

1 STATE OF OKLAHOMA

2 2nd Session of the 58th Legislature (2022)

3 COMMITTEE SUBSTITUTE  
4 FOR ENGROSSED  
5 HOUSE BILL NO. 2010

By: Townley and Johns of the  
House

6 and

7 Montgomery of the Senate

8  
9 COMMITTEE SUBSTITUTE

10 An Act relating to public health and safety; amending  
11 63 O.S. 2021, Sections 1-1101 and 1-1118, which  
12 relate to food; defining terms; modifying creation of  
13 certain fees; requiring mobile food vendors follow  
14 certain laws; allowing mobile food vendors to operate  
15 in certain locations; requiring mobile food vendors  
16 operate in a certain manner; authorizing the State  
17 Commissioner of Health to promulgate rules;  
18 authorizing local authorities to regulate mobile food  
19 vendors; allowing administrative hearing upon  
20 suspension or revocation of certain license;  
21 establishing penalties; providing appeals process;  
22 providing for codification; and providing an  
23 effective date.

24 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 63 O.S. 2021, Section 1-1101, is  
amended to read as follows:

Section 1-1101. For the purposes of this ~~article~~ act:

(a) The term "food" means:

1 (1) articles used for food or drink for ~~man~~ human  
2 consumption,

3 (2) chewing gum, and

4 (3) articles used for components of any such article.

5 (b) The term "label" means a display of written, printed or  
6 graphic matter upon the immediate container of any article; and a  
7 requirement made by or under authority of this article that any  
8 word, statement, or other information appearing on the label shall  
9 not be considered to be complied with unless such word, statement,  
10 or other information also appears on the outside container or  
11 wrapper, if there be any, of the retail package of such article, or  
12 is easily legible through the outside container or wrapper.

13 (c) The term "immediate container" does not include package  
14 liners.

15 (d) The term "labeling" means all labels and other written,  
16 printed or graphic matter:

17 (1) upon an article or any of its containers or wrappers,

18 or

19 (2) accompanying such article.

20 (e) If an article is alleged to be misbranded because the  
21 labeling is misleading, or if an advertisement is alleged to be  
22 false because it is misleading, then in determining whether the  
23 labeling or advertisement is misleading there shall be taken into  
24 account (among other things) not only representations made or

1 suggested by statement, word, design, device, sound, or in any  
2 combination thereof, but also the extent to which the labeling or  
3 advertisement fails to reveal facts material in the light of such  
4 representations or material with respect to consequences which may  
5 result from the use of the article to which the labeling or  
6 advertisement relates, under the conditions of use prescribed in the  
7 labeling or advertisement thereof, or under such conditions of use  
8 as are customary or usual.

9 (f) The term "advertisement" means all representations  
10 disseminated in any manner or by any means, other than by labeling,  
11 for the purpose of inducing, or which are likely to induce, directly  
12 or indirectly, the purchase of food.

13 (g) The term "contaminated with filth" applies to any food not  
14 securely protected from dust, dirt, and, as far as may be necessary  
15 by all reasonable means, from all foreign or injurious  
16 contaminations.

17 (h) The provisions of this article regarding the selling of  
18 food shall be considered to include the manufacture, production,  
19 processing, packing, exposure, offer, possession, and holding of any  
20 such article for sale; and the sale, dispensing, and giving of any  
21 such article, and the supplying or applying of any such articles in  
22 the conduct of any food establishment.

23 (i) The term "Federal Act" means the Federal Food, Drug, and  
24 Cosmetic Act.

1       (j) The term "mobile food establishment" means a facility  
2 including a trailer, that prepares food and beverages, is vehicle  
3 mounted, is road-approved by the Department of Transportation  
4 including wheels and axles, is readily movable, and remains at one  
5 physical address for no more than twelve (12) hours at one time,  
6 unless the mobile food establishment is operating on private  
7 property. A mobile food establishment operating on private property  
8 may remain at one physical address for no more than fourteen (14)  
9 days.

