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HOUSE BILL NO. 853

2

INTRODUCED BY G. NIKOLAKAKOS, J. KASSMIER

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LICENSED ESTABLISHMENT FEES;
5 INCREASING RETAIL FOOD ESTABLISHMENT FEES, WHOLESALE FOOD ESTABLISHMENT FEES,
6 PUBLIC ACCOMMODATION FEES, TRAILER COURT AND CAMPGROUND FEES, AND POOL AND SPA
7 FEES; ADDING SEASONAL AND YEAR-ROUND CATEGORIES; PROVIDING DEFINITIONS; AND
8 AMENDING SECTIONS 50-50-102, 50-50-201, 50-50-205, 50-51-204, 50-52-202, 50-53-102, 50-53-203, AND
9 50-57-205, MCA."

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

12

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.

28 (6) "Direct sale" means a face-to-face purchase or exchange of the cottage food product between

1 the manufacturer or packager of a cottage food product and a consumer or individual purchasing the cottage
2 food product as a gift. The direct sale may not be by consignment or involve shipping or internet sales.

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

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

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

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

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

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

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

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

19 (13)(15)(a) "Mobile food establishment" means a retail food establishment that serves or sells food from
20 a motor vehicle, a nonmotorized cart, a boat, or other movable vehicle that periodically or continuously changes
21 location and requires a servicing area to accommodate the unit for cleaning, inspection, and maintenance.

22 (b) The term does not include:

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

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

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

27 (14)(16) "Nonprofit organization" means any organization qualifying as a tax-exempt organization under
28 26 U.S.C. 501.

1 (15)(17)"Person" means an individual, a partnership, a corporation, an association, a cooperative
2 group, the state or a political subdivision of the state, or other entity.

3 (16)(18)"Potentially hazardous food" means food that requires time and temperature control for safety
4 to limit toxin formation or the growth of pathogenic microorganisms.

5 (17)(19)(a) "Raw agricultural commodity" means any food in its raw, unaltered state, including fruits,
6 vegetables, raw honey, and grains. A raw agricultural commodity may be in a container if putting the commodity
7 in a container does not alter the raw state.

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

9 (i) cooked;

10 (ii) canned;

11 (iii) preserved, except for drying;

12 (iv) combined with other food products; or

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

14 (18)(20)"Registered area" means the portion of a domestic residence that has been registered as
15 provided in 50-50-117 and in which food ingredients intended for cottage food products are transported or
16 stored or the domestic residence kitchen where cottage food products are processed, packaged, or stored.

17 (19)(21)"Regulatory authority" means the department, the local board of health, the local health officer,
18 or the local sanitarian.

19 (20)(22)"Retail" means the provision of food directly to the consumer.

20 (21)(23)(a) "Retail food establishment" means an operation, whether mobile or at a temporary or
21 stationary facility or location, that meets one or more of the conditions in subsections (21) (23)(a)(i) and (21)
22 (23)(a)(ii) and that may include a central processing facility that supplies a transportation vehicle or a vending
23 location or satellite feeding location. A retail food establishment:

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

26 (A) a restaurant;

27 (B) a market;

28 (C) a satellite or catered feeding location;

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

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

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

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

5 and day visitors;

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

7 provided in 50-50-120;

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

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

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

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

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

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

14 (xvii) a contract cook; or

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

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

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

18 food establishment and that operates with no more than 2 employees during peak hours.

19 (22)(25)"Temporary food establishment" means a retail food establishment that in a licensing year

20 either:

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

22 celebration; or

23 (b) uses a fixed menu and operates within a single county at a recurring event or celebration for no

24 more than 45 days.

25 (23)(26)(a) "Water hauler" means a person engaged in the business of transporting water for human

26 consumption and use and that is not regulated as a public water supply system as provided in Title 75, chapter

27 6.

28 (b) The term does not include a person engaged in the business of transporting water for human

1 consumption that is used for individual family households and family farms and ranches.

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

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

5 **"50-50-201. License or permit required.** (1) (a) Except as provided in 50-50-202 and subsection
6 (1)(b)(i) of this section, a person operating a retail food establishment shall procure an annual license from the
7 department.

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

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

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

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

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

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

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

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

27

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

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

6 (b) License fees are:

7 (i) \$85 \$150 for each license issued to a small retail food establishment as defined in 50-50-102;

8 ~~that does not have more than two employees working at any one time; and~~

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

10 (ii)(iii) \$115 \$275 for for a large retail food establishment as defined in 50-50-102 establishments

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

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

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

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

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

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

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

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

28 (b) A fee charged to a temporary food establishment may not exceed the amount charged to a

1 retail food establishment as provided in subsection (1).

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

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

8

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

10 **"50-51-204. License fee -- late fee.** (1) (a) The department shall collect fees for each license required
11 under 50-51-201 or for each annual license renewal as provided in subsection (1)(b). The department shall
12 deposit 85% of the fees collected under this section into the local board inspection fund account created in 50-
13 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-
14 110.

15 (b) Initial and renewal license fees are:

16 (i) ~~\$40~~ \$100 annually for an establishment with no more than 10 rooms available for rental;

17 (ii) ~~\$80~~ \$175 annually for an establishment with more than 10 but not more than 25 rooms
18 available for rental; and

19 (iii) ~~\$160~~ \$250 annually for an establishment with more than 25 rooms available for rental.

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

24 (b) The late fee must be deposited in the account provided for in 50-51-110."

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26 **Section 5.** Section 50-52-202, MCA, is amended to read:

27 **"50-52-202. License fee -- late fee.** (1) (a) Each application for a new license required under 50-52-
28 103 or a license renewal must be accompanied by a fee as provided in subsection (1)(b).

17 **Section 6.** Section 50-53-102, MCA, is amended to read:

18 **"50-53-102. Definitions.** As used in this chapter, unless the context clearly indicates otherwise, the
19 following definitions apply:

20 (1) "Department" means the department of public health and human services provided for in 2-15-
21 2201.

22 (2) "Lazy river" means a constructed watercourse through which people travel by use of flotation
23 devices

(3) "Local board of health" or "board" means a local board as defined in 50-1-101.

(4) "Local health officer" or "officer" means a local health officer as defined in 50-1-101.

26 (5) "Person" means a person, firm, partnership, corporation, or organization or the state or any
27 political subdivision of the state.

(6) "Public bathing place" means a body of water with bathhouses and related appurtenances.

1 operated for the public.

2 (7) (a) "Public swimming pool" means an artificial pool and related appurtenances for swimming,
3 bathing, wading, or other aquatic therapy or recreation, including but not limited to natural hot water pools,
4 spas, splash decks, water slides, lazy rivers, and wave pools.

5 (b) The term does not include:

6 (i) swimming pools located on private property, including the private common area property of
7 owner-occupied condominium developments, used for swimming or bathing only by the owner, members of the
8 owner's family, or their invited guests; or

9 (ii) medicinal hot water baths for individual use.

10 (8) "Seasonal" refers to a pool or spa that operates in 6 or fewer months in a calendar year.

11 (8)(9) "Spa" means an artificial pool that is designed for recreational bathing or therapeutic use and
12 that is not drained, cleaned, or refilled for individual use. A spa includes but is not limited to a therapeutic pool,
13 hydrotherapy pool, whirlpool, hot tub, or Jacuzzi-type whirlpool bath.

14 (9)(10) "Splash deck" means a constructed area over which water is sprayed but is not allowed to pool.

15 (10)(11)"Tourist home" means a private home or condominium that is not occupied by an owner or
16 manager and that is rented, leased, or furnished in its entirety to transient guests on a daily or weekly basis.

17 (11)(12)"Wading pool" means a pool in which the water depth does not exceed 2 feet.

18 (12)(13)"Wave pool" means a swimming pool designed for the purpose of producing wave action in the
19 water.

20 (14) "Year-round" refers to a pool or spa that operates in more than 6 months in a calendar year."

21

22 **Section 7.** Section 50-53-203, MCA, is amended to read:

23 **"50-53-203. License fee and late fee -- disposition.** (1) (a) Except as provided in subsection (1)(b),
24 each application for an original or renewal license must be accompanied by a license fee of \$200 \$225 for a
25 seasonal public swimming pool or \$325 for a year-round public swimming pool.

26 (b) Each application for an original or renewal license for a spa or wading pool with a total water
27 capacity not exceeding 4,000 gallons must be accompanied by a license fee of \$75 \$100 for a seasonal facility
28 or \$150 for a year-round facility.

13 (b) the department shall deposit 15% of the fees collected under subsection (1) and all the fees
14 collected under subsection (2) in an account in the state special revenue fund to be appropriated by the
15 legislature to the department for the enforcement of part 1 and this part.

16 (4) If the local board of health has delegated its inspection and enforcement activities for public
17 swimming pools and public bathing places to the department, the department shall deposit all of the fees
18 collected under subsections (1) and (2) in an account in the state special revenue fund to be appropriated by
19 the legislature to the department for the enforcement of part 1 and this part."

21 **Section 8.** Section 50-57-205, MCA, is amended to read:

22 **"50-57-205. License fee -- late renewal fee -- allocation of fees.** (1) For each annual license issued
23 or renewed, the department shall collect a fee of \$115 \$225.

24 (2) A person operating an establishment who fails to renew a license by the expiration date
25 provided in 50-57-206 and who operates the establishment in the license year for which an annual renewal fee
26 was not paid shall, upon renewal, pay to the department a late renewal fee of \$25 in addition to the annual
27 renewal fee required by subsection (1). Payment of the late renewal fee does not relieve the operator of
28 responsibility for operating without a license.

- END -