

HB0232S03 compared with HB0232S02

~~text~~ shows text that was in HB0232S02 but was deleted in HB0232S03.

text shows text that was not in HB0232S02 but was inserted into HB0232S03.

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Representative Marc K. Roberts proposes the following substitute bill:

FOOD REVISIONS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Marc K. Roberts

Senate Sponsor: _____

LONG TITLE

General Description:

This bill creates permitting guidelines for agritourism food establishments and amends provisions relating to food handler and food safety permits.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ clarifies provisions related to the certification requirements for an individual who is a certified educator and who teaches a food program;
- ▶ clarifies provisions related to local health departments' documentation process for certified food safety managers;
- ▶ grants administrative authority to the Department of Health to make rules regarding sanitation, equipment, and maintenance requirements for microenterprise home

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kitchens; and

- ▶ grants administrative authority to local health departments to:
 - create and issue agritourism food establishment permits;
 - charge fees for issuing permits and inspecting premises;†
 - ~~create standards and regulations for inspecting agritourism food establishments;†~~ and
 - inspect agritourism food establishments, including inspecting the locations where food is prepared ~~{, and}‡~~.

~~{ → makes technical changes.~~

‡Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

26-15-5, as repealed and reenacted by Laws of Utah 2013, Chapter 444

26-15a-106, as last amended by Laws of Utah 2000, Chapter 86

ENACTS:

26-15b-101, Utah Code Annotated 1953

26-15b-102, Utah Code Annotated 1953

26-15b-103, Utah Code Annotated 1953

26-15b-104, Utah Code Annotated 1953

26-15b-105, Utah Code Annotated 1953

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

Section 1. Section 26-15-5 is amended to read:

26-15-5. Requirements for food handlers -- Training program and testing requirements for permit -- Rulemaking.

(1) As used in this section:

(a) "Approved food handler training program" means a training program described by this section and approved by the department.

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(b) "Food handler" means a person who works with unpackaged food, food equipment or utensils, or food-contact surfaces for a food service establishment.

(c) "Food handler permit" means a permit issued by a local health department to allow a person to work as a food handler.

(d) "Food service establishment" has the same meaning as provided in Section 26-15a-102.

(e) "Instructor" means an individual who is qualified to instruct an approved food handler program on behalf of a provider.

~~(e)~~ (f) "Provider" means a person or entity that provides an approved food handler training program.

(2) A person may not work as a food handler for a food service establishment unless the person:

(a) successfully completes an approved food handler training program within 14 days after the day on which the person begins employment that includes food handler services; and

(b) obtains a food handler permit within 30 days after the day on which the person begins employment that includes food handler services.

(3) An approved food handler training program shall include:

(a) at least 75 minutes of training time;

(b) an exam, which requires a passing score of 75% and, except as provided in Subsection (11), consists of:

(i) 40 multiple-choice questions developed by the department, in consultation with local health departments; and

(ii) four content sections designated by rule of the department with 10 randomly selected questions for each content section; and

(c) upon completion, the awarding of a certificate of completion that is valid with any local health department in the state for 30 days after the day on which the certificate is issued:

(i) to a student who:

(A) completes the training; and

(B) passes the exam described in this Subsection (3) or an exam approved by the department in accordance with Subsection (11); and

(ii) which certificate of completion:

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(A) includes student identifying information determined by department rule; and

(B) is delivered by mail or electronic means.

(4) (a) A person may obtain a food handler permit by:

(i) providing a valid certificate of completion of an approved food handler training program and an application, approved by the local health department, to a local health department; and

(ii) paying a food handler permit fee to the local health department.

(b) (i) A local health department may charge a food handler permit fee that is reasonable and that reflects the cost of managing the food safety program.

(ii) The department shall establish by rule the maximum amount a local health department may charge for the fee described in Subsection (4)(b)(i).

(5) A person working as a food handler for a food service establishment shall obtain a food handler permit:

(a) before handling any food;

(b) within 30 days of initial employment with a food service establishment; and

(c) within seven days of the expiration of an existing food handler permit.

(6) (a) A person who holds a valid food handler permit under this section may serve as a food handler throughout the state without restriction.

(b) A food handler permit granted after June 30, 2013, is valid for three years from the date of issuance.

(7) ~~[A person]~~ An individual may not serve as an instructor ~~[of an approved food handler training program]~~, unless ~~[the person is registered with a local health department as an instructor]~~ the provider includes the individual on the provider's list of instructors.

