

## Food Legislation 2019

State legislatures introduced over 700 bills regarding food and food safety in 2019, with 132 being enacted and 17 adopted into law.

Laws in 42 of the 50 states, Puerto Rico and the District of Columbia were enacted regarding food in 2019. New Jersey and New York had the most bills related to the topic (63 and 59, respectively), followed by Hawaii with 46. At the opposite end were Alaska and Ohio, which had no bills regarding food safety.

The foremost issue regarding food was food safety. Legislatures reviewed many aspects of food safety, from the adoption of the U.S. Food and Drug Administration (FDA) food code to state efforts to implement the Food Safety Modernization Act.

Laws regarding food establishments and retail food locations were popular, with 130 bills being introduced and 14 becoming law.

The most interesting issue in 2019 was cell- or plant-based meat laws. The popularity of plant-based meats led to several laws being introduced and enacted on the labeling of these products. Many of these laws involve cell-based meats, even though such products are not readily available.

Limiting a state's oversight of food safety regulations was a popular topic, with 59 bills being introduced regarding cottage foods. Food freedom bills, which were introduced and enacted in previous sessions, saw only one bill introduced in 2019; it was not enacted.

Food donation, a popular topic in 2018, got less attention in 2019. However, the federal Supplemental Nutrition Assistance Program (SNAP) was reviewed in several states.

Edible cannabis and hemp gained interest from legislators in 2019. States introduced 86 bills regarding food in cannabis or hemp products, enacting 13 laws. Food deserts are another new area of interest for state legislatures.

Dairy and raw milk saw 58 bills introduced, with 10 being enacted into law. The foremost issue under this category was the proper labeling of milk products.

### Food Safety

Bills related to food safety were the foremost issue; 149 bills were introduced in 2019, with 12 being enacted. Topics included the Food Safety Modernization Act (FSMA), changes to the retail food code, inspectors for produce safety and responses to allergens.

**Arkansas** [H 1005](#) clarifies the application of the sales and use tax to candy and soft drinks.

In **California**, the legislature enacted [S 677, Act 254](#), which amends the Retail Food Code. The law prohibits the use of latex gloves in food facilities and retail food establishments, and requires food employees to use nonlatex utensils, including nonlatex gloves. [A 1532 Act 131](#) provides that food handler card requirements apply to food handlers who are employed by a retail food facility or an organized camp that is subject to the Retail Food Code and requires a specific food handler training course include major food allergens and symptoms of allergic reactions.

**Hawaii** enacted [H 463 Act 104](#), which requires the Department of Agriculture to establish a food safety certification training program to assist small to medium sized farms to comply with the U.S. Department of Agriculture's Good Agricultural Practices Certification Program. [S 754 Act 103](#) enacts produce safety rules in accordance with the U.S. Food and Drug Administration (FDA) standards for the growing, harvesting, packing, and holding of produce for human consumption.

**Idaho's** [H 38 Act 27](#) relates to the Food Safety Modernization Act, revises a date by which certain contracts and contracting authority will transition to the state Department of Agriculture.

In **Illinois**, the legislature amended the state's Food, Drug, and Cosmetic Act regarding the sale of bulk food to ensure take that home containers, including bags, cups, and lids provided for consumer use are cleaned, stored, and dispensed in a sanitary manner, and provides that a retailer may allow a consumer to fill or refill a personal container with bulk food. ([H 3440 Act 510](#)).

**Illinois'** [H 2123 Act 129](#) provides that a food is misbranded if it contains sesame, is offered for sale in package form but not for immediate consumption, and the label does not include sesame.

The legislature in **Maine** sought changes to laws governing shellfish sales and handling to ensure compliance with the National Shellfish Sanitation Program. The law creates flexibility in shellfish sales, requires a person who holds an aquaculture license to tag shellfish in accordance with Department of Marine Resources rules, and expands the buying station permit to include other species of shellfish besides soft shelled clams ([H 1244 Act 334](#)).

