

SENATE BILL 2005

By Bowling

AN ACT to amend Tennessee Code Annotated, Title 5;  
Title 6; Title 7; Title 43; Title 53 and Title 68,  
relative to the "Tennessee Food Freedom Act".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 53, Chapter 8, is amended by adding Sections 2 through 9 of this act as a new part.

SECTION 2. This part shall be known and may be cited as the "Tennessee Food Freedom Act."

SECTION 3. The purpose of this part is to recognize the right of individuals to produce, procure, and consume homemade foods of their choice free from unnecessary and anticompetitive regulations; and foster small businesses, innovation, and economic growth.

SECTION 4. The general assembly has determined that:

(1) There is great interest in small-scale, home-based food businesses in this state; however, current law restricts entrepreneurs' ability to establish and grow such businesses;

(2) Expanding the freedom of entrepreneurs to operate home-based food businesses will provide numerous benefits, including the opportunity for self-employment and to earn an honest living through work that affords flexibility, creativity, and financial rewards;

(3) Consumers desire foods produced by such entrepreneurs;

(4) Expanding the freedom of consumers to procure food from home-based food businesses will provide many benefits, including consumers in urban and rural areas in

this state gaining access to a greater variety of food options, especially food produced on a small, local scale;

(5) There is little evidence that home-based food businesses pose a threat to the public in states where they are lightly regulated; and

(6) Allowing the production, sale, and consumption of a greater variety of homemade foods respects individuals' personal liberty, including their economic liberty. Individuals should be free to produce, procure, and consume the homemade foods of their choice.

SECTION 5. As used in this part:

(1) "Delivered" means transferred to the consumer, either immediately upon sale or at a time thereafter;

(2) "Department" means the department of agriculture;

(3) "Homemade food item" means a food item, including a non-alcoholic beverage, which is produced and, if packaged, packaged at the private residence of the producer;

(4) "Non-potentially hazardous," in relation to food, means food that does not require time and temperature control for safety to limit pathogenic microorganism growth or toxin formation;

(5) "Potentially hazardous," in relation to food, means food that requires time and temperature control for safety to limit pathogenic microorganism growth or toxin formation;

(6) "Produce" means to prepare a food item by cooking, baking, drying, mixing, cutting, fermenting, preserving, dehydrating, growing, raising, or other process;

(7) "Producer" means a person who produces a homemade food item;

(8) "Seller" means a person who sells a homemade food item to a consumer;

and

(9) "State" means the state of Tennessee and its political subdivisions.

SECTION 6.

(a) The production and sale of homemade food items under this part are exempt from all licensing, permitting, inspection, packaging, and labeling laws of this state.

(b) Subsection (a) does not exempt a producer or seller of homemade food items from any requirement to register the producer or seller's business name, address, and other identification information with this state.

(c) The exemption under subsection (a) only applies if the following conditions are satisfied:

(1) The following apply to the sale and delivery of non-potentially hazardous homemade food items:

(A) Non-potentially hazardous homemade food items must be sold either by:

(i) The producer to the consumer, whether in person or remotely, including, but not limited to, a sale by telephone or internet; or

(ii) An agent of the producer or a third-party vendor, such as a retail shop or grocery store, to the consumer;

(B) Non-potentially hazardous homemade food items must be delivered either by:

(i) The producer to the consumer; or

(ii) An agent of the producer, a third-party vendor, or a third-party carrier to the consumer;

(2) Potentially hazardous homemade food items must be sold by the producer to the consumer, either in person or remotely, including, but not limited to, a sale by telephone or internet, and delivered by the producer to the consumer in person;

(3) The following information must be provided to the consumer, in the format required by subdivision (c)(4):

(A) The name, home address, and telephone number of the producer of the homemade food item;

(B) The common or usual name of the homemade food item;

(C) The ingredients of the homemade food item in descending order of predominance; and

(D) The following statement: "This product was produced at a private residence that is exempt from state licensing and inspection. This product may contain allergens.";

(4)

(A) The information required by subdivision (c)(3) must be provided:

(i) On a label affixed to the package, if the homemade food item is packaged;

(ii) On a label affixed to the container, if the homemade food item is offered for sale from a bulk container;

(iii) On a placard displayed at the point of sale, if the homemade food item is neither packaged nor offered for sale from a bulk container; or

(iv) On the webpage on which the homemade food item is offered for sale, if the homemade food item is offered for sale on the internet;

(B) If the homemade food item is sold by telephone or custom order, the seller need not display the information required by subdivision

(c)(3), but the seller must 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. The seller must have the information required by subdivisions (c)(3)(A)-(C) readily available and provide it to the consumer upon request; and

(5) The homemade food item must not be meat, meat byproduct, meat food product, poultry, poultry byproduct, or poultry food product, as those terms are defined for purposes of the Federal Meat Inspection Act (21 U.S.C. § 601 et seq.) or the federal Poultry Products Inspection Act (21 U.S.C. § 451 et seq.) unless the production and sale of the item:

(A) Are within an exemption in 9 C.F.R. § 303.1(d), 9 C.F.R. § 381.10(c), or 9 C.F.R. § 381.10(d)(1); and

(B) Comply with other applicable federal regulations.

## SECTION 7.

(a) This part does not:

(1) Impede the department in any investigation of a reported foodborne illness; or

(2) Preclude an agency from providing assistance, consultation, or inspection at the request of the producer of a homemade food item.

(b) This part does not:

(1) Preclude the production or sale of food items otherwise authorized by law;

(2) Preclude the sale of live animals or portions of live animals before slaughter for future delivery;

(3) Change the regulation of other goods and services where homemade food items are also produced or sold;

(4) Exempt producers or sellers of homemade food items from any applicable tax law;

(5) Exempt producers or sellers of homemade food items from any applicable fishing or hunting law;

(6) Exempt producers or sellers of homemade food items from any applicable federal law, including any federal law prohibiting the sale of food items in interstate commerce; or

(7) Exempt producers or sellers of homemade food items from any applicable law of another state.

SECTION 8. Tennessee Code Annotated, Section 53-1-208(b), is amended by deleting the language "Except as provided in subsection (d), no person shall manufacture" and substituting instead the language "A person shall not manufacture".

SECTION 9. Tennessee Code Annotated, Section 53-1-208(d), is amended by deleting the subsection.

SECTION 10. This part preempts county, municipal, and other political jurisdictions from prohibiting and regulating the production and sale of homemade food items.

SECTION 11. The commissioner of agriculture shall promulgate rules and regulations to effectuate the purposes of this part. All such rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 12. For the purpose of promulgating rules, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect January 1, 2021, the public welfare requiring it.