



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-3473/1
MCP:amn

2017 ASSEMBLY BILL 360

June 1, 2017 - Introduced by Representatives OTT, STAFSHOLT, ROHRKASTE, SPREITZER, SINICKI, KOOYENGA, JARCHOW, GANNON, JACQUE, BALLWEG, C. TAYLOR, OHNSTAD, NOVAK, MURPHY, E. BROOKS, MURSAU, GENRICH, WEATHERSTON, BRANDTJEN, EDMING, KLEEFISCH, SKOWRONSKI, TUSLER, THIESFELDT, MACCO, DUCHOW and QUINN, cosponsored by Senators HARSDORF, RINGHAND, MOULTON, VINEHOUT, TESTIN, LEMAHIEU, VUKMIR, BEWLEY, OLSEN, STROEBEL, KAPENGA, CRAIG, MARKLEIN and HANSEN. Referred to Committee on Small Business Development.

1 **AN ACT** *to amend* 97.29 (2) (b) 2. (intro.), 97.29 (2) (b) 2. c., 97.29 (2) (b) 2. e., 97.29
2 (6) (title), 97.29 (6) (a) and 97.29 (6) (b); **to repeal and recreate** 97.29 (2) (b)
3 2. b.; and **to create** 97.29 (1) (he), 97.29 (1) (j), 97.29 (2) (b) 3., 97.29 (2) (be),
4 97.30 (1) (be), 97.30 (2) (b) 3., 97.30 (2) (b) 4., 97.30 (2) (be) and 97.30 (6) of the
5 statutes; **relating to:** the sale of homemade baked goods and homemade
6 canned goods.

Analysis by the Legislative Reference Bureau

This bill allows for the limited face-to-face sale of certain homemade baked and canned foods without a licensing requirement.

Current law requires food processing plant licenses from the Department of Agriculture, Trade and Consumer Protection for certain facilities at which food is manufactured or prepared for sale through processes such as baking, canning, freezing, and bottling, with specified exemptions. If the food will be sold at retail at the same location as it was manufactured or prepared, a retail food establishment license may also be required.

This bill provides an exemption from the requirement to obtain a food processing plant license or a retail food establishment license for the face-to-face sale of nonhazardous homemade baked goods to consumers by a person who receives less than \$7,500 per year from the sale of the food, registers with DATCP, and complies with requirements concerning training, labeling, signage, and

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documenting sales. A baked good is nonhazardous if it is acidic or has a low amount of moisture and will not support the growth of dangerous organisms. The bill prohibits door-to-door sales under the exemption.

Current law provides an exemption from the requirement to obtain a food processing plant license for the sale of food products, such as pickles, that are prepared and canned by a person at home if certain requirements are met. Under current law, the sales of the canned products must take place at a community or social event or a farmer's market. This bill replaces that requirement with a requirement that the sales be face-to-face sales to consumers, but prohibits door-to-door sales. Under current law, the exemption applies only if the person receives less than \$5,000 per year from the sale of the canned products. Under this bill, the exemption applies if the person receives less than \$7,500 per year from the sales. This bill also creates an identical exemption from the requirement to obtain a retail food establishment license for the sale of these canned food products.

The bill also requires DATCP to provide information about the kinds of foods that may be sold without a food processing plant license or a retail food establishment license, about food safety, and about safe storage of baked goods, ingredients, and packaging materials.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 97.29 (1) (he) of the statutes is created to read:

2 97.29 (1) (he) "Nonhazardous baked goods" means baked goods that either
3 have a water activity value of 0.85 or less or an equilibrium pH value of 4.6 or lower,
4 that will not, in whole or part, support growth of or toxin formation by pathogenic
5 microorganisms, and that do not, in whole or part, contain pathogenic organisms at
6 a level sufficient to cause illness when the food is consumed.

7 **SECTION 2.** 97.29 (1) (j) of the statutes is created to read:

8 97.29 (1) (j) "Water activity value" means a measure of free moisture in a food
9 product, calculated by dividing the water vapor pressure of the food product by the
10 vapor pressure of pure water at the same temperature.

