



2013 SENATE BILL 435

December 11, 2013 - Introduced by Senators HARS DORF, T. CULLEN, GROTHMAN, LASSA, LEHMAN, SCHULTZ, L. TAYLOR, TIFFANY, VINEHOUT and ELLIS, cosponsored by Representatives BROOKS, RINGHAND, BALLWEG, BERCEAU, BERNIER, BEWLEY, BIES, CRAIG, DANOU, ENDSLEY, HULSEY, JACQUE, KAHL, KRUG, MARKLEIN, MILROY, MURSAU, OHNSTAD, A. OTT, POPE, SMITH, C. TAYLOR and WRIGHT. Referred to Energy, Consumer Protection, and Government Reform.

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. and 97.29 (2) (be)
4 of the statutes; **relating to:** the sale of homemade baked goods and homemade
5 canned goods.

Analysis by the Legislative Reference Bureau

Current law requires food processing plant licenses from the Department of Agriculture, Trade and Consumer Protection (DATCP) for certain facilities at which food is manufactured or prepared for sale through processes such as baking, canning, freezing, and bottling, with specified exemptions.

This bill provides an exemption from the requirement to obtain a food processing plant license for the face-to-face sale of nonhazardous homemade baked goods to consumers by a person who receives less than \$10,000 per year from the sale of the food, registers with DATCP, takes a class on food safety approved by DATCP, and complies with requirements concerning labeling, signage, and 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

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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 only applies 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 \$10,000 per year from the sales.

The bill also requires DATCP to provide information about the kinds of foods that may be sold without a food processing 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:

12 97.29 (2) (b) 2. (intro.) A person is not required to obtain a license under this
13 section to sell ~~at retail, through face-to-face sales to consumers~~, food products that
14 the person prepares and cans at home in this state if all of the following apply:

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 b. of the statutes is repealed and recreated to read:

16 97.29 (2) (b) 2. b. The person does not sell the food products door-to-door.

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

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1 97.29 (2) (b) 2. c. The person receives less than ~~\$5,000~~ \$10,000 in gross receipts
2 per year from the sale of the food products.

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

4 97.29 (2) (b) 2. e. Each container of food product that is sold is labeled with the
5 name and address of the person who prepared and canned the food product, the date
6 on which the food product was canned, the statement “This product was made in a
7 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 **SECTION 7.** 97.29 (2) (b) 3. of the statutes is created to read:

13 97.29 (2) (b) 3. A person is not required to obtain a license under this section
14 to sell, through face-to-face sales to consumers for personal consumption and not for
15 resale, food products that the person prepares and bakes at home in this state if all
16 of the following apply:

17 a. The food products are nonhazardous baked goods.

18 b. The person registers with the department.

19 c. The person receives less than \$10,000 in gross receipts per year from the sale
20 of the nonhazardous baked goods.

21 d. Each food product that is sold is labeled with the name or business name of
22 the person who prepared and baked the food product, the city, state, and zip code of
23 the person’s residence, the person’s telephone number or electronic mail address, the
24 date on which the food product was baked, the statement “This product was made
25 in a private home not subject to state licensing or inspection.”, and a list of

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1 ingredients in descending order of prominence. If any ingredient originates from
2 milk, eggs, fish, crustacean shellfish, tree nuts, wheat, peanuts, or soybeans, the list
3 of ingredients shall include the common name of the ingredient and, if the ingredient
4 originates from fish, crustacean shellfish, or tree nuts, the common name of the
5 source species.

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

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

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

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

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

17 97.29 (2) (be) *Suspension of registration.* The department may suspend the
18 registration under par. (b) 3. b. of a person who violates par. (b) 3.

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

20 97.29 (6) (title) INFORMATION ABOUT HOME CANNING AND BAKING.

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

22 97.29 (6) (a) The department shall encourage persons to whom the exemption
23 in sub. (2) (b) 2. applies to attend and complete training, ~~that is approved by the~~
24 ~~department,~~ concerning preparing and canning foods and to have their recipes and
25 processes reviewed by a person who is knowledgeable about the food canning

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1 industry and who is recognized by the department as an authority on preparing and
2 canning food. The department shall encourage persons who register under sub. (2)
3 (b) 3. b. to have their recipes and processes reviewed by a person who is
4 knowledgeable about the baking industry.

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

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

15 (END)