

Representative Christine F. Watkins proposes the following substitute bill:

MICROENTERPRISE HOME KITCHEN AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Christine F. Watkins

Senate Sponsor: 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
 - inspect microenterprise home kitchens.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:



- 26 [26-15c-101](#), Utah Code Annotated 1953
- 27 [26-15c-102](#), Utah Code Annotated 1953
- 28 [26-15c-103](#), Utah Code Annotated 1953
- 29 [26-15c-104](#), Utah Code Annotated 1953
- 30 [26-15c-105](#), Utah Code Annotated 1953

31
32 *Be it enacted by the Legislature of the state of Utah:*

33 Section 1. Section [26-15c-101](#) is enacted to read:

34 **CHAPTER 15c. MICROENTERPRISE HOME KITCHEN ACT**

35 **[26-15c-101](#). Title.**

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

37 Section 2. Section [26-15c-102](#) is enacted to read:

38 **[26-15c-102](#). Definitions.**

39 As used in this chapter:

40 (1) "Food" means:

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

43 (b) chewing gum.

44 (2) "Local health department" means the same as that term is defined in Section
45 [26A-1-102](#).

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

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

50 (i) a catering operation;

51 (ii) a cottage food operation;

52 (iii) a food truck;

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

54 (v) a bed and breakfast; or

55 (vi) a residence-based group care facility.

56 (4) "Microenterprise home kitchen permit" means a permit issued by a local health

57 department to the operator for the purpose of operating a microenterprise home kitchen.

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

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

61 (a) raw animal food that is cooked;

62 (b) raw fruits and vegetables that are washed;

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

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

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

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

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

71 **26-15c-103. Permitting -- Fees.**

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

75 (2) In accordance with Section [26A-1-121](#), and subject to the restrictions of Section
76 [26-15c-105](#), the department shall make standards and regulations relating to the permitting of a
77 microenterprise home kitchen.

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

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

82 **26-15c-104. Safety and health inspections and permits.**

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

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

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

89 **26-15c-105. Permit requirements.**

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

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

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

95 (c) the microenterprise home kitchen operates only during the hours approved in the
96 microenterprise home kitchen permit; and

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

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

101 (3) A local health department shall:

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

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

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

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

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

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

113 (iii) for subsequent inspections if:

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

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

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

122 (4) A microenterprise home kitchen shall:

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

124 (i) food;

125 (ii) equipment;

126 (iii) utensils; or

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

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

130 (i) symptoms associated with acute gastrointestinal illness; or

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

132 (c) comply with the following requirements:

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

135 (ii) food ~~that is sold or provided to a customer~~ may ~~not~~ be consumed
 135a onsite at the microenterprise home kitchen operation ~~or~~
 136 ~~offsite if the food is]~~

136a (iii) food that is sold or provided to a customer shall be ~~picked up by the consumer~~
 136b or delivered within a safe time period based on
 137 holding equipment capacity;

138 ~~food preparation may not involve processes that require a HACCP plan,~~
 138a or the
 139 production, service, or sale of raw milk or raw milk products;

140 ~~molluscan shellfish may not be served or sold;~~ ~~and~~

141 ~~the operator may only sell or provide food directly to consumers and may~~
 141a not sell or

142 provide food to any wholesaler or retailer ~~;~~ ; and

142a (vii) the operator shall provide the consumer with a notification that, while a permit has been
 142b issued by the local health department, the kitchen may not meet all of the requirements of a
 142c commercial retail food establishment.

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

145 (a) hand washing facilities, except to require that a hand washing station supplied with

146 warm water, soap, and disposable hand towels is conveniently located in food preparation, food
147 dispensing, and warewashing areas;

148 (b) kitchen sinks, kitchen sink compartments, and dish sanitation, except to require that
149 the kitchen sink has hot and cold water, a sanitizing agent, is fully operational, and that dishes

150 are sanitized between each use;

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

153 (d) display guards, covers, or containers for display foods, except to require that
154 ready-to-eat food is protected from contamination during storage, preparation, handling,
155 transport, and display;

