

(iv) Cut tomatoes or mixtures of cut tomatoes; and

(v) Garlic-in-oil mixtures; and

(9) "Transaction" means the exchange of buying and selling in person, by telephone or online, and the delivery of the homemade food or drink product.

20-57-504. Food freedom.

(a) Unless otherwise provided in this section, homemade food or drink products produced and sold in compliance with this subchapter are exempt from state licensure, certification, inspection, and packaging and labeling requirements.

(b) A transaction under this subchapter shall:

(1)(A) Be directly between the seller and the informed end consumer.

(B) The seller of a homemade food or drink product may be the producer of the homemade food or drink product, an agent of the producer, or a third-party vendor, including a retail shop or grocery store;

(2) Occur in Arkansas or in another state if the seller complies with all applicable federal laws;

(3) Not involve the sale of meat, poultry, seafood, or time/temperature control for safety food products;

(4) Be delivered by the producer, agent of the producer, third-party vendor, or third-party carrier to the informed end consumer; and

(5) Satisfy the disclosure requirements in § 20-57-505.

20-57-505. Disclosures.

(a) The following information shall be provided to the informed end consumer as described in subsection (b) of this section:

(1) The date that the homemade food or drink product was manufactured, produced, or processed;

(2) The name, address, and telephone number of the producer of the homemade food or drink product, or an identification number provided by the Department of Agriculture if requested by the producer to protect the producer's safety;

(3) The common or usual name of the homemade food or drink product;

(4) The ingredients of the homemade food or drink product in descending order of predominance; and

(5) The following statement: "This product was produced in a private residence that is exempt from state licensing and inspection. This product may contain allergens."

(b) The information required under subsection (a) of this section shall be provided on:

(1) A label affixed to the:

(A) Package if the homemade food or drink product is packaged; or

(B) Container and a separate written document provided to the informed end consumer upon sale if the homemade food or drink product is offered for sale from a bulk container;

(2) A placard displayed at the point of sale if the homemade food or drink product is not packaged or offered for sale from a bulk container; or

(3) The website on which the homemade food or drink product is

offered for sale if the product is offered for sale online.

20-57-506. Exemption – Location sold.

(a) Except as provided in this subchapter, a homemade food or drink product shall not be sold or used in any food service establishment.

(b) A homemade food or drink product may be sold:

(1) From a retail space located at the ranch, farm, home, or office where the homemade food or drink product is produced; or

(2) At a retail location of a third-party vendor of the homemade food or drink product.

(c) A seller who is operating in a retail space or location that also sells food and drink made in a licensed food service establishment shall keep homemade food or drink products separate from the items prepared or processed in the licensed food service establishment.

20-57-507. Applicability – Preemption.

(a) This subchapter does not:

(1) Impede the Department of Health in any investigation of food-borne illness;

(2) Change the requirements for brand inspection or animal health inspections;

(3) Preclude an agency from providing assistance, consultation, or inspection, at the request of the producer;

(4) Preclude the production or sale of food items otherwise allowed by law, including without limitation incidental sales of milk that has not been pasteurized under § 20-59-248;

(5) Change the regulation of other goods and services where homemade food or drink products are also produced or sold;

(6) Exempt producers or sellers of homemade food or drink products from any applicable:

(A) Tax law;

(B) Fishing or hunting law;

(C) Federal law, including any federal law prohibiting the sale of certain food items in interstate commerce; or

(D) Another state's laws; or

(7) Conflict with the authority of the department to ensure food

is not adulterated or misbranded under the Food, Drug, and Cosmetic Act, § 20-56-201 et seq.

(b) This subchapter preempts county, municipal, and other political subdivision jurisdictions from prohibiting and regulating the production and sale of homemade food or drink products.

/s/B. Ballinger

APPROVED: 4/29/21