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SENATE BILL NO. 296

INTRODUCED BY

Harding Fisher

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING NONPROFIT ORGANIZATIONS TO SELL POTENTIALLY HAZARDOUS FOOD THAT IS PREPARED AND CONSUMED AT THE SAME FACILITY OR LOCATION AND TO SELL BAKED GOODS AND PRESERVES; 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; ALLOWING PERSONS TO SELL BAKED GOODS AND PRESERVES AT FARMER'S MARKETS ORGANIZED BY THE APPROPRIATE MUNICIPAL OR COUNTY AUTHORITY AND EXEMPTING THEM FROM LICENSURE UNDER FOOD ESTABLISHMENT LAWS; ALLOWING PERSONS TO SELL POTENTIALLY HAZARDOUS FOOD PREPARED AND CONSUMED AT THE SAME FACILITY OR LOCATION, BAKED GOODS, AND PRESERVES, IF SOLD ON AN OCCASIONAL BASIS NOT EXCEEDING FOUR TIMES A CALENDAR YEAR AND EXEMPTING THEM FROM LICENSURE UNDER FOOD ESTABLISHMENT LAWS; AMENDING SECTIONS 50-50-102, 50-50-103, AND 50-50-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. 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) "Baked goods" means breads, cakes, candies, cookies, pastries, and pies that do not contain any meat, poultry, or fish.

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

~~(2)(3)~~ (a) "Commercial establishment" means an establishment operated primarily for profit.

(b) The term does not include a farmer's market.

~~(3)(4)~~ "Department" means the department of health and environmental sciences, provided for in Title 2, chapter 15, part 21.

~~(4)(5)~~ "Establishment" means a food manufacturing establishment, meat market, food service establishment, food warehouse, frozen food plant, commercial food processor, or perishable food dealer.

1 ~~(6)~~ (6) "Farmer's market" means a farm premises, a roadside stand owned and operated by a farmer,
2 or an organized market authorized by the appropriate municipal or county authority.

3 ~~(5)(7)~~ (7) "Food" means an edible substance, beverage, or ingredient used, intended for use, or for
4 sale for human consumption.

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

9 ~~(7)(9)~~ (9) (a) "Food service establishment" means a fixed or mobile restaurant, coffee shop, cafeteria,
10 short-order cafe, luncheonette, grille, tearoom, sandwich shop, soda fountain, food store serving food or
11 beverage samples, food or drink vending machine, tavern, bar, cocktail lounge, nightclub, industrial feeding
12 establishment, catering kitchen, commissary, private organization routinely serving the public, or similar
13 place where food or drink is prepared, served, or provided to the public with or without charge.

14 (b) The term does not include establishments, vendors, or vending machines ~~which~~ that sell or serve
15 only packaged, nonperishable foods in their unbroken, original containers or a private organization serving
16 food only to its members.

17 ~~(9)(10)~~ (10) "Food warehouse" means a commercial establishment and buildings or structures in
18 connection with it used to store food, drugs, or cosmetics for distribution to retail outlets, but does not
19 include a wine, beer, or soft drink warehouse that is separate from facilities where brewing occurs.

20 ~~(9)(11)~~ (11) "Frozen food plant" means a place used to freeze, process, or store food, including facilities
21 used in conjunction with the frozen food plant, and a place where individual compartments are offered to
22 the public on a rental or other basis.

23 ~~(10)(12)~~ (12) "Meat market" means a commercial establishment and buildings or structures in connection
24 with it used to process, store, or display meat or meat products for sale to the public or for human
25 consumption.

26 ~~(11)(13)~~ (13) "Nonprofit organization" means any organization qualifying as a tax-exempt organization
27 under 26 U.S.C. 501.

28 ~~(12)(14)~~ (14) "Perishable food dealer" means a person or commercial establishment ~~which~~ that is in the
29 business of purchasing and selling perishable food to the public.

30 ~~(13)(15)~~ (15) "Person" means a person, partnership, corporation, association, cooperative group, or

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

2 (16) (a) "Potentially hazardous food" means any perishable food that consists in whole or in part
3 of milk and milk products, eggs, meat, poultry, fish, shellfish, edible crustaceans, or other ingredients,
4 including synthetic ingredients, in a form capable of supporting rapid and progressive growth of infectious
5 or toxigenic microorganisms.

6 (b) The term does not include clean, whole, uncracked, odor-free shell eggs or foods that have a
7 pH level of 4.6 or below or a water activity (aW) value of 0.85 or less.

