

State of South Dakota

NINETY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2017

648Y0121

HOUSE BILL NO. 1201

Introduced by: Representatives Campbell, Brunner, Dennert, DiSanto, Gosch, Howard, Jensen (Kevin), Latterell, Livermont, Marty, May, and Pischke and Senators Jensen (Phil), Monroe, and Nelson

1 FOR AN ACT ENTITLED, An Act to exempt certain food sales from licensure, certification,
2 and inspection.

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

4 Section 1. That the code be amended by adding a NEW SECTION to read:

5 Terms in this Act mean:

- 6 (1) "Delivery," a transfer of a product resulting from a transaction between a producer
7 and an informed end consumer. The delivery may occur by the producer's designated
8 agent at a farm, ranch, farmers market, home, office, or any location agreed to
9 between the producer and the informed end consumer;
- 10 (2) "Farmers market," a common facility or area where several vendors may gather on
11 a regular, recurring basis to sell a variety of fresh fruits and vegetables, locally grown
12 farm products, and other items directly to consumers;
- 13 (3) "Home consumption," consumed within a private home or food from a private home
14 that is only consumed by family members, employees, or nonpaying guests;



1 (4) "Homemade," food that is prepared in a private home kitchen, that is not licensed,
2 inspected, or regulated;

3 (5) "Informed end consumer," a person who is the last person to purchase any product,
4 who does not resell the product and who has been informed that the product is not
5 licensed, regulated, or inspected;

6 (6) "Producer," a person who harvests any product of the soil or poultry for food or
7 drink;

8 (7) "Transaction," the exchange of buying and selling.

9 Section 2. That the code be amended by adding a NEW SECTION to read:

10 No state governmental agency or an agency of any political subdivision of the state may
11 require licensure, permitting, certification, packaging, or labeling that pertains to the
12 preparation, serving, use, consumption, or storage of foods or food products under this Act.
13 Nothing in this Act prohibits an agency from providing assistance, consultation, or inspection,
14 when requested by the producer.

15 Section 3. That the code be amended by adding a NEW SECTION to read:

16 Any transaction under this Act shall:

17 (1) Be directly between the producer and the informed end consumer;

18 (2) Only be for home consumption;

19 (3) Only occur in South Dakota;

20 (4) Not involve interstate commerce; and

21 (5) Not involve the sale of meat products, except:

22 (a) The sale of poultry or poultry products consistent with this Act;

23 (b) The sale of live animals intended for slaughter; and

24 (c) The sale of portions of animals for future delivery provided that the processing

1 of the animals is done by the purchaser or by a processing facility licensed by
2 the state or federal government.

3 Section 4. That the code be amended by adding a NEW SECTION to read:

4 Except for raw, unprocessed fruit and vegetables, no food may be sold or used in any
5 commercial food establishment unless the food has been labeled, licensed, packaged, regulated,
6 or inspected as required by law.

7 Section 5. That the code be amended by adding a NEW SECTION to read:

8 The producer shall inform the end consumer that any food product or product sold at a
9 farmers market or through ranch, farm, or home based sales pursuant to this Act is not certified,
10 labeled, licensed, or packaged, regulated, or inspected.

11 Section 6. That the code be amended by adding a NEW SECTION to read:

12 Any potentially hazardous food may not be required to be labeled, licensed, regulated, or
13 inspected if it is sold at a farmers market or sold from a producer to an informed end consumer.

14 Section 7. That the code be amended by adding a NEW SECTION to read:

15 Nothing in this Act prohibits the Department of Health from conducting any investigation
16 of food borne illness.

17 Section 8. That the code be amended by adding a NEW SECTION to read:

18 Nothing in this Act affects the requirements for any brand inspection or animal health
19 inspection.

20 Section 9. That § 34-18-1 be amended to read:

21 34-18-1. Terms used in this chapter mean:

22 (1) "Campground," a plot of ground for public use upon which two or more campsites
23 are located, established, maintained, advertised, or held out to the public to be a place
24 where camping units can be located and occupied as temporary living quarters for

