

FOOD HANDLER LICENSING

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: Leonard M. Blackham

AN ACT RELATING TO HEALTH; DEFINING TERMS; REQUIRING FOOD SERVICE ESTABLISHMENTS HAVE ON STAFF A CERTIFIED FOOD SAFETY MANAGER; ESTABLISHING THE REQUIREMENTS FOR AND DUTIES OF A CERTIFIED FOOD SAFETY MANAGER; AND ESTABLISHING THE DUTIES OF THE DEPARTMENT OF HEALTH AND LOCAL DEPARTMENTS OF HEALTH.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

26A-1-114, as last amended by Chapter 218, Laws of Utah 1995

ENACTS:

26-15a-101, Utah Code Annotated 1953

26-15a-102, Utah Code Annotated 1953

26-15a-103, Utah Code Annotated 1953

26-15a-104, Utah Code Annotated 1953

26-15a-105, Utah Code Annotated 1953

26-15a-106, Utah Code Annotated 1953

26-15a-107, Utah Code Annotated 1953

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

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

CHAPTER 15a. FOOD SAFETY MANAGER CERTIFICATION

26-15a-101. Title.

This chapter shall be known as the "Food Safety Manager Certification Act."

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

26-15a-102. Definitions.

(1) "Back country food service establishment" means a federal or state licensed back country guiding or outfitting business that:

(a) provides food services; and

(b) meets department recognized federal or state food service safety regulations for food handlers.

(2) "Certified food safety manager" means a manager of a food service establishment who:

(a) passes successfully a department-approved examination;

(b) successfully completes, every three years, renewal requirements established by department rule consistent with original certification requirements; and

(c) submits to the appropriate local health department the documentation required by Section 26-15a-106.

(3) "Food service establishment" means any place or area within a business or organization where potentially hazardous foods are prepared and intended for individual portion service and consumption by the general public, whether the consumption is on or off the premises, and whether or not a fee is charged for the food.

(4) "Local health department" means a local health department as defined in Subsection 26A-1-102(5).

(5) "Potentially hazardous foods":

(a) means any food that is natural or synthetic and that requires temperature control because it is in a form capable of supporting:

(i) the rapid and progressive growth of infectious or toxigenic microorganisms;

(ii) the growth and toxin production of Clostridium Botulinum; or

(iii) in raw shell eggs, the growth of Salmonella Enteritidis;

(b) includes:

(i) a food of animal origin that is raw or heat-treated;

(ii) a food of plant origin that is heat-treated or consists of raw seed sprouts;

(iii) cut melons; and

(iv) garlic and oil mixtures that are not acidified or otherwise modified at a food processing plant in a way that results in mixtures that do not support growth specified in Subsection (5)(a); and

(c) does not include:

(i) an air-cooled hard-boiled egg with shell intact;

(ii) a food with an A_w value of 0.85 or less;

(iii) a food with a pH level of 4.6 or below when measured at 24 degrees Celsius or 75 degrees Fahrenheit;

(iv) a food in an unopened hermetically sealed container that is commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution;

(v) a food for which laboratory evidence demonstrates that the rapid and progressive growth of infectious or toxigenic microorganisms or the growth of *S. Enteritidis* in eggs or *C. Botulinum* cannot occur, such as a food that has an A_w and a pH that are above the levels specified in Subsections (5)(c)(ii) and (iii), and that may contain a preservative, other barrier to the growth of microorganisms, or a combination of barriers that inhibit the growth of microorganisms; or

(vi) a food that does not support the growth of microorganisms as specified in Subsection (5)(a), even though the food may contain an infectious or toxigenic microorganism or chemical or physical contaminant at a level sufficient to cause illness.

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

26-15a-103. Duties.

In connection with this chapter:

(1) the department shall:

(a) establish, by rule:

(i) statewide, uniform standards for certified food safety managers;

(ii) criteria for food safety certification examinations; and

(iii) other provisions necessary to implement this chapter; and

(b) approve food safety certification examinations; and

(2) the local health department shall enforce the provisions of this chapter.

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

26-15a-104. Food service establishment requirements -- Enforcement -- Right of

appeal.

(1) (a) Except as provided in Subsection (1)(b), each food service establishment in the state shall, on or before July 1, 1999, be managed by at least one full-time certified food safety manager at each establishment site, who need not be present at the establishment site during all its hours of operation.

