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for Public Health Law

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# **Food Insecurity and Food Safety: Policy and Legislative Actions**

**February 20, 2025**

## Moderator



### **Katherine Schutes, J.D.**

Staff Attorney, Network for Public Health  
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## Learning Objectives

- Obtain an overview of the food freedom trend in the United States, which goes by many names, including cottage food laws, food sovereignty, micro-enterprise kitchens, and food freedom.
- Learn about the various food freedom policies that have been adopted.
- Hear about state legislation likely to be introduced in 2025.
- Obtain insight into existing legal and policy levers that can both reduce food waste, and address food insecurity, including incentivizing food donation and diverting edible food from landfills to dining room tables and homeless shelters.

## Presenters



**Doug Farquhar, J.D.**

Director of Government Affairs, National  
Environmental Health Association



**Kathi Hoke, J.D.**

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National Environmental  
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## Food Insecurity & Food Safety

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# Food Freedom Laws

Food Freedom is a term that covers any law that prohibits the regulatory oversight of retail foods

Includes Cottage Food Laws, raw milk, Microenterprise Kitchens, Food Sovereignty

Every state has some law that exempts certain retail foods from regulatory oversight

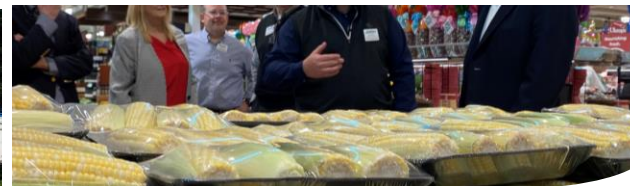


# State Food Safety Authority

## State Food Safety Laws

- States have the primary authority to create laws that affect the public health and safety of their residents and to control commerce within state lines
- Federal government has clear authority over food circulating in interstate commerce, and food produced for sale only intrastate, such as through restaurants and retail stores, has traditionally been regulated by state law

*“Food should be purchased from commercial supplies under regulatory control. Home kitchens, with their varieties of food and open entry to humans and pet animals, are frequently implicated in the microbial contamination of food.” 3-201.11 2022 Food Code*



# Cottage Foods Original Parameters

1. sellers could only generate a limited amount of gross sales from cottage foods
2. sellers must list their name and production facility
3. seller must clearly label that their food product comes from an uninspected kitchen
4. sellers cannot sell via the internet; would allow for interstate sales





# Food Freedom Laws

<b>California</b>	<b>Microenterprise Home Kitchen Operations Act</b>
<b>Maine</b>	Contained/Implied in Food Sovereignty Act
<b>Montana</b>	Contained/Implied in Local Food Choice Act
<b>North Dakota</b>	Contained/Implied in Cottage Food Law
<b>Oklahoma</b>	Homemade Food Freedom Act
<b>Utah</b>	Microenterprise Home Kitchen Amendments
<b>Vermont</b>	Home Caterer License
<b>Wyoming</b>	Contained/Implied in Food Freedom Act



# National Outbreak Reporting System (NORS)

Attributed to foods prepared in private homes from 2008  
- 2018

- 1225 reported foodborne illness outbreaks
- 22,893 illnesses
- 2737 hospitalizations
- 89 deaths

Uninspected home kitchens do present a health risk to the public; from pets, unwell children and family members, improper washing stations

Data from Wyoming Department of Health indicates that almost half of the state's foodborne outbreaks come from food freedom operations

