

HB0094S02 compared with HB0094S01

~~{deleted text}~~ shows text that was in HB0094S01 but was deleted in HB0094S02.

inserted text shows text that was not in HB0094S01 but was inserted into HB0094S02.

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~~{Representative Christine F. Watkins}~~ Senator Evan J. Vickers proposes the following substitute bill:

MICROENTERPRISE HOME KITCHEN AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Christine F. Watkins

Senate Sponsor: ~~{Christine F. Watkins}~~ Evan J. Vickers

LONG TITLE

General Description:

This bill creates permitting guidelines for microenterprise home kitchens.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ grants administrative authority to the Department of Health to make rules regarding the sanitation, equipment, and maintenance requirements for microenterprise home kitchens; and
- ▶ grants administrative authority to local health departments to:
 - create and issue microenterprise home kitchen permits;
 - charge fees for issuing permits and inspecting premises; and

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- inspect microenterprise home kitchens~~(.)~~; and
- ▶ limits the number of microenterprise home kitchen permits that may be issued within a county and creates a sunset date for this limit.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63I-1-226, as last amended by Laws of Utah 2020, Chapters 19, 154, 172, 181, 221, 232, 303, 347, and 429

ENACTS:

26-15c-101, Utah Code Annotated 1953

26-15c-102, Utah Code Annotated 1953

26-15c-103, Utah Code Annotated 1953

26-15c-104, Utah Code Annotated 1953

26-15c-105, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **26-15c-101** is enacted to read:

CHAPTER 15c. MICROENTERPRISE HOME KITCHEN ACT

26-15c-101. Title.

This chapter is known as the "Microenterprise Home Kitchen Act."

Section 2. Section **26-15c-102** is enacted to read:

26-15c-102. Definitions.

As used in this chapter:

(1) "Food" means:

(a) a raw, cooked, or processed edible substance, ice, nonalcoholic beverage, or ingredient used or intended for use or for sale, in whole or in part, for human consumption; or

(b) chewing gum.

(2) "Local health department" means the same as that term is defined in Section

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26A-1-102.

(3) (a) "Microenterprise home kitchen" means a non-commercial kitchen facility located in a private home and operated by a resident of the home where ready-to-eat food is handled, stored, prepared, or offered for sale.

(b) "Microenterprise home kitchen" does not include:

(i) a catering operation;

(ii) a cottage food operation;

(iii) a food truck;

(iv) an agritourism food establishment as defined in Section 26-15b-102;

(v) a bed and breakfast; or

(vi) a residence-based group care facility.

(4) "Microenterprise home kitchen permit" means a permit issued by a local health department to the operator for the purpose of operating a microenterprise home kitchen.

(5) "Operator" means an individual who resides in the private home and who manages or controls the microenterprise home kitchen.

(6) "Ready-to-eat" means:

(a) raw animal food that is cooked;

(b) raw fruits and vegetables that are washed;

(c) fruits and vegetables that are cooked for hot holding;

(d) a time or temperature control food that is cooked to the temperature and time required for the specific food in accordance with rules made by the department in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; or

(e) a bakery item for which further cooking is not required for food safety.

(7) "Time or temperature control food" means food that requires time or temperature controls for safety to limit pathogenic microorganism growth or toxin formation.

Section 3. Section **26-15c-103** is enacted to read:

26-15c-103. Permitting -- Fees.

(1) An operator may not operate a microenterprise home kitchen unless the operator obtains a permit from the local health department that has jurisdiction over the area in which the microenterprise home kitchen is located.

(2) In accordance with Section 26A-1-121, and subject to the restrictions of Section

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26-15c-105, the department shall make standards and regulations relating to the permitting of a microenterprise home kitchen.

(3) In accordance with Section 26A-1-114, a local health department shall impose a fee for a microenterprise home kitchen permit in an amount that reimburses the local health department for the cost of regulating the microenterprise home kitchen.

Section 4. Section **26-15c-104** is enacted to read:

26-15c-104. Safety and health inspections and permits.

(1) A local health department with jurisdiction over an area in which a microenterprise home kitchen is located may grant a microenterprise home kitchen permit to the operator.

(2) Nothing in this section prevents a local health department from revoking a microenterprise home kitchen permit issued by the local health department if the operation of the microenterprise home kitchen violates the terms of the permit or Section 26-15c-105.

