

SB 643: Relating to food establishments in residential dwellings.

SUPPORT TESTIMONY Jennifer McDonald, Institute for Justice January 25, 2023

Overview

Home food businesses, often known as cottage food businesses, are a way for entrepreneurs with big dreams but little capital to start small in their own homes without having to spend tens of thousands of dollars on professional equipment and commercial kitchen space. Oregon has embraced these businesses as job creators and revenue generators, but Oregon's cottage food laws need updating. Oregon's cottage food laws are unclear and confusing, and burdensomely limit the earning potential of these entrepreneurs.

These limits keep families across the state from earning important income and contributing to the economy. **We ask the committee to support SB 643, which will make it easier for home-based entrepreneurs to earn an honest living doing what they love.**

Consumers and producers alike benefit from the sale of cottage foods: Consumers love buying local, homemade foods, and producers can earn income while supporting the local economy. As Oregonians continue to recover from the pandemic and fight high inflation, home-based food businesses can generate revenue and expand access to local food, especially in rural areas. As members of the community, cottage food entrepreneurs can identify and meet specific needs, such as providing much-needed food options in isolated communities, in a way that traditional food retailers cannot.

Current law allows cottage food producers to only sell shelf-stable (also known as "non-potentially hazardous") goods. These are goods that do not require time or temperature control, such as cookies, breads, and dried pasta. Current law prohibits producers from earning more than \$20,000 in annual revenue (one of the lowest in the country), having pets at home (rather than the reasonable restriction to prohibit pets in the kitchen during operation), and shipping their goods to other Oregonians.

Selling cottage foods is a safe, accessible path to entrepreneurship. Oregon should support reforms that will help make it easier for entrepreneurs to start and run cottage food businesses.

SB 643 reforms Oregon's cottage food law by adopting the best practices of other states. SB 643 clarifies and improves the cottage food law by:

1. Eliminating the \$20,000 annual revenue cap;
2. Expressly allowing online sales, mail delivery, and sales to retail stores;
3. Protecting the safety of cottage food producers by providing the option to use a unique ID number in place of a home address on product labels; and
4. Removing the blanket ban on owning pets, which disqualifies a large portion of the populace from this economic opportunity.

1. Eliminate the \$20,000 annual revenue cap.

Unlike most states, Oregon does not permit cottage food businesses to earn more than \$20,000 a year in revenue. **Oregon is tied with one other state for having the lowest revenue cap in the country.**¹ Considering how much it costs to start and run these businesses, most cottage food producers are not left with much income after hitting this very low revenue cap.

While most cottage food businesses generate only a few thousand dollars in annual revenue, some generate much more and many plan to expand their businesses.² A revenue cap as low as \$20,000 creates a one-size-fits-all business model that only serves to undermine the ability of producers to use their homes as a steppingstone to a shared commercial kitchen space or a brick-and-mortar store, keeping aspiring entrepreneurs from thriving. Considering the COVID-19 pandemic's continuing economic impacts on the state and an ever-rising cost of living, arbitrary revenue limits should not be placed on residents who are simply trying to provide for their families.

Revenue caps on cottage food businesses are increasingly becoming a thing of the past as more states remove their caps each year, recognizing the inherent safety of cottage foods and the benefit these businesses have on the community and the economy. Thirty-three states have no revenue cap at all, and even regulation-heavy California allows cottage food producers to sell up to \$150,000 per year.³ Cottage food entrepreneurs tend to be women of modest means living in rural areas, many of whom have children living at home.⁴ A 2016 survey found that the median income of a cottage food producer is just \$36,000—significantly lower than the national median of \$59,000 for that year.⁵ Raising the revenue cap would allow these families to climb the economic ladder with more ease.

After Wisconsin ended its ban on the sale of home-baked goods, producers reported being able to do everything from enroll their children in extra lessons to pay for healthcare to being able to afford to stay in their homes.⁶ In addition to helping families make ends meet, these home-based businesses create revenue and jobs for the state. Over half of all U.S. businesses are operated primarily out of the home.⁷ For single parents, the disabled, those without reliable transportation and many more, operating out of the home may be their only feasible business model. Regardless of the reason, especially now, it is essential that people have the ability to earn a living from the safety of their homes.⁸

¹ New Hampshire has a revenue cap of \$20,000.

