

## 1 SENATE BILL NO. 394

2 INTRODUCED BY J. TESTER, M. GUGGENHEIM

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE DEPARTMENT OF AGRICULTURE TO PREPARE  
 5 A PLAN FOR THE ESTABLISHMENT OF A STATE ORGANIC CERTIFICATION PROGRAM, IN CONFORMITY  
 6 WITH APPLICABLE FEDERAL LAW, UPON PETITION BY CERTIFIED ORGANIC MONTANA PRODUCERS,  
 7 PROCESSORS, AND HANDLERS; REQUIRING THAT WHEN THE PLAN IS DEVELOPED IT MUST BE  
 8 SUBMITTED BY THE GOVERNOR TO THE U.S. SECRETARY OF AGRICULTURE FOR APPROVAL;  
 9 PROVIDING THAT WHEN A STATE PLAN IS APPROVED BY THE U.S. SECRETARY OF AGRICULTURE, THE  
 10 STATE ORGANIC CERTIFICATION PROGRAM MUST BE IMPLEMENTED IN MONTANA UPON THE  
 11 REQUEST OF A PERCENTAGE OF ORGANIC PRODUCERS, PROCESSORS, AND HANDLERS; REQUIRING  
 12 THAT THE PROGRAM BE ADMINISTERED BY THE DEPARTMENT OF AGRICULTURE ACCORDING TO  
 13 RULES ADOPTED BY THE DEPARTMENT WITH ADVICE FROM AN ORGANIC COMMODITY ADVISORY  
 14 COUNCIL; ESTABLISHING AN ACCOUNT; AMENDING SECTIONS 50-31-103 AND 50-31-203, MCA;  
 15 REPEALING SECTIONS 50-31-221, 50-31-222, 50-31-223, AND 50-31-231; AND PROVIDING AN IMMEDIATE  
 16 EFFECTIVE ~~DATE~~ DATES."

17

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

19

20 NEW SECTION. **Section 1. Plan for establishment of state organic certification program --**  
 21 **submission by governor to U.S. secretary of agriculture -- administration by department.** (1) ~~The~~ UPON  
 22 PETITION BY 50% OR MORE OF CERTIFIED ORGANIC PRODUCERS, PROCESSORS, AND HANDLERS IN MONTANA, THE  
 23 department shall develop a plan for a state organic certification program for producers and handlers of agricultural  
 24 products that have been produced using organic methods. The plan must be developed in conformity with the  
 25 requirements of the Organic Foods Production Act of 1990, 7 U.S.C. 6501, et seq. The state program must be  
 26 designed to ensure that a product that is sold or labeled as organically produced is produced and handled using  
 27 organic methods. The state organic certification program may contain requirements that are more restrictive than  
 28 those contained in the federal act for the organic certification of farms and handling operations and the production  
 29 and handling of agricultural products that are to be sold or labeled as organically produced.

30 (2) Once the plan is developed, the governor, as the governing state official, shall submit the plan for

1 a Montana state organic certification program to the U.S. secretary of agriculture for approval.

2 (3) If the state program is approved by the U.S. secretary of agriculture, ~~20% or more of certified organic~~  
 3 ~~producers, processors, and handlers in Montana~~ TWO-THIRDS OF THE CERTIFIED ORGANIC PRODUCERS, PROCESSORS,  
 4 AND HANDLERS WHO PETITIONED FOR DEVELOPMENT OF A STATE PLAN PURSUANT TO SUBSECTION (1) may petition the  
 5 department for implementation of the Montana state organic certification program.

