

1 **SENATE FLOOR VERSION**

2 April 14, 2022

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

By: Townley and Johns of the
House

and

Montgomery and Bergstrom of
the Senate

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

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

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

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

18 (a) The term "food" means:

19 (1) articles used for food or drink for ~~man~~ human

20 consumption,

21 (2) chewing gum, and

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

23 (b) The term "label" means a display of written, printed or
24 graphic matter upon the immediate container of any article; and a

1 requirement made by or under authority of this article that any
2 word, statement, or other information appearing on the label shall
3 not be considered to be complied with unless such word, statement,
4 or other information also appears on the outside container or
5 wrapper, if there be any, of the retail package of such article, or
6 is easily legible through the outside container or wrapper.

7 (c) The term "immediate container" does not include package
8 liners.

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

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

13 (2) accompanying such article.

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

1 labeling or advertisement thereof, or under such conditions of use
2 as are customary or usual.

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

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

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

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

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

1 property. A mobile food establishment operating on private property
2 may remain at one physical address for no more than fourteen (14)
3 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
8 licensed enterprise which sells packaged foods from a stationary
9 display at a location some distance from the establishment but still
10 at the same physical address for no more than twelve (12) hours;
11 provided, the licensed unit is on the premises and readily available
12 for inspection and the food has been prepared in a facility that is
13 regulated by the good manufacturing practices in Title 21 of the
14 Code of Federal Regulations or pursuant to Section 310:260 of the
15 Oklahoma Administrative Code, Good Manufacturing Practice
16 Regulations, Oklahoma Department of Agriculture, Food, and Forestry,
17 and United States Department of Agriculture, or this act.

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

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

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

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

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

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

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

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

22 Section 1-1118. A. It shall be unlawful for any person to
23 operate or maintain any establishment, stationary or otherwise,
24 where food or drink is offered for sale, or sold, to the public,

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

17 A food establishment license shall not be required for:

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

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

23 3. A kitchen in a private home if only food that does not
24 require time and temperature control for safety is prepared for sale

1 or service at a function such as a nonprofit civic, charitable or
2 religious organization's bake sale;

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

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

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

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

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

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

23 10. Nursing facilities and specialized facilities, as defined
24 in and licensed pursuant to the provisions of the Nursing Home Care

1 Act, residential care homes as defined by the Residential Care Act,
2 adult day care centers as defined by the Adult Day Care Act, and
3 assisted living centers and continuum of care facilities licensed
4 pursuant to the Continuum of Care and Assisted Living Act; and

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

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

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

19 2. The Commissioner may by rule also provide that licenses for
20 establishments serving events of limited duration or operating on a
21 seasonal basis shall extend only for the term of the event or
22 season, and may by rule adjust the fees for such licenses
23 accordingly.

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

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

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

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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 is
6 authorized to operate in the state subject to this section. Mobile
7 food vendors shall follow all state and local laws and regulations
8 governing operations in the jurisdiction where the vendor is
9 operating that are not in conflict with this act.

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 not in conflict with this act. Such recognition
19 and authorization may include issuing a local license or permit to
20 the mobile food vendor. Any local license or permit issued shall
21 not impose additional requirements that conflict with this act.

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

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

1 2. On private property under the following circumstances:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 5. Require a mobile food vendor to obtain any additional
24 permits from a local authority unless the mobile food vendor seeks

1 to operate at an event which is permitted by a local authority or in
2 a local, public park;

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

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

8 8. Require a mobile food vendor to change locations unless the
9 vendor is operating in violation of this act;

10 9. Require a mobile food vendor to maintain insurance that
11 names a local authority as an additional insured unless the vendor
12 is operating at an event sponsored by the local authority or
13 operating in a local, public park;

14 10. Require a mobile food vendor to maintain a bond that names
15 a local authority as a beneficiary unless the vendor is operating at
16 an event sponsored by the local authority or operating in a local,
17 public park;

18 11. Require a mobile food vendor to submit to health
19 inspections beyond health inspections conducted by the Department or
20 by a local authority collaborating with the Department, unless the
21 Department is investigating a reported foodborne illness, or
22 addressing a complaint of an imminent health or safety hazard to the
23 public;

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

6 13. Charge a mobile food vendor fees for a health inspection;
7 or

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

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

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

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

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

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

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

4 5. Investigate reports of foodborne illnesses;

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

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

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

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

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

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

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 promulgated by the State Commissioner of
13 Health.

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

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

20 A person aggrieved by a decision of the State Department of
21 Health following a hearing has the right to appeal the decision as
22 provided in the Administrative Procedures Act and rules promulgated
23 by the State Commissioner 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 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS, COMMERCE AND TOURISM
13 April 14, 2022 - DO PASS AS AMENDED
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