

HOUSE BILL NO. 771

INTRODUCED BY FOSTER, KOEHNKE, STEPPLER, JERGESON

IN THE HOUSE

FEBRUARY 12, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON BUSINESS & ECONOMIC DEVELOPMENT.

FIRST READING.

FEBRUARY 13, 1991 ON MOTION, REREFERRED TO COMMITTEE
ON AGRICULTURE, LIVESTOCK, & IRRIGATION.

FEBRUARY 21, 1991 COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 22, 1991 PRINTING REPORT.

FEBRUARY 23, 1991 SECOND READING, DO PASS.

FEBRUARY 25, 1991 ENGROSSING REPORT.

FEBRUARY 26, 1991 THIRD READING, PASSED.
AYES, 98; NOES, 0.

TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 27, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON AGRICULTURE, LIVESTOCK, & IRRIGATION.

FIRST READING.

MARCH 16, 1991 COMMITTEE RECOMMEND BILL BE
CONCURRED IN. REPORT ADOPTED.

MARCH 20, 1991 SECOND READING, CONCURRED IN.

MARCH 21, 1991 THIRD READING, CONCURRED IN.
AYES, 49; NOES, 0.

RETURNED TO HOUSE.

IN THE HOUSE

MARCH 22, 1991 RECEIVED FROM SENATE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1
 2 INTRODUCED BY House BILL NO. 771
Ernie Zerkow
Jerseon
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
 5 AGRICULTURAL WAREHOUSE, COMMODITY DEALER, AND GRAIN
 6 STANDARDS ACT; REVISING USE OF THE \$30,000 EXEMPTION;
 7 PROVIDING A PENALTY FOR FRAUD; ELIMINATING USE OF A
 8 COMBINATION SCALE WEIGHT TICKET AND WAREHOUSE RECEIPT;
 9 ELIMINATING THE REQUIREMENT THAT SCALE WEIGHT TICKETS BE
 10 EXCHANGED FOR WAREHOUSE RECEIPTS; ESTABLISHING A TIME LIMIT
 11 FOR ISSUING A WAREHOUSE RECEIPT; REQUIRING A PRODUCER TO
 12 REQUEST A WAREHOUSE RECEIPT; ALLOWING THE POOLING OF
 13 AGRICULTURAL COMMODITIES IN STORAGE TO COVER SHORTAGES;
 14 ALLOWING THE DEPARTMENT OF AGRICULTURE TO SEEK REMEDY IN THE
 15 FIRST JUDICIAL DISTRICT; CHANGING THE AGGREGATE LIABILITY OF
 16 SURETY BONDS FROM CUMULATIVE TO NONCUMULATIVE; ELIMINATING
 17 THE ABILITY OF THE DEPARTMENT OF AGRICULTURE TO SET BOND
 18 AMOUNTS BY RULE; REMOVING THE MINIMUM AND MAXIMUM AMOUNTS OF
 19 BONDS FOR A COMMODITY DEALER; PROVIDING REMEDIES FOR
 20 COMMODITY DEALER DEFAULTS; REQUIRING COMMODITY DEALERS TO
 21 KEEP RECORDS; PROVIDING FOR CLAIMS ON THE BOND BY AN INJURED
 22 PERSON; AND AMENDING SECTIONS 80-4-402, 80-4-429, 80-4-525,
 23 80-4-527, 80-4-538, AND 80-4-604, MCA."
 24
 25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

1 **Section 1.** Section 80-4-402, MCA, is amended to read:
 2 "80-4-402. Definitions. As used in parts 4 through 7 of
 3 this chapter, the following definitions apply:
 4 (1) "Agent" means any person who contracts for or
 5 solicits any agricultural commodities from a producer or
 6 warehouseman or negotiates the consignment or purchase of
 7 any agricultural commodity on behalf of any commodity
 8 dealer.
 9 (2) "Agricultural commodity" means any grain, beans,
 10 safflower, sunflower seeds, tame mustards, rapeseed,
 11 flaxseed, leguminous seed, or other small seed, and other
 12 agricultural commodities designated by rule of the
 13 department.
 14 (3) "Bond" means the bond required to be filed by part
 15 5 or 6 of this chapter and includes any equivalent
 16 established by department rule, as provided in 80-4-504 and
 17 80-4-604.
 18 (4) "Commodity dealer" means any person who engages in
 19 a business involving or, as part of his business,
 20 participates in buying, exchanging, negotiating, or
 21 soliciting the sale, resale, exchange, or transfer of any
 22 agricultural commodity in the state of Montana. The term
 23 does not include:
 24 (a) a person engaged solely in storing, shipping, or
 25 handling agricultural commodities for hire;