8 (17) (a) "Preserves" means foods prepared by canning, pickling, salting, or a similar method for
9 future use.

10 (b) The term does not include meat, poultry, or fish.

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

13 (a) cooked;

14 (b) canned;

15 (c) preserved, except for drying; or

16 (d) combined with other food products."

17

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

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

23 (2) (a) The department and local health authorities may not adopt rules prohibiting the sale of:

24 (i) potentially hazardous food by nonprofit organizations if the food is prepared and consumed at
25 the same facility or location;

26 (ii) baked goods and preserves by nonprofit organizations or by persons at farmer's markets; or

27 (iii) potentially hazardous food that is prepared and consumed at the same facility or location, baked
28 goods, or preserves, if sold by any person on an occasional basis not exceeding four times in any calendar
29 year.

30 (b) The department and local health authorities may not require that foods sold pursuant to this

1 subsection (2) be prepared in certified or commercial kitchens."

2

3 **Section 3.** Section 50-50-202, MCA, is amended to read:

4 **"50-50-202. Establishments, farmer's market sellers, and occasional sales exempt from license**
5 **requirement.** (1) Establishments owned or operated by the state or a political subdivision of the state are
6 exempt from licensure but must comply with the requirements of this chapter and rules adopted by the
7 department under this chapter.

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

11 ~~(a)(i)~~ be operated in compliance with the remaining provisions of this chapter and rules adopted
12 by the department under this chapter; and

13 ~~(b)(ii)~~ prior to each operation, register with the local health officer or sanitarian on forms provided
14 by the department.

15 (b) A nonprofit organization may conduct sales of potentially hazardous food that is consumed at
16 the same facility or location, baked goods, and preserves without obtaining a license or registering with the
17 local health officer or sanitarian.

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

20 (b) A license is not required of a person selling baked goods or preserves at a farmer's market.

21 (4) A license is not required of any person selling potentially hazardous food that is prepared and
22 consumed at the same facility or location, baked goods, or preserves, if sold on an occasional basis not
23 exceeding four times in any calendar year."

24

25 **NEW SECTION. Section 4. Effective date.** [This act] is effective on passage and approval.

26

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0296, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act allowing nonprofit organizations to sell potentially hazardous food that is prepared and consumed at the same facility or location and to sell baked goods and preserves; 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; allowing persons to sell baked goods and preserves at farmer's markets organized by the appropriate municipal or county authority and exempting them from licensure under food establishment laws; allowing persons to sell potentially hazardous food prepared and consumed at the same facility or location, baked goods, and preserves, if sold on an occasional basis not exceeding four times a calendar year and exempting them from licensure under food establishment laws.

ASSUMPTIONS:

1. The Executive Budget present law base serves as the starting point from which to calculate any fiscal impact due to this proposed legislation.
2. The annual food establishment license fee is \$60.
3. Of the \$60 license fee, 85.0% goes to local health departments and agencies for program operation, 7.5% goes to the general fund, and 7.5% goes to the state special revenue account in the Department of Health and Environmental Sciences (DHES) which partially funds operations of the statewide food and consumer safety programs.
4. Section 50-50-202, as proposed:
 - 1) exempts nonprofit organizations from licensure when selling potentially hazardous food which is consumed at the facility or site where it was sold (regardless of where it was produced; please see Technical Notes), or when selling baked goods or preserves;
 - 2) exempts gardeners, farm owners, or farm operators who sell raw and unprocessed farm products at a farmer's market from licensure;
 - 3) exempts a person selling baked goods or preserves at a farmer's market from licensure; and
 - 4) exempts a person who sells potentially hazardous food which is prepared and consumed at the facility or site where it was sold, from licensure, if the person sells the products four or fewer times in a calendar year.
5. The department estimates that for each of the exempt categories listed in assumption #4 above, the number of organizations or persons which will no longer require food establishment licenses are as follows:
 - 1) 70 nonprofit organizations would no longer be licensed
 - 2) 20 persons would no longer be licensed (assuming the definition in proposed section 50-50-102(18) includes bottled honey)
 - 3) 40 persons would no longer be licensed
 - 4) 80 persons would no longer be licensed (assuming the definition of an occasional basis to encompass four or fewer times, means four or fewer days per year; please see Technical Notes.)

