

TESTIMONY IN SUPPORT OF THE COTTAGE FOOD EXPANSION AMENDMENT ACT OF 2019

Committee on Health
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Overview

Cottage food businesses are a way for entrepreneurs with big dreams but little capital to get started 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 DC's current rules and registration process place limits on producers that push this business model out of reach for many Washingtonians. DC Council should pass the Cottage Food Expansion Amendment Act of 2019, which would lift the \$25,000 revenue cap and expand the venues where cottage foods can be sold.

In order to make this reform as beneficial as possible to the food entrepreneurs who depend on it, the Committee on Health should clarify that online sales are permitted under this amendment, expand the reform to allow retail sales, and work with DC Health to streamline the cottage food registration process so that cottage food producers can register their businesses quickly, affordably, and without confusion. These reforms would not change the health protections currently included in DC's law. All cottage foods would still need to be labeled as homemade, and DC Health would have the power to investigate complaints and shut down businesses that are unsafe.

The Institute for Justice is a national nonprofit advocacy organization that has supported cottage food reforms across the country. In addition to working to change restrictive 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.

This testimony will explore DC's current cottage food law, how reforms can open opportunities for home bakers in need of extra income, why this change is so important to Washingtonians, and why these businesses are safe.

History of DC's Cottage Food Laws

DC's Cottage Food Act of 2013 was passed at the end of that year and set with an effective date of January 25, 2014. However, DC Health did not publish their regulations for cottage foods until December of 2017, and the online cottage food registry did not go live until the summer of 2018. Although the Cottage Food Act of 2013 was similar to laws being passed in some jurisdictions at the time—like our neighbors in Maryland—by the time the program was fully up and running in 2018, many states had realized their laws were too restrictive and passed reforms to expand them. For example, Maryland has passed two reforms to its cottage food law in the last two legislative sessions. The first expanded the allowed venues from just farmer's markets and special events to all direct sales. Just weeks ago, the legislature passed a second reform to allow cottage food sales at retail stores and food co-ops. In its current form, DC's law is now one of the most restrictive cottage food laws in the country.

Expanding DC's Current Law to Support Entrepreneurship

Unlike most states—including our neighbors in Maryland and Virginia—DC only allows cottage food businesses to sell their products at farmer's markets and at special events (see full DMV law comparison chart in Appendix A). But these venues come with expensive price tags and long waitlists. Worse, under DC's sales cap, cottage food businesses can't earn more than \$25,000 a year in revenue. Considering how much it costs to start and run these businesses, most cottage food producers would not be left with much income after hitting this very low revenue cap.

Venue Restrictions

DC prohibits cottage food producers from selling anywhere other than farmer's markets and special events. This means that the same cookie that can be purchased legally at a farmer's market would be illegal were it purchased at the home of the baker across the street. This restriction undermines the ability of the cottage food producer to do business.

Farmer's markets and special events are typically seasonal, meaning that many cottage food producers are effectively only allowed to operate a few months out of the year. These events can also be very expensive and difficult to access. Especially in a dense metropolitan area like DC, the number of applicants for these events is far greater than the number of spaces available.

Additionally, the ban on home sales effectively prohibits producers from creating custom orders, such as wedding or birthday cakes, cutting off an important stream of revenue. Virginia and Maryland both allow cottage food producers to sell directly from their home.¹ This shows that DC's law is an outlier in our region.

¹ Appendix A

The \$25,000 Revenue Cap

Under DC's sales cap, cottage food businesses can't earn more than \$25,000 a year in revenue. Considering the cost of starting and running these businesses (see Appendix B), most cottage food producers would not be left with much income after hitting this very low revenue cap. Cottage food is the only type of home-based occupation that is subject to a revenue cap.

A cottage food producer is naturally limited by the size of their kitchen. Creating a one-size-fits-all revenue cap only serves to undermine the ability for producers to use their home as a stepping stone to a shared commercial kitchen space or a brick and mortar store. With DC being one of the most expensive places to live in the country, we shouldn't place arbitrary limits on residents who are trying to make ends meet.

A Complicated Registration Process

In order to register as a cottage food business, applicants must (see Appendix B for costs):

- Obtain a Home Occupancy Permit;
- Receive a Certified Food Manager Certificate;
- Obtain a DC Issued Certified Food Protection Manager ID;
- Prepare a menu of all products and labels the producer plans to sell;
- Complete the cottage food registry with DC Health;
- Show proof of calibrated scales to DCRA, if applicable;
- Pass a pre-operational kitchen inspection.

