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**Testimony on the Cottage Food Law  
House Committee on Agriculture  
January 26, 2021**

Chairwomen Alexander and Members of the Committee:

Selling cottage foods—like cookies, jam, and bread— is a great way for entrepreneurs with big dreams but little capital to get started small in their own homes. They’re able to start selling these items without having to spend hundreds or thousands of hard-earned dollars on commercial kitchen space. Michigan has embraced these businesses as job creators and revenue generators, but Michigan’s cottage food law needs updating.

Cottage foods are goods that are considered “non-potentially hazardous,” meaning that they do not need to be kept refrigerated. Consumers and producers alike benefit from the sale of cottage foods: Consumers love buying local, homemade foods, and producers can earn income while supporting the local economy. As members of the community, cottage food entrepreneurs can identify and meet specific needs, such as providing much-needed food options in isolated communities, in a way that traditional food retailers cannot.

Selling cottage foods is a safe, accessible path to entrepreneurship. Michigan should support reforms that will help make it easier for entrepreneurs to start and run cottage food businesses.<sup>1</sup>

This testimony will present the following recommended reforms to the Cottage Food Law:

1. Remove the \$25,000 revenue cap;
2. Permit intrastate shipping and mail delivery; and
3. Allow the use of an optional unique ID number to replace a home address on cottage food product labels.

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<sup>1</sup>For a recent history of legal and legislative cottage food reforms, see *Timeline of Recent Cottage Food Expansion*. Institute for Justice. <https://ij.org/activism/a-timeline-of-recent-cottage-food-expansion/>. See also McDonald, J. (2017). *Flour Power: How Cottage Food Entrepreneurs Are Using Their Home Kitchens to Become Their Own Bosses*. Arlington, VA: Institute for Justice; <https://ij.org/wp-content/uploads/2017/12/Cottage-Foods-Report-Sep-2018.pdf>; McDonald, J. (2018). *Ready to roll: Nine lessons from ending Wisconsin’s home-baking ban*. Arlington, VA: Institute for Justice. <https://ij.org/report/ready-to-roll/>



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

Unlike most states, Michigan does 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 stepping stone 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.<sup>2</sup>

Michigan has one of the lowest sales 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 Indiana, Ohio, and Wisconsin.** Included at the end of this testimony is 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.<sup>3</sup> Raising the revenue cap would allow these families to climb the economic ladder with more ease. 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. businesses are operated primarily out of the home.<sup>4</sup> 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.<sup>5</sup>

<sup>2</sup> *Timeline of Recent Cottage Food Expansion.* Institute for Justice. <https://ij.org/activism/a-timeline-of-recent-cottage-food-expansion/>

<sup>3</sup> McDonald, 2019; 2018; 2017.

<sup>4</sup> 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>

<sup>5</sup> McDonald, J. (January 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/>



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*2. Permit intrastate shipping and mail delivery.*

Under the current law, online sales are allowed but cottage food producers in Michigan are prohibited from using mail delivery to fulfill those orders. Instead, they must be dropped off by the producer or picked up by the consumer.

The majority of states allow mail delivery. For example, early in the pandemic, Washington put in place a reform to temporarily allows intrastate shipping, given the concerns of person-to-person contact.<sup>6</sup> This action shows not only that mail-delivery is a safe option, but that, for many, it is the safest option. In fact, no instance of foodborne illnesses has ever been traced to mail delivery of cottage foods.

*3. Allow the use of an optional unique identification number to replace a home address on cottage food product labels.*

Under current law, cottage food producers must put their home address on their product labels. As mentioned previously, cottage food entrepreneurs tend to be women of modest means in rural areas, many of whom have children. For this reason, many cottage food producers feel uncomfortable printing their home address on their baked goods. This reform would ease the minds of many home bakers all over the state that just want to earn an honest living doing what they love.