(8) The department, in consultation with local health departments, shall:

(a) approve the content of an approved food handler training program required under Subsection (3);

(b) approve, as qualified, each provider; and

(c) in accordance with applicable rules made under Subsection (12), provide a means to authenticate:

(i) documents used in an approved food handler training program;

(ii) the identity of an approved instructor; and

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(iii) an approved provider.

(9) An approved food handler training program shall:

(a) provide basic instruction on the Centers for Disease Control and Prevention's top five foodborne illness risk factors, including:

(i) improper hot and cold holding temperatures of potentially hazardous food;

(ii) improper cooking temperatures of food;

(iii) dirty or contaminated utensils and equipment;

(iv) poor employee health and hygiene; and

(v) food from unsafe sources;

(b) be offered through:

(i) a trainer-led class;

(ii) the Internet; or

(iii) a combination of a trainer-led class and the Internet;

(c) maintain a system to verify a certificate of completion of an approved food handler training program issued under Subsection (3) to the department, a local health department, and a food service establishment; and

(d) provide to the department unrestricted access to classroom training sessions and online course materials at any time for audit purposes.

(10) (a) A provider that provides an approved food handler training program may charge a reasonable fee.

(b) If a person or an entity is not approved by the department to provide an approved food handler training program, the person or entity may not represent, in connection with the person's or entity's name or business, including in advertising, that the person or entity is a provider of an approved food handler training program or otherwise represent that a program offered by the person or entity will qualify an individual to work as a food handler in the state.

(11) (a) Subject to the approval of the department every three years, a provider may use an exam that consists of questions that do not conform with the provisions of Subsection (3)(b), if:

(i) the provider complies with the provisions of this Subsection (11);

(ii) the provider pays a fee every three years to the department, which fee shall be determined by the department and shall reflect the cost of the review of the alternative test

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questions; and

(iii) an independent instructional design and testing expert provides a written report to the department containing a positive recommendation based on the expert's analysis as described in Subsection 11(b).

(b) (i) A provider may request approval of a different bank of test questions other than the questions developed under Subsection (3) by submitting to the department a proposed bank of at least 200 test questions organized by learning objective in accordance with Subsection (9)(a).

(ii) A provider proposing a different bank of test questions under this Subsection (11) shall contract with an independent instructional design and testing expert approved by the department at the provider's expense to analyze the provider's bank of test questions to ensure the questions:

(A) effectively measure the applicant's knowledge of the required learning objectives; and

(B) meet the appropriate testing standards for question structure.

(c) If the department provides written notice to a provider that any test question of the provider's approved exam under this Subsection (11) inadequately tests the required learning objectives, the provider shall make required changes to the question within 30 days after the day on which written notice is received by the provider.

(d) A food handler exam offered by a provider may be:

(i) a written exam;

(ii) an online exam; or

(iii) an oral exam, if circumstances require, including when an applicant's language or reading abilities interfere with taking a written or online exam.

(e) A provider shall routinely rotate test questions from the test question bank, change the order of test questions in tests, and change the order of multiple-choice answers in test questions to discourage cheating.

(12) (a) When exercising rulemaking authority under this section the department shall comply with the requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(b) The department shall, by rule, establish requirements designed to inhibit fraud for an approved food handler training program described in this section.

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(c) The requirements described in Subsection (12)(b) may include requirements to ensure that:

(i) an individual does not attempt to complete the program or exam in another individual's place;

(ii) an individual taking the approved food handler training program is focused on training material and actively engaged throughout the training period;

(iii) if the individual is unable to participate online because of technical difficulties, an approved food handler training program provides technical support, such as requiring a telephone number, email, or other method of communication to allow an individual taking the online course or test to receive assistance;

(iv) an approved food handler training program provider maintains a system to reduce fraud as to who completes an approved food handler training program, such as requiring a distinct online certificate with information printed on the certificate that identifies a person taking an online course or exam, or requiring measures to inhibit duplication of a certificate of completion or of a food handler permit;

(v) the department may audit an approved food handler training program;

(vi) an individual taking an online course or certification exam has the opportunity to provide an evaluation of the online course or test;

(vii) an approved food handler training program provider track the Internet protocol address or similar electronic location of an individual who takes an online course or certification exam;

(viii) an individual who takes an online course or exam uses an electronic signature; or

(ix) if the approved food handler training program provider learns that a certificate of completion does not accurately reflect the identity of the individual who took the online course or certification exam, an approved food handler training program provider invalidates the certificate of completion.

