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Arkansas' Cottage Food Law: What the Law Allows

Introduction

For many years, homemade products such as bread and jam were not legally allowed to be sold 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 people the opportunity to sell homemade goods without having to invest money in expensive commercial kitchens.

Although the law has been in effect for several years, confusion continues about what products can be sold as a Cottage Food. Not everything sold at a farmers' market is a Cottage Food item. The following information can help determine whether a home-made product qualifies as a Cottage Food item.

What Is Cottage Food?

A Cottage Food Production Operation is not required to have any permit or license from the Arkansas Department of Health. Under state law, a "Cottage Food Production Operation" means a person who produces food items in the person's home that are not potentially hazardous foods.

Cottage Food laws vary from state to state in what products are allowable. In Arkansas, the foods that are considered Cottage Foods are:

- Bakery products
- Candy



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

- Fruit butters
- Jams
- Jellies
- 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 as a Cottage Food. People interested in making and selling these products should contact the Arkansas Department of Health for information about what steps need to be taken to offer these items for sale.

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 the law 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. Contact your local Department of Health unit for information on requirements for selling these items.

Where Can Cottage Food Be Sold in Arkansas?

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, special event or at a pop-up shop located within another established business.

The farmers' market can be a physical location or an online market after the passage of Act 399 in 2017. In 2019, legislators added "pop-up" shops as a location. Act 775 of 2019 defines "pop-up shop" as "a cottage food production operation selling items in an unaffiliated established business for a limited time period with the consent of the owner of the unaffiliated established business and the owner or employee of the cottage food production operation being present at the point of sale."

The law also says that cottage food operations using pop-up shops can not sell food for wholesale distribution.

Otherwise, 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 requirements.

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."

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 (2) (vi) (b) (1) to request samples of food products for testing.

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.

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. (2019). Cottage Food Guide. Retrieved from www.healthy.arkansas.gov/images/uploads/pdf/CottageFoodGuidelines_7-24-19.pdf

Arkansas Department of Health and Arkansas Agriculture Department. (2019). A Guide for Farmers and the Consumer. Retrieved from www.healthy.arkansas.gov/images/uploads/pdf/FarmersMarketGuidelines_7-24-19.pdf

Definitions, Ark. Code § 20-57-201. Maintenance and regulation of markets, Arkansas Code § 14-140-101.

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