

Sixty-sixth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2269

Introduced by

Senators Klein, Myrdal, Unruh

Representatives D. Johnson, Schreiber-Beck

1 A BILL for an Act to create and enact three new sections to chapter 23-09.5 of the North Dakota
2 Century Code, relating to cottage food production and sale; and to amend and reenact sections
3 23-09.5-01 and 23-09.5-02 of the North Dakota Century Code, relating to the direct producer to
4 consumer sale of cottage food products.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1. AMENDMENT.** Section 23-09.5-01 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **23-09.5-01. Definitions.**

9 As used in this chapter:

- 10 1. "Adulterated" has the same definition as under section 19-02.1-09.
- 11 2. "Baked goods" means a food usually produced from dough or batter which is baked
12 before consuming, including bread, quick bread, lefse, fruit pies, custard pies, cakes,
13 cheesecakes, cookies, biscuits, crackers, doughnuts, rolls, pastries with or without
14 fillings, candies, or chocolates, or similar products, regardless of whether the food
15 requires time and temperature control for safety.
- 16 3. "Commercial consumption" includes use of food in a food establishment, food
17 processing plant, retail food store, or any other food operation requiring licensure
18 under section 23-09-16.
- 19 4. "Cottage food operator" means an individual who produces or packages cottage food
20 products in a noncommercial kitchen ~~designed and intended for use by the residents~~
21 ~~of a private home.~~
- 22 ~~2.5.~~ "Cottage food product" means baked goods, jams, jellies, and pickles, or other food
23 and drink products produced or packaged by a cottage food operator. ~~The term does~~
24 ~~not include whole, uncut fresh fruits and vegetables.~~

- 1 ~~3-6.~~ "Delivery" means the transfer of a cottage food product resulting from a
2 person-to-person transaction between a cottage food operator and an informed end
3 consumer.
- 4 ~~4-7.~~ "Farmers market" means a market or group of booths ~~whereat~~ which farmers and
5 other cottage food operators sell cottage food products directly to consumers.
- 6 ~~5.~~ "Home consumption" means ~~food consumed within a private home or food from a~~
7 ~~private home consumed only by family members, employees, or nonpaying guests.~~
- 8 ~~6-8.~~ "Food" means an article used for food or drink for human consumption.
- 9 ~~9.~~ "Food establishment" has the same definition as under section 23-09-01.
- 10 ~~9-10.~~ "Food requiring time and temperature control for safety" means perishable food that is
11 not modified in a way to limit the growth of undesirable micro-organisms or toxin
12 formation.
- 13 ~~10-11.~~ "Frozen" means a food is maintained at a temperture no greater than zero degrees
14 Fahrenheit [-17.8 degrees Celsius] or in a solid state.
- 15 ~~11-12.~~ "High acid foods" or "acidified foods" means foods naturally high in acid or foods that
16 have been acidified by adding acid or by the action of a culture to reduce the
17 equilibrium pH to four and six-tenths or below.
- 18 ~~12-13.~~ "Informed end consumer" means an individual who is the last individual to purchase a
19 cottage food product and has been informed the cottage food product is not licensed,
20 regulated, or inspected purchases a cottage food product for noncommercial
21 consumption and has been informed the cottage food product is produced and
22 packaged in a noncommercial kitchen and the product is not regulated or inspected by
23 a state or local health department.
- 24 ~~13-14.~~ "Misbranded" means any false or misleading labeling of a food product; food offered
25 for sale under the name of another food; or a food container made, formed, or filled as
26 to be misleading.
- 27 ~~14-15.~~ "Safe moisture level" means a level of moisture low enough to prevent the growth of
28 undesirable micro-organisms in the finished food product. The measurement of
29 moisture level or water activity at eighty-five hundredths or less is low enough to inhibit
30 the growth of undesirable micro-organisms.

1 ~~7.15.16.~~ "Transaction" means the exchange of buying and selling directly, person-to-person,
2 between the cottage food operator and informed end consumer.

3 ~~16.17.~~ "Undesirable micro-organisms" means yeasts, molds, bacteria, viruses, protozoa, and
4 parasites, and includes disease-causing pathogens having public health significance
5 which subject food to decomposition, indicate food is contaminated with filth, or
6 otherwise may cause food to be adulterated.

7 18. "Whole, uncut fresh fruits and vegetables" means a fruit or vegetable in its raw or
8 natural state, including all fruits and vegetables that are washed, colored, or otherwise
9 treated in an unpeeled natural form before marketing.

10 **SECTION 2. AMENDMENT.** Section 23-09.5-02 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **23-09.5-02. Direct producer to consumer sales of cottage food products.**

- 13 1. ~~Notwithstanding any other provision of law, a contrary provision of law regarding the~~
14 ~~production, packaging, sale, or purchase of a food item, under the terms of this~~
15 ~~chapter, a cottage food operator may produce, package, and sell a cottage food~~
16 ~~product to an informed end consumer. A state agency or political subdivision may not~~
17 ~~require licensure, regulation, permitting, certification, or inspection, packaging, or~~
18 ~~labeling that pertains to the preparation, packaging, or sale of cottage food products~~
19 ~~authorized for sale and purchase under this section. This section does not preclude~~
20 ~~ana state agency or political subdivision from providing assistance, consultation, or~~
21 ~~inspection, upon the request, of a producer cottage food operator.~~
- 22 2. ~~Transactions~~A transaction of a cottage food product under this section~~chapter~~ must be
23 ~~directly between the cottage food operator and the informed end consumer and be~~
24 ~~only intended for home~~noncommercial consumption. ~~Transactions~~A transaction may
25 occur at a farm, ranch, farmers market, ~~farm~~roadside stand, ~~home-based kitchen, or~~
26 ~~any other venue not otherwise prohibited by law or through delivery~~private home, in-
27 person delivery, community event, craft show, county fair, or bazaar, or other similar
28 event.
- 29 3. ~~Transactions~~A transaction under this section~~chapter~~ may not:
30 a. ~~Involve interstate commerce~~Occur outside the state; or
31 b. ~~Be conducted over the internet or phone, through the mail, or by consignment;~~

- 1 e. ~~Include the sale of uninspected products made from meat, except as provided~~
2 ~~under subdivision d; or~~
- 3 d. ~~Include the sale of uninspected products made from poultry, unless:~~
4 (1) ~~The cottage food operator slaughters no more than one thousand poultry~~
5 ~~raised by the cottage food operator during the calendar year;~~
6 (2) ~~The cottage food operator does not buy or sell poultry products, except~~
7 ~~products produced from poultry raised by the cottage food operator; and~~
8 (3) ~~The poultry product is not adulterated or misbranded.~~
- 9 4. ~~Except for whole, unprocessed fruits and vegetables, food prepared by a cottage food~~
10 ~~operator may not be sold or used in any food establishment, food processing plant, or~~
11 ~~food store.~~
- 12 5. ~~The cottage food operator shall inform the end consumer that any cottage food~~
13 ~~product or food sold under this section is not certified, labeled, licensed, packaged,~~
14 ~~regulated, or inspected.~~
- 15 6. ~~This section does not change any requirement for brand inspection or animal health~~
16 ~~inspections.~~
- 17 7. ~~A cottage food operator shall label all cottage food products that require refrigeration,~~
18 ~~such as baked goods containing cream, custard, meringue, cheesecake, pumpkin pie,~~
19 ~~and cream cheese, with safe handling instructions and a product disclosure statement~~
20 ~~indicating the product was transported and maintained frozen.~~
- 21 8. ~~A cottage food operator shall display a consumer advisory sign at the point of sale or~~
22 ~~place a label on the cottage food product with the following statement:~~
23 ~~"This product is made in a home kitchen that is not inspected by the state or local~~
24 ~~health department."~~
- 25 9. ~~The state department of health or a local regulating authority may conduct an~~
26 ~~investigation upon complaint of an illness or environmental health complaint.~~
27 A cottage
28 food product may be advertised using the internet if the transaction and delivery are
29 made in person, directly from the cottage food operator to the informed end consumer,
as specified under this section.

1 5. A cottage food operator may not sell a cottage food product to an informed end
2 consumer if the cottage food operator knows the cottage food product is intended to
3 be used for commercial consumption.

4 6. An informed end consumer may not sell a cottage food product or provide the cottage
5 food product to another person for commercial consumption.

6 7. Except for whole, uncut fresh fruits and vegetables, food prepared by a cottage food
7 operator may not be sold or used for commercial consumption.

8 **SECTION 3.** A new section to chapter 23-09.5 of the North Dakota Century Code is created
9 and enacted as follows:

10 **Cottage food products.**

11 The following cottage food products are not authorized for sale under this chapter:

12 1. Meat, wild game, poultry, fish, seafood, or shellfish, or products containing such items.

13 A cottage food operator may sell uninspected raw poultry or shell eggs that are the
14 product of poultry, if:

15 a. The cottage food operator slaughters no more than one thousand poultry during
16 the calendar year;

17 b. The cottage food operator does not sell poultry or shell eggs produced from
18 poultry raised by anyone other than the cottage food operator; and

19 c. The raw poultry product is not adulterated or misbranded.

20 2. Home-processed or home-canned products, unless:

21 a. The products are processed or canned in this state and the products are high
22 acid foods, such as fruit, or acidified foods, such as salsa, pickles, or vegetables
23 and the pH level is verified by using a calibrated pH meter; ~~or~~

24 b. The products are dehydrated or are freeze dried and the products have a safe
25 moisture level;

26 c. The products are blanched and frozen; or

27 d. The products are low-acid foods processed using a pressure canner.

28 3. Food requiring time and temperature control for safety, unless the food is baked or
29 otherwise meets the requirements under this subsection. A food requiring time and
30 temperature control for safety which is a cottage food product authorized for sale

1 under this chapter must be labeled in accordance with the requirements of this chapter

2 and:

3 a. ~~If~~Except as provided under subdivision b, if transported by the cottage food
4 operator, must be maintained frozen at a temperature of forty degrees Fahrenheit
5 [4.4 degrees Celsius] or less by the cottage food operator, except for washed
6 shell eggs, which must be transported and maintained under refrigeration at forty-
7 five degrees Fahrenheit [7.2 degrees Celsius] or less; and/or

8 b. ~~Must be labeled in accordance with the requirements of this chapter~~Except for
9 washed shell eggs, if a period of four hours or more occurs between
10 transportation by the cottage food operator and delivery, must be maintained
11 frozen by the cottage food operator.

12 4. Dairy, unless properly pasteurized and then only to the extent the dairy is used as an
13 ingredient in a baked good.

14 5. Garlic in oil.

15 ~~6. Seed sprouts of any variety.~~

16 ~~7. Cut leafy greens, except for leafy greens grown and dehydrated or blanched and~~
17 ~~frozen by the cottage food operator.~~

18 ~~8. Fresh cut or cooked fruits and vegetables, unless the fresh cut fruits and vegetables~~
19 ~~are grown by and are dehydrated by or blanched and frozen by the cottage food~~
20 ~~operator. Fresh cut fruits and vegetables do not include cut fresh tomato or melon,~~
21 ~~dehydrated tomato or melon, or blanched and frozen cut melon.~~

22 ~~9. Wild-harvested, noncultivated mushrooms.~~

23 ~~10.6. Alcoholic beverages.~~

24 ~~11.7. Animal feed or pet feed, or any products not intended for human consumption.~~

25 **SECTION 4.** A new section to chapter 23-09.5 of the North Dakota Century Code is created
26 and enacted as follows:

27 **Cottage food labeling.**

28 1. A cottage food operator may not sell an adulterated or misbranded cottage food
29 product.

- 1 2. A cottage food operator shall inform the end consumer the cottage food product is
2 produced and packaged in a noncommercial kitchen and the product is not regulated
3 or inspected by a state or local health department.
- 4 3. A cottage food operator shall label cottage food that requires time and temperature
5 control for safety with safe handling instructions and a product disclosure statement.
6 The safe handling instructions and product disclosure statement must:
- 7 a. Appear on the product packaging labeled prominently and conspicuously and in a
8 legible type size;
- 9 b. Include, at a minimum, the zip code of the harvest origin or location of production
10 and the date of harvest or date of production;
- 11 c. Include the phrase "safe handling instructions" in bold capital letters; and
- 12 d. Contain the following language:
- 13 (1) For baked goods or blanched and frozen fruits and vegetables, "Previously
14 Handled Refrigerated or Frozen for your Protection - Refreeze or Keep
15 Refrigerated."
- 16 (2) For raw poultry, "Previously Handled Frozen for your Protection - Refreeze
17 or Keep Refrigerated. Thaw in a refrigerator or microwave. Keep poultry
18 separate from other foods. Wash cutting surfaces, utensils, and hands after
19 touching raw poultry. Cook thoroughly."
- 20 (3) For washed shell eggs, "Previously Transported Refrigerated for your
21 Protection - Keep Refrigerated."
- 22 4. If the cottage food is a low-acid food, the label required under this section must:
- 23 a. Be printed on a high visibility color background;
- 24 b. Include the phrase "low-acid food" in bold capital letters; and
- 25 c. Contain the following language: "Improperly canned low-acid food increases your
26 risk of developing foodborne illnesses including botulism or death".
- 27 5. A cottage food operator shall display a clear, prominent, and legible consumer
28 advisory sign at the point of sale or place a label on the cottage food product indicating
29 the "product is made and packaged in a noncommercial kitchen and the product is not
30 regulated or inspected by the state or local health department."

1 6. The state department of health shall publish a list of high-acid foods that do not
2 require special labeling under this section as a low-acid food.

3 **SECTION 5.** A new section to chapter 23-09.5 of the North Dakota Century Code is created
4 and enacted as follows:

5 **Brand inspection.**

6 This chapter does not change any requirement for brand inspection or animal health
7 inspections.