Total licenses no longer required are 210.
(continued)

Dave Lewis 2-7-95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Ethel M. Harding 2-10-95
ETHEL HARDING, PRIMARY SPONSOR DATE

Fiscal Note for SB0296, as introduced

SB 296

6. Total loss of revenue for these 210 fewer licenses would be \$12,600 (\$60 X 210) annually. Of that, \$10,710 (85%) would be reduced revenue to counties, \$945 (7.5%) would be reduced revenue to the general fund, and \$945 would be reduced revenue to the DHES state special revenue account which funds food and consumer safety activities.

FISCAL IMPACT:

<u>Expenditures:</u>	<u>FY96</u>	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
Operating Expenses	(1,890)	(1,890)
Local Grants	<u>(10,710)</u>	<u>(10,710)</u>
Total	(12,600)	(12,600)

Funding:

General Fund	(945)	(945)
State Special Revenue	<u>(11,655)</u>	<u>(11,655)</u>
Total	(12,600)	(12,600)

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

As shown in assumption #6 above, \$10,710 in revenues to local health agencies from food establishment fees would be lost annually.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Investigations of consumer complaints or foodborne illness outbreaks related to food and beverage sales by organizations or individuals exempted from licensure would be the responsibility of state and/or local health agencies. No funding would be provided for these activities from food establishment licensure fees. Individuals and organizations exempt from licensure and regulation are not required to obtain liability insurance.

TECHNICAL NOTES:

On page 3, lines 24 and 25, proposed language states "(i) potentially hazardous food by nonprofit organizations if the food is prepared and consumed at the same facility or location.". Then on page 4, lines 15 and 16, proposed language refers to "(b) A nonprofit organization may conduct sales of potentially hazardous food that is consumed at the same facility or location.". There may be an inconsistency between the two references concerning whether the food must also be prepared at the location of sale and consumption.

Additionally, clarification is needed in §50-50-202(4), to explain whether four times in any calendar year means four calendar days or four calendar events, each consisting of an undetermined length of concurrent days.

For the purposes of this fiscal note, interpretations of both items listed above are made in the assumptions.

APPROVED BY COM ON
LOCAL GOVERNMENT

SENATE BILL NO. 296

INTRODUCED BY HARDING, FISHER

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING NONPROFIT ORGANIZATIONS TO SELL POTENTIALLY HAZARDOUS FOOD THAT IS PREPARED AND CONSUMED AT THE SAME FACILITY OR LOCATION AND TO SELL BAKED GOODS AND PRESERVES; 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; ALLOWING PERSONS TO SELL BAKED GOODS AND PRESERVES AT FARMER'S MARKETS ORGANIZED BY THE APPROPRIATE MUNICIPAL OR COUNTY AUTHORITY AND EXEMPTING THEM FROM LICENSURE UNDER FOOD ESTABLISHMENT LAWS; ALLOWING PERSONS TO SELL POTENTIALLY HAZARDOUS FOOD PREPARED AND CONSUMED AT THE SAME FACILITY OR LOCATION, BAKED GOODS, AND PRESERVES, IF SOLD ON AN OCCASIONAL BASIS NOT EXCEEDING FOUR TIMES A CALENDAR YEAR AND EXEMPTING THEM FROM LICENSURE UNDER FOOD ESTABLISHMENT LAWS; REQUIRING ORGANIZED FARMER'S MARKETS AUTHORIZED BY A MUNICIPAL OR COUNTY AUTHORITY TO KEEP RECORDS; AMENDING SECTIONS 50-50-102, 50-50-103, AND 50-50-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. 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) "Baked goods" means breads, cakes, candies, cookies, pastries, and pies that do not contain any meat, poultry, or fish ARE NOT POTENTIALLY HAZARDOUS FOODS.

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

~~(2)~~(3) (a) "Commercial establishment" means an establishment operated primarily for profit.

(b) The term does not include a farmer's market.

~~(3)~~(4) "Department" means the department of health and environmental sciences, provided for in Title 2, chapter 15, part 21.

~~(4)~~(5) "Establishment" means a food manufacturing establishment, meat market, food service

1 establishment, food warehouse, frozen food plant, commercial food processor, or perishable food dealer.

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

4 ~~(5)(7)~~ "Food" means an edible substance, beverage, or ingredient used, intended for use, or for
5 sale for human consumption.

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

10 ~~(7)(9)~~ (a) "Food service establishment" means a fixed or mobile restaurant, coffee shop, cafeteria,
11 short-order cafe, luncheonette, grille, tearoom, sandwich shop, soda fountain, food store serving food or
12 beverage samples, food or drink vending machine, tavern, bar, cocktail lounge, nightclub, industrial feeding
13 establishment, catering kitchen, commissary, private organization routinely serving the public, or similar
14 place where food or drink is prepared, served, or provided to the public with or without charge.

