

HOUSE BILL 111

IN THE HOUSE

January 11, 1979

Introduced and referred to
Committee on Business and
Industry.

January 19, 1979

Committee recommend bill,
do not pass.

January 22, 1979

Report adopted.

1 House BILL NO. 111
 2 INTRODUCED BY Burnett
 3 BY REQUEST OF THE DEPARTMENT OF
 4 HEALTH AND ENVIRONMENTAL SCIENCES

5
 6 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND
 7 AMEND THE LAWS RELATING TO FOOD SERVICE ESTABLISHMENTS;
 8 AMENDING SECTIONS 50-50-102 THROUGH 50-50-104, 50-50-106
 9 THROUGH 50-50-108, 50-50-201, 50-50-203, 50-50-205,
 10 50-50-208, 50-50-301, 50-50-302, AND 50-50-305, MCA; AND
 11 REPEALING SECTIONS 50-50-202 AND 50-50-204, MCA."

12
 13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

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

17 (1) "Board" means the board of health and
 18 environmental sciences, provided for in 2-15-2104.

19 (2) "Department" means the department of health and
 20 environmental sciences, provided for in Title 2, chapter 15,
 21 part 21.

22 (3) "Establishment" means a food manufacturing
 23 establishment, meat market, food service establishment,
 24 frozen food plant, commercial food processor, or perishable
 25 food dealer.

1 (4) "Food" means an edible substance, beverage, or
 2 ingredient used, intended for use, or for sale for human
 3 consumption.

4 (5) "Food manufacturing establishment" means a
 5 commercial establishment and buildings or structures in
 6 connection with it used to manufacture or prepare food for
 7 sale or human consumption, but does not include milk
 8 producers' facilities, milk pasteurization facilities, milk
 9 product manufacturing plants, slaughterhouses, or meat
 10 packing plants.

11 (6) "Food service establishment" means a fixed or
 12 mobile restaurant, coffee shop, cafeteria, short-order cafe,
 13 luncheonette, grille, tearoom, sandwich shop, soda fountain,
 14 food store serving food or beverage samples, food or drink
 15 vending machine, tavern, bar, cocktail lounge, nightclub,
 16 industrial feeding establishment, catering kitchen,
 17 commissary, private organization routinely serving the
 18 public, or similar place where food or drink is prepared,
 19 served, or provided to the public with or without charge.
 20 The term does not include establishments, vendors, or
 21 vending machines which sell or serve only packaged
 22 nonperishable foods in their unbroken original containers or
 23 a private organization serving food only to its members.

24 (7) "Frozen food plant" means a place used to freeze,
 25 process, or store food including facilities used in

1 conjunction with the frozen food plant and a place where
2 individual compartments are offered to the public on a
3 rental or other basis.

4 (8) "Meat market" means a commercial establishment and
5 buildings or structures in connection with it used to
6 process, store, or display meat or meat products for sale to
7 the public or for human consumption.

8 (9) "Perishable food dealer" means a person or
9 commercial establishment which is in the business of
10 purchasing and selling perishable food to the public.

11 (10) "Person" means ~~a person, partnership, corporation,~~
12 ~~association, cooperative group, or other entity~~ an
13 ~~individual, partnership, firm, association, municipality,~~
14 ~~public or private corporation, subdivision or agency of the~~
15 ~~state, trust, estate, or any other legal entity~~ engaged in
16 operating, owning, or offering services of an
17 establishment."

18 Section 2. Section 50-50-103, MCA, is amended to read:

19 "50-50-103. Department authorized to adopt rules. ~~To~~
20 ~~protect public health, the department may adopt rules~~
21 ~~relating to the operation of establishments defined in~~
22 ~~50-50-102, including coverage of food, personnel, food~~
23 ~~equipment and utensils, sanitary facilities and controls,~~
24 ~~construction and fixtures, and housekeeping. (1) The~~
25 ~~department is authorized to adopt rules necessary for the~~

1 ~~administration of this chapter and the protection of public~~
2 ~~health, including but not limited to rules for:~~

3 ~~(a) preconstruction review of establishments;~~

4 ~~(b) licensing of establishments;~~

5 ~~(c) standards governing the operation of~~
6 ~~establishments, including those for fixtures, sanitary~~
7 ~~facilities and controls, food equipment and utensils,~~
8 ~~housekeeping, coverage of food, and personnel;~~

9 ~~(d) written agreements for assistance with the local~~
10 ~~administration of the provisions of this chapter and rules;~~

11 ~~(e) inspections and evaluations of establishments and~~
12 ~~reports to the department on enforcement;~~

13 ~~(f) emergency closure of an establishment without~~
14 ~~prior hearing by department order whenever an imminent~~
15 ~~threat to public health or safety exists or a public~~
16 ~~nuisance is present.~~

