

1 **PRODUCTION AND SALE OF FOOD IN UTAH REVISIONS**

2 2012 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Casey O. Anderson**

5 House Sponsor: _____

6

7 **LONG TITLE**

8 **General Description:**

9 This bill prohibits federal regulation of an agricultural product that remains in Utah
10 after it is made, grown, or produced in Utah, and addresses the designation of a Utah
11 agricultural product.

12 **Highlighted Provisions:**

13 This bill:

14 ▶ prohibits federal regulation of an agricultural product that remains in Utah after it is
15 made, grown, or produced in Utah;

16 ▶ allows a person to identify certain agricultural products by indicating that they are
17 "Made in Utah," "Grown in Utah," or "Produced in Utah";

18 ▶ prohibits a person from claiming that an agricultural product was made, grown, or
19 produced in Utah if the product is not a Utah agricultural product;

20 ▶ makes it a class A misdemeanor for a person to enforce federal regulation of a Utah
21 agricultural product that remains in Utah; and

22 ▶ provides a person grounds to request injunctive relief if the person is punished in
23 violation of this section.

24 **Money Appropriated in this Bill:**

25 None

26 **Other Special Clauses:**

27 None



28 **Utah Code Sections Affected:**

29 ENACTS:

30 **4-8-5.5**, Utah Code Annotated 1953



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

33 Section 1. Section **4-8-5.5** is enacted to read:

34 **4-8-5.5. Intrastate agricultural product regulation.**

35 (1) As used in this section:

36 (a) "Utah agricultural product" means an agricultural product that is entirely:

37 (i) made in Utah;

38 (ii) grown in Utah; or

39 (iii) produced in Utah.

40 (b) "Utah agricultural product" includes an agricultural product that is made, grown, or
41 produced with a basic or generic material that is acquired from outside of Utah, if the basic or
42 generic material constitutes an insignificant part or portion of the final agricultural product.

43 (c) "Utah agricultural product" does not include:

44 (i) an agricultural product imported into Utah; or

45 (ii) an agricultural product whose production is directly aided by a federal subsidy.

46 (2) A Utah agricultural product that remains in Utah is not subject to regulation by the
47 federal government.

48 (3) A person may identify a Utah agricultural product by indicating that it is "Made in
49 Utah," "Grown in Utah," or "Produced in Utah" on:

50 (a) a label affixed to the product;

51 (b) the packaging, if the product is contained within a package;

52 (c) a receipt; or

53 (d) nearby signage advertising the sale of the product.

54 (4) A person may not, on labeling, on packaging, on a receipt, or in advertising, claim
55 that an agricultural product was made in Utah, grown in Utah, or produced in Utah, if that
56 agricultural product is not a Utah agricultural product.

57 (5) (a) An officer, employee, or agent of Utah or an officer, employee, or agent of any
58 of Utah's political subdivisions who enforces federal law in violation of Subsection (2) is guilty

59 of a class A misdemeanor.

60 (b) A person may bring an action for injunctive relief in district court if the person
61 receives a citation, fine, mandate, punishment, or threat of punishment for failure to comply
62 with or enforce federal regulation of a Utah agricultural product that is prohibited by this
63 section.

64 (c) A Utah district court shall enforce the provisions of this section, including, as
65 necessary and appropriate, issuing a restraining order or a writ, or taking other judicial action.

66 (d) The governor shall enforce the provisions of this section.

67 (e) A court may not require a Utah resident to pay a bond to participate in any portion
68 of a civil proceeding that relates to this section.

Legislative Review Note
as of 12-19-11 6:31 AM

As required by legislative rule 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 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 bill provides that agricultural products that remain in Utah after being made, grown, or produced in Utah are not subject to federal regulation. Additionally, this bill provides that if an officer, employee, or agent of Utah or of any of Utah's political subdivisions enforces federal regulation of a Utah agricultural product that remains in Utah, the officer, employee or agent is guilty of a class A misdemeanor. Finally, the bill provides that Utah's district courts and the governor must enforce its provisions.

As drafted, these provisions raise issues relating to the Supremacy Clause, contained in Article VI, Section 2 of the United States Constitution ("This Constitution, and the Laws of the United States . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."). The United States Supreme Court has "long recognized that state laws that conflict with federal law are 'without effect,'" *Altria Group, Inc. v. Good*, 555 U.S. 70, 76 (2008), quoting *Maryland v. Louisiana*, 451 U.S. 725, 746 (1981), and has further held that an individual cannot be guilty of a state crime if the individual was acting necessarily and properly under the authority of the laws of the United States. *Cunningham v. Neagle*, 135 U.S. 1, 75 (1890).

Relying on the Commerce Clause of the United States Constitution in Article I, Section 8, Congress exercises authority over many kinds of agricultural products in Utah under various federal acts, including the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sec. 301 et seq., the Poultry Inspection Act, 21 U.S.C. Sec. 454, and the Federal Meat Inspection Act, 21 U.S.C. Sec. 601 et seq. This type of federal legislation is often applicable to agricultural products that are produced in, and remain in Utah. The United States Supreme Court has recognized that Congress may regulate wholly intrastate conduct if the conduct has a substantial effect on interstate commerce. *Gonzalez v. Raich*, 545 U.S. 1, 17 (2005) ("Our case law firmly establishes Congress' power to regulate purely local activities that are part of an economic 'class of activities' that have a substantial effect on interstate commerce."); *Wickard v. Filburn*, 317 U.S. 111, 125 (1942) ("But even if [the] activity be local and though it still not be regarded as commerce, it may still, whatever its nature, be reached by Congress if it exerts a substantial economic effect on interstate commerce.").

Based on the federal statutes and case law described above, there is a high probability that a court will find that this bill violates the Supremacy Clause to the extent that it: 1) conflicts with valid federal regulation of intrastate commerce; 2) makes it a crime for a government agent to enforce federal law; or 3) requires a court or the governor to uphold state law in violation of the Supremacy Clause of the United States Constitution.

Office of Legislative Research and General Counsel