

1 ENGROSSED HOUSE
2 BILL NO. 2010

By: Townley and Johns of the
House

3 and

4 Montgomery of the Senate
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8 An Act relating to public health and safety; amending
9 63 O.S. 2021, Sections 1-1101 and 1-1118, which
10 relate to food; defining terms; modifying creation of
11 certain fees; requiring mobile food vendors follow
12 certain laws; allowing mobile food vendors to operate
13 in certain locations; requiring mobile food vendors
14 operate in a certain manner; authorizing the State
Department of Health to promulgate rules; authorizing
local authorities to regulate mobile food vendors;
allowing administrative hearing upon suspension or
revocation of certain license; establishing
penalties; providing appeals process; providing for
codification; and providing an effective date.

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

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

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

21 (a) The term "food" means:

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

24 (2) chewing gum, and

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

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

10 (c) The term "immediate container" does not include package
11 liners.

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

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

15 or

16 (2) accompanying such article.

17 (e) If an article is alleged to be misbranded because the
18 labeling is misleading, or if an advertisement is alleged to be
19 false because it is misleading, then in determining whether the
20 labeling or advertisement is misleading there shall be taken into
21 account (among other things) not only representations made or
22 suggested by statement, word, design, device, sound, or in any
23 combination thereof, but also the extent to which the labeling or
24 advertisement fails to reveal facts material in the light of such

1 representations or material with respect to consequences which may
2 result from the use of the article to which the labeling or
3 advertisement relates, under the conditions of use prescribed in the
4 labeling or advertisement thereof, or under such conditions of use
5 as are customary or usual.

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

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

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

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

22 (j) The term "mobile food establishment" means a facility,
23 including a trailer, that prepares food and beverages, is vehicle
24 mounted, is road-approved by the Department of Transportation,

1 including wheels and axles, is readily movable, and remains at one
2 physical address for no more than twelve (12) hours at one time,
3 unless the mobile food establishment is operating on private
4 property. A mobile food establishment operating on private property
5 may remain at one physical address for no more than fourteen (14)
6 days.

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

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

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

24

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

3 (o) The term "food vending vehicle" means a mobile food
4 establishment, mobile push cart, or mobile retail food
5 establishment.

6 (p) The term "local authority" means any local government,
7 including any town, city, charter city, political subdivision, or
8 county.

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

13 (r) The term "temporary mass gathering" means an actual or
14 reasonably anticipated assembly of three hundred (300) or more
15 people for an event that continues, or reasonably can be expected to
16 continue, for two (2) or more hours per day.

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

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

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

20 A food establishment license shall not be required for:

- 21 1. A produce stand that offers only whole, uncut and
22 unprocessed fresh fruits, melons, vegetables and legumes and/or
23 whole uncracked and unprocessed nuts;

24

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

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

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

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

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

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

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

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

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

18 C. The State ~~Commissioner~~ Board of Health shall promulgate
19 reasonable standards and rules for sanitation of establishments
20 required to be licensed, which shall include the following:
21 buildings, vehicles, and appurtenances thereto, including plumbing,
22 ventilation and lighting; construction, cleanliness and bactericidal
23 treatment of equipment and utensils; cleanliness, wholesomeness,
24 storage and refrigeration of food and drink sold or served;

1 cleanliness and hygiene of personnel; toilet facilities; disposal of
2 waste; water supply; and other items deemed necessary to safeguard
3 the health, comfort, and safety of customers.

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

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

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

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

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

4 2. On private property under the following circumstances:

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

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

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

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

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

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

- 1 1. Maintain a food vending vehicle in good operating order;
- 2 2. Provide a waste receptacle for customers that is visible and
3 request that customers use it;
- 4 3. Remove and dispose of all refuse within a twenty-five-foot
5 radius of the mobile food vendor's operating area at the conclusion
6 of operation;
- 7 4. Display the mobile food vendor's food establishment license
8 in a conspicuous location for public view; and
- 9 5. If serving food at a temporary mass gathering, notify the
10 State Department of Health and the local authority in the
11 jurisdiction where the gathering is to be located of the dates the
12 mobile food vendor will operate at the temporary mass gathering at
13 least ten (10) business days prior to the gathering.
- 14 G. The State Department of Health may promulgate rules to
15 enforce the provisions of this section. Rules adopted shall not:
 - 16 1. Require a mobile food vendor to operate a specific distance
17 from the perimeter of an existing commercial establishment or to
18 enter into any agreement with a commercial establishment;
 - 19 2. Require a mobile food vendor that serves only prepackaged
20 food or that does not prepare or open food to have a handwashing
21 sink in the food vending vehicle;
 - 22 3. Require a mobile food vendor to associate with a commissary
23 if the vendor carries all the equipment necessary to comply with
24 health and safety standards and applicable regulations;

- 1 4. Limit the number of licensed mobile food vendors;
- 2 5. Require a mobile food vendor to obtain any additional
3 permits from a local authority unless the mobile food vendor seeks
4 to operate at an event which is permitted by a local authority or in
5 a local, public park;
- 6 6. Require a mobile food vendor to be fingerprinted or to
7 install a Global Positioning System (GPS) tracking device on the
8 vendor's vehicle;
- 9 7. Require a mobile food vendor to stay in constant motion
10 except for when serving customers;
- 11 8. Require a mobile food vendor to change locations unless the
12 vendor is operating in violation of this act;
- 13 9. Require a mobile food vendor to maintain insurance that
14 names a local authority as an additional insured unless the vendor
15 is operating at an event sponsored by the local authority or
16 operating in a local, public park;
- 17 10. Require a mobile food vendor to maintain a bond that names
18 a local authority as a beneficiary unless the vendor is operating at
19 an event sponsored by the local authority or operating in a local,
20 public park;
- 21 11. Require a mobile food vendor to submit to health
22 inspections beyond health inspections conducted by the Department or
23 by a local authority collaborating with the Department, unless the
24 Department is investigating a reported foodborne illness, or

1 addressing a complaint of an imminent health or safety hazard to the
2 public;

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

8 13. Charge a mobile food vendor fees for a health inspection;
9 and

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

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

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

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

22 2. Restrict a mobile food vendor from operating in a public
23 park or require a special permit and payment of fees to operate in a
24 public park;

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

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

6 5. Investigate reports of foodborne illnesses;

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

9 7. Issue citations and penalties to mobile food vendors for
10 violations of state and local law not inconsistent with this act;
11 and

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

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

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

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

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

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

6 c. the mobile food vendor seeks a food establishment
7 license from a local authority required by Section 1-
8 1118 of Title 63 of the Oklahoma Statutes;

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

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

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

17 6. Require a mobile food vendor to stay in constant motion
18 except for when serving customers;

19 7. Require a mobile food vendor to maintain an insurance policy
20 that names the local authority as an additional insured unless the
21 vendor is operating at an event sponsored by the local authority or
22 operating in a local, public park;

23 8. Require a mobile food vendor to maintain a bond that names a
24 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 9. Require a mobile food vendor to submit to health inspections
4 beyond health inspections conducted by or in collaboration with the
5 Department, unless the local authority is investigating a reported
6 foodborne illness or addressing a complaint of an imminent health or
7 safety hazard to the public;

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

14 11. Charge a mobile food vendor fees for additional health
15 inspections;

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

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

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

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1 15. Regulate the equipment requirements for a food vending
2 vehicle; and

3 16. Require a mobile food vendor to associate with a commissary
4 if the vendor has all the equipment necessary to comply with state
5 regulations pertaining to food vending vehicles.

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

9 A. Any mobile food vendor who has been notified of a possible
10 suspension or revocation of his or her state license may request an
11 administrative hearing in accordance with the Administrative
12 Procedures Act and rules of the State Department of Health.

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

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

19 A person aggrieved by a decision of the State Department of
20 Health following a hearing has the right to appeal the decision as
21 provided in the Administrative Procedures Act and rules of the State
22 Department of Health.

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

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

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

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

12 Passed the House of Representatives the 21st day of March, 2022.

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Presiding Officer of the House
of Representatives

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Passed the Senate the ___ day of _____, 2022.

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Presiding Officer of the Senate

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