

STATE OF OKLAHOMA

1st Session of the 59th Legislature (2023)

SENATE BILL 185

By: Bergstrom

AS INTRODUCED

An Act relating to public health and safety; creating the Mobile Food Vendor Act; defining terms; requiring persons who operate as mobile food vendors to obtain a license; prohibiting political subdivisions from restricting certain vendors; requiring the State Department of Health to prepare and make available a license application; authorizing the Department to require certain information; authorizing the Department to require certain information by individuals under oath; requiring applicants to abide by requests for information; providing conditions for denial of license; requiring the Department or a political subdivision to conduct an inspection; stating purpose of inspection; authorizing the Department to establish a fee; requiring the Department to issue a license under certain conditions; prohibiting transfer of license; providing exception to invalidation of license; providing for renewal of license; requiring the Department to submit notice of expiration; making it a crime to knowingly provide false information; requiring the Department to create and make available a guide; requiring mobile food vendors to follow all laws not in conflict with this act; providing locations to operate mobile food trucks; requiring certain operational standards; requiring display of license and certification; authorizing the State Commissioner of Health to promulgate rules that adhere to certain restrictions; requiring mobile food vendors to follow laws and regulations regarding food handling and safety; requiring possession of a state-recognized food safety certification; requiring the Department to classify mobile food vendors; requiring inspections at a frequency based on classifications; requiring the Department to establish and maintain a

1 database; authorizing the Department to collaborate
2 with political subdivisions for inspections;
3 requiring inspection certificates based on a letter
4 grade format; requiring notification of inspection;
5 authorizing mobile food vendors to request the
6 Department to obtain an administrative warrant;
7 requiring the Department to calculate average
8 inspection costs; stating limit on fees for
9 inspection; authorizing reimbursement of inspection
10 fees under certain circumstances; authorizing
11 political subdivisions to regulate certain aspects of
12 operations; prohibiting political subdivisions from
13 regulating certain aspects of operations; authorizing
14 the Department and political subdivisions to
15 investigate under certain circumstances; providing
16 for license denial, revocation and suspension;
17 providing for penalties; authorizing persons to
18 request an administrative hearing; providing
19 statutory reference; requiring the Department to
20 provide decision at the conclusion of hearing;
21 prohibiting certain persons from operating as mobile
22 food vendors; authorizing persons to appeal hearing
23 decision; providing preemption of political
24 subdivisions; stating the act shall not be construed
25 to compel political subdivisions to take certain
26 actions; amending 63 O.S. 2021, Section 1-1118, which
27 relates to food establishment licenses; adding
28 exemption; providing for codification; and providing
29 an effective date.

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

31 SECTION 1. NEW LAW A new section of law to be codified
32 in the Oklahoma Statutes as Section 1-1150 of Title 63, unless there
33 is created a duplication in numbering, reads as follows:

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

1 SECTION 2. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1-1151 of Title 63, unless there
3 is created a duplication in numbering, reads as follows:

4 As used in the Mobile Food Vendor Act:

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

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

9 3. "Food vending vehicle" means any motorized, two-axle vehicle
10 used to sell food and beverages by a mobile food vendor;

11 4. "Local authority" means any local government including any
12 town, city, charter city, political subdivision or county;

13 5. "Mobile food vendor" means any person who dispenses food or
14 beverages from a food vending vehicle for immediate service or
15 consumption;

16 6. "Person" means any individual, group of individuals, firm,
17 partnership, company, corporation, trustee, association or any
18 public or private entity and includes the entity's employees or
19 agents;

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

1 8. "Public property" means any property owned and operated by
2 this state or a local authority for the benefit of the public and
3 includes all rights-of-way contained wholly within any state or
4 local authority parks; and

5 9. "Sell" means to transfer or exchange for value, to expose,
6 display or offer for sale or exchange, or to procure, store, keep or
7 have on hand or in one's possession or control for the purpose of
8 selling.

9 SECTION 3. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 1-1152 of Title 63, unless there
11 is created a duplication in numbering, reads as follows:

12 A. No person may operate as a mobile food vendor in this state
13 without obtaining a mobile food vending license from the State
14 Department of Health. A separate mobile food license shall be
15 required for every food vending vehicle used by a mobile food
16 vendor.

