

1 **DEPARTMENT OF AGRICULTURE AND FOOD**

2 **AMENDMENTS**

3 2004 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: David Ure**

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies the Agriculture Code by amending provisions relating to weights and
10 measures, licensing fees, and the sale of raw milk.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ amends conditions under which raw milk may be sold;
- 14 ▶ requires food establishments and entities using weights and measures in commerce
15 or trade to be licensed by the Department of Agriculture and Food;
- 16 ▶ enacts conditions for licensure and allows the Department of Agriculture and Food
17 to charge licensure fees;
- 18 ▶ designates information regarding food security assessments as a protected record
19 under the Government Records Access and Management Act; and
- 20 ▶ makes technical corrections.

21 **Monies Appropriated in this Bill:**

22 None

23 **Other Special Clauses:**

24 None

25 **Utah Code Sections Affected:**

26 AMENDS:

27 **4-3-14**, as last amended by Chapter 1, Laws of Utah 1980



- 28 4-5-2, as last amended by Chapter 157, Laws of Utah 1990
- 29 4-5-3, as last amended by Chapter 157, Laws of Utah 1990
- 30 4-5-9, as enacted by Chapter 2, Laws of Utah 1979
- 31 4-9-1, as enacted by Chapter 2, Laws of Utah 1979
- 32 4-9-3, as enacted by Chapter 2, Laws of Utah 1979
- 33 4-9-4, as enacted by Chapter 2, Laws of Utah 1979
- 34 4-9-5, as enacted by Chapter 2, Laws of Utah 1979
- 35 4-9-5.2, as enacted by Chapter 19, Laws of Utah 1985
- 36 4-9-5.3, as enacted by Chapter 19, Laws of Utah 1985
- 37 4-9-5.4, as enacted by Chapter 19, Laws of Utah 1985
- 38 4-9-6, as last amended by Chapter 28, Laws of Utah 1995
- 39 4-9-12, as last amended by Chapter 19, Laws of Utah 1985
- 40 63-2-304, as last amended by Chapters 60 and 131, Laws of Utah 2003

41 ENACTS:

42 4-9-15, Utah Code Annotated 1953



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

45 Section 1. Section 4-3-14 is amended to read:

46 **4-3-14. Sale of raw milk prohibited -- Exceptions -- Suspension of producer's**
47 **permit.**

48 (1) ~~[The sale of raw]~~ Raw milk [is prohibited unless] may be sold if:

49 (a) the producer ~~[holds]~~ obtains a permit ~~[issued by]~~ from the department to produce
50 milk under Subsection 4-3-8(2);

51 (b) the sale and delivery of the milk is made upon the premises where the milk is
52 produced;

53 (c) ~~[the sale]~~ it is sold to consumers for household use and not for resale;

54 (d) ~~[the milk]~~ it is bottled or [otherwise contained] packaged under sanitary conditions
55 and in sanitary containers on the premises where the milk is produced ~~[in sanitary containers~~
56 ~~furnished by the producer under sanitary conditions;];~~

57 (e) it is labeled "raw milk[-]" and meets the [other] labeling requirements under 21
58 C.F.R. Parts 101 and 131 and rules established by the department;

59 ~~(e)~~ (f) ~~[the milk]~~ it is:

60 (i) cooled to 50 degrees Fahrenheit or a lower ~~[Fahrenheit]~~ temperature within one
61 hour after being drawn from the ~~[cow and]~~ animal;

62 (ii) further cooled to 41 degrees Fahrenheit within two hours of being drawn from the
63 animal; and

64 (iii) maintained at ~~[such]~~ 41 degrees Fahrenheit or a lower temperature until it is
65 delivered to the consumer;

66 ~~(f)~~ (g) the bacterial ~~[plate]~~ count of the milk does not exceed:

67 (i) 20,000 colony forming units per ~~[c.c.]~~ milliliter, or ~~[the]~~ if individual colonies are
68 counted, a direct microscopic count [of which does not exceed] in excess of 20,000 colony
69 forming units per [c.c. if individual colonies are counted,] milliliter; or

70 (ii) if individual organisms are counted, 80,000 bacteria per [c.c. if individual
71 organisms are counted] milliliter; [and meets]

72 (h) the bacterial plate count and the coliform count of the milk meet the [coliform
73 count, and] bacterial and coliform enforcement standards for grade A pasteurized milk;

74 ~~(g)~~ (i) the production of the milk conforms ~~[in all other particulars to state law and]~~ to
75 departmental [regulations] rules for the production of grade A milk;

76 ~~(h)~~ (j) all dairy animals on the premises are ~~[identified by a mark or breed registration~~
77 papers and are];

78 (i) permanently and individually identifiable; and

79 (ii) free of tuberculosis, brucellosis, and other diseases carried through milk; and

80 ~~(i)~~ (k) ~~[all persons]~~ any person on the premises performing any work in connection
81 with the production, bottling, handling, or sale of the raw milk ~~[are]~~ is free from communicable
82 disease.

83 ~~[(2) If the department finds that the production, handling, or sale of milk or the bacteria~~
84 counts violate those allowed by this section, or that the health of any person or dairy animal
85 offends this section, the permit of such raw milk producer shall be suspended until such time as
86 compliance is had with this section.]

87 (2) (a) The department shall suspend a permit to produce raw milk issued under
88 Subsection 4-3-8(2) if a milk producer violates any provision of Subsection (1).

89 (b) The department may reissue a permit to produce raw milk which has been

90 suspended under Subsection (2)(a) if the producer has complied with all of the requirements of
91 Subsection (1).

92 Section 2. Section ~~4-5-2~~ is amended to read:

93 **4-5-2. Definitions.**

94 As used in this chapter:

95 (1) "Advertisement" means ~~[all representations]~~ a representation, other than by
96 labeling, ~~[for the purpose of inducing]~~ made to induce the purchase of food.

