

## TESTIMONY – SB 2269 Opponent

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I'm not a cottage food producer, but did help with this legislation as it went through the 2017 Legislature and served on the Cottage Foods Working Group. I agree with the sponsor's goal of more clarity in this law; but not at the expense of restricting the type of foods and drinks sold. I think there is an opportunity for amendments which will further clarify the law and alleviate food safety concerns. I'll discuss those in a moment.

Let's first set the stage, so you know why I'm proposing amendments.

I've gotten to know many of the cottage food producers. They're a diverse group. Often entire families get involved making these products and participating in the growing, processing, labeling and sales. They can be a nice source of extra income, while working together as a family. Some cottage food producers are young people coming back to the family farm. There's not enough room or income unless a side business is developed and farmers markets and cottage foods can create that opportunity. Some producers are simply people who love to cook or bake or garden or gather and like to share those fabulous family recipes with others. Quite a few of these producers have worked in restaurants or the food industry, but circumstances changed and now they need to work from home.

One of the people I wish you could meet is Brenda Daniel from Ray. Brenda started baking and decorating cakes because she couldn't afford to buy one for her son's birthday. Her family encouraged her to start a business, but Brenda didn't because of complicated rules. After passage of the 2017 law, Brenda put some ads on Facebook and got so many orders that last December she opened a cake shop in the local mall. Because she does it all without employees, Brenda was unable to attend the hearing today. But her efforts show exactly what we were hoping would happen when the first legislation was passed.

Let's be perfectly clear. NO cottage food producer and NO ONE in this room wants ANYONE to get sick from any food or drink product; regardless of where it was made. Many of these producers have told me, "If I ever made anyone sick, I'd quit." They have a connection with their customers and delight in repeat business and knowing they've made someone happy with their product. While a large company may be able to recall products, a cottage food producer knows any illness will kill their business. Our producers work hard to make the safest products possible.

Cottage foods and drinks are handmade; often with lots of labor per item because we're making small quantities. These are not cheap products. If you purchase jams, jellies, pickles, cake, bread, etc. at a farmers market, you'll probably pay considerably more than you do at your local store. Consumers want these products because they're unique and support a local entrepreneur.

Remember, not all transactions take place at farmers markets in the middle of July. Many people sell out of their homes, at craft shows or other venues throughout the year. As I go through suggested amendments with you, please bear this in mind.

Let's walk through the bill and I'll reference specific places in 2269 that I believe need to be amended in order to bring it in line with what this committee passed two years ago as well as some good changes:

- Page 1, Item 5. Line 23 – The words "and drink" have been struck out. That means that only certain foods could be sold and no drinks. I've heard the Health Department say they don't regulate "kids' lemonade stands." With this change, I guess if I want to sell lemonade at a farmers market, I need to find a kid to run the stand. Remember, just two years ago, you approved "drinks." In fact, prior to the 2017 law, the ND Department of Ag in their Farmer's Market Handbook listed black coffee, hot teas, iced teas, and lemonade as "allowed beverages." We need to include "drinks" in the definition. This does NOT include alcoholic beverages, which are addressed elsewhere.

