

HOUSE BILL NO. 159

INTRODUCED BY HAINES

BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING FOOD ESTABLISHMENT AND NONPRESCRIPTION DRUG MANUFACTURING LAWS; CREATING A STATUTORY SCHEME FOR THE LICENSURE AND REGULATION OF WHOLESALE FOOD ESTABLISHMENTS AND WHOLESALE AND RETAIL NONPRESCRIPTION DRUG MANUFACTURERS BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; GRANTING RULEMAKING AUTHORITY TO THE DEPARTMENT; PROVIDING FOR INJUNCTIONS, CIVIL ACTIONS, PROSECUTION, AND CIVIL PENALTIES AND CRIMINAL PENALTIES FOR VIOLATIONS OF WHOLESALE FOOD ESTABLISHMENT AND WHOLESALE AND RETAIL NONPRESCRIPTION DRUG MANUFACTURING LAWS; PROVIDING FOR VALIDATION OF LICENSES BY LOCAL HEALTH OFFICERS; PROVIDING FOR THE DENIAL OR CANCELLATION OF LICENSES; PROVIDING FOR INSPECTIONS AND INVESTIGATIONS BY STATE AND LOCAL HEALTH OFFICERS, SANITARIANS-IN-TRAINING, AND REGISTERED SANITARIANS; CREATING A SPECIAL REVENUE ACCOUNT FOR THE DEPARTMENT TO BE USED IN ADMINISTERING WHOLESALE FOOD ESTABLISHMENT AND WHOLESALE AND RETAIL DRUG MANUFACTURING LAWS; REQUIRING THE DEPARTMENT TO PAY LOCAL BOARDS OF HEALTH FOR INSPECTIONS AND ENFORCEMENT; CLARIFYING THE DUTIES OF LOCAL HEALTH OFFICERS; GENERALLY REVISING LAWS GOVERNING FOOD ESTABLISHMENTS TO PROVIDE CONSISTENCY WITH THE WHOLESALE FOOD ESTABLISHMENT AND WHOLESALE AND RETAIL NONPRESCRIPTION DRUG MANUFACTURING LAWS AND TO CLARIFY THE LAWS THAT PERTAIN TO RETAIL FOOD ESTABLISHMENTS; AMENDING SECTIONS 30-16-301, 50-2-118, 50-50-102, 50-50-106, 50-50-107, 50-50-108, AND 50-50-110, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE."

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

NEW SECTION. **Section 1. Purpose.** [Sections 1 through ~~24~~ 25] provide 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.

NEW SECTION. Section 2. Definitions. Unless the context clearly requires otherwise, in [sections 1 through ~~24~~ 25], 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 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 producer's 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 that is done onsite for retail sale.

NEW SECTION. Section 3. Department authorized to adopt rules. (1) The department shall adopt rules relating to the operation of establishments, including rules:

(a) setting standards to ensure sanitation and safety in establishments to protect public health and safety;

(b) relating to the licensing of establishments;

(c) providing procedures for enforcement of the laws and rules relating to establishments;

(d) relating to cooperative agreements between the department and local boards of health; and

(e) setting performance standards for local boards of health, local health officers, and sanitarians to meet as a condition to receipt of funds provided by the department pursuant to [section ~~24~~ 25].

(2) To the extent feasible, the rules must be consistent with rules adopted to implement chapter 50.

NEW SECTION. Section 4. Cooperative agreements authorized. The department may enter into cooperative agreements with other state agencies and political subdivisions of the state to carry out the provisions of [sections 1 through ~~24~~ 25].

NEW SECTION. Section 5. Diseased person not to handle food or nonprescription drugs. A person who has a communicable disease, as defined in 50-1-101, may not work in any establishment or in the handling or processing of food or nonprescription drugs.

NEW SECTION. Section 6. Injunctions. The regulatory authority may bring an action for an injunction against the continuation of an alleged violation of [sections 1 through ~~24~~ 25] or a rule adopted by the department under [sections 1 through ~~24~~ 25].

