

1 STATE OF OKLAHOMA

2 1st Session of the 59th Legislature (2023)

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL NO. 185

6 By: Bergstrom

7 COMMITTEE SUBSTITUTE

8 An Act relating to food; creating the Mobile Food
9 Vendor Act; providing short title; defining terms;
10 requiring mobile food vendors to obtain a license;
11 requiring the State Department of Health to prepare
12 and make available a license application consisting
13 of certain information; requiring certain persons to
14 hold a driver license; requiring applicants to abide
15 by requests for information; requiring the Department
16 to conduct a health inspection; authorizing the
17 Department to establish a fee schedule; requiring the
18 Department to issue a license under certain
19 conditions; stating duration of license validity;
20 prohibiting transfer of license; authorizing
21 promulgation of certain rules; requiring a health
22 inspection under certain condition; providing for
23 renewal of license; requiring the Department to
24 submit notice of expiration; requiring mobile food
vendors to follow all state and local laws and
regulations; allowing and prohibiting operation by a
mobile food vendor in certain locations; requiring
certain operational standards; authorizing the State
Commissioner of Health to promulgate rules that
adhere to certain restrictions; requiring mobile food
vendors to follow laws and regulations regarding
preparation and handling of food; requiring
possession of a state-recognized food handling
certification; requiring the Department to classify
mobile food vendors according to certain
specifications; specifying allowable food items and
beverages for classifications of mobile food vendors;
requiring inspections at a frequency based on
classifications and under certain additional
conditions; directing the Commissioner to establish

1 classification qualifications; providing for
2 reclassification of a mobile food vendor; creating
3 certain penalty; requiring certain health inspections
4 and issuance of inspection reports; requiring
5 licensed mobile food vendors to present for
6 inspections; authorizing the Department to
7 investigate mobile food vendors under certain
8 circumstances; requiring certain mobile food vendor
9 to present the food vending vehicle to the county
10 health department upon request; authorizing penalties
11 for failure to cooperate with an investigation;
12 providing certain construction; amending 63 O.S.
13 2021, Section 1-1118, which relates to food
14 establishment licenses; adding exemption; modifying
15 rulemaking authority of the Commissioner; providing
16 for codification; providing an effective date; and
17 declaring an emergency.

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

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

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

24 SECTION 2. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 1-1152 of Title 63, unless there
is created a duplication in numbering, reads as follows:

As used in this act:

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

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

2 3. "Food vending vehicle" means any mobile unit used to sell
3 food and beverages by a mobile food vendor;

4 4. "Mobile food vendor" means any person who dispenses food or
5 beverages from a food vending vehicle for consumption;

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

10 6. "Sell" means to transfer or exchange for value, to expose,
11 display, or offer for sale or exchange, or to procure, store, keep
12 or have on hand or in one's possession or control for the purpose of
13 selling; and

14 7. "Vendor" means any person or entity who sells food out of a
15 mobile vending unit.

16 SECTION 3. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 1-1153 of Title 63, unless there
18 is created a duplication in numbering, reads as follows:

19 All mobile food vendors must obtain a mobile food vending
20 license from the State Department of Health. A separate mobile food
21 vendor license shall be required for every food vending vehicle used
22 by a mobile food vendor.

1 SECTION 4. 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. The State Department of Health shall make a mobile food
5 vendor license application available to applicants on the
6 Department's website.

7 B. The Department shall require the following information in a
8 mobile food vendor application:

9 1. The name, permanent address, telephone number, and email
10 address of the applicant;

11 2. Information pertaining to the nature of the food or
12 beverages to be offered by the applicant; and

13 3. A list of the vehicle descriptions and license plate numbers
14 for all vehicles directly related to the mobile food vending
15 business.

16 C. Any person who drives a food vending vehicle shall hold a
17 current driver license to drive the food vending vehicle.

18 D. The applicant shall complete the application form and abide
19 by any request for information required by this act made by the
20 Department.

21 E. The Department or designee shall confirm completeness of the
22 application, collect the license fee, and conduct a health
23 inspection prior to issuing a mobile food vendor license.