**Maryland's** [H 50 Act 131](#) establishes the Produce Safety Program in the Department of Agriculture to reduce the risk of adverse impacts on human health from the consumption of contaminated produce. The law requires the state to conform with federal standards for growing, harvesting, packing, and holding produce for human consumption, and defines a covered farm as one which sold produce with a specified average annual monetary value.

The **North Carolina** legislature authorized the Commission for Public Health to adopt rules incorporating the most recent edition of the U.S. FDA food code ([H 735, Act 129](#)).

**Puerto Rico** directed the House Committee on Agriculture to conduct an exhaustive investigation on the control and inspection measures of foreign agricultural products taken by the Department of Agriculture under the Plant Health Law of Puerto Rico, which guarantees the good sanitary management of the product in the country of origin (HR 1574).

**Oklahoma's** [H 2155 Act 109](#) banned the feeding of garbage to swine. The law defines garbage as putrescible animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of foods, including fish, poultry or animal carcasses or parts.

**Rhode Island's** [S 406 Act 134](#) and [H 6218 Act 122](#) requires the state to assent to the FDA Food Safety Modernization Act, empowers the director of Department of Environmental Management to be in compliance with the provisions of the act in respects to produce grown on farms.

The legislature in **South Carolina** clarified that certain individuals are authorized to adjust food spoilage claims without an adjuster's license ([S 360 Act 6](#)).

**Utah's** [H 33 Act 33](#) amends provisions of the Wholesome Food Act by clarifying provisions related to state oversight. The law designates "produce" as adulterated if it is in violation of certain provisions of the federal Food Safety Modernization Act, expands the definition of "food establishment" to include farms, allows an authorized agent of the state's Department of Agriculture and Food to enter a farm for inspections under certain circumstances and provides that carriers are subject to regulation under the Utah Wholesome Food Act.

In **Virginia**, the legislature authorized a Hazard Analysis and Critical Control Point plan for certified restaurant or retail market to purchase from a certified dealer or to sell processed snakehead fish of the Actiniidae family ([H 1404 Act 559](#)). The legislature also amended its Food and Drinking Sanitary Requirements to allow companion animals in breweries, distilleries or wineries. ([H 286 Act 819](#)).

The **Washington** legislature enacted a law exempting the U.S. FDA from disclosure of nonpublic information ([H 1385 Act 337](#)).

### **Food Facilities**

Legislatures introduced 130 bills related to food facilities, including restaurants, public schools, mobile food trucks, vending machines and retail food establishment, enacting 14 bills.

The **Colorado** legislature revised provisions relating to the inspection of retail food establishments. [H 1014 Act 11](#) defines an imminent health hazard and details the process for the suspension of a retail food establishment license or certification of license. The state also enacted [H 1246 Act 234](#) regarding mobile food trucks. The law requires a local government to grant a business license to food trucks that have a license from another local government, prohibits local governments from imposing additional licensing requirements, provides that a local government may enforce its sales tax, zoning, and land use regulations and promulgate regulations related to the operation of food trucks in its jurisdiction.

**Delaware's** [H 79 Act 100](#) requires food safety standards for restaurants to include a system for requiring healthy beverages to be offered as the default beverage with a combination children's meal.

Similarly, **Hawaii's** [S 549 Act 138](#) requires restaurants that sell children's meals that include a beverage to make the default beverage a healthy beverage. SR 82 urges the Department of Health to work with the Hawaii restaurant association to establish industry standards to address unsanitary food handling conditions in food establishments.

**Louisiana's** [H 335 Act 372](#) requires food service establishments serving imported crawfish or shrimp to inform patrons that the seafood is of foreign origin.

**Maine** enacted the Purchase of Local Produce for Public Schools ([S 132 Act 511](#)) which provides funds to the Department of Education to administer the Local Produce Fund, providing a \$1 match for every \$3 spent by a school administrative unit for produce or minimally processed foods purchased directly from a farmer, farmers' cooperative, or local food hub in the state.

