



2022 South Dakota Legislature
House Bill 1322
ENROLLED

AN ACT

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

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

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

34-18-35. Except as otherwise provided in § 34-18-38, the licensure provisions of this chapter do not apply to a person selling:

- (1) Non-temperature-controlled food prepared at a residence;
- (2) Home-processed canned goods;
- (3) Baked goods prepared at a residence; or
- (4) Any food product prepared at a residence and authorized under § 34-18-36 or section 3 of this Act.

Section 2. That § 34-18-36 be AMENDED:

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

Except as otherwise provided in this section, a producer selling canned goods under this section shall, every five years, complete food safety training approved by the department. The training must be available online. The producer shall retain records verifying the timely completion of such training.

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

Section 3. That chapter 34-18 be amended with a NEW SECTION:

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

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

Section 4. That § 34-18-37 be AMENDED:

34-18-37. Food prepared at a residence may not be sold unless it has a label that includes the following information:

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

Section 5. That § 34-18-38 be AMENDED:

34-18-38. A person selling food prepared at the person's residence, in accordance with § 34-18-35, is exempt from the licensing and license fee provisions of this chapter if:

- (1) The food meets the requirements of § 34-18-37;
- (2) The food is sold in the seller's physical presence at:
 - (a) The seller's primary residence;
 - (b) A farmer's market;
 - (c) A roadside stand; or
 - (d) Other temporary sale venue; and
- (3) The seller, or a person residing at the seller's primary residence, personally delivers the food to the buyer at the completion of the sale.

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I certify that the attached Act originated in
the:
House as Bill No. 1322

Received at this Executive Office
this ____ day of _____,
2022 at _____ M.

Chief Clerk

By _____
for the Governor

Speaker of the House

The attached Act is hereby
approved this _____ day of
_____, A.D., 2022

Attest:

Chief Clerk

Governor

STATE OF SOUTH DAKOTA,

ss.

Office of the Secretary of State

President of the Senate

Attest:

Filed _____, 2022
at _____ o'clock __ M.

Secretary of the Senate

Secretary of State

House Bill No. 1322
File No. _____
Chapter No. _____

By _____
Asst. Secretary of State