

**FIRST ENGROSSMENT  
with House Amendments  
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.

- 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    ~~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    ~~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    ~~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    ~~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    ~~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    ~~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     ~~7.16.~~    "Transaction" means the exchange of buying and selling directly, person-to-person,  
2                    between the cottage food operator and informed end consumer.
- 3     ~~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 producercottage food operator.
- 22            2.    ~~Transactions~~A transaction of a cottage food product under this sectionchapter must be  
23                    directly between the cottage food operator and the informed end consumer and be  
24                    onlyintended for homenoncommercial consumption. TransactionsA transaction may  
25                    occur at a farm, ranch, farmers market, farmroadside stand, home-based kitchen, or  
26                    any other venue not otherwise prohibited by law or through deliveryprivate 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 sectionchapter 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;

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

8           b. Except for washed shell eggs, if a period of four hours or more occurs between  
9           transportation by the cottage food operator and delivery, must be maintained  
10           frozen by the cottage food operator.

11          4. Dairy, unless properly pasteurized and then only to the extent the dairy is used as an  
12          ingredient.

13          5. Wild-harvested, noncultivated mushrooms.

14          6. Alcoholic beverages.

15          7. Animal feed or pet feed, or any products not intended for human consumption.

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

18          **Cottage food labeling.**

19          1. A cottage food operator may not sell an adulterated or misbranded cottage food  
20          product.

21          2. A cottage food operator shall inform the end consumer the cottage food product is  
22          produced and packaged in a noncommercial kitchen and the product is not regulated  
23          or inspected by a state or local health department.

24          3. A cottage food operator shall label cottage food that requires time and temperature  
25          control for safety with safe handling instructions and a product disclosure statement.

26          The safe handling instructions and product disclosure statement must:

27          a. Appear on the product packaging labeled prominently and conspicuously and in a  
28          legible type size;

29          b. Include, at a minimum, the zip code of the harvest origin or location of production  
30          and the date of harvest or date of production;

31          c. Include the phrase "safe handling instructions" in bold capital letters; and

- 1           d. Contain the following language:
- 2           (1) For baked goods or blanched and frozen fruits and vegetables, "Previously
- 3           Handled Refrigerated or Frozen for your Protection - Refreeze or Keep
- 4           Refrigerated."
- 5           (2) For raw poultry, "Previously Handled Frozen for your Protection - Refreeze
- 6           or Keep Refrigerated. Thaw in a refrigerator or microwave. Keep poultry
- 7           separate from other foods. Wash cutting surfaces, utensils, and hands after
- 8           touching raw poultry. Cook thoroughly."
- 9           (3) For washed shell eggs, "Previously Transported Refrigerated for your
- 10           Protection - Keep Refrigerated."
- 11        4. If the cottage food is a low-acid food, the label required under this section must:
- 12           a. Be printed on a high visibility color background;
- 13           b. Include the phrase "low-acid food" in bold capital letters; and
- 14           c. Contain the following language: "Improperly canned low-acid food increases your
- 15           risk of developing foodborne illnesses including botulism or death".
- 16        5. A cottage food operator shall display a clear, prominent, and legible consumer
- 17           advisory sign at the point of sale or place a label on the cottage food product indicating
- 18           the "product is made and packaged in a noncommercial kitchen and the product is not
- 19           regulated or inspected by the state or local health department."
- 20        6. The state department of health shall publish a list of high-acid foods that do not require
- 21           special labeling under this section as a low-acid food.

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

24        **Brand inspection.**

25        This chapter does not change any requirement for brand inspection or animal health  
26 inspections.