

January 11th, 2024

Testimony on Assembly Bill 897
Assembly Committee on Consumer Protection

Thank you, Chairman Callahan and other Assembly committee members, for having a hearing today on Assembly Bill 897 relating to qualification for exemptions from food product licensing requirements for the sale of pickled fruits and vegetables, baked goods, and other shelf-stable food products.

In 2017, the Lafayette County Circuit Court ruled against the DATCP's authority to regulate the sale of unlicensed, home-baked goods to the public, provided such goods are shelf-stable. The court ruling deregulates the sale of non-potentially hazardous foods in Wisconsin, creating unfair market advantages that are negatively affecting licensed food producers. Judges in both cases noted a gap in state statutes that fails to address the situation.

This bill addresses these gaps in state statutes:

First, it creates space within the industry for cottage food producers to sell "non-potentially hazardous" foods without a license.

Second, it expands current financial caps on the sale of "pickled" products from \$5,000 to \$20,000 and puts a cap on home-baked sales to \$20,000 as well. Originally, there was no sales cap in place for home-baked goods.

Lastly, it updates the food allergen list to include "sesame seeds."

Wisconsin's growing cottage food industry has been the subject of a series of court decisions in recent years, which have left the industry in flux and created an unnecessary division between licensed and unlicensed food producers. This bill creates market space for all Wisconsin food producers and clarifies the state's role in this developing market.

Thank you for your time today, and thank you for your consideration of this bill.



ROB SUMMERFIELD

STATE REPRESENTATIVE • 67th ASSEMBLY DISTRICT
MAJORITY CAUCUS CHAIR

January 11, 2024

Representative Callahan, Chair
Members of the Assembly Committee on Consumer Protection

Testimony on 2023 Assembly Bill 897

Relating to: qualification for exemptions from food product licensing requirements for sale of pickled fruits and vegetables, baked goods, and other shelf-stable food products

Chairman Callahan and Committee Members:

Thank you for providing me with the opportunity to testify at today's public hearing on Assembly Bill 897. I appreciate your time and consideration of this legislation.

Recently, Wisconsin's strong and growing cottage food industry has been the focus of multiple decisions from the courts. A 2017 ruling by the Lafayette County Circuit Court curtailed the Department of Agriculture, Trade, and Consumer Protection's (DATCP) authority to regulate the sale of unlicensed, but shelf stable baked goods to the public. This same court later expanded its definition of shelf-stable to include all "non-potentially hazardous foods."

The judges in these matters noted a gap in state statute regarding the sale of non-potentially hazardous foods that created unfair market advantages that have been detrimental to licensed food producers.

Assembly Bill 897 closes this gap without overregulating. This bill allows cottage food producers to sell "non-potentially hazardous" foods without a license up to new financial cap of \$20,000. This bill also adds sesame seeds as an ingredient that must be listed on packaging for allergen concerns.

Cottage food industries are a growing portion of the food sector. This bill allows them to continue to grow, but mitigates unfair market advantages that are hurting licensed food producers.

I ask that you join me in supporting this bill.

Dear Assembly Members,

I operate a bakery in your district and I want to use this opportunity to bring an important legislative matter to your attention

Your local baker is a staple main street business in many Wisconsin communities. We strive to fill a niche market that buys local, buys fresh and wants a high-quality product for their family table or event. Behind the scenes, bakers work incredibly hard and spend a lot of time and resources maintaining a licensed facility, regulated by the State of Wisconsin.

Wisconsin's future for bakers like me is in doubt. A county circuit court decision has paved the way for unlicensed bakers to sell baked goods to the public without complying with any of our State's health and safety regulations. The expense of commercial equipment, space outside a domestic dwelling, health and safety inspections, continuing education – all deemed unnecessary by a court decision.