10       (k) The term "mobile push cart" means a non-self-propelled food  
11 unit that can be manually moved by an average person without being  
12 vehicle mounted.

13       (l) The term "mobile retail food establishment" means a  
14 licensed enterprise which sells packaged foods from a stationary  
15 display at a location some distance from the establishment but still  
16 at the same physical address for no more than twelve (12) hours;  
17 provided, the licensed unit is on the premises and readily available  
18 for inspection and the food has been prepared in a facility that is  
19 regulated by the good manufacturing practices in Title 21 of the  
20 Code of Federal Regulations or pursuant to Section 310:260 of the  
21 Oklahoma Administrative Code, Good Manufacturing Practice  
22 Regulations, Oklahoma Department of Agriculture, Food, and Forestry,  
23 and United States Department of Agriculture, or this act.

1       (m) The term "mobile food vendor" means any person who  
2 dispenses food or beverages from a mobile food establishment, mobile  
3 push cart, or mobile retail food establishment.

4       (n) The term "mobile food vending" means dispensing food or  
5 beverages from a food vending vehicle.

6       (o) The term "food vending vehicle" means a mobile food  
7 establishment, mobile push cart, or mobile retail food  
8 establishment.

9       (p) The term "local authority" means any local government  
10 including any town, city, charter city, political subdivision, or  
11 county.

12       (q) The term "public property" means any property owned and  
13 operated by this state or a local authority for the benefit of the  
14 public and includes all rights-of-way contained wholly within any  
15 state or local authority parks.

16       (r) The term "temporary mass gathering" means an actual or  
17 reasonably anticipated assembly of three hundred or more people for  
18 an event that continues, or reasonably can be expected to continue,  
19 for two (2) or more hours per day.

20       (s) The term "nonobstructive spot inspection" means an  
21 inspection of a mobile food establishment at a temporary mass  
22 gathering that is conducted, if practicable, before the start of the  
23 temporary mass gathering and that does not exceed ten (10) minutes  
24 in length if conducted during a high-traffic time of the gathering.

1 SECTION 2. AMENDATORY 63 O.S. 2021, Section 1-1118, is  
2 amended to read as follows:

3 Section 1-1118. A. It shall be unlawful for any person to  
4 operate or maintain any establishment, stationary or otherwise,  
5 where food or drink is offered for sale, or sold, to the public,  
6 unless the person is the holder of a food establishment license  
7 issued for such purpose by the State Commissioner of Health or  
8 designee. A mobile food vendor that seeks to operate in a county  
9 with a population of more than four hundred thousand (400,000)  
10 according to the latest Federal Decennial Census that is governed by  
11 a city-county health department shall obtain a food establishment  
12 license from the local authority which has the population over four  
13 hundred thousand (400,000) according to the latest Federal Decennial  
14 Census. This food establishment license shall be recognized by the  
15 State Commissioner of Health and all local authorities as a state  
16 food establishment license for purposes of this title. A food  
17 establishment license shall permit the mobile food vendor to operate  
18 in any local authority's jurisdiction upon the local authority's  
19 recognition of the license, the issuance of any relevant local  
20 license not in conflict with this act, and the vendor's compliance  
21 with all other municipal provisions not in conflict with this act.

