

1 STATE OF OKLAHOMA

2 1st Session of the 58th Legislature (2021)

3 HOUSE BILL 2010

By: Townley

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5
6 AS INTRODUCED

7 An Act relating to public health and safety; amending
8 63 O.S. 2011, Sections 1-1101 and 1-1118, as last
9 amended by Section 1, Chapter 505, O.S.L. 2019 (63
10 O.S. Supp. 2020, Section 1-1118), which relate to
11 food; defining terms; modifying creation of certain
12 fees; requiring mobile food vendors follow certain
13 laws; allowing mobile food vendors to operate in
14 certain locations; requiring mobile food vendors
15 operate in a certain manner; authorizing the
16 Department of Health to promulgate rules; authorizing
17 local authorities to regulate mobile food vendors;
18 allowing administrative hearing upon suspension or
19 revocation of certain license; establishing
20 penalties; providing appeals process; construing law;
21 providing for codification; and providing an
22 effective date.

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

24 SECTION 1. AMENDATORY 63 O.S. 2011, Section 1-1101, is
amended to read as follows:

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

(a) The term "food" means:

(1) articles used for food or drink for man,

(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, or
14 (2) accompanying such article.

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

1 advertisement relates, under the conditions of use prescribed in the
2 labeling or advertisement thereof, or under such conditions of use
3 as are customary or usual.

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

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

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

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

20 (j) The term "mobile food establishment" means a facility,
21 including a trailer, that prepares food and beverages, is vehicle
22 mounted, is Department of Transportation road approved, including
23 wheels and axles, is readily moveable and remains at one physical
24 address for no more than twelve (12) hours at one time, unless the

1 truck is operating on private property. A mobile food establishment
2 operating on private property may remain at one physical address for
3 no more than fourteen (14) days.

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

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

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

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

23 (o) The term "food vending vehicle" means a mobile food
24 establishment, mobile push cart or mobile retail food establishment.

1 (p) The term "local authority" means any local government,
2 including any town, city, charter city, political subdivision or
3 county.

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

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

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

17 SECTION 2. AMENDATORY 63 O.S. 2011, Section 1-1118, as
18 last amended by Section 1, Chapter 505, O.S.L. 2019 (63 O.S. Supp.
19 2020, Section 1-1118), is amended to read as follows:

20 Section 1-1118. A. It shall be unlawful for any person to
21 operate or maintain any establishment, stationary or otherwise,
22 where food or drink is offered for sale, or sold, to the public,
23 unless the person is the holder of a food establishment license
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1 issued for such purpose by the State Commissioner of Health or
2 designee. A food establishment license shall not be required for:

3 1. A produce stand that offers only whole, uncut and
4 unprocessed fresh fruits, melons, vegetables and legumes and/or
5 whole uncracked and unprocessed nuts;

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

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

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

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

16 6. A hotel licensed pursuant to Section 1-1201 of this title
17 which provides limited food service in compliance with rules
18 promulgated by the State Board of Health;

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

23 8. A nonprofit civic, charitable or religious organization
24 using unpaid individuals to prepare or serve food on its behalf, for

1 occasional fund-raising events sponsored and conducted by the
2 organization. For the purposes of this paragraph, an "occasional
3 fund-raising event" shall be defined as an event that occurs four
4 times a year or less;

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

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

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

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

21 1. The Board may provide by rule for a fee-exempt license for a
22 food establishment operated by a nonprofit, civic, charitable or
23 religious organization that uses unpaid persons to sell or offer
24 food on a more frequent basis than the occasional fund-raising

1 event. A fee-exempt license shall not expire but shall remain in
2 full force and effect until affirmatively revoked, suspended,
3 annulled or withdrawn by the Department in accordance with
4 applicable law.

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

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

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

1 hygiene of personnel; toilet facilities; disposal of waste; water
2 supply; and other items deemed necessary to safeguard the health,
3 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. Mobile food vendors shall follow all state and local laws
8 and regulations governing operations in the jurisdiction where the
9 vendor is operating that are not in conflict with this section.

10 B. A mobile food vendor may operate in the following locations:

11 1. On public property, so long as the vending vehicle is not
12 parked within twenty (20) feet of an intersection. A mobile food
13 vendor may operate from legal parking spaces on the public right-of-
14 way, including metered spaces, upon payment of appropriate fees.
15 When operating on public property, a mobile food vendor is subject
16 to the same parking rules, restrictions and obligations as other
17 commercial vehicles; and

18 2. On private property under the following circumstances:

19 a. the property is located in a zoning district where
20 food service establishments are permitted to operate
21 and the vendor has permission of the property owner,
22 designee or lessor, and

23 b. the property is located in a residential zoning
24 district and the mobile food vendor has been invited

1 by a resident or group of residents in that district
2 to operate on their property for the purpose of
3 serving food to that resident, group of residents or
4 their guests.