(b) Food service establishments, under the same ownership, that prepare and serve a total of five or fewer potentially hazardous foods shall employ at least one certified food safety manager for every ten establishment sites under common ownership.

(2) Within 60 days of the termination of a certified food safety manager's employment that results in the food service establishment no longer being in compliance with Subsection (1), the food service establishment shall:

(a) employ a new certified food safety manager; or

(b) designate another employee to become the establishment's certified food safety manager who shall commence a department-approved food safety manager training course.

(3) Compliance with the 60-day time period provided in Subsection (2) may be extended by the local health department for reasonable cause, as determined by the department by rule.

(4) (a) The local health department may determine whether a food service establishment is in compliance with this section by visiting the establishment during regular business hours and requesting information and documentation about the employment of a certified food safety manager.

(b) If a violation of this section is identified, the local health department shall propose remedial action to bring the food service establishment into compliance.

(c) A food service establishment receiving notice of a violation and proposed remedial action from a local health department may appeal the notice of violation and proposed remedial action pursuant to procedures established by the local health department, which shall be essentially consistent with the provisions of Title 63, Chapter 46b, Administrative Procedures Act.

Notwithstanding the provisions of Section 63-46b-15, an appeal of a local health department decision to a district court shall be conducted as an original, independent proceeding, and not as a review of the proceedings conducted by the local health department. The district court shall give

no deference to the findings or conclusions of the local health department.

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

26-15a-105. Exemptions to food service establishment requirements.

(1) The following are not subject to the provisions of Section 26-15a-104:

(a) special events sponsored by municipal or nonprofit civic organizations, including food booths at school sporting events and little league athletic events and church functions;

(b) temporary event food services approved by a local health department;

(c) vendors and other food service establishments that serve only commercially prepackaged foods and beverages as defined by the department by rule;

(d) private homes not used as a commercial food service establishment;

(e) health care facilities licensed under Chapter 21, Health Care Facility Licensing and Inspection Act;

(f) bed and breakfast establishments at which the only meal served is a continental breakfast as defined by the department by rule;

(g) residential child care provides;

(h) child care providers and programs licensed under Chapter 39, Utah Child Care Licensing Act; and

(i) back country food service establishments.

(2) Nothing in this section may be construed as exempting a food service establishment described in Subsection (1) from any other applicable food safety laws of this state.

Section 6. Section **26-15a-106** is enacted to read:

26-15a-106. Certified food safety manager.

(1) Before a person may manage a food service establishment as a certified food safety manager, that person shall submit documentation to the appropriate local health department indicating a passing score on a department-approved examination.

(2) To continue to manage a food service establishment, a certified food safety manager shall:

(a) successfully complete, every three years, renewal requirements established by department

rule which are consistent with original certification requirements; and

(b) submit documentation within 30 days of the completion of renewal requirements to the appropriate local health department.

(3) A local health department may deny, revoke, or suspend the authority of a certified food safety manager to manage a food service establishment or require the completion of additional food safety training courses for any one of the following reasons:

(a) submitting information required under Subsection (1) or (2) that is false, incomplete, or misleading;

(b) repeated violations of department or local health department food safety rules; or

(c) operating a food service establishment in a way that causes or creates a health hazard or otherwise threatens the public health, safety, or welfare.

(4) A determination of a local health department made pursuant to Subsection (3) may be appealed by a certified food safety manager in the same manner provided for in Subsection 26-15a-104(4).

(5) No person may use the title "certified food safety manager," or any other similar title, unless the person has satisfied the requirements of this chapter.

Section 7. Section **26-15a-107** is enacted to read:

26-15a-107. Duties.

Certified food safety managers shall:

(1) establish and monitor compliance with practices and procedures in the food service establishments where they are employed to maintain compliance with department and local health department food safety rules; and

(2) perform such other duties that may be necessary to ensure food safety in the food service establishments where they are employed.

Section 8. Section **26A-1-114** is amended to read:

26A-1-114. Powers and duties of departments.

