

SENATE CHAMBER
STATE OF OKLAHOMA

DISPOSITION

FLOOR AMENDMENT

No. 1

COMMITTEE AMENDMENT

(Date)

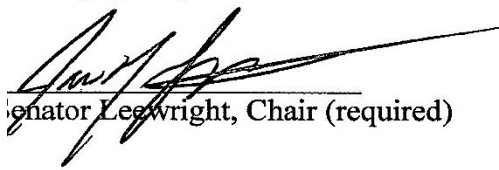
I move to amend House Bill No. 2010 by substituting the attached floor substitute (Request 3877) for the title, enacting clause and entire body of the measure.

Submitted by:

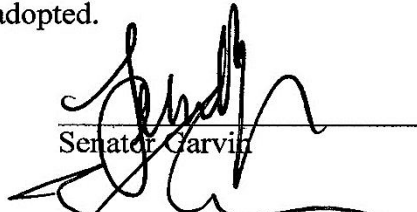


Senator Montgomery

I hereby grant permission for the floor substitute to be adopted.

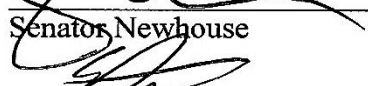


Senator Lee Wright, Chair (required)



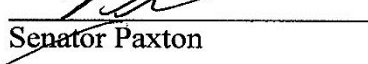
Senator Garvin

Senator Coleman



Senator Newhouse

Senator Bergstrom



Senator Paxton

Senator Brooks

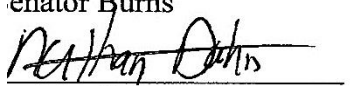


Senator Pugh

Senator Burns



Senator Rogers



Senator Dahm

Senator Young

Senator Treat, President Pro Tempore

Senator McCortney, Majority Floor Leader

Note: Business, Commerce and Tourism committee majority requires seven (7) members' signatures.

Montgomery-DC-FS-HB2010
4/27/2022 4:05 PM

Floor Amendments Only)

Date and Time Filed: 4-27-22 4:22 pm *Jed*

Untimely

Amendment Cycle Extended

Secondary Amendment

STATE OF OKLAHOMA

2nd Session of the 58th Legislature (2022)

FLOOR SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 2010

By: Townley and Johns of the
House

and

Montgomery and Bergstrom of
the Senate

FLOOR SUBSTITUTE

[public health and safety - mobile food vendors to
operate in certain locations - local authorities to
regulate mobile food vendors - codification -
effective date]

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) articles used for food or drink for ~~man~~ human

consumption,

(2) chewing gum, and

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

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

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

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

- 13 (1) upon an article or any of its containers or wrappers,
14 or
15 (2) accompanying such article.

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

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

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

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

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

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

21 (j) The term "mobile food establishment" means a facility
22 including a trailer, that prepares food and beverages, is vehicle
23 mounted, is approved for street and highway use by the Department of
24 Public Safety and the United States 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 approved by the local authority. A mobile food establishment
4 operating on private property may remain at one physical address for
5 no more than fourteen (14) days unless approved by the local
6 authority.

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 or more people for
15 an event that continues, or reasonably can be expected to continue,
16 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 and the vendor's compliance with all
18 other municipal provisions.

19 A food establishment license shall not be required for:

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

23 2. A manufacturer, wholesaler or broker of food licensed
24 pursuant to Section 1-1119 of this title;

1 3. A kitchen in a private home if only food that does not
2 require time and temperature control for safety is prepared for sale
3 or service at a function such as a nonprofit civic, charitable or
4 religious organization's bake sale;

5 4. An area where food that is prepared as specified in
6 paragraph 3 of this subsection is sold or offered for human
7 consumption;

8 5. A private home that receives catered or home-delivered food;

9 6. A hotel licensed pursuant to Section 1-1201 of this title
10 which provides limited food service in compliance with rules
11 promulgated by the State Commissioner of Health;

12 7. A kitchen in a private home or in a bed and breakfast that
13 prepares and offers food to guests, if the home is owner-occupied,
14 the number of available guest bedrooms does not exceed three, and
15 breakfast is the only meal offered;

16 8. A nonprofit civic, charitable or religious organization
17 using unpaid individuals to prepare or serve food on its behalf, for
18 occasional ~~fund-raising~~ fundraising events sponsored and conducted
19 by the organization. For the purposes of this paragraph, an
20 "occasional ~~fund-raising~~ fundraising event" shall be defined as an
21 event that occurs four times a year or less;

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

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

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

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

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

21 2. The Commissioner may by rule also provide that licenses for
22 establishments serving events of limited duration or operating on a
23 seasonal basis shall extend only for the term of the event or
24

1 season, and may by rule adjust the fees for such licenses
2 accordingly.

3 3. The Commissioner shall provide by rule a three-day license
4 for vendors who only sell at farmers markets as defined in 310:257-
5 1-2 of the Oklahoma Administrative Code or at county fairs.
6 Licenses for vendors who only sell at farmers markets or county
7 fairs shall not exceed Fifty Dollars (\$50.00). Vendors who do not
8 sell food and vendors who meet the exceptions provided in subsection
9 A of this section shall not be required to obtain a three-day
10 license or a food establishment license.

