

## 2013 DRAFTING REQUEST

### Bill

Received: 1/11/2013 Received By: btradewe  
Wanted: As time permits Same as LRB:  
For: Janis Ringhand (608) 266-1192 By/Representing: Maggie Gau  
May Contact: Drafter: btradewe  
Subject: Agriculture - food safety Addl. Drafters:  
Extra Copies:

Submit via email: YES  
Requester's email: Rep.Ringhand@legis.wisconsin.gov  
Carbon copy (CC) to:

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### Pre Topic:

No specific pre topic given

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### Topic:

Allow sale of home-baked products

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### Instructions:

See attached

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### Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	btradewe 1/23/2013	scalvin 1/25/2013	rschluet 1/25/2013	_____			
/P1	btradewe 2/15/2013			_____	sbasford 1/25/2013		State
/1		scalvin 2/15/2013	jmurphy 2/15/2013	_____	lparisi 2/15/2013	mbarman 3/11/2013	State

FE Sent For:

*at*  
*info*

<END>

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/?	btradewe	PI sec 01/25/2013	<i>(Handwritten mark)</i>	_____	_____		
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FE Sent For:

<END>

## **Tradewell, Becky**

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**From:** Gau, Maggie  
**Sent:** Friday, January 11, 2013 3:42 PM  
**To:** Tradewell, Becky  
**Subject:** Cottage Food Legislation - Ringhand  
**Attachments:** CA Direct Sales Language.pdf; 11-38032.pdf

Becky,

Attached is the last and most recent draft I have of our bill. The changes below are based off that draft. We also have some changes we'll be making that revises language passed in the "Pickle Bill" (2009 AB 229) two sessions ago.

If we could start with a P-draft of this bill this session, that'd be great.

### **Specific changes to existing LRB 3803/2 text**

- ✓ -Specify that we are talking about gross income (not net) for our income limits
- ✓ -Add language that requires a sign to be displayed at place of sale "These baked good are homemade and not subject to state inspection"
- ? -Under section six, eliminate "and home can". Also, change "low acid" to "high-acid and acidified food products"
- ✓ -Pg 2 Line 5, change "does not" to "do not"
- ✓ -Delete section four

-So after reviewing several other state's cottage food laws, I noticed that many of them provide a definition of "direct sales" – essentially how and where these products can be sold. Since we don't outline that specifically in our bill (and we're nervous about specifically listing where they can sell goods since we don't want to be too restrictive), I was thinking we should include this in our bill. What do you think? I've attached language from cottage food legislation passed in California. If we can incorporate this into the bill I think that'd be good, unless you would suggest not doing so.

### **Specific changes to provisions included in the "Pickle Bill" (2009 Assembly Bill 229)** (that we want included in this bill – but are currently not addressed in 3803/2)

- ✓ -Change income limits under "Pickle Bill" to \$10,000 – so it is consistent with our bill
- ✓ -Remove "the person sells the food products at a community or social event or farmers market in this state" from "Pickle Bill" language in statute

I tried to be as clear as possible. If you have any questions – please give me a call.

Thank you!  
Maggie

Maggie Gau  
Office of Rep. Janis Ringhand  
608.266.1192 or 1.888.534.0080  
Room 418 North ~ State Capitol

not have more than fifty thousand dollars (\$50,000) in gross annual sales in the calendar year. A cottage food operation includes both of the following:

(1) A "Class A" cottage food operation, which is a cottage food operation that may engage only in direct sales of cottage food products from the cottage food operation or other direct sales venues described in paragraph (4) of subdivision (b).

(2) A "Class B" cottage food operation, which is a cottage food operation that may engage in both direct sales and indirect sales of cottage food products from the cottage food operation, from direct sales venues described in paragraph (4) of subdivision (b), from offsite events, or from a third-party retail food facility described in paragraph (5) of subdivision (b).

(b) For purposes of this section, the following definitions shall apply:

(1) "Cottage food employee" means an individual, paid or volunteer, who is involved in the preparation, packaging, handling, and storage of a cottage food product, or otherwise works for the cottage food operation. An employee does not include an immediate family member or household member of the cottage food operator.

(2) "Cottage food operator" means an individual who operates a cottage food operation in his or her private home and is the owner of the cottage food operation.

(3) "Cottage food products" means nonpotentially hazardous foods, including foods that are described in Section 114365.5 and that are prepared for sale in the kitchen of a cottage food operation.

(4) "Direct sale" means a transaction between a cottage food operation operator and a consumer, where the consumer purchases the cottage food product directly from the cottage food operation. Direct sales include, but are not limited to, transactions at holiday bazaars or other temporary events, such as bake sales or food swaps, transactions at farm stands, certified farmers' markets, or through community-supported agriculture subscriptions, and transactions occurring in person in the cottage food operation.

