

1 HOUSE BILL NO. 478

2 INTRODUCED BY K. WILLIAMS

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT IMPLEMENTING SAFETY STANDARDS AND OVERSIGHT FOR
5 COTTAGE FOOD OPERATIONS AND VARIOUS RETAIL FOOD ESTABLISHMENTS; PROVIDING
6 CONDITIONS AND REGISTRATION REQUIREMENTS FOR COTTAGE FOOD OPERATIONS; CLARIFYING
7 TERMS RELATING TO AND STATE REGULATION OF MOBILE FOOD ESTABLISHMENTS; PROVIDING FOR
8 LOCAL BOARDS OF HEALTH TO OVERSEE AND ISSUE PERMITS FOR TEMPORARY FOOD
9 ESTABLISHMENTS; CLARIFYING REGULATION OF COTTAGE FOOD OPERATIONS IN RELATION TO
10 CERTAIN PRODUCTS; EXTENDING THE RULEMAKING AUTHORITY OF THE DEPARTMENT OF PUBLIC
11 HEALTH AND HUMAN SERVICES; AND AMENDING SECTIONS 50-31-103, 50-46-309, 50-50-101, 50-50-102,
12 50-50-103, 50-50-105, 50-50-109, 50-50-110, 50-50-201, 50-50-202, 50-50-203, 50-50-205, 50-50-208,
13 50-50-209, 50-50-211, 50-50-212, 50-50-213, 50-50-214, 50-50-215, 50-50-301, 50-50-302, 50-50-303,
14 50-50-305, 50-57-102, AND 81-22-208, MCA."

15

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

17

18 NEW SECTION. **Section 1. Conditions for cottage food operation exemption from licensure and**
19 **routine facility inspection.** (1) To acquire the status of not being a retail food establishment, a cottage food
20 operation must meet the conditions in this section and shall register with a local health authority as provided in
21 [section 2].

22 (2) A cottage food operation shall:

23 (a) follow department food standards as provided in rule, including applicable provisions implementing
24 the 2013 United States food and drug administration food code;25 (b) package cottage food products and label the cottage food products prior to sale, including on the
26 label, at a minimum, the following:

27 (i) the name, address, city, state, and zip code of the cottage food operation;

28 (ii) the name of the cottage food product;

29 (iii) the ingredients of the cottage food product, in descending order of predominance by weight;

30 (iv) the net quantity, weight, count, or volume of the cottage food product;

- 1 (v) allergen labeling as specified by federal and state labeling requirements;
- 2 (vi) if a nutritional claim is made, an appropriate label if required by federal law; and
- 3 (vii) the following statement, printed in at least the equivalent of 11-point font size in a color that provides
- 4 a clear contrast to the background and is conspicuously placed on the principal label:
- 5 "Made in a home kitchen that is not subject to retail food establishment regulations or inspections."
- 6 (3) Providing cottage food products by consignment, including at a retail food establishment or through
- 7 a wholesale establishment, is prohibited.
- 8 (4) Processing or packaging of cottage food products must be in the specific registered area of the
- 9 domestic residence of the person processing or packaging the cottage food products.
- 10 (5) A cottage food operation may store cottage food products only in the registered area of the primary
- 11 domestic residence used to produce the cottage food product or temporarily in a registered area of a motor
- 12 vehicle used to transport cottage food products.
- 13 (6) (a) A cottage food operation is subject to local health authority or state enforcement action for
- 14 violations of applicable department regulations.
- 15 (b) Cottage food products may be subject to other state or federal laws or regulations.
- 16 (7) A cottage food operation that meets the requirements in this section is not a retail food establishment
- 17 or a wholesale food establishment and is not subject to licensure or inspection requirements under Title 50,
- 18 chapter 57, or this chapter.
- 19
- 20 **NEW SECTION. Section 2. Registration of cottage food operations -- fee.** (1) A person in charge
- 21 of a cottage food operation shall register with the local health authority in the county in which the person's
- 22 domestic residence is located and pay a registration fee as provided in subsection (6).
- 23 (2) A registrant shall provide:
- 24 (a) the name of the cottage food operation;
- 25 (b) the physical address of the domestic residence, as defined in 50-50-102, where the ingredients are
- 26 manufactured or packaged into cottage food products and stored;
- 27 (c) a brief description of expected or known food ingredient sources;
- 28 (d) a complete list of the cottage food products manufactured or packaged; and
- 29 (e) a copy of each cottage food product label.
- 30 (3) A local health authority may request additional food safety information, if needed, and shall submit

1 the list of additional information to the department. The additional requested information may not restrain trade
2 through extensive registration requirements.

3 (4) The local health authority shall submit a copy of the approved registration to the department, which
4 may maintain a listing of cottage food operations.

5 (5) If a local health authority refuses to register a cottage food operation, the provisions of 50-50-215
6 apply, including the requirement for notification of the cottage food operation in writing.

7 (6) The person in charge of the cottage food operation shall pay a nonrefundable registration fee to the
8 county in which the cottage food operation is registered. The department shall set the registration fee by rule. The
9 county shall deposit the registration fee with the county treasurer.

10
11 **NEW SECTION. Section 3. Temporary food establishment requirements.** (1) Whether for-profit or
12 operated by a nonprofit organization, a temporary food establishment:

13 (a) must be operated in compliance with applicable department rules; and

14 (b) shall obtain a permit from the local health regulatory authority on a form approved by the state.

15 (2) (a) A for-profit temporary food establishment shall pay a required permit fee to the local regulatory
16 authority.

17 (b) A temporary food establishment operated by a nonprofit organization:

18 (i) is exempt from paying a permit fee; and

19 (ii) may sell or serve foods that meet the definition of cottage food products but is not required to register
20 as a cottage food operation.

21
22 **NEW SECTION. Section 4. Requirements for farmer's markets.** (1) (a) A person selling food that is
23 not potentially hazardous, including food listed in subsection (2), at a farmer's market is not a retail food
24 establishment.

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

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

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

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

3 (c) raw agricultural commodities; and

4 (d) food identified by the department by rule as not being a potentially hazardous food.

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

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

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

12 (6) Food sold in a farmer's market must, if sold in a container, have a label similar to a label required of
13 a cottage food product under [section 1].

