

Amendments to House Bill No. 724
1st Reading Copy

Requested by Representative John Sinrud

For the House Taxation Committee

Prepared by David Niss
March 10, 2005 (3:49pm)

1. Title, line 5.
Strike: "TO GIVE"
Insert: "; GIVING"

2. Title, line 8.
Following: ";"
Insert: "CHANGING THE AUTHORITY FOR APPOINTING A LOCAL HEALTH OFFICER FROM THE LOCAL HEALTH BOARD TO THE LOCAL GOVERNING BODY; CHANGING THE AUTHORITY TO HIRE STAFF OF A LOCAL HEALTH DEPARTMENT FROM THE LOCAL HEALTH BOARD TO THE LOCAL GOVERNING BODY; REQUIRING A BOARD OF COUNTY COMMISSIONERS TO HEAR AN APPEAL FROM DENIAL BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY OF A VARIANCE TO WATER QUALITY LAWS AND PROVIDING FOR APPEAL OF THE COMMISSIONERS' DECISION TO THE DISTRICT COURT; AND"

3. Title, line 8.
Following: "50-2-116,"
Insert: "50-2-117,"
Following: "50-2-130,"
Insert: "50-16-602, 50-16-1003, 50-50-102,"

4. Title, line 9.
Following: "50-50-103,"
Insert: "50-57-102,"

5. Page 2, line 26 through line 28.
Strike: subsection (a) in its entirety
Renumber: subsequent subsection,

6. Page 2, line 30.
Strike: subsection (c) in its entirety
Renumber: subsequent subsections

7. Page 3, line 11.

Strike: "department"

Insert: "county commissioners"

8. Page 4.

Following: line 25

Insert: "Section 4. Section 50-2-117, MCA, is amended to read:

"50-2-117. **Appointment of local health officer by department when not made by local health board governing body.**

(1) If a local health board governing body does not appoint a health officer, the department may appoint a health officer 30 days after notification in writing has been given to the local health board governing body.

(2) A health officer appointed by the department has the same authority as a health officer appointed by a local health board governing body."

{Internal References to 50-2-117: None.}"

Renumber: subsequent sections

9. Page 6.

Following: line 27

Insert: "Section 7. Section 50-16-602, MCA, is amended to read:

"50-16-602. **Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Department" means the department of public health and human services provided for in 2-15-2201.

(2) (a) "Health care information" means information, whether oral or recorded in any form or medium, that identifies or can readily be associated with the identity of an individual, including one who is deceased, and that relates to that individual's health care or status. The term includes any record of disclosures of health care information and any information about an individual received pursuant to state law or rules relating to communicable disease.

(b) The term does not include vital statistics information gathered under Title 50, chapter 15.

(3) "Local board" means a county, city, city-county, or district board of health provided for in Title 50, chapter 2, part 1.

(4) "Local health officer" means a county, city, city-county, or district health officer appointed by a local board in accordance with [section 15]."

{Internal References to 50-16-602: None.}"

Insert: "Section 8. Section 50-16-1003, MCA, is amended to read:

"50-16-1003. **Definitions.** As used in this part, the

following definitions apply:

(1) "AIDS" means acquired immune deficiency syndrome as further defined by the department in accordance with standards promulgated by the centers for disease control of the United States public health service.

(2) "Contact" means a person who has been exposed to the test subject in a manner, voluntary or involuntary, that may allow HIV transmission in accordance with modes of transmission recognized by the centers for disease control of the United States public health service.

(3) "Department" means the department of public health and human services provided for in 2-15-2201.

(4) "Health care facility" means a health care institution, private or public, including but not limited to a hospital, nursing home, clinic, blood bank, blood center, sperm bank, or laboratory.

(5) (a) "Health care provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state or who is licensed, certified, or otherwise authorized by the laws of another state to provide health care in the ordinary course of business or practice of a profession.

(b) The term does not include a person who provides health care solely through the sale or dispensing of drugs or medical devices.

(6) "HIV" means the human immunodeficiency virus, identified as the causative agent of AIDS, and all HIV and HIV-related viruses that damage the cellular branch of the human immune or neurological systems and leave the infected person immunodeficient or neurologically impaired.

(7) "HIV-related condition" means a chronic disease resulting from infection with HIV, including but not limited to AIDS and asymptomatic seropositivity for HIV.

(8) "HIV-related test" means a test approved by the federal food and drug administration, including but not limited to an enzyme immunoassay and a western blot, that is designed to detect the presence of HIV or antibodies to HIV.

