

Representative Roger E. Barrus proposes the following substitute bill:

REGULATION OF COTTAGE FOOD

PRODUCTION OPERATION

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Roger E. Barrus

Senate Sponsor: Margaret Dayton

LONG TITLE

General Description:

This bill amends the Utah Wholesome Food Production Act to provide for the registration of cottage food production operations as food establishments.

Highlighted Provisions:

This bill:

- ▶ defines terms, including cottage food production operation and potentially hazardous food product;
- ▶ requires the Department of Agriculture and Food to develop administrative rules to register cottage food production operations as food establishments; and
- ▶ clarifies the jurisdiction of the Department of Agriculture and Food and local health departments regarding the regulation of cottage food production operations.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:



26 4-5-9.5, Utah Code Annotated 1953

27

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

29 Section 1. Section 4-5-9.5 is enacted to read:

30 **4-5-9.5. Cottage food production operations.**

31 (1) For purposes of this chapter:

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

35 (b) "Home" means a primary residence:

36 (i) occupied by the individual who is operating a cottage food production operation;
37 and

38 (ii) which contains:

39 (A) a kitchen designed for common residential usage; and

40 (B) appliances designed for common residential usage.

41 (c) "Potentially hazardous food" or "food that requires time/temperature controls for
42 safety":

43 (i) means a food that requires time and or temperature control for safety to limit
44 pathogenic microorganism growth or toxin formation and is in a form capable of supporting:

45 (A) the rapid and progressive growth of infections or toxigenic microorganisms;

46 (B) the growth and toxin production of Clostridium botulinum; or

47 (C) in shell eggs, the growth of Salmonella enteritidis;

48 (ii) includes:

49 (A) an animal food;

50 (B) a food of animal origin that is raw or heat treated;

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

52 (D) cut melons;

53 (E) cut tomatoes; and

54 (F) garlic and oil mixtures that are not acidified or otherwise modified at a food
55 establishment in a way that results in mixtures that do not support growth as specified under
56 Subsection (1)(c)(i); and

- 57 (iii) does not include:
- 58 (A) an air-cooled hard-boiled egg with shell intact;
- 59 (B) a food with an actual weight or water activity value of 0.85 or less;
- 60 (C) a food with pH level of 4.6 or below when measured at 24 degrees Centigrade;
- 61 (D) a food, in an unopened hermetically sealed container, that is processed to achieve
62 and maintain sterility under conditions of nonrefrigerated storage and distribution;
- 63 (E) a food for which laboratory evidence demonstrates that the rapid and progressive
64 growth of items listed in Subsection (1)(c)(i) cannot occur, such as a food that:
- 65 (I) has an actual weight and a pH level that are above the levels specified under
66 Subsections (1)(c)(iii)(B) and (C); or
- 67 (II) contains a preservative or other barrier to the growth of microorganisms, or a
68 combination of barriers that inhibit the growth of microorganisms; or
- 69 (F) a food that does not support the growth of microorganisms as specified under
70 Subsection (1)(c)(i) even though the food may contain an infectious or toxigenic
71 microorganism or chemical or physical contaminant at a level sufficient to cause illness.
- 72 (2) (a) The department shall adopt rules pursuant to Title 63, Chapter 46a, Utah
73 Administrative Rulemaking Act, as necessary to protect public health and ensure a safe food
74 supply.
- 75 (b) Rules adopted pursuant to this Subsection (2) shall provide for:
- 76 (i) the registration of cottage food production operations as food establishments under
77 this chapter;
- 78 (ii) the labeling of products from a cottage food production operation as "Home
79 Produced"; and
- 80 (iii) other exceptions to the chapter that the department determines are appropriate and
81 that are consistent with this section.
- 82 (3) Rules adopted pursuant to Subsection (2):
- 83 (a) may not require:
- 84 (i) the use of commercial surfaces such as stainless steel counters or cabinets;
- 85 (ii) the use of a commercial grade:
- 86 (A) sink;
- 87 (B) dishwasher; or

88 (C) oven;
89 (iii) a separate kitchen for the cottage food production operation; or
90 (iv) the submission of plans and specifications before construction of, or remodel of, a
91 cottage food production operation; and
92 (b) may require:
93 (i) an inspection of a cottage food production operation:
94 (A) prior to issuing a registration for the cottage food production operation; and
95 (B) at other times if the department has reason to believe the cottage food production
96 operation is operating:
97 (I) in violation of this chapter or an administrative rule adopted pursuant to this
98 section; or
99 (II) in an unsanitary manner; and
100 (ii) the use of finished and cleanable surfaces.
101 (4) (a) The operator of a cottage food production operation shall:
102 (i) register with the department as a cottage food production operation before operating
103 as a cottage food production operation; and
104 (ii) hold a valid food handler's permit.
105 (b) Notwithstanding the provisions of Subsections 4-5-9(1)(a) and (c), the department
106 shall issue a registration to an applicant for a cottage food production operation if the applicant
107 for the registration:
108 (i) passes the inspection required by Subsection (3)(b);
109 (ii) pays the fees required by the department; and
110 (iii) meets the requirements of this section.
111 (5) Notwithstanding the provisions of Section 26A-1-114, a local health department:
112 (a) does not have jurisdiction to regulate the production of food at a cottage food
113 production operation operating in compliance with this section, as long as the products are not
114 offered to the public for consumption on the premises; and
115 (b) does have jurisdiction to investigate a cottage food production operation in any
116 investigation into the cause of a food born illness outbreak.
117 (6) A food service establishment as defined in Section 26-15a-102 may not use a
118 product produced in a cottage food production operation as an ingredient in any food that is

119 prepared by the food establishment and offered by the food establishment to the public for
120 consumption.

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Fiscal Note

2007 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for local governments. Some cottage food production operations would now be subject to inspection and fees.
