

SENATE BILL NO. 202

INTRODUCED BY G. HERTZ

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING EXEMPTIONS FOR PRODUCERS OF HOMEMADE FOOD OR HOMEMADE FOOD PRODUCTS; REVISING REQUIREMENTS FOR FARMER'S MARKETS; CLARIFYING COUNTY COMMISSION REGULATION OF FARMER'S MARKETS; CLARIFYING DEFINITIONS; RESTRICTING RULEMAKING AUTHORITY OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES AND LOCAL BOARDS OF HEALTH; AMENDING SECTIONS 7-21-3301, 50-49-202, 50-49-203, 50-50-102, 50-50-103, AND 50-50-121, MCA."

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

Section 1. Section 7-21-3301, MCA, is amended to read:

"7-21-3301. Establishment of markets and market houses. In addition to the powers specifically granted by the laws of the state and such other limitations and exceptions contained in the existing statutes of the state in reference to law regarding the debt-incurring power of boards of county commissioners, the boards of county commissioners in every county in Montana shall have the power to erect market houses to be located at the county seats of their respective counties, to establish and regulate markets, and to acquire the property necessary therefor for this. For the establishment and regulation of farmer's markets, the boards of county commissioners are subject to the requirements of Title 50, chapter 50, part 1."

Section 2. Section 50-49-202, MCA, is amended to read:

"50-49-202. Definitions. For the purposes of this part, 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, other private property, or another location agreed to between the producer or agent and the informed end consumer.

(2) "Home consumption" means:

- 1 (a) the consumption of food or a food product in a private home; or
- 2 (b) the consumption of food or a food product from a private home.
- 3 (3) "Homemade" means food or a food product that is prepared in a private home and that is not
- 4 licensed, permitted, certified, packaged, labeled, or inspected per any official regulations.
- 5 (4) "Informed end consumer" means a person who is the last person to purchase a product, does
- 6 not resell the product, and has been informed that the product is not licensed, permitted, certified, packaged,
- 7 labeled, or inspected per any official regulations.
- 8 (5) (a) "Producer" means a person who harvests, produces, or prepares a product that may be
- 9 consumed as homemade food or a homemade food product. The term includes a person operating a small
- 10 dairy.
- 11 (b) The term does not include the entities listed in 50-49-203(1)(c).
- 12 (6) "Small dairy" means a place where no more than 5 lactating cows, 10 lactating goats, or 10
- 13 lactating sheep are kept for producing milk.
- 14 (7) "Traditional community social event" means an event at which people gather as part of a
- 15 community for the benefit of those gathering or for the benefit of the community, including but not limited to a:
- 16 (a) wedding;
- 17 (b) funeral;
- 18 (c) church or religious social;
- 19 (d) school event;
- 20 (e) farmer's market;
- 21 (f) potluck;
- 22 (g) neighborhood gathering;
- 23 (h) club meeting or social; or
- 24 (i) youth or adult outdoor club or sporting event.
- 25 (8) "Transaction" means an exchange of buying and selling, including the transfer of a product by
- 26 delivery."

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**Section 3.** Section 50-49-203, MCA, is amended to read:

1           **"50-49-203. Exemptions from regulations -- transactions -- information required -- exceptions.**

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

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

7           (c) A producer is not:

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

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

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

12          (d) A producer is not subject to labeling, licensure, inspection, sanitation, or other requirements or  
13       standards of 30-12-301; Title 50, ~~chapter 34~~ chapters 31 and 50; or Title 81, chapters 2, 9, 21, 22, or 23.

14       (2) Transactions pursuant to this part:

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

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

17       and

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

19           (d) are not subject to regulation by a board of county commissioners pursuant to 7-21-3301.

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

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

26           (5) Except as provided in subsection (6) and pursuant to this part, a producer may donate  
27       homemade food or homemade food products to a traditional community social event.

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

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

5           (b)     Subsection (7)(a) does not apply to a producer who slaughters fewer than 1,000 poultry birds a  
6 year except that the producer is subject to the requirements of 9 CFR 381.10(c) and the recordkeeping  
7 requirements of 9 CFR 381.175. The poultry or poultry products may not be adulterated or misbranded.

