

# HB0251S01 compared with HB0251

~~deleted text~~ shows text that was in HB0251 but was deleted in HB0251S01.

Inserted text shows text that was not in HB0251 but was inserted into HB0251S01.

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Representative Keven J. Stratton proposes the following substitute bill:

## UTAH WHOLESOME FOOD ACT AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Keven J. Stratton**

Senate Sponsor: \_\_\_\_\_

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### LONG TITLE

#### General Description:

This bill amends provisions of the Utah Wholesome Food Act.

#### Highlighted Provisions:

This bill:

- ▶ adds ~~a definition for "produce"~~definitions;
- ▶ designates "produce" as adulterated if it is in violation of certain provisions of the Federal Food Safety Modernization Act;
- ▶ expands the definition of "food establishment" to include farms;
- ▶ allows an authorized agent of the Department of Agriculture and Food to enter a farm for inspections under certain circumstances;
- ▶ provides that carriers are subject to regulation under the Utah Wholesome Food Act; and

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- ▶ makes technical changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

#### AMENDS:

**4-5-102**, as renumbered and amended by Laws of Utah 2017, Chapter 345

**4-5-103**, as renumbered and amended by Laws of Utah 2017, Chapter 345

**4-5-105**, as renumbered and amended by Laws of Utah 2017, Chapter 345

**4-5-501**, as last amended by Laws of Utah 2017, Chapter 42 and renumbered and amended by Laws of Utah 2017, Chapter 345 and last amended by Coordination Clause, Laws of Utah 2017, Chapter 345

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

Section 1. Section **4-5-102** is amended to read:

#### **4-5-102. Definitions.**

As used in this chapter:

(1) "Advertisement" means a representation, other than by labeling, made to induce the purchase of food.

(2) (a) "Color additive":

(i) means a dye, pigment, or other substance not exempted under the federal act that, when added or applied to a food, is capable of imparting color; and

(ii) includes black, white, and intermediate grays.

(b) "Color additive" does not include a pesticide chemical, soil or plant nutrient, or other agricultural chemical which imparts color solely because of its effect, before or after harvest, in aiding, retarding, or otherwise affecting, directly or indirectly, the growth or other natural physiological process of any plant life.

(3) (a) "Consumer commodity" means a food, as defined by this act, or by the federal act.

(b) "Consumer commodity" does not include:

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- (i) a commodity subject to packaging or labeling requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. Sec. 136 et seq.;
  - (ii) a commodity subject to Title 4, Chapter 16, Utah Seed Act;
  - (iii) a meat or meat product subject to the Federal Meat Inspection Act, 21 U.S.C. Sec. 601 et seq.;
  - (iv) a poultry or poultry product subject to the Poultry Inspection Act, 21 U.S.C. Sec. 451 et seq.;
  - (v) a tobacco or tobacco product; or
  - (vi) a beverage subject to or complying with packaging or labeling requirements imposed under the Federal Alcohol Administration Act, 27 U.S.C. Sec. 201 et seq.
- (4) "Contaminated" means not securely protected from dust, dirt, or foreign or injurious agents.

(5) (a) "Farm" means an agricultural operation, under management by one entity, that grows or harvests crops.

(b) "Farm" does not include an entity that is exempt under 21 C.F.R. 112.4(a), 21 C.F.R. 112.5, or 21 C.F.R. 117.3.

~~(5)~~ (6) "Farmers market" means a market where producers of food products sell only fresh, raw, whole, unprocessed, and unprepared food items directly to the final consumer.

~~(6)~~ (7) "Federal act" means the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sec. 301 et seq.

~~(7)~~ (8) "Food" means:

- (a) an article used for food or drink for human or animal consumption or the components of the article;
- (b) chewing gum or its components; or
- (c) a food supplement for special dietary use which is necessitated because of a physical, physiological, pathological, or other condition.

~~(8)~~ (9) (a) "Food additive" means a substance, the intended use of which results in the substance becoming a component, or otherwise affecting the characteristics, of a food.

(b) (i) "Food additive" includes a substance or source of radiation intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food.

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(ii) "Food additive" does not include:

(A) a pesticide chemical in or on a raw agricultural commodity;

(B) a pesticide chemical that is intended for use or is used in the production, storage, or transportation of a raw agricultural commodity; or

(C) a substance used in accordance with a sanction or approval granted pursuant to the Poultry Products Inspection Act, 21 U.S.C. Sec. 451 et seq. or the Federal Meat Inspection Act, 21 U.S.C. Sec. 601 et seq.

