

New Data Show Homemade Food for Sale is Incredibly Safe

The Institute for Justice contacted the states with the broadest homemade food laws and found no incidents of foodborne illness.

Is buying homemade food safe? New data from the Institute for Justice (IJ) show the answer to that question is a resounding “yes.”

IJ contacted the seven states with the broadest homemade food laws (California, Iowa, Montana, North Dakota, Oklahoma, Utah and Wyoming) to request data on the number of complaints and confirmed cases of foodborne illness that could be traced to a food product sold under states’ homemade food laws. Each of these states’ homemade food laws allow the sale of not just shelf-stable foods (like breads, cakes, and jams), but also perishable foods like meals (tamales, pizza, chicken sandwiches, and various cultural street foods). The results showed that not a single state has found a foodborne illness to be caused by food sold under their homemade food law. This was true even though some of the states, like Wyoming, have had their laws in place for almost a decade.

ALL 50 STATES HAVE HOMEMADE FOODS LAWS

All 50 states and Washington, D.C. allow the sale of homemade food, often known as “cottage food.” Cottage food is made in a home kitchen, instead of in a licensed commercial kitchen. Cottage food businesses selling delicious treats like homemade cakes, sourdough bread and jam have been legal and popular for years. But during the pandemic, cottage food reached new heights of popularity—for both sellers and consumers. Sellers love the flexibility and affordability of working from home, instead of paying tens of thousands of dollars a year for a commercial kitchen. And consumers love buying locally made foods made with fresh ingredients.

Most states allow the sale of only shelf-stable cottage food. But in response to growing demand, several states are considering expanding their cottage food laws to allow not just shelf-stable foods but also perishable foods, including meals. This would allow cottage food sellers to sell everything from tamales and Indian street food to pizza and chicken sandwiches. The problem is that elected officials frequently express concerns that allowing the sale of homemade perishable foods would increase the risk of foodborne illness. So IJ decided to investigate.



SEVEN STATES ALREADY ALLOW THE SALE OF MEALS AND OTHER PERISHABLE FOODS

Seven states (California, Iowa, Montana, North Dakota, Oklahoma, Utah, and Wyoming) already allow the sale of homemade meals and other perishable foods made in a home kitchen.

Some of these states, like Montana, North Dakota, and Wyoming, allow the sale of these foods with no permit required and minimal government oversight. These unrestrictive types of law are called “food freedom” laws. Notably, Wyoming has had its food freedom law since 2015, making it the oldest such law. Other food freedom states, like Oklahoma, have some restrictions on the sale of these foods, like a \$75,000 cap on annual gross sales and a required food safety course to be able to sell perishable food. Other states, like California and Iowa, put additional requirements in place, such as kitchen inspections conducted by local health departments. And Utah only requires permits and inspections for meat products, but not for other perishable foods like cheesecakes.

You can learn more about each state’s law here: <https://ij.org/food-freedom/>

THE INSTITUTE FOR JUSTICE’S RESEARCH

To investigate alleged safety concerns, IJ reached out to each of these seven states to see if they have had any incidents of foodborne illness related to their food freedom laws. Specifically, IJ sent public records requests to the state agencies in each state responsible for administering the cottage food program.

Each of the seven states responded. Not a single state had a confirmed case of a foodborne illness caused by food sold under its homemade food law. In fact, almost none of the states had even a suspected case of foodborne illness for such foods. The only

location with suspected cases of foodborne illness was Riverside County, California, that had two suspected cases. But neither case was confirmed. Notably, these cases also did not result in serious illness.

CONCLUSION

Homemade perishable foods have been legally sold for almost a decade in this country with little to no evidence of foodborne illnesses. This should not be surprising. Many of these cottage food businesses are run by only one or two people, with their name, reputation, and livelihood on the line. It makes sense that these tiny home businesses would be extra careful in serving their customers.

This research confirms that other states can—and should—expand their cottage food laws to include perishable foods and meals, and that they can do so with no threat to public health and safety.

ABOUT THE INSTITUTE FOR JUSTICE

IJ is a national nonprofit organization and civil rights law firm. It is a national expert on cottage food laws and has helped reform over 25 states’ cottage food laws through both litigation and legislation. For instance, IJ successfully sued both Wisconsin and New Jersey to remove their bans on cottage foods. These lawsuits received nationwide attention, including coverage in the *Wall Street Journal*, the *New York Times*, and NPR’s *Morning Edition*. IJ has also assisted multiple state legislatures in reforming their cottage food laws and has provided expert testimony on dozens of cottage food bills nationwide.