

Arkansas' Cottage Food Law: What the Law Allows

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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 that were inspected by the Arkansas Department of Health. That changed in 2011 after the passage of the “Cottage Food” law, which 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 money in expensive commercial kitchens.

Despite the law change, confusion continues about what exactly can be sold as Cottage Foods.

What Is Cottage Food?

In Arkansas, a Cottage Food Production Operation is not required to have any permit or license from the Arkansas Department of Health.

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 include:

- Bakery products
- Candy
- Fruit butters
- Jams
- Jellies



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

- Chocolate-covered fruit and berries that are not cut
- Similar products specified in rules adopted by the Department of Health

Sugar-free jams, jellies, fruit butters and some candy and bakery products made with sugar substitutes are considered potentially hazardous food and may not be sold. They are not considered Cottage Food items, according to the Arkansas Department of Health's Cottage Food rules and regulations.

The Department of Health can add other items to the list of Cottage Foods if they desire or state legislators can change the law. In 2017, lawmakers amended Arkansas Code Annotated § 20-57-201 with the passage of Act 399 to add chocolate-covered, uncut fruit as an item that can be sold as a Cottage Food.

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 cheesecake, 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 was made or at a farmers' market, county fair or special event. The farmers' market can be a physical location or an online market after the passage of Act 399 in 2017.

Homemade items produced to be sold at a store or an online 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. 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

The Cottage Food law does not provide the manufacturer with liability protection, so anyone who is injured by consuming the product can still sue the person who made the Cottage Food item.

Nothing in the law prevents farmers' markets, cities or counties from having more restrictive cottage-food regulations. The Cottage Food law did not include any language to prevent cities or counties from passing ordinances with more restrictions.

Being exempt from health department permits is not the same thing as being exempt from local business permits. 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. However, the city 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 requirements.

Farmers' markets may also have their own requirements regarding how vendors are supposed to communicate to people whether their items were made in inspected or uninspected kitchens.

Helpful Resources

Arkansas Department of Health and Arkansas Agriculture Department. (2014). *A Guide for Farmers and the Consumers*. Retrieved from <https://www.healthy.arkansas.gov/images/uploads/pdf/FarmersMarketGuidelines.pdf>

Definitions, Ark. Code § 20-57-201.

Maintenance and regulation of markets, Ark. Code § 14-140-101.

Whalen, L. (2011, Feb. 25). Cottage Food Law Expands Markets. *Arkansas Democrat-Gazette*.

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