

HOUSE AGRICULTURE AND WATER RESOURCES COMMITTEE SUBSTITUTE FOR
HOUSE BILL 177

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

AN ACT

RELATING TO FOOD; ENACTING THE HOMEMADE FOOD ACT; PROVIDING
DEFINITIONS; ESTABLISHING LABELING AND INFORMATION REQUIREMENTS
FOR HOMEMADE FOOD ITEMS; EXEMPTING NOT-TIME-AND-TEMPERATURE-
CONTROL HOMEMADE FOOD ITEMS FROM REGULATION PURSUANT TO THE
FOOD SERVICE SANITATION ACT, THE NEW MEXICO FOOD ACT OR CHAPTER
57, ARTICLE 17 NMSA 1978; ESTABLISHING STATE PREEMPTION OF
REGULATION OF HOMEMADE FOOD ITEMS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of Chapter 25 NMSA 1978 is
enacted to read:

"[NEW MATERIAL] SHORT TITLE.--Sections 1 through 5 of this
act may be cited as the "Homemade Food Act"."

SECTION 2. A new section of Chapter 25 NMSA 1978 is
enacted to read:

1 "[NEW MATERIAL] DEFINITIONS.--As used in the Homemade Food
2 Act:

3 A. "department" means the department of
4 environment; provided that when a class A county and a home
5 rule municipality that have established a combined local health
6 department pursuant to the Joint Powers Agreements Act for the
7 purpose of local health regulation, "department" means the
8 combined local health department;

9 B. "homemade food item" means a food item or
10 non-alcoholic beverage that is produced at the private farm,
11 ranch or residence of a processor, including homemade food
12 items that are packaged at the processor's private farm, ranch
13 or residence;

14 C. "label" means a display of written, printed or
15 graphic matter upon the immediate container of any article;

16 D. "not time and temperature control" refers to
17 food items that do not require time and temperature control to
18 ensure safety;

19 E. "person" includes an individual, partnership,
20 corporation and association;

21 F. "processor" means a person who produces a
22 homemade food item;

23 G. "seller" means a person who sells a not-time-
24 and-temperature-control homemade food item to a consumer;

25 H. "time and temperature control" means a control

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1 requirement for certain foods to ensure safety and limit
2 pathogenic microorganism growth; and

3 I. "to produce" means to prepare a homemade food
4 item by baking, cooking, cutting, dehydrating, drying,
5 fermenting, growing, mixing, preserving, raising or other
6 process designated by the environmental improvement board by
7 rule."

8 SECTION 3. A new section of Chapter 25 NMSA 1978 is
9 enacted to read:

10 "[NEW MATERIAL] ~~HOMEMADE FOOD ITEMS--LICENSING,~~
11 ~~PERMITTING, INSPECTION AND LABELING EXEMPTIONS--REQUIREMENTS.--~~

12 A. The production and sale of homemade food items
13 shall be regulated pursuant to the provisions of the Homemade
14 Food Act and are exempt from other requirements pursuant to the
15 Food Service Sanitation Act and the New Mexico Food Act;
16 provided that:

17 (1) the food items are not-time-and-
18 temperature-control food items;

19 (2) the seller sells directly to consumers
20 within the state, including at farmers' markets, at festivals,
21 on the internet, at roadside stands, at the seller's home for
22 pick-up or delivery or through mail delivery;

23 (3) the seller completes a food handler
24 certification course approved by the department;

25 (4) the seller maintains a sanitary kitchen,

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1 practices good hygiene, protects the kitchen from rodents and
2 pests and keeps pets and children out of the kitchen while
3 producing food;

4 (5) if the seller transports food items
5 pursuant to the Homemade Food Act, the seller ensures that the
6 food is transported in a sanitary manner and is protected from
7 pets, children and other hazards; and

8 (6) the seller labels or otherwise provides to
9 the consumer the information required by Subsection C of this
10 section.

11 B. A seller shall provide to the consumer the
12 information required by Subsection C of this section in the
13 following manner:

14 (1) on a label affixed to a package of a
15 homemade food item when the package is the unit of sale;

16 (2) on a label affixed to a container when the
17 homemade food item is offered for sale from a bulk container;

18 (3) on a placard displayed at the point of
19 sale when the homemade food item is neither packaged nor
20 offered for sale from a bulk container;

21 (4) on a webpage on which the homemade food
22 item is offered for sale; and

23 (5) when a homemade food item is sold by
24 telephone or custom order, a label is not required for the
25 homemade food item; however, the seller shall disclose to the

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underscoring material = new
~~[bracketed material] = delete~~

1 consumer that the homemade food item is produced at a private
2 residence that is exempt from state licensing and inspection
3 and may contain allergens.

