

HOUSE BILL NO. 352

INTRODUCED BY G. HERTZ

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4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE MONTANA LOCAL FOOD CHOICE ACT;  
5 EXEMPTING CERTAIN FOOD PRODUCERS FROM FOOD LICENSURE, PERMITTING, CERTIFICATION,  
6 PACKAGING, LABELING, AND INSPECTION REGULATIONS AS WELL AS CERTAIN OTHER STANDARDS  
7 AND REQUIREMENTS; PROVIDING EXCEPTIONS TO CERTAIN REQUIREMENTS; PROVIDING  
8 DEFINITIONS; AND AMENDING SECTIONS 30-12-301, 50-31-104, 50-31-106, 50-31-108, 50-31-201,  
9 50-50-301, 81-2-102, 81-2-105, 81-9-201, 81-9-218, 81-21-102, 81-22-102, 81-22-201, 81-22-303, 81-22-304,  
10 81-22-401, 81-22-405, 81-22-412, 81-22-413, 81-22-416, 81-22-420, 81-22-421, AND 81-22-503, MCA."

11  
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13  
14 NEW SECTION. Section 1. Short title -- purpose. (1) This chapter may be cited as the "Montana Local  
15 Food Choice Act".

16 (2) The purpose of this act is to allow for the sale and consumption of homemade food and food products  
17 and to encourage the expansion of agricultural sales by ranches, farms, and home-based producers and the  
18 accessibility of homemade food and food products to informed end consumers by:

- 19 (a) facilitating the purchase and consumption of fresh and local agricultural products;
- 20 (b) enhancing the agricultural economy; and
- 21 (c) providing Montana citizens with unimpeded access to healthy food from known sources.

22  
23 NEW SECTION. Section 2. Definitions. For purposes of this chapter, the following definitions apply:

24 (1) "Deliver" means to transfer a product as a result of a transaction between a producer and an informed  
25 end consumer. The action may be performed by the producer or the producer's designated agent at a farm,  
26 ranch, home, office, traditional community social event, or another location agreed to between the producer or  
27 agent and the informed end consumer.

- 28 (2) "Home consumption" means:
- 29 (a) the consumption of food or a food product in a private home; or
- 30 (b) the consumption of food or a food product from a private home.

1 (3) "Homemade" means food or a food product that is prepared in a private home kitchen and that is not  
2 licensed, permitted, certified, packaged, labeled, or inspected per any official regulations.

3 (4) "Informed end consumer" means a person who is the last person to purchase a product, does not  
4 resell the product, and has been informed that the product is not licensed, permitted, certified, packaged, labeled,  
5 or inspected per any official regulations.

6 (5) (a) "Producer" means a person who harvests, produces, or prepares a product that may be  
7 consumed as food or a food product.

8 (b) The term does not include the entities listed in [section 3(1)(c)].

9 (6) "Traditional community social event" means an event at which people gather as part of a community  
10 for the benefit of those gathering or for the benefit of the community, including but not limited to a:

11 (a) wedding;

12 (b) funeral;

13 (c) church or religious social;

14 (d) school event;

15 (e) potluck;

16 (f) neighborhood gathering; or

17 (g) club meeting or social.

18 (7) "Transaction" means an exchange of buying and selling.

19

20 **NEW SECTION. Section 3. Exemptions from regulations -- transactions -- information required**

21 **-- exceptions.** (1) (a) A state agency or an agency of a political subdivision of the state may not require licensure,  
22 permitting, certification, packaging, labeling, or inspection that pertains to the preparation, serving, use,  
23 consumption, or storage of food or a food product under this chapter.

24 (b) This chapter does not preclude an agency from providing assistance, consultation, or inspection  
25 requested by a producer.

26 (c) A producer as defined in this chapter is not:

27 (i) a retail food establishment, a cottage food operation, or a temporary food establishment, as each term  
28 is defined in 50-50-102;

29 (ii) a wholesale food establishment, as defined in 50-57-102; or

30 (iii) a dairy or a manufactured dairy products plant, as defined in 81-22-101.

1 (d) A producer is not subject to labeling, licensure, inspection, sanitation, or other requirements or  
2 standards of 30-12-301; Title 50, chapter 31; or Title 81, chapters 2, 9, 21, or 22.