97 (2) (a) "Color additive" means a dye, pigment, or other substance not exempted under
98 the federal act that, when added or applied to a food, is capable of imparting color. "Color"
99 includes black, white, and intermediate grays.

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

104 (3) (a) "Consumer commodity" means~~[-, except as otherwise specifically provided by~~
105 ~~this subsection, any]~~ a food, as defined by this act, or by the federal act.

106 (b) "Consumer commodity" does not include:

107 (i) ~~[any]~~ a commodity subject to packaging or labeling requirements imposed under the
108 Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. Sec. 136 et seq.~~[-, the Federal~~
109 ~~Insecticide, Fungicide, and Rodenticide Act or 21 U.S.C. 151 et seq., the Virus-Serum-Toxin~~
110 ~~Act]~~;

111 (ii) ~~[any]~~ a commodity subject to Title 4, Chapter 16, ~~[the]~~ Utah Seed Act;

112 (iii) ~~[any]~~ a meat or meat product~~[-]~~ subject to the Federal Meat Inspection Act, 21
113 U.S.C. Sec. 601 et seq.;

114 (iv) a poultry or poultry product~~[-, or]~~ subject to the Poultry Inspection Act, 21 U.S.C.
115 Sec. 451 et seq.;

116 (v) a tobacco or tobacco product; or

117 ~~[(iv)]~~ (vi) ~~[any]~~ a beverage subject to or complying with packaging or labeling
118 requirements imposed under the Federal Alcohol Administration Act, 27 U.S.C. Sec. 201, et
119 seq.~~[-, the Federal Alcohol Administration Act.]~~

120 (4) "Contaminated" means not securely protected from dust, dirt, or foreign or

121 injurious agents.

122 (5) "Federal act" means the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sec. 301
123 et seq.[~~the Federal Food, Drug and Cosmetic Act.~~]

124 (6) "Food" means:

125 (a) [~~articles~~] an article used for food or drink for [man or animals] human or animal
126 consumption or the components of [those articles] the article;

127 (b) chewing gum or its components; or

128 (c) a food [supplements] supplement for special dietary [uses] use which [exist by
129 reason] is necessitated because of a physical, physiological, pathological, or other condition.

130 (7) (a) "Food additive" means [~~any~~] a substance, the intended use of which results in
131 [it] the substance becoming a component, or otherwise affecting the characteristics, of [any] a
132 food [including any]. "Food additive" includes a substance or source of radiation intended for
133 use in producing, manufacturing, packing, processing, preparing, treating, packaging,
134 transporting, or holding food[~~if that substance is not generally recognized, among experts~~
135 ~~qualified by scientific training and experience to evaluate its safety, as having been adequately~~
136 ~~shown through scientific procedures to be safe under the conditions of its intended use. In the~~
137 ~~case of a substance used in a food prior to January 1, 1958, its safety may be demonstrated~~
138 ~~through either scientific procedures or experience based on its common use in food].~~

139 (b) "Food additive" does not include:

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

141 (ii) a pesticide chemical [~~to the extent~~] that [~~it~~] is intended for use or is used in the
142 production, storage, or transportation of [~~any~~] a raw agricultural commodity; or

143 [~~(iii) a color additive; or~~]

144 [~~(iv) any~~] (iii) a substance used in accordance with a sanction or approval granted
145 pursuant to [the federal act] the Poultry Products Inspection Act, 21 U.S.C. Sec. 451 et seq.;
146 the Poultry Products Inspection Act,] or the Federal Meat Inspection Act, 21 U.S.C. Sec. 601 et
147 seq.[~~the Meat Inspection Act.~~]

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

152 (b) "Food establishment" does not include a dairy farm, a dairy plant, or a meat
153 establishment, which is subject to the Poultry Products Inspection Act, 21 U.S.C. Sec. 451 et
154 seq., or the Federal Meat Inspection Act, 21 U.S.C. Sec. 601 et seq.

155 [~~(8)~~] (9) "Label" means a [~~display of~~] written, printed, or graphic [~~matter upon~~] display
156 on the immediate container of [any] an article of food. [A requirement made by or under the
157 authority of this chapter that any word, statement, or other information appear on the label may
158 not be considered to be complied with unless the word, statement, or other information also
159 appears] The department may require that a label contain specific written, printed, or graphic
160 information which is:

161 (a) displayed on the outside container or wrapper[~~, if any,~~] of [~~the~~] a retail package of
162 [~~the~~] an article[~~;~~]; or [~~is~~]

163 (b) easily legible through the outside container or wrapper.

164 [~~(9)~~] (10) "Labeling" means [~~all labels~~] a label and other written, printed, or graphic
165 [~~matter~~] display:

166 (a) [~~upon~~] on an article of food or [~~any of~~] its containers or wrappers; or

167 (b) accompanying the article of food.

168 (11) "License" means the authorization issued by the commissioner to engage in the
169 operation of a food establishment.

170 [~~(10)~~] (12) "Official compendium" means the official documents or supplements to the:

171 (a) United States Pharmacopoeia;

172 (b) National Formulary[~~, official~~]; or

173 (c) Homeopathic Pharmacopoeia of the United States[~~, or any supplement to them~~].

174 [~~(11)~~] (13) (a) "Package" means [~~any~~] a container or wrapping in which [~~any~~] a
175 consumer commodity is enclosed for use in the delivery or display of the consumer commodity
176 to retail purchasers.

177 (b) "Package" does not include:

178 (i) package liners;

179 (ii) shipping containers or wrapping used solely for the transportation of consumer
180 commodities in bulk or in quantity to manufacturers, packers, processors, or wholesale or retail
181 distributors; or

182 (iii) shipping containers or outer wrappings used by retailers to ship or deliver [~~any~~] a

183 consumer commodity to retail customers, if the containers and wrappings bear no printed
 184 ~~[matter pertaining]~~ information relating to the consumer commodity.

