



# COTTAGE FOODS AND HOME KITCHENS: 2021 State Policy Trends

*January 2022*

The Harvard Law School Food Law and Policy Clinic works to increase access to healthy foods, support sustainable and equitable food production, reduce food waste, and promote community-led food system change through advocacy, guidance, and information-sharing. We have produced previous reports detailing broader legislative trends in cottage food and home kitchen laws<sup>1</sup> and provided testimony on regulatory innovation in the home kitchen space. This issue brief describes trends in cottage food and home kitchen legislation throughout 2021, which saw the highest number of these bills introduced in a single year.

As consumer demand for locally-produced food products and state efforts to support in-state producers have grown over the last decade, many states have expanded both their cottage food and home kitchen laws. Shocks to the labor market created by COVID-19 accelerated the trend, as legislatures have sought to give entrepreneurs the opportunity to start or expand successful businesses from home. These expansions enable individual entrepreneurs and small enterprises to operate without being subject to the same level of scrutiny as full-scale restaurants and food manufacturers, which in turn reduces start-up costs and barriers to entry.

As a result of these societal trends and concerns, as noted above, more states than ever before have considered new cottage food or home

kitchen laws. In 2021 alone, fifty-one unique pieces of legislation expanding home food producer exemptions were introduced in thirty-one states and the District of Columbia, and 19 of these bills were enacted.<sup>2</sup>

## BACKGROUND

States have the primary responsibility for regulating safety for retail food sales and food service operations. Most states' food safety laws, however, are modeled after the federal Food and Drug Administration's (FDA) Model Food Code ("the Food Code").<sup>3</sup> The Food Code applies to any "food establishment", defined as "an operation that stores, prepares, packages, serves, vends . . . or otherwise provides food for human consumption."<sup>4</sup> Under the Food Code, if a food producer is legally a "food establishment", the operation is subject to the extensive requirements contained in the 767-page Model Code (or whatever portion of it has been adopted in that state) and other relevant state laws. The FDA advises against ever licensing or permitting any kitchen in a home as a food establishment, though it includes a limited exemption for producers that prepare certain foods in a private home and offer them at a bake sale for a religious or charitable organizations.<sup>5</sup>

As of 2021, all fifty states have innovated to expand the exception beyond that

recommended by the FDA, allowing for sales of certain kinds of foods when made in a home kitchen.<sup>6</sup> Many states either completely exempt home production of certain foods from the food establishment definition, or replace the extensive “food establishment” regulations with more limited requirements that are better suited for home kitchens. Both the exceptions themselves and the replacement requirements vary widely across states, and are constantly evolving. Historically, these exceptions have come in the form of cottage food laws, which tend to exempt producers from the definition of “food establishments” if they produce foods that are categorically low-risk. As of 2018, however, two states have begun experimenting with a new regulatory program for “microenterprise home kitchens.” These rules allow for the production of more types of foods in a home kitchen than traditionally allowed under cottage food laws, but impose requirements that are stricter than those of cottage food laws but less rigid than those of traditional restaurants.

Cottage food laws generally eliminate or heavily reduce the requirements for licensing, permitting, labeling, packaging, or inspection for producers of low-risk foods. Most often, states allow these cottage food exceptions for non-time/temperature control for safety (“non-TCS”) foods, because they are low-risk and do not require refrigeration or consistent heating to a set temperature.<sup>7</sup> Products like granola, dried tea, baked goods without cream filling, honey, jams and jellies are common examples of allowed cottage food products. 83% of cottage food producers are women, and many come from rural communities.<sup>8</sup> Some states have allowed the production and sale of cottage foods for over a decade,<sup>9</sup> while others have enacted their first cottage food laws only recently.<sup>10</sup>

Distinct from cottage food laws, microenterprise home kitchen laws generally allow for the production of a broad range of food products, including fully-prepared hot meals. California

enacted the first such law in 2018, and Utah followed suit in 2021.<sup>11</sup> In both of those states, microenterprise home kitchens are subject to permitting, inspection, and strict rules about food handling and safety.<sup>12</sup> Health code requirements such as the frequency of inspections, the cost of permits, and even the material of countertops<sup>13</sup> or the number of available sinks,<sup>14</sup> are reduced to scale-appropriate levels that lessen the burden of starting an at-home small business. As with cottage foods, most producers who utilize microenterprise home kitchen are women. Whereas a majority of cottage food producers are rural residents, however, microenterprise home cooks generally live in more urban areas, and are often members of immigrant or other traditionally marginalized communities.<sup>15</sup>

In both cases, advocates argue that tailored permitting and inspection standards save state and local resources in several ways, including by reducing the number of producers that need to be inspected or the frequency of inspections for low-risk products, and for cases where inspection is still required, by shortening the time that an inspection takes and reducing return visits by inspectors through simplifying criteria. These tailored programs may also encourage home food producers who have been selling food on existing ‘black’ markets in several popular internet platforms to register themselves with state and local authorities.<sup>16</sup> This can improve their access to would-be consumers, increase local tax revenues, and provide greater protection to consumers by allowing producers to consult with state and local food safety experts. Of course, it can also contribute to economic development for cottage food or home kitchen operators.

