

**Representative David Ure** proposes the following substitute bill:

**DEPARTMENT OF AGRICULTURE AND FOOD**

**AMENDMENTS**

2004 GENERAL SESSION

STATE OF UTAH

**Sponsor: David Ure**

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**LONG TITLE**

**General Description:**

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

**Highlighted Provisions:**

This bill:

- ▶ amends conditions under which raw milk may be sold;
- ▶ requires food establishments and entities using weights and measures in commerce or trade to be registered by the Department of Agriculture and Food;
- ▶ enacts conditions for registration and allows the Department of Agriculture and Food to charge registration fees;
- ▶ designates fees as dedicated credits;
- ▶ designates information regarding food security assessments as a protected record under the Government Records Access and Management Act; and
- ▶ makes technical corrections.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None



26 **Utah Code Sections Affected:**

27 AMENDS:

- 28 **4-3-14**, as last amended by Chapter 1, Laws of Utah 1980
- 29 **4-5-2**, as last amended by Chapter 157, Laws of Utah 1990
- 30 **4-5-3**, as last amended by Chapter 157, Laws of Utah 1990
- 31 **4-5-9**, as enacted by Chapter 2, Laws of Utah 1979
- 32 **4-9-1**, as enacted by Chapter 2, Laws of Utah 1979
- 33 **4-9-3**, as enacted by Chapter 2, Laws of Utah 1979
- 34 **4-9-4**, as enacted by Chapter 2, Laws of Utah 1979
- 35 **4-9-5**, as enacted by Chapter 2, Laws of Utah 1979
- 36 **4-9-5.2**, as enacted by Chapter 19, Laws of Utah 1985
- 37 **4-9-5.3**, as enacted by Chapter 19, Laws of Utah 1985
- 38 **4-9-5.4**, as enacted by Chapter 19, Laws of Utah 1985
- 39 **4-9-6**, as last amended by Chapter 28, Laws of Utah 1995
- 40 **4-9-12**, as last amended by Chapter 19, Laws of Utah 1985
- 41 **63-2-304**, as last amended by Chapters 60 and 131, Laws of Utah 2003

42 ENACTS:

- 43 **4-9-15**, Utah Code Annotated 1953



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

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

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

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

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

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

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

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

57 furnished by the producer under sanitary conditions;];

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

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

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

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

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

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

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

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

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

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

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

79 (i) permanently and individually identifiable; and

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

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

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

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

90           (b) The department may reissue a permit to produce raw milk which has been  
91 suspended under Subsection (2)(a) if the producer has complied with all of the requirements of  
92 Subsection (1).

93           Section 2. Section **4-5-2** is amended to read:

94           **4-5-2. Definitions.**

95           As used in this chapter:

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

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

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

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

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

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

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

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

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

117           (v) a tobacco or tobacco product; or

118           ~~[(iv)]~~ (vi) ~~[any]~~ a beverage subject to or complying with packaging or labeling

119 requirements imposed under the Federal Alcohol Administration Act, 27 U.S.C. Sec. 201, et  
120 seq.~~[, the Federal Alcohol Administration Act.]~~

121 (4) "Contaminated" means not securely protected from dust, dirt, or foreign or  
122 injurious agents.

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

125 (6) "Food" means:

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

128 (b) chewing gum or its components; or

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

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

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

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

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

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

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

149 (8) (a) "Food establishment" means a grocery store, bakery, candy factory, food

150 processor, bottling plant, sugar factory, cannery, rabbit processor, meat processor, flour mill,  
 151 cold or dry warehouse storage, or other facility where food products are manufactured, canned,  
 152 processed, packaged, stored, transported, prepared, sold, or offered for sale.

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

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

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

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

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

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

168 (b) accompanying the article of food.

169 ~~[(10)]~~ (11) "Official compendium" means the official documents or supplements to the:

170 (a) United States Pharmacopoeia;

171 (b) National Formulary[,-official]; or

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

173 ~~[(11)]~~ (12) (a) "Package" means ~~[any]~~ a container or wrapping in which [any] a  
 174 consumer commodity is enclosed for use in the delivery or display of the consumer commodity  
 175 to retail purchasers.

176 (b) "Package" does not include:

177 (i) package liners;

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

181 (iii) shipping containers or outer wrappings used by retailers to ship or deliver ~~[any]~~ a  
182 consumer commodity to retail customers, if the containers and wrappings bear no printed  
183 ~~[matter pertaining]~~ information relating to the consumer commodity.