NEW SECTION. Section 7. County attorney to prosecute violations. When the regulatory authority furnishes evidence to the county attorney of a county in this state, the county attorney shall prosecute any person, firm, or corporation violating [sections 1 through ~~24~~ 25] or a rule adopted by the department under [sections 1 through ~~24~~ 25].

NEW SECTION. Section 8. Violation -- misdemeanor. A person who purposefully or knowingly violates provisions of [sections 1 through ~~24~~ 25] or rules adopted by the department under [sections 1 through ~~24~~ 25] is guilty of a misdemeanor. Upon conviction, the person shall be:

- (1) fined an amount of not less than \$50 or more than \$100 for the first offense;
- (2) fined an amount of not less than \$75 or more than \$200 for the second offense;
- (3) fined an amount of not less than \$200 and imprisoned in the county jail for not more than 90 days for the third offense and subsequent offenses.

NEW SECTION. Section 9. Civil penalties -- injunctions not barred. (1) An establishment that violates [sections 1 through ~~24~~ 25] or rules adopted by the department under [sections 1 through ~~24~~ 25] is subject to a civil penalty not to exceed \$500.

(2) A civil action to impose penalties, as provided under this section, does not bar a prosecution under [sections 7 and 8] or injunctions to enforce compliance with [sections 1 through ~~24~~ 25] or to enforce compliance with a rule adopted by the department under [sections 1 through ~~24~~ 25].

NEW SECTION. Section 10. Costs and expenses -- recovery by department or county. In a civil action initiated by the regulatory authority under [sections 1 through ~~24~~ 25], the court may, by petition of the regulatory authority, order an establishment that is found to be in willful violation of [sections 1 through ~~24~~ 25] or rules adopted under [sections 1 through ~~24~~ 25] to pay the costs of investigations and any other expenses incurred in enforcing the provisions of [sections 1 through ~~24~~ 25]. These costs are limited to the direct costs of investigations and other expenses.

NEW SECTION. Section 11. License required. (1) A person operating an establishment shall procure an annual license from the department.

(2) Except as provided in subsection (3), a separate license is required for each establishment, but if more than one type of establishment is operated on the same premises and under the same management, only one license is required.

(3) A person operating an establishment and a retail food establishment is required to obtain a separate license for the establishment under [sections 1 through ~~24~~ 25] and for the retail food establishment under Title 50, chapter 50.

NEW SECTION. Section 12. Application for license. An application for a license must be made to the department on forms containing information required by the department, or the application must be made in compliance with the rules established by the board of review established in 30-16-302.

NEW SECTION. Section 13. License fee -- late renewal fee -- allocation of fees. (1) For each annual license issued, the department shall collect a fee of ~~\$60~~ \$75. For an operation containing an establishment and a retail food establishment, as provided in [section 11(3)], the department shall collect one fee of ~~\$60~~ \$75 for ~~both licenses~~ EACH LICENSE.

(2) A person operating an establishment who fails to renew a license by the expiration date provided in [section ~~14~~ 15] and who operates the establishment in the license year for which an annual renewal fee was not paid shall, upon renewal, pay to the department a late renewal fee of \$25 in addition to the annual renewal fee required by subsection (1). Payment of the late renewal fee does not relieve the operator of responsibility for operating without a license.

(3) The department shall deposit the annual fees collected under subsection (1) as follows:

(a) ~~85%~~ 88% into the state special revenue fund to the credit of the local board inspection fund account, created in 50-2-108;

(b) ~~7.5%~~ 6% into the general fund; and

(c) ~~7.5%~~ 6% into the account, created in [section ~~24~~ 22], in the state special revenue fund.

(4) The department shall deposit all of the fees collected under subsection (2) into the account, created by [section ~~24~~ 22], in the state special revenue fund.

NEW SECTION. SECTION 14. LICENSE FEE -- LATE RENEWAL FEE -- ALLOCATION OF FEES. (1) FOR EACH

ANNUAL LICENSE ISSUED, THE DEPARTMENT SHALL COLLECT A FEE OF \$90. FOR AN OPERATION CONTAINING AN ESTABLISHMENT AND A RETAIL FOOD ESTABLISHMENT, AS PROVIDED IN [SECTION 11(3)], THE DEPARTMENT SHALL COLLECT ONE FEE OF \$90 FOR EACH LICENSE.

