

1 SENATE BILL NO. 118

2 INTRODUCED BY CRISMORE

3 BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO PUBLIC
6 ACCOMMODATIONS, CAMPGROUNDS, AND TRAILER COURTS; PROVIDING DEFINITIONS; CLARIFYING
7 THAT A BED AND BREAKFAST IS A PUBLIC ACCOMMODATION; AUTHORIZING THE DEPARTMENT OF
8 PUBLIC HEALTH AND HUMAN SERVICES TO ADOPT RULES; PROVIDING FOR EXPIRATION AND
9 CANCELLATION OF LICENSES; PROVIDING FOR ENFORCEMENT METHODS AND CIVIL AND
10 ADMINISTRATIVE PENALTIES; AMENDING SECTIONS 50-51-102, 50-51-103, 50-51-201, 50-51-207,
11 50-51-212, 50-51-401, 50-52-102, 50-52-107, AND 50-52-203, MCA; AND PROVIDING EFFECTIVE
12 DATES AND A RETROACTIVE APPLICABILITY DATE."
13

14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
1516 **Section 1.** Section 50-51-102, MCA, is amended to read:17 **"50-51-102. Definitions.** Unless the context requires otherwise, in this chapter, the following
18 definitions apply:19 (1) "Bed and breakfast" means a private, owner-occupied residence that is primarily used as a
20 private residence but in which:21 (a) one to six guest rooms are made available to transient guests;22 (b) breakfast is the only meal served and is included in the charge for a guest room; and23 (c) the number of daily guests does not exceed 18.24 ~~(1)~~(2) "Department" means the department of public health and human services provided for in
25 2-15-2201.26 ~~(2)~~(3) "Establishment" means a bed and breakfast, hotel, motel, roominghouse, boardinghouse,
27 or tourist home.28 ~~(3)~~(4) "Hotel" or "motel" includes:29 (a) a building or structure kept, used, maintained as, advertised as, or held out to the public to be
30 a hotel, motel, inn, motor court, tourist court, or public lodginghouse,~~or;~~

1 **(b)** a place where sleeping accommodations are furnished for a fee to transient guests, with or
2 without meals; or

3 **(c)** an establishment that is not a bed and breakfast and that is primarily used as a private residence
4 but in which guest rooms are made available to transient guests.

5 ~~{4}~~**(5)** "Person" includes an individual, partnership, corporation, association, county, municipality,
6 cooperative group, or other entity engaged in the business of operating, owning, or offering the services
7 of a bed and breakfast, hotel, motel, boardinghouse, tourist home, or roominghouse.

8 ~~{5}~~**(6)** "Roominghouse" or "boardinghouse" means buildings in which separate sleeping rooms are
9 rented that provide sleeping accommodations for three or more persons on a weekly, semimonthly,
10 monthly, or permanent basis, whether or not meals or central kitchens are provided but without separated
11 cooking facilities or kitchens within each room, and whose occupants do not need professional nursing or
12 personal-care services provided by the facility.

13 ~~{6}~~**(7)** "Tourist home" means ~~an establishment or premises where sleeping accommodations are~~
14 ~~furnished to transient guests for hire or rent on a daily or weekly rental basis in a private home when the~~
15 ~~accommodations are offered for hire or rent for the use of the traveling public.~~ a private home or
16 condominium that is not occupied by an owner or manager and that is rented, leased, or furnished in its
17 entirety to transient guests on a daily or weekly basis.

18 ~~{7}~~**(8)** "Transient guest" means a guest for only a brief stay, such as the traveling public."
19

20 **Section 2.** Section 50-51-103, MCA, is amended to read:

21 **"50-51-103. Department authorized to adopt rules.** The department may adopt ~~and enforce~~ rules
22 ~~to preserve~~ governing the construction and operation of bed and breakfasts, hotels, motels, roominghouses,
23 boardinghouses, and tourist homes to protect the public health and safety. These rules shall relate to
24 construction, furnishings, housekeeping, personnel, sanitary facilities and controls, water supply, sewerage
25 and sewage disposal system, refuse collection and disposal, registration and supervision, and fire and life
26 safety code. The rules may include rules to:

27 (1) ensure that establishments have safe and sanitary facilities and systems, including drinking
28 water, sewage disposal, and solid waste disposal systems;

29 (2) regulate services provided by establishments, including laundry, food, and housekeeping
30 services;

- 1 (3) provide for review and approval of plans and specifications for establishments;
 2 (4) prevent injury and the spread of disease or illness in establishments;
 3 (5) ensure that establishments are operated and maintained in a safe and sanitary manner;
 4 (6) implement staggered license expiration dates;
 5 (7) address licensing of establishments under this chapter;
 6 (8) provide for reimbursing local governments for inspections and enforcement of this chapter; and
 7 (9) address other subjects necessary to implement the provisions of this chapter."

8
 9 **Section 3.** Section 50-51-201, MCA, is amended to read:

10 **"50-51-201. License required.** (1) ~~Each year, every~~ A person engaged in the business of
 11 conducting or operating a bed and breakfast, hotel, motel, tourist home, boardinghouse, or roominghouse
 12 shall procure a license issued by the department.

13 (2) A separate license is required for each establishment; however, when more than one of each
 14 type of establishment is operated on the same premises and under the same management, only one license
 15 is required that must enumerate on the certificate the types of establishments licensed.

16 (3) Before a license may be issued by the department, it must be validated by the local health
 17 officer or, if there is no local health officer, the sanitarian, in the county where the establishment is
 18 located."

19
 20 **Section 4.** Section 50-51-207, MCA, is amended to read:

21 **"50-51-207. Expiration date of license.** (1) ~~Each~~ Except as provided in subsection (2), each
 22 license ~~shall expire~~ expires on December 31 following its date of issue unless canceled for cause.

23 (2) The department may amend or issue licenses to provide for staggered expiration dates. The
 24 department may provide for initial license terms of greater than 12 months but no more than 23 months
 25 in adopting staggered expiration dates. Thereafter, licenses expire annually. License fees for the license
 26 term implementing staggered license terms will be prorated by the department."

27
 28 **Section 5.** Section 50-51-212, MCA, is amended to read:

29 **"50-51-212. Cancellation of license for multiple-type establishment -- definition.** (1) When a
 30 multiple-type establishment is licensed by the department, the denial or cancellation of the license may

1 affect the entire establishment or only a portion of it as determined by the department {,

2 (2) For the purposes of this section, a multiple-type establishment "multiple-type establishment"
 3 includes two or more of the following: bed and breakfast, hotel, motel, or tourist home}."

4
 5 **Section 6.** Section 50-51-401, MCA, is amended to read:

6 **"50-51-401. Civil penalties -- ~~injunctions~~ other enforcement not barred.** (1) An establishment that
 7 violates this chapter or rules adopted by the department pursuant to this chapter is subject to a civil penalty
 8 not to exceed \$500 for each violation. Each day of violation is a separate violation for the purposes of this
 9 section.

10 (2) ~~Civil~~ A civil action to impose penalties, as provided under this section, does not bar
 11 administrative enforcement under [section 7], administrative penalties under [section 8], or injunctions to
 12 enforce compliance with this chapter or to enforce compliance with a rule adopted by the department
 13 pursuant to this chapter."

14
 15 **NEW SECTION. Section 7. Administrative enforcement -- notice of violation -- hearing.** (1) If the
 16 department believes that a violation of this chapter, a rule adopted pursuant to this chapter, an order issued
 17 pursuant to this chapter, or a condition or limitation imposed by a license issued pursuant to this chapter
 18 has occurred, it may serve a written notice of the violation on the alleged violator or the violator's agent
 19 personally or by certified mail. The notice must specify the statute, rule, order, or license condition or
 20 limitation alleged to have been violated and the facts alleged to constitute the violation. The notice may
 21 include an order to take necessary corrective action, including ceasing the violation within a period of time
 22 stated in the order. The order becomes final unless, within 10 days after the notice is received, the person
 23 named as the respondent in the order requests in writing a hearing before the department. Until issuance
 24 of a contrary decision by the department, an order issued pursuant to this section remains effective and
 25 enforceable.

26 (2) A hearing requested by the respondent must be held in accordance with the contested case
 27 provisions of the Montana Administrative Procedure Act, as provided in Title 2, chapter 4, part 6. If, after
 28 a hearing, the department finds that a violation has occurred, the department shall issue an appropriate
 29 order for the prevention, abatement, or control of the violation involved or the taking of other corrective
 30 action. An order issued as part of a notice of violation or after a hearing may prescribe the date by which

1 the violation must cease and the time limits for a particular action in preventing, abating, or controlling the
2 violation. If, after a hearing, the department finds that a violation has not occurred or is not occurring, the
3 department shall declare the order void.

4 (3) Instead of or in addition to issuing the order provided in subsections (1) and (2), the department
5 may take action under another applicable provision of this chapter.

6 (4) Section 50-51-210 does not apply to an action taken by the department pursuant to this
7 section.

8 (5) Before taking an action pursuant to this section, the department may attempt to obtain
9 voluntary compliance through use of a warning, a conference, or other appropriate means.

10

11 **NEW SECTION. Section 8. Administrative penalties -- appeals -- venue for hearing.** (1) An
12 establishment that violates an order issued by the department pursuant to [section 7] may be assessed and
13 ordered by the department to pay an administrative penalty not to exceed \$200 for each violation. Each
14 day of violation constitutes a separate violation. The department may assess the penalty by an order issued
15 pursuant to this section or may suspend all or a part of the administrative penalty assessed under this
16 section if the violation that caused the assessment of the penalty is corrected within a specified time.
17 Assessment of an administrative penalty under this section may be made in conjunction with an order
18 issued pursuant to [section 7(2)] after a hearing as provided in [section 7(2)].

19 (2) When the department assesses an administrative penalty under this section, it must have
20 written notice served personally or by certified mail on the alleged violator or the violator's agent. For
21 purposes of this chapter, service by mail is complete on the day of receipt. The notice must state:

22 (a) the order alleged to have been violated;

23 (b) the facts alleged to constitute the violation;

24 (c) the amount of the administrative penalty assessed under this section;

25 (d) the amount, if any, of the penalty to be suspended upon correction of the condition that caused
26 the assessment of the penalty;

27 (e) the nature of any corrective action that the department requires if a portion of the penalty is
28 to be suspended;

29 (f) the time within which the corrective action is to be taken or the time within which the
30 administrative penalty is to be paid;

1 (g) the right to a hearing, as provided in this section, and the time, place, and nature of any
2 hearing; and

3 (h) that the hearing, provided in this section may be waived or that the alleged violator may
4 proceed by informal disposition pursuant to 2-4-603.

5 (3) The department shall provide the respondent who is assessed a penalty under this section with
6 an opportunity for a hearing to either contest the alleged violation or request mitigation of the penalty. The
7 contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter
8 4, part 6, apply to a hearing conducted under this section. If a hearing is held under this section, it must
9 be held in Lewis and Clark County or the county in which the alleged violation occurred.

10 (4) In determining appropriate penalties for violations, the department shall consider the gravity of
11 the violations and the potential for significant harm to the public health or safety. In determining the
12 appropriate amount of penalty, if any, to be suspended upon correction of the condition that caused the
13 penalty assessment, the department shall consider the cooperation and the degree of care exercised by the
14 respondent who is assessed the penalty, how expeditiously the violation was corrected, and whether
15 significant harm resulted to the public health or safety from the violation.

16 (5) If the respondent fails to pay all or part of an administrative penalty assessed pursuant to this
17 section, the department may take action in district court to recover the amount of the penalty that is unpaid
18 and any additional amounts assessed or sought under this chapter.

19 (6) Action taken by the department pursuant to this section does not bar other action under this
20 chapter or any other remedy available to the department for violations of applicable laws or rules adopted
21 pursuant to those laws.

22 (7) Administrative penalties collected under this section must be deposited in the special revenue
23 account provided for in 50-51-110.

24

25 **Section 9.** Section 50-52-102, MCA, is amended to read:

26 **"50-52-102. Department to adopt rules.** The department ~~shall~~ may adopt rules for constructing
27 and operating campgrounds, trailer courts, work camps, and youth camps to ~~insure sanitation and~~ protect
28 the public health and safety. The rules may include rules to:

29 (1) ensure that establishments have safe and sanitary facilities and systems, including drinking
30 water, sewage disposal, and solid waste disposal systems;

- 1 (2) regulate service buildings or facilities associated with any activity regulated by this chapter,
 2 including laundry and food service facilities;
- 3 (3) provide for review and approval of plans and specifications for establishments;
 4 (4) address nuisances that could cause the spread of disease or illness;
 5 (5) implement staggered license expiration dates;
 6 (6) address licensing of establishments under this chapter and operator requirements;
 7 (7) provide for reimbursing local governments for inspections and enforcement of this chapter; and
 8 (8) address any other subject necessary to implement the provisions of this chapter."

9

10 **Section 10.** Section 50-52-107, MCA, is amended to read:

11 "**50-52-107. Civil penalties -- ~~injunctions~~ other enforcement not barred.** (1) An establishment that
 12 violates this chapter or rules adopted by the department pursuant to this chapter is subject to a civil penalty
 13 not to exceed \$500 for each violation. Each day of violation is a separate violation for purposes of this
 14 section.

15 (2) ~~Civil~~ A civil action to impose penalties, as provided under this section, does not bar
 16 administrative enforcement under [section 13], administrative penalties under [section 14], or injunctions
 17 to enforce compliance with this chapter or to enforce compliance with a rule adopted by the department
 18 pursuant to this chapter."

19

20 **Section 11.** Section 50-52-203, MCA, is amended to read:

21 "**50-52-203. Expiration date of license.** ~~Licenses~~ (1) Except as provided in subsection (2),
 22 licenses expire on December 31 of the year in which they are issued unless canceled for cause.

23 (2) The department may amend or issue licenses to provide for staggered expiration dates. The
 24 department may provide for initial license terms of greater than 12 months but no more than 23 months
 25 in adopting staggered expiration dates. Thereafter, licenses expire annually. License fees for the license
 26 term implementing staggered license terms will be prorated by the department."

27

28 **NEW SECTION. Section 12. Right to renewal.** (1) The department shall renew licenses as a matter
 29 of right, unless conditions exist that are grounds for cancellation or denial of a license.

30 (2) Renewal may be obtained annually by paying the required annual license fee.

1 **NEW SECTION. Section 13. Administrative enforcement -- notice of violation -- hearing.** (1) If the
2 department believes that a violation of this chapter, a rule adopted pursuant to this chapter, an order issued
3 pursuant to this chapter, or a condition or limitation imposed by a license issued pursuant to this chapter
4 has occurred, it may serve a written notice of the violation on the alleged violator or the violator's agent
5 personally or by certified mail. The notice must specify the statute, rule, order, or license condition or
6 limitation alleged to have been violated and the facts alleged to constitute the violation. The notice may
7 include an order to take necessary corrective action, including ceasing the violation within a period of time
8 stated in the order. The order becomes final unless, within 10 days after the notice is received, the person
9 named as the respondent in the order requests in writing a hearing before the department. Until issuance
10 of a contrary decision by the department, an order issued pursuant to this section remains effective and
11 enforceable.

