

# Model Food Freedom Act

September 22, 2021

**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 fresh food produced on a small, local scale.
- (e) Evidence from other states shows that home-based food businesses are safe.
- (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 for human consumption, including a non-alcoholic beverage, which is produced and, if packaged, packaged at the residential property of the producer.<sup>1</sup>

(d) “Foods not requiring time and temperature control for safety (non-TCS foods)” means food that does not require time and temperature control for safety to limit pathogenic microorganism growth or toxin formation, as defined in [cite state statute or administrative rules].<sup>2</sup> For purposes of this act, examples of non-TCS foods include, but are not limited to, baked goods without cream, custard, cheese or meat fillings; jams; uncut fruits and vegetables; dill pickles; confections; fudge; nut mixes; granola; dry soup mixes; roasted coffee beans, dried tea, and dried herbs; dry pasta; and popcorn.

(e) “Foods requiring time and temperature control (TCS foods)” means food that requires time and temperature control for safety to limit pathogenic microorganism growth or toxin formation, as defined in [cite state statute or administrative rules]. For purposes of this act, examples of TCS foods include, but are not limited to, desserts requiring refrigeration, such as cheesecakes and cream-filled pies; quiches; pizzas; macaroni and cheese; frozen doughs; and cooked vegetables and beans.

(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 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 exception is that homemade food items that are dairy products or that contain poultry or meat can only be sold by the producer.

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

(j) The terms “dairy product,” “meat,” “meat byproduct,” “meat food product,” “poultry,” “poultry byproduct,” and “poultry food product” shall have the same definitions as in federal law.

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<sup>1</sup> States usually have special regulations for the sale of unincubated eggs. If your state does not already allow uninspected and unlicensed eggs to be sold directly to consumers and retailers, you should consider including eggs as a homemade food item.

<sup>2</sup> Some states use the term “not-potentially hazardous food,” which is synonymous with non-TCS food. You should check what definition your state Department of Health already uses and use that term.

**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) **Excluded homemade food items.** The homemade food item must not be meat, meat byproduct, meat food product, poultry, poultry byproduct, or poultry food product, unless the sale of those items are allowed by federal law. Such homemade food items allowed by federal law include, but are not limited to:

- (1) Poultry, poultry byproduct, or poultry food product if the producer raised the poultry pursuant to the 1,000-bird exemption set forth in 9 C.F.R. § 381.10(c).
- (2) Poultry, poultry byproduct, or poultry food product if the poultry is from an inspected source, such as a butcher shop or grocery store, pursuant to 9 C.F.R. § 381.10(d).
- (3) Meat, meat byproduct, or meat food product if the meat is from an inspected source, such as a butcher shop or grocery store, pursuant to 9 C.F.R. § 303.1(d).

(b) **Sale and delivery of homemade food items, whether TCS or non-TCS foods, that are not dairy products and do not contain meat or poultry.**

(1) Such homemade foods 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.

(2) Such 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.

(c) **Sale and delivery of homemade food items, whether TCS or non-TCS foods, that are dairy products or that contain meat or poultry.** Such 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.

**(d) Transportation of TCS homemade food items.** If TCS homemade food items are transported before final delivery to the consumer, the foods must be maintained at an appropriate temperature during transport, cannot be transported more than once, and cannot be transported for longer than two hours.

**(e) Required disclosures.** The following information must be provided to the consumer in the format required by subsection (f) of this section:

- (1) the name, 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 residential property that is exempt from State licensing and inspection. This product may contain allergens.”

**(f) Format of disclosures.** The information required by subsection (e) 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.
- (5) If the homemade food item is sold by telephone or custom order, the seller need not display the information required by subsection (e) of this section, but the seller must disclose to the consumer that the homemade food item: (1) is produced at a residential property that is exempt from state licensing and inspection; and (2) may contain allergens. The seller must have the information required by subsection (e)(1)–(3) of this section readily available and provide it to the consumer upon request.

**(g) Separate display area for sale by third-party vendor, such as a retail shop or grocery store.** In addition to the labeling requirements in subsection (f), if the homemade food item is sold by a third-party vendor, the food must be sold in a separate section of the store or on a separate display case from non-homemade food items. A sign should clearly indicate that the foods are homemade and exempt from State licensing and inspection.

**Section 7. Investigation and enforcement.** Nothing in this act shall be construed to impede the Department in any investigation of a reported foodborne illness. The Department shall also have the authority to enforce this act and may impose a fine no greater than \$75 for each violation. The Department shall issue a written warning before issuing a fine.

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

**Section 9. Federal Law.** In addition to the transactions permitted under this act, homemade food producers may sell homemade food items to the maximum extent permitted by federal law. Nothing in this article shall be construed to be more restrictive than applicable federal requirements.

**Section 10. Construction.** This act shall not be construed to:

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

**Section 11. Preemption.** This act preempts counties, municipalities, and other political jurisdictions from prohibiting or regulating the production and sale of homemade food items.

**Section 12. Effective Date.** This act shall take effect on \_\_\_\_\_.

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