

**H7909: Cottage Food Manufacture
SUPPORT TESTIMONY
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March 2022**

Overview

Home food businesses, often known as cottage food businesses, are a way for entrepreneurs with big dreams but little capital to start small in their own homes without having to spend tens of thousands of dollars on professional equipment and commercial kitchen space. Nearly every state across the country has embraced these businesses as job creators and revenue generators, but Rhode Island's current homemade food law is keeping families across the state from an opportunity to earn important income and contribute to the economy. **We ask the committee to support H7909, which would provide the opportunity for all people—not just farmers—to sell safe, self-stable baked goods from their homes.**

As Rhode Islanders recover from the pandemic, home-based food businesses can generate revenue and expand access to local food, especially in rural areas. **Rhode Island is the only state that allows only farmers to sell homemade foods.** That means that while a farmer can sell homemade chocolate chip cookies, a home baker living in downtown Providence cannot sell the same exact cookies without breaking the law.

H7909 will make it easier for Rhode Islanders to buy, sell, and consume the food of their choice. The bill will allow anyone who meets the kitchen sanitation requirements to sell homemade foods, not just farmers.

This change is proven to create jobs. For example, since 2016, Delaware, Connecticut, and Kentucky have opened their cottage food laws to allow for all people to sell cottage foods, not just farmers. These states have seen a boon of entrepreneurship. In information obtained through FOIA requests, as of early 2021, Connecticut has over 400 and Kentucky has over 900 registered cottage food producers. Whereas, Rhode Island has just 6 registered farm home food manufactures. This reform will create economic opportunity.

Whether in a home kitchen on a farm, a home kitchen in the suburbs, or a home kitchen in a city, anyone should be allowed to participate in this accessible path to entrepreneurship.

We support this bill which will bring economic opportunities to many Rhode Islanders, but we ask the committee to consider making the following changes to improve the language:

1. Remove the \$25,000 revenue cap; and
2. Allow the sale of all non-potentially hazardous foods, not just baked goods.

Limitations of the current law

Rhode Island's law governing the sale of homemade food is hampering local small businesses from growing during a time where these businesses are especially necessary for the local food supply chain and economy.

Farm home food manufacturers can only sell shelf-stable (also known as “non-potentially hazardous”) goods. These are goods that do not require time or temperature control, such as cookies, breads, and dried pasta. Current law allows only farmers who sell \$2,500 worth of agricultural products throughout the year to sell homemade foods. Additionally, where these foods can be sold is limited to the agricultural sector. This restriction can undermine the ability of the home food manufacturers to do business, as farmers markets and roadside stands are typically seasonal and can be unpredictable.

Suggestions for improving the cottage food manufacture language included in H7909:

1. Remove the \$25,000 revenue cap:

The revenue cap provision would not permit cottage food businesses to earn more than \$25,000 a year in revenue. Considering costs for ingredients and other supplies, most cottage food producers are not left with much income after hitting this very low revenue cap.

A revenue cap as low as \$25,000 creates a one-size-fits-all business model that undermines the ability of producers to use their homes as a steppingstone to a shared commercial kitchen space or a brick-and-mortar store, keeping aspiring entrepreneurs from thriving. With the economic devastation brought by the COVID-19 pandemic and an ever-rising cost of living, arbitrary revenue limits should not be placed on residents who are simply trying to provide for their families.

Revenue caps on cottage food businesses are increasingly becoming a thing of the past as more states remove their caps each year, recognizing the inherent safety of cottage foods and the benefit these businesses have on the community and the economy.

If Rhode Island implements a \$25,000 revenue cap, it would be one of the lowest revenue caps in the country: Only seven other states have a sales cap that is \$25,000 or lower. In contrast, 11 other states have sales caps between \$35,000 and \$250,000 and **31 states do not have a sales cap at all, including Massachusetts.**¹ Additionally, **Connecticut legislators are considering a bill that will remove its revenue cap.** Appendix A contains an updated chart that lists the revenue cap for cottage food producers in each state.

Cottage food entrepreneurs tend to be women of modest means living in rural areas, many of whom have children living at home.² Raising the revenue cap would allow these families to climb the economic ladder with more ease. After Wisconsin ended its ban on the sale of home-baked goods, producers reported being able to do everything from enroll their children in extra lessons to pay for healthcare to being able to afford to stay in their homes.³ In addition to helping families make ends meet, these home-based businesses create revenue and jobs for the state. Over half of all U.S.