3 (2) Transactions pursuant to this chapter:

4 (a) must be directly between the producer and the informed end consumer;

5 (b) must be only for home consumption or consumption at a traditional community social event; and

6 (c) must occur only in this state and may not involve interstate commerce.

7 (3) A producer shall inform an end consumer that any food or food product sold through ranch, farm, or  
8 home-based sales pursuant to this chapter has not been licensed, permitted, certified, packaged, labeled, or  
9 inspected per any official regulations.

10 (4) Except for raw, unprocessed fruit and vegetables, food shall not be sold or used in a retail food  
11 establishment, as defined in 50-50-102, unless the food has been licensed, permitted, certified, packaged,  
12 labeled, and inspected as required by law.

13

14 **Section 4.** Section 30-12-301, MCA, is amended to read:

15 **"30-12-301. Method of sale of commodities -- general.** (1) Commodities in liquid form may be sold  
16 only by liquid measure or by weight, and, except as otherwise provided in parts 1 through 5, commodities not in  
17 liquid form may be sold only by weight, by measure of length or area, or by count. Liquid commodities may be  
18 sold by weight and commodities not in liquid form may be sold by count only if those methods give accurate  
19 information as to the quantity of commodity sold. This section does not apply to:

20 (a) commodities when sold for immediate consumption on the premises where sold;

21 (b) vegetables when sold by the head or bunch;

22 (c) commodities in containers standardized by a law of this state or by federal law;

23 (d) commodities in package form when there exists a general consumer usage to express the quantity  
24 in some other manner;

25 (e) concrete aggregates, concrete mixtures, and loose solid materials such as earth, soil, gravel, crushed  
26 stone, and the like, when sold by cubic measure;

27 (f) unprocessed vegetable and animal fertilizer when sold by cubic measure; ~~or~~

28 (g) cottage food products as defined in 50-50-102; or

29 (h) food or food products sold pursuant to [sections 1 through 3].

30 (2) The department may adopt reasonable rules necessary to ensure that amounts of commodity sold

1 are determined in accordance with good commercial practice and are determined and represented as to be  
2 accurate and informative to all parties at interest."

3

4 **Section 5.** Section 50-31-104, MCA, is amended to read:

5 **"50-31-104. Department authorized to adopt rules.** (1) The department may adopt rules for the  
6 efficient enforcement of this chapter. The department may adopt by reference the regulations adopted by the food  
7 and drug administration under the federal act and the Fair Packaging and Labeling Act (15 U.S.C. 1451, et seq.).

8 (2) No hearing is required for adoption by reference of those regulations adopted under the federal act  
9 and the Fair Packaging and Labeling Act (15 U.S.C. 1451, et seq.).

10 (3) The department may not establish rules related to enforcement of this chapter for food or a food  
11 product sold pursuant to [sections 1 through 3]."

12

13 **Section 6.** Section 50-31-106, MCA, is amended to read:

14 **"50-31-106. Inspections and taking of samples authorized.** (1) The department or its authorized  
15 agents have free access at all reasonable hours to any factory, warehouse, or establishment in which foods,  
16 drugs, devices, or cosmetics are manufactured, processed, packed, or held for introduction into commerce or to  
17 any vehicle being used to transport or hold the foods, drugs, devices, or cosmetics in commerce, for the purpose  
18 of:

19 (a) inspecting the factory, warehouse, establishment, or vehicle to determine if any of the provisions of  
20 this chapter are being violated; and

21 (b) securing samples or specimens of any food, drug, device, or cosmetic after paying or offering to pay  
22 for the sample.

23 (2) The department shall make or cause to be made examinations of samples secured under the  
24 provisions of this section to determine whether or not any provision of this chapter is being violated.

25 (3) Pursuant to [sections 1 through 3], the department may not conduct inspections of or take samples  
26 from producers as defined in [section 2]."

27

28 **Section 7.** Section 50-31-108, MCA, is amended to read:

29 **"50-31-108. Regulations concerning additives.** (1) The department, upon its own motion or upon the  
30 petition of any interested party requesting that a rule be established, whenever public health or other

1 considerations in the state require, is authorized to adopt, amend, or repeal rules, whether or not in accordance  
2 with regulations promulgated under the federal act, prescribing tolerances for any added poisonous or deleterious  
3 substances for food additives, for pesticide chemicals in or on raw agricultural commodities, or for color additives,  
4 including but not limited to zero tolerances and exemptions from tolerances in the case of pesticide chemicals  
5 in or on raw agricultural commodities, and prescribing the conditions under which a food additive or a color  
6 additive may be safely used and exemptions when the food additive or color additive is to be used solely for  
7 investigational or experimental purposes.