12 (2) A hearing requested by the respondent must be held in accordance with the contested case
13 provisions of the Montana Administrative Procedure Act. If, after a hearing, the department finds that a
14 violation has occurred, the department shall issue an appropriate order for the prevention, abatement, or
15 control of the violation involved or the taking of other corrective action. An order issued as part of a notice
16 of violation or after a hearing may prescribe the date by which the violation must cease and the time limits
17 for a particular action in preventing, abating, or controlling the violation. If, after a hearing, the department
18 finds that a violation has not occurred or is not occurring, the department shall declare the order void.

19 (3) Instead of or in addition to issuing the order provided in subsections (1) and (2), the department
20 may take action under another applicable provision of this chapter.

21 (4) Section 50-52-206 does not apply to an action taken by the department pursuant to this
22 section.

23 (5) Before taking an action pursuant to this section, the department may attempt to obtain
24 voluntary compliance through use of a warning, a conference, or other appropriate means.

25

26 **NEW SECTION. Section 14. Administrative penalties -- appeals -- venue for hearings.** (1) An
27 establishment that violates an order issued by the department pursuant to [section 13] may be assessed
28 and ordered by the department to pay an administrative penalty not to exceed \$200 for each violation.
29 Each day of violation constitutes a separate violation. The department may assess the penalty by an order
30 issued pursuant to this section or may suspend all or a part of the administrative penalty assessed under

1 this section if the violation that caused the assessment of the penalty is corrected within a specified time.
2 Assessment of an administrative penalty under this section may be made in conjunction with an order
3 issued pursuant to [section 13(2)] after a hearing as provided in [section 13(2)].

4 (2) When the department assesses an administrative penalty under this section, it must have
5 written notice served personally or by certified mail on the alleged violator or the violator's agent. For
6 purposes of this chapter, service by mail is complete on the day of receipt. The notice must state:

7 (a) the order alleged to have been violated;

8 (b) the facts alleged to constitute the violation;

9 (c) the amount of the administrative penalty assessed under this section;

10 (d) the amount, if any, of the penalty to be suspended upon correction of the condition that caused
11 the assessment of the penalty;

12 (e) the nature of any corrective action that the department requires if a portion of the penalty is
13 to be suspended;

14 (f) the time within which the corrective action is to be taken or the time within which the
15 administrative penalty is to be paid;

16 (g) the right to a hearing, as provided in this section, and the time, place, and nature of any
17 hearing; and

18 (h) that the hearing provided in this section may be waived or that the alleged violator may proceed
19 by informal disposition under 2-4-603.

20 (3) The department shall provide the respondent assessed a penalty under this section an
21 opportunity for a hearing to either contest the alleged violation or request mitigation of the penalty. The
22 contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter
23 4, part 6, apply to a hearing conducted under this section. If a hearing is held under this section, it must
24 be held in Lewis and Clark County or the county in which the alleged violation occurred.

25 (4) In determining appropriate penalties for violations, the department shall consider the gravity of
26 the violations and the potential for significant harm to the public health or safety. In determining the
27 appropriate amount of penalty, if any, to be suspended upon correction of the condition that caused the
28 penalty assessment, the department shall consider the cooperation and the degree of care exercised by the
29 respondent who is assessed the penalty, how expeditiously the violation was corrected, and whether
30 significant harm resulted to the public health or safety from the violation.

1 (5) If the respondent fails to pay all or part of an administrative penalty assessed pursuant to this
2 section, the department may take action in district court to recover the amount of the penalty that is unpaid
3 and any additional amounts assessed or sought under this chapter.

4 (6) Action taken by the department pursuant to this section does not bar other action under this
5 chapter or any other remedy available to the department for violations of applicable laws or rules adopted
6 pursuant to those laws.

7 (7) Administrative penalties collected under this section must be deposited in the special revenue
8 account provided for in 50-52-210.

9
10 **NEW SECTION. Section 15. Codification instruction.** (1) [Sections 7 and 8] are intended to be
11 codified as an integral part of Title 50, chapter 51, and the provisions of Title 50, chapter 51, apply to
12 [sections 7 and 8].

13 (2) [Sections 12 through 14] are intended to be codified as an integral part of Title 50, chapter 52,
14 and the provisions of Title 50, chapter 52, apply to [sections 12 through 14].

15
16 **NEW SECTION. Section 16. Retroactive applicability.** [Sections 4, 6 through 8, and 10 through
17 14] apply retroactively, within the meaning of 1-2-109, to licenses issued pursuant to Title 50, chapter 51
18 or 52, prior to October 1, 1997.

19
20 **NEW SECTION. Section 17. Effective dates.** (1) [Sections 2, 9, 15, and 16 and this section] are
21 effective on passage and approval.

22 (2) [Sections 1, 3 through 8, and 10 through 14] are effective October 1, 1997.

23 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0118, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act generally revising the laws relating to public accommodations, campgrounds, and trailer courts; providing definitions; clarifying that a bed and breakfast is a public accommodation; authorizing the department of public health and human services to adopt rules; providing for expiration and cancellation of licenses; and providing for enforcement methods and civil and administrative penalties.

FISCAL IMPACT:

None.

Dave Lewis 1-9-97
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

William Crismore 1/10/97
WILLIAM CRISMORE, PRIMARY SPONSOR DATE

Fiscal Note for SB0118, as introduced

SB 118

1 SENATE BILL NO. 118

2 INTRODUCED BY CRISMORE

3 BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO PUBLIC
6 ACCOMMODATIONS, CAMPGROUNDS, AND TRAILER COURTS; PROVIDING DEFINITIONS; CLARIFYING
7 THAT A BED AND BREAKFAST IS A PUBLIC ACCOMMODATION; AUTHORIZING THE DEPARTMENT OF
8 PUBLIC HEALTH AND HUMAN SERVICES TO ADOPT RULES; PROVIDING FOR EXPIRATION AND
9 CANCELLATION OF LICENSES; ~~PROVIDING FOR ENFORCEMENT METHODS AND CIVIL AND~~
10 ~~ADMINISTRATIVE PENALTIES~~; AMENDING SECTIONS 50-51-102, 50-51-103, 50-51-201, 50-51-207,
11 50-51-212, ~~50-51-401~~, 50-52-102, ~~50-52-107~~, AND 50-52-203, MCA; AND PROVIDING EFFECTIVE
12 DATES AND A RETROACTIVE APPLICABILITY DATE."

13

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

15

16 **Section 1.** Section 50-51-102, MCA, is amended to read:

17 "50-51-102. **Definitions.** Unless the context requires otherwise, in this chapter, the following
18 definitions apply:

19 (1) "Bed and breakfast" means a private, ~~owner occupied~~ OWNER- OR MANAGER- residence that
20 is primarily used as a private residence but in which:

21 ~~(a) one to six guest rooms are made available to transient guests;~~

22 ~~(b)(A) breakfast is the only meal served and is included in the charge for a guest room; and~~

23 ~~(b)(B) the number of daily guests SERVED does not exceed 18.~~

24 ~~(1)(2)~~ (2) "Department" means the department of public health and human services provided for in
25 2-15-2201.

26 ~~(2)(3)~~ (3) "Establishment" means a bed and breakfast, hotel, motel, roominghouse, boardinghouse,
27 or tourist home.

28 ~~(3)(4)~~ (4) "Hotel" or "motel" includes:

29 (a) a building or structure kept, used, maintained as, advertised as, or held out to the public to be
30 a hotel, motel, inn, motor court, tourist court, or public lodginghouse, ~~or~~;

1 **(b)** a place where sleeping accommodations are furnished for a fee to transient guests, with or
2 without meals; or

3 **(c)** an establishment that is not a bed and breakfast and that is primarily used as a private residence
4 but in which guest rooms are made available to transient guests.

5 **(4)(5)** "Person" includes an individual, partnership, corporation, association, county, municipality,
6 cooperative group, or other entity engaged in the business of operating, owning, or offering the services
7 of a bed and breakfast, hotel, motel, boardinghouse, tourist home, or roominghouse.

8 **(5)(6)** "Roominghouse" or "boardinghouse" means buildings in which separate sleeping rooms are
9 rented that provide sleeping accommodations for three or more persons on a weekly, semimonthly,
10 monthly, or permanent basis, whether or not meals or central kitchens are provided but without separated
11 cooking facilities or kitchens within each room, and whose occupants do not need professional nursing or
12 personal-care services provided by the facility.

13 **(6)(7)** "Tourist home" means ~~an establishment or premises where sleeping accommodations are~~
14 ~~furnished to transient guests for hire or rent on a daily or weekly rental basis in a private home when the~~
15 ~~accommodations are offered for hire or rent for the use of the traveling public.~~ a private home or
16 condominium that is not occupied by an owner or manager and that is rented, leased, or furnished in its
17 entirety to transient guests on a daily or weekly basis.

18 **(7)(8)** "Transient guest" means a guest for only a brief stay, such as the traveling public."
19

20 **Section 2.** Section 50-51-103, MCA, is amended to read:

21 **"50-51-103. Department authorized to adopt rules.** The department may adopt ~~and enforce~~ rules
22 ~~to preserve governing the construction and operation of bed and breakfasts, hotels, motels, roominghouses,~~
23 ~~boardinghouses, and tourist homes to protect~~ the public health and safety. ~~These rules shall relate to~~
24 ~~construction, furnishings, housekeeping, personnel, sanitary facilities and controls, water supply, sewerage~~
25 ~~and sewage disposal system, refuse collection and disposal, registration and supervision, and fire and life~~
26 ~~safety code. The rules may include rules to:~~

27 **(1)** ~~ensure that establishments have safe and sanitary facilities and systems, including drinking~~
28 ~~water, sewage disposal, and solid waste disposal systems;~~

29 **(2)** ~~regulate services provided by establishments, including laundry, food, and housekeeping~~
30 ~~services;~~

1 ~~(3) provide for review and approval of plans and specifications for establishments;~~

2 ~~(4) prevent injury and the spread of disease or illness in establishments;~~

3 ~~(5) ensure that establishments are operated and maintained in a safe and sanitary manner;~~

4 ~~(6) implement staggered license expiration dates;~~

5 ~~(7) address licensing of establishments under this chapter;~~

6 ~~(8) provide for reimbursing local governments for inspections and enforcement of this chapter; and~~

7 ~~(9) address other subjects necessary to implement the provisions of this chapter. THESE RULES~~

8 MAY RELATE TO CONSTRUCTION, FURNISHINGS, HOUSEKEEPING, PERSONNEL, SANITARY FACILITIES
 9 AND CONTROLS, WATER SUPPLY, SEWERAGE AND SEWAGE DISPOSAL SYSTEM, REFUSE COLLECTION
 10 AND DISPOSAL, REGISTRATION AND SUPERVISION, FIRE AND LIFE SAFETY, FOOD SERVICE, SPECIAL
 11 REQUIREMENTS FOR BED AND BREAKFAST ESTABLISHMENTS, STAGGERED LICENSE EXPIRATION
 12 DATES, AND REIMBURSEMENT OF LOCAL GOVERNMENTS FOR INSPECTIONS AND ENFORCEMENT."

13
 14 **Section 3.** Section 50-51-201, MCA, is amended to read:

15 "50-51-201. **License required.** (1) ~~Each year, every~~ A person engaged in the business of
 16 conducting or operating a bed and breakfast, hotel, motel, tourist home, boardinghouse, or roominghouse
 17 shall procure a license issued by the department.

18 (2) A separate license is required for each establishment; however, when more than one of each
 19 type of establishment is operated on the same premises and under the same management, only one license
 20 is required that must enumerate on the certificate the types of establishments licensed.

21 (3) Before a license may be issued by the department, it must be validated by the local health
 22 officer or, if there is no local health officer, the sanitarian, in the county where the establishment is
 23 located."

24
 25 **Section 4.** Section 50-51-207, MCA, is amended to read:

26 "50-51-207. **Expiration date of license.** (1) ~~Each~~ Except as provided in subsection (2), each
 27 license ~~shall expire~~ expires on December 31 following its date of issue unless canceled for cause.

28 (2) The department may amend or issue licenses to provide for staggered expiration dates. The
 29 department may provide for initial license terms of greater than 12 months but no more than 23 months
 30 in adopting staggered expiration dates. Thereafter, licenses expire annually. License fees for the license

1 term implementing staggered license terms will be prorated by the department."

2
3 **Section 5.** Section 50-51-212, MCA, is amended to read:

4 "50-51-212. **Cancellation of license for multiple-type establishment -- definition.** (1) When a
5 multiple-type establishment is licensed by the department, the denial or cancellation of the license may
6 affect the entire establishment or only a portion of it as determined by the department {.

7 (2) For the purposes of this section, a multiple-type establishment "multiple-type establishment"
8 includes two or more of the following: bed and breakfast, hotel, motel, or tourist home}."

9
10 ~~**Section 6.** Section 50-51-401, MCA, is amended to read:~~

11 ~~"50-51-401. **Civil penalties -- injunctions other enforcement not barred.** (1) An establishment that~~
12 ~~violates this chapter or rules adopted by the department pursuant to this chapter is subject to a civil penalty~~
13 ~~not to exceed \$500 for each violation. Each day of violation is a separate violation for the purposes of this~~
14 ~~section.~~

15 ~~(2) Civil A civil action to impose penalties, as provided under this section, does not bar~~
16 ~~administrative enforcement under [section 7], administrative penalties under [section 8], or injunctions to~~
17 ~~enforce compliance with this chapter or to enforce compliance with a rule adopted by the department~~
18 ~~pursuant to this chapter."~~

19
20 **NEW SECTION. SECTION 6. SPECIAL REQUIREMENTS FOR BED AND BREAKFAST**
21 **ESTABLISHMENTS. THE DEPARTMENT, IN ADOPTING RULES ESTABLISHING SPECIAL REQUIREMENTS**
22 **FOR BED AND BREAKFAST ESTABLISHMENTS, SHALL CONSULT WITH BED AND BREAKFAST**
23 **OPERATORS.**

24
25 ~~**NEW SECTION. Section 7. Administrative enforcement -- notice of violation -- hearing.** (1) If the~~
26 ~~department believes that a violation of this chapter, a rule adopted pursuant to this chapter, an order issued~~
27 ~~pursuant to this chapter, or a condition or limitation imposed by a license issued pursuant to this chapter~~
28 ~~has occurred, it may serve a written notice of the violation on the alleged violator or the violator's agent~~
29 ~~personally or by certified mail. The notice must specify the statute, rule, order, or license condition or~~
30 ~~limitation alleged to have been violated and the facts alleged to constitute the violation. The notice may~~

1 ~~include an order to take necessary corrective action, including ceasing the violation within a period of time~~
2 ~~stated in the order. The order becomes final unless, within 10 days after the notice is received, the person~~
3 ~~named as the respondent in the order requests in writing a hearing before the department. Until issuance~~
4 ~~of a contrary decision by the department, an order issued pursuant to this section remains effective and~~
5 ~~enforceable.~~

6 ~~(2) A hearing requested by the respondent must be held in accordance with the contested case~~
7 ~~provisions of the Montana Administrative Procedure Act, as provided in Title 2, chapter 4, part 6. If, after~~
8 ~~a hearing, the department finds that a violation has occurred, the department shall issue an appropriate~~
9 ~~order for the prevention, abatement, or control of the violation involved or the taking of other corrective~~
10 ~~action. An order issued as part of a notice of violation or after a hearing may prescribe the date by which~~
11 ~~the violation must cease and the time limits for a particular action in preventing, abating, or controlling the~~
12 ~~violation. If, after a hearing, the department finds that a violation has not occurred or is not occurring, the~~
13 ~~department shall declare the order void.~~

