

HOUSE AGRICULTURE AND WATER RESOURCES COMMITTEE SUBSTITUTE FOR
HOUSE BILL 177

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

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

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 HHC→; PROVIDING A PENALTY←HHC .

.220171.4AIC March 11, 2021 (9:55am)

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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 Act:

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

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

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

D. "not time and temperature control" refers to food items that do not require time and temperature control to

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ensure safety;

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

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

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

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

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

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

"[NEW MATERIAL] HOMEMADE FOOD ITEMS--LICENSING, PERMITTING, INSPECTION AND LABELING EXEMPTIONS--REQUIREMENTS HHHC→--INVESTIGATIONS←HHHC .--

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

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

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

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

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

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

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

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

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

(2) on a label affixed to a container when the

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homemade food item is offered for sale from a bulk container;

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

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

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

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

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

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

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

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

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

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

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

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

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

"[NEW MATERIAL] INTERPRETATION OF ACT

HHHC → ~~INVESTIGATIONS~~ ← HHHC --CONSULTATIONS.--No provision of the Homemade Food Act shall be construed so as to:

A. preclude the department from providing

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

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

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

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

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

F. conflict with federal law."

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

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

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

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

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Homemade Food Act."

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

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

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

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

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