(13) An instructor is not required to satisfy any additional training requirements if the instructor:

(a) is an educator in a public or private school; and

(b) teaches a food program that includes food safety in a public or private school in which the instructor is an educator.

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Section 2. Section 26-15a-106 is amended 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 in the format prescribed by the department 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 in the format prescribed by the department 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.

(6) A local health department:

(a) may not charge a fee to accept or process the documentation described in

Subsections (1) and (2);

(b) shall accept photocopies or electronic copies of the documentation described in

Subsections (1) and (2); and

(c) shall allow an individual to submit the documentation described in Subsections (1)

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and (2) by mail, email, or in person.

Section ~~{1}~~3. Section **26-15b-101** is enacted to read:

CHAPTER 15b. AGRITOURISM FOOD ESTABLISHMENT ACT

26-15b-101. Title.

This chapter is known as the "Agritourism Food Establishment Act."

Section ~~{2}~~4. Section **26-15b-102** is enacted to read:

26-15b-102. Definitions.

As used in this chapter:

(1) "Agricultural tourism activity" means the same as that term is defined in Section 78B-4-512.

(2) "Agritourism" means the same as that term is defined in Section 78B-4-512.

(3) "Agritourism food establishment" means a non-commercial kitchen facility ~~{located on a farm}~~ where food is handled, stored, or prepared, ~~{, sold, or}~~ to be offered for sale on a farm in connection with an agricultural tourism activity.

(4) "Agritourism food establishment permit" means a permit issued by a local health department to the operator for the purposes of operating an agritourism food establishment.

(5) "Farm" means a working farm, ranch, or other commercial agricultural, aquacultural, horticultural, or forestry operation.

(6) "Food" means:

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

(b) chewing gum.

(7) "Local health department" means the same as that term is defined in Section 26A-1-102.

(8) "Operator" means a person who owns, manages, or controls, or who has the duty to manage or control, the farm.

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

Section ~~{3}~~5. Section **26-15b-103** is enacted to read:

26-15b-103. Permitting -- Fees.

(1) A farm may not operate an agritourism food establishment unless the farm obtains a

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permit from the local health department that has jurisdiction over the area in which the farm is located.

(2) In accordance with Section 26A-1-121, and subject to the restrictions of Section 26-15b-105, a local health department shall make standards and regulations relating to the permitting of an agritourism food establishment.

(3) In accordance with Section 26A-1-114, a local health department shall impose a fee for an agritourism food establishment permit in an amount that reimburses the local health department for the cost of regulating the agritourism food establishment.

Section ~~{4}~~6. Section **26-15b-104** is enacted to read:

26-15b-104. Safety and health inspections and permits.

(1) A local health department with jurisdiction over an area in which a farm is located may grant an agritourism food establishment permit to the farm.

(2) Nothing in this section prevents a local health department from revoking an agritourism food establishment permit issued by the local health department if the operation of the agritourism food establishment violates the terms of the permit or Section 26-15b-105.

Section ~~{5}~~7. Section **26-15b-105** is enacted to read:

26-15b-105. Permit requirements.

(1) A farm may qualify for an agritourism food establishment permit if:

(a) poultry products that are served at the agritourism establishment are slaughtered and processed in compliance with the Poultry Products Inspection Act, 21 U.S.C. Sec. 451 et seq., and the applicable regulations issued pursuant to that act;

(b) meat not described in Subsection (1)(a) that is served at the agritourism food establishment is slaughtered and processed in compliance with the Federal Meat Inspection Act, 21 U.S.C. Sec. 601 et seq., and the applicable regulations issued pursuant to that act;

(c) a kitchen facility used to prepare food for the agritourism food establishment meets the requirements established by the department;

(d) the farm operates the agritourism food establishment for no more than 14 consecutive days at a time; and

(e) the farm complies with the requirements of this section.

(2) The department shall, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules regarding sanitation, equipment, and maintenance

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requirements for agritourism food establishments.

