

HOUSE BILL 449

Introduced by Brooke, et al.

2/03	Introduced
2/03	Referred to Business & Economic Development
2/03	Fiscal Note Requested
2/03	First Reading
2/09	Hearing
2/09	Committee Report--Bill Passed
2/10	Fiscal Note Received
2/12	Fiscal Note Printed
2/13	2nd Reading Passed
2/16	3rd Reading Passed
	Transmitted to Senate
2/20	First Reading
2/20	Referred to Natural Resources
3/17	Hearing
3/22	Committee Report--Bill Concurred as Amended
3/24	2nd Reading Concurred
3/25	3rd Reading Concurred
	Returned to House with Amendments
4/02	2nd Reading Amendments Not Concurred
4/05	Conference Committee Appointed
	Senate
4/07	Conference Committee Appointed Died in Process

1
2 INTRODUCED BY *House BILL NO 449*
3 *Sen. Brad Brundage*
4 *Sen. Helen Squire, Sen. David Ream*
5 A BILL FOR AN ACT ENTITLED: "AN ACT EXEMPTING GARDENERS,
6 FARM OWNERS, AND FARM OPERATORS WHO SELL RAW AND UNPROCESSED
7 FARM PRODUCTS AT A FARMER'S MARKET FROM LICENSURE UNDER FOOD
8 ESTABLISHMENT LAWS; DEFINING TERMS; AMENDING SECTIONS
9 50-50-102 AND 50-50-202, MCA; AND PROVIDING AN IMMEDIATE
10 EFFECTIVE DATE."

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

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

13 "50-50-102. Definitions. Unless the context requires
14 otherwise, in this chapter, the following definitions apply:

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

17 (2) "Commercial establishment" means an establishment
18 operated primarily for profit. The term does not include a
19 farmer's market.

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

23 (4) "Establishment" means a food manufacturing
24 establishment, meat market, food service establishment, food
25 warehouse, frozen food plant, commercial food processor, or

1 perishable food dealer.

2 (5) "Farmer's market" means farm premises, a roadside
3 stand owned and operated by a farmer, or an organized
4 farmer's market authorized by the appropriate municipal or
5 county authority.

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

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

16 (8) "Food service establishment" means a fixed or
17 mobile restaurant, coffee shop, cafeteria, short-order cafe,
18 luncheonette, grille, tearoom, sandwich shop, soda fountain,
19 food store serving food or beverage samples, food or drink
20 vending machine, tavern, bar, cocktail lounge, nightclub,
21 industrial feeding establishment, catering kitchen,
22 commissary, private organization routinely serving the
23 public, or similar place where food or drink is prepared,
24 served, or provided to the public with or without charge.
25 The term does not include establishments, vendors, or

vending machines which sell or serve only packaged nonperishable foods in their unbroken original containers or a private organization serving food only to its members.

{8}(9) "Food warehouse" means a commercial establishment and buildings or structures in connection with it used to store food, drugs, or cosmetics for distribution to retail outlets, but does not include a wine, beer, or soft drink warehouse that is separate from facilities where brewing occurs.

{9}(10) "Frozen food plant" means a place used to freeze, process, or store food, including facilities used in conjunction with the frozen food plant, and a place where individual compartments are offered to the public on a rental or other basis.

{10}(11) "Meat market" means a commercial establishment and buildings or structures in connection with it used to process, store, or display meat or meat products for sale to the public or for human consumption.

{11}(12) "Nonprofit organization" means any organization qualifying as a tax-exempt organization under 26 U.S.C. 501.

{12}(13) "Perishable food dealer" means a person or commercial establishment which is in the business of purchasing and selling perishable food to the public.

{13}(14) "Person" means a person, partnership, corporation, association, cooperative group, or other entity

engaged in operating, owning, or offering services of an establishment.

(15) (a) "Raw and unprocessed farm products" means fruits, vegetables, and grains sold at a farmer's market in their natural state that are not:

(i) cooked;

(ii) canned;

(iii) preserved, except for drying; or

(iv) combined with other food products.

(b) The term includes honey, bottled or in the comb, in its natural state and unaltered by the addition of coloring or flavoring."

Section 2. Section 50-50-202, MCA, is amended to read:

"50-50-202. Establishments and farmer's market sellers exempt from license requirement. (1) Establishments owned or operated by the state or a political subdivision of the state are exempt from licensure but must comply with the requirements of this chapter and rules adopted by the department under this chapter.

(2) No A license is not required to operate an establishment if it is operated by a nonprofit organization for a period of less than 14 days in 1 calendar year. An establishment exempt from licensure under this subsection must:

(a) be operated in compliance with the remaining

1 provisions of this chapter and rules adopted by the
2 department under this chapter; and

3 (b) prior to each operation register with the local
4 health officer or sanitarian on forms provided by the
5 department.