The total economic loss of the COVID-19 pandemic from March 2020 through October 2021 is estimated at \$16 trillion.<sup>17</sup> That number may hide the outsized impact on people of color, immigrants, and women.<sup>18</sup> As students were

sent home from school and in-person jobs became dangerous, lower-income workers were laid off or parents were forced to quit work to stay home with their children. Proponents of cottage food and home kitchen laws argue that as the recovery is beginning, cottage food and home kitchen laws unlock the ability of small entrepreneurs to start businesses and speed our economic progress, as well as support a more equitable economic recovery.

## RECENT POLICY TRENDS IN COTTAGE FOOD AND HOME KITCHEN LAWS

States' experiences with home kitchen food enterprises have given no reason to believe that home food enterprises pose a safety risk to the public. There is little hard data on the safety of home kitchens, which itself suggests that it is not a large-scale problem. In a 2014 study, the Center for Science in the Public Interest found that foodborne illness outbreaks are less than half as common in private home kitchens than they are in restaurant kitchens.<sup>19</sup> Corroborating this finding, the Centers for Disease Control reported that foodborne illness plummeted by 26% in 2020, as restaurants closed and more people cooked at home.<sup>20</sup> Despite the many variations in the mosaic of cottage food and home kitchens laws and enforcement mechanisms across the 50 states, none have reported foodborne illness outbreaks related to the consumption of cottage foods.

Not surprisingly, another commonality between the 50 states is the direction in which their home food enterprise laws are trending. Not a single bill has been introduced in the last several years to scale back these home food producer exemptions. State legislatures seem to understand the safety of foods produced at home and the economic opportunity presented by expanding the ability to start and run small businesses. Between 2013<sup>21</sup> (when FLPC began tracking state data) and 2018,<sup>22</sup> eight states legalized the production of cottage foods, and

the passage of legislation has only accelerated since then, with 28 bills in 2018, 13 in 2019, and 22 in 2020 introduced to expand cottage food and home kitchen laws. In 2021, 55 bills were introduced in 31 states and the District of Columbia. Nineteen of those bills passed,<sup>23</sup> and as of 2021 every single state now has a cottage food law, a home kitchen law, or both.<sup>24</sup> Furthermore, since microenterprise home kitchens were first allowed in California, Utah has followed California's lead in allowing these enterprises in 2021, and New York and Washington both introduced legislation allowing for microenterprise home kitchens.<sup>25</sup>

All told, 118 bills cottage food or home kitchen laws were introduced between 2018-2021. In general, these bills aim to expand the list of allowed foods, raise caps on revenue from sales of home-produced foods, preempt local regulation, expand sales and delivery venues, or otherwise expand the ability of producers to sell foods produced in their homes. These bills have broad bipartisan support, often passing unanimously or near-unanimously.<sup>26</sup> Some of the most common features across these recent state bills are disaggregated and described below.

### Expansion of Allowable Foods

States have slightly different mechanisms for producing a list of allowable cottage foods. Some states, including Colorado, Idaho, and Louisiana, put a list of allowable food directly into the state statute.<sup>27</sup> Others charge the relevant state agency (often either department of health or department of agriculture) with enumerating lists of allowed cottage foods.<sup>28</sup> A few states have not created statutory cottage food laws at all, but instead have regimes set up entirely by regulation under broad statutory authority that does not reference cottage foods.<sup>29</sup> All these statutory and regulatory designs are generally well-established and effective.



Bills can be styled as ‘food freedom’ laws, rather than cottage food laws,<sup>30</sup> and this distinction can have implications for the list of allowable foods. For example, food freedom laws in Wyoming and North Dakota exempt nearly all foods—TCS or not—from the food establishment requirements.<sup>31</sup> Other food freedom laws, however, are essentially cottage food laws by another name, like those in Illinois that exempt mainly non-TCS foods.<sup>32</sup> Some choose a middle path, such as Iowa, which creates limited permitting processes for TCS foods while fully exempting non-TCS foods.<sup>33</sup>

Lists can be exhaustive, meaning that *only* the foods listed are allowed to be produced in a home kitchen.<sup>34</sup> Other times the lists are illustrative, and end with “or other non-TCS foods” or something similar.<sup>35</sup> Still others—like some food freedom and microenterprise kitchen laws—only list foods that are *not* allowed, and presume that all others are. In California’s microenterprise home kitchen laws, for example, the only prohibited products are milk products, raw oysters, and processes that require a Hazard Analysis Critical Control Point (HACCP) plan—such as smoking, curing, acidification, or preserving in vinegar.<sup>36</sup>

Not surprisingly, the trend is toward expansion of cottage food lists. In Arkansas, a food freedom law passed in 2021 exempts all non-TCS foods from permitting, replacing the prior cottage food law that exempted only a limited list but allowed for the Department of Health to add “similar products.”<sup>37</sup> Meanwhile, Oklahoma replaced its Home Bakery Act with a new Food Freedom Law, expanding the exempted foods from only bakery items to all food other than alcoholic beverages, unpasteurized milk, or cannabis products.<sup>38</sup> Under the new law, TCS food producers have to pass a food safety training course, but no such requirement exists for non-TCS food producers. Similarly, West Virginia expanded its cottage food laws to allow for the sale of TCS foods but subject to a limited permitting program.<sup>39</sup>

## Raising or Lifting Gross Sales Caps

Roughly half of states place limits on annual gross sales allowed from home kitchens. Critics of these gross sales caps believe that they can be burdensome to cottage food or home kitchen operations and that they are poorly tailored since they are on gross receipts rather than on net profits. Alternative limitations on the size of operations can hinge on the number of employees they may have or the number of meals they can serve.<sup>40</sup> Enforcement of these caps is difficult, and may cause cottage food producers and microenterprise home kitchens to underreport earnings or meals served, which would corrupt the data state authorities collect and reduce the local tax base.