(5) "Indirect sale" means an interaction between a cottage food operation, a third-party retailer, and a consumer, where the consumer purchases cottage food products made by the cottage food operation from a third-party retailer that holds a valid permit issued pursuant to Section 114381. Indirect sales include, but are

*\* Can this include online sales?*



**BILL**

1 SECTION 1. 97.29 (1) (he) of the statutes is created to read:

2 97.29 (1) (he) "Nonhazardous baked goods" means baked goods that either  
3 have a water activity value of 0.85 or less or an equilibrium pH value of 4.6 or lower,  
4 that will not, in whole or part, support growth of or toxin formation by pathogenic  
5 microorganisms, and that <sup>do</sup> does not, in whole or part, contain pathogenic organisms  
6 at a level sufficient to cause illness when the food is consumed.

7 SECTION 2. 97.29 (1) (j) of the statutes is created to read:

8 97.29 (1) (j) "Water activity value" means a measure of free moisture in a food  
9 product, calculated by dividing the water vapor pressure of the food product by the  
10 vapor pressure of pure water at the same temperature.

*Insert*  
*2-10*

11 SECTION 3. 97.29 (2) (b) 3. of the statutes is created to read:

12 97.29 (2) (b) 3. A person is not required to obtain a license under this section  
13 to sell <sup>at retail</sup> food products that the person prepares and bakes at home in this state  
14 <sup>, through face-to-face sales to consumers,</sup> if all of the following apply:

15 a. The food products are nonhazardous baked goods.

16 b. The person registers with the department.

17 c. The person receives less than \$10,000 <sup>in gross receipts</sup> per year from the sale of the  
18 nonhazardous baked goods.

19 d. Each food product that is sold is labeled with the name, address, and contact  
20 information of the person who prepared and baked the food product, the date on  
21 which the food product was baked, the statement "This product was made in a  
22 private home not subject to state licensing or inspection.", and a list of ingredients  
23 in descending order of prominence. If any ingredient originates from milk, eggs, fish,  
24 crustacean shellfish, tree nuts, wheat, peanuts, or soybeans, the list of ingredients  
25 shall include the common name of the ingredient.

*Insert*  
*2-25*



1           **Analysis insert**

Current law provides an exemption from the requirement to obtain a food processing plant license for the sale of food products, such as pickles, that are prepared and canned by a person at home if certain requirements are met. Under current law, the sales of the canned products must take place at a community or social event or a farmer's market. This bill replaces that requirement with a requirement that the sales be face-to-face sales to consumers. Under current law, the exemption only applies if the person receives less than \$5,000 per year from the sale of the canned products. Under this bill, the exemption applies if the person receives less than \$10,000 per year from the sales.

2           **Insert 2-10**

3           **SECTION 1.** 97.29 (2) (b) 2. (intro.) of the statutes is amended to read:

4           97.29 (2) (b) 2. (intro.) A person is not required to obtain a license under this

*move*

5           section to sell ~~at retail~~ food products that the person prepares and cans at home in

6           this state, through face-to-face sales to consumers, if all of the following apply:

7           History: 1987 a. 399; 1989 a. 31; 1989 a. 56 s. 259; 1991 a. 39; 1993 a. 27, 264; 1995 a. 460; 1997 a. 27; 2001 a. 16; 2009 a. 101.

8           **SECTION 2.** 97.29 (2) (b) 2. b. of the statutes is repealed.

9           **SECTION 3.** 97.29<sup>\*</sup> (2) (b) 2. c. of the statutes is amended to read:

10           97.29 (2) (b) 2. c. The person receives less than ~~\$5,000~~ \$10,000 in gross receipts

per year from the sale of the food products.

11           History: 1987 a. 399; 1989 a. 31; 1989 a. 56 s. 259; 1991 a. 39; 1993 a. 27, 264; 1995 a. 460; 1997 a. 27; 2001 a. 16; 2009 a. 101.

12           **Insert 2-25**

13           e. The person displays a sign at the place of sale stating: "These baked goods

are homemade and not subject to state inspection."

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-1126/P1dn

RCT./.....

Sac

-date-

Maggie Gau:

This is a preliminary draft of the proposal concerning the sale of home baked food.

It seemed to me that the concern about direct sales was that there should be no limit on where the sales could take place as long as the sales are face-to-face, so I used that language in the draft. Please let me know if that does not address the concern.

I did not eliminate "and home can" from s. 97.29 (6) (b) of the statutes because the provision relates to the current exemption for home prepared and canned foods. If this is a problem, please let me know what the concern is.

\* Please contact me with <sup>any</sup> questions or redraft instructions.

Rebecca C. Tradewell  
Managing Attorney  
Phone: (608) 266-7290  
E-mail: becky.tradewell@legis.wisconsin.gov

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1126/P1dn  
RCT:sac:rs

January 25, 2013

Maggie Gau:

This is a preliminary draft of the proposal concerning the sale of home baked food.

