

1 STATE OF OKLAHOMA

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

3 SENATE BILL 545

By: Dahm

4  
5  
6 AS INTRODUCED

7 An Act relating to mobile food vendors; creating the  
8 Mobile Food Vendor Act; defining terms; requiring  
9 persons who operate as mobile food vendors to obtain  
10 a license; prohibiting political subdivisions from  
11 restricting certain vendors; requiring the State  
12 Department of Health to prepare and make available a  
13 license application; authorizing the Department to  
14 require certain information; authorizing the  
15 Department to require certain information by  
16 individuals under oath; requiring applicants to abide  
17 by requests for information; providing conditions for  
18 denial of license; requiring the Department or a  
19 political subdivision to conduct an inspection;  
20 stating purpose of inspection; authorizing the  
21 Department to establish a fee; requiring the  
22 Department to issue a license under certain  
23 conditions; prohibiting transfer of license;  
24 providing exception to invalidation of license;  
25 providing for renewal of license; requiring the  
26 Department to submit notice of expiration; making it  
27 a crime to knowingly provide false information;  
28 requiring the Department to create and make available  
29 a guide; requiring mobile food vendors to follow all  
30 laws not in conflict with this act; providing  
31 locations to operate mobile food trucks; requiring  
32 certain operational standards; requiring display of  
33 license and certification; authorizing the Department  
34 to promulgate rules that adhere to certain  
35 restrictions; requiring mobile food vendors to follow  
36 laws and regulations regarding food handling and  
37 safety; requiring possession of a state-recognized  
38 food safety certification; requiring the Department  
39 to classify mobile food vendors; requiring  
40 inspections at a frequency based on classifications;  
41 requiring the Department to establish and maintain a

1 database; authorizing the Department to collaborate  
2 with political subdivisions for inspections;  
3 requiring inspection certificates based on a letter  
4 grade format; requiring notification of inspection;  
5 authorizing mobile food vendors to request the  
6 Department to obtain an administrative warrant;  
7 requiring the Department to calculate average  
8 inspection costs; stating limit on fees for  
9 inspection; authorizing reimbursement of inspection  
10 fees under certain circumstances; authorizing  
11 political subdivisions to regulate certain aspects of  
12 operations; prohibiting political subdivisions from  
13 regulating certain aspects of operations; authorizing  
14 the Department and political subdivisions to  
15 investigate under certain circumstances; providing  
16 for license denial, revocation and suspension;  
17 providing for penalties; authorizing persons to  
18 request an administrative hearing; providing  
19 statutory reference; requiring the Department to  
20 provide decision at the conclusion of hearing;  
21 prohibiting certain persons from operating as mobile  
22 food vendors; authorizing persons to appeal hearing  
23 decision; providing preemption of political  
24 subdivisions; stating the act shall not be construed  
to compel political subdivisions to take certain  
actions; amending 63 O.S. 2011, Section 1-1118, as  
last amended by Section 1, Chapter 505, O.S.L. 2019  
(63 O.S. Supp. 2020, Section 1-1118), which relates  
to food establishment licenses; adding exemption;  
providing for codification; and providing an  
effective date.

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

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

23 This act shall be known and may be cited as the "Mobile Food  
24 Vendor Act".

1 SECTION 2. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 1-1151 of Title 63, unless there  
3 is created a duplication in numbering, reads as follows:

4 As used in the Mobile Food Vendor Act:

5 1. "Customer" means any person with whom a mobile food vendor  
6 conducts his or her mobile vending business, or any person who stops  
7 to contemplate conducting such business with a mobile food vendor;

8 2. "Department" means the State Department of Health;

9 3. "Food vending vehicle" means any motorized, two-axle vehicle  
10 used to sell food and beverages by a mobile food vendor;

11 4. "Local authority" means any local government including any  
12 town, city, charter city, political subdivision or county;

13 5. "Mobile food vendor" means any person who dispenses food or  
14 beverages from a food vending vehicle for immediate service or  
15 consumption;

16 6. "Person" means any individual, group of individuals, firm,  
17 partnership, company, corporation, trustee, association or any  
18 public or private entity and includes the entity's employees or  
19 agents;

20 7. "Prepackaged food" means any commercially labeled and  
21 processed food prepackaged to prevent direct human contact with the  
22 food product upon distribution from the manufacturer, a food  
23 facility or other approved source;

24  
25

1 8. "Public property" means any property owned and operated by  
2 this state or a local authority for the benefit of the public and  
3 includes all rights-of-way contained wholly within any state or  
4 local authority parks; and

5 9. "Sell" means to transfer or exchange for value, to expose,  
6 display or offer for sale or exchange, or to procure, store, keep or  
7 have on hand or in one's possession or control for the purpose of  
8 selling.

