

SENATE BILL NO. 464
INTRODUCED BY KEENAN

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS GOVERNING FOOD ESTABLISHMENTS; REVISING FOOD ESTABLISHMENT LICENSURE FEES; ~~DEFINING "TEMPORARY RISK ESTABLISHMENT";~~ REQUIRING A LICENSE FOR TEMPORARY RISK ESTABLISHMENTS; PROVIDING FOR LICENSURE OF FOOD ESTABLISHMENTS OPERATED BY THE STATE OR A POLITICAL SUBDIVISION OF THE STATE UNLESS THEY EMPLOY A FULL-TIME SANITARIAN; EXEMPTING ESTABLISHMENTS OPERATED BY NONPROFIT ORGANIZATIONS THAT DO NOT SERVE POTENTIALLY HAZARDOUS FOOD; REQUIRING ANNUAL INSPECTIONS; ALLOWING INSPECTIONS MORE THAN ONCE A YEAR; REQUIRING TRAINING FOR INSPECTORS; AMENDING SECTIONS 50-50-102, 50-50-103, ~~50-50-201~~, 50-50-202, 50-50-205, AND 50-50-301, MCA; AND PROVIDING DELAYED EFFECTIVE DATES AND A TERMINATION DATE."

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

Section 1. 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.

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

(4) "Establishment" means a 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) (a) "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~~

(b) The term does not include milk producers' facilities, milk pasteurization facilities, milk product manufacturing plants, slaughterhouses, or meat packing plants.

(8) (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 with or without charge.

(b) The term does not include establishments, vendors, or vending machines that sell or serve only packaged, nonperishable foods in their unbroken, original containers or a private organization serving food only to its members.

(c) 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.

(11) "Meat market" means a commercial establishment and buildings or structures in connection with it used to process, store, or display meat or meat products for sale to the public or for human consumption.

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

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

(14) "Person" means a person, partnership, corporation, association, cooperative group, THE STATE OR A POLITICAL SUBDIVISION OF THE STATE, or other entity engaged in operating, owning, or offering services of an establishment.

(15) (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) (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)(a).

(17) "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.

~~(18) "Temporary risk establishment" means a temporary food service establishment OPERATED BY A NONPROFIT ORGANIZATION that operates for no more than 14 consecutive 13 days in conjunction with a single event or celebration. IN 1 CALENDAR YEAR.~~

~~(18)(19)~~(18)(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 2. Section 50-50-103, MCA, is amended to read:

"50-50-103. Department authorized to adopt rules -- advisory council. (1) To protect public health, the department may adopt rules relating to the operation of establishments defined in 50-50-102, including coverage of food, personnel, food equipment and utensils, sanitary facilities and controls, construction and fixtures, and housekeeping.

(2) (a) The department and local health authorities may not adopt rules prohibiting the sale of baked goods and preserves by nonprofit organizations or by persons at farmer's markets.

(b) The department and local health authorities may not require that foods sold pursuant to this subsection (2) be prepared in certified or commercial kitchens.

(3) The department may SHALL use a food safety task force or advisory council to assist in the development of administrative rules or proposed legislation. Any THE task force or advisory council must be composed of equal numbers of representatives of the food establishments and representatives of state and local government. Administrative rules and any legislation to be proposed by the department must be presented to the task force or advisory council prior to its proposal or introduction."

~~SECTION 3. SECTION 50-50-201, MCA, IS AMENDED TO READ:~~

~~"50-50-201. License required. (1) Except as provided in 50-50-202, a person operating an establishment shall procure an annual license or a person operating a temporary risk establishment shall procure a license from the department.~~

~~(2) 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) Only one license is required for a person owning and operating one or more vending machines.~~

~~(4) A license issued by the department is not valid unless signed in accordance with 50-50-214."~~

Section 3. Section 50-50-202, MCA, is amended to read:

"50-50-202. Establishments exempt from license requirement -- ~~establishment of temporary risk license -- farmer's market records.~~ (1) Establishments owned or operated by the state or a political subdivision of the state ~~THAT EMPLOY A FULL-TIME SANITARIAN~~ are exempt from licensure but ~~must~~ shall comply with the requirements of this chapter and rules adopted by the department under this chapter.

(2) A license is ~~not~~ NOT required to operate ~~an a temporary risk AN~~ establishment if it is ~~operated by a nonprofit organization for a period of less than 14 days in 1 calendar year~~ IF IT IS OPERATED BY A NONPROFIT ORGANIZATION FOR A PERIOD OF LESS THAN 14 DAYS IN 1 CALENDAR YEAR AND DOES NOT PREPARE, SERVE, OR PROVIDE POTENTIALLY HAZARDOUS FOOD. An establishment ~~exempt from~~ subject to EXEMPT FROM licensure under this subsection ~~must~~:

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

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

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

(b) A license is not required of a person selling baked goods or preserves at a farmer's market.