Therefore, we are advocating for the option for cottage food producers to register with the state to receive a unique identification number to replace their home address. This reform is becoming increasingly common; Maryland and Washington have recently adopted reforms to give cottage food producers this option. This small change will provide the same transparency as printing the producer's address on the label—the Department of Health will still be able to trace cottage foods to the producer—while offering peace of mind to the producer. This process should be voluntary and should not require any fees.

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<sup>6</sup> *Policy Statement FS-20-0001 – Delivery of Cottage Foods Products During the State of Emergency, Issued Pursuant to Governor's Proclamation 20-05* (2020). <https://cms.agr.wa.gov/WSDAKentico/Documents/FSCS/Food%20Safety/Cottage-Foods-Policy-Statement-FS-20-0001-Delivery-of-Cottage-Foods-Products.pdf>



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### *Cottage Foods Are Safe*

Cottage foods are just as safe as foods produced in commercial kitchens. In December of 2017, the Institute for Justice filed a lawsuit against New Jersey’s outright ban on cottage food businesses. Microbiologist Thomas J. Montville, Ph.D. of Rutgers University provided expert testimony during the litigation, finding that “baked goods ... are perfectly safe [and] 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.”<sup>7</sup> Therefore, Michigan’s \$25,000 revenue cap does nothing to improve public health and safety—but it does prevent entrepreneurial home cooks from realizing their full potential.

### *Conclusion*

States that allow residents to start cottage food businesses have seen employment growth, not disease outbreaks. Over the last few years several states have expanded their cottage food laws, making it easier for people to sell more homemade foods in more places. Michigan should reform its cottage food law and join the ranks of the other states that support and promote this accessible path to entrepreneurship.

The Institute for Justice is a national nonprofit advocacy organization that has supported cottage food reforms across the country. We work to change restrictive cottage food laws in the courts and state legislatures and study the importance of cottage food businesses to hardworking families and local communities.

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<sup>7</sup> Taken from Expert Report of Thomas J. Montville, Ph.D. Superior Court of New Jersey, 2018 November 16.



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## Sales Caps in Cottage Food Laws

### Under \$10,000

- South Dakota, \$5,000 (only applies to foods sold out of producer's home—no sales cap for sales at farmers markets and events)

### \$20,000 to \$25,000

- 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

- Mississippi, \$35,000
- Nevada, \$35,000
- New Jersey, \$50,000
- Missouri, \$50,000
- Texas, \$50,000

### \$60,000 to \$250,000

- 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



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<p><b>No Sales Limit</b></p>	<ul style="list-style-type: none"> <li>• Alabama</li> <li>• Arizona</li> <li>• Arkansas</li> <li>• District of Columbia</li> <li>• Georgia</li> <li>• Hawaii</li> <li>• Idaho</li> <li>• Indiana</li> <li>• Kansas</li> <li>• Illinois</li> <li>• Iowa (but if you want to sell perishable/potentially hazardous baked goods, limited to \$35,000)</li> <li>• Massachusetts</li> <li>• Maine</li> <li>• Montana</li> <li>• Nebraska</li> <li>• New Hampshire (but if don't want a license/inspection, need to sell under \$20,000)</li> <li>• New Mexico</li> <li>• New York</li> <li>• North Carolina</li> <li>• North Dakota</li> <li>• Ohio</li> <li>• Oregon (but if don't want a license/inspection, need to sell under \$20,000)</li> <li>• Pennsylvania</li> <li>• Rhode Island</li> <li>• South Carolina</li> <li>• Tennessee</li> <li>• Utah</li> <li>• Vermont</li> <li>• Virginia</li> <li>• West Virginia</li> <li>• Wisconsin</li> </ul>
<p><b>Caps just on pickled foods.</b></p>	<ul style="list-style-type: none"> <li>• Virginia, \$3,000</li> <li>• Wisconsin, \$5,000</li> </ul>
<p><b>Caps on specific sales</b></p>	<ul style="list-style-type: none"> <li>• 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.)</li> </ul>