17 ~~(2) Department standards adopted pursuant to~~
18 ~~subsection (1)(c) shall serve as the minimum establishment~~
19 ~~standards for Montana."~~

20 Section 3. Section 50-50-104, MCA, is amended to read:

21 "50-50-104. ~~Cooperative~~ ~~agreements~~ ~~authorized~~
22 ~~Administration of chapter~~ ~~agreements for local~~
23 ~~assistance. The department may enter into cooperative~~
24 ~~agreements with other state agencies and political~~
25 ~~subdivisions of the state to carry out the provisions of~~

1 ~~this chapter. The department may enter into written~~
 2 ~~agreements with other state agencies, political subdivisions~~
 3 ~~of the state, or local boards or departments of health for~~
 4 ~~assistance with the administration of this chapter and~~
 5 ~~department rules, in addition to those inspectional duties~~
 6 ~~required by 50-50-301, if the department determines that the~~
 7 ~~proposed program is adequate to effectively and efficiently~~
 8 ~~carry out the provisions of this chapter and the rules.~~
 9 ~~Approval may be granted by the department to enforce more~~
 10 ~~stringent requirements."~~

11 Section 4. Section 50-50-106, MCA, is amended to read:
 12 "50-50-106. Injunctions. Notwithstanding any other
 13 provision of this chapter, the department, ~~local county or~~
 14 ~~district health officer or sanitarian or, at the request of~~
 15 ~~the department, the attorney general or the county attorney~~
 16 ~~of the county in which the establishment is located~~ may
 17 bring an action for an injunction against the continuation
 18 of an alleged violation of this chapter, a rule adopted
 19 pursuant to this chapter, or an order issued pursuant to
 20 this chapter."

21 Section 5. Section 50-50-107, MCA, is amended to read:
 22 "50-50-107. County attorney to prosecute Prosecution
 23 of violations. (1) When the department furnishes evidence to
 24 the county attorney ~~of a county in this state~~, the county
 25 attorney shall prosecute any person ~~firm or corporation~~

1 violating this chapter or a rule effective under this
 2 chapter.

3 ~~(2) The department or, at the request of the~~
 4 ~~department, the attorney general or the county attorney of~~
 5 ~~the county in which the establishment is located may sue in~~
 6 ~~district court to collect a civil penalty as provided in~~
 7 ~~50-50-108."~~

8 Section 6. Section 50-50-108, MCA, is amended to read:
 9 "50-50-108. Violation ~~of chapter~~ ~~a~~ ~~misdemeanor~~
 10 Penalties. (1) A person who violates provisions a provision
 11 of this chapter, or rules a rule adopted by ~~the~~ department
 12 under this chapter, or an order issued pursuant to this
 13 chapter is guilty of a misdemeanor. Upon conviction, he
 14 shall be:

- 15 ~~(1)(a)~~ fined not less than \$50 or more than \$100 for
- 16 the first offense;
- 17 ~~(2)(b)~~ fined not less than \$75 or more than \$200 for
- 18 the second offense;
- 19 ~~(3)(c)~~ fined not less than \$200 and imprisoned in the
- 20 county jail for not more than 90 days for the third and
- 21 subsequent offenses.

22 ~~(2) A person who violates a provision of this chapter,~~
 23 ~~a rule adopted under this chapter, or an order issued~~
 24 ~~pursuant to this chapter and who fails to submit an~~
 25 ~~acceptable plan of correction within 10 days after~~

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1 notification by the department in writing of the violation
 2 is subject to a civil penalty of not more than \$50. Each day
 3 upon which a violation occurs is a separate offense.

4 (3) Fines shall be paid to the county treasurer of the
 5 county in which the establishment is located. The county
 6 treasurer shall send all fines collected to the state
 7 treasurer for deposit in the state general fund."

8 Section 7. Section 50-50-201, MCA, is amended to read:

9 "50-50-201. License required. (1) A person operating
 10 an establishment shall procure an annual license from the
 11 department. No person may operate an establishment unless it
 12 is licensed by the department.

13 (2) A separate license is required for each
 14 establishment, but if more than one type of establishment is
 15 operated on the same premises and under the same management,
 16 only one license is required; however, only one license is
 17 required for a person owning and operating one or more
 18 vending machines at one location.

19 (3) Only one license is required for a person owning
 20 and operating one or more vending machines."

21 Section 8. Section 50-50-203, MCA, is amended to read:

22 "50-50-203. Application for license. An application
 23 for a license is made to the department on forms and
 24 contains information required by the department.
 25 (1) Application for a license is made by submitting the

1 license application fee and completed application form to
 2 the department.

