

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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(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 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 ~~(c)(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."

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