



2022 South Dakota Legislature

House Bill 1322

HOUSE COMMERCE AND ENERGY ENGROSSED

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

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

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

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

24 A producer selling home-processed goods under this section may, in lieu of the
 25 requirement for food safety training, maintain verification of each recipe from a third-

1 party processing authority. The third-party processing authority with—must have
2 knowledge of the thermal processing required of food in hermetically-sealed containers
3 and shall verify the method of processing and that the pH or water activity threshold levels
4 are met. The processing authority shall provide any—such—verification in writing to the
5 producer.

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

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

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

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

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

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

19 ~~34-18-37. Unless otherwise provided in this section, no baked good or canned~~
20 ~~good~~ Food prepared at a residence may not be sold unless it has a label that includes the
21 following information:

22 (1) Name of the product;

23 (2) Name of the producer;

24 (3) Physical address of production;

25 (4) Mailing address of the producer;

26 (5) Telephone number of the producer;

27 (6) Date the product was made or processed;

28 (7) Ingredients; ~~and~~

29 (8) In the case of food sold in accordance with section 3 of this Act, a directive to keep
30 refrigerated or frozen; and

31 (9) A disclaimer that states: "This product was not produced in a commercial kitchen.

32 It has been home-processed in a kitchen that may also process common food

1 allergens such as tree nuts, peanuts, eggs, soy, wheat, milk, fish, and crustacean
2 shellfish."

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

4 **34-18-38.** ~~Any~~A person selling ~~non-temperature-controlled baked goods~~ food
5 prepared at the person's primary residence, in accordance with § 34-18-35, is exempt
6 from the licensing and license fee provisions of this chapter if:

- 7 (1) ~~The non-temperature-controlled baked goods meet~~ food meets the requirements of
8 § 34-18-37;
- 9 (2) ~~The non-temperature-controlled baked goods are~~ food is sold in the seller's physical
10 presence at:
11 (a) The seller's primary residence;
12 (b) A farmer's market;
13 (c) A roadside stand; or
14 (d) Other temporary sale venue; and
- 15 (3) The seller, or a person residing at the seller's primary residence, personally delivers
16 the ~~non-temperature-controlled baked goods~~ food to the buyer at the completion
17 of the sale.