There is a trend in the state legislatures toward raising or eliminating these caps. In 2021, Florida raised its annual gross sales cap for cottage food operators from \$50,000 per year to \$250,000 per year,<sup>41</sup> California raised its cap on Class A cottage food producers from \$50,000 to \$100,000 per year,<sup>42</sup> and Minnesota introduced a bill to eliminate the gross receipts cap altogether.<sup>43</sup> In 2020, Wyoming set its cap at \$250,000,<sup>44</sup> while in 2019, Kentucky raised its cap from \$35,000 to \$60,000.<sup>45</sup>

## Ensuring Local Governments Allow Home Food Production

State legislatures have, on occasion, enacted cottage food or microenterprise home kitchen laws in such a way as to leave the permitting and inspection processes to city or county authorities. This can lead to inefficient implementation and uneven application of these laws; in some cases, municipal authorities fail or decline to create a permitting process at all. When the state is in charge, only one regulatory body needs to burden itself with establishing standards and processes. Because the work is not being duplicated, state departments of health or agriculture can put adequate resources into making determinations about the safety of





certain foods, cooking processes, or need for inspection.

Massachusetts is a good example of this phenomenon. It established a cottage food program twenty years ago, but left the permitting process to local boards of health.<sup>46</sup> Many of these local boards have never created a permitting process,<sup>47</sup> perhaps because they do not have adequate resources to do so. In the absence of this specific information about the likelihood of foodborne illness, local boards of health may overestimate this risk, and may thus be concerned with political blowback if one were to take place. Whatever the motivation, failure to create these permitting processes denies would-be cottage food producers the economic opportunity to run small businesses from home. California faces a similar issue with its microenterprise home kitchen laws.<sup>48</sup> Because county boards of health must opt in by creating a permitting and inspection process, the program is not available everywhere in California.

Few states require opting-in by local officials in the first place, but to the extent that there is a trend, it is toward states preempting local laws that otherwise restrict cottage food production. Connecticut,<sup>49</sup> New Mexico,<sup>50</sup> and Florida<sup>51</sup> preempted more restrictive local laws in 2021, for example. Massachusetts currently has three pending bills, all of which would also preempt local laws and eliminate the need for local permitting.<sup>52</sup>

### Expanding Sales and Delivery Venues

Most cottage foods are sold directly from the producer to the consumer and delivered at the place of sale, such as at a farmers market or on-site at a farm or the producer's home. But the recent trend has been toward allowing more sales and delivery methods. Cottage food producers can reach a broader consumer base if they are able to sell products on the internet and deliver them by mail, for example. For

microenterprise home kitchens, the ability to use third-party delivery for hot meals sold on internet platforms is important for driving business. The more permissive laws allow for sales online, over the phone, by mail-order, or in person.<sup>53</sup> Common allowances for delivery include via third-party delivery, by mail, via third-party shops and other vendors, or in-person.<sup>54</sup> Once again, the trend is toward relaxation of restrictions around cottage foods and home kitchens. New York's pending bill to allow microenterprise home kitchens would allow sales by telephone, email, mobile app, or online-through either an operator-owned website or a third-party vendor.<sup>55</sup> It then allows delivery via the operator, an employee or agent of the operator, or a third-party delivery service.<sup>56</sup> Multiple states have relaxed delivery rules for cottage food providers in 2021, including Alabama,<sup>57</sup> Arkansas,<sup>58</sup> California,<sup>59</sup> Florida,<sup>60</sup> Illinois,<sup>61</sup> and New Jersey.<sup>62</sup>

## CONCLUSION

There is a wide variety of cottage food and home kitchen laws across the country. Despite this variety, the trend in new state legislation is quite clear. Whether allowing more categories of foods, raising sales caps, preempting local regulation, or expanding sales and delivery venues, states have been steadily broadening their cottage food and home kitchen allowances. The consistent absence of headlines or reports showing outbreaks of foodborne illness related to home food producers, even as the opportunities to produce foods at home have expanded, have made legislators and regulators more comfortable endorsing tailored requirements and reducing burdens. Growing markets for cottage foods and other home-produced foods has led to economic development and rising numbers of consumers and home cooks able to advocate for these laws. The trend has accelerated in 2021 in the wake of the COVID-19 pandemic, as states have sought to eliminate barriers for willing buyers and



sellers to engage in the purchase and sale of more home-produced foods, and support a more equitable economic recovery. The beneficiaries of these laws are largely women, immigrants, and people of color, all of whom have been disproportionately impacted by the pandemic.

Expansion of home food producer exemptions is a grassroots economic recovery strategy that benefits state and local governments, consumers, and producers.

### **Acknowledgments**

This issue brief was written by Patrick Montgomery, Regina Paparo, and Emily M. Broad Leib. We are grateful to Shef for providing comments and additional insights.



