

1 **MICROENTERPRISE HOME KITCHEN AMENDMENTS**

2 2023 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Christine F. Watkins**

5 Senate Sponsor: _____

7 **LONG TITLE**

8 **General Description:**

9 This bill amends the Microenterprise Home Kitchen Act.

10 **Highlighted Provisions:**

11 This bill:

12 ▶ requires a political subdivision to allow a microenterprise home kitchen to operate
13 within the political subdivision if the microenterprise home kitchen meets the
14 requirements for a permit;

15 ▶ allows a political subdivision to establish certain regulations regarding
16 microenterprise home kitchen operations; and

17 ▶ specifies that the Microenterprise Home Kitchen Act supersedes regulation of any
18 political subdivision to the extent there is a conflict with the local regulation.

19 **Money Appropriated in this Bill:**

20 None

21 **Other Special Clauses:**

22 None

23 **Utah Code Sections Affected:**

24 AMENDS:

25 **26-15c-105**, as enacted by Laws of Utah 2021, Chapter 417

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



28 Section 1. Section **26-15c-105** is amended to read:

29 **26-15c-105. Permit requirements -- Certain local ordinances superseded.**

30 (1) An operator may qualify for a microenterprise home kitchen permit if:

31 (a) food that is served at the microenterprise home kitchen is processed in compliance
32 with state and federal regulations;

33 (b) a kitchen facility used to prepare food for the microenterprise home kitchen meets
34 the requirements established by the department;

35 (c) the microenterprise home kitchen operates only during the hours approved in the
36 microenterprise home kitchen permit; and

37 (d) the microenterprise home kitchen complies with the requirements of this section.

38 (2) The department shall, in accordance with Title 63G, Chapter 3, Utah
39 Administrative Rulemaking Act, make rules regarding sanitation, equipment, and maintenance
40 requirements for microenterprise home kitchens.

41 (3) A local health department shall:

42 (a) ensure compliance with the rules described in Subsection (2) when inspecting a
43 microenterprise home kitchen;

44 (b) notwithstanding Section [26A-1-113](#), inspect a microenterprise home kitchen that
45 requests a microenterprise home kitchen permit only:

46 (i) for an initial inspection, no more than one week before the microenterprise home
47 kitchen is scheduled to begin operation;

48 (ii) for an unscheduled inspection, if the local health department conducts the
49 inspection:

50 (A) within three days before or after the day on which the microenterprise home
51 kitchen is scheduled to begin operation; or

52 (B) during operating hours of the microenterprise home kitchen; or

53 (iii) for subsequent inspections if:

54 (A) the local health department provides the operator with reasonable advanced notice
55 of the inspection; or

56 (B) the local health department has a valid reason to suspect that the microenterprise
57 home kitchen is the source of an adulterated food or of an outbreak of illness caused by a
58 contaminated food; and

59 (c) document the reason for any inspection after the initial inspection, keep a copy of
60 that documentation on file with the microenterprise home kitchen's permit, and provide a copy
61 of that documentation to the operator.

62 (4) A microenterprise home kitchen shall:

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

64 (i) food;

65 (ii) equipment;

66 (iii) utensils; or

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

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

70 (i) symptoms associated with acute gastrointestinal illness; or

71 (ii) a communicable disease that is transmissible through food; and

72 (c) comply with the following requirements:

73 (i) time or temperature control food shall be prepared, cooked, and served on the same
74 day;

75 (ii) food that is sold or provided to a customer may not be consumed onsite at the
76 microenterprise home kitchen operation;

77 (iii) food that is sold or provided to a customer shall be picked up by the consumer or
78 delivered within a safe time period based on holding equipment capacity;

79 (iv) food preparation may not involve processes that require a HACCP plan, or the
80 production, service, or sale of raw milk or raw milk products;

81 (v) molluscan shellfish may not be served or sold;

82 (vi) the operator may only sell or provide food directly to consumers and may not sell
83 or provide food to any wholesaler or retailer; and

84 (vii) the operator shall provide the consumer with a notification that, while a permit
85 has been issued by the local health department, the kitchen may not meet all of the
86 requirements of a commercial retail food establishment.

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

89 (a) hand washing facilities, except to require that a hand washing station supplied with

90 warm water, soap, and disposable hand towels is conveniently located in food preparation, food
91 dispensing, and warewashing areas;

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

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

97 (d) display guards, covers, or containers for display foods, except to require that
98 ready-to-eat food is protected from contamination during storage, preparation, handling,
99 transport, and display;

