

# Taste of Home

Lawmakers are balancing strict food safety laws with policies to encourage small food entrepreneurs.

BY DOUG FARQUHAR

**F**ood safety is something most Americans take for granted. But that confidence is shaken when there's an outbreak of a food-borne illness, like the *Listeria* infection in Colorado cantaloupes last year that left 32 people dead.

There's plenty of reason to be concerned. One of every six people becomes ill each year from eating contaminated foods, according to estimates by the Centers for Disease Control and Prevention. An estimated 48 million Americans become sick from food-borne illness, 128,000 end up in hospitals and 3,000 die.

While state lawmakers are well aware of the dangers, they increasingly are interested in introducing more flexible rules to allow for the growth of local food producers. New laws to encourage the "cottage food" movement offer exemptions for food start-ups from state health and food safety rules until they become established.

From Maryland to California, cottage food laws have struck a chord with lawmakers. Exemptions from food safety laws for church suppers, potlucks, farmers' markets or foods sold directly to consumers are a way to encourage entrepreneurs and promote economic development. Arkansas, Arizona, Indiana, Maryland, Missouri, Minnesota, Montana, Texas, Virginia, Washington, Wisconsin and Wyoming have adopted cottage food laws.

"Food safety rules and fees were preventing businesses from starting up," says Michigan Senator John Proos (R), sponsor of his state's Cottage Foods Act. "By providing this exemption, we have seen an explosion of small producers selling at farmers' markets across Michigan."

## Collaborative Process

Former Minnesota Representative Al Juhnke's (D) foremost concern was "first, do no harm" in adopting a cottage foods law in Minnesota.

He worked closely with the state health department to determine the most important food safety concerns and other areas where it made sense to back off. Labeling was important to let consumers know what the product contained and that it was not inspected by the state.

"People have an expectation that their food is safe and inspected. That's

not always the case," says Juhnke, who left the House in 2010 and now is an aide to U.S. Senator Al Franken.

In Michigan, Proos worked with the state agriculture department on the cottage food bill. To deal with labeling and hazardous food concerns, the department identified potentially hazardous foods that require time or temperature control for safety—meats, poultry and shellfish, mushrooms, raw sprouts and tofu—that must remain subject to state oversight. The law also continues to require all foods be labeled with allergens, which is a federal requirement.

Cottage foods in Michigan cannot be sold in retail stores. The law is designed for direct sale to customers at farmers' markets, roadside stands, from home kitchens or other direct markets, but it loosens the regulatory burdens that hindered start-ups from selling foods.

Now, local markets are showcasing Michigan berries and other fruits, and the scones, muffins, cupcakes and cookies that can be made with these fruits.

"It has been a huge benefit to the agriculture industry in the state," says Proos. "Organic farmers, health advocates, small business, the agriculture community and foodies all support this bill."



Senator  
Jane Nelson (R)  
Texas

## Improved Training

"Consumers need better protection from food-borne illness, without over-regulation," says Texas Senator Jane Nelson (R). Texas adopted her food safety bill requiring the licensing of producers that

harvest, package and ship produce while providing an exemption for small farmers.

Nelson included protections for local bakers as well. "The Cottage Foods section was intended to ensure small home bakers are able to sell their products without over-regulation by the state or local health departments."

Rather than providing a blanket exemption, her bill requires small food producers to complete food safety training.

The Minnesota cottage foods efforts also encouraged training. Additional legislation in 2011 exempted faith-based organizations, school concession stands, fraternal organization and food service events from needing a state food safety license. It also highlighted the potential health threats caused by contaminated foods. When the state health department and the University of Minnesota Agriculture Extension held free training on food safety, more than 700 people attended. An additional 500 people requested the training video, "Cooking Safely for a Crowd."

