

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.

House BILL NO. 111

1 INTRODUCED BY Burnett  
2 BY REQUEST OF THE DEPARTMENT OF  
3 HEALTH AND ENVIRONMENTAL SCIENCES

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND  
6 AMEND THE LAWS RELATING TO FOOD SERVICE ESTABLISHMENTS;  
7 AMENDING SECTIONS 50-50-102 THROUGH 50-50-104, 50-50-106  
8 THROUGH 50-50-108, 50-50-201, 50-50-203, 50-50-205,  
9 50-50-208, 50-50-301, 50-50-302, AND 50-50-305, MCA; AND  
10 REPEALING SECTIONS 50-50-202 AND 50-50-204, MCA."

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

13 Section 1. Section 50-50-102, MCA, is amended to read:  
14  
15 "50-50-102. Definitions. Unless the context requires  
16 otherwise, in this chapter the following definitions apply:  
17  
18 (1) "Board" means the board of health and  
19 environmental sciences, provided for in 2-15-2104.

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

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

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

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

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

26  
27 (7) "Frozen food plant" means a place used to freeze,  
28 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 foods 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 (g) 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-locally-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. 111 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           121 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---8---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        ~~shall~~ fined not less than \$50 or more than \$100 for  
16 the first offense;

17            ~~fel~~ fined not less than \$75 or more than \$200 for  
18 the second offense;

19           **felon** 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       121. 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

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 funds."

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--t--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 rates 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-