

Jennifer Berg  
Crumb Sourdough Microbakery, LLC

January 25, 2023,

To: Sen. Golden, Chair; Sen. Girod, Vice-Chair, and  
Members of the Senate Natural Resources Committee

**RE: Rebuttal and Corrections to Leslie Foster's Testimony**

Dear Senate Committee on Natural Resources:

For the record, I have taken the time to refute and address inaccurate and/or exaggerated testimony by Ms. Leslie Foster below in Red. I encourage testimony and dialogue as long as it's honest and accurate.

Respectfully,

/s/ Jennifer Berg

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Crumb Sourdough Microbakery, LLC

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To: Sen. Golden, Chair; Sen. Girod, Vice-Chair, and  
Members of the Senate Natural Resources Committee

From: Leslie Foster, Owner, The Cake Room, LLC,  
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Subject: Criticism of SB643

Date: January 25, 2023

Executive Summary:

As a person who has been licensed for 15 years and running a successful home business I personally know what it takes to get and stay licensed.

The process is extraordinarily easy and inexpensive.

False/Subjective. The process to become licensed requires costly modifications to the food preparation area such as having closed doors to the kitchen, a separate refrigerator and other storage areas just for the commercial products and supplies, and others. Producers must also undergo an annual inspection of their home kitchen, be available Monday-Friday from 8am to 5pm for unannounced inspections, and

pay annual license fees in excess of \$150. For Cottage Food Bakers who only want to prepare shelf-stable foods, these measures are excessive.

Home bakery fees are significantly lower than what a commercial baker, making the same revenue, pays. The number one complaint I get from the home-baker community is the no pet rule. It is the only barrier that prevents home-based bakers from getting licensed. I believe the better option to SB 643 is to add exceptions to the no pet rule for licensed and unlicensed home based businesses.

If that one rule about pets is changed to include exceptions then everyone will be able to get licensed and the concerns that SB 643 addresses become moot.

For the reasons above, not every home baker wants to or is financially able to be licensed. Eliminating the Home Bakery Exemption tier altogether would put undue strain and regulation on bakers who desire only to produce shelf-stable foods.

Arguments For and Against:

I am Leslie Foster, of West Linn, the owner of a successful licensed domestic kitchen since 2008.

My licensed home-based bakery is one of the longest licensed home-based bakeries in Oregon. Because of that I am respected and asked for guidance and mentorship by many of my peers who have home bakeries or want to start a home bakery. As an advocate of home-based bakery businesses I must speak in opposition to Senate Bill 643 as it is written.

For clarity, the term “cottage food law” is used by the FDA and other states as a blanket term to describe a home bakery. In the state of Oregon the Dept. of Agriculture’s Oregon Administrative Rules (OAR) that govern home-based bakery businesses uses the term “domestic kitchen” to define home-based bakeries. You can operate as a licensed domestic kitchen or an unlicensed domestic kitchen. The unlicensed domestic kitchen wasn’t created until 2016.

Home bakers operating under the exemption are self regulated and their operation is solely on the honor system.

Cottage Food Operators in Oregon are not “self-regulated”. CFOs must follow the many detailed rules in 616.723 “Exemption from ORS 616.695 to 616.755 for establishments in residential dwellings”, including but not limited to maintaining “accurate records of annual sales and the types of foods produced by the food establishment. The person must retain the records for not less than three years and make the records available for inspection by the department upon request.” (subsection (7)), in addition to conducting home business in accordance with city zoning laws and ordinances. Many CFOs, like myself, carry insurance tailored to the food produced and sold from my home.

Regarding “honor system”, the beauty of selling homemade foods as it has been done for hundreds of years is the transparency and exposure of the home producer. Communication and trust are often far superior between CFO and customer than between consumer and Bimbo Bakery, f.i. Stakes are high and CFOs take extraordinary care in producing goods that will only

support growth of their businesses, not compromise it. To insinuate that that “honor system” lacks weight is insulting to consumers who most certainly can decide for themselves the foods they purchase and consume.

A fact sheet, created by the Oregon Extension at Oregon State Univ. and prepared in consultation with the ODA Food Safety, titled “What is the Home Bakery Exemption?” reads: “In 2016, the Oregon Legislature passed a law that creates new small-business opportunities for home bakers while providing rural communities access to fresh baked goods. The Home Bakery Exemption allows people to produce certain baked goods and confectionary items in their home kitchens and sell them directly to consumers without having to obtain a food establishment license or undergo an inspection from the Oregon Department of Agriculture (ODA). Exempt home kitchens must be built and maintained in a clean, healthful, and sanitary manner.” As SB 643 is written:

1. I am Opposed to removing the revenue cap on unlicensed domestic kitchens:

1. The argument that a person cannot grow their business because they are not making enough money to do so is not accurate.

I’d like to see the research or simple logic supporting the notion that a \$20K per year gross sales cap is not a financial hurdle to growing a business. This is nonsensical.

