

## SB0084S01 compared with SB0084

~~{deleted text}~~ shows text that was in SB0084 but was deleted in SB0084S01.

inserted text shows text that was not in SB0084 but was inserted into SB0084S01.

**DISCLAIMER:** This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

~~{FEDERAL}~~ Senator Aaron Osmond proposes the following substitute bill:

### STATE CONTROL OF SCHOOL NUTRITION STANDARDS~~{~~ EXEMPTIONS}

2015 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Aaron Osmond**

House Sponsor: \_\_\_\_\_

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#### LONG TITLE

##### General Description:

This bill ~~{requires the State Board of Education to make rules regarding exemptions to federal}~~provides for state control of nutrition standards in Utah schools.

##### Highlighted Provisions:

This bill:

- ▶ defines terms:
- ▶ requires the State Board of Education (the board) to make rules ~~{allowing exemptions to federal}~~describing nutrition standards for ~~{foods}~~food sold ~~{for}~~by a ~~{school-sponsored fund-raiser}~~school food authority;
- ▶ after the board has finalized rules describing nutrition standards, prohibits the board

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from requiring a school food authority to comply with federal nutrition standards:

- ▶ requires a school food authority to comply with board rules related to school nutrition standards; and
- ▶ provides ~~{direction for the rules described in this bill}~~ for the board to comply with the Code of Federal Regulations, Title 7, Chapter II, Subchapter A, Child Nutrition Programs.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

ENACTS:

**53A-1-909**, Utah Code Annotated 1953

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

Section 1. Section **53A-1-909** is enacted to read:

**53A-1-909.** ~~{ Federal }~~ State control of nutrition standards ~~{ exemptions }~~.

(1) As used in this section:

(a) "Board" means the State Board of Education.

~~{~~ ~~—— (b) "Competitive foods" means all food and beverages, other than meals reimbursed under programs authorized by the Richard B. Russell National School Lunch Act, 42 U.S.C. and the Child Nutrition Act of 1966, available for sale to students on the school campus during the school day.~~

~~—— (c) "Exempt fund-raiser" means a school-sponsored fund-raiser, including a fund-raiser for a career and technical education program, that is not required to meet federal nutrition standards.~~

~~—— (d) "Federal competitive food regulations" means 7 C.F.R. Sec. 210.11.~~

~~‡~~ ~~(~~e~~)~~ "Federal nutrition standards" means the nutritional requirements for all food sold in ~~{ a school as defined in }~~ schools as defined in:

(i) Section 10 of the National School Lunch Program, 7 C.F.R. Sec. 210.10;

(ii) Section 11 of the National School Lunch Program, 7 C.F.R. Sec. 210.11 ~~‡~~

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- ~~(f) "LEA";~~
- (iii) Section 8 of the School Breakfast Program, 7 C.F.R. Sec. 220.8; and
- (iv) Section 23 of the School Breakfast Program, 7 C.F.R. Sec. 220.23.
- (c) "Federal school nutrition programs" means:
- ~~(i) a school district;~~
- ~~(ii) a charter school; or~~
- ~~(iii) the Utah Schools for the Deaf and the Blind.~~
- ~~(g) "The Healthy, Hunger-Free Kids Act" means The Healthy, Hunger-Free Kids Act of 2010;~~the national school lunch program, authorized by the Richard B. Russell National School Lunch Act, 42 U.S.C. Sec. 1751 et seq., as amended; and
- (ii) the school breakfast program, authorized by the Child Nutrition Act of 1966, 42 U.S.C. Sec. 1771 ~~et seq.~~
- ~~(2) Pursuant to the Healthy, Hunger-Free Kids Act, Sec. 1779, and federal competitive food regulations;~~ as amended.
- (d) "School food authority" means a governing body that:
- (i) is responsible for the administration of one or more schools; and
- (ii) has legal authority to operate school breakfast and lunch programs.
- (2) Utah desires to receive the state's portion of federal funds for federal school nutrition programs, but is unwilling to sacrifice the state's rightful sovereignty over the state's education system to obtain these funds.
- (3) By October 1, 2015, the board shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that provide nutrition standard requirements for food served by a Utah school food authority that:
- ~~(a) except as provided by Subsection (2)(d), set a maximum number of allowable exempt fund-raisers of no less than 25 exempt fund-raisers per site per school year;~~
- ~~(b) set the maximum duration of each exempt fund-raiser as five consecutive school days;~~
- ~~(c) provide that an exempt fund-raiser may include competitive foods sold by:~~
- ~~(i) a school-sponsored club or activity; or~~
- ~~(ii) a career and technical education program;~~
- ~~(d) provide a process to approve exempt fund-raisers for a career and technical~~

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~~education program in excess of the maximum established in Subsection (2)(a) if a career and technical education program requests an additional exempt fund-raiser; and~~

~~— (c) provide for an LEA to allow for a lower maximum number of exempt fund-raisers than provided for in; are based on the best available nutritional science; and~~

~~(b) reflect unique nutritional needs in Utah's schools.~~

~~(4) After finalizing the rules described in Subsection (~~(2)~~3), the board may not:~~

