

The Arkansas Food Freedom Act & Hobbyist Beekeeper Operations

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As of July 28, 2021, the Arkansas Food Freedom Act has expanded and replaced regulations under the Arkansas Cottage Food Law. These rules allowed a few specific homemade food products to be sold directly to consumers without having to be made in a facility certified and inspected by the Arkansas Department of Health, which could be a confusing and expensive process for low-volume producers.

Act 1040 of 2021 seeks to encourage the sale and consumption of fresh agricultural products to enhance Arkansas' agricultural economy, and to provide citizens with easier access to locally produced farm products. When food and agricultural products are locally produced and traded, more money stays within the area economy, and consumers can feel good knowing they have supported their neighbors.

The system empowers women, minorities and members of rural communities who may otherwise be excluded from

economic opportunities because of financial limitations or bureaucratic obstacles. The cottage food industry expands consumer choices, helps to fill gaps in local markets, and increases consumers' options for purchasing fresh local foods.

The Food Freedom Act allows for the preparation and sale of homemade food and drink products that are shelf-stable, and have low risk for dangerous bacterial contamination due to their acidity or high sugar content. These "non-time/temperature control for safety" foods (also referred to as non-TCS foods) should remain safe to consume at room temperature.

The new law also updates labeling requirements for producers and expands where and how these products may be sold. While the Food Freedom Act covers a multitude of food and drink products, this guide briefly outlines only some of the items that relate specifically to beekeepers and honey producers.

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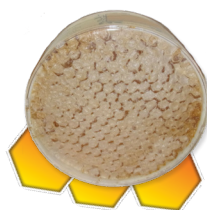
Honey_miele.jpg by Marcobeltrametti, Wikimedia commons, CC BY-SA 4.0

What Can Beekeepers Sell Under This Law?

Apiary products that can be produced and sold under these updated regulations include extracted honey, comb honey, chunk honey and creamed honey (also called whipped honey or spun honey). Honey is naturally antiseptic, needs no heating or pasteurization, and requires no refrigeration to remain shelf-stable.



Extracted honey is honey in its liquid form that has been removed from the wax honeycombs. Honey that has been fully ripened and capped by the bees requires minimal processing to remove, strain and bottle. All honey will eventually crystallize, but it can be returned to a liquid state by gently heating the container in warm water (~100°F).



Comb honey is honey has been removed from the beehive while still inside of the sealed wax honeycombs, just as it was produced by the bees. These combs may be cut from wooden frames or top bars, or produced inside the hive in special removable frames. The combs should be sealed in clean, airtight packaging before being offered for sale.



Chunk honey is produced by placing a piece of sealed honeycomb in a jar and filling the remainder of the space in the container with extracted liquid honey. This niche product is considered a treat by many people.



Creamed honey is produced by controlled granulation, which results in extremely small sugar crystals. The resulting product remains creamy and easy to spread. While traditionally made from pure honey, creamed honey may contain other ingredients (such as spices, nuts or fruit powders) as long as these ingredients are also non-TCS. Additional ingredients should be dried so as not to affect the moisture content of the honey. Any potential allergens (such as tree nuts) should be listed in the ingredients.

Label Requirements

The information below must be disclosed to the consumer or buyer, printed clearly on a label affixed to the product container. For products sold online, the information should also be provided on the producer's website.

- The common name of the product. In most cases this would simply be "honey." However, it is permissible

to add a descriptive term if applicable, such as "wildflower honey" or "clover honey."

- The name, address and telephone number of the producer of the homemade food product must be listed. In lieu of displaying personal information, a unique identification number can be requested from the Arkansas Department of Agriculture to protect the producer's safety and privacy. Producers can apply online to request this number at tinyurl.com/arfoodfreedom.
- Any flavorings or other ingredients added to the product must be listed, in order of descending importance.
- The date that the home-made food or drink was prepared, produced, processed or bottled.
- The label must include the following statement: **"This product was produced in a private residence that is exempt from state licensing and inspection. This product may contain allergens."**



Raw Honey vs. Organic Honey

Raw honey is essentially the same substance that the bees produce. It contains enzymes, vitamins and grains of pollen. Raw honey may be strained to remove impurities, such as bits of wax, but is never heated excessively, which destroys the natural enzymes. Commercial packers will heat honey to lower its viscosity for pumping through bottling equipment, and they typically filter out pollen and other particles that promote rapid crystallization.

Honey is a naturally pure and safe food. Microorganisms cannot grow in honey because it has a high sugar content, low moisture level and mild acidity. It never needs pasteurization or refrigeration. Descriptive terms on honey labels, such as "pure," "raw", or "natural" are not regulated by law. The FDA, however, defines "natural" foods as foods containing nothing that a consumer would not expect to find.