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

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

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

161 (ii) are properly sanitized after use; and

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

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

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

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

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

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

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

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

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

- 181 (i) sinks be supplied with hot and cold potable water from:
- 182 (A) an approved public water ~~H~~→ [source; or] system as defined in Section 19-4-102;
- 182a (B) if the local health department with jurisdiction over the microenterprise home
- 182b kitchen has regulations regarding the safety of drinking water, a source that meets the local
- 182c health department's regulations regarding the safety of drinking water; or ←H
- 183 H→ ~~(B)~~ (C) ←H a water source that is tested at least once per month for bacteriologic
- 183a quality, and at
- 184 least once in every three year period for lead and copper; and
- 185 (ii) food preparation and service is discontinued in the event of a disruption of potable
- 186 water service;
- 187 (o) the number of and path of access to toilet facilities, except to require that toilet
- 188 facilities are equipped with proper handwashing stations;
- 189 (p) lighting, except to require that food preparations are well lit by natural or artificial
- 190 light whenever food is being prepared;
- 191 (q) designated dressing areas and storage facilities, except to require that items not
- 192 ordinarily found in a home kitchen are placed or stored away from food preparation areas, that
- 193 dressing takes place outside of the kitchen facility, and that food items are stored in a manner
- 194 that does not allow for contamination;
- 195 (r) the presence and handling of animals, except to require that all animals are kept
- 196 outside of food preparation and service areas;
- 197 (s) food storage, floor, wall, ceiling, and toilet surfaces, except to require that surfaces
- 198 are smooth, of durable construction, easily cleanable, and kept clean and free of debris;
- 199 (t) kitchen facilities open to living areas, except to require that food is only prepared,
- 200 handled, or stored in kitchen and food storage areas;
- 201 (u) submission of plans and specifications before construction or remodel of a kitchen
- 202 facility;
- 203 (v) the number and type of time or temperature controlled food offered for sale, except:
- 204 (i) a raw time or temperature-controlled food such and as raw fish, raw milk, and raw
- 205 shellfish;
- 206 (ii) any food requiring special processes that would necessitate a HACCP plan; and
- 207 (iii) fish from waters of the state;
- 208 (w) approved food sources, except to require that:

- 209 (i) food in a hermetically sealed container is obtained from a regulated food processing
210 plant;
211 (ii) liquid milk and milk products are obtained from sources that comply with Grade A

212 standards specified by the Department of Agriculture and Food by rule made in accordance
 213 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
 214 (iii) fish for sale or service are commercially and legally caught;
 215 (iv) mushrooms picked in the wild are not offered for sale or service; and
 216 (v) game animals offered for sale or service are raised, slaughtered, and processed
 217 according to rules governing meat and poultry as specified by the Department of Agriculture
 218 and Food by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
 219 Rulemaking Act;
 220 (x) the use of items produced under this chapter; or
 221 (y) the use of an open air barbeque, grill, or outdoor wood-burning oven.
 222 (6) An operator applying for a microenterprise home kitchen permit shall provide to
 223 the local health department:
 224 (a) written consent to enter the premises where food is prepared, cooked, stored, or
 225 harvested for the microenterprise home kitchen; and
 226 (b) written standard operating procedures that include:
 227 (i) all food that will be stored, handled, and prepared;
 228 (ii) the proposed procedures and methods of food preparation and handling;
 229 (iii) procedures, methods, and schedules for cleaning utensils and equipment;
 230 (iv) procedures and methods for the disposal of refuse; and
 231 (v) a plan for maintaining time or temperature controlled food at the appropriate
 232 temperatures for each time or temperature controlled food.
 233 (7) In addition to a fee charged under Section [26-15c-103](#), if the local health
 234 department is required to inspect the microenterprise home kitchen as a source of an
 235 adulterated food or an outbreak of illness caused by a contaminated food and finds, as a result
 236 of that inspection, that the microenterprise home kitchen has produced an adulterated food or
 237 was the source of an outbreak of illness caused by a contaminated food, the local health
 238 department may charge and collect from the ~~H~~→ **[farm] microenterprise home kitchen** ←~~H~~ a fee
 238a for that inspection.
 239 (8) A microenterprise home kitchen permit:
 240 (a) is nontransferable;
 241 (b) is renewable on an annual basis;
 242 (c) is restricted to the location and hours listed on the permit; ~~S~~→ **[and]** **(d) shall include a**
 242a **statement that reads: "This location is permitted under modified FDA**
 242b **requirements.";** and ←~~S~~

243 ~~§~~ → ~~(d)~~ (e) ← ~~§~~ shall provide the operator the opportunity to update the food types and
243a products
244 handled without requiring the operator to renew the permit.
245 (9) This section does not prohibit an operator from applying for a different type of food
246 event permit from a local health department.