In the first decision, WI Circuit Court-LaFayette County concluded the State of WI is not statutorily authorized to regulate the sale of "baked goods" to the public, products containing primarily flour. (please note that the home producers are now making candy, crème' filled cupcakes, cakes, caramel apples, strawberry shortcake with whipped cream or soy crème- way past the intent of primarily flour ingredient the low moisture cookie bill required) In August of 2022, the same court heard a second case challenging the State's authority to regulate all "non-potentially hazardous foods", including nuts, candies, coffee beans, etc. Since the law has not been addressed since the 2017 decision, we anticipate a similar outcome. Our concern is that we will be right back here talking about another category of foods in a few years if the State Legislature does not clarify the State's authority to regulate food producers.

Some of my concerns and experiences based on assisting in coordination/oversight of the Baileys Harbor Community Association regarding vendor food safety/insurance compliance and personal experience are listed below. In addition I vend at that market as a fully compliant licensed/inspected food processing facility. Concerns about the "cottage industry" processors are: lack of State Certification for Food Safety/Sanitation, pets in the home kitchens of cottage operations (cats on the kitchen counters and dog hair comes immediately to mind), no FDA required labeling on their pre-packaged products which includes allergen content, no HACCP training/compliance, no monitoring of temperatures for coolers (most use home refrigerators with no digital temp monitoring or temp breach alarms)for hazardous/potentially hazardous food ingredients examples being - eggs, dairy, plant and animal protein items, improper storage of ingredients, no product liability insurance, buy-sell pass through products where the vendor pretends its made in the home and fails to know the ingredients for allergens, no required posting to the public at the vending stand that the items were made in a home kitchen not subject to inspection. They most times do not know they need to register with the FDA on the FDA Unified Listing and Registration System for producers of food which you update and renew your information every 2 years be it for human or pet consumption. The FDA and DATCP also require a HACCP (Hazard Analysis Critical Control Point) plan to be in place for numerous processing data records including the ability to track your staple commodities used to make the end product for the consumer – one of these facets in used in notification of foods or ingredients

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Assembly Committee on Consumer Protection
January 11, 2024

Thank you Chairperson Callahan and Members of the Assembly Committee on Consumer Protection for holding a hearing on Assembly Bill 897. My name is Jessica Hoover and I am the Executive Director of the Wisconsin Bakers Association. Our association supports people in the baking industry whether they are just getting started or are a 4th generation bakery owner. Our membership is diverse and represents all aspects of the industry throughout the state of Wisconsin, from rural communities to cities, students attending Wisconsin's technical colleges, and even though we have a few larger scale commercial bakery members, the majority of our members are independent family-owned retail bakeries.

Wisconsin's laws regulating the sale of home-baked food products to the public are a legal mess and the Wisconsin Bakers Association and others are asking the Legislature to intervene. Back-to-back court decisions since 2017 have exposed a gap in DATCP's authority to require even modest food safety protocols from home-producers of non-potentially hazardous foods, i.e. wedding cakes, breads, cookies, etc. As a result, the bakery industry has been flooded by unregulated producers and your main street bakery is quickly becoming a thing of the past.

Why does AB897 matter? Your local licensed bakery is required by the State of Wisconsin to make all products sold to the public in a commercial kitchen, maintained and inspected to ensure public safety, by employees licensed by the State in food safety, and all covered by statutorily required liability insurance. It comes at a great cost to the business. Products produced in a home setting do not incur these costs and can be produced at a much lower price point. It is inherently unfair for the State to require one sector of the industry to adhere to an extensive set of strict and costly rules while completely ignoring the existence of an unregulated competitor.

The Wisconsin Bakers Association is supporting the Cottage Food Bill because our members believe in shared success over competition. A balance can be reached which allows both producers - licensed and cottage food producers - to exist within the industry while taking a major step forward in protecting public safety. Assembly Bill 897 provides a clear definition for nonpotentially hazardous food AND creates stepping stones for small producers to sell baked goods in Wisconsin while creating a clear threshold for becoming a fully licensed bakery. The requirements are minimal for cottage food producers, but they do have to tell DATCP where and what they intend to sell to the public - an asset in the event of a food-borne illness outbreak.

Our current situation is not good for anyone. Licensed bakers are being wiped-out by unlicensed competition, the cottage-food industry is existing on the ruling of a single judge which is currently under appeal, and the term "buyer beware" has never been more important in the consumer industry. The Wisconsin Legislature needs to take the courts lead and resolve this issue for the betterment of producers and consumers.