185 ~~[(12)]~~ (14) (a) "Pesticide ~~[chemical]~~" means ~~[any]~~ a substance ~~[which]~~ intended:

186 ~~[(a) alone, in chemical combination, or in formulation with one or more other~~
 187 ~~substances is a pesticide within the meaning of 7 U.S.C., Sec. 136(u), the Federal Insecticide,~~
 188 ~~Fungicide, and Rodenticide Act; and]~~

189 ~~[(b) is used in the production, storage, or transportation of raw agricultural~~
 190 ~~commodities.]~~

191 (i) to prevent, destroy, repel, or mitigate a pest, as defined under Subsection
 192 4-14-2(20); or

193 (ii) for use as a plant regulator, defoliant, or desiccant.

194 (b) "Pesticide" does not include:

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

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

200 ~~[(13)]~~ (15) "Principal display panel" means that part of a label that is most likely to be
 201 displayed, presented, shown, or examined under normal and customary conditions of display
 202 for retail sale.

203 ~~[(14)]~~ (16) "Raw agricultural commodity" means ~~[any]~~ a food in its raw or natural
 204 state, including all fruits that are washed, colored, or otherwise treated in their unpeeled,
 205 natural form prior to marketing.

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

207 **4-5-3. Unlawful acts specified.**

208 (1) ~~[The following acts are prohibited]~~ A person may not:

209 (a) ~~[the]~~ manufacture, ~~[sale, delivery, holding, or offering]~~ sell, deliver, hold, or offer
 210 for sale ~~[of any]~~ a food that is adulterated or misbranded;

211 (b) ~~[the adulteration or misbranding of any]~~ adulterate or misbrand food;

212 (c) ~~[the distribution]~~ except as provided in Subsection (2), distribute, in commerce ~~[of],~~
 213 a consumer commodity ~~[which is contained in a package or bears a label that does not conform~~

214 to] inconsistent with the packaging and labeling requirements of this chapter, or the rules made
 215 under this chapter;

216 (d) [~~the sale, delivery~~] sell, deliver for sale, [~~holding~~] hold for sale, or [~~offering~~] offer
 217 for sale [~~of any~~] an article in violation of Section 4-5-9;

218 (e) [~~the dissemination of any~~] disseminate false [~~advertisement~~] advertising;

219 (f) [~~the removal~~] remove or [~~disposal~~] dispose of detained or embargoed food in
 220 violation of Section 4-5-5;

221 (g) [~~the alteration, mutilation, destruction, obliteration, or removal of~~] adulterate,
 222 mutilate, destroy, obliterate, or remove the food label [~~of any food, if that act is done while the~~
 223 ~~food is held for sale and~~] which results in the food being misbranded or adulterated while the
 224 food is for sale;

225 (h) [~~forging, counterfeiting, simulating, or falsely representing, or without proper~~
 226 ~~authority, using any~~] forge, counterfeit, simulate, or misrepresent a label or information, by the
 227 unauthorized use of a mark, stamp, tag, label, or other identification device [~~authorized or~~
 228 ~~required by rules made under this chapter~~]; [~~and~~]

229 (i) [~~the~~] use or [~~revelation by any person of any~~] reveal a method, process, or
 230 information which is [~~entitled to protection~~] protected as a trade secret[-];

231 (j) operate a food establishment without a valid license issued by the department; and

232 (k) refuse entry to an authorized agent of the department in a food establishment as
 233 required under Section 4-5-18.

234 (2) Subsection (1)(c) does not apply to [~~persons~~] a person engaged in the wholesale or
 235 retail distribution of consumer commodities [~~except to the extent those persons~~] unless that
 236 person:

237 (a) [~~are~~] is engaged in the packaging or labeling of consumer commodities; or

238 (b) [~~prescribe~~] prescribes or [~~specify by any means~~] specifies the manner in which
 239 consumer commodities are packaged or labeled.

240 Section 4. Section **4-5-9** is amended to read:

241 **4-5-9. Licensure of food establishments -- Fee -- Suspension and reinstatement of**
 242 **licenses -- Inspection for compliance.**

243 [~~(1) Whenever the department finds after investigation that the distribution in Utah of~~
 244 ~~any class of food may, by reason of contamination with microorganisms during manufacture,~~

245 ~~processing, or packing in any locality, be injurious to health, and that such injurious nature~~
246 ~~cannot be adequately determined after such articles have entered commerce, it shall promulgate~~
247 ~~regulations providing for the issuance of permits to the manufacturers, processors, or packers~~
248 ~~of such class of food stating the conditions governing the manufacture, processing, or packing~~
249 ~~of such class of food, for such temporary period as may be necessary to protect the public~~
250 ~~health; and after the effective date of such regulations and during such temporary period, no~~
251 ~~person shall introduce or deliver for introduction into commerce any such class of food unless~~
252 ~~such manufacturer, processor, or packer holds a permit issued by the department.]~~

253 (1) (a) Pursuant to Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
254 department shall establish rules providing for the issuance of licenses to food establishments to
255 protect public health and ensure a safe food supply.

256 (b) The owner or operator of a food establishment shall obtain a license issued by the
257 department before operating a food establishment.

258 (c) Prior to granting a license to the owner or operator of a food establishment, the
259 department shall inspect and assess the food establishment to determine whether it complies
260 with the rules established under Subsection (1)(a).

261 (d) An applicant shall apply to the department, in writing, using forms required by the
262 department.

263 (e) The department shall issue a license to an applicant, if the department determines
264 that the applicant meets the qualifications of licensure established under Subsection (1)(a).