(3) (a) The number of microenterprise home kitchen permits issued by a local health department under this chapter may not exceed:

(i) for a county of the first or second class, 15% of the total number of licenses issued by the local health department to food service establishments as defined in Section 26-15a-102;
or

(ii) for a county of the third through sixth class, 70% of the total number of licenses issued by the local health department to food service establishments as defined in Section 26-15a-102.

(b) For a local health department with jurisdiction over two or more counties, the limitation under Subsection (3)(a) shall be calculated separately for each county within the local health department's jurisdiction.

Section 5. Section **26-15c-105** is enacted to read:

26-15c-105. Permit requirements.

(1) An operator may qualify for a microenterprise home kitchen permit if:

(a) food that is served at the microenterprise home kitchen is processed in compliance with state and federal regulations;

(b) a kitchen facility used to prepare food for the microenterprise home kitchen meets the requirements established by the department;

(c) the microenterprise home kitchen operates only during the hours approved in the

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microenterprise home kitchen permit; and

(d) the microenterprise home kitchen complies with the requirements of this section.

(2) The department shall, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules regarding sanitation, equipment, and maintenance requirements for microenterprise home kitchens.

(3) A local health department shall:

(a) ensure compliance with the rules described in Subsection (2) when inspecting a microenterprise home kitchen;

(b) notwithstanding Section 26A-1-113, inspect a microenterprise home kitchen that requests a microenterprise home kitchen permit only:

(i) for an initial inspection, no more than one week before the microenterprise home kitchen is scheduled to begin operation;

(ii) for an unscheduled inspection, if the local health department conducts the inspection:

(A) within three days before or after the day on which the microenterprise home kitchen is scheduled to begin operation; or

(B) during operating hours of the microenterprise home kitchen; or

(iii) for subsequent inspections if:

(A) the local health department provides the operator with reasonable advanced notice of the inspection; or

(B) the local health department has a valid reason to suspect that the microenterprise home kitchen is the source of an adulterated food or of an outbreak of illness caused by a contaminated food; and

(c) document the reason for any inspection after the initial inspection, keep a copy of that documentation on file with the microenterprise home kitchen's permit, and provide a copy of that documentation to the operator.

(4) A microenterprise home kitchen shall:

(a) take steps to avoid any potential contamination to:

(i) food;

(ii) equipment;

(iii) utensils; or

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(iv) unwrapped single-service and single-use articles; and

(b) prevent an individual from entering the food preparation area while food is being prepared if the individual is known to be suffering from:

(i) symptoms associated with acute gastrointestinal illness; or

(ii) a communicable disease that is transmissible through food; and

(c) comply with the following requirements:

(i) time or temperature control food shall be prepared, cooked, and served on the same day;

(ii) food ~~that is sold or provided to a customer~~ may ~~not~~ be consumed onsite at the microenterprise home kitchen operation ~~or offsite if the~~;

(iii) food ~~that is sold or provided to a customer shall be~~ picked up by the consumer or delivered within a safe time period based on holding equipment capacity;

~~(iii)~~ (iv) food preparation may not involve processes that require a HACCP plan, or the production, service, or sale of raw milk or raw milk products;

~~(iv)~~ (v) molluscan shellfish may not be served or sold; ~~and~~

~~(v)~~ (vi) the operator may only sell or provide food directly to consumers and may not sell or provide food to any wholesaler or retailer ~~or~~; ~~and~~

~~(vi)~~ (vii) the operator shall provide the consumer with a notification that, while a permit has been issued by the local health department, the kitchen may not meet all of the requirements of a commercial retail food establishment.

(5) When making the rules described in Subsection (2), the department may not make rules regarding:

(a) hand washing facilities, except to require that a hand washing station supplied with warm water, soap, and disposable hand towels is conveniently located in food preparation, food dispensing, and warewashing areas;

(b) kitchen sinks, kitchen sink compartments, and dish sanitation, except to require that the kitchen sink has hot and cold water, a sanitizing agent, is fully operational, and that dishes are sanitized between each use;

(c) the individuals allowed access to the food preparation areas, food storage areas, and washing areas, except during food preparation;

(d) display guards, covers, or containers for display foods, except to require that

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ready-to-eat food is protected from contamination during storage, preparation, handling, transport, and display;