1 (b) a person who buys agricultural commodities from a
2 licensed commodity dealer; or

3 (c) a person who does not purchase more than \$30,000
4 worth of agricultural commodities from producers during a
5 licensing year; however, once a person exceeds the \$30,000
6 exemption, he shall obtain a license and is not eligible for
7 the exemption for the succeeding year;

8 (d) a person who is the producer of agricultural
9 commodities that he actually plants, nurtures, and harvests;
10 or

11 (e) a person whose trading in agricultural
12 commodities is limited to trading in commodity futures on a
13 recognized futures exchange.

14 (5) "Credit sale contract" means a contract for the
15 sale of an agricultural commodity when the sale price is to
16 be paid at a date after delivery of the agricultural
17 commodity to the buyer and includes but is not limited to
18 those contracts commonly referred to as deferred payment
19 contracts, deferred pricing contracts, or price-later
20 contracts.

21 (6) "Department" means the department of agriculture
22 provided for in 2-15-3001.

23 (7) "Depositor" means any person who deposits an
24 agricultural commodity in a warehouse for storage,
25 processing, handling, or shipment or who is the owner or

1 legal holder of an outstanding warehouse receipt or who is
2 lawfully entitled to possession of the agricultural
3 commodity.

4 (8) "Director" means the director of the department of
5 agriculture.

6 (9) "Grain" means all grains for which standards have
7 been established under the United States Grain Standards Act
8 (7 U.S.C. 71 through 87) and all other agricultural
9 commodities, such as mustard, oil seed crops, or other crops
10 which may be designated by rule of the department.

11 (10) "Grain Standards Act" means the United States Grain
12 Standards Act (7 U.S.C. 71 through 87) ~~as that act reads on~~
13 ~~July 17, 1983.~~

14 (11) "Inspector" means any person so designated by the
15 director to assist in the administration of parts 4 through
16 6 of this chapter. The term includes warehouse auditors or
17 examiners.

18 (12) "Official grain inspectors" means any official
19 personnel who perform or supervise the performance of
20 official inspection services and certify the results
21 thereof, including the grade of the grain.

22 (13) "Official grain samplers" or "samplers" means any
23 official personnel who perform or supervise the performance
24 of official sampling services and certify the results
25 thereof.

1 (14) "Official grain standards" means the standards of
2 quality and condition of grain that establish the grades
3 defined by the Grain Standards Act.

4 (15) "Official grain weighers" means any official
5 personnel who perform or supervise the performance of class
6 X or class Y weighing services and certify the results
7 thereof, including the weight of the grain.

8 (16) "Person" means any individual, firm, association,
9 corporation, partnership, or any other form of business
10 enterprise.

11 (17) "Producer" means the owner, tenant, or operator of
12 land in this state who has an interest in and receives all
13 or part of the proceeds from the sale of agricultural
14 commodities produced on that land.

15 (18) "Public warehouse" or "warehouse" means any
16 elevator, mill, warehouse, subterminal grain warehouse,
17 public warehouse, or other structure or facility in which,
18 for compensation, agricultural commodities are received for
19 storage, handling, processing, or shipment. The term
20 includes facilities which commingle commodities belonging to
21 different lots of agricultural commodities.

22 (19) "Receipt" means a warehouse receipt.

23 (20) "Scale weight ticket" means a load slip or other
24 evidence of delivery, other than a receipt, given to a
25 depositor by a warehouseman licensed under the provisions of

1 part 5 of this chapter upon initial delivery of the
2 agricultural commodity to the warehouse.

3 (21) "Station" means a warehouse located more than 3
4 miles from the central office of the warehouse.

5 (22) "Subterminal warehouse" means any warehouse at
6 which an intermediate function is performed in which
7 agricultural commodities are customarily received from
8 dealers or producers and where the commodities are
9 accumulated prior to shipment.

10 (23) "Terminal grain warehouse" means any warehouse
11 authorized by a grain exchange to receive or disburse grain
12 on consignment as presented by the rules and regulations of
13 a grain exchange.

14 (24) "Warehouseman" means a person operating or
15 controlling a public warehouse.