I'm happy to answer any questions committee members have on this testimony.

Thank you, Chairperson Callahan and Members of the Assembly Committee on Consumer Protection, for holding a hearing on Assembly Bill 897. My name is Rachel Smith and I own Sweet Pea's in Mayville, Wisconsin.

My husband and I started a pie company in Minnesota in 2009. Although we only had one B2B customer and sold less than 20 pies per week at the beginning of our baking adventure, I started our company as if we were a large commercial business. We formed an LLC, I got my professional food handler's license, we bought our ingredients from approved vendors, and we were licensed, inspected, and insured as a very small wholesale food manufacturer. I was not required to meet those standards by the law. There were two beliefs that drove my decision to treat my infant venture as a legitimate business from day one.

- First, I envisioned a future in which we would not only be able to employ ourselves full-time, but also be able to provide jobs to others and I wanted to have good habits in place.
- Second, the safety of the people who ate my product was a primary concern. I viewed the licensing professionals as my advocates in keeping my customers safe.

A few years ago, we moved our business to Wisconsin. Our kids were basically adults and we were ready to give it our full attention. We are still growing, but to date we have employed up to nine part-time employees in one season, we renovated a historic building, we purchased a small pie manufacturing company and merged it with ours, I completed a fellowship with the Food Finance Institute, and we support local events by supplying them with our pies for dinners and fundraisers and by bringing our products to sell at local fairs. We absolutely love being the town's favorite celebration spot!

I am here today to testify to this committee as a small-business owner that feels a deep sense of responsibility to protect the people that eat the food we produce and that has experienced first-

Dear Chairman Callahan and members of the Assembly Committee on Consumer Protection:

Thank you for the opportunity to testify against AB897.

My name is Rebecca Barth. I make Sourdough Bread on my farm in Delavan, Walworth County. My business, Good Oak Farmstead, has been a registered LLC with the DFI since 2018 and is also registered with the Town of Delavan as an at home business.

I started making bread so I could have an add on to vegetables and have income year round. It wasn't too much time that my bread started overtaking the vegetables and I am now affectionately known as "The Bread Lady" in the 3 surrounding towns. I was always worried about not being called by my name, but by "Cora's Mom". But now, I can't walk down the street without someone saying "Hi Bread Lady!".

I love having the flexibility to work during the hours my children are at school. Some of my proudest moments have been being able to pay for their Soccer Uniforms, Cheer Squad and Summer Camps from my income.

I work closely with local farmers and other producers to get the freshest product to my customer. From Beekeepers, to Flower Farmers, to Heirloom Wisconsin Grains, I have been able to keep a majority of my expenses to my own local economy. I have also been able to make a significant donation to my local library expansion, many local charitable fundraisers and even large events that have brought in thousands of tourists to my city. (The Delavan Train Show is coming back! March 9 & 10!)

So many of your constituents struggle daily with a work-life balance. Many dream about creating a business from their hobby and passion. As a Cottage Baker, I have been able to achieve both. An Income Cap would hinder all of these things I mentioned significantly. I would have to participate in less events, not be able to donate and sponsor to as many local events. The consumers in my town would also have less options for what they feed their families.

Please support Wisconsin Small Business and vote no on this bill.

Dear Chair Callahan and Members of the Assembly Committee on Consumer Protection:

Thank you for the opportunity to testify against AB897.

My name is Jobea Murray, President of WCEA.

I own Jobea Bakes a custom cake and treat business focused on kids birthdays and family celebrations in Glendale. I have a diploma in Pastry Arts from Escoffier School of Culinary Arts in Boulder, CO.

I started my cottage business 5 years ago. After being a SAHM of 3, I wanted to get back into paid work. But I wanted flexibility, control, and balance. Having my own business allows me to work when I want, and being home means I can bake at night while everyone sleeps. Or while the kids are off school without having the additional cost of child care.

This bill would limit my ability to earn money, and be here for my kids. While my goal is to have a commercial space outside of my house, that should be my decision as a business owner when it is financially and personally the right choice for me and my family.