3 (2) An application for a license to operate an
 4 establishment must be received by the department not less
 5 than 30 days prior to the anticipated opening of the
 6 establishment or expiration of the existing license.
 7 Applications received less than 30 days prior to the
 8 anticipated opening are delinquent and shall be assessed a
 9 delinquent license application fee."

10 Section 9. Section 50-50-205, MCA, is amended to read:

11 "50-50-205. License application fee. For each license
 12 issued, the department shall collect a fee of \$20. It shall
 13 deposit receipts in the state general fund. (1) A person
 14 shall submit annually a \$20 license application fee to the
 15 department along with a completed application for each
 16 establishment.

17 (2) Delinquent applications shall be accompanied by a
 18 \$10 delinquent application fee in addition to the \$20
 19 license application fee.

20 (3) License and delinquent application fees collected
 21 under this chapter shall be nonrefundable and shall be
 22 deposited in the state treasury in an earmarked revenue fund
 23 for use by the department in administering this chapter and
 24 the rules."

25 Section 10. Section 50-50-208, MCA, is amended to

1 read:

2 "50-50-208. Local board to report number of licensees
3 to department. ~~Before--done--i--of--each~~ Each year, when
4 ~~requested by the department,~~ the local board of health shall
5 submit to the department a list of the establishments in
6 each jurisdiction that are licensed under this chapter."

7 Section 11. Section 50-50-301, MCA, is amended to
8 read:

9 "50-50-301. ~~Health--officers--to--investigate--and--make~~
10 ~~inspections~~ Establishments to be investigated and inspected.
11 State and local health officers, sanitarians, or other
12 authorized persons authorized by the department shall make
13 investigations and inspections of establishments and make
14 reports to the department as required by department rules
15 ~~adopted by the department."~~

16 Section 12. Section 50-50-302, MCA, is amended to
17 read:

18 "50-50-302. ~~Health--officers--to--have--free--access~~
19 Authorized persons to have access to inspect establishments.
20 (1) A person operating an establishment shall permit state
21 State and local health officers, sanitarians, fire
22 marshals, electrical and plumbing inspectors, and other
23 persons authorized persons by the department shall ~~have~~
24 ~~free--access--to--establishments to enter and inspect at any~~
25 reasonable time, his establishment to determine its

1 ~~compliance with this chapter and the rules at--at--reasonable~~
2 ~~hours.~~

3 (2) A person may not refuse entry or access to an
4 authorized representative of the department who presents
5 appropriate credentials when the department or its
6 representatives request entry at reasonable times for
7 purposes of inspection.

8 (3) The operator of an establishment which has been
9 inspected by the department or its representatives may
10 request and shall then receive a report stating all facts
11 found which relate to its compliance status."

12 Section 13. Section 50-50-305, MCA, is amended to
13 read:

14 "50-50-305. Department to pay local board for
15 ~~inspections~~ administrative assistance. (1) Before June 30
16 of each year, the department shall pay transfer to a local
17 board of health, as established under 50-2-104, 50-2-106, or
18 50-2-107, an amount from ~~any general fund--appropriation--to~~
19 ~~the--department~~ an earmarked fund of the state treasury for
20 use by the department, which is for the purpose of
21 ~~inspecting--establishments--licensed--under--this--chapter~~
22 assisting the department with the administration of this
23 chapter and the rules provided, however, that there is a
24 ~~functioning local board of health and that the local board~~
25 ~~of--health, local health officers, and sanitarians assist in~~

1 ~~the enforcement of the provisions of this chapter and the~~
2 ~~rules adopted under it.~~

3 (2) ~~The funds received by the local board of health~~
4 ~~shall be deposited with the appropriate local fiscal~~
5 ~~authority and shall be in addition to the funds appropriated~~
6 ~~under 50-2-108 through 50-2-114. Transfer of funds to a~~
7 ~~local board of health is contingent on the existence of a~~
8 ~~written agreement between the department and the local board~~
9 ~~of health pursuant to 50-50-104 and the local board of~~
10 ~~health fulfilling its duties under that agreement.~~

11 (3) ~~Funds received by a local board of health pursuant~~
12 ~~to this section shall be deposited with the appropriate~~
13 ~~local fiscal authority, shall be used to support the local~~
14 ~~administration of this chapter, and shall be in addition to~~
15 ~~the funds appropriated under 50-2-108 through 50-2-114."~~

16 Section 14. Saving clause. This act does not affect
17 rights and duties that matured, penalties that were
18 incurred, or proceedings that were begun before the
19 effective date of this act.

20 Section 15. Severability. If a part of this act is
21 invalid, all valid parts that are severable from the invalid
22 part remain in effect. If a part of this act is invalid in
23 one or more of its applications, the part remains in effect
24 in all valid applications that are severable from the
25 invalid applications.

1 Section 16. Repealer. Sections 50-50-202 and
2 50-50-204, MCA, are repealed.

-End-