14

15 **Section 5.** Section 50-31-103, MCA, is amended to read:

16 **"50-31-103. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions
17 apply:

18 (1) "Advertisement" means representations disseminated in any manner or by any means, other than
19 by labeling, for the purpose of inducing or that are likely to induce, directly or indirectly, the purchase of food,
20 drugs, devices, or cosmetics.

21 (2) "Beef patty mix" means "hamburger" or "ground beef" to which have been added binders or extenders
22 as those terms are understood by general custom and usage in the food industry.

23 (3) "Bottled water" means water that is intended for human consumption and that is sealed in bottles or
24 other containers with no added ingredients, except that ~~it~~ bottled water may optionally contain safe and suitable
25 antimicrobial agents.

26 (4) "Color" includes black, white, and intermediate grays.

27 (5) (a) "Color additive" means a material that:

28 (i) is a dye, pigment, or other substance made by a process of synthesis or similar artifice or that is
29 extracted, isolated, or otherwise derived, with or without intermediate or final change of identity, from a vegetable,
30 animal, mineral, or other source; or

1 (ii) when added or applied to a food, drug, or cosmetic or to the human body is capable (alone or through
2 reaction with another substance) of imparting color to the human body.

3 (b) The term does not include material that has been or is exempted under the federal act.

4 (6) (a) "Consumer commodity", except as otherwise specifically provided by this subsection, means any
5 food, drug, device, or cosmetic as those terms are defined by this chapter or by the federal act and regulations
6 pursuant to the federal act.

7 (b) The term does not include:

8 (i) any tobacco or tobacco product;

9 (ii) a commodity subject to packaging or labeling requirements imposed under the Federal Insecticide,
10 Fungicide, and Rodenticide Act (7 U.S.C. 136, et seq.) or the provisions of the eighth paragraph under the
11 heading "Bureau of Animal Industry" of the act of March 4, 1913 (37 Stat. 832-833; 21 U.S.C. 151 through 157),
12 commonly known as the Virus-Serum-Toxin Act;

13 (iii) a drug subject to 50-31-306(1)(m) or 50-31-307(2)(c) or section 503(b)(1) or 506 of the federal act
14 (21 U.S.C. 353(b)(1) and 356);

15 (iv) a beverage subject to or complying with packaging or labeling requirements imposed under the
16 Federal Alcohol Administration Act (27 U.S.C. 201, et seq.); or

17 (v) a commodity subject to the Federal Seed Act (7 U.S.C. 1551 through 1610).

18 (7) "Contaminated with filth" applies to a food, drug, device, or cosmetic not securely protected from dust,
19 dirt, and, as far as may be necessary by all reasonable means, foreign, or injurious contaminations.

20 (8) (a) "Cosmetic" means:

21 ~~(a)~~(i) articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise
22 applied to the human body for cleansing, beautifying, promoting attractiveness, or altering the appearance; and

23 ~~(b)~~(ii) articles intended for use as a component of these articles, ~~except that the~~.

24 (b) The term does not include soap.

25 (9) "Counterfeit drug" means a drug, drug container, or drug label that, without authorization, bears the
26 trademark, trade name, or other identifying mark, imprint, or device or any likeness ~~thereof~~ of an identifying mark,
27 imprint, or device of a drug manufacturer, processor, packer, or distributor other than the person who in fact
28 manufactured, processed, packed, or distributed the drug and that falsely purports or is represented to be the
29 product of or to have been packed or distributed by the other drug manufacturer, processor, packer, or distributor.

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

1 (11) "Device" (except when used in 50-31-107(2), 50-31-203(6), 50-31-306(1)(c) and (1)(q), 50-31-402(3),
2 and 50-31-501(10)) means instruments, apparatus, and contrivances, including their components, parts, and
3 accessories, intended:

4 (a) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other
5 animals; or

6 (b) to affect the structure or function of the body of humans or other animals.

7 (12) "Dietary supplement" means a product, other than a tobacco product, that is intended to supplement
8 the diet and that:

9 (a) is advertised only as a food supplement;

10 (b) bears or contains one or more of the following ingredients:

11 (i) a vitamin;

12 (ii) a mineral;

13 (iii) an herb or other botanical substance;

14 (iv) an amino acid;

15 (v) a dietary substance used to supplement the diet by increasing the total dietary intake or a
16 concentrate, metabolite, constituent, extract, or combination of any ingredients described in subsections (12)(b)(i)
17 through (12)(b)(iv);

18 (c) conforms to any additional provisions for the definition of dietary supplement under 21 U.S.C. 321.

19 (13) "Drug" means:

20 (a) articles recognized in the official United States Pharmacopoeia, official National Formulary, or a
21 supplement to either of these;

22 (b) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in
23 humans or other animals;

24 (c) articles (other than food) intended to affect the structure or function of the body of humans or other
25 animals;

26 (d) articles intended for use as components of any article specified in subsection (13)(a), (13)(b), or
27 (13)(c) but does not include devices or their components, parts, or accessories.

28 (14) "Federal act" means the Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C. 301, et
29 seq.).

30 (15) "Food" means:

1 (a) articles used for food or drink for humans or other animals;

2 (b) chewing gum;

3 (c) articles used for components of these articles; and

4 (d) dietary supplements.

5 (16) (a) "Food additive" means a substance, the intended use of which results or may be reasonably
6 expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics
7 of food ~~(including~~. The term includes a substance intended for use in producing, manufacturing, packing,
8 processing, preparing, treating, packaging, transporting, or holding food and ~~including~~ a source of radiation
9 intended for this use); if the substance is not generally recognized; among experts qualified by scientific training
10 and experience to evaluate its safety; as having been adequately shown through scientific procedures to be safe
11 under the conditions of its intended use. ~~(or, in the case of~~ Alternatively, for a substance used in a food prior to
12 January 1, 1958, the determination of safety under the conditions of the substance's intended use may be through
13 either scientific procedures or experience based on common use in food) ~~to be safe under the conditions of its~~
14 ~~intended use.~~

15 (b) The term does not include:

16 (i) a pesticide chemical in or on a raw agricultural commodity;

17 (ii) a pesticide chemical to the extent that ~~it~~ the pesticide chemical is intended for use or is used in the
18 production, storage, or transportation of a raw agricultural commodity;

19 (iii) a color additive;

20 (iv) a substance used in accordance with a sanction or approval granted prior to the enactment of the
21 Food Additives Amendment of 1958, pursuant to the federal act, the Poultry Products Inspection Act (21 U.S.C.
22 451, et seq.), or the Meat Inspection Act of March 4, 1907 (34 Stat. 1260), as amended and extended (21 U.S.C.
23 603, et seq.).