184 ~~[(12)] (13) (a)~~ "Pesticide ~~[chemical]~~" means ~~[any]~~ a substance ~~[which]~~ intended:  
185 ~~[(a) alone, in chemical combination, or in formulation with one or more other~~  
186 ~~substances is a pesticide within the meaning of 7 U.S.C., Sec. 136(u), the Federal Insecticide,~~  
187 ~~Fungicide, and Rodenticide Act; and]~~

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

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

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

193 (b) "Pesticide" does not include:

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

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

199 ~~[(13)] (14)~~ "Principal display panel" means that part of a label that is most likely to be  
200 displayed, presented, shown, or examined under normal and customary conditions of display  
201 for retail sale.

202 ~~[(14)] (15)~~ "Raw agricultural commodity" means ~~[any]~~ a food in its raw or natural  
203 state, including all fruits that are washed, colored, or otherwise treated in their unpeeled,  
204 natural form prior to marketing.

205 (16) "Registration" means the issuance of a certificate by the commissioner to a  
206 qualified food establishment.

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

208 **4-5-3. Unlawful acts specified.**

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

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

- 212 (b) ~~[the adulteration or misbranding of any]~~ adulterate or misbrand food;
- 213 (c) ~~[the distribution]~~ except as provided in Subsection (2), distribute, in commerce [of],  
214 a consumer commodity ~~[which is contained in a package or bears a label that does not conform~~  
215 ~~to]~~ inconsistent with the packaging and labeling requirements of this chapter, or the rules made  
216 under this chapter;
- 217 (d) ~~[the sale, delivery]~~ sell, deliver for sale, ~~[holding]~~ hold for sale, or ~~[offering]~~ offer  
218 for sale ~~[of any]~~ an article in violation of Section 4-5-9;
- 219 (e) ~~[the dissemination of any]~~ disseminate false ~~[advertisement]~~ advertising;
- 220 (f) ~~[the removal]~~ remove or ~~[disposal]~~ dispose of detained or embargoed food in  
221 violation of Section 4-5-5;
- 222 (g) ~~[the alteration, mutilation, destruction, obliteration, or removal of]~~ adulterate,  
223 mutilate, destroy, obliterate, or remove the food label ~~[of any food, if that act is done while the~~  
224 ~~food is held for sale and]~~ which results in the food being misbranded or adulterated while the  
225 food is for sale;
- 226 (h) ~~[forging, counterfeiting, simulating, or falsely representing, or without proper~~  
227 ~~authority, using any]~~ forge, counterfeit, simulate, or misrepresent a label or information, by the  
228 unauthorized use of a mark, stamp, tag, label, or other identification device ~~[authorized or~~  
229 ~~required by rules made under this chapter]; [and]~~
- 230 (i) ~~[the]~~ use or ~~[revelation by any person of any]~~ reveal a method, process, or  
231 information which is ~~[entitled to protection]~~ protected as a trade secret[-];
- 232 (j) operate a food establishment without a valid registration issued by the department;  
233 and
- 234 (k) refuse entry to an authorized agent of the department in a food establishment as  
235 required under Section 4-5-18.
- 236 (2) Subsection (1)(c) does not apply to ~~[persons]~~ a person engaged in the wholesale or  
237 retail distribution of consumer commodities ~~[except to the extent those persons]~~ unless that  
238 person:
- 239 (a) ~~[are]~~ is engaged in the packaging or labeling of consumer commodities; or
- 240 (b) ~~[prescribe]~~ prescribes or ~~[specify by any means]~~ specifies the manner in which  
241 consumer commodities are packaged or labeled.

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



243           **4-5-9. Registration of food establishments -- Fee -- Suspension and reinstatement**  
244 **of registration -- Inspection for compliance.**

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

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

258           (b) The owner or operator of a food establishment shall register with the department  
259 before operating a food establishment.

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

263           (d) An applicant shall register with the department, in writing, using forms required by  
264 the department.

265           (e) The department shall issue a registration to an applicant, if the department  
266 determines that the applicant meets the qualifications of registration established under  
267 Subsection (1)(a).

268           (f) If the applicant does not meet the qualifications of registration, the department shall  
269 notify the applicant, in writing, that the applicant's registration is denied.