No state has this burdensome of a registration process. Many states do not require any kind of registration to sell cottage foods. In those that do, cottage food producers simply fill out a form or submit their contact information to their local health department. DC's registration process is far too complicated and too expensive.

One particularly challenging part of registration has been menu review. To register as a cottage food producer, applicants must include a copy of the recipes for all products they intend to sell to ensure that the foods are shelf-stable and non-potentially hazardous. However, if an applicant wants to change their recipe by a single ingredient or add a seasonal product, they must re-submit their entire application and pay an additional \$50. Many potential cottage food entrepreneurs have expressed frustration at this process, as it limits their ability to cater to their customers and their own creativity.

The cost of starting a cottage food business in DC is considerably more expensive than in the rest of the country. The minimum cost of starting a cottage food business can add up to nearly \$400.² This does not include costs of corporate registration, insurance, trade name registration or any other miscellaneous

² Appendix B

costs associated with starting a business. This is a significant barrier to entry, especially for the people who need an additional stream of income the most.

The Potential Impact of Reforming DC's Cottage Food Law

A 2015 survey conducted by Etsy, the most popular e-commerce platform for homemade goods—including home-baked goods—reported that its sellers' income contributes an average of 15 percent to total household income overall. Etsy argues that these micro-businesses are indicative of a changing economy, in which many Americans must “combin[e] income from both salaried jobs and entrepreneurial efforts to make a living.”³ Home bakers would likely experience a similar effect on their family budgets.

Because it can be difficult for small business owners to make it to a DC Council hearing during the day, we invited bakers across the District to explain why changing DC's law would be so important to them. We've included a few below, and more can be found in Appendix C. Names have been removed to protect bakers who may be working without a permit.

Baker from Ward 1

Why is it important to you to be able to start a home-based food business?

I would like to create a steady source of income for my retirement years. I hope to retire in three to five years.

How would changing DC's law help you, your family or your business?

I think that the current law is very restrictive. I need more flexibility to create my business, which will offer 20+ kinds of cookies baked from vintage cookbook recipes.

Baker from Ward 2

Why is it important to you to be able to start a home-based food business?

I need to be able to work to support myself and my cooking, particularly healthy recipes, is a unique skill to me as an RD. I also want other people to have the freedom to cook their own food and sell it for income and so that other people may enjoy it.

How would changing DC's law help you, your family or your business?

My mother and I would be able to support ourselves through our unique skills with cooking healthy and delicious food. Friends and neighbors have always loved our food and we would love to be able to share with more people and also earn income by selling our creations.

Baker from Ward 4

Why is it important to you to be able to start a home-based food business?

Generating income to take care of your family helps me be a productive citizen not only in my community but in the world.

³ Building an Etsy Economy: The New Face of Creative Entrepreneurship
https://extfiles.etsy.com/Press/reports/Etsy_NewFaceofCreativeEntrepreneurship_2015.pdf

How would changing DC's law help you, your family or your business?

Working from home not only reduces my carbon footprint but can also reduce others in the community. Not having to pay for transportation, office space and other business expenses put money back in my pocket to help take care of my family and help my business grow.

Baker from Ward 6

Why is it important to you to be able to start a home-based food business?

It's important to be able to start a food business within my home because I have a full-time job and a mortgage. So it would be a rash decision to quit my job, get a commercial license, and go all-in on a food business that may not succeed. A home-based business allows you to work into the food business slowly so that you can learn from your mistakes and improve without risking your home or going bankrupt.

How would changing DC's law help you, your family or your business?

Changing DC's law would allow me to achieve my dream of opening a bakery. If I'm not able to do it smart by easing into it in DC with the Cottage Food law, then I will have to move to Virginia where I can still work on the bakery on the side, but keep my regular full-time job. Do we really want DC to be known as the place that holds small businesses down? That not only doesn't actively help new entrepreneurs, but actually works against them with red tape, excess fees, and unnecessarily restrictive laws? Who wants to live in a place like that? Be a safe haven for us, DC.

Baker from Ward 6

Why is it important to you to be able to start a home-based food business?

I would like to be able to generate income from home and the cost of living in DC is so expensive that the fees for commercial kitchen space are beyond my financial means.

