

An Act

ENROLLED HOUSE
BILL NO. 1055

By: Bush, McEntire and Waldron
of the House

and

McCortney and Dossett of
the Senate

An Act relating to sellers of food; defining terms; creating and requiring certain permit; specifying location; setting forth criteria for food and beverages to be sold; requiring certain features; setting forth certain provisions related to sanitation and security; requiring certain routine service; requiring certain signage; assigning certain responsibilities to permit holder and providing for certain agreement; directing State Department of Health to establish certain fees; requiring sales tax permit and collection of sales tax; providing for promulgation of rules; providing for codification; and declaring an emergency.

SUBJECT: Unattended food establishments

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1118.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. As used in this section:

1. "Unattended food establishment" means an operation that provides packaged foods or whole fruit using an automated payment system and has controlled entry not accessible by the general public. An unattended food establishment shall not be considered a food establishment as used in Section 1-1118 of Title 63 of the Oklahoma Statutes; and

2. "Controlled entry" means selective restriction or limitation of access to a place or location.

B. The State Department of Health shall create a permit for unattended food establishments and establish criteria and a procedure for approval or denial of such permits. No unattended food establishment shall operate until the establishment has obtained a permit.

C. The unattended food establishment shall be located in the interior of a building that is not accessible by the general public. Access to the establishment shall be limited to a defined population, including but not limited to employees or occupants of the building where the establishment is located.

D. 1. Only commercially packaged foods properly labeled for individual retail sale, which meet the definition of "packaged and labeled" under Section 3-201.11(C) of the Food and Drug Administration (FDA) Food Code, shall be offered.

2. No unpackaged food shall be permitted except as provided by Section 3-302.11(B) (1) of the FDA Food Code.

3. Food shall be such that preparation by consumers is limited to heating or reheating food in a microwave oven.

4. No bulk food may be offered for sale.

5. Beverages may be dispensed by individual serving only.

E. An unattended food establishment shall be equipped with refrigeration or freezer units that have the following features:

1. Self-closing doors that allow food to be viewed without opening the door to the refrigerated cooler or freezer; and

2. Automatic self-locking mechanism that prevents the consumer from accessing the food upon the occurrence of any condition that results in the failure of the refrigeration unit to maintain the internal product temperature specified under Section 3-501.16(A) of the FDA Food Code; or

3. Freezer unit to maintain the product frozen, if the establishment contains frozen food.

F. 1. Multi-use, food-contact surfaces shall be cleaned on the frequency consistent with the service under Section 4-202.11 of the FDA Food Code, or shall be easily removable and replaced with cleaned surfaces.

2. No multi-use food-contact surfaces shall be used for foods that require time and temperature control for safety (TCS).

G. 1. a. An unattended food establishment shall provide continuous video surveillance of areas where consumers view, select, handle and purchase products that provides sufficient resolution to identify situations that may compromise food safety or food defense.

b. Video surveillance recordings shall be maintained and made available for inspection upon request by a representative of the State Department of Health or another applicable regulatory agency within twenty-four (24) hours of such request.

c. Video surveillance recordings shall be held by the establishment for a minimum of fourteen (14) calendar days after the date of the surveillance.

2. The permit holder shall take reasonable steps necessary to discourage individuals from returning food or beverages that have not been selected for purchase.

H. 1. The permit holder shall service the unattended food establishment on a scheduled basis and at a frequency acceptable to the State Department of Health. Service may include, but is not limited to, the following:

a. checking food supplies and equipment for signs of product damage and tampering,

b. verifying refrigeration equipment is operating properly, including the temperature display and self-locking mechanism,

c. rotating foods to better ensure first-in/first-out of food items,

d. cleaning food service equipment and food display areas,

e. stocking food and disposable single-use and single-service supplies, and

f. checking inventory for recalled foods.

2. The permit holder shall ensure that:

a. food is from an approved source,

b. packaged food is provided in tamper-evident packaging,

c. food is protected from potential sources of cross-contamination, and

d. food is maintained at safe temperatures during transport and display.

I. The unattended food establishment shall have a sign readily visible at the automated payment station stating:

1. The name and mailing address of the business entity responsible for the establishment and to whom complaints and comments should be addressed; and

2. The telephone, email or web information for the responsible business entity, when applicable.

J. The permit holder bears all responsibilities for the operation of the unattended food establishment. If the permit holder is not the owner or operator of the building where the food establishment is located, a mutual agreement may be approved by the State Department of Health that outlines the responsibilities for cleaning and maintenance of all surfaces and equipment, provision of supportive facilities or services such as janitorial and restroom facilities, pest control and removal of solid waste. This agreement shall also outline what actions must be taken by both parties to maintain the establishment in compliance with all requirements.

K. The State Department of Health shall establish an annual fee structure for unattended food establishments, not to exceed One Hundred Fifty Dollars (\$150.00) per location.

L. An unattended food establishment shall obtain an Oklahoma sales tax permit prior to conducting any sales, and shall collect and remit state sales tax as provided for in the Sales Tax Code.

M. The State Commissioner of Health shall promulgate such rules as are necessary to implement the provisions of this section.

SECTION 2. It being immediately necessary for the preservation of the public peace, health or safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 13th day of March, 2019.

Presiding Officer of the House
of Representatives

Passed the Senate the 17th day of April, 2019.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____