270           (g) (i) If an applicant submits an incomplete application, a written notice of conditional  
271 denial of registration shall be provided to an applicant.

272           (ii) The applicant must correct the deficiencies within the time period specified in the  
273 notice to receive a registration.

274 (h) (i) The department may, as provided under Subsection 4-2-2(2), charge the food  
275 establishment a registration fee.

276 (ii) The department shall retain the fees as dedicated credits and shall use the fees to  
277 administer the registration of food establishments.

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

280 (b) A registration may be renewed for the following year by applying for renewal by  
281 December 31 of the year the registration expires.

282 (3) A registration, issued under this section, shall specify:

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

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

285 (c) the registration issuance and expiration date.

286 ~~[(2)]~~ (4) (a) The department ~~[is authorized to]~~ may immediately suspend ~~[immediately~~  
287 ~~upon notice any permit]~~ a registration, issued under ~~[authority of]~~ this section, if ~~[it is found~~  
288 ~~that]~~ any of the conditions of ~~[the permit]~~ registration have been violated.

289 (b) (i) The holder of a ~~[permit so]~~ registration suspended ~~[shall be privileged at any~~  
290 ~~time to]~~ under Subsection (4)(a) may apply for the reinstatement of ~~[such permit, and]~~ a  
291 registration.

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

297 ~~[(3)]~~ (5) (a) ~~[Any officer or employee duly designated by]~~ A food establishment,  
298 ~~registered under this section, shall allow the department [shall] to have access to [any factory~~  
299 ~~or] the food establishment[, the operator of which holds a permit from the department for the~~  
300 ~~purpose of ascertaining whether or not]~~ to determine if the ~~[conditions of the permit are being~~  
301 ~~complied with, and denial of]~~ food establishment is complying with the registration  
302 requirements.

303 (b) If a food establishment denies access for ~~[such]~~ an inspection ~~[shall be ground for~~  
304 ~~suspension of the permit]~~ required under Subsection (5)(a), the department may suspend the

305 food establishment's registration until [such] the department is allowed access [is freely given  
 306 by the operator] to the food establishment's premises.

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

308 **4-9-1. Definitions.**

309 As used in this chapter:

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

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

314 (3) "Primary standards" mean the physical standards of the state, described in Section  
 315 4-9-4, which [~~serve as~~] are the legal reference from which all other standards and weights and  
 316 measures are derived[;].

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

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

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

322 [~~(6)~~] (7) "Weight" means net weight, unless the label declares that the product is sold  
 323 by drained weight, in which [~~event, it~~] case, "weight" means net drained weight[; ~~and~~].

324 [~~(7)~~] (8) "Weights and measures" [~~mean all~~] means weights and measures [~~of every~~  
 325 ~~kind~~], and [~~any instrument or device~~] instruments or devices used for weighing or measuring  
 326 [~~together with any~~], including an appliance or accessory associated with [~~such an~~] the  
 327 instrument or device.

328 (9) "Weights and measures registration" means the issuance of a certificate by the  
 329 commissioner to a weights and measures user.

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

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

333 **4-9-3. Weights and measures -- Systems used -- Basic units, tables, and**  
 334 **equivalents as published by National Institute of Standards and Technology.**

335 [~~The~~] (1) The department shall use the same system of weights and measures [in

336 ~~customary use] that is customarily used~~ in the United States, and the metric system of weights  
 337 and measures ~~[are jointly recognized, and either one or both of these systems shall].~~

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

339 (3) The definitions of basic units of weight and measure, the tables of weight and  
 340 measure, and the weights and measures equivalents published by the National ~~[Bureau]~~  
 341 Institute of Standards and Technology, shall ~~[govern]~~ determine the weights and measures  
 342 systems used within ~~[this]~~ the state.

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

344 **4-9-4. Weights and measures -- Primary state standards -- Secondary state**  
 345 **standards -- Verification.**

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

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

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

355 **4-9-5. Weights and measures -- Specifications, tolerances, and technical data**  
 356 **published in National Institute of Standards and Technology Handbook govern.**

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

362 (1) commercial weighing and measuring~~[-for];~~

363 (2) law enforcement~~[-for];~~

364 (3) data gathering~~[-];~~ and ~~[for]~~

365 (4) other weighing and measuring ~~[devices adopted by the National Conference on~~  
 366 ~~Weights and Measures and published in National Bureau of Standards Handbook 44,~~

