

## 1 SENATE BILL NO. 31

2 INTRODUCED BY L. WHITFORD

3 BY REQUEST OF THE ECONOMIC AFFAIRS INTERIM COMMITTEE

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING RAW HONEY TO BE BARTERED AND SOLD AS A  
6 RAW AND UNPROCESSED FARM PRODUCT AT FARMER'S MARKETS WITHOUT A SPECIAL LICENSE;  
7 AMENDING SECTIONS 50-50-102 AND 50-50-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE  
8 DATE."

9  
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11  
12 **Section 1.** Section 50-50-102, MCA, is amended to read:

13 **"50-50-102. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions  
14 apply:

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

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

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

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

22 (b) The term does not include people who gather to exchange in nonmonetary transactions:

23 (i) high-acid canned goods, including but not limited to tomato sauce, fruits, pickles, or other  
24 vinegar-based foods;

25 (ii) home-brewed beer; ~~or~~

26 (iii) dehydrated fruits and vegetables; or

27 (iv) raw honey.

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

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

1 human consumption.

2 (7) (a) "Food service establishment" means a fixed or mobile restaurant, coffee shop, cafeteria,  
3 short-order cafe, luncheonette, grille, tearoom, sandwich shop, soda fountain, food store serving food or beverage  
4 samples, food or drink vending machine, tavern, bar, cocktail lounge, nightclub, industrial feeding establishment,  
5 catering kitchen, commissary, private organization routinely serving the public, or similar place where food or  
6 drink is prepared, served, or provided to the public at retail, with or without charge.

7 (b) The term does not include:

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (b) The term includes cut melons, garlic and oil mixtures, a food of animal origin that is raw or

1 heat-treated, and a food of plant origin that is heat-treated or consists of raw seed sprouts.

2 (c) The term does not include:

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

4 (ii) a food with a hydrogen ion concentration (pH) level of 4.6 or below when measured at 24 degrees C  
5 (75 degrees F);

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

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

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

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

15 (b) The term does not include:

16 (i) tomatoes or food products containing tomatoes; or

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

19 (16) "Raw and unprocessed farm products" means:

20 (a) raw honey that:

21 (i) is not combined with other food products; and

22 (ii) if packaged, is packaged in a clean container with ~~or without~~ a label; or

23 (b) fruits, vegetables, and grains sold at a farmer's market in their natural state that are not packaged and  
24 labeled and are not:

25 ~~(a)~~(i) cooked;

26 ~~(b)~~(ii) canned;

27 ~~(c)~~(iii) preserved, except for drying;

28 ~~(d)~~(iv) combined with other food products; or

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

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

1 the local sanitarian.

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

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

5 (b) The term does not include:

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

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

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

9 (20) (a) "Water hauler" means a person engaged in the business of transporting water for human  
10 consumption and use and that is not regulated as a public water supply system as provided in Title 75, chapter  
11 6.

12 (b) The term does not include a person engaged in the business of transporting water for human  
13 consumption that is used for individual family households and family farms and ranches."

14

15 **Section 2.** Section 50-50-202, MCA, is amended to read:

16 **"50-50-202. Establishments exempt from license requirement -- farmer's market records.** (1)  
17 Establishments owned or operated by the state or a political subdivision of the state that employ a full-time  
18 sanitarian are exempt from licensure but shall comply with the requirements of this chapter and rules adopted  
19 by the department under this chapter.

20 (2) (a) A license is not required to operate an establishment if it is operated by a nonprofit organization  
21 for a period of less than 14 days in 1 calendar year. An establishment exempt from licensure under this  
22 subsection:

23 (i) must be operated in compliance with the remaining provisions of this chapter and rules adopted by  
24 the department under this chapter; and

25 (ii) prior to each operation, shall register with the local health officer or sanitarian on forms provided by  
26 the department.

27 (b) Nonprofit organizations or persons selling baked goods or preserves exclusively for a charitable  
28 community purpose are exempt from registration if they notify the local health officer or sanitarian, by phone or  
29 in person, before the event. The notification required is limited to the date and time of the event, items planned  
30 to be sold, and an estimate of the number of people expected to be served at the event.

1 (3) (a) (i) A license is not required of a gardener, apiarist, farm owner, or farm operator who sells raw  
2 and unprocessed farm products or whole shell eggs at a farmer's market.

3 (ii) Whole shell eggs sold at a farmer's market by a farm owner or operator must:

4 (A) be clean, free of cracks, and stored in clean cartons;

5 (B) be kept at a temperature established by the department; and

6 (C) carry a label indicating the name and address of the farm owner or operator selling the eggs.

7 (b) A license is not required of a person:

8 (i) selling or offering hot coffee or hot tea at a farmer's market; or

9 (ii) selling baked goods or preserves at a farmer's market or exclusively for a charitable community  
10 purpose.

11 (c) Coffee or tea exempted under this subsection (3) may not be prepared or served with fresh milk or  
12 cream.

13 (4) (a) A farmer's market that is an organized market authorized by a municipal or county authority shall  
14 keep registration records of all individuals and organizations that sell baked goods or preserves at the market.

15 (b) The registration records must include but are not limited to the name of the seller, the seller's address  
16 and telephone number, the products sold by the seller, and the date the products were sold.

17 (c) The registration records must be made available to the local health officer or the officer's agent."  
18

19 COORDINATION SECTION. SECTION 3. COORDINATION INSTRUCTION. IF BOTH HOUSE BILL NO. 478 AND  
20 [THIS ACT] ARE PASSED AND APPROVED, THEN [THIS ACT] IS VOID ON OCTOBER 1, 2015.

21

22 NEW SECTION. Section 4. Effective date. [This act] is effective on passage and approval.

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