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

15 C. The State Commissioner of Health shall promulgate reasonable
16 standards and rules for sanitation of establishments required to be
17 licensed, which shall include the following: buildings, vehicles,
18 and appurtenances thereto, including plumbing, ventilation and
19 lighting; construction, cleanliness and bactericidal treatment of
20 equipment and utensils; cleanliness, wholesomeness, storage and
21 refrigeration of food and drink sold or served; cleanliness and
22 hygiene of personnel; toilet facilities; disposal of waste; water
23 supply; and other items deemed necessary to safeguard the health,
24 comfort, and safety of customers.

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

4 A. A mobile food vendor with a food establishment license
5 required under Section 1-1118 of Title 63 of the Oklahoma Statutes
6 may operate in the state subject to this section. Mobile food
7 vendors shall follow all state and local laws and regulations
8 governing operations in the jurisdiction where the vendor is
9 operating.

10 B. A mobile food vendor with a food establishment license
11 required under Section 1-1118 of Title 63 of the Oklahoma Statutes
12 shall provide a copy of its state license to a local authority for
13 recognition by the local authority before operating in the local
14 authority's jurisdiction. The local authority shall recognize a
15 lawful and valid state license and authorize the mobile food vendor
16 to operate in its jurisdiction within five (5) business days of
17 receipt of the state license and verification of compliance with
18 local regulations. Such recognition and authorization may include
19 issuing a local license or permit to the mobile food vendor.

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

- 22 1. Any location allowed by the local authority; and
- 23 2. On private property under the following circumstances:

24

1 a. the property is located in a zoning district where
2 food service establishments are permitted to operate
3 and the vendor has permission of the property owner,
4 designee, or lessor, and

5 b. the mobile food vendor would not cause a nuisance.

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

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

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

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

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

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

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

21 5. If serving food at a temporary mass gathering, notify the
22 State Department of Health and the local authority in the
23 jurisdiction where the gathering is to be located of the dates the
24

1 mobile food vendor will operate at the temporary mass gathering at
2 least ten (10) business days prior to the gathering.

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

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

8 2. Require a mobile food vendor that serves only prepackaged
9 food or that does not prepare or open food to have a handwashing
10 sink in the food vending vehicle;

11 3. Require a mobile food vendor to associate with a commissary
12 if the vendor carries all the equipment necessary to comply with
13 health and safety standards and applicable regulations;

14 4. Limit the number of licensed mobile food vendors;

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

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

20 7. Require a mobile food vendor to change locations unless the
21 vendor is operating in violation of this act;

22 8. Require a mobile food vendor to maintain insurance that
23 names a local authority as an additional insured unless the vendor
24

1 is operating at an event sponsored by the local authority or
2 operating in a local, public park or other publicly owned property;

3 9. Require a mobile food vendor to maintain a bond that names a
4 local authority as a beneficiary unless the vendor is operating at
5 an event sponsored by the local authority or operating in a local,
6 public park or other publicly owned property;

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

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

18 12. Charge a mobile food vendor fees for a health inspection;
19 or

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

23 SECTION 4. NEW LAW A new section of law to be codified
24 in the Oklahoma Statutes as Section 1-1151 of Title 63, unless there

1 is created a duplication in numbering, reads as follows:

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

5 1. Restrict the operation of a noisemaking device that creates
6 a public nuisance;

7 2. Restrict a mobile food vendor from operating in a public
8 park or require a special permit and payment of fees to operate in a
9 public park;

10 3. Prohibit a mobile food vendor from blocking or restricting
11 ingress to or egress from private or public property;

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

15 5. Investigate reports of foodborne illnesses;

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

18 7. Issue citations and penalties to mobile food vendors for
19 violations of state and local law; and

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

24

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

3 1. Prohibit a mobile food vendor from lawfully operating in its
4 jurisdiction if the vendor holds a food establishment license
5 required under Section 1-1118 of Title 63 of the Oklahoma Statutes
6 and is in compliance with this act and all other state and local
7 laws;

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

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

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

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

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

22 7. Require a mobile food vendor to maintain a bond that names a
23 local authority as a beneficiary unless the vendor is operating at
24

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

3 8. 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 9. 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 10. Charge a mobile food vendor fees for additional health
15 inspections;

16 11. 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 12. 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 13. Require a mobile food vendor to enter into any agreement
23 with a commercial establishment or restaurant;

24

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

3 15. 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; or

6 16. Adopt or enforce any regulations that conflict with this
7 act.

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

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

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

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

22 A person aggrieved by a decision of the State Department of
23 Health following a hearing has the right to appeal the decision as
24

1 provided in the Administrative Procedures Act and rules promulgated
2 by the State Commissioner of Health.

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

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

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

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11 58-2-3877 DC 4/27/2022 6:02:44 PM

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