(2) A PERSON OPERATING AN ESTABLISHMENT WHO FAILS TO RENEW A LICENSE BY THE EXPIRATION DATE PROVIDED IN [SECTION 15] AND WHO OPERATES THE ESTABLISHMENT IN THE LICENSE YEAR FOR WHICH AN ANNUAL RENEWAL FEE WAS NOT PAID SHALL, UPON RENEWAL, PAY TO THE DEPARTMENT A LATE RENEWAL FEE OF \$25 IN ADDITION TO THE ANNUAL RENEWAL FEE REQUIRED BY SUBSECTION (1). PAYMENT OF THE LATE RENEWAL FEE DOES NOT RELIEVE THE OPERATOR OF RESPONSIBILITY FOR OPERATING WITHOUT A LICENSE.

(3) THE DEPARTMENT SHALL DEPOSIT THE ANNUAL FEES COLLECTED UNDER SUBSECTION (1) AS FOLLOWS:

(A) 90% INTO THE STATE SPECIAL REVENUE FUND TO THE CREDIT OF THE LOCAL BOARD INSPECTION FUND ACCOUNT, CREATED IN 50-2-108;

(B) 5% INTO THE GENERAL FUND; AND

(C) 5% INTO THE ACCOUNT, CREATED IN [SECTION 22], IN THE STATE SPECIAL REVENUE FUND.

(4) THE DEPARTMENT SHALL DEPOSIT ALL OF THE FEES COLLECTED UNDER SUBSECTION (2) INTO THE ACCOUNT, CREATED BY [SECTION 22], IN THE STATE SPECIAL REVENUE FUND.

NEW SECTION. Section 15. License expiration -- non-transferability. (1) Except as provided in subsection (2), licenses expire on December 31 of the year in which they are issued unless canceled for cause.

(2) If the board of review adopts a renewal date for licenses under [sections 1 through ~~24~~ 25], the licenses expire on the anniversary date established by rule by the board of review.

(3) Licenses are not transferable.

NEW SECTION. Section 16. Right to renewal. (1) License renewal may be obtained annually by paying the required annual license fee provided for in [section 13].

(2) The department shall renew licenses as a matter of right, unless conditions exist that are grounds for cancellation or denial of a license.

NEW SECTION. Section 17. Validation by local health officer. (1) A license issued by the department is not valid until it is signed by the local health officer of the local board of health with jurisdiction where the establishment is located.

(2) The local health officer shall validate or refuse to validate the license within 15 days of the receipt

of the license.

(3) The failure of the local health officer to validate the license within 15 days after its receipt is a refusal.

NEW SECTION. Section 18. Refusal of local health officer to validate -- appeal to board. (1) A local health officer may refuse to validate a license issued by the department only if the local health officer determines that the applicant has not met the requirements for the issuance of the license under [sections 1 through ~~24~~ 25] or rules adopted by the department under [sections 1 through ~~24~~ 25]. The local health officer shall notify the applicant and the department of the refusal within 5 days of the decision not to validate. The notice must state the grounds for the refusal.

(2) The applicant may appeal the decision of the local health officer to the local board of health by filing a written notice of appeal with the local health officer and the local board of health within 30 days of the local health officer's refusal to validate a license or within 30 days of the expiration of the period for the local health officer's decision under [section ~~46~~ 17], whichever is first.

(3) Upon the filing of the notice of appeal, the applicant is entitled to a hearing before the local board of health to determine the applicant's eligibility for a license under [sections 1 through ~~24~~ 25] and department rules adopted under [sections 1 through ~~24~~ 25]. The hearing must be held pursuant to the contested case procedure of the Montana Administrative Procedure Act. If the local board of health finds that the applicant is entitled to a validated license, the presiding officer of the local board of health shall validate the license by signing the license.