6 (3) A license is not required of a gardener, farm
7 owner, or farm operator who sells raw and unprocessed farm
8 products at a farmer's market."

9 NEW SECTION. Section 3. Effective date. [This act] is
10 effective on passage and approval.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0449, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act exempting gardeners, farm owners, and farm operators who sell raw and unprocessed farm products at a farmer's market from licensure under food establishment laws; and providing an immediate effective date.

ASSUMPTIONS:

1. The number of annual food purveyor establishment licenses issued will remain reasonably constant (DHES).
2. The current annual food purveyor license fee of \$60 has 85% (\$51) deposited in the state special revenue account (local board inspection fund), 7.5% (\$4.50) deposited in the state general fund and 7.5% (\$4.50) deposited in the special revenue account earmarked for the department (DHES).
3. Proposed language within the definition of "raw and unprocessed farm products" would primarily exempt honey processors from licensure when selling in "farmers markets" who bottle extracted and refined honey. An estimated 50 honey processors utilizing organized farmers markets statewide would become exempt from licensure. Proposed language would also exempt from licensure producers of food preserved by "drying", which is defined as a food process. It is not known if anyone using organized farmers markets statewide is currently licensed utilizing strictly this process. All other inclusions and exemptions within the definition of "raw and unprocessed farm products" appear to be consistent with current interpretation of the existing law (DHES).
4. The introduced HB 449 removes the requirements for licensure of producers of exempted product, but does not remove the requirements for product standards, sanitary production facilities, or sanitary production procedures. The workload of inspections and enforcement required of local and state public health agencies is not changed. Inspections and enforcement not performed by county agencies would be done by the state (DHES).
5. Under the Department of Agriculture, all farmer's market sellers currently are exempt.

FISCAL IMPACT:

	FY '94			FY '95		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
<u>Expenditures:</u>						
Operating Expenses	450	450	0	450	450	0
Local Government Grants	<u>2,550</u>	<u>2,550</u>	<u>0</u>	<u>2,550</u>	<u>2,550</u>	<u>0</u>
Total	3,000	3,000	0	3,000	3,000	0

David Lewis 2993

DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Vivian M. Brooke 2/11/95

VIVIAN M. BROOKE, PRIMARY SPONSOR DATE

Fiscal Note for HB0449, as introduced

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Funding:

General Fund	225	3,000	(2,775)	225	3,000	(2,775)
Special Rev - Local Bd Insp Fnd	2,550	0	2,550	2,550	0	2,550
Special Rev - DHES	<u>225</u>	<u>0</u>	<u>225</u>	<u>225</u>	<u>0</u>	<u>225</u>
Total	3,000	3,000	0	3,000	3,000	0

Revenues:

General Fund	225	0	(225)	225	0	(225)
Special Rev. - Local Bd. Insp. Fnd.	2,550	0	(2,550)	2,550	0	(2,550)
Special Rev. - DHES	<u>225</u>	<u>0</u>	<u>(225)</u>	<u>225</u>	<u>0</u>	<u>(225)</u>
Total	3,000	0	(3,000)	3,000	0	(3,000)

Net Impact:

General Fund	0	(3,000)	(3,000)	0	(3,000)	(3,000)
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EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Local public health agencies would lose an estimated \$2,550 from the loss of license fee revenues for operating expenditures. Products and facilities of producers exempted from licensure must still be inspected and meet sanitary operating procedures.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Local public health agencies, due to revenue loss, would probably discontinue the inspection process of licensure exempted establishments/producers. The local operating cost of \$2,550 for inspection and enforcement activities currently performed by counties would probably be returned to the state. Without licensure, the state would also lack a funding source for this specific activity. State costs would increase due to the need to contract personnel resources for this purpose with extensive traveling necessary to conduct the inspection and enforcement activities statewide. The seasonal production of the proposed exempted producers would necessitate more available staff time than current state FTE levels.

TECHNICAL NOTES:

1. Introduced HB 449 Section 1 language in 50-50-102 (2) to include a "farmer's market" as an exemption to the defined term "commercial" is not accurate as the majority of "farmer's markets" are not operated as not for profit or nonprofit organizations.
2. Introduced HB 449 Section 1 language in 50-50-102 (15) for "raw and unprocessed farm products" conflicts with provisions of the definition 50-50-102 (6) (7) "food manufacturing establishment".

HB 449

vending machines which sell or serve only packaged nonperishable foods in their unbroken original containers or a private organization serving food only to its members.

{8}(9) "Food warehouse" means a commercial establishment and buildings or structures in connection with it used to store food, drugs, or cosmetics for distribution to retail outlets, but does not include a wine, beer, or soft drink warehouse that is separate from facilities where brewing occurs.