Even then I will continue to support and develop the next generation of cottage food producers. We need new, innovative, and creative business owners to come to market. We are losing many long-time bakeries due to retirement and lack of innovation. Consumers are looking for high quality and trendy items. Cottage food producers are agile and resourceful, able to meet the needs of this ever changing market, in a way legacy businesses can't, or won't.

Please support entrepreneurship and vote no on this bill. Thank you.

Sincerely,

Jobea Murray



Testimony of

Michael Semmann

On Behalf of the

Wisconsin Grocers Association

Before the

Assembly Committee on Consumer Protection

Assembly Bill 897

January 11, 2024

Mr. Chairman, thank you for the opportunity to speak before the committee today in opposition of Assembly Bill 897 relating to qualification for exemptions from food product licensing requirements for sale of pickled fruits and vegetables, baked goods, and other shelf-stable food products.

On behalf of the Wisconsin Grocers Association (WGA) and its members, we believe this bill has strong intent and purpose, and the issues surrounding the home baking industry should be explored in greater detail. This testimony will not address the food safety component that could be raised and how the public will be assured of adequate protections. One specific item that is important to note relates to WGA sales data that shows an interesting comparison. Sales data available to WGA indicates that in an average to small size grocery store, no one bakery product has more than \$20,000 in annual sales. It appears that would be creating an unlevel regulatory environment based on sales of individual products. WGA also hopes to work with the authors to address questions related to the bill, including:

- **Who is covered by this legislation? Is the “person” addressed in the bill applicable to individual people or a business?**
- **Can multiple businesses be run out of the same address under the bill?**
- **Are you giving a distinct advantage to home bakers over other industries?**
- **Is the intent of the baker to compete as a small business in the local, state or regional economy?**
- **Are they starting a small business with the intent to scale up?**
- **Will any basic education be required of the persons involved?**
- **If someone outside the home is hired to work in the home or to prepare food, is that considered a home business?**

We look forward to continuing the discussion. I’m happy to answer questions.

The Wisconsin Grocers Association (WGA) is a non-profit trade association established in 1900 to represent independent grocers and grocery chains, warehouses & brokers, vendors, suppliers, and manufacturers before all levels of government. The WGA provides educational and networking opportunities, leadership training, public affairs, and compliance information for its membership.

WGA and its membership have a significant Economic Impact in the state of Wisconsin. The WGA represents nearly 350 independent grocers with multiple locations across the state, more than 200 retail grocery chain stores, warehouses and distributors, convenience stores, food brokers and suppliers. Wisconsin grocers employ over 30,000 people with over \$1 billion in payroll and generate more than \$12 billion in annual sales in Wisconsin resulting in approximately \$800 million in state sales tax revenue. (Data provided by The Food Institute).



January 11th, 2024

Testimony of the Wisconsin Farmers Union

In Opposition to Assembly Bill 897: relating to the qualification for exemptions from food product licensing requirements for sale of pickled fruits and vegetables, baked goods, and other shelf-stable food products.

Before the Assembly Committee on Consumer Protection

Chair Callahan and members of the committees,

Thank you for the opportunity to submit testimony on Assembly Bill 897,

Wisconsin Farmers Union supports food safety legislation that is scale appropriate. This includes support for Cottage Food laws and other rules and laws that maintain necessary food-safety provisions yet allow for increased opportunity for small-scale and local processed food enterprises.

We are opposed to the highly restrictive sale threshold AB 897 sets and oppose legislation that serves to unduly confine the flourishing home-baker and cottage foods industry in Wisconsin.

Thank you for this opportunity to share Wisconsin Farmers Union's thoughts on this issue.

Sincerely,

Michelle Ramirez-White
Policy Coordinator

715-450-9507; mramirezwhite@wisconsinfarmersunion.com



2801 Fish Hatchery Road | Madison, WI 53713 | (608) 270-9950 | (800) 589-3211 | FAX (608) 270-9960 | www.wirestaurant.org
January 9, 2024

TO: Assembly Committee on Consumer Protection

FR: Susan Quam, Executive Vice President

Testimony in Support of AB 897/SB 813, which gives DATCP some regulatory authority over cottage food businesses.