17 B. No local authority may prohibit a mobile food vendor from
18 lawfully operating in its jurisdiction if the vendor holds a mobile
19 food vending license and is in compliance with all other state laws
20 and local laws not in conflict with this act.

21 SECTION 4. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 1-1153 of Title 63, unless there
23 is created a duplication in numbering, reads as follows:

1 A. The State Department of Health shall prepare a written
2 application for a statewide mobile food vending license. The
3 Department shall make the mobile food vending license application
4 available to applicants in person and on the Department's website.

5 B. The Department shall require an applicant to provide the
6 following information, under oath, before issuing a license:

7 1. The name, permanent address and telephone number of the
8 applicant;

9 2. The name, address and telephone number of any associated
10 entities or organizations that the applicant is representing and
11 copies of documents verifying that relationship;

12 3. A listing of all primary residences for the last five (5)
13 years;

14 4. A statement of whether any employees or agents will operate
15 with the applicant under the license and whether the employees or
16 agents hold a current food safety certification;

17 5. The nature of the food or beverages to be offered by the
18 applicant; and

19 6. A statement of whether the applicant has previously been
20 denied a license to operate as a mobile food vendor or if the
21 applicant has had a previous mobile food vending license suspended
22 or revoked in any state or local jurisdiction and, if so, the
23 reasons or the circumstances surrounding the denial, suspension or
24 revocation.

1 C. In addition to the written application, the Department shall
2 require an applicant who will operate from a food vending vehicle to
3 provide the following:

4 1. A listing of all vehicle license numbers, vehicle
5 descriptions, vehicle identification numbers and vehicle
6 registration papers;

7 2. Proof of automobile insurance for the vehicle or vehicles
8 from which the applicant proposes to conduct business; and

9 3. A copy or proof of any additional licenses or permits
10 required by this state for certain commercial vehicles.

11 D. Any person who drives a food vending vehicle shall hold a
12 current driver license to drive the food vending vehicle.

13 E. The applicant shall complete the application form and abide
14 by any request for information required by this act made by the
15 Department. The applicant may submit one application for all
16 vehicles which require a license. Failure to submit a complete
17 application form and provide all requested information may result in
18 denial of a license.

19 F. Within thirty (30) days of receiving a complete application,
20 the Department, or a local authority acting under a collaborative
21 agreement pursuant to Section 6 of this act, shall conduct a health
22 inspection, if required by the Department, prior to issuing a mobile
23 food vending license. The purpose of the inspection is to ensure
24 the applicant's vehicle is safe for preparing, handling and selling

1 food to customers and the applicant is compliant with applicable
2 regulations.

3 G. The Department may establish a reasonable schedule of fees
4 not to exceed Two Hundred Dollars (\$200.00) for a mobile food
5 vending license or for renewal of a mobile food vending license.
6 The Department may also establish an inspection fee that covers the
7 average cost of conducting health inspections for the vendor and
8 charge that fee in conjunction with a mobile food vending license
9 fee or the renewal fee of a mobile food vending license.

10 H. Upon a receipt of a complete application and an applicant
11 passing initial inspection if required by the Department, the
12 Department shall issue a mobile vending license to the applicant.
13 Licenses shall be valid for one (1) year.

14 I. Licenses are not transferable, nor shall a license authorize
15 the activities of any person other than the person to whom it is
16 issued, except that the sale of the specific vehicle identified in a
17 license application, when replaced by another vending vehicle on a
18 one-for-one basis, will not invalidate the original license nor
19 cause a new license to be required. When replacing a vending
20 vehicle on a one-for-one basis, the licensee shall notify the
21 Department of the information required by subsection C of this
22 section. If the Department determines an inspection of the new
23 vehicle is required, the inspection shall take place as soon as
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1 practicable but no later than fourteen (14) calendar days from
2 receipt of the information required by subsection C of this section.

3 J. If a mobile food vendor transfers its mobile food vending
4 business assets, the recipient of the assets shall, before operating
5 in the state, apply for and obtain a new mobile food vending
6 license.