6 (4) Upon receipt and verification of the petition, the department shall implement the program.  
 7 Implementation must include the establishment of an organic commodity advisory council. The council must be  
 8 composed of the director of the department, A CONSUMER MEMBER OF THE PUBLIC AT LARGE, and certified Montana  
 9 organic producers, processors, and handlers, a majority of which must be organic producers, to advise the  
 10 department regarding:

- 11 (a) the adoption of administrative rules to implement the organic certification program;  
 12 (b) appropriate research and market development programs for certified organic products;  
 13 (c) assessments on certified organic products payable by certified organic producers, processors, and  
 14 handlers CERTIFIED UNDER THE STATE ORGANIC CERTIFICATION PROGRAM, when approved by a majority of those  
 15 producers, processors, and handlers, in an amount sufficient to fund the state organic certification program  
 16 without negative fiscal impact on the state budget;  
 17 (d) assessment collection and enforcement procedures;  
 18 (e) appropriate penalty and enforcement provisions applicable to the state organic certification program;  
 19 (f) the awarding of research and marketing contracts; and  
 20 (g) any other issues the advisory council considers necessary for proper administration of the state  
 21 organic certification program.

22 (5) A STATE ORGANIC CERTIFICATION PROGRAM MAY NOT BE CONSTRUED TO APPLY TO ORGANIC PRODUCERS,  
 23 PROCESSORS, AND HANDLERS CERTIFIED SOLELY BY OTHER ORGANIC CERTIFICATION PROGRAMS, WHETHER PUBLIC,  
 24 PRIVATE, FOREIGN, OR DOMESTIC, NOR MAY THE STATE ORGANIC CERTIFICATION PROGRAM PROHIBIT THOSE OTHER  
 25 CERTIFYING ORGANIZATIONS FROM CERTIFYING AND COLLECTING FEES FROM ORGANIC PRODUCERS, PROCESSORS,  
 26 HANDLERS, OR ANY OTHER COMMERCIAL ENTITY IN MONTANA. ORGANIC PRODUCERS, PROCESSORS, AND HANDLERS MAY  
 27 BE CERTIFIED UNDER BOTH THE STATE ORGANIC CERTIFICATION PROGRAM AND PROGRAMS ADMINISTERED BY OTHER  
 28 CERTIFYING ORGANIZATIONS.

29

30 NEW SECTION. Section 2. Account established -- sources -- use -- expenditures. (1) There is an

1 account in the state special revenue fund. The following must be placed in the account:

2 (a) the proceeds from all gifts, grants, or donations to the department for development and administration  
3 of the state organic certification plan and program authorized under [section 1];

4 (b) proceeds of assessments, penalties, and other money collected pursuant to a state organic  
5 certification program when implemented pursuant to [section 1].

6 (2) The account must be maintained for the purposes of [section 1] and must be separate from all other  
7 accounts of the department.

8 (3) The department may direct the board of investments to invest funds from the account pursuant to the  
9 provisions of the unified investment program for state funds. The income from those investments must be credited  
10 to the account established in this section.

11

12 **SECTION 3. SECTION 50-31-103, MCA, IS AMENDED TO READ:**

13 **"50-31-103. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions  
14 apply:

15 (1) "Advertisement" means representations disseminated in any manner or by any means, other than  
16 by labeling, for the purpose of inducing or that are likely to induce, directly or indirectly, the purchase of food,  
17 drugs, devices, or cosmetics.

18 (2) "Approved source" means water from a spring, artesian well, drilled well, municipal water supply, or  
19 other source that has been found by the department to be of a safe and sanitary quality.

20 (3) "Artesian water" means water that is forced from below the ground toward the surface through a well  
21 by natural underground pressure.

22 (4) "Beef patty mix" means "hamburger" or "ground beef" to which have been added binders or extenders  
23 as those terms are understood by general custom and usage in the food industry.

24 (5) "Bottled water" means carbonated, demineralized, distilled, fluoridated, mineral, purified, sparkling,  
25 or other water that is from an approved source and that is disinfected and placed in a sealed container or package  
26 for human consumption.

27 (6) "Carbonated water" or "sparkling water" means water that contains carbon dioxide.

28 (7) "Color" includes black, white, and intermediate grays.

