

HOUSE BILL 574

Introduced by Thoft, et al.

| | |
|------|--|
| 2/02 | Introduced |
| 2/02 | Referred to Agriculture, Livestock & Irrig. |
| 2/04 | First Reading |
| 2/04 | Fiscal Note Requested |
| 2/07 | Fiscal Note Printed [sic.] |
| 2/07 | Fiscal Note Received |
| 2/11 | Hearing |
| 2/21 | Committee Report--Bill Passed as Amended |
| 3/07 | 2nd Reading Passed |
| 3/09 | 3rd Reading Passed |
| | Transmitted to Senate |
| 3/11 | First Reading |
| 3/11 | Referred to Agriculture, Livestock & Irrig. |
| 3/18 | Hearing |
| 3/28 | Tabled in Committee |

1 Access BILL NO. 574
 2 INTRODUCED BY Tyff Hays
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE
 5 REGISTRATION OF INSECTARIES OR SITES WHERE INSECTS OR PLANT
 6 PATHOGENS ARE PROPAGATED, REARED, SOLD, RELEASED,
 7 DISTRIBUTED, OR COLLECTED FOR WEED CONTROL; REQUIRING
 8 RECORDKEEPING; ESTABLISHING VIOLATIONS, INVESTIGATIVE
 9 AUTHORITY, ENFORCEMENT PROVISIONS, AND PENALTIES; AND
 10 PROVIDING AN EFFECTIVE DATE."
 11

12 STATEMENT OF INTENT

13 A statement of intent is required for this bill because
 14 [section 8] grants the department of agriculture the
 15 authority to adopt rules regarding the registration of
 16 insectaries or sites used for insects or plant pathogens
 17 intended for use in biological weed control. It is intended
 18 that the rules address, at a minimum:

- 19 (1) registration requirements and information required
- 20 for proper application for registration of insectaries or
- 21 sites, including a registration fee;
- 22 (2) requirements related to interstate, intrastate, and
- 23 international notification;
- 24 (3) recordkeeping required of persons registering an
- 25 insectary or site;

- 1 (4) inspection and investigation of persons maintaining
- 2 registered insectaries or sites;
- 3 (5) suspension or revocation of registrations;
- 4 (6) structuring of administrative penalties; and
- 5 (7) other issues regarding the administration and
- 6 enforcement of the provisions of this bill.

7
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9 NEW SECTION. Section 1. Short title. [Sections 1
 10 through 15] may be cited as the "Montana Biological Agent
 11 Introduction and Distribution Weed Control Act".

12 NEW SECTION. Section 2. Definitions. Unless the
 13 context requires otherwise, in [sections 1 through 15] the
 14 following definitions apply:

- 15 (1) "Department" means the department of agriculture
- 16 established in 2-15-3001.
- 17 (2) "Insectary or site" means a place or location for
- 18 propagating, rearing, keeping, selling, distributing, or
- 19 collecting insects or plant pathogens intended for the
- 20 biological control of weeds.
- 21 (3) "Person" means an individual, group, firm,
- 22 cooperative, corporation, association, partnership,
- 23 political subdivision, state or federal government agency,
- 24 or other organization or entity.

25 NEW SECTION. Section 3. Insectary or site registration



1 -- exception. (1) It is unlawful for any person to establish
 2 an insectary or site or to propagate, rear, sell, release,
 3 distribute, or collect insects or plant pathogens intended
 4 for the biological control of weeds without annually
 5 registering the insectary or site with the department. A
 6 person may not propagate, rear, sell, release, distribute,
 7 or collect any insects or plant pathogens until the
 8 insectary or site is approved and registered with the
 9 department.

10 (2) Government agencies and units of the Montana
 11 university system and their employees are exempt from the
 12 registration requirement of this section if their duties
 13 involve:

- 14 (a) weed research, demonstration, or education;
- 15 (b) administration of noxious weed districts;
- 16 (c) management of weeds on lands under their control;
- 17 or
- 18 (d) management of weed control projects on any lands.

19 **NEW SECTION. Section 4. Application for registration**

20 -- fee. (1) A person desiring to register an insectary or
 21 site shall apply for registration on forms approved by the
 22 department.

23 (2) Information required for registration must include:

- 24 (a) a legal description of the location of the
 25 insectary or site, by township, range, and section;

1 (b) the name of the owner or manager of the land on
 2 which the insectary or site will be located;

3 (c) the scientific and common name of the insect or
 4 plant pathogen to be placed on the site;

5 (d) a list of weeds present at the site and a list of
 6 the weeds the insects or plant pathogens are intended to
 7 control; and

8 (e) other information the department requires by rule.

9 (3) The person making application shall obtain written
 10 verification from the appropriate county weed district and
 11 the Montana state university agricultural experiment station
 12 that the insectary or site does not conflict with or
 13 adversely affect an insectary or site established by a
 14 government agency or the university.

