

1 State of Arkansas As Engrossed: S2/8/21 S3/3/21 S4/14/21 H4/21/21
2 93rd General Assembly
3 Regular Session, 2021

A Bill

SENATE BILL 248

4
5 By: Senators B. Davis, B. Ballinger
6 By: Representative Payton

For An Act To Be Entitled

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

Subtitle

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

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

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

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

30 ~~(A) Bakery products;~~

31 ~~(B) Candy;~~

32 ~~(C) Fruit butter;~~

33 ~~(D) Jams;~~

34 ~~(E) Jellies;~~

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

36 and



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

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

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

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

13 (B) The following are also exempt:

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

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

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

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

22 (a) Fresh unprocessed fruits or vegetables;

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

25 (c) Commercially prepackaged food that is not
26 potentially hazardous, ~~on the condition that the food is contained in~~
27 ~~displays, the total space of which equals less than one hundred cubic feet~~
28 ~~(100 cu. ft.) on the premises where the person conducts business at the~~
29 ~~farmers’ market; or~~

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

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

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

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

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

6 (c) Commercially prepackaged food that is not
7 potentially hazardous, ~~on the condition that the food is contained in~~
8 ~~displays, the total space of which equals less than one hundred cubic feet~~
9 ~~(100 cu. ft.); or~~

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

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

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

17 (c) Commercially prepackaged food that is not
18 potentially hazardous, ~~on the condition that the food is contained in~~
19 ~~displays, the total space of which equals less than one hundred cubic feet~~
20 ~~(100 cu. ft.) on the premises where the person conducts business at the farm~~
21 ~~market; or~~

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

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

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

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

31
32 SECTION 2. Arkansas Code § 20-57-209 is repealed.

33 ~~20-57-209. Pop-up shop inspections and restrictions.~~

34 ~~(a) The Department of Health may inspect a cottage food production~~
35 ~~operation that operates as a pop-up shop as defined in § 20-57-~~
36 ~~201(2)(B)(vi)(a)(5) within another established business.~~

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

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

6 Subchapter 5 – Food Freedom Act

7
8 20-57-501. Title.

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

11
12 20-57-502. Purpose.

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

17 (1) Facilitating the purchase and consumption of fresh and local
18 agricultural products;

19 (2) Enhancing the agricultural economy; and

20 (3) Providing citizens of Arkansas with unimpeded access to
21 healthy food and drink products from known sources.

22
23 20-57-503. Definitions.

24 As used in this subchapter:

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

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

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

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

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

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

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

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

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

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

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

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

24 (i)(a) The recipe:

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

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

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

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

35 (iii) The producer maintains records that include:

36 (a) The batch number;

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

4 (d) The date that the batch was prepared;

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

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

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

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

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

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

19 (iii) Cut leafy greens;

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

21 (v) Garlic-in-oil mixtures; and

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

25
26 20-57-504. Food freedom.

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

31 (b) A transaction under this subchapter shall:

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

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

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

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

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

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

8
9 20-57-505. Disclosures.

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

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

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

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

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

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

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

27 (1) A label affixed to the:

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

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

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

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

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

2
3 20-57-506. Exemption – Location sold.

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

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

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

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

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

15
16 20-57-507. Applicability – Preemption.

17 (a) This subchapter does not:

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

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

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

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

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

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

31 (A) Tax law;

32 (B) Fishing or hunting law;

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

35 (D) Another state's laws; or

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

1 is not adulterated or misbranded under the Food, Drug, and Cosmetic Act, §
2 20-56-201 et seq.

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

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/s/B. Ballinger

APPROVED: 4/29/21