8 (2) A petitioner shall establish by data submitted to the department that a necessity exists for the rule  
9 and that its effect will not be detrimental to the public health. If the data furnished by the petitioner is not sufficient  
10 to allow the department to determine whether the regulation should be promulgated, the department may require  
11 additional data to be submitted and failure to comply with the request is sufficient grounds to deny the request.

12 (3) In adopting, amending, or repealing rules relating to the substances, the department shall consider  
13 among other relevant factors the following, which the petitioner, if any, shall furnish:

14 (a) the name and all pertinent information concerning the substance, including, when available:

15 (i) its chemical identity and composition;

16 (ii) a statement of the conditions of the proposed use, including directions, recommendations, and  
17 suggestions and including specimens of proposed labeling; and

18 (iii) all relevant data bearing on the physical or other technical effect and the quantity required to produce  
19 the effect;

20 (b) the probable composition of or other relevant exposure from the article and of any substance formed  
21 in or on a food, drug, or cosmetic resulting from the use of the substance;

22 (c) the probable consumption of the substance in the diet of humans and animals taking into account  
23 any chemically or pharmacologically related substance in the diet;

24 (d) safety factors that, in the opinion of experts qualified by scientific training and experience to evaluate  
25 the safety of the substances for the use or uses for which they are proposed to be used, are generally recognized  
26 as appropriate for the use of animal experimentation data;

27 (e) the availability of any needed practicable methods of analysis for determining the identity and quantity  
28 of:

29 (i) the substance in or on an article;

30 (ii) any substance formed in or on the article because of the use of the substance; and

- 1 (iii) the pure substance and all intermediates and impurities; and  
 2 (f) facts supporting a contention that the proposed use of the substance will serve a useful purpose.  
 3 (4) The department may not establish rules related to food additives under this section for food or a food  
 4 product sold pursuant to [sections 1 through 3]."

5  
 6 **Section 8.** Section 50-31-201, MCA, is amended to read:  
 7 **"50-31-201. Department authorized to adopt food standards.** (1) Whenever in the judgment of the  
 8 department such action will promote honesty and fair dealing in the interest of consumers, the department shall  
 9 ~~promulgate~~ adopt regulations fixing and establishing for any food or class of food a reasonable definition and  
 10 standard of identity, standard of quality, and/or fill of container.

11 (2) In prescribing a definition and standard of identity for any food or class of food in which optional  
 12 ingredients are permitted, the department shall, for the purpose of promoting honesty and fair dealing in the  
 13 interest of consumers, designate the optional ingredients which shall be named on the label.

14 (3) The definitions and standards ~~so promulgated~~ shall conform ~~so far as much~~ as much as practicable to the  
 15 definitions and standards promulgated under authority of the federal act, or the department may ~~promulgate~~ adopt  
 16 by reference the definitions and standards promulgated under authority of the federal act.

17 (4) The department may not adopt food standards or regulations under this section for food or a food  
 18 product sold pursuant to [sections 1 through 3]."

19  
 20 **Section 9.** Section 50-50-301, MCA, is amended to read:

21 **"50-50-301. Health officers and sanitarians to make investigations and inspections -- training**  
 22 **requirements.** (1) State and local health officers, sanitarians-in-training, and registered sanitarians shall make  
 23 investigations and inspections of retail food establishments once a year and make reports to the department as  
 24 required under rules adopted by the department. An inspection may be conducted more often than once a year.

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

28 (3) (a) A cottage food operation is not subject to inspection under this section unless the state or local  
 29 health officer is investigating a complaint based on an illness or an outbreak suspected to be directly related to  
 30 cottage food products.

1 (b) A cottage food operation may request an inspection and pay the appropriate costs for that inspection  
2 on a voluntary basis.

3 (4) A producer as defined in [section 2] selling food or a food product pursuant to [sections 1 through  
4 3] is not subject to inspection under this section unless the state or local health officer is investigating a complaint  
5 based on an illness or an outbreak suspected to be directly related to that food or food product."