9 SECTION 3. NEW LAW A new section of law to be codified  
10 in the Oklahoma Statutes as Section 1-1152 of Title 63, unless there  
11 is created a duplication in numbering, reads as follows:

12 A. No person may operate as a mobile food vendor in this state  
13 without obtaining a mobile food vending license from the State  
14 Department of Health. A separate mobile food license shall be  
15 required for every food vending vehicle used by a mobile food  
16 vendor.

17 B. No local authority may prohibit a mobile food vendor from  
18 lawfully operating in its jurisdiction if the vendor holds a mobile  
19 food vending license and is in compliance with all other state laws  
20 and local laws not in conflict with this act.

21 SECTION 4. NEW LAW A new section of law to be codified  
22 in the Oklahoma Statutes as Section 1-1153 of Title 63, unless there  
23 is created a duplication in numbering, reads as follows:

1           A. The State Department of Health shall prepare a written  
2 application for a statewide mobile food vending license. The  
3 Department shall make the mobile food vending license application  
4 available to applicants in person and on the Department's website.

5           B. The Department shall require an applicant to provide the  
6 following information, under oath, before issuing a license:

7           1. The name, permanent address and telephone number of the  
8 applicant;

9           2. The name, address and telephone number of any associated  
10 entities or organizations that the applicant is representing and  
11 copies of documents verifying that relationship;

12           3. A listing of all primary residences for the last five (5)  
13 years;

14           4. A statement of whether any employees or agents will operate  
15 with the applicant under the license and whether the employees or  
16 agents hold a current food safety certification;

17           5. The nature of the food or beverages to be offered by the  
18 applicant; and

19           6. A statement of whether the applicant has previously been  
20 denied a license to operate as a mobile food vendor or if the  
21 applicant has had a previous mobile food vending license suspended  
22 or revoked in any state or local jurisdiction and, if so, the  
23 reasons or the circumstances surrounding the denial, suspension or  
24 revocation.

1 C. In addition to the written application, the Department shall  
2 require an applicant who will operate from a food vending vehicle to  
3 provide the following:

4 1. A listing of all vehicle license numbers, vehicle  
5 descriptions, vehicle identification numbers and vehicle  
6 registration papers;

7 2. Proof of automobile insurance for the vehicle or vehicles  
8 from which the applicant proposes to conduct business; and

9 3. A copy or proof of any additional licenses or permits  
10 required by this state for certain commercial vehicles.

11 D. Any person who drives a food vending vehicle shall hold a  
12 current driver license to drive the food vending vehicle.

13 E. The applicant shall complete the application form and abide  
14 by any request for information required by this act made by the  
15 Department. The applicant may submit one application for all  
16 vehicles which require a license. Failure to submit a complete  
17 application form and provide all requested information may result in  
18 denial of a license.

19 F. Within thirty (30) days of receiving a complete application,  
20 the Department, or a local authority acting under a collaborative  
21 agreement pursuant to Section 6 of this act, shall conduct a health  
22 inspection, if required by the Department, prior to issuing a mobile  
23 food vending license. The purpose of the inspection is to ensure  
24 the applicant's vehicle is safe for preparing, handling and selling

1 food to customers and the applicant is compliant with applicable  
2 regulations.

3 G. The Department may establish a reasonable schedule of fees  
4 not to exceed Two Hundred Dollars (\$200.00) for a mobile food  
5 vending license or for renewal of a mobile food vending license.  
6 The Department may also establish an inspection fee that covers the  
7 average cost of conducting health inspections for the vendor and  
8 charge that fee in conjunction with a mobile food vending license  
9 fee or the renewal fee of a mobile food vending license.

10 H. Upon a receipt of a complete application and an applicant  
11 passing initial inspection if required by the Department, the  
12 Department shall issue a mobile vending license to the applicant.  
13 Licenses shall be valid for one (1) year.

