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4

As Engrossed: S2/8/21 S3/3/21

A Bill

SENATE BILL 248

5 By: Senator B. Ballinger
6 By: Representative Payton
7

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.
13
14

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.
20
21

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
23

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 ~~(1) From the site where the products are~~
 2 ~~produced;~~
 3 ~~(2) At a physical or online farmers'~~
 4 ~~market;~~
 5 ~~(3) At a county fair;~~
 6 ~~(4) At a special event; or~~
 7 ~~(5)(A) At a pop-up shop within another~~
 8 ~~established business.~~

9 ~~(B) As used in this subdivision~~
 10 ~~(2)(B)(vi)(a), "pop-up shop" means a cottage food production operation~~
 11 ~~selling items in an unaffiliated established business for a limited time~~
 12 ~~period with the consent of the owner of the unaffiliated established business~~
 13 ~~and the owner or employee of the cottage food production operation being~~
 14 ~~present at the point of sale.~~

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

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

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

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

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

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

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

29 ~~(vii)(vi) A maple syrup and sorghum processor and~~
 30 ~~beekeeper if the processor or beekeeper offers only maple syrup, sorghum, or~~
 31 ~~honey directly to the consumer from the site where those products are~~
 32 ~~processed or homemade food or drink products under the Food Freedom Act, §~~
 33 ~~20-57-501 et seq., or both;~~

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

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) "Animal share" means an ownership interest in an animal or
26 herd of animals created by a written contract between an informed end
27 consumer and a farmer or rancher that includes:

28 (A) A bill of sale to the informed end consumer for an
29 ownership interest in the animal or herd; and

30 (B) A boarding provision under which the informed end
31 consumer:

32 (i) Boards the animal or herd with the farmer or
33 rancher for care and processing; and

34 (ii) Is entitled to receive a share of meat from the
35 animal or herd;

36 (2)(A) "Delivery" means the transfer of a homemade food or drink

1 product resulting from a transaction between a producer and an informed end
2 consumer.

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

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

12 (4) "Homemade food or drink product" means a food or drink
13 product that is processed at the private residence of the producer, including
14 a farm or ranch where the producer resides, and that is exempt from state
15 licensure, inspection, certification, and packaging and labeling
16 requirements;

17 (5) "Informed end consumer" means a person who:

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

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

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

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

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

28 (6) "Not potentially hazardous" means food that does not require
29 time or temperature control for safety to limit the rapid and progressive
30 growth of infectious or toxigenic microorganisms;

31 (7)(A) "Potentially hazardous" means food that requires time or
32 temperature control due to the form of the food which is capable of
33 supporting rapid and progressive growth of infectious or toxigenic
34 microorganisms, including clostridium botulinum and salmonella enteritis.

35 (B) "Potentially hazardous" includes:

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

1 (ii) A food of plant origin that is heat treated or
2 consists of raw seed sprouts;

3 (iii) Cut melons;

4 (iv) Eggs;

5 (v) Meat;

6 (vi) Poultry;

7 (vii) Fish; and

8 (viii) Dairy foods;

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

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

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

18
19 20-57-504. Food freedom.

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

24 (b) A transaction under this subchapter shall:

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

27 (B) The seller of not potentially hazardous homemade food
28 or drink product may be the producer of the homemade food or drink product,
29 an agent of the producer, or a third-party vendor, including a retail shop or
30 grocery store.

31 (C) The seller of potentially hazardous homemade food or
32 drink product shall be the producer of the homemade food or drink product;

33 (2) Occur only in Arkansas, except that the seller in a
34 transaction involving not potentially hazardous homemade food or drink
35 product may sell the homemade food or drink product to an informed end
36 consumer in another state if the seller complies with all applicable federal

1 laws;

2 (3) Not involve the sale of meat products, with the following
3 exceptions:

4 (A) The sale of poultry and poultry products in accordance
5 with the one thousand (1,000) poultry exemption under 9 C.F.R. § 381.10(c),
6 as it existed on January 1, 2021;

7 (B) The sale of live animals;

8 (C) The sale of portions of live animals before slaughter
9 for future delivery through an animal share;

10 (D) The sale of domestic rabbit meat; and

11 (E) The sale of farm-raised fish if:

12 (i) The fish is raised in accordance with state and
13 federal laws; and

14 (ii) The fish is not catfish;

15 (4) For not potentially hazardous homemade food and drink
16 products, be delivered by the producer, agent of the producer, third-party
17 seller, or third-party carrier to the informed end consumer;

18 (5) For potentially hazardous homemade food and drink products,
19 be delivered by the producer to the informed end consumer in person; and

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

21

22 20-57-505. Disclosures.

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

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

29 (2) The common or usual number of the homemade food or drink
30 product;

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

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

36 (b) The information required under subsection (a) of this section

1 shall be provided on:

2 (1) A label affixed to the:

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

5 (B) Container if the homemade food or drink product is
6 offered for sale from a bulk container;

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

10 (3) The website on which the homemade food or drink product is
11 offered for sale if the product is offered for sale online.

12
13 20-57-506. Exemption – Location sold.

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

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

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

19 (2) At a retail location of a third-party seller of not
20 potentially hazardous homemade food or drink product.

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

25
26 20-57-507. Applicability – Preemption.

27 (a) This subchapter does not:

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

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

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

34 (4) Preclude the production or sale of food items otherwise
35 allowed by law, including without limitation incidental sales of milk that
36 has not been pasteurized under § 20-59-48;

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

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

5 (A) Tax law;

6 (B) Fishing or hunting law;

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

9 (D) Another state's laws.

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

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15 */s/B. Ballinger*
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