16 (25) "Warehouse receipt" means every receipt, whether
17 negotiable or nonnegotiable, issued under part 5 of this
18 chapter by a warehouseman, except scale weight tickets."

19 **Section 2.** Section 80-4-429, MCA, is amended to read:

20 **"80-4-429. Penalty.** (1) Except as otherwise provided,
21 any person who violates any provision of parts 4 through 6
22 of this chapter or rules promulgated thereunder or who
23 impedes, obstructs, hinders, or otherwise prevents or
24 attempts to prevent the director or his duly authorized
25 representative in the performance of his duty under parts 4

1 through 6 of this chapter is guilty of a misdemeanor and is
2 punishable by imprisonment in a county jail not to exceed 6
3 months or by a fine of not more than \$1,000, or both.

4 (2) A person who refuses to permit inspection of
5 licensed premises, books, accounts, records, or other
6 documents required by parts 4 through 7 of this chapter or
7 who uses a scale weight ticket or credit sale contract that
8 fails to satisfy the requirements of parts 4 through 7 of
9 this chapter is guilty of a misdemeanor.

10 (3) A person acting as a commodity dealer or
11 warehouseman who knowingly sells warehouse-receipted
12 agricultural commodities that he is not authorized to sell
13 or who fails to pay for purchased agricultural commodities
14 is guilty of a felony."

15 **Section 3.** Section 80-4-525, MCA, is amended to read:

16 "80-4-525. Scale weight tickets -- form -- issuance.

17 (1) Scale weight tickets must be bound in books of
18 convenient size and must be numbered consecutively. The
19 original scale weight ticket must be delivered to the person
20 from whom the agricultural commodities are received. One
21 carbon copy of each scale weight ticket must remain as a
22 permanent record.

23 (2) A scale weight ticket must be issued for each load
24 of agricultural commodity received by the warehouseman.

25 (3) A scale weight ticket may not be issued or held in

1 lieu of a warehouse receipt. The retention of scale weight
2 tickets in lieu of warehouse receipts by the owner of the
3 grain is at the owner's risk.

4 (4) There must be plainly printed across the face of
5 such scale weight ticket issued by the warehouseman, in bold
6 type, the words "THIS IS NOT A WAREHOUSE RECEIPT. ~~IT MUST BE~~
7 EXCHANGED FOR A WAREHOUSE RECEIPT WILL BE ISSUED UPON
8 REQUEST IF GRAIN IS HELD IN STORAGE".

9 ~~(5) --There--must--be--plainly--printed--across--the--face--of--a~~
10 ~~combination-scale-weight-ticket-and-warehouse-receipt-issued~~
11 ~~by-the-warehouseman,--in--bold--type,--the--words--"COMBINATION~~
12 ~~SCALE-WEIGHT-TICKET-AND-WAREHOUSE-RECEIPT".~~

13 ~~(6)~~(5) All scale weight tickets must be signed by the
14 warehouseman or his agent.

15 ~~(7) When--scale--weight--tickets--are---exchanged---for~~
16 ~~warehouse---receipts,--the--scale--weight--tickets--must--be~~
17 ~~surrendered-to-the-warehouseman.~~

18 ~~(8)~~(6) All scale weight tickets must be converted into
19 cash or warehouse receipts on demand."

20 **Section 4.** Section 80-4-527, MCA, is amended to read:

21 "80-4-527. Warehouse receipt -- issuance. (1) A
22 warehouse receipt is a receipt issued by a licensed
23 warehouseman on a form containing all the information
24 required by 80-4-526.

25 (2) No warehouse receipt may be issued except for an

1 agricultural commodity actually delivered to a warehouse for
2 storage.

3 (3) All warehousemen are required to issue a warehouse
4 receipt for each lot of agricultural commodity received for
5 storage or make payment for the agricultural commodity.

6 (4) A warehouse receipt that does not in fact represent
7 an agricultural commodity actually delivered into a
8 warehouse for storage and the origin of which cannot be
9 traced to the actual delivery of the grain represented:

10 (a) is not legal and is of no value;

11 (b) has no claim on the agricultural commodity stored
12 in a warehouse; and

13 (c) has no claim on the warehouseman's bond.

14 (5) All agricultural commodities in a warehouse belong
15 to the holder of outstanding warehouse receipts except those
16 commodities that are in excess of the total of all
17 outstanding storage obligations. An outstanding warehouse
18 receipt is a warehouse receipt that has not been returned
19 and paid in full on the basis of grade, quality, and
20 quantity by the warehouseman issuing it.