15 (b) The term does not include establishments, vendors, or vending machines ~~which~~ that sell or serve
16 only packaged, nonperishable foods in their unbroken, original containers or a private organization serving
17 food only to its members.

18 ~~(8)(10)~~ "Food warehouse" means a commercial establishment and buildings or structures in
19 connection with it used to store food, drugs, or cosmetics for distribution to retail outlets, but does not
20 include a wine, beer, or soft drink warehouse that is separate from facilities where brewing occurs.

21 ~~(9)(11)~~ "Frozen food plant" means a place used to freeze, process, or store food, including facilities
22 used in conjunction with the frozen food plant, and a place where individual compartments are offered to
23 the public on a rental or other basis.

24 ~~(10)(12)~~ "Meat market" means a commercial establishment and buildings or structures in connection
25 with it used to process, store, or display meat or meat products for sale to the public or for human
26 consumption.

27 ~~(11)(13)~~ "Nonprofit organization" means any organization qualifying as a tax-exempt organization
28 under 26 U.S.C. 501.

29 ~~(12)(14)~~ "Perishable food dealer" means a person or commercial establishment ~~which~~ that is in the
30 business of purchasing and selling perishable food to the public.

1 ~~(13)~~(15) "Person" means a person, partnership, corporation, association, cooperative group, or
2 other entity engaged in operating, owning, or offering services of an establishment.

3 (16) (a) "Potentially hazardous food" means ~~any perishable~~ A food that consists in whole or in part
4 of milk and milk products, eggs, meat, poultry, fish, shellfish, edible crustaceans, or other ingredients,
5 including synthetic ingredients, IS NATURAL OR SYNTHETIC AND IS in a form capable of supporting:

6 (I) THE rapid and progressive growth of infectious or toxigenic microorganisms; OR

7 (II) THE GROWTH AND TOXIN PRODUCTION OF CLOSTRIDIUM BOTULINUM.

8 (B) THE TERM INCLUDES CUT MELONS, GARLIC AND OIL MIXTURES, A FOOD OF ANIMAL
9 ORIGIN THAT IS RAW OR HEAT-TREATED, AND A FOOD OF PLANT ORIGIN THAT IS HEAT-TREATED OR
10 CONSISTS OF RAW SEED SPROUTS.

11 ~~(b)~~(C) The term does not include ~~clean, whole, uncracked, odor free:~~

12 (I) AN AIR-COOLED, HARD-BOILED EGG WITH INTACT shell ~~eggs or foods that have a pH;~~

13 (II) A FOOD WITH A HYDROGEN ION CONCENTRATION (PH) level of 4.6 or below ~~or~~ WHEN
14 MEASURED AT 24°C (75°F);

15 (III) A FOOD WITH a water activity ~~(a_w)~~ (A_w) value of 0.85 or less;

16 (IV) A FOOD IN AN UNOPENED HERMETICALLY SEALED CONTAINER THAT IS COMMERCIALY
17 PROCESSED TO ACHIEVE AND MAINTAIN COMMERCIAL STERILITY UNDER CONDITIONS OF
18 NONREFRIGERATED STORAGE AND DISTRIBUTION; OR

19 (V) A FOOD FOR WHICH LABORATORY EVIDENCE IS ACCEPTED BY THE DEPARTMENT AS
20 DEMONSTRATING THAT RAPID AND PROGRESSIVE GROWTH OF INFECTIOUS AND TOXIGENIC
21 MICROORGANISMS OR THE SLOWER GROWTH OF CLOSTRIDIUM BOTULINUM CANNOT OCCUR.

22 (17) (a) "Preserves" means ~~foods prepared by canning, pickling, salting, or a similar method for~~
23 future use. PROCESSED FRUIT OR BERRY JAMS, JELLIES, COMPOTES, FRUIT BUTTERS, MARMALADES,
24 CHUTNEYS, FRUIT ASPICS, FRUIT SYRUPS, OR SIMILAR PRODUCTS THAT HAVE A HYDROGEN ION
25 CONCENTRATION (PH) OF 4.6 OR BELOW WHEN MEASURED AT 24°C (75°F) AND THAT ARE
26 ASEPTICALLY PROCESSED, PACKAGED, AND SEALED.