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

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

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

Section 4. Section 50-50-205, MCA, is amended to read:

"50-50-205. License fee -- late fee -- preemption of local authority -- exception. (1) ~~(A) For~~ Except as provided in subsection (3), for ~~FOR EXCEPT AS PROVIDED IN SUBSECTION (1)(B), FOR~~ each license issued, the department shall collect a fee of ~~\$60~~ \$75. It shall deposit ~~85%~~ 88% of the fees collected under this section into the local board inspection fund account created in 50-2-108, ~~7.5%~~ 6% of the fees into the general fund, and ~~7.5%~~ 6% of the fees into the account provided for in 50-50-216.

(B) FOR EACH LICENSE ISSUED TO AN ESTABLISHMENT THAT DOES NOT HAVE MORE THAN TWO EMPLOYEES WORKING AT ANY ONE TIME, THE DEPARTMENT SHALL COLLECT A FEE OF \$60, WHICH MUST BE DEPOSITED IN ACCORDANCE WITH THE PERCENTAGES PROVIDED IN SUBSECTION (1)(A).

(2) In addition to the license fee required under subsection (1), the department shall collect a late fee from any licensee who has failed to submit a license renewal fee prior to the expiration of the licensee's current license and who operates an establishment governed by this part in the next licensing year. The late fee is \$25 and must be deposited in the account provided for in 50-50-216.

~~———— (3) The department shall grant a license to a temporary risk establishment that and shall collect a fee of \$40, which must be deposited in accordance with the percentages provided in subsection (1).~~

~~(3)(4)(3)~~ A county or other local government may not impose an inspection fee or charge in addition to the fee provided for in ~~subsection subsections~~ SUBSECTION (1) ~~through (3)~~ unless a violation of this chapter or rule persists and is not corrected after two visits to the establishment.

~~(4)(5)(4)~~ The fees in subsections (1) ~~and (2) through (3)~~ AND (2) may be paid by credit card and may be discounted for payment processing charges paid by the department to a third party. However, the discounting of license fees may not reduce the fees paid into the local board inspection fund account established in 50-2-108."

Section 5. Section 50-50-205, MCA, is amended to read:

"50-50-205. License fee -- late fee -- preemption of local authority -- exception. (1) ~~(A) For Except as provided in subsection (3), for FOR EXCEPT AS PROVIDED IN SUBSECTION (1)(B), FOR~~ each license issued, the department shall collect a fee of ~~\$60~~ \$90. It shall deposit ~~85%~~ 90% of the fees collected under this section into the local board inspection fund account created in 50-2-108, ~~7.5%~~ 5% of the fees into the general fund, and ~~7.5%~~ 5% of the fees into the account provided for in 50-50-216.

~~(B) FOR EACH LICENSE ISSUED TO AN ESTABLISHMENT THAT DOES NOT HAVE MORE THAN TWO EMPLOYEES WORKING AT ANY ONE TIME, THE DEPARTMENT SHALL COLLECT A FEE OF \$60, WHICH MUST BE DEPOSITED IN ACCORDANCE WITH THE PERCENTAGES PROVIDED IN SUBSECTION (1)(A).~~

(2) In addition to the license fee required under subsection (1), the department shall collect a late fee from any licensee who has failed to submit a license renewal fee prior to the expiration of the licensee's current license and who operates an establishment governed by this part in the next licensing year. The late fee is \$25 and must be deposited in the account provided for in 50-50-216.

~~———— (3) The department shall grant a license to a temporary risk establishment and shall collect a fee of \$40, which must be deposited in accordance with the percentages provided in subsection (1).~~

~~(3)(4)(3)~~ A county or other local government may not impose an inspection fee or charge in addition to the fee provided for in ~~subsection subsections~~ SUBSECTION (1) ~~through (3)~~ unless a violation of this chapter or rule persists and is not corrected after two visits to the establishment.

~~(4)(5)(4)~~ The fees in subsections (1) ~~and (2) through (3)~~ AND (2) may be paid by credit card and may be discounted for payment processing charges paid by the department to a third party. However, the discounting of license fees may not reduce the fees paid into the local board inspection fund account established in 50-2-108."

Section 6. Section 50-50-301, MCA, is amended to read:

"50-50-301. Health officers and sanitarians to make investigations and inspections -- training requirements. (1) State and local health officers, sanitarians-in-training, and registered sanitarians shall make investigations and inspections of establishments once a year and make reports to the department as required under rules adopted by the department. An inspection may be conducted more often than once a year.

(2) A person conducting an inspection must be certified and have completed a food safety training program, such as the program administered by the national restaurant association educational foundation or its equivalent."

NEW SECTION. **Section 7. Effective dates.** (1) [Sections 1 through ~~4, 6, and 8~~ 5, 7, AND 9 ~~4, 6, AND 8~~ and this section] are effective January 1, 2004.

(2) [Section 5 ~~6~~ 5] is effective January 1, 2005.

NEW SECTION. **Section 8. Termination.** [Section 4 ~~5~~ 4] terminates December 31, 2004.

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