

An Act

ENROLLED HOUSE
BILL NO. 1032

By: Mize, Davis, Bennett,
Blancett, Steagall, Lepak,
Bashore, Hill, Humphrey,
West (Tammy), Kendrix,
Osburn, Grego, Dempsey,
Stark, Roberts (Eric) and
Rosecrants of the House

and

Pugh, Bullard, Stephens and
Jett of the Senate

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.

SUBJECT: Public health and safety

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. 2020, 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 "~~Home Bakery Act of 2013~~ Homemade Food Freedom Act".

SECTION 2. AMENDATORY 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), is amended to read as follows:

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

1. "Home food establishment" shall mean a business on the premises of a residence in which ~~prepared homemade food is products~~ are created for sale or resale at farmers markets, on site, at cooperatives, through membership-based buying clubs or for delivery, if the business has gross annual sales of prepared food of less than ~~Twenty Thousand Dollars (\$20,000.00)~~ Seventy-five Thousand Dollars (\$75,000.00). Gross annual sales includes all sales of prepared food produced by the business at any location; ~~and~~

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

3. "Homemade food product" shall mean food, including a beverage, which is produced and, if packaged, packaged at a residence; provided, however, homemade food product shall not mean

alcoholic beverages or unpasteurized milk or cannabis or marijuana products;

4. "Non-time- or -temperature-controlled for safety" shall mean food that does not require time or temperature control for safety 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. "Time- or temperature-controlled for safety" shall mean 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;

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

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

SECTION 3. AMENDATORY 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), is amended to read as follows:

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

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

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

- a. by the producer directly to the consumer, either in person or by remote means, including, but not limited to, the Internet or telephone, or
- b. by a producer's designated agent or a third-party vendor, such as a retail or grocery store, farm, farm stand, farmers market, membership-based buying club, craft fair or flea market, to the consumer; provided, the third-party vendor displays a placard where homemade food products are displayed for sale with the following disclosure: "This product was produced in a private residence that is exempt from government licensing and inspection. This product may contain allergens.";

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

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

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

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

5. Before a producer produces and sells time- or temperature-controlled-for-safety homemade food products, the producer shall complete and pass food safety training from a list of providers, including the ServSafe Food Handler Training, approved by the Oklahoma Department of Agriculture, Food, and Forestry. The food safety training shall be available to complete online and shall not exceed eight (8) hours in length. The Oklahoma Department of

Agriculture, Food, and Forestry shall make the list of approved training available on its website by the effective date of this act;

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

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

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

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

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

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

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

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

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

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

SECTION 4. AMENDATORY 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), is amended to read as follows:

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

- ~~1. The name and address of the home food establishment;~~
- ~~2. The name of the prepared food; and~~

~~3. The following statement printed in at least 10 point type in a color that provides a clear contrast to the background of the label: "Made in a home food establishment that is not licensed by the State Department of Health." Nothing in the Homemade Food Freedom Act shall be construed to impede the State Department of Health in any investigation of a reported foodborne illness. Upon receipt of a consumer complaint, the Oklahoma Department of Agriculture, Food, and Forestry shall have the authority to request proof of completion of the food safety training, verify a producer's gross sales, and ensure a producer has complied with the act's labeling and delivery requirements. The Oklahoma Department of Agriculture, Food, and Forestry may fine a producer who violates this act in accordance with Section 5-4.5 of this title.~~

SECTION 5. AMENDATORY 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), is amended to read as follows:

~~Section 5-4.5 Violation of Section 4 of the Home Bakery Act of 2013 Homemade Food Freedom Act shall be a misdemeanor and shall be~~

punishable by a fine not exceeding ~~One Hundred Dollars (\$100.00)~~
Three Hundred Dollars (\$300.00).

SECTION 6. AMENDATORY 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), is amended to read as follows:

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

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

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

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

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

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

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

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

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

Passed the House of Representatives the 4th day of May, 2021.

Presiding Officer of the House
of Representatives

Passed the Senate the 13th day of April, 2021.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____