14 I. Licenses are not transferable, nor shall a license authorize  
15 the activities of any person other than the person to whom it is  
16 issued, except that the sale of the specific vehicle identified in a  
17 license application, when replaced by another vending vehicle on a  
18 one-for-one basis, will not invalidate the original license nor  
19 cause a new license to be required. When replacing a vending  
20 vehicle on a one-for-one basis, the licensee shall notify the  
21 Department of the information required by subsection C of this  
22 section. If the Department determines an inspection of the new  
23 vehicle is required, the inspection shall take place as soon as  
24

1 practicable but no later than fourteen (14) calendar days from  
2 receipt of the information required by subsection C of this section.

3 J. If a mobile food vendor transfers its mobile food vending  
4 business assets, the recipient of the assets shall, before operating  
5 in the state, apply for and obtain a new mobile food vending  
6 license.

7 K. Licenses shall be renewed on an annual basis. The  
8 Department shall send notice to the licensee. It is the  
9 responsibility of the licensee to submit the renewal application  
10 annually, at least fourteen (14) days prior to the license's  
11 expiration date. While an application for renewal is pending with  
12 the Department, a licensee may continue mobile food vending  
13 operations.

14 L. It shall be a misdemeanor for any individual to  
15 intentionally provide false information or to intentionally omit  
16 requested information on an application for any license issued  
17 pursuant to this act.

18 M. The Department shall prepare a guide for applicants for a  
19 mobile food vending license. The guide shall include instructions  
20 for applying for, obtaining and maintaining a mobile food vending  
21 license and shall describe the standards used to inspect food  
22 vending vehicles. The guide shall be made available for applicants  
23 in person at the Department's office and on the Department's  
24 website.



1 SECTION 5. 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. Mobile food vendors shall follow all state and local laws  
5 and regulations governing operations in the jurisdiction where the  
6 vendor is operating including without limitation all fire codes,  
7 zoning codes, occupational tax codes and any other applicable state  
8 and local authority codes and laws not in conflict with the  
9 provisions of this act.

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

11 1. On public property, except as provided in paragraph 3 of  
12 subsection A of Section 7 of this act, so long as the vending  
13 vehicle is not parked within twenty (20) feet of an intersection. A  
14 mobile vendor may operate from legal parking spaces on the public  
15 right-of-way including metered spaces upon payment of appropriate  
16 fees. When operating on public property, a mobile vendor is subject  
17 to the same parking rules, restrictions and obligations that a  
18 commercial vehicle would be subject to if not used by a mobile food  
19 vendor; and

20 2. On private property under the following circumstances:

21 a. the property is located in an industrial, commercial  
22 or institutional zoning district, and the vendor has  
23 permission of the property owner or designee or a  
24 lessor, and

1           b.    the property is located in a residential zoning  
2                district, and the mobile food vendor has been invited  
3                by a resident or group of residents in that district  
4                to operate on their property for the purpose of  
5                serving food to that resident, group of residents or  
6                their guests.

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

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

11           1.   Maintain a food vending vehicle in good operating order and  
12                visual appearance including the removal of any graffiti that is not  
13                part of the overall design or art featured on the vehicle;

14           2.   Park so that its service window faces the sidewalk or away  
15                from the street if the vehicle is parked along a street;

16           3.   Serve customers through a service window;

17           4.   Provide a waste receptacle for customers which is clearly  
18                visible and request its use by customers;

19           5.   Remove and dispose of all refuse within twenty-five (25)  
20                feet of the vendor's operating area at the conclusion of operation;

21           6.   Submit to and pass any required health inspections; and

22           7.   Display the mobile food vendor license and required  
23                inspection certificates or permits in a conspicuous location for  
24                public view.

1 E. The State Department of Health may promulgate rules to  
2 enforce the provisions of this act. Rules adopted shall not:

3 1. Require a mobile food vendor to operate a specific distance  
4 from the perimeter of an existing commercial establishment;

5 2. Require a mobile food vendor to enter into any agreement  
6 with a commercial establishment;

7 3. Restrict the operating hours of a mobile food vendor;

8 4. Require a mobile food vendor that does not prepare food to  
9 have a handwashing sink in his or her food vending vehicle;

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

13 6. Limit the number of mobile food vendor licenses issued;

14 7. Require a mobile food vendor to obtain any additional  
15 permits from a local authority, unless the mobile food vendor seeks  
16 to operate in a local, public park;

17 8. Require a mobile food vendor to be fingerprinted;

18 9. Require a mobile food vendor to install a GPS tracking  
19 device on the vendor's vehicle;

20 10. Require a mobile food vendor to stay in constant motion  
21 except for when serving customers;

22 11. Require a mobile food vendor to maintain insurance that  
23 names a local authority as an additional insured unless the vendor  
24 is attending an event sponsored by the local authority; and

1           12. Require a mobile food vendor to submit to inspections  
2 beyond health inspections conducted by the Department or by a local  
3 authority under a collaborative agreement with the Department,  
4 unless the Department is investigating a reported foodborne illness.