² McDonald, J. (2019). The relationship between cottage food laws and business outcomes: A quantitative study of cottage food producers in the United States. *Food Policy*, 84, 21–34. <https://doi.org/10.1016/j.foodpol.2019.01.012>.

³ *Timeline of Recent Cottage Food Expansion*. Institute for Justice. <https://ij.org/activism/a-timeline-of-recent-cottage-food-expansion/>

⁴ McDonald, 2019; McDonald, J. (2018). *Ready to Roll: Nine Lessons from Ending Wisconsin's Home-Baking Ban*. Arlington, VA: Institute for Justice. <https://ij.org/report/ready-to-roll/>

⁵ McDonald, 2019.

⁶ McDonald, 2018.

⁷ U.S. Small Business Administration Office of Advocacy. (2020). *Frequently Asked Questions*. <https://cdn.advocacy.sba.gov/wp-content/uploads/2020/11/05122043/Small-Business-FAQ-2020.pdf>

⁸ McDonald, J. (2022). *Work Entrepreneur from Home: How Home-Based Businesses Provide Flexibility and Opportunity--and How Cities Can Get Out of Their Way*. Arlington, VA: Institute for Justice. <https://ij.org/report/entrepreneur-from-home-how-home-based-businesses-provide-flexibility-and-opportunity-and-how-cities-can-get-out-of-their-way/>

2. Expressly allow online sales, mail delivery, and sales to retail stores.

Under the current law, producers in Oregon are prohibited from using mail delivery to send orders; they must be dropped off by the producer or picked up by the consumer.

The majority of states—34—allow mail delivery, and mail delivery poses no health or safety risks for the shelf-stable foods allowed to be sold under current law. For example, early in the pandemic, Washington put in place a reform to temporarily allows intrastate shipping, given the concerns of person-to-person contact.⁹ This suggests not only that mail delivery is a safe option, but that, for many, it may be the safest option.

3. Allow for the use of an optional unique ID number to replace a home address on cottage food product labels.

Cottage food producers must put their home address on their product labels. As mentioned previously, cottage food entrepreneurs tend to be women of modest means in rural areas, many of whom have children. For this reason, many cottage food producers feel unsafe printing their home address on their products.

Many may choose to do business from their home—something that we advocate should be an accessible option for cottage food producers—but they ought to also have the option not to advertise their home address on a label should they choose not to. This reform would ease the minds of many producers all over the state who just want to earn an honest living doing what they love.

This bill will allow cottage food producers to register with the state to receive a unique identification number to replace their home address. This reform is becoming increasingly common: more than a dozen states give cottage food producers this option. This small change will provide the same transparency—the Department of Agriculture will still be able to trace cottage foods to the producer—while offering peace of mind to the producer.

4. Remove the blanket ban on owning pets

This bill follows the footsteps of nearly every other state, by preventing the department from disqualifying a person from being a cottage food producer due to owning a pet, as long as the pet is kept out of the kitchen during operation. This is a safe and reasonable requirement, especially given that nearly 60% of Oregonians own pets.¹⁰

⁹ Policy Statement FS-20-0001 – Delivery of Cottage Foods Products During the State of Emergency, Issued Pursuant to Governor’s Proclamation 2005. (2020).

<https://cms.agr.wa.gov/WSDAKentico/Documents/FSCS/Food%20Safety/Cottage-Foods-Policy-Statement-FS-20-0001-Delivery-of-Cottage-Foods-Products.pdf>

¹⁰ According to the World Population Review, in 2023, 59.2% of Oregon households own pets.

<https://worldpopulationreview.com/state-rankings/pet-ownership-statistics-by-state>

Benefits of allowing the sale of shelf stable, homemade foods

The ability to sell cottage foods made in the home can create enormous opportunity for people who are struggling to make ends meet. Cottage foods have clear benefits of increasing self-employment opportunities, especially for women, increasing food access in food deserts, and allowing for more consumer choice, while allowing consumers to eat local. Below are some proven benefits that the sale of cottage foods can have on the community and the economy.