29 (8) (a) "Color additive" means a material that:

30 (i) is a dye, pigment, or other substance made by a process of synthesis or similar artifice or that is

1 extracted, isolated, or otherwise derived, with or without intermediate or final change of identity, from a vegetable,  
2 animal, mineral, or other source; or

3 (ii) when added or applied to a food, drug, or cosmetic or to the human body is capable (alone or through  
4 reaction with another substance) of imparting color to the human body.

5 (b) The term does not include material that has been or is exempted under the federal act.

6 (9) "Consumer commodity", except as otherwise specifically provided by this subsection, means any  
7 food, drug, device, or cosmetic as those terms are defined by this chapter or by the federal act and regulations  
8 pursuant to the federal act. The term does not include:

9 (a) any tobacco or tobacco product;

10 (b) a commodity subject to packaging or labeling requirements imposed under the Federal Insecticide,  
11 Fungicide, and Rodenticide Act (7 U.S.C. 136, et seq.) or the provisions of the eighth paragraph under the  
12 heading "Bureau of Animal Industry" of the act of March 4, 1913 (37 Stat. 832-833; 21 U.S.C. 151 through 157),  
13 commonly known as the Virus-Serum-Toxin Act;

14 (c) a drug subject to 50-31-306(1)(m) or 50-31-307(2)(c) or section 503(b)(1) or 506 of the federal act  
15 (21 U.S.C. 353(b)(1) and 356);

16 (d) a beverage subject to or complying with packaging or labeling requirements imposed under the  
17 Federal Alcohol Administration Act (27 U.S.C. 201, et seq.); or

18 (e) a commodity subject to the Federal Seed Act (7 U.S.C. 1551 through 1610).

19 (10) "Contaminated with filth" applies to a food, drug, device, or cosmetic not securely protected from  
20 dust, dirt, and, as far as may be necessary by all reasonable means, from foreign or injurious contaminations.

21 (11) "Cosmetic" means:

22 (a) articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied  
23 to the human body for cleansing, beautifying, promoting attractiveness, or altering the appearance;

24 (b) articles intended for use as a component of these articles, except that the term does not include soap.

25 (12) "Counterfeit drug" means a drug, drug container, or drug label that, without authorization, bears the  
26 trademark, trade name, or other identifying mark, imprint, or device or any likeness thereof of a drug  
27 manufacturer, processor, packer, or distributor other than the person who in fact manufactured, processed,  
28 packed, or distributed the drug and that falsely purports or is represented to be the product of or to have been  
29 packed or distributed by the other drug manufacturer, processor, packer, or distributor.

30 (13) "Demineralized water" means water that has been demineralized by distillation, deionization, reverse

1 osmosis, or other methods and that contains not more than 10 parts per million total solids.

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

3 (15) "Device" (except when used in 50-31-107(2), 50-31-203(6), 50-31-306(1)(c) and (1)(q), 50-31-402(3),  
4 and 50-31-501(10)) means instruments, apparatus, and contrivances, including their components, parts, and  
5 accessories, intended:

6 (a) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other  
7 animals;

8 (b) to affect the structure or function of the body of humans or other animals.

9 (16) "Distilled water" means purified water that has been vaporized and condensed.

10 (17) "Drinking water" means water that has undergone purification, distillation, demineralization,  
11 mineralization, activated carbon or particulate filtration, fluoridation, carbonation, or other similar process or has  
12 undergone minimum treatment consisting of ozonization or an acceptable disinfection process.

13 (18) "Drug" means:

14 (a) articles recognized in the official United States Pharmacopoeia, official National Formulary, or a  
15 supplement to either of these;

16 (b) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in  
17 humans or other animals;

18 (c) articles (other than food) intended to affect the structure or function of the body of humans or other  
19 animals;

20 (d) articles intended for use as components of any article specified in subsection (18)(a), (18)(b), or  
21 (18)(c) but does not include devices or their components, parts, or accessories.

22 (19) "Federal act" means the Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C. 301, et  
23 seq.).

24 (20) "Fluoridated water" means water that contains, naturally or by addition, fluoride ions in quantities of  
25 not less than 0.7 and not more than 1.4 milligrams per liter and that complies with the food and drug  
26 administration quality standards set forth in 21 CFR 103.35.