Use of the term "organic" on a product label is regulated by law and indicates that the item was produced without conventional pesticides, synthetic fertilizers, bioengineering or ionizing radiation. Honey



labeled as organic must meet rigorous standards implemented by the USDA through third-party certification agencies, whether produced in the U.S. or in a foreign country.

If you include the word organic on your packaging, your operation must be certified by an accredited agent. Because honey bees can forage far from their hives, it is practically impossible to control potential contact with any substances prohibited under organic guidelines. Most certified organic honey sold in the U.S. is produced in other countries in areas without significant agricultural production.

An alternative to organic certification is Certified Naturally Grown (cngfarming.org). This certification indicates that the honey (or other farm product) was produced using sustainable methods and without employing chemical pesticides in or around beehives. It recognizes that honey bees are free flying and that a beekeeper has no control of where bees may forage outside the hive.

Weight vs. Volume

Foods are sold by weight while drinks are sold by volume. Even though many people sell liquid honey in pint or quart jars, honey is a food and should therefore be labeled accordingly.

Federal labeling laws require food containers to display the net weight of the product (excluding packaging), printed on the lower third of the front label in a clearly legible font. The weight should be listed in pounds/ounces and in grams, such as: Net Wt. 16 oz. (454 g).

Most containers manufactured specifically for bottling honey will indicate the net weight of honey that they hold. Other containers may be labeled by fluid ounces or milliliters, which is different than weight. For example, a pint jar holds 16 fluid ounces, or approximately 1 pound of water, but it holds 1.5 pounds of honey.

When determining the net weight, use the federal government conversion factor of 1 ounce = 28.3495 grams. Producers who do not have access to an accurate scale can measure the volume of water that a container holds and convert that volume to honey weight using an online calculator tool such as: convert-to.com/246/honey-amounts-converter.html.

Feeding Honey To Infants

Infant botulism is a unique form of food poisoning. Children under twelve months of age may not have a strong enough immune system or sufficient stomach acids to fend off this bacterial spore. Although honey prevents the growth of bacteria due to its low pH and moisture

level, honey may contain dormant spores of a bacteria called *Clostridium botulinum*. When a young child eats the tainted honey, the bacterial spores activate and produce botulism food poisoning. Botulinum spores can also be found in inadequately prepared home preserves or canned goods, and may be common on unwashed fresh fruits and vegetables. Although the risk is fairly low, children should not be fed honey until they have reached one year of age to avoid potential food poisoning.

Where Can Beekeepers Sell Home-Produced Items?

Previous regulations allowed for home-made products to only be sold directly from the producer to the consumer. The Food Freedom Act expands potential points of sale to include:

- Direct to a customer from a beekeeper's farm or home.
- From roadside farm stands that sell only honey, or honey and additional agricultural produce as well as other non-TCS foods and drinks.
- At a festival or other public event that last no more than 7 consecutive days.
- From farmers markets where multiple vendors gather on a regular, recurring basis to sell raw agricultural products and other approved merchandise.
- Internet sales are allowed, but if products cross state boundaries, the seller is responsible for ensuring that all federal and state requirements are met for the locations where products will be delivered.
- Another addition to these revised regulations now allows a third-party vendor to sell home-produced food products in a retail outlet (such as grocery stores or other markets), as long as all appropriate label requirements and disclosures are met.

What These Regulations Do Not Do

The Arkansas Food Freedom Act (§ 20-57-501) does not preclude or impede the Arkansas Department of Health from investigating any instance of food-borne illness, nor does this act prevent the agency from ensuring food products are not adulterated or misbranded.

The Arkansas Food Freedom Act does not provide a manufacturer with any liability protection. Any person who claims harm or injury by consuming a product sold in compliance with these regulations may still sue the person who produced the food item. Producers may wish to purchase their own product liability insurance. Some retail outlets may require this protection as a condition of doing business with individuals.

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 regarding permitting or licensing requirements you need.

Sales of raw agricultural products, where the sale is made directly by the producer to the consumer, including sales at farmers markets, are exempt from Arkansas state sales tax (Act 386 of 1941, Act 458 of 1991, Act 1205 of 2009; Ark. Code Ann. § 26-52). Producers are responsible for checking with their local county or municipal authorities regarding the collection and remittance of other local sales taxes.

This act does not exempt producers or sellers from any other applicable tax laws. Nor does it exempt producers them from reporting taxable income to state or federal authorities. Producers and sellers should consult a qualified accountant or tax specialist for accurate the most up-to-date tax information on this topic.

Additional Resources

uaex.uada.edu/bees

www.uaex.uada.edu/business-communities/public-policy-center/

www.healthy.arkansas.gov/programs-services/topics/food-protection

www.arkleg.state.ar.us/Acts/FTPDocument?file=1040&path=%2FACTS%2F2021R%2FPublic%2F&ddBienniumSession=2021%2F2021R

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