(e) outdoor display and sale of food, except to require that food is maintained at proper holding temperatures;

(f) utensils and equipment, except to require that utensils and equipment used in the home kitchen:

(i) retain their characteristic qualities under normal use conditions;

(ii) are properly sanitized after use; and

(iii) are maintained in a sanitary manner between uses;

(g) food contact surfaces, except to require that food contact surfaces are smooth, easily cleanable, in good repair, and properly sanitized between tasks;

(h) non-food contact surfaces, if those surfaces are made of materials ordinarily used in residential settings, except to require that those surfaces are kept clean from the accumulation of residue and debris;

(i) clean-in-place equipment, except to require that the equipment is cleaned and sanitized between uses;

(j) ventilation, except to require that gases, odors, steam, heat, grease, vapors, and smoke are able to escape the kitchen;

(k) fixed temperature measuring devices or product mimicking sensors for the holding equipment for time or temperature control food, except to require non-fixed temperature measuring devices for hot and cold holding of food during storage, serving, and cooling;

(l) fixed floor-mounted and table-mounted equipment, except to require that floor-mounted and table-mounted equipment be in good repair and sanitized between uses;

(m) dedicated laundry facilities, except to require that linens used for the microenterprise home kitchen are stored and laundered separately from household laundry and that soiled laundry is stored to prevent contamination of food and equipment;

(n) water, plumbing, drainage, and waste, except to require that:

(i) sinks be supplied with hot and cold potable water from:

(A) an approved public water system as defined in Section 19-4-102;

(B) if the local health department with jurisdiction over the microenterprise home kitchen has regulations regarding the safety of drinking water, a source that meets the local

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health department's regulations regarding the safety of drinking water; or

(~~B~~;C) a water source that is tested at least once per month for bacteriologic quality, and at least once in every three year period for lead and copper; and

(ii) food preparation and service is discontinued in the event of a disruption of potable water service;

(o) the number of and path of access to toilet facilities, except to require that toilet facilities are equipped with proper handwashing stations;

(p) lighting, except to require that food preparations are well lit by natural or artificial light whenever food is being prepared;

(q) designated dressing areas and storage facilities, except to require that items not ordinarily found in a home kitchen are placed or stored away from food preparation areas, that dressing takes place outside of the kitchen facility, and that food items are stored in a manner that does not allow for contamination;

(r) the presence and handling of animals, except to require that all animals are kept outside of food preparation and service areas;

(s) food storage, floor, wall, ceiling, and toilet surfaces, except to require that surfaces are smooth, of durable construction, easily cleanable, and kept clean and free of debris;

(t) kitchen facilities open to living areas, except to require that food is only prepared, handled, or stored in kitchen and food storage areas;

(u) submission of plans and specifications before construction or remodel of a kitchen facility;

(v) the number and type of time or temperature controlled food offered for sale, except:

(i) a raw time or temperature-controlled food such and as raw fish, raw milk, and raw shellfish;

(ii) any food requiring special processes that would necessitate a HACCP plan; and

(iii) fish from waters of the state;

(w) approved food sources, except to require that:

(i) food in a hermetically sealed container is obtained from a regulated food processing plant;

(ii) liquid milk and milk products are obtained from sources that comply with Grade A standards specified by the Department of Agriculture and Food by rule made in accordance

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with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(iii) fish for sale or service are commercially and legally caught;

(iv) mushrooms picked in the wild are not offered for sale or service; and

(v) game animals offered for sale or service are raised, slaughtered, and processed according to rules governing meat and poultry as specified by the Department of Agriculture and Food by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(x) the use of items produced under this chapter; or

(y) the use of an open air barbeque, grill, or outdoor wood-burning oven.

(6) An operator applying for a microenterprise home kitchen permit shall provide to the local health department:

(a) written consent to enter the premises where food is prepared, cooked, stored, or harvested for the microenterprise home kitchen; and

(b) written standard operating procedures that include:

(i) all food that will be stored, handled, and prepared;

(ii) the proposed procedures and methods of food preparation and handling;

(iii) procedures, methods, and schedules for cleaning utensils and equipment;

(iv) procedures and methods for the disposal of refuse; and

(v) a plan for maintaining time or temperature controlled food at the appropriate temperatures for each time or temperature controlled food.

