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Arkansas' Cottage Food Law: What the New Law Allows

Introduction

For many years, homemade products such as bread and jam were not allowed to be sold legally in Arkansas unless they were prepared in licensed kitchens inspected by the Arkansas Department of Health. That changed in February 2011 after Governor Mike Beebe signed into law the "Cottage Food" act that exempted certain foods from Department of Health oversight. The modification of Arkansas Code Annotated § 20-57-201 came after years of lobbying by farmers' markets that wanted to give farmers the opportunity to sell homemade goods without having to invest in commercial kitchens.

A year after the law's passage, confusion persists among some producers and farmers' market vendors about what exactly can be sold and whether the Arkansas Department of Health still has oversight of homemade foods. Some of that confusion comes from a lack of knowledge about the law or because of outdated resources. For example, the Department of Health mentioned Cottage Foods in its new *Farmers' Market Vendor Guide*. However, as late as February 2012, the health department's web site (www.healthy.arkansas.gov) informed people that, if they were baking at home, they needed to be permitted and prepare the food in a licensed kitchen inspected by health department officials.

Cottage Food laws differ from state to state. In Arkansas, a Cottage Food production operation is not required to have any permit or license from the Arkansas Department of Health.

What Is Cottage Food?

According to Act 72 of 2010, a "cottage food production operation" means a person who produces food items in the person's home that are

not potentially hazardous foods. The list of allowable foods includes bakery products, candy, fruit butters, jams, jellies or similar products specified in any future rules adopted by the Arkansas Department of Health. Department officials have indicated they are not planning to add any other foods in the foreseeable future.



Kitchens where Cottage Food items are prepared do not need to be licensed or inspected by the health department.

Foods that are not potentially hazardous, such as the items mentioned above, are specifically mentioned in health department regulations as not falling under the definition of a "retail food establishment," as long as they are sold directly to the person who will consume the product.

The health department's *Rules and Regulations Pertaining to Retail Food Establishments* and the *Farmers' Market Vendor Guide* can be found at www.healthy.arkansas.gov/programsServices/environmentalHealth/foodProtection/Pages/RulesandRegulations.aspx#2.

What Foods Are Not Considered Cottage Foods?

Food items that must be kept refrigerated or hot to remain safe to eat are not allowed to be

sold as a Cottage Food item and are considered potentially hazardous foods. Examples are cheese-cake, cream pies or bakery items containing meat, cream or cheese filling.

Although Cottage Food items do not have to be prepared in a licensed kitchen, the Arkansas Department of Health retains the right under Arkansas Code Annotated § 20-57-201 (vi) (b) (1) to request samples of food products for testing.

Where Can Cottage Food Be Sold?

Arkansas' law states that Cottage Food items can only be sold direct from the manufacturer to the customer either from the site where the food is made or at a farmer's market, county fair or special event. Homemade items produced to be sold at a store do not fall under the Cottage Food law and are not exempt from Department of Health permitting.

Labeling Requirements

Cottage Foods must be labeled with the name and address of the manufacturer, the name of the product and the ingredients in the product. Under the law, nutritional claims are not allowed. In addition to ingredients and manufacturer information, the label must include this statement in 10-point type: "This Product Is Home-Produced."

Other Considerations

Nothing in the law prevents farmers' markets, municipalities or counties from having more restrictive cottage-food product regulations. The Cottage Food law did not include any language to prevent cities or counties from passing ordinances with more restrictions, although state health officials are not aware of any that have done that.

Being exempt from health department permits is not the same thing as being exempt from local business licenses. Be sure to check with your local city or county clerk on any permitting or licensing requirements.

Arkansas Code Annotated § 14-140-101 prohibits charges or assessments, other than those essential for operations and maintenance, against farmers or

producers who sell items grown or produced on their property. However, this law may not apply in all Cottage Food situations.

For example, the city of Little Rock exempts farmers' market vendors from needing a business license but requires a license for vendors selling products grown by other farmers at locations other than a farmers' market. The city also requires people selling cakes from home to have a business license, which may trigger city zoning regulations. Little Rock city code can be found at www.littlerock.org.

Farmers' markets may also have their own requirements. For example, markets in North Little Rock and Searcy operated by the Certified Arkansas Farmer's Market require Cottage Food vendors to have displays telling customers they are not permitted or inspected by the Department of Health. The market also requires Cottage Food vendors who do have licensed kitchens (to sell other products) to display that they are permitted and inspected by the state. These requirements are part of the organization's bylaws and can be obtained by e-mailing info@certifiedarkansas.com.

References

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