

HOUSE BILL NO. 853

INTRODUCED BY G. NIKOLAKAKOS, J. KASSMIER

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LICENSED ESTABLISHMENT FEES; INCREASING RETAIL FOOD ESTABLISHMENT FEES, WHOLESALE FOOD ESTABLISHMENT FEES, PUBLIC ACCOMMODATION FEES, TRAILER COURT AND CAMPGROUND FEES, AND POOL AND SPA FEES; ADDING SEASONAL AND YEAR-ROUND CATEGORIES; REQUIRING FUNDS FROM THE LOCAL BOARD INSPECTION FUND ACCOUNT TO BE USED ONLY FOR INSPECTIONS; PROVIDING DEFINITIONS; AND AMENDING SECTIONS 50-2-108, 50-50-102, 50-50-201, 50-50-205, 50-51-204, 50-52-202, 50-53-102, 50-53-203, AND 50-57-205, MCA."

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

Section 1. Section 50-2-108, MCA, is amended to read:

"50-2-108. Financing of local boards -- inspection fund. (1) Local boards are financed by general fund appropriations, special levy appropriations, state and federal funds available, and contributions from school boards and other official and nonofficial agencies.

(2) There is within the state special revenue fund a local board inspection fund account. The money from the account may be used only for the purpose of inspections.

(3) General funds may not be used for inspections conducted pursuant to Title 50, chapters 50 through 53 and 57."

Section 2. Section 50-50-102, MCA, is amended to read:

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

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

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

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

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

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

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

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

(8) "Farmer's market" means a farm premises, a food stand owned and operated by a farmer, or an organized market 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 food establishment and that operates with 10 or more employees during peak hours.

~~(40)(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, appointed 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

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1 meat market that are used to process, store, or display meat or meat products for retail sale to the public or for
2 human consumption.

3 ~~(14)(15)~~"Medium retail food establishment" means a retail food establishment that is not a mobile retail
4 food establishment and that operates with between 3 to 9 THREE AND NINE employees during peak hours.

5 ~~(13)(15)(16)~~ (a) "Mobile food establishment" means a retail food establishment that serves or sells
6 food from a motor vehicle, a nonmotorized cart, a boat, or other movable vehicle that periodically or
7 continuously changes location and requires a servicing area to accommodate the unit for cleaning, inspection,
8 and maintenance.

9 (b) The term does not include:

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

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

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

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

16 ~~(15)(17)(18)~~ "Person" means an individual, a partnership, a corporation, an association, a
17 cooperative group, the state or a political subdivision of the state, or other entity.

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

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

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

24 (i) cooked;

25 (ii) canned;

26 (iii) preserved, except for drying;

27 (iv) combined with other food products; or

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

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

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

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

~~(21)(23)(24)~~ (a) "Retail food establishment" means an operation, whether mobile or at a temporary or stationary facility or location, that meets one or more of the conditions in subsections ~~(21)(23)(a)(i)-(24)(A)(I)~~ and ~~(21)(23)(a)(ii)-(24)(A)(II)~~ and that may include a central processing facility that supplies a transportation vehicle or a vending location or satellite feeding location. A retail food establishment:

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

(A) a restaurant;

(B) a market;

(C) a satellite or catered feeding location;

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

(E) a vending location;

(F) a conveyance used to transport people;

(G) an institution; or

(H) a food bank; and

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

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

(c) The term does not include:

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

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

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

(xvii) a contract cook; or

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

(25) "SMALL MOBILE FOOD ESTABLISHMENT" MEANS A RETAIL FOOD ESTABLISHMENT THAT IS A MOBILE FOOD ESTABLISHMENT AND THAT OPERATES WITH NO MORE THAN TWO EMPLOYEES DURING PEAK HOURS.

(24)(26)"Small retail food establishment" means a retail food establishment that is not a mobile retail food establishment and that operates with no more than 2-TWO employees during peak hours.

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

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

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

(23)(26)(28) (a) "Water hauler" means a person engaged in the business of transporting water for human consumption and use and that is not regulated as a public water supply system as provided in Title 75, chapter 6.

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

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

Section 3. Section 50-50-201, MCA, is amended to read:

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

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

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

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

(3) Only one retail food establishment license is required for a person owning and operating one or 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 4. 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%-95%~~ 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:

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(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)~~ \$145 \$275 for 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 licensing year.

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

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

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

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

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

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

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

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

Section 5. Section 50-51-204, MCA, is amended to read:

"50-51-204. License fee -- late fee. (1) (a) The department shall collect fees for each license required under 50-51-201 or for each annual license renewal as provided in subsection (1)(b). The department shall deposit ~~85%~~ 96.25% of the fees collected under this section into the local board inspection fund account created in 50-2-108, ~~11.25% of the fees into the general fund,~~ and 3.75% of the fees into the account provided for in 50-51-110.