24 (17) "Food service establishment" means ~~a restaurant, catering vehicle, vending machine, delicatessen,~~
25 ~~fast-food retailer, or any other place that serves food at retail to the public for consumption, either at or away from~~
26 ~~the point of service;~~ a retail food establishment defined in 50-50-102 and any facility operated by a governmental
27 entity where food is served.

28 (18) "Hamburger" or "ground beef" means ground fresh or frozen beef or a combination of both fresh and
29 frozen beef, with or without the addition of suet, to which no water, binders, or extenders are added. There are
30 four grades of hamburger or ground beef:

- 1 (a) "regular hamburger" or "regular ground beef" may have:
- 2 (i) a fat content no greater than the federal standard set forth in 9 CFR 319.15; and
- 3 (ii) a lean content of no less than 70%;
- 4 (b) "lean hamburger" or "lean ground beef" may have:
- 5 (i) a fat content no greater than 22%; and
- 6 (ii) a lean content of no less than 78%;
- 7 (c) "extra lean hamburger" or "extra lean ground beef" may have:
- 8 (i) a fat content no greater than 16%; and
- 9 (ii) a lean content of no less than 84%; and
- 10 (d) "super lean hamburger" or "super lean ground beef" may have:
- 11 (i) a fat content no greater than 12%; and
- 12 (ii) a lean content of no less than 88%.
- 13 (19) "Honey" means the nectar and saccharine plant exudations, gathered, modified, and stored in the
- 14 comb by honey bees, that are levorotatory and that contain not more than 25% of water, not more than 0.25%
- 15 of ash, and not more than 8% sucrose.
- 16 (20) "Label" means a display of written, printed, or graphic matter on the immediate container of an
- 17 article. "Immediate container" does not include package liners.
- 18 (21) "Labeling" means labels and other written, printed, or graphic matter:
- 19 (a) on an article or its containers or wrappers;
- 20 (b) accompanying the article.
- 21 (22) "Menu" means a list presented to the patron that states the food items for sale in a food service
- 22 establishment.
- 23 (23) "New drug" means a drug, the composition of which ~~is such that:~~
- 24 (a) ~~it is not generally recognized;~~ among experts qualified by scientific training and experience to
- 25 evaluate the safety and effectiveness of drugs; as safe and effective for use under the conditions prescribed,
- 26 recommended, or suggested in ~~its~~ the new drug's labeling; or
- 27 (b) ~~the drug;~~ has become recognized as a result of investigations to determine ~~its~~ the new drug's safety
- 28 and effectiveness for use under the conditions prescribed; ~~has become so recognized but that~~ has not, other than
- 29 in the investigations, been used to a material extent or for a material time under the conditions prescribed.
- 30 (24) "Official compendium" means the official United States Pharmacopoeia, official National Formulary,

1 or a supplement to either of these.

2 (25) (a) "Package" means a container or wrapping in which a consumer commodity is enclosed for use
3 in the delivery or display of that consumer commodity to retail purchasers.

4 (b) The term does not include:

5 (i) shipping containers or wrappings used solely for the transportation of a consumer commodity in bulk
6 or in quantity to manufacturers, packers, or processors or to wholesale or retail distributors;

7 (ii) shipping containers or outer wrappings used by retailers to ship or deliver a commodity to retail
8 customers if the containers and wrappings bear no printed matter pertaining to a particular commodity.

9 (26) "Person" includes an individual, partnership, corporation, and association.

10 (27) "Pesticide chemical" means a substance that alone, in chemical combination, or in formulation with
11 one or more other substances is an "economic poison" under the Federal Insecticide, Fungicide, and Rodenticide
12 Act (7 U.S.C. 136, et seq.), as amended, and that is used in the production, storage, or transportation of raw
13 agricultural commodities.

14 (28) "Placard" means a nonpermanent sign used to display or describe food items for sale in a food
15 service establishment or retail meat establishment.

16 (29) "Principal display panel" means that part of a label that is most likely to be displayed, presented,
17 shown, or examined under normal and customary conditions of display for retail sale.

18 (30) "Processing" means cooking, baking, heating, drying, mixing, grinding, churning, separating,
19 extracting, cutting, freezing, or otherwise manufacturing a food or changing the physical characteristics of a food
20 and the enclosure of the food in a package.

21 (31) "Raw agricultural commodity" ~~means food in its raw or natural state, including fruits that are washed,~~
22 ~~colored, or otherwise treated in their unpeeled natural form prior to marketing~~ has the meaning as provided in
23 50-50-102.

24 (32) "Retail meat establishment" means a commercial establishment at which meat or meat products are
25 displayed for sale or provision to the public, with or without charge.

26 (33) "Synthetically compounded" means a product formulated by a process that chemically changes a
27 material or substance extracted from naturally occurring plant, animal, or mineral sources, except for
28 microbiological processes."

29

30 **Section 6.** Section 50-46-309, MCA, is amended to read:

1 **"50-46-309. Marijuana-infused products provider -- requirements -- allowable activities.** (1) An
2 individual registered as a marijuana-infused products provider shall:

3 (a) prepare marijuana-infused products at a premises registered with the department that is used for the
4 manufacture and preparation of marijuana-infused products; and

5 (b) use equipment that is used exclusively for the manufacture and preparation of marijuana-infused
6 products.

7 (2) A marijuana-infused products provider:

8 (a) may cultivate marijuana only for the purpose of making marijuana-infused products; and

9 (b) may not provide a cardholder with marijuana in a form that may be used for smoking unless the
10 marijuana-infused products provider is also a registered provider and is providing the marijuana to a registered
11 cardholder who has selected the person as the person's registered provider.

12 (3) All registered premises on which marijuana-infused products are manufactured must meet any
13 applicable standards set by a local board of health for a retail food ~~service~~ establishment as defined in 50-50-102.

