



# Tennessee Food Freedom Act: Important Updates for Small Food Manufacturers

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- **Disclaimer: This publication is for educational purposes only and does not constitute legal advice nor is it intended to be a substitute for the services of a competent legal professional.**

# What were the rules prior to July 1, 2022?

## “Aka Cottage Food Laws in TN”



*State of Tennessee*

PUBLIC CHAPTER NO. 150

SENATE BILL NO. 1187

By Norris, Niceley

Substituted for: House Bill No. 299

By Hawk, Casada, Reedy, Ragan

- **Products had to be non-potentially hazardous**
- **Products could be produced essentially anywhere in TN without requiring a permit or inspection by TDA**
- **Producers could only sell directly to consumers in the state of TN**

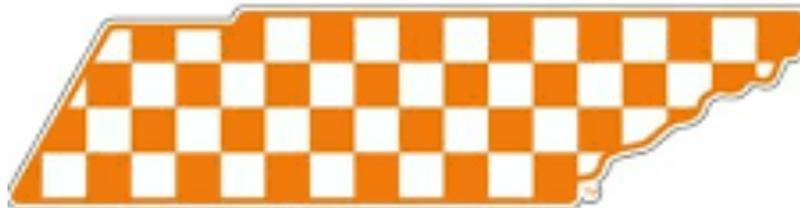
# What were the rules prior to July 1, 2022?

“Aka Cottage Food Laws in TN”

- There could not be any full-time employees
- Producers had to follow “Good Manufacturing Practices” regulations
- Products had specific labeling requirements
- Producers had to allow inspection by agencies charged with enforcing food safety laws

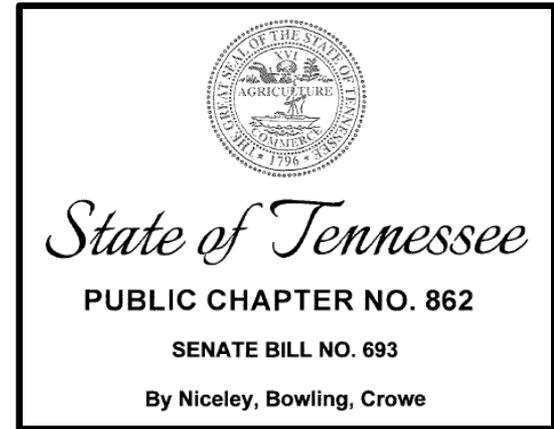
## What has stayed the same?

- **Products still can be sold directly to consumers or online in TN**
- **Must still allow regulators access to the private residence if necessary to ensure food safety**
- **Restaurants, other food-service establishments, and licensed food manufacturers cannot use homemade products as ingredients**



# What has changed?

- **New law refers to “homemade food items”**
  - Food, including a non-alcoholic beverage, which is produced and (if) packaged at the private residence of the producer
- **Changed from non-potentially hazardous to non-time/temperature control for safety (TCS) food**
  - Cannot contain meat, fish, poultry, or egg products



# What has changed?

- **Custom orders and third party sales are now allowed**
  - This now introduces wholesale as an option
- **No limitations on employees**
- **New labeling requirements identifying producer (more details later)**

## Non-TCS vs TCS

- **Time and temperature control for safety (TCS) foods can easily and quickly grow bacteria when held at specific temperatures and times**
- **Limiting time and temperature of these foods means limiting pathogenic microorganism growth or toxin formation**
- **Two common parameters used to determine a TCS food are**
  - water activity
  - pH
- **If it requires refrigeration, it's TCS and not allowed under FFA**
- **Non-TCS products are typically shelf stable**

**Table A. Interaction of pH and  $A_w$  for control of spores in FOOD heat-treated to destroy vegetative cells and subsequently PACKAGED**

| $A_w$ values  | pH: 4.6 or less | pH: > 4.6 - 5.6 | pH: > 5.6    |
|---------------|-----------------|-----------------|--------------|
| $\leq 0.92$   | non-TCS FOOD*   | non-TCS FOOD    | non-TCS FOOD |
| > 0.92 - 0.95 | non-TCS FOOD    | non-TCS FOOD    | PA**         |
| > 0.95        | non-TCS FOOD    | PA              | PA           |

\* TCS FOOD means TIME/TEMPERATURE CONTROL FOR SAFETY FOOD

\*\* PA means Product Assessment required

## Foods Heat Treated and packaged

**Table B. Interaction of pH and  $A_w$  for control of vegetative cells and spores in FOOD not heat-treated or heat-treated but not PACKAGED**

| $A_w$ values  | pH: < 4.2     | pH: 4.2 - 4.6 | pH: > 4.6 - 5.0 | pH: > 5.0    |
|---------------|---------------|---------------|-----------------|--------------|
| < 0.88        | non-TCS food* | Non-TCS food  | non-TCS food    | non-TCS food |
| 0.88 – 0.90   | non-TCS food  | non-TCS food  | non-TCS food    | PA**         |
| > 0.90 – 0.92 | non-TCS food  | non-TCS food  | PA              | PA           |
| > 0.92        | non-TCS food  | PA            | PA              | PA           |