367 "~~Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring~~  
368 ~~Devices," and supplements or revisions of such handbook, shall govern devices for weights and~~  
369 ~~measures in the state used for any official purpose, except as modified by regulation of the~~  
370 ~~department] purposes.~~

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

372 **4-9-5.2. Adopting uniform packaging and labeling regulation.**

373 [~~The~~] ~~Unless modified by the department, the~~ Uniform Packaging and Labeling  
374 Regulation, [~~as~~] adopted by the National Conference on Weights and Measures [~~and published~~  
375 ~~in the National Bureau of Standards' Handbook 130 "Uniform Laws and Regulations" is~~  
376 ~~applicable]~~ in Handbook 130, Uniform Laws and Regulations in the Areas of Legal Metrology  
377 and Engine Fuel Quality, National Institute of Standards and Technology, shall apply to  
378 packaging and labeling in the state[~~, unless modified by the department~~].

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

380 **4-9-5.3. Adopting uniform regulation for the method of sale of commodities.**

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

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

389 **4-9-5.4. Adopting uniform regulation for the voluntary registration of**  
390 **servicepersons and service agencies for commercial weighing and measuring devices.**

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

398 department].

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

400 **4-9-6. Department duties -- Seizure of incorrect weights and measures.**

401 (1) The department may:

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

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

405 (ii) the fill for any commodity contained in a package[~~, standards and specifications~~  
406 ~~for~~];

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

409 (iv) weights and measures used commercially;

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

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

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

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

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

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

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

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

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

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

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

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

441           ~~[(11)]~~ (k) ~~[establishes]~~ establish and ~~[charges]~~ charge fees as authorized under ~~[Section~~  
442 ~~63-38-3.2]~~ Subsection 4-2-2(2) for the inspection of weights and measures. ~~[Weights]~~

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

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

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

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

451           **4-9-12. Unlawful acts specified.**

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

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

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

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

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

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

464 (6) operate weights and measures in trade or commerce for the purpose of determining  
465 the weight or measure of a commodity without a valid weights and measures registration issued  
466 by the department.

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

468 **4-9-15. Registration of commercial establishments using weights and measures --**  
469 **Application -- Fee -- Expiration -- Renewal.**

470 (1) (a) Pursuant to Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the  
471 department shall establish rules providing for the ~~Ĥ~~ **REGISTRATION OF WEIGHTS AND MEASURES**  
471a **USERS AND** ~~ĥ~~ issuance of ~~Ĥ~~ [a weights and measures  
472 registration to] **CERTIFICATION OF** ~~ĥ~~ weights and measures ~~Ĥ~~ [users] **DEVICES** ~~ĥ~~ to ensure the  
472a use of correct weights and measures in  
473 commerce or trade.

474 (b) A weights and measures user shall register with the department.

475 (c) Prior to granting a registration to a weights and measures user, the department shall  
476 determine whether the weights and measures user complies with the rules established under  
477 Subsection (1)(a).

478 (d) An applicant shall register with the department, in writing, using forms required by  
479 the department.

480 (e) The department shall issue a registration to an applicant, if the department  
481 determines that the applicant meets the qualifications of registration established under  
482 Subsection (1)(a).

483 (f) If the applicant does not meet the qualifications of registration, the department shall  
484 notify the applicant, in writing, that the applicant's registration is denied.

485 (g) (i) If an applicant submits an incomplete application, a written notice of conditional  
486 denial of registration shall be provided to an applicant.

487 (ii) The applicant must correct the deficiencies within the time period specified in the  
488 notice to receive a registration.

489 (h) (i) The department may, as provided under Subsection 4-2-2(2), charge the weights  
490 and measures user a registration fee.



491 (ii) The department shall retain the fees as dedicated credits and shall use the fees to  
 492 administer the registration of weights and measures users.

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

495 (b) A registration may be renewed for the following year by applying for renewal by  
 496 December 31 of the year the registration expires.

497 (3) A registration, issued under this section, shall specify:

498 (a) the name and address of the weights and measures user; ~~H~~ [and] ~~h~~

499 (b) the registration issuance and expiration date ~~H~~ [;] ; AND

499a **(c) THE NUMBER AND TYPE OF WEIGHTS AND MEASURES DEVICES TO BE CERTIFIED.** ~~h~~

500 (4) (a) The department may immediately suspend a registration, issued under this  
 501 section, if any of the requirements of Section 4-9-12 are violated.