7 K. Licenses shall be renewed on an annual basis. The
8 Department shall send notice to the licensee. It is the
9 responsibility of the licensee to submit the renewal application
10 annually, at least fourteen (14) days prior to the license's
11 expiration date. While an application for renewal is pending with
12 the Department, a licensee may continue mobile food vending
13 operations.

14 L. It shall be a misdemeanor for any individual to
15 intentionally provide false information or to intentionally omit
16 requested information on an application for any license issued
17 pursuant to this act.

18 M. The Department shall prepare a guide for applicants for a
19 mobile food vending license. The guide shall include instructions
20 for applying for, obtaining and maintaining a mobile food vending
21 license and shall describe the standards used to inspect food
22 vending vehicles. The guide shall be made available for applicants
23 in person at the Department's office and on the Department's
24 website.

1 SECTION 5. 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. 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 without limitation 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, except as provided in paragraph 3 of
12 subsection A of Section 7 of this act, so long as the vending
13 vehicle is not parked within twenty (20) feet of an intersection. A
14 mobile vendor may operate from legal parking spaces on the public
15 right-of-way including metered spaces upon payment of appropriate
16 fees. When operating on public property, a mobile vendor is subject
17 to the same parking rules, restrictions and obligations that a
18 commercial vehicle would be subject to if not used by a mobile food
19 vendor; and

20 2. On private property under the following circumstances:

21 a. the property is located in an industrial, commercial
22 or institutional zoning district, and the vendor has
23 permission of the property owner or designee or a
24 lessor, and

1 b. the property is located in a residential zoning
2 district, and the mobile food vendor has been invited
3 by a resident or group of residents in that district
4 to operate on their property for the purpose of
5 serving food to that resident, group of residents or
6 their guests.

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

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

11 1. Maintain a food vending vehicle in good operating order and
12 visual appearance including the removal of any graffiti that is not
13 part of the overall design or art featured on the vehicle;

14 2. Park so that its service window faces the sidewalk or away
15 from the street if the vehicle is parked along a street;

16 3. Serve customers through a service window;

17 4. Provide a waste receptacle for customers which is clearly
18 visible and request its use by customers;

19 5. Remove and dispose of all refuse within twenty-five (25)
20 feet of the vendor's operating area at the conclusion of operation;

21 6. Submit to and pass any required health inspections; and

22 7. Display the mobile food vendor license and required
23 inspection certificates or permits in a conspicuous location for
24 public view.

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

3 1. Require a mobile food vendor to operate a specific distance
4 from the perimeter of an existing commercial establishment;

5 2. Require a mobile food vendor to enter into any agreement
6 with a commercial establishment;

7 3. Restrict the operating hours of a mobile food vendor;

8 4. Require a mobile food vendor that does not prepare food to
9 have a handwashing sink in his or her food vending vehicle;

10 5. Require a mobile food vendor to associate with a commissary
11 if the vendor carries all the equipment necessary to comply with
12 health and safety standards and all applicable regulations;

13 6. Limit the number of mobile food vendor licenses issued;

14 7. Require a mobile food vendor to obtain any additional
15 permits from a local authority, unless the mobile food vendor seeks
16 to operate in a local, public park;

17 8. Require a mobile food vendor to be fingerprinted;

18 9. Require a mobile food vendor to install a Global Positioning
19 System (GPS) tracking device on the vendor's vehicle;

20 10. Require a mobile food vendor to stay in constant motion
21 except for when serving customers;

22 11. Require a mobile food vendor to maintain insurance that
23 names a local authority as an additional insured unless the vendor
24 is attending an event sponsored by the local authority; and
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1 12. Require a mobile food vendor to submit to inspections
2 beyond health inspections conducted by the Department or by a local
3 authority under a collaborative agreement with the Department,
4 unless the Department is investigating a reported foodborne illness.

5 SECTION 6. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 1-1155 of Title 63, unless there
7 is created a duplication in numbering, reads as follows:

8 A. Mobile food vendors shall adhere to all laws and regulations
9 of the Oklahoma Administrative Code pertaining to the preparation
10 and handling of food.