(9) "Informed consent" means a freely executed oral or written grant of permission by the subject of an HIV-related test, by the subject's legal guardian, or, if there is no legal guardian and the subject of the test is unconscious or otherwise mentally incapacitated, by the subject's next of kin or significant other or a person designated by the subject in hospital records to act on the person's behalf to perform an HIV-related test after the receipt of pretest counseling.

(10) "Legal guardian" means a person appointed by a court to assume legal authority for another who has been found incapacitated or, in the case of a minor, a person who has legal custody of the minor.

(11) "Local board" means a county, city, city-county, or district board of health.

(12) "Local health officer" means a county, city, city-county, or district health officer appointed by the local board in accordance with [section 15].

(13) "Next of kin" means an individual who is a parent, adult child, grandparent, adult sibling, or legal spouse of a person.

(14) "Person" means an individual, corporation, organization, or other legal entity.

(15) "Posttest counseling" means counseling, conducted at the time that the HIV-related test results are given, and includes, at a minimum, written materials provided by the department.

(16) "Pretest counseling" means the provision of counseling to the subject prior to conduct of an HIV-related test, including, at a minimum, written materials developed and provided by the department.

(17) "Release of test results" means a written authorization for disclosure of HIV-related test results that:

(a) is signed and dated by the person tested or the person authorized to act for the person tested; and

(b) specifies the nature of the information to be disclosed and to whom disclosure is authorized.

(18) "Significant other" means an individual living in a current spousal relationship with another individual but who is not legally a spouse of that individual."

{Internal References to 50-16-1003:

x50-16-529 x50-16-702 x50-16-712}"

Insert: "Section 9. Section 50-50-102, MCA, is amended to read:

"50-50-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Baked goods" means breads, cakes, candies, cookies, pastries, and pies that are not potentially hazardous foods.

(2) "Consumer" means a person who is a member of the public, takes possession of food, is not operating an establishment, and does not offer the food for resale.

(3) "Department" means the department of public health and human services provided for in 2-15-2201.

(4) "Establishment" means a retail food manufacturing establishment, meat market, food service establishment, perishable food dealer, or water hauler.

(5) "Farmer's market" means a farm premises, a roadside stand owned and operated by a farmer, or an organized market authorized by the appropriate municipal or county authority.

(6) "Food" means an edible substance, beverage, or ingredient used, intended for use, or for sale for human consumption.

(7) (a) "Food service establishment" means a fixed or mobile restaurant, coffee shop, cafeteria, short-order cafe, luncheonette, grille, tearoom, sandwich shop, soda fountain, food

store serving food or beverage samples, food or drink vending machine, tavern, bar, cocktail lounge, nightclub, industrial feeding establishment, catering kitchen, commissary, private organization routinely serving the public, or similar place where food or drink is prepared, served, or provided to the public at retail, with or without charge.

(b) The term does not include:

(i) operations, vendors, or vending machines that sell or serve only packaged, nonperishable foods in their unbroken, original containers;

(ii) a private organization serving food only to its members;

(iii) custom meat cutters or wild game processors who cut, process, grind, package, or freeze game meat for the owner of the carcass for consumption by the owner or the owner's family, pets, or nonpaying guests; or

(iv) an establishment, as defined in 50-51-102, that serves food only to its registered guests.

(8) "Local board of health" means a county, city, city-county, or district board of health.

(9) "Local health officer" means a county, city, city-county, or district health officer, appointed by the local board of health in accordance with [section 15], or the health officer's authorized representative.

(10) "Meat market" means an operation and buildings or structures in connection with it used to process, store, or display meat or meat products for retail sale to the public or for human consumption.

(11) "Nonprofit organization" means any organization qualifying as a tax-exempt organization under 26 U.S.C. 501.

(12) "Perishable food dealer" means an operation that is in the business of purchasing and selling perishable food to the public at retail.

(13) "Person" means a person, partnership, corporation, association, cooperative group, the state or a political subdivision of the state, or other entity.

(14) (a) "Potentially hazardous food" means a food that is natural or synthetic and is in a form capable of supporting:

(i) the rapid and progressive growth of infectious or toxigenic microorganisms; or

(ii) the growth and toxin production of *Clostridium botulinum*.

(b) The term includes cut melons, garlic and oil mixtures, a food of animal origin that is raw or heat-treated, and a food of plant origin that is heat-treated or consists of raw seed sprouts.