How would changing DC's law help you, your family or your business?

I will be able to make enough income to start a savings account. That savings account will be used to grow wealth for my daughter's college fund.

Baker from Ward 7

Why is it important to you to be able to start a home-based food business?

It is important because it not only brings me joy to make others smile with eating healthy food, but it's also a calling with my hands. I want to be able to serve not only the community but to provide income for my family. Low income and homeless are high priority.

How would changing DC's law help you, your family or your business?

I want to be able to provide independence not just for myself but to provide income for my family. I want to share what I love with the community as well as making it a safe and healthy way to eat and stay healthy. I provide foods that are simple as well as tasty and also a few Vegan and Vegetarian dishes. [My business] is not just my company name but it represents me and what my heart desires. God has blessed my hands and my heart so I am truly ready change your taste buds. Thank you for this opportunity to express this.

These stories are not unique. Some entrepreneurs start baking because physical limitations or childcare responsibilities make it difficult to work away from home. Some have been the victims of layoffs, scraping together side jobs to get by. Others are retirees, looking to supplement their fixed income and stay active. Regardless of the reason, people across the country have realized that selling their home baked goods allows them to use their talents to earn extra income. Home baking is the way to get started right away without having to spend tens or even hundreds of thousands of dollars on professional equipment and commercial kitchen space.

In addition to helping families make ends meet, home-based businesses would create revenue and jobs for the state. According to the Census Bureau's 2012 Survey of Business Owners, over half of all U.S. businesses are operated primarily out of the home. For single parents, the disabled, and those without reliable transportation, operating out of the home may be the only feasible business model.

Legalizing these businesses will benefit customers as well. Home bakers have the flexibility to make small batches of goods and cater to food allergies and dietary restrictions. People who live far from traditional bakeries and grocery stores can buy freshly baked bread and other goods from their neighbors instead of trekking across town.

Research on the Safety of Cottage Food Laws

Our research shows that cottage foods are just as safe as foods produced in commercial kitchens.

In December of 2017, the Institute for Justice filed a case against New Jersey's outright ban on cottage food businesses. During that case, an expert report from food scientist Thomas J. Montville, Ph.D. of Rutgers University found the following:

"I have four main conclusions: (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, and (4) there is no evidence or reasonable basis for concluding that not potentially-hazardous foods prepared in home kitchens would present a greater risk when made for profit than when made for charity."⁴

In 2011, Oregon passed the Farm Direct Marketing Law (FDML). The law legalized cottage 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

⁴ Taken from Expert Report of Thomas J. Montville, Ph.D. Superior Court of New Jersey, 2018 November 16

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.”⁵

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.”⁶

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.”⁷

Jurisdictions that allow residents to start cottage food businesses have seen employment growth, not disease outbreaks.

Conclusion

Passing the Cottage Food Expansion Amendment Act of 2019 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 start a business doing what you love safely, and legally.

DC Council should pass this legislation and consider expanding allowed sales venues to include online and retail sales as well. We look forward to working with DC Council and DC Health to make it easier and more cost effective to become a cottage food operator in DC.

⁵ 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 September 2018.

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

⁶ New Kentucky Law Will Let Anyone Start A Home-Baking Business. Forbes, 2018 April 3

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

⁷ Texans Created Over A Thousand Local Businesses After Texas Eased Restrictions On Selling Food Made At Home.

Forbes, 2014 September 22. <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>

Appendix A: Comparing DC to Neighboring Jurisdictions

	Revenue Cap	Home Occupancy Permit	Pre-Operation Inspection	Menu Approval	CFPM Certificate	Where Can I Sell?			
						Farmer's Market	Home	Online	Retail Store
DC	\$25,000	Yes	Yes	Yes	Yes	Yes	No	No	No
Maryland	\$25,000	No	No	No	No	Yes	Yes	Yes	Yes
Virginia	None	No	No	No	No	Yes	Yes	No	No
Virginia Home Food Processing Operation	None	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes

Appendix B: Fees for Starting a Cottage Food Business in DC

Steps	Cost
1. Receive a Certified Food Manager Certificate	\$150.00*
2. Obtain DC issued Certified Food Protection Manager identification	\$35.00
3. Obtain a Home Occupancy Permit	\$72.60**
4. Prepare a menu of all products and copies of packaging labels	
5. Complete a Cottage Food Business Registry application	\$50.00
6. Show proof of calibrated scales to DCRA, if applicable	\$75.00
7. Pass pre-operational kitchen inspection	
Total Cost	\$382.60
*Cost can vary, but typically around \$150	
** \$36.30 for application fee and \$36.30 for issuance fee if approved	

Note: This chart only covers the cost specific to cottage food registration. This does not take into account the additional miscellaneous costs of starting a business, such as corporate registration, trade name registration, obtaining insurance, etc.