## APPENDIX I: COTTAGE FOOD AND HOME KITCHEN LEGISLATION INTRODUCED IN 2021

State	Bills Introduced*
Alabama	<ul style="list-style-type: none"> <li>H.B. 12, 2021 Leg., Reg. Sess. (Ala. 2021)</li> <li><b>S.B. 160, 2021 Leg., Reg. Sess. (Ala. 2021)</b></li> </ul>
Arizona	<ul style="list-style-type: none"> <li>H.B. 2387, 55th Leg., 1st Leg. Sess. (Az. 2021)</li> </ul>
Arkansas	<ul style="list-style-type: none"> <li><b>H.B. 1118, 93rd Gen. Assemb., Reg. Sess. (Ark. 2021)</b></li> <li><b>H.B. 1681/S.B. 248 Gen. Assemb., Reg. Sess. (Ark. 2021)</b></li> </ul>
California	<ul style="list-style-type: none"> <li><b>A.B. 1144, 2021–22 Leg. Sess. (Ca. 2021)</b></li> <li><b>A.B. 831, 2021–22 Leg. Sess. (Ca. 2021)</b></li> <li><b>A.B. 61, 2021–22 Leg. Sess. (Ca. 2021)</b></li> </ul>
Connecticut	<ul style="list-style-type: none"> <li>H.B. 5093, 2021 Gen. Assemb., Reg. Sess. (Conn. 2021)</li> <li>S.B. 1024/S.B. 0804/<b>H.B.6107, 2021 Gen. Assemb., Reg. Sess. (Conn. 2021)</b><sup>†</sup></li> </ul>
Florida	<ul style="list-style-type: none"> <li><b>H.B. 663/S.B. 1294, 2021 Sen., Reg. Sess. (Fla. 2021)</b></li> </ul>
Illinois	<ul style="list-style-type: none"> <li><b>S.B. 2007/H.B. 2615, 102 Gen. Assemb., 2021–22 Reg. Sess. (Ill. 2021)</b></li> </ul>
Indiana	<ul style="list-style-type: none"> <li>H.B. 1103, Gen. Assemb., 2021 Sess. (Ind. 2021)</li> </ul>
Iowa	<ul style="list-style-type: none"> <li>H.F. 638, 2021 Gen. Assemb., Reg. Sess. (Iowa 2021)</li> </ul>
Maine	<ul style="list-style-type: none"> <li>H.P. 419, 130th Leg., First Reg. Sess. 2021 (Me. 2021)</li> <li>H.P. 61 - L.D. 95, 130th Leg., First Reg. Sess. 2021 (Me. 2021)</li> </ul>
Maryland	<ul style="list-style-type: none"> <li>H.D. 1298/S.D. 806, 2021 Gen. Assemb., First Reg. Sess. (Md. 2021)</li> </ul>
Massachusetts	<ul style="list-style-type: none"> <li>H. 465, 192nd Leg., 2021 Reg. Sess. (Mass. 2021)</li> <li>H. 862/S. 533, 192nd Leg., 2021 Reg. Sess. (Mass. 2021)</li> </ul>
Michigan	<ul style="list-style-type: none"> <li>H.B. 4514, 2021 Leg., Reg. Sess. (Mich. 2021)</li> <li>H.B. 5058, 2021 Leg., Reg. Sess. (Mich. 2021)</li> </ul>
Minnesota	<ul style="list-style-type: none"> <li>H.F. 1430/S.F. 1254, 92nd Leg., 2021 Reg. Sess. (Minn. 2021)</li> <li>H.F. 433/S.F. 1941, 92nd Leg., 2021 Reg. Sess. (Minn. 2021)</li> <li>H.F. 2014/S.F. 1610, 92nd Leg., 2021 Reg. Sess. (Minn. 2021)</li> <li><b>H.F. 8, 92nd Leg., 2021 Special Sess. (Minn. 2021)</b></li> <li><b>S.F. 958, 92nd Leg., 2021 Reg. Sess. (Minn. 2021)</b></li> </ul>
Mississippi	<ul style="list-style-type: none"> <li>H.B. 562/S.B. 2781, 2021 Leg., 2021 Reg. Sess. (Miss. 2021)</li> <li>H.B. 588, 2021 Leg., 2021 Reg. Sess. (Miss. 2021)</li> </ul>
Missouri	<ul style="list-style-type: none"> <li>H.B. 357/S.B. 27, 101st Gen. Assemb. 1st Reg. Sess. (Mo. 2021)</li> </ul>
Montana	<ul style="list-style-type: none"> <li><b>S.B. 199, 67th Reg. Sess. (Mont. 2021)</b></li> </ul>
New Hampshire	<ul style="list-style-type: none"> <li>H.B. 314 2021 Leg., 2021 Reg. Sess. (N.H. 2021)</li> </ul>
New Jersey	<ul style="list-style-type: none"> <li><b>A.2315, 219th Legis., Reg. Sess. 2021 (N.J. 2021)</b></li> </ul>
New Mexico	<ul style="list-style-type: none"> <li>H.B. 177, 55th Leg., 2021 First Sess. (N.M. 2021)</li> <li><b>S.B. 118, 55th Leg., 2021 Reg. Sess. (N.M. 2021)</b></li> </ul>

\* Enacted legislation marked in green.

<sup>†</sup> Otherwise dissimilar agricultural bills contained identical language exempting cottage food operations from zoning laws.



