

1 _____ BILL NO. _____

2 INTRODUCED BY _____

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO THE MONTANA
5 LOCAL FOOD CHOICE ACT; PROVIDING FOR THE STORAGE OF HOMEMADE FOOD OR HOMEMADE
6 FOOD PRODUCT IN A RETAIL FOOD ESTABLISHMENT UNDER CERTAIN CONDITIONS; PROVIDING AN
7 INSPECTION FEE; REVISING DEFINITIONS; AND AMENDING SECTIONS 50-49-202, 50-49-203, 50-50-102,
8 AND 50-50-103, MCA."

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11
12 **Section 1.** Section 50-49-202, MCA, is amended to read:

13 **"50-49-202. Definitions.** For the purposes of this part, the following definitions apply:

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

18 (2) "Home consumption" means:

19 (a) the consumption of food or a food product in a private home; or

20 (b) the consumption of food or a food product from a private home.

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

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

26 (5) (a) "Producer" means a person who harvests, produces, or prepares a product that may be
27 consumed as homemade food or a homemade food product. The term includes a person operating a small
28 dairy.

- 1 (b) The term does not include the entities listed in 50-49-203(1)(c).
- 2 (6) "Small dairy" means a place where no more than 5 lactating cows, 10 lactating goats, or 10
- 3 lactating sheep are kept for producing milk.
- 4 (7) "Traditional community social event" means an event at which people gather as part of a
- 5 community for the benefit of those gathering or for the benefit of the community, including but not limited to a:
- 6 (a) wedding;
- 7 (b) funeral;
- 8 (c) church or religious social;
- 9 (d) school event;
- 10 (e) farmer's market;
- 11 (f) potluck;
- 12 (g) neighborhood gathering;
- 13 (h) club meeting or social; or
- 14 (i) youth or adult outdoor club or sporting event.
- 15 (8) "Transaction" means an exchange of buying and selling, including the transfer of a product by
- 16 delivery."

17

18 **Section 2.** Section 50-49-203, MCA, is amended to read:

19 **"50-49-203. Exemptions from regulations -- fee -- transactions -- information required --**

20 **exceptions.** (1) (a) A state agency or an agency of a political subdivision of the state may not require licensure,

21 permitting, certification, packaging, labeling, testing, sampling, or inspection that pertains to the preparation,

22 serving, use, consumption, delivery, or storage of homemade food or a homemade food product under this part.

23 (b) (i) This part does not preclude an agency from providing assistance, consultation, or inspection

24 requested by a producer.

25 (ii) The department of public health and human services shall collect for each inspection requested

26 under subsection (1)(b)(i) a \$25 fee from the requesting producer. The fees collected under this subsection

27 (1)(b)(ii) must be deposited in the local board of inspection fund account created in 50-2-108.

28 (c) A producer is not:

- 1 (i) a retail food establishment, a cottage food operation, or a temporary food establishment, as
2 each term is defined in 50-50-102;
- 3 (ii) a wholesale food manufacturing establishment, as defined in 50-57-102; or
4 (iii) a dairy or a manufactured dairy products plant, as defined in 81-22-101.
- 5 (d) A producer is not subject to labeling, licensure, inspection, sanitation, or other requirements or
6 standards of 30-12-301; Title 50, chapters 31 and 50; or Title 81, chapters 2, 9, 21, 22, or 23.
- 7 (2) Transactions pursuant to this part:
- 8 (a) must be directly between the producer or the producer's designated agent and the informed
9 end consumer;
- 10 (b) must be only for home consumption or consumption at a traditional community social event;
11 (c) must occur only in this state and may not involve interstate commerce; and
12 (d) are not subject to regulation by a board of county commissioners pursuant to 7-21-3301.
- 13 (3) Except as provided in subsection (7), a producer shall inform an end consumer that any
14 homemade food or homemade food product sold through ranch, farm, or home-based sales pursuant to this
15 part has not been licensed, permitted, certified, packaged, labeled, or inspected per any official regulations.
- 16 (4) (a) Except for raw, unprocessed fruit and vegetables, homemade food may not be sold or used
17 in a retail food establishment, as defined in 50-50-102, unless the food has been licensed, permitted, certified,
18 packaged, labeled, and inspected as required by law.
- 19 (b) A retail food establishment may hold and store homemade food or homemade food product for
20 a producer for the purposes of a transaction and delivery between the producer or the producer's designated
21 agent and an informed end consumer only when:
- 22 (i) the homemade food or homemade food product is delivered by the producer or the producer's
23 designated agent to the retail food establishment;
- 24 (ii) the homemade food or homemade food product is stored in an area of the retail food
25 establishment that is not accessible to the general public and in a designated and secured area that is
26 separated from food products being sold to the general public; and
- 27 (iii) a sign or label is displayed by the retail food establishment or producer on the homemade food
28 or homemade food product stating that the homemade food or homemade food product is not for sale.

1 (c) A retail food establishment holding or storing a homemade food or homemade food product
2 pursuant to subsection (4)(b) must store temperature-controlled homemade food or homemade food products
3 below 41 degrees Fahrenheit.