11 B. Any person preparing food or beverages in a food vending
12 vehicle shall hold a current food safety certification recognized by
13 this state. At all times at least one person working in a food
14 vending vehicle must hold a current food safety certification
15 recognized by this state.

16 C. Upon receipt of a complete license application, the State
17 Department of Health shall classify a mobile food vendor into one of
18 the following three classifications for the purpose of conducting
19 inspections:

20 1. If a vendor dispenses prepackaged foods or non-
21 time/temperature control for safety food, as defined in 310:257-1-2
22 of the Oklahoma Administrative Code, beverages or poses a low risk
23 of harm to the public, it shall be classified as a Mobile Food Type
24 I Vendor;

1 2. If a vendor dispenses food that requires limited handling
2 and preparation, it shall be classified as a Mobile Food Type II
3 Vendor; and

4 3. If a vendor prepares, cooks, holds and serves food from the
5 vehicle, it shall be classified as a Mobile Food Type III Vendor.

6 D. The Department shall specify the categories of foods or
7 beverages that mobile vendors in each classification may serve. If
8 a mobile food vendor seeks to serve food or beverages that may
9 require the vendor to be reclassified, the mobile food vendor shall
10 notify the Department of the nature of the food or beverages to be
11 sold, and the Department shall reclassify the mobile food vendor.

12 E. For the purpose of protecting public health and safety, the
13 Department shall ensure that mobile food vendors are inspected on an
14 ongoing, randomized basis pursuant to the frequency set forth in
15 subsection I of this section based on their classification and
16 inspection grade. The Department, upon a local authority's request,
17 may enter into a collaborative agreement with the local authority
18 for conducting health inspections. The Department shall reimburse
19 the local authority acting under a collaborative agreement for the
20 cost of conducting inspections using funds from inspection fees
21 collected from licensees pursuant to subsection K of this section.

22 F. The Department shall establish and maintain a statewide
23 database for the Department and local authorities to record and
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1 reference the names of licensees, inspections, inspection reports
2 and public complaints.

3 G. Health inspections shall be conducted by the Department
4 or a local authority acting under a collaborative agreement using
5 statewide inspection criteria and a score-based grading system
6 established by the Department based on objective factors. The
7 inspection criteria shall provide a letter-grade format that rates
8 the vendor with an "A," "B," "C" or "F" grade, based on the score
9 received during the inspection. If a vendor receives two
10 consecutive "A" grades, it shall be given a certificate of
11 excellence. If a vendor receives an "F" grade, the Department may
12 suspend the mobile food vendor's license until the mobile food
13 vendor corrects the violations.

14 H. Upon completion of an inspection, the Department, or local
15 authority operating under a collaborative agreement, shall issue a
16 certificate to the mobile food vendor displaying the vendor's letter
17 grade or achievement of excellence and record the grade in the
18 Department's database. The mobile food vendor shall display its
19 certificate indicating its letter grade or achievement of excellence
20 in a conspicuous place for public view.

21 I. Health inspections shall occur on a randomized basis,
22 pursuant to the following frequency, based on the mobile food
23 vendor's classification:
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1 1. A Mobile Food Type I Vendor shall be inspected only upon the
2 Department or a local authority being notified of a public health or
3 safety complaint regarding the vendor. If the inspection reveals a
4 violation of law or rule, the vendor shall become subject to
5 inspections at the frequency set for a Mobile Food Type II Vendor
6 until the vendor obtains a certificate of excellence;

7 2. Mobile Food Type II Vendors shall be inspected once per
8 calendar year. If a Mobile Food Type II Vendor receives a
9 certificate of excellence, it shall become subject to inspections at
10 the frequency set for Mobile Food Type I Vendors. If a Mobile Food
11 Type II Vendor holding a certificate of excellence receives a score
12 lower than an "A" on a subsequent inspection, the vendor shall lose
13 its certificate of excellence and return to being inspected once per
14 year; and

15 3. Mobile Food Type III Vendors shall be inspected twice per
16 calendar year. If a Mobile Food Type III Vendor receives a
17 certificate of excellence, it shall be inspected at the frequency
18 set for Mobile Food Type II Vendors. If a Mobile Food Type III
19 Vendor holding a certificate of excellence receives a score lower
20 than an "A" on a subsequent inspection, the vendor shall lose its
21 certificate of excellence and return to being inspected twice per
22 calendar year.

