

South Dakota Requirements for the Sale of Baked Goods Made within Your Home

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In 2010 the South Dakota “Home-Processed Foods Law”¹ came into effect allowing for sale of home baked goods at farmer’s markets and similar venues. In 2011, a new section was added to this law expanding on the sale of home-baked goods. This fact sheet will explain the requirements of the exemption as they pertain to the sale of home-baked goods.

VENUES FOR MARKETING OR SALE:

- Farmers Market or Roadside Stand
- Community type venues. For example at church or school bake sale, craft fair, concession stand among others.
- Orders from your home: the total gross receipts from the sale of baked goods from the person’s own primary residence does not exceed five thousand dollars in a calendar year. Not to be consumed on the premises.

HOME-BAKED FOODS ALLOWED TO BE SOLD

Baked goods that do not require refrigeration may include but are not limited to lefse, bread, rolls, fruit pies, candies and confectioneries, cakes and cookies.

HOME-BAKED FOODS NOT ALLOWED TO BE SOLD

Baked foods that require refrigeration for safety may include cream or custard filled pastries such as kuchen, pumpkin pie, and flan. This pertains to custards or cream fillings that commonly contain dairy products, eggs or certain soy products.

MARKETING OF HOME-BAKED GOODS

Sales of non-temperature controlled baked goods are exempt from licensing requirements if they meet the following conditions:

- Any non-temperature-controlled baked goods sold from a person’s own primary residence is for consumption off the premises.
- Any non-temperature-controlled baked goods sold from a person’s own primary residence or at the farmer’s market must have a label with the following information:
 1. Name of product
 2. Producer and contact information
 3. Date the product was made or processed

4. Ingredients

5. A disclaimer that states: “This product was not produced in a commercial kitchen. It has been home-processed in a kitchen that may also process common food allergens such as tree nuts, peanuts, eggs, soy, wheat, milk, fish, and crustacean shellfish.”

- Selling from a display case at the farmer’s market – the information must be on the display case or made available in written format to the customer when purchased.

EXAMPLES OF PRODUCTS THAT DO NOT PERTAIN TO THIS LAW:

Whole eggs in the shell, fish, dairy or meat products such as smoked fish, butter, raw milk, vacuum packaged food, or jerky —these products are overseen by the regulatory jurisdiction of one of the following (dependent upon the food product): South Dakota Department of Agriculture, SD Department of Health, the USDA or FDA.

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¹South Dakota Codified Law (SDCL) 34-18-34 thru 37. Commonly referred to as “Home Processed Foods Law”