22 A food establishment license shall not be required for:  
23  
24

- 1        1. A produce stand that offers only whole, uncut and  
2 unprocessed fresh fruits, melons, vegetables and legumes and/or  
3 whole uncracked and unprocessed nuts;
- 4        2. A manufacturer, wholesaler or broker of food licensed  
5 pursuant to Section 1-1119 of this title;
- 6        3. A kitchen in a private home if only food that does not  
7 require time and temperature control for safety is prepared for sale  
8 or service at a function such as a nonprofit civic, charitable or  
9 religious organization's bake sale;
- 10       4. An area where food that is prepared as specified in  
11 paragraph 3 of this subsection is sold or offered for human  
12 consumption;
- 13       5. A private home that receives catered or home-delivered food;
- 14       6. A hotel licensed pursuant to Section 1-1201 of this title  
15 which provides limited food service in compliance with rules  
16 promulgated by the State Commissioner of Health;
- 17       7. A kitchen in a private home or in a bed and breakfast that  
18 prepares and offers food to guests, if the home is owner-occupied,  
19 the number of available guest bedrooms does not exceed three, and  
20 breakfast is the only meal offered;
- 21       8. A nonprofit civic, charitable or religious organization  
22 using unpaid individuals to prepare or serve food on its behalf, for  
23 occasional ~~fund-raising~~ fundraising events sponsored and conducted  
24 by the organization. For the purposes of this paragraph, an

1 "occasional ~~fund-raising~~ fundraising event" shall be defined as an  
2 event that occurs four times a year or less;

3 9. Day care centers or family day care centers, and all other  
4 child care facilities as defined and licensed pursuant to the  
5 provisions of the Oklahoma Child Care Facilities Licensing Act;

6 10. Nursing facilities and specialized facilities, as defined  
7 in and licensed pursuant to the provisions of the Nursing Home Care  
8 Act, residential care homes as defined by the Residential Care Act,  
9 adult day care centers as defined by the Adult Day Care Act, and  
10 assisted living centers and continuum of care facilities licensed  
11 pursuant to the Continuum of Care and Assisted Living Act; and

12 11. Other establishments exempted from food establishment  
13 licensure pursuant to state law.

14 B. Each license shall expire one (1) year following the date of  
15 its issuance. The State Department of Health shall charge and  
16 collect for each such license an annual fee to be fixed by the State  
17 Commissioner of Health by rule or as provided for in this section.

18 1. The Commissioner may provide by rule for a fee-exempt  
19 license for a food establishment operated by a nonprofit, civic,  
20 charitable or religious organization that uses unpaid persons to  
21 sell or offer food on a more frequent basis than the occasional  
22 ~~fund-raising~~ fundraising event. A fee-exempt license shall not  
23 expire but shall remain in full force and effect until affirmatively  
24



1 revoked, suspended, annulled or withdrawn by the Department in  
2 accordance with applicable law.

3 2. The Commissioner may by rule also provide that licenses for  
4 establishments serving events of limited duration or operating on a  
5 seasonal basis shall extend only for the term of the event or  
6 season, and may by rule adjust the fees for such licenses  
7 accordingly.

8 3. The Commissioner shall provide by rule a three-day license  
9 for vendors who only sell at farmers markets as defined in 310:257-  
10 1-2 of the Oklahoma Administrative Code or at county fairs.  
11 Licenses for vendors who only sell at farmers markets or county  
12 fairs shall not exceed Fifty Dollars (\$50.00). Vendors who do not  
13 sell food and vendors who meet the exceptions provided in subsection  
14 A of this section shall not be required to obtain a three-day  
15 license or a food establishment license.

16 4. The Commissioner shall provide by rule a multiseasonal  
17 license for snow cone stands that sell hot beverages in addition to  
18 snow cones. A snow cone stand that does not sell hot beverages  
19 shall be considered a seasonal food establishment.

20 C. The State Commissioner of Health shall promulgate reasonable  
21 standards and rules for sanitation of establishments required to be  
22 licensed, which shall include the following: buildings, vehicles,  
23 and appurtenances thereto, including plumbing, ventilation and  
24 lighting; construction, cleanliness and bactericidal treatment of

1 equipment and utensils; cleanliness, wholesomeness, storage and  
2 refrigeration of food and drink sold or served; cleanliness and  
3 hygiene of personnel; toilet facilities; disposal of waste; water  
4 supply; and other items deemed necessary to safeguard the health,  
5 comfort, and safety of customers.