NEW SECTION. Section 19. Cancellation of license -- multiple establishments. (1) The department may deny or cancel a license if it finds, after proper investigation, that the applicant or licensee has violated or is not in compliance with [sections 1 through ~~24~~ 25] or a rule adopted under [sections 1 through ~~24~~ 25] and that the applicant or licensee has failed or refused to remedy or correct the noncompliance or violation.

(2) When more than one type of establishment is authorized by one license, as provided in [section 11(2)], the denial or cancellation may affect one, some, or all of the types of establishments as determined by the department.

NEW SECTION. Section 20. Submission and execution of plan of correction as bar to cancellation. An applicant or licensee may submit to the department a written plan of correction within 10 days after receipt from the department of a written notice of violation. The department shall determine if the plan of correction is acceptable. The submission and execution of an acceptable plan of correction within the time

prescribed in the plan are a bar to license cancellation.

NEW SECTION. Section 21. Notice and hearing required. (1) A license may not be denied or canceled by the department without delivery to the applicant or licensee of a written statement of the grounds for denial or cancellation and an opportunity for a hearing before the department to show cause, if any, why the license should not be denied or canceled.

(2) The applicant or licensee shall make a written request to the department for a hearing within 10 days after notice of the grounds for denial or cancellation has been received.

(3) The hearing must be held in accordance with the contested case procedure of the Montana Administrative Procedure Act. After a hearing, the department may issue an appropriate order. Service of notice or an order mailed by the department is complete upon mailing.

NEW SECTION. Section 22. Special revenue account. There is an account in the state special revenue fund. Money in the account is allocated to the department to be used to administer the provisions of [sections 1 through ~~24~~ 25] and the rules adopted under [sections 1 through ~~24~~ 25].

NEW SECTION. Section 23. Health officers and sanitarians to make investigations and inspections. State and local health officers, sanitarians-in-training, and registered sanitarians shall conduct investigations and inspections of establishments and make reports to the department as required under rules adopted by the department.

NEW SECTION. Section 24. Health officers and sanitarians to have free access. State and local health officers, sanitarians-in-training, and registered sanitarians must be provided free access to establishments at all reasonable hours for the purpose of conducting investigations and inspections as required under [sections 1 through ~~24~~ 25].

NEW SECTION. Section 25. Department to pay local health board for inspections and enforcement. (1) Before June 30 of each year, the department shall pay to a local board of health an amount from the local board inspection fund account, created in 50-2-108, that may be used only for the purpose of inspecting establishments under [sections 1 through ~~24~~ 25] and enforcing the provisions of [sections 1 through ~~24~~ 25]. However, a payment may be made only if:

- (a) there is a functioning local board of health; and
 - (b) the local board of health, local health officers, sanitarians-in-training, and registered sanitarians:
 - (i) assist in inspections and enforcement of the provisions of [sections 1 through ~~24~~ 25] and rules adopted under [sections 1 through ~~24~~ 25]; and
 - (ii) meet minimum program performance standards as established under rules adopted by the department.
- (2) The funds received by the local board of health pursuant to subsection (1) must be deposited with the appropriate local fiscal authority and must be used to supplement, but not supplant, other funds received by the local board of health that in the absence of funding received under subsection (1) would be made available for the same purpose.
- (3) Funds in the local board inspection fund account not paid to the local board of health, as provided in subsection (1), may be used by the department, within any jurisdiction that does not qualify to receive payments from the local board inspection fund account, to enforce the provisions of [sections 1 through ~~24~~ 25] and rules adopted under [section 1 through ~~24~~ 25].