~~(a) in the board's agreement with a school food authority under 7 C.F.R. Sec. 210.9, require the school food authority to meet federal nutrition standards for lunch or after school snacks;~~

~~(b) in the board's agreement with a school food authority under 7 C.F.R. Sec. 220.7, require the school food authority to meet federal nutrition standards for breakfast; or~~

~~(c) withhold payment from a school food authority for failure to meet federal nutrition standards if the school food authority meets the nutrition standards developed by the board under Subsection (3).~~

~~(5) A school food authority shall comply with the board rules made under Subsection (3).~~

~~(6) Except as otherwise provided in this section, the board and school food authorities shall comply with 7 C.F.R. Chapter II, Subchapter A, Child Nutrition Programs.~~

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### Legislative Review Note

as ~~of 12-10-14 10:31 AM~~  
of 3-2-15 1:37 PM

The Utah Legislature's Joint Rule 4-2-402 requires legislative general counsel to place a legislative review note on legislation. The Legislative Management Committee has further directed legislative general counsel to include legal analysis in the legislative review note only if legislative general counsel determines there is a high probability that a court would declare the legislation to be unconstitutional under the Utah Constitution, the United States Constitution, or both. As explained in the legal analysis below, legislative general counsel has determined, based on applicable state and federal constitutional language and current interpretations of that language in state and federal court case law, that this legislation has a high probability of being declared unconstitutional by a court.

The Healthy Hunger-Free Kids Act of 2010, Pub. L. No. 111-296, 124 Stat. 3183, amended portions of the National School Lunch Act, 42 U.S.C. 1751 et seq., to require the United States Department of Agriculture ("USDA") to issue regulations to update the meal patterns and

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minimum nutrition standards for the National School Lunch and School Breakfast Programs (“federal school nutrition programs”) as well as for all food sold in schools, such as food sold as part of a school-sponsored fundraiser. The federal regulations require a participating school district or charter school (“school food authority”) to serve food that meets minimum nutrition requirements established by the USDA and agree to that requirement by signing an agreement with the State Board of Education (“Board”) before the school food authority may participate in the federal school nutrition programs. 7 C.F.R. §§ 210.9(b)(5), 220.7(e)(2). The Board or a school food authority may establish more rigorous or additional nutrition requirements, if the requirements are consistent with the minimum nutrition requirements established by the USDA. 77 Fed. Reg. 4088, 4105 (Jan. 26, 2012). If the USDA finds that Utah fails to comply with the conditions of the federal school nutrition programs, the USDA could: 1) require the Board to stop payments to school food authorities; 2) impose a fine on the state; 3) suspend or terminate Utah’s federal school nutrition program entirely; or 4) “take any other action as may be available or appropriate.” 7 C.F.R. § 210.24; 42 U.S.C. 1769c(e)(1)(A); 7 C.F.R. § 210.25.

This bill: 1) requires the Board to make rules to provide Utah specific “nutrition standard requirements for food served by a Utah school food authority” (“Utah specific nutrition requirements”); 2) requires a school food authority to comply with the Utah specific nutrition requirements; 3) prohibits the Board from requiring a school food authority to comply with federal minimum nutrition requirements established by the USDA for the federal school nutrition programs; and 4) prohibits the Board from withholding payments to a school food authority for failure to meet the federal minimum nutrition requirements, if the school food authority complies with the Utah specific nutrition requirements.

Under the Supremacy Clause, Article VI, cl.2 of the United States Constitution, the United States Supreme Court has "long recognized that state laws that conflict with federal law are without effect." *Altira Group v. Good*, 555 U.S. 70, 76 (2008) (citation omitted). When the USDA updated the federal regulations for the school nutrition programs, the USDA explicitly stated that the final rule “is intended to have preemptive effect with respect to any State or local laws, regulations, or policies which conflict with its provisions or which would otherwise impede its full and timely implementation.” 77 Fed. Reg. at 4105.

The federal regulations require a school food authority to serve food that meets minimum nutrition requirements established by the USDA. 7 C.F.R. §§ 210.9(b)(5), 220.7(e)(2). This bill specifically prohibits the Board from requiring a school food authority to comply with the federal minimum nutrition requirements, which directly conflicts with 7 C.F.R. Sections 210.9(b)(5) and 220.7(e)(2). The federal regulations also require the Board to withhold federal school nutrition program money in whole, or in part, from a school food authority that fails to comply with the federal regulations. 7 C.F.R. § 210.24. This bill specifically prohibits the Board from withholding money from a school food authority that fails to comply with the federal minimum nutrition requirements, which directly conflicts with 7 C.F.R. Section 210.24.

Because this bill prohibits the Board from requiring a school food authority to comply with federal minimum nutrition requirements and prohibits the Board from withholding payments to a school food authority if the school food authority fails to meet the federal minimum nutrition requirements, as long as the school food authority complies with the Utah specific nutrition

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requirements, there is a high probability that a court will find those portions of this bill unconstitutional.

**Office of Legislative Research and General Counsel**