27 (21) "Food" means:

28 (a) articles used for food or drink for humans or other animals;

29 (b) chewing gum; and

30 (c) articles used for components of these articles.

1 (22) (a) "Food additive" means a substance, the intended use of which results or may be reasonably  
2 expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics  
3 of food (including a substance intended for use in producing, manufacturing, packing, processing, preparing,  
4 treating, packaging, transporting, or holding food and including a source of radiation intended for this use), if the  
5 substance is not generally recognized, among experts qualified by scientific training and experience to evaluate  
6 its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used  
7 in a food prior to January 1, 1958, through either scientific procedures or experience based on common use in  
8 food) to be safe under the conditions of its intended use.

9 (b) The term does not include:

10 (i) a pesticide chemical in or on a raw agricultural commodity;

11 (ii) a pesticide chemical to the extent that it is intended for use or is used in the production, storage, or  
12 transportation of a raw agricultural commodity;

13 (iii) a color additive;

14 (iv) a substance used in accordance with a sanction or approval granted prior to the enactment of the  
15 Food Additives Amendment of 1958, pursuant to the federal act, the Poultry Products Inspection Act (21 U.S.C.  
16 451, et seq.), or the Meat Inspection Act of March 4, 1907 (34 Stat. 1260), as amended and extended (21 U.S.C.  
17 603, et seq.).

18 (23) "Food service establishment" means a restaurant, catering vehicle, vending machine, delicatessen,  
19 fast-food retailer, or any other place that serves food to the public for consumption, either at or away from the  
20 point of service, and any facility operated by a governmental entity where food is served.

21 (24) "Hamburger" or "ground beef" means ground fresh or frozen beef or a combination of both fresh and  
22 frozen beef, with or without the addition of suet, to which no water, binders, or extenders are added. There are  
23 four grades of hamburger or ground beef:

24 (a) "regular hamburger" or "regular ground beef" may have:

25 (i) a fat content no greater than the federal standard set forth in 9 CFR 319.15; and

26 (ii) a lean content of no less than 70%;

27 (b) "lean hamburger" or "lean ground beef" may have:

28 (i) a fat content no greater than 22%; and

29 (ii) a lean content of no less than 78%;

30 (c) "extra lean hamburger" or "extra lean ground beef" may have:

1 (i) a fat content no greater than 16%; and

2 (ii) a lean content of no less than 84%; and

3 (d) "super lean hamburger" or "super lean ground beef" may have:

4 (i) a fat content no greater than 12%; and

5 (ii) a lean content of no less than 88%.

6 (25) "Honey" means the nectar and saccharine plant exudations, gathered, modified, and stored in the  
7 comb by honey bees, that are levorotatory and that contain not more than 25% of water, not more than 0.25%  
8 of ash, and not more than 8% sucrose.

9 (26) "Label" means a display of written, printed, or graphic matter on the immediate container of an  
10 article. "Immediate container" does not include package liners.

11 (27) "Labeling" means labels and other written, printed, or graphic matter:

12 (a) on an article or its containers or wrappers;

13 (b) accompanying the article.

14 (28) "Menu" means a list presented to the patron that states the food items for sale in a food service  
15 establishment.

16 (29) "Mineral water" means water that contains more than 500 parts per million total dissolved mineral  
17 solids.

18 (30) "New drug" means a drug, the composition of which is such that:

19 (a) it is not generally recognized, among experts qualified by scientific training and experience to  
20 evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed,  
21 recommended, or suggested in its labeling; or

22 (b) the drug, as a result of investigations to determine its safety and effectiveness for use under the  
23 conditions prescribed, has become so recognized but that has not, other than in the investigations, been used  
24 to a material extent or for a material time under the conditions prescribed.

25 (31) "Official compendium" means the official United States Pharmacopoeia, official National Formulary,  
26 or a supplement to either of these.

27 ~~(32) "Organic food" means food that conforms to the definition in 50-31-222.~~

28 ~~(33)~~(32) (a) "Package" means a container or wrapping in which a consumer commodity is enclosed for  
29 use in the delivery or display of that consumer commodity to retail purchasers.

30 (b) The term does not include:

1 (i) shipping containers or wrappings used solely for the transportation of a consumer commodity in bulk  
2 or in quantity to manufacturers, packers, or processors or to wholesale or retail distributors;

3 (ii) shipping containers or outer wrappings used by retailers to ship or deliver a commodity to retail  
4 customers if the containers and wrappings bear no printed matter pertaining to a particular commodity.

5 ~~(34)~~(33) "Person" includes an individual, partnership, corporation, and association.

6 ~~(35)~~(34) "Pesticide chemical" means a substance that alone, in chemical combination, or in formulation  
7 with one or more other substances is an "economic poison" under the Federal Insecticide, Fungicide, and  
8 Rodenticide Act (7 U.S.C. 136, et seq.), as amended, and that is used in the production, storage, or transportation  
9 of raw agricultural commodities.

10 ~~(36)~~(35) "Placard" means a nonpermanent sign used to display or describe food items for sale in a food  
11 service establishment or retail establishment.

12 ~~(37)~~(36) "Principal display panel" means that part of a label that is most likely to be displayed, presented,  
13 shown, or examined under normal and customary conditions of display for retail sale.

14 ~~(38)~~(37) "Processing" means cooking, baking, heating, drying, mixing, grinding, churning, separating,  
15 extracting, cutting, freezing, or otherwise manufacturing a food or changing the physical characteristics of a food,  
16 and the enclosure of the food in a package.

17 ~~(39)~~(38) "Purified water" means water that is produced by distillation, deionization, reverse osmosis, or  
18 other method and that meets the definition of purified water in the 20th edition of the Pharmacopoeia of the United  
19 States of America, 1980.

20 ~~(40)~~(39) "Raw agricultural commodity" means food in its raw or natural state, including fruits that are  
21 washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.

22 ~~(41)~~(40) "Retail establishment" means a commercial establishment at which meat or meat products are  
23 displayed for sale or provision to the public, with or without charge.

24 ~~(42)~~(41) "Spring water" means water that originates in an underground formation and flows naturally,  
25 without external force or vacuum, to a natural orifice in the surface of the earth.

26 ~~(43)~~(42) "Synthetically compounded" means a product formulated by a process that chemically changes  
27 a material or substance extracted from naturally occurring plant, animal, or mineral sources, except for  
28 microbiological processes.

29 ~~(44)~~(43) "Water-bottling plant" means a facility in which bottled water is produced.

30 ~~(45)~~(44) "Well water" means water that:

- 1 (a) is taken from below the ground through a piping device or similar installed device using external force  
2 or vacuum;
- 3 (b) is not modified in its mineral content; and
- 4 (c) may have undergone minimum treatment consisting of ozonization or an acceptable disinfection  
5 process."

6

7 **SECTION 4. SECTION 50-31-203, MCA, IS AMENDED TO READ:**

8 **"50-31-203. When food misbranded.** A food is considered to be misbranded if:

9 (1) its labeling is false or misleading in any particular;

10 (2) it is offered for sale under the name of another food;

11 (3) it is an imitation of another food for which a definition and standard of identity has been prescribed  
12 by regulations as provided by 50-31-201 or if it is an imitation of another food that is not subject to subsection (7)  
13 of this section, unless its label bears in type of uniform size and prominence the word imitation and, immediately  
14 after that word, the name of the food imitated;

15 (4) its container is made, formed, or filled in a manner that is misleading;

16 (5) it is in package form, unless it bears a label containing:

17 (a) the name and place of business of the manufacturer, packer, or distributor;

18 (b) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count;  
19 provided that reasonable variations must be permitted and exemptions as to small packages must be established  
20 by regulations prescribed by the department;