{9}(10) "Frozen food plant" means a place used to freeze, process, or store food, including facilities used in conjunction with the frozen food plant, and a place where individual compartments are offered to the public on a rental or other basis.

{10}(11) "Meat market" means a commercial establishment and buildings or structures in connection with it used to process, store, or display meat or meat products for sale to the public or for human consumption.

{11}(12) "Nonprofit organization" means any organization qualifying as a tax-exempt organization under 26 U.S.C. 501.

{12}(13) "Perishable food dealer" means a person or commercial establishment which is in the business of purchasing and selling perishable food to the public.

{13}(14) "Person" means a person, partnership, corporation, association, cooperative group, or other entity

engaged in operating, owning, or offering services of an establishment.

(15) (a) "Raw and unprocessed farm products" means fruits, vegetables, and grains sold at a farmer's market in their natural state that are not:

(i) cooked;

(ii) canned;

(iii) preserved, except for drying; or

(iv) combined with other food products.

(b) The term includes honey, bottled or in the comb, in its natural state and unaltered by the addition of coloring or flavoring."

Section 2. Section 50-50-202, MCA, is amended to read:

"50-50-202. Establishments and farmer's market sellers exempt from license requirement. (1) Establishments owned or operated by the state or a political subdivision of the state are exempt from licensure but must comply with the requirements of this chapter and rules adopted by the department under this chapter.

(2) No A license is not required to operate an establishment if it is operated by a nonprofit organization for a period of less than 14 days in 1 calendar year. An establishment exempt from licensure under this subsection must:

(a) be operated in compliance with the remaining

1 provisions of this chapter and rules adopted by the
2 department under this chapter; and

3 (b) prior to each operation register with the local
4 health officer or sanitarian on forms provided by the
5 department.

6 (3) A license is not required of a gardener, farm
7 owner, or farm operator who sells raw and unprocessed farm
8 products at a farmer's market."

9 **NEW SECTION. Section 3.** **Effective date.** [This act] is
10 effective on passage and approval.

-End-

1 *House* BILL NO. *449*
 2 INTRODUCED BY *Senate* *Barbara Brundage*
 3 *Hedra Aguirre Selva David Ream*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT EXEMPTING GARDENERS,
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 14 otherwise, in this chapter, the following definitions apply:

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 16 sciences, provided for in 2-15-2104.

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 21 environmental sciences, provided for in Title 2, chapter 15,
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 24 establishment, meat market, food service establishment, food
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 7 ingredient used, intended for use, or for sale for human
 8 consumption.

9 ~~(6)~~(7) "Food manufacturing establishment" means a
 10 commercial establishment and buildings or structures in
 11 connection with it used to manufacture or prepare food for
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 13 producers' facilities, milk pasteurization facilities, milk
 14 product manufacturing plants, slaughterhouses, or meat
 15 packing plants.

16 ~~(7)~~(8) "Food service establishment" means a fixed or
 17 mobile restaurant, coffee shop, cafeteria, short-order cafe,
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 22 commissary, private organization routinely serving the
 23 public, or similar place where food or drink is prepared,
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 25 The term does not include establishments, vendors, or

vending machines which sell or serve only packaged nonperishable foods in their unbroken original containers or a private organization serving food only to its members.

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~~(10)~~(11) "Meat market" means a commercial establishment and buildings or structures in connection with it used to process, store, or display meat or meat products for sale to the public or for human consumption.

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(a) be operated in compliance with the remaining

1 provisions of this chapter and rules adopted by the
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4 health officer or sanitarian on forms provided by the
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7 owner, or farm operator who sells raw and unprocessed farm
8 products at a farmer's market."

9 **NEW SECTION. Section 3.** effective date. [This act] is
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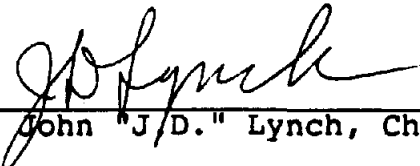
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SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 19, 1993

MR. PRESIDENT:


We, your committee on Business and Industry having had under consideration House Bill No. 449 (first reading copy -- blue), respectfully report that House Bill No. 449 be amended as follows and as so amended be concurred in.

Signed: 
Senator John "J.D." Lynch, Chair

That such amendments read:

1. Page 4, line 10.
Following: "honey"
Strike: ", bottled or"
Following: "comb"
Strike: ","

-END-

 M. Amd. Coord.
W. Sec. of Senate


Senator Carrying Bill

HB 449
SENATE
621211SC.Sma

HOUSE BILL NO. 449

INTRODUCED BY BROOKE, BRANDEWIE, DOWELL,
KADAS, SQUIRES, SCHYE, DAVIS, REAM

A BILL FOR AN ACT ENTITLED: "AN ACT EXEMPTING GARDENERS,
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