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GROWING OF FOOD

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Christopher N. Herrod

Senate Sponsor: _____

LONG TITLE

General Description:

This bill provides that certain food grown by an individual for use by the individual's family is not subject to local or federal regulation and that certain food grown or stored by an individual for use by the individual's family may not be confiscated by a government entity.

Highlighted Provisions:

This bill:

- ▶ defines "family food";
- ▶ prohibits local or federal regulation of certain food that is grown by an individual for use by the individual or the individual's family unless:

- the food poses a risk to health, the spreading of insect infestation, or the spreading of agricultural disease; or

- the food is unlawfully possessed; and

- ▶ prohibits a government entity from confiscating certain food that is grown or stored by an individual for use by the individual or the individual's family unless:

- the food poses a risk to health, the spreading of insect infestation, or the spreading of agricultural disease; or

- the food is unlawfully possessed.

Money Appropriated in this Bill:

None



28 **Other Special Clauses:**

29 None

30 **Utah Code Sections Affected:**

31 ENACTS:

32 **4-1-9**, Utah Code Annotated 1953



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

35 Section 1. Section **4-1-9** is enacted to read:

36 **4-1-9. Growing or storing food for personal or family use.**

37 (1) As used in this section, "family food" means food owned by an individual that is
38 intended for the individual's use, or for use by members of the individual's immediate family,
39 that:

40 (a) is legal for human consumption;

41 (b) is lawfully possessed; and

42 (c) poses no risk:

43 (i) to health;

44 (ii) of spreading insect infestation; or

45 (iii) of spreading agricultural disease.

46 (2) Family food that is grown by an individual on the individual's property is not
47 subject to local or federal regulation if growth of the family food:

48 (a) does not negatively impact the rights of adjoining property owners; and

49 (b) complies with the food safety requirements of this title.

50 (3) A government entity may not confiscate family food described in Subsection (2) or
51 family food that is stored by the owner in the owner's home or dwelling.

52 (4) If any provision of this section or the application of any provision of this section to
53 any person or circumstance is held invalid by a final decision of a court of competent
54 jurisdiction, the remainder of this section shall be given effect without the invalid provision or
55 application. The provisions of this section are severable.

Legislative Review Note
as of 2-2-12 7:01 PM

As required by legislative rule and practice, the Office of Legislative Research and General Counsel provides the following legislative review note to assist the Legislature in making its own determination as to the constitutionality of the bill. The note is based on an analysis of relevant state and federal constitutional law as applied to the bill. The note is not written for the purpose of influencing whether the bill should become law, but is written to provide information relevant to the legislators' consideration of this bill. The note is not a substitute for the judgment of the judiciary, which has authority to determine the constitutionality of a law in the context of a specific case.

This bill provides that, subject to certain exceptions, food grown by an individual and intended for personal or family use is not subject to federal regulation. In addition, this bill provides that, subject to certain exceptions, food either grown or stored by an individual that is intended for the individual's use or for use by the individual's family may not be confiscated by a government entity. As drafted, this bill raises issues relating to the Supremacy Clause, contained in Article VI of the United States Constitution. The United States Supreme Court has "long recognized that state laws that conflict with federal law are 'without effect.'" *Altria Group, Inc. v. Good*, 555 U.S. 70, 76 (2008), quoting *Maryland v. Louisiana*, 451 U.S. 725, 746 (1981).

The United States Supreme Court has held that the United States Congress has broad power to regulate purely intrastate activity under the Commerce Clause of the United States Constitution. *Gonzales v. Raich*, 545 U.S. 1, 18 (2005) ("Congress can regulate purely intrastate activity . . . if it concludes that failure to regulate that class of activity would undercut the regulation of the interstate market in that commodity."); U.S. Const. art. I, § 8, cl. 3. Moreover, even if the growing and storing of food described in this bill is not considered commercial activity, the Supreme Court has held that Congress may regulate intrastate activity if it substantially affects interstate commerce. *United States v. Lopez*, 514 U.S. 549, 559 (1995). Finally, the United States Supreme Court has explained that the regulation of agricultural commodities is a fundamental example of what Congress may regulate under the Commerce Clause. *Wickard v. Filburn*, 317 U.S. 111, 125 (1942) (holding that Congress may regulate wholly intrastate conduct—even the growing of wheat for consumption only by the grower—if "it exerts a substantial economic effect on interstate commerce.").

Based on this authority, to the extent this bill conflicts with federal regulation of commerce, there is a high probability that a court would find that this legislation violates the Supremacy Clause of the United States Constitution.

Office of Legislative Research and General Counsel