15 (4) The department may charge a registration fee of not
 16 more than \$50 for each insectary or site.

17 (5) The department shall approve an application for
 18 registration that meets the requirements of this section.
 19 Registration may be granted only in the name of a person.

20 **NEW SECTION. Section 5. Interstate and intrastate**
 21 **notification required.** A person shall notify the department
 22 in writing prior to introducing or distributing any insect
 23 or plant pathogen for biological control of weeds into the
 24 state or between counties within the state. The department
 25 may not approve the introduction or distribution until

1 registration is approved under [section 4] or distribution
2 or sale of the insect or plant pathogen to another person is
3 verified.

4 NEW SECTION. Section 6. International notification
5 required. A person shall notify the department in writing
6 prior to collecting in a foreign country any insect or plant
7 pathogen intended for subsequent introduction or
8 distribution in Montana for biological weed control. The
9 person shall possess all valid state and federal permits and
10 written authorization by an appropriate official of the
11 foreign country. The department may not approve the
12 introduction or distribution until registration is approved
13 under [section 4] or distribution or sale of the insect or
14 plant pathogen to another person is verified.

15 NEW SECTION. Section 7. Recordkeeping. A person who
16 registers an insectary or site under [section 4] shall
17 maintain records on the propagation, rearing, sale, release,
18 distribution, and collection of insects and plant pathogens
19 for weed control. The records must be submitted to the
20 department annually or upon the department's request. The
21 records must be available for review by any government
22 agency involved with the propagation, rearing, sale,
23 release, distribution, or collection of insects or plant
24 pathogens.

25 NEW SECTION. Section 8. Rules. The department may

1 adopt any rules necessary to carry out the provisions of
2 [sections 1 through 15]. The rules may prescribe procedures
3 and criteria for:

- 4 (1) registration of insectaries or sites and the fee
- 5 for registration;
- 6 (2) notification required under [sections 5 and 6];
- 7 (3) recordkeeping required under [section 7];
- 8 (4) inspection and investigation of persons maintaining
- 9 registration under [section 4] to determine compliance with
- 10 [sections 1 through 15];
- 11 (5) suspension or revocation of registration;
- 12 (6) structuring of administrative penalties imposed
- 13 under [section 14]; and
- 14 (7) other requirements consistent with the provisions
- 15 of [sections 1 through 15].

16 NEW SECTION. Section 9. Funding. Registration fees
17 collected under [section 4] and administrative penalties
18 collected under [section 14] must be credited to the
19 commercial biological weed control agent account in the
20 state special revenue fund for use of the department. Funds
21 may be used only for the administration of [sections 1
22 through 15].

23 NEW SECTION. Section 10. Investigative and inspection
24 authority. An authorized agent or representative of the
25 department may, upon presentation of department credentials,

1 at reasonable times or under emergency conditions enter an
 2 insectary or site or any public or private property that the
 3 department reasonably believes to be associated with an
 4 insectary or site to:

5 (1) investigate conditions relating to compliance with
 6 [sections 1 through 15] and with compliance orders issued
 7 under [section 12]; and

8 (2) gain access to and copy any records required to be
 9 kept under [section 7].

10 NEW SECTION. Section 11. Prohibited activities. It is
 11 unlawful for a person in whose name an insectary or site is
 12 registered to:

13 (1) violate any provisions of [sections 1 through 15];

14 (2) propagate, rear, sell, release, distribute, or
 15 collect any insects or plant pathogens for weed control
 16 without registering with the department;

17 (3) introduce or distribute insects or plant pathogens
 18 to be used for weed control without notifying the
 19 department;

20 (4) collect insects or plant pathogens for weed control
 21 from an insectary or site established by another person,
 22 government agency, or unit of the university system without
 23 obtaining written permission of the landowner or person who
 24 established the insectary or site; or

25 (5) collect insects or plant pathogens for weed control

1 from outside the state or to introduce or distribute the
 2 insects or plant pathogens in this state without complying
 3 with the registration provisions of [section 3].

4 NEW SECTION. Section 12. Compliance orders and
 5 emergency orders. (1) In furtherance of [section 10], the
 6 department may issue a compliance order or emergency order
 7 to any person, including the person's employees, agents, or
 8 subcontractors, who violates the provisions of [sections 1
 9 through 15].

10 (2) A compliance order must specify the requirement
 11 violated and must set a time for compliance. A compliance
 12 order issued under this section must be served either
 13 personally by a person qualified to perform service under
 14 the Montana Rules of Civil Procedure or by certified mail.

15 (3) The department may issue an emergency order or rule
 16 to protect public health, safety, or welfare.