Adobe Stock | #119188394



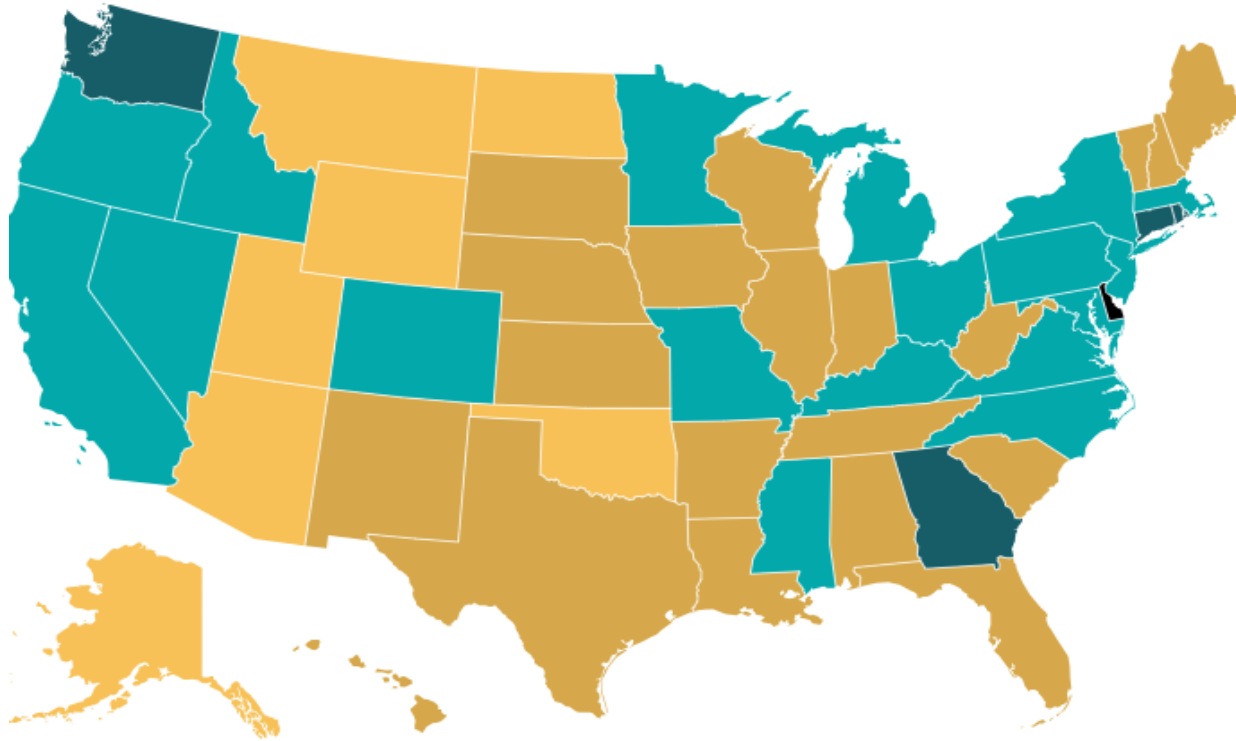
# Sale of home-kitchen prepared foods

U.S. Food Code explicitly states that “food prepared in a private home may not be used or offered for human consumption in a food establishment” 3-201.11 Food Code

The FDA Food Code addresses the risk of food-borne illness by designating high- and low-risk foods. High-risk foods, called “time/temperature control for safety foods” (TCS foods) in the most recent FDA Food Code and “potentially hazardous foods” in prior FDA Food Codes, are foods that may develop pathogenic microorganisms if they are kept out of the correct temperature range for too long.



# Institute for Justice Sale of Homemade Foods



Lt Yellow – Most Permissive  
Dk Yellow – Permissive  
Lt Turquoise – Protective  
DK Turquoise – Most Protective

Delaware has most protective/least liberal food freedom laws

Wyoming has the most permissive, according to IJ

# Bills in the 2025 State Legislative Sessions

28 bills on Food Freedom in the 2025 Legislative Session

CO HB 1190 - allows for the sale of foods that require refrigeration.

CT SB 154 - authorizes cottage food operations to sell their products at certain farm stores and cafes.

IL HB 1052 - Permits Food Truck Freedom Act

IN HB 1562 - provides that a small farm or home-based vendor must complete and pass food safety training from a list of approved providers before selling time temperature control for safety homemade food products

MD SB 701 - Alters the definition of cottage food product for purposes of provisions of law governing the sale of cottage food products to include nonpotentially hazardous foods

MS HB 1407 - Creates the State On Farm Sales and Food Freedom Act

MS SB 2265 - List of Foods that are Authorized as Cottage Foods

# Bills in the 2025 State Legislative Sessions

NH HB 307 - Allows homestead food production in a food production area

NH HB 505 - Allows the sale of freeze-dried foods produced in homestead food operations

NH HB 642 - Allows the sale of dehydrated meat without a homestead food license

OK HB 2152 – Expands Homemade Food Freedom gross sales to \$300K; allows for sale of raw milk

OR SB 59 - allows HOA members or their tenants to grow a garden or raise hens or bees

TN HB 130 - Authorizes the sale of homemade food items; contains dairy, meat, or poultry

TX HB 294 – allows food production on single-family lot

TX HB 520/SB 541 – expands cottage foods operations to non-profits

# Bills on Microenterprise Kitchens

MN SB 391 – Microenterprise Home Kitchen Operation License

MO HB 415 - Repeals provisions governing no-impact, home-based businesses

NH HB 304 – Food Produced in Homestead Kitchens

NH HB 307 - Allows homestead food production in a food production area

NH HB 505 - Allows the sale of freeze-dried foods produced in homestead food operations

NH HB 642 - Allows the sale of dehydrated meat without a homestead food license

NY AB 1330, SB 3561 – Study of Kitchen Incubators

OK HB 2152 – Expands Homemade Food Freedom gross sales to \$300K; allows for sale of raw milk

TN HB 130 - Authorizes the sale of homemade food items; contains dairy, meat, or poultry



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## Food Insecurity & Food Safety

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# Legal Levers: Incentivizing Food Donation

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Director, Network for Public Health Law-Eastern Region;  
Professor, Maryland Carey School of Law

**February 20, 2025**

## FOOD WASTE FACTS

**About 30 to 40 percent of food produced is wasted:**

- 66 million tons of food waste generated in the retail, food service, and residential sectors

**and**

- 40 million tons generated in the food and beverage manufacturing and processing sectors.