(c) The term does not include:

(i) an air-cooled, hard-boiled egg with intact shell;

(ii) a food with a hydrogen ion concentration (pH) level of 4.6 or below when measured at 24 degrees C (75 degrees F);

(iii) a food with a water activity (aw) value of 0.85 or less;

(iv) a food in an unopened hermetically sealed container that is commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution; or

(v) a food for which laboratory evidence is accepted by the department as demonstrating that rapid and progressive growth of infectious and toxigenic microorganisms or the slower growth of *Clostridium botulinum* cannot occur.

(15) (a) "Preserves" means processed fruit or berry jams, jellies, compotes, fruit butters, marmalades, chutneys, fruit aspics, fruit syrups, or similar products that have a hydrogen ion concentration (pH) of 4.6 or below when measured at 24 degrees C (75 degrees F) and that are aseptically processed, packaged, and sealed.

(b) The term does not include:

(i) tomatoes or food products containing tomatoes; or

(ii) any other food substrate or product preserved by any method other than that described in subsection (15) (a).

(16) "Raw and unprocessed farm products" means fruits, vegetables, and grains sold at a farmer's market in their natural state that are not packaged and labeled and are not:

(a) cooked;

(b) canned;

(c) preserved, except for drying;

(d) combined with other food products; or

(e) peeled, diced, cut, blanched, or otherwise subjected to value-adding procedures.

(17) "Regulatory authority" means the department, the local board of health, the local health officer, or the local sanitarian.

(18) "Retail" means the provision of food directly to the consumer.

(19) (a) "Retail food manufacturing establishment" means an operation and the buildings or structures used to manufacture or prepare food for sale or human consumption at retail.

(b) The term does not include:

(i) milk producers' facilities, milk pasteurization facilities, or milk product manufacturing plants;

(ii) slaughterhouses, meat packing plants, or meat depots;

or
(iii) producers or harvesters of raw and unprocessed farm products.

(20) (a) "Water hauler" means a person engaged in the business of transporting water for human consumption and use and that is not regulated as a public water supply system as provided in Title 75, chapter 6.

(b) The term does not include a person engaged in the business of transporting water for human consumption that is used

for individual family households and family farms and ranches."

{ Internal References to 50-50-102:

x50-50-101 x50-50-103 x50-57-102 x81-22-208 }

Renumber: subsequent sections

10. Page 7.

Following: line 12

Insert: "Section 11. Section 50-57-102, MCA, is amended to read:

"50-57-102. Definitions. Unless the context clearly requires otherwise, in this chapter, the following definitions apply:

(1) "Consumer" means a person who:
(a) is a member of the public;
(b) takes possession of food or nonprescription drugs;
(c) is not functioning in the capacity of an operator of an establishment; and
(d) does not offer the food or nonprescription drugs for resale.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Dietary supplement" means a product, other than a tobacco product, that is intended to supplement the diet and:

(a) is advertised only as a food supplement; and
(b) bears or contains one or more of the following ingredients:

(i) a vitamin;
(ii) a mineral;
(iii) an herb or other botanical substance;
(iv) an amino acid; or
(v) a dietary substance used to supplement the diet by increasing the total dietary intake or a concentrate, metabolite, constituent, extract, or a combination of any ingredients described in subsections (3)(b)(i) through (3)(b)(iv).

(4) "Establishment" means a wholesale food manufacturing establishment, wholesale food salvage establishment, wholesale food warehouse, wholesale ice manufacturer, wholesale water bottler, wholesale nonprescription drug manufacturer, or retail nonprescription drug manufacturer.

(5) (a) "Food" means an edible substance, beverage, or ingredient used, intended for use, or for sale for human consumption. The term includes dietary supplements.

(b) The term does not include nonprescription drugs.

(6) "Local board of health" means a county, city, city-county, or district board of health.

(7) "Local health officer" means a county, city, city-county, or district health officer appointed by the local board of health in accordance with [section 15] or the health officer's authorized representative.

(8) (a) "Nonprescription drug" means an article, other than

food, that is available without a prescription from a health practitioner licensed by the department of labor and industry and that is:

(i) intended for use in the diagnosis, cure, mitigation, treatment, or prevention of a disease in humans or animals;

(ii) intended to affect the structure or function of the body of humans or animals; or

(iii) intended for use as a component of any article specified in subsections (8) (a) (i) and (8) (a) (ii).

(b) The term does not include devices, as defined in 50-31-103.

(9) "Nonprescription drug manufacturer" means an entity engaged in the manufacturing, processing, preparing, or packaging of nonprescription drugs for sale or human consumption at retail or wholesale.