6

7 **Section 10.** Section 81-2-102, MCA, is amended to read:

8 **"81-2-102. Powers of department.** (1) The department may:

9 (a) supervise the sanitary conditions of livestock in this state, under the provisions of the constitution and  
10 statutes of this state and the rules adopted by the department. The department may quarantine a lot, yard, land,  
11 building, room, premises, enclosure, or other place or section in this state that is or may be used or occupied by  
12 livestock and that in the judgment of the department is infected or contaminated with an infectious, contagious,  
13 communicable, or dangerous disease or disease-carrying medium by which the disease may be communicated.  
14 The department may quarantine livestock in this state when the livestock is affected with or has been exposed  
15 to disease or disease-carrying medium. The department may prescribe treatments and enforce sanitary rules that  
16 are necessary and proper to circumscribe, extirpate, control, or prevent the disease.

17 (b) foster, promote, and protect the livestock industry in this state by the investigation of diseases and  
18 other subjects related to ways and means of prevention, extirpation, and control of diseases or to the care of  
19 livestock and its products and to this end may establish and maintain a laboratory, may make or cause to be  
20 made biologic products, curatives, and preventative agents, and may perform any other acts and things as may  
21 be necessary or proper in the fostering, promotion, or protection of the livestock industry in this state;

22 (c) impose and collect fees that the department considers appropriate for the tests and services  
23 performed by it at the laboratory or elsewhere and for biologic products, curatives, and preventative agents made  
24 or caused to be made by the department. In fixing these fees, the department shall take into consideration the  
25 costs, both direct and indirect, of the tests, services, products, curatives, and agents. All fees must be deposited  
26 in the state special revenue fund for the use of the animal health functions of the department.

27 (d) subject to subsection (2), adopt rules and orders that it considers necessary or proper to prevent the  
28 introduction or spreading of infectious, contagious, communicable, or dangerous diseases affecting livestock and  
29 alternative livestock in this state;

30 (e) (i) adopt rules and orders that it considers necessary or proper for the inspection, testing, and

1 quarantine of all livestock and alternative livestock imported into this state; and

2 (ii) adopt rules and orders that it considers necessary or proper governing inspections and tests of  
3 livestock and alternative livestock intended for importation into this state to prevent the introduction or spreading  
4 of infectious, contagious, communicable, or dangerous diseases affecting livestock and alternative livestock;

5 (f) adopt rules and orders that it considers necessary or proper for the supervision, inspection, and  
6 control of the standards and sanitary conditions of slaughterhouses, meat depots, meat and meat food products,  
7 dairies, milk depots, milk and its byproducts, barns, dairy cows, factories, and other places and premises where  
8 meat or meat foods, milk or its products, or any byproducts thereof intended for sale or consumption as food are  
9 produced, kept, handled, or stored. An authorized representative of the department may take samples of a  
10 product so produced, kept, handled, or stored for analysis or testing by the department. The records of the  
11 samples and their analysis and test, when identified as to the sample by the oath of the officer taking it and  
12 verified as to the analysis or test by the oath of the chemist or bacteriologist making it, are prima facie evidence  
13 of the facts set forth in them when offered in evidence in a prosecution or action at law or in equity for violation  
14 of 81-9-201, 81-20-101, 81-21-102, 81-21-103, part 1, 2, or 3 of this chapter, or a rule or order of the board  
15 adopted thereunder. These standards, insofar as they relate to dairies or milk and its byproducts, may not include  
16 standards of weight or measurement. A producer as defined in [section 2] selling food or a food product pursuant  
17 to [sections 1 through 3] is not subject to the rules and orders adopted under this subsection (1)(f).

18 (g) adopt rules and orders that seem necessary or proper for the supervision and control of  
19 manufactured and refined foods for livestock and the manufacture, importation, sale, and method of using a  
20 biologic remedy or curative agent for the treatment of diseases of livestock. However, as far as practicable, the  
21 standards approved by the United States department of agriculture must be adopted.

22 (h) install an adequate system of meat inspection in accordance with 81-9-216 through 81-9-220 and  
23 81-9-226 through 81-9-236 that must provide ways and means for shipping home-grown and home-killed meats  
24 into any city in this state. As far as practicable, the rules must conform with the meat-inspection requirements of  
25 the United States department of agriculture.