17 NEW SECTION. Section 13. Injunction authorized. The
 18 department may commence a civil action seeking appropriate
 19 relief, including a permanent or temporary injunction, for a
 20 violation that is subject to a compliance order under
 21 [section 12].

22 NEW SECTION. Section 14. Administrative civil penalty.

23 (1) A person who commits a violation of [sections 1 through
 24 15] may be assessed an administrative civil penalty of not
 25 more than \$1,000 for each offense. Assessment of a civil

1 penalty may be made in conjunction with any other warning,
2 order, or administrative action authorized by [sections 1
3 through 15].

4 (2) An administrative civil penalty may not be assessed
5 unless the person charged is given notice and opportunity
6 for a hearing pursuant to the Montana Administrative
7 Procedure Act, Title 2, chapter 4, part 6.

8 (3) If the department is unable to collect the
9 administrative civil penalty or if a person fails to pay all
10 or a set portion of the administrative civil penalty as
11 determined by the department, the department may seek to
12 recover the amount in the appropriate district court.

13 (4) A person against whom the department has assessed
14 an administrative civil penalty may, within 30 days of the
15 final agency action making the assessment, appeal the
16 assessment to the district court of the county in which the
17 violation is alleged to have occurred. A jury trial must be
18 granted when demanded under Rule 38 of the Montana Rules of
19 Civil Procedure.

20 NEW SECTION. Section 15. Judicial civil penalty. A
21 person who commits a violation as specified in [section 11]
22 is subject to a judicial civil penalty not to exceed \$5,000.
23 Each occurrence constitutes a separate violation.

24 NEW SECTION. Section 16. Severability. If a part of
25 [this act] is invalid, all valid parts that are severable

1 from the invalid part remain in effect. If a part of [this
2 act] is invalid in one or more of its applications, the part
3 remains in effect in all valid applications that are
4 severable from the invalid applications.

5 NEW SECTION. Section 17. Codification instruction.
6 [Sections 1 through 15] are intended to be codified as an
7 integral part of Title 80, and the provisions of Title 80
8 apply to [sections 1 through 15].

9 NEW SECTION. Section 18. Effective date. [This act] is
10 effective July 1, 1991.

-End-

STATE OF MONTANA - FISCAL NOTE
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0574, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

This bill provides for registration of insectaries or sites where insects of plant pathogens are propagated, reared, sold, released, distributed, or collected for weed control.

ASSUMPTIONS:

1. Insectory or site fee revenue estimates are based on 50 sites at \$50 per site.
2. The registration fee of \$50 will be used to process the application form for insectory or site approval and to support information systems to track site locations information.
3. During the initial phase, no FTE will be required to implement the act.
4. Contract services for clerical assistance may be needed to develop the registration system.
5. Insectory sites could be located in any part of the state.
6. Review of applications will be conducted in conjunction with the APHIS permit program.
7. Government agencies and units of the Montana University System are exempt from registration.

FISCAL IMPACT:

Department of Agriculture:

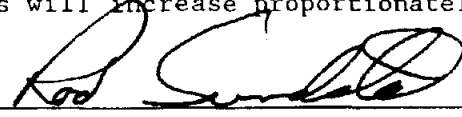
| | FY 92 | | | FY 93 | | |
|----------------------------|--------------------|---------------------|-------------------|--------------------|---------------------|-------------------|
| | <u>Current Law</u> | <u>Proposed Law</u> | <u>Difference</u> | <u>Current Law</u> | <u>Proposed Law</u> | <u>Difference</u> |
| <u>Expenditures:</u> | | | | | | |
| Operating Costs | 0 | 2,500 | 2,500 | 0 | 2,500 | 2,500 |
| <u>Funding:</u> | | | | | | |
| Site Registration Fee (02) | 0 | 2,500 | 2,500 | 0 | 2,500 | 2,500 |

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Minimal county expenditures may be needed to verify proposed insectory site locations.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Biological control methods are projected to increase in the future. As the number of sites increase, the expenditures and revenues will increase proportionately.



ROD SUNDESTED, BUDGET DIRECTOR 2-7-91
Office of Budget and Program Planning DATE



BOB THOFT, PRIMARY SPONSOR 2-7-91
DATE

Fiscal Note for HB0574, as introduced

HB 574

APPROVED BY COMMITTEE
ON AGRICULTURE LIVESTOCK
& IRRIGATION

HOUSE BILL NO. 574

INTRODUCED BY THOFT, HARPER

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE
REGISTRATION OF INSECTARIES OR SITES WHERE INSECTS OR PLANT
PATHOGENS ARE PROPAGATED, REARED, SOLD, RELEASED,
DISTRIBUTED, OR COLLECTED FOR WEED BIOLOGICAL CONTROL;
REQUIRING RECORDKEEPING; ESTABLISHING VIOLATIONS,
INVESTIGATIVE AUTHORITY, ENFORCEMENT PROVISIONS, AND
PENALTIES; AND PROVIDING AN EFFECTIVE DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill because
[section 8] grants the department of agriculture the
authority to adopt rules regarding the registration of
insectaries or sites used for insects or plant pathogens
intended for use in biological weed control. It is intended
that the rules address, at a minimum:

- (1) registration requirements and information required for proper application for registration of insectaries or sites, including a registration fee;
- (2) requirements related to interstate, intrastate, and international notification;
- (3) recordkeeping required of persons registering an insectary or site;

- (4) inspection and investigation of persons maintaining registered insectaries or sites;
- (5) suspension or revocation of registrations;
- (6) structuring of administrative penalties; and
- (7) other issues regarding the administration and enforcement of the provisions of this bill.

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

NEW SECTION. **Section 1.** Short title. [Sections 1 through 15 16] may be cited as the "Montana Biological Agent Introduction and Distribution Weed Control Act".

NEW SECTION. **Section 2.** Definitions. Unless the context requires otherwise, in [sections 1 through 15 16] the following definitions apply:

- (1) "Department" means the department of agriculture established in 2-15-3001.
- (2) "Insectary or site" means a place or location for propagating, rearing, keeping, selling, distributing, or collecting insects or plant pathogens intended for the biological control of-weeds.
- (3) "Person" means an individual, group, firm, cooperative, corporation, association, partnership, political subdivision, state or federal government agency, or other organization or entity.

NEW SECTION. **Section 3.** Insectary or site registration



1 -- **exception.** (1) It is unlawful for any person to establish
 2 an insectary or site or to propagate, rear, sell, release,
 3 distribute, or collect insects or plant pathogens intended
 4 for the biological control of--weeds without annually
 5 registering the insectary or site with the department. A
 6 person may not propagate, rear, sell, release, distribute,
 7 or collect any insects or plant pathogens until the
 8 insectary or site is approved and registered with the
 9 department.

10 (2) Government agencies and units of the Montana
 11 university system and their employees are exempt from the
 12 registration requirement of this section if their duties
 13 involve:

- 14 (a) weed BIOLOGICAL research, demonstration, or
- 15 education;
- 16 (b) administration of noxious weed districts;
- 17 (c) management of INSECTS OR weeds on lands under their
- 18 control; or
- 19 (d) management of INSECT OR weed control projects on
- 20 any lands.

21 **NEW SECTION. Section 4.** Application for registration

22 -- **fee -- EXCEPTION.** (1) A person desiring to register an
 23 insectary or site shall apply for registration on forms
 24 approved by the department.

25 (2) Information required for registration must include:

- 1 (a) a legal description of the location of the
- 2 insectary or site, by township, range, and section;
- 3 (b) the name of the owner or manager of the land on
- 4 which the insectary or site will be located;
- 5 (c) the scientific and common name of the insect or
- 6 plant pathogen to be placed on the site;
- 7 (d) a list of INSECTS OR weeds present at the site and
- 8 a list of the INSECTS OR weeds THAT the insects or plant
- 9 pathogens are intended to control; and
- 10 (e) other information the department requires by rule.

11 (3) The ~~person--making--application~~ DEPARTMENT shall
 12 obtain A written verification RECOMMENDATION from the
 13 appropriate county weed district and the Montana state
 14 university agricultural experiment station ~~that--the~~
 15 REGARDING THE ESTABLISHMENT OF AN insectary or site ~~does-not~~
 16 THAT MAY conflict with or adversely affect an insectary or
 17 site established by a government agency or the university.

18 (4) The department may charge a registration fee of not
 19 more than \$50 for each insectary or site, EXCEPT FOR SITES
 20 MAINTAINED BY GOVERNMENT AGENCIES OR UNITS OF THE MONTANA
 21 UNIVERSITY SYSTEM.

22 (5) The department shall approve an application for
 23 registration that meets the requirements of this section.
 24 Registration may be granted only in the name of a person.

25 **NEW SECTION. Section 5.** Interstate and intrastate

1 notification required. A person shall notify the department
 2 in writing prior to introducing or distributing any insect
 3 or plant pathogen for biological control ~~of weeds~~ into the
 4 state or between counties within the state. The department
 5 may not approve the introduction or distribution until
 6 registration is approved under [section 4] or distribution
 7 or sale of the insect or plant pathogen to another person is
 8 verified.

9 NEW SECTION. Section 6. International notification
 10 required. A person shall notify the department in writing
 11 prior to collecting in a foreign country any insect or plant
 12 pathogen intended for subsequent introduction or
 13 distribution in Montana for biological weed control. The
 14 person shall possess all valid state and federal permits and
 15 written authorization by an appropriate official of the
 16 foreign country. The department may not approve the
 17 introduction or distribution until registration is approved
 18 under [section 4] or distribution or sale of the insect or
 19 plant pathogen to another person is verified.