5           SECTION 6.           NEW LAW           A new section of law to be codified  
6 in the Oklahoma Statutes as Section 1-1155 of Title 63, unless there  
7 is created a duplication in numbering, reads as follows:

8           A. Mobile food vendors shall adhere to all laws and regulations  
9 of the Oklahoma Administrative Code pertaining to the preparation  
10 and handling of food.

11           B. Any person preparing food or beverages in a food vending  
12 vehicle shall hold a current food safety certification recognized by  
13 this state. At all times at least one person working in a food  
14 vending vehicle must hold a current food safety certification  
15 recognized by this state.

16           C. Upon receipt of a complete license application, the State  
17 Department of Health shall classify a mobile food vendor into one of  
18 the following three classifications for the purpose of conducting  
19 inspections:

20           1. If a vendor dispenses prepackaged foods or non-  
21 time/temperature control for safety food, as defined in 310:257-1-2  
22 of the Oklahoma Administrative Code, beverages or poses a low risk  
23 of harm to the public, it shall be classified as a Mobile Food Type  
24 I Vendor;

1           2. If a vendor dispenses food that requires limited handling  
2 and preparation, it shall be classified as a Mobile Food Type II  
3 Vendor; and

4           3. If a vendor prepares, cooks, holds and serves food from the  
5 vehicle, it shall be classified as a Mobile Food Type III Vendor.

6           D. The Department shall specify the categories of foods or  
7 beverages that mobile vendors in each classification may serve. If  
8 a mobile food vendor seeks to serve food or beverages that may  
9 require the vendor to be reclassified, the mobile food vendor shall  
10 notify the Department of the nature of the food or beverages to be  
11 sold, and the Department shall reclassify the mobile food vendor.

12           E. For the purpose of protecting public health and safety, the  
13 Department shall ensure that mobile food vendors are inspected on an  
14 ongoing, randomized basis pursuant to the frequency set forth in  
15 subsection I of this section based on their classification and  
16 inspection grade. The Department, upon a local authority's request,  
17 may enter into a collaborative agreement with the local authority  
18 for conducting health inspections. The Department shall reimburse  
19 the local authority acting under a collaborative agreement for the  
20 cost of conducting inspections using funds from inspection fees  
21 collected from licensees pursuant to subsection K of this section.

22           F. The Department shall establish and maintain a statewide  
23 database for the Department and local authorities to record and  
24

1 reference the names of licensees, inspections, inspection reports  
2 and public complaints.

3 G. Health inspections shall be conducted by the Department  
4 or a local authority acting under a collaborative agreement using  
5 statewide inspection criteria and a score-based grading system  
6 established by the Department based on objective factors. The  
7 inspection criteria shall provide a letter-grade format that rates  
8 the vendor with an "A," "B," "C" or "F" grade, based on the score  
9 received during the inspection. If a vendor receives two  
10 consecutive "A" grades, it shall be given a certificate of  
11 excellence. If a vendor receives an "F" grade, the Department may  
12 suspend the mobile food vendor's license until the mobile food  
13 vendor corrects the violations.

14 H. Upon completion of an inspection, the Department, or local  
15 authority operating under a collaborative agreement, shall issue a  
16 certificate to the mobile food vendor displaying the vendor's letter  
17 grade or achievement of excellence and record the grade in the  
18 Department's database. The mobile food vendor shall display its  
19 certificate indicating its letter grade or achievement of excellence  
20 in a conspicuous place for public view.