23 J. The Department, or local authority acting under a
24 collaborative agreement, shall notify a mobile food vendor by phone

1 or by First-Class Mail, with a return receipt requested, of its
2 intent to inspect the food vending vehicle within thirty (30) days
3 following the delivery of the notice. The mobile food vendor may
4 request the Department or local authority obtain an administrative
5 warrant prior to conducting an inspection. Upon receipt of notice
6 of an inspection, the mobile food vendor shall provide the locations
7 where the vendor can be located for an inspection if requested by
8 the Department or local authority.

9 K. The Department shall calculate the average cost of providing
10 notice of and conducting a health inspection. If the Department has
11 entered into a collaborative agreement with a local authority, the
12 Department shall consult with the local authority and determine the
13 average cost of providing notice of and conducting health
14 inspections in that jurisdiction. The Department shall charge the
15 mobile food vendor an inspection fee at the time the mobile vendor
16 applies for or renews a license, based on the average cost of
17 providing notice of and conducting an inspection, multiplied by the
18 number of annual inspections required for the upcoming year as
19 required by this section. A mobile food vendor may request
20 reimbursement for an inspection that was not conducted at the
21 expiration of its mobile vending license or when the vendor renews a
22 license. The Department shall reimburse the vendor for any
23 inspection that was not conducted in the previous year within thirty
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1 (30) calendar days following receipt of a mobile food vendor's
2 request.

3 SECTION 7. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 1-1156 of Title 63, unless there
5 is created a duplication in numbering, reads as follows:

6 A. The local authority may regulate state-licensed mobile food
7 vendors in accordance with this act. In relation to a state-
8 licensed mobile food vendor's operations, a local authority may:

9 1. Impose operating hours only if they are the same as the
10 operating hours imposed on commercial businesses;

11 2. Restrict the operation of noisemaking devices during certain
12 hours of day;

13 3. Restrict a mobile food vendor from operating in a public
14 park or require a special permit and payment of fees to operate in a
15 public park;

16 4. Prohibit a mobile food vendor that is operating on private
17 property from blocking ingress or egress from that property;

18 5. Develop a mobile food vendor metered parking pass for a fee
19 that permits a mobile food vendor to operate from metered parking
20 spaces for longer than the vendor would otherwise be permitted;

21 6. Investigate reports of foodborne illnesses;

22 7. Report a mobile food vendor's suspected violation of this
23 act to the State Department of Health and recommend the Department
24 suspend or revoke a mobile food vending license; and

1 8. Issue citations and penalties to mobile food vendors for
2 violations of local law not inconsistent with the provisions of this
3 act.

4 B. In relation to a state-licensed mobile food vendor's
5 operations, a local authority may not:

6 1. Prohibit or restrict a mobile food vendor from operating in
7 a lawful manner provided for in this act;

8 2. Require a mobile food vendor to receive any kind of special
9 permit from a local authority in addition to the mobile food vending
10 license or permit to operate as a commercial vehicle, unless the
11 mobile food vendor seeks to operate in a public park;

12 3. Restrict the duration of time a mobile food vendor may
13 operate on private property in industrial, commercial or
14 institutional zoning districts;

15 4. Require a mobile food vendor to operate a specific distance
16 from commercial food or retail establishments;

17 5. Require a mobile food vendor to be fingerprinted;

18 6. Require a mobile food vendor to install a Global Positioning
19 System (GPS) tracking device on its vehicle;

20 7. Require a mobile food vendor to stay in constant motion
21 while serving customers;

22 8. Require a mobile food vendor to maintain an insurance policy
23 that names the local authority as an additional insured unless the
24 vendor is attending an event sponsored by the local authority;

1 9. Require a mobile food vendor to submit to inspections beyond
2 health inspections conducted under a collaborative agreement with
3 the Department, unless the local authority is investigating a
4 reported foodborne illness;

5 10. Require a mobile food vendor to enter into any agreement
6 with a commercial establishment or restaurant;

7 11. Regulate the equipment requirements for a food vending
8 vehicle; and

9 12. Require a mobile food vendor to associate with a commissary
10 if the vendor has all the equipment necessary to comply with all
11 regulations pertaining to food establishments.