New York	<ul style="list-style-type: none"> <li>• S. 5951/A. 7787, 2021–2022 Leg. Sess. (N.Y. 2021)</li> </ul>
Oklahoma	<ul style="list-style-type: none"> <li>• S.B. 833, 58th Leg., 1st Sess. (Ok. 2021)</li> <li>• <b>H.B. 1032, 58th Leg., 1st Sess. (Ok. 2021)</b></li> </ul>
Rhode Island	<ul style="list-style-type: none"> <li>• S.B. 552/H. 5758, Gen. Assemb., 2021 Reg. Sess. (R.I. 2021)</li> <li>• H. 5313, Gen. Assemb., 2021 Reg. Sess. (R.I. 2021)</li> <li>• H. 5770, Gen. Assemb., 2021 Reg. Sess. (R.I. 2021)</li> </ul>
South Carolina	<ul style="list-style-type: none"> <li>• S. 506, Gen. Assemb., 124th Sess. (S.C. 2021)</li> <li>• S. 308, Gen. Assemb., 124th Sess. (S.C. 2021)</li> </ul>
South Dakota	<ul style="list-style-type: none"> <li>• H.B. 1121, 2021 Leg., 96th Leg. Sess. (S.D. 2021)</li> </ul>
Tennessee	<ul style="list-style-type: none"> <li>• S.B. 0693/HB 0813, 2021 Leg., 2021 Reg. Sess. (Tenn. 2021)</li> <li>• <b>S.B. 2140, 2021 Leg., 2021 Reg. Sess. (Tenn. 2021)</b></li> </ul>
Texas	<ul style="list-style-type: none"> <li>• H.B. 1686/S.B 1062, 2021 Leg., 87th Reg. Sess. (Tex. 2021)</li> </ul>
Utah	<ul style="list-style-type: none"> <li>• <b>H.B. 94, 2021 Leg., 2021 Gen. Sess. (Utah 2021)</b></li> </ul>
Washington	<ul style="list-style-type: none"> <li>• H.B. 1258, 2021 Leg., 2021–2022 Reg. Sess. (Wash. 2021)</li> </ul>
Washington, D.C.	<ul style="list-style-type: none"> <li>• B24-0301, 2021 Leg., 2021 Reg. Sess. (D.C. 2021)</li> </ul>
West Virginia	<ul style="list-style-type: none"> <li>• S.B. 357/<b>H.B. 2633, 85th Leg., Reg. Sess. (W.Va. 2021)</b></li> </ul>
Wyoming	<ul style="list-style-type: none"> <li>• <b>H.B. 0118, 66th Leg., 2021 Gen. Sess. (Wyo. 2021)</b></li> </ul>





## APPENDIX II: CURRENT ENACTED COTTAGE FOOD AND HOME KITCHEN LAWS

Alabama	ALA. CODE § 22-20-5.1
Alaska	ALASKA ADMIN. CODE tit. 18, §§ 31.012, 31.985
Arizona	ARIZ. REV. STAT. ANN. §§ 36-136 (I)(4)(g); (R)(1); A.A.C. § 9-8-118
Arkansas	ARK. CODE § 20-57-501
California	CAL. HEALTH & SAFETY CODE §§ 113758; 114365
Colorado	COLO. REV. STAT. § 25-4-1614
Connecticut	CONN. GEN. STAT. § 21a-24a
Delaware	3-100-101 DEL. ADMIN. CODE §§ 1.0–16.0
Florida	FLA. STAT. §§ 500.03, 500.80
Georgia	GA. COMP. R. & REGS. 40-7-19.02—.10
Hawaii	HAW. STATE DEP'T OF HEALTH, STARTING A HOMEMADE FOOD OPERATION (Sept. 2017), <a href="https://health.hawaii.gov/san/files/2017/09/hmf-handout.pdf">https://health.hawaii.gov/san/files/2017/09/hmf-handout.pdf</a>
Idaho	IDAHO ADMIN. CODE R. 16.02.19.110
Illinois	410 ILL. COMP. STAT. 625/4
Indiana	IND. CODE 16-42-5-29
Iowa	IOWA CODE § 137f
Kansas	KAN. STAT. ANN. § 65-689(D)(4)
Kentucky	KY. REV. STAT. ANN. §§ 217.015, 217.136–138
Louisiana	LA. STAT. ANN. § 40:4.9
Maine	01-001-330 ME. CODE R. § 1–2; 01-001-345 ME. CODE R. § 1–8
Maryland	MD. CODE ANN., HEALTH-GEN. § 21-330.1; CODE OF MD. REGS. 10.15.03
Massachusetts	105 MASS. CODE REGS. 590.002, 590.009
Michigan	MICH. COMP. LAWS §§ 289.1105, 289.4102
Minnesota	MINN. STAT. § 3.737
Mississippi	MISS. CODE ANN. §75-29-951
Missouri	MO. REV. STAT. § 196.298
Montana	Montana Local Food Choice Act, S.B. 199; MONT. CODE ANN. § 50-50-301
Nebraska	NEB. REV. STAT. § 81-2,245.01
Nevada	NEV. REV. STAT. § 446.866
New Hampshire	N.H. REV. STAT. ANN. § 143-A:12
New Jersey	N.J. ADMIN. CODE §§ 8:24-11.1 <i>et seq.</i>
New Mexico	N.M. STAT. ANN. § 25-12-1 <i>et seq.</i>
New York	N.Y. COMP. CODES R. & REGS. tit. 1, §§ 276.3, 276.4
North Carolina	FOOD PROGRAM: STARTING A HOME-BASED FOOD BUSINESS, N.C. DEP'T OF AGRIC. & CONSUMER SERVS. FOOD & DRUG PROT. DIV., <a href="http://www.ncagr.gov/Fooddrug/food/homebiz.hztm">http://www.ncagr.gov/Fooddrug/food/homebiz.hztm</a>
North Dakota	N.D. CENT. CODE § 23-09.5 (2021)
Ohio	OHIO REV. CODE ANN. §§ 3715.01, 3715.023, 3715.025
Oklahoma	OKLA. STAT. tit. 2, §§ 5-4.1 To 4.6
Oregon	OR. REV. STAT. §§ 616.711, 616.723; OR. ADMIN. R. 603-025-0215 to -0275
Pennsylvania	3 PA. CONS. STAT. §§ 5721 - 5737
Rhode Island	21 R.I. GEN. LAWS § 21-27-6.1
South Carolina	S.C. CODE ANN. § 44-1-143
South Dakota	S.D. CODIFIED LAWS §§ 34-18-34, <i>et seq.</i>



