

HOUSE BILL NO. 524

INTRODUCED BY C. HINKLE, F. MANDEVILLE

A BILL FOR AN ACT ENTITLED: "AN ACT REMOVING ROOMINGHOUSES AND BOARDINGHOUSES FROM HOTEL AND MOTEL PUBLIC HEALTH AND SAFETY REQUIREMENTS; REVISING DEFINITIONS; AND AMENDING SECTIONS 50-50-102, 50-51-102, 50-51-103, AND 50-51-107, MCA."

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

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

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

(1) "Consumer" means a person who is a member of the public, takes possession of food, and does not offer the food for resale.

(2) "Contract cook" means a person who specializes in a home food service and prepares food in an individual's domestic residence only for members of that household and house guests.

(3) "Cottage food operation" means a person who provides, manufactures, or packages cottage food products only in a kitchen in a registered area of a domestic residence and only for direct sale to a consumer in this state.

(4) "Cottage food products" means foods that are not potentially hazardous and are processed or packaged in a cottage food operation, including jams, jellies, dried fruit, dry mixes, and baked goods. Other similar foods that are not potentially hazardous may be defined by the department by rule.

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

(6) "Direct sale" means a face-to-face purchase or exchange of the cottage food product between the manufacturer or packager of a cottage food product and a consumer or individual purchasing the cottage food product as a gift. The direct sale may not be by consignment or involve shipping or internet sales.

(7) "Domestic residence" means a single-family house or a unit in a multiunit residential structure,

1 whether rented, leased, or owned by the person in charge of the cottage food operation.

2 (8) "Farmer's market" means a farm premises, a food stand owned and operated by a farmer, or
3 an organized market authorized by the appropriate municipal or county authority under 7-21-3301.

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

6 (10) "Local board of health" means a county, city, city-county, or district board of health.

7 (11) "Local health officer" means a county, city, city-county, or district health officer, appointed by
8 the local board of health, or the health officer's authorized representative.

9 (12) "Meat market" means an operation and buildings or structures in connection with the meat
10 market that are used to process, store, or display meat or meat products for retail sale to the public or for
11 human consumption.

12 (13) (a) "Mobile food establishment" means a retail food establishment that serves or sells food from
13 a motor vehicle, a nonmotorized cart, a boat, or other movable vehicle that periodically or continuously changes
14 location and requires a servicing area to accommodate the unit for cleaning, inspection, and maintenance.

15 (b) The term does not include:

16 (i) a motor vehicle used solely to transport or deliver food by a motorized carrier regulated by the
17 state or the federal government;

18 (ii) a cottage food operation transport vehicle; or

19 (iii) a concession stand designed to operate as a temporary food establishment.

20 (14) "Nonprofit organization" means any organization qualifying as a tax-exempt organization under
21 26 U.S.C. 501.

22 (15) "Person" means an individual, a partnership, a corporation, an association, a cooperative
23 group, the state or a political subdivision of the state, or other entity.

24 (16) "Potentially hazardous food" means food that requires time and temperature control for safety
25 to limit toxin formation or the growth of pathogenic microorganisms.

26 (17) (a) "Raw agricultural commodity" means any food in its raw, unaltered state, including fruits,
27 vegetables, raw honey, and grains. A raw agricultural commodity may be in a container if putting the commodity
28 in a container does not alter the raw state.

1 (b) The term does not include an agricultural commodity that has been altered by being:

2 (i) cooked;

3 (ii) canned;

4 (iii) preserved, except for drying;

5 (iv) combined with other food products; or

6 (v) peeled, diced, cut, blanched, or otherwise subjected to value-adding procedures.

7 (18) "Registered area" means the portion of a domestic residence that has been registered as
8 provided in 50-50-117 and in which food ingredients intended for cottage food products are transported or
9 stored or the domestic residence kitchen where cottage food products are processed, packaged, or stored.

10 (19) "Regulatory authority" means the department, the local board of health, the local health officer,
11 or the local sanitarian.

12 (20) "Retail" means the provision of food directly to the consumer.

13 (21) (a) "Retail food establishment" means an operation, whether mobile or at a temporary or
14 stationary facility or location, that meets one or more of the conditions in subsections (21)(a)(i) and (21)(a)(ii)
15 and that may include a central processing facility that supplies a transportation vehicle or a vending location or
16 satellite feeding location. A retail food establishment:

17 (i) stores, processes, packages, serves, or vends food directly to the consumer or otherwise
18 provides food for human consumption at a venue that may include:

19 (A) a restaurant;

20 (B) a market;

21 (C) a satellite or catered feeding location;

22 (D) a catering operation if the catering operation provides food directly to a consumer or to a
23 conveyance used to transport people;

24 (E) a vending location;

25 (F) a conveyance used to transport people;

26 (G) an institution; or

27 (H) a food bank; and

28 (ii) relinquishes possession of food to a consumer directly or indirectly by using either a delivery

1 service, as is done for grocery or restaurant orders, or a common carrier that provides deliveries.

2 (b) The term is not dependent on whether consumption is on or off the premises or whether there
3 is a charge for food served to the public.

4 (c) The term does not include:

5 (i) milk producers' facilities, milk pasteurization facilities, or milk product manufacturing plants;

6 (ii) slaughterhouses, meat packing plants, or meat depots;

7 (iii) growers or harvesters of raw agricultural commodities;

8 (iv) a cottage food operation;

9 (v) a person that sells or serves only commercially prepackaged foods that are not potentially
10 hazardous;

11 (vi) a food stand that offers raw agricultural commodities;

12 (vii) a wholesale food establishment, including those wholesale food establishments that are
13 located on the same premises as a retail food establishment;

14 (viii) a kitchen in a domestic residence used for preparing food to sell or serve at a function by a
15 nonprofit organization as provided in subsection (21)(c)(xiii);

16 (ix) custom meat and game animal processors that receive from an owner the remains of a carcass
17 and process those remains for delivery to the owner for the exclusive use in the owner's household by the
18 owner or members of the owner's household, including the owner's family pets, or of the owner's nonpaying
19 guests or employees. For this exemption to apply, the carcass must be kept separate from other meat food
20 products and parts that are to be prepared for sale.

21 (x) private, religious, fraternal, youth, patriotic, or civic organizations that serve or sell food to the
22 public over no more than 4 days in a 12-month period;

23 (xi) a private organization that serves food only to its members and their guests;

24 (xii) a bed and breakfast, a hotel, a motel, a ~~roominghouse~~, a guest ranch, an outfitting and guide
25 facility, a ~~boardinghouse~~, or a tourist home as defined in 50-51-102 that serves food only to registered guests
26 and day visitors;

27 (xiii) a nonprofit organization that operates a temporary food establishment under a permit as
28 provided in 50-50-120;

(xiv) persons who sell or serve at a farmer's market or a food stand whole shell eggs, hot coffee, hot tea, homemade food or a homemade food product pursuant to Title 50, chapter 49, or other food not meeting the definition of potentially hazardous, as authorized by the appropriate municipal or county authority;

(xv) a day-care center under 52-2-721(1)(a) or day-care providers who are not subject to licensure under 52-2-721(1)(a);

(xvi) a private domestic residence that receives catered or home-delivered food;

(xvii) a contract cook; or

(xviii) a provider of free samples to the public as a marketing activity if the provider is a licensed wholesale food establishment, a cottage food operation, or a seller at a farmer's market.

(22) "Temporary food establishment" means a retail food establishment that in a licensing year either:

(a) operates at a fixed location for no more than 21 days in conjunction with a single event or celebration; or

(b) uses a fixed menu and operates within a single county at a recurring event or celebration for no more than 45 days.

(23) (a) "Water hauler" means a person engaged in the business of transporting water for human consumption and use and that is not regulated as a public water supply system as provided in Title 75, chapter 6.

(b) The term does not include a person engaged in the business of transporting water for human consumption that is used for individual family households and family farms and ranches."

Section 2. Section 50-51-102, MCA, is amended to read:

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

(1) "Bed and breakfast" means a private, owner- or manager-occupied residence that is used as a private residence but in which:

(a) breakfast is served and is included in the charge for a guest room; and

(b) the number of daily guests served does not exceed 18.

(2) (a) "Day visitor" means a guest whose primary purpose on the guest ranch is to participate in recreational activities regularly provided by the guest ranch for a fee including but not limited to hunting, horseback riding, working cattle, hiking, biking, snowmobiling, or fishing, who may be served food incidental to the activity, and who does not stay overnight.

(b) The term does not include persons attending weddings, parties, large group functions, or other meals not related to the recreational activities described in subsection (2)(a) and who may not be served food unless the guest ranch or other entity serving the food has a license issued pursuant to 50-50-201.

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

(4) "Establishment" means a bed and breakfast, hotel, motel, ~~roominghouse~~, guest ranch, outfitting and guide facility, ~~boardinghouse~~, or tourist home.

(5) "Guest ranch" means a facility that:

(a) uses one or more permanent structures, one or more of which have running water, sewage disposal, and a kitchen;

(b) furnishes sleeping accommodations on advance reservations for a minimum stay;

(c) provides recreational activities that include but are not limited to hunting, horseback riding, fishing, hiking, biking, snowmobiling, or a working cattle ranch experience to its guests and day visitors; and

(d) is a small establishment or a seasonal establishment.

(6) "Hotel" or "motel" includes:

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

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

(7) "Outfitting and guide facility" means a facility that:

(a) uses one or more permanent structures, one or more of which have running water, sewage disposal, and a kitchen;

(b) furnishes sleeping accommodations to guests;

(c) offers hunting, fishing, or recreational services in conjunction with the services of an outfitter or

1 guide, as defined in 37-47-101; and

2 (d) is a small establishment or a seasonal establishment.

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

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

12 ~~(10)~~(9) "Seasonal establishment" means a guest ranch or outfitting and guide facility operating for less
13 than 120 days in a calendar year and offering accommodations to no more than 40 people on average a day.
14 The average number of people a day is determined by dividing the total number of guests accommodated
15 during the year by the total number of days that the establishment was open for the purpose of accommodating
16 guests as a guest ranch or outfitting and guide facility during the year.

17 ~~(11)~~(10) "Small establishment" means a guest ranch or an outfitting and guide facility offering
18 accommodations to no more than 24 people on average a day. The average number of people a day is
19 determined by dividing the total number of guests accommodated during the year by the total number of days
20 that the establishment was open for the purpose of accommodating guests as a guest ranch or outfitting and
21 guide facility during the year.

22 ~~(12)~~(11) "Tourist home" means a private home or condominium that is not occupied by an owner or
23 manager and that is rented, leased, or furnished in its entirety to transient guests on a daily or weekly basis.

24 ~~(13)~~(12) "Transient guest" means a guest for only a brief stay, such as the traveling public."
25

26 **Section 3.** Section 50-51-103, MCA, is amended to read:

27 **"50-51-103. Department authorized to adopt rules or guidelines.** (1) The department may adopt
28 rules governing the operation of bed and breakfasts, hotels, motels, ~~roominghouses~~, ~~boardinghouses~~, and

1 tourist homes to protect the public health and safety.

2 (2) Rules applicable to a bed and breakfast, hotel, motel, ~~roominghouse~~, ~~boardinghouse~~, or tourist
3 home may relate to construction, furnishings, housekeeping, personnel, sanitary facilities and controls, water
4 supply, sewerage and sewage disposal systems, refuse collection and disposal, registration and supervision,
5 fire and life safety, food service, staggered license expiration dates, and reimbursement of local governments
6 for inspections and enforcement.

7 (3) The department may not adopt rules governing guest ranches and outfitting and guide facilities
8 that meet the definitions in 50-51-102 but may adopt voluntary guidelines for these facilities. The guidelines
9 must take into consideration the size, type, location, and seasonal operations of an establishment and may
10 include only guidelines to:

11 (a) address that the establishment has safe drinking water and an adequate water supply;

12 (b) ensure an adequate and sanitary sewage system and ensure adequate and sanitary refuse
13 collection and disposal; and

14 (c) address food safety concerns, such as adequate storage, refrigeration, and food handling.

15 (4) These guidelines must be developed through a negotiated process in cooperation with guest
16 ranches and outfitters and guides. These guidelines are not intended to be regulatory in nature.

17 (5) The department shall develop guidelines for county sanitarians to provide assistance to guest
18 ranches and outfitters and guides, and the guidelines must be tailored to the needs of each type of
19 establishment.

20 (6) As provided in 7-1-113, nothing in this section prohibits a local government from adopting an
21 ordinance that:

22 (a) is the same as or more stringent than rules adopted by the department under this section; or

23 (b) differs from the voluntary guidelines adopted by the department under this section."
24

25 **Section 4.** Section 50-51-107, MCA, is amended to read:

26 **"50-51-107. Provision of nursing services or personal-care services by facility prohibited. (1)**

27 Hotels, motels, ~~boardinghouses~~, ~~roominghouses~~, or similar accommodations may not provide professional
28 nursing services or personal-care services. A resident of a hotel, motel, ~~boardinghouse~~, ~~roominghouse~~, or

1 similar accommodation may have personal-care, medical, or nursing-related services provided for the resident
2 in the facility by a third-party provider.

3 (2) Whenever a complaint is filed with the department that a person in need of professional nursing
4 services is residing in ~~a roominghouse or other similar~~ an accommodation not licensed to provide that service,
5 the department shall investigate and may require appropriate care or placement of the person if it is found that
6 professional nursing services are needed."

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