14 (4) Marijuana-infused products may not be considered a food or drug for the purposes of Title 50,
15 chapter 31."

16

17 **Section 7.** Section 50-50-101, MCA, is amended to read:

18 **"50-50-101. Purpose of regulation.** Regulation ~~of establishments defined in 50-50-102~~ is required
19 under this chapter is intended to prevent and eliminate conditions and practices ~~which~~ that endanger public
20 health."

21

22 **Section 8.** Section 50-50-102, MCA, is amended to read:

23 **"50-50-102. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions
24 apply:

25 (1) ~~"Baked goods" means breads, cakes, candies, cookies, pastries, and pies that are not potentially~~
26 ~~hazardous foods.~~

27 ~~(2)(1)~~ (1) "Consumer" means a person who is a member of the public, takes possession of food, ~~is not~~
28 ~~operating an establishment,~~ and does not offer the food for resale.

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

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

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

8 ~~(3)~~(5) "Department" means the department of public health and human services provided for in
 9 2-15-2201.

10 ~~(4) (a) "Establishment" means a retail food manufacturing establishment, meat market, food service~~
 11 ~~establishment, perishable food dealer, or water hauler.~~

12 ~~—— (b) The term does not include people who gather to exchange in nonmonetary transactions:~~

13 ~~—— (i) high-acid canned goods, including but not limited to tomato sauce, fruits, pickles, or other~~
 14 ~~vinegar-based foods;~~

15 ~~—— (ii) home-brewed beer; or~~

16 ~~—— (iii) dehydrated fruits and vegetables.~~

17 ~~(5)~~(6) "Direct sale" means a face-to-face purchase or exchange of the cottage food product between the
 18 manufacturer or packager of a cottage food product and a consumer or individual purchasing the cottage food
 19 product as a gift. The direct sale may not be by consignment or involve shipping or internet sales.

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

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

24 ~~(6)~~(9) "Food" means an edible substance, beverage, or ingredient used, intended for use, or for sale for
 25 human consumption.

26 ~~(7) (a) "Food service establishment" means a fixed or mobile restaurant, coffee shop, cafeteria,~~
 27 ~~short-order cafe, luncheonette, grille, tearoom, sandwich shop, soda fountain, food store serving food or beverage~~
 28 ~~samples, food or drink vending machine, tavern, bar, cocktail lounge, nightclub, industrial feeding establishment,~~
 29 ~~eatering kitchen, commissary, private organization routinely serving the public, or similar place where food or~~
 30 ~~drink is prepared, served, or provided to the public at retail, with or without charge.~~

1 ~~_____~~ (b) The term does not include:

2 ~~_____~~ (i) operations, vendors, or vending machines that sell or serve only packaged, nonperishable foods in
3 their unbroken, original containers;

4 ~~_____~~ (ii) a private organization serving food only to its members;

5 ~~_____~~ (iii) custom meat cutters or wild game processors who cut, process, grind, package, or freeze game meat
6 for the owner of the carcass for consumption by the owner or the owner's family, pets, or nonpaying guests;

7 ~~_____~~ (iv) an establishment, as defined in 50-51-102, that serves food only to its registered guests and day
8 visitors.

9 ~~(8)~~(10) "Local board of health" means a county, city, city-county, or district board of health.

10 ~~(9)~~(11) "Local health officer" means a county, city, city-county, or district health officer, appointed by the
11 local board of health, or the health officer's authorized representative.

12 ~~(10)~~(12) "Meat market" means an operation and buildings or structures in connection with it the meat
13 market that are used to process, store, or display meat or meat products for retail sale to the public or for human
14 consumption.

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

18 (b) The term does not include:

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

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

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

23 ~~(14)~~(14) "Nonprofit organization" means any organization qualifying as a tax-exempt organization under
24 26 U.S.C. 501.

25 ~~(12) "Perishable food dealer" means an operation that is in the business of purchasing and selling~~
26 ~~perishable food to the public at retail.~~

27 ~~(13)~~(15) "Person" means ~~a person~~ an individual, a partnership, a corporation, an association, a
28 cooperative group, the state or a political subdivision of the state, or other entity.

29 ~~(14)~~(16) ~~(a)~~ "Potentially hazardous food" means ~~a food that is natural or synthetic and is in a form capable~~
30 ~~of supporting:~~

1 ~~—— (i) the rapid and progressive growth of infectious or toxigenic requires time and temperature or acidity~~
 2 ~~control for safety to limit toxin formation or the growth of pathogenic microorganisms; or~~

3 ~~—— (ii) the growth and toxin production of Clostridium botulinum.~~

4 ~~—— (b) The term includes cut melons, garlic and oil mixtures, a food of animal origin that is raw or~~
 5 ~~heat-treated, and a food of plant origin that is heat-treated or consists of raw seed sprouts.~~

6 ~~(c) The term does not include:~~

7 ~~—— (i) an air-cooled, hard-boiled egg with intact shell;~~

8 ~~—— (ii) a food with a hydrogen ion concentration (pH) level of 4.6 or below when measured at 24 degrees C~~
 9 ~~(75 degrees F);~~

10 ~~—— (iii) a food with a water activity (aw) value of 0.85 or less;~~

11 ~~—— (iv) a food in an unopened hermetically sealed container that is commercially processed to achieve and~~
 12 ~~maintain commercial sterility under conditions of nonrefrigerated storage and distribution; or~~

13 ~~—— (v) a food for which laboratory evidence is accepted by the department as demonstrating that rapid and~~
 14 ~~progressive growth of infectious and toxigenic microorganisms or the slower growth of Clostridium botulinum~~
 15 ~~cannot occur.~~

16 ~~(15) (a) "Preserves" means processed fruit or berry jams, jellies, compotes, fruit butters, marmalades,~~
 17 ~~chutneys, fruit aspics, fruit syrups, or similar products that have a hydrogen ion concentration (pH) of 4.6 or below~~
 18 ~~when measured at 24 degrees C (75 degrees F) and that are aseptically processed, packaged, and sealed.~~

19 ~~—— (b) The term does not include:~~

20 ~~—— (i) tomatoes or food products containing tomatoes; or~~

21 ~~—— (ii) any other food substrate or product preserved by any method other than that described in subsection~~
 22 ~~(15)(a).~~

