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

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

14           **"50-50-102. Definitions.** Unless the context requires otherwise, in this chapter, the following  
15           definitions apply:

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

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

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

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

26 (5) "Department" means the department of public health and human services provided for in 2-15-  
27 2201.

(6) "Direct sale" means a face-to-face purchase or exchange of the cottage food product between manufacturer or packager of a cottage food product and a consumer or individual purchasing the cottage 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, or 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 authorized by the appropriate municipal or county authority under 7-21-3301.

(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.

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

**(10)(11)(12)** "Local board of health" means a county, city, city-county, or district board of health.

(11)(12)(13) "Local health officer" means a county, city, city-county, or district health officer, ed by the local board of health, or the health officer's authorized representative.

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

(14)(15)"Medium retail food establishment" means a retail food establishment that is not a mobile retail establishment and that operates with between 3 to 9 three and nine employees during peak hours.

(13)(15)(16) (a) "Mobile food establishment" means a retail food establishment that serves or sells 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

1 state or the federal government;

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

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

4 ~~(14)(16)(17)~~ "Nonprofit organization" means any organization qualifying as a tax-exempt  
5 organization under 26 U.S.C. 501.

6 ~~(15)(17)(18)~~ "Person" means an individual, a partnership, a corporation, an association, a  
7 cooperative group, the state or a political subdivision of the state, or other entity.

8 ~~(16)(18)(19)~~ "Potentially hazardous food" means food that requires time and temperature control for  
9 safety to limit toxin formation or the growth of pathogenic microorganisms.

10 ~~(17)(19)(20)~~ (a) "Raw agricultural commodity" means any food in its raw, unaltered state, including  
11 fruits, vegetables, raw honey, and grains. A raw agricultural commodity may be in a container if putting the  
12 commodity in a container does not alter the raw state.

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

14 (i) cooked;

15 (ii) canned;

16 (iii) preserved, except for drying;

17 (iv) combined with other food products; or

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

19 ~~(18)(20)(21)~~ "Registered area" means the portion of a domestic residence that has been registered  
20 as provided in 50-50-117 and in which food ingredients intended for cottage food products are transported or  
21 stored or the domestic residence kitchen where cottage food products are processed, packaged, or stored.

22 ~~(19)(21)(22)~~ "Regulatory authority" means the department, the local board of health, the local health  
23 officer, or the local sanitarian.

24 ~~(20)(22)(23)~~ "Retail" means the provision of food directly to the consumer.

25 ~~(21)(23)(24)~~ (a) "Retail food establishment" means an operation, whether mobile or at a temporary  
26 or stationary facility or location, that meets one or more of the conditions in subsections ~~(21) (23)(a)(i) (24)(a)(i)~~  
27 and ~~(21) (23)(a)(ii) (24)(a)(ii)~~ and that may include a central processing facility that supplies a transportation

1        vehicle or a vending location or satellite feeding location. A retail food establishment:

2            (i)        stores, processes, packages, serves, or vends food directly to the consumer or otherwise

3        provides food for human consumption at a venue that may include:

4            (A)        a restaurant;

5            (B)        a market;

6            (C)        a satellite or catered feeding location;

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

8        conveyance used to transport people;

9            (E)        a vending location;

10          (F)        a conveyance used to transport people;

11          (G)        an institution; or

12          (H)        a food bank; and

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

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

17            (c)        The term does not include:

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

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

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

21            (iv)        a cottage food operation;

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

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

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

27            (viii)        a kitchen in a domestic residence used for preparing food to sell or serve at a function by a

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1 nonprofit organization as provided in subsection (21)(c)(xiii) ~~(23)(c)(xiii) (24)(c)(xiii)~~;

2 (ix) custom meat and game animal processors that receive from an owner the remains of a carcass

3 and process those remains for delivery to the owner for the exclusive use in the owner's household by the

4 owner or members of the owner's household, including the owner's family pets, or of the owner's nonpaying

5 guests or employees. For this exemption to apply, the carcass must be kept separate from other meat food

6 products and parts that are to be prepared for sale.