Ensuring proper food safety practices is a top priority for restaurants and other licensed retail food establishments, such as bakeries and grocery stores. Protecting public health and their own business is important for restaurant owners. In fact, the WRA was founded in 1933 in order to force the state of Wisconsin to develop what is now the Wisconsin Food Code, which provides food safety regulation for all retail food establishments. At that time, there were many establishments serving food that was not safe and forward-thinking restaurateurs knew they needed to do something to protect not only the public, but the integrity of the restaurant industry. Since then, the WRA has been a strong supporter of science-based regulation that protects the public and the restaurant industry. We spend a tremendous amount of effort representing independent restaurants at the local, state and federal level, making sure they have a voice in the development and enforcement of sound food safety regulations.

Up until 2018, any person or business that wished to sell food to the public as a business, needed to obtain a license from either the Department of Agriculture, Trade and Consumer Protection (DATCP) or one of its local agent health departments. At that time there were (and still are) exceptions for charitable sales of food prepared in a home or at a location without a license, but this is intended for church potlucks and 4H bake sales.

Since 2018, two court cases at the county level have challenged DATCP's authority to regulate home-based, for-profit food businesses (AKA cottage foods) and the requirement of licensure to sell to the public. A county judge ruled in the first case that statute does not grant DATCP the authority to prevent home based businesses from selling "non-hazardous" food directly to the consumer. The same ruling came in the second case and an appeal by the state is in progress. In both cases **the presiding judge specifically referenced that the legislature did not do its due diligence regarding the oversight of home based food businesses and therefore the lack of granting authority means that anyone can produce food in their home and sell to the public.** These rulings not only go against sound food safety principles, but it has also created a lot of confusion on what foods can and cannot be created in an unlicensed kitchen and sold to the public. Not only was an improper definition of non-hazardous foods issued by the ruling, improper information regarding covered foods have been widely circulated by cottage food proponents.

WRA has many concerns about the safety of food created in an unlicensed, uninspected kitchen. Again, this is not about church bake sales or potluck suppers. These are for-profit businesses, which currently have no regulations, other than what is laid out by court decree - which is ambiguous, limited, and does not take into account industry supported food safety principles.

Legislation requiring registration and maximum sales caps is needed to put some regulatory structure in place for cottage food businesses. Many of these unlicensed businesses are selling foods that are not even allowed under the court rulings, such as meat pies and cheesecakes. Some are even catering pig roasts or selling fully prepared meals. While not all cottage food producers are selling foods outside of the intent of the court rulings, as all cottage food businesses grow, at some point a licensed commercial kitchen needs to be required. As it stands

now, these unlicensed businesses directly compete with local businesses that are required to have licensing and inspection. This creates an unlevel playing field for licensed businesses. I know many people do not believe that the sale of a few hundred dollars of cookies or cakes per week harm the local, licensed businesses in a community. In reality, there is a finite market for food, especially food like cakes and cookies. We are all for competition in the marketplace and consumers should decide what they want to spend their money on. However, when one seller has exponentially higher costs of doing business mandated by regulation and their competition doesn't, that is not a level playing field.

Rep. Green and Senator Quinn introduced AB 897/SB 813 to put some regulations in place to protect the public, while not curbing entrepreneurship. We understand the need to promote entrepreneurship and support the growth of small businesses. There also needs to be some common sense, enforceable rules and maximum sales limits in place on what can and cannot be sold out of unlicensed kitchens.

Keeping with the status quo of no oversight is unfair to licensed food businesses and does not protect public health.

The Wisconsin Restaurant Association (WRA) represents over 7,000 restaurant locations statewide and represents all segments of the restaurant and hospitality industry. Our membership includes food establishments of all types and sizes, such as seasonal drive-ins, supper clubs, diners, bars, locally owned franchisees, fine-dining, and hotels/resorts. The majority of our members have alcohol licenses. Over 75 percent of our membership is independent restaurants or restaurant groups. Regardless of ownership type, all restaurants are the cornerstones of their neighborhoods and communities. Restaurants not only provide great food, drink, and hospitality, they support schools, teams, charities and churches with fundraising and donations. They provide meeting places to celebrate, mourn and organize, or just provide a safe, tasty meal for a busy family.