12 SECTION 8. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 1-1157 of Title 63, unless there
14 is created a duplication in numbering, reads as follows:

15 A. The State Department of Health or a local authority may
16 investigate a mobile food vendor upon reasonable suspicion the
17 vendor has violated the law or upon receipt of a health or safety
18 complaint. Any complaint shall be recorded in the state's mobile
19 vending database. The local authority shall report suspected
20 violations of law to the Department and may recommend the Department
21 suspend or revoke a mobile food vending license.

22 B. The mobile food vendor shall cooperate with the Department
23 or local authority during an investigation. Failure to cooperate
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1 with the Department or local authority may result in suspension or
2 revocation of a license.

3 C. Nothing in this act shall be construed to impede the
4 Department or local authority in any investigation of a reported
5 foodborne illness.

6 SECTION 9. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 1-1158 of Title 63, unless there
8 is created a duplication in numbering, reads as follows:

9 A. A license issued under this act may be denied, suspended or
10 revoked by the State Department of Health for the following reasons:

11 1. Fraud, misrepresentation or a false statement contained in
12 the application for a license;

13 2. Fraud, misrepresentation or a false statement made in
14 connection with the selling of food or beverages;

15 3. Any facts or conditions which would justify the denial of
16 the original application;

17 4. Three (3) or more violations of this act within a period of
18 twelve (12) months; and

19 5. The receipt of an "F" grade during an inspection or an
20 investigation in response to a complaint.

21 B. Any person who has been notified regarding the denial of his
22 or her mobile food vending application or the possible suspension or
23 revocation of his or her mobile food vending license may request an
24 administrative hearing in accordance with the Administrative
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1 Procedures Act within fourteen (14) calendar days of receipt of the
2 notice. Other than as described in subsection C of this section, no
3 license shall be suspended or revoked prior to a hearing if a mobile
4 food vendor requests a hearing within the fourteen-day period
5 required. Upon receipt of a request for a hearing, the Department
6 shall hold a hearing within fourteen (14) calendar days and issue
7 findings of fact, conclusions of law and a decision at the
8 conclusion of the hearing.

9 C. When circumstances demonstrate that continued operation by a
10 mobile vendor poses an imminent threat to the public's health and
11 safety, the Department may immediately suspend or revoke a mobile
12 food vending license. The mobile food vendor may request a hearing
13 regarding the suspension or revocation within fourteen (14) calendar
14 days of receiving notice of the suspension or revocation. Any
15 hearing regarding the summary suspension or revocation of a license
16 shall be given priority over all potential license denial,
17 suspension or revocation proceedings and shall be held within seven
18 (7) calendar days from the date the Department receives a mobile
19 food vendor's request for a hearing, and the Department shall issue
20 findings of fact, conclusions of law and a decision at the
21 conclusion of the hearing.

22 D. It shall be a misdemeanor for a licensee whose license has
23 been suspended or revoked to continue business operations. If the
24 Department suspends or revokes a mobile vending license, the mobile
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1 vendor shall immediately surrender the license to the Department.
2 The Department may issue civil penalties to a person who operates as
3 a mobile food vendor without a license, with a suspended license or
4 after a license is revoked.

5 SECTION 10. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 1-1159 of Title 63, unless there
7 is created a duplication in numbering, reads as follows:

8 A person aggrieved by an agency decision following a hearing has
9 the right to appeal the decision in accordance with the provisions
10 of the Administrative Procedures Act.

11 SECTION 11. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 1-1160 of Title 63, unless there
13 is created a duplication in numbering, reads as follows:

14 This act preempts local authorities from prohibiting mobile food
15 vending and regulating mobile food vending in a way that conflicts
16 with the provisions of this act.