6 SECTION 3. NEW LAW A new section of law to be codified  
7 in the Oklahoma Statutes as Section 1-1150 of Title 63, unless there  
8 is created a duplication in numbering, reads as follows:

9 A. A mobile food vendor with a food establishment license  
10 required under Section 1-1118 of Title 63 of the Oklahoma Statutes is  
11 authorized to operate in the state subject to this section. Mobile  
12 food vendors shall follow all state and local laws and regulations  
13 governing operations in the jurisdiction where the vendor is  
14 operating that are not in conflict with this act.

15 B. A mobile food vendor with a food establishment license  
16 required under Section 1-1118 of Title 63 of the Oklahoma Statutes  
17 shall provide a copy of its state license to a local authority for  
18 recognition by the local authority before operating in the local  
19 authority's jurisdiction. The local authority shall recognize a  
20 lawful and valid state license and authorize the mobile food vendor  
21 to operate in its jurisdiction within five (5) business days of  
22 receipt of the state license and verification of compliance with  
23 local regulations not in conflict with this act. Such recognition  
24 and authorization may include issuing a local license or permit to

1 the mobile food vendor. Any local license or permit issued shall  
2 not impose additional requirements that conflict with this act.

3 C. Upon compliance with subsection B of this section, a mobile  
4 food vendor may operate in the following locations:

5 1. Any location allowed by the local authority; and

6 2. On private property under the following circumstances:

7 a. the property is located in a zoning district where  
8 food service establishments are permitted to operate  
9 and the vendor has permission of the property owner,  
10 designee, or lessor,

11 b. the property is located in a residential zoning  
12 district and the mobile food vendor has been invited  
13 by a resident or group of residents in that district  
14 to operate on their property for the purpose of  
15 serving food to that resident, group of residents, or  
16 their guests; provided, that the operation of mobile  
17 food vendors on the subject property not exceed twelve  
18 (12) days per year, and

19 c. the mobile food vendor would not cause a nuisance.

20 D. A mobile food vendor shall not operate in any manner which  
21 will interfere with or obstruct the free passage of pedestrians or  
22 vehicles along any street, sidewalk, or parkway.

23  
24

1 E. A mobile food vendor shall not operate in a state park  
2 without having a contract or lease agreement approved by the  
3 Oklahoma Tourism and Recreation Commission.

4 F. When operating, a mobile food vendor shall:

5 1. Maintain a food vending vehicle in good operating order;

6 2. Provide a waste receptacle for customers that is visible and  
7 request that customers use it;

8 3. Remove and dispose of all refuse within a twenty-five-foot  
9 radius of the mobile food vendor's operating area at the conclusion  
10 of operation;

11 4. Display the mobile food vendor's food establishment license  
12 in a conspicuous location for public view; and

13 5. If serving food at a temporary mass gathering, notify the  
14 State Department of Health and the local authority in the  
15 jurisdiction where the gathering is to be located of the dates the  
16 mobile food vendor will operate at the temporary mass gathering at  
17 least ten (10) business days prior to the gathering.

18 G. The State Commissioner of Health may promulgate rules to  
19 enforce the provisions of this section. Rules adopted shall not:

20 1. Require a mobile food vendor to operate a specific distance  
21 from the perimeter of an existing commercial establishment or to  
22 enter into any agreement with a commercial establishment;