INSTITUTE FOR JUSTICE

January 11, 2024

Dear Chair Callahan and Members of the Assembly Committee on Consumer Protection:

Thank you for the opportunity to testify in opposition to Assembly Bill 897. My name is Suranjan Sen. I am an attorney at the Institute for Justice. We are a nonprofit, public interest law firm that helps cottage food producers across the country reform restrictive laws that prevent them from earning a living. I am one of the lead attorneys representing the Wisconsin Cottage Food Association, which has won two court victories striking down previous restrictions on homemade food sales as violative of the Wisconsin Constitution.

This bill is bad policy. But before getting to that, I'm first going to discuss how it's unconstitutional. Wisconsin courts have not once, but twice held that, under the Wisconsin Constitution, government may not prevent people from selling the ordinary, safe food they make in their home kitchens. These are shelf-stable foods that are ubiquitous across the country—chances are, you probably all made some yourself recently. And they're incredibly safe; their scientific properties mean they don't go bad. We've all had a stale cracker and lived to tell the tale.

In fact, homemade food sales present less risk than food produced in a commercial kitchen. There's fewer people involved in handling the food. And there's fewer opportunities for bacterial contamination from moisture—I don't know about you, but I don't hose down my kitchen and get it all wet every day. That's why states allow these sales across the country. They take place here in Wisconsin, every day. And there has been no problem at all. As the Wisconsin courts have already held, the Wisconsin Constitution requires more than this before you can take away someone's liberty.

The Wisconsin Constitution also requires that government treat people evenhandedly. This bill violates that promise—it would cap the sales of ordinary Wisconsinites trying to support themselves, but it would not cap sales pursuant to nonprofit exemptions. The Wisconsin Bakers Association, who supports this proposed cap, earns more than \$100k annually from unlicensed

Re: AB 897
January 11, 2024
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sales of cream puffs at the Wisconsin state fair. They would still be able to do that if this bill passes. That disparity alone renders this bill unconstitutional.

Let's be clear, this is not merely my opinion. This is the opinion of Wisconsin courts that have already said you can't prevent homemade food sales in this state. The proposed bill would violate existing court orders, as well as the constitution.

Now, let's discuss why this is a bad idea—even if the Constitution did not exist. There are many benefits to having a thriving cottage food industry. Aspiring food entrepreneurs benefit by being able to test the market and grow their businesses. Small farms also benefit from being able to make value-added products and from having an additional source of revenue. Overall, expansive cottage food laws create jobs and stimulate economic growth in their communities. They give consumers access to greater, fresher choices in their own neighborhoods. These are all good things that the state should encourage, not restrict.

These also are people who need options to support themselves. Home-based food sellers are overwhelmingly women trying to help pay their families' bills. They're rural people. They're low-income people who have discovered a way to make money using their own home kitchen. They're immigrants, who are under the impression they have come to the land of the free.

That's why most states have no cap on homemade food sales at all. And those that do, their cap is high enough for home-based producers to earn a living wage. Florida's cap, for example, is \$250,000. This proposed cap, at \$20k gross revenue, would be the most restrictive in the entire country, ensuring that no one in Wisconsin can earn an honest living by selling homemade foods.

And that's the entire point. This bill is being proposed because large commercial interests want to use this state's police power to shut down their smaller, local competitors. Groups like the Baker's and Restaurants Associations say that letting ordinary Wisconsinites earn a living by selling food they make in their own home gives them, quote, "unfair market advantages." But I'll tell you what's unfair—threatening to throw grandma in jail because she's exceeded her yearly allotment of cookie sales. Make no mistake, that's what this bill would do. With all respect, this body does not have the constitutional authority to do that. I urge you to vote against this bill.

Sincerely,

Re: AB 897
January 11, 2024
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A handwritten signature in black ink, appearing to be 'S. Sen', written over a horizontal line.

Suranjan Sen
Attorney
Institute for Justice