26 (i) slaughter or cause to be slaughtered any livestock in this state known to be affected with or that has  
27 been exposed to an infectious, contagious, communicable, or dangerous disease, when the slaughter is  
28 necessary for the protection of other livestock, and destroy or cause to be destroyed all barns, stables, sheds,  
29 outbuildings, fixtures, furniture, or personal property infected with any infectious, contagious, communicable, or  
30 dangerous disease when they cannot be thoroughly cleaned and disinfected and the destruction is necessary



1 to prevent the spreading of the disease;

2 (j) indemnify the owner of any property destroyed by order of the department or pursuant to any rules  
3 adopted by the department under 81-20-101, 81-21-102, 81-21-103, or part 1, 2, or 3 of this chapter;

4 (k) require persons, firms, and corporations engaged in the production or handling of meat, meat food  
5 products, dairy products, or any byproducts thereof to furnish statistics of the quantity and cost of the food and  
6 food products produced or handled and the name and address of persons supplying them any of the products.

7 (2) (a) As used in subsection (1)(d), "order" means a command, direction, or instruction issued by the  
8 department, board, or board's administrator in circumstances that clearly constitute an existing imminent peril to  
9 the public health, safety, or welfare or to animal health or welfare.

10 (b) An order under subsection (1)(d) may last no more than 5 years and may be altered or rescinded as  
11 necessary to address the circumstances set out in subsection (1)(d). An order may not be used to create a  
12 permanent program.

13 (c) As used in subsection (2)(b), "program" means a legislatively or administratively created function,  
14 project, or duty of an agency.

15 (3) When in the exercise of its powers or the discharge of its duties it becomes necessary for employees  
16 of the department to investigate facts and conditions, they may administer oaths, take affidavits, and compel the  
17 attendance and testimony of witnesses."

18

19 **Section 11.** Section 81-2-105, MCA, is amended to read:

20 **"81-2-105. Authority of municipal corporations.** (1) Nothing in this title prevents the governing  
21 authority of a municipal corporation from enacting or enforcing ordinances for the inspection of slaughterhouses,  
22 meat depots, meat markets, meat food products, creameries, butter or cheese factories, dairies, or dairy products  
23 located, sold, or offered for sale in the limits of the municipal corporation. An ordinance may not be enforced in  
24 conflict with the powers of this title delegated to the department and its officers or agents.

25 (2) The governing authority of a municipal corporation may not enact or enforce ordinances pursuant  
26 to this section for producers as defined in [section 2] selling food or a food product pursuant to [sections 1 through  
27 3]."

28

29 **Section 12.** Section 81-9-201, MCA, is amended to read:

30 **"81-9-201. Meat establishment license -- fees and renewals.** (1) ~~It~~ Except for producers as defined

1 in [section 2] selling food or a food product pursuant to [sections 1 through 3] to an informed end consumer as  
2 defined in [section 2], it is unlawful for a person, firm, or corporation to engage in the business of slaughtering  
3 livestock or poultry, including the operation of a mobile slaughter facility as defined in 81-9-217, or processing,  
4 storing, or wholesaling livestock or poultry products without having a license issued by the department. The  
5 department shall establish an annual fee for a license issued under this section, to be paid into the state special  
6 revenue fund for the use of the department.

7 (2) All licenses expire each year on the anniversary date established by rule by the board of review  
8 established in 30-16-302 and must be renewed by the department on request of the licensee. However, when  
9 the department finds that the establishment for which the license is issued is not conducted in accordance with  
10 the rules and orders of the board made under 81-2-102, the department shall revoke the license and may not  
11 renew it until the establishment is in a sanitary condition in accordance with department rules.

12 (3) Investor-owned equine slaughter or processing facilities must be licensed pursuant to this section.

13 (4) A person, firm, or corporation violating this section or any rule or order promulgated by authority of  
14 81-2-102 is guilty of a misdemeanor and upon conviction shall be fined not more than \$500."

15

16 **Section 13.** Section 81-9-218, MCA, is amended to read:

17 **"81-9-218. Exemptions.** (1) The following persons are exempt from 81-9-201, 81-9-216 through  
18 81-9-220, and 81-9-226 through 81-9-236:

19 (a) a person who slaughters livestock or poultry or prepares or processes livestock or poultry products  
20 for the person's own personal or household use; ~~and~~

21 (b) a person who transports dead, dying, or diseased animals or poultry for the purpose of treatment,  
22 burial, or disposal in a manner that would prevent the carcasses from being used as human food; and

23 (c) a producer as defined in [section 2] who sells food or a food product pursuant to [sections 1 through  
24 3].