My business has grown from its humble beginnings in a small galley kitchen to now being in a million dollar home with its own studio.

I have done it as many others have by expanding as the business grows.

Yes, growth can occur when no sales cap is present. Business cannot grow under a sales cap. Rather, businesses reach a financial halting point over and over with a sales cap. The singular purpose of a cap is to curtail growth.

We did it like any other small business by proving our business at an entry level. Licensed domestic kitchens have no revenue cap. Meaning I can make as much as I can manage to generate in my licensed domestic kitchen. The only restrictions that hold back my earning potential is actually my Cities Code for residential businesses.

2. Furthermore, like any other small business there are organizations who assist in training and funding.

In the free enterprise system, financial assistance is optional and being completely “self-made” is without doubt entirely possible.

Since I began my business I have applied for grants and small business loans based on my business income. It is a process that is available to home-based businesses through the SBA, Mercy Corp, MESO, City Chamber of Commerce, angel investors, commercial funding, women's groups and so-on.

3. I am in favor of increasing the cap for unlicensed domestic kitchens to \$35,000 maximum. This keeps up with today's dollar and allows for more income while bakers are building their business presence.

Assuming a CFO can "take home" 30% profit from their business:

- \$35k x 30% = \$10.5k/YEAR "profit"/take home = BELOW POVERTY WAGE. See <https://livingwage.mit.edu/states/41>
- **CONVERSELY, IT WOULD TAKE at least \$250k gross sales/year to obtain a living wage in OR in 2022 and beyond.**

4. The cap serves the purpose of the exemption law. The average income of an Oregon baker is \$14-\$20 per hour. Well under the \$35,000 cap I recommend.

2. I am Opposed to mail delivery, wholesale sales to retail stores, and coffee shops from unlicensed domestic kitchens:

The proposed new language in SB643 as conditions under indirect selling is more than adequate and reasonable.

1. Wholesale and retail accounts are very lucrative accounts that are allowed with a domestic kitchen license.

If a person working without a license wants to make the volume of baked goods that these accounts bring that puts their bakery business beyond the mission of the exemption and into the requirement for have a licensed kitchen.

This is definitely subjective and case-by-case. Wholesale accounts are not one-size fits all. Small-medium batch wholesale accounts for CFOs occur all over the country. 18 other states + DC allow indirect sales (AZ, DC, IA, LA, ME, MD, MA, NH, NC, OH, OK, PA, RI, TN, UT, VA, WV, WY

These types of accounts are lucrative and in most cases require more room beyond the average kitchen space, more equipment, bigger equipment, and usually an employee.

2. I am in favor of giving this rule an exemption, on a case by case basis, taking into account the populous around the baker accounting for rural towns where it is difficult at best to get fresh baked products at local venues.
3. The problem with making this a statewide law is that it opens it up to everyone, including bigger cities.

The pandemic opened a pandoras box for people to make and sell baked goods.

Pandora's Box or competition? This statement is at the heart of Ms. Foster's opposition. By definition, a Pandora's Box is a constant source of complications and trouble. For whom? Rather, the pandemic opened a Pandora's Box of global fear, despair, job loss, sickness both mental and physical, and death.

For many CFOs that started during the pandemic, like a plethora of other small businesses, we sprang out of hope, need, fortitude, creativity, inspiration, and ingenuity and have added immense value to our communities.

Rather than constant troubles, even before the pandemic homemade food sales by CFOs were expected to reach \$20 billion by 2019, according to a 2018 Harvard Law School study: [https://chlpi.org/wp-content/uploads/2013/12/FLPC\\_Cottage-Foods-Report\\_August-2018.pdf](https://chlpi.org/wp-content/uploads/2013/12/FLPC_Cottage-Foods-Report_August-2018.pdf)

It was fantastic that so many found baking as a means to provide for their families and friends.

However, for the norm people with little to no training in food handling or food safety are learning these things from youtube and Instagram where the subject is rarely, if ever, discussed outside professional online groups.

Opinion?

Selling to a small number of people in smaller towns is not as risky as selling to grocery stores and other high volume locations where there is

little to no traceability.

Incorrect. SB643 addresses this

3. I am Opposed to unlimited online sales for unlicensed domestic kitchens:

1. The unlicensed law is for home bakers selling to their local community. Unlimited online selling is for licensed domestic kitchens.
2. I have seen all over social media channels people selling cakes and baked goods who have not done their due diligence to learn about selling food from

their homes.

These home bakers are uninformed, untrained in food safety and handling, and there is zero traceability if one should cause food poisoning or worse.

Oregon CFOs must take and pass a Food Handlers Training program every two years and maintain a food handlers certification.

<https://www.oregon.gov/oha/ph/HealthyEnvironments/FoodSafety/Pages/cert.aspx>

Oregon CFO labeling law requires the home baker's address and phone number in addition to several other food details, so the food is 100% traceable.

In recent research by Forbes, there have never been any known public health foodborne outbreak from cottage food product in any state.

