



Getting Montana Foods on Montana Tables

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IN 1950, 70 PERCENT OF FOODS CONSUMED IN MONTANA

were local to Montana, but in 2021, only 3 percent were. To increase local, direct-to-consumer options, the Montana Local Food Choice Act, or SB199, was enacted in 2021 and updated in 2023. This law exempts certain homemade food producers from many regulations, including food licensure, permitting, certification, packaging, labeling, and inspection regulations.

The goal was to allow people to sell and eat homemade food so that 1) it is easier to eat fresh and local foods, 2) Montana ranches, farms, and homemade businesses can grow, and 3) consumers can have more access to homemade food.

This MontGuide explores the Local Food Choice Act for food producers and consumers in Montana.

- Use the check below to see if a food product qualifies for the “Local Food Choice Act” in Montana.
- Explore basic liability and food safety considerations for homemade food producers.
- Identify additional resources, licensures, and organizations that can help determine the next best business step.

The MontGuide is for general food safety awareness and does not replace legal or professional safety advice for specific products.

Under the Local Food Choice Act

WHO CAN SELL

- Farmers, ranchers, and homemade food producers (and their employees) who are selling directly to the end consumer for personal, household, or family use
- Not under/in conflict with an already licensed food establishment
- Not sold through a second-party distributor or otherwise licensed food entity

WHAT FOODS CAN BE SOLD

- Food products that the seller has harvested, produced, or prepared in their home kitchen
- Includes small dairy exemption allowing the sale of raw milk
 - Small dairy follows a 5/10/10 rule: 5 or fewer lactating cows or 10 or fewer lactating goats or sheep, and complies with DPHHS testing and reporting requirements
- Includes 1000 bird per year exemption, allowing the sale of home-processed poultry
 - Must still align with federal requirements for safety, labeling, and record keeping
- If preparing a shelf-stable, high-risk (low acid or acidified) homemade preserved food, file a Federal Drug and Agriculture (FDA) exemption
- Not preparing food products in a business or commercial kitchen
- Not including products with any meat, drugs, alcohol, marijuana, or CBD in them
- Not making health claims about products that make them a drug or supplement

WHERE CAN FOODS BE SOLD

- Direct-to-consumers or at farmers’ markets and local community events in Montana
- Sale and delivery must be in Montana
- Not selling food through retail, resale, or wholesale
- Not selling food off a producer’s property at an unmanned roadside stand or kiosk

INFORMED END CONSUMER

- Producers are **required to inform** the end consumer that the homemade food products have **not been through any official regulation or inspection**.
- Producing food products under this exemption does not eliminate any potential liability for foodborne illness or product defects.

Local Food Choice Act products can still be subject to civil legal action.

Liability

To reduce the risk of lawsuits, producers should consider the following steps:

1. **Get insurance.** Even if not required by law, having product liability or completed product insurance helps protect businesses from catastrophic losses from potential lawsuits. Product liability protects a business from bodily injury and property damage claims arising from the products manufactured, sold, or distributed. For example, if a customer brings a lawsuit because they claim they became ill from the food produced, product liability insurance could respond to this claim.
2. **Form a corporation or LLC.** While not required, structuring a business as a corporation or LLC can protect business owners. These business structures keep personal assets separate from business assets, reducing financial risk to the business owners.
3. **Follow food safety guidelines.** Even if regulations do not require food safety steps, these are important to keeping happy and healthy customers. Proper handling, cooking, and storage throughout food production reduces the risk of contamination or spoilage.

FAT TOM Food Safety Guidelines

These are initial considerations to keep foods safe and reduce the risk of foodborne illness. Understanding these can help keep food safe and prevent illness.

- **Food:** Bacteria need food to grow, especially protein-rich foods like meat, dairy, and eggs.
- **Acidity:** Foods with low acidity (like meat and dairy) allow bacteria to grow faster, while high-acid foods (like vinegar and citrus) slow their growth.
- **Temperature:** Bacteria grow best between 40°F and 140°F, known as the danger zone. Keep cold foods cold and hot foods hot!
- **Time:** The longer food stays in the danger zone, the more bacteria can grow. Never leave perishable food out for more than 2 hours.
- **Oxygen:** Some bacteria need oxygen to grow, while others grow without it. Proper food storage can help control this.
- **Moisture:** Bacteria grow best in moist foods. Dry foods or foods with little water (like crackers or dried fruit) are safer from bacteria.

See the Food Safety for Home Food Producers checklist for more specific homemade food safety considerations from Abundant Montana (Formerly Alternative Energy Resource Organization-AERO) and MSU Extension: <https://mtfoodsystemresources.org/wp-content/uploads/2023/05/Digital-Copy-of-Food-Safety-Tool-for-Home-Producers-.pdf>.

View the Local Food Choice Act bill, online here: https://archive.legmt.gov/bills/mca/title_0500/chapter_0490/part_0020/sections_index.html.

ALTERNATIVES TO WAYS PRODUCERS CAN SELL FOODS IN MONTANA

If a food product does not fit under the Montana Local Food Choice Act, there are several alternative options for selling.

1. **Cottage Food Laws:** If products are classified as cottage foods, they can sell at farmers' markets, community events, and directly from a home. Cottage foods typically include items like baked goods, jams, and certain low-risk foods, but they must comply with specific regulations, such as labeling requirements.
2. **Wholesale License:** If pursuing a wholesale food license, one can sell products to grocery stores, restaurants, or other retailers, but this will require producing food products in a licensed commercial kitchen, meeting state and local food safety regulations, obtaining the necessary licenses, and passing inspections.

Resources and Support

STATE AGENCIES

- Montana Department of Health and Human Services (DPHHS):
 - Public health guidance and information on state and federal food laws
 - Contact: 406-444-2837
- County Sanitarian and Environmental Health Officers
 - Food Handling
 - Licensure and regulations
 - Contact Statewide: 406-444-2837
 - County and Tribal Health Department map and contact information: dphhs.mt.gov/publichealth/ehfs/countytribalhealthdepts

OUTREACH ORGANIZATIONS

- Regional Food and Agriculture Development Centers (FADC)
 - Business and financial planning and development
 - Classes and individualized support
 - Information on navigating the licensing process
 - Contact: agr.mt.gov/Food-and-Ag-Development-Centers
- MSU Extension Office
 - Educational resources in agriculture, family and consumer sciences, including food safety, youth development, and community vitality
 - Classes and individualized support
 - Contact Statewide: 406-994-1750

LEGAL COUNSEL

- Agricultural and Food attorneys can help with:
 - Interpreting the law and its scope
 - Advising on compliance with other laws
 - Risk management and liability
 - Guidance on interstate sales
 - Business structuring

Summary

Consider current and future needs when determining the right kind of food license for product(s). Since every producer's situation is different, obtaining advice tailored to specific needs, such as food safety or legal protection, is crucial. Montana producers can take full advantage of the opportunities to grow their business while providing their Montana neighbors with safe, local foods to enjoy.

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