It seemed to me that the concern about direct sales was that there should be no limit on where the sales could take place as long as the sales are face-to-face, so I used that language in the draft. Please let me know if that does not address the concern.

I did not eliminate "and home can" from s. 97.29 (6) (b) of the statutes because the provision relates to the current exemption for home prepared and canned foods. If this is a problem, please let me know what the concern is.

Please contact me with any questions or redraft instructions.

Rebecca C. Tradewell  
Managing Attorney  
Phone: (608) 266-7290  
E-mail: [becky.tradewell@legis.wisconsin.gov](mailto:becky.tradewell@legis.wisconsin.gov)

**Tradewell, Becky**

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**From:** Gau, Maggie  
**Sent:** Friday, February 15, 2013 1:56 PM  
**To:** Tradewell, Becky  
**Subject:** LRB 1126/P1

Hey Becky,

Great work on the draft. Can we get a /1 of that?

Thank you and have a great weekend!  
Maggie

Maggie Gau  
Office of Rep. Janis Ringhand  
608.266.1192 or 1.888.534.0045  
Room 321 West - State Capitol



State of Wisconsin  
2013 - 2014 LEGISLATURE

Mar 1/18



LRB-1126/B1

RCT:sac:rs

VMR

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

No changes

DWF  
Jan 2/15/13

gen cat

1 **AN ACT to repeal** 97.29 (2) (b) 2. b.; **to amend** 97.29 (2) (b) 2. (intro.), 97.29 (2)  
2 (b) 2. c., 97.29 (6) (title) and 97.29 (6) (b); and **to create** 97.29 (1) (he), 97.29 (1)  
3 (j) and 97.29 (2) (b) 3. of the statutes; **relating to:** the sale of homemade baked  
4 goods and homemade canned goods.

***Analysis by the Legislative Reference Bureau***

Current law requires food processing plant licenses from the Department of Agriculture, Trade and Consumer Protection (DATCP) for certain facilities at which food is manufactured or prepared for sale through processes such as baking, canning, freezing, and bottling, with specified exemptions.

This bill provides an exemption from the requirement to obtain a food processing plant license for the face-to-face sale of nonhazardous homemade baked goods to consumers by a person who receives less than \$10,000 per year from the sale of the food, registers with DATCP, and complies with requirements concerning labeling and signage. A baked good is nonhazardous if it is acidic or has a low amount of moisture and will not support the growth of dangerous organisms.

Current law provides an exemption from the requirement to obtain a food processing plant license for the sale of food products, such as pickles, that are prepared and canned by a person at home if certain requirements are met. Under current law, the sales of the canned products must take place at a community or social event or a farmer's market. This bill replaces that requirement with a requirement that the sales be face-to-face sales to consumers. Under current law, the exemption only applies if the person receives less than \$5,000 per year from the

sale of the canned products. Under this bill, the exemption applies if the person receives less than \$10,000 per year from the sales.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1           **SECTION 1.** 97.29 (1) (he) of the statutes is created to read:

2           97.29 (1) (he) “Nonhazardous baked goods” means baked goods that either  
3 have a water activity value of 0.85 or less or an equilibrium pH value of 4.6 or lower,  
4 that will not, in whole or part, support growth of or toxin formation by pathogenic  
5 microorganisms, and that do not, in whole or part, contain pathogenic organisms at  
6 a level sufficient to cause illness when the food is consumed.

7           **SECTION 2.** 97.29 (1) (j) of the statutes is created to read:

8           97.29 (1) (j) “Water activity value” means a measure of free moisture in a food  
9 product, calculated by dividing the water vapor pressure of the food product by the  
10 vapor pressure of pure water at the same temperature.

11           **SECTION 3.** 97.29 (2) (b) 2. (intro.) of the statutes is amended to read:

12           97.29 (2) (b) 2. (intro.) A person is not required to obtain a license under this  
13 section to sell ~~at retail, through face-to-face sales to consumers,~~ food products that  
14 the person prepares and cans at home in this state if all of the following apply:

15           **SECTION 4.** 97.29 (2) (b) 2. b. of the statutes is repealed.

16           **SECTION 5.** 97.29 (2) (b) 2. c. of the statutes is amended to read:

17           97.29 (2) (b) 2. c. The person receives less than ~~\$5,000~~ \$10,000 in gross receipts  
18 per year from the sale of the food products.

19           **SECTION 6.** 97.29 (2) (b) 3. of the statutes is created to read:



**Parisi, Lori**

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**From:** Gau, Maggie  
**Sent:** Monday, March 11, 2013 1:14 PM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB -1126/1 Topic: Allow sale of home-baked products

Please Jacket LRB -1126/1 for the ASSEMBLY.