¹ *Timeline of Recent Cottage Food Expansion*. Arlington, VA: Institute for Justice. <https://ij.org/activism/a-timeline-of-recent-cottage-food-expansion/>

² McDonald, J. (2017). *Flour Power: How Cottage Food Entrepreneurs Are Using Their Home Kitchens to Become Their Own Bosses*. Arlington, VA: <https://ij.org/wp-content/uploads/2017/12/Cottage-Foods-Report-Sep-2018.pdf>

³ McDonald, J. (2018). *Ready to Roll: Nine Lessons from Ending Wisconsin’s Home-Baking Ban*. Arlington, VA: Institute for Justice. <https://ij.org/wp-content/uploads/2018/10/Wisconsin-Home-Bakers-FINAL.pdf>

businesses are operated primarily out of the home.⁴ For single parents, the disabled, those without reliable transportation and many more, operating out of the home may be their only feasible business model. Regardless of the reason, especially now, it is essential that people have the ability to earn an income from the safety of their homes **without an income limitation.**⁵

2. Allow the sale of all non-potentially hazardous foods:

In H7909, the language only allows certain baked goods and “other baked goods as defined by the department,” rather than all goods that are non-potentially hazardous. This contrasts with the Farm Home Food Manufacture Act which allows the sale of other typical non-potentially hazardous foods, such as jams, jellies, dried herbs, etc. Cottage food producers should be able to sell the same items as Farm Home Food Manufacturers, as both types of producers are subject to the same health and safety standards. Whether a cottage food producer sells a cookie or a dried herb mix, they are equally safe to sell. Rhode Islanders should have the opportunity to sell the non-potentially hazardous foods of their choice.

Benefits of allowing the sale of shelf stable, homemade foods

The ability to sell cottage foods made in the home can create enormous opportunity for people who are struggling to make ends meet. Cottage foods have clear benefits of increasing self-employment opportunities, especially for women, increasing food access in food deserts, and allowing for more consumer choice, while allowing consumers to eat local. Below are some proven benefits that the sale of cottage foods can have on the community and the economy.

- *Transparency, traceability, and accountability.* People know what they are getting when they buy local due to labeling requirements. A neighbor has much more stake in each product than a Hostess factory.
- *Female empowerment.* Cottage food entrepreneurs tend to be women of modest means in rural areas, many of whom have children.⁶ While not all cottage food entrepreneurs are women, the ability to sell homemade food has the greatest impact on women by opening a viable and accessible economic opportunity.
- *Encourages small business.* Selling homemade foods helps small-scale businesses succeed, including young entrepreneurs and stay-at-home moms, by giving them an additional source of revenue and a means to get started affordably from the safety of their homes.

⁴ U.S. Small Business Administration Office of Advocacy. (2020). *Frequently Asked Questions*.

<https://cdn.advocacy.sba.gov/wp-content/uploads/2020/11/05122043/Small-Business-FAQ-2020.pdf>

⁵ McDonald, J. (2022). *Work Entrepreneur from Home: How Home-Based Businesses Provide Flexibility and Opportunity--and How Cities Can Get Out of Their Way*. Arlington, VA: Institute for Justice.

<https://ij.org/report/entrepreneur-from-home-how-home-based-businesses-provide-flexibility-and-opportunity-and-how-cities-can-get-out-of-their-way/>

⁶ McDonald, 2017.

- *Flexible jobs with low start-up costs.* All home bakers need is their kitchen and a recipe to start supporting their families and communities, which is important in today's economy. Economic downturns, like the one we're facing from the pandemic, create a greater need for such jobs. Selling homemade food also helps create jobs and opportunities in rural areas and small towns.
- *Increase in locally made, specialty goods.* Homemade goods are made locally and are often specialty foods: gluten free, halal, kosher, keto, etc. They can also be customized for birthdays and special events. No one can feed and understand the needs of the community better than the community.
- *Resiliency in the local food supply chain.* Local farmers and home-based food producers across the country saw a spike in sales over the course of the pandemic when grocery stores were bare. A local ecosystem of homemade food helps when the national supply chain fails.

Conclusion

There is considerable demand for this reform. Over the past year we have spoken to dozens of Rhode Islanders who are eager for this type of reform. Additionally, over 2,800 people and counting have signed a change.org petition urging the state to change its homebased food law to allow all people to sell their shelf stable homemade foods.⁷

Passing the cottage food manufacture section will allow home bakers to claim their piece of the American Dream, encourage job creation and entrepreneurship, and free customers to buy delicious treats prepared by their neighbors. If you have an oven and a recipe, you should be able to start a business doing what you love—safely and legally.

The Institute for Justice is a national nonprofit advocacy organization that supports cottage food reforms across the country. In addition to working to open opportunities for entrepreneurship through cottage food laws in the courts and in legislatures, our research team has studied the effects of cottage food businesses on local economies and communities and researched claims about health and safety risks. We have consulted experts, followed up with health departments in states that have expanded their cottage food laws, and studied best practices. Our research confirms that cottage foods are inherently safe for producers, consumers, and the community at large (see Appendix B).

Thank you for the opportunity to testify in favor of H7909. We urge the Committee to support this language and make the recommended changes. For additional information, please contact Ellen Hamlett at ehamlett@ij.org.