\* TCS FOOD means TIME/TEMPERATURE CONTROL FOR SAFETY FOOD

\*\* PA means Product Assessment required

**Foods Not Heat Treated or Heat Treated and NOT packaged**

# Examples of products allowed and not allowed

## Allowed

- ❑ Dry pasta
- ❑ Muffins
- ❑ Dry spice blends
- ❑ Canned\* fruit jams/jellies
- ❑ Canned\* salsa
- ❑ Canned\* pickled vegetables
- ❑ Canned\* vegetables
- ❑ Canned\* BBQ sauce

## Not Allowed

- ❑ Cooked pasta
- ❑ Cupcakes w/ cream filling
- ❑ Fresh garlic in oil
- ❑ Cut/sliced cantaloupe
- ❑ Fresh salsa
- ❑ Pickled or preserved eggs
- ❑ Fresh sliced vegetables
- ❑ Sea moss gel

\*Canned means thermally processed to be shelf stable

# Examples of products allowed and not allowed

## Allowed

- ❑ Fermented foods (non alcoholic ferments only)
- ❑ Dried products (air or freeze-dried)
- ❑ Non alcoholic beverages (shelf-stable only)
- ❑ Shelf-stable salad dressing
- ❑ Candy, chocolates, fudge

## Not Allowed

- ❑ Anything with meat, fish, or poultry, including jerky
- ❑ Any products requiring refrigeration or freezing
- ❑ Products > 0.5% alcohol
- ❑ All dairy products including pimento cheese
- ❑ Caramel apples with sticks
- ❑ Cold filled lemonade/tea
- ❑ Cold brewed coffee

# Scenario 1 - Cupcakes

- **Bonnie wants to start selling her homemade cupcakes. She does some research on the internet and learns about the Food Freedom Act, but she's not sure where to start.**
- **The first question she needs to ask herself is will she use frosting on her cupcakes, and if so what type of frosting?**
  - If Bonnie uses buttercream, then she should have the water activity tested to be sure it is considered non-TCS to be allowed.
  - If Bonnie does not use buttercream frosting, then she could sell and produce her cupcakes under the FFA since they would be considered non-TCS.

## Scenario 2 – Vanilla Extract

- **V. Nilly wants to start selling her homemade vanilla extract**
  - Extract is made by soaking vanilla beans in ethanol
  - Unfortunately, vanilla extract has more than 0.5% alcohol by volume and would be regulated by the Tennessee Alcohol and Beverage Commission
- **Products with greater than 0.5 % alcohol are regulated by ABC and not allowed under the TN FFA**

## Scenario 3 - Pickles

- **Luke has been making pickles for a few years now, and with the FFA being passed he knows he can legally produce and sell homemade pickles now in TN.**
- **If Luke wants to produce and sell pickles, there are 2 requirements he must meet**
  - Check the pH to ensure it stays below 4.6
  - Ensure products have been correctly thermally processed using a water bath

## Scenario 4 – Green Beans

- Donna has been canning green beans for years. Friends and family have told her she needs to sell them, and with the new FFA she knows she can now legally do so.
- Donna only uses a pressure canner to process her green beans.
- She wants to make sure she is following correct guidelines to prevent *clostridium botulinum* since she will be selling them.

**What resources should she use?**

- USDA Complete Guide to Home Canning
- Ball Complete Book of Home Preserving
- Contact UT Food Science to evaluate her process

## Scenario 5 – Homemade Spaghetti Sauce

- Luigi wants to sell his homemade spaghetti sauce in 16 oz glass jars under the TN FFA. Since his sauce does not contain any meat it falls under the TN FFA.
  - Option A) The spaghetti sauce has a pH less than 4.6 (acidified food)
    - This sauce can be processed via water bath canning to be shelf-stable.
  - Option B) The spaghetti sauce has a pH greater than 4.6 (low acid food)
    - Pressure canning is required to be shelf-stable
- Either homemade sauce can be sold under the TN FFA

# Labeling requirements

## ■ Producer information required

- Name
- Home address (PO Box is not acceptable)
- Telephone number

## ■ Common/usual name of product

## ■ Ingredients in descending order based on weight

## ■ The following statement:

- *"This product was produced at a private residence that is exempt from state licensing and inspection. This product may contain allergens."*

A glass jar filled with pickled beets, topped with a green lid. The jar has a white label with black text. The background is dark, and the jar sits on a wooden surface.

## Pickled Beets

Ingredients: beets, sugar, apple cider vinegar, & water

"This product was produced at a private residence that is exempt from state licensing and inspection. This product may contain allergens."