265 (f) If the applicant does not meet the qualifications of licensure, the department shall
266 notify the applicant, in writing, that the applicant's license is denied.

267 (g) (i) If an applicant submits an incomplete application, a written notice of conditional
268 denial of licensure shall be provided to an applicant.

269 (ii) The applicant must correct the deficiencies within the time period specified in the
270 notice to receive a license.

271 (h) The department may, as provided under Subsection 4-2-2(2), charge the food
272 establishment a licensing fee.

273 (2) (a) A license, issued under this section, shall be valid from the date the department
274 issues the license, to December 31 of the year the license is issued.

275 (b) A license may be renewed for the following year by applying for renewal by

276 December 31 of the year the license expires.

277 (3) A license, issued under this section, shall specify:

278 (a) the name and address of the food establishment;

279 (b) the name of the owner or operator of the food establishment; and

280 (c) the license issuance and expiration date.

281 (4) The owner or operator of a food establishment shall display, conspicuously, the
282 license in the food establishment at all times.

283 ~~[(2)]~~ (5) (a) The department [is authorized to] may immediately suspend [immediately
284 upon notice any permit] a license, issued under [authority of] this section, if [it is found that]
285 any of the conditions of [the permit] licensure have been violated.

286 (b) (i) The holder of a [permit so] license suspended [shall be privileged at any time to]
287 under Subsection (5)(a) may apply for the reinstatement of [such permit, and] a license.

288 (ii) If the department [shall, immediately after prompt hearing and an inspection of the
289 establishment, reinstate such permit if it is found that adequate measures have been taken to
290 comply with and maintain the conditions of the permit, as originally issued, or as amended]
291 determines that all licensure requirements have been met, the department shall reinstate the
292 license.

293 ~~[(3)]~~ (6) (a) [Any officer or employee duly designated by] A food establishment,
294 licensed under this section, shall allow the department [shall] to have access to [any factory or]
295 the food establishment[, the operator of which holds a permit from the department for the
296 purpose of ascertaining whether or not] to determine if the [conditions of the permit are being
297 complied with, and denial of] food establishment is complying with the licensure requirements.

298 (b) If a food establishment denies access for [such] an inspection [shall be ground for
299 suspension of the permit] required under Subsection (6)(a), the department may suspend the
300 food establishment's license until [such] the department is allowed access [is freely given by
301 the operator] to the food establishment's premises.

302 Section 5. Section 4-9-1 is amended to read:

303 **4-9-1. Definitions.**

304 As used in this chapter:

305 (1) "Correct" ~~[as]~~, when used in connection with weights and measures, means
306 conformance to ~~[a]]~~ applicable requirements of this chapter~~;~~.

307 (2) "Package" means ~~[any]~~ a commodity put up or packaged ~~[in any manner in advance~~
 308 ~~of]~~ before sale in [units suitable for] either wholesale or retail sale[;]units.

309 (3) "Primary standards" mean the physical standards of the state, described in Section
 310 4-9-4, which ~~[serve as]~~ are the legal reference from which all other standards and weights and
 311 measures are derived[;].

312 (4) "Sale from bulk" means the sale of commodities, when the quantity is determined
 313 at the time of sale[;].

314 (5) "Secondary standards" ~~[mean]~~ means a physical ~~[standards]~~ standard which ~~[are]~~ is
 315 traceable to primary standards through comparisons, using acceptable laboratory procedures[;].

316 (6) "Weighing and measuring" means the use of weights and measures.

317 ~~[(6)]~~ (7) "Weight" means net weight, unless the label declares that the product is sold
 318 by drained weight, in which ~~[event, it]~~ case, "weight" means net drained weight~~[; and]~~.

319 ~~[(7)]~~ (8) "Weights and measures" [mean all] means weights and measures ~~[of every~~
 320 ~~kind], and [any instrument or device]~~ instruments or devices used for weighing or measuring
 321 ~~[together with any], including an~~ appliance or accessory associated with [such an] the
 322 instrument or device.

323 (9) "Weights and measures license" means the authorization issued by the
 324 commissioner, to use correct weights and measures in trade or commerce.

325 (10) "Weights and measures user" means a person who uses weights and measures in
 326 trade or commerce.

327 Section 6. Section **4-9-3** is amended to read:

328 **4-9-3. Weights and measures -- Systems used -- Basic units, tables, and**
 329 **equivalents as published by National Institute of Standards and Technology.**

330 ~~[The]~~ (1) The department shall use the same system of weights and measures [in
 331 customary use] that is customarily used in the United States, and the metric system of weights
 332 and measures [are jointly recognized, and either one or both of these systems shall].

333 (2) Either system may be used for [all] commercial purposes in [this] the state.

334 (3) The definitions of basic units of weight and measure, the tables of weight and
 335 measure, and the weights and measures equivalents published by the National [Bureau]
 336 Institute of Standards and Technology, shall [govern] determine the weights and measures
 337 systems used within [this] the state.

338 Section 7. Section **4-9-4** is amended to read:

339 **4-9-4. Weights and measures -- Primary state standards -- Secondary state**
340 **standards -- Verification.**

341 (1) Weights and measures that are traceable to the United States prototype standards
342 supplied by the federal government, or approved as being satisfactory by the National [Bureau]
343 Institute of Standards and Technology, shall be the state primary standards, and shall be
344 maintained in [such] the calibration [as] prescribed by the National [Bureau] Institute of
345 Standards [prescribes] and Technology.

346 (2) Secondary standards may be prescribed by the department and shall be verified
347 upon their initial receipt, and as often after initial receipt as [deemed] is considered necessary
348 by the department.