14 ~~(3) Instead of or in addition to issuing the order provided in subsections (1) and (2), the department~~
15 ~~may take action under another applicable provision of this chapter.~~

16 ~~(4) Section 50-51-210 does not apply to an action taken by the department pursuant to this~~
17 ~~section.~~

18 ~~(5) Before taking an action pursuant to this section, the department may attempt to obtain~~
19 ~~voluntary compliance through use of a warning, a conference, or other appropriate means.~~

20
21 ~~**NEW SECTION. Section 8. Administrative penalties — appeals — venue for hearing.** (1) An~~
22 ~~establishment that violates an order issued by the department pursuant to [section 7] may be assessed and~~
23 ~~ordered by the department to pay an administrative penalty not to exceed \$200 for each violation. Each~~
24 ~~day of violation constitutes a separate violation. The department may assess the penalty by an order issued~~
25 ~~pursuant to this section or may suspend all or a part of the administrative penalty assessed under this~~
26 ~~section if the violation that caused the assessment of the penalty is corrected within a specified time.~~
27 ~~Assessment of an administrative penalty under this section may be made in conjunction with an order~~
28 ~~issued pursuant to [section 7(2)] after a hearing as provided in [section 7(2)].~~

29 ~~(2) When the department assesses an administrative penalty under this section, it must have~~
30 ~~written notice served personally or by certified mail on the alleged violator or the violator's agent. For~~

1 ~~purposes of this chapter, service by mail is complete on the day of receipt. The notice must state:~~

2 ~~(a) the order alleged to have been violated;~~

3 ~~(b) the facts alleged to constitute the violation;~~

4 ~~(c) the amount of the administrative penalty assessed under this section;~~

5 ~~(d) the amount, if any, of the penalty to be suspended upon correction of the condition that caused~~
6 ~~the assessment of the penalty;~~

7 ~~(e) the nature of any corrective action that the department requires if a portion of the penalty is~~
8 ~~to be suspended;~~

9 ~~(f) the time within which the corrective action is to be taken or the time within which the~~
10 ~~administrative penalty is to be paid;~~

11 ~~(g) the right to a hearing, as provided in this section, and the time, place, and nature of any~~
12 ~~hearing; and~~

13 ~~(h) that the hearing, provided in this section may be waived or that the alleged violator may~~
14 ~~proceed by informal disposition pursuant to 2-4-603.~~

15 ~~(3) The department shall provide the respondent who is assessed a penalty under this section with~~
16 ~~an opportunity for a hearing to either contest the alleged violation or request mitigation of the penalty. The~~
17 ~~contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter~~
18 ~~4, part 6, apply to a hearing conducted under this section. If a hearing is held under this section, it must~~
19 ~~be held in Lewis and Clark County or the county in which the alleged violation occurred.~~

20 ~~(4) In determining appropriate penalties for violations, the department shall consider the gravity of~~
21 ~~the violations and the potential for significant harm to the public health or safety. In determining the~~
22 ~~appropriate amount of penalty, if any, to be suspended upon correction of the condition that caused the~~
23 ~~penalty assessment, the department shall consider the cooperation and the degree of care exercised by the~~
24 ~~respondent who is assessed the penalty, how expeditiously the violation was corrected, and whether~~
25 ~~significant harm resulted to the public health or safety from the violation.~~

26 ~~(5) If the respondent fails to pay all or part of an administrative penalty assessed pursuant to this~~
27 ~~section, the department may take action in district court to recover the amount of the penalty that is unpaid~~
28 ~~and any additional amounts assessed or sought under this chapter.~~

29 ~~(6) Action taken by the department pursuant to this section does not bar other action under this~~
30 ~~chapter or any other remedy available to the department for violations of applicable laws or rules adopted~~

1 pursuant to these laws.

2 ~~(7) Administrative penalties collected under this section must be deposited in the special revenue~~
 3 ~~account provided for in 50-51-110.~~

4

5 **Section 7.** Section 50-52-102, MCA, is amended to read:

6 **"50-52-102. Department to adopt rules.** The department ~~shall~~ may adopt rules for constructing
 7 and operating campgrounds, trailer courts, work camps, and youth camps to ~~insure sanitation and protect~~
 8 the public health and safety. The rules may include rules to:

9 (1) ensure that establishments have safe and sanitary facilities and systems, including drinking
 10 water, sewage disposal, and solid waste disposal systems;

11 (2) regulate service buildings or facilities associated with any activity regulated by this chapter,
 12 including laundry and food service facilities;

13 (3) provide for review and approval of plans and specifications for establishments;

14 (4) address nuisances that could cause the spread of disease or illness;

15 (5) implement staggered license expiration dates;

16 (6) address licensing of establishments under this chapter and operator requirements; AND

17 (7) provide for reimbursing local governments for inspections and enforcement of this chapter; and,

18 ~~(8) address any other subject necessary to implement the provisions of this chapter."~~

19

20 **Section 10.** Section 50-52-107, MCA, is amended to read:

21 ~~**"50-52-107. Civil penalties -- injunctions other enforcement not barred.** (1) An establishment that~~
 22 ~~violates this chapter or rules adopted by the department pursuant to this chapter is subject to a civil penalty~~
 23 ~~not to exceed \$500 for each violation. Each day of violation is a separate violation for purposes of this~~
 24 ~~section.~~

25 ~~(2) Civil~~ A civil ~~action to impose penalties, as provided under this section, does not bar~~
 26 ~~administrative enforcement under [section 13], administrative penalties under [section 14], or injunctions~~
 27 ~~to enforce compliance with this chapter or to enforce compliance with a rule adopted by the department~~
 28 ~~pursuant to this chapter."~~

29

30 **Section 8.** Section 50-52-203, MCA, is amended to read:

1 "50-52-203. **Expiration date of license.** ~~Licenses (1) Except as provided in subsection (2),~~
2 ~~licenses~~ expire on December 31 of the year in which they are issued ~~unless canceled for cause.~~

3 ~~(2) The department may amend or issue licenses to provide for staggered expiration dates. The~~
4 ~~department may provide for initial license terms of greater than 12 months but no more than 23 months~~
5 ~~in adopting staggered expiration dates. Thereafter, licenses expire annually. License fees for the license~~
6 ~~term implementing staggered license terms will be prorated by the department."~~

7
8 **NEW SECTION. Section 9. Right to renewal.** (1) The department shall renew licenses as a matter
9 of right, unless conditions exist that are grounds for cancellation or denial of a license.

10 (2) Renewal may be obtained annually by paying the required annual license fee.

11
12 ~~**NEW SECTION. Section 13. Administrative enforcement -- notice of violation -- hearing.** (1) If the~~
13 ~~department believes that a violation of this chapter, a rule adopted pursuant to this chapter, an order issued~~
14 ~~pursuant to this chapter, or a condition or limitation imposed by a license issued pursuant to this chapter~~
15 ~~has occurred, it may serve a written notice of the violation on the alleged violator or the violator's agent~~
16 ~~personally or by certified mail. The notice must specify the statute, rule, order, or license condition or~~
17 ~~limitation alleged to have been violated and the facts alleged to constitute the violation. The notice may~~
18 ~~include an order to take necessary corrective action, including ceasing the violation within a period of time~~
19 ~~stated in the order. The order becomes final unless, within 10 days after the notice is received, the person~~
20 ~~named as the respondent in the order requests in writing a hearing before the department. Until issuance~~
21 ~~of a contrary decision by the department, an order issued pursuant to this section remains effective and~~
22 ~~enforceable.~~

23 ~~(2) A hearing requested by the respondent must be held in accordance with the contested case~~
24 ~~provisions of the Montana Administrative Procedure Act. If, after a hearing, the department finds that a~~
25 ~~violation has occurred, the department shall issue an appropriate order for the prevention, abatement, or~~
26 ~~control of the violation involved or the taking of other corrective action. An order issued as part of a notice~~
27 ~~of violation or after a hearing may prescribe the date by which the violation must cease and the time limits~~
28 ~~for a particular action in preventing, abating, or controlling the violation. If, after a hearing, the department~~
29 ~~finds that a violation has not occurred or is not occurring, the department shall declare the order void.~~

30 ~~(3) Instead of or in addition to issuing the order provided in subsections (1) and (2), the department~~

1 ~~may take action under another applicable provision of this chapter.~~

2 ~~(4) Section 50-52-206 does not apply to an action taken by the department pursuant to this~~
 3 ~~section.~~

4 ~~(5) Before taking an action pursuant to this section, the department may attempt to obtain~~
 5 ~~voluntary compliance through use of a warning, a conference, or other appropriate means.~~

6
 7 ~~**NEW SECTION. Section 14. Administrative penalties — appeals — venue for hearings.** (1) An~~
 8 ~~establishment that violates an order issued by the department pursuant to [section 13] may be assessed~~
 9 ~~and ordered by the department to pay an administrative penalty not to exceed \$200 for each violation.~~
 10 ~~Each day of violation constitutes a separate violation. The department may assess the penalty by an order~~
 11 ~~issued pursuant to this section or may suspend all or a part of the administrative penalty assessed under~~
 12 ~~this section if the violation that caused the assessment of the penalty is corrected within a specified time.~~
 13 ~~Assessment of an administrative penalty under this section may be made in conjunction with an order~~
 14 ~~issued pursuant to [section 13(2)] after a hearing as provided in [section 13(2)].~~

15 ~~(2) When the department assesses an administrative penalty under this section, it must have~~
 16 ~~written notice served personally or by certified mail on the alleged violator or the violator's agent. For~~
 17 ~~purposes of this chapter, service by mail is complete on the day of receipt. The notice must state:~~

18 ~~(a) the order alleged to have been violated;~~

19 ~~(b) the facts alleged to constitute the violation;~~

20 ~~(c) the amount of the administrative penalty assessed under this section;~~

21 ~~(d) the amount, if any, of the penalty to be suspended upon correction of the condition that caused~~
 22 ~~the assessment of the penalty;~~

23 ~~(e) the nature of any corrective action that the department requires if a portion of the penalty is~~
 24 ~~to be suspended;~~

25 ~~(f) the time within which the corrective action is to be taken or the time within which the~~
 26 ~~administrative penalty is to be paid;~~

27 ~~(g) the right to a hearing, as provided in this section, and the time, place, and nature of any~~
 28 ~~hearing; and~~

29 ~~(h) that the hearing provided in this section may be waived or that the alleged violator may proceed~~
 30 ~~by informal disposition under 2-4-603.~~

1 ~~(3) The department shall provide the respondent assessed a penalty under this section an~~
 2 ~~opportunity for a hearing to either contest the alleged violation or request mitigation of the penalty. The~~
 3 ~~contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter~~
 4 ~~4, part 6, apply to a hearing conducted under this section. If a hearing is held under this section, it must~~
 5 ~~be held in Lewis and Clark County or the county in which the alleged violation occurred.~~

6 ~~(4) In determining appropriate penalties for violations, the department shall consider the gravity of~~
 7 ~~the violations and the potential for significant harm to the public health or safety. In determining the~~
 8 ~~appropriate amount of penalty, if any, to be suspended upon correction of the condition that caused the~~
 9 ~~penalty assessment, the department shall consider the cooperation and the degree of care exercised by the~~
 10 ~~respondent who is assessed the penalty, how expeditiously the violation was corrected, and whether~~
 11 ~~significant harm resulted to the public health or safety from the violation.~~

12 ~~(5) If the respondent fails to pay all or part of an administrative penalty assessed pursuant to this~~
 13 ~~section, the department may take action in district court to recover the amount of the penalty that is unpaid~~
 14 ~~and any additional amounts assessed or sought under this chapter.~~

15 ~~(6) Action taken by the department pursuant to this section does not bar other action under this~~
 16 ~~chapter or any other remedy available to the department for violations of applicable laws or rules adopted~~
 17 ~~pursuant to those laws.~~

18 ~~(7) Administrative penalties collected under this section must be deposited in the special revenue~~
 19 ~~account provided for in 50-52-210.~~

20
 21 **NEW SECTION. Section 10. Codification instruction.** (1) ~~{Sections 7 and 8} are [SECTION 6] IS~~
 22 ~~intended to be codified as an integral part of Title 50, chapter 51, and the provisions of Title 50, chapter~~
 23 ~~51, apply to {sections 7 and 8} [SECTION 6].~~

24 (2) ~~{Sections 12 through 14} are [SECTION 9] IS~~ intended to be codified as an integral part of Title
 25 50, chapter 52, and the provisions of Title 50, chapter 52, apply to ~~{sections 12 through 14} [SECTION~~
 26 ~~9].~~

27
 28 **NEW SECTION. Section 16. Retroactive applicability.** ~~{Sections 4, 6 through 8, and 10 through~~
 29 ~~14} apply retroactively, within the meaning of 1-2-109, to licenses issued pursuant to Title 50, chapter 51~~
 30 ~~or 52, prior to October 1, 1997.~~

1 SENATE BILL NO. 118

2 INTRODUCED BY CRISMORE

3 BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO PUBLIC
6 ACCOMMODATIONS, CAMPGROUNDS, AND TRAILER COURTS; PROVIDING DEFINITIONS; CLARIFYING
7 THAT A BED AND BREAKFAST IS A PUBLIC ACCOMMODATION; AUTHORIZING THE DEPARTMENT OF
8 PUBLIC HEALTH AND HUMAN SERVICES TO ADOPT RULES; PROVIDING FOR EXPIRATION AND
9 CANCELLATION OF LICENSES; ~~PROVIDING FOR ENFORCEMENT METHODS AND CIVIL AND~~
10 ~~ADMINISTRATIVE PENALTIES~~; AMENDING SECTIONS 50-51-102, 50-51-103, 50-51-201, 50-51-207,
11 50-51-212, ~~50-51-401~~, 50-52-102, ~~50-52-107~~, AND 50-52-203, MCA; AND PROVIDING EFFECTIVE
12 DATES AND A RETROACTIVE APPLICABILITY DATE."

13
14 STATEMENT OF INTENT

15 A STATEMENT OF INTENT IS REQUIRED FOR THIS BILL BECAUSE ADDITIONAL RULEMAKING
16 AUTHORITY, BEYOND THAT ALREADY GRANTED BY 50-51-103 AND 50-52-102, IS BEING GIVEN TO
17 THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES. THE RULEMAKING AUTHORITY WILL
18 ALLOW THE DEPARTMENT TO ADOPT RULES FOR ESTABLISHMENTS REGULATED BY TITLE 50,
19 CHAPTER 51, IN THE FOLLOWING AREAS:

20 (1) REQUIREMENTS FOR FOOD SERVICE;
21 (2) REQUIREMENTS FOR BED AND BREAKFAST ESTABLISHMENTS;
22 (3) REQUIREMENTS TO IMPLEMENT STAGGERED LICENSE EXPIRATION DATES; AND
23 (4) REQUIREMENTS ADDRESSING REIMBURSEMENT OF LOCAL GOVERNMENTS FOR
24 INSPECTIONS AND ENFORCEMENT.

25 THE AMENDED RULEMAKING AUTHORITY IN 50-52-102 WILL CLARIFY THE DEPARTMENT'S
26 AUTHORITY TO ADOPT RULES FOR ESTABLISHMENTS REGULATED BY TITLE 50, CHAPTER 52, IN THE
27 FOLLOWING AREAS:

28 (1) REQUIREMENTS TO ENSURE THAT ESTABLISHMENTS HAVE SAFE AND SANITARY
29 FACILITIES AND SYSTEMS;
30 (2) REQUIREMENTS FOR SERVICE BUILDINGS OR FACILITIES;

- 1 (3) REQUIREMENTS FOR PLAN REVIEW;
- 2 (4) REQUIREMENTS ADDRESSING NUISANCES THAT COULD CAUSE THE SPREAD OF DISEASE
- 3 OR ILLNESS;
- 4 (5) REQUIREMENTS TO IMPLEMENT STAGGERED LICENSE EXPIRATION DATES;
- 5 (6) REQUIREMENTS ADDRESSING LICENSING OF ESTABLISHMENTS AND OPERATOR
- 6 REQUIREMENTS; AND
- 7 (7) REQUIREMENTS ADDRESSING REIMBURSEMENT OF LOCAL GOVERNMENTS FOR INSPECTION
- 8 AND ENFORCEMENT.

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

12 **Section 1.** Section 50-51-102, MCA, is amended to read:

13 **"50-51-102. Definitions.** Unless the context requires otherwise, in this chapter, the following
14 definitions apply:

15 (1) "Bed and breakfast" means a private, ~~owner-occupied~~ OWNER- OR MANAGER-
16 MANAGER-OCCUPIED residence that is primarily used as a private residence but in which:

17 ~~(a) one to six guest rooms are made available to transient guests;~~

18 ~~(b)(A) breakfast is the only meal served and is included in the charge for a guest room; and~~

19 ~~(c)(B) the number of daily guests SERVED does not exceed 18.~~

20 ~~(2)~~(2) "Department" means the department of public health and human services provided for in
21 2-15-2201.

22 ~~(3)~~(3) "Establishment" means a bed and breakfast, hotel, motel, roominghouse, boardinghouse,
23 or tourist home.

24 ~~(4)~~(4) "Hotel" or "motel" includes:

25 (a) a building or structure kept, used, maintained as, advertised as, or held out to the public to be
26 a hotel, motel, inn, motor court, tourist court, or public lodginghouse, ~~or~~;

27 (b) a place where sleeping accommodations are furnished for a fee to transient guests, with or
28 without meals; or

29 (c) an establishment that is not a bed and breakfast and that is primarily used as a private residence
30 but in which guest rooms are made available to transient guests.

1 ~~(4)~~(5) "Person" includes an individual, partnership, corporation, association, county, municipality,
2 cooperative group, or other entity engaged in the business of operating, owning, or offering the services
3 of a bed and breakfast, hotel, motel, boardinghouse, tourist home, or roominghouse.

4 ~~(5)~~(6) "Roominghouse" or "boardinghouse" means buildings in which separate sleeping rooms are
5 rented that provide sleeping accommodations for three or more persons on a weekly, semimonthly,
6 monthly, or permanent basis, whether or not meals or central kitchens are provided but without separated
7 cooking facilities or kitchens within each room, and whose occupants do not need professional nursing or
8 personal-care services provided by the facility.

9 ~~(6)~~(7) "Tourist home" means ~~an establishment or premises where sleeping accommodations are~~
10 ~~furnished to transient guests for hire or rent on a daily or weekly rental basis in a private home when the~~
11 ~~accommodations are offered for hire or rent for the use of the traveling public.~~ a private home or
12 condominium that is not occupied by an owner or manager and that is rented, leased, or furnished in its
13 entirety to transient guests on a daily or weekly basis.

14 ~~(7)~~(8) "Transient guest" means a guest for only a brief stay, such as the traveling public."
15

16 **Section 2.** Section 50-51-103, MCA, is amended to read:

17 "**50-51-103. Department authorized to adopt rules.** The department may adopt ~~and enforce~~ rules
18 ~~to preserve governing the construction and operation of bed and breakfasts, hotels, motels, roominghouses,~~
19 ~~boardinghouses, and tourist homes to protect the public health and safety. These rules shall relate to~~
20 ~~construction, furnishings, housekeeping, personnel, sanitary facilities and controls, water supply, sewerage~~
21 ~~and sewage disposal system, refuse collection and disposal, registration and supervision, and fire and life~~
22 ~~safety code. The rules may include rules to:~~

23 ~~(1) ensure that establishments have safe and sanitary facilities and systems, including drinking~~
24 ~~water, sewage disposal, and solid waste disposal systems;~~

25 ~~(2) regulate services provided by establishments, including laundry, food, and housekeeping~~
26 ~~services;~~

27 ~~(3) provide for review and approval of plans and specifications for establishments;~~

28 ~~(4) prevent injury and the spread of disease or illness in establishments;~~

29 ~~(5) ensure that establishments are operated and maintained in a safe and sanitary manner;~~

30 ~~(6) implement staggered license expiration dates;~~

1 ~~(7) address licensing of establishments under this chapter;~~

2 ~~(8) provide for reimbursing local governments for inspections and enforcement of this chapter; and~~

3 ~~(9) address other subjects necessary to implement the provisions of this chapter. THESE RULES~~

4 MAY RELATE TO CONSTRUCTION, FURNISHINGS, HOUSEKEEPING, PERSONNEL, SANITARY FACILITIES
5 AND CONTROLS, WATER SUPPLY, SEWERAGE AND SEWAGE DISPOSAL SYSTEM, REFUSE COLLECTION
6 AND DISPOSAL, REGISTRATION AND SUPERVISION, FIRE AND LIFE SAFETY, FOOD SERVICE, SPECIAL
7 REQUIREMENTS FOR BED AND BREAKFAST ESTABLISHMENTS, STAGGERED LICENSE EXPIRATION
8 DATES, AND REIMBURSEMENT OF LOCAL GOVERNMENTS FOR INSPECTIONS AND ENFORCEMENT."

9
10 **Section 3.** Section 50-51-201, MCA, is amended to read:

11 "50-51-201. **License required.** (1) ~~Each year, every~~ A person engaged in the business of
12 conducting or operating a bed and breakfast, hotel, motel, tourist home, boardinghouse, or roominghouse
13 shall procure a license issued by the department.

14 (2) A separate license is required for each establishment; however, when more than one of each
15 type of establishment is operated on the same premises and under the same management, only one license
16 is required that must enumerate on the certificate the types of establishments licensed.

17 (3) Before a license may be issued by the department, it must be validated by the local health
18 officer or, if there is no local health officer, the sanitarian, in the county where the establishment is
19 located."

20
21 **Section 4.** Section 50-51-207, MCA, is amended to read:

22 "50-51-207. **Expiration date of license.** (1) ~~Each~~ Except as provided in subsection (2), each
23 license ~~shall expire~~ expires on December 31 following its date of issue unless canceled for cause.

24 (2) The department may amend or issue licenses to provide for staggered expiration dates. The
25 department may provide for initial license terms of greater than 12 months but no more than 23 months
26 in adopting staggered expiration dates. Thereafter, licenses expire annually. License fees for the license
27 term implementing staggered license terms will be prorated by the department."

28
29 **Section 5.** Section 50-51-212, MCA, is amended to read:

30 "50-51-212. **Cancellation of license for multiple-type establishment -- definition.** (1) When a

1 multiple-type establishment is licensed by the department, the denial or cancellation of the license may
 2 affect the entire establishment or only a portion of it as determined by the department.

3 (2) For the purposes of this section, a multiple-type establishment "multiple-type establishment"
 4 includes two or more of the following: bed and breakfast, hotel, motel, or tourist home."

5

6 ~~Section 6. Section 50-51-401, MCA, is amended to read:~~

7 ~~"50-51-401. Civil penalties — injunctions — other enforcement not barred. (1) An establishment that~~
 8 ~~violates this chapter or rules adopted by the department pursuant to this chapter is subject to a civil penalty~~
 9 ~~not to exceed \$500 for each violation. Each day of violation is a separate violation for the purposes of this~~
 10 ~~section.~~

11 ~~(2) Civil. A civil action to impose penalties, as provided under this section, does not bar~~
 12 ~~administrative enforcement under [section 7], administrative penalties under [section 8], or injunctions to~~
 13 ~~enforce compliance with this chapter or to enforce compliance with a rule adopted by the department~~
 14 ~~pursuant to this chapter."~~

15

16 NEW SECTION. SECTION 6. SPECIAL REQUIREMENTS FOR BED AND BREAKFAST
 17 ESTABLISHMENTS. THE DEPARTMENT, IN ADOPTING RULES ESTABLISHING SPECIAL REQUIREMENTS
 18 FOR BED AND BREAKFAST ESTABLISHMENTS, SHALL CONSULT WITH BED AND BREAKFAST
 19 OPERATORS. THE DEPARTMENT SHALL ESTABLISH A NEGOTIATED RULEMAKING COMMITTEE, AS
 20 PROVIDED IN TITLE 2, CHAPTER 5, PART 1, TO CONSIDER MATTERS PROPOSED BY THE DEPARTMENT
 21 THAT AFFECT BED AND BREAKFAST ESTABLISHMENTS.

22

23 ~~NEW SECTION. Section 7. Administrative enforcement — notice of violation — hearing. (1) If the~~
 24 ~~department believes that a violation of this chapter, a rule adopted pursuant to this chapter, an order issued~~
 25 ~~pursuant to this chapter, or a condition or limitation imposed by a license issued pursuant to this chapter~~
 26 ~~has occurred, it may serve a written notice of the violation on the alleged violator or the violator's agent~~
 27 ~~personally or by certified mail. The notice must specify the statute, rule, order, or license condition or~~
 28 ~~limitation alleged to have been violated and the facts alleged to constitute the violation. The notice may~~
 29 ~~include an order to take necessary corrective action, including ceasing the violation within a period of time~~
 30 ~~stated in the order. The order becomes final unless, within 10 days after the notice is received, the person~~

1 named as the respondent in the order requests in writing a hearing before the department. Until issuance
 2 of a contrary decision by the department, an order issued pursuant to this section remains effective and
 3 enforceable.

4 ~~(2) A hearing requested by the respondent must be held in accordance with the contested case~~
 5 ~~provisions of the Montana Administrative Procedure Act, as provided in Title 2, chapter 4, part 6. If, after~~
 6 ~~a hearing, the department finds that a violation has occurred, the department shall issue an appropriate~~
 7 ~~order for the prevention, abatement, or control of the violation involved or the taking of other corrective~~
 8 ~~action. An order issued as part of a notice of violation or after a hearing may prescribe the date by which~~
 9 ~~the violation must cease and the time limits for a particular action in preventing, abating, or controlling the~~
 10 ~~violation. If, after a hearing, the department finds that a violation has not occurred or is not occurring, the~~
 11 ~~department shall declare the order void.~~

12 ~~(3) Instead of or in addition to issuing the order provided in subsections (1) and (2), the department~~
 13 ~~may take action under another applicable provision of this chapter.~~

14 ~~(4) Section 50-51-210 does not apply to an action taken by the department pursuant to this~~
 15 ~~section.~~

16 ~~(5) Before taking an action pursuant to this section, the department may attempt to obtain~~
 17 ~~voluntary compliance through use of a warning, a conference, or other appropriate means.~~

18
 19 ~~**NEW SECTION. Section 8. Administrative penalties—appeals—venue for hearing.** (1) An~~
 20 ~~establishment that violates an order issued by the department pursuant to [section 7] may be assessed and~~
 21 ~~ordered by the department to pay an administrative penalty not to exceed \$200 for each violation. Each~~
 22 ~~day of violation constitutes a separate violation. The department may assess the penalty by an order issued~~
 23 ~~pursuant to this section or may suspend all or a part of the administrative penalty assessed under this~~
 24 ~~section if the violation that caused the assessment of the penalty is corrected within a specified time.~~
 25 ~~Assessment of an administrative penalty under this section may be made in conjunction with an order~~
 26 ~~issued pursuant to [section 7(2)] after a hearing as provided in [section 7(2)].~~

27 ~~(2) When the department assesses an administrative penalty under this section, it must have~~
 28 ~~written notice served personally or by certified mail on the alleged violator or the violator's agent. For~~
 29 ~~purposes of this chapter, service by mail is complete on the day of receipt. The notice must state:~~

30 ~~(a) the order alleged to have been violated;~~

1 ~~(b) the facts alleged to constitute the violation;~~

2 ~~(c) the amount of the administrative penalty assessed under this section;~~

3 ~~(d) the amount, if any, of the penalty to be suspended upon correction of the condition that caused~~
4 ~~the assessment of the penalty;~~

5 ~~(e) the nature of any corrective action that the department requires if a portion of the penalty is~~
6 ~~to be suspended;~~

7 ~~(f) the time within which the corrective action is to be taken or the time within which the~~
8 ~~administrative penalty is to be paid;~~

9 ~~(g) the right to a hearing, as provided in this section, and the time, place, and nature of any~~
10 ~~hearing; and~~

11 ~~(h) that the hearing, provided in this section may be waived or that the alleged violator may~~
12 ~~proceed by informal disposition pursuant to 2-4-603.~~

13 ~~(3) The department shall provide the respondent who is assessed a penalty under this section with~~
14 ~~an opportunity for a hearing to either contest the alleged violation or request mitigation of the penalty. The~~
15 ~~contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter~~
16 ~~4, part 6, apply to a hearing conducted under this section. If a hearing is held under this section, it must~~
17 ~~be held in Lewis and Clark County or the county in which the alleged violation occurred.~~

18 ~~(4) In determining appropriate penalties for violations, the department shall consider the gravity of~~
19 ~~the violations and the potential for significant harm to the public health or safety. In determining the~~
20 ~~appropriate amount of penalty, if any, to be suspended upon correction of the condition that caused the~~
21 ~~penalty assessment, the department shall consider the cooperation and the degree of care exercised by the~~
22 ~~respondent who is assessed the penalty, how expeditiously the violation was corrected, and whether~~
23 ~~significant harm resulted to the public health or safety from the violation.~~

24 ~~(5) If the respondent fails to pay all or part of an administrative penalty assessed pursuant to this~~
25 ~~section, the department may take action in district court to recover the amount of the penalty that is unpaid~~
26 ~~and any additional amounts assessed or sought under this chapter.~~

27 ~~(6) Action taken by the department pursuant to this section does not bar other action under this~~
28 ~~chapter or any other remedy available to the department for violations of applicable laws or rules adopted~~
29 ~~pursuant to those laws.~~

30 ~~(7) Administrative penalties collected under this section must be deposited in the special revenue~~

1 ~~account provided for in 50-51-110.~~

2

3 **Section 7.** Section 50-52-102, MCA, is amended to read:

4 **"50-52-102. Department to adopt rules.** The department ~~shall~~ may adopt rules for constructing
5 and operating campgrounds, trailer courts, work camps, and youth camps to ~~insure sanitation and~~ protect
6 the public health and safety. The rules may include rules to:

7 (1) ensure that establishments have safe and sanitary facilities and systems, including drinking
8 water, sewage disposal, and solid waste disposal systems;

9 (2) regulate service buildings or facilities associated with any activity regulated by this chapter,
10 including laundry and food service facilities;

11 (3) provide for review and approval of plans and specifications for establishments;

12 (4) address nuisances that could cause the spread of disease or illness;

13 (5) implement staggered license expiration dates;

14 (6) address licensing of establishments under this chapter and operator requirements; AND

15 (7) provide for reimbursing local governments for inspections and enforcement of this chapter; and.

16 ~~(8) address any other subject necessary to implement the provisions of this chapter."~~

17

18 ~~**Section 10.** Section 50-52-107, MCA, is amended to read:~~

19 ~~**"50-52-107. Civil penalties — injunctions other enforcement not barred.** (1) An establishment that~~
20 ~~violates this chapter or rules adopted by the department pursuant to this chapter is subject to a civil penalty~~
21 ~~not to exceed \$500 for each violation. Each day of violation is a separate violation for purposes of this~~
22 ~~section.~~

23 ~~(2) Civil A civil action to impose penalties, as provided under this section, does not bar~~
24 ~~administrative enforcement under [section 13], administrative penalties under [section 14], or injunctions~~
25 ~~to enforce compliance with this chapter or to enforce compliance with a rule adopted by the department~~
26 ~~pursuant to this chapter."~~

27

28 **Section 8.** Section 50-52-203, MCA, is amended to read:

29 **"50-52-203. Expiration date of license.** Licenses (1) Except as provided in subsection (2),
30 licenses expire on December 31 of the year in which they are issued unless canceled for cause.

1 (2) The department may amend or issue licenses to provide for staggered expiration dates. The
 2 department may provide for initial license terms of greater than 12 months but no more than 23 months
 3 in adopting staggered expiration dates. Thereafter, licenses expire annually. License fees for the license
 4 term implementing staggered license terms will be prorated by the department."

5
 6 **NEW SECTION. Section 9. Right to renewal.** (1) The department shall renew licenses as a matter
 7 of right, unless conditions exist that are grounds for cancellation or denial of a license.

8 (2) Renewal may be obtained annually by paying the required annual license fee.

9
 10 ~~**NEW SECTION. Section 13. Administrative enforcement notice of violation hearing.**~~ (1) If the
 11 ~~department believes that a violation of this chapter, a rule adopted pursuant to this chapter, an order issued~~
 12 ~~pursuant to this chapter, or a condition or limitation imposed by a license issued pursuant to this chapter~~
 13 ~~has occurred, it may serve a written notice of the violation on the alleged violator or the violator's agent~~
 14 ~~personally or by certified mail. The notice must specify the statute, rule, order, or license condition or~~
 15 ~~limitation alleged to have been violated and the facts alleged to constitute the violation. The notice may~~
 16 ~~include an order to take necessary corrective action, including ceasing the violation within a period of time~~
 17 ~~stated in the order. The order becomes final unless, within 10 days after the notice is received, the person~~
 18 ~~named as the respondent in the order requests in writing a hearing before the department. Until issuance~~
 19 ~~of a contrary decision by the department, an order issued pursuant to this section remains effective and~~
 20 ~~enforceable.~~

21 ~~(2) A hearing requested by the respondent must be held in accordance with the contested case~~
 22 ~~provisions of the Montana Administrative Procedure Act. If, after a hearing, the department finds that a~~
 23 ~~violation has occurred, the department shall issue an appropriate order for the prevention, abatement, or~~
 24 ~~control of the violation involved or the taking of other corrective action. An order issued as part of a notice~~
 25 ~~of violation or after a hearing may prescribe the date by which the violation must cease and the time limits~~
 26 ~~for a particular action in preventing, abating, or controlling the violation. If, after a hearing, the department~~
 27 ~~finds that a violation has not occurred or is not occurring, the department shall declare the order void.~~

28 ~~(3) Instead of or in addition to issuing the order provided in subsections (1) and (2), the department~~
 29 ~~may take action under another applicable provision of this chapter.~~

30 ~~(4) Section 50-52-206 does not apply to an action taken by the department pursuant to this~~

1 ~~section.~~

2 ~~(5) Before taking an action pursuant to this section, the department may attempt to obtain~~
 3 ~~voluntary compliance through use of a warning, a conference, or other appropriate means.~~

4
 5 ~~**NEW SECTION. Section 14. Administrative penalties — appeals — venue for hearings.** (1) An~~
 6 ~~establishment that violates an order issued by the department pursuant to [section 13] may be assessed~~
 7 ~~and ordered by the department to pay an administrative penalty not to exceed \$200 for each violation.~~
 8 ~~Each day of violation constitutes a separate violation. The department may assess the penalty by an order~~
 9 ~~issued pursuant to this section or may suspend all or a part of the administrative penalty assessed under~~
 10 ~~this section if the violation that caused the assessment of the penalty is corrected within a specified time.~~
 11 ~~Assessment of an administrative penalty under this section may be made in conjunction with an order~~
 12 ~~issued pursuant to [section 13(2)] after a hearing as provided in [section 13(2)].~~

13 ~~(2) When the department assesses an administrative penalty under this section, it must have~~
 14 ~~written notice served personally or by certified mail on the alleged violator or the violator's agent. For~~
 15 ~~purposes of this chapter, service by mail is complete on the day of receipt. The notice must state:~~

16 ~~(a) the order alleged to have been violated;~~

17 ~~(b) the facts alleged to constitute the violation;~~

18 ~~(c) the amount of the administrative penalty assessed under this section;~~

19 ~~(d) the amount, if any, of the penalty to be suspended upon correction of the condition that caused~~
 20 ~~the assessment of the penalty;~~

21 ~~(e) the nature of any corrective action that the department requires if a portion of the penalty is~~
 22 ~~to be suspended;~~

23 ~~(f) the time within which the corrective action is to be taken or the time within which the~~
 24 ~~administrative penalty is to be paid;~~

25 ~~(g) the right to a hearing, as provided in this section, and the time, place, and nature of any~~
 26 ~~hearing; and~~

27 ~~(h) that the hearing provided in this section may be waived or that the alleged violator may proceed~~
 28 ~~by informal disposition under 2-4-603.~~

29 ~~(3) The department shall provide the respondent assessed a penalty under this section an~~
 30 ~~opportunity for a hearing to either contest the alleged violation or request mitigation of the penalty. The~~

1 ~~contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter~~
 2 ~~4, part 6, apply to a hearing conducted under this section. If a hearing is held under this section, it must~~
 3 ~~be held in Lewis and Clark County or the county in which the alleged violation occurred.~~

4 ~~(4) In determining appropriate penalties for violations, the department shall consider the gravity of~~
 5 ~~the violations and the potential for significant harm to the public health or safety. In determining the~~
 6 ~~appropriate amount of penalty, if any, to be suspended upon correction of the condition that caused the~~
 7 ~~penalty assessment, the department shall consider the cooperation and the degree of care exercised by the~~
 8 ~~respondent who is assessed the penalty, how expeditiously the violation was corrected, and whether~~
 9 ~~significant harm resulted to the public health or safety from the violation.~~

10 ~~(5) If the respondent fails to pay all or part of an administrative penalty assessed pursuant to this~~
 11 ~~section, the department may take action in district court to recover the amount of the penalty that is unpaid~~
 12 ~~and any additional amounts assessed or sought under this chapter.~~

13 ~~(6) Action taken by the department pursuant to this section does not bar other action under this~~
 14 ~~chapter or any other remedy available to the department for violations of applicable laws or rules adopted~~
 15 ~~pursuant to those laws.~~

16 ~~(7) Administrative penalties collected under this section must be deposited in the special revenue~~
 17 ~~account provided for in 50-52-210.~~

18
 19 NEW SECTION. Section 10. Codification instruction. (1) ~~{Sections 7 and 8} are [SECTION 6] IS~~
 20 ~~intended to be codified as an integral part of Title 50, chapter 51, and the provisions of Title 50, chapter~~
 21 ~~51, apply to {sections 7 and 8} [SECTION 6].~~

22 (2) ~~{Sections 12 through 14} are [SECTION 9] IS~~ intended to be codified as an integral part of Title
 23 50, chapter 52, and the provisions of Title 50, chapter 52, apply to ~~{sections 12 through 14} [SECTION~~
 24 ~~9].~~

25
 26 NEW SECTION. Section 16. Retroactive applicability. ~~{Sections 4, 6 through 8, and 10 through~~
 27 ~~14} apply retroactively, within the meaning of 1-2-109, to licenses issued pursuant to Title 50, chapter 51~~
 28 ~~or 52, prior to October 1, 1997.~~

29
 30 NEW SECTION. Section 11. Effective dates. (1) ~~{Sections 2, 9, 15, and 16 and this section}~~

1 [SECTIONS 2, 6, 7, AND 10 AND THIS SECTION] are effective on passage and approval.

2 (2) ~~(Sections 1, 3 through 8, and 10 through 14)~~ [SECTIONS 1, 3 THROUGH 5, 8, AND 9] are
3 effective October 1, 1997.

4 -END-

1 SENATE BILL NO. 118

2 INTRODUCED BY CRISMORE

3 BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO PUBLIC
6 ACCOMMODATIONS, CAMPGROUNDS, AND TRAILER COURTS; PROVIDING DEFINITIONS; CLARIFYING
7 THAT A BED AND BREAKFAST IS A PUBLIC ACCOMMODATION; AUTHORIZING THE DEPARTMENT OF
8 PUBLIC HEALTH AND HUMAN SERVICES TO ADOPT RULES; PROVIDING FOR EXPIRATION AND
9 CANCELLATION OF LICENSES; ~~PROVIDING FOR ENFORCEMENT METHODS AND CIVIL AND~~
10 ~~ADMINISTRATIVE PENALTIES~~; AMENDING SECTIONS 50-51-102, 50-51-103, 50-51-201, 50-51-207,
11 50-51-212, ~~50-51-401~~, 50-52-102, ~~50-52-107~~, AND 50-52-203, MCA; AND PROVIDING EFFECTIVE
12 DATES ~~AND A RETROACTIVE APPLICABILITY 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. 118

INTRODUCED BY CRISMORE

BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO PUBLIC ACCOMMODATIONS, CAMPGROUNDS, AND TRAILER COURTS; PROVIDING DEFINITIONS; CLARIFYING THAT A BED AND BREAKFAST IS A PUBLIC ACCOMMODATION; AUTHORIZING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO ADOPT RULES; PROVIDING FOR EXPIRATION AND CANCELLATION OF LICENSES; ~~PROVIDING FOR ENFORCEMENT METHODS AND CIVIL AND ADMINISTRATIVE PENALTIES;~~ AMENDING SECTIONS 50-51-102, 50-51-103, 50-51-201, 50-51-207, 50-51-212, ~~50-51-401,~~ 50-52-102, ~~50-52-107,~~ AND 50-52-203, MCA; AND PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE."

STATEMENT OF INTENT

A STATEMENT OF INTENT IS REQUIRED FOR THIS BILL BECAUSE ADDITIONAL RULEMAKING AUTHORITY, BEYOND THAT ALREADY GRANTED BY 50-51-103 AND 50-52-102, IS BEING GIVEN TO THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES. THE RULEMAKING AUTHORITY WILL ALLOW THE DEPARTMENT TO ADOPT RULES FOR ESTABLISHMENTS REGULATED BY TITLE 50, CHAPTER 51, IN THE FOLLOWING AREAS:

- (1) REQUIREMENTS FOR FOOD SERVICE;
- (2) REQUIREMENTS FOR BED AND BREAKFAST ESTABLISHMENTS;
- (3) REQUIREMENTS TO IMPLEMENT STAGGERED LICENSE EXPIRATION DATES; AND
- (4) REQUIREMENTS ADDRESSING REIMBURSEMENT OF LOCAL GOVERNMENTS FOR INSPECTIONS AND ENFORCEMENT.

THE AMENDED RULEMAKING AUTHORITY IN 50-52-102 WILL CLARIFY THE DEPARTMENT'S AUTHORITY TO ADOPT RULES FOR ESTABLISHMENTS REGULATED BY TITLE 50, CHAPTER 52, IN THE FOLLOWING AREAS:

- (1) REQUIREMENTS TO ENSURE THAT ESTABLISHMENTS HAVE SAFE AND SANITARY FACILITIES AND SYSTEMS;
- (2) REQUIREMENTS FOR SERVICE BUILDINGS OR FACILITIES;

- 1 (3) REQUIREMENTS FOR PLAN REVIEW;
 2 (4) REQUIREMENTS ADDRESSING NUISANCES THAT COULD CAUSE THE SPREAD OF DISEASE
 3 OR ILLNESS;
 4 (5) REQUIREMENTS TO IMPLEMENT STAGGERED LICENSE EXPIRATION DATES;
 5 (6) REQUIREMENTS ADDRESSING LICENSING OF ESTABLISHMENTS AND OPERATOR
 6 REQUIREMENTS; AND
 7 (7) REQUIREMENTS ADDRESSING REIMBURSEMENT OF LOCAL GOVERNMENTS FOR INSPECTION
 8 AND ENFORCEMENT.

9

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

11

12 **Section 1.** Section 50-51-102, MCA, is amended to read:13 "**50-51-102. Definitions.** Unless the context requires otherwise, in this chapter, the following
 14 definitions apply:15 (1) "Bed and breakfast" means a private, ~~owner-occupied~~ OWNER- OR MANAGER-
 16 MANAGER-OCCUPIED residence that is primarily used as a private residence but in which:17 ~~(a) one to six guest rooms are made available to transient guests;~~18 ~~(b)(A) breakfast is the only meal served and is included in the charge for a guest room; and~~19 ~~(c)(B) the number of daily guests SERVED does not exceed 18.~~20 ~~(1)(2) "Department" means the department of public health and human services provided for in~~
 21 2-15-2201.22 ~~(2)(3) "Establishment" means a bed and breakfast, hotel, motel, roominghouse, boardinghouse,~~
 23 or tourist home.24 ~~(3)(4) "Hotel" or "motel" includes:~~25 ~~(a) a building or structure kept, used, maintained as, advertised as, or held out to the public to be~~
 26 a hotel, motel, inn, motor court, tourist court, or public lodginghouse, ~~or;~~27 ~~(b) a place where sleeping accommodations are furnished for a fee to transient guests, with or~~
 28 without meals; ~~or.~~29 ~~(c) an establishment that is not a bed and breakfast and that is primarily used as a private residence~~
 30 but in which guest rooms are made available to transient guests.

1 ~~(4)~~(5) "Person" includes an individual, partnership, corporation, association, county, municipality,
2 cooperative group, or other entity engaged in the business of operating, owning, or offering the services
3 of a bed and breakfast, hotel, motel, boardinghouse, tourist home, or roominghouse.

4 ~~(5)~~(6) "Roominghouse" or "boardinghouse" means buildings in which separate sleeping rooms are
5 rented that provide sleeping accommodations for three or more persons on a weekly, semimonthly,
6 monthly, or permanent basis, whether or not meals or central kitchens are provided but without separated
7 cooking facilities or kitchens within each room, and whose occupants do not need professional nursing or
8 personal-care services provided by the facility.

9 ~~(6)~~(7) "Tourist home" means ~~an establishment or premises where sleeping accommodations are~~
10 ~~furnished to transient guests for hire or rent on a daily or weekly rental basis in a private home when the~~
11 ~~accommodations are offered for hire or rent for the use of the traveling public.~~ a private home or
12 condominium that is not occupied by an owner or manager and that is rented, leased, or furnished in its
13 entirety to transient guests on a daily or weekly basis.

14 ~~(7)~~(8) "Transient guest" means a guest for only a brief stay, such as the traveling public."
15

16 **Section 2.** Section 50-51-103, MCA, is amended to read:

17 "**50-51-103. Department authorized to adopt rules.** The department may adopt ~~and enforce~~ rules
18 ~~to preserve~~ governing the construction and operation of bed and breakfasts, hotels, motels, roominghouses,
19 boardinghouses, and tourist homes to protect the public health and safety. These rules shall relate to
20 construction, furnishings, housekeeping, personnel, sanitary facilities and controls, water supply, sewerage
21 and sewage disposal system, refuse collection and disposal, registration and supervision, and fire and life
22 safety code. The rules may include rules to:

23 ~~(1) ensure that establishments have safe and sanitary facilities and systems, including drinking~~
24 ~~water, sewage disposal, and solid waste disposal systems;~~

25 ~~(2) regulate services provided by establishments, including laundry, food, and housekeeping~~
26 ~~services;~~

27 ~~(3) provide for review and approval of plans and specifications for establishments;~~

28 ~~(4) prevent injury and the spread of disease or illness in establishments;~~

29 ~~(5) ensure that establishments are operated and maintained in a safe and sanitary manner;~~

30 ~~(6) implement staggered license expiration dates;~~

1 ~~(7) address licencing of establishments under this chapter;~~
 2 ~~(8) provide for reimbursing local governments for inspections and enforcement of this chapter; and~~
 3 ~~(9) address other subjects necessary to implement the provisions of this chapter. THESE RULES~~
 4 MAY RELATE TO CONSTRUCTION, FURNISHINGS, HOUSEKEEPING, PERSONNEL, SANITARY FACILITIES
 5 AND CONTROLS, WATER SUPPLY, SEWERAGE AND SEWAGE DISPOSAL SYSTEM SYSTEMS, REFUSE
 6 COLLECTION AND DISPOSAL, REGISTRATION AND SUPERVISION, FIRE AND LIFE SAFETY, FOOD
 7 SERVICE, SPECIAL REQUIREMENTS RULES FOR BED AND BREAKFAST ESTABLISHMENTS, STAGGERED
 8 LICENSE EXPIRATION DATES, AND REIMBURSEMENT OF LOCAL GOVERNMENTS FOR INSPECTIONS AND
 9 ENFORCEMENT."

10
 11 **Section 3.** Section 50-51-201, MCA, is amended to read:

12 "50-51-201. **License required.** (1) ~~Each year, every~~ A person engaged in the business of
 13 conducting or operating a bed and breakfast, hotel, motel, tourist home, boardinghouse, or roominghouse
 14 shall procure a license issued by the department.

15 (2) A separate license is required for each establishment; however, when more than one of each
 16 type of establishment is operated on the same premises and under the same management, only one license
 17 is required that must enumerate on the certificate the types of establishments licensed.

18 (3) Before a license may be issued by the department, it must be validated by the local health
 19 officer or, if there is no local health officer, the sanitarian, in the county where the establishment is
 20 located."

21
 22 **Section 4.** Section 50-51-207, MCA, is amended to read:

23 "50-51-207. **Expiration date of license.** (1) Each ~~Each~~ Except as provided in subsection (2), each
 24 license shall expire expires on December 31 following its date of issue unless canceled for cause.

25 (2) The department may amend or issue licenses to provide for staggered expiration dates. The
 26 department may provide for initial license terms of greater than 12 months but no more than 23 months
 27 in adopting staggered expiration dates. Thereafter, licenses expire annually. License fees for the license
 28 term implementing staggered license terms will MAY be prorated by the department."

29
 30 **Section 5.** Section 50-51-212, MCA, is amended to read:

1 "50-51-212. **Cancellation of license for multiple-type establishment -- definition.** (1) When a
2 multiple-type establishment is licensed by the department, the denial or cancellation of the license may
3 affect the entire establishment or only a portion of it as determined by the department {.

4 (2) For the purposes of this section, a multiple-type establishment "multiple-type establishment"
5 includes two or more of the following: bed and breakfast, hotel, motel, or tourist home}."

6
7 ~~Section 6. Section 50-51-401, MCA, is amended to read:~~

8 ~~"50-51-401. **Civil penalties -- injunctions other enforcement not barred.** (1) An establishment that~~
9 ~~violates this chapter or rules adopted by the department pursuant to this chapter is subject to a civil penalty~~
10 ~~not to exceed \$500 for each violation. Each day of violation is a separate violation for the purposes of this~~
11 ~~section.~~

12 ~~(2) Civil A civil action to impose penalties, as provided under this section, does not bar~~
13 ~~administrative enforcement under [section 7], administrative penalties under [section 8], or injunctions to~~
14 ~~enforce compliance with this chapter or to enforce compliance with a rule adopted by the department~~
15 ~~pursuant to this chapter."~~

16
17 NEW SECTION. SECTION 6. SPECIAL REQUIREMENTS RULES FOR BED AND BREAKFAST
18 ESTABLISHMENTS. THE DEPARTMENT, IN ADOPTING RULES ESTABLISHING SPECIAL REQUIREMENTS
19 RULES FOR BED AND BREAKFAST ESTABLISHMENTS, SHALL CONSULT WITH BED AND BREAKFAST
20 OPERATORS. THE DEPARTMENT SHALL ESTABLISH A NEGOTIATED RULEMAKING COMMITTEE, AS
21 PROVIDED IN TITLE 2, CHAPTER 5, PART 1, TO CONSIDER MATTERS PROPOSED BY THE DEPARTMENT
22 THAT AFFECT BED AND BREAKFAST ESTABLISHMENTS.

23
24 ~~NEW SECTION. Section 7. **Administrative enforcement -- notice of violation -- hearing.** (1) If the~~
25 ~~department believes that a violation of this chapter, a rule adopted pursuant to this chapter, an order issued~~
26 ~~pursuant to this chapter, or a condition or limitation imposed by a license issued pursuant to this chapter~~
27 ~~has occurred, it may serve a written notice of the violation on the alleged violator or the violator's agent~~
28 ~~personally or by certified mail. The notice must specify the statute, rule, order, or license condition or~~
29 ~~limitation alleged to have been violated and the facts alleged to constitute the violation. The notice may~~
30 ~~include an order to take necessary corrective action, including ceasing the violation within a period of time~~

1 ~~stated in the order. The order becomes final unless, within 10 days after the notice is received, the person~~
 2 ~~named as the respondent in the order requests in writing a hearing before the department. Until issuance~~
 3 ~~of a contrary decision by the department, an order issued pursuant to this section remains effective and~~
 4 ~~enforceable.~~

5 ~~(2) A hearing requested by the respondent must be held in accordance with the contested case~~
 6 ~~provisions of the Montana Administrative Procedure Act, as provided in Title 2, chapter 4, part 6. If, after~~
 7 ~~a hearing, the department finds that a violation has occurred, the department shall issue an appropriate~~
 8 ~~order for the prevention, abatement, or control of the violation involved or the taking of other corrective~~
 9 ~~action. An order issued as part of a notice of violation or after a hearing may prescribe the date by which~~
 10 ~~the violation must cease and the time limits for a particular action in preventing, abating, or controlling the~~
 11 ~~violation. If, after a hearing, the department finds that a violation has not occurred or is not occurring, the~~
 12 ~~department shall declare the order void.~~

13 ~~(3) Instead of or in addition to issuing the order provided in subsections (1) and (2), the department~~
 14 ~~may take action under another applicable provision of this chapter.~~

15 ~~(4) Section 50-51-210 does not apply to an action taken by the department pursuant to this~~
 16 ~~section.~~

17 ~~(5) Before taking an action pursuant to this section, the department may attempt to obtain~~
 18 ~~voluntary compliance through use of a warning, a conference, or other appropriate means.~~

19
 20 ~~NEW SECTION. Section 8. Administrative penalties -- appeals -- venue for hearing. (1) An~~
 21 ~~establishment that violates an order issued by the department pursuant to [section 7] may be assessed and~~
 22 ~~ordered by the department to pay an administrative penalty not to exceed \$200 for each violation. Each~~
 23 ~~day of violation constitutes a separate violation. The department may assess the penalty by an order issued~~
 24 ~~pursuant to this section or may suspend all or a part of the administrative penalty assessed under this~~
 25 ~~section if the violation that caused the assessment of the penalty is corrected within a specified time.~~
 26 ~~Assessment of an administrative penalty under this section may be made in conjunction with an order~~
 27 ~~issued pursuant to [section 7(2)] after a hearing as provided in [section 7(2)].~~

28 ~~(2) When the department assesses an administrative penalty under this section, it must have~~
 29 ~~written notice served personally or by certified mail on the alleged violator or the violator's agent. For~~
 30 ~~purposes of this chapter, service by mail is complete on the day of receipt. The notice must state:~~

- 1 ~~(a) the order alleged to have been violated;~~
- 2 ~~(b) the facts alleged to constitute the violation;~~
- 3 ~~(c) the amount of the administrative penalty assessed under this section;~~
- 4 ~~(d) the amount, if any, of the penalty to be suspended upon correction of the condition that caused~~
5 ~~the assessment of the penalty;~~
- 6 ~~(e) the nature of any corrective action that the department requires if a portion of the penalty is~~
7 ~~to be suspended;~~
- 8 ~~(f) the time within which the corrective action is to be taken or the time within which the~~
9 ~~administrative penalty is to be paid;~~
- 10 ~~(g) the right to a hearing, as provided in this section, and the time, place, and nature of any~~
11 ~~hearing; and~~
- 12 ~~(h) that the hearing, provided in this section may be waived or that the alleged violator may~~
13 ~~proceed by informal disposition pursuant to 2-4-603.~~
- 14 ~~(3) The department shall provide the respondent who is assessed a penalty under this section with~~
15 ~~an opportunity for a hearing to either contest the alleged violation or request mitigation of the penalty. The~~
16 ~~contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter~~
17 ~~4, part 6, apply to a hearing conducted under this section. If a hearing is held under this section, it must~~
18 ~~be held in Lewis and Clark County or the county in which the alleged violation occurred.~~
- 19 ~~(4) In determining appropriate penalties for violations, the department shall consider the gravity of~~
20 ~~the violations and the potential for significant harm to the public health or safety. In determining the~~
21 ~~appropriate amount of penalty, if any, to be suspended upon correction of the condition that caused the~~
22 ~~penalty assessment, the department shall consider the cooperation and the degree of care exercised by the~~
23 ~~respondent who is assessed the penalty, how expeditiously the violation was corrected, and whether~~
24 ~~significant harm resulted to the public health or safety from the violation.~~
- 25 ~~(5) If the respondent fails to pay all or part of an administrative penalty assessed pursuant to this~~
26 ~~section, the department may take action in district court to recover the amount of the penalty that is unpaid~~
27 ~~and any additional amounts assessed or sought under this chapter.~~
- 28 ~~(6) Action taken by the department pursuant to this section does not bar other action under this~~
29 ~~chapter or any other remedy available to the department for violations of applicable laws or rules adopted~~
30 ~~pursuant to those laws.~~

1 ~~(7) Administrative penalties collected under this section must be deposited in the special revenue~~
2 ~~account provided for in 50-51-110.~~

3
4 **Section 7.** Section 50-52-102, MCA, is amended to read:

5 "**50-52-102. Department to adopt rules.** The department ~~shall~~ may adopt rules for constructing
6 and operating campgrounds, trailer courts, work camps, and youth camps to ~~insure sanitation and protect~~
7 the public health and safety. The rules may include rules to:

8 (1) ensure that establishments have safe and sanitary facilities and systems, including drinking
9 water, sewage disposal, and solid waste disposal systems;

10 (2) regulate service buildings or facilities associated with any activity regulated by this chapter,
11 including laundry and food service facilities;

12 (3) provide for review and approval of plans and specifications for establishments;

13 (4) address nuisances that could cause the spread of disease or illness;

14 (5) implement staggered license expiration dates;

15 (6) address licensing of establishments under this chapter and operator requirements; AND

16 (7) provide for reimbursing local governments for inspections and enforcement of this chapter; and.

17 ~~(8) address any other subject necessary to implement the provisions of this chapter."~~

18
19 ~~**Section 10.** Section 50-52-107, MCA, is amended to read:~~

20 ~~"**50-52-107. Civil penalties— injunctions other enforcement not barred.** (1) An establishment that~~
21 ~~violates this chapter or rules adopted by the department pursuant to this chapter is subject to a civil penalty~~
22 ~~not to exceed \$500 for each violation. Each day of violation is a separate violation for purposes of this~~
23 ~~section.~~

24 ~~(2) Civil A civil action to impose penalties, as provided under this section, does not bar~~
25 ~~administrative enforcement under [section 13], administrative penalties under [section 14], or injunctions~~
26 ~~to enforce compliance with this chapter or to enforce compliance with a rule adopted by the department~~
27 ~~pursuant to this chapter."~~

28
29 **Section 8.** Section 50-52-203, MCA, is amended to read:

30 "**50-52-203. Expiration date of license.** Licenses (1) Except as provided in subsection (2),

1 licenses expire on December 31 of the year in which they are issued unless canceled for cause.

2 (2) The department may amend or issue licenses to provide for staggered expiration dates. The
3 department may provide for initial license terms of greater than 12 months but no more than 23 months
4 in adopting staggered expiration dates. Thereafter, licenses expire annually. License fees for the license
5 term implementing staggered license terms will be prorated by the department."

6
7 **NEW SECTION. Section 9. Right to renewal.** (1) The department shall renew licenses as a matter
8 of right, unless conditions exist that are grounds for cancellation or denial of a license.

9 (2) Renewal may be obtained annually by paying the required annual license fee.

10
11 **NEW SECTION. Section 13. Administrative enforcement -- notice of violation -- hearing.** (1) If the
12 ~~department believes that a violation of this chapter, a rule adopted pursuant to this chapter, an order issued~~
13 ~~pursuant to this chapter, or a condition or limitation imposed by a license issued pursuant to this chapter~~
14 ~~has occurred, it may serve a written notice of the violation on the alleged violator or the violator's agent~~
15 ~~personally or by certified mail. The notice must specify the statute, rule, order, or license condition or~~
16 ~~limitation alleged to have been violated and the facts alleged to constitute the violation. The notice may~~
17 ~~include an order to take necessary corrective action, including ceasing the violation within a period of time~~
18 ~~stated in the order. The order becomes final unless, within 10 days after the notice is received, the person~~
19 ~~named as the respondent in the order requests in writing a hearing before the department. Until issuance~~
20 ~~of a contrary decision by the department, an order issued pursuant to this section remains effective and~~
21 ~~enforceable.~~

22 (2) ~~A hearing requested by the respondent must be held in accordance with the contested case~~
23 ~~provisions of the Montana Administrative Procedure Act. If, after a hearing, the department finds that a~~
24 ~~violation has occurred, the department shall issue an appropriate order for the prevention, abatement, or~~
25 ~~control of the violation involved or the taking of other corrective action. An order issued as part of a notice~~
26 ~~of violation or after a hearing may prescribe the date by which the violation must cease and the time limits~~
27 ~~for a particular action in preventing, abating, or controlling the violation. If, after a hearing, the department~~
28 ~~finds that a violation has not occurred or is not occurring, the department shall declare the order void.~~

29 (3) ~~Instead of or in addition to issuing the order provided in subsections (1) and (2), the department~~
30 ~~may take action under another applicable provision of this chapter.~~

1 ~~{4} Section 50-52-206 does not apply to an action taken by the department pursuant to this~~
2 ~~section.~~

3 ~~{5} Before taking an action pursuant to this section, the department may attempt to obtain~~
4 ~~voluntary compliance through use of a warning, a conference, or other appropriate means.~~

5

6 ~~NEW SECTION. Section 14. Administrative penalties -- appeals -- venue for hearings. (1) An~~
7 ~~establishment that violates an order issued by the department pursuant to [section 13] may be assessed~~
8 ~~and ordered by the department to pay an administrative penalty not to exceed \$200 for each violation.~~
9 ~~Each day of violation constitutes a separate violation. The department may assess the penalty by an order~~
10 ~~issued pursuant to this section or may suspend all or a part of the administrative penalty assessed under~~
11 ~~this section if the violation that caused the assessment of the penalty is corrected within a specified time.~~
12 ~~Assessment of an administrative penalty under this section may be made in conjunction with an order~~
13 ~~issued pursuant to [section 13(2)] after a hearing as provided in [section 13(2)].~~

14 ~~(2) When the department assesses an administrative penalty under this section, it must have~~
15 ~~written notice served personally or by certified mail on the alleged violator or the violator's agent. For~~
16 ~~purposes of this chapter, service by mail is complete on the day of receipt. The notice must state:~~

17 ~~(a) the order alleged to have been violated;~~

18 ~~(b) the facts alleged to constitute the violation;~~

19 ~~(c) the amount of the administrative penalty assessed under this section;~~

20 ~~(d) the amount, if any, of the penalty to be suspended upon correction of the condition that caused~~
21 ~~the assessment of the penalty;~~

22 ~~(e) the nature of any corrective action that the department requires if a portion of the penalty is~~
23 ~~to be suspended;~~

24 ~~(f) the time within which the corrective action is to be taken or the time within which the~~
25 ~~administrative penalty is to be paid;~~

26 ~~(g) the right to a hearing, as provided in this section, and the time, place, and nature of any~~
27 ~~hearing; and~~

28 ~~(h) that the hearing provided in this section may be waived or that the alleged violator may proceed~~
29 ~~by informal disposition under 2-4-603.~~

30 ~~(3) The department shall provide the respondent assessed a penalty under this section an~~

1 opportunity for a hearing to either contest the alleged violation or request mitigation of the penalty. The
 2 contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter
 3 4, part 6, apply to a hearing conducted under this section. If a hearing is held under this section, it must
 4 be held in Lewis and Clark County or the county in which the alleged violation occurred.

5 (4) In determining appropriate penalties for violations, the department shall consider the gravity of
 6 the violations and the potential for significant harm to the public health or safety. In determining the
 7 appropriate amount of penalty, if any, to be suspended upon correction of the condition that caused the
 8 penalty assessment, the department shall consider the cooperation and the degree of care exercised by the
 9 respondent who is assessed the penalty, how expeditiously the violation was corrected, and whether
 10 significant harm resulted to the public health or safety from the violation.

11 (5) If the respondent fails to pay all or part of an administrative penalty assessed pursuant to this
 12 section, the department may take action in district court to recover the amount of the penalty that is unpaid
 13 and any additional amounts assessed or sought under this chapter.

14 (6) Action taken by the department pursuant to this section does not bar other action under this
 15 chapter or any other remedy available to the department for violations of applicable laws or rules adopted
 16 pursuant to those laws.

17 (7) Administrative penalties collected under this section must be deposited in the special revenue
 18 account provided for in 50-52-210.

19
 20 **NEW SECTION. Section 10. Codification instruction.** (1) ~~{Sections 7 and 8}~~ are **[SECTION 6]** IS
 21 intended to be codified as an integral part of Title 50, chapter 51, and the provisions of Title 50, chapter
 22 51, apply to ~~{sections 7 and 8}~~ **[SECTION 6]**.

23 (2) ~~{Sections 12 through 14}~~ are **[SECTION 9]** IS intended to be codified as an integral part of Title
 24 50, chapter 52, and the provisions of Title 50, chapter 52, apply to ~~{sections 12 through 14}~~ **[SECTION**
 25 **9]**.

26
 27 **NEW SECTION. Section 16. Retroactive applicability.** ~~{Sections 4, 6 through 8, and 10 through~~
 28 ~~14}~~ apply retroactively, within the meaning of 1-2-109, to licenses issued pursuant to Title 50, chapter 51
 29 or 52, prior to October 1, 1997.

30

1 SENATE BILL NO. 118

2 INTRODUCED BY CRISMORE

3 BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO PUBLIC
 6 ACCOMMODATIONS, CAMPGROUNDS, AND TRAILER COURTS; PROVIDING DEFINITIONS; CLARIFYING
 7 THAT A BED AND BREAKFAST IS A PUBLIC ACCOMMODATION; AUTHORIZING THE DEPARTMENT OF
 8 PUBLIC HEALTH AND HUMAN SERVICES TO ADOPT RULES; PROVIDING FOR EXPIRATION AND
 9 CANCELLATION OF LICENSES; ~~PROVIDING FOR ENFORCEMENT METHODS AND CIVIL AND~~
 10 ~~ADMINISTRATIVE PENALTIES~~; AMENDING SECTIONS 50-51-102, 50-51-103, 50-51-201, 50-51-207,
 11 50-51-212, ~~50-51-401~~, 50-52-102, ~~50-52-107~~, AND 50-52-203, MCA; AND PROVIDING EFFECTIVE
 12 DATES ~~AND A RETROACTIVE APPLICABILITY DATE.~~"

13
14 STATEMENT OF INTENT

15 A STATEMENT OF INTENT IS REQUIRED FOR THIS BILL BECAUSE ADDITIONAL RULEMAKING
 16 AUTHORITY, BEYOND THAT ALREADY GRANTED BY 50-51-103 AND 50-52-102, IS BEING GIVEN TO
 17 THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES. THE RULEMAKING AUTHORITY WILL
 18 ALLOW THE DEPARTMENT TO ADOPT RULES FOR ESTABLISHMENTS REGULATED BY TITLE 50,
 19 CHAPTER 51, IN THE FOLLOWING AREAS:

20 (1) REQUIREMENTS FOR FOOD SERVICE;21 (2) REQUIREMENTS FOR BED AND BREAKFAST ESTABLISHMENTS;22 (3) REQUIREMENTS TO IMPLEMENT STAGGERED LICENSE EXPIRATION DATES; AND23 (4) REQUIREMENTS ADDRESSING REIMBURSEMENT OF LOCAL GOVERNMENTS FOR
24 INSPECTIONS AND ENFORCEMENT.

25 THE AMENDED RULEMAKING AUTHORITY IN 50-52-102 WILL CLARIFY THE DEPARTMENT'S
 26 AUTHORITY TO ADOPT RULES FOR ESTABLISHMENTS REGULATED BY TITLE 50, CHAPTER 52, IN THE
 27 FOLLOWING AREAS:

28 (1) REQUIREMENTS TO ENSURE THAT ESTABLISHMENTS HAVE SAFE AND SANITARY
29 FACILITIES AND SYSTEMS;30 (2) REQUIREMENTS FOR SERVICE BUILDINGS OR FACILITIES;

- 1 (3) REQUIREMENTS FOR PLAN REVIEW;
 2 (4) REQUIREMENTS ADDRESSING NUISANCES THAT COULD CAUSE THE SPREAD OF DISEASE
 3 OR ILLNESS;
 4 (5) REQUIREMENTS TO IMPLEMENT STAGGERED LICENSE EXPIRATION DATES;
 5 (6) REQUIREMENTS ADDRESSING LICENSING OF ESTABLISHMENTS AND OPERATOR
 6 REQUIREMENTS; AND
 7 (7) REQUIREMENTS ADDRESSING REIMBURSEMENT OF LOCAL GOVERNMENTS FOR INSPECTION
 8 AND ENFORCEMENT.

9
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11
 12 **Section 1.** Section 50-51-102, MCA, is amended to read:

13 "**50-51-102. Definitions.** Unless the context requires otherwise, in this chapter, the following
 14 definitions apply:

15 (1) "Bed and breakfast" means a private, owner-occupied OWNER- OR MANAGER-
 16 MANAGER-OCCUPIED residence that is primarily used as a private residence but in which:

17 (a) one to six guest rooms are made available to transient guests;

18 (b)(A) breakfast is the only meal served and is included in the charge for a guest room; and

19 (B) the number of daily guests SERVED does not exceed 18.

20 (2) "Department" means the department of public health and human services provided for in
 21 2-15-2201.

22 (3) "Establishment" means a bed and breakfast, hotel, motel, roominghouse, boardinghouse,
 23 or tourist home.

24 (4) "Hotel" or "motel" includes:

25 (a) a building or structure kept, used, maintained as, advertised as, or held out to the public to be
 26 a hotel, motel, inn, motor court, tourist court, or public lodginghouse, or;

27 (b) a place where sleeping accommodations are furnished for a fee to transient guests, with or
 28 without meals; or.

29 (c) an establishment that is not a bed and breakfast and that is primarily used as a private residence
 30 but in which guest rooms are made available to transient guests.

1 ~~(4)~~(5) "Person" includes an individual, partnership, corporation, association, county, municipality,
2 cooperative group, or other entity engaged in the business of operating, owning, or offering the services
3 of a bed and breakfast, hotel, motel, boardinghouse, tourist home, or roominghouse.

4 ~~(5)~~(6) "Roominghouse" or "boardinghouse" means buildings in which separate sleeping rooms are
5 rented that provide sleeping accommodations for three or more persons on a weekly, semimonthly,
6 monthly, or permanent basis, whether or not meals or central kitchens are provided but without separated
7 cooking facilities or kitchens within each room, and whose occupants do not need professional nursing or
8 personal-care services provided by the facility.

9 ~~(6)~~(7) "Tourist home" means ~~an establishment or premises where sleeping accommodations are~~
10 ~~furnished to transient guests for hire or rent on a daily or weekly rental basis in a private home when the~~
11 ~~accommodations are offered for hire or rent for the use of the traveling public.~~ a private home or
12 condominium that is not occupied by an owner or manager and that is rented, leased, or furnished in its
13 entirety to transient guests on a daily or weekly basis.

14 ~~(7)~~(8) "Transient guest" means a guest for only a brief stay, such as the traveling public."
15

16 **Section 2.** Section 50-51-103, MCA, is amended to read:

17 **"50-51-103. Department authorized to adopt rules.** The department may adopt ~~and enforce~~ rules
18 ~~to preserve~~ governing the construction and operation of bed and breakfasts, hotels, motels, roominghouses,
19 boardinghouses, and tourist homes to protect the public health and safety. ~~These rules shall relate to~~
20 ~~construction, furnishings, housekeeping, personnel, sanitary facilities and controls, water supply, sewerage~~
21 ~~and sewage disposal system, refuse collection and disposal, registration and supervision, and fire and life~~
22 ~~safety code. The rules may include rules to:~~

23 ~~(1) ensure that establishments have safe and sanitary facilities and systems, including drinking~~
24 ~~water, sewage disposal, and solid waste disposal systems;~~

25 ~~(2) regulate services provided by establishments, including laundry, food, and housekeeping~~
26 ~~services;~~

27 ~~(3) provide for review and approval of plans and specifications for establishments;~~

28 ~~(4) prevent injury and the spread of disease or illness in establishments;~~

29 ~~(5) ensure that establishments are operated and maintained in a safe and sanitary manner;~~

30 ~~(6) implement staggered license expiration dates;~~

1 ~~(7) address licensing of establishments under this chapter;~~
 2 ~~(8) provide for reimbursing local governments for inspections and enforcement of this chapter; and~~
 3 ~~(9) address other subjects necessary to implement the provisions of this chapter.~~ THESE RULES
 4 MAY RELATE TO CONSTRUCTION, FURNISHINGS, HOUSEKEEPING, PERSONNEL, SANITARY FACILITIES
 5 AND CONTROLS, WATER SUPPLY, SEWERAGE AND SEWAGE DISPOSAL SYSTEM SYSTEMS, REFUSE
 6 COLLECTION AND DISPOSAL, REGISTRATION AND SUPERVISION, FIRE AND LIFE SAFETY, FOOD
 7 SERVICE, SPECIAL REQUIREMENTS RULES FOR BED AND BREAKFAST ESTABLISHMENTS, STAGGERED
 8 LICENSE EXPIRATION DATES, AND REIMBURSEMENT OF LOCAL GOVERNMENTS FOR INSPECTIONS AND
 9 ENFORCEMENT."

10

11 **Section 3.** Section 50-51-201, MCA, is amended to read:

12 **"50-51-201. License required.** (1) ~~Each year, every~~ A person engaged in the business of
 13 conducting or operating a bed and breakfast, hotel, motel, tourist home, boardinghouse, or roominghouse
 14 shall procure a license issued by the department.

15 (2) A separate license is required for each establishment; however, when more than one of each
 16 type of establishment is operated on the same premises and under the same management, only one license
 17 is required that must enumerate on the certificate the types of establishments licensed.

18 (3) Before a license may be issued by the department, it must be validated by the local health
 19 officer or, if there is no local health officer, the sanitarian, in the county where the establishment is
 20 located."

21

22 **Section 4.** Section 50-51-207, MCA, is amended to read:

23 **"50-51-207. Expiration date of license.** (1) ~~Each~~ Except as provided in subsection (2), each
 24 license ~~shall expire~~ expires on December 31 following its date of issue unless canceled for cause.

25 (2) The department may amend or issue licenses to provide for staggered expiration dates. The
 26 department may provide for initial license terms of greater than 12 months but no more than 23 months
 27 in adopting staggered expiration dates. Thereafter, licenses expire annually. License fees for the license
 28 term implementing staggered license terms will MAY be prorated by the department."

29

30 **Section 5.** Section 50-51-212, MCA, is amended to read:

1 **"50-51-212. Cancellation of license for multiple-type establishment -- definition.** (1) When a
 2 multiple-type establishment is licensed by the department, the denial or cancellation of the license may
 3 affect the entire establishment or only a portion of it as determined by the department {,

4 (2) For the purposes of this section, a multiple-type establishment "multiple-type establishment"
 5 includes two or more of the following: bed and breakfast, hotel, motel, or tourist home}."

6
 7 ~~Section 6. Section 50-51-401, MCA, is amended to read:~~

8 ~~"50-51-401. Civil penalties -- injunctions other enforcement not barred.~~ (1) An establishment that
 9 violates this chapter or rules adopted by the department pursuant to this chapter is subject to a civil penalty
 10 not to exceed \$500 for each violation. Each day of violation is a separate violation for the purposes of this
 11 section.

12 (2) ~~Civil A civil action to impose penalties, as provided under this section, does not bar~~
 13 ~~administrative enforcement under [section 7], administrative penalties under [section 8], or injunctions to~~
 14 ~~enforce compliance with this chapter or to enforce compliance with a rule adopted by the department~~
 15 ~~pursuant to this chapter."~~

16
 17 NEW SECTION. SECTION 6. SPECIAL REQUIREMENTS RULES FOR BED AND BREAKFAST
 18 ESTABLISHMENTS. THE DEPARTMENT, IN ADOPTING RULES ESTABLISHING SPECIAL REQUIREMENTS
 19 RULES FOR BED AND BREAKFAST ESTABLISHMENTS, SHALL CONSULT WITH BED AND BREAKFAST
 20 OPERATORS. THE DEPARTMENT SHALL ESTABLISH A NEGOTIATED RULEMAKING COMMITTEE, AS
 21 PROVIDED IN TITLE 2, CHAPTER 5, PART 1, TO CONSIDER MATTERS PROPOSED BY THE DEPARTMENT
 22 THAT AFFECT BED AND BREAKFAST ESTABLISHMENTS.

23
 24 ~~NEW SECTION. Section 7. Administrative enforcement -- notice of violation -- hearing.~~ (1) If the
 25 department believes that a violation of this chapter, a rule adopted pursuant to this chapter, an order issued
 26 pursuant to this chapter, or a condition or limitation imposed by a license issued pursuant to this chapter
 27 has occurred, it may serve a written notice of the violation on the alleged violator or the violator's agent
 28 personally or by certified mail. The notice must specify the statute, rule, order, or license condition or
 29 limitation alleged to have been violated and the facts alleged to constitute the violation. The notice may
 30 include an order to take necessary corrective action, including ceasing the violation within a period of time

1 stated in the order. The order becomes final unless, within 10 days after the notice is received, the person
2 named as the respondent in the order requests in writing a hearing before the department. Until issuance
3 of a contrary decision by the department, an order issued pursuant to this section remains effective and
4 enforceable.

5 ~~(2) A hearing requested by the respondent must be held in accordance with the contested case~~
6 ~~provisions of the Montana Administrative Procedure Act, as provided in Title 2, chapter 4, part 6. If, after~~
7 ~~a hearing, the department finds that a violation has occurred, the department shall issue an appropriate~~
8 ~~order for the prevention, abatement, or control of the violation involved or the taking of other corrective~~
9 ~~action. An order issued as part of a notice of violation or after a hearing may prescribe the date by which~~
10 ~~the violation must cease and the time limits for a particular action in preventing, abating, or controlling the~~
11 ~~violation. If, after a hearing, the department finds that a violation has not occurred or is not occurring, the~~
12 ~~department shall declare the order void.~~

13 ~~(3) Instead of or in addition to issuing the order provided in subsections (1) and (2), the department~~
14 ~~may take action under another applicable provision of this chapter.~~

15 ~~(4) Section 50-51-210 does not apply to an action taken by the department pursuant to this~~
16 ~~section.~~

17 ~~(5) Before taking an action pursuant to this section, the department may attempt to obtain~~
18 ~~voluntary compliance through use of a warning, a conference, or other appropriate means.~~

19

20 ~~NEW SECTION. Section 8. Administrative penalties—appeals—venue for hearing. (1) An~~
21 ~~establishment that violates an order issued by the department pursuant to [section 7] may be assessed and~~
22 ~~ordered by the department to pay an administrative penalty not to exceed \$200 for each violation. Each~~
23 ~~day of violation constitutes a separate violation. The department may assess the penalty by an order issued~~
24 ~~pursuant to this section or may suspend all or a part of the administrative penalty assessed under this~~
25 ~~section if the violation that caused the assessment of the penalty is corrected within a specified time.~~
26 ~~Assessment of an administrative penalty under this section may be made in conjunction with an order~~
27 ~~issued pursuant to [section 7(2)] after a hearing as provided in [section 7(2)].~~

28 ~~(2) When the department assesses an administrative penalty under this section, it must have~~
29 ~~written notice served personally or by certified mail on the alleged violator or the violator's agent. For~~
30 ~~purposes of this chapter, service by mail is complete on the day of receipt. The notice must state:~~

1 ~~(a) the order alleged to have been violated;~~

2 ~~(b) the facts alleged to constitute the violation;~~

3 ~~(c) the amount of the administrative penalty assessed under this section;~~

4 ~~(d) the amount, if any, of the penalty to be suspended upon correction of the condition that caused~~
5 ~~the assessment of the penalty;~~

6 ~~(e) the nature of any corrective action that the department requires if a portion of the penalty is~~
7 ~~to be suspended;~~

8 ~~(f) the time within which the corrective action is to be taken or the time within which the~~
9 ~~administrative penalty is to be paid;~~

10 ~~(g) the right to a hearing, as provided in this section, and the time, place, and nature of any~~
11 ~~hearing; and~~

12 ~~(h) that the hearing, provided in this section may be waived or that the alleged violator may~~
13 ~~proceed by informal disposition pursuant to 2-4-603.~~

14 ~~(3) The department shall provide the respondent who is assessed a penalty under this section with~~
15 ~~an opportunity for a hearing to either contest the alleged violation or request mitigation of the penalty. The~~
16 ~~contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter~~
17 ~~4, part 6, apply to a hearing conducted under this section. If a hearing is held under this section, it must~~
18 ~~be held in Lewis and Clark County or the county in which the alleged violation occurred.~~

19 ~~(4) In determining appropriate penalties for violations, the department shall consider the gravity of~~
20 ~~the violations and the potential for significant harm to the public health or safety. In determining the~~
21 ~~appropriate amount of penalty, if any, to be suspended upon correction of the condition that caused the~~
22 ~~penalty assessment, the department shall consider the cooperation and the degree of care exercised by the~~
23 ~~respondent who is assessed the penalty, how expeditiously the violation was corrected, and whether~~
24 ~~significant harm resulted to the public health or safety from the violation.~~

25 ~~(5) If the respondent fails to pay all or part of an administrative penalty assessed pursuant to this~~
26 ~~section, the department may take action in district court to recover the amount of the penalty that is unpaid~~
27 ~~and any additional amounts assessed or sought under this chapter.~~

28 ~~(6) Action taken by the department pursuant to this section does not bar other action under this~~
29 ~~chapter or any other remedy available to the department for violations of applicable laws or rules adopted~~
30 ~~pursuant to those laws.~~

1 ~~(7) Administrative penalties collected under this section must be deposited in the special revenue~~
 2 ~~account provided for in 50-51-110.~~

3
 4 **Section 7.** Section 50-52-102, MCA, is amended to read:

5 **"50-52-102. Department to adopt rules.** The department ~~shall~~ may adopt rules for constructing
 6 and operating campgrounds, trailer courts, work camps, and youth camps to ~~insure sanitation and protect~~
 7 the public health and safety. The rules may include rules to:

8 (1) ensure that establishments have safe and sanitary facilities and systems, including drinking
 9 water, sewage disposal, and solid waste disposal systems;

10 (2) regulate service buildings or facilities associated with any activity regulated by this chapter,
 11 including laundry and food service facilities;

12 (3) provide for review and approval of plans and specifications for establishments;

13 (4) address nuisances that could cause the spread of disease or illness;

14 (5) implement staggered license expiration dates;

15 (6) address licensing of establishments under this chapter and operator requirements; AND

16 (7) provide for reimbursing local governments for inspections and enforcement of this chapter; and,

17 ~~(8) address any other subject necessary to implement the provisions of this chapter."~~

18
 19 **Section 10.** ~~Section 50-52-107, MCA, is amended to read:~~

20 ~~**"50-52-107. Civil penalties— injunctions other enforcement not barred.** (1) An establishment that~~
 21 ~~violates this chapter or rules adopted by the department pursuant to this chapter is subject to a civil penalty~~
 22 ~~not to exceed \$500 for each violation. Each day of violation is a separate violation for purposes of this~~
 23 ~~section.~~

24 ~~(2) Civil~~ A civil ~~action to impose penalties, as provided under this section, does not bar~~
 25 ~~administrative enforcement under [section 13], administrative penalties under [section 14], or injunctions~~
 26 ~~to enforce compliance with this chapter or to enforce compliance with a rule adopted by the department~~
 27 ~~pursuant to this chapter."~~

28
 29 **Section 8.** Section 50-52-203, MCA, is amended to read:

30 **"50-52-203. Expiration date of license. Licenses** (1) Except as provided in subsection (2),

1 licenses expire on December 31 of the year in which they are issued unless canceled for cause.

2 (2) The department may amend or issue licenses to provide for staggered expiration dates. The
3 department may provide for initial license terms of greater than 12 months but no more than 23 months
4 in adopting staggered expiration dates. Thereafter, licenses expire annually. License fees for the license
5 term implementing staggered license terms will be prorated by the department."

6
7 NEW SECTION. Section 9. Right to renewal. (1) The department shall renew licenses as a matter
8 of right, unless conditions exist that are grounds for cancellation or denial of a license.

9 (2) Renewal may be obtained annually by paying the required annual license fee.

10
11 ~~NEW SECTION. Section 13. Administrative enforcement -- notice of violation -- hearing. (1) If the~~
12 ~~department believes that a violation of this chapter, a rule adopted pursuant to this chapter, an order issued~~
13 ~~pursuant to this chapter, or a condition or limitation imposed by a license issued pursuant to this chapter~~
14 ~~has occurred, it may serve a written notice of the violation on the alleged violator or the violator's agent~~
15 ~~personally or by certified mail. The notice must specify the statute, rule, order, or license condition or~~
16 ~~limitation alleged to have been violated and the facts alleged to constitute the violation. The notice may~~
17 ~~include an order to take necessary corrective action, including ceasing the violation within a period of time~~
18 ~~stated in the order. The order becomes final unless, within 10 days after the notice is received, the person~~
19 ~~named as the respondent in the order requests in writing a hearing before the department. Until issuance~~
20 ~~of a contrary decision by the department, an order issued pursuant to this section remains effective and~~
21 ~~enforceable.~~

22 ~~(2) A hearing requested by the respondent must be held in accordance with the contested case~~
23 ~~provisions of the Montana Administrative Procedure Act. If, after a hearing, the department finds that a~~
24 ~~violation has occurred, the department shall issue an appropriate order for the prevention, abatement, or~~
25 ~~control of the violation involved or the taking of other corrective action. An order issued as part of a notice~~
26 ~~of violation or after a hearing may prescribe the date by which the violation must cease and the time limits~~
27 ~~for a particular action in preventing, abating, or controlling the violation. If, after a hearing, the department~~
28 ~~finds that a violation has not occurred or is not occurring, the department shall declare the order void.~~

29 ~~(3) Instead of or in addition to issuing the order provided in subsections (1) and (2), the department~~
30 ~~may take action under another applicable provision of this chapter.~~

1 ~~(4) Section 50-52-206 does not apply to an action taken by the department pursuant to this~~
2 ~~section.~~

3 ~~(5) Before taking an action pursuant to this section, the department may attempt to obtain~~
4 ~~voluntary compliance through use of a warning, a conference, or other appropriate means.~~

5
6 ~~**NEW SECTION. Section 14. Administrative penalties — appeals — venue for hearings.** (1) An~~
7 ~~establishment that violates an order issued by the department pursuant to {section 13} may be assessed~~
8 ~~and ordered by the department to pay an administrative penalty not to exceed \$200 for each violation.~~
9 ~~Each day of violation constitutes a separate violation. The department may assess the penalty by an order~~
10 ~~issued pursuant to this section or may suspend all or a part of the administrative penalty assessed under~~
11 ~~this section if the violation that caused the assessment of the penalty is corrected within a specified time.~~
12 ~~Assessment of an administrative penalty under this section may be made in conjunction with an order~~
13 ~~issued pursuant to {section 13(2)} after a hearing as provided in {section 13(2)}.~~

14 ~~(2) When the department assesses an administrative penalty under this section, it must have~~
15 ~~written notice served personally or by certified mail on the alleged violator or the violator's agent. For~~
16 ~~purposes of this chapter, service by mail is complete on the day of receipt. The notice must state:~~

17 ~~(a) the order alleged to have been violated;~~

18 ~~(b) the facts alleged to constitute the violation;~~

19 ~~(c) the amount of the administrative penalty assessed under this section;~~

20 ~~(d) the amount, if any, of the penalty to be suspended upon correction of the condition that caused~~
21 ~~the assessment of the penalty;~~

22 ~~(e) the nature of any corrective action that the department requires if a portion of the penalty is~~
23 ~~to be suspended;~~

24 ~~(f) the time within which the corrective action is to be taken or the time within which the~~
25 ~~administrative penalty is to be paid;~~

26 ~~(g) the right to a hearing, as provided in this section, and the time, place, and nature of any~~
27 ~~hearing; and~~

28 ~~(h) that the hearing provided in this section may be waived or that the alleged violator may proceed~~
29 ~~by informal disposition under 2-4-603.~~

30 ~~(3) The department shall provide the respondent assessed a penalty under this section an~~

1 opportunity for a hearing to either contest the alleged violation or request mitigation of the penalty. The
 2 contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter
 3 4, part 6, apply to a hearing conducted under this section. If a hearing is held under this section, it must
 4 be held in Lewis and Clark County or the county in which the alleged violation occurred.

5 (4) In determining appropriate penalties for violations, the department shall consider the gravity of
 6 the violations and the potential for significant harm to the public health or safety. In determining the
 7 appropriate amount of penalty, if any, to be suspended upon correction of the condition that caused the
 8 penalty assessment, the department shall consider the cooperation and the degree of care exercised by the
 9 respondent who is assessed the penalty, how expeditiously the violation was corrected, and whether
 10 significant harm resulted to the public health or safety from the violation.

11 (5) If the respondent fails to pay all or part of an administrative penalty assessed pursuant to this
 12 section, the department may take action in district court to recover the amount of the penalty that is unpaid
 13 and any additional amounts assessed or sought under this chapter.

14 (6) Action taken by the department pursuant to this section does not bar other action under this
 15 chapter or any other remedy available to the department for violations of applicable laws or rules adopted
 16 pursuant to those laws.

17 (7) Administrative penalties collected under this section must be deposited in the special revenue
 18 account provided for in 50-52-210.

19
 20 **NEW SECTION. Section 10. Codification instruction.** (1) ~~{Sections 7 and 8}~~ [SECTION 6] IS
 21 intended to be codified as an integral part of Title 50, chapter 51, and the provisions of Title 50, chapter
 22 51, apply to ~~{sections 7 and 8}~~ [SECTION 6].

23 (2) ~~{Sections 12 through 14}~~ [SECTION 9] IS intended to be codified as an integral part of Title
 24 50, chapter 52, and the provisions of Title 50, chapter 52, apply to ~~{sections 12 through 14}~~ [SECTION
 25 9].

26
 27 **NEW SECTION. Section 16. Retroactive applicability.** ~~{Sections 4, 6 through 8, and 10 through~~
 28 ~~14}~~ apply retroactively, within the meaning of 1-2-109, to licenses issued pursuant to Title 50, chapter 51
 29 or 52, prior to October 1, 1997.

1 NEW SECTION. Section 11. Effective dates. (1) ~~{Sections 2, 9, 15, and 16 and this section}~~
2 ~~{SECTIONS 2, 6, 7, AND 10 AND THIS SECTION}~~ are effective on passage and approval.
3 (2) ~~{Sections 1, 3 through 8, and 10 through 14}~~ {SECTIONS 1, 3 THROUGH 5, 8, AND 9} are
4 effective October 1, 1997.

5 -END-