11 **SECTION 3.** 97.29 (2) (b) 2. (intro.) of the statutes is amended to read:

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1 97.29 (2) (b) 2. (intro.) A person is not required to obtain a license under this
2 section to sell at retail, through face-to-face sales to consumers, food products that
3 the person prepares and cans at home in this state if all of the following apply:

4 **SECTION 4.** 97.29 (2) (b) 2. b. of the statutes is repealed and recreated to read:

5 97.29 (2) (b) 2. b. The person does not sell the food products door-to-door.

6 **SECTION 5.** 97.29 (2) (b) 2. c. of the statutes is amended to read:

7 97.29 (2) (b) 2. c. The person receives less than ~~\$5,000~~ \$7,500 in gross receipts
8 per year from the sale of the food products.

9 **SECTION 6.** 97.29 (2) (b) 2. e. of the statutes is amended to read:

10 97.29 (2) (b) 2. e. Each container of food product that is sold is labeled with the
11 name and address of the person who prepared and canned the food product, the date
12 on which the food product was canned, the statement “This product was made in a
13 private home not subject to state licensing or inspection-”, and a list of ingredients
14 in descending order of prominence. If any ingredient originates from milk, eggs, fish,
15 crustacean shellfish, tree nuts, wheat, peanuts, or soybeans, the list of ingredients
16 shall include the common name of the ingredient and, if the ingredient originates
17 from fish, crustacean shellfish, or tree nuts, the common name of the source species.

18 **SECTION 7.** 97.29 (2) (b) 3. of the statutes is created to read:

19 97.29 (2) (b) 3. A person is not required to obtain a license under this section
20 to sell, through face-to-face sales to consumers for personal consumption and not for
21 resale, food products that the person prepares and bakes at home in this state if all
22 of the following apply:

23 a. The food products are nonhazardous baked goods.

24 b. The person registers with the department.

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1 c. The person receives less than \$7,500 in gross receipts per year from the sale
2 of the nonhazardous baked goods.

3 d. Each food product that is sold is labeled with the name or business name of
4 the person who prepared and baked the food product; the city, state, and zip code of
5 the person's residence; the person's telephone number or electronic mail address; the
6 date on which the food product was baked; the statement "This product was made
7 in a private home not subject to state licensing or inspection"; and a list of ingredients
8 in descending order of prominence. If any ingredient originates from milk, eggs, fish,
9 crustacean shellfish, tree nuts, wheat, peanuts, or soybeans, the list of ingredients
10 shall include the common name of the ingredient and, if the ingredient originates
11 from fish, crustacean shellfish, or tree nuts, the common name of the source species.

12 e. The person displays a sign at the place of sale stating: "These baked goods
13 are made in a private home not subject to state licensing or inspection."

14 f. The person does not sell the food products door-to-door.

15 g. The person has a written plan for recalling food products baked by the
16 person, should a food recall become necessary, and documents what food products the
17 person sells and when and where the sales take place, using a form specified by the
18 department.

19 h. The person has completed a class on food safety that is approved by the
20 department and submits proof of completing the class when the person registers
21 under subd. 3. b.

22 **SECTION 8.** 97.29 (2) (be) of the statutes is created to read:

23 97.29 (2) (be) *Suspension of registration.* The department may suspend the
24 registration under par. (b) 3. b. of a person who violates par. (b) 3.

25 **SECTION 9.** 97.29 (6) (title) of the statutes is amended to read:

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1 97.29 (6) (title) INFORMATION ABOUT HOME CANNING AND BAKING.

2 **SECTION 10.** 97.29 (6) (a) of the statutes is amended to read:

3 97.29 (6) (a) The department shall encourage persons to whom the exemption
4 in sub. (2) (b) 2. applies to attend and complete training, ~~that is approved by the~~
5 ~~department,~~ concerning preparing and canning foods and to have their recipes and
6 processes reviewed by a person who is knowledgeable about the food canning
7 industry ~~and who is recognized by the department as an authority on preparing and~~
8 ~~canning food.~~ The department shall encourage persons who register under sub. (2)
9 (b) 3. b. to have their recipes and processes reviewed by a person who is
10 knowledgeable about the baking industry.

11 **SECTION 11.** 97.29 (6) (b) of the statutes is amended to read:

12 97.29 (6) (b) The department shall provide information about the kinds of foods
13 that may be sold under sub. (2) (b) 2. and 3., about food safety, and about safe storage
14 of baked goods, ingredients, and packaging materials to persons who wish to home
15 prepare and home can high-acid and acidified food products or to sell home baked
16 goods. The department, in cooperation with the University of Wisconsin-Extension,
17 shall attempt to maximize the availability of other information and technical
18 services and support for persons who wish to home prepare and home can ~~low-acid~~
19 high-acid and acidified food products and persons who register under sub. (2) (b) 3.
20 b. to sell nonhazardous baked goods.

21 **SECTION 12.** 97.30 (1) (be) of the statutes is created to read:

22 97.30 (1) (be) “Nonhazardous baked goods” has the meaning given in s. 97.29
23 (1) (he).

24 **SECTION 13.** 97.30 (2) (b) 3. of the statutes is created to read:

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1 97.30 (2) (b) 3. A person is not required to obtain a license under this section
2 to sell, through face-to-face sales to consumers, food products that the person
3 prepares and cans at home in this state if all of the following apply:

4 a. The food products are pickles or other processed vegetables or fruits with an
5 equilibrium pH value of 4.6 or lower.

6 b. The person does not sell the food products door-to-door.

7 c. The person receives less than \$7,500 in gross receipts per year from the sale
8 of the food products.

9 d. The person displays a sign at the place of sale stating: "These canned goods
10 are homemade and not subject to state inspection."

11 e. Each container of food product that is sold is labeled with the name and
12 address of the person who prepared and canned the food product, the date on which
13 the food product was canned, the statement "This product was made in a private
14 home not subject to state licensing or inspection", and a list of ingredients in
15 descending order of prominence. If any ingredient originates from milk, eggs, fish,
16 crustacean shellfish, tree nuts, wheat, peanuts, or soybeans, the list of ingredients
17 shall include the common name of the ingredient and, if the ingredient originates
18 from fish, crustacean shellfish, or tree nuts, the common name of the source species.

19 **SECTION 14.** 97.30 (2) (b) 4. of the statutes is created to read:

20 97.30 (2) (b) 4. A person is not required to obtain a license under this section
21 to sell, through face-to-face sales to consumers for personal consumption and not for
22 resale, food products that the person prepares and bakes at home in this state if all
23 of the following apply:

24 a. The food products are nonhazardous baked goods.

25 b. The person registers with the department.

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1 c. The person receives less than \$7,500 in gross receipts per year from the sale
2 of the nonhazardous baked goods.

3 d. Each food product that is sold is labeled with the name or business name of
4 the person who prepared and baked the food product; the city, state, and zip code of
5 the person's residence; the person's telephone number or electronic mail address; the
6 date on which the food product was baked; the statement "This product was made
7 in a private home not subject to state licensing or inspection"; and a list of ingredients
8 in descending order of prominence. If any ingredient originates from milk, eggs, fish,
9 crustacean shellfish, tree nuts, wheat, peanuts, or soybeans, the list of ingredients
10 shall include the common name of the ingredient and, if the ingredient originates
11 from fish, crustacean shellfish, or tree nuts, the common name of the source species.

12 e. The person displays a sign at the place of sale stating: "These baked goods
13 are made in a private home not subject to state licensing or inspection."

14 f. The person does not sell the food products door-to-door.

15 g. The person has a written plan for recalling food products baked by the
16 person, should a food recall become necessary, and documents what food products the
17 person sells and when and where the sales take place, using a form specified by the
18 department.

19 h. The person has completed a class on food safety that is approved by the
20 department and submits proof of completing the class when the person registers
21 under subd. 4. b.

22 **SECTION 15.** 97.30 (2) (be) of the statutes is created to read:

23 97.30 (2) (be) *Suspension of registration.* The department may suspend the
24 registration under par. (b) 4. b. of a person who violates par. (b) 4.

25 **SECTION 16.** 97.30 (6) of the statutes is created to read:

