SENATE BILL NO. 6

INTRODUCED BY E. BOLDMAN

BY REQUEST OF THE ECONOMIC AFFAIRS INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: “AN ACT REVISING THE DEFINITION OF "FARMER'S MARKET"; AND AMENDING SECTION 50-50-102, MCA.”

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

Section 1. Section 50-50-102, MCA, is amended to read:

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

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

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

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

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

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

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

(7) "Domestic residence" means a single-family house or a unit in a multiunit residential structure,

whether rented, leased, or owned by the person in charge of the cottage food operation.

(8) "Farmer's market" means a ~~farm premises, a food stand owned and operated by a farmer, or an organized market~~ collection of two or more food vendors, authorized by the appropriate municipal or county authority under 7-21-3301, that sells products directly to consumers at a physical location.

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

(10) "Large mobile food establishment" means a retail food establishment that is a mobile food establishment and that operates with three or more employees during peak hours.

(11) "Large retail food establishment" means a retail food establishment that is not a mobile food establishment and that operates with 10 or more employees during peak hours.

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

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

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

(15) "Medium retail food establishment" means a retail food establishment that is not a mobile food establishment and that operates with between three and nine employees during peak hours.

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

(b) The term does not include:

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

(ii) a cottage food operation transport vehicle; or

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

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

(18) "Person" means an individual, a partnership, a corporation, an association, a cooperative group, the state or a political subdivision of the state, or other entity.

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

(20) (a) "Raw agricultural commodity" means any food in its raw, unaltered state, including fruits, vegetables, aquaculture products as defined in 80-3-302, raw honey, and grains. A raw agricultural commodity may be in a container if putting the commodity in a container does not alter the raw state.

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

(i) cooked;

(ii) canned;

(iii) preserved, except for drying;

(iv) combined with other food products; or

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

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

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

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

(24) (a) "Retail food establishment" means an operation, whether mobile or at a temporary or stationary facility or location, that meets one or more of the conditions in subsections (24)(a)(i) and (24)(a)(ii) and that may include a central processing facility that supplies a transportation vehicle or a vending location or satellite feeding location. A retail food establishment:

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

(A) a restaurant;

(B) a market;

(C) a satellite or catered feeding location;

(D) a catering operation if the catering operation provides food directly to a consumer or to a conveyance used to transport people;

(E) a vending location;

(F) a conveyance used to transport people;

(G) an institution; or

(H) a food bank; and

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

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

(c) The term does not include:

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

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

(iii) growers or harvesters of raw agricultural commodities;

(iv) a cottage food operation;

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

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

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

(viii) a kitchen in a domestic residence used for preparing food to sell or serve at a function by a nonprofit organization as provided in subsection (24)(c)(xiii);

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

(x) private, religious, fraternal, youth, patriotic, or civic organizations that serve or sell food to the

public over no more than 4 days in a 12-month period;

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

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

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

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

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

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

(xvii) a contract cook; or

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

(25) "Small mobile food establishment" means a retail food establishment that is a mobile food establishment and that operates with no more than two employees during peak hours.

(26) "Small retail food establishment" means a retail food establishment that is not a mobile food establishment and that operates with no more than two employees during peak hours.

(27) "Temporary food establishment" means a retail food establishment that in a licensing year either:

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

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

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

6.

(b) The term does not include a person engaged in the business of transporting water for human consumption that is used for individual family households and family farms and ranches.

(29) "Year-round" has the same meaning as provided in 50-53-102."

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