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

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

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

105 (ii) are properly sanitized after use; and

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

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

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

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

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

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

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

- 121 (m) dedicated laundry facilities, except to require that linens used for the
122 microenterprise home kitchen are stored and laundered separately from household laundry and
123 that soiled laundry is stored to prevent contamination of food and equipment;
- 124 (n) water, plumbing, drainage, and waste, except to require that:
- 125 (i) sinks be supplied with hot and cold potable water from:
- 126 (A) an approved public water system as defined in Section 19-4-102;
- 127 (B) if the local health department with jurisdiction over the microenterprise home
128 kitchen has regulations regarding the safety of drinking water, a source that meets the local
129 health department's regulations regarding the safety of drinking water; or
- 130 (C) a water source that is tested at least once per month for bacteriologic quality, and at
131 least once in every three year period for lead and copper; and
- 132 (ii) food preparation and service is discontinued in the event of a disruption of potable
133 water service;
- 134 (o) the number of and path of access to toilet facilities, except to require that toilet
135 facilities are equipped with proper handwashing stations;
- 136 (p) lighting, except to require that food preparations are well lit by natural or artificial
137 light whenever food is being prepared;
- 138 (q) designated dressing areas and storage facilities, except to require that items not
139 ordinarily found in a home kitchen are placed or stored away from food preparation areas, that
140 dressing takes place outside of the kitchen facility, and that food items are stored in a manner
141 that does not allow for contamination;
- 142 (r) the presence and handling of animals, except to require that all animals are kept
143 outside of food preparation and service areas;
- 144 (s) food storage, floor, wall, ceiling, and toilet surfaces, except to require that surfaces
145 are smooth, of durable construction, easily cleanable, and kept clean and free of debris;
- 146 (t) kitchen facilities open to living areas, except to require that food is only prepared,
147 handled, or stored in kitchen and food storage areas;
- 148 (u) submission of plans and specifications before construction or remodel of a kitchen
149 facility;
- 150 (v) the number and type of time or temperature controlled food offered for sale, except:
- 151 (i) a raw time or temperature controlled food such as raw fish, raw milk, and raw

152 shellfish;

153 (ii) any food requiring special processes that would necessitate a HACCP plan; and

154 (iii) fish from waters of the state;

155 (w) approved food sources, except to require that:

156 (i) food in a hermetically sealed container is obtained from a regulated food processing

157 plant;

158 (ii) liquid milk and milk products are obtained from sources that comply with Grade A

159 standards specified by the Department of Agriculture and Food by rule made in accordance

160 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

161 (iii) fish for sale or service are commercially and legally caught;

162 (iv) mushrooms picked in the wild are not offered for sale or service; and

163 (v) game animals offered for sale or service are raised, slaughtered, and processed

164 according to rules governing meat and poultry as specified by the Department of Agriculture

165 and Food by rule made in accordance with Title 63G, Chapter 3, Utah Administrative

166 Rulemaking Act;

167 (x) the use of items produced under this chapter; or

168 (y) the use of an open air barbeque, grill, or outdoor wood-burning oven.

169 (6) An operator applying for a microenterprise home kitchen permit shall provide to

170 the local health department:

171 (a) written consent to enter the premises where food is prepared, cooked, stored, or

172 harvested for the microenterprise home kitchen; and

173 (b) written standard operating procedures that include:

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

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

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

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

178 (v) a plan for maintaining time or temperature controlled food at the appropriate

179 temperatures for each time or temperature controlled food.

180 (7) In addition to a fee charged under Section [26-15c-103](#), if the local health

181 department is required to inspect the microenterprise home kitchen as a source of an

182 adulterated food or an outbreak of illness caused by a contaminated food and finds, as a result

183 of that inspection, that the microenterprise home kitchen has produced an adulterated food or
184 was the source of an outbreak of illness caused by a contaminated food, the local health
185 department may charge and collect from the microenterprise home kitchen a fee for that
186 inspection.

187 (8) A microenterprise home kitchen permit:

188 (a) is nontransferable;

189 (b) is renewable on an annual basis;

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

191 (d) shall include a statement that reads: "This location is permitted under modified
192 FDA requirements."; and

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

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

197 (10) (a) Except as provided in Subsection (10)(b), a political subdivision may not
198 prohibit or restrict a microenterprise home kitchen that otherwise meets the requirements in
199 this section and rules made by the department under Subsection (2) from doing business as a
200 microenterprise home kitchen.

201 (b) A political subdivision may, but is not required, to establish reasonable regulations
202 regarding:

203 (i) the maximum number of customers or customer vehicles that may be at a
204 microenterprise home kitchen at one time, except that a microenterprise home kitchen shall be
205 permitted to allow at least 10 customers to be on the premise at one time;

206 (ii) the hours during which a microenterprise home kitchen may operate, except that a
207 microenterprise home kitchen shall be permitted to operate from 8:00 a.m. to 10:00 p.m.;

208 (iii) the external appearance of the microenterprise home kitchen, except that a
209 microenterprise home kitchen shall be permitted to post a sign outside of the microenterprise
210 home kitchen that is three feet high and three feet wide; or

211 (iv) the maximum number of employees from outside of the household, except that a
212 microenterprise home kitchen shall be permitted to have at least two employees from outside of
213 the household at the microenterprise home kitchen at any given time.

214 (c) A political subdivision may not enact a regulation that creates specific requirements
215 for a microenterprise home kitchen except those that are specifically authorized under this
216 section.

217 (d) This section supersedes any ordinance enacted by the governing body of a political
218 subdivision that is contrary to this Subsection (10).