**Mississippi** [H 1206](#) defines the terms vending machine and micro market. The bill exempts vending machines and micro markets, which sell prepackaged food and other food products, from the regulatory authority of the State Department of Agriculture and Commerce and the State Board of Health.

**New Jersey's** Healthy Small Food Retailers act ([A 2164 Act 15](#)) provides funding to small food retailers to sell fresh and nutritious food, requires the Department of Agriculture to expand the Jersey Fresh website to provide opportunities for the establishment of purchasing networks between farmers, distributors, grantees, and small food retailers. **Oklahoma** [H 1055, Act 138](#) creates a permit for unattended food establishments, sets forth criteria for food and beverages to be sold, requires signage, sets forth provisions relating to sanitation and security, requires routine service, and the collection of sales tax.

**Oregon** enacted [H 2060 Act 387](#), which authorizes State Department of Agriculture to condemn or close a food establishment if authorization to operate has not been obtained or has lapsed.

**Utah's** Food Truck Licensing bill amends the state food truck law, clarifies that a political subdivision may not enforce local regulations that conflict with state law, and prohibits a political subdivision from requiring a fee or permit for a food truck to operate on private property or requiring a food truck operator to provide the dates, times and duration of food truck operation. ([S 71 Act 260](#))

**Virginia** amended its Food Establishments law to define a certified food protection manager and exempts any restaurant operated by a nonprofit civic service organization, a volunteer fire department, or a volunteer emergency medical services agency from any requirement to employ a certified food protection manager. ([H 1663 Act 275](#))

**Washington's** Mobile Food Units law ([S 5218 Act 185](#)) revises provisions relating to mobile food units, requires a regulatory authority to accept a completed and approved plan review of a mobile food unit of another regulatory authority.

In **West Virginia**, the legislature enacted the Fresh Foods Act, requiring all state-funded institutions to purchase a minimum of 5% of fresh produce, meat and poultry products from in-state producers if available at equal or lower cost. ([H 2396 Act 12](#)).

### **Donation of Foods**

Food donation, which was a popular bill in 2018, dropped off significantly in 2019, with 34 bills being introduced and four being enacted.

**California's** [A 614 Act 431](#) expands an income tax credit for persons defined as responsible for planting a crop, managing the crop, and harvesting the crop from the land, to apply to the donation of qualified donation items, defined as raw agricultural products or processed foods. The law expands the definition of a qualified taxpayer to include the person responsible for growing or raising a qualified donation item, or harvesting, packing, or processing a qualified donation item but would exclude a retailer.

**Hawaii** adopted [SR 26](#) urges restaurants to donate any leftover food to homeless shelters at the end of their business day.

**New Jersey's** [A 4701 Act 54](#) requires Department of Human Services to establish an electronic portal to promote surplus food donation collaboration among nonprofit organizations, gleaners, and food retailers.

In **Washington**, the legislature enacted [H 1114 Act 255](#) designed to reduce the wasting of foods.

### **Marketing**

Hawaii's [S 375 Act 151](#) requires the state's Department of Agriculture, in cooperation with the governor's office, to develop a strategic plan to double local food production and increase food exports.

The legislature in **Massachusetts** established a Restaurant Promotion Commission ([H 4020 Act 49](#)).

### **Food Nutrition, Food Deserts, and SNAP**

Bills related to food nutrition, food allergens, and the Supplemental Nutrition Assistance Program (SNAP, aka food stamps) were common in 2019, with 33 being introduced and eight being enacted: 21 bills introduced/three enacted regarding nutrition and food deserts, and 12 introduced/five enacted regarding SNAP.

State legislatures have become much more interested in the federal Supplemental Nutrition Assistance Program (SNAP) aka food stamps. States are looking at ways to expand access to this program, to maximize the amount of federal funds available to the state.

The term 'food desert' which was absent from the legislative dialogue a few years back is gaining attention, with states like Indiana, Missouri, Texas and Virginia introducing legislation on the topic. New Jersey enacted legislation in 2019 on food deserts.