<https://www.forbes.com/sites/instituteforjustice/2020/05/06/homemade-food-producers-take-on-bureaucrats-who-shut-them-down/?sh=389ebc157afb>

They do not get FDA alerts like I do, they do not access ODA to get the correct answers.

They do not have food handlers training.

False. See above

And most get their information from online chat groups where the advice could be coming from an uninformed person down the street, in the next state, or in another country all together.

Where is the data to support this?

Many customers have shared their stories of buying baked goods, especially cakes, from home bakers who were over their skill level or knowledge.

Part of the free enterprise system. Let the customers decide. Some CFOs will succeed, some will not, and some will learn and shift from mistakes like any other business owner, including licensed kitchen bakers. A domestic kitchen license does not magically transform a person into a highly skilled and trained chef. I don't see how this argument has any bearing on the law. Because food producers – licensed or not – can make errors or are not as skilled is not a reason to oppose law. There is room for everyone to grow and hone skills in any field as long as the law supports that.

4. I am in favor of online payment access: So much of our world has gone mobile

and online that giving unlicensed bakers the ability to take payments via an online or payment app like Venmo, Cashapp, ApplePay, absolutely should be allowed.

5. I am in favor of allowing ID numbers instead of home addresses for both :

1. In spite of only hearing of two cases since 2008 involving a crime with a home baker I absolutely believe home bakers should have the option of using a number issued by the Dept. of Ag. in place of their address. Being registered with the Dept. of Ag allows for traceability if ever needed.

6. I am Opposed to pets in an unlicensed or licensed domestic kitchen:

1. The current rule prohibiting pets in licensed and unlicensed homes is too restrictive. It is the number one barrier for the majority of those seeking to operate licensed or unlicensed domestic kitchens.

2. I don't know of any state that allows pets inside a cottage or domestic kitchen.

3. Restrictions must be in place regarding animals. However, I believe there are ways to accommodate family pets without putting unnecessary risk to the public.

7. I am in favor of pets with exceptions:

1. Owners cannot control what their animals do in a kitchen. They shed, they have dander, and they cause allergies for some people. Anyone who has pets in the home of a domestic kitchen should be required to disclose that fact in the same way they are required that they are unlicensed.

2. Pets that are immobile in children's rooms and away and outside of the kitchen should be allowed.

3. A domestic kitchen that is 100% closed off from the rest of the home where the pets meander should be allowed. The pets should never enter that kitchen work space.

4. The domestic kitchen that is a separate space or room that is closed off 100% from the rest of the home where the pets meander should be allowed. The pets should never enter that kitchen work space. The work space may require further upgraded (ie: hand sink, ovens, 2 or 3 sink compartment, etc. based off an inspection.).

5. The baker, licensed or unlicensed, is required to work with the Dept. of Ag. inspector who approves the space and pet(s) that will be on the premises. As a one-time evaluation for unlicensed domestic kitchens and as part of the annual inspection of licensed domestic kitchens.

Closing:

I believe that SB 643 is the result of a small group of bakers who do not want to be regulated in any way.

There are currently hundreds of CFOs in Oregon and thousands nationwide in this \$20+ billion dollar growing industry as noted above. In this SB643 hearing alone, over 200 emails in support of the bill have been submitted.

CFOs do not want to be unregulated as Foster states.

Regardless, what do numbers have to do with anything in regards to freedoms under the law and law reform if people are willing to take the time to fight for them? In this line of argument, should minorities be forfeited rights and freedoms because they are 'minorities' (reduced in number), and in demanding justice and freedoms are they simply wanting benefits and rewards without responsibility? Or should they remain shackled and without civil liberties the rest of their lives because in freeing them they could encroach on the successes of the majority and take a slice of the pie?

They want the benefits and rewards of being licensed without the responsibility. To be clear I believe SB 643 is looking to undermine the Oregon Administrative Rules that govern licensed domestic kitchens by drastically changing the Oregon Home Baking Bill exemption.

If this bill passes as-is there will be no reason for the licensed domestic kitchen rules.

**False. The law change will still limit the kind of food that CFOs are allowed to make: only shelf-stable, non-refrigerated (potentially non-hazardous) food items. If CFOs want more, they will still need to obtain a domestic kitchen license.**

As a person who has been licensed for 15 years and running a successful home business I personally know what it takes to get and stay licensed. The process is extraordinarily easy and inexpensive. Home bakery fees are significantly lower than what a commercial baker, making the same revenue, pays. The number one complaint I get from the home-baker community is the no pet rule.

It is the only barrier that prevents home-based bakers from getting licensed.

**Opinion, not fact.**

I believe the better option to SB 643 is to add exceptions to the no pet rule for licensed and unlicensed home based businesses. If that one rule about pets is changed to include exceptions then everyone will be able to get licensed and the concerns that SB 643 addresses become moot. I have links and sources I can share if you need them. I am just unable to attach them here with my time constraints and needing to return to work.

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