21 I. Health inspections shall occur on a randomized basis,  
22 pursuant to the following frequency, based on the mobile food  
23 vendor's classification:  
24

1 1. A Mobile Food Type I Vendor shall be inspected only upon the  
2 Department or a local authority being notified of a public health or  
3 safety complaint regarding the vendor. If the inspection reveals a  
4 violation of law or rule, the vendor shall become subject to  
5 inspections at the frequency set for a Mobile Food Type II Vendor  
6 until the vendor obtains a certificate of excellence;

7 2. Mobile Food Type II Vendors shall be inspected once per  
8 calendar year. If a Mobile Food Type II Vendor receives a  
9 certificate of excellence, it shall become subject to inspections at  
10 the frequency set for Mobile Food Type I Vendors. If a Mobile Food  
11 Type II Vendor holding a certificate of excellence receives a score  
12 lower than an "A" on a subsequent inspection, the vendor shall lose  
13 its certificate of excellence and return to being inspected once per  
14 year; and

15 3. Mobile Food Type III Vendors shall be inspected twice per  
16 calendar year. If a Mobile Food Type III Vendor receives a  
17 certificate of excellence, it shall be inspected at the frequency  
18 set for Mobile Food Type II Vendors. If a Mobile Food Type III  
19 Vendor holding a certificate of excellence receives a score lower  
20 than an "A" on a subsequent inspection, the vendor shall lose its  
21 certificate of excellence and return to being inspected twice per  
22 calendar year.

23 J. The Department, or local authority acting under a  
24 collaborative agreement, shall notify a mobile food vendor by phone

1 or by First-Class Mail, with a return receipt requested, of its  
2 intent to inspect the food vending vehicle within thirty (30) days  
3 following the delivery of the notice. The mobile food vendor may  
4 request the Department or local authority obtain an administrative  
5 warrant prior to conducting an inspection. Upon receipt of notice  
6 of an inspection, the mobile food vendor shall provide the locations  
7 where the vendor can be located for an inspection if requested by  
8 the Department or local authority.

9 K. The Department shall calculate the average cost of providing  
10 notice of and conducting a health inspection. If the Department has  
11 entered into a collaborative agreement with a local authority, the  
12 Department shall consult with the local authority and determine the  
13 average cost of providing notice of and conducting health  
14 inspections in that jurisdiction. The Department shall charge the  
15 mobile food vendor an inspection fee at the time the mobile vendor  
16 applies for or renews a license, based on the average cost of  
17 providing notice of and conducting an inspection, multiplied by the  
18 number of annual inspections required for the upcoming year as  
19 required by this section. A mobile food vendor may request  
20 reimbursement for an inspection that was not conducted at the  
21 expiration of its mobile vending license or when the vendor renews a  
22 license. The Department shall reimburse the vendor for any  
23 inspection that was not conducted in the previous year within thirty  
24



1 (30) calendar days following receipt of a mobile food vendor's  
2 request.

3 SECTION 7. NEW LAW A new section of law to be codified  
4 in the Oklahoma Statutes as Section 1-1156 of Title 63, unless there  
5 is created a duplication in numbering, reads as follows:

6 A. The local authority may regulate state-licensed mobile food  
7 vendors in accordance with this act. In relation to a state-  
8 licensed mobile food vendor's operations, a local authority may:

9 1. Impose operating hours only if they are the same as the  
10 operating hours imposed on commercial businesses;

11 2. Restrict the operation of noisemaking devices during certain  
12 hours of day;

13 3. Restrict a mobile food vendor from operating in a public  
14 park or require a special permit and payment of fees to operate in a  
15 public park;

16 4. Prohibit a mobile food vendor that is operating on private  
17 property from blocking ingress or egress from that property;

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

21 6. Investigate reports of foodborne illnesses;

22 7. Report a mobile food vendor's suspected violation of this  
23 act to the State Department of Health and recommend the Department  
24 suspend or revoke a mobile food vending license; and

1           8. Issue citations and penalties to mobile food vendors for  
2 violations of local law not inconsistent with the provisions of this  
3 act.