20 NEW SECTION. Section 7. Recordkeeping. A person who
 21 registers an insectary or site under [section 4] shall
 22 maintain records on the propagation, rearing, sale, release,
 23 distribution, and collection of insects and plant pathogens
 24 for weed BIOLOGICAL control. The records must be submitted
 25 to the department annually or upon the department's request.

1 The records must be available for review by any government
 2 agency involved with the propagation, rearing, sale,
 3 release, distribution, or collection of insects or plant
 4 pathogens.

5 NEW SECTION. Section 8. Rules. The department may
 6 adopt any rules necessary to carry out the provisions of
 7 [sections 1 through ~~±5~~ 16]. The rules may prescribe
 8 procedures and criteria for:

- 9 (1) registration of insectaries or sites and the fee
 10 for registration;
- 11 (2) notification required under [sections 5 and 6];
- 12 (3) recordkeeping required under [section 7];
- 13 (4) inspection and investigation of persons maintaining
 14 registration under [section 4] to determine compliance with
 15 [sections 1 through ~~±5~~ 16];
- 16 (5) suspension or revocation of registration;
- 17 (6) structuring of administrative penalties imposed
 18 under [section ~~±4~~ 15]; and
- 19 (7) other requirements consistent with the provisions
 20 of [sections 1 through ~~±5~~ 16].

21 NEW SECTION. SECTION 9. CONFIDENTIALITY OF RECORDS.
 22 ALL INSECTARY OR SITE REGISTRATION INFORMATION REQUIRED IN
 23 [SECTIONS 4 THROUGH 7] MUST BE KEPT CONFIDENTIAL BY THE
 24 DEPARTMENT AND MAY NOT BE DISCLOSED, EXCEPT:

- 25 (1) UPON WRITTEN PERMISSION OF THE REGISTRANT;

1 (2) IN ACTIONS OR ADMINISTRATIVE PROCEEDINGS COMMENCED
 2 UNDER THE PROVISIONS OF [SECTIONS 1 THROUGH 16];

3 (3) WHEN REQUIRED BY SUBPOENA OR COURT ORDER;

4 (4) WHEN DISCLOSED TO LAW ENFORCEMENT AGENCIES IN
 5 CONNECTION WITH THE INVESTIGATION OR PROSECUTION OF CRIMINAL
 6 OFFENSES; OR

7 (5) WHEN SUMMARIZED IN DEPARTMENT PROGRAM REPORTS THAT
 8 DO NOT INCLUDE SITE-SPECIFIC OR REGISTRANT-SPECIFIC
 9 INFORMATION.

10 NEW SECTION. Section 10. Funding. Registration fees
 11 collected under [section 4] and administrative penalties
 12 collected under [section ~~4~~ 15] must be credited to the
 13 commercial biological weed control agent account in the
 14 state special revenue fund for use of the department. Funds
 15 may be used only for the administration of [sections 1
 16 through ~~15~~ 16].

17 NEW SECTION. Section 11. Investigative and inspection
 18 authority. An authorized agent or representative of the
 19 department may, upon presentation of department credentials,
 20 at reasonable times or under emergency conditions enter an
 21 insectary or site or any public or private property that the
 22 department reasonably believes to be associated with an
 23 insectary or site to:

24 (1) investigate conditions relating to compliance with
 25 [sections 1 through ~~15~~ 16] and with compliance orders issued

1 under [section ~~12~~ 13]; and

2 (2) gain access to and copy any records required to be
 3 kept under [section 7].

4 NEW SECTION. Section 12. Prohibited activities. It is
 5 unlawful for a person in whose name an insectary or site is
 6 registered to:

7 (1) violate any provisions of [sections 1 through ~~15~~
 8 16];

9 (2) propagate, rear, sell, release, distribute, or
 10 collect any insects or plant pathogens for weed BIOLOGICAL
 11 control without registering with the department;

12 (3) introduce or distribute insects or plant pathogens
 13 to be used for weed BIOLOGICAL control without notifying the
 14 department;

15 (4) collect insects or plant pathogens for weed
 16 BIOLOGICAL control from an insectary or site established by
 17 another person, government agency, or unit of the university
 18 system without obtaining written permission of the landowner
 19 or person who established the insectary or site; or

20 (5) collect insects or plant pathogens for weed
 21 BIOLOGICAL control from outside the state or to introduce or
 22 distribute the insects or plant pathogens in this state
 23 without complying with the registration provisions of
 24 [section 3].

25 NEW SECTION. Section 13. Compliance orders and

1 emergency orders. (1) In furtherance of [section ~~10~~ 11], the
2 department may issue a compliance order or emergency order
3 to any person, including the person's employees, agents, or
4 subcontractors, who violates the provisions of [sections 1
5 through ~~15~~ 16].