Hawaii [S 390 Act 153](#) requires the Department of Agriculture to create a dollar-for-dollar matching program for beneficiaries of the federal Supplemental Nutrition Assistance Program who use their benefits to purchase state-grown produce.

Illinois' [H 3343 Act 110](#) amends the Public Aid Code by requiring the Department of Human Services to establish a Restaurant Meals Program to permit individuals who are elderly, with a disability, and homeless individuals to redeem their Supplemental Nutrition Assistance Program benefits at private establishments.

The **Maryland** legislature renamed the Food Stamp Program to be the Food Supplement Program, established a Restaurant Meals Program (RMP) within the Food Supplement Program in the Department of Human Services, authorized a certain household eligible to participate in the RMP to purchase certain foods at restaurants using a food supplement benefit ([H 838 Act 475](#)).

**New Mexico** [S 84 Act 152](#) relates to nutritional services for senior citizens, authorizes the growing and use for food service of fruit and vegetable gardens at senior centers.

In **New Jersey**, the Food Desert Produce Pilot Program ([A 4704 Act 91](#)) directs the state Department of Agriculture to establish a food desert produce pilot program, establishes a program to provide residents in food desert communities with access to fresh and affordable produce.

### **Labeling of Cell- or Plant-Based Meat**

Perhaps the most interesting bills came in regard to cell- and plant-based meats. Beginning with one bill in Missouri in 2018, the issue exploded in 2019 with 60 bills being introduced in 31 states and 13 being enacted. Most followed Missouri's lead, restricting the term 'meat' to products derived from animals harvesting by traditional means.

Legislation uses terms such as "clean meat," "cell-based meat," "cell-cultured meat," or "lab-grown meat" to refer to artificially-grown muscle or organ cells of animals. Other bills limit the term "beef" and

“meat” to products from “cattle born, raised and harvested in the traditional manner.” These bills restrict the term “meat” used by companies producing cell or plant-based products, or in the case of Louisiana and Arkansas, the term “rice.”

The law in **Missouri** (SB 627 and SB 925 (2018)) criminalizes speech by prohibiting the misrepresentation of a product as “meat” if that product is “not derived from harvested production livestock or poultry.” The state’s department of agriculture promulgated rules implementing the bill, but the plant-based industry challenged the law in court as a restriction on free speech.

In 2019, certain bills were even more aggressive. **Arkansas** [H 1407 Act 501](#) Truth in Labeling of Edible Agricultural Products included both meats and rice, banning calling cauliflower rice a “rice” product. **Mississippi’s** [S 2922](#) bans cell-based, insect-based or plant-based foods from being termed as a “meat food product.” **Kentucky’s** [H 311 Act 42](#) restricts any food product that purports to be or is represented as meat or a meat product that contains any cultured animal tissue. **Kentucky’s** [HR 105](#) urges the United States Congress to enact legislation granting the U.S. Department of Agriculture jurisdiction over labeling requirements for imitation meat products.

Like Arkansas, **Louisiana** [S 152 Act 273](#) addresses truth in labeling requirements of agricultural products, including plant-based meats, rice and soy products; prohibits misbranding or misrepresenting a food product.

**Montana** [H 327 Act 186](#) looks to work along with USDA-FDA labeling, since it will allow the word “meat” but require additional notification on the source of the meat. In **Oklahoma**, the legislature did not ban the word “meat” as applied to cell or plant-based products, but did prohibit persons from advertising or selling food plans or carcasses from engaging in certain misleading or deceptive practices, meaning that the fact the product came from non-traditional means must be clear. ([S 392](#))

Other bills on labeling of cell- or plant-based meat were enacted in **Alabama** ([H 518](#)), **Colorado** ([HR 1005](#)), **North Dakota** ([H 1400](#); [HCR 3024](#)), **Oklahoma** ([S 392 Act 180](#)), **South Carolina** ([H 4245](#)), **South Dakota** ([S 68 Act 181](#)) and **Wyoming** ([S 68 Act 100](#)).