~~[(9)]~~ [(10)] (a) "Food establishment" means a grocery store, bakery, candy factory, food processor, bottling plant, sugar factory, cannery, farm, rabbit processor, meat processor, flour mill, cold or dry warehouse storage, or other facility where food products are manufactured, canned, processed, packaged, stored, transported, prepared, sold, or offered for sale.

(b) "Food establishment" does not include:

(i) a dairy farm, a dairy plant, or a meat establishment, which is subject to the Poultry Products Inspection Act, 21 U.S.C. Sec. 451 et seq., or the Federal Meat Inspection Act, 21 U.S.C. Sec. 601 et seq.; or

(ii) a farmers market.

~~[(10)]~~ [(11)] "Label" means a written, printed, or graphic display on the immediate container of an article of food.

~~[(11)]~~ [(12)] "Labeling" means a label and other written, printed, or graphic display:

(a) on an article of food or its containers or wrappers; or

(b) accompanying the article of food.

~~[(12)]~~ [(13)] "Official compendium" means the official documents or supplements to the:

(a) United States Pharmacopoeia;

(b) National Formulary; or

(c) Homeopathic Pharmacopoeia of the United States.

~~[(13)]~~ [(14)] (a) "Package" means a container or wrapping in which a consumer commodity is enclosed for use in the delivery or display of the consumer commodity to retail purchasers.

(b) "Package" does not include:

(i) package liners;

(ii) shipping containers or wrapping used solely for the transportation of consumer

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commodities in bulk or in quantity to manufacturers, packers, processors, or wholesale or retail distributors; or

(iii) shipping containers or outer wrappings used by retailers to ship or deliver a consumer commodity to retail customers, if the containers and wrappings bear no printed information relating to the consumer commodity.

~~[(14)]~~ (15) (a) "Pesticide" means a substance intended:

(i) to prevent, destroy, repel, or mitigate a pest, as defined under Subsection 4-14-102(20); or

(ii) for use as a plant regulator, defoliant, or [~~desiccant~~] desiccant.

(b) "Pesticide" does not include:

(i) a new animal drug, as defined by 21 U.S.C. Sec. 321, that has been determined by the United States Secretary of Health and Human Services not to be a new animal drug by federal regulation establishing conditions of use of the drug; or

(ii) animal feed, as defined by 21 U.S.C. Sec. 321, bearing or containing a new animal drug.

~~[(15)]~~ (16) "Principal display panel" means that part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

~~[(16)]~~ (17) "Produce" means a food that is a:

(a) fruit, vegetable, mix of intact fruits and vegetables, mushroom, sprout from any seed source, peanut, tree nut, or herb; and

(b) raw agricultural commodity.

~~[(16)]~~ ~~[(17)]~~ (18) "Raw agricultural commodity" means a food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled, natural form prior to marketing.

~~[(17)]~~ ~~[(18)]~~ (19) "Registration" means the issuance of a certificate by the commissioner to a qualified food establishment.

(20) "Sprout" means the shoot of a plant generally harvested when cotyledons are undeveloped or underdeveloped and mature leaves have not emerged.

Section 2. Section **4-5-103** is amended to read:

**4-5-103. Adulterated food specified.**

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(1) A food is adulterated:

~~[(†)]~~ (a) if it bears or contains ~~[any]~~ a poisonous or deleterious substance in a quantity that may ordinarily render it injurious to health; ~~[but in case the substance is not an added substance the food may not be considered adulterated under this Subsection (1)(a) if the quantity of the substance in such food does not ordinarily render it injurious to health;]~~

(b) ~~[(†)]~~ if it bears or contains ~~[any]~~ an added poisonous or added deleterious substance ~~[other than one that is: (A) a pesticide chemical in or on a raw agricultural commodity; (B) a food additive; or (C) a color additive]~~ that is unsafe within the meaning of Subsection 4-5-204(1); ~~[or]~~

~~[(†)]~~ (c) except as provided in Subsection (3), if it is a raw agricultural commodity and it bears or contains a pesticide chemical that is unsafe within the meaning of 21 U.S.C. Sec. 346a; ~~[or]~~

~~[(†)]~~ (d) if it is ~~[or it]~~, bears, or contains ~~[any]~~ a food additive that is unsafe within the meaning of 21 U.S.C. Sec. 348; ~~[provided that where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or tolerance prescribed under 21 U.S.C. 346a and the raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling the residue of such pesticide chemical remaining in or on such processed food shall, notwithstanding the provisions of Section 4-5-204 and this Subsection (1)(b)(iii), not be considered unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice, and the concentration of such residue in the processed food when ready to eat is not greater than the tolerance prescribed for the raw agricultural commodity;]~~

~~[(†)]~~ (e) if it consists in whole or in part of a diseased, contaminated, filthy, putrid, or decomposed substance~~[-or]~~;