(b) Initial and renewal license fees are:

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

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

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

(2) (a) In addition to the license renewal 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 an establishment governed by this part in the next licensing year.

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

Section 6. Section 50-52-202, MCA, is amended to read:

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

(b) License fees are:

(i) ~~\$40~~ \$80 annually for a campground or trailer court with no more than 10 spaces available for rental;

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1 (ii) \$60 ~~\$150~~ annually for a campground or trailer court with more than 10 but not more than 25
2 spaces available for rental; and

3 (iii) \$120 ~~\$225~~ annually for a campground or trailer court with more than 25 spaces available for
4 rental.

5 (2) Of the fees collected under subsection (1), the department shall deposit ~~85%-96.25%~~ into the
6 local board inspection fund account created in 50-2-108, ~~11.25% into the general fund~~, and 3.75% into the
7 account provided for in 50-52-210.

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

12 (b) The late fee must be deposited in the account provided for in 50-52-210."
13

14 **Section 7.** Section 50-53-102, MCA, is amended to read:

15 **"50-53-102. Definitions.** As used in this chapter, unless the context clearly indicates otherwise, the
16 following definitions apply:

17 (1) "Department" means the department of public health and human services provided for in 2-15-
18 2201.

19 (2) "Lazy river" means a constructed watercourse through which people travel by use of flotation
20 devices.

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

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

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

25 (6) "Public bathing place" means a body of water with bathhouses and related appurtenances
26 operated for the public.

27 (7) (a) "Public swimming pool" means an artificial pool and related appurtenances for swimming,

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1 bathing, wading, or other aquatic therapy or recreation, including but not limited to natural hot water pools,
2 spas, splash decks, water slides, lazy rivers, and wave pools.

3 (b) The term does not include:

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

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

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

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

12 ~~(9)(10)~~ "Splash deck" means a constructed area over which water is sprayed but is not allowed to pool.

13 ~~(10)(11)~~ "Tourist home" means a private home or condominium that is not occupied by an owner or
14 manager and that is rented, leased, or furnished in its entirety to transient guests on a daily or weekly basis.

15 ~~(11)(12)~~ "Wading pool" means a pool in which the water depth does not exceed 2 feet.

16 ~~(12)(13)~~ "Wave pool" means a swimming pool designed for the purpose of producing wave action in the
17 water.

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

19

20 **Section 8.** Section 50-53-203, MCA, is amended to read:

21 **"50-53-203. License fee and late fee -- disposition.** (1) (a) Except as provided in subsection (1)(b),
22 each application for an original or renewal license must be accompanied by a license fee of ~~\$200~~ \$225 for a
23 seasonal public swimming pool or \$325 for a year-round public swimming pool.

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

27 (2) An operator of a public swimming pool or public bathing place who fails to renew a license by

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1 the expiration date provided in 50-53-204 and who operates the public swimming pool or public bathing place in
2 the license year for which a renewal fee was not paid shall, upon renewal, pay to the department a late renewal
3 fee of \$25 for each calendar month after the renewal due date in addition to the renewal fee required by
4 subsection (1). Payment of the late renewal fee does not relieve the operator of responsibility for any operation
5 without a license.

6 (3) If the local board of health conducts its own inspections and enforcement activities for the
7 public swimming pools and public bathing places within its jurisdiction:

8 (a) the department shall deposit 85% of the fees collected under subsection (1) in the state special
9 revenue fund to the credit of the local board inspection fund account created by 50-2-108. Money deposited in
10 the local board inspection fund account is subject to appropriation by the legislature for the purposes of 50-53-
11 218.

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

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

19
20 **Section 9.** Section 50-57-205, MCA, is amended to read:

21 **"50-57-205. License fee -- late renewal fee -- allocation of fees.** (1) For each annual license issued
22 or renewed, the department shall collect a fee of ~~\$145~~ \$225.

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

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1 (3) The department shall deposit the annual fees collected under subsection (1) as follows:

2 (a) ~~90%-95%~~ into the state special revenue fund to the credit of the local board inspection fund
3 account, created in 50-2-108; ~~and~~

4 ~~(b) — 5% into the general fund; and~~

5 ~~(e)(b)~~ 5% into the account created in 50-57-213 in the state special revenue fund.

6 (4) The department shall deposit all of the fees collected under subsection (2) into the account
7 created by 50-57-213 in the state special revenue fund."

8 - END -