25 (2) A person engaged in the custom slaughtering of livestock or poultry delivered by the owner for  
26 custom slaughter or a person engaged in the preparation of the carcasses and parts and meat food products of  
27 the livestock or poultry when slaughtered or prepared for exclusive use in the owner's household by the owner  
28 or members of the owner's household or the owner's nonpaying guests or employees is exempt from 81-9-216  
29 through 81-9-220 and 81-9-226 through 81-9-236 if the carcasses, parts, or meat food products or containers  
30 of the articles are:

- 1 (a) kept separate from carcasses, parts, or meat food products prepared for sale;
- 2 (b) plainly marked "Not for Sale" immediately after being slaughtered or prepared and remain plainly
- 3 marked until delivered to the owner; and
- 4 (c) prepared and packaged in a sanitary manner and in a sanitary facility."

5

6 **Section 14.** Section 81-21-102, MCA, is amended to read:

7 **"81-21-102. Licensing of milk plants and dairies selling milk or cream for public consumption.**

8 (1) Except for producers as defined in [section 2] selling milk or cream as food or a food product pursuant to

9 [sections 1 through 3], it is unlawful for the following businesses to operate in this state without first obtaining a

10 license from the department:

- 11 (a) a dairy selling milk or cream for public consumption in the form in which it is originally produced;
- 12 (b) a condensed, evaporated, or powdered milk plant; and
- 13 (c) a fluid milk plant.

14 (2) A license expires on December 31 of the year issued. The department may, following the procedures

15 in the Montana Administrative Procedure Act, deny, suspend, or revoke a license when it determines that a

16 person to whom the license is issued has failed to comply with the rules of the department or has failed to conduct

17 the person's establishment in a sanitary manner. All license fees collected must be deposited into the general

18 fund.

19 (3) The department may issue a restraining order prohibiting a dairy from selling or giving away milk or

20 cream not produced or handled under the laws of this state or the rules of the department. It is unlawful for a

21 dairy, while restrained, to sell or give away for public consumption milk or cream produced or handled by the

22 dairy, and it is also unlawful for a dairy products manufacturing plant, milk plant, or cream station to purchase or

23 use the cream or milk from a dairy while the dairy is restrained.

24 (4) The department shall establish license fees for the following facilities:

- 25 (a) a condensed, evaporated, or powdered milk factory;
- 26 (b) a fluid milk plant; and
- 27 (c) a dairy.

28 (5) A person violating this section is guilty of a misdemeanor."

29

30 **Section 15.** Section 81-22-102, MCA, is amended to read:

1           **"81-22-102. General authority of department.** (1) The department may regulate and establish  
 2 sanitation standards for persons operating dairies producing milk for manufacturing purposes. The department  
 3 may regulate and establish sanitation and quality standards for a person engaged in the processing of  
 4 manufactured dairy products or of products made or sold in the semblance or imitation of dairy products in this  
 5 state when those products made in semblance or imitation of dairy products are made in a manufactured dairy  
 6 products plant.

7           (2) The department may adopt minimum standards for the production, transportation, grading, testing,  
 8 use, processing, packaging, and storage of milk and cream used for manufacturing purposes and of  
 9 manufactured dairy products.

10          (3) The department shall adopt rules and establish fees for licenses for selling or producing milk as  
 11 required by 81-23-202.

12          (4) The department may not establish fees, rules, or standards under this chapter for producers as  
 13 defined in [section 2] selling milk or cream as food or a food product pursuant to [sections 1 through 3]."  
 14

15           **Section 16.** Section 81-22-201, MCA, is amended to read:

16           **"81-22-201. License required to operate manufactured dairy products plant.** (1) It shall be unlawful  
 17 for any person to operate a manufactured dairy products plant, concentrated, condensed, or evaporated milk  
 18 and/or cream plant, milk and cream buying station, creamery, dairy producing milk for manufacturing purposes,  
 19 water ice manufacturing plant, cheese plant including cottage cheese, and cream cheese, sour cream, yogurt,  
 20 or frozen dessert manufacturing plant without first obtaining a license from the department.

21          (2) Any manufactured dairy products plant or dairy which undergoes a change of ownership shall be  
 22 considered a new plant or dairy for relicensing purposes, provided that changes of ownership shall not be  
 23 construed to include changes of stockholders.

