

HOUSE BILL 177

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

INTRODUCED BY

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AN ACT

RELATING TO FOOD; ENACTING THE HOMEMADE FOOD ACT; PROVIDING
DEFINITIONS; ESTABLISHING LABELING AND INFORMATION REQUIREMENTS
FOR HOMEMADE FOOD ITEMS; EXEMPTING NON-POTENTIALLY HAZARDOUS
HOMEMADE FOOD ITEMS FROM REGULATION PURSUANT TO THE FOOD
SERVICE SANITATION ACT OR THE NEW MEXICO FOOD ACT; 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:

"[NEW MATERIAL] DEFINITIONS.--As used in the Homemade Food
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underscored material = new
[bracketed material] = delete

1 Act:

2 A. "board" means the environmental improvement
3 board;

4 B. "department" means the department of
5 environment;

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

11 D. "label" means a display of written, printed or
12 graphic matter upon the immediate container of any article;

13 E. "non-potentially hazardous" means a food item
14 that does not require time-temperature control for safety to
15 limit pathogenic microorganism growth or toxin formation and
16 includes baked goods without cream, custard, cheese or meat
17 fillings; candies and confections; cereals, grains and granola;
18 coffee that has been roasted; dried or dehydrated produce; dry
19 herbs, pasta, seasonings, soup mixes and tea; fruit pies,
20 empanadas and tamales; fudge; jams, jellies and preserves; nuts
21 and nut mixes; pickled produce; popcorn; uncut fruits and
22 vegetables; vinegars; and other items determined by the board
23 by rule;

24 F. "person" includes an individual, partnership,
25 corporation and association;

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1 G. "processor" means a person who produces a
2 homemade food item;

3 H. "secretary" means the secretary of environment
4 or the secretary's authorized representative;

5 I. "seller" means a person who sells a homemade
6 food or non-potentially hazardous food item to a consumer. A
7 seller may be a processor of an item, an agent of a processor
8 or a third-party vendor such as a retail or grocery store; and

9 J. "to produce" means to prepare a food item by
10 baking, cooking, cutting, dehydrating, drying, fermenting,
11 growing, mixing, preserving, raising or other process
12 designated by the board by rule."

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

15 "[NEW MATERIAL] HOMEMADE FOOD ITEMS--LICENSING,
16 PERMITTING, INSPECTION AND LABELING EXEMPTIONS--REQUIREMENTS.--

17 A. The production and sale of homemade food items
18 shall be regulated pursuant to the provisions of the Homemade
19 Food Act and are exempt from other requirements pursuant to the
20 Food Service Sanitation Act and the New Mexico Food Act;
21 provided that:

22 (1) the food items are non-potentially
23 hazardous; and

24 (2) the seller labels or otherwise provides
25 information to the consumer pursuant to the requirements of

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1 Subsections B and C of this section.

2 B. A seller shall provide to the consumer the
3 information required by Subsection C of this section in the
4 following manner:

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

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

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

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

14 (5) when a homemade food item is sold by
15 telephone or custom order, a label is not required for the
16 homemade food item; however, the seller shall disclose to the
17 consumer that the homemade food item is produced at a private
18 residence that is exempt from state licensing and inspection
19 and may contain allergens.

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

22 (1) the name, home address, telephone number
23 and email address of the processor of the homemade food item
24 or, if the processor chooses, an identification number provided
25 to the processor by the department pursuant to Subsection E of

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1 this section;

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

4 (3) the ingredients of the homemade food item
5 in descending order of predominance; and

6 (4) the following statement: "This product
7 was produced at a private residence that is exempt from state
8 licensing and inspection. This product may contain
9 allergens."

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

13 E. Upon request, the department shall provide a
14 unique identification number to a homemade food processor;
15 provided that the processor submits to the department the
16 seller's contact information including the seller's name,
17 address, telephone number and email address."

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

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

23 A. impede the department in an investigation of a
24 reported food-borne illness;

25 B. preclude the department from providing

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1 assistance, consultation or inspection at the request of the
2 processor of a homemade food item;

3 C. preclude the production or sale of food items
4 otherwise allowed by law;

5 D. change the regulation of other goods and
6 services where homemade food items are also produced or sold;
7 or

8 E. exempt sellers from applicable business
9 registration or tax law."

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

12 "[NEW MATERIAL] STATE PREEMPTION.--A political subdivision
13 of the state, including a home rule municipality, or an
14 institution of the state shall not adopt a law, policy or
15 resolution that regulates or attempts to regulate the
16 production or sale of homemade food items."

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

19 "[NEW MATERIAL] HOMEMADE FOOD ITEMS--EXEMPTION.--Other
20 than enforcement actions pursuant to Section 25-1-10 NMSA 1978,
21 the provisions of the Food Service Sanitation Act shall not
22 apply to food items produced or sold pursuant to the Homemade
23 Food Act."

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

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