502 (b) (i) The holder of a registration suspended under Subsection (4)(a) may apply for the  
 503 reinstatement of a registration.

504 (ii) If the department determines that all requirements under Section 4-9-12 are being  
 505 met, the department shall reinstate the registration.

506 (5) (a) A weights and measures user, registered under this section, shall allow the  
 507 department access to the weights and measures user's place of business to determine if the  
 508 weights and measures user is complying with the registration requirements.

509 (b) If a weights and measures user denies access for an inspection required under  
 510 Subsection (5)(a), the department may suspend the weights and measures user's registration  
 511 until the department is allowed access to the weights and measures user's place of business.

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

513 **63-2-304. Protected records.**

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

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

517 (2) commercial information or nonindividual financial information obtained from a  
 518 person if:

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

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

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

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

530 (4) records the disclosure of which could cause commercial injury to, or confer a  
531 competitive advantage upon a potential or actual competitor of, a commercial project entity as  
532 defined in Subsection 11-13-103(4);

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

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

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

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

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

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

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

551 (8) records prepared in contemplation of sale, exchange, lease, rental, or other  
552 compensated transaction of real or personal property including intellectual property, which, if

553 disclosed prior to completion of the transaction, would reveal the appraisal or estimated value  
554 of the subject property, unless:

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

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

560 (9) records created or maintained for civil, criminal, or administrative enforcement  
561 purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if  
562 release of the records:

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

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

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

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

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

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

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

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

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

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

592 (15) records of a governmental audit agency relating to an ongoing or planned audit  
593 until the final audit is released;

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

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

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

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

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

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

613 (21) research requests from legislators to the Office of Legislative Research and  
614 General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared

615 in response to these requests;

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

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

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

622 (25) records, other than personnel evaluations, that contain a personal recommendation  
623 concerning an individual if disclosure would constitute a clearly unwarranted invasion of  
624 personal privacy, or disclosure is not in the public interest;

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

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

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

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

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

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

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

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

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

654 (35) records that would reveal negotiations regarding assistance or incentives offered  
655 by or requested from a governmental entity for the purpose of encouraging a person to expand  
656 or locate a business in Utah, but only if disclosure would result in actual economic harm to the  
657 person or place the governmental entity at a competitive disadvantage, but this section may not  
658 be used to restrict access to a record evidencing a final contract;

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

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

665 (a) the donor requests anonymity in writing;

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

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

672 (38) accident reports, except as provided in Sections 41-6-40, 41-12a-202, and  
673 73-18-13;

674 (39) a notification of workers' compensation insurance coverage described in Section  
675 34A-2-205;

676 (40) (a) the following records of a public institution of education, which have been

677 developed, discovered, or received by or on behalf of faculty, staff, employees, or students of  
678 the institution:

679 (i) unpublished lecture notes;

680 (ii) unpublished research notes and data;

681 (iii) unpublished manuscripts;

682 (iv) creative works in process;

683 (v) scholarly correspondence; and

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

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

686 (41) (a) records in the custody or control of the Office of Legislative Auditor General

687 that would reveal the name of a particular legislator who requests a legislative audit prior to the  
688 date that audit is completed and made public; and

689 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the

690 Office of the Legislative Auditor General is a public document unless the legislator asks that

691 the records in the custody or control of the Office of Legislative Auditor General that would

692 reveal the name of a particular legislator who requests a legislative audit be maintained as

693 protected records until the audit is completed and made public;

694 (42) records that provide detail as to the location of an explosive, including a map or

695 other document that indicates the location of:

696 (a) a production facility; or

697 (b) a magazine;

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

699 (44) information contained in the Management Information System and Licensing

700 Information System described in Title 62A, Chapter 4a, Child and Family Services; ~~and~~

701 (45) information regarding National Guard operations or activities in support of the

702 National Guard's federal mission[-]; and

703 (46) information regarding food security, risk, and vulnerability assessments performed

704 by the Department of Agriculture and Food.

**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 in Dedicated Credits for the Department to administer the program.

	<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>
Dedicated Credits Revenue	\$533,600	\$533,600	\$533,600	\$533,600
<b>TOTAL</b>	<b>\$533,600</b>	<b>\$533,600</b>	<b>\$533,600</b>	<b>\$533,600</b>

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**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.

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**Office of the Legislative Fiscal Analyst**