21 (6) any word, statement, or other information required by or under authority of this chapter to appear on  
22 the label or labeling is not prominently placed on the label or labeling with such conspicuousness (as compared  
23 with other words, statements, designs, or devices in the labeling) and in terms that render it likely to be read and  
24 understood by the ordinary individual under customary conditions of purchase and use;

25 (7) it purports to be or is represented as a food for which a definition and standard of identity have been  
26 prescribed by regulations as provided by 50-31-201, unless:

27 (a) it conforms to that definition and standard; and

28 (b) its label bears the name of the food specified in the definition and standard and, as may be required  
29 by the regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present  
30 in the food;

1 (8) it purports to be or is represented as:

2 (a) a food for which a standard of quality has been prescribed by regulations as provided by 50-31-201  
3 and its quality falls below that standard, unless its label bears, in a manner and form that the regulations specify,  
4 a statement that it falls below that standard; or

5 (b) a food for which a standard or standards of fill of container have been prescribed by regulation as  
6 provided by 50-31-201 and it falls below the standard of fill of container applicable, unless its label bears, in a  
7 manner and form that the regulations specify, a statement that it falls below that standard;

8 (9) it is not subject to the provisions of subsection (7) unless it bears labeling clearly giving:

9 (a) the common or usual name of the food, if there is one; and

10 (b) in case it is fabricated from two or more ingredients, the common or usual name of each ingredient;  
11 except that spices, flavorings, and colorings, other than those sold as such, may be designated as spices,  
12 flavorings, and colorings without naming each. To the extent that compliance with the requirements of this  
13 subsection (9)(b) is impractical or results in deception or unfair competition, exemptions must be established by  
14 regulations promulgated by the department. The requirements of this subsection (9)(b) do not apply to food  
15 products that are packaged at the direction of purchasers at retail at the time of sale, the ingredients of which are  
16 disclosed to the purchasers by other means in accordance with regulations promulgated by the department.

17 (10) it purports to be or is represented for special dietary uses, unless its label bears information  
18 concerning its vitamin, mineral, and other dietary properties that the department determines to be and by  
19 regulations prescribes as necessary in order to fully inform purchasers as to its value for special dietary uses;

20 (11) it bears or contains any artificial flavoring, artificial coloring, or chemical preservative unless it bears  
21 labeling stating that fact. To the extent that compliance with the requirements of this subsection is impracticable,  
22 exemptions must be established by regulations promulgated by the department. Butter, cheese, ice cream, and  
23 frozen desserts as described in 81-22-101 are exempt from label statements for artificial flavoring and artificial  
24 coloring.

25 (12) it is a product intended as an ingredient of another food and when used according to the directions  
26 of the purveyor will result in the final food product being adulterated or misbranded;

27 (13) it is a color additive, unless its packaging and labeling are in conformity with packaging and labeling  
28 requirements applicable to that color additive prescribed under the provisions of the federal act;

29 ~~(14) it is labeled "organic", "organically grown", "naturally grown", "ecologically grown", or "biologically~~  
30 ~~grown" but does not conform to the definition in 50-31-222."~~

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2        NEW SECTION. SECTION 5. REPEALER. SECTIONS 50-31-221, 50-31-222, 50-31-223, AND 50-31-231,  
3 MCA, ARE REPEALED.

4

5        NEW SECTION. Section 6. Codification instruction. [Sections 1 and 2] are intended to be codified  
6 as an integral part of Title 80, chapter 11, and the provisions of Title 80, chapter 11, apply to [sections 1 and 2].

7

8        NEW SECTION. Section 7. Effective date DATES. [~~This (1) EXCEPT AS PROVIDED IN SUBSECTION (2),~~  
9 [~~THIS act~~] is effective on passage and approval.

10        (2) [SECTIONS 3 THROUGH 5] ARE EFFECTIVE UPON THE IMPLEMENTATION OF A STATE ORGANIC CERTIFICATION  
11 PROGRAM PURSUANT TO [SECTION 1(3)].

12

- END -