27 (b) The term does not include ~~meat, poultry, or fish:~~

28 (I) TOMATOES OR FOOD PRODUCTS CONTAINING TOMATOES; OR

29 (II) ANY OTHER FOOD SUBSTRATE OR PRODUCT PRESERVED BY ANY METHOD OTHER THAN
30 THAT DESCRIBED IN SUBSECTION (17)(A).

1 (18) "Raw and unprocessed farm products" means fruits, vegetables, and grains sold at a farmer's
 2 market in their natural state that are not PACKAGED AND LABELED AND ARE NOT:

3 (a) cooked;

4 (b) canned;

5 (c) preserved, except for drying; or

6 (d) combined with other food products; OR

7 (E) PEELED, DICED, CUT, BLANCHED, OR OTHERWISE SUBJECTED TO VALUE-ADDING
 8 PROCEDURES."

9
 10 **Section 2.** Section 50-50-103, MCA, is amended to read:

11 **"50-50-103. Department authorized to adopt rules. (1)** To protect public health, the department
 12 may adopt rules relating to the operation of establishments defined in 50-50-102, including coverage of
 13 food, personnel, food equipment and utensils, sanitary facilities and controls, construction and fixtures, and
 14 housekeeping.

15 (2) (a) The department and local health authorities may not adopt rules prohibiting the sale of:

16 (i) potentially hazardous food by nonprofit organizations if the food is prepared and consumed at
 17 the same facility or location;

18 (ii) baked goods and preserves by nonprofit organizations or by persons at farmer's markets; or

19 (iii) potentially hazardous food that is prepared and consumed at the same facility or location, baked
 20 goods, or preserves, if sold by any person on an occasional basis not exceeding four times in any calendar
 21 year.

22 (b) The department and local health authorities may not require that foods sold pursuant to this
 23 subsection (2) be prepared in certified or commercial kitchens."

24
 25 **Section 3.** Section 50-50-202, MCA, is amended to read:

26 **"50-50-202. Establishments, ~~farmer's market sellers, and occasional sales~~ exempt from license**
 27 **requirement -- FARMER'S MARKET RECORDS.** (1) Establishments owned or operated by the state or a
 28 political subdivision of the state are exempt from licensure but must comply with the requirements of this
 29 chapter and rules adopted by the department under this chapter.

30 (2) ~~(a)~~ No A license is not required to operate an establishment if it is operated by a nonprofit

1 organization for a period of less than 14 days in 1 calendar year. An establishment exempt from licensure
 2 under this subsection must:

3 ~~(a)(i)(A)~~ be operated in compliance with the remaining provisions of this chapter and rules adopted
 4 by the department under this chapter; and

5 ~~(b)(ii)(B)~~ prior to each operation, register with the local health officer or sanitarian on forms provided
 6 by the department.

7 ~~(b) A nonprofit organization may conduct sales of potentially hazardous food that is consumed at~~
 8 ~~the same facility or location, baked goods, and preserves without obtaining a license or registering with the~~
 9 ~~local health officer or sanitarian.~~

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

12 (b) A license is not required of a person selling baked goods or preserves at a farmer's market.

13 ~~(4) A license is not required of any person selling potentially hazardous food that is prepared and~~
 14 ~~consumed at the same facility or location, baked goods, or preserves, if sold on an occasional basis not~~
 15 ~~exceeding four times in any calendar year.~~

16 (4) (A) A FARMER'S MARKET THAT IS AN ORGANIZED MARKET AUTHORIZED BY A MUNICIPAL
 17 OR COUNTY AUTHORITY SHALL KEEP REGISTRATION RECORDS OF ALL INDIVIDUALS AND
 18 ORGANIZATIONS THAT SELL BAKED GOODS OR PRESERVES AT THE MARKET.

19 (B) THE REGISTRATION RECORDS MUST INCLUDE BUT ARE NOT LIMITED TO THE NAME OF THE
 20 SELLER, THE SELLER'S ADDRESS AND TELEPHONE NUMBER, THE PRODUCTS SOLD BY THE SELLER,
 21 AND THE DATE THE PRODUCTS WERE SOLD.

22 (C) THE REGISTRATION RECORDS MUST BE MADE AVAILABLE TO THE LOCAL HEALTH OFFICER
 23 OR THE OFFICER'S AGENT."

