

## 2022 South Dakota Legislature

**House Bill 1322****AMENDMENT 1322D FOR THE INTRODUCED BILL**

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 4-3 of this Act.

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

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

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

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

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

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

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

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

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

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

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

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

- 32 (1) Name of the product;

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

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

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

AMENDED