8           (8)     A small dairy shall:

9           (a)     sample, test, or retest every 6 months for standard plate count, coliform count, and somatic cell  
10 count of milk or cream sold as homemade food pursuant to this part;

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

13          (c)     maintain records for 2 years of all previous samples, tests, or retests, which must be provided  
14 to the department of livestock if the department suspects the small dairy is causing a foodborne illness."  
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16           **Section 4.** Section 50-50-102, MCA, is amended to read:

17           **"50-50-102. Definitions.** Unless the context requires otherwise, in this chapter, the following  
18 definitions apply:

19           (1)     "Consumer" means a person who is a member of the public, takes possession of food, and  
20 does not offer the food for resale.

21           (2)     "Contract cook" means a person who specializes in a home food service and prepares food in  
22 an individual's domestic residence only for members of that household and house guests.

23           (3)     "Cottage food operation" means a person who provides, manufactures, or packages cottage  
24 food products only in a kitchen in a registered area of a domestic residence and only for direct sale to a  
25 consumer in this state.

26           (4)     "Cottage food products" means foods that are not potentially hazardous and are processed or  
27 packaged in a cottage food operation, including jams, jellies, dried fruit, dry mixes, and baked goods. Other  
28 similar foods that are not potentially hazardous may be defined by the department by rule.

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

3 (6) "Direct sale" means a face-to-face purchase or exchange of the cottage food product between  
4 the manufacturer or packager of a cottage food product and a consumer or individual purchasing the cottage  
5 food product as a gift. The direct sale may not be by consignment or involve shipping or internet sales.

6 (7) "Domestic residence" means a single-family house or a unit in a multiunit residential structure,  
7 whether rented, leased, or owned by the person in charge of the cottage food operation.

8 (8) "Farmer's market" means a farm premises, a food stand owned and operated by a farmer, or  
9 an organized market authorized by the appropriate municipal or county authority under 7-21-3301.

10 (9) "Food" means an edible substance, beverage, or ingredient used, intended for use, or for sale  
11 for human consumption.

12 (10) "Local board of health" means a county, city, city-county, or district board of health.

13 (11) "Local health officer" means a county, city, city-county, or district health officer, appointed by  
14 the local board of health, or the health officer's authorized representative.

15 (12) "Meat market" means an operation and buildings or structures in connection with the meat  
16 market that are used to process, store, or display meat or meat products for retail sale to the public or for  
17 human consumption.

18 (13) (a) "Mobile food establishment" means a retail food establishment that serves or sells food from  
19 a motor vehicle, a nonmotorized cart, a boat, or other movable vehicle that periodically or continuously changes  
20 location and requires a servicing area to accommodate the unit for cleaning, inspection, and maintenance.

21 (b) The term does not include:

22 (i) a motor vehicle used solely to transport or deliver food by a motorized carrier regulated by the  
23 state or the federal government;

24 (ii) a cottage food operation transport vehicle; or

25 (iii) a concession stand designed to operate as a temporary food establishment.

26 (14) "Nonprofit organization" means any organization qualifying as a tax-exempt organization under  
27 26 U.S.C. 501.

28 (15) "Person" means an individual, a partnership, a corporation, an association, a cooperative

1 group, the state or a political subdivision of the state, or other entity.

2 (16) "Potentially hazardous food" means food that requires time and temperature control for safety  
3 to limit toxin formation or the growth of pathogenic microorganisms.

4 (17) (a) "Raw agricultural commodity" means any food in its raw, unaltered state, including fruits,  
5 vegetables, raw honey, and grains. A raw agricultural commodity may be in a container if putting the commodity  
6 in a container does not alter the raw state.

7 (b) The term does not include an agricultural commodity that has been altered by being:

8 ~~(a)~~(i) cooked;

9 ~~(b)~~(ii) canned;

10 ~~(c)~~(iii) preserved, except for drying;

11 ~~(d)~~(iv) combined with other food products; or

12 ~~(e)~~(v) peeled, diced, cut, blanched, or otherwise subjected to value-adding procedures.

13 (18) "Registered area" means the portion of a domestic residence that has been registered as  
14 provided in 50-50-117 and in which food ingredients intended for cottage food products are transported or  
15 stored or the domestic residence kitchen where cottage food products are processed, packaged, or stored.

16 (19) "Regulatory authority" means the department, the local board of health, the local health officer,  
17 or the local sanitarian.

18 (20) "Retail" means the provision of food directly to the consumer.

19 (21) (a) "Retail food establishment" means an operation, whether mobile or at a temporary or  
20 stationary facility or location, that meets one or more of the conditions in subsections (21)(a)(i) and (21)(a)(ii)  
21 and that may include a central processing facility that supplies a transportation vehicle or a vending location or  
22 satellite feeding location. A retail food establishment:

23 (i) stores, processes, packages, serves, or vends food directly to the consumer or otherwise  
24 provides food for human consumption at a venue that may include:

25 (A) a restaurant;

26 (B) a market;

27 (C) a satellite or catered feeding location;

28 (D) a catering operation if the catering operation provides food directly to a consumer or to a

1 conveyance used to transport people;

2 (E) a vending location;

3 (F) a conveyance used to transport people;

4 (G) an institution; or

5 (H) a food bank; and

6 (ii) relinquishes possession of food to a consumer directly or indirectly by using either a delivery  
7 service, as is done for grocery or restaurant orders, or a common carrier that provides deliveries.

8 (b) The term is not dependent on whether consumption is on or off the premises or whether there  
9 is a charge for food served to the public.

10 (c) The term does not include:

11 (i) milk producers' facilities, milk pasteurization facilities, or milk product manufacturing plants;

12 (ii) slaughterhouses, meat packing plants, or meat depots;

13 (iii) growers or harvesters of raw agricultural commodities;

14 (iv) a cottage food operation;

15 (v) a person that sells or serves only commercially prepackaged foods that are not potentially  
16 hazardous;

17 (vi) a food stand that offers raw agricultural commodities;

18 (vii) a wholesale food establishment, including those wholesale food establishments that are  
19 located on the same premises as a retail food establishment;

20 (viii) a kitchen in a domestic residence used for preparing food to sell or serve at a function by a  
21 nonprofit organization as provided in subsection (21)(c)(xiii);

22 (ix) custom meat and game animal processors that receive from an owner the remains of a carcass  
23 and process those remains for delivery to the owner for the exclusive use in the owner's household by the  
24 owner or members of the owner's household, including the owner's family pets, or of the owner's nonpaying  
25 guests or employees. For this exemption to apply, the carcass must be kept separate from other meat food  
26 products and parts that are to be prepared for sale.

27 (x) private, religious, fraternal, youth, patriotic, or civic organizations that serve or sell food to the  
28 public over no more than 4 days in a 12-month period;

1 (xi) a private organization that serves food only to its members and their guests;

2 (xii) a bed and breakfast, a hotel, a motel, a roominghouse, a guest ranch, an outfitting and guide  
3 facility, a boardinghouse, or a tourist home as defined in 50-51-102 that serves food only to registered guests  
4 and day visitors;

5 (xiii) a nonprofit organization that operates a temporary food establishment under a permit as  
6 provided in 50-50-120;

7 (xiv) persons who sell or serve at a farmer's market or a food stand whole shell eggs, hot coffee, hot  
8 tea, homemade food or a homemade food product pursuant to Title 50, chapter 49, or other food not meeting  
9 the definition of potentially hazardous, as authorized by the appropriate municipal or county authority;

10 (xv) a day-care center under 52-2-721(1)(a) or day-care providers who are not subject to licensure  
11 under 52-2-721(1)(a);

12 (xvi) a private domestic residence that receives catered or home-delivered food;

13 (xvii) a contract cook; or

14 (xviii) a provider of free samples to the public as a marketing activity if the provider is a licensed  
15 wholesale food establishment, a cottage food operation, or a seller at a farmer's market.

16 (22) "Temporary food establishment" means a retail food establishment that in a licensing year  
17 either:

18 (a) operates at a fixed location for no more than 21 days in conjunction with a single event or  
19 celebration; or

20 (b) uses a fixed menu and operates within a single county at a recurring event or celebration for no  
21 more than 45 days.

22 (23) (a) "Water hauler" means a person engaged in the business of transporting water for human  
23 consumption and use and that is not regulated as a public water supply system as provided in Title 75, chapter  
24 6.

25 (b) The term does not include a person engaged in the business of transporting water for human  
26 consumption that is used for individual family households and family farms and ranches."  
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28 **Section 5.** Section 50-50-103, MCA, is amended to read:



1           **"50-50-103. Department authorized to adopt rules -- advisory council.** (1) Except as provided in  
2 subsection (3), to protect public health, the department may adopt rules relating to:

3           (a) the operation of retail food establishments and cottage food operations. The rules may address  
4 sanitation standards related to food, personnel, food equipment and utensils, and facilities and may address  
5 other controls, construction and fixtures, and housekeeping.

6           (b) licensure of retail food establishments; and

7           (c) registration for cottage food operations, including the fees to be charged for registration. The  
8 department shall specify in rule any fees for farmer's markets and cottage food operations that may be imposed  
9 by a regulatory authority.

10           (2) The department may adopt rules regarding permitting fees, statewide standards, plans to be  
11 provided by mobile food establishments as part of a mobile food establishment's licensing requirements, and an  
12 appeals process at the state and local levels.

13           (3) The department and local boards of health may not adopt rules or ordinances, respectively,  
14 that prohibit:

15           (a) the sale of cottage food products; ~~or~~

16           (b) the use of commercially processed wild game or fish meat in meals served by nonprofit retail  
17 food establishments pursuant to 50-50-126; or

18           (c) the sale of homemade food or a homemade food product pursuant to Title 50, chapter 49.

19           (4) (a) The department shall establish a food safety task force or advisory council to assist in the  
20 development of administrative rules or to review any proposed legislation related to the provisions of this  
21 chapter.

22           (b) The task force or advisory council must be composed of equal numbers of representatives of  
23 the departments of public health and human services, agriculture, and livestock and of registered sanitarians  
24 from local regulatory authorities and no more than six members of the public. Each department head shall  
25 appoint two of the public members and confer with other department heads to provide geographic  
26 representation. Each public member must be an owner or employee of a licensed retail food establishment or a  
27 representative of the food industry.

28           (c) The department shall present administrative rules and any legislation to be proposed by the

1 department to the task force or advisory council prior to its proposal or introduction. When the department  
2 learns of proposed legislation related to the provisions of this chapter that has not been proposed by the  
3 department, the department shall provide copies of that legislation for review by the task force or advisory  
4 council and shall provide to the legislature any comments of the task force or advisory council."

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6 **Section 6.** Section 50-50-121, MCA, is amended to read:

7 **"50-50-121. Requirements for farmer's markets.** (1) (a) A person selling food that is not potentially  
8 hazardous, including food listed in subsection (2), at a farmer's market is not a retail food establishment.

9 (b) A person selling food that is not potentially hazardous or otherwise listed in subsection (2) if  
10 selling only at a farmer's market is not required to register as a cottage food operation.

11 (2) Foods that are not potentially hazardous or are otherwise eligible to be sold at a farmer's  
12 market include:

13 (a) whole shell eggs if the whole shell eggs are clean, free of cracks, and stored in clean cartons at  
14 a temperature established by the department by rule;

15 (b) hot coffee or hot tea if the person selling the hot coffee or hot tea does not provide or include  
16 fresh milk or cream;

17 (c) raw agricultural commodities; ~~and~~

18 (d) food identified by the department by rule as not being a potentially hazardous food; and

19 (e) homemade food or a homemade food product pursuant to Title 50, chapter 49.

20 (3) A farmer's market authorized by a municipal or county authority shall keep registration records  
21 of all persons and organizations that serve or sell food exempt from licensure at the market, including food that  
22 does not meet the definition of potentially hazardous food.

23 (4) The registration records must include the name, address, and telephone number of the seller or  
24 server as well as the types of products sold or served and the date on which the products were sold or served.

25 (5) A farmer's market under this section shall make registration records available upon request to  
26 the local health authority.

27 (6) ~~Food~~ Except for homemade food or a homemade food product pursuant to Title 50, chapter 49,  
28 food sold in a farmer's market must, if sold in a container, have a label similar to a label required of a cottage

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1 food product under 50-50-116."

2 - END -