17 SECTION 12. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 1-1161 of Title 63, unless there
19 is created a duplication in numbering, reads as follows:

20 This act shall not be construed to require a local authority to
21 enter into a collaborative agreement with the State Department of
22 Health to conduct health inspections, to adopt a program regulating
23 mobile food vendors or to modify its existing program regulating
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1 mobile food vendors; provided, the regulations do not conflict with
2 the provisions of this act.

3 SECTION 13. AMENDATORY 63 O.S. 2021, Section 1-1118, is
4 amended to read as follows:

5 Section 1-1118. A. It shall be unlawful for any person to
6 operate or maintain any establishment, stationary or otherwise,
7 where food or drink is offered for sale, or sold, to the public,
8 unless the person is the holder of a food establishment license
9 issued for such purpose by the State Commissioner of Health or
10 designee. A food establishment license shall not be required for:

11 1. A produce stand that offers only whole, uncut and
12 unprocessed fresh fruits, melons, vegetables and legumes and/or
13 whole uncracked and unprocessed nuts;

14 2. A manufacturer, wholesaler or broker of food licensed
15 pursuant to Section 1-1119 of this title;

16 3. A kitchen in a private home if only food that does not
17 require time and temperature control for safety is prepared for sale
18 or service at a function such as a nonprofit civic, charitable or
19 religious organization's bake sale;

20 4. An area where food that is prepared as specified in
21 paragraph 3 of this subsection is sold or offered for human
22 consumption;

23 5. A private home that receives catered or home-delivered food;
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1 6. A hotel licensed pursuant to Section 1-1201 of this title
2 which provides limited food service in compliance with rules
3 promulgated by the State Commissioner of Health;

4 7. A kitchen in a private home or in a bed and breakfast that
5 prepares and offers food to guests, if the home is owner-occupied,
6 the number of available guest bedrooms does not exceed three, and
7 breakfast is the only meal offered;

8 8. A nonprofit civic, charitable or religious organization
9 using unpaid individuals to prepare or serve food on its behalf, for
10 occasional fund-raising events sponsored and conducted by the
11 organization. For the purposes of this paragraph, an "occasional
12 fund-raising event" shall be defined as an event that occurs four
13 times a year or less;

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

17 10. Nursing facilities and specialized facilities, as defined
18 in and licensed pursuant to the provisions of the Nursing Home Care
19 Act, residential care homes as defined by the Residential Care Act,
20 adult day care centers as defined by the Adult Day Care Act, and
21 assisted living centers and continuum of care facilities licensed
22 pursuant to the Continuum of Care and Assisted Living Act; ~~and~~

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

1 12. Mobile food vendors licensed pursuant to Section 3 of this
2 act.

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

7 1. The Commissioner may provide by rule for a fee-exempt
8 license for a food establishment operated by a nonprofit, civic,
9 charitable or religious organization that uses unpaid persons to
10 sell or offer food on a more frequent basis than the occasional
11 fund-raising event. A fee-exempt license shall not expire but shall
12 remain in full force and effect until affirmatively revoked,
13 suspended, annulled or withdrawn by the Department in accordance
14 with applicable law.

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

20 3. The Commissioner shall provide by rule a three-day license
21 for vendors who only sell at farmers markets as defined in 310:257-
22 1-2 of the Oklahoma Administrative Code or at county fairs.
23 Licenses for vendors who only sell at farmers markets or county
24 fairs shall not exceed Fifty Dollars (\$50.00). Vendors who do not

1 sell food and vendors who meet the exceptions provided in subsection
2 A of this section shall not be required to obtain a three-day
3 license or a food establishment license.

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

8 C. The State Commissioner of Health shall promulgate reasonable
9 standards and rules for sanitation of establishments required to be
10 licensed, which shall include the following: buildings, vehicles,
11 and appurtenances thereto, including plumbing, ventilation and
12 lighting; construction, cleanliness and bactericidal treatment of
13 equipment and utensils; cleanliness, wholesomeness, storage and
14 refrigeration of food and drink sold or served; cleanliness and
15 hygiene of personnel; toilet facilities; disposal of waste; water
16 supply; and other items deemed necessary to safeguard the health,
17 comfort, and safety of customers.

18 SECTION 14. This act shall become effective November 1, 2023.

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20 59-1-948 DC 1/6/2023 6:43:00 PM