(10) "Regulatory authority" means the department, the local board of health, the local health officer, or the local sanitarian.

(11) "Retail" means the provision of food or nonprescription drugs directly to the consumer.

(12) "Retail food establishment" means an establishment, as defined in 50-50-102, that provides food directly to the consumer.

(13) (a) "Wholesale" means the sale or provision of food or nonprescription drugs to a retail food establishment or other person engaged in retail sales who sells or provides the items directly to the consumer.

(b) The term does not include the sale or provision of food or nonprescription drugs at retail.

(14) (a) "Wholesale food manufacturing establishment" means a facility and the facility's buildings or structures used to manufacture or prepare food for human consumption at wholesale.

(b) The term does not include:

(i) milk producers' facilities, milk pasteurization facilities, or milk product manufacturing plants;

(ii) slaughterhouses, meat packing plants, or meat depots; or

(iii) producers or harvesters of raw and unprocessed farm products.

(15) "Wholesale food salvage establishment" means an entity that is engaged in reconditioning or by other means salvaging distressed food or that sells, buys, or distributes for human consumption any salvaged food. The term includes a salvage broker, a salvage operator, and a salvage warehouse.

(16) (a) "Wholesale food warehouse" means a facility used to store food or cosmetics for distribution to retailers.

(b) The term includes a frozen food plant that is used to freeze, process, or store food, including any facility used in conjunction with the frozen food plant.

(c) The term does not include a wine, beer, or soft drink

warehouse that is separate from facilities where brewing or drink manufacturing occurs.

(17) (a) "Wholesale ice manufacturer" means an entity that produces ice for human consumption that is sold at wholesale in packaged form or in bulk form for food, drink, or culinary purposes.

(b) The term does not include:

(i) persons, hotels, restaurants, inns, caterers, food service contractors, or theaters that manufacture or furnish ice solely for their customers in a manner that is incidental to the production, sale, or dispensing of other goods and services; or

(ii) a retail food establishment that manufactures ice in packaged form for onsite retail sales to the consumer.

(18) (a) "Wholesale water bottler" means an entity that is engaged in the production, packaging, manufacturing, or processing of drinking water, culinary bottled water, or water otherwise processed and packaged for human consumption that is sold at wholesale.

(b) The term does not include a facility that produces, packages, manufactures, or processes drinking water, culinary bottled water, or water otherwise processed and packaged for human consumption onsite for retail sale."

{ *Internal References to 50-57-102: None.* }

Renumber: subsequent sections

11. Page 8.

Following: line 5

Insert: "(5) A decision by the department pursuant to subsection (4) is appealable to the board of county commissioners for the county in which the variance is sought. The appeal is not a trial de novo and must be based upon the records of the department."

Renumber: subsequent subsections

12. Page 8, line 6.

Strike: "department"

Insert: "county commissioners"

Strike: "(4)"

Insert: "(5)"

13. Page 8, lines 6 and 7.

Strike: "district" on line 6 through "7." on line 7

Insert: "the district court of the county in which the variance is sought. The appeal is not a trial de novo and must be based upon the records of the commission."

(7) A decision by the department or the county commissioners must be supported by substantial evidence. An

appeal pursuant to subsection (5) or (6) does not stay the enforcement of a statute, rule, or regulation, unless the court orders a stay."

Renumber: subsequent subsection

14. Page 10.

Following: line 12

Insert: "NEW SECTION. Section 15. Appointment of local health officer and other staff. (1) A county health officer must be appointed by the county commissioners. A city health officer must be appointed by the city local governing body. A health officer for a joint city-county health department must be appointed by mutual agreement of the county commissioners and the city local governing body. A district health officer must be appointed by mutual agreement of the involved counties.

(2) A local health officer must be a physician or a person with a master's degree in public health or the equivalent and with appropriate experience, as determined by the department. The appointing authority shall fix the health officer's salary.

(3) The local governing body appointing a local health officer shall also employ necessary and qualified staff for the local health department.

(4) As used in this section, "local governing body" means:

(a) for a municipality, the council or other legislative body charged with governing the municipality;

(b) for a county, the board of county commissioners."

Insert: "NEW SECTION. Section 16. {standard} Codification instruction. [Section 15] is intended to be codified as an integral part of Title 50, chapter 2, part 1, and the provisions of Title 50, chapter 2, part 1, apply to [section 15]."

Renumber: subsequent section

- END -