1 children or adults, or both. Camping units are considered to be trailers, tent campers,
2 campers, tents, recreational park trailers, or other equipment that may be used by the
3 public at individual campsites located at campgrounds or areas used by the public as
4 campgrounds;

5 (2) "County fair," any fair or celebration operated by any county of this state and under
6 the supervision of a county fair board, county fair association, or the county board of
7 commissioners;

8 (3) "Department," the Department of Health;

9 (4) "Food," any raw, cooked, or processed edible substance, beverage, or ingredient used
10 or intended for use or for sale in whole or in part for human consumption;

11 (5) "~~Food~~ Commercial food service establishment," any ~~fixed restaurant; coffee shop;~~
12 ~~cafeteria; short-order café; luncheonette; grill; tearoom; sandwich shop; soda~~
13 ~~fountain; tavern; bar; cocktail lounge; night club; roadside stand; catering kitchen;~~
14 ~~delicatessen; bakery; grocery store; boardinghouse; or similar place in which food or~~
15 ~~drink is prepared for sale or for service to the public on the premises or elsewhere~~
16 ~~with or without charge~~ place or area of an establishment that is a wholesale or retail
17 business where food, drugs, devices, or cosmetics are displayed for sale,
18 manufactured, processed, packed, held, or stored. The term does not include:

19 (a) Any farmers market; or

20 (b) Any producer or informed consumer engaged in transactions pursuant to this
21 Act;

22 (6) "Hotel," any hotel, motel, lodge, resort, cabins, building, or buildings with more than
23 ten rental units which is used to provide sleeping accommodations for a charge to the
24 public;

- 1 (7) "Lodging establishment," any building or other structure and property or premises
2 kept, used, maintained, advertised or held out to the public to be a place where
3 sleeping accommodations are furnished for pay to two or more transient guests. The
4 term includes hotels, motels, cabins, bed and breakfast establishments, lodges,
5 vacation home establishments, dude ranches, and resorts;
- 6 (8) "Mobile food service establishment," any mobile unit in which food or drink is
7 prepared for sale or for service to the public with or without charge;
- 8 (9) "Nonprofit organization," any governmental organization, church, fraternal, social,
9 school, youth, or other similar organization that is organized and operated for a
10 common good and not for the specific monetary gain of any person or persons;
- 11 (10) "Owner," the operator, agent, proprietor, manager, or licensee whether it be a person,
12 firm, corporation, limited liability company, or association;
- 13 (11) "Rental unit," any room, cabin, or other quarters that may be rented to a guest for
14 sleeping accommodations;
- 15 (12) "Secretary," the secretary of the Department of Health;
- 16 (13) "Specialty resort," any bed and breakfast establishment, lodge, dude ranch, resort,
17 building, or buildings used to provide accommodations or recreation for a charge to
18 the public, with no more than ten rental units for up to an average of twenty guests
19 per night and in which meals are provided to only the guests staying at the specialty
20 resort;
- 21 (14) "State Fair," the fair at Huron, South Dakota, operated by the Department of
22 Agriculture;
- 23 (15) "Temporary food service establishment," any food service establishment which
24 operates at a fixed location for a temporary period of time, not to exceed two weeks,

1 in connection with a fair, carnival, circus, public exhibition, or similar transitory
2 gathering;

3 (16) "Transient guest," any person who resides in a lodging establishment less than four
4 consecutive calendar weeks;

5 (17) "Vacation home establishment," any home, cabin, or similar building that is rented,
6 leased, or furnished in its entirety to the public on a daily or weekly basis for more
7 than fourteen days in a calendar year and is not occupied by an owner or manager
8 during the time of rental. This term does not include a bed and breakfast
9 establishment as defined in subdivision 34-18-9.1(1);

10 (18) "Water recreational facility," any artificial basin of water located at a facility licensed
11 pursuant to chapter 34-18 constructed, installed, modified, or improved for the
12 purpose of swimming, wading, diving, or recreation, including swimming pools,
13 spas, hot tubs, and water slides.

14 Section 10. That chapter 34-18 be amended by adding a NEW SECTION to read:

15 The provisions of § 34-18-10 do not apply to a producer selling food directly to an informed
16 end consumer at a farmers market or through ranch, farm, or home based sales.