(f) if it is otherwise unfit for food;

~~[(†)]~~ (g) if it has been produced, prepared, packed, or held under unsanitary conditions whereby it may have:

(i) become contaminated with filth~~[-]~~; or ~~[whereby it may have]~~

(ii) been rendered diseased, unwholesome, or injurious to health;

~~[(†)]~~ (h) if it is, in whole or in part, the product of:

(i) a diseased animal ~~[or]~~;

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(ii) an animal that has died ~~[otherwise]~~ other than by slaughter~~;~~; or ~~[of]~~

(iii) an animal that has been fed upon the uncooked offal from a slaughterhouse;

~~[(f)]~~ (i) if its container is composed, in whole or in part, of ~~[any]~~ a poisonous or deleterious substance that may render the contents injurious to health;

~~[(g)]~~ (j) if it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a rule or exemption in effect pursuant to Section 4-5-204, or 21 U.S.C. Sec. 348; ~~[or]~~

~~[(h)]~~ ~~{ in }~~ (k) in if the food is a meat or meat ~~[products are adulterated]~~ product, and:

(i) ~~[if such products are in casings, packages, or wrappers]~~ the product is in a casing, package, or wrapper:

(A) through which ~~[any]~~ a part of their contents can be seen; and

(B) which, or the markings of which, are colored ~~[red or any other color]~~ so as to be misleading or deceptive with respect to the color, quality, or kind of ~~[such products]~~ product to which ~~[they are]~~ the color is applied; or

(ii) ~~[if such products contain or bear any]~~ the product contains or bears a color additive;

(l) if the food is produce and is in violation of a provision of 21 C.F.R. Part 112;

~~[(2)(a)]~~ if any ~~(m)~~ if a valuable constituent has been, in whole or in part, omitted or abstracted ~~[therefrom; (b) if any]~~ from a product and a substance has been substituted wholly or in part ~~[therefor];~~

~~[(c)]~~ (n) if damage or inferiority has been concealed ~~[in any manner; or];~~

~~[(d)]~~ (o) if ~~[any]~~ a substance has been added ~~[or],~~ mixed, or packed ~~[therewith]~~ with a product so as to:

(i) increase its bulk or weight~~[-or];~~

(ii) reduce its quality or strength; or

(iii) make it appear better or of greater value than it is; or

~~[(3)]~~ (p) if ~~[it]~~ the food is confectionery, and:

~~[(a)]~~ (i) has partially or completely imbedded ~~[therein any]~~ in the food a nonnutritive object~~[-; provided that this Subsection (3)(a) does not apply in the case of any nonnutritive objective if, in the judgment of the department such object], unless the department determines that the nonnutritive object is of practical functional value to the confectionery product and would not render the product injurious or hazardous to health;~~

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~~[(b)]~~ (ii) bears or contains ~~[any]~~ alcohol, other than alcohol ~~[not in excess of .05% by volume]~~ derived solely from the use of flavoring extracts, that does not exceed .05% by volume; or

~~[(c)]~~ (iii) bears or contains ~~[any]~~ a nonnutritive substance~~[- provided, that this Subsection (3)(c) does not apply to]~~, unless:

(A) it is a safe nonnutritive substance that is in or on confectionery [by reason of its use for some] for a practical functional purpose in the manufacture, packaging, or storing of [such] the confectionery [if]; and

(B) the use of the substance does not promote deception of the consumer or otherwise result in adulteration or misbranding in violation of this chapter.

~~[(4)]~~ (2) The department may, for the purpose of avoiding or resolving uncertainty as to the application of Subsection ~~[(3)(c)]~~ (1)(p)(iii), issue rules allowing or prohibiting the use of a particular nonnutritive ~~[substances]~~ substance.

(3) Notwithstanding the provisions of Section 4-5-204 and Subsection (1)(c), the residue of a pesticide chemical remaining in or on a processed food is not considered unsafe if:

(a) the pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or tolerance prescribed under 21 U.S.C. Sec. 346a;

(b) the residue of the pesticide chemical in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice;

(c) the raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling; and

(d) the concentration of the residue in the processed food when ready to eat is no greater than the tolerance prescribed for the raw agricultural commodity.