### **Edible Cannabis and Hemp**

With many states permitting the use of medical and recreational marijuana, legislatures have had to look into edible cannabis products. States introduced 67 bills related to edible cannabis in 2019, enacting six, mainly to define what is considered an edible.

In **California**, “edible cannabis product” means a cannabis product that is intended to be used for human consumption, including chewing gum. An edible cannabis product is not considered food, as defined by Section 109935 of the Health and Safety Code, or a drug, as defined by Section 109925 of the Health and Safety Code. ([S 185 Act 841](#)).

**Georgia** [H 324 Act 27](#) provides for the production, manufacturing, and dispensing of low THC oil, either cannabis or hemp.

**Maine** enacted [H 524 Act 491](#) which provides that food, food additives or food products that contain adult use marijuana are not considered to be adulterated under this subchapter based solely on the inclusion of adult use marijuana.

The **Maryland** legislature requires the Commission to allow certain processors and processor agents to transport food containing medical cannabis edible cannabis products to an independent testing laboratory ([H 17 Act 456](#)).

## Hemp

With Congress legalizing the growing and sale of hemp, many states began to look into the production of hemp. One use for hemp is in food production. Maine, Minnesota, Nevada, Oklahoma and Tennessee enacted legislation focusing on the use of hemp in food.

**Maine's** Food Products Containing Hemp ([H 459 Act 12](#)) clarifies that food containing hemp-derived cannabidiol that is produced and sold within the state is not considered to be adulterated, provides that the production, marketing, sale, or distribution of food or food products containing hemp may not be restricted or prohibited, changes references to the term of industrial hemp to hemp, defines hemp to match the definition of hemp in the federal Agriculture Improvement Act.

In **Minnesota** the 2019 budget bills calls on the state's Department of Agriculture to draft regulations regarding the public's use of hemp.

In **Nevada**, the legislature enacted [S 209 Act 374](#) which revises provisions relating to industrial hemp, replaces the term industrial hemp with the term hemp, requires the Department of Health and Human Services to adopt regulations requiring the testing and labeling of commodities and products made using hemp, prohibits the sale of such products unless they satisfy certain standards relating to testing and labeling.

**Oklahoma** enacted [S 868 Act 91](#) which modifies the Industrial Hemp Agricultural Pilot Program, provides for license to grow industrial hemp commercially, authorizes license holders to import seeds, clarifies statutory language, modifies harvest report requirements, and updates statutory language. **Tennessee** [S 357 Act 87](#) seeks for the state Department of Agriculture to have primary regulatory authority over hemp production.

## Cottage Foods or Food Freedom Laws

Cottage or Food Freedom laws are laws that restrict a government's oversight regarding food safety; 59 bills were introduced in 2019, with 11 being enacted in 10 states.

These are foods made in small, kitchen-based operations with locally-grown produce designed for sale at farmers' markets, roadside stands or small food operations. Cottage food laws provide regulatory relief to these operations, allowing vendors to sell their products absent food safety requirements required for commercial food kitchens.

Since the federal government has limited oversight regarding state food laws, it rarely preempts state efforts. The FDA Model Food Code does reference low-risk foods being safely prepared in homes and sold to the public at farmers' markets or charity events as being less likely to require oversight. But the code affirms that potentially hazardous foods should be subject to regulatory oversight.

Each state has taken a different approach to cottage foods; in general, each law provides:

- Exemptions from licensing for small food producers that sell directly to consumers.
- Labeling requirements stating the product has not been inspected.

- Rules for handling potentially hazardous foods, such as those that need a certain cooking time or temperature to ensure safety.
- Training courses for people who prepare foods.

To date, every state, Puerto Rico and the District of Columbia have enacted cottage food laws that exempt small-scale food production from regulatory oversight, with the exception of New Jersey.

Fifty-nine bills were introduced in the 2019 sessions to expand or define the scope of cottage food operations. Allowing for larger operations to be eligible for cottage food protections, permitting hazardous food products, and altering rules on food handling all were reviewed by state legislatures.