23 ~~(16)(17) (a) "Raw and unprocessed farm products agricultural commodity" means fruits, vegetables, and~~
 24 ~~grains sold at a farmer's market in their natural state that are not packaged and labeled and are not any food in~~
 25 ~~its raw, unaltered state, including fruits, vegetables, raw honey, and grains. A raw agricultural commodity may~~
 26 ~~be in a container if putting the commodity in a container does not alter the raw state.~~

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

28 ~~(a) cooked;~~

29 ~~(b) canned;~~

30 ~~(c) preserved, except for drying;~~

- 1 (d) combined with other food products; or
- 2 (e) peeled, diced, cut, blanched, or otherwise subjected to value-adding procedures.
- 3 (18) "Registered area" means the portion of a domestic residence that has been registered as provided
- 4 in [section 2] and in which food ingredients intended for cottage food products are transported or stored or the
- 5 domestic residence kitchen where cottage food products are processed, packaged, or stored.
- 6 ~~(17)~~(19) "Regulatory authority" means the department, the local board of health, the local health officer,
- 7 or the local sanitarian.
- 8 ~~(18)~~(20) "Retail" means the provision of food directly to the consumer.
- 9 ~~(19)~~(21) (a) "Retail food manufacturing establishment" means an operation ~~and the buildings or structures~~
- 10 ~~used to manufacture or prepare food for sale or human consumption at retail, whether mobile or at a temporary~~
- 11 ~~or stationary facility or location, that meets one or more of the conditions in subsections (21)(a)(i) and (21)(a)(ii)~~
- 12 ~~and that may include a central processing facility that supplies a transportation vehicle or a vending location or~~
- 13 ~~satellite feeding location. A retail food establishment:~~
- 14 (i) stores, processes, packages, serves, or vends food directly to the consumer or otherwise provides
- 15 food for human consumption at a venue that may include:
- 16 (A) a restaurant;
- 17 (B) a market;
- 18 (C) a satellite or catered feeding location;
- 19 (D) a catering operation if the catering operation provides food directly to a consumer or to a conveyance
- 20 used to transport people;
- 21 (E) a vending location;
- 22 (F) a conveyance used to transport people;
- 23 (G) an institution; or
- 24 (H) a food bank; and
- 25 (ii) relinquishes possession of food to a consumer directly or indirectly by using either a delivery service,
- 26 as is done for grocery or restaurant orders, or a common carrier that provides deliveries.
- 27 (b) The term is not dependent on whether consumption is on or off the premises or whether there is a
- 28 charge for food served to the public.
- 29 ~~(b)~~(c) The term does not include:
- 30 (i) milk producers' facilities, milk pasteurization facilities, or milk product manufacturing plants;

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

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

4 or

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

7 ~~(20)(23)~~ (a) "Water hauler" means a person engaged in the business of transporting water for human
8 consumption and use and that is not regulated as a public water supply system as provided in Title 75, chapter
9 6.

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

13 **Section 9.** Section 50-50-103, MCA, is amended to read:

14 **"50-50-103. Department authorized to adopt rules -- advisory council.** (1) To protect public health,
15 the department may adopt rules relating to:

16 (a) the operation of retail food establishments defined in 50-50-102, including coverage of and cottage
17 food operations. The rules may address sanitation standards related to food, personnel, food equipment and
18 utensils, sanitary and facilities and may address other controls, construction and fixtures, and housekeeping.

19 (b) licensure of retail food establishments; and

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

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

26 ~~(2)(3)~~ (a) The department and local boards of health authorities may not adopt rules prohibiting or
27 ordinances, respectively, that prohibit the sale of baked goods and preserves cottage food products by nonprofit
28 organizations or by persons selling baked goods or preserves at farmer's markets or exclusively for a charitable
29 community purpose.

30 ~~(b) The department and local health authorities may not require that foods sold pursuant to this~~

1 subsection (2) be prepared in certified or commercial kitchens.

2 ~~(3)~~(4) (a) The department shall establish a food safety task force or advisory council to assist in the
3 development of administrative rules or to review any proposed legislation related to the provisions of this chapter.

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

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

15

16 **Section 10.** Section 50-50-105, MCA, is amended to read:

17 **"50-50-105. Diseased person not to handle food.** A person who has a communicable disease may
18 not work in any retail food establishment or in the handling or processing of food in a cottage food operation until
19 a local health officer has determined that the person is free of the infectious agent or unlikely to transmit the
20 infectious agent because of the nature of the person's work."

21

22 **Section 11.** Section 50-50-109, MCA, is amended to read:

23 **"50-50-109. Civil penalties -- injunctions not barred.** (1) ~~An~~ A retail food establishment or a cottage
24 food operation that violates this chapter or rules adopted by the department pursuant to this chapter is subject
25 to a civil penalty not to exceed \$500.

26 (2) Civil action to impose penalties, as provided under this section, does not bar injunctions to enforce
27 compliance with this chapter or to enforce compliance with a rule adopted by the department pursuant to this
28 chapter."

29

30 **Section 12.** Section 50-50-110, MCA, is amended to read:

1 **"50-50-110. Costs and expenses -- recovery by department or county.** In a civil action initiated by
 2 the regulatory authority under this chapter, the court may, by petition of the regulatory authority, order ~~an~~ a retail
 3 food establishment or a cottage food operation that is found in violation of this chapter or rules adopted under
 4 this chapter to pay the costs of investigations and any other expenses incurred in enforcing the provisions of this
 5 chapter in the case of a willful violation. These costs are limited to the direct costs of investigations and other
 6 expenses."

7

8 **Section 13.** Section 50-50-201, MCA, is amended to read:

9 **"50-50-201. License, permit required.** (1) (a) Except as provided in 50-50-202 and subsection (1)(b)(i)
 10 of this section, a person operating ~~an~~ a retail food establishment shall procure an annual license from the
 11 department.

12 (b) (i) A temporary food establishment described in [section 3(2)(a)] shall obtain a permit and pay a
 13 permit fee to the local regulatory authority in the county where the temporary food establishment is operated.

14 (ii) For a temporary food establishment described under 50-50-102(22)(b), each time a temporary food
 15 establishment alters its menu substantially by food type and means of production, a separate permit must be
 16 obtained and a separate permit fee paid.