349 Section 8. Section **4-9-5** is amended to read:

350 **4-9-5. Weights and measures -- Specifications, tolerances, and technical data**
351 **published in National Institute of Standards and Technology Handbook govern.**

352 [The] Unless modified by the department, Handbook 44, Specifications, Tolerances,
353 and Other Technical Requirements for Weighing and Measuring Devices, National Institute of
354 Standards and Technology, adopted by the National Conference on Weights and Measures,
355 including supplements or revisions to Handbook 44, shall determine the specifications,
356 tolerances, and other technical requirements for devices used for:

357 (1) commercial weighing and measuring[,-for];

358 (2) law enforcement[,-for];

359 (3) data gathering[;]; and [for]

360 (4) other weighing and measuring [devices adopted by the National Conference on
361 Weights and Measures and published in National Bureau of Standards Handbook 44,
362 "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring
363 Devices," and supplements or revisions of such handbook, shall govern devices for weights and
364 measures in the state used for any official purpose, except as modified by regulation of the
365 department] purposes.

366 Section 9. Section **4-9-5.2** is amended to read:

367 **4-9-5.2. Adopting uniform packaging and labeling regulation.**

368 [The] Unless modified by the department, the Uniform Packaging and Labeling

369 Regulation, [as] adopted by the National Conference on Weights and Measures [~~and published~~
370 ~~in the National Bureau of Standards' Handbook 130 "Uniform Laws and Regulations" is~~
371 ~~applicable]~~ in Handbook 130, Uniform Laws and Regulations in the Areas of Legal Metrology
372 and Engine Fuel Quality, National Institute of Standards and Technology, shall apply to
373 packaging and labeling in the state[~~, unless modified by the department].~~

374 Section 10. Section **4-9-5.3** is amended to read:

375 **4-9-5.3. Adopting uniform regulation for the method of sale of commodities.**

376 [~~The~~] Unless modified by the department, the Uniform Regulation for the Method of
377 Sale of Commodities, [as] adopted by the National Conference on Weights and Measures, [~~and~~
378 ~~published by the National Conference on Weights and Measures in the National Bureau of~~
379 ~~Standards' Handbook 130 "Uniform Laws and Regulations" is applicable]~~ in Handbook 130,
380 Uniform Laws and Regulations in the Areas of Legal Metrology and Engine Fuel Quality,
381 National Institute of Standards and Technology, shall apply to the method of sale of
382 commodities in the state[~~, unless modified by the department].~~

383 Section 11. Section **4-9-5.4** is amended to read:

384 **4-9-5.4. Adopting uniform regulation for the voluntary registration of**
385 **servicepersons and service agencies for commercial weighing and measuring devices.**

386 [~~The~~] Unless modified by the department, the Uniform Regulation for the Voluntary
387 Registration of Servicepersons and Service Agencies for Commercial Weighing and Measuring
388 Devices, [as] adopted by the National Conference on Weights and Measures[~~, and published in~~
389 ~~the National Bureau of Standards' Handbook 130 "Uniform Laws and Regulations" is~~
390 ~~applicable]~~ in Handbook 130, Uniform Laws and Regulations in the Areas of Legal Metrology
391 and Engine Fuel Quality, National Institute of Standards and Technology, shall apply to the
392 registration of servicepersons and service agencies in the state[~~, unless modified by the~~
393 ~~department].~~

394 Section 12. Section **4-9-6** is amended to read:

395 **4-9-6. Department duties -- Seizure of incorrect weights and measures.**

396 (1) The department may:

397 [~~(1)~~] (a) [~~promulgates~~] establish weights and measures standards, specifications, and
398 tolerances for [~~any and~~];

399 (i) all commodities[~~, standards of~~];

400 (ii) the fill for any commodity contained in a package~~[- standards and specifications~~
401 ~~for];~~

402 (iii) labels or labeling of ~~[any] a~~ commodity~~[-];~~ and ~~[standards, specifications, and~~
403 ~~tolerances for]~~

404 (iv) weights and measures used commercially;

405 ~~[(2)]~~ (b) ~~[inspects] inspect~~ and ~~[tests] test~~ weights and measures kept, offered, or
406 exposed for sale to determine if they are correct;

407 ~~[(3)]~~ (c) ~~[inspects] inspect~~ and ~~[tests] test~~ weights and measures commercially used to
408 determine if they are correct;

409 ~~[(4)]~~ (d) ~~[tests] test~~ all weights and measures used ~~[in checking] to check~~ the receipt or
410 disbursement of supplies used by ~~[any] a~~ state agency or institution funded by the state;

411 ~~[(5)]~~ (e) ~~[inspects and tests, according to] in accordance with~~ sampling procedures
412 recognized and designated in ~~[the] Handbook 133, Checking the Net Contents of Packaged~~
413 ~~Goods, National [Bureau] Institute of Standards [Handbooks 67 and 133, "Checking~~
414 ~~Prepackaged Commodities,"]~~ and Technology, inspect and test any packaged commodity kept,
415 offered, or exposed for sale, sold, or in the process of delivery, to determine if the package
416 contains the amount represented;

417 ~~[(6)]~~ (f) ~~[prescribes] determine~~ the appropriate term or unit of weight or measure to be
418 used for container sizes, if ~~[it] the department~~ determines that an existing practice of declaring
419 the quantity by weight, measure, count, or any combination of ~~[such] these~~ practices, hinders
420 value comparisons by consumers;

421 ~~[(7)]~~ (g) ~~[approves] approve correct~~ weights and measures ~~[for use as correct]~~ and
422 ~~[rejects] reject~~ and ~~[marks] mark~~ as "rejected," weights and measures ~~[found incorrect] that are~~
423 incorrect;

424 ~~[(8)]~~ (h) ~~[allows] allow~~ reasonable variations from ~~[the] a~~ stated weight or measure
425 caused by loss or gain due to:

