

SENATE BILL NO. 94

INTRODUCED BY J. ESP

BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT REMOVING THE REQUIREMENT THAT WHOLESALE AND RETAIL NONPRESCRIPTION DRUG MANUFACTURERS BE LICENSED AND REGULATED ENTITIES THROUGH THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; AND AMENDING SECTIONS 50-57-101, 50-57-102, AND 50-57-105, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 50-57-101, MCA, is amended to read:

**"50-57-101. Purpose.** This chapter provides for the licensure and regulation of wholesale food establishments and ~~wholesale and retail nonprescription drug manufacturers~~ to prevent and eliminate conditions and practices that endanger public health."

**Section 2.** 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;

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

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

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

12 (b) The term does not include nonprescription drugs.

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

14 (7) "Local health officer" means a county, city, city-county, or district health officer appointed by the local  
 15 board of health or the health officer's authorized representative.

16 ~~(8) (a) "Nonprescription drug" means an article, other than food, that is available without a prescription~~  
 17 ~~from a health practitioner licensed by the department of labor and industry and that is:~~

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

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

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

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

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

25 ~~(10)(8)~~ (8) "Regulatory authority" means the department, the local board of health, the local health officer,  
 26 or the local sanitarian.

27 ~~(11)(9)~~ (9) "Retail" means the provision of food ~~or nonprescription drugs~~ directly to the consumer.

28 ~~(12)(10)~~ (10) "Retail food establishment" means an establishment, as defined in 50-50-102, that provides food  
 29 directly to the consumer.

30 ~~(13)(11)~~ (11) (a) "Wholesale" means the sale or provision of food ~~or nonprescription drugs~~ to a retail food

1 establishment or other person engaged in retail sales who sells or provides the ~~items~~ food directly to the  
2 consumer.

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

4 ~~(14)~~(12) (a) "Wholesale food manufacturing establishment" means a facility and the facility's buildings  
5 or structures used to manufacture or prepare food for human consumption at wholesale.

6 (b) The term does not include:

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

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

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

10 ~~(15)~~(13) "Wholesale food salvage establishment" means an entity that is engaged in reconditioning or  
11 by other means salvaging distressed food or that sells, buys, or distributes for human consumption any salvaged  
12 food. The term includes a salvage broker, a salvage operator, and a salvage warehouse.

13 ~~(16)~~(14) (a) "Wholesale food warehouse" means a facility used to store food or cosmetics for distribution  
14 to retailers.

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

17 (c) The term does not include a wine, beer, or soft drink warehouse that is separate from facilities where  
18 brewing or drink manufacturing occurs.

19 ~~(17)~~(15) (a) "Wholesale ice manufacturer" means an entity that produces ice for human consumption that  
20 is sold at wholesale in packaged form or in bulk form for food, drink, or culinary purposes.

21 (b) The term does not include:

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

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

27 ~~(18)~~(16) (a) "Wholesale water bottler" means an entity that is engaged in the production, packaging,  
28 manufacturing, or processing of drinking water, culinary bottled water, or water otherwise processed and  
29 packaged for human consumption that is sold at wholesale.

30 (b) The term does not include a facility that produces, packages, manufactures, or processes drinking

1 water, culinary bottled water, or water otherwise processed and packaged for human consumption onsite for retail  
2 sale."

3  
4 **Section 3.** Section 50-57-105, MCA, is amended to read:

5 **"50-57-105. Diseased person not to handle food or nonprescription drugs.** A person who has a  
6 communicable disease, as defined in 50-1-101, may not work in any establishment or in the handling or  
7 processing of food or nonprescription drugs."

8 - END -