(3) A local health department shall:

(a) ensure compliance with the rules described in Subsection (2) when inspecting a kitchen facility;

(b) notwithstanding Section 26A-1-113, inspect the kitchen facility of a farm that requests an agritourism food establishment permit only:

(i) for an initial inspection, no more than one week before the agritourism food establishment is scheduled to begin operation;

(ii) for an unscheduled inspection:

(A) of an event scheduled to last no more than three days if the local health department conducts the inspection within three days before or after the day on which the agritourism food establishment is scheduled to begin operation; or

(B) of an event scheduled to last longer than three days if the local health department conducts the inspection within three days before or after the day on which the agritourism food establishment is scheduled to begin operation, or conducts the inspection during operating hours of the agritourism food establishment; or

(iii) for subsequent inspections if:

(A) the local health department provides the operator with reasonable advanced notice about an inspection; or

(B) the local health department has a valid reason to suspect that the agritourism food establishment is the source of an adulterated food or of an outbreak of illness caused by a contaminated food; and

(c) document the reason for any inspection after the permitting inspection, keep a copy of that documentation on file with the agritourism food establishment's permit, and provide a copy of that documentation to the operator.

(4) An agritourism food establishment shall:

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

(i) food;

(ii) equipment;

(iii) utensils; or

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

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

(i) symptoms associated with acute gastrointestinal illness; or

(ii) a communicable disease that is transmissible through food.

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

(a) hand washing facilities, except to require that a hand washing station supplied with warm water, soap, and disposable hand towels is conveniently located;

(b) kitchen sinks, kitchen sink compartments, and dish sanitation, except to require that the kitchen sink has hot and cold water, a sanitizing agent, is fully operational, and that dishes are sanitized between each use;

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

(d) display guards, covers, or containers for display foods, except to require that any food on display that is not protected from the direct line of a consumer's mouth by an effective means is not served or sold to any subsequent consumer;

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

(f) reuse by an individual of drinking cups and tableware for multiple portions;

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

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

(ii) are properly sanitized after use; and

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

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

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

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

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

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

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

(n) dedicated laundry facilities, except to require that linens used for the agritourism food establishment are stored and laundered separately from household laundry and that soiled laundry is stored to prevent contamination of food and equipment;

(o) water, plumbing, drainage, and waste, except to require that sinks be supplied with hot water;

(p) the number of and path of access to toilet facilities, except to require that toilet facilities are equipped with proper handwashing stations;

(q) lighting, except to require that food preparations are well lit by natural or artificial light whenever food is being prepared;

(r) designated dressing areas and storage facilities, except to require that items not ordinarily found in a home kitchen are placed or stored away from food preparation areas, that dressing takes place outside of the kitchen facility, and that food items are stored in a manner that does not allow for contamination;

(s) the presence and handling of animals, except to require that all animals are kept outside of food preparation and service areas during food service and food preparation;

(t) food storage, floor, wall, ceiling, and toilet surfaces, except to require that surfaces are smooth, of durable construction, easily cleanable, and kept clean and free of debris;

(u) kitchen facilities open to living areas, except to require that food is only prepared, handled, or stored in kitchen and food storage areas;

(v) submission of plans and specifications before construction or remodel of a kitchen facility;

(w) the number and type of time/temperature controlled food offered for sale;

(x) approved food sources, except those required by 9 C.F.R. 303.1;

~~(y) the use of items produced under Section 4-5-9.5 and this chapter;~~

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(fzy) the use of an open air barbeque, grill, or outdoor wood-burning oven; or
(faaz) food safety certification, except any individual who is involved in the preparation, storage, or service of food in the agritourism food establishment shall hold a food handler permit as defined in Section 26-15-5.

(6) An operator applying for an agritourism food establishment permit shall provide to the local health department:

(a) written consent to enter the premises where food is prepared, cooked, stored, or harvested for the agritourism food establishment; and

(b) written standard operating procedures that include:

(i) all food that will be stored, handled, and prepared;

(ii) the proposed procedures and methods of food preparation and handling;

(iii) procedures, methods, and schedules for cleaning utensils and equipment;

(iv) procedures and methods for the disposal of refuse; and

(v) a plan for maintaining time/temperature controlled food at the appropriate temperatures for each time/temperature controlled food.

(7) In addition to a fee charged under Section 26-15b-103, if the local health department is required to inspect the farm as a source of an adulterated food or an outbreak of illness caused by a contaminated food and finds, as a result of that inspection, that the farm has produced an adulterated food or was the source of an outbreak of illness caused by a contaminated food, the local health department may charge and collect from the farm a fee for that inspection.

(8) An agritourism food establishment permit:

(a) is nontransferable;

(b) is renewable on an annual basis;

(c) is restricted to the location listed on the permit; and

(d) shall provide the operator the opportunity to update the food types and products handled without requiring the operator to renew the permit.

(9) This section does not prohibit an operator from applying for a different type of food event permit from a local health department.