426 (i) moisture during the course of ~~[good] acceptable~~ distribution ~~[practice] practices~~; or
427 ~~[by]~~

428 (ii) unavoidable deviations in ~~[good] acceptable~~ manufacturing ~~[practice] practices~~;

429 ~~[(9)]~~ (i) ~~[grants] grant~~ an exemption from the requirements of this chapter or from any
430 ~~[regulation published as authorized by] rule promulgated under~~ this chapter, when

431 ~~[appropriate]~~ the department determines that the exemption is necessary for the maintenance of
 432 ~~[good]~~ acceptable commercial practices;

433 ~~[(10)]~~ (j) ~~[maintains]~~ maintain on file, for public inspection, a copy of each handbook
 434 prepared by the National ~~[Bureau]~~ Institute of Standards and Technology which is used to
 435 enforce this chapter; and

436 ~~[(11)]~~ (k) ~~[establishes]~~ establish and ~~[charges]~~ charge fees as authorized under ~~[Section~~
 437 ~~63-38-3.2]~~ Subsection 4-2-2(2) for the inspection of weights and measures. ~~[Weights]~~

438 (2) The department may seize weights and measures that ~~[have been rejected may be~~
 439 seized if] are:

440 (a) incorrect and are not corrected within ~~[the]~~ a reasonable time specified ~~[or if]~~ by
 441 the department; or

442 (b) used or disposed of in a manner not ~~[specifically]~~ authorized ~~[-The]~~ by the
 443 department ~~[shall condemn and may seize weights and measures found to be incorrect that are~~
 444 not capable of being corrected].

445 Section 13. Section **4-9-12** is amended to read:

446 **4-9-12. Unlawful acts specified.**

447 ~~[It is unlawful for any]~~ A person ~~[to]~~ may not:

448 (1) sell, offer, or ~~[expose]~~ present for sale ~~[any]~~ a commodity whose weight and
 449 measure is less than the weight and measure represented as being sold, offered, or exposed for
 450 sale;

451 (2) misrepresent the price of ~~[any]~~ a commodity sold, advertised, exposed, or offered
 452 for sale by weight, measure, or count, or to represent the price in ~~[any]~~ a manner ~~[tending to~~
 453 mislead or deceive] that misleads or deceives a person;

454 (3) use or possess ~~[any incorrect]~~ an incorrect weight or measure in commerce;

455 (4) remove ~~[any]~~ a tag, seal, or mark from ~~[any]~~ a weight or measure without specific
 456 written authorization from the department; ~~[or]~~

457 (5) hinder or obstruct ~~[any]~~ an agent of the department dealing with weights and
 458 measures in the performance of the agent's duties~~[-];~~ or

459 (6) operate weights and measures in trade or commerce for the purpose of determining
 460 the weight or measure of a commodity without a valid weights and measures license issued by
 461 the department.

462 Section 14. Section **4-9-15** is enacted to read:

463 **4-9-15. Licensure of commercial establishments using weights and measures --**

464 **Application -- Fee -- Expiration -- Renewal.**

465 (1) (a) Pursuant to Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
466 department shall establish rules providing for the issuance of licenses to weights and measures
467 users to ensure the use of correct weights and measures in commerce or trade.

468 (b) A weights and measures user shall obtain a license issued by the department.

469 (c) Prior to granting a license to a weights and measures user, the department shall
470 determine whether the weights and measures user complies with the rules established under
471 Subsection (1)(a).

472 (d) An applicant shall apply to the department, in writing, using forms required by the
473 department.

474 (e) The department shall issue a license to an applicant, if the department determines
475 that the applicant meets the qualifications of licensure established under Subsection (1)(a).

476 (f) If the applicant does not meet the qualifications of licensure, the department shall
477 notify the applicant, in writing, that the applicant's license is denied.

478 (g) (i) If an applicant submits an incomplete application, a written notice of conditional
479 denial of licensure shall be provided to an applicant.

480 (ii) The applicant must correct the deficiencies within the time period specified in the
481 notice to receive a license.

482 (h) The department may, as provided under Subsection 4-2-2(2), charge the weights
483 and measures user a licensing fee.

484 (2) (a) A license, issued under this section, shall be valid from the date the department
485 issues the license, to December 31 of the year the license is issued.

486 (b) A license may be renewed for the following year by applying for renewal by
487 December 31 of the year the license expires.

488 (3) A license, issued under this section, shall specify:

489 (a) the name and address of the weights and measures user; and

490 (b) the license issuance and expiration date.

491 (4) A weights and measures user shall display, conspicuously, the license in the
492 weights and measures user's place of business at all times.

493 (5) (a) The department may immediately suspend a license, issued under this section, if
494 any of the conditions of licensure have been violated.

495 (b) (i) The holder of a license suspended under Subsection (5)(a) may apply for the
496 reinstatement of a license.

497 (ii) If the department determines that all licensure requirements have been met, the
498 department shall reinstate the license.

499 (6) (a) A weights and measures user, licensed under this section, shall allow the
500 department access to the weights and measures user's place of business to determine if the
501 weights and measures user is complying with the licensure requirements.

502 (b) If a weights and measures user denies access for an inspection required under
503 Subsection (6)(a), the department may suspend the weights and measures user's license until
504 the department is allowed access to the weights and measures user's place of business.