24

25 NEW SECTION. Section 4. Effective date. [This act] is effective on passage and approval.

26

-END-

1 SENATE BILL NO. 296

2 INTRODUCED BY HARDING, FISHER

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING NONPROFIT ORGANIZATIONS TO SELL
5 ~~POTENTIALLY HAZARDOUS FOOD THAT IS PREPARED AND CONSUMED AT THE SAME FACILITY OR~~
6 ~~LOCATION AND TO SELL~~ BAKED GOODS AND PRESERVES; EXEMPTING GARDENERS, FARM OWNERS,
7 AND FARM OPERATORS WHO SELL RAW AND UNPROCESSED FARM PRODUCTS AT A FARMER'S
8 MARKET FROM LICENSURE UNDER FOOD ESTABLISHMENT LAWS; ALLOWING PERSONS TO SELL
9 BAKED GOODS AND PRESERVES AT FARMER'S MARKETS ~~ORGANIZED BY THE APPROPRIATE~~
10 ~~MUNICIPAL OR COUNTY AUTHORITY~~ AND EXEMPTING THEM FROM LICENSURE UNDER FOOD
11 ESTABLISHMENT LAWS; ~~ALLOWING PERSONS TO SELL POTENTIALLY HAZARDOUS FOOD PREPARED~~
12 ~~AND CONSUMED AT THE SAME FACILITY OR LOCATION, BAKED GOODS, AND PRESERVES, IF SOLD~~
13 ~~ON AN OCCASIONAL BASIS NOT EXCEEDING FOUR TIMES A CALENDAR YEAR AND EXEMPTING THEM~~
14 ~~FROM LICENSURE UNDER FOOD ESTABLISHMENT LAWS; REQUIRING ORGANIZED FARMER'S MARKETS~~
15 AUTHORIZED BY A MUNICIPAL OR COUNTY AUTHORITY TO KEEP RECORDS; AMENDING SECTIONS
16 50-50-102, 50-50-103, AND 50-50-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

THERE ARE NO CHANGES IN THIS BILL AND IT WILL
NOT BE REPRINTED. PLEASE REFER TO SECOND
READING COPY (YELLOW) FOR COMPLETE TEXT.

SENATE BILL NO. 296

INTRODUCED BY HARDING, FISHER

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A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING NONPROFIT ORGANIZATIONS TO SELL ~~POTENTIALLY HAZARDOUS FOOD THAT IS PREPARED AND CONSUMED AT THE SAME FACILITY OR LOCATION AND TO SELL~~ BAKED GOODS AND PRESERVES; 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; ALLOWING PERSONS TO SELL BAKED GOODS AND PRESERVES AT FARMER'S MARKETS ~~ORGANIZED BY THE APPROPRIATE MUNICIPAL OR COUNTY AUTHORITY~~ AND EXEMPTING THEM FROM LICENSURE UNDER FOOD ESTABLISHMENT LAWS; ~~ALLOWING PERSONS TO SELL POTENTIALLY HAZARDOUS FOOD PREPARED AND CONSUMED AT THE SAME FACILITY OR LOCATION, BAKED GOODS, AND PRESERVES, IF SOLD ON AN OCCASIONAL BASIS NOT EXCEEDING FOUR TIMES A CALENDAR YEAR AND EXEMPTING THEM FROM LICENSURE UNDER FOOD ESTABLISHMENT LAWS;~~ REQUIRING ORGANIZED FARMER'S MARKETS AUTHORIZED BY A MUNICIPAL OR COUNTY AUTHORITY TO KEEP RECORDS; AMENDING SECTIONS 50-50-102, 50-50-103, AND 50-50-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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Section 1. 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) "Baked goods" means breads, cakes, candies, cookies, pastries, and pies that do not contain any meat, poultry, or fish ARE NOT POTENTIALLY HAZARDOUS FOODS.

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

~~(2)~~(3) (a) "Commercial establishment" means an establishment operated primarily for profit.

(b) The term does not include a farmer's market.

~~(3)~~(4) "Department" means the department of health and environmental sciences, provided for in Title 2, chapter 15, part 21.

~~(4)~~(5) "Establishment" means a food manufacturing establishment, meat market, food service

1 establishment, food warehouse, frozen food plant, commercial food processor, or perishable food dealer.

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

4 ~~(5)(7)~~ "Food" means an edible substance, beverage, or ingredient used, intended for use, or for
5 sale for human consumption.

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

10 ~~(7)(9)~~ (a) "Food service establishment" means a fixed or mobile restaurant, coffee shop, cafeteria,
11 short-order cafe, luncheonette, grille, tearoom, sandwich shop, soda fountain, food store serving food or
12 beverage samples, food or drink vending machine, tavern, bar, cocktail lounge, nightclub, industrial feeding
13 establishment, catering kitchen, commissary, private organization routinely serving the public, or similar
14 place where food or drink is prepared, served, or provided to the public with or without charge.

