

1 AN ACT
2 RELATING TO FOOD; ENACTING THE HOMEMADE FOOD ACT; PROVIDING
3 DEFINITIONS; ESTABLISHING LABELING AND INFORMATION
4 REQUIREMENTS FOR HOMEMADE FOOD ITEMS; EXEMPTING
5 NOT-TIME-AND-TEMPERATURE-CONTROL HOMEMADE FOOD ITEMS FROM
6 REGULATION PURSUANT TO THE FOOD SERVICE SANITATION ACT, THE
7 NEW MEXICO FOOD ACT OR CHAPTER 57, ARTICLE 17 NMSA 1978;
8 ESTABLISHING STATE PREEMPTION OF REGULATION OF HOMEMADE FOOD
9 ITEMS; PROVIDING A PENALTY.

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

14 "SHORT TITLE.--Sections 1 through 5 of this act may be
15 cited as the "Homemade Food Act"."

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

18 "DEFINITIONS.--As used in the Homemade Food Act:

19 A. "department" means the department of
20 environment; provided that when a class A county and a home
21 rule municipality that have established a combined local
22 health department pursuant to the Joint Powers Agreements Act
23 for the purpose of local health regulation, "department"
24 means the combined local health department;

25 B. "homemade food item" means a food item or

1 non-alcoholic beverage that is produced at the private farm,
2 ranch or residence of a processor, including homemade food
3 items that are packaged at the processor's private farm,
4 ranch or residence;

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

7 D. "not time and temperature control" refers to
8 food items that do not require time and temperature control
9 to ensure safety;

10 E. "person" includes an individual, partnership,
11 corporation and association;

12 F. "processor" means a person who produces a
13 homemade food item;

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

16 H. "time and temperature control" means a control
17 requirement for certain foods to ensure safety and limit
18 pathogenic microorganism growth; and

19 I. "to produce" means to prepare a homemade food
20 item by baking, cooking, cutting, dehydrating, drying,
21 fermenting, growing, mixing, preserving, raising or other
22 process designated by the environmental improvement board by
23 rule."

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

1 "HOMEMADE FOOD ITEMS--LICENSING, PERMITTING, INSPECTION
2 AND LABELING EXEMPTIONS--REQUIREMENTS--INVESTIGATIONS.--

3 A. The production and sale of homemade food items
4 shall be regulated pursuant to the provisions of the Homemade
5 Food Act and are exempt from other requirements pursuant to
6 the Food Service Sanitation Act and the New Mexico Food Act;
7 provided that:

8 (1) the food items are not-time-and-
9 temperature-control food items;

10 (2) the seller sells directly to consumers
11 within the state, including at farmers' markets, at
12 festivals, on the internet, at roadside stands, at the
13 seller's home for pick-up or delivery or through mail
14 delivery;

15 (3) the seller completes a food handler
16 certification course approved by the department;

17 (4) the seller maintains a sanitary kitchen,
18 practices good hygiene, protects the kitchen from rodents and
19 pests and keeps pets and children out of the kitchen while
20 producing food;

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

25 (6) the seller labels or otherwise provides

1 to the consumer the information required by Subsection C of
2 this section.

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

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

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

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

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

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

22 C. A seller shall provide the following
23 information about the seller's homemade food items to the
24 consumer:

25 (1) the name, home address, telephone number

1 and email address of the processor of the food item;

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

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

6 (4) the following statement: "This product
7 is home produced and is exempt from state licensing and
8 inspection. This product may contain allergens."

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

12 E. The department may operate a voluntary permit
13 system for the sale of homemade food items. A seller may
14 apply for such a permit from the department.

15 F. A class A county and a home rule municipality
16 that have established a combined local health department
17 pursuant to the Joint Powers Agreements Act for the purpose
18 of local health regulation may operate a mandatory or a
19 voluntary permit system for the sale of homemade food items
20 within the jurisdictions of the respective county and
21 municipality; provided that such permit system allows the
22 sale of all food items at all locations authorized by the
23 Homemade Food Act.

24 G. The department shall enforce the Homemade Food
25 Act and may investigate any suspected food-borne illness or

1 stop the sale of any suspected contaminated foods; provided
2 that the department shall first issue a written warning
3 regarding any violation before imposing a fine. Failure to
4 comply with a written warning shall be a misdemeanor, and
5 upon conviction the violator shall be subject to a fine not
6 to exceed one hundred dollars (\$100) per violation."

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

9 "INTERPRETATION OF ACT--CONSULTATIONS.--No provision of
10 the Homemade Food Act shall be construed so as to:

11 A. preclude the department from providing
12 assistance, consultation or inspection at the request of the
13 processor of a homemade food item;

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

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

18 D. exempt sellers from applicable business
19 registration or tax law;

20 E. require private farmers' markets or other
21 private venues to allow the sale of homemade foods; or

22 F. conflict with federal law."

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

25 "STATE PREEMPTION.--Except as otherwise provided in the

1 Homemade Food Act, a political subdivision of the state,
2 including a home rule municipality, or an institution of the
3 state shall not adopt a law, policy or resolution that
4 regulates or attempts to regulate the production or sale of
5 homemade food items."

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

8 "HOMEMADE FOOD ITEMS--EXEMPTION.--Other than enforcement
9 actions pursuant to Section 25-1-10 NMSA 1978, the provisions
10 of the Food Service Sanitation Act shall not apply to
11 homemade food items produced or sold pursuant to the Homemade
12 Food Act."

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

15 "HOMEMADE FOOD ITEMS--EXEMPTION.--Other than actions
16 pursuant to Section 25-2-6 NMSA 1978, the provisions of the
17 New Mexico Food Act shall not apply to homemade food items
18 produced or sold pursuant to the Homemade Food Act."

19 SECTION 8. A new section of Chapter 57, Article 17 NMSA
20 1978 is enacted to read:

21 "HOMEMADE FOOD ITEMS--EXEMPTION.--The provisions of
22 Chapter 57, Article 17 NMSA 1978 shall not apply to homemade
23 food items produced or sold pursuant to the Homemade Food
24 Act."

25 SECTION 9. EFFECTIVE DATE.--The effective date of the

