

Senator Darin G. Peterson proposes the following substitute bill:

FOOD SAFETY MANAGER CERTIFICATION

2005 GENERAL SESSION

STATE OF UTAH

Sponsor: Darin G. Peterson

LONG TITLE

General Description:

This bill amends the Health Code related to food service establishment requirements for hazardous foods.

Highlighted Provisions:

This bill:

- ▶ amends the definition of a potentially hazardous food;
- ▶ amends the requirement for the management by a full-time food safety manager;

and

- ▶ amends exemptions to food service establishments.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2005.

Utah Code Sections Affected:

AMENDS:

26-15a-102, as enacted by Chapter 345, Laws of Utah 1998

26-15a-104, as enacted by Chapter 345, Laws of Utah 1998

26-15a-105, as enacted by Chapter 345, Laws of Utah 1998



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

27 Section 1. Section **26-15a-102** is amended to read:

28 **26-15a-102. Definitions.**

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

31 (a) provides food services; and

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

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

36 (a) passes successfully a department-approved examination;

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

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

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

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

47 (5) "Potentially hazardous foods"~~[:] shall be defined by the department by~~
48 administrative rule adopted in accordance with Title 63, Chapter 46a, Utah Administrative
49 Rulemaking Act.

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

52 ~~[(i) the rapid and progressive growth of infectious or toxigenic microorganisms;]~~

53 ~~[(ii) the growth and toxin production of Clostridium Botulinum; or]~~

54 ~~[(iii) in raw shell eggs, the growth of Salmonella Enteritidis;]~~

55 ~~[(b) includes:]~~

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

- 57 ~~[(ii) a food of plant origin that is heat-treated or consists of raw seed sprouts;]~~
- 58 ~~[(iii) cut melons; and]~~
- 59 ~~[(iv) garlic and oil mixtures that are not acidified or otherwise modified at a food~~
- 60 ~~processing plant in a way that results in mixtures that do not support growth specified in~~
- 61 ~~Subsection (5)(a); and]~~
- 62 ~~[(c) does not include:]~~
- 63 ~~[(i) an air-cooled hard-boiled egg with shell intact;]~~
- 64 ~~[(ii) a food with an Aw value of 0.85 or less;]~~
- 65 ~~[(iii) a food with a pH level of 4.6 or below when measured at 24 degrees Celsius or 75~~
- 66 ~~degrees Fahrenheit;]~~
- 67 ~~[(iv) a food in an unopened hermetically sealed container that is commercially~~
- 68 ~~processed to achieve and maintain commercial sterility under conditions of nonrefrigerated~~
- 69 ~~storage and distribution;]~~
- 70 ~~[(v) a food for which laboratory evidence demonstrates that the rapid and progressive~~
- 71 ~~growth of infectious or toxigenic microorganisms or the growth of S. Enteritidis in eggs or C.~~
- 72 ~~Botulinum cannot occur, such as a food that has an Aw and a pH that are above the levels~~
- 73 ~~specified in Subsections (5)(c)(ii) and (iii), and that may contain a preservative, other barrier to~~
- 74 ~~the growth of microorganisms, or a combination of barriers that inhibit the growth of~~
- 75 ~~microorganisms; or]~~
- 76 ~~[(vi) a food that does not support the growth of microorganisms as specified in~~
- 77 ~~Subsection (5)(a), even though the food may contain an infectious or toxigenic microorganism~~
- 78 ~~or chemical or physical contaminant at a level sufficient to cause illness.]~~

79 Section 2. Section **26-15a-104** is amended to read:

80 **26-15a-104. Food service establishment requirements -- Enforcement -- Right of**
81 **appeal.**

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

86 ~~[(b) Food service establishments, under the same ownership, that prepare and serve a~~
87 ~~total of five or fewer potentially hazardous foods shall employ at least one certified food safety~~

88 ~~manager for every ten establishment sites under common ownership.]~~

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

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

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

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

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

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

104 (c) A food service establishment receiving notice of a violation and proposed remedial
105 action from a local health department may appeal the notice of violation and proposed remedial
106 action pursuant to procedures established by the local health department, which shall be
107 essentially consistent with the provisions of Title 63, Chapter 46b, Administrative Procedures
108 Act. Notwithstanding the provisions of Section 63-46b-15, an appeal of a local health
109 department decision to a district court shall be conducted as an original, independent
110 proceeding, and not as a review of the proceedings conducted by the local health department.
111 The district court shall give no deference to the findings or conclusions of the local health
112 department.

113 Section 3. Section **26-15a-105** is amended to read:

114 **26-15a-105. Exemptions to food service establishment requirements.**

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

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

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

- 119 (c) vendors and other food service establishments that serve only commercially
120 prepackaged foods and beverages as defined by the department by rule;
- 121 (d) private homes not used as a commercial food service establishment;
- 122 (e) health care facilities licensed under Chapter 21, Health Care Facility Licensing and
123 Inspection Act;
- 124 (f) bed and breakfast establishments at which the only meal served is a continental
125 breakfast as defined by the department by rule;
- 126 (g) residential child care providers;
- 127 (h) child care providers and programs licensed under Chapter 39, Utah Child Care
128 Licensing Act; ~~and~~
- 129 (i) back country food service establishments[-]; and
130 a lowest risk or permitted food establishment category determined by a risk
131 assessment evaluation established by the department by administrative rule adopted in
132 accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.
- 133 (2) Nothing in this section may be construed as exempting a food service establishment
134 described in Subsection (1) from any other applicable food safety laws of this state.

135 **Section 4. Effective date.**

136 This bill takes effect on July 1, 2005.