

Good morning Chairman Johnson and members of the House Agriculture Committee. My name is Julie Wagendorf, Director of the Division of Food and Lodging within the Department of Health. I am here to support and provide information on Senate Bill 2269 that clarifies the laws and regulations for cottage food production and sales.

North Dakota Century Code Section 23-09.5 defines a cottage food product as “baked goods, jams, jellies, and other food and drink products produced by a cottage food operator.” For any cottage food operator preparing cottage food products in a home kitchen, a license and inspection is not required by the Department of Health.

The concern with the current cottage food law is the level of confusion over the definition and interpretation of what “other food and drink products” are. The Department of Health supports the language in SB 2269 that offers further clarification, including the amendments made to the bill in response to the public testimony given during the Senate Agriculture Committee hearing. Following my testimony, I can review these sections of the bill, as well as the attached handout listing cottage food products being proposed by the bill.

During the 2017 legislative session, the Department offered support of HB 1433 regarding direct producer-to-consumer sales of certain food products defined as ‘cottage food products’ and supported a law that could be administered uniformly throughout the state.

Since the law was enacted, there has been confusion related to the intent of this law. We’ve received questions about whether the law is intended to allow for all kinds of food and drink, if the law intended to permit home-based catering and home-based restaurants, and if the intent was to dismantle and negate mobile food truck and temporary food events from licensing requirements. These are examples of food establishments defined by existing chapters of state law that conflict with the types of transactions prohibited in the current cottage food law. Section 2, Subsection 4 of NDCC 23-09.5 states that a cottage food operator may not sell or use food in any food establishment or food store because these

require a license to operate. Yet, we have received several reports of this occurring since the cottage food law was enacted. The most common misunderstanding is the sale of meat and meat products and whether it is permitted under the current cottage food law when really meat products are regulated.

Existing food laws and regulations require food establishments to be licensed and inspected based on the types of foods they have that require time and temperature control for safety, and how food is to be stored, prepared, served, or sold. Exclusions from licensure need to be referenced so that chapters in law do not contradict each other. SB 2269 offers a clear separation of cottage food operations from licensed food establishments.

As of 2018, 49 states have enacted cottage food laws. Most state cottage food laws set criteria that define cottage food products. Aside from Wyoming, SB 2269 offers North Dakota the fewest restrictions on unregulated cottage food products.

The Department of Health is in support of the cottage food law as presented in SB 2269 and we recognize the benefit this can serve for small, start-up food businesses. At the heart of every vibrant community are businesses and special events that keep the local economy thriving. The food industry continues to grow and change with consumer and market demands and we recognize that food regulations also need to change and adapt.

We're happy to work together on a solution that builds and adds value to our state's integrated food system while preserving public health and safety for the consumers we serve.

### **Cottage Food Products Authorized Under SB 2269**

- Baked goods such as breads, quick breads and muffins, lefse, cookies, no-bake cookies, biscuits, crackers, donuts cakes, pastries, candies and confections (made without alcohol) such as caramels, chocolates, fudge, brittle, hard candy, and cotton candy, fruit pies (including pecan pie) and fruit empanadas such as apple, apricot, grape, peach, plum, quince, orange, nectarine, tangerine, blackberry, raspberry, blueberry, boysenberry, cherry, cranberry, strawberry, red currants or a combination of these fruits.

- Time and temperatures for safety (refrigerate) baked goods when labeling and storage requirements are met, such as: pumpkin pie, sweet potato pie, cheesecake, custard pies, crème pies, meringue pies, cakes with glaze or frosting that requires refrigeration (e.g., cream cheese frosting), and pastries with fillings or toppings that require time and temperature control for safety.
- Fruit jam, fruit jelly, and fruit preserves including, but not limited to: apple, apricot, grape, peach, plum, quince, orange, nectarine, tangerine, blackberry, raspberry, blueberry, boysenberry, cherry, cranberry, strawberry, red currants, or a combination of these fruits.  
*Note: Vegetable and other non-fruit-based jams and jellies such as rhubarb, tomato, and pepper are not permitted unless acidified to pH equilibrium of less than 4.6.*
- Fruit butters including apple, apricot, grape, peach, plum, quince, and prune. Pumpkin butter, banana butter, and pear butter are allowed if the equilibrium pH is less than 4.6.
- Freezer fruit jams
- Chocolate covered pretzels, marshmallows, graham crackers, Rice Krispies treats, strawberries, pineapple, bananas, or other non-perishable foods that do not require time and temperature control for safety.
- In-shell eggs (1,000 bird exemption) if properly labeled.
- Raw Poultry products (1,000 bird exemption) if properly labeled.
- Acidified or fermented fruits or vegetables with a pH equilibrium of less than 4.6, including pickled fruits and vegetables such as pickles, salsa, sauerkraut, kimchi, fruit chutney, applesauce.
- Cut Leafy greens that are dehydrated or blanched and frozen. Fresh cut leafy greens are not permitted for sale.  
*Note: "Cut leafy greens" means fresh leafy greens where leaves have been cut, shredded, sliced, chopped, or torn and does not include the 'harvest cut' at the stem or stalk. The term "leafy greens" includes iceberg lettuce, romaine lettuce, leaf lettuce, butter lettuce, baby leaf lettuce (i.e., immature lettuce or leafy greens), escarole, endive, spring mix, spinach, cabbage, kale, arugula and chard. The term "leafy greens" does not include herbs such as cilantro or parsley.*

- Cut fruits and vegetables if grown by the cottage food operator and dehydrated (includes freeze dried) or blanched then frozen; if properly labeled. Dehydrated tomato or melon and frozen cut melon are not permitted for sale.
- Dry herb/dry herb blends
- Dry shelf-stable products, such as seasoning blends, baking mixes, dip mixes, soup mixes and tea blends.
- Roasted coffee beans or ground roasted coffee
- Dry pasta
- Tree nuts (coated and uncoated)
- Legumes
- Honey, molasses, sorghum, maple syrup, maple sugar
- Flour, grains, dry cereal, popcorn, popcorn balls, granola, granola bars, dry mixes  
*Note: Dry bulk mixes sold wholesale can be repackaged into a cottage food product. Similar items already packaged and labeled for retail sale cannot be repackaged and/or relabeled.*
- Vinegar and flavored vinegars
- Sauces and condiments, including barbeque sauce, hot sauce, ketchup, or mustard where the equilibrium pH level has been reduced to 4.6 or less and verified using a calibrated pH meter.

Noteworthy:

Whole, uncut fruit and vegetables harvested and packed for sale at produce stands/farmers markets are not considered 'cottage foods' because they are not covered under the ND Food Code as retail food sales requiring a food license. Whole, uncut fruits and vegetables which are allowed for sale.