



AN ACT PROVIDING FOR THE MONTANA LOCAL FOOD CHOICE ACT; EXEMPTING CERTAIN HOMEMADE FOOD PRODUCERS FROM FOOD LICENSURE, PERMITTING, CERTIFICATION, PACKAGING, LABELING, AND INSPECTION REGULATIONS AS WELL AS CERTAIN OTHER STANDARDS AND REQUIREMENTS; PROVIDING EXCEPTIONS TO CERTAIN REQUIREMENTS; REVISING RULEMAKING AUTHORITY; AMENDING SECTIONS 30-12-301, 50-31-104, 50-31-106, 50-31-108, 50-31-201, 50-50-301, 81-2-102, 81-2-105, 81-9-201, 81-9-218, 81-21-101, 81-21-102, 81-21-103, 81-22-101, 81-22-102, 81-22-201, 81-22-303, 81-22-304, 81-22-401, 81-22-405, 81-22-412, 81-22-413, 81-22-416, 81-22-420, 81-22-421, 81-22-503, 81-23-103, 81-23-401, AND 81-23-405, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1. Short title -- purpose.** (1) This chapter may be cited as the "Montana Local Food Choice Act".

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

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

**Section 2. Definitions.** For purposes of this chapter, the following definitions apply:

(1) "Deliver" means to transfer a product as a result of a transaction between a producer and an informed end consumer. The action may be performed by the producer or the producer's designated agent at a

farm, ranch, home, office, traditional community social event, or another location agreed to between the producer or agent and the informed end consumer.

(2) "Home consumption" means:

- (a) the consumption of food or a food product in a private home; or
- (b) the consumption of food or a food product from a private home.

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

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

(5) (a) "Producer" means a person who harvests, produces, or prepares a product that may be consumed as homemade food or a homemade food product. The term includes a person operating a small dairy, as defined in 81-21-101.

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

(6) "Small dairy" means a place where no more than 5 lactating cows, 10 lactating goats, or 10 lactating sheep are kept for producing milk.

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

- (a) wedding;
- (b) funeral;
- (c) church or religious social;
- (d) school event;
- (e) farmer's market;
- (f) potluck;
- (g) neighborhood gathering; or
- (h) club meeting or social; or
- (i) youth or adult outdoor club or sporting event.

(8) "Transaction" means an exchange of buying and selling, including the transfer of a product by

delivery.

**Section 3. Exemptions from regulations -- transactions -- information required -- exceptions.**

(1) (a) A state agency or an agency of a political subdivision of the state may not require licensure, permitting, certification, packaging, labeling, testing, sampling, or inspection that pertains to the preparation, serving, use, consumption, delivery, or storage of homemade food or a homemade food product under this chapter.

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

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

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

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

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

(d) A producer is not subject to labeling, licensure, inspection, sanitation, or other requirements or standards of 30-12-301; Title 50, chapter 31; or Title 81, chapters 2, 9, 21, 22, or 23.

(2) Transactions pursuant to this chapter:

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

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

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

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

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

(5) Except as provided in subsection (6) and pursuant to [sections 1 through 3], a producer may donate homemade food or homemade food products to a traditional community social event.

(6) A producer may not donate milk to a traditional community social event.

(7) (a) Except for a temporary food establishment subject to 50-50-120, meat or meat products processed at a state-licensed establishment or a federally approved meat establishment, by the producer, or by any third party may not be used in preparation of homemade food that is sold pursuant to a transaction provided for in [sections 1 through 3].

(b) Subsection (7)(a) does not apply to a producer, as defined in [section 2], who slaughters fewer than 1,000 poultry birds a year except that the producer is subject to the requirements of 9 CFR 381.10(c) and the recordkeeping requirements of 9 CFR 381.175. The poultry or poultry products must not be adulterated or misbranded.

(8) A small dairy shall:

(a) sample, test, or retest every 6 months for standard plate count, coliform count, and somatic cell count of milk or cream sold as homemade food pursuant to [sections 1 through 3];

(b) sample, test, or retest every year for brucellosis for every lactating cow, lactating goat, or lactating sheep that is part of the small dairy; and

(c) maintain records for 2 years of all previous samples, tests, or retests, which must be provided to the department of livestock if the department suspects the small dairy is causing a foodborne illness.

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

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

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

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

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

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

(e) concrete aggregates, concrete mixtures, and loose solid materials such as earth, soil, gravel,

crushed stone, and the like, when sold by cubic measure;

- (f) unprocessed vegetable and animal fertilizer when sold by cubic measure; ~~or~~
- (g) cottage food products as defined in 50-50-102; or
- (h) homemade food or homemade food products sold pursuant to [sections 1 through 3].

(2) The department may adopt reasonable rules necessary to ensure that amounts of commodity sold are determined in accordance with good commercial practice and are determined and represented as to be accurate and informative to all parties at interest."

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

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

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

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

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

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

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

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

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

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

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

**"50-31-108. Regulations concerning additives.** (1) The department, upon its own motion or upon the petition of any interested party requesting that a rule be established, whenever public health or other considerations in the state require, is authorized to adopt, amend, or repeal rules, whether or not in accordance with regulations promulgated under the federal act, prescribing tolerances for any added poisonous or deleterious substances for food additives, for pesticide chemicals in or on raw agricultural commodities, or for color additives, including but not limited to zero tolerances and exemptions from tolerances in the case of pesticide chemicals in or on raw agricultural commodities, and prescribing the conditions under which a food additive or a color additive may be safely used and exemptions when the food additive or color additive is to be used solely for investigational or experimental purposes.

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

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

- (a) the name and all pertinent information concerning the substance, including, when available:
  - (i) its chemical identity and composition;
  - (ii) a statement of the conditions of the proposed use, including directions, recommendations, and suggestions and including specimens of proposed labeling; and
  - (iii) all relevant data bearing on the physical or other technical effect and the quantity required to produce the effect;

- (b) the probable composition of or other relevant exposure from the article and of any substance formed in or on a food, drug, or cosmetic resulting from the use of the substance;
  - (c) the probable consumption of the substance in the diet of humans and animals taking into account any chemically or pharmacologically related substance in the diet;
  - (d) safety factors that, in the opinion of experts qualified by scientific training and experience to evaluate the safety of the substances for the use or uses for which they are proposed to be used, are generally recognized as appropriate for the use of animal experimentation data;
  - (e) the availability of any needed practicable methods of analysis for determining the identity and quantity of:
    - (i) the substance in or on an article;
    - (ii) any substance formed in or on the article because of the use of the substance; and
    - (iii) the pure substance and all intermediates and impurities; and
  - (f) facts supporting a contention that the proposed use of the substance will serve a useful purpose.
- (4) The department may not establish rules related to food additives under this section for homemade food or a homemade food product sold pursuant to [sections 1 through 3]."

**Section 8.** Section 50-31-201, MCA, is amended to read:

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

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

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

(4) The department may not adopt food standards or regulations under this section for homemade

food or a homemade food product sold pursuant to [sections 1 through 3]."

**Section 9.** 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 retail food 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.

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

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

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

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

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

(a) supervise the sanitary conditions of livestock in this state, under the provisions of the constitution and statutes of this state and the rules adopted by the department. The department may quarantine a lot, yard, land, building, room, premises, enclosure, or other place or section in this state that is or may be used or occupied by livestock and that in the judgment of the department is infected or contaminated with an infectious, contagious, communicable, or dangerous disease or disease-carrying medium by which the disease may be communicated. The department may quarantine livestock in this state when the livestock is affected with or has



been exposed to disease or disease-carrying medium. The department may prescribe treatments and enforce sanitary rules that are necessary and proper to circumscribe, extirpate, control, or prevent the disease.

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

(c) impose and collect fees that the department considers appropriate for the tests and services performed by it at the laboratory or elsewhere and for biologic products, curatives, and preventative agents made or caused to be made by the department. In fixing these fees, the department shall take into consideration the costs, both direct and indirect, of the tests, services, products, curatives, and agents. All fees must be deposited in the enterprise fund account established in 81-2-116 for the use of the animal laboratory functions of the department.

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

(e) (i) adopt rules and orders that it considers necessary or proper for the inspection, testing, and quarantine of all livestock and alternative livestock imported into this state; and

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

(f) adopt rules and orders that it considers necessary or proper for the supervision, inspection, and control of the standards and sanitary conditions of slaughterhouses, meat depots, meat and meat food products, dairies, milk depots, milk and its byproducts, barns, dairy cows, factories, and other places and premises where meat or meat foods, milk or its products, or any byproducts thereof intended for sale or consumption as food are produced, kept, handled, or stored. An authorized representative of the department may take samples of a product so produced, kept, handled, or stored for analysis or testing by the department.

The records of the samples and their analysis and test, when identified as to the sample by the oath of the officer taking it and verified as to the analysis or test by the oath of the chemist or bacteriologist making it, are prima facie evidence of the facts set forth in them when offered in evidence in a prosecution or action at law or in equity for violation 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 adopted thereunder. These standards, insofar as they relate to dairies or milk and its byproducts, may not include standards of weight or measurement. A producer as defined in [section 2] selling homemade food or a homemade food product pursuant to [sections 1 through 3] is not subject to the rules and orders adopted under this subsection (1)(f) as those relate to the licensure, permitting, certification, packaging, labeling, or inspection that pertains to the preparation, serving, use, consumption, delivery, or storage of homemade food or a homemade food product.

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

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

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

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

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

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

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

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

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

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

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

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

**"81-9-201. Meat establishment license -- fees and renewals.** (1) ~~Except as provided in [section 3], it is unlawful for a person, firm, or corporation to engage in the business of slaughtering livestock or poultry, including the operation of a mobile slaughter facility as defined in 81-9-217, or processing, storing, or wholesaling livestock or poultry products without having a license issued by the department. The department shall establish an annual fee for a license issued under this section, to be paid into the state special revenue fund for the use of the department.~~

(2) All licenses expire each year on the anniversary date established by rule by the board of review

established in 30-16-302 and must be renewed by the department on request of the licensee. However, when the department finds that the establishment for which the license is issued is not conducted in accordance with the rules and orders of the board made under 81-2-102, the department shall revoke the license and may not renew it until the establishment is in a sanitary condition in accordance with department rules.

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

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

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

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

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

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

(c) a producer as defined in [section 2] who sells homemade food or slaughters fewer than 1,000 poultry birds a year pursuant to [section 3] except that the producer is subject to the requirements of 9 CFR 381.10(c) and the recordkeeping requirements of 9 CFR 381.175.

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

(a) kept separate from carcasses, parts, or meat food products prepared for sale;

(b) plainly marked "Not for Sale" immediately after being slaughtered or prepared and remain plainly marked until delivered to the owner; and

(c) prepared and packaged in a sanitary manner and in a sanitary facility."

**Section 14.** Section 81-21-101, MCA, is amended to read:

**"81-21-101. Definitions.** As used in this part, the following definitions apply:

(1) "Fluid milk plant" means a place where milk or cream is not produced but is purchased or collected and prepared for distribution to the consumer in liquid form.

(2) "Public consumption" means the use of milk or cream by the public for any purpose.

(3) "Small dairy" means a place where no more than 5 lactating cows, 10 lactating goats, or 10 lactating sheep are kept for producing milk."

**Section 15.** Section 81-21-102, MCA, is amended to read:

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

(1) ~~Except for a small dairy, it is unlawful for the following businesses to operate in this state without first obtaining a license from the department:~~

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

(2) A license expires on December 31 of the year issued. The department may, following the procedures in the Montana Administrative Procedure Act, deny, suspend, or revoke a license when it determines that a person to whom the license is issued has failed to comply with the rules of the department or has failed to conduct the person's establishment in a sanitary manner. All license fees collected must be deposited into the general fund.

(3) The department may issue a restraining order prohibiting a dairy from selling or giving away milk or cream not produced or handled under the laws of this state or the rules of the department. It is unlawful for a dairy, while restrained, to sell or give away for public consumption milk or cream produced or handled by the dairy, and it is also unlawful for a dairy products manufacturing plant, milk plant, or cream station to purchase or use the cream or milk from a dairy while the dairy is restrained.

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

- (a) a condensed, evaporated, or powdered milk factory;

- (b) a fluid milk plant; and
- (c) a dairy.
- (5) A person violating this section is guilty of a misdemeanor."

**Section 16.** Section 81-21-103, MCA, is amended to read:

**"81-21-103. Exceptions of certain producers of dairy products.** (1) The owners or operators of small dairies, dairies, creameries, butter factories, cheese factories, or other places of business engaged in the production, storage, or transportation of dairy products are not required to procure a license from the department of public health and human services for the business of production, storage, or transportation of these food products.

(2) This section does not limit:

- (a) the supervision or regulation by the department of public health and human services of the sanitary condition of a restaurant, hotel, boardinghouse, or retail market or the products sold or offered for sale at those facilities; or
- (b) the duties imposed by law on the department of public health and human services to make sanitary rules for the eradication or control of an epidemic of human disease that may exist in a community."

**Section 17.** Section 81-22-101, MCA, is amended to read:

**"81-22-101. Definitions.** For the purpose of this chapter, the following definitions are adopted:

- (1) "Agent" means a person who is authorized by another person to act for that other person in dealing with a third person.
- (2) "Butter" is the clean, nonrancid product made by gathering the fat of fresh ripened milk or cream into a mass that also contains a small portion of the other milk constituents, with or without salt, and must contain not less than 80% of milk fat. No tolerance for deficiency in milk fat is permitted. Butter may also contain added coloring matter.
- (3) "Cheese" is the sound, solid, and ripened product made from milk or cream by coagulating the casein with rennet or lactic acid, with or without ripening ferments and seasoning, and must contain in the water-free substance not less than 50% of milk fat and not more than 39% of moisture. Cheese may also

contain added coloring matter.

(4) "C.I.P." means the procedure by which sanitary pipelines or pieces of dairy equipment are mechanically cleaned in place by circulation when this procedure meets the 3-A accepted practices for permanently installed sanitary product-pipelines and cleaning systems.

(5) "Code of Federal Regulations" refers especially but is not limited to Title 21, which contains the definitions and standards of identity for products as established by the food and drug administration, United States department of health and human services.

(6) "Cream" means the milk fat that rises to the surface when milk is allowed to stand or that is separated from milk by centrifugal force when sold, used, or intended for use in a manufactured product.

(7) "Creamery" means a place where butter is made for commercial purposes.

(8) "Culture" means the harmless lactic acid fermenting bacteria that are added to milk or cream to make manufactured dairy products like cultured buttermilk, cheese, cottage cheese, yogurt, sour cream, cream cheese, butter, and similar products.

(9) "Dairy" or "dairy farm" means a place where ~~one or more hoofed mammals~~ 6 or more lactating cows, 11 or more lactating goats, 11 or more lactating sheep, or 11 or more of any lactating hoofed mammals are kept, a part or all of the milk or cream from which is used for manufacturing purposes.

(10) The term "department", unless otherwise indicated, means the department of livestock provided for in Title 2, chapter 15, part 31.

(11) "Directly acidified" and similar terms mean the process of adding a food grade acid to milk or cream instead of or in addition to the adding of culture.

(12) "Filled dairy products" means milk, cream, skimmed milk, or any combination of these, whether or not condensed, evaporated, concentrated, frozen, powdered, dried, or desiccated, or any food product made or manufactured from them, to which has been added or which has been blended or compounded with fat or oil other than milk fat so that the resulting product is in imitation or semblance of a dairy product, including milk, cream, sour cream, skimmed milk, ice cream, low-fat ice cream, whipped cream, flavored milk or skim milk yogurt, dried or powdered milk, cheese, cream, cream cheese, cottage cheese, creamed cottage cheese, ice cream mix, low-fat ice cream mix, sherbet, condensed milk, evaporated milk, or concentrated milk.

(13) "French ice cream", "French custard ice cream", and similar frozen products, except sherbets and

water ices, are varieties of ice cream.

(14) "Grading" means the examination of milk, cream, or products by sight, odor, taste, or laboratory analysis, the results of which determine a grade designating their quality.

(15) "Ice cream" is a frozen product made with pure, sweet milk, cream, skim milk, evaporated or condensed milk, evaporated or condensed skim milk, dry milk, dry skim milk, pure milk fat, wholesome sweet butter, or any combination of these products, with or without sweetening, or clean wholesome eggs or egg products, with or without the use of harmless flavoring and coloring. Ice cream must contain not less than 10% of milk fat, not less than 33% total solids, and may or may not contain pure and harmless edible stabilizer. Ice cream may contain not to exceed 1% gelatin. A frozen milk or milk product may not be manufactured or sold unless it contains at least 10% butterfat, excepting sherbets, ices, and other exceptions under this section. All ice cream must be manufactured from pasteurized ice cream mix.

(16) (a) "Ice cream mix" is a pasteurized, unfrozen product used in the manufacture of ice cream and must comply with the requirements for ice cream.

(b) "Mix" includes the liquid, unfrozen product from which those frozen products listed under subsections (21)(a)(iii) through (21)(a)(xii) are made.

(17) "Intrastate commerce" means commerce within this state under the jurisdiction of the state and includes the operation of a business or service establishment.

(18) "Manufactured dairy product" means an item enumerated in subsection (21) or any other dairy product made by incorporating milk or cream or converting milk or cream into a different state of appearance or quality. For purposes of reporting production and licensing, manufactured dairy product includes but is not limited to:

- (a) ice cream or its mix;
- (b) French ice cream, custard ice cream, French custard ice cream, their low-fat counterparts, or their mixes;
- (c) sherbets of all kinds or their mixes;
- (d) animal or vegetable fat frozen desserts or their mixes;
- (e) frozen confections or their mixes when made in a manufactured dairy products plant;
- (f) water ices or their mixes;



- (g) frozen dessert sandwiches, bars, cones, and similar novelties;
- (h) frozen dessert made of nondairy origins and other products made in the semblance or imitation of dairy products or their mixes when made in a manufactured dairy products plant;
- (i) ice milk or its mix;
- (j) cheese of all kinds, including cottage cheese, cheese curd, cheese dressing, and cream cheese, either cultured or directly acidified;
- (k) sour cream when cultured or directly acidified;
- (l) eggnog, low-fat eggnog, eggnog-flavored milk, and similar flavored products;
- (m) buttermilk, cultured or from churned butter or directly acidified;
- (n) butter;
- (o) yogurt, low-fat yogurt, or flavored yogurt, either cultured or directly acidified or frozen.

(19) "Manufactured dairy products plant" or "factory" means a place where milk or cream is collected and converted into a product or into a different state of appearance or quality or that manufactures those products listed in subsection (21). If only products of semblance or imitation of dairy products are made, the plant is not considered a manufactured dairy products plant.

(20) "Milk" means the lacteal secretion, practically free from colostrum, obtained by the milking of one or more healthy hoofed mammals located in modified accredited areas and modified certified areas or from hoofed mammals in herds fully accredited as tuberculosis-free by the United States department of agriculture or in the process of being accredited, when the milk or cream is sold for use in, intended for use in, or used in a manufactured dairy product.

(21) (a) "Milk" and "cream" mean milk and cream sold, used, or intended for manufacturing purposes or for conversion into products of a form other than the form in which originally produced or products commonly known as but not limited to:

- (i) butter;
- (ii) cheese, including cottage cheese, low-fat cottage cheese, cheese curd, and cream cheese, which are either cultured or directly acidified, and cheese dressings;
- (iii) ice cream or its mix;
- (iv) frozen dessert or its mix;

- (v) sherbets of all kinds or their mixes;
  - (vi) frozen ice cream bars, sandwiches, cones, and similar novelties;
  - (vii) frozen desserts or products made in the semblance or imitation of frozen dessert;
  - (viii) frozen confections or their mixes;
  - (ix) water ices or their mixes;
  - (x) ice milk or its mix;
  - (xi) French ice cream, French custard, or their mixes;
  - (xii) frozen custard or its mix and frozen yogurt;
  - (xiii) yogurt, flavored yogurt, and low-fat yogurt;
  - (xiv) sour cream, either cultured or directly acidified;
  - (xv) cream cheese, either cultured or directly acidified;
  - (xvi) buttermilk, either cultured, from churned butter, or directly acidified;
  - (xvii) eggnog, low-fat eggnog, eggnog-flavored milk, whipped cream, flavored toppings, and similar flavored products;
  - (xviii) dry or powdered milk; and
  - (xix) condensed milk products.
- (b) The items specified in subsection (21)(a) must conform to the standards of identity set forth in the Code of Federal Regulations. If standards of identity are not set forth in the code, then the standards adopted by the department prevail. The labeling of manufactured dairy products must be in accordance with the Montana Food, Drug, and Cosmetic Act.
- (22) "Milk or cream station" means a place other than a creamery where deliveries of milk or cream are weighed, graded, sampled, tested, or collected for purchase.
- (23) "Mislabeled", "unwholesome", "food additives", "optional ingredients", "impure", "misbranded", "contaminated", "adulterated", "perishable", "hazardous", "unfit", "spoiled", "damaged", and similar terms, when applied to a manufactured dairy product or product made in semblance or in imitation of a manufactured dairy product, are as defined in Title 50, chapter 31.
- (24) "Official test" means test procedures outlined in the sources referred to under 81-22-301 concerning samples, methods, and rules of evidence.

(25) "Pasteurization", "pasteurizing", and similar terms mean the process of heating every particle of milk or milk product to at least 145 degrees F and holding it continuously at or above this temperature for at least 30 minutes or to at least 161 degrees F and holding it continuously at or above this temperature for at least 15 seconds in equipment that is properly operated and approved by the department. Milk products that have a higher fat content than milk or contain added sweeteners must be heated to at least 155 degrees F and held continuously at or above this temperature for at least 30 minutes, or to at least 175 degrees F and held continuously at or above this temperature for at least 25 seconds. This definition does not bar any other pasteurization process that has been recognized by the United States public health service to be equally effective and that is approved by the department.

(26) "Person" means an individual, firm, partnership, corporation, cooperative, or other business unit or trade device.

(27) "Producer" means the person who exercises control over the production of milk or cream delivered to a milk or cream receiving station or manufactured dairy products plant or who receives payment for milk or cream used in manufacturing.

(28) "Safe temperature" means 45 degrees F or less unless the product is frozen, in which case the temperature must be at or below 0 degrees F.

(29) "Small dairy" means a place where no more than 5 lactating cows, 10 lactating goats, 10 lactating sheep, or 10 other lactating hoofed mammals are kept for producing milk.

~~(29)~~(30) "Testing", "test", "tested", and similar words mean the examination of milk, cream, or manufactured dairy products by sight, odor, taste, or biological or chemical laboratory analysis to determine their quality, wholesomeness, or composition.

~~(30)~~(31) "Water ice" means a frozen product containing but not limited to the following ingredients: water, sugar, flavoring, coloring, stabilizers, and other ingredients allowed by the Code of Federal Regulations as optional ingredients."

**Section 18.** Section 81-22-102, MCA, is amended to read:

**"81-22-102. General authority of department.** (1) The department may regulate and establish sanitation standards for persons operating dairies producing milk for manufacturing purposes. The department

may regulate and establish sanitation and quality standards for a person engaged in the processing of manufactured dairy products or of products made or sold in the semblance or imitation of dairy products in this state when those products made in semblance or imitation of dairy products are made in a manufactured dairy products plant.

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

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

(4) The department may not establish fees, rules, or standards under this chapter for small dairies selling milk or cream as homemade food or a homemade food product pursuant to [sections 1 through 3]."

**Section 19.** Section 81-22-201, MCA, is amended to read:

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

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

(3) A small dairy selling milk or cream as homemade food or a homemade food product pursuant to [sections 1 through 3] is exempt from the licensing requirements of this section."

**Section 20.** Section 81-22-303, MCA, is amended to read:

**"81-22-303. Sampling and testing by department.** (1) ~~The~~ Except as provided in subsection (2), the department shall have the authority to sample, test, ~~and/or~~ or retest samples of milk or cream or their products

at any dairy, at the premises of any supplier of milk or cream for manufacturing purposes, or at any manufactured dairy products plant, milk plant, or cream buying or receiving station.

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

**Section 21.** Section 81-22-304, MCA, is amended to read:

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

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

(3) The department's right of entry under this section does not apply to small dairies selling milk or cream as homemade food or a homemade food product pursuant to [sections 1 through 3]."

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

**"81-22-401. Grading of milk -- condemnation of unsafe milk.** ~~Milk~~ Except for milk or cream sold as homemade food or a homemade food product pursuant to [sections 1 through 3], milk or cream purchased for use in milk plants or for use in a manufactured dairy product in this state shall be graded by licensed graders, weighers, and samplers. 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, adulterated, rancid, dirty, with marked undesirable odors or flavors, or to contain foreign objects, fragments, substances, or excessive bacteria. The milk or cream grader or the department shall condemn the milk or cream and may add to the milk or cream a nontoxic coloring substance or rennet and

return it to or leave it with the producer with an explanation of the cause for rejection."

**Section 23.** Section 81-22-405, MCA, is amended to read:

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

**Section 24.** Section 81-22-412, MCA, is amended to read:

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

**Section 25.** Section 81-22-413, MCA, is amended to read:

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

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

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

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

**Section 27.** Section 81-22-420, MCA, is amended to read:

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

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

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

(4) The labeling requirements of this section do not apply to milk or cream sold as homemade food or

a homemade food product pursuant to [sections 1 through 3]."

**Section 28.** Section 81-22-421, MCA, is amended to read:

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

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

**"81-22-503. Buyers and plants to make records available to department.** (1) Persons, including cooperatives, who buy or sell milk or cream on the basis of butterfat, protein, solids, or other component content of milk or cream shall make available to the department, on its request, records showing the amounts of milk or cream sold or purchased, the price per pound, the amount paid, the sampling period for which the amount was paid, and the name and address of the person to whom payment was made or from whom payment was received.

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

(3) Small dairies selling milk or cream as homemade food or a homemade food product pursuant to [sections 1 through 3] are exempt from the recordkeeping requirements of this section."

**Section 30.** Section 81-23-103, MCA, is amended to read:

**"81-23-103. General powers of department and board.** (1) ~~The~~ Except for milk produced from a small dairy as defined in 81-21-101, the board shall supervise, regulate, and control the milk industry of this state, including the production, processing, storage, distribution, and sale of milk sold for consumption in this state. The board shall conduct hearings and make determinations under this chapter and under board rules and orders promulgated pursuant to this chapter. This chapter does not affect the status, force, or operation of any



provision of public health laws, county board of health rules, or municipal ordinances for the promotion or protection of the public health.

(2) The department may cooperate with the department of public health and human services, a county or city board of health, or the department of agriculture in enforcing this chapter.

(3) The department shall assist the board by investigating all matters pertaining to the production, processing, storage, distribution, and sale of milk in this state and by bringing proceedings to enforce the orders of the board. The department, in exercising its enforcement duties, may subpoena milk dealers, their records, books, and accounts, and any other person from whom information may be desired or considered necessary to carry out the purposes and intent of this chapter. The department may take depositions of witnesses who are sick or absent from the state or who cannot otherwise appear in person before the department at its offices. The department shall give at least 10 days' notice to the proposed witness.

(4) The department shall provide staff to the board as provided in 2-15-121 to assist in technical, enforcement, and regulatory activities."

**Section 31.** Section 81-23-401, MCA, is amended to read:

**"81-23-401. Entry, inspection, and investigation.** ~~The~~ Except for the premises of a small dairy as defined in 81-21-101, the department may enter, at all reasonable hours, all places where milk is produced, processed, bottled, handled, or stored or where the books, papers, records, or documents relative to those transactions are kept, and may inspect and copy them in any place in this state. The department may administer oaths and take testimony for the purpose of ascertaining facts which, in the judgment of the department, are necessary to administer this chapter."

**Section 32.** Section 81-23-405, MCA, is amended to read:

**"81-23-405. Violations made misdemeanors -- penalties.** (1) ~~A~~ Except for a person operating a small dairy as defined in 81-21-101, a person who produces, sells, distributes, or handles milk in any way, except as a consumer, without a license from the board as required by this chapter or who violates a lawful rule of the department or board is guilty of a misdemeanor punishable by a fine not exceeding \$600. Each day's violation is a separate offense.

(2) The district courts have original jurisdiction in all criminal actions for violations of this chapter and in all civil actions for the recovery or enforcement of penalties provided for in this chapter. All of those actions, both criminal and civil, must be tried in the district court.

(3) The county attorneys, in their respective counties, shall diligently prosecute all violations of this chapter."

**Section 33. Codification instruction.** [Sections 1 through 3] are intended to be codified as an integral part of Title 50, and the provisions of Title 50 apply to [sections 1 through 3].

**Section 34. Effective date.** [This act] is effective on passage and approval.

- END -

I hereby certify that the within bill,  
SB 199, originated in the Senate.

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Secretary of the Senate

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President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2021.

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Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2021.

SENATE BILL NO. 199

INTRODUCED BY G. HERTZ, M. BLASDEL, K. BOGNER, B. BROWN, M. CUFFE, J. ELLSWORTH, C. FRIEDEL, C. GLIMM, S. HINEBAUCH, B. KEENAN, M. LANG, T. MANZELLA, T. MCGILLVRAY, D. SALOMON, C. SMITH, R. TEMPEL, S. BERGLEE, M. BINKLEY, M. CAFERRO, J. CARLSON, J. FULLER, S. GALLOWAY, W. GALT, J. GILLETTE, E. HILL, C. HINKLE, J. HINKLE, J. KASSMIER, C. KNUDSEN, R. KNUDSEN, D. LENZ, B. PHALEN, J. READ, J. SCHILLINGER, L. SHELDON-GALLOWAY, D. SKEES, M. STROMSWOLD, J. TREBAS, B. TSCHIDA, K. ZOLNIKOV

AN ACT PROVIDING FOR THE MONTANA LOCAL FOOD CHOICE ACT; EXEMPTING CERTAIN HOMEMADE FOOD PRODUCERS FROM FOOD LICENSURE, PERMITTING, CERTIFICATION, PACKAGING, LABELING, AND INSPECTION REGULATIONS AS WELL AS CERTAIN OTHER STANDARDS AND REQUIREMENTS; PROVIDING EXCEPTIONS TO CERTAIN REQUIREMENTS; REVISING RULEMAKING AUTHORITY; AND AMENDING SECTIONS 30-12-301, 50-31-104, 50-31-106, 50-31-108, 50-31-201, 50-50-301, 81-2-101, 81-2-102, 81-2-105, 81-9-201, 81-9-218, 81-21-101, 81-21-102, 81-21-103, 81-22-101, 81-22-102, 81-22-201, 81-22-303, 81-22-304, 81-22-401, 81-22-405, 81-22-412, 81-22-413, 81-22-416, 81-22-420, 81-22-421, 81-22-503, 81-23-103, 81-23-401, AND 81-23-405, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.