

Amendments to House Bill No. 325  
1st Reading Copy

Requested by Representative Alan Redfield

For the House Agriculture Committee

Prepared by Jason Mohr  
February 16, 2017 (3:47pm)

1. Title, page 1, line 4 through line 10.

**Following:** "ESTABLISHING " on line 4

**Strike:** "A SMALL" on line 4 through "81-23-106" on line 10

**Insert:** "AN EXEMPTION FOR CERTAIN PRODUCERS OF MILK; AND AMENDING  
SECTIONS 81-2-101, 81-2-102, 81-2-105, 81-21-101, 81-21-102,  
81-21-103, 81-22-101, 81-22-102, 81-23-103, 81-23-401, AND  
81-23-405"

2. Page 1, line 14 through page 16, line 13.

**Strike:** everything after the enacting clause

**Insert:** "**Section 1.** Section 81-2-101, MCA, is amended to read:

"**81-2-101. Authority of department agents.** In Except for the premises of a small dairy as defined in 81-21-101, in the performance of official duties, an agent or officer of the department may enter on or in a lot, yard, land, building, room, premises, enclosure, car, wagon, boat, or other place or vehicle used for the treatment, storage, manufacture, display, or transportation of animals, meat, or dairy products intended for sale or disposal as food. The agent or officer may enter anywhere where livestock may be found that are affected with or that have been exposed to or that the officer has reason to believe are either affected with or have been exposed to an infectious, contagious, communicable, or dangerous disease or disease-carrying insects."

{*Internal References to 81-2-101: None.*}

**Insert:** "**Section 2.** Section 81-2-102, MCA, is amended to read:

"**81-2-102. Powers of department.** (1) The department may:  
(a) supervise the sanitary conditions of livestock in this state, under the provisions of the constitution and statutes of this state and the rules adopted by the department. The department may quarantine a lot, yard, land, building, room, premises, enclosure, or other place or section in this state that is or may be used or occupied by livestock and that in the judgment of the department is infected or contaminated with an infectious, contagious, communicable, or dangerous disease or disease-carrying medium by which the disease may be communicated. The department may quarantine livestock in this state when the livestock is affected with or has been exposed to disease or disease-carrying medium. The department may prescribe treatments and enforce sanitary rules that are necessary and proper to circumscribe, extirpate, control, or prevent the disease.

(b) foster, promote, and protect the livestock industry in this state by the investigation of diseases and other subjects related to ways and means of prevention, extirpation, and control

of diseases or to the care of livestock and its products and to this end may establish and maintain a laboratory, may make or cause to be made biologic products, curatives, and preventative agents, and may perform any other acts and things as may be necessary or proper in the fostering, promotion, or protection of the livestock industry in this state;

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

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

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

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

(f) except for a small dairy, as defined in 81-22-101, adopt rules and orders that it considers necessary or proper for the supervision, inspection, and control of the standards and sanitary conditions of slaughterhouses, meat depots, meat and meat food products, dairies, milk depots, milk and its byproducts, barns, dairy cows, factories, and other places and premises where meat or meat foods, milk or its products, or any byproducts thereof intended for sale or consumption as food are produced, kept, handled, or stored. An authorized representative of the department may take samples of a product so produced, kept, handled, or stored for analysis or testing by the department. The records of the samples and their analysis and test, when identified as to the sample by the oath of the officer taking it and verified as to the analysis or test by the oath of the chemist or bacteriologist making it, are prima facie evidence of the facts set forth in them when offered in evidence in a prosecution or action at law or in equity for violation of 81-9-201, 81-20-101, 81-21-102, 81-21-103, part 1, 2, or 3 of this chapter, or a rule or order of the board adopted thereunder. These standards, insofar as they relate to dairies or milk and its byproducts, may not include standards of weight or measurement.

(g) adopt rules and orders that seem necessary or proper for the supervision and control of manufactured and refined foods for livestock and the manufacture, importation, sale, and method of using a biologic remedy or curative agent for the treatment of

diseases of livestock. However, as far as practicable, the standards approved by the United States department of agriculture must be adopted.

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

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

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

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

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

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

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

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

{*Internal References to 81-2-102:*

81-1-303 81-9-201 81-21-104 81-21-105}"

**Insert: "Section 3.** Section 81-2-105, MCA, is amended to read:

**"81-2-105. Authority of municipal corporations. Nothing Except for on the premises of a small dairy, as defined in 81-21-101, nothing** in this title prevents the governing authority of a municipal corporation from enacting or enforcing ordinances for the inspection of slaughterhouses, meat depots, meat markets,

meat food products, creameries, butter or cheese factories, dairies, or dairy products located, sold, or offered for sale in the limits of the municipal corporation. An ordinance may not be enforced in conflict with the powers of this title delegated to the department and its officers or agents."

{Internal References to 81-2-105: None.}"

**Insert: "Section 4.** Section 81-21-101, MCA, is amended to read:

**"81-21-101. Definitions.** As used in this part, the following definitions apply:

(1) "Fluid milk plant" means a place where milk or cream is not produced but is purchased or collected and prepared for distribution to the consumer in liquid form.

(2) "Public consumption" means the use of milk or cream by the public for any purpose.

(3) "Small dairy" means a place where no more than 5 lactating cows, 10 lactating goats, or 10 lactating sheep are kept for producing milk."

{Internal References to 81-21-101: None.}"

**Insert: "Section 5.** Section 81-21-102, MCA, is amended to read:

**"81-21-102. Licensing of milk plants and dairies selling milk or cream for public consumption.** (1) It Except for a small dairy subject to registration under subsection (6), it is unlawful for the following businesses to operate in this state without first obtaining a license from the department:

(a) a dairy selling milk or cream for public consumption in the form in which it is originally produced;

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

(c) a fluid milk plant.

(2) A license expires on December 31 of the year issued.

The department may, following the procedures in the Montana Administrative Procedure Act, deny, suspend, or revoke a license when it determines that a person to whom the license is issued has failed to comply with the rules of the department or has failed to conduct the person's establishment in a sanitary manner. All license fees collected must be deposited into the general fund.

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

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

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

(b) a fluid milk plant; and

(c) a dairy.

(5) A person violating this section is guilty of a misdemeanor.

(6) The department may register a person operating a small dairy. The registration fee is \$5 a year."

{Internal References to 81-21-102:  
x81-2-102 x81-22-208}"

**Insert: "Section 6.** Section 81-21-103, MCA, is amended to read:

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

(2) This section does not limit:

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

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

{Internal References to 81-21-103:  
x81-2-102}"

**Insert: "Section 7.** Section 81-22-101, MCA, is amended to read:

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

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

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

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

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

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

(6) "Cream" means the milk fat that rises to the surface when milk is allowed to stand or that is separated from milk by centrifugal force when sold, used, or intended for use in a manufactured product.

(7) "Creamery" means a place where butter is made for

commercial purposes.

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

(9) "Dairy" or "dairy farm" means a place where ~~one or more cows or goats~~ 6 or more lactating cows, 11 or more lactating goats, or 11 or more lactating sheep are kept, a part or all of the milk or cream from which is used for manufacturing purposes.

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

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

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

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

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

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

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

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

(17) "Intrastate commerce" means commerce within this state under the jurisdiction of the state and includes the operation of

a business or service establishment.

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

- (a) ice cream or its mix;
- (b) French ice cream, custard ice cream, French custard ice cream, their low-fat counterparts, or their mixes;
- (c) sherbets of all kinds or their mixes;
- (d) animal or vegetable fat frozen desserts or their mixes;
- (e) frozen confections or their mixes when made in a manufactured dairy products plant;
- (f) water ices or their mixes;
- (g) frozen dessert sandwiches, bars, cones, and similar novelties;
- (h) frozen dessert made of nondairy origins and other products made in the semblance or imitation of dairy products or their mixes when made in a manufactured dairy products plant;
- (i) ice milk or its mix;
- (j) cheese of all kinds, including cottage cheese, cheese curd, cheese dressing, and cream cheese, either cultured or directly acidified;
- (k) sour cream when cultured or directly acidified;
- (l) eggnog, low-fat eggnog, eggnog-flavored milk, and similar flavored products;
- (m) buttermilk, cultured or from churned butter or directly acidified;
- (n) butter;
- (o) yogurt, low-fat yogurt, or flavored yogurt, either cultured or directly acidified or frozen.

(19) "Manufactured dairy products plant" or "factory" means a place where milk or cream is collected and converted into a product or into a different state of appearance or quality or that manufactures those products listed in subsection (21). If only products of semblance or imitation of dairy products are made, the plant is not considered a manufactured dairy products plant.

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

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

- (i) butter;
- (ii) cheese, including cottage cheese, low-fat cottage cheese, cheese curd, and cream cheese, which are either cultured or directly acidified, and cheese dressings;
- (iii) ice cream or its mix;

- (iv) frozen dessert or its mix;
- (v) sherbets of all kinds or their mixes;
- (vi) frozen ice cream bars, sandwiches, cones, and similar novelties;
- (vii) frozen desserts or products made in the semblance or imitation of frozen dessert;
- (viii) frozen confections or their mixes;
- (ix) water ices or their mixes;
- (x) ice milk or its mix;
- (xi) French ice cream, French custard, or their mixes;
- (xii) frozen custard or its mix and frozen yogurt;
- (xiii) yogurt, flavored yogurt, and low-fat yogurt;
- (xiv) sour cream, either cultured or directly acidified;
- (xv) cream cheese, either cultured or directly acidified;
- (xvi) buttermilk, either cultured, from churned butter, or directly acidified;
- (xvii) eggnog, low-fat eggnog, eggnog-flavored milk, whipped cream, flavored toppings, and similar flavored products;
- (xviii) dry or powdered milk; and
- (xix) condensed milk products.

(b) The items specified in subsection (21)(a) must conform to the standards of identity set forth in the Code of Federal Regulations. If standards of identity are not set forth in the code, then the standards adopted by the department prevail. The labeling of manufactured dairy products must be in accordance with the Montana Food, Drug, and Cosmetic Act.

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

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

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

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

(26) "Person" means an individual, firm, partnership,

corporation, cooperative, or other business unit or trade device.

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

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

(29) "Small dairy" means a place where no more than 5 lactating cows, 10 lactating goats, or 10 lactating sheep are kept for producing milk.

~~(29)~~(30) "Testing", "test", "tested", and similar words mean the examination of milk, cream, or manufactured dairy products by sight, odor, taste, or biological or chemical laboratory analysis to determine their quality, wholesomeness, or composition.

~~(30)~~(31) "Water ice" means a frozen product containing but not limited to the following ingredients: water, sugar, flavoring, coloring, stabilizers, and other ingredients allowed by the Code of Federal Regulations as optional ingredients."

{Internal References to 81-22-101:  
x50-31-203}"

**Insert: "Section 8.** Section 81-22-102, MCA, is amended to read:

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

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

(3) The Except for a small dairy subject to registration under 81-21-102, department shall adopt rules and establish fees for licenses for selling or producing milk as required by 81-23-202."

{Internal References to 81-22-102: None.}"

**Insert: "Section 9.** Section 81-23-103, MCA, is amended to read:

**"81-23-103. General powers of department and board.** (1) The Except for milk produced from a small dairy, as defined in 81-21-101, the board shall supervise, regulate, and control the milk industry of this state, including the production, processing, storage, distribution, and sale of milk sold for consumption in this state. The board shall conduct hearings and make determinations under this chapter and under board rules and orders promulgated pursuant to this chapter. This chapter does not affect the status, force, or operation of any provision of public health laws, county board of health rules, or municipal ordinances for the promotion or protection of the public health.

(2) The department may cooperate with the department of public health and human services, a county or city board of

health, or the department of agriculture in enforcing this chapter.

(3) The department shall assist the board by investigating all matters pertaining to the production, processing, storage, distribution, and sale of milk in this state and by bringing proceedings to enforce the orders of the board. The department, in exercising its enforcement duties, may subpoena milk dealers, their records, books, and accounts, and any other person from whom information may be desired or considered necessary to carry out the purposes and intent of this chapter. The department may take depositions of witnesses who are sick or absent from the state or who cannot otherwise appear in person before the department at its offices. The department shall give at least 10 days' notice to the proposed witness.

(4) The department shall provide staff to the board as provided in 2-15-121 to assist in technical, enforcement, and regulatory activities."

{Internal References to 81-23-103: None.}"

**Insert: "Section 10.** Section 81-23-401, MCA, is amended to read:

**"81-23-401. Entry, inspection, and investigation.** The Except for the premises of a small dairy, as defined in 81-21-101, the department may enter, at all reasonable hours, all places where milk is produced, processed, bottled, handled, or stored or where the books, papers, records, or documents relative to those transactions are kept, and may inspect and copy them in any place in this state. The department may administer oaths and take testimony for the purpose of ascertaining facts which, in the judgment of the department, are necessary to administer this chapter."

{Internal References to 81-23-401: None.}"

**Insert: "Section 11.** Section 81-23-405, MCA, is amended to read:

**"81-23-405. Violations made misdemeanors -- penalties.** (1) A Except for a person operating a small dairy subject to registration under 81-21-102, a person who produces, sells, distributes, or handles milk in any way, except as a consumer, without a license from the board as required by this chapter or who violates a lawful rule of the department or board is guilty of a misdemeanor punishable by a fine not exceeding \$600. Each day's violation is a separate offense.

(2) The district courts have original jurisdiction in all criminal actions for violations of this chapter and in all civil actions for the recovery or enforcement of penalties provided for in this chapter. All of those actions, both criminal and civil, must be tried in the district court.

(3) The county attorneys, in their respective counties, shall diligently prosecute all violations of this chapter."

{Internal References to 81-23-405: None.}"

- END -