

2022 South Dakota Legislature

House Bill 1322**AMENDMENT 1322F 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 **prepared at a residence**; or

15 (4) Any food product **prepared at a residence and** authorized under § 34-18-36 or
16 section **4-3** of this Act.

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

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

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

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

4 **34-18-36.** No canned good may be sold unless the pH level is 4.6 or less or the
5 water activity level is .85 or less.A

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

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

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

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

21 (1) Any non-heat-processed fermented food, provided the food is consistently
22 maintained at a temperature that is at or below forty-one degrees Fahrenheit;

23 (2) Kuchen and baked goods that require time and temperature control for safety,
24 including soft pies, cheesecake, and baked goods having a custard or cream filling,
25 and sauces and pesto that require time and temperature control for safety,
26 provided the food is consistently maintained at a temperature that is at or below
27 forty-one degrees Fahrenheit; and

28 (3) Home-processed frozen fruit and produce, provided the food is consistently
29 maintained at a temperature that is at or below zero degrees Fahrenheit.

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

1 ~~34-18-37. Unless otherwise provided in this section, no baked good or canned~~
 2 ~~good~~ Food prepared at a residence may not be sold unless it has a label that includes the
 3 following information:

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

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

18 ~~34-18-38. Any~~ A person selling ~~non-temperature-controlled baked goods~~ food
 19 prepared at the person's primary residence, in accordance with § 34-18-35, is exempt
 20 from the licensing and license fee provisions of this chapter if:

- 21 (1) ~~The non-temperature-controlled baked goods meet~~ food meets the requirements of
 22 § 34-18-37;
- 23 (2) ~~The non-temperature-controlled baked goods are~~ food is sold in the seller's physical
 24 presence at:
 - 25 (a) The seller's primary residence;
 - 26 (b) A farmer's market;
 - 27 (c) A roadside stand; or
 - 28 (d) Other temporary sale venue; and
- 29 (3) The seller, or a person residing at the seller's primary residence, personally delivers
 30 the non-temperature-controlled baked goods food to the buyer at the completion
 31 of the sale
- 32 ~~(1) The food is sold at the seller's primary residence;~~
- 33 ~~(2) The food is sold at a farmer's market;~~
- 34 ~~(3) The food is sold at a roadside stand;~~

- 1 ~~(4) The food is sold at any other temporary sale venue;~~
2 ~~(5) The food is sold by the producer directly to the buyer;~~
3 ~~(6) The food is sold to the buyer and thereafter delivered to the buyer by mail or other~~
4 ~~delivery service; or~~
5 ~~(7) The food is non-temperature controlled, advertised on a website that contains the~~
6 ~~labeling information required by § 34-18-37, sold online, and delivered to the~~
7 ~~buyer by mail or other delivery service.~~

AMENDED