21 (6) If for convenience the holder of two or more
22 warehouse receipts covering like agricultural commodities
23 wishes to combine them, the new receipt so issued must state
24 the fact that it was issued in lieu of existing receipts. An
25 assembly or recapitulation statement must be made whenever

1 receipts are so combined, and the number or other
2 identification of the statement must be referenced on the
3 new combined receipt. The assembly sheet must be kept on
4 file in the warehouse office. Each canceled receipt must
5 have stamped across its face "Canceled by No. ___" (showing
6 the number of the new combination receipt).

7 (7) A warehouseman who is a grower and conducts such an
8 enterprise may receive his own grain and issue warehouse
9 receipts for agricultural commodities, in the same manner
10 and without discrimination, as though the warehouse and
11 growing enterprises were of separate ownership. However, the
12 warehouseman shall report to the department all warehouse
13 receipts issued to himself as a grower.

14 (8) When warehouse receipts are prepared on duplicate
15 or triplicate forms, the original copy is the warehouse
16 receipt and must be given upon request to the person storing
17 the agricultural commodity covered by such receipt. The
18 other copies shall have plainly printed across the face the
19 words "duplicate", "triplicate", or "nonnegotiable".

20 (9) Each warehouse receipt issued must show the amount
21 of cash or value of any merchandise the warehouseman has
22 advanced on the agricultural commodity represented by the
23 receipt, but such notation may not be construed as fixing
24 the date of sale of such grain.

25 (10) All warehouse receipts must be numbered

1 consecutively as issued by each warehouseman.

2 (11) Warehouse receipts must be issued no later than 30
3 days after delivery unless agreed to in writing by both
4 parties."

5 **Section 5.** Section 80-4-538, MCA, is amended to read:

6 "**80-4-538. Warehouse shortage -- remedies.** (1) For
7 purposes of this section, whenever a warehouseman stores
8 agricultural commodities of different kinds, a receipt
9 holder has a claim against all commodities in storage,
10 regardless of their kind, under his receipt.

11 (2) Whenever it appears, after an investigation, that a
12 warehouseman does not have in his possession sufficient
13 agricultural commodities to cover the outstanding warehouse
14 receipts, scale weight tickets, or other evidence of storage
15 liability issued or assumed by him or when a warehouseman
16 refuses to submit his books, papers, or property to lawful
17 inspection, the department may give notice to the
18 warehouseman to comply with the following requirements:

19 (a) to cover such shortage;

20 (b) to give an additional bond as requested by the
21 department; or

22 (c) to submit to such inspection as the department
23 considers necessary.

24 ~~(2)~~(3) If the warehouseman fails to comply with the
25 terms of such notice within 24 hours from the date of

1 issuance of the notice or within such further time as the
2 department may allow, the department may petition the
3 district court of the first judicial district, Lewis and
4 Clark County, or the district court in the county where the
5 licensee's principal place of business is located, as shown
6 by the license application, for an order:

7 (a) authorizing the department to seize and take
8 possession of any or all agricultural commodities in the
9 warehouse or warehouses owned, operated, or controlled by
10 the warehouseman and of all books, papers, and property of
11 all kinds used in connection with the conduct or the
12 operation of the warehouse business and any materials that
13 pertain in any way to that business; and

14 (b) enjoining the warehouseman from interfering with
15 the department in the discharge of its duties as required by
16 this part.

17 ~~(3)~~(4) Upon taking possession, the department shall
18 give written notice of its action to the surety on the bond
19 of the warehouseman and may notify the holders of record, as
20 shown by the warehouseman's record, of all warehouse
21 receipts or scale weight tickets issued for agricultural
22 commodities to present their warehouse receipts or other
23 evidence of deposits for inspection or to account for the
24 same. The department may thereupon cause an audit to be made
25 of the affairs of the warehouse, including but not limited

1 to the agricultural commodities of which there is an
 2 apparent shortage, to determine the amount of shortage and,
 3 if possible, to compute the shortage as to each depositor as
 4 shown by the warehouseman's records. The department shall
 5 notify the warehouseman and the surety on his bond of the
 6 amount of the shortage and notify each affected depositor by
 7 sending notices to the depositor's last-known address as
 8 shown by the records of the warehouseman.