4 (d) (i) Except as provided in subsection (4)(d)(ii), the producer or the producer's designated agent
5 shall retrieve the homemade food or homemade food product from the retail food establishment for the
6 transaction and delivery of the homemade food or homemade food product to an informed end consumer.

7 (ii) A retail food establishment must dispose of homemade food or homemade food product stored
8 at the retail food establishment pursuant to subsection (4)(b) if the homemade food or homemade food product
9 has been stored at the retail food establishment for longer than 30 days.

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

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

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

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

20 (8) A small dairy shall:

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

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

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

27
28 **Section 3.** Section 50-50-102, MCA, is amended to read:

1 **"50-50-102. Definitions.** Unless the context requires otherwise, in this chapter, the following
2 definitions apply:

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

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

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

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

13 (5) "Department" means the department of public health and human services provided for in 2-15-
14 2201.

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

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

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

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

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

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

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

1 human consumption.

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

5 (b) The term does not include:

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

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

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

10 (14) "Nonprofit organization" means any organization qualifying as a tax-exempt organization under
11 26 U.S.C. 501.

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

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

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

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

20 (i) cooked;

21 (ii) canned;

22 (iii) preserved, except for drying;

23 (iv) combined with other food products; or

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

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

28 (19) "Regulatory authority" means the department, the local board of health, the local health officer,

1 or the local sanitarian.

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

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

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

9 (A) a restaurant;

10 (B) a market;

11 (C) a satellite or catered feeding location;

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

14 (E) a vending location;

15 (F) a conveyance used to transport people;

16 (G) an institution; or

17 (H) a food bank; ~~and~~

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

20 (iii) if applicable, may store and relinquish possession of homemade food or homemade food
21 product pursuant to the provisions of Title 50, chapter 49, part 2.

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

24 (c) The term does not include:

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

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

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

28 (iv) a cottage food operation;

- 1 (v) a person that sells or serves only commercially prepackaged foods that are not potentially
2 hazardous;
- 3 (vi) a food stand that offers raw agricultural commodities;
- 4 (vii) a wholesale food establishment, including those wholesale food establishments that are
5 located on the same premises as a retail food establishment;
- 6 (viii) a kitchen in a domestic residence used for preparing food to sell or serve at a function by a
7 nonprofit organization as provided in subsection (21)(c)(xiii);
- 8 (ix) custom meat and game animal processors that receive from an owner the remains of a carcass
9 and process those remains for delivery to the owner for the exclusive use in the owner's household by the
10 owner or members of the owner's household, including the owner's family pets, or of the owner's nonpaying
11 guests or employees. For this exemption to apply, the carcass must be kept separate from other meat food
12 products and parts that are to be prepared for sale.
- 13 (x) private, religious, fraternal, youth, patriotic, or civic organizations that serve or sell food to the
14 public over no more than 4 days in a 12-month period;
- 15 (xi) a private organization that serves food only to its members and their guests;
- 16 (xii) a bed and breakfast, a hotel, a motel, a roominghouse, a guest ranch, an outfitting and guide
17 facility, a boardinghouse, or a tourist home as defined in 50-51-102 that serves food only to registered guests
18 and day visitors;
- 19 (xiii) a nonprofit organization that operates a temporary food establishment under a permit as
20 provided in 50-50-120;
- 21 (xiv) persons who sell or serve at a farmer's market or a food stand whole shell eggs, hot coffee, hot
22 tea, homemade food or a homemade food product pursuant to Title 50, chapter 49, or other food not meeting
23 the definition of potentially hazardous, as authorized by the appropriate municipal or county authority;
- 24 (xv) a day-care center under 52-2-721(1)(a) or day-care providers who are not subject to licensure
25 under 52-2-721(1)(a);
- 26 (xvi) a private domestic residence that receives catered or home-delivered food;
- 27 (xvii) a contract cook; or
- 28 (xviii) a provider of free samples to the public as a marketing activity if the provider is a licensed

1 wholesale food establishment, a cottage food operation, or a seller at a farmer's market.

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

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

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

8 (23) (a) "Water hauler" means a person engaged in the business of transporting water for human
9 consumption and use and that is not regulated as a public water supply system as provided in Title 75, chapter
10 6.

11 (b) The term does not include a person engaged in the business of transporting water for human
12 consumption that is used for individual family households and family farms and ranches."
13

14 **Section 4.** Section 50-50-103, MCA, is amended to read:

15 **"50-50-103. Department authorized to adopt rules -- advisory council.** (1) Except as provided in
16 subsection (3), to protect public health, the department may adopt rules relating to:

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

20 (b) licensure of retail food establishments; and

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

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

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

1 (a) the sale of cottage food products;

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

4 (c) the sale or storage of homemade food or a-homemade food product pursuant to Title 50,
5 chapter 49.

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

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

15 (c) The department shall present administrative rules and any legislation to be proposed by the
16 department to the task force or advisory council prior to its proposal or introduction. When the department
17 learns of proposed legislation related to the provisions of this chapter that has not been proposed by the
18 department, the department shall provide copies of that legislation for review by the task force or advisory
19 council and shall provide to the legislature any comments of the task force or advisory council."

20 - END -