

HOUSE BILL NO. 325

INTRODUCED BY N. BALLANCE

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4 A BILL FOR AN ACT ENTITLED: "~~AN ACT ESTABLISHING A SMALL HERD EXEMPTION PERMIT AND FEE~~  
5 ~~FOR CERTAIN PRODUCERS OF MILK; PROVIDING FOR HERD SHARING; REQUIRING THE DEPARTMENT~~  
6 ~~OF LIVESTOCK TO ADOPT RULES TO ADMINISTER SMALL HERD EXEMPTION PERMITS; EXEMPTING~~  
7 ~~CERTAIN INDIVIDUALS FROM PARTICULAR PRODUCTION, USE, AND SALES REQUIREMENTS;~~  
8 ~~PROVIDING LABELING AND NOTIFICATION REQUIREMENTS; PROVIDING CERTAIN RULEMAKING~~  
9 ~~AUTHORITY; AND AMENDING SECTIONS 81-2-102, 81-21-102, 81-21-103, 81-22-101, 81-22-102, 81-22-202,~~  
10 ~~81-22-303, 81-22-304, 81-22-413, 81-22-415, 81-22-416, 81-22-501, AND 81-23-106~~ AN EXEMPTION A SMALL  
11 HERD EXEMPTION REGISTRATION AND FEE FOR CERTAIN PRODUCERS OF MILK; PROVIDING FOR HERD  
12 SHARING; REQUIRING THE DEPARTMENT OF LIVESTOCK TO ADOPT RULES TO ADMINISTER SMALL  
13 HERD EXEMPTION REGISTRATION; EXEMPTING CERTAIN INDIVIDUALS FROM PARTICULAR  
14 PRODUCTION, USE, AND SALES REQUIREMENTS; PROVIDING LABELING AND NOTIFICATION  
15 REQUIREMENTS; PROVIDING GOVERNMENTAL IMMUNITY; PROVIDING RULEMAKING AUTHORITY; AND  
16 AMENDING SECTIONS 81-2-101, 81-2-102, 81-2-105, 81-21-101, 81-21-102, 81-21-103, 81-21-104, 81-21-105,  
17 81-22-101, 81-22-102, 81-23-103, 81-23-401, AND 81-23-405 81-22-202, 81-22-303, 81-22-304, 81-22-413,  
18 81-22-415, 81-22-416, 81-22-501, AND 81-23-106, MCA."

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

(Refer to Second Reading, Yellow Bill)

Strike everything after the enacting clause and insert:

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23  
24 NEW SECTION. Section 1. Small herd exemption registration -- application -- rules -- immunity  
25 from liability. (1) The department shall issue small herd exemption registrations for the sale of raw milk and raw  
26 milk products as allowed under [sections 1 through 4]. The holder of a small herd exemption registration who  
27 meets the requirements of [sections 1 through 4] is exempt from the licensing, sanitation, quality, and labeling  
28 requirements provided in Title 81, chapter 22, or this part, unless otherwise specified in Title 81, chapter 22, or  
29 this part.

30 (2) The department shall issue a small herd exemption registration to a person who produces raw milk

- 1 or raw milk products for human consumption:
- 2 (a) if the person's dairy herd is:
- 3 (i) composed of 10 or fewer lactating cows, 20 or fewer lactating goats, or 20 or fewer lactating sheep,
- 4 except that the dairy herd may include other cows, goats, or sheep that are not lactating or are producing milk
- 5 for purposes other than human consumption;
- 6 (ii) tested at least annually according to standards set by department rule for brucellosis unless the
- 7 department determines a brucella ring test regimen is adequate in lieu of the annual test; and
- 8 (iii) registered by the department; and
- 9 (b) if the raw milk and raw milk products produced by the person's dairy herd are:
- 10 (i) all produced and processed on the same premises;
- 11 (ii) cooled to 45 degrees F or less within 2 hours after milking; and
- 12 (iii) tested at least four times in separate months during any consecutive 6-month period for bacteria,
- 13 coliform, and somatic cells pursuant to [section 2].
- 14 (3) An application for a small herd exemption registration must be made on a form provided by the
- 15 department and must include:
- 16 (a) the street address of the physical location of the small herd for which the application is being made;
- 17 (b) the mailing address of the applicant; and
- 18 (c) the fee determined by the department pursuant to 81-21-102.
- 19 (4) A small herd exemption registration:
- 20 (a) is valid on the date issued and expires on December 31 of that year unless suspended or revoked
- 21 by the department;
- 22 (b) may be renewed by January 31 following the expiration date if the registrant submits a renewal
- 23 application form and the renewal fee to the department;
- 24 (c) must be posted in conspicuous view on the premises;
- 25 (d) is not transferable to another person; and
- 26 (e) is valid only for the physical location of the small herd listed in the application.
- 27 (5) (a) Distribution of raw milk to an individual who has an ownership in a dairy animal or a herd of dairy
- 28 animals is not subject to the provisions of this section.
- 29 (b) An individual receiving raw milk under subsection (5)(a) must have a written bill of sale showing
- 30 purchase of ownership interest in a dairy animal or a herd of dairy animals.

1 (6) The department shall adopt rules to implement the provisions of [sections 1 through 4].

2 (7) The state is immune from suit for injury to a person who consumes raw milk sold or provided by a  
3 person operating a small dairy under this part.

4  
5 **NEW SECTION. Section 2. Testing for small herd exemption registration.** (1) Subject to subsection  
6 (2), the results of a test conducted as required in [section 1] must confirm that counts of bacteria, coliform, and  
7 somatic cells in raw milk or raw milk products produced by animals on the premises for which a small herd  
8 exemption is applied for, issued, or renewed do not exceed:

9 (a) bacteria greater than 15,000 per milliliter;

10 (b) coliform greater than 25 per milliliter; or

11 (c) somatic cells greater than 500,000 per milliliter for cow's milk or 750,000 per milliliter for goat's or  
12 sheep's milk.

13 (2) If three or more in any five consecutive counts of bacteria, coliform, or somatic cells exceed the limits  
14 provided in subsection (1), the raw milk and raw milk products produced by the registrant may not be offered for  
15 human consumption until subsequent testing shows that the raw milk and raw milk products comply with the  
16 requirements of subsection (1).

17 (3) (a) The tests and sampling required for the tests in this section must be conducted pursuant to an  
18 appropriate test method listed in Standard Methods for the Examination of Dairy Products, current  
19 edition--American Public Health Association, Inc.

20 (b) Testing must be performed by the Montana veterinary diagnostic laboratory or by an independent  
21 laboratory.

22 (c) The person who produces raw milk or raw milk products is responsible for testing costs.

23 (d) A registrant shall submit test results to the department and shall provide raw milk and raw milk  
24 product quality test results to an individual who has purchased raw milk or milk products if the individual makes  
25 the request within 6 months of the purchase date.

26  
27 **NEW SECTION. Section 3. Direct sales by small herd exemption registrant -- certain sales**  
28 **prohibited -- labeling -- immunity from liability.** (1) (a) A person operating under a small herd exemption  
29 registration may not sell or otherwise provide raw milk or raw milk products produced by the registrant to a person  
30 for resale but may sell those items directly to a consumer, a member or guest of the registrant's family, or the

1 registrant's employee.

2 (b) The restriction provided in subsection (1)(a) includes restricting the registrant from selling raw milk  
3 or raw milk products for resale to a retail food establishment licensed under Title 50, chapter 50, or a wholesale  
4 food establishment licensed under Title 50, chapter 57.

5 (2) (a) All products sold by a registrant directly to the public under this section must be sold on the  
6 premises for which the small herd exemption registration is issued and, except as provided in subsection (2)(b),  
7 must:

8 (i) meet the labeling requirement of 81-22-413 and 81-22-415; and

9 (ii) be in a container with a label that reads: "This product, which is sold for personal use and not for  
10 resale, is fresh whole milk that has not been pasteurized. Neither this farm nor the milk sold by this farm has been  
11 inspected by the state of Montana."

12 (b) A person who purchases or otherwise obtains products under this section may have the registrant  
13 transfer the products into a container provided by the person obtaining the products. The registrant is not required  
14 to label the container.

15 (3) The registrant shall post in a conspicuous place on the premises a sign of at least 1 x 2 feet that  
16 states in large, clear print: "This product, which is sold for personal use and not for resale, is fresh whole milk that  
17 has not been pasteurized. Neither this farm nor the milk sold by this farm has been inspected by the state of  
18 Montana."

19 (4) The sale of raw milk or raw milk products by a small herd exemption registrant is not subject to pricing  
20 controls under Title 81, chapter 23.

21  
22 **NEW SECTION. Section 4. Penalty.** A registrant who violates the provisions of [sections 1 through 3]  
23 is subject to a registration suspension by the department. The department shall lift a suspension when the  
24 violation has been corrected.

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26 **Section 5.** Section 81-2-102, MCA, is amended to read:  
27 **"81-2-102. Powers of department.** (1) The department may:  
28 (a) supervise the sanitary conditions of livestock in this state, under the provisions of the constitution and  
29 statutes of this state and the rules adopted by the department. The department may quarantine a lot, yard, land,  
30 building, room, premises, enclosure, or other place or section in this state that is or may be used or occupied by

1 livestock and that in the judgment of the department is infected or contaminated with an infectious, contagious,  
2 communicable, or dangerous disease or disease-carrying medium by which the disease may be communicated.  
3 The department may quarantine livestock in this state when the livestock is affected with or has been exposed  
4 to disease or disease-carrying medium. The department may prescribe treatments and enforce sanitary rules that  
5 are necessary and proper to circumscribe, extirpate, control, or prevent the disease.

6 (b) foster, promote, and protect the livestock industry in this state by the investigation of diseases and  
7 other subjects related to ways and means of prevention, extirpation, and control of diseases or to the care of  
8 livestock and its products and to this end may establish and maintain a laboratory, may make or cause to be  
9 made biologic products, curatives, and preventative agents, and may perform any other acts and things as may  
10 be necessary or proper in the fostering, promotion, or protection of the livestock industry in this state;

11 (c) impose and collect fees that the department considers appropriate for the tests and services  
12 performed by it at the laboratory or elsewhere and for biologic products, curatives, and preventative agents made  
13 or caused to be made by the department. In fixing these fees, the department shall take into consideration the  
14 costs, both direct and indirect, of the tests, services, products, curatives, and agents. All fees must be deposited  
15 in the state special revenue fund for the use of the animal health functions of the department.

16 (d) subject to subsection (2), adopt rules and orders that it considers necessary or proper to prevent the  
17 introduction or spreading of infectious, contagious, communicable, or dangerous diseases affecting livestock and  
18 alternative livestock in this state;

19 (e) (i) adopt rules and orders that it considers necessary or proper for the inspection, testing, and  
20 quarantine of all livestock and alternative livestock imported into this state; and

21 (ii) adopt rules and orders that it considers necessary or proper governing inspections and tests of  
22 livestock and alternative livestock intended for importation into this state to prevent the introduction or spreading  
23 of infectious, contagious, communicable, or dangerous diseases affecting livestock and alternative livestock;

24 (f) adopt rules and orders that it considers necessary or proper for the supervision, inspection, and  
25 control of the standards and sanitary conditions of slaughterhouses, meat depots, meat and meat food products,  
26 dairies, milk depots, milk and its byproducts, barns, dairy cows, factories, and other places and premises where  
27 meat or meat foods, milk or its products, or any byproducts thereof intended for sale or consumption as food are  
28 produced, kept, handled, or stored. An authorized representative of the department may take samples of a  
29 product so produced, kept, handled, or stored for analysis or testing by the department. The records of the  
30 samples and their analysis and test, when identified as to the sample by the oath of the officer taking it and

1 verified as to the analysis or test by the oath of the chemist or bacteriologist making it, are prima facie evidence  
2 of the facts set forth in them when offered in evidence in a prosecution or action at law or in equity for violation  
3 of 81-9-201, 81-20-101, 81-21-102, 81-21-103, section 2, part 1, 2, or 3 of this chapter, or a rule or order of the  
4 board adopted thereunder. These standards, insofar as they relate to dairies or milk and its byproducts, may not  
5 include standards of weight or measurement.

6 (g) adopt rules and orders that seem necessary or proper for the supervision and control of  
7 manufactured and refined foods for livestock and the manufacture, importation, sale, and method of using a  
8 biologic remedy or curative agent for the treatment of diseases of livestock. However, as far as practicable, the  
9 standards approved by the United States department of agriculture must be adopted.

10 (h) install an adequate system of meat inspection in accordance with 81-9-216 through 81-9-220 and  
11 81-9-226 through 81-9-236 that must provide ways and means for shipping home-grown and home-killed meats  
12 into any city in this state. As far as practicable, the rules must conform with the meat-inspection requirements of  
13 the United States department of agriculture.

14 (i) slaughter or cause to be slaughtered any livestock in this state known to be affected with or that has  
15 been exposed to an infectious, contagious, communicable, or dangerous disease, when the slaughter is  
16 necessary for the protection of other livestock, and destroy or cause to be destroyed all barns, stables, sheds,  
17 outbuildings, fixtures, furniture, or personal property infected with any infectious, contagious, communicable, or  
18 dangerous disease when they cannot be thoroughly cleaned and disinfected and the destruction is necessary  
19 to prevent the spreading of the disease;

20 (j) indemnify the owner of any property destroyed by order of the department or pursuant to any rules  
21 adopted by the department under 81-20-101, 81-21-102, 81-21-103, or part 1, 2, or 3 of this chapter;

22 (k) require persons, firms, and corporations engaged in the production or handling of meat, meat food  
23 products, dairy products, or any byproducts thereof to furnish statistics of the quantity and cost of the food and  
24 food products produced or handled and the name and address of persons supplying them any of the products.

25 (2) (a) As used in subsection (1)(d), "order" means a command, direction, or instruction issued by the  
26 department, board, or board's administrator in circumstances that clearly constitute an existing imminent peril to  
27 the public health, safety, or welfare or to animal health or welfare.

28 (b) An order under subsection (1)(d) may last no more than 5 years and may be altered or rescinded as  
29 necessary to address the circumstances set out in subsection (1)(d). An order may not be used to create a  
30 permanent program.

1 (c) As used in subsection (2)(b), "program" means a legislatively or administratively created function,  
2 project, or duty of an agency.

3 (3) When in the exercise of its powers or the discharge of its duties it becomes necessary for employees  
4 of the department to investigate facts and conditions, they may administer oaths, take affidavits, and compel the  
5 attendance and testimony of witnesses.

6 (4) The department's authority under subsection (1)(f) for a small herd exemption registrant is limited  
7 to inspections related to investigating the potential source of an illness or outbreak of a disease."

8

9 **Section 6.** Section 81-21-102, MCA, is amended to read:

10 **"81-21-102. Licensing and registering of milk plants and dairies selling milk or cream for public**  
11 **consumption.** (1) (a) It is unlawful for the following businesses to operate in this state without first obtaining a  
12 license from the department:

13 ~~(a)~~(i) a dairy, except a dairy operating under a small herd exemption registration, selling milk or cream  
14 for public consumption in the form in which it is originally produced;

15 ~~(b)~~(ii) a condensed, evaporated, or powdered milk plant;

16 ~~(c)~~(iii) a fluid milk plant.

17 (b) A dairy operating under a small herd exemption registration must have a valid small herd exemption  
18 registration as provided in [section 1].

19 (2) (a) A license expires on December 31 of the year issued. The department may, following the  
20 procedures in the Montana Administrative Procedure Act, deny, suspend, or revoke a license when it determines  
21 that a person to whom the license is issued has failed to comply with the rules of the department or has failed  
22 to conduct the person's establishment in a sanitary manner. All license fees collected must be deposited into the  
23 general fund.

24 (b) The department shall use revenue from small herd exemption registration and renewal fees  
25 established in subsection (5) to offset the costs of administering the small herd registration.

26 (3) The department may issue a restraining order prohibiting a dairy from selling or giving away milk or  
27 cream not produced or handled under the laws of this state or the rules of the department. It is unlawful for a  
28 dairy, while restrained, to sell or give away for public consumption milk or cream produced or handled by the  
29 dairy, and it is also unlawful for a dairy products manufacturing plant, milk plant, or cream station to purchase or  
30 use the cream or milk from a dairy while the dairy is restrained.

1 (4) The department shall establish license fees for the following facilities:

2 (a) a condensed, evaporated, or powdered milk factory;

3 (b) a fluid milk plant; and

4 (c) a dairy.

5 (5) The department shall establish a fee of up to \$20 for issuing or renewing a small herd exemption  
6 registration.

7 ~~(5)~~(6) A person violating this section is guilty of a misdemeanor."  
8

9 **Section 7.** Section 81-21-103, MCA, is amended to read:

10 **"81-21-103. Exceptions of certain producers of dairy products.** (1) (a) The owners or operators of  
11 dairies, creameries, butter factories, cheese factories, or other places of business engaged in the production,  
12 storage, or transportation of dairy products are not required to procure a license from the department of public  
13 health and human services for the business of production, storage, or transportation of these food products.

14 (b) As used in subsection (1)(a), "dairies" includes dairies operating under a small herd exemption  
15 registration.

16 (2) This section does not limit:

17 (a) the supervision or regulation by the department of public health and human services of the sanitary  
18 condition of a restaurant, hotel, boardinghouse, or retail market or the products sold or offered for sale at those  
19 facilities; or

20 (b) the duties imposed by law on the department of public health and human services to make sanitary  
21 rules for the eradication or control of an epidemic of human disease that may exist in a community."  
22

23 **Section 8.** Section 81-21-104, MCA, is amended to read:

24 **"81-21-104. Injunctive remedies.** (1) ~~The~~ Except as provided in subsection (2), the department may  
25 apply for and the court may grant a temporary or permanent injunction restraining any person from violating the  
26 provisions of this chapter or rules adopted under 81-2-102, notwithstanding the existence of other remedies at  
27 law. When the application of other remedies has been insufficient to compel action to control, extirpate, or prevent  
28 the spread of disease or upon a showing that an animal disease emergency exists and that other remedies  
29 probably would be insufficient to compel action to control the emergency, the department may apply for and the  
30 court may grant mandatory injunctive relief.



1           (2) A person violating the provisions of [sections 1 through 3] is subject only to the penalty provided in  
2 [section 4]."

3

4           **Section 9.** Section 81-21-105, MCA, is amended to read:

5           **"81-21-105. Penalty -- exception.** (1) Any Except as provided in subsection (2), any person, persons,  
6 firm, or corporation violating any provision of this chapter, or the rule or order promulgated by authority of  
7 81-2-102, shall be guilty of a misdemeanor. Violations of this chapter shall be tried without undue delay in any  
8 court of competent jurisdiction.

9           (2) A person, firm, or corporation violating any provision of [sections 1 through 3] is subject only to the  
10 penalty provided in [section 4]."

11

12           **Section 10.** Section 81-22-101, MCA, is amended to read:

13           **"81-22-101. Definitions.** For the purpose of this chapter, the following definitions are adopted:

14           (1) "Agent" means a person who is authorized by another person to act for that other person in dealing  
15 with a third person.

16           (2) "Butter" is the clean, nonrancid product made by gathering the fat of fresh ripened milk or cream into  
17 a mass that also contains a small portion of the other milk constituents, with or without salt, and must contain not  
18 less than 80% of milk fat. No tolerance for deficiency in milk fat is permitted. Butter may also contain added  
19 coloring matter.

20           (3) "Cheese" is the sound, solid, and ripened product made from milk or cream by coagulating the casein  
21 with rennet or lactic acid, with or without ripening ferments and seasoning, and must contain in the water-free  
22 substance not less than 50% of milk fat and not more than 39% of moisture. Cheese may also contain added  
23 coloring matter.

24           (4) "C.I.P." means the procedure by which sanitary pipelines or pieces of dairy equipment are  
25 mechanically cleaned in place by circulation when this procedure meets the 3-A accepted practices for  
26 permanently installed sanitary product-pipelines and cleaning systems.

27           (5) "Code of Federal Regulations" refers especially but is not limited to Title 21, which contains the  
28 definitions and standards of identity for products as established by the food and drug administration, United  
29 States department of health and human services.

30           (6) "Cream" means the milk fat that rises to the surface when milk is allowed to stand or that is separated

1 from milk by centrifugal force when sold, used, or intended for use in a manufactured product.

2 (7) "Creamery" means a place where butter is made for commercial purposes.

3 (8) "Culture" means the harmless lactic acid fermenting bacteria that are added to milk or cream to make  
4 manufactured dairy products like cultured buttermilk, cheese, cottage cheese, yogurt, sour cream, cream cheese,  
5 butter, and similar products.

6 (9) "Dairy" or "dairy farm" means a place where one or more cows or goats are kept, a part or all of the  
7 milk or cream from which is used for manufacturing purposes.

8 (10) The term "department", unless otherwise indicated, means the department of livestock provided for  
9 in Title 2, chapter 15, part 31.

10 (11) "Directly acidified" and similar terms mean the process of adding a food grade acid to milk or cream  
11 instead of or in addition to the adding of culture.

12 (12) "Filled dairy products" means milk, cream, skimmed milk, or any combination of these, whether or  
13 not condensed, evaporated, concentrated, frozen, powdered, dried, or desiccated, or any food product made or  
14 manufactured from them, to which has been added or which has been blended or compounded with fat or oil  
15 other than milk fat so that the resulting product is in imitation or semblance of a dairy product, including milk,  
16 cream, sour cream, skimmed milk, ice cream, low-fat ice cream, whipped cream, flavored milk or skim milk yogurt,  
17 dried or powdered milk, cheese, cream, cream cheese, cottage cheese, creamed cottage cheese, ice cream mix,  
18 low-fat ice cream mix, sherbet, condensed milk, evaporated milk, or concentrated milk.

19 (13) "French ice cream", "French custard ice cream", and similar frozen products, except sherbets and  
20 water ices, are varieties of ice cream.

21 (14) "Grading" means the examination of milk, cream, or products by sight, odor, taste, or laboratory  
22 analysis, the results of which determine a grade designating their quality.

23 (15) "Ice cream" is a frozen product made with pure, sweet milk, cream, skim milk, evaporated or  
24 condensed milk, evaporated or condensed skim milk, dry milk, dry skim milk, pure milk fat, wholesome sweet  
25 butter, or any combination of these products, with or without sweetening, or clean wholesome eggs or egg  
26 products, with or without the use of harmless flavoring and coloring. Ice cream must contain not less than 10%  
27 of milk fat, not less than 33% total solids, and may or may not contain pure and harmless edible stabilizer. Ice  
28 cream may contain not to exceed 1% gelatin. A frozen milk or milk product may not be manufactured or sold  
29 unless it contains at least 10% butterfat, excepting sherbets, ices, and other exceptions under this section. All  
30 ice cream must be manufactured from pasteurized ice cream mix.

1 (16) (a) "Ice cream mix" is a pasteurized, unfrozen product used in the manufacture of ice cream and  
2 must comply with the requirements for ice cream.

3 (b) "Mix" includes the liquid, unfrozen product from which those frozen products listed under subsections  
4 (21)(a)(iii) through (21)(a)(xii) are made.

5 (17) "Intrastate commerce" means commerce within this state under the jurisdiction of the state and  
6 includes the operation of a business or service establishment.

7 (18) "Manufactured dairy product" means an item enumerated in subsection (21) or any other dairy  
8 product made by incorporating milk or cream or converting milk or cream into a different state of appearance or  
9 quality. For purposes of reporting production and licensing, manufactured dairy product includes but is not limited  
10 to:

11 (a) ice cream or its mix;

12 (b) French ice cream, custard ice cream, French custard ice cream, their low-fat counterparts, or their  
13 mixes;

14 (c) sherbets of all kinds or their mixes;

15 (d) animal or vegetable fat frozen desserts or their mixes;

16 (e) frozen confections or their mixes when made in a manufactured dairy products plant;

17 (f) water ices or their mixes;

18 (g) frozen dessert sandwiches, bars, cones, and similar novelties;

19 (h) frozen dessert made of nondairy origins and other products made in the semblance or imitation of  
20 dairy products or their mixes when made in a manufactured dairy products plant;

21 (i) ice milk or its mix;

22 (j) cheese of all kinds, including cottage cheese, cheese curd, cheese dressing, and cream cheese,  
23 either cultured or directly acidified;

24 (k) sour cream when cultured or directly acidified;

25 (l) eggnog, low-fat eggnog, eggnog-flavored milk, and similar flavored products;

26 (m) buttermilk, cultured or from churned butter or directly acidified;

27 (n) butter;

28 (o) yogurt, low-fat yogurt, or flavored yogurt, either cultured or directly acidified or frozen.

29 (19) (a) "Manufactured dairy products plant" or "factory" means a place where milk or cream is collected  
30 and converted into a product or into a different state of appearance or quality or that manufactures those products

1 listed in subsection (21). If only products of semblance or imitation of dairy products are made, the plant is not  
2 considered a manufactured dairy products plant.

3 (b) The term does not include a facility operating under a small herd exemption registration pursuant to  
4 [section 1].

5 (20) "Milk" means the lacteal secretion, practically free from colostrum, obtained by the milking of one  
6 or more healthy cows located in modified accredited areas and modified certified areas or from cows in herds fully  
7 accredited as tuberculosis-free by the United States department of agriculture or in the process of being  
8 accredited, when the milk or cream is sold for use in, intended for use in, or used in a manufactured dairy product.

9 (21) (a) "Milk" and "cream" mean milk and cream sold, used, or intended for manufacturing purposes or  
10 for conversion into products of a form other than the form in which originally produced or products commonly  
11 known as but not limited to:

12 (i) butter;

13 (ii) cheese, including cottage cheese, low-fat cottage cheese, cheese curd, and cream cheese, which  
14 are either cultured or directly acidified, and cheese dressings;

15 (iii) ice cream or its mix;

16 (iv) frozen dessert or its mix;

17 (v) sherbets of all kinds or their mixes;

18 (vi) frozen ice cream bars, sandwiches, cones, and similar novelties;

19 (vii) frozen desserts or products made in the semblance or imitation of frozen dessert;

20 (viii) frozen confections or their mixes;

21 (ix) water ices or their mixes;

22 (x) ice milk or its mix;

23 (xi) French ice cream, French custard, or their mixes;

24 (xii) frozen custard or its mix and frozen yogurt;

25 (xiii) yogurt, flavored yogurt, and low-fat yogurt;

26 (xiv) sour cream, either cultured or directly acidified;

27 (xv) cream cheese, either cultured or directly acidified;

28 (xvi) buttermilk, either cultured, from churned butter, or directly acidified;

29 (xvii) eggnog, low-fat eggnog, eggnog-flavored milk, whipped cream, flavored toppings, and similar  
30 flavored products;

1 (xviii) dry or powdered milk; and

2 (xix) condensed milk products.

3 (b) The items specified in subsection (21)(a), except items produced by a person operating under a small  
4 herd exemption registration pursuant to [section 1], must conform to the standards of identity set forth in the Code  
5 of Federal Regulations. If standards of identity are not set forth in the code, then the standards adopted by the  
6 department prevail, except that the department's standards do not apply to items specified in subsection (21)(a)  
7 that are produced by a person operating under a small herd exemption registration pursuant to [section 1]. The  
8 labeling of manufactured dairy products must be in accordance with the Montana Food, Drug, and Cosmetic Act.

9 (22) "Milk or cream station" means a place other than a creamery where deliveries of milk or cream are  
10 weighed, graded, sampled, tested, or collected for purchase.

11 (23) "Misbranded", "unwholesome", "food additives", "optional ingredients", "impure", "misbranded",  
12 "contaminated", "adulterated", "perishable", "hazardous", "unfit", "spoiled", "damaged", and similar terms, when  
13 applied to a manufactured dairy product or product made in semblance or in imitation of a manufactured dairy  
14 product, are as defined in Title 50, chapter 31.

15 (24) "Official test" means test procedures outlined in the sources referred to under 81-22-301 concerning  
16 samples, methods, and rules of evidence.

17 (25) "Pasteurization", "pasteurizing", and similar terms mean the process of heating every particle of milk  
18 or milk product to at least 145 degrees F and holding it continuously at or above this temperature for at least 30  
19 minutes or to at least 161 degrees F and holding it continuously at or above this temperature for at least 15  
20 seconds in equipment that is properly operated and approved by the department. Milk products that have a higher  
21 fat content than milk or contain added sweeteners must be heated to at least 155 degrees F and held  
22 continuously at or above this temperature for at least 30 minutes, or to at least 175 degrees F and held  
23 continuously at or above this temperature for at least 25 seconds. This definition does not bar any other  
24 pasteurization process that has been recognized by the United States public health service to be equally effective  
25 and that is approved by the department.

26 (26) "Person" means an individual, firm, partnership, corporation, cooperative, or other business unit or  
27 trade device.

28 (27) "Producer" means the person who exercises control over the production of milk or cream delivered  
29 to a milk or cream receiving station or manufactured dairy products plant or who receives payment for milk or  
30 cream used in manufacturing.

1 (28) "Safe temperature" means 45 degrees F or less unless the product is frozen, in which case the  
2 temperature must be at or below 0 degrees F.

3 (29) "Testing", "test", "tested", and similar words mean the examination of milk, cream, or manufactured  
4 dairy products by sight, odor, taste, or biological or chemical laboratory analysis to determine their quality,  
5 wholesomeness, or composition.

6 (30) "Water ice" means a frozen product containing but not limited to the following ingredients: water,  
7 sugar, flavoring, coloring, stabilizers, and other ingredients allowed by the Code of Federal Regulations as  
8 optional ingredients."

9

10 **Section 11.** Section 81-22-102, MCA, is amended to read:

11 **"81-22-102. General authority of department.** (1) The department may regulate and establish  
12 sanitation standards for persons operating dairies producing milk for manufacturing purposes. The department  
13 may regulate and establish sanitation and quality standards for a person engaged in the processing of  
14 manufactured dairy products or of products made or sold in the semblance or imitation of dairy products in this  
15 state when those products made in semblance or imitation of dairy products are made in a manufactured dairy  
16 products plant.

17 (2) The department may adopt minimum standards for the production, transportation, grading, testing,  
18 use, processing, packaging, and storage of milk and cream used for manufacturing purposes and of  
19 manufactured dairy products.

20 (3) ~~(a) The~~ Except as provided in subsection (3)(b), the department shall adopt rules and establish fees  
21 for licenses for selling or producing milk as required by 81-23-202.

22 (b) The sale of raw milk or raw milk products by a small herd exemption registrant is not subject to pricing  
23 controls under Title 81, chapter 23."

24

25 **Section 12.** Section 81-22-202, MCA, is amended to read:

26 **"81-22-202. Licensing and registering of persons engaged in production of milk.** (1) The  
27 department may license persons engaged in the production of milk for manufacturing purposes and license  
28 persons who manufacture dairy products or products made in their semblance or imitation when the products are  
29 made in a manufactured dairy products plant.

30 (2) The department may examine and license weighers, graders, samplers, and milk and cream testers

1 in order to establish the qualifications of these persons to perform those operations or tests for which the licenses  
2 are issued.

3 (3) A person operating under a small herd exemption registration pursuant to [section 1] may  
4 manufacture dairy products or products made in their semblance or imitation in accordance with the registration  
5 and the rules of the department."

6  
7 **Section 13.** Section 81-22-303, MCA, is amended to read:  
8 **"81-22-303. Sampling and testing by department.** The department shall have the authority to sample,  
9 test, and/or retest samples of milk or cream or their products at any dairy, at the premises of any supplier of milk  
10 or cream for manufacturing purposes, ~~or~~ at any manufactured dairy products plant, milk plant, or cream buying  
11 or receiving station, or at any facility operating under a small herd exemption registration pursuant to [section 1]."

12  
13 **Section 14.** Section 81-22-304, MCA, is amended to read:  
14 **"81-22-304. Department's right of entry into dairy or plants for inspection -- penalty.** (1) The  
15 department or its authorized agent has the right of entry during normal business hours, including Sundays and  
16 holidays, into a dairy supplying milk or cream for manufacturing purposes, a manufactured dairy products plant,  
17 a milk plant, a cream receiving station, a transportation facility, a facility operating under a small herd exemption  
18 registration pursuant to [section 1], or any premises where dairy products, dairy manufactured products, or their  
19 substitutes or imitations are produced, manufactured, sold, offered for sale, or stored while in transit to inspect  
20 the dairy or plant, its facilities and products, or to obtain samples for testing or analysis. It is unlawful for a person  
21 to interfere with the department or its authorized agent in the performance of its duty to enter, inspect, or obtain  
22 samples.

23 (2) Violation of this section is a misdemeanor and subjects the offender to a fine of not less than \$50 and  
24 not more than \$500 or to imprisonment in the county jail for not less than 1 or more than 30 days or both such  
25 fine and imprisonment."

26  
27 **Section 15.** Section 81-22-413, MCA, is amended to read:  
28 **"81-22-413. Pasteurization required -- exemption.** (1) ~~All~~ Except as provided in [section 1] and  
29 subsections (2) and (3) of this section, all milk and cream used in the manufacture of any dairy product or  
30 products made in semblance or imitation of dairy products sold, offered for sale, purveyed, stored, displayed, or

1 transported in Montana must be pasteurized.

2 ~~(2) However, cheese~~ Cheese held, stored, or aged for at least 60 days at not less than 35 degrees F  
3 is not required to be made from pasteurized milk or cream but must be labeled "made from raw or unpasteurized  
4 milk or unpasteurized cream", as the case may be.

5 ~~(3) Other cultured~~ Cultured raw or unpasteurized dairy products other than cheese that can be made  
6 safe by aging must be similarly aged and labeled as required ~~above in [section 3] or this section.~~"

7

8 **Section 16.** Section 81-22-415, MCA, is amended to read:

9 **"81-22-415. Pasteurization-labeling Labeling.** (1) It is unlawful for a person to sell, offer for sale,  
10 exchange, or have in the person's possession milk, cream, or a manufactured dairy product in a container or  
11 package marked or labeled or in any way designating the contents of the container or package as "pasteurized"  
12 unless it has been treated by an approved process of pasteurization as required by the department.

13 (2) A person operating under a small herd exemption registration pursuant to [section 1] shall label a  
14 product as provided in [section 3]."

15

16 **Section 17.** Section 81-22-416, MCA, is amended to read:

17 **"81-22-416. Milk and manufactured dairy products to conform to standards.** (1) ~~All~~ Except as  
18 provided in subsection (2), all milk and cream used in manufactured dairy products, and the manufactured dairy  
19 products, ~~shall~~ must conform to the standards of purity, quality, and wholesomeness as provided in this chapter  
20 or in the regulations promulgated under the authority of this chapter.

21 (2) All raw milk and raw milk products produced by a facility operating under a small herd exemption  
22 registration pursuant to [section 1] must conform to the standards of purity, quality, and wholesomeness as  
23 provided in this chapter. The department may not adopt rules imposing standards on a facility operating under  
24 a small herd exemption registration that are different from the standards imposed in this chapter."

25

26 **Section 18.** Section 81-22-501, MCA, is amended to read:

27 **"81-22-501. Required records and reports -- examination.** The department may require dairies ~~and,~~  
28 dairy product manufacturers, and facilities operating under small herd exemption registrations pursuant to [section  
29 1] to maintain and produce for examination or to report the records necessary for carrying out its duties under  
30 this chapter."



1  
 2 **Section 19.** Section 81-23-106, MCA, is amended to read:  
 3 **"81-23-106. Application.** (1) This chapter does not apply to:  
 4 (a) raw milk or raw milk products produced under a small herd exemption registration pursuant to  
 5 [section 1]; or

6 (b) foreign or interstate commerce except insofar as it may be effective in compliance with the United  
 7 States constitution and with the laws of the United States.

8 (2) It is the intention of the legislature, however, that the instant, whenever that may be, that As soon as  
 9 the handling within the state by a dealer of milk produced outside of the state becomes the subject of regulation  
 10 by the state in the exercise of its police powers, the provisions of this chapter affecting intrastate milk immediately  
 11 apply and the powers conferred by this chapter attach thereto."

12  
 13 NEW SECTION. **Section 20. Codification instruction.** [Sections 1 through 4] are intended to be  
 14 codified as an integral part of Title 81, chapter 21, part 1, and the provisions of Title 81, chapter 21, part 1, apply  
 15 to [sections 1 through 4].

16  
 17 COORDINATION SECTION. **Section 21. Coordination instruction.** If both Senate Bill No. 300 and  
 18 [this act] are passed and approved, then [section 3(3) of this act] is void.

19  
 20 NEW SECTION. **Section 22. Saving clause.** [This act] does not affect rights and duties that matured,  
 21 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

22  
 23 NEW SECTION. **Section 23. Two-thirds vote required.** Because [section 1] limits governmental  
 24 liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each  
 25 house of the legislature for passage.

26 - END -