

**Representative Christopher N. Herrod** proposes the following substitute bill:

**GROWING OF FOOD**

2011 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Christopher N. Herrod**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill provides that an individual may grow and store food for consumption by the individual and other community members.

**Highlighted Provisions:**

This bill:

► provides that an individual may grow food for consumption by the individual and other community members;

► unless the food poses a risk to public health, a risk of spreading insect infestation, a risk of spreading agricultural disease, or is unlawfully possessed, prohibits governmental confiscation of food grown for consumption by the grower and other members of the individual's community or food stored in an individual's home or dwelling.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

ENACTS:

**1st Sub. H.B. 249**



26 4-1-9, Utah Code Annotated 1953

27

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

29 Section 1. Section 4-1-9 is enacted to read:

30 **4-1-9. Growing food for personal use.**

31 (1) Except as provided in Subsection (2), an individual in this state may grow food for  
 32 consumption by the individual, or other members of the individual's community ~~H→~~ or state ~~←H~~ .  
 32a if the food is

33 lawfully possessed and is legal for human consumption.

34 (2) A government entity may not confiscate food grown in accordance with this  
 35 section, or food stored in an individual's home or dwelling, that is legal for human consumption  
 36 and is lawfully possessed, unless the food poses a risk:

37 (a) to public health;

38 (b) of spreading insect infestation; or

39 (c) of spreading agricultural disease.

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### Legislative Review Note

as of 2-24-11 5:28 PM

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

This legislation provides that an individual may grow and store food for consumption by the individual, members of the individual's community, and members of the individual's state, if the food is lawfully possessed and is legal for human consumption. Furthermore, it provides that a government entity, not excluding a federal government entity, may confiscate that food only under certain circumstances. While this legislation is limited to wholly intrastate conduct, the United States Supreme Court has held that the United States Congress has broad power to regulate purely intrastate activity under the Commerce Clause of the United States Constitution. *Gonzales v. Raich*, 545 U.S. 1, 18 (2005) ("Congress can regulate purely intrastate activity . . . if it concludes that failure to regulate that class of activity would undercut the regulation of the interstate market in that commodity."); U.S. Const. art. I, § 8, cl. 3. Moreover, even if the growing and storing of food described in this bill is not considered commercial activity, the Supreme Court has held that

Congress may regulate intrastate activity if it substantially affects interstate commerce. *United States v. Lopez*, 514 U.S. 549, 559 (1995). Indeed, the regulation of agricultural commodities is a fundamental example of what Congress may regulate under the Commerce Clause. *Wickard v. Filburn*, 317 U.S. 111, 125 (1942) (holding that Congress may regulate wholly intrastate conduct—even the growing of wheat for consumption only by the grower—if “it exerts a substantial economic effect on interstate commerce.”).

Furthermore, the Supremacy Clause of the United States Constitution declares the laws of the United States to be the supreme law of the land. U.S. Const. art. VI, cl. 2. The Supreme Court has interpreted this to mean, for example, that a federal regulation properly adopted under federal law preempts state law that conflicts with the federal regulation. *Fry v. United States*, 421 U.S. 542, 547-48 (1975).

Based on this authority, there is a high probability that a court would find that this legislation is unconstitutional in that it violates the Supremacy Clause by limiting the permissible exercise of Congress’s authority under the Commerce Clause.

**Office of Legislative Research and General Counsel**

# FISCAL NOTE

H.B. 249 1st Sub. (Buff)

SHORT TITLE: **Growing of Food**

SPONSOR: **Herrod, C.**

2011 GENERAL SESSION, STATE OF UTAH

## STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this bill likely will not materially impact the state budget.

## LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill likely will not result in direct, measurable costs for local governments.

## DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Enactment of this bill likely will not result in direct, measurable expenditures by Utah residents or businesses.