24          (3) A producer as defined in [section 2] selling milk or cream as food or a food product pursuant to  
 25 [sections 1 through 3] is exempt from the licensing requirements of this section."  
 26

27           **Section 17.** Section 81-22-303, MCA, is amended to read:

28           **"81-22-303. Sampling and testing by department.** (1) The department shall have the authority to  
 29 sample, test, ~~and/or~~ or retest samples of milk or cream or their products at any dairy, at the premises of any  
 30 supplier of milk or cream for manufacturing purposes, or at any manufactured dairy products plant, milk plant,

1 or cream buying or receiving station.

2 (2) The department may not sample, test, or retest milk or cream sold as food or a food product pursuant  
3 to [sections 1 through 3]."

4

5 **Section 18.** Section 81-22-304, MCA, is amended to read:

6 **"81-22-304. Department's right of entry into dairy or plants for inspection -- penalty.** (1) The  
7 department or its authorized agent has the right of entry during normal business hours, including Sundays and  
8 holidays, into a dairy supplying milk or cream for manufacturing purposes, manufactured dairy products plant,  
9 milk plant, cream receiving station, transportation facility, or any premises where dairy products, dairy  
10 manufactured products, or their substitutes or imitations are produced, manufactured, sold, offered for sale, or  
11 stored while in transit to inspect the dairy or plant, its facilities and products, or to obtain samples for testing or  
12 analysis. It is unlawful for a person to interfere with the department or its authorized agent in the performance of  
13 its duty to enter, inspect, or obtain samples.

14 (2) Violation of this section is a misdemeanor and subjects the offender to a fine of not less than \$50 and  
15 not more than \$500 or to imprisonment in the county jail for not less than 1 or more than 30 days or both such  
16 fine and imprisonment.

17 (3) The department's right of entry under this section does not apply to producers as defined in [section  
18 2] selling milk or cream as food or a food product pursuant to [sections 1 through 3]."

19

20 **Section 19.** Section 81-22-401, MCA, is amended to read:

21 **"81-22-401. Grading of milk -- condemnation of unsafe milk.** ~~Milk~~ Except for milk or cream sold as  
22 food or a food product pursuant to [sections 1 through 3], milk or cream purchased for use in milk plants or for  
23 use in a manufactured dairy product in this state shall be graded by licensed graders, weighers, and samplers.  
24 It is unlawful to sell, purchase, or use milk or cream for a food purpose if the milk or cream is found to be musty,  
25 adulterated, rancid, dirty, with marked undesirable odors or flavors, or to contain foreign objects, fragments,  
26 substances, or excessive bacteria. The milk or cream grader or the department shall condemn the milk or cream  
27 and may add to the milk or cream a nontoxic coloring substance or rennet and return it to or leave it with the  
28 producer with an explanation of the cause for rejection."

29

30 **Section 20.** Section 81-22-405, MCA, is amended to read:

1           **"81-22-405. Labeling of cheese containers.** ~~It~~ Except for a producer as defined in [section 2] selling  
2 milk or cream as food or a food product pursuant to [sections 1 through 3], it shall be is unlawful and punishable  
3 as a misdemeanor for any person to offer for sale, expose for sale, or sell any cheese in any container or wrapper  
4 unless such container or wrapper bears a legible label or inscription indicating the net weight, type or style of  
5 cheese, and the manufacturer's or distributor's name and address or plant number."  
6

7           **Section 21.** Section 81-22-412, MCA, is amended to read:

8           **"81-22-412. Manufactured products to conform to standards of identity.** ~~It~~ Except for a producer  
9 as defined in [section 2] selling milk or cream as food or a food product pursuant to [sections 1 through 3], it shall  
10 be is unlawful for any person to manufacture, display, transport, sell, or offer for sale in Montana as a  
11 manufactured dairy product any substance or product which does not conform to the standards of identity for such  
12 product as defined in the Code of Federal Regulations or to the standard of identity established by the  
13 department."  
14

15           **Section 22.** Section 81-22-413, MCA, is amended to read:

16           **"81-22-413. Pasteurization required.** (1) All milk and cream used in the manufacture of any dairy  
17 product or products made in semblance or imitation of dairy products sold, offered for sale, purveyed, stored,  
18 displayed, or transported in Montana must be pasteurized. However, cheese held, stored, or aged for at least 60  
19 days at not less than 35 degrees F is not required to be made from pasteurized milk or cream but must be labeled  
20 "made from raw or unpasteurized milk or unpasteurized cream", as the case may be. Other cultured raw or  
21 unpasteurized dairy products that can be made safe by aging must be similarly aged and labeled as required  
22 above.

