

DIRECT FOOD SALES AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

LONG TITLE

General Description:

This bill modifies the requirements for a cottage food production operation.

Highlighted Provisions:

This bill:

- ▶ modifies definitions and defines terms;
- ▶ modifies the rulemaking authority of the Department of Agriculture and Food in regard to a cottage food production operation;
- ▶ requires the operator of a cottage food production operation to package a cottage food product with a label, as specified by the Department of Agriculture and Food in rule; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

4-5-9.5, as last amended by Laws of Utah 2008, Chapter 382

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

Section 1. Section **4-5-9.5** is amended to read:

4-5-9.5. Cottage food production operations.

(1) For purposes of this chapter:

(a) "Cottage food [~~production~~] operation" means a person[~~, who in the person's home, produces a food product that is not a potentially hazardous food or a food that requires time/temperature controls for safety] who produces a cottage food product in a home kitchen.~~

[(b) "Home" means a primary residence:]

- 33 ~~[(i) occupied by the individual who is operating a cottage food production operation;~~
 34 ~~and]~~
- 35 ~~[(ii) which contains:]~~
- 36 ~~[(A) a kitchen designed for common residential usage; and]~~
 37 ~~[(B) appliances designed for common residential usage.]~~
- 38 (b) "Cottage food product" means a baked good that is:
 39 (i) produced at a cottage food operation; and
 40 (ii) not a potentially hazardous food.
- 41 (c) "Home kitchen" means a kitchen:
 42 (i) designed and intended for use by the residents of a home; and
 43 (ii) used by a resident of the home for the production of a cottage food product.
- 44 ~~[(c)] (d) "Potentially hazardous food" [or "food that requires time/temperature controls~~
 45 ~~for safety": (i) means a food] means:~~
 46 (i) a food of animal origin;
 47 (ii) raw seed sprouts; or
 48 (iii) a food that requires time [and] or temperature control, or both, for safety to limit
 49 pathogenic microorganism growth or toxin formation [and is in a form capable of supporting],
 50 as identified by the department in rule.
- 51 ~~[(A) the rapid and progressive growth of infections or toxigenic microorganisms;]~~
 52 ~~[(B) the growth and toxin production of Clostridium botulinum; or]~~
 53 ~~[(C) in shell eggs, the growth of Salmonella enteritidis;]~~
- 54 ~~[(ii) includes:]~~
- 55 ~~[(A) an animal food;]~~
 56 ~~[(B) a food of animal origin that is raw or heat treated;]~~
 57 ~~[(C) a food of plant origin that is heat treated or consists of raw seed sprouts;]~~
 58 ~~[(D) cut melons;]~~
 59 ~~[(E) cut tomatoes; and]~~
 60 ~~[(F) garlic and oil mixtures that are not acidified or otherwise modified at a food~~
 61 ~~establishment in a way that results in mixtures that do not support growth as specified under~~
 62 ~~Subsection (1)(c)(i); and]~~
- 63 ~~[(iii) does not include:]~~

64 ~~[(A) an air-cooled hard-boiled egg with shell intact;]~~
65 ~~[(B) a food with an actual weight or water activity value of 0.85 or less;]~~
66 ~~[(C) a food with pH level of 4.6 or below when measured at 24 degrees Centigrade;]~~
67 ~~[(D) a food, in an unopened hermetically sealed container, that is processed to achieve~~
68 ~~and maintain sterility under conditions of nonrefrigerated storage and distribution;]~~

69 ~~[(E) a food for which laboratory evidence demonstrates that the rapid and progressive~~
70 ~~growth of items listed in Subsection (1)(c)(i) cannot occur, such as a food that:]~~

71 ~~[(F) has an actual weight and a pH level that are above the levels specified under~~
72 ~~Subsections (1)(c)(iii)(B) and (C); or]~~

73 ~~[(H) contains a preservative or other barrier to the growth of microorganisms, or a~~
74 ~~combination of barriers that inhibit the growth of microorganisms; or]~~

75 ~~[(F) a food that does not support the growth of microorganisms as specified under~~
76 ~~Subsection (1)(c)(i) even though the food may contain an infectious or toxigenic~~
77 ~~microorganism or chemical or physical contaminant at a level sufficient to cause illness.]~~

78 (2) [(a)] The department shall adopt rules pursuant to Title 63G, Chapter 3, Utah
79 Administrative Rulemaking Act, as necessary to protect public health and ensure a safe food
80 supply.

81 ~~[(b) Rules adopted pursuant to this Subsection (2) shall provide for:]~~

82 ~~[(i) the registration of cottage food production operations as food establishments under~~
83 ~~this chapter;]~~

84 ~~[(ii) the labeling of products from a cottage food production operation as "Home~~
85 ~~Produced"; and]~~

86 ~~[(iii) other exceptions to the chapter that the department determines are appropriate and~~
87 ~~that are consistent with this section.]~~

88 (3) Rules adopted pursuant to Subsection (2) may not require:

89 ~~[(a) may not require:]~~

90 ~~[(i)] (a) the use of commercial surfaces such as stainless steel counters or cabinets;~~

91 ~~[(ii)] (b) the use of a commercial grade:~~

92 ~~[(A)] (i) sink;~~

93 ~~[(B)] (ii) dishwasher; or~~

94 ~~[(C)] (iii) oven;~~

95 ~~[(iii)]~~ (c) a separate kitchen for the cottage food production operation; or

96 ~~[(iv)]~~ (d) the submission of plans and specifications before construction of, or remodel

97 of, a cottage food production operation~~[-; and]~~.

98 ~~[(b) may require:]~~

99 ~~[(i) an inspection of a cottage food production operation:]~~

100 ~~[(A) prior to issuing a registration for the cottage food production operation; and]~~

101 ~~[(B) at other times if the department has reason to believe the cottage food production~~

102 ~~operation is operating:]~~

103 ~~[(f) in violation of this chapter or an administrative rule adopted pursuant to this~~

104 ~~section; or]~~

105 ~~[(H) in an unsanitary manner; and]~~

106 ~~[(ii) the use of finished and cleanable surfaces:]~~

107 (4) ~~[(a)]~~ The operator of a cottage food production operation shall:

108 ~~[(i)]~~ (a) register with the department as a cottage food production operation before

109 operating as a cottage food production operation; ~~[and]~~

110 ~~[(ii)]~~ (b) hold a valid food handler's permit~~[-]; and~~

111 (c) package a cottage food product with a label, as specified by the department in rule.

112 ~~[(b)]~~ (5) Notwithstanding the provisions of Subsections 4-5-9(1)(a) and (c), the

113 department shall issue a registration to an applicant for a cottage food production operation if

114 the applicant for the registration:

115 ~~[(i) passes the inspection required by Subsection (3)(b);]~~

116 ~~[(ii)]~~ (a) pays the fees required by the department; and

117 ~~[(iii)]~~ (b) meets the requirements of this section.

118 ~~[(5)]~~ (6) Notwithstanding the provisions of Section 26A-1-114, a local health

119 department:

120 (a) does not have jurisdiction to regulate the production of food at a cottage food

121 production operation operating in compliance with this section, as long as the products are not

122 offered to the public for consumption on the premises; and

123 (b) does have jurisdiction to investigate a cottage food production operation in any

124 investigation into the cause of a food born illness outbreak.

125 ~~[(6)]~~ (7) A food service establishment as defined in Section 26-15a-102 may not use a

126 product produced in a cottage food production operation as an ingredient in any food that is
127 prepared by the food establishment and offered by the food establishment to the public for
128 consumption.

Legislative Review Note
Office of Legislative Research and General Counsel