6 (2) A compliance order must specify the requirement
7 violated and must set a time for compliance. A compliance
8 order issued under this section must be served either
9 personally by a person qualified to perform service under
10 the Montana Rules of Civil Procedure or by certified mail.

11 (3) The department may issue an emergency order or rule
12 to protect public health, safety, or welfare.

13 NEW SECTION. **Section 14.** Injunction authorized. The
14 department may commence a civil action seeking appropriate
15 relief, including a permanent or temporary injunction, for a
16 violation that is subject to a compliance order under
17 [section ~~12~~ 13].

18 NEW SECTION. **Section 15.** Administrative civil penalty.
19 (1) A person who commits a violation of [sections 1 through
20 ~~15~~ 16] may be assessed an administrative civil penalty of
21 not more than \$1,000 for each offense. Assessment of a civil
22 penalty may be made in conjunction with any other warning,
23 order, or administrative action authorized by [sections 1
24 through ~~15~~ 16].

25 (2) An administrative civil penalty may not be assessed

1 unless the person charged is given notice and opportunity
2 for a hearing pursuant to the Montana Administrative
3 Procedure Act, Title 2, chapter 4, part 6.

4 (3) If the department is unable to collect the
5 administrative civil penalty or if a person fails to pay all
6 or a set portion of the administrative civil penalty as
7 determined by the department, the department may seek to
8 recover the amount in the appropriate district court.

9 (4) A person against whom the department has assessed
10 an administrative civil penalty may, within 30 days of the
11 final agency action making the assessment, appeal the
12 assessment to the district court of the county in which the
13 violation is alleged to have occurred. A jury trial must be
14 granted when demanded under Rule 38 of the Montana Rules of
15 Civil Procedure.

16 NEW SECTION. **Section 16.** Judicial civil penalty. A
17 person who commits a violation as specified in [section ~~11~~
18 12] is subject to a judicial civil penalty not to exceed
19 \$5,000. Each occurrence constitutes a separate violation.

20 NEW SECTION. **Section 17.** Severability. If a part of
21 [this act] is invalid, all valid parts that are severable
22 from the invalid part remain in effect. If a part of [this
23 act] is invalid in one or more of its applications, the part
24 remains in effect in all valid applications that are
25 severable from the invalid applications.

HB 0574/02

1 NEW SECTION. **Section 18.** Codification instruction.
2 [Sections 1 through ±5 16] are intended to be codified as an
3 integral part of Title 80, and the provisions of Title 80
4 apply to [sections 1 through ±5 16].

5 NEW SECTION. **Section 19.** Effective date. [This act] is
6 effective July 1, 1991.

-End-

1 HOUSE BILL NO. 574

2 INTRODUCED BY THOFT, HARPER

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE
5 REGISTRATION OF INSECTARIES OR SITES WHERE INSECTS OR PLANT
6 PATHOGENS ARE PROPAGATED, REARED, SOLD, RELEASED,
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8 REQUIRING RECORDKEEPING; ESTABLISHING VIOLATIONS,
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10 PENALTIES; AND PROVIDING AN EFFECTIVE DATE."

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17 that the rules address, at a minimum:

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19 for proper application for registration of insectaries or
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21 (2) requirements related to interstate, intrastate, and
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1 (4) inspection and investigation of persons maintaining
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18 propagating, rearing, keeping, selling, distributing, or
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24 or other organization or entity.

25 NEW SECTION. Section 3. Insectary or site registration

1 -- exception. (1) It is unlawful for any person to establish
 2 an insectary or site or to propagate, rear, sell, release,
 3 distribute, or collect insects or plant pathogens intended
 4 for the biological control of--weeds without annually
 5 registering the insectary or site with the department. A
 6 person may not propagate, rear, sell, release, distribute,
 7 or collect any insects or plant pathogens until the
 8 insectary or site is approved and registered with the
 9 department.

10 (2) Government agencies and units of the Montana
 11 university system and their employees are exempt from the
 12 registration requirement of this section if their duties
 13 involve:

- 14 (a) weed BIOLOGICAL research, demonstration, or
- 15 education;
- 16 (b) administration of noxious weed districts;
- 17 (c) management of INSECTS OR weeds on lands under their
- 18 control; or
- 19 (d) management of INSECT OR weed control projects on
- 20 any lands.

21 NEW SECTION. Section 4. Application for registration

22 -- fee -- EXCEPTION. (1) A person desiring to register an
 23 insectary or site shall apply for registration on forms
 24 approved by the department.