Tennessee	TENN. CODE ANN. § 53-1-204(c).
Texas	TEX. HEALTH & SAFETY CODE ANN. §§ 437.001, 437.0191– 437.0196; 25 Tex. Admin. Code § 229.661
Utah	UTAH CODE ANN. §§ 4-5-501, 4-5a-102, <i>et seq.</i> ; Utah Admin. Code R. § 70-560
Vermont	18 VT. STAT. ANN. TIT. 18, § § 4301, 4358
Virginia	VA. CODE ANN. § 3.2-5130
Washington	WASH. REV. CODE §§ 69.22.010, <i>et seq.</i> ; WASH. ADMIN. CODE §§ 16-149-060, <i>et seq.</i>
Washington, D.C.	D.C. Mun. Regs. Tit. 25-K, §§ 100-109; 9900-9901
West Virginia	W. VA. CODE §§ 19-35-2, <i>et seq.</i>
Wisconsin	WIS. STAT. § 97.29; <a href="https://www.wisconsinincottagefood.com/bestpractices">https://www.wisconsinincottagefood.com/bestpractices</a>
Wyoming	WYO. STAT. ANN. § 11-49-101, <i>et seq.</i>



## ENDNOTES

- <sup>1</sup> HARVARD LAW SCHOOL FOOD LAW AND POLICY CLINIC, COTTAGE FOOD LAWS IN THE UNITED STATES (2018), [https://www.chlpi.org/wp-content/uploads/2013/12/FLPC\\_Cottage-Foods-Report\\_August-2018.pdf](https://www.chlpi.org/wp-content/uploads/2013/12/FLPC_Cottage-Foods-Report_August-2018.pdf).
- <sup>2</sup> See *infra* App'x I (enacted legislation denoted in green).
- <sup>3</sup> U.S. FOOD & DRUG ADMIN., FOOD CODE (2017), <https://www.fda.gov/media/110822/download>.
- <sup>4</sup> *Id.* at § 1-201.10(B)(1)(a).
- <sup>5</sup> *Id.* at 1-201.10(B)(3)(d).
- <sup>6</sup> See App'x II. In 2021, New Jersey became the 50th state to legalize food production in home kitchens through new administrative regulations. N.J. ADMIN. CODE §§ 8:24-11.1 *et seq* (2021).
- <sup>7</sup> See, e.g., Alabama (ALA. ADMIN. CODE R. 420-3-22-.01 (2020)); Iowa (IOWA CODE § 137f (2021)); New Hampshire (N.H. REV. STAT. ANN. § 143-A:12 (2017)); South Dakota (S.D. CODIFIED LAWS §§ 34-18-34 to -38 (2010)); Wyoming (WYO. STAT. ANN. § 11-49-101 to -103 (2015)).
- <sup>8</sup> Jennifer McDonald, *The relationship between cottage food laws and business outcomes: A quantitative study of cottage food producers in the United States*, 84 FOOD POLICY 21, 25 (2019).
- <sup>9</sup> See, e.g., FLA. STAT. §§ 500.03, 500.80 (2011); 105 MASS. CODE REGS. §§ 590.002, 590.009 (2008).
- <sup>10</sup> See, e.g., N.J. ADMIN. CODE §§ 8:24-11.1-11.8 (2021).
- <sup>11</sup> 2018 Cal. Legis. Serv. Ch. 470 (A.B. 626) (West); see also e.g., UTAH CODE ANN. § 26-15c-101 (2021).
- <sup>12</sup> CAL. HEALTH & SAFETY CODE § 114367 (2020).
- <sup>13</sup> FDA FOOD CODE, *supra* note 3, at § 4-101.19.
- <sup>14</sup> *Id.* at §§ 5-203.11; 5-203.13.
- <sup>15</sup> An internal 2018 COOK Alliance poll (on file with authors) found that the microenterprises in its network kitchens are overwhelmingly run by people from marginalized populations. Eighty-five percent of the cooks were women, and about one-third were first-generation immigrants.
- <sup>16</sup> While the authors of this brief are not aware of any major studies to date about this practice, anecdotes from industry insiders suggest that this is a widespread practice.
