

## SENATE BILL NO. 155

INTRODUCED BY D. EMRICH

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE DEPARTMENT OF AGRICULTURE TO LIMIT CERTAIN FOODS BASED ON RECOMMENDATIONS FROM THE PANEL ON FOOD SAFETY; CREATING THE PANEL ON FOOD SAFETY; PROVIDING QUALIFICATIONS FOR THE PANEL; REQUIRING ENFORCEMENT BY THE DEPARTMENT OF AGRICULTURE WITH ASSISTANCE FROM THE UNITED STATES FOOD AND DRUG ADMINISTRATION; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTIONS 50-31-108 AND 80-1-102, MCA."

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

NEW SECTION. **Section 1. Panel on food safety.** (1) There is a panel on food safety.

(2) The panel consists of three members appointed by the governor. The members must have scientific expertise in:

- (a) chemical risk assessment and safety assessment of food additives and flavoring substances;
- (b) toxicology;
- (c) toxicity testing;
- (d) toxicokinetics and toxicodynamics of substances;
- (e) chemistry;
- (f) exposure assessment and consumption surveys; or
- (g) food technology.

(3) A vacancy on the panel must be filled by the governor in the same manner with the qualifications in subsection (2).

(4) The panel shall meet quarterly.

(5) Panel members shall serve without compensation but may be reimbursed as provided in 2-18-501 through 2-18-503.

(6) The panel shall:

(a) consider and study the cumulative effect of food additives and food colors in the diet, as well as any chemically or pharmacologically related substance or substances in the diet; and

(b) advise and make recommendations to the department of agriculture on limiting the availability of food containing a food additive or a food color determined to have a negative toxic effect.

(7) The panel is attached to the department of agriculture for administrative purposes only as provided in 2-15-121.

**Section 2.** Section 50-31-108, MCA, is amended to read:

**"50-31-108. Regulations concerning additives.** (1) The department, ~~upon~~on its own motion or ~~upon~~on the petition of any interested party requesting that a rule be established, whenever public health or other considerations in the state require, is authorized to adopt, amend, or repeal rules, whether or not in accordance with regulations promulgated under the federal act~~;~~;

(a) prescribing tolerances for any added poisonous or deleterious substances for food additives~~;~~

(b) for pesticide chemicals in or on raw agricultural commodities, or for color additives, including but not limited to zero tolerances and exemptions from tolerances in the case of pesticide chemicals in or on raw agricultural commodities~~;~~ and~~;~~

(c) prescribing the conditions under which a food additive or a color additive may be safely used and exemptions when the food additive or color additive is to be used solely for investigational or experimental purposes~~;~~ and

(d) authorizing the department of agriculture to limit the availability of food containing a food additive or food color identified by the panel on food safety in [section 1] as having a negative toxic effect based on a cumulative effects analysis of food additives and food colors conducted pursuant to [section 1].

(2) A petitioner or the panel on food safety shall establish by data submitted to the department that a necessity exists for the rule and that its effect will not be detrimental to the public health. If the data furnished by the petitioner or the panel on food safety is not sufficient to allow the department to determine whether the regulation should be promulgated, the department may require additional data to be submitted and failure to comply with the request is sufficient grounds to deny the request.

(3) In adopting, amending, or repealing rules relating to the substances, the department shall

1 consider among other relevant factors the following, which the petitioner, if any, or the panel on food safety  
2 shall furnish:

3 (a) the name and all pertinent information concerning the substance, including, when available:

4 (i) its chemical identity and composition;

5 (ii) a statement of the conditions of the proposed use, including directions, recommendations, and  
6 suggestions and including specimens of proposed labeling; and

7 (iii) all relevant data bearing on the physical or other technical effect and the quantity required to  
8 produce the effect;

9 (b) the probable composition of or other relevant exposure from the article and of any substance  
10 formed in or on a food, drug, or cosmetic resulting from the use of the substance;

11 (c) the probable consumption of the substance in the diet of humans and animals taking into  
12 account any chemically or pharmacologically related substance in the diet;

13 (d) safety factors that, in the opinion of experts qualified by scientific training and experience to  
14 evaluate the safety of the substances for the use or uses for which they are proposed to be used, are generally  
15 recognized as appropriate for the use of animal experimentation data;

16 (e) the availability of any needed practicable methods of analysis for determining the identity and  
17 quantity of:

18 (i) the substance in or on an article;

19 (ii) any substance formed in or on the article because of the use of the substance; and

20 (iii) the pure substance and all intermediates and impurities; and

21 (f) facts supporting a contention that the proposed use of the substance will serve a useful  
22 purpose.

23 (4) The department may not establish rules related to food additives under this section for  
24 homemade food or a homemade food product sold pursuant to Title 50, chapter 49, part 2."  
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26 **Section 3.** Section 80-1-102, MCA, is amended to read:

27 **"80-1-102. Duties of department.** The department shall:

28 (1) encourage and promote the interests of agriculture, including horticulture and apiculture, and

- 1 all other allied industries;
- 2 (2) collect and publish statistics relating to the production and marketing of crops and other  
3 agricultural products so far as the information may be of value to the agricultural and allied interests of the  
4 state;
- 5 (3) assist, encourage, and promote the organization of farmers' institutes, horticultural and  
6 agricultural societies, the holding of fairs, livestock shows, or other exhibits of the products of agriculture;
- 7 (4) adopt standards for open and closed receptacles for farm products and standards for the grade  
8 and other classification of farm products;
- 9 (5) cooperate with producers and consumers in devising and maintaining economical and efficient  
10 systems of distribution and aid in the reduction of waste and expense incidental to marketing;
- 11 (6) have the authority to maintain a market news service, including information as to crops, freight  
12 rates, commission rates, and other matters as may be of service to producers and consumers, and act as a  
13 clearinghouse for information of value to producers and consumers;
- 14 (7) gather and diffuse information concerning the supply, demand, prevailing prices, and  
15 commercial movement of farm products;
- 16 (8) investigate the practices and methods of factors, commission merchants, and others who  
17 receive, solicit, buy, sell, handle on commission or otherwise, or deal in grain, vegetables, or other farm  
18 products, so that distribution of the commodities is accomplished efficiently, economically, and without  
19 hardship, waste, or fraud;
- 20 (9) cooperate with Montana state university-Bozeman, the agricultural experiment station, and the  
21 federal government for the betterment of the agricultural industries of the state, the improvement of rural life,  
22 and promotion of equality of opportunity for the farmers of the state;
- 23 (10) take and hold in the name of the state of Montana property, real and personal, acquired by  
24 gifts, subscriptions, donations, and bequests;
- 25 (11) sell and dispose of personal property owned by it in a manner the department may provide,  
26 when in the judgment of the department the sale or disposal best promotes the purposes for which the  
27 department is established;
- 28 (12) contract in respect to any matter within the scope of its authority;

1           (13)    enforce, with the cooperation and coordination of the United States food and drug  
2   administration, rules designed to limit the availability of food containing a food additive or a food color identified  
3   by the panel on food safety as having a negative toxic effect based on a cumulative effects analysis of food  
4   additives and food colors conducted pursuant to [section 1]; and  
5           ~~(13)~~(14)enforce this title and all other laws for the protection and regulation of agriculture."  
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7           NEW SECTION. Section 4. Codification instruction. [Section 1] is intended to be codified as an  
8   integral part of Title 80, chapter 1, part 1, and the provisions of Title 80, chapter 1, part 1, apply to [section 1].  
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