Section 26. Section 30-16-301, MCA, is amended to read:

"30-16-301. Business registration and licensing plan -- administration. (1) The provisions of 16-11-120, 16-11-122, 30-12-203, 30-13-203, 30-13-206, 30-13-210, 30-13-217, 30-16-104, 50-50-201, 50-50-203, 50-50-205, 50-50-207, 50-50-214, [sections 11 through 14 15], [section 16 17], 80-7-106, 81-9-201, 81-20-201, and 82-15-105 constitute a means of implementing a preliminary plan for streamlined registration and licensing procedures. Sections 16-11-120, 16-11-122, 30-12-203, 30-13-203, 30-13-206, 30-13-210, 30-13-217, 30-16-104, 50-50-201, 50-50-203, 50-50-205, 50-50-207, 50-50-214, [sections 11 through 14 15], [section 16 17], 80-7-106, 81-9-201, 81-20-201, and 82-15-105 provide that certain licenses selected by the board of review must allow for:

- (a) an anniversary date for license renewal that is set by the board of review;
 - (b) an electronic means of verifying the information required in the license application; and
 - (c) credit card discounts in relation to fees required for licensure.
- (2) The department shall designate an employee in charge of administering the plan whose duties include those of executive secretary of the board of review."

Section 27. Section 50-2-118, MCA, is amended to read:

"50-2-118. Powers and duties of local health officers. (1) Local health officers or their authorized representatives shall:

- (a) make inspections for sanitary conditions;
- (b) as directed by the local board, issue written orders for the destruction and removal of filth ~~which~~ that might cause disease;
- (c) with written approval of the department, order buildings or facilities where people congregate closed during epidemics;
- (d) on forms provided by the department, report communicable diseases to the department each week;
- (e) before the first day of January, April, July, and October, give a report to the local board of sanitary conditions in the county, city, city-county, or district, together with a detailed account of ~~his~~ activities, on forms and containing information required by the department;
- (f) before the 10th day after the report is given to the local board, send a copy of the report required by subsection (1)(e) ~~of this section~~ to the department;
- (g) as prescribed by rules adopted by the department, establish and maintain quarantines;
- (h) as prescribed by rules adopted by the department, supervise the disinfection of places at the expense of the local board when a period of quarantine ends;
- (i) notify the department of ~~his~~ appointment and changes in membership of the local board;
- (j) file a complaint with the appropriate court if this chapter or rules adopted by the local board or state department under this chapter are violated;
- (k) validate state licenses issued by the department in accordance with chapters 50 through 53 of this title and [sections 1 through 24 25].

(2) With approval of the department, local health officers may forbid persons to assemble in a place if the assembly endangers public health.

(3) A local health officer who is a physician may be placed in charge of a communicable disease hospital, but a local health officer who is a physician is not required to act as a physician to the indigent.

(4) A local health officer who is not a physician ~~shall~~ may not act as a physician to anyone."

Section 28. 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) (a) "Commercial establishment" means an establishment operated primarily for profit.~~

~~(b) The term does not include a farmer's market.~~

(2) "Consumer" means a person who is not 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, ~~food warehouse, frozen food plant, commercial food processor,~~ perishable food dealer, or water hauler ~~not regulated as a public water supply system as provided in Title 75, chapter 6.~~

(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) "Food manufacturing establishment" means a commercial establishment and buildings or structures in connection with it used to manufacture or prepare food for sale or human consumption, but does not include milk producers' facilities, milk pasteurization facilities, milk product manufacturing plants, slaughterhouses, or meat packing plants.~~

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

(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

~~(e)~~(iv) The term does not include an establishment, as defined in 50-51-102, that serves food only to its registered guests.

~~(9) (a) "Food warehouse" means a commercial establishment and buildings or structures in connection~~

~~with it used to store food, drugs, or cosmetics for distribution to retail outlets.~~

~~—— (b) The term does not include a wine, beer, or soft drink warehouse that is separate from facilities where brewing occurs.~~

~~—— (10) "Frozen food plant" means a place used to freeze, process, or store food, including facilities used in conjunction with the frozen food plant, and a place where individual compartments are offered to the public on a rental or other basis.~~

(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.

~~(11)(10) "Meat market" means a commercial establishment 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.~~

~~(12)(11) "Nonprofit organization" means any organization qualifying as a tax-exempt organization under 26 U.S.C. 501.~~

~~(13)(12) "Perishable food dealer" means a person or commercial establishment an operation that is in the business of purchasing and selling perishable food to the public at retail.~~

~~(14)(13) "Person" means a person, partnership, corporation, association, cooperative group, or other entity engaged in operating, owning, or offering services of an establishment.~~

~~(15)(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.