- <sup>17</sup> D.M. Cutler & Lawrence Summers, *The COVID-19 Pandemic and the \$16 Trillion Virus*, JAMA (Oct. 12, 2020), <https://jamanetwork.com/journals/jama/fullarticle/2771764>.
- <sup>18</sup> Rakesh Kochhar, *Hispanic women, immigrants, young adults, those with less education hit hardest by COVID-19 job losses*, PEW RSCH. CTR. (June 9, 2020), <https://www.pewresearch.org/fact-tank/2020/06/09/hispanic-women-immigrants-young-adults-those-with-less-education-hit-hardest-by-covid-19-job-losses/>.
- <sup>19</sup> OUTBREAK ALERT! 2014: A REVIEW OF FOODBORNE ILLNESS IN AMERICA FROM 2002-2011, CTR. FOR SCIENCE IN THE PUBLIC INTEREST 4 (Apr. 2014), <https://cspinet.org/sites/default/files/attachment/outbreakalert2014.pdf>.
- <sup>20</sup> Logan C. Ray et al., *Decreased Incidence of Infections Caused by Pathogens Transmitted Commonly Through Food During the COVID-19 Pandemic — Foodborne Diseases Active Surveillance Network, 10 U.S. Sites, 2017–2020*, 70 MORBIDITY AND MORTALITY WEEKLY REP. 1332, 1332 (2021), <https://www.cdc.gov/mmwr/volumes/70/wr/pdfs/mm7038a4-H.pdf>.
- <sup>21</sup> HARVARD LAW SCHOOL FOOD LAW AND POLICY CLINIC, COTTAGE FOOD LAWS IN THE UNITED STATES (2013), [https://chlpi.org/wp-content/uploads/2013/12/FINAL\\_Cottage-Food-Laws-Report\\_2013.pdf](https://chlpi.org/wp-content/uploads/2013/12/FINAL_Cottage-Food-Laws-Report_2013.pdf).
- <sup>22</sup> HARVARD LAW SCHOOL FOOD LAW AND POLICY CLINIC, COTTAGE FOOD LAWS IN THE UNITED STATES (2018), *supra* note 1.
- <sup>23</sup> S.B. 160, 2021 Leg., Reg. Sess. (Ala. 2021); H.B. 1118, 93rd Gen. Assemb., Reg. Sess. (Ark. 2021); H.B. 1681/S.B. 248 93rd Gen. Assemb., Reg. Sess. (Ark. 2021); A.B. 1144, 2021–22 Leg. Sess. (Ca. 2021); A.B. 831, 2021–22 Leg. Sess. (Ca. 2021); A.B. 61, 2021–22 Leg. Sess. (Ca. 2021); H.B. 06107, 2021 Gen. Assemb., Reg. Sess. (Conn. 2021); H.B. 663/S.B. 1294, 2021 Sen., 2021 Reg. Sess. (Fla. 2021); S.B. 2007/H.B. 2615, 102 Gen. Assemb., 2021–22 Reg. Sess. (Ill. 2021); H.F. 8, 92nd Leg., 2021 Special Sess. (Minn. 2021); S.F. 958, 92nd Leg., 2021 Reg. Sess. (Minn. 2021); S.B. 199, 67th Reg. Sess. (Mont. 2021); A.2315, 219th Legis., Reg. Sess. 2021 (N.J. 2021); H.B. 177, 2021 Leg., 2021 Reg. Sess. (N.M. 2021); H.B. 1032 58th Leg., 1st Sess. (Ok. 2021); S.B. 2140, 2021 Leg., 2021 Reg. Sess. (Tenn. 2021); H.B. 94, 2021 Leg., 2021 Gen. Sess. (Utah 2021); H.B. 2633, 2021 Leg., 2021 Reg. Sess. (W.Va. 2021); H.B. 0118, 66th Leg., 2021 Gen. Sess. (Wyo. 2021).
- <sup>24</sup> Pat Ralph, *Homemade Baked Goods Can Finally Be Sold in New Jersey*, THE PHILLY VOICE (Oct. 5, 2021), <https://www.phillyvoice.com/new-jersey-homemade-baked-goods-sales-rules/>.
- <sup>25</sup> See, e.g., CAL. HEALTH & SAFETY CODE § 114367 (2020); UTAH CODE ANN. § 26-15c-101 (2021); A. 7787, 2021-2022 Reg. Sess., (N.Y. 2021); H.B. 1258, 2021-2022 Reg. Sess. (Wash. 2021).