9 ~~4~~(5) The department shall retain possession of the
 10 agricultural commodities in the warehouse or warehouses and
 11 the books, papers, and property of the warehouseman until
 12 such time as:

13 (a) the warehouseman or the surety on the bond has
 14 satisfied the claims of all holders of warehouse receipts or
 15 other evidence of deposits;

16 (b) the surety on the bond has satisfied all such
 17 claims pro rata, if the shortage exceeds the amount of the
 18 bond; or

19 (c) the department is ordered by the court to surrender
 20 possession.

21 ~~5~~(6) If during or after the audit provided for in
 22 this section or at any other time the department has
 23 evidence that the warehouseman is insolvent or is unable to
 24 satisfy the claims of all holders of warehouse receipts or
 25 other evidence of deposits, the department may petition the

1 district court for the appointment of the department to
 2 operate or liquidate the business of the warehouse.

3 ~~6~~(7) At any time within 10 days after the department
 4 takes possession of any agricultural commodities or the
 5 books, papers, or property of any warehouse, the
 6 warehouseman may serve notice on the department to appear in
 7 the district court of the county in which the warehouse is
 8 located, at a time to be fixed by the court, and show cause
 9 why the agricultural commodities, books, papers, and other
 10 property should not be restored to his possession.

11 ~~7~~(8) All necessary expenses incurred by the
 12 department in carrying out the provisions of this section
 13 may be recovered in a separate civil action brought by the
 14 department in district court or recovered at the same time
 15 and as part of the seizure action filed under subsection
 16 ~~2~~~~a~~(3)(a).

17 ~~8~~(9) As a part of the expenses so incurred, the
 18 department is authorized to include the cost of adequate
 19 liability insurance necessary to protect the department, its
 20 officers, and others engaged in carrying out this section.

21 ~~9~~(10) The department shall set by rule the time limits
 22 for:

23 (a) notification of its action on the surety bond of a
 24 warehouseman;

25 (b) the holders of warehouse receipts or scale weight

1 tickets to provide to the department such evidence of
2 deposit; and

3 (c) satisfaction of the claims of all holders of
4 warehouse receipts or other evidence of deposits."

5 **Section 6.** Section 80-4-604, MCA, is amended to read:

6 "**80-4-604. Bonding requirement amounts -- cancellation.**

7 (1) An applicant for a license to operate as a commodity
8 dealer shall, before a license may be issued, file with the
9 department a surety bond or its equivalent, as established
10 by department rule, payable to the state. The aggregate
11 ~~annual~~ liability of the surety may not exceed the sum of the
12 bond.

13 (2) ~~Unless set by department rule, the~~ The bond for a
14 commodity dealer may not exceed 2% of the value of the
15 agricultural commodities purchased by the commodity dealer
16 from the producer during the previous 12-month period. The
17 bond for all new applicants is 2% of the estimated value of
18 all agricultural commodities to be purchased during the
19 coming 12-month period. ~~The department may by rule require a~~
20 ~~greater percentage in each instance. The minimum amount of~~
21 ~~bond required by any commodity dealer is \$20,000 and the~~
22 ~~maximum is prescribed in 80-4-405.~~

23 (3) A surety shall notify the commodity dealer and the
24 department by certified mail at least 60 days prior to the
25 cancellation of the bond. The liability of the surety covers

1 purchases made by the commodity dealer during the time the
2 bond is in force. A commodity dealer's bond filed with the
3 department is continuous until canceled by the surety upon
4 60 days' notice; however, such cancellation does not
5 terminate any liability of the surety incurred prior to the
6 date of cancellation."

7 **NEW SECTION. Section 7. Commodity dealer defaults --**

8 **remedies.** (1) If the department finds that a commodity
9 dealer has failed to comply with the terms of a written
10 contract or has failed to pay for a commodity purchase under
11 an oral agreement in the manner and within the time provided
12 in 80-4-608, the department may petition the district court
13 of the first judicial district, Lewis and Clark County, for
14 an order authorizing the department to seize and take
15 possession of:

16 (a) any agricultural commodities in the facilities
17 owned, operated, or controlled by the commodity dealer;

18 (b) all books, papers, and property used in connection
19 with the operation of the commodity dealer business; and

20 (c) any material that pertains in any way to that
21 business.

22 (2) If during or after an audit or at any other time
23 the department has evidence that the commodity dealer is
24 insolvent or is unable to satisfy the claims of all
25 commodity dealer creditors covered by the bond, the

1 department may petition the district court of the first
 2 judicial district, Lewis and Clark County, for the
 3 appointment of the department to operate or liquidate the
 4 business of the commodity dealer.