17 (2) A separate license is required for each retail food establishment, but if more than one type of retail
 18 food establishment is operated on the same premises and under the same management, only one license is
 19 required.

20 (3) Only one retail food establishment license is required for a person owning and operating one or more
 21 vending machines.

22 (4) ~~(a)~~ Except as provided in subsection (4)(b), a retail food establishment license issued by the
 23 department is not valid unless signed in accordance with 50-50-214.

24 (b) A temporary food establishment permit must be signed by the local health officer or the health
 25 officer's designee to be valid."

26

27 **Section 14.** Section 50-50-202, MCA, is amended to read:

28 **"50-50-202. Establishments exempt Exemptions from license requirement -- farmer's market**
 29 **records.** (1) ~~Establishments~~ A retail food establishment owned or operated by the state or a political subdivision
 30 of the state, ~~if that employ political subdivision employs~~ a full-time sanitarian ~~are,~~ is exempt from licensure under

1 this chapter but shall comply with the requirements of this chapter and rules adopted by the department under
 2 this chapter. A retail food establishment under this subsection may be operated by but is not limited to a county
 3 jail, a local government-owned health care facility, a school, a state prison, or a state university.

4 (2) If not listed among entities that are not considered retail food establishments in 50-50-102, a person
 5 who exchanges a cottage food product in nonmonetary transactions is exempt from licensure.

6 ~~(2) (a) A license is not required to operate an establishment if it is operated by a nonprofit organization~~
 7 ~~for a period of less than 14 days in 1 calendar year. An establishment exempt from licensure under this~~
 8 ~~subsection:~~

9 ~~—— (i) must be operated in compliance with the remaining provisions of this chapter and rules adopted by~~
 10 ~~the department under this chapter; and~~

11 ~~—— (ii) prior to each operation, shall register with the local health officer or sanitarian on forms provided by~~
 12 ~~the department.~~

13 ~~—— (b) Nonprofit organizations or persons selling baked goods or preserves exclusively for a charitable~~
 14 ~~community purpose are exempt from registration if they notify the local health officer or sanitarian, by phone or~~
 15 ~~in person, before the event. The notification required is limited to the date and time of the event, items planned~~
 16 ~~to be sold, and an estimate of the number of people expected to be served at the event.~~

17 ~~—— (3) (a) (i) A license is not required of a gardener, farm owner, or farm operator who sells raw and~~
 18 ~~unprocessed farm products or whole shell eggs at a farmer's market.~~

19 ~~—— (ii) Whole shell eggs sold at a farmer's market by a farm owner or operator must:~~

20 ~~—— (A) be clean, free of cracks, and stored in clean cartons;~~

21 ~~—— (B) be kept at a temperature established by the department; and~~

22 ~~—— (C) carry a label indicating the name and address of the farm owner or operator selling the eggs.~~

23 ~~—— (b) A license is not required of a person:~~

24 ~~—— (i) selling or offering hot coffee or hot tea at a farmer's market; or~~

25 ~~—— (ii) selling baked goods or preserves at a farmer's market or exclusively for a charitable community~~
 26 ~~purpose.~~

27 ~~—— (c) Coffee or tea exempted under this subsection (3) may not be prepared or served with fresh milk or~~
 28 ~~cream.~~

29 ~~—— (4) (a) A farmer's market that is an organized market authorized by a municipal or county authority shall~~
 30 ~~keep registration records of all individuals and organizations that sell baked goods or preserves at the market.~~

1 ~~_____ (b) The registration records must include but are not limited to the name of the seller, the seller's address~~
2 ~~and telephone number, the products sold by the seller, and the date the products were sold.~~

3 ~~_____ (c) The registration records must be made available to the local health officer or the officer's agent."~~

4

5 **Section 15.** Section 50-50-203, MCA, is amended to read:

6 **"50-50-203. Application for license, permit.** ~~(1) An~~ Except as provided in subsection (2), an application
7 for a retail food establishment license is must be:

8 (a) made to the department on forms and contains contain information required by the department; or
9 is

10 (b) filed using an application for a license that is in compliance with rules established by the board of
11 review established in 30-16-302.

12 (2) An application for a temporary food establishment permit must be made to the local regulatory
13 authority on a state-approved form. If a local board of review exists, the local board of review shall work with the
14 state to provide a permit application under this subsection similar to the state-approved form, and the temporary
15 food establishment may use the local board of review permit application."

16

17 **Section 16.** Section 50-50-205, MCA, is amended to read:

18 **"50-50-205. License fee -- late fee -- preemption of local authority -- exception.** (1) (a) ~~The~~ Except
19 as provided in subsection (6) or (7), the department shall collect for each license issued or renewed a fee as
20 provided in subsection (1)(b). Of the fees collected under this section, 90% must be deposited into the local board
21 inspection fund account created in 50-2-108, 5% into the general fund, and 5% into the account provided for in
22 50-50-216.

23 (b) ~~License~~ The department shall set the fees are:

24 ~~_____ (i) \$85 for each license issued to an establishment that does not have more than two employees working~~
25 ~~at any one time; and~~

26 ~~_____ (ii) \$115 for establishments not referred to in subsection (1)(b)(i) by rule according to retail food~~
27 ~~establishment complexity.~~

28 (2) (a) In addition to the license fee required under subsection (1), the department shall collect a late fee
29 of \$25 from any licensee who has failed to submit a license renewal fee prior to the expiration of the licensee's
30 current license and who operates an a retail food establishment governed by this part in the next licensing year.

1 (b) The late fee must be deposited in the account provided for in 50-50-216.

2 (3) A county or other local government may not impose an inspection fee or charge in addition to the fee
3 provided for in subsection (1) unless a violation of this chapter or rule persists and is not corrected after two visits
4 ~~to inspections of the retail food establishment.~~

5 (4) The fees in subsections (1) and (2) may be paid by credit card and may be discounted for payment
6 processing charges paid by the department to a third party. However, the discounting of license fees may not
7 reduce the fees paid into the local board inspection fund account established in 50-2-108.

8 (5) The department shall collect a fee as provided in rule for each mobile food establishment plan
9 submitted to the department for review.

10 (6) (a) A local health authority shall collect a fee, as provided in subsection (6)(b), for a permit issued
11 for a temporary food establishment required to register under [section 3].