- <sup>26</sup> See, e.g., H.B. 1032, 58th Leg., 1st Sess. (Ok. 2021) (passing Oklahoma House 86-0); H.B. 177, 55th Leg., 2021 First Sess. (N.M. 2021) (passing New Mexico House 63-1 and 38-2 in New Mexico Senate).
- <sup>27</sup> See, e.g., COLO. REV. STAT. § 25-4-1614 (2021); IDAHO ADMIN. CODE R. 16.02.19.110 (2020); LA. STAT. ANN. § 40:4.9 (2015).
- <sup>28</sup> See, e.g., D.C. CODE § 7-742.01–.02 (2021); D.C. Mun. Regs. tit. 25, § K100–109 (2021).
- <sup>29</sup> See, e.g., 16-4400-4458A DEL. ADMIN. CODE §§ 1.0–9.0 (2019)); HAW. CODE R. § 11-50-3 (2017); HAW. STATE DEP’T OF HEALTH, STARTING A HOMEMADE FOOD OPERATION (Sept. 2017), <https://health.hawaii.gov/san/files/2017/09/HMF-handout.pdf>); KAN. DEP’T OF AGRIC., FOOD SAFETY FOR KANSAS FARMERS MARKET VENDORS: REGULATIONS AND BEST PRACTICES (Jan. 2018) <https://www.bookstore.ksre.ksu.edu/pubs/MF3138.pdf>.
- <sup>30</sup> See, e.g., H.F. 433/S.F. 1941, 92nd Leg., 2021 Reg. Sess. (Minn. 2021); H.F. 319, 2021 Gen. Assemb, Reg. Sess. (Iowa 2021); H.B. 1032, 58th Leg., 1st Sess. (Ok. 2021).
- <sup>31</sup> See, e.g., WYO. STAT. ANN. § 11-49-101, *et seq.* (2015); N.D. CENT. CODE § 23-09.5 (2021).
- <sup>32</sup> 410 ILL. COMP. STAT. 625/3.6/4 (2018).
- <sup>33</sup> See, e.g., IOWA CODE § 137F (2021) (non-TCS foods); IOWA CODE § 137D (2021) (some TCS foods).
- <sup>34</sup> See, e.g., D.C. Mun. Regs. tit. 25, § K100–109; KY. REV. STAT. ANN. §§ 217.015, 217.136–138.
- <sup>35</sup> See, e.g., GA. COMP. R. & REGS. 40-7-19.02–.10 (2021); COLO. REV. STAT. § 25-4-1614 (2021).
- <sup>36</sup> CAL. HEALTH & SAFETY CODE § 114367 (2020).
- <sup>37</sup> Act 1040, 93rd Gen. Assem. 2021 Reg. Sess. (Ark. 2021).
- <sup>38</sup> H.B. 1032, 58th Leg., 1st Sess. (Ok. 2021).
- <sup>39</sup> H.B. 2633, 85th Leg., Reg. Sess. (W.Va. 2021).
- <sup>40</sup> See, e.g., CAL. HEALTH & SAFETY CODE § 114367 (2020).
- <sup>41</sup> H.B. 663/S.B. 1294, 2021 Sen., Reg. Sess. (Fla. 2021).
- <sup>42</sup> CAL. HEALTH & SAFETY CODE § 114365 (2020). California has two classes of cottage food production, Class A and Class B. *Id.* Class A is for smaller producers, and has a lower gross sales cap and no inspection requirements. *Id.* Class B has a higher gross sales cap and allows sales through an intermediary, but requires annual inspections. *Id.*
- <sup>43</sup> H.F. 433/S.F. 1941, 92nd Leg., 2021 Reg. Sess. (Minn. 2021).
- <sup>44</sup> Act 43, 65th Leg., Budget Sess. (Wyo. 2020).
- <sup>45</sup> KY. REV. STAT. 217.136 (2019).
- <sup>46</sup> 105 MASS. CODE REGS. 590.008(C) (2008) (“The [local] board of health may . . . issue a permit . . . after a properly completed application is submitted, reviewed, and approved, the fees are paid, and an inspection demonstrates compliance [with Code standards]”); *but see* 105 MASS. CODE REGS. 590.008(D) (2008) (providing an enumerated list of grounds a local board of health may use to deny a permit or permit renewal).
- <sup>47</sup> For example, Boston and Cambridge only established permitting processes in 2021, and many municipalities, including Worcester and Leominster, have never created one at all.
- <sup>48</sup> David Crabill, *Behind the Scenes of a Cottage Food Bill*, FORRAGER (last visited Jan. 2, 2022), <https://forrager.com/behind-the-scenes-of-a-cottage-food-bill/>.
- <sup>49</sup> Public Act No. 21-29, Gen. Assemb. Reg. Sess. (Conn. 2021).
- <sup>50</sup> H.B. 177, 55th Leg., 2021 First Sess. (N.M. 2021).
- <sup>51</sup> H.B. 663/S.B. 1294, 2021 Sen., Reg. Sess. (Fla. 2021).
- <sup>52</sup> H.B. 465, 192nd Gen. Court, Reg. Sess., (Ma. 2021); H.B. 862/S.B. 533 192nd Gen. Court, Reg. Sess., (Ma. 2021).
- <sup>53</sup> See, e.g., Act No. 2021-461, 2021 Leg., Reg. Sess. (Ala. 2021); H.B. 1118, 93rd Gen. Assemb., Reg. Sess. (Ark. 2021).
- <sup>54</sup> *Id.*
- <sup>55</sup> See S. 5951, 2021–2022 Leg. Sess. (N.Y. 2021); A. 7787 S. 5951, 2021–2022 Leg. Sess. (N.Y. 2021).
- <sup>56</sup> *Id.*
- <sup>57</sup> Act No. 2021-461, 2021 Leg., Reg. Sess. (Ala. 2021).
- <sup>58</sup> H.B. 1118, 93rd Gen. Assemb., Reg. Sess. (Ark. 2021).
- <sup>59</sup> CAL. HEALTH & SAFETY CODE § 114367 (2020).
- <sup>60</sup> H.B. 663/S.B. 1294, 2021 Sen., Reg. Sess. (Fla. 2021).
- <sup>61</sup> Public Act 102-0633, 102 Gen. Assemb., 2021–2022 Reg. Sess. (Ill. 2021).
- <sup>62</sup> A.2315, 219th Legis., Reg. Sess. 2021 (N.J. 2021).

