



2021 South Dakota Legislature

House Bill 1121

Introduced by: **Representative Wiese**

1 **An Act to establish criteria governing the sale of homemade food items.**

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

3 **Section 1.** That a NEW SECTION be added:

4 **7-18A-38. Homemade food item--Ordinance limitation.**

5 A board of county commissioners may not pass an ordinance that restricts,
 6 prohibits, or imposes any licensure requirement or licensure fee on the sale of any
 7 homemade food item, as defined in § 34-18-1.

8 **Section 2.** That a NEW SECTION be added:

9 **8-5-15. Homemade food item--Ordinance limitation.**

10 A township board of supervisors may not pass an ordinance that restricts, prohibits,
 11 or imposes any licensure requirement or licensure fee on the sale of any homemade food
 12 item, as defined in § 34-18-1.

13 **Section 3.** That a NEW SECTION be added:

14 **9-19-22. Homemade food item--Ordinance limitation.**

15 The governing board of a municipality may not pass an ordinance that restricts,
 16 prohibits, or imposes any licensure requirement or licensure fee on the sale of any
 17 homemade food item, as defined in § 34-18-1.

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

19 **34-18-1. Definitions.**

20 Terms used in this chapter mean:

21 (1) "Campground," a plot of ground for public use upon which two or more campsites
 22 are located, established, maintained, advertised, or held out to the public to be a

- 1 place where camping units can be located and occupied as temporary living quarters
2 for children or adults, or both. Camping units are considered to be trailers, tent
3 campers, campers, tents, recreational park trailers, or other equipment that may
4 be used by the public at individual campsites located at campgrounds or areas used
5 by the public as campgrounds;
- 6 (2) "County fair," any fair or celebration operated by any county of this state and under
7 the supervision of a county fair board, county fair association, or the county board
8 of commissioners;
- 9 (3) "Department," the Department of Health;
- 10 (4) "Food," any raw, cooked, or processed edible substance, beverage, or ingredient
11 used or intended for use or for sale in whole or in part for human consumption;
- 12 (5) "Food service establishment," any fixed restaurant; coffee shop; cafeteria; short-
13 order café; luncheonette; grill; tearoom; sandwich shop; soda fountain; tavern;
14 bar; cocktail lounge; night club; roadside stand; catering kitchen; delicatessen;
15 bakery; grocery store; boardinghouse; or similar place in which food or drink is
16 prepared for sale or for service to the public on the premises or elsewhere with or
17 without charge;
- 18 (6) "Homemade food item," any food, including a nonalcoholic beverage, that is
19 produced and, if applicable, packaged at the residence of the producer;
- 20 (7) "Hotel," any hotel, motel, lodge, resort, cabins, building, or buildings with more
21 than ten rental units which is used to provide sleeping accommodations for a charge
22 to the public;
- 23 ~~(7)~~(8) "Lodging establishment," any building or other structure and property or premises
24 kept, used, maintained, advertised or held out to the public to be a place where
25 sleeping accommodations are furnished for pay to two or more transient guests.
26 The term includes hotels, motels, cabins, bed and breakfast establishments, lodges,
27 vacation home establishments, dude ranches, and resorts;
- 28 ~~(8)~~(9) "Mobile food service establishment," any mobile unit in which food or drink is
29 prepared for sale or for service to the public with or without charge;
- 30 ~~(9)~~(10) "Nonprofit organization," any governmental organization, church, fraternal, social,
31 school, youth, or other similar organization that is organized and operated for a
32 common good and not for the specific monetary gain of any person or persons;
- 33 (11) "Nontemperature-controlled item," a homemade food item that does not, for
34 purposes of safety, require a time or temperature control process to limit
35 pathogenic microorganism growth or toxin formation;

- 1 ~~(10)~~(12) "Owner," the operator, agent, proprietor, manager, or licensee whether it be
2 a person, firm, corporation, limited liability company, or association;
- 3 (13) "Produce," to prepare a homemade food item by baking, canning, cooking, cutting,
4 dehydrating, drying, fermenting, growing, mixing, preserving, raising, or other
5 similar action;
- 6 ~~(11)~~(14) "Rental unit," any room, cabin, or other quarters that may be rented to a
7 guest for sleeping accommodations;
- 8 ~~(12)~~(15) "Secretary," the secretary of the Department of Health;
- 9 ~~(13)~~(16) "Specialty resort," any bed and breakfast establishment, lodge, dude ranch,
10 resort, building, or buildings used to provide accommodations or recreation for a
11 charge to the public, with no more than ten rental units for up to an average of
12 twenty guests per night and in which meals are provided to only the guests staying
13 at the specialty resort;
- 14 ~~(14)~~(17) "State Fair," the fair at Huron, South Dakota, operated by the Department of
15 Agriculture;
- 16 (18) "Temperature-controlled item," a homemade food item that does, for purposes of
17 safety, require a time or temperature control process to limit pathogenic
18 microorganism growth or toxin formation;
- 19 ~~(15)~~(19) "Temporary food service establishment," any food service establishment
20 which operates at a fixed location for a temporary period of time, not to exceed two
21 weeks, in connection with a fair, carnival, circus, public exhibition, or similar
22 transitory gathering;
- 23 ~~(16)~~(20) "Transient guest," any person who resides in a lodging establishment less
24 than four consecutive calendar weeks;
- 25 ~~(17)~~(21) "Vacation home establishment," any home, cabin, or similar building that is
26 rented, leased, or furnished in its entirety to the public on a daily or weekly basis
27 for more than fourteen days in a calendar year and is not occupied by an owner or
28 manager during the time of rental. This term does not include a bed and breakfast
29 establishment as defined in subdivision 34-18-9.1(1);
- 30 ~~(18)~~(22) "Water recreational facility," any artificial basin of water located at a facility
31 licensed pursuant to chapter 34-18 constructed, installed, modified, or improved
32 for the purpose of swimming, wading, diving, or recreation, including swimming
33 pools, spas, hot tubs, and water slides.