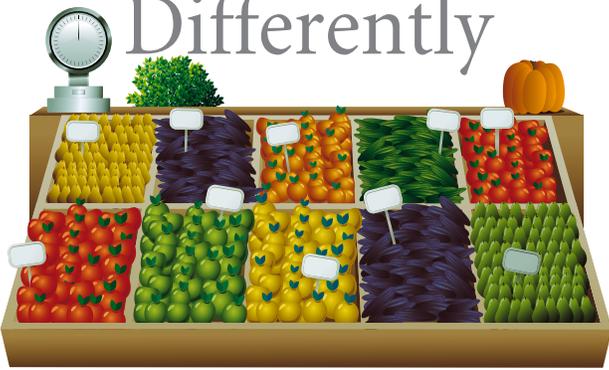
*"These food safety rules and fees were preventing businesses from starting up. By providing this exemption, we have seen an explosion of small producers selling at farmers' markets across Michigan."*

—Senator John Proos (R), Michigan



Senator  
John Proos (R)  
Michigan

# States, Feds See Food Safety Roles Differently



BY DOUG FARQUHAR

Outbreaks of illnesses from contaminated food helped spur enactment of the Food Safety Modernization Act, passed by Congress and signed by the president in January 2011.

The law focuses on preventing outbreaks, instead of reacting to them, and changes many of the regulatory structures designed to protect the public from food-borne illnesses. The main thrust of the law, however, is to update the U.S. Food and Drug Administration's authority to regulate foods. Previously, FDA acted only after a food-related illness outbreak. The new law allows the FDA to design measures to prevent food-borne outbreaks from occurring by regulating the food industry.

"FSMA will have a significant impact on states," says Joe Reardon, an FDA official and former food program director of the North Carolina Department of Agriculture & Consumer Services. "It will create a federal-state partnership to build an integrated food safety system."

FDA officials see one of their roles as guiding small businesses through new food safety requirements. "If we want to ensure that our food is safer, we need to be able to invest in compliance," says Dr. Margaret A. Hamburg, FDA commissioner of food and drugs. "We need to help educate and train industry—especially small businesses—through guidance documents that address the real-world issues companies face in trying to abide by the rules."

The federal law created some tension between the federal government and the states, however. Lawmakers in Delaware, Hawaii, North Carolina and Utah have introduced legislation to protect the states' role in food safety. Many state lawmakers also see it as their role to help small businesses deal with food safety regulations.

"We want to adopt our own food safety rules before they are dic-

tated by FDA," says Hawaii Senator Clarence Nishihara (D), who chairs the Senate Agriculture Committee. Bills before his committee this session would require a certification program for producers and ensure a trace-back ability to identify where a product comes from when someone becomes ill.

An amendment was added to the federal food safety law to ensure small businesses are protected, exempting them from the extensive requirements imposed upon large food manufacturers and processors.

Food facilities that sell only within their state—or within 275 miles of their facility—and have less than \$500,000 in annual sales are exempt from the new federal law, as is food produced on a farm and sold directly to the consumer, including at local farmers' markets. Since the federal food safety law does not preempt state laws, these facilities and activities remain subject to state and local food safety laws.

## Cottage Food Laws

Although there is no universal cottage food law, most state laws have four provisions:

- ◆ Exemptions from licensing for small companies that sell directly to consumers.
- ◆ Labels that must state 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 for large groups.



Senator  
Clarence  
Nishihara (D)  
Hawaii

*"We do have the safest food supply in the world, but we need to work hard to keep it that way."*

—Joe Reardon,  
director of federal-state relations  
at the U.S. Food and Drug  
Administration

## Working With States

Most food safety efforts are performed at the state level. State workers inspect most food processing and service facilities following state rules. Congress recognized this when drafting FSMA, and specifically required the FDA to work with states. The law encourages creation of an integrated state-federal food safety system. It seeks consistency among state and federal food safety training and standards nationwide, much of which will be done by the states.

Although there are no specific state requirements, the law encourages the FDA to rely heavily on current state food safety and inspection programs, since a majority of the work currently is performed by state

agencies. Under the law, FDA must:

- ◆ Improve the ability of local and state agencies to detect and handle outbreaks of food-borne illnesses.
- ◆ Improve training for state, local territorial and tribal food safety officials.
- ◆ Provide money to state and local agencies to improve food safety activities, laboratory capacity and the infrastructure of state food safety programs.
- ◆ Support efforts to detect and investigate food-borne outbreaks, which currently fall to state agencies with funding from the FDA or the U.S. Department of Agriculture.
- ◆ Create "Food Safety Integrated Centers of Excellence," within state departments of health, to help states and localities during an outbreak, offer analysis of the response, and provide training.

"We do have the safest food supply in the world," says Reardon. "But we need to work hard to keep it that way." 