(1) A local health department may:

(a) enforce state laws, local ordinances, department rules, and local health department

standards and regulations relating to public health and sanitation, including the plumbing code adopted by the Division of Occupational and Professional Licensing under Section 58-56-4 and under Title 26, Chapter 15a, Food Safety Manager Certification Act;

(b) establish, maintain, and enforce isolation and quarantine, and exercise physical control over property and over individuals as the local health department finds necessary for the protection of the public health;

(c) establish and maintain medical, environmental, occupational, and other laboratory services considered necessary or proper for the protection of the public health;

(d) establish and operate reasonable health programs or measures not in conflict with state law that:

(i) are necessary or desirable for the promotion or protection of the public health and the control of disease; or

(ii) may be necessary to ameliorate the major risk factors associated with the major causes of injury, sickness, death, and disability in the state;

(e) close theaters, schools, and other public places and prohibit gatherings of people when necessary to protect the public health;

(f) abate nuisances or eliminate sources of filth and infectious and communicable diseases affecting the public health and bill the owner or other person in charge of the premises upon which this nuisance occurs for the cost of abatement;

(g) make necessary sanitary and health investigations and inspections on its own initiative or in cooperation with the Department of Health or Environmental Quality, or both, as to any matters affecting the public health;

(h) (i) establish and collect appropriate fees;

(ii) accept, use, and administer all federal, state, or private donations or grants of funds, property, services, or materials for public health purposes; and

(iii) make agreements not in conflict with state law that are conditional to receiving a donation or grant;

(i) prepare, publish, and disseminate information necessary to inform and advise the public

concerning:

(i) the health and wellness of the population, specific hazards, and risk factors that may adversely affect the health and wellness of the population; and

(ii) specific activities individuals and institutions can engage in to promote and protect the health and wellness of the population;

(j) investigate the causes of morbidity and mortality;

(k) issue notices and orders necessary to carry out this part;

(l) conduct studies to identify injury problems, establish injury control systems, develop standards for the correction and prevention of future occurrences, and provide public information and instruction to special high risk groups;

(m) cooperate with boards created under Section 19-1-106 to enforce laws and rules within the jurisdiction of the boards; and

(n) cooperate with the state health department, the Department of Corrections, the Administrative Office of the Courts, the Division of Youth Corrections, and the Crime Victims Reparations Board to conduct testing for HIV infection of convicted sexual offenders and any victims of a sexual offense.

(2) The local health department shall:

(a) establish programs or measures to promote and protect the health and general wellness of the people within the boundaries of the local health department;

(b) investigate infectious and other diseases of public health importance and implement measures to control the causes of epidemic and communicable diseases and other conditions significantly affecting the public health which may include involuntary testing of convicted sexual offenders for the HIV infection pursuant to Section 76-5-502 and voluntary testing of victims of sexual offenses for HIV infection pursuant to Section 76-5-503;

(c) cooperate with the department in matters pertaining to the public health and in the administration of state health laws; and

(d) coordinate implementation of environmental programs to maximize efficient use of resources by developing with the Department of Environmental Quality a Comprehensive

Environmental Service Delivery Plan that:

(i) recognizes that the Department of Environmental Quality and local health departments are the foundation for providing environmental health programs in the state;

(ii) delineates the responsibilities of the department and each local health department for the efficient delivery of environmental programs using federal, state, and local authorities, responsibilities, and resources;

(iii) provides for the delegation of authority and pass through of funding to local health departments for environmental programs, to the extent allowed by applicable law, identified in the plan, and requested by the local health department; and

(iv) is reviewed and updated annually.

(3) The local health department has the following duties regarding public and private schools within its boundaries:

(a) enforce all ordinances, standards, and regulations pertaining to the public health of persons attending public and private schools;

(b) exclude from school attendance any person, including teachers, who is suffering from any communicable or infectious disease, whether acute or chronic, if the person is likely to convey the disease to those in attendance;

(c) (i) make regular inspections of the health-related condition of all school buildings and premises;

(ii) report the inspections on forms furnished by the department to those responsible for the condition and provide instructions for correction of any conditions that impair or endanger the health or life of those attending the schools; and

(iii) provide a copy of the report to the department at the time the report is made.

(4) If those responsible for the health-related condition of the school buildings and premises do not carry out any instructions for corrections provided in a report in Subsection (3)(c), the local health board shall cause the conditions to be corrected at the expense of the persons responsible.

(5) The local health department may exercise incidental authority as necessary to carry out the provisions and purposes of this part.