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1 F. The State Commissioner of Health may establish a reasonable
2 schedule of fees not to exceed:

3 1. Two Hundred Dollars (\$200.00) for an initial mobile food
4 vendor license; and

5 2. One Hundred Seventy-five Dollars (\$175.00) for annual
6 renewal of a mobile food vendor license.

7 G. Upon receipt of a complete, approved application, fees, and
8 a passed initial health inspection, the Department shall issue a
9 mobile vendor license to the applicant. The license shall be valid
10 for one (1) year from the date of issuance.

11 H. Licenses are not transferable, and a license shall not
12 authorize activities of any person other than the person to whom it
13 is issued.

14 I. The Commissioner may promulgate rules to allow for a mobile
15 unit to keep an existing license when purchasing a different mobile
16 unit for the purposes of the existing license. The licensee shall
17 submit to a health inspection of the new vehicle prior to beginning
18 operations.

19 J. It is the responsibility of the licensee to submit a renewal
20 application annually, at least fourteen (14) days prior to the
21 expiration date of the license. While an application for renewal is
22 pending with the Department, a licensee may continue mobile food
23 vending operations until the expiration date of the license.

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1 SECTION 5. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1-1155 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 but not limited to 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, as long as the vending vehicle is not
12 parked within twenty (20) feet of an intersection. A mobile vendor
13 may operate from legal parking spaces on the public right-of-way
14 including metered spaces upon payment of appropriate fees. When
15 operating on public property, a mobile vendor is subject to the same
16 parking rules, restrictions, and obligations that a commercial
17 vehicle would be subject to if not used by a mobile food vendor; and

18 2. On private property located in an industrial, commercial, or
19 institutional zoning district if the vendor has permission of the
20 property owner or designee.

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

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

- 1 1. Maintain a food vending vehicle in good operating order and
2 visual appearance including the removal of any graffiti that is not
3 part of the overall design or art featured on the vehicle;
- 4 2. Park so that its service window faces the sidewalk or away
5 from the street if the vehicle is parked along a street;
- 6 3. Serve customers through a service window;
- 7 4. Provide a waste receptacle for customers which is clearly
8 visible and request its use by customers;
- 9 5. Remove and dispose of all refuse within twenty-five (25)
10 feet of the vendor's operating area at the conclusion of operation;
- 11 6. Submit to any required health inspections;
- 12 7. Display the mobile food vendor license in a conspicuous
13 location for public view; and
- 14 8. Display the food vending vehicle's most recent inspection
15 report inside the food vending vehicle and provide such inspection
16 report to the Department or designee upon request.

17 E. The State Commissioner of Health may promulgate rules to
18 enforce the provisions of this act. Rules adopted shall not:

- 19 1. Require a mobile food vendor that does not prepare food to
20 have a handwashing sink in the food vending vehicle;
- 21 2. Require a mobile food vendor to associate with a commissary
22 if the vendor carries all the equipment necessary to comply with
23 health and safety standards and all applicable regulations;
- 24 3. Limit the number of mobile food vendor licenses issued;

1 4. Require a mobile food vendor to obtain any additional
2 permits from a local authority, unless the mobile food vendor seeks
3 to operate in a local, public park;

4 5. Require a mobile food vendor to install a Global Positioning
5 System (GPS) tracking device on the food vending vehicle;

6 6. Require a mobile food vendor to stay in constant motion
7 except for when serving customers;

8 7. Require a mobile food vendor to maintain insurance that
9 names a local authority as an additional insured unless the vendor
10 is attending an event sponsored by the local authority; or

11 8. Require a mobile food vendor to submit to inspections beyond
12 routine or complaint health inspections conducted by the Department
13 or designee unless the Department is investigating a reported
14 foodborne illness.

15 SECTION 6. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 1-1156 of Title 63, unless there
17 is created a duplication in numbering, reads as follows:

18 A. Mobile food vendors shall adhere to all laws and regulations
19 of the Oklahoma Administrative Code pertaining to the preparation
20 and handling of food.

21 B. Any person preparing food or beverages in a food vending
22 vehicle shall hold a current food handler certification recognized
23 by this state. At all times at least one person working in a food
24 vending vehicle must hold a current food handler certification

1 recognized by this state. Evidence of such certification shall be
2 presented at initial licensure and renewal.

3 C. Upon receipt of a complete license application, the State
4 Department of Health shall classify a mobile food vendor into one of
5 the three classifications described in this subsection.

6 1. A Mobile Food Type I Vendor may only serve unopened,
7 prepackaged food items and bottled or canned beverages. Type I
8 vendors shall be inspected prior to initial licensure, upon receipt
9 of a complaint, and as necessary for follow-up inspections due to
10 cited violations.

11 2. A Mobile Food Type II Vendor may serve any food item or
12 beverage a Type I Vendor may serve, hot or cold items, or unpackaged
13 food, as long as the vendor is not cooking with raw meat. Type II
14 Vendors may assemble food in the mobile unit. Type II Vendors shall
15 be inspected prior to initial licensure, once per year for a routine
16 inspection, upon receipt of a complaint, and as necessary for
17 follow-up inspections due to cited violations.

18 3. A Mobile Food Type III Vendor may serve any food item or
19 beverage in accordance with applicable laws and regulations. Type
20 III Vendors shall be inspected prior to initial licensure, twice per
21 year for routine inspections, upon receipt of a complaint, and as
22 necessary for follow-up inspections due to cited violations.

23 D. The State Commissioner of Health shall specify
24 classification qualifications in rule. If a mobile food vendor

1 elects to expand the scope of the vendor's service in a manner which
2 would affect the classification type of the food vending vehicle,
3 the mobile vendor shall notify the Department. The Department shall
4 update the classification status of the food vending vehicle if
5 applicable and notify the mobile food vendor of the
6 reclassification. Failure to report a change in service which would
7 affect the classification type of a food vending vehicle may result
8 in the suspension or revocation of the mobile food vendor license.

9 E. Health inspections shall be conducted by the Department or
10 designee. Upon completion of an inspection, the Department or
11 designee shall issue a copy of the inspection report, which the
12 mobile food vendor shall post inside the food vending vehicle.

13 F. Licensed mobile food vendors shall present to the county
14 health department assigned to them for inspections. The State
15 Department of Health shall assign inspections to the county health
16 department closest to the licensee's home unless otherwise agreed
17 upon by the Department and licensee. Routine inspection frequency
18 shall be based on the mobile food vendor's classification under
19 subsection C of this section.

20 SECTION 7. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 1-1157 of Title 63, unless there
22 is created a duplication in numbering, reads as follows:

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1 A. The State Department of Health may investigate a food
2 vending vehicle upon reasonable suspicion the mobile food vendor has
3 violated the law or upon receipt of a health or safety complaint.

4 B. If requested by the Department, a mobile vendor under
5 investigation or receiving a follow-up inspection by the Department
6 for noncompliance during previous inspections shall present the food
7 vending vehicle within five (5) calendar days to the county health
8 department location specified by the Department.

9 C. Failure to cooperate with an investigation by the Department
10 may result in suspension or revocation of a license.

11 D. Nothing in this act shall be construed to impede the
12 Department or a local authority in any investigation of a reported
13 foodborne illness.

14 SECTION 8. AMENDATORY 63 O.S. 2021, Section 1-1118, is
15 amended to read as follows:

16 Section 1-1118. A. It shall be unlawful for any person to
17 operate or maintain any establishment, stationary or otherwise,
18 where food or drink is offered for sale, or sold, to the public,
19 unless the person is the holder of a food establishment license
20 issued for such purpose by the State Commissioner of Health or
21 designee. A food establishment license shall not be required for:

22 1. A produce stand that offers only whole, uncut and
23 unprocessed fresh fruits, melons, vegetables and legumes and/or
24 whole uncracked and unprocessed nuts;

- 1 2. A manufacturer, wholesaler or broker of food licensed
2 pursuant to Section 1-1119 of this title;
- 3 3. A kitchen in a private home if only food that does not
4 require time and temperature control for safety is prepared for sale
5 or service at a function such as a nonprofit civic, charitable or
6 religious organization's bake sale;
- 7 4. An area where food that is prepared as specified in
8 paragraph 3 of this subsection is sold or offered for human
9 consumption;
- 10 5. A private home that receives catered or home-delivered food;
- 11 6. A hotel licensed pursuant to Section 1-1201 of this title
12 which provides limited food service in compliance with rules
13 promulgated by the State Commissioner of Health;
- 14 7. A kitchen in a private home or in a bed and breakfast that
15 prepares and offers food to guests, if the home is owner-occupied,
16 the number of available guest bedrooms does not exceed three, and
17 breakfast is the only meal offered;
- 18 8. A nonprofit civic, charitable or religious organization
19 using unpaid individuals to prepare or serve food on its behalf, for
20 occasional fund-raising events sponsored and conducted by the
21 organization. For the purposes of this paragraph, an "occasional
22 fund-raising event" shall be defined as an event that occurs four
23 times a year or less;

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

4 10. Nursing facilities and specialized facilities, as defined
5 in and licensed pursuant to the provisions of the Nursing Home Care
6 Act, residential care homes as defined by the Residential Care Act,
7 adult day care centers as defined by the Adult Day Care Act, and
8 assisted living centers and continuum of care facilities licensed
9 pursuant to the Continuum of Care and Assisted Living Act; ~~and~~

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

12 12. Mobile food vendors licensed under this act.

13 B. Each license shall expire one (1) year following the date of
14 its issuance. The State Department of Health shall charge and
15 collect for each such license an annual fee to be fixed by the State
16 Commissioner of Health.

17 1. The Commissioner may provide by rule for a fee-exempt
18 license for a food establishment operated by a nonprofit, civic,
19 charitable or religious organization that uses unpaid persons to
20 sell or offer food on a more frequent basis than the occasional
21 fund-raising event. A fee-exempt license shall not expire but shall
22 remain in full force and effect until affirmatively revoked,
23 suspended, annulled or withdrawn by the Department in accordance
24 with applicable law.

1 2. The Commissioner may by rule also provide that licenses for
2 establishments serving events of limited duration or operating on a
3 seasonal basis shall extend only for the term of the event or
4 season, and may by rule adjust the fees for such licenses
5 accordingly.

6 3. The Commissioner shall promulgate rules to define farmers
7 markets and provide by rule for a three-day license for vendors who
8 only sell at farmers markets ~~as defined in 310:257-1-2 of the~~
9 ~~Oklahoma Administrative Code~~ or at county fairs. Licenses for
10 vendors who only sell at farmers markets or county fairs shall not
11 exceed Fifty Dollars (\$50.00). Vendors who do not sell food and
12 vendors who meet the exceptions provided in subsection A of this
13 section shall not be required to obtain a three-day license or a
14 food establishment license.

15 4. The Commissioner shall provide by rule a multiseasonal
16 license for snow cone stands that sell hot beverages in addition to
17 snow cones. A snow cone stand that does not sell hot beverages
18 shall be considered a seasonal food establishment.

19 C. The State Commissioner of Health shall promulgate reasonable
20 standards and rules for sanitation of establishments required to be
21 licensed, which shall include the following: buildings, vehicles,
22 and appurtenances thereto, including plumbing, ventilation and
23 lighting; construction, cleanliness and bactericidal treatment of
24 equipment and utensils; cleanliness, wholesomeness, storage and

1 refrigeration of food and drink sold or served; cleanliness and
2 hygiene of personnel; toilet facilities; disposal of waste; water
3 supply; and other items deemed necessary to safeguard the health,
4 comfort, and safety of customers.

5 SECTION 9. This act shall become effective July 1, 2023.

6 SECTION 10. It being immediately necessary for the preservation
7 of the public peace, health or safety, an emergency is hereby
8 declared to exist, by reason whereof this act shall take effect and
9 be in full force from and after its passage and approval.

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