⁷ Change.org, 2021. Change Cottage Food Law in RI. <https://www.change.org/p/david-cicilline-change-cottage-food-law-in-ri?signed=true>

Appendix A



Sales Caps in Cottage Food Laws

\$20,000 to \$25,000	<ul style="list-style-type: none"> Louisiana, \$20,000 Alaska, \$25,000 Connecticut, \$25,000 (even with license and inspection) Delaware, \$25,000 (unless you are a farmer, and then you can sell up to \$40,000) Maryland \$25,000 Michigan, \$25,000 Washington, \$25,000 (even with license and inspection)
\$35,000 to \$50,000	<ul style="list-style-type: none"> Mississippi, \$35,000 Nevada, \$35,000 New Jersey, \$50,000 Missouri, \$50,000 Texas, \$50,000
\$60,000 to \$250,000	<ul style="list-style-type: none"> Kentucky, \$60,000 Minnesota, \$78,000 California (\$75,000 for class A and \$150,000 for class B) Oklahoma, \$75,000 Wyoming, \$250,000 Florida, \$250,000
No Sales Limit	<ul style="list-style-type: none"> Alabama Arizona Arkansas District of Columbia Georgia Hawaii Idaho Indiana Kansas Illinois Iowa (but if you want to sell perishable/potentially hazardous baked goods, limited to \$35,000) Massachusetts Maine Montana Nebraska New Hampshire (but if don't want a license/inspection, need to sell under \$20,000) New Mexico New York North Carolina North Dakota Ohio Oregon (but if don't want a license/inspection, need to sell under \$20,000) Pennsylvania Rhode Island South Carolina South Dakota Tennessee Utah Vermont Virginia West Virginia Wisconsin
Caps just on pickled foods.	<ul style="list-style-type: none"> Virginia, \$3,000 Wisconsin, \$5,000
Caps on specific sales	<ul style="list-style-type: none"> Colorado, \$10,000 (but only limited to each product or flavor, so producers can sell an unlimited amount of food, as long as they keep creating different products.)

Appendix B

Our research shows that homemade not potentially-hazardous cottage foods are just as safe as foods produced in commercial kitchens and it is incredibly unlikely that someone would get sick from expanding the homemade food law.

- In December of 2017, the Institute for Justice filed a lawsuit against New Jersey's outright ban on home processed not potentially-hazardous food businesses. During that case, an expert report from food scientist Thomas J. Montville, Ph.D. of Rutgers University found the following:

"(1) not potentially-hazardous baked goods, such as cakes, cookies, breads, and muffins, are perfectly safe, (2) there is no evidence or reason to think that not potentially-hazardous baked goods prepared in home kitchens would present a greater risk of foodborne disease than those prepared in licensed and inspected commercial-grade kitchens, (3) other not potentially-hazardous foods, such as chocolates, hard candies, dried herbs and spices, dried cookie and cake mixes, and dried pastas, are also perfectly safe..."ⁱ

- In 2011, Oregon passed the Farm Direct Marketing Law (FDML). The law legalized the sale of home processed not potentially-hazardous foods, allowing farms to make and sell certain low-risk, value-added products directly to consumers and without a food processor's license.

"Five years after the law took effect, we interviewed farmers and farmers market managers about their experiences with the FDML, focusing on the cottage food provision that exempts some producer-processed products from food safety licensing and inspection...regarding food safety concerns, we found no foodborne illness outbreaks that were linked to FDML products."ⁱⁱ

- In 2018, Kentucky expanded its cottage food law, which only allowed farmers to sell cottage foods, to allow all residents to sell these goods. The push was justified in part by the fact that no one in the state had reported an illness due to cottage foods.

"According to the Kentucky Food Safety Branch, 'there have not been any reports of a foodborne illness from home-based processors, since Kentucky created the program 15 years ago."ⁱⁱⁱ

- After passing its cottage food law, Texas saw a major increase in job creation due to these new businesses, but no rise in foodborne illnesses.

"After contacting both the Texas Department of State Health Services (DSHS) and environmental health departments for the 25 largest cities and counties in Texas, the Institute for Justice found no complaints regarding foodborne illnesses from a cottage food business."^{iv}

ⁱ Taken from Expert Report of Thomas J. Montville, Ph.D. Superior Court of New Jersey. (2018).

ⁱⁱ *Farm Direct at five years: An early assessment of Oregon's farm-focused cottage food law*. Journal of Agriculture, Food Systems, and Community Development. (2018).

<https://www.foodsystemsjournal.org/index.php/fsj/article/view/621>

ⁱⁱⁱ *New Kentucky Law Will Let Anyone Start A Home-Baking Business*. Forbes. (2018).

<https://www.forbes.com/sites/instituteforjustice/2018/04/03/new-kentucky-law-will-let-anyone-start-a-home-baking-business/#55ba37e61e32>

^{iv} *Texans Created Over A Thousand Local Businesses After Texas Eased Restrictions On Selling Food Made At Home*. Forbes. (2014). <https://www.forbes.com/sites/instituteforjustice/2014/09/22/texans-created-over-a-thousand-local-businesses-after-texas-eased-restrictions-on-selling-food-made-at-home/#563f09e96406>