(7) In addition to a fee charged under Section 26-15c-103, if the local health department is required to inspect the microenterprise home kitchen as a source of an adulterated food or an outbreak of illness caused by a contaminated food and finds, as a result of that inspection, that the microenterprise home kitchen has produced an adulterated food or was the source of an outbreak of illness caused by a contaminated food, the local health department may charge and collect from the ~~{farm}~~ microenterprise home kitchen a fee for that inspection.

(8) A microenterprise home kitchen permit:

(a) is nontransferable;

(b) is renewable on an annual basis;

(c) is restricted to the location and hours listed on the permit;

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(d) shall include a statement that reads: "This location is permitted under modified FDA requirements."; and

(f)(e) shall provide the operator the opportunity to update the food types and products handled without requiring the operator to renew the permit.

(9) This section does not prohibit an operator from applying for a different type of food event permit from a local health department.

Section 6. Section 63I-1-226 is amended to read:

63I-1-226. Repeal dates, Title 26.

(1) Subsection 26-1-7(1)(f), related to the Residential Child Care Licensing Advisory Committee, is repealed July 1, 2024.

(2) Subsection 26-1-7(1)(h), related to the Primary Care Grant Committee, is repealed July 1, 2025.

(3) Section 26-1-7.5, which creates the Utah Health Advisory Council, is repealed July 1, 2025.

(4) Section 26-1-40 is repealed July 1, 2022.

(5) Section 26-1-41 is repealed July 1, 2026.

(6) Section 26-7-10 is repealed July 1, 2025.

(7) Subsection 26-7-11(5), regarding reports to the Legislature, is repealed July 1, 2028.

(8) Section 26-7-14 is repealed December 31, 2027.

(9) Title 26, Chapter 9f, Utah Digital Health Service Commission Act, is repealed July 1, 2025.

(10) Subsection 26-10-6(5), which creates the Newborn Hearing Screening Committee, is repealed July 1, 2026.

(11) Section 26-10-11 is repealed July 1, 2025.

(12) Section 26-10b-106, which creates the Primary Care Grant Committee, is repealed July 1, 2025.

(13) Subsection 26-15c-104(3), relating to a limitation on the number of microenterprise home kitchen permits that may be issued, is repealed on July 1, 2022.

~~(13)~~ (14) Title 26, Chapter 18, Part 2, Drug Utilization Review Board, is repealed July 1, 2027.

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~~[(14) Subsection 26-18-417(3) relating to a report to the Health and Human services Interim Committee is repealed July 1, 2020.]~~

~~(15) Subsection 26-18-418(2), the language that states "and the Behavioral Health Crisis Response Commission created in Section 63C-18-202" is repealed July 1, 2023.~~

~~(16) Title 26, Chapter 18a, Kurt Oscarson Children's Organ Transplant Coordinating Committee, is repealed July 1, 2021.~~

~~(17) Section 26-33a-117 is repealed on December 31, 2023.~~

~~(18) Title 26, Chapter 33a, Utah Health Data Authority Act, is repealed July 1, 2024.~~

~~(19) Title 26, Chapter 36b, Inpatient Hospital Assessment Act, is repealed July 1, 2024.~~

~~(20) Title 26, Chapter 36c, Medicaid Expansion Hospital Assessment Act, is repealed July 1, 2024.~~

~~(21) Title 26, Chapter 36d, Hospital Provider Assessment Act, is repealed July 1, 2024.~~

~~(22) Section 26-39-201, which creates the Residential Child Care Licensing Advisory Committee, is repealed July 1, 2024.~~

~~(23) Section 26-40-104, which creates the Utah Children's Health Insurance Program Advisory Council, is repealed July 1, 2025.~~

~~(24) Section 26-50-202, which creates the Traumatic Brain Injury Advisory Committee, is repealed July 1, 2025.~~

~~(25) Title 26, Chapter 54, Spinal Cord and Brain Injury Rehabilitation Fund and Pediatric Neuro-Rehabilitation Fund, is repealed January 1, 2025.~~

~~(26) Title 26, Chapter 63, Nurse Home Visiting Pay-for-Success Program, is repealed July 1, 2026.~~

~~(27) Title 26, Chapter 66, Early Childhood Utah Advisory Council, is repealed July 1, 2026.~~