**California's** [A 377 Act 536](#) prohibits a microenterprise home kitchen operation from producing, manufacturing, processing, freezing, or packaging milk or milk products, including cheese and ice cream. The law prohibits a third-party delivery service from delivering microenterprise-produced food, except to an individual who has a physical or mental disability.

**Connecticut's** [S 233 Act 18](#) provides that a cottage food product does not include maple syrup or honey.

In **Illinois**, [S 2068 Act 425](#) amends the Food Handling Regulation Enforcement Act by prohibiting a public health district from regulating the preparing and serving of food in a private residence that is prepared by or for the lessees and their guests.

**Maryland's** [S 290 Act 370](#) alters the definition of cottage food product to include food sold to retail food stores or food cooperatives. The law requires the owner of a cottage food business to submit information to the Maryland Department of Health before selling a cottage food product to a retail food store. [H 527 Act 370](#) alters the definition of cottage food products to include food sold to retail food stores or food cooperatives, requires that a specific label be applied to cottage food products. [H 522 Act 230](#) provides that certain regulations adopted by the Maryland Department of Health establishing a licensing system is a rescindable, rather than nonrescindable, alternative to certain regulation; extends, from 14 to 30, the number of consecutive days of operation authorized under a license to operate a temporary food service facility before the license expires; and authorizes the Department to adopt certain regulations governing excluded organizations.

In **Montana**, [S 57 Act 87](#) removes the authority of the Department of Livestock to inspect and regulate home-killed meat.

**Texas'** [S 572 Act 590](#) relates to foods produced by a cottage food production operation and a cottage food industry study, requires cottage food production operations to include labels relating to food safety, and restricts internet and mail order sales. [H 1694 Act 373](#) limits food regulations applied to farms, farmers' markets, and at cottage food production operations.

**West Virginia's** [S 285 Act 3](#) authorizes production and sale of homemade food items under certain circumstances. The law establishes conditions for exemption from licensure, permitting, inspection, packaging, and labeling laws, provides required notices to consumer, and permits local health departments to inspect reported foodborne illnesses. It also authorizes Department of Agriculture to provide assistance, consultation, or inspection at the request of a producer.

One of the more interesting laws came from the legislature in Maine. **Maine's** H 583 proposes an amendment to the Maine Constitution relating to rights to food and food sovereignty and freedom from hunger; declares that all individuals have a natural, inherent, and unalienable right to food, including the right to acquire, produce, process, prepare, preserve and consume and to barter, trade, and purchase the food of their own choosing for their own nourishment, sustenance, bodily health, and well-being. The bill will be subject to a statewide vote.

### **Raw Milk and Dairy**

Several states reviewed legislation related to dairy or raw milk. Many laws refer to the labeling of milk products. In 2019, 58 bills were introduced and eight enacted.

**Arkansas** [H 1699 Act 846](#) amends the laws concerning sales of raw milk to authorize the sale of raw sheep milk.

**California's** [A 590 Act 304](#) revises provisions governing administration of the Milk Producers Security Trust Fund to provide consistency with the Federal Milk Marketing Order. Requires an assessment on producers to defray the costs of administering these provisions. The law also revises the Dairy Council of California Law to refocus activities on research, communication, and education regarding the nutritional role of milk products.

**Louisiana's** [S 39 Act 184](#) prohibits the mislabeling of milk products, provides for enforcement by the Department of Health.

In **Maryland**, [S 922 Act 530](#) prohibits a person from stating, on a label of a food product, that the product is milk, unless the product meets the definition of milk.

**Nebraska** [LR 13](#) urges the federal agencies of the U.S. Government responsible for food labeling to establish and enforce standards for nomenclature of plant-based imitation milk and dairy food products. Similarly **Pennsylvania's** [AR 222](#) urges the Congress of the United States and the United States Food and Drug Administration to take immediate action to defend this nation's dairy farmers by enforcing a standard of identity for the term milk.

**New Jersey's** [AR 156](#) urges the US Department of Agriculture and the U.S. Department of Commerce to increase the exportation of state dairy products to other nations.