12 (b) A fee charged to a temporary food establishment may not exceed the amount charged to a retail food
13 establishment as provided in subsection (1).

14 (c) The local regulatory authority shall use the revenue from the fee collected under this subsection (6)
15 to defray costs associated with issuing a temporary food establishment permit and the costs of inspections
16 required under this chapter.

17 (7) A fee may not be charged a person who sells or serves whole shell eggs at a farmer's market if the
18 whole shell eggs are clean, free of cracks, and stored in clean cartons that are labeled in accordance with
19 department rules and kept at a temperature established by the department by rule."

20

21 **Section 17.** Section 50-50-208, MCA, is amended to read:

22 **"50-50-208. Local board to report number of licensees to department.** Before June 1 of each year,
23 the local board of health shall submit to the department a list of the licensed retail food establishments, excluding
24 temporary food establishments, in each jurisdiction that are licensed under this chapter. The local board of health
25 also shall submit to the department a list of cottage food operations that have registered as provided in [section
26 2]."

27

28 **Section 18.** Section 50-50-209, MCA, is amended to read:

29 **"50-50-209. Cancellation of license.** (1) The Except as provided in subsection (2), the department may
30 cancel the license of a retail food establishment license if the department finds, after proper investigation, that

1 the licensee has violated this chapter or a rule effective under this chapter and the licensee has failed or refused
2 to remedy or correct the violation.

3 (2) A local regulatory authority may cancel a temporary food establishment permit if the local regulatory
4 authority finds after proper investigation that the permitholder has:

5 (a) violated the provisions of this chapter or a rule promulgated under this chapter; and

6 (b) failed or refused to remedy or correct a violation that was the subject of the investigation."

7

8 **Section 19.** Section 50-50-211, MCA, is amended to read:

9 **"50-50-211. Notice and hearing required.** (1) A The department may not deny or cancel the license
10 of a retail food establishment license may not be denied or canceled by the department without delivery delivering
11 to the applicant or licensee of a written statement of the grounds for cancellation or denial or the charge involved
12 and an opportunity to answer at a hearing before the department to show cause, if any, why the license should
13 not be denied or canceled. In such case, To request a hearing, the licensee must shall make a written request
14 to the department for a hearing within 10 days after notice of the grounds or charges has been received.

15 (2) A local regulatory authority may not deny or cancel a temporary food establishment permit without
16 delivering to the applicant or permitholder a written statement of the grounds for cancellation or denial or the
17 charge involved and an opportunity to answer at a hearing before the local board of health to show cause, if any,
18 why the permit should not be denied or canceled. To request a hearing, the permitholder shall make a written
19 request to the local board of health within 10 days after notice of the grounds or charges has been received."

20

21 **Section 20.** Section 50-50-212, MCA, is amended to read:

22 **"50-50-212. Cancellation of license or permit for multiple-type establishment.** When a multiple-type
23 retail food establishment is licensed by the department, the denial or cancellation of the license may affect the
24 entire establishment or only a portion of it as determined by the department. A multiple-type retail food
25 establishment, including a mobile food establishment, includes an establishment authorized by 50-50-201(2)."

26

27 **Section 21.** Section 50-50-213, MCA, is amended to read:

28 **"50-50-213. Return of license or permit for alteration or destruction.** On cancellation of the license
29 of a retail food establishment license or the right to operate one or more of the multiple-type retail food
30 establishments under the same license, the license certificate shall must be returned to the department for

1 destruction or deletion of types of establishment as the department may direct in its notice of cancellation."
 2

3 **Section 22.** Section 50-50-214, MCA, is amended to read:

4 **"50-50-214. Notification of and validation by local health officer.** (1) (a) A retail food establishment
 5 license issued by the department under this chapter is not valid until signed by the local health officer in the
 6 county where the retail food establishment is located or until the license is otherwise validated by the local health
 7 officer and is in accordance with rules established by the board of review established in 30-16-302.

8 ~~(2)(b)~~ The local health officer shall, within 15 days after the department has notified the local health
 9 officer of its decision to issue a retail food establishment license ~~under this chapter~~, make a final decision on
 10 whether the retail food establishment license will be validated.

11 ~~(3)(c)~~ Failure of the local health officer to validate the retail food establishment license within 15 days
 12 after its receipt is a refusal.

13 (2) A temporary food establishment permit issued by the local regulatory authority under this chapter
 14 must be signed and validated by the local health officer in the county where the temporary food establishment
 15 is to operate. If a local board of review exists, the local health officer may validate the permit in accordance with
 16 regulations established by the local board of review."

17
 18 **Section 23.** Section 50-50-215, MCA, is amended to read:

19 **"50-50-215. Refusal by local health officer -- appeal to board.** (1) (a) The local health officer may
 20 refuse to validate a license issued under this chapter only upon a finding that the requirements of this chapter
 21 and any rules implementing ~~it~~ this chapter are not satisfied. If the local health officer refuses to validate the
 22 license, the officer shall notify the applicant and the department in writing stating the officer's reasons.

23 (b) If a local health officer does not approve a registration of a cottage food operator, as provided in
 24 [section 2], or a temporary food establishment permit, as provided in [section 3], the officer shall notify the
 25 applicant in writing stating the officer's reasons.

26 (2) The applicant or any person aggrieved by the decision of the local health officer ~~not to validate a~~
 27 ~~license~~ as provided in subsection (1) may appeal the decision to the local board of health within 30 days after
 28 receiving written notice of the local health officer's decision.

29 (3) The hearing before the local board of health must be held pursuant to the contested case provisions
 30 of the Montana Administrative Procedure Act."

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Section 24. 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."

Section 25. Section 50-50-302, MCA, is amended to read:

"50-50-302. Health officers and sanitarians to have free access. (1) State and local health officers, sanitarians-in-training, and sanitarians must be provided free access to retail food establishments licensed under this chapter at all reasonable hours for the purpose of conducting investigations and inspections as required under this chapter.

(2) For the purpose of conducting investigations regarding complaints, illness, or outbreaks, state and local health officers, sanitarians-in-training, and sanitarians must be provided free access at all reasonable hours to cottage food operations if a complaint, illness, or outbreak is suspected or is directly related to the cottage food operation's cottage food products."