25 (2) Information required for registration must include:

- 1 (a) a legal description of the location of the
- 2 insectary or site, by township, range, and section;
- 3 (b) the name of the owner or manager of the land on
- 4 which the insectary or site will be located;
- 5 (c) the scientific and common name of the insect or
- 6 plant pathogen to be placed on the site;
- 7 (d) a list of INSECTS OR weeds present at the site and
- 8 a list of the INSECTS OR weeds THAT the insects or plant
- 9 pathogens are intended to control; and
- 10 (e) other information the department requires by rule.

11 (3) The person--making--application DEPARTMENT shall
 12 obtain A written verification RECOMMENDATION from the
 13 appropriate county weed district and the Montana state
 14 university agricultural experiment station ~~that--the~~
 15 REGARDING THE ESTABLISHMENT OF AN insectary or site ~~does-not~~
 16 THAT MAY conflict with or adversely affect an insectary or
 17 site established by a government agency or the university.

18 (4) The department may charge a registration fee of not
 19 more than \$50 for each insectary or site, EXCEPT FOR SITES
 20 MAINTAINED BY GOVERNMENT AGENCIES OR UNITS OF THE MONTANA
 21 UNIVERSITY SYSTEM.

22 (5) The department shall approve an application for
 23 registration that meets the requirements of this section.
 24 Registration may be granted only in the name of a person.

25 NEW SECTION. Section 5. Interstate and intrastate

1 notification required. A person shall notify the department
 2 in writing prior to introducing or distributing any insect
 3 or plant pathogen for biological control ~~of-weeds~~ into the
 4 state or between counties within the state. The department
 5 may not approve the introduction or distribution until
 6 registration is approved under [section 4] or distribution
 7 or sale of the insect or plant pathogen to another person is
 8 verified.

9 NEW SECTION. Section 6. International notification
 10 required. A person shall notify the department in writing
 11 prior to collecting in a foreign country any insect or plant
 12 pathogen intended for subsequent introduction or
 13 distribution in Montana for biological weed control. The
 14 person shall possess all valid state and federal permits and
 15 written authorization by an appropriate official of the
 16 foreign country. The department may not approve the
 17 introduction or distribution until registration is approved
 18 under [section 4] or distribution or sale of the insect or
 19 plant pathogen to another person is verified.

20 NEW SECTION. Section 7. Recordkeeping. A person who
 21 registers an insectary or site under [section 4] shall
 22 maintain records on the propagation, rearing, sale, release,
 23 distribution, and collection of insects and plant pathogens
 24 for weed BIOLOGICAL control. The records must be submitted
 25 to the department annually or upon the department's request.

1 The records must be available for review by any government
 2 agency involved with the propagation, rearing, sale,
 3 release, distribution, or collection of insects or plant
 4 pathogens.

5 NEW SECTION. Section 8. Rules. The department may
 6 adopt any rules necessary to carry out the provisions of
 7 [sections 1 through ~~15~~ 16]. The rules may prescribe
 8 procedures and criteria for:

- 9 (1) registration of insectaries or sites and the fee
 10 for registration;
- 11 (2) notification required under [sections 5 and 6];
- 12 (3) recordkeeping required under [section 7];
- 13 (4) inspection and investigation of persons maintaining
 14 registration under [section 4] to determine compliance with
 15 [sections 1 through ~~15~~ 16];
- 16 (5) suspension or revocation of registration;
- 17 (6) structuring of administrative penalties imposed
 18 under [section ~~14~~ 15]; and
- 19 (7) other requirements consistent with the provisions
 20 of [sections 1 through ~~15~~ 16].

21 NEW SECTION. SECTION 9. CONFIDENTIALITY OF RECORDS.
 22 ALL INSECTARY OR SITE REGISTRATION INFORMATION REQUIRED IN
 23 [SECTIONS 4 THROUGH 7] MUST BE KEPT CONFIDENTIAL BY THE
 24 DEPARTMENT AND MAY NOT BE DISCLOSED, EXCEPT:

- 25 (1) UPON WRITTEN PERMISSION OF THE REGISTRANT;

- 1 (2) IN ACTIONS OR ADMINISTRATIVE PROCEEDINGS COMMENCED
- 2 UNDER THE PROVISIONS OF [SECTIONS 1 THROUGH 16];
- 3 (3) WHEN REQUIRED BY SUBPOENA OR COURT ORDER;
- 4 (4) WHEN DISCLOSED TO LAW ENFORCEMENT AGENCIES IN
- 5 CONNECTION WITH THE INVESTIGATION OR PROSECUTION OF CRIMINAL
- 6 OFFENSES; OR
- 7 (5) WHEN SUMMARIZED IN DEPARTMENT PROGRAM REPORTS THAT
- 8 DO NOT INCLUDE SITE-SPECIFIC OR REGISTRANT-SPECIFIC
- 9 INFORMATION.

