

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

429J0509

HOUSE BILL NO. 1219

Introduced by: Representatives McCoy, Bartling, Cutler, Elliott, Glenski, Hanson, Hargens, Kroger, Nesselhuf, Olson (Mel), and Sigdestad and Senators Kooistra and Nachtigal

1 FOR AN ACT ENTITLED, An Act to exempt certain low income individuals from sales tax
2 on food.

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

4 Section 1. There are hereby exempted from the provisions of chapter 10-45 and from the
5 computation of the amount of tax imposed by it, the gross receipts resulting from authorized
6 purchases of food by any low income household pursuant to this Act. For purposes of
7 determining a low income household for this Act, the Department of Social Services shall use
8 federal poverty level established in 67 Fed. Reg. 6,931 as of January 1, 2004, and multiply that
9 figure by two hundred percent. If the household income is below that level, the department shall
10 issue an exemption card to the household indicating that the purchaser is exempt from taxation
11 on food. Any food purchased by any member of an eligible low income household shall be for
12 consumption by such household.

13 Section 2. Terms used in this Act mean:

14 (1) "Assistance," includes a classification that the household is low income and exempt
15 from sales tax on food;



- 1 (2) "Candy," any preparation of sugar, honey, or other natural or artificial sweeteners in
2 combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form
3 of bars, drops, or pieces. The term, candy, does not include any item that contains
4 flour or requires refrigeration;
- 5 (3) "Department," the Department of Social Services;
- 6 (4) "Exemption card," a card issued by the department to a household pursuant to this
7 Act. The exemption card shall have an identification number encoded into the card;
- 8 (5) "Food" and "food ingredient," any substance, whether in liquid, concentrated, solid,
9 frozen, dried, or dehydrated form, that is sold for ingestion or chewing by humans
10 and is consumed for its taste or nutritional value. The term, food, does not include
11 alcoholic beverages, tobacco, soft drinks, candy, or prepared food;
- 12 (6) "Prepared food," any:
- 13 (a) Food sold in a heated state or heated by the seller;
- 14 (b) Two or more food ingredients mixed or combined by the seller for sale as a
15 single item. The term, prepared food, in this subdivision does not include food
16 that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat,
17 poultry, and foods containing these raw animal foods requiring cooking by the
18 consumer as recommended by the Food and Drug Administration in chapter
19 3, part 401.11 of its Food Code as of January 1, 2004, so as to prevent food
20 borne illnesses; or
- 21 (c) Food sold with eating utensils provided by the seller, including plates, knives,
22 forks, spoons, glasses, cups, napkins, or straws. A plate does not include a
23 container or packaging used to transport the food;
- 24 (7) "Purchaser," any member of the household utilizing the exemption card at a retailer

1 to purchase food pursuant to this Act;

2 (8) "Soft drinks," any nonalcoholic beverages that contain natural or artificial
3 sweeteners. The term, soft drinks, does not include any beverage that contains milk
4 or milk products, soy, rice or similar milk substitutes, or greater than fifty percent of
5 vegetable or fruit juice by volume.

6 Section 3. The department shall promulgate rules, pursuant to chapter 1-26, regarding:

- 7 (1) Assistance eligibility qualifications and application procedure;
- 8 (2) Conditions of continued eligibility, eligibility time limits, eligibility recertification
9 periods, and exemptions;
- 10 (3) Program participation requirements and criteria for disqualification;
- 11 (4) Disqualification for intentional program violation or failure to comply with program
12 requirements;
- 13 (5) Development of applications, reports, and other forms;
- 14 (6) Enforcement of child support obligations including distribution of collections,
15 cooperative agreements with courts and law enforcement officials; and
- 16 (7) Collection, audit, and reporting of facts and statistics relating to the assistance.

17 Section 4. Application shall be made in a manner prescribed by the department. The
18 department shall promptly notify the applicant of its decision.

19 Section 5. An applicant or recipient whose application is denied or not acted upon or who
20 is aggrieved by any action affecting receipt, suspension, reduction, or termination of assistance
21 may appeal the action or inaction as provided in chapter 1-26.

22 Section 6. No applicant or recipient of assistance under this Act may:

- 23 (1) Intentionally make or cause to be made any false statement or misrepresentation in
24 any application, report, or other communication with the department; or

1 (2) Having knowledge of any event or circumstance affecting the initial or continued
2 eligibility for assistance, intentionally conceal or fail to disclose that event or
3 circumstance for the purpose of obtaining assistance.

4 The department may deny or terminate assistance to any person or household who has
5 violated this Act for such period as may be reasonable or necessary to deter fraud or program
6 abuse.

7 Section 7. The department may promulgate, pursuant to chapter 1-26, necessary and
8 reasonable policies and procedures to recover or recoup any unpaid sales tax that resulted from
9 fraud or misrepresentation, erroneous determination of eligibility or amount of assistance, or
10 otherwise.

11 Section 8. Assistance implemented under this Act is subject to the provisions of any
12 amending or repealing act that may hereafter be enacted. No applicant or recipient of assistance
13 under this Act has any claim for compensation or otherwise by reason of the effect of any such
14 amending or repealing act.

15 Section 9. This Act is effective on January 1, 2005.