23           (2) The pasteurization and labeling requirements of this section do not apply to milk or cream sold as  
24 food or a food product pursuant to [sections 1 through 3]."  
25

26           **Section 23.** Section 81-22-416, MCA, is amended to read:

27           **"81-22-416. Milk and manufactured dairy products to conform to standards.** ~~All~~ Except for milk or  
28 cream sold as food or a food product pursuant to [sections 1 through 3], all milk and cream used in manufactured  
29 dairy products, and the manufactured dairy products, shall conform to the standards of purity, quality, and  
30 wholesomeness as provided in this chapter or in the regulations promulgated under the authority of this chapter."

1

2           **Section 24.** Section 81-22-420, MCA, is amended to read:

3           **"81-22-420. Labeling of animal or vegetable fat contents on frozen desserts.** (1) Any frozen dessert  
4 made in the semblance of or in imitation of ice cream in this chapter, which contains any amount of animal fat  
5 (other than milk fat) or vegetable fat or oil (other than any such fat or oil which is naturally present in any flavoring  
6 ingredient), shall be labeled as an animal fat product or vegetable fat product, or a combination of both, as the  
7 case may be. Such animal fat or vegetable fat products shall be manufactured from a pasteurized mix which has  
8 been processed in a licensed manufacturing dairy product plant. All persons manufacturing, offering for sale or  
9 exchange, or selling such animal fat or vegetable fat frozen desserts shall be subject to the sanitary, reporting,  
10 and licensing regulations of this chapter and of the regulations promulgated under the authority of this chapter.

11           (2) No representation shall be made by statement, word, grade designation, design, symbol, device, or  
12 in any other manner on any container, package, or wrapper or on any advertising media that such animal fat or  
13 vegetable fat product, or combination thereof, is ice cream, sherbet, or any of their low-fat counterparts or  
14 derivatives or any other products which are prohibited from containing animal or vegetable fats.

15           (3) The container, package, or wrapper containing such animal fat or vegetable fat frozen dessert shall  
16 be clearly and plainly marked, labeled, or printed on the outside in boldfaced letters with the words, "animal fat  
17 product", "vegetable fat product", "animal-vegetable fat product", or "vegetable-animal fat product", as the case  
18 may be, and shall bear thereon the common or usual name of each of the ingredients therein, including the fats  
19 or oils, except that spices, flavorings, or colorings may be designated as such without naming each.

20           (4) The labeling requirements of this section do not apply to milk or cream sold as food or a food product  
21 pursuant to [sections 1 through 3]."

22

23           **Section 25.** Section 81-22-421, MCA, is amended to read:

24           **"81-22-421. Labeling on manufactured dairy products to conform to requirements.** Labeling Except  
25 for milk or cream sold as food or a food product pursuant to [sections 1 through 3], labeling on manufactured dairy  
26 products must conform to requirements of the Food, Drug, and Cosmetic Act and to the other requirements that  
27 are adopted by the department or the department of public health and human services."

28

29           **Section 26.** Section 81-22-503, MCA, is amended to read:

30           **"81-22-503. Buyers and plants to make records available to department.** (1) Persons, including

1 cooperatives, who buy or sell milk or cream on the basis of butterfat, protein, solids, or other component content  
2 of milk or cream shall make available to the department, on its request, records showing the amounts of milk or  
3 cream sold or purchased, the price per pound, the amount paid, the sampling period for which the amount was  
4 paid, and the name and address of the person to whom payment was made or from whom payment was received.

5 (2) A manufactured dairy product plant, on request by the department, shall make available production  
6 records of dairy manufactured products covered by this chapter and manufactured products made in semblance  
7 or imitation of these dairy products.

8 (3) Producers as defined in [section 2] selling milk or cream as food or a food product pursuant to  
9 [sections 1 through 3] are exempt from the recordkeeping requirements of this section."

10  
11 NEW SECTION. Section 27. Codification instruction. [Sections 1 through 3] are intended to be  
12 codified as an integral part of Title 50, and the provisions of Title 50 apply to [sections 1 through 3].

13 - END -