4 C. A seller shall provide the following information
5 about the seller's homemade food items to the consumer:

6 (1) the name, home address, telephone number
7 and email address of the processor of the food item;

8 (2) the common or usual name of the food item;

9 (3) the ingredients of the food item in
10 descending order of predominance; and

11 (4) the following statement: "This product is
12 home produced and is exempt from state licensing and
13 inspection. This product may contain allergens."

14 D. A seller shall have the information required by
15 Subsection C of this section readily available and shall
16 provide it to a consumer upon request.

17 E. The department may operate a voluntary permit
18 system for the sale of homemade food items. A seller may apply
19 for such a permit from the department.

20 F. A class A county and a home rule municipality
21 that have established a combined local health department
22 pursuant to the Joint Powers Agreements Act for the purpose of
23 local health regulation may operate a mandatory or a voluntary
24 permit system for the sale of homemade food items within the
25 jurisdictions of the respective county and municipality;

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1 provided that such permit system allows the sale of all food
2 items at all locations authorized by the Homemade Food Act.

3 G. The department shall enforce the Homemade Food
4 Act and may investigate any suspected food-borne illness or
5 stop the sale of any suspected contaminated foods; provided
6 that the department shall first issue a written warning
7 regarding any violation before imposing a fine. Failure to
8 comply with a written warning shall be a misdemeanor, and upon
9 conviction the violator shall be subject a fine not to exceed
10 one hundred dollars (\$100) per violation."

11 SECTION 4. A new section of Chapter 25 NMSA 1978 is
12 enacted to read:

13 "[NEW MATERIAL] INTERPRETATION OF ACT--INVESTIGATIONS--
14 CONSULTATIONS.--No provision of the Homemade Food Act shall be
15 construed so as to:

16 A. preclude the department from providing
17 assistance, consultation or inspection at the request of the
18 processor of a homemade food item;

19 B. preclude the production or sale of homemade food
20 items otherwise allowed by law;

21 C. change the regulation of other goods and
22 services where homemade food items are also produced or sold;

23 D. exempt sellers from applicable business
24 registration or tax law;

25 E. require private farmers' markets or other

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1 private venues to allow the sale of homemade foods; or

2 F. conflict with federal law."

3 SECTION 5. A new section of Chapter 25 NMSA 1978 is
4 enacted to read:

5 "[NEW MATERIAL] STATE PREEMPTION.--Except as otherwise
6 provided in the Homemade Food Act, a political subdivision of
7 the state, including a home rule municipality, or an
8 institution of the state shall not adopt a law, policy or
9 resolution that regulates or attempts to regulate the
10 production or sale of homemade food items."

11 SECTION 6. A new section of the Food Service Sanitation
12 Act is enacted to read:

13 "[NEW MATERIAL] HOMEMADE FOOD ITEMS--EXEMPTION.--Other
14 than enforcement actions pursuant to Section 25-1-10 NMSA 1978,
15 the provisions of the Food Service Sanitation Act shall not
16 apply to homemade food items produced or sold pursuant to the
17 Homemade Food Act."

18 SECTION 7. A new section of the New Mexico Food Act is
19 enacted to read:

20 "[NEW MATERIAL] HOMEMADE FOOD ITEMS--EXEMPTION.--Other
21 than actions pursuant to Section 25-2-6 NMSA 1978, the
22 provisions of the New Mexico Food Act shall not apply to
23 homemade food items produced or sold pursuant to the Homemade
24 Food Act."

25 SECTION 8. A new section of Chapter 57, Article 17 NMSA

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1 1978 is enacted to read:

2 "[NEW MATERIAL] HOMEMADE FOOD ITEMS--EXEMPTION.--The
3 provisions of the Chapter 57, Article 17 NMSA 1978 shall not
4 apply to homemade food items produced or sold pursuant to the
5 Homemade Food Act."

6 SECTION 9. EFFECTIVE DATE.--The effective date of the
7 provisions of this act is July 1, 2021.