505 Section 15. Section **63-2-304** is amended to read:

506 **63-2-304. Protected records.**

507 The following records are protected if properly classified by a governmental entity:

508 (1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret
509 has provided the governmental entity with the information specified in Section 63-2-308;

510 (2) commercial information or nonindividual financial information obtained from a
511 person if:

512 (a) disclosure of the information could reasonably be expected to result in unfair
513 competitive injury to the person submitting the information or would impair the ability of the
514 governmental entity to obtain necessary information in the future;

515 (b) the person submitting the information has a greater interest in prohibiting access
516 than the public in obtaining access; and

517 (c) the person submitting the information has provided the governmental entity with
518 the information specified in Section 63-2-308;

519 (3) commercial or financial information acquired or prepared by a governmental entity
520 to the extent that disclosure would lead to financial speculations in currencies, securities, or
521 commodities that will interfere with a planned transaction by the governmental entity or cause
522 substantial financial injury to the governmental entity or state economy;

523 (4) records the disclosure of which could cause commercial injury to, or confer a

524 competitive advantage upon a potential or actual competitor of, a commercial project entity as
525 defined in Subsection 11-13-103(4);

526 (5) test questions and answers to be used in future license, certification, registration,
527 employment, or academic examinations;

528 (6) records the disclosure of which would impair governmental procurement
529 proceedings or give an unfair advantage to any person proposing to enter into a contract or
530 agreement with a governmental entity, except that this Subsection (6) does not restrict the right
531 of a person to see bids submitted to or by a governmental entity after bidding has closed;

532 (7) records that would identify real property or the appraisal or estimated value of real
533 or personal property, including intellectual property, under consideration for public acquisition
534 before any rights to the property are acquired unless:

535 (a) public interest in obtaining access to the information outweighs the governmental
536 entity's need to acquire the property on the best terms possible;

537 (b) the information has already been disclosed to persons not employed by or under a
538 duty of confidentiality to the entity;

539 (c) in the case of records that would identify property, potential sellers of the described
540 property have already learned of the governmental entity's plans to acquire the property; or

541 (d) in the case of records that would identify the appraisal or estimated value of
542 property, the potential sellers have already learned of the governmental entity's estimated value
543 of the property;

544 (8) records prepared in contemplation of sale, exchange, lease, rental, or other
545 compensated transaction of real or personal property including intellectual property, which, if
546 disclosed prior to completion of the transaction, would reveal the appraisal or estimated value
547 of the subject property, unless:

548 (a) the public interest in access outweighs the interests in restricting access, including
549 the governmental entity's interest in maximizing the financial benefit of the transaction; or

550 (b) when prepared by or on behalf of a governmental entity, appraisals or estimates of
551 the value of the subject property have already been disclosed to persons not employed by or
552 under a duty of confidentiality to the entity;

553 (9) records created or maintained for civil, criminal, or administrative enforcement
554 purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if

555 release of the records:

556 (a) reasonably could be expected to interfere with investigations undertaken for
557 enforcement, discipline, licensing, certification, or registration purposes;

558 (b) reasonably could be expected to interfere with audits, disciplinary, or enforcement
559 proceedings;

560 (c) would create a danger of depriving a person of a right to a fair trial or impartial
561 hearing;

562 (d) reasonably could be expected to disclose the identity of a source who is not
563 generally known outside of government and, in the case of a record compiled in the course of
564 an investigation, disclose information furnished by a source not generally known outside of
565 government if disclosure would compromise the source; or

566 (e) reasonably could be expected to disclose investigative or audit techniques,
567 procedures, policies, or orders not generally known outside of government if disclosure would
568 interfere with enforcement or audit efforts;

569 (10) records the disclosure of which would jeopardize the life or safety of an
570 individual;

571 (11) records the disclosure of which would jeopardize the security of governmental
572 property, governmental programs, or governmental recordkeeping systems from damage, theft,
573 or other appropriation or use contrary to law or public policy;

574 (12) records that, if disclosed, would jeopardize the security or safety of a correctional
575 facility, or records relating to incarceration, treatment, probation, or parole, that would interfere
576 with the control and supervision of an offender's incarceration, treatment, probation, or parole;

577 (13) records that, if disclosed, would reveal recommendations made to the Board of
578 Pardons and Parole by an employee of or contractor for the Department of Corrections, the
579 Board of Pardons and Parole, or the Department of Human Services that are based on the
580 employee's or contractor's supervision, diagnosis, or treatment of any person within the board's
581 jurisdiction;

582 (14) records and audit workpapers that identify audit, collection, and operational
583 procedures and methods used by the State Tax Commission, if disclosure would interfere with
584 audits or collections;

585 (15) records of a governmental audit agency relating to an ongoing or planned audit

586 until the final audit is released;

587 (16) records prepared by or on behalf of a governmental entity solely in anticipation of
588 litigation that are not available under the rules of discovery;

589 (17) records disclosing an attorney's work product, including the mental impressions or
590 legal theories of an attorney or other representative of a governmental entity concerning
591 litigation;

592 (18) records of communications between a governmental entity and an attorney
593 representing, retained, or employed by the governmental entity if the communications would be
594 privileged as provided in Section 78-24-8;

595 (19) personal files of a legislator, including personal correspondence to or from a
596 member of the Legislature, provided that correspondence that gives notice of legislative action
597 or policy may not be classified as protected under this section;

598 (20) (a) records in the custody or control of the Office of Legislative Research and
599 General Counsel, that, if disclosed, would reveal a particular legislator's contemplated
600 legislation or contemplated course of action before the legislator has elected to support the
601 legislation or course of action, or made the legislation or course of action public; and

602 (b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the
603 Office of Legislative Research and General Counsel is a public document unless a legislator
604 asks that the records requesting the legislation be maintained as protected records until such
605 time as the legislator elects to make the legislation or course of action public;

606 (21) research requests from legislators to the Office of Legislative Research and
607 General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared
608 in response to these requests;

609 (22) drafts, unless otherwise classified as public;

610 (23) records concerning a governmental entity's strategy about collective bargaining or
611 pending litigation;

612 (24) records of investigations of loss occurrences and analyses of loss occurrences that
613 may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the
614 Uninsured Employers' Fund, or similar divisions in other governmental entities;