Section 26. Section 50-50-303, MCA, is amended to read:

"50-50-303. Licensee or registrant to furnish food samples. ~~Persons licensed~~ A licensee or a registrant under Title 50, chapter 50, part 2, shall furnish food samples for analysis as required by rules adopted by the department."

1 **Section 27.** Section 50-50-305, MCA, is amended to read:

2 "**50-50-305. Department to pay local board for inspections and enforcement.** (1) ~~Before~~ Subject to
3 the provisions of subsection (2), before June 30 of each year, the department shall pay to a local board of health,
4 as established under 50-2-104, 50-2-106, or 50-2-107, an amount from the local board inspection fund account
5 created in 50-2-108 that must be used only for the purpose of inspecting retail food establishments, including
6 mobile food establishments, licensed under this chapter and enforcing the provisions of this chapter; ~~provided,~~
7 ~~however, that:~~

8 ~~(a)~~(2) (a) The provisions of subsection (1) apply only if there is a functioning local board of health; and
9 ~~(b)~~ (b) the local board of health, local health officers, sanitarians-in-training, and registered sanitarians: meet
10 the requirements listed in subsection (2)(b).

11 ~~(i)~~(b) To be eligible under subsection (1), the entities listed in subsection (2)(a) shall:

12 ~~(i)~~ (i) assist in inspections and enforcement of the provisions of this chapter and the rules adopted ~~under~~
13 it pursuant to this chapter; and

14 ~~(ii)~~(ii) meet minimum program performance standards as established under rules adopted by the
15 department.

16 ~~(2)~~(3) The funds received by the local board of health pursuant to subsection (1) must be deposited with
17 the appropriate local fiscal authority and must be used to supplement, but not supplant, other funds received by
18 the local board of health that in the absence of funding received under subsection (1) would be made available
19 for the same purpose.

20 ~~(3)~~(4) Funds in the local board inspection fund account not paid to the local board of health as provided
21 in subsection (1) may be used by the department, within any jurisdiction that does not qualify to receive payments
22 from the local board inspection fund account, to enforce the provisions of this chapter and the rules adopted
23 under it."

24

25 **Section 28.** Section 50-57-102, MCA, is amended to read:

26 "**50-57-102. Definitions.** Unless the context clearly requires otherwise, in this chapter; the following
27 definitions apply:

28 (1) "Consumer" means a person who:

29 (a) is a member of the public;

30 (b) takes possession of food;

- 1 (c) is not functioning in the capacity of an operator of an establishment; and
2 (d) does not offer the food for resale.
- 3 (2) "Department" means the department of public health and human services provided for in 2-15-2201.
- 4 (3) "Dietary supplement" means a product, other than a tobacco product, that is intended to supplement
5 the diet and:
- 6 (a) is advertised only as a food supplement; and
7 (b) bears or contains one or more of the following ingredients:
8 (i) a vitamin;
9 (ii) a mineral;
10 (iii) an herb or other botanical substance;
11 (iv) an amino acid; or
12 (v) a dietary substance used to supplement the diet by increasing the total dietary intake or a
13 concentrate, metabolite, constituent, extract, or a combination of any ingredients described in subsections (3)(b)(i)
14 through (3)(b)(iv).
- 15 (4) "Establishment" means a wholesale food manufacturing establishment, wholesale food salvage
16 establishment, wholesale food warehouse, wholesale ice manufacturer, or wholesale water bottler.
- 17 (5) (a) "Food" means an edible substance, beverage, or ingredient used, intended for use, or for sale
18 for human consumption. The term includes dietary supplements.
19 (b) The term does not include nonprescription drugs.
- 20 (6) "Local board of health" means a county, city, city-county, or district board of health.
- 21 (7) "Local health officer" means a county, city, city-county, or district health officer appointed by the local
22 board of health or the health officer's authorized representative.
- 23 (8) "Regulatory authority" means the department, the local board of health, the local health officer, or
24 the local sanitarian.
- 25 (9) "Retail" means the provision of food directly to the consumer.
- 26 (10) "Retail food establishment" ~~means an establishment, as defined in 50-50-102, that provides food~~
27 ~~directly to the consumer~~ has the meaning provided in 50-50-102.
- 28 (11) (a) "Wholesale" means the sale or provision of food to a retail food establishment or ~~other~~ to another
29 person engaged in retail sales who sells or provides the food directly to the consumer.
30 (b) The term does not include the sale or provision of food at retail.

1 (12) (a) "Wholesale food manufacturing establishment" means a facility and the facility's buildings or
2 structures used to manufacture or prepare food for human consumption at wholesale.

3 (b) The term does not include:

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

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

6 (iii) producers or harvesters of raw and unprocessed farm products.

7 (13) "Wholesale food salvage establishment" means an entity that is engaged in reconditioning or by
8 other means salvaging distressed food or that sells, buys, or distributes for human consumption any salvaged
9 food. The term includes a salvage broker, a salvage operator, and a salvage warehouse.

10 (14) (a) "Wholesale food warehouse" means a facility used to store food or cosmetics for distribution to
11 retailers.

12 (b) The term includes a frozen food plant that is used to freeze, process, or store food, including any
13 facility used in conjunction with the frozen food plant.

14 (c) The term does not include a wine, beer, or soft drink warehouse that is separate from facilities where
15 brewing or drink manufacturing occurs.

16 (15) (a) "Wholesale ice manufacturer" means an entity that produces ice for human consumption that is
17 sold at wholesale in packaged form or in bulk form for food, drink, or culinary purposes.

18 (b) The term does not include:

19 (i) persons, hotels, restaurants, inns, caterers, food service contractors, or theaters that manufacture
20 or furnish ice solely for their customers in a manner that is incidental to the production, sale, or dispensing of
21 other goods and services; or

22 (ii) a retail food establishment that manufactures ice in packaged form for onsite retail sales to the
23 consumer.

24 (16) (a) "Wholesale water bottler" means an entity that is engaged in the production, packaging,
25 manufacturing, or processing of drinking water, culinary bottled water, or water otherwise processed and
26 packaged for human consumption that is sold at wholesale.

27 (b) The term does not include a facility that produces, packages, manufactures, or processes drinking
28 water, culinary bottled water, or water otherwise processed and packaged for human consumption onsite for retail
29 sale."

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