Appendix C: Stories from Bakers Around DC

Baker from Ward 1

Why is it important to you to be able to start a home-based food business?

I would like to create a steady source of income for my retirement years. I hope to retire in three to five years.

How would changing DC's law help you, your family or your business?

I think that the current law is very restrictive. I need more flexibility to create my business, which will offer 20+ kinds of cookies baked from vintage cookbook recipes.

Baker from Ward 2

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My mother and I would be able to support ourselves through our unique skills with cooking healthy and delicious food. Friends and neighbors have always loved our food and we would love to be able to share with more people and also earn income by selling our creations.

Baker from Ward 2

Why is it important to you to be able to start a home-based food business?

Extra income

How would changing DC's law help you, your family or your business?

Could use regular kitchen

Baker from Ward 4

Why is it important to you to be able to start a home-based food business?

Generating income to take care of your family helps me be a productive citizen not only in my community but in the world.

How would changing DC's law help you, your family or your business?

Working from home not only reduce my carbon footprint but can also reduce others in the community. Not having to pay for transportation, office space and other business expenses put money back in my pocket to help take care of my family and help my business grow.

Baker from Ward 5

Why is it important to you to be able to start a home-based food business?

Another source of income.

How would changing DC's law help you, your family or your business?

Make it more convenient for me to bake.

Baker from Ward 6

Why is it important to you to be able to start a home-based food business?

It's important to be able to start a food business within my home because I have a full-time job and a mortgage. So it would be a rash decision to quit my job, get a commercial license, and go all-in on a food business that may not succeed. A home-based business allows you to work into the food business slowly so that you can learn from your mistakes and improve without risking your home or going bankrupt.

How would changing DC's law help you, your family or your business?

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How would changing DC's law help you, your family or your business?

I will be able to make enough income to start a savings account. That savings account will be used to grow wealth for my daughter's college fund.

Baker from Ward 6

Why is it important to you to be able to start a home-based food business?

I'd like to be able to test out my business without the extra overhead cost.

How would changing DC's law help you, your family or your business?

I'd be able to make extra income to support my family without all the unnecessary constraints.

Baker from Ward 6

Why is it important to you to be able to start a home-based food business?

To be able to make my dream come true.

How would changing DC's law help you, your family or your business?

I would be able to push sale and make a difference in my community.

Baker from Ward 6

Why is it important to you to be able to start a home-based food business?

Greater Prosperity and choices to improve the market for all. Expand profitable sustainable entrepreneurship opportunities for District residents.

How would changing DC's law help you, your family or your business?

Help folks achieve their dreams. More individuals making income legitimately is great for the District.

Baker from Ward 7

Why is it important to you to be able to start a home-based food business?

It is important because it not only brings me joy to make others smile with eating healthy food, but it's also a calling with my hands. I want to be able to serve not only the community but to provide income for my family. Low income and homeless are high priority.

How would changing DC's law help you, your family or your business?

I want to be able to provide independence not just for myself but to provide income for my family. I want to share what I love with the community as well as making it a safe and healthy way to eat and stay healthy. I provide foods that are simple as well as tasty and also a few Vegan and Vegetarian dishes. [My business] is not just my company name but it represents me and what my heart desires. God has blessed my hands and my heart so I am truly ready change your taste buds. Thank you for this opportunity to express this.

Baker from Ward 7

Why is it important to you to be able to start a home-based food business?

The overhead allows these commercial kitchens to exploit small business I'm currently paying more than my mortgage to operate my food business.

How would changing DC's law help you, your family or your business?

It would help to make my business more profitable so I can save for a storefront.

Baker from Ward 7

Why is it important to you to be able to start a home-based food business?

Because kitchen rentals and insurance is very costly.

How would changing DC's law help you, your family or your business?

It will give me the freedom to sell more of my baked goods.