Made by: Bob Neyland

(865)123-4567

1300 Neyland Stadium Street,  
Knoxville, TN 37916

# Chocolate Chip Cookies



## Inside Label

**Kyla's Homemade Cookies  
K. Adkins, 2510 River Dr. Knoxville,  
TN 37796. 865-974-7331**

### **Chocolate Chip Cookies**

**Ingredients: Enriched Wheat Flour,  
Semi-sweet Chocolate Chips (Sugar,  
Chocolate Liquor, Cocoa Butter, Corn  
Sugar, Milk Fat, Soy Lecithin, Natural  
Flavor, Vanillin), Butter (Milk), Sugar,  
Brown Sugar, Eggs, Vanilla Extract,  
Salt, Baking Soda**

**This product was produced at a  
Private Residence that is exempt  
from state licensing and inspection.  
This product may contain allergens.**

# Where does the labeling information go?

- **Must be on a label (if packaged or sold in bulk)**
  - attached to the product
  - attached to the bulk container the product is sold from
- **On a placard displayed at the point of sale if product is not packaged or sold from a bulk container**
- **On the website where the product is sold (if only sold online)**
- **If product is sold by telephone or custom order, the seller must inform the consumer that the product is produced at a private residence that is exempt from state licensing and inspection**

## Contact info

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- Email: [kylaadkins@utk.edu](mailto:kylaadkins@utk.edu)

### ■ Food Science Department

- 2510 River Drive Knoxville, TN 37996
- Phone: 865-974-7331
- Email: [foodsci\\_ext@utk.edu](mailto:foodsci_ext@utk.edu)
- Website: <https://foodscience.tennessee.edu/food-science-extension/>

# Contact Information

Tennessee Department of Agriculture  
Consumer and Industry Services  
Food Safety Section

[NewFood.Business@TN.gov](mailto:NewFood.Business@TN.gov)

615-837-5193



*Thank you!*

**FOOD SCIENCE**

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**UTIA** INSTITUTE OF  
AGRICULTURE  
THE UNIVERSITY OF TENNESSEE



**Home-based Food Producer  
(TN FFA)**

**vs**

**Home-based Caterer  
(Exemption from permit by TDH)**

# Tennessee Food Regulatory Authority & Jurisdiction

## TDH

### Food Service Establishments

Defined as any place or location where food is prepared and served to the public.

Food is served for immediate consumption whether eaten on or off-site (to-go or catered).

## TDA

- Food Manufacturing and Food Warehouses
- Retail Food Stores  
(and Food Service Establishments within them)
- *Food Freedom Act*

Foods that are produced, packaged or unpackaged, and sold at retail or otherwise placed into commerce.

Includes food service operations located within grocery and convenience stores.

# Catering

Catering operations require a Food Service Establishment permit issued by the Tennessee Department of Health

- *unless it meets the criteria for the exemption in T.C.A 68-14-703 9 (G):*
  - Employs no regular, full-time employees,
  - The food preparation for such business is solely performed within the confines of the principal residence of the proprietor, and
  - The catering business makes only “occasional sales” during any thirty-day period; ...

# Catering Exemption

What is Catering?

Catering is a type of Food Service Operation where foods are:

- Prepared and served to a group at an event (such as a party, wedding, or meeting)
- Prepared only in response to an advance order

# How is Catering Different than Regular Food Service?

- Catering-
  - Must have advance order before preparing food
  - Agreement or contract for service
  - Example: Order received in advance to provide foods for a wedding or birthday party next weekend. Food preparation only happens after the order is received. You deliver or they pick up on the day of the event.
- Regular Food Service Establishment- (i.e. restaurant)
  - Advance order not required. You can prepare the foods then offer them for sale
  - Example: You prepare cakes in advance and customers come into your restaurant and order a slice of cake that has already been made.

# How does the Home Caterer Exemption Differ from the Food Freedom Act?

- **Home Caterer Exemption**

This is Food Service that falls under the jurisdiction of TDH

If a home caterer meets the criteria for exemption under 68-14-703(9), is exempt from regulation and may:

- Prepare and serve foods *directly to the consumer* in response to advance orders
- No restriction on type of foods catered
- These foods may not be sold or used in another business

- **Food Freedom Act**

Falls under the “jurisdiction” of the Tennessee Department of Agriculture (TDA)

- Restricted “homemade foods”; processed and (if) packaged at the persons private residence
- May be produced, packaged, and sold directly from producer to consumer
- Allows properly labeled homemade foods to be sold using a third-party agent, such as a retail store
- Foods produced under FFA are not approved to be used as ingredients/served in a Food Service Establishment permitted by TDH:
  - TCA 1200-23-01-.03 2 a (ii) Food from an Unlicensed Home Facility, “Food from an unlicensed home facility shall not be served in a food establishment”