15 (b) The term does not include establishments, vendors, or vending machines ~~which~~ that sell or serve
16 only packaged, nonperishable foods in their unbroken, original containers or a private organization serving
17 food only to its members.

18 ~~(8)(10)~~ "Food warehouse" means a commercial establishment and buildings or structures in
19 connection with it used to store food, drugs, or cosmetics for distribution to retail outlets, but does not
20 include a wine, beer, or soft drink warehouse that is separate from facilities where brewing occurs.

21 ~~(9)(11)~~ "Frozen food plant" means a place used to freeze, process, or store food, including facilities
22 used in conjunction with the frozen food plant, and a place where individual compartments are offered to
23 the public on a rental or other basis.

24 ~~(10)(12)~~ "Meat market" means a commercial establishment and buildings or structures in connection
25 with it used to process, store, or display meat or meat products for sale to the public or for human
26 consumption.

27 ~~(11)(13)~~ "Nonprofit organization" means any organization qualifying as a tax-exempt organization
28 under 26 U.S.C. 501.

29 ~~(12)(14)~~ "Perishable food dealer" means a person or commercial establishment ~~which~~ that is in the
30 business of purchasing and selling perishable food to the public.

1 ~~(13)~~(15) "Person" means a person, partnership, corporation, association, cooperative group, or
 2 other entity engaged in operating, owning, or offering services of an establishment.

3 (16) (a) ~~"Potentially hazardous food" means any perishable~~ A food that ~~consists in whole or in part~~
 4 ~~of milk and milk products, eggs, meat, poultry, fish, shellfish, edible crustaceans, or other ingredients,~~
 5 ~~including synthetic ingredients, IS NATURAL OR SYNTHETIC AND IS in a form capable of supporting:~~

6 (I) THE rapid and progressive growth of infectious or toxigenic microorganisms; OR

7 (II) THE GROWTH AND TOXIN PRODUCTION OF CLOSTRIDIUM BOTULINUM.

8 (B) THE TERM INCLUDES CUT MELONS, GARLIC AND OIL MIXTURES, A FOOD OF ANIMAL
 9 ORIGIN THAT IS RAW OR HEAT-TREATED, AND A FOOD OF PLANT ORIGIN THAT IS HEAT-TREATED OR
 10 CONSISTS OF RAW SEED SPROUTS.

11 ~~(b)(C) The term does not include clean, whole, uncracked, odor free:~~

12 (I) AN AIR-COOLED, HARD-BOILED EGG WITH INTACT shell ~~eggs or foods that have a pH;~~

13 (II) A FOOD WITH A HYDROGEN ION CONCENTRATION (PH) level of 4.6 or below ~~or~~ WHEN
 14 MEASURED AT 24°C (75°F);

15 (III) A FOOD WITH a water activity ~~(a_w)~~ (A_w) value of 0.85 or less;

16 (IV) A FOOD IN AN UNOPENED HERMETICALLY SEALED CONTAINER THAT IS COMMERCIALY
 17 PROCESSED TO ACHIEVE AND MAINTAIN COMMERCIAL STERILITY UNDER CONDITIONS OF
 18 NONREFRIGERATED STORAGE AND DISTRIBUTION; OR

19 (V) A FOOD FOR WHICH LABORATORY EVIDENCE IS ACCEPTED BY THE DEPARTMENT AS
 20 DEMONSTRATING THAT RAPID AND PROGRESSIVE GROWTH OF INFECTIOUS AND TOXIGENIC
 21 MICROORGANISMS OR THE SLOWER GROWTH OF CLOSTRIDIUM BOTULINUM CANNOT OCCUR.

22 (17) (a) ~~"Preserves" means foods prepared by canning, pickling, salting, or a similar method for~~
 23 ~~future use.~~ PROCESSED FRUIT OR BERRY JAMS, JELLIES, COMPOTES, FRUIT BUTTERS, MARMALADES,
 24 CHUTNEYS, FRUIT ASPICS, FRUIT SYRUPS, OR SIMILAR PRODUCTS THAT HAVE A HYDROGEN ION
 25 CONCENTRATION (PH) OF 4.6 OR BELOW WHEN MEASURED AT 24°C (75°F) AND THAT ARE
 26 ASEPTICALLY PROCESSED, PACKAGED, AND SEALED.

