

1 STATE OF OKLAHOMA

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

3 COMMITTEE SUBSTITUTE
4 FOR ENGROSSED
5 HOUSE BILL 2010

By: Townley and Johns of the
House

and

Montgomery of the Senate

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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:
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- 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
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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.

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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;

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- 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:

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- 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;
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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;

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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.

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