Section 3. Section **4-5-105** is amended to read:

### **4-5-105. Inspection of premises and records -- Authority to take samples --**

#### **Inspection results reported.**

(1) An authorized agent of the department, upon presenting appropriate credentials to the owner, operator, or agent in charge, may:

(a) enter at reasonable times ~~[any]~~ a factory, farm, warehouse, or establishment in which food is manufactured, processed, packed, or held for introduction into commerce or after introduction into commerce;

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(b) enter ~~[any]~~ a vehicle being used to transport or hold food in commerce;

(c) inspect at reasonable times and within reasonable limits and in a reasonable manner ~~[any]~~ a factory, warehouse, establishment, or vehicle and all pertinent equipment, finished and unfinished materials, containers, and labeling located within it;

(d) obtain samples necessary for the enforcement of this chapter ~~[so long as]~~ if the department:

(i) pays the posted price for the sample if requested to do so; and

(ii) receives a signed receipt from the person from whom the sample is taken; and

(e) have access to and copy all records of carriers in commerce showing:

(i) the movement in commerce of ~~[any]~~ food;

(ii) the holding of food during or after movement in commerce; and

(iii) the quantity, shipper, and consignee of food.

(2) Evidence obtained under this section may not be used in a criminal prosecution of the person from whom the evidence was obtained.

(3) Carriers ~~[may not be]~~ are subject to the other provisions of this chapter by reason of their receipt, carriage, holding, or delivery of food in the usual course of business as carriers.

(4) ~~[Upon completion of]~~ After the inspection of a factory, warehouse, consulting laboratory, or other establishment and ~~[prior to]~~ before leaving the premises, the authorized agent making the inspection shall give ~~[to]~~ the owner, operator, or agent in charge a written report ~~[in writing setting forth]~~ describing any conditions or practices observed by ~~[him]~~ the agent during the inspection which, in ~~[his]~~ the agent's judgment, indicate that ~~[any]~~ a food in the establishment:

(a) consists in whole or in part of ~~[any]~~ a filthy, putrid, or decomposed substance; or

(b) has been prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth or ~~[whereby it may have]~~ been rendered injurious to health.

(5) A copy of the report required under Subsection (4) shall be sent promptly to the department.

(6) If the authorized agent making the inspection of a factory, warehouse, or other establishment has obtained ~~[any]~~ a sample in the course of the inspection, the agent shall give to the owner, operator, or agent in charge:

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(a) a receipt describing the samples obtained[-]; and

~~[(7) When in the course of the inspection the officer or employee making the inspection obtains a sample of any food and]~~

~~—~~ (b) if an analysis is made of the sample for the purpose of ascertaining whether the food consists in whole or in part of ~~[any]~~ a filthy, putrid, or decomposed substance or is otherwise unfit for food, a copy of the results of the analysis ~~[shall be furnished promptly to the owner, operator, or agent in charge].~~

Section 4. Section **4-5-501** is amended to read:

### **4-5-501. Cottage food operations.**

(1) For purposes of this chapter:

(a) "Cottage food operation" means a person who produces a cottage food product in a home kitchen.

(b) "Cottage food product" means a non-potentially hazardous baked good, jam, jelly, or other non-potentially hazardous food produced in a home kitchen.

(c) "Home kitchen" means a kitchen:

(i) designed and intended for use by the residents of a home; and

(ii) used by a resident of the home for the production of a cottage food product.

(d) "Potentially hazardous food" means:

(i) a food of animal origin;

(ii) raw seed sprouts; or

(iii) a food that requires time or temperature control, or both, for safety to limit pathogenic microorganism growth or toxin formation, as identified by the department in rule.

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

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

(a) the use of commercial surfaces such as stainless steel counters or cabinets;

(b) the use of a commercial grade:

(i) sink;

(ii) dishwasher; or

(iii) oven;

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- (c) a separate kitchen for the cottage food [production] operation; or
  - (d) the submission of plans and specifications before construction of, or remodel of, a cottage food production operation.
- (4) The operator of a cottage food [production] operation shall:
- (a) register with the department as a cottage food [production] operation before operating as a cottage food [production] operation;
  - (b) hold a valid food handler's permit; and
  - (c) package a cottage food product with a label, as specified by the department in rule.
- (5) Notwithstanding the provisions of Subsections 4-5-301(1)(a) and (c), the department shall issue a registration to an applicant for a cottage food [production] operation if the applicant for the registration:
- (a) pays the fees required by the department; and
  - (b) meets the requirements of this section.
- (6) Notwithstanding the provisions of Section 26A-1-114, a local health department:
- (a) does not have jurisdiction to regulate the production of food at a cottage food [production] operation operating in compliance with this section, as long as the products are not offered to the public for consumption on the premises; and
  - (b) does have jurisdiction to investigate a cottage food [production] operation in [any] an investigation into the cause of a food [born] borne illness outbreak.
- (7) A food service establishment as defined in Section 26-15a-102 may not use a product produced in a cottage food [production] operation as an ingredient in [any] a food that is prepared by the food establishment and offered by the food establishment to the public for consumption.

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**Legislative Review Note**

**~~Office of Legislative Research and General Counsel~~**