

Model Food Freedom Act

November 14, 2018

Section 1. Short Title. This act shall be known as the “Food Freedom Act.”

Section 2. Purposes. This act’s purposes are to:

- (a) recognize the right of individuals to produce, procure, and consume homemade foods of their choice free from unnecessary and anticompetitive regulations; and
- (b) foster small businesses, innovation, and economic growth.

Section 3. Legislative Findings. The legislature finds the following:

- (a) There is great interest in small-scale, home-based food businesses in this state, but current law restricts entrepreneurs' ability to establish and grow such businesses.
- (b) Expanding the freedom of entrepreneurs to operate home-based food businesses will provide numerous benefits, including the opportunity for self-employment and to earn an honest living through work that affords flexibility, creativity, and financial rewards.
- (c) Consumers desire foods produced by such entrepreneurs.
- (d) Expanding the freedom of consumers to procure food from home-based food businesses will provide many benefits, including consumers in urban and rural areas in the state gaining access to a greater variety of food options, especially food produced on a small, local scale.
- (e) There is little evidence that home-based food businesses pose a threat to the public in states where they are lightly regulated.
- (f) Allowing the production, sale, and consumption of a greater variety of homemade foods respects individuals’ personal liberty, including economic liberty. Individuals should be free to produce, procure, and consume the homemade foods of their choice.

Section 4. Definitions. For purposes of this act:

- (a) “Delivered” means transferred to the consumer, either immediately upon sale or at a time thereafter.
- (b) “Department” means [insert name of agency with regulatory jurisdiction].
- (c) “Homemade food item” means a food item, including a non-alcoholic beverage, which is produced and, if packaged, packaged at the private residence of the producer.

(d) “Non-potentially hazardous,” in relation to food, means food that does not require time/temperature control for safety to limit pathogenic microorganism growth or toxin formation.¹

(e) “Potentially hazardous,” in relation to food, means food that requires time/temperature control for safety to limit pathogenic microorganism growth or toxin formation.²

(f) “Produce” means prepare a food item by cooking, baking, drying, mixing, cutting, fermenting, preserving, dehydrating, growing, raising or other process.

(g) “Producer” means the person who produces a homemade food item.

(h) “Seller” means the person who sells a homemade food item to a consumer. The seller of a non-potentially hazardous homemade food item may be the producer of the item, an agent of the producer, or a third-party vendor, such as a retail shop or grocery store. The seller of a potentially hazardous homemade food item must be the producer of the item.

(i) “State” means the State of _____ and its political subdivisions.

Section 5. Exemption. (a) The production and sale of homemade food items under this act are exempt from all licensing, permitting, inspection, packaging, and labeling laws of the state.

(b) Paragraph (a), however, does not exempt a producer or seller of homemade food items from any requirement to register the producer or seller’s business name, address, and other identification information with the state.

Section 6. Conditions for Exemption. The exemption set forth in section 5 shall apply only if the conditions in this section are satisfied.

(a) Sale and delivery of non-potentially hazardous homemade foods. The following conditions apply to the sale and delivery of non-potentially hazardous homemade food items:

(1) Non-potentially hazardous homemade food items must be sold:

(i) by the producer to the consumer, whether in person or remotely (*e.g.*, by telephone or internet); or

(ii) by an agent of the producer or a third-party vendor, such as a retail shop or grocery store, to the consumer.

¹ Examples of non-potentially hazardous foods include baked goods without cream, custard, cheese or meat fillings; jams; uncut fruits and vegetables; dill pickles; hard candy; fudge; nut mixes; granola; dry soup mixes; roasted coffee beans; dry pasta; and popcorn.

² Examples of potentially hazardous foods include desserts requiring refrigeration, such as cheesecakes and cream-filled pies, quiches, pizzas, frozen doughs, and cooked vegetables and beans.

(2) Non-potentially hazardous homemade food items must be delivered:

(i) by the producer to the consumer; or

(ii) by an agent of the producer, a third-party vendor, or a third-party carrier to the consumer.

(b) Sale and delivery of potentially hazardous homemade foods. Potentially hazardous homemade food items must be sold by the producer to the consumer, either in person or remotely (*e.g.*, by telephone or internet), and delivered by the producer to the consumer in person.

(c) Required disclosures. The following information must be provided to the consumer, in the format required by subsection (d) of this section:

(1) the name, home address, and telephone number of the producer of the homemade food item;

(2) the common or usual name of the homemade food item;

(3) the ingredients of the homemade food item in descending order of predominance; and

(4) the following statement: “This product was produced at a private residence that is exempt from State licensing and inspection. This product may contain allergens.”

(d) Format of disclosures. The information required by subsection (c) of this section must be provided:

(1) on a label affixed to the package if the homemade food item is packaged;

(2) on a label affixed to the container, if the homemade food item is offered for sale from a bulk container;

(3) on a placard displayed at the point of sale, if the homemade food item is neither packaged nor offered for sale from a bulk container; or

(4) on the webpage on which the homemade food item is offered for sale if the homemade food item is offered for sale on the internet.

If the homemade food item is sold by telephone or custom order, the seller need not display the information required by subsection (c) of this section, but the seller must disclose to the consumer that the homemade food item: is produced at a private residence that is exempt from state licensing and inspection; and may contain

allergens. The seller must have the information required by subsection (c) (1)-(3) of this section readily available and provide it to the consumer upon request.

(e) Production and sale of meat and poultry. The homemade food item must not be meat, meat byproduct, meat food product, poultry, poultry byproduct, or poultry food product, as those terms are defined for purposes of the Federal Meat Inspection Act and federal Poultry Products Inspection Act, unless the production and sale of the item:

(1) are within an exemption in 9 C.F.R. § 303.1(d), 9 C.F.R. § 381.10(c), or 9 C.F.R. § 381.10(d)³; and

(2) comply with other applicable federal regulations.

Section 7. Investigation. Nothing in this act shall be construed to impede the Department in any investigation of a reported foodborne illness.

Section 8. Consultation. Nothing in this act shall preclude an agency from providing assistance, consultation, or inspection at the request of the producer of a homemade food item.

Section 9. Construction. This act shall not be construed to:

- (a) preclude the production or sale of food items otherwise allowed by law;
- (b) preclude the sale of live animals or portions of live animals before slaughter for future delivery;
- (c) change the regulation of other goods and services where homemade food items are also produced or sold;
- (d) exempt producers or sellers of homemade food items from any applicable tax law;
- (e) exempt producers or sellers of homemade food items from any applicable fishing or hunting law;
- (f) exempt producers or sellers of homemade food items from any applicable law of the federal government, including any federal law prohibiting the sale of certain food items in interstate commerce; or
- (g) exempt producers or sellers of homemade food items from any applicable law of another state.

³ Examples of food items that may meet the exemptions in 9 C.F.R. § 303.1(d), 9 C.F.R. § 381.10(c), or 9 C.F.R. § 381.10(d) include (1) dishes containing meat or poultry that has passed federal or state inspection, and (2) poultry raised at a producer's private residence and sold in limited quantities."

Section 10. Preemption. This act preempts county, municipal and other political jurisdictions from prohibiting and regulating the production and sale of homemade food items.

Section 11. Effective Date. This act shall take effect on _____.

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