

HB0249S02 compared with HB0249S01

~~{deleted text}~~ shows text that was in HB0249S01 but was deleted in HB0249S02.

inserted text shows text that was not in HB0249S01 but was inserted into HB0249S02.

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 bill. This automatically generated document could experience abnormalities caused by: limitations of the compare program; bad input data; the timing of the compare; and other potential causes.

Representative ~~{Christopher N. Herrod}~~ Bill Wright proposes the following substitute bill:

GROWING OF FOOD

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Christopher N. Herrod

Senate Sponsor: _____

LONG TITLE

General Description:

This bill ~~{provides that}~~ recognizes the right of an individual ~~{may}~~ to grow ~~{and store}~~ food for ~~{consumption by}~~ personal use of the individual and ~~{other community members}~~ the individual's family, without being subject to local, state, or federal regulation.

Highlighted Provisions:

This bill:

- ▶ ~~{provides that}~~ recognizes the right of an individual ~~{may}~~ to grow food for ~~{consumption by}~~ personal use of the individual and ~~{other community members;}~~ the individual's family, on the individual's property, without being subject to local, state, or federal regulation; and
- ▶ unless the food poses a risk to ~~{public}~~ health, a risk of spreading insect infestation,

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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}~~ individual or family use, 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:

4-1-9, Utah Code Annotated 1953

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

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

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

(1) ~~{Except as provided in Subsection (2), an individual in this state may grow food for consumption}~~ The state recognizes the right of an individual, without federal intervention, to grow food for personal use by the individual ~~{,}~~ or ~~{other members}~~ a member of the individual's ~~{community, if the food is lawfully possessed and}~~ family, on the individual's property, without being subject to local, state, or federal laws, ordinances, or rules, if the food:

(a) is legal for human consumption;

(b) is lawfully possessed;

(c) does not pose a health risk;

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

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

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

(a) to {public} health;

(b) of spreading insect infestation; or

(c) of spreading agricultural disease.

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Legislative Review Note

as of 3-3-11 6:10 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 recognizes the right of an individual to grow and store food for the personal use of the individual and the individual's family without being subject to local, state, or federal laws, ordinances, or rules. Furthermore, it provides that a government entity, not excluding a federal government entity, may confiscate that food only under certain circumstances. Even if this legislation is interpreted to be 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