10 NEW SECTION. Section 10. Funding. Registration fees
 11 collected under [section 4] and administrative penalties
 12 collected under [section 14 15] must be credited to the
 13 commercial biological weed control agent account in the
 14 state special revenue fund for use of the department. Funds
 15 may be used only for the administration of [sections 1
 16 through 15 16].

17 NEW SECTION. Section 11. Investigative and inspection
 18 authority. An authorized agent or representative of the
 19 department may, upon presentation of department credentials,
 20 at reasonable times or under emergency conditions enter an
 21 insectary or site or any public or private property that the
 22 department reasonably believes to be associated with an
 23 insectary or site to:

- 24 (1) investigate conditions relating to compliance with
- 25 [sections 1 through 15 16] and with compliance orders issued

1 under [section 12 13]; and

- 2 (2) gain access to and copy any records required to be
- 3 kept under [section 7].

4 NEW SECTION. Section 12. Prohibited activities. It is
 5 unlawful for a person in whose name an insectary or site is
 6 registered to:

- 7 (1) violate any provisions of [sections 1 through 15
- 8 16];

- 9 (2) propagate, rear, sell, release, distribute, or
- 10 collect any insects or plant pathogens for weed BIOLOGICAL
- 11 control without registering with the department;

- 12 (3) introduce or distribute insects or plant pathogens
- 13 to be used for weed BIOLOGICAL control without notifying the
- 14 department;

- 15 (4) collect insects or plant pathogens for weed
- 16 BIOLOGICAL control from an insectary or site established by
- 17 another person, government agency, or unit of the university
- 18 system without obtaining written permission of the landowner
- 19 or person who established the insectary or site; or

- 20 (5) collect insects or plant pathogens for weed
- 21 BIOLOGICAL control from outside the state or to introduce or
- 22 distribute the insects or plant pathogens in this state
- 23 without complying with the registration provisions of
- 24 [section 3].

25 NEW SECTION. Section 13. Compliance orders and

1 emergency orders. (1) In furtherance of [section ~~10~~ 11], the
2 department may issue a compliance order or emergency order
3 to any person, including the person's employees, agents, or
4 subcontractors, who violates the provisions of [sections 1
5 through ~~15~~ 16].

6 (2) A compliance order must specify the requirement
7 violated and must set a time for compliance. A compliance
8 order issued under this section must be served either
9 personally by a person qualified to perform service under
10 the Montana Rules of Civil Procedure or by certified mail.

11 (3) The department may issue an emergency order or rule
12 to protect public health, safety, or welfare.

13 NEW SECTION. **Section 14.** Injunction authorized. The
14 department may commence a civil action seeking appropriate
15 relief, including a permanent or temporary injunction, for a
16 violation that is subject to a compliance order under
17 [section ~~12~~ 13].

18 NEW SECTION. **Section 15.** Administrative civil penalty.

19 (1) A person who commits a violation of [sections 1 through
20 ~~15~~ 16] may be assessed an administrative civil penalty of
21 not more than \$1,000 for each offense. Assessment of a civil
22 penalty may be made in conjunction with any other warning,
23 order, or administrative action authorized by [sections 1
24 through ~~15~~ 16].

25 (2) An administrative civil penalty may not be assessed

1 unless the person charged is given notice and opportunity
2 for a hearing pursuant to the Montana Administrative
3 Procedure Act, Title 2, chapter 4, part 6.

4 (3) If the department is unable to collect the
5 administrative civil penalty or if a person fails to pay all
6 or a set portion of the administrative civil penalty as
7 determined by the department, the department may seek to
8 recover the amount in the appropriate district court.

9 (4) A person against whom the department has assessed
10 an administrative civil penalty may, within 30 days of the
11 final agency action making the assessment, appeal the
12 assessment to the district court of the county in which the
13 violation is alleged to have occurred. A jury trial must be
14 granted when demanded under Rule 38 of the Montana Rules of
15 Civil Procedure.

16 NEW SECTION. **Section 16.** Judicial civil penalty. A
17 person who commits a violation as specified in [section ~~11~~
18 12] is subject to a judicial civil penalty not to exceed
19 \$5,000. Each occurrence constitutes a separate violation.

20 NEW SECTION. **Section 17.** Severability. If a part of
21 [this act] is invalid, all valid parts that are severable
22 from the invalid part remain in effect. If a part of [this
23 act] is invalid in one or more of its applications, the part
24 remains in effect in all valid applications that are
25 severable from the invalid applications.

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1 NEW SECTION. Section 18. Codification instruction.
2 [Sections 1 through ~~15~~ 16] are intended to be codified as an
3 integral part of Title 80, and the provisions of Title 80
4 apply to [sections 1 through ~~15~~ 16].
5 NEW SECTION. Section 19. Effective date. [This act] is
6 effective July 1, 1991.

-End-