~~(16)~~(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 ~~(16)~~(15)(a).

~~(17)~~(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.

~~(18)~~(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."

Section 29. Section 50-50-106, MCA, is amended to read:

"50-50-106. Injunctions. ~~Notwithstanding any other provision of this chapter, the department, local, county, or district health officer or sanitarian~~ The regulatory authority may bring an action for an injunction against ~~the continuation of an alleged~~ any continued violation of this chapter or rule adopted by the department under this chapter."

Section 30. Section 50-50-107, MCA, is amended to read:

"50-50-107. County attorney to prosecute violations. When the ~~department~~ regulatory authority furnishes evidence to the county attorney of a county in this state, the county attorney shall prosecute any person, firm, or corporation violating this chapter or a rule effective under this chapter."

Section 31. Section 50-50-108, MCA, is amended to read:

"50-50-108. Violation of chapter a -- misdemeanor. A person who purposefully or knowingly violates provisions of this chapter or rules adopted by the department under this chapter is guilty of a misdemeanor. Upon conviction, ~~he~~ the person shall be:

- (1) fined not less than \$50 or more than \$100 for the first offense;
- (2) fined not less than \$75 or more than \$200 for the second offense;
- (3) fined not less than \$200 and imprisoned in the county jail for not more than 90 days for the third offense and subsequent offenses."

Section 32. Section 50-50-110, MCA, is amended to read:

"50-50-110. Costs and expenses -- recovery by department or county. In a civil action initiated by the ~~department or county~~ regulatory authority under this chapter, the court may, by petition of the ~~department or county~~ regulatory authority, order an establishment that is found in violation of this chapter or rules adopted under this chapter to pay the costs of investigations and any other expenses incurred in enforcing the provisions of this chapter in the case of a willful violation. These costs are limited to the direct costs of investigations and other expenses."

NEW SECTION. **Section 33. Codification instruction.** [Sections 1 through ~~24~~ 25] are intended to be codified as an integral part of Title 50, and the provisions of Title 50 apply to [sections 1 through ~~24~~ 25].

NEW SECTION. SECTION 34. COORDINATION INSTRUCTION. IF SENATE BILL NO. 464 IS NOT PASSED AND APPROVED, THEN [SECTIONS 14, 35(2), AND 36 OF THIS ACT] ARE VOID AND [SECTION 13 OF THIS ACT] MUST READ AS FOLLOWS:

"NEW SECTION. Section 13. License fee -- late renewal fee -- allocation of fees. (1) For each annual license issued, the department shall collect a fee of \$60. For an operation containing an establishment and a retail food establishment, as provided in [section 11(3)], the department shall collect one fee of \$60 for each license.

(2) A person operating an establishment who fails to renew a license by the expiration date provided in [section 14] and who operates the establishment in the license year for which an annual renewal fee was not paid shall, upon renewal, pay to the department a late renewal fee of \$25 in addition to the annual renewal fee required by subsection (1). Payment of the late renewal fee does not relieve the operator of responsibility for operating without a license.

(3) The department shall deposit the annual fees collected under subsection (1) as follows:

(a) 85% into the state special revenue fund to the credit of the local board inspection fund account, created in 50-2-108;

(b) 7.5% into the general fund; and

(c) 7.5% into the account, created in [section 21], in the state special revenue fund.

(4) The department shall deposit all of the fees collected under subsection (2) into the account, created by [section 21], in the state special revenue fund."

NEW SECTION. SECTION 35. EFFECTIVE DATES. (1) EXCEPT AS PROVIDED IN SUBSECTION (2), [THIS ACT] IS EFFECTIVE JANUARY 1, 2004.

(2) [SECTION 14] IS EFFECTIVE JANUARY 1, 2005.

NEW SECTION. SECTION 36. TERMINATION. [SECTION 13] TERMINATES DECEMBER 31, 2004.

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