615 (25) records, other than personnel evaluations, that contain a personal recommendation
616 concerning an individual if disclosure would constitute a clearly unwarranted invasion of

617 personal privacy, or disclosure is not in the public interest;

618 (26) records that reveal the location of historic, prehistoric, paleontological, or
619 biological resources that if known would jeopardize the security of those resources or of
620 valuable historic, scientific, educational, or cultural information;

621 (27) records of independent state agencies if the disclosure of the records would
622 conflict with the fiduciary obligations of the agency;

623 (28) records of a public institution of higher education regarding tenure evaluations,
624 appointments, applications for admissions, retention decisions, and promotions, which could be
625 properly discussed in a meeting closed in accordance with Title 52, Chapter 4, Open and Public
626 Meetings, provided that records of the final decisions about tenure, appointments, retention,
627 promotions, or those students admitted, may not be classified as protected under this section;

628 (29) records of the governor's office, including budget recommendations, legislative
629 proposals, and policy statements, that if disclosed would reveal the governor's contemplated
630 policies or contemplated courses of action before the governor has implemented or rejected
631 those policies or courses of action or made them public;

632 (30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis,
633 revenue estimates, and fiscal notes of proposed legislation before issuance of the final
634 recommendations in these areas;

635 (31) records provided by the United States or by a government entity outside the state
636 that are given to the governmental entity with a requirement that they be managed as protected
637 records if the providing entity certifies that the record would not be subject to public disclosure
638 if retained by it;

639 (32) transcripts, minutes, or reports of the closed portion of a meeting of a public body
640 except as provided in Section 52-4-7;

641 (33) records that would reveal the contents of settlement negotiations but not including
642 final settlements or empirical data to the extent that they are not otherwise exempt from
643 disclosure;

644 (34) memoranda prepared by staff and used in the decision-making process by an
645 administrative law judge, a member of the Board of Pardons and Parole, or a member of any
646 other body charged by law with performing a quasi-judicial function;

647 (35) records that would reveal negotiations regarding assistance or incentives offered

648 by or requested from a governmental entity for the purpose of encouraging a person to expand
649 or locate a business in Utah, but only if disclosure would result in actual economic harm to the
650 person or place the governmental entity at a competitive disadvantage, but this section may not
651 be used to restrict access to a record evidencing a final contract;

652 (36) materials to which access must be limited for purposes of securing or maintaining
653 the governmental entity's proprietary protection of intellectual property rights including patents,
654 copyrights, and trade secrets;

655 (37) the name of a donor or a prospective donor to a governmental entity, including a
656 public institution of higher education, and other information concerning the donation that could
657 reasonably be expected to reveal the identity of the donor, provided that:

658 (a) the donor requests anonymity in writing;

659 (b) any terms, conditions, restrictions, or privileges relating to the donation may not be
660 classified protected by the governmental entity under this Subsection (37); and

661 (c) except for public institutions of higher education, the governmental unit to which
662 the donation is made is primarily engaged in educational, charitable, or artistic endeavors, and
663 has no regulatory or legislative authority over the donor, a member of his immediate family, or
664 any entity owned or controlled by the donor or his immediate family;

665 (38) accident reports, except as provided in Sections 41-6-40, 41-12a-202, and
666 73-18-13;

667 (39) a notification of workers' compensation insurance coverage described in Section
668 34A-2-205;

669 (40) (a) the following records of a public institution of education, which have been
670 developed, discovered, or received by or on behalf of faculty, staff, employees, or students of
671 the institution:

672 (i) unpublished lecture notes;

673 (ii) unpublished research notes and data;

674 (iii) unpublished manuscripts;

675 (iv) creative works in process;

676 (v) scholarly correspondence; and

677 (vi) confidential information contained in research proposals; and

678 (b) Subsection (40)(a) may not be construed to affect the ownership of a record;

679 (41) (a) records in the custody or control of the Office of Legislative Auditor General
680 that would reveal the name of a particular legislator who requests a legislative audit prior to the
681 date that audit is completed and made public; and

682 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the
683 Office of the Legislative Auditor General is a public document unless the legislator asks that
684 the records in the custody or control of the Office of Legislative Auditor General that would
685 reveal the name of a particular legislator who requests a legislative audit be maintained as
686 protected records until the audit is completed and made public;

687 (42) records that provide detail as to the location of an explosive, including a map or
688 other document that indicates the location of:

689 (a) a production facility; or

690 (b) a magazine;

691 (43) information contained in the database described in Section 62A-3-311.1;

692 (44) information contained in the Management Information System and Licensing
693 Information System described in Title 62A, Chapter 4a, Child and Family Services; ~~and~~

694 (45) information regarding National Guard operations or activities in support of the
695 National Guard's federal mission[-]; and

696 (46) information regarding food security, risk, and vulnerability assessments performed
697 by the Department of Agriculture and Food.

Legislative Review Note
as of 2-5-04 4:51 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

State Impact

Provisions of this bill require the Department of Agriculture and Food to license food establishments and entities using weights and measures, and charge a licensure fee. It is estimated the fee would generate \$533,600 for the General Fund, of which \$186,700 would be appropriated to the Department of Agriculture and Food to cover program costs.

	<u>FY 2005</u> <u>Approp.</u>	<u>FY 2006</u> <u>Approp.</u>	<u>FY 2005</u> <u>Revenue</u>	<u>FY 2006</u> <u>Revenue</u>
General Fund	\$186,700	\$186,700	\$533,600	\$533,600
TOTAL	\$186,700	\$186,700	\$533,600	\$533,600

Individual and Business Impact

Food establishments and all entities using weights and measures in commerce will be required to obtain a license and pay a licensure fee from \$30 to \$250, depending on the size of the entity.

Office of the Legislative Fiscal Analyst