- *Transparency, traceability, and accountability.* People know what they are getting when they buy local due to labeling requirements. A neighbor has much more stake in each product sold than does a Hostess factory.
- *Female empowerment.* While not all cottage food entrepreneurs are women, the ability to sell homemade food has the greatest impact on women by opening a viable and accessible economic opportunity.
- *Encourages small business.* Selling homemade foods helps small-scale businesses succeed, including for young entrepreneurs and stay-at-home parents, by giving them an additional source of revenue and a means to get started affordably from the safety of their homes.
- *Flexible jobs with low start-up costs.* All one needs is a kitchen and a recipe to start supporting their families and communities, which is important in today's economy. During the pandemic, one in three home-based business owners started their businesses due to Covid-related job losses, while one in four did so after the pandemic forced them to shutter their brick-and-mortar business.¹¹ Selling homemade food also helps create jobs and opportunities in rural areas and small towns where economic challenges may be greater.
- *Increase in locally made, specialty goods.* Homemade goods are made locally and are often specialty foods: gluten free, halal, kosher, keto, etc. They can also be customized for birthdays and special events. No one can feed and understand the needs of the community better than the community.
- *Resiliency in the local food supply chain.* Local farmers and home-based food producers across the country saw a spike in sales over the course of the pandemic when grocery stores were bare. A local ecosystem of homemade food helps when the national supply chain fails.¹²

Conclusion

There is considerable demand for this reform. Over the past year we have spoken to over 100 Oregonians who are eager for this type of reform.

¹¹ McDonald, 2022.

¹² King, S., McFarland, A., & Vogelzang, J. (2022). Food sovereignty and sustainability mid-pandemic: How Michigan's experience of Covid-19 highlights chasms in the food system. *Agriculture and Human Values*. 39, 827-838. <https://link.springer.com/article/10.1007/s10460-021-10270-6>; Gao, M. (2020, Jul. 17). How small farms found new customers during the coronavirus pandemic. *CNBC*. <https://www.cnbc.com/2020/07/17/how-small-farms-found-new-customers-during-the-coronavirus-pandemic.html>

SB 643 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 a kitchen and a recipe, you should be able to start a business doing what you love—safely and legally.

The Institute for Justice is a national nonprofit advocacy organization that supports cottage food reforms across the country. In addition to working to open opportunities for entrepreneurship through 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, researched claims about health and safety risks, and published in peer-reviewed journals. 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 beneficial and safe for producers, consumers, and the community at large (see Appendix A).

Thank you for the opportunity to testify in favor of SB 643. We urge the Committee to support this bill. For additional information, please contact Jennifer McDonald at jmcdonald@ij.org or (703) 682-9323 x. 216

Appendix A

Our research shows that homemade not potentially-hazardous cottage foods are just as safe as foods produced in commercial kitchens and it is incredibly unlikely that someone would get sick from expanding the homemade food law.

- In December of 2017, the Institute for Justice filed a lawsuit against New Jersey's outright ban on home processed not potentially-hazardous food businesses. During that case, an expert report from food scientist Thomas J. Montville, Ph.D. of Rutgers University found the following:

"(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..."ⁱ

- In 2011, Oregon passed the Farm Direct Marketing Law (FDML). The law legalized the sale of home processed not potentially-hazardous 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 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."ⁱⁱ

- 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."ⁱⁱⁱ

- 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."^{iv}

ⁱ Taken from Expert Report of Thomas J. Montville, Ph.D. Superior Court of New Jersey. (2018).

ⁱⁱ Gwin, L., Brekken, C.A., & Trant, L. (2018). Farm Direct at five years: An early assessment of Oregon's farm-focused cottage food law. *Journal of Agriculture, Food Systems, and Community Development*.
<https://www.foodsystemsjournal.org/index.php/fsj/article/view/621>

ⁱⁱⁱ Sibilla, N. (2018, Apr. 3) New Kentucky Law Will Let Anyone Start A Home-Baking Business. *Forbes*.
<https://www.forbes.com/sites/instituteforjustice/2018/04/03/new-kentucky-law-will-let-anyone-start-a-home-baking-business/#55ba37e61e32>

^{iv} Sibilla, N. (2014, Sep. 22). Texans Created Over A Thousand Local Businesses After Texas Eased Restrictions On Selling Food Made At Home. *Forbes*.
<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>