

Testimony on HB 511

Brent Sarchet
Helena Farmer's Market Manager
PO Box 1155
Boulder, MT 59632
438-0027

This committee has heard other bills that relate to the produce and nursery law. I feel this bill, HB 511, will accomplish the goals of other produce and nursery bills proposed as well as address some of the Department of Agriculture's concerns heard in previous testimony.

HB 511 will exempt in-state, produce and nursery stock vendors at a farmer's market from obtaining a license. Instead of individual vendors being responsible for obtaining their own license, the farmer's market would be responsible for obtaining the licenses. Each farmer's market would hold two licenses, one nursery and one produce license. The nursery and produce licenses purchased by the farmer's market would cover all vendors at the farmer's market except for those who sell products originating from outside of this state.

Current nursery law Section 80-7-106, Montana Code Annotated (MCA) requires any firm, nursery, or plant dealer engaging in the business of selling or distributing nursery stock in this state shall obtain a license for each location from the department. The current license fee is \$95. This license fee is a deterrent for back-yard gardeners, 4-H clubs, FFA chapters, and other fundraising groups who want to sell nursery stock and potted plants. Some of these people may only make a few hundred dollars, so a \$95 license fee makes selling nursery stock and potted plants unprofitable.

The produce law Section 80-3-321, MCA states that a produce license is required for any person who: (a) wholesales produce in this state; (b) transports produce from out-of-state into this state for retail sale; or (c) retails produce grown by the produce dealer in this state when gross retail sales exceed \$15,000 annually. People who grow their own produce in this state are not required to obtain a license unless they exceed \$15,000 in gross retail sales annually. With recent scares in the food industry, it may be just a matter of time before anyone who sells produce must obtain a produce license. With passage of this bill, produce vendors would not be burdened with paying a produce license fee.

Traceability of our food is becoming increasingly important, especially with the recent food scares. The Montana Department of Agriculture is, to some extent, responsible for being able to trace nursery stock and produce back to their sources. Two of the purposes of requiring nursery and produce licenses are: 1) to obtain contact information from all nursery stock and produce sellers, so if needed, the department has the ability to trace nursery stock and produce, and 2) the fees collected through licensing are used to fund

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, 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