23

24

- 1        2.    Require a mobile food vendor that serves only prepackaged  
2 food or that does not prepare or open food to have a handwashing  
3 sink in the food vending vehicle;
- 4        3.    Require a mobile food vendor to associate with a commissary  
5 if the vendor carries all the equipment necessary to comply with  
6 health and safety standards and applicable regulations;
- 7        4.    Limit the number of licensed mobile food vendors;
- 8        5.    Require a mobile food vendor to obtain any additional  
9 permits from a local authority unless the mobile food vendor seeks  
10 to operate at an event which is permitted by a local authority or in  
11 a local, public park;
- 12       6.    Require a mobile food vendor to be fingerprinted or to  
13 install a Global Positioning System (GPS) tracking device on the  
14 vendor's vehicle;
- 15       7.    Require a mobile food vendor to stay in constant motion  
16 except for when serving customers;
- 17       8.    Require a mobile food vendor to change locations unless the  
18 vendor is operating in violation of this act;
- 19       9.    Require a mobile food vendor to maintain insurance that  
20 names a local authority as an additional insured unless the vendor  
21 is operating at an event sponsored by the local authority or  
22 operating in a local, public park;
- 23       10.   Require a mobile food vendor to maintain a bond that names  
24 a local authority as a beneficiary unless the vendor is operating at

1 an event sponsored by the local authority or operating in a local,  
2 public park;

3 11. Require a mobile food vendor to submit to health  
4 inspections beyond health inspections conducted by the Department or  
5 by a local authority collaborating with the Department, unless the  
6 Department is investigating a reported foodborne illness, or  
7 addressing a complaint of an imminent health or safety hazard to the  
8 public;

9 12. Require a health inspection of a food vending vehicle more  
10 than twice per year unless the Department is ensuring a mobile food  
11 vendor has corrected a violation detected during a prior inspection,  
12 is investigating a reported foodborne illness, or is conducting a  
13 nonobstructive spot inspection to ensure food safety;

14 13. Charge a mobile food vendor fees for a health inspection;  
15 or

16 14. Require a mobile food vendor to submit to a state fire  
17 inspection if the vendor can demonstrate it passed a state or local  
18 fire inspection in the previous twelve (12) months.

19 SECTION 4. NEW LAW A new section of law to be codified  
20 in the Oklahoma Statutes as Section 1-1151 of Title 63, unless there  
21 is created a duplication in numbering, reads as follows:

22 A. The local authority may regulate mobile food vendors in  
23 accordance with this section. In relation to a mobile food vendor's  
24 operations, a local authority may:

1           1. Restrict the operation of a noisemaking device that exceeds  
2 seventy-five (75) decibels measured at twenty-three (23) feet from  
3 the food vending vehicle during certain hours of the day;

4           2. Restrict a mobile food vendor from operating in a public  
5 park or require a special permit and payment of fees to operate in a  
6 public park;

7           3. Prohibit a mobile food vendor from blocking or restricting  
8 ingress to or egress from private property;

9           4. Develop a mobile food vendor metered parking pass for a fee  
10 that permits a mobile food vendor to operate from metered parking  
11 spaces for longer than the vendor would otherwise be permitted;

12           5. Investigate reports of foodborne illnesses;

13           6. Report a mobile food vendor's suspected violation of this  
14 act to the State Department of Health;

15           7. Issue citations and penalties to mobile food vendors for  
16 violations of state and local law not inconsistent with this act;  
17 and

18           8. Adopt and enforce other regulations in conformity to  
19 municipal powers that are not inconsistent with this act. Any  
20 regulation regarding mobile food vendors must address public health  
21 or safety risks.

22           B. In relation to a mobile food vendor's operations, a local  
23 authority may not:

24

1 1. Prohibit a mobile food vendor from lawfully operating in its  
2 jurisdiction if the vendor holds a food establishment license  
3 required under Section 1-1118 of Title 63 of the Oklahoma Statutes  
4 and is in compliance with this act and all other state and local  
5 laws not in conflict with this act;

6 2. Require a mobile food vendor to obtain any license or permit  
7 from the local authority to operate a food vending vehicle unless:

8 a. the local authority is issuing a local license in  
9 recognition of a state license under subsection B of  
10 Section 3 of this act,

11 b. the mobile food vendor seeks to operate at an event  
12 which has been permitted by the local authority, or

13 c. the mobile food vendor seeks a food establishment  
14 license from a local authority required by Section 1-  
15 1118 of Title 63 of the Oklahoma Statutes;

16 3. Require a mobile food vendor that is operating on private  
17 property with the permission of the owner to operate a specific  
18 distance from commercial food or retail establishments;

19 4. Require a mobile food vendor to enter into any agreement  
20 with commercial food or retail establishments;

21 5. Require a mobile food vendor to be fingerprinted or to  
22 install a Global Positioning System (GPS) tracking device on the  
23 vendor's vehicle;

24



- 1           6. Require a mobile food vendor to stay in constant motion  
2 except for when serving customers;
- 3           7. Require a mobile food vendor to maintain an insurance policy  
4 that names the local authority as an additional insured unless the  
5 vendor is operating at an event sponsored by the local authority or  
6 operating in a local, public park;
- 7           8. Require a mobile food vendor to maintain a bond that names a  
8 local authority as a beneficiary unless the vendor is operating at  
9 an event sponsored by the local authority or operating in a local,  
10 public park;
- 11          9. Require a mobile food vendor to submit to health inspections  
12 beyond health inspections conducted by or in collaboration with the  
13 Department, unless the local authority is investigating a reported  
14 foodborne illness or addressing a complaint of an imminent health or  
15 safety hazard to the public;
- 16          10. Require a health inspection of a food vending vehicle more  
17 than twice per year unless the local authority, in collaboration  
18 with the Department under this act, is ensuring a mobile food vendor  
19 has corrected a violation detected during a prior inspection, is  
20 investigating a reported foodborne illness, or is conducting a  
21 nonobstructive spot inspection to ensure food safety;
- 22          11. Charge a mobile food vendor fees for additional health  
23 inspections;
- 24

1 12. Charge a mobile food vendor fees for any local license or  
2 permit allowed under Section 3 of this act beyond the administrative  
3 cost of issuing the local license or permit;

4 13. Require a mobile food vendor to submit to a state fire  
5 inspection if the vendor can demonstrate it passed a state fire  
6 inspection in the previous twelve (12) months;

7 14. Require a mobile food vendor to enter into any agreement  
8 with a commercial establishment or restaurant;

9 15. Regulate the equipment requirements for a food vending  
10 vehicle; or

11 16. Require a mobile food vendor to associate with a commissary  
12 if the vendor has all the equipment necessary to comply with state  
13 regulations pertaining to food vending vehicles.

14 SECTION 5. NEW LAW A new section of law to be codified  
15 in the Oklahoma Statutes as Section 1-1152 of Title 63, unless there  
16 is created a duplication in numbering, reads as follows:

17 A. Any mobile food vendor who has been notified of a possible  
18 suspension or revocation of his or her state license may request an  
19 administrative hearing in accordance with the Administrative  
20 Procedures Act and rules promulgated by the State Commissioner of  
21 Health.

22 B. The Department may issue civil penalties to a person who  
23 operates as a mobile food vendor without a license, with a suspended  
24 license, or after a license is revoked.

1 SECTION 6. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 1-1153 of Title 63, unless there  
3 is created a duplication in numbering, reads as follows:

4 A person aggrieved by a decision of the State Department of  
5 Health following a hearing has the right to appeal the decision as  
6 provided in the Administrative Procedures Act and rules promulgated  
7 by the State Commissioner of Health.

8 SECTION 7. NEW LAW A new section of law to be codified  
9 in the Oklahoma Statutes as Section 1-1154 of Title 63, unless there  
10 is created a duplication in numbering, reads as follows:

11 A. This act shall not be construed to require a local authority  
12 to adopt a program regulating mobile food vendors or to modify its  
13 existing program regulating mobile food vendors; provided, the  
14 regulations do not conflict with this act.

15 B. This act shall not be construed to impede the State  
16 Department of Health or local authority in any investigation of a  
17 reported foodborne illness.

18 SECTION 8. This act shall become effective November 1, 2022.  
19

20 58-2-3786 DC 4/6/2022 4:36:05 PM  
21  
22  
23  
24