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**The amount of food wasted correlates to a cost of nearly \$218 billion or 130 billion meals annually.**

# FOOD INSECURITY FACTS

**Access to food is social determinant of health, necessary to maintain a healthy and active lifestyle.**



- 1 in 7 U.S. households (**13.5%**) experienced food insecurity, affecting **47.4 million people**
- Black and Hispanic households face higher rates of food insecurity, at **23.3%** and **21.9%**
- People living in urban and rural areas are more vulnerable to food insecurity, at **15.7%** and **15.4%**
- Women living alone experience a food insecurity rate of **16.2%**, while single-female-headed households face rates as high as **34.7%**
- **1 in 5** pregnant people are food insecure

## FEDERAL LAW

### *Bill Emerson Food Donation Good Samaritan Law*

- Civil and criminal liability protection for those who donate (and those who distribute) *in good faith*
- Does *not protect gross negligence or intentional misconduct*

## FEDERAL LAW

- **Farmers and Gleaners+**
- **Apparently Wholesome Food**
- **Indirect: Non-Profit Organization**  
 **NEW IN 2023** 
- **Direct: Consumer**
- **Free or Good Sam Reduced Price**

*Emerson Act establishes a floor for liability protection for food donation.*

# FEDERAL TAX INCENTIVES

## General Deductions

- Cost Basis

## Enhanced Deduction

- Lessor of (a) twice basis value of donated food or (b) basis value of donated food plus one-half of food's expected profit margin if sold for FMV

## Limits Based on % Taxable Income

# STATE LAWS

## Summary Matrix of State Laws Addressing Food Donation

Enacted or adopted as of March 2024

Key:

(1) \*\* = see notes

(2) † = not explicitly stated, but implied by the overarching language of "donor" or "person" that are defined broadly

State	What "food" can be donated (what language is used to describe food in the statute)?	Who can be a "donor"?							Allows direct donation in line with the Bill Emerson Act (2023)?	Are there tax incentives for farmers donating?	Are there tax incentives for businesses donating?	Are there organic waste requirements	Notes
		Person/Good Faith Donor	Farmer	Gleaner	Retailer/ Grocery Store, Wholesaler, Distributor	Restaurant/Caterer	Processor	Other					
AL	<u>Canned and perishable food, including perishable food that is "not readily marketable due to appearance, freshness, grade, or surplus"</u>	Y	†	†	†	†	†	†	N	N	N	N	
AK	<u>Food includes unsold hot food</u>	Y	†	†	†	†	†	†	N	N	N	N	

## STATE EXAMPLES: FOOD DONATION

The spectrum of liability protection among the states can be defined by how each state builds upon the federal baseline, clarifying any ambiguities and extending protections to products or groups not explicitly covered by the Emerson Act.

- Several states, such as California and Oregon, provide liability protection **regardless of if the donated food does not comply with laws, rules, or ordinances regulating the packaging or labeling for food.**
- Some states like Massachusetts provide liability protection **even to food donated past its expiration date.**
- Maryland offers protection for donated food **regardless of the condition, nature, age, or packaging of the food if it was donated in good faith to a nonprofit.**



## STATE EXAMPLES: TAX INCENTIVES

- **California provides a tax credit on transportation cost of donated crops, allowing farmers a credit valued at up to 50% of the total contribution.**
- **Pennsylvania offers tax credits to donors approved under the Charitable Food Program, valued at up to 55% percent of the total contribution.**
- **Maryland's Farmers Feeding Families Act (2023) allows farmers to claim 100% wholesale credit on all donated food, with limits of up to \$10,000.**

## **INNOVATIONS?**

- **UMB circulates via an app when free food is available on campus.**
- **Apps allow restaurants to offer last-minute deals on prepared foods that would go to waste.**
- **Make a practice of ordering food that can survive being left out and then finding a non-profit to retrieve it at the end of a conference/event.**
- **Bring reusable containers and take the food home —or to those in need who you may encounter on your way home.**

**Tell us about yours!**

## RESOURCES/LINKS

- [Bill Emerson Food Donation Good Samaritan Act](#)
- [Federal Liability Protection for Food Donation: Legal Fact Sheet](#) (2023) *Food Law and Policy Clinic at Harvard Law School*
- [Federal Enhanced Tax Deduction for Donated Food: A Legal Guide](#) (2016) *Food Law and Policy Clinic at Harvard Law School*
- [Food Loss and Waste: Snapshot of Food Donation Laws and Other Incentives to Increase Food Security and Reduce Environmental Harm: Policy Brief](#) (2024) *Network for Public Health Law*
- [State Laws Addressing Food Donation: 50-State Survey](#) (2024) *Network for Public Health Law*

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