- Page 1, Item 5, Lines 23-24 – I want to call your attention to this sentence “The term does NOT include whole, uncut fresh fruits and vegetables.” If you don’t cut the fresh fruit or vegetables, they aren’t cottage food. That’s an important distinction later on.
- Page 2 – Lots of definitions and rewording. It replaces the phrase “home consumption” with “non-commercial consumption.”
- Page 3 – Mostly rewriting what is already in code. I appreciate line 12 that regulation is inserted and line 13 where packaging is included so there’s extra clarification that neither a state agency nor local health district may write rules.
- Page 3, Item 2, Lines 21-23 – I appreciate the clarification of all the places where transactions may take place.
- Page 4, Item 4, Lines 4-6 – There’s important wording here about whole, unprocessed fruits and vegetables that’s being struck out.
  - Prior to 2017, some local health districts required an inspection or other hoops before a producer could sell fresh produce to a restaurant or retailer. If this wording is deleted, it opens the door for that to happen again. Please note keeping these lines in code does NOT make fresh, uncut fruit and vegetables a cottage food. It simply clarifies that those items can be sold to a retail store or restaurant. Because it’s in this section of Century Code, local jurisdictions are prohibited from making extra rules for these producers.
- Page 4, Lines 21-24 – I appreciate the addition of clarifying language that producers can use the internet to advertise. Previous wording was a bit confusing.
- Page 5, Line 11 – All home canned products should be allowed. Yes, there are food safety concerns, but cottage food operators have a stellar record of food safety.
  - To alleviate concerns about the safety of low acid, home-canned foods, we would support an amendment which requires low acid foods to be pressure canned. Many of the producers I talk to already use pressure canning since it faster than other methods.
  - Further, we would support an amendment requiring producers to complete a food safety course and produce a certificate of completion when asked. Many of our producers have already attended these classes and use that completion as a marketing tool.
- Page 5, Line 16 – We believe refrigerated products should be allowed and not just those which can be transported frozen.
  - At the very least – Line 20 needs to be amended to allow for the customer to pick up fresh baked goods like cream pies unfrozen.
  - We believe Line 20 should be further amended to allow for the transport of refrigerated items at 40 degrees or cooler. This is in line with food safety guidelines and, if a cottage food operator wishes to make arrangements to handle refrigerated product safely, we should allow them to do so.
  - Every time you make a major change to the temperature of a product, you change the texture. If we require our cottage food operators to complete a food safety course, they can judge for themselves what products fit their abilities. Then their customers will also judge the products and decide if they’re worth purchasing.
- Rest of Page 5 – Now they’re picking “good” and “bad” foods. When you review incidents of foodborne illness in North Dakota, you don’t see these foods causing problems and especially not from home use. Again, we believe that, if the producers are trained, they can decide what they wish to sell and buyers can decide what they wish to purchase.

- Page 6, Section 4 – Much of what you see as far as warning, etc. are already in code. Cottage food operators have to tell the public this is made in an uninspected kitchen with a sign at the point of sale or with individual labels. We have to provide safe handling instructions. When a cottage food operator sells something, there's a discussion with the consumer. The products aren't just sitting on shelves waiting to be picked up. There's a dialogue. Much of the information is transmitted as part of the sale.
- Page 7, New Section 6 – We would propose adding a section to require cottage food operators complete a food safety class before selling food. They would need to find a class that provided a completion certificate that could be produced upon request.
  - We've actively promoted food safety classes. NDSU Extension offers them. Local health districts and sometime the State Health Department offers classes. Some farmers markets provide classes for their members. There's also a plethora of online classes. These takes three hours or so to complete and the cost of many range from free to \$10 or \$20. People I know who have taken these classes say they learn something every time they attend one.
  - Point of Clarification – Because uncut, fresh, whole fruits and vegetables are not cottage foods, those selling ONLY uncut, fresh, whole fruits and vegetables are not cottage food operators and would not be required to take a food safety class. (Though I know many of these individuals who have thoroughly studied food safety.) If they cut the fruits and vegetables, then they become a cottage food operator and would have to take a class.

I know you'll hear from several cottage food producers this morning. They can explain more specifics about their business and what the 2017 law has meant to their family. I'm sure you have questions for me. First, let me ask you – have you ever been to a restaurant and read an advertisement for “homemade” pie? Sure you have! I would venture to guess that you even start to salivate at the thought. If the sign says something like “Grandma’s recipe,” it's even better. We know this isn't really homemade, but just the thought makes us hungry. This bill addresses homemade food made in real homes by real people we meet when we purchase their products.

We're not asking – or expecting – to feed the world. We just want to feed our communities and our state. I am asking this committee to amend SB 2269 and hold the restrictions at bay. Please allow the energy and enthusiasm of these producers to remain unleashed so they can work and expand their enterprises.

Without these amendments, I'd ask for a Do Not Pass on this legislation.

**With these suggested amendments, I can enthusiastically support the bill.**