34 **Section 5.** That § 34-18-34 be AMENDED.

1 **34-18-34. Farmer's market fresh fruits and vegetables--Licensure**
 2 **exemption.**

3 No person selling whole, ~~intact~~ fresh fruits or vegetables at a farmer's market,
 4 roadside stand, or similar venue is required to be licensed pursuant to this chapter.

5 **Section 6.** That § 34-18-36 be AMENDED.

6 **34-18-36. Canned good requirements--Verification.**

7 No canned good may be sold unless the pH level is 4.6 or less or the water activity
 8 level is .85 or less. ~~A third party processing authority with knowledge of the thermal~~
 9 ~~processing required of food in hermetically sealed containers shall verify the method of~~
 10 ~~processing and that the pH or water activity threshold levels are met. The processing~~
 11 ~~authority shall provide any such verification in writing.~~

12 **Section 7.** That § 34-18-37 be AMENDED.

13 **34-18-37. Homemade food item--Label--Content.**

14 ~~Unless otherwise provided in this section, no baked good~~ A homemade food item
 15 or canned good may not be sold unless it has a label that ~~includes the following~~
 16 information:

- 17 (1) ~~Name~~ States the name of the product;
- 18 (2) ~~Name~~ States the name of the producer;
- 19 (3) ~~Physical~~ States the physical address of production;
- 20 (4) ~~Mailing~~ States the mailing address of the producer;
- 21 (5) ~~Telephone~~ States the telephone number of the producer;
- 22 (6) ~~Date~~ States the date the product was made or processed;
- 23 (7) ~~Ingredients~~ Lists the ingredients; and
- 24 (8) ~~A disclaimer that states~~ Includes the following disclaimers:
- 25 (a) ~~"This product food was not produced in a commercial kitchen. It has been~~
 26 ~~home processed in a kitchen that may also process common food allergens~~
 27 ~~such as tree nuts, peanuts, eggs, soy, wheat, milk, fish, and crustacean~~
 28 ~~shellfish that is regulated or inspected.";~~ and
- 29 (b) "This food may contain allergens."

30 **Section 8.** That § 34-18-38 be AMENDED.

34-18-38. Homemade food items--Exemption from licensure--Conditions.

Any person selling ~~non-temperature-controlled baked goods at the person's primary residence~~ homemade food items is exempt from the licensing and license fee provisions of this chapter, if the following conditions are met, where applicable:

- (1) ~~The non-temperature-controlled baked goods~~ homemade food items meet the requirements of § 34-18-37;
- (2) ~~The non-temperature-controlled baked goods are 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 non-temperature-controlled baked goods to the buyer at the completion of the sale~~ Any homemade food items that are nontemperature-controlled are sold and delivered to the purchaser by:
 - (a) The producer, either in person or remotely, including by telephone or internet;
 - (b) An agent of the producer; or
 - (c) A third-party vendor, including a retail or grocery store;
- (3) Any homemade food items that are temperature-controlled are:
 - (a) Sold to the purchaser by the producer, either in person or remotely, including by telephone or internet; and
 - (b) Delivered to the purchaser in person;
- (4) The homemade food item is not a meat food product, as that term is defined in the Federal Meat Inspection Act, 21 U.S.C § 601, as of January 1, 2021, unless it is exempted in accordance with 9 C.F.R. § 303.1;
- (5) The homemade food item is not a poultry product, as that term is defined in the Poultry Products Inspection Act, 21 U.S.C § 453, as of January 1, 2021, unless it is exempted in accordance with 9 C.F.R. § 381.10(c) or (d); and
- (6) The person's annual gross revenue from selling homemade food items does not exceed one hundred fifty thousand dollars.

Section 9. That a NEW SECTION be added:

1 **34-18-39. Homemade food items--Retailer--Required signage.**

2 A retailer selling homemade food items shall display a sign informing the end
3 consumer that the homemade food items have not been inspected.

4 **Section 10.** That § 34-46-17 be AMENDED.

5 **34-46-17. Posted smoking rooms permitted in hotels and lodging**
6 **establishments.**

7 The provisions of §§ 34-46-13 to 34-46-15, inclusive, do not apply to any sleeping
8 rooms in any hotel or lodging establishment licensed pursuant to ~~subdivision 34-18-1(7)~~
9 ~~or (9), respectively~~ chapter 34-18, if the rooms are rented to guests. Any sleeping room
10 in which smoking is allowed shall be posted as a smoking room.

11 **Section 11.** That § 34-18-35 be REPEALED.

12 **34-18-35. Farmer's market baked and canned goods--Licensure exemption.**