



2022 South Dakota Legislature

House Bill 1322

Introduced by: **Representative Wiese**

1 **An Act to provide for the direct sale of certain home-produced or home-processed**
 2 **foods and food products.**

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 **Section 1. That § 34-18-35 be AMENDED:**

5 **34-18-35.** ~~No~~ Except as otherwise provided in § 34-18-38, the licensure
 6 provisions of this chapter do not apply to a person selling non-temperature-controlled
 7 baked goods or non-temperature-controlled home-processed canned goods at a farmer's
 8 market, roadside stand, or similar venue is required to be licensed pursuant to this
 9 chapter. However, any non-temperature-controlled baked goods or non-temperature-
 10 controlled home-processed canned goods sold at a farmer's market, roadside stand, or
 11 similar venue shall meet the requirements of § 34-18-36, if applicable, and § 34-18-37:
 12 (1) Non-temperature-controlled food prepared at a residence;
 13 (2) Home-processed canned goods;
 14 (3) Baked goods; or
 15 (4) Any food product authorized under § 34-18-36 or section 4 of this Act.

16 **Section 2. That chapter 34-18 be amended with a NEW SECTION:**

17 A person selling food or any food product, as authorized in § 34-18-35, shall
 18 register with the department and submit an annual fee in the amount of fifteen dollars.
 19 The department shall forward any fees collected under this section to the state treasurer
 20 for deposit in the general fund.

21 The department shall promulgate rules in accordance with chapter 1-26, to provide
 22 for an annual registration process.

23 **Section 3. That § 34-18-36 be AMENDED:**

1 **34-18-36.** No canned good may be sold unless the pH level is 4.6 or less or the
2 water activity level is .85 or less.~~A~~

3 Except as otherwise provided in this section, a producer selling canned goods under
4 this section shall, every five years, complete food safety training approved by the
5 department. The training must be available online and may not cost more than one
6 hundred dollars. The producer shall retain records verifying the timely completion of such
7 training.

8 A producer selling home-processed goods under this section may, in lieu of the
9 requirement for food safety training, maintain verification of each recipe from a third-
10 party processing authority. The third-party processing authority ~~with~~ must have
11 knowledge of the thermal processing required of food in hermetically-sealed containers
12 and shall verify the method of processing and that the pH or water activity threshold levels
13 are met. The processing authority shall provide ~~any such~~ verification in writing to the
14 producer.

15 **Section 4. That chapter 34-18 be amended with a NEW SECTION:**

16 Any producer who verifies compliance with the food safety training requirements
17 set forth in accordance with § 34-18-36, may sell the following:

- 18 (1) Any non-heat-processed fermented food, provided the food is consistently
19 maintained at a temperature that is at or below forty-one degrees Fahrenheit;
20 (2) Kuchen and baked goods that require time and temperature control for safety,
21 including soft pies, cheesecake, and baked goods having a custard or cream filling,
22 and sauces and pesto that require time and temperature control for safety,
23 provided the food is consistently maintained at a temperature that is at or below
24 forty-one degrees Fahrenheit; and
25 (3) Home-processed frozen fruit and produce, provided the food is consistently
26 maintained at a temperature that is at or below zero degrees Fahrenheit.

27 **Section 5. That § 34-18-37 be AMENDED:**

28 ~~34-18-37.~~ Unless otherwise provided in this section, no baked good or canned
29 good ~~Food prepared at a residence~~ may not be sold unless it has a label that includes the
30 following information:

- 31 (1) Name of the product;
32 (2) Name of the producer;
33 (3) Physical address of production;

- 1 (4) Mailing address of the producer;
- 2 (5) Telephone number of the producer;
- 3 (6) Date the product was made or processed;
- 4 (7) Ingredients; ~~and~~
- 5 (8) In the case of food sold in accordance with section 4 of this Act, a directive to keep
- 6 refrigerated or frozen; and
- 7 (9) A disclaimer that states: "This product was not produced in a commercial kitchen.
- 8 It has been home-processed in a kitchen that may also process common food
- 9 allergens such as tree nuts, peanuts, eggs, soy, wheat, milk, fish, and crustacean
- 10 shellfish."

11 **Section 6. That § 34-18-38 be AMENDED:**

- 12 **34-18-38.** ~~Any~~ A person selling ~~non-temperature-controlled baked goods~~ food
- 13 prepared at the person's ~~primary~~ residence is exempt from the licensing and license fee
- 14 provisions of this chapter if:
- 15 ~~(1) The non-temperature-controlled baked goods meet the requirements of § 34-18-~~
- 16 ~~37;~~
- 17 ~~(2) The non-temperature-controlled baked goods are sold in the seller's physical~~
- 18 ~~presence at:~~
- 19 ~~(a) The seller's primary residence;~~
- 20 ~~(b) A farmer's market;~~
- 21 ~~(c) A roadside stand; or~~
- 22 ~~(d) Other temporary sale venue; and~~
- 23 ~~(3) The seller, or a person residing at the seller's primary residence, personally delivers~~
- 24 ~~the non-temperature-controlled baked goods to the buyer at the completion of the~~
- 25 ~~sale~~
- 26 (1) The food is sold at the seller's primary residence;
- 27 (2) The food is sold at a farmer's market;
- 28 (3) The food is sold at a roadside stand;
- 29 (4) The food is sold at any other temporary sale venue;
- 30 (5) The food is sold by the producer directly to the buyer;
- 31 (6) The food is sold to the buyer and thereafter delivered to the buyer by mail or other
- 32 delivery service; or

- 1 (7) The food is non-temperature controlled, advertised on a website that contains the
2 labeling information required by § 34-18-37, sold online, and delivered to the
3 buyer by mail or other delivery service.