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

6           1. Prohibit or restrict a mobile food vendor from operating in  
7 a lawful manner provided for in this act;

8           2. Require a mobile food vendor to receive any kind of special  
9 permit from a local authority in addition to the mobile food vending  
10 license or permit to operate as a commercial vehicle, unless the  
11 mobile food vendor seeks to operate in a public park;

12           3. Restrict the duration of time a mobile food vendor may  
13 operate on private property in industrial, commercial or  
14 institutional zoning districts;

15           4. Require a mobile food vendor to operate a specific distance  
16 from commercial food or retail establishments;

17           5. Require a mobile food vendor to be fingerprinted;

18           6. Require a mobile food vendor to install a Global Positioning  
19 System (GPS) tracking device on its vehicle;

20           7. Require a mobile food vendor to stay in constant motion  
21 while serving customers;

22           8. Require a mobile food vendor to maintain an insurance policy  
23 that names the local authority as an additional insured unless the  
24 vendor is attending an event sponsored by the local authority;

1 9. Require a mobile food vendor to submit to inspections beyond  
2 health inspections conducted under a collaborative agreement with  
3 the Department, unless the local authority is investigating a  
4 reported foodborne illness;

5 10. Require a mobile food vendor to enter into any agreement  
6 with a commercial establishment or restaurant;

7 11. Regulate the equipment requirements for a food vending  
8 vehicle; and

9 12. Require a mobile food vendor to associate with a commissary  
10 if the vendor has all the equipment necessary to comply with all  
11 regulations pertaining to food establishments.

12 SECTION 8. NEW LAW A new section of law to be codified  
13 in the Oklahoma Statutes as Section 1-1157 of Title 63, unless there  
14 is created a duplication in numbering, reads as follows:

15 A. The State Department of Health or a local authority may  
16 investigate a mobile food vendor upon reasonable suspicion the  
17 vendor has violated the law or upon receipt of a health or safety  
18 complaint. Any complaint shall be recorded in the state's mobile  
19 vending database. The local authority shall report suspected  
20 violations of law to the Department and may recommend the Department  
21 suspend or revoke a mobile food vending license.

22 B. The mobile food vendor shall cooperate with the Department  
23 or local authority during an investigation. Failure to cooperate  
24

1 with the Department or local authority may result in suspension or  
2 revocation of a license.

3 C. Nothing in this act shall be construed to impede the  
4 Department or local authority in any investigation of a reported  
5 foodborne illness.

6 SECTION 9. NEW LAW A new section of law to be codified  
7 in the Oklahoma Statutes as Section 1-1158 of Title 63, unless there  
8 is created a duplication in numbering, reads as follows:

9 A. A license issued under this act may be denied, suspended or  
10 revoked by the State Department of Health for the following reasons:

11 1. Fraud, misrepresentation or a false statement contained in  
12 the application for a license;

13 2. Fraud, misrepresentation or a false statement made in  
14 connection with the selling of food or beverages;

15 3. Any facts or conditions which would justify the denial of  
16 the original application;

17 4. Three (3) or more violations of this act within a period of  
18 twelve (12) months; and

19 5. The receipt of an "F" grade during an inspection or an  
20 investigation in response to a complaint.

21 B. Any person who has been notified regarding the denial of  
22 their mobile food vending application or the possible suspension or  
23 revocation of their mobile food vending license may request an  
24 administrative hearing in accordance with the Administrative  
25

1 Procedures Act within fourteen (14) calendar days of receipt of the  
2 notice. Other than as described in subsection C of this section, no  
3 license shall be suspended or revoked prior to a hearing if a mobile  
4 food vendor requests a hearing within the fourteen-day period  
5 required. Upon receipt of a request for a hearing, the Department  
6 shall hold a hearing within fourteen (14) calendar days and issue  
7 findings of fact, conclusions of law and a decision at the  
8 conclusion of the hearing.

9 C. When circumstances demonstrate that continued operation by a  
10 mobile vendor poses an imminent threat to the public's health and  
11 safety, the Department may immediately suspend or revoke a mobile  
12 food vending license. The mobile food vendor may request a hearing  
13 regarding the suspension or revocation within fourteen (14) calendar  
14 days of receiving notice of the suspension or revocation. Any  
15 hearing regarding the summary suspension or revocation of a license  
16 shall be given priority over all potential license denial,  
17 suspension or revocation proceedings and shall be held within seven  
18 (7) calendar days from the date the Department receives a mobile  
19 food vendor's request for a hearing, and the Department shall issue  
20 findings of fact, conclusions of law and a decision at the  
21 conclusion of the hearing.

22 D. It shall be a misdemeanor for a licensee whose license has  
23 been suspended or revoked to continue business operations. If the  
24 Department suspends or revokes a mobile vending license, the mobile  
25

1 vendor shall immediately surrender the license to the Department.  
2 The Department may issue civil penalties to a person who operates as  
3 a mobile food vendor without a license, with a suspended license or  
4 after a license is revoked.