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

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

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

10 (xii) a bed and breakfast, ~~a hotel, a motel~~, a roominghouse, a guest ranch, an outfitting and guide

11 facility, a boardinghouse, or a tourist home as defined in 50-51-102 that serves food only to registered guests

12 and day visitors;

13 (xiii) a nonprofit organization that operates a temporary food establishment under a permit as

14 provided in 50-50-120;

15 (xiv) persons who sell or serve at a farmer's market or a food stand whole shell eggs, hot coffee, hot

16 tea, homemade food or a homemade food product pursuant to Title 50, chapter 49, or other food not meeting

17 the definition of potentially hazardous, as authorized by the appropriate municipal or county authority;

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

19 under 52-2-721(1)(a);

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

21 (xvii) a contract cook; or

22 (xviii) a provider of free samples to the public as a marketing activity if the provider is a licensed

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

24 (25) "Small mobile food establishment" means a retail food establishment that is a mobile food

25 establishment and that operates with no more than two employees during peak hours.

26 (24)(26) "Small retail food establishment" means a retail food establishment that is not a mobile ~~retail~~

27 food establishment and that operates with no more than ~~2~~two employees during peak hours.

1                   (22)(25)(27)    "Temporary food establishment" means a retail food establishment that in a licensing  
2 year either:

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

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

7                   (23)(26)(28)    (a) "Water hauler" means a person engaged in the business of transporting water for  
8 human consumption and use and that is not regulated as a public water supply system as provided in Title 75,  
9 chapter 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                  (27)(29)"Year-round" has the same meaning as provided in 50-53-102."

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14                  **Section 2.** Section 50-50-201, MCA, is amended to read:

15                  **"50-50-201. License or permit required.** (1) (a) Except as provided in 50-50-202 and subsection  
16 (1)(b)(i) of this section, a person operating a retail food establishment shall procure an annual license from the  
17 department.

18                  (b)    (i) A temporary food establishment described in 50-50-120(2)(a) shall obtain a permit and pay a  
19 permit fee to the local regulatory authority in the county where the temporary food establishment is operated.

20                  (ii)    For a temporary food establishment described under 50-50-102 (22) (b) in 50-50-102(25)(b),  
21 each time a temporary food establishment alters its menu substantially by food type and means of production, a  
22 separate permit must be obtained and a separate permit fee paid.

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

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

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

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

(5) A tribal government may pursue an agreement with the department pursuant to the authority provided in 50-1-106 to coordinate the licensing of a mobile ~~retail~~ food establishment subject to tribal regulations. The agreement must include an appeals process if the license is not validated.

(6) If there is not a cooperative agreement pursuant to subsection (5), the department may issue a license to a person operating a mobile ~~retail~~ food establishment."

**Section 3.** Section 50-50-205, MCA, is amended to read:

**"50-50-205. License fee -- late fee -- preemption of local authority -- exception.** (1) (a) Except as

provided in subsection (6) or (7), the department shall collect for each license issued or renewed a fee as

provided in subsection (1)(b). Of the fees collected under this section, 90% must be deposited into the local

board inspection fund account created in 50-2-108, 5% into the general fund, and 5% into the account provided

for in 50-50-216.

(b) License fees are:

(i) ~~\$85~~ ~~\$150~~ for each license issued to a small retail food establishment as defined in 50-50-102; that does not have more than two employees working at any one time; and

(ii) \$225 for a medium retail food establishment as defined in 50-50-102;

(ii)(iii) \$115 for a large retail food establishment as defined in 50-50-102 establishments.

~~other than those referred to in subsection (1)(b)(i); and~~

(iv) \$150 for a small mobile food establishment as defined in 50-50-102; and

(iv)(v) \$225 for a ~~large~~ mobile food establishment as defined in 50-50-102.

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

1 licensing year.

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

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

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

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

11 (6) (a) A local health authority shall collect a fee, as provided in subsection (6)(b), for a permit  
12 issued for a temporary food establishment required to register under 50-50-120.

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

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

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

21

22 **Section 4.** Section 50-51-204, MCA, is amended to read:

23 **"50-51-204. License fee -- late fee.** (1) (a) The department shall collect fees for each license required  
24 under 50-51-201 or for each annual license renewal as provided in subsection (1)(b). The department shall  
25 deposit 85% of the fees collected under this section into the local board inspection fund account created in 50-  
26 2-108, 11.25% of the fees into the general fund, and 3.75% of the fees into the account provided for in 50-51-  
27 110.