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

8 D. When operating, a mobile food vendor shall:

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

10 2. Provide a waste receptacle for customers which is visible
11 and request its use by customers;

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

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

17 5. If serving food at a temporary mass gathering, notify the
18 State Department of Health and the local authority in the
19 jurisdiction where the gathering is located of the dates the mobile
20 food vendor will operate at the temporary mass gathering at least
21 five (5) business days prior to the gathering.

22 E. The State Department of Health may promulgate rules to
23 enforce the provisions of this section. Rules adopted shall not:
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- 1 1. Require a mobile food vendor to operate a specific distance
2 from the perimeter of an existing commercial establishment or to
3 enter into any agreement with a commercial establishment;
- 4 2. Require a mobile food vendor that serves only prepackaged
5 food or that does not prepare or open food to have a handwashing
6 sink in his or her food vending vehicle;
- 7 3. Require a mobile food vendor to associate with a commissary
8 if the vendor carries all the equipment necessary to comply with
9 health and safety standards and applicable regulations;
- 10 4. Limit the number of licensed mobile food vendors;
- 11 5. Require a mobile food vendor to obtain any additional
12 permits from a local authority unless the mobile food vendor seeks
13 to operate at an event sponsored by a local authority or in a local,
14 public park;
- 15 6. Require a mobile food vendor to be fingerprinted or to
16 install a GPS tracking device on the vendor's vehicle;
- 17 7. Require a mobile food vendor to stay in constant motion
18 except for when serving customers;
- 19 8. Require a mobile food vendor to change locations unless the
20 vendor is operating in violation of this act;
- 21 9. Require a mobile food vendor to maintain insurance that
22 names a local authority as an additional insured unless the vendor
23 is attending an event sponsored by the local authority or operating
24 in a local, public park;

1 10. Require a mobile food vendor to maintain a bond that names
2 a local authority as a beneficiary unless the vendor is attending an
3 event sponsored by the local authority or operating in a local
4 public park;

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

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

16 13. Charge a mobile food vendor fees for a health inspection;
17 and

18 14. Require a mobile food vendor to submit to a state or local
19 fire inspection if the vendor can demonstrate it passed a state or
20 local fire inspection in the previous year.

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

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

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

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 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; and

18 7. Issue citations and penalties to mobile food vendors for
19 violations of state and local law not inconsistent with this act.

20 B. In relation to a state-licensed mobile food vendor's
21 operations, a local authority may not:

22 1. Prohibit a mobile food vendor from lawfully operating in its
23 jurisdiction if the vendor holds a food establishment license and is
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1 in compliance with all other state laws and local laws not in
2 conflict with this act;

3 2. Require a mobile food vendor to obtain any license or permit
4 from a local authority to operate a food vending vehicle unless the
5 mobile food vendor seeks to operate at an event sponsored by the
6 local authority or in a local, public park;

7 3. Restrict the duration of time a mobile food vendor may
8 operate on private property in a district where food vending is
9 permitted unless the mobile food vendor is in violation of this act;

10 4. Require a mobile food vendor to operate a specific distance
11 from commercial food or retail establishments or to enter into any
12 agreement with commercial food or retail establishments;

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

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

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

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

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1 9. Require a mobile food vendor to maintain a bond that names a
2 local authority as a beneficiary unless the vendor is attending an
3 event sponsored by the local authority or operating in a local,
4 public park;

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

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

16 12. Charge a mobile food vendor fees for a health inspection;

17 13. Require a mobile food vendor to submit to a state or local
18 fire inspection if the vendor can demonstrate it passed a state or
19 local fire inspection in the previous year;

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

22 15. Regulate the equipment requirements for a food vending
23 vehicle; and
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1 16. Require a mobile food vendor to associate with a commissary
2 if the vendor has all the equipment necessary to comply with state
3 regulations pertaining to food vending vehicles.

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

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

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

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

17 A person aggrieved by an agency decision following a hearing has
18 the right to appeal the decision in accordance with the
19 Administrative Procedures Act and the State Department of Health's
20 rules.

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

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

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

8 SECTION 8. This act shall become effective November 1, 2021.

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