5 SECTION 10. NEW LAW A new section of law to be codified  
6 in the Oklahoma Statutes as Section 1-1159 of Title 63, unless there  
7 is created a duplication in numbering, reads as follows:

8 A person aggrieved by an agency decision following a hearing has  
9 the right to appeal the decision in accordance with the provisions  
10 of the Administrative Procedures Act.

11 SECTION 11. NEW LAW A new section of law to be codified  
12 in the Oklahoma Statutes as Section 1-1160 of Title 63, unless there  
13 is created a duplication in numbering, reads as follows:

14 This act preempts local authorities from prohibiting mobile food  
15 vending and regulating mobile food vending in a way that conflicts  
16 with the provisions of this act.

17 SECTION 12. NEW LAW A new section of law to be codified  
18 in the Oklahoma Statutes as Section 1-1161 of Title 63, unless there  
19 is created a duplication in numbering, reads as follows:

20 This act shall not be construed to require a local authority to  
21 enter into a collaborative agreement with the State Department of  
22 Health to conduct health inspections, to adopt a program regulating  
23 mobile food vendors or to modify its existing program regulating  
24

1 mobile food vendors; provided, the regulations do not conflict with  
2 the provisions of this act.

3 SECTION 13. AMENDATORY 63 O.S. 2011, Section 1-1118, as  
4 last amended by Section 1, Chapter 505, O.S.L. 2019 (63 O.S. Supp.  
5 2020, Section 1-1118), is amended to read as follows:

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

12 1. A produce stand that offers only whole, uncut and  
13 unprocessed fresh fruits, melons, vegetables and legumes and/or  
14 whole uncracked and unprocessed nuts;

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

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

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

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

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

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

8           8. A nonprofit civic, charitable or religious organization  
9 using unpaid individuals to prepare or serve food on its behalf, for  
10 occasional fund-raising events sponsored and conducted by the  
11 organization. For the purposes of this paragraph, an "occasional  
12 fund-raising event" shall be defined as an event that occurs four  
13 times a year or less;

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

17           10. Nursing facilities and specialized facilities, as defined  
18 in and licensed pursuant to the provisions of the Nursing Home Care  
19 Act, residential care homes as defined by the Residential Care Act,  
20 adult day care centers as defined by the Adult Day Care Act, and  
21 assisted living centers and continuum of care facilities licensed  
22 pursuant to the Continuum of Care and Assisted Living Act; ~~and~~

23           11. Other establishments exempted from food establishment  
24 licensure pursuant to state law; and



1        12. Mobile food vendors licensed pursuant to Section 3 of this  
2 act.

3        B. Each license shall expire one (1) year following the date of  
4 its issuance. The State Department of Health shall charge and  
5 collect for each such license an annual fee to be fixed by the State  
6 Board of Health.

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

15        2. The Board may by rule also provide that licenses for  
16 establishments serving events of limited duration or operating on a  
17 seasonal basis shall extend only for the term of the event or  
18 season, and may by rule adjust the fees for such licenses  
19 accordingly.

20        3. The Board shall provide by rule a three-day license for  
21 vendors who only sell at farmers markets as defined in 310:257-1-2  
22 of the Oklahoma Administrative Code or at county fairs. Licenses  
23 for vendors who only sell at farmers markets or county fairs shall  
24 not exceed Fifty Dollars (\$50.00). Vendors who do not sell food and  
25

1 vendors who meet the exceptions provided in subsection A of this  
2 section shall not be required to obtain a three-day license or a  
3 food establishment license.

4 C. The State Board of Health shall promulgate reasonable  
5 standards and rules for sanitation of establishments required to be  
6 licensed, which shall include the following: buildings, vehicles,  
7 and appurtenances thereto, including plumbing, ventilation and  
8 lighting; construction, cleanliness and bactericidal treatment of  
9 equipment and utensils; cleanliness, wholesomeness, storage and  
10 refrigeration of food and drink sold or served; cleanliness and  
11 hygiene of personnel; toilet facilities; disposal of waste; water  
12 supply; and other items deemed necessary to safeguard the health,  
13 comfort, and safety of customers.

14 SECTION 14. This act shall become effective November 1, 2021.

15  
16 58-1-1250 NP 1/20/2021 3:59:21 PM  
17  
18  
19  
20  
21  
22  
23  
24  
25