27 ~~(b) The term does not include meat, poultry, or fish:~~

28 (I) TOMATOES OR FOOD PRODUCTS CONTAINING TOMATOES; OR

29 (II) ANY OTHER FOOD SUBSTRATE OR PRODUCT PRESERVED BY ANY METHOD OTHER THAN
 30 THAT DESCRIBED IN SUBSECTION (17)(A).

1 (18) "Raw and unprocessed farm products" means fruits, vegetables, and grains sold at a farmer's
 2 market in their natural state that are not PACKAGED AND LABELED AND ARE NOT:

3 (a) cooked;

4 (b) canned;

5 (c) preserved, except for drying; or

6 (d) combined with other food products; OR

7 (E) PEELED, DICED, CUT, BLANCHED, OR OTHERWISE SUBJECTED TO VALUE-ADDING
 8 PROCEDURES."

9
 10 Section 2. Section 50-50-103, MCA, is amended to read:

11 "50-50-103. Department authorized to adopt rules. (1) To protect public health, the department
 12 may adopt rules relating to the operation of establishments defined in 50-50-102, including coverage of
 13 food, personnel, food equipment and utensils, sanitary facilities and controls, construction and fixtures, and
 14 housekeeping.

15 (2) (a) The department and local health authorities may not adopt rules prohibiting the sale of:

16 (i) ~~potentially hazardous food by nonprofit organizations if the food is prepared and consumed at~~
 17 ~~the same facility or location;~~

18 (ii) ~~baked goods and preserves by nonprofit organizations or by persons at farmer's markets; or~~

19 (iii) ~~potentially hazardous food that is prepared and consumed at the same facility or location, baked~~
 20 ~~goods, or preserves, if sold by any person on an occasional basis not exceeding four times in any calendar~~
 21 ~~year.~~

22 (b) The department and local health authorities may not require that foods sold pursuant to this
 23 subsection (2) be prepared in certified or commercial kitchens."

24
 25 Section 3. Section 50-50-202, MCA, is amended to read:

26 "50-50-202. ~~Establishments, farmer's market sellers, and occasional sales~~ exempt from license
 27 ~~requirement --~~ **FARMER'S MARKET RECORDS**. (1) Establishments owned or operated by the state or a
 28 political subdivision of the state are exempt from licensure but must comply with the requirements of this
 29 chapter and rules adopted by the department under this chapter.

30 (2) ~~for~~ A license is not required to operate an establishment if it is operated by a nonprofit

1 organization for a period of less than 14 days in 1 calendar year. An establishment exempt from licensure
2 under this subsection must:

3 ~~(a)(i)(A)~~ be operated in compliance with the remaining provisions of this chapter and rules adopted
4 by the department under this chapter; and

5 ~~(b)(ii)(B)~~ prior to each operation, register with the local health officer or sanitarian on forms provided
6 by the department.

7 ~~(b) A nonprofit organization may conduct sales of potentially hazardous food that is consumed at
8 the same facility or location, baked goods, and preserves without obtaining a license or registering with the
9 local health officer or sanitarian.~~

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

12 (b) A license is not required of a person selling baked goods or preserves at a farmer's market.

13 ~~(4) A license is not required of any person selling potentially hazardous food that is prepared and
14 consumed at the same facility or location, baked goods, or preserves, if sold on an occasional basis not
15 exceeding four times in any calendar year.~~

16 (4) (A) A FARMER'S MARKET THAT IS AN ORGANIZED MARKET AUTHORIZED BY A MUNICIPAL
17 OR COUNTY AUTHORITY SHALL KEEP REGISTRATION RECORDS OF ALL INDIVIDUALS AND
18 ORGANIZATIONS THAT SELL BAKED GOODS OR PRESERVES AT THE MARKET.

19 (B) THE REGISTRATION RECORDS MUST INCLUDE BUT ARE NOT LIMITED TO THE NAME OF THE
20 SELLER, THE SELLER'S ADDRESS AND TELEPHONE NUMBER, THE PRODUCTS SOLD BY THE SELLER,
21 AND THE DATE THE PRODUCTS WERE SOLD.

22 (C) THE REGISTRATION RECORDS MUST BE MADE AVAILABLE TO THE LOCAL HEALTH OFFICER
23 OR THE OFFICER'S AGENT."

24
25 NEW SECTION. Section 4. Effective date. [This act] is effective on passage and approval.

26 -END-