5 NEW SECTION. Section 8. Records. (1) A commodity
 6 dealer shall provide evidence of delivery, such as scale
 7 tickets, for all agricultural commodities purchased from a
 8 producer.

9 (2) A commodity dealer shall keep daily position
 10 records or their equivalent showing purchases, deliveries,
 11 or payments to producers.

12 NEW SECTION. Section 9. Claims on bond by injured
 13 person. A person injured by the breach of an obligation for
 14 which the bond is given may file a claim with the
 15 department. Claims will be accepted only from producers and
 16 for agricultural commodities grown in Montana.

17 NEW SECTION. Section 10. Codification instruction.
 18 [Sections 7, 8, and 9] are intended to be codified as an
 19 integral part of Title 80, chapter 4, part 6, and the
 20 provisions of Title 80, chapter 4, part 6, apply to
 21 [sections 7, 8, and 9].

22 NEW SECTION. Section 11. Severability. If a part of
 23 [this act] is invalid, all valid parts that are severable
 24 from the invalid part remain in effect. If a part of [this
 25 act] is invalid in one or more of its applications, the part

1 remains in effect in all valid applications that are
 2 severable from the invalid applications.

-End-

RE-REFERRED AND
APPROVED BY COMMITTEE
ON AGRICULTURE LIVESTOCK
AND IRRIGATION AS AMENDED

HOUSE BILL NO. 771

INTRODUCED BY FOSTER, KOEHNKE, STEPLER, JERGESON

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE AGRICULTURAL WAREHOUSE, COMMODITY DEALER, AND GRAIN STANDARDS ACT; REVISING USE OF THE \$30,000 EXEMPTION; PROVIDING A PENALTY FOR FRAUD; ELIMINATING USE OF A COMBINATION SCALE WEIGHT TICKET AND WAREHOUSE RECEIPT; ~~ELIMINATING THE REQUIREMENT THAT SCALE WEIGHT TICKETS BE EXCHANGED FOR WAREHOUSE RECEIPTS~~; ESTABLISHING A TIME LIMIT FOR ISSUING A WAREHOUSE RECEIPT; REQUIRING A PRODUCER TO REQUEST A WAREHOUSE RECEIPT; ALLOWING THE POOLING OF AGRICULTURAL COMMODITIES IN STORAGE TO COVER SHORTAGES; ALLOWING THE DEPARTMENT OF AGRICULTURE TO SEEK REMEDY IN THE FIRST JUDICIAL DISTRICT; CHANGING THE AGGREGATE LIABILITY OF SURETY BONDS FROM CUMULATIVE TO NONCUMULATIVE; ELIMINATING THE ABILITY OF THE DEPARTMENT OF AGRICULTURE TO SET BOND AMOUNTS BY RULE; ~~REMOVING THE MINIMUM AND MAXIMUM AMOUNTS OF BONDS FOR A COMMODITY DEALER~~; PROVIDING REMEDIES FOR COMMODITY DEALER DEFAULTS; REQUIRING COMMODITY DEALERS TO KEEP RECORDS; PROVIDING FOR CLAIMS ON THE BOND BY AN INJURED PERSON; AND AMENDING SECTIONS 80-4-402, 80-4-429, 80-4-525, 80-4-527, 80-4-538, AND 80-4-604, MCA."

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

Section 1. Section 80-4-402, MCA, is amended to read:

"80-4-402. Definitions. As used in parts 4 through 7 of this chapter, the following definitions apply:

(1) "Agent" means any person who contracts for or solicits any agricultural commodities from a producer or warehouseman or negotiates the consignment or purchase of any agricultural commodity on behalf of any commodity dealer.

(2) "Agricultural commodity" means any grain, beans, safflower, sunflower seeds, tame mustards, rapeseed, flaxseed, leguminous seed, or other small seed, and other agricultural commodities designated by rule of the department.

(3) "Bond" means the bond required to be filed by part 5 or 6 of this chapter and includes any equivalent established by department rule, as provided in 80-4-504 ~~and 80-4-604~~ AND 80-4-604.

(4) "Commodity dealer" means any person who engages in a business involving or, as part of his business, participates in buying, exchanging, negotiating, or soliciting the sale, resale, exchange, or transfer of any agricultural commodity in the state of Montana. The term does not include:

(a) a person engaged solely in storing, shipping, or handling agricultural commodities for hire;



1 (b) a person who buys agricultural commodities from a
2 licensed commodity dealer; or

3 (c) a person who does not purchase more than \$30,000
4 worth of agricultural commodities from producers during a
5 licensing year; however, once a person exceeds the \$30,000
6 exemption, he shall obtain a license and is not eligible for
7 the exemption for the succeeding year;

8 (d) a person who is the producer of agricultural
9 commodities that he actually plants, nurtures, and harvests;
10 or

11 (e) a person whose trading in agricultural
12 commodities is limited to trading in commodity futures on a
13 recognized futures exchange.

14 (5) "Credit sale contract" means a contract for the
15 sale of an agricultural commodity when the sale price is to
16 be paid at a date after delivery of the agricultural
17 commodity to the buyer and includes but is not limited to
18 those contracts commonly referred to as deferred payment
19 contracts, deferred pricing contracts, or price-later
20 contracts.

21 (6) "Department" means the department of agriculture
22 provided for in 2-15-3001.

23 (7) "Depositor" means any person who deposits an
24 agricultural commodity in a warehouse for storage,
25 processing, handling, or shipment or who is the owner or

1 legal holder of an outstanding warehouse receipt or who is
2 lawfully entitled to possession of the agricultural
3 commodity.

4 (8) "Director" means the director of the department of
5 agriculture.

6 (9) "Grain" means all grains for which standards have
7 been established under the United States Grain Standards Act
8 (7 U.S.C. 71 through 87) and all other agricultural
9 commodities, such as mustard, oil seed crops, or other crops
10 which may be designated by rule of the department.

11 (10) "Grain Standards Act" means the United States Grain
12 Standards Act (7 U.S.C. 71 through 87) ~~as that act reads on~~
13 ~~July 17, 1983.~~

14 (11) "Inspector" means any person so designated by the
15 director to assist in the administration of parts 4 through
16 6 of this chapter. The term includes warehouse auditors or
17 examiners.

18 (12) "Official grain inspectors" means any official
19 personnel who perform or supervise the performance of
20 official inspection services and certify the results
21 thereof, including the grade of the grain.

22 (13) "Official grain samplers" or "samplers" means any
23 official personnel who perform or supervise the performance
24 of official sampling services and certify the results
25 thereof.

1 (14) "Official grain standards" means the standards of
2 quality and condition of grain that establish the grades
3 defined by the Grain Standards Act.

4 (15) "Official grain weighers" means any official
5 personnel who perform or supervise the performance of class
6 X or class Y weighing services and certify the results
7 thereof, including the weight of the grain.

8 (16) "Person" means any individual, firm, association,
9 corporation, partnership, or any other form of business
10 enterprise.

11 (17) "Producer" means the owner, tenant, or operator of
12 land in this state who has an interest in and receives all
13 or part of the proceeds from the sale of agricultural
14 commodities produced on that land.

15 (18) "Public warehouse" or "warehouse" means any
16 elevator, mill, warehouse, subterminal grain warehouse,
17 public warehouse, or other structure or facility in which,
18 for compensation, agricultural commodities are received for
19 storage, handling, processing, or shipment. The term
20 includes facilities which commingle commodities belonging to
21 different lots of agricultural commodities.

22 (19) "Receipt" means a warehouse receipt.

23 (20) "Scale weight ticket" means a load slip or other
24 evidence of delivery, other than a receipt, given to a
25 depositor by a warehouseman licensed under the provisions of

1 part 5 of this chapter upon initial delivery of the
2 agricultural commodity to the warehouse.

3 (21) "Station" means a warehouse located more than 3
4 miles from the central office of the warehouse.

5 (22) "Subterminal warehouse" means any warehouse at
6 which an intermediate function is performed in which
7 agricultural commodities are customarily received from
8 dealers or producers and where the commodities are
9 accumulated prior to shipment.

10 (23) "Terminal grain warehouse" means any warehouse
11 authorized by a grain exchange to receive or disburse grain
12 on consignment as presented by the rules and regulations of
13 a grain exchange.

14 (24) "Warehouseman" means a person operating or
15 controlling a public warehouse.

16 (25) "Warehouse receipt" means every receipt, whether
17 negotiable or nonnegotiable, issued under part 5 of this
18 chapter by a warehouseman, except scale weight tickets."

19 **Section 2.** Section 80-4-429, MCA, is amended to read:

20 **"80-4-429. Penalty.** (1) Except as otherwise provided,
21 any person who violates any provision of parts 4 through 6
22 of this chapter or rules promulgated thereunder or who
23 impedes, obstructs, hinders, or otherwise prevents or
24 attempts to prevent the director or his duly authorized
25 representative in the performance of his duty under parts 4

1 through 6 of this chapter is guilty of a misdemeanor and is
2 punishable by imprisonment in a county jail not to exceed 6
3 months or by a fine of not more than \$1,000, or both.

4 (2) A person who refuses to permit inspection of
5 licensed premises, books, accounts, records, or other
6 documents required by parts 4 through 7 of this chapter or
7 who uses a scale weight ticket or credit sale contract that
8 fails to satisfy the requirements of parts 4 through 7 of
9 this chapter is guilty of a misdemeanor.

10 (3) A person acting as a commodity dealer or
11 warehouseman who knowingly sells warehouse-receipted
12 agricultural commodities that he is not authorized to sell
13 or who fails to pay for purchased agricultural commodities
14 is guilty of a felony."

15 **Section 3.** Section 80-4-525, MCA, is amended to read:

16 "80-4-525. Scale weight tickets -- form -- issuance.

17 (1) Scale weight tickets must be bound in books of
18 convenient size and must be numbered consecutively. The
19 original scale weight ticket must be delivered to the person
20 from whom the agricultural commodities are received. One
21 carbon copy of each scale weight ticket must remain as a
22 permanent record.

23 (2) A scale weight ticket must be issued for each load
24 of agricultural commodity received by the warehouseman.

25 (3) A scale weight ticket may not be issued or held in

1 lieu of a warehouse receipt. The retention of scale weight
2 tickets in lieu of warehouse receipts by the owner of the
3 grain is at the owner's risk.

4 (4) There must be plainly printed across the face of
5 such scale weight ticket issued by the warehouseman, in bold
6 type, the words "THIS IS NOT A WAREHOUSE RECEIPT. ~~IT MUST BE~~
7 ~~EXCHANGED FOR IT MUST BE EXCHANGED FOR~~ A WAREHOUSE RECEIPT
8 ~~WITH BE ISSUED UPON REQUEST~~ IF GRAIN IS HELD IN STORAGE".

9 (5) ~~There must be plainly printed across the face of a~~
10 ~~combination scale weight ticket and warehouse receipt issued~~
11 ~~by the warehouseman in bold type, the words "COMBINATION~~
12 ~~SCALE WEIGHT TICKET AND WAREHOUSE RECEIPT".~~

13 (6) (5) All scale weight tickets must be signed by the
14 warehouseman or his agent.

15 (7) ~~When scale weight tickets are exchanged for~~
16 ~~warehouse receipts, the scale weight tickets must be~~
17 ~~surrendered to the warehouseman.~~

18 (8) (6) All scale weight tickets must be converted into
19 cash or warehouse receipts on demand."

20 **Section 4.** Section 80-4-527, MCA, is amended to read:

21 "80-4-527. Warehouse receipt -- issuance. (1) A
22 warehouse receipt is a receipt issued by a licensed
23 warehouseman on a form containing all the information
24 required by 80-4-526.

25 (2) No warehouse receipt may be issued except for an

1 agricultural commodity actually delivered to a warehouse for
2 storage.

3 (3) All warehousemen are required to issue a warehouse
4 receipt for each lot of agricultural commodity received for
5 storage or make payment for the agricultural commodity.

6 (4) A warehouse receipt that does not in fact represent
7 an agricultural commodity actually delivered into a
8 warehouse for storage and the origin of which cannot be
9 traced to the actual delivery of the grain represented:

- 10 (a) is not legal and is of no value;
- 11 (b) has no claim on the agricultural commodity stored
12 in a warehouse; and
- 13 (c) has no claim on the warehouseman's bond.

14 (5) All agricultural commodities in a warehouse belong
15 to the holder of outstanding warehouse receipts except those
16 commodities that are in excess of the total of all
17 outstanding storage obligations. An outstanding warehouse
18 receipt is a warehouse receipt that has not been returned
19 and paid in full on the basis of grade, quality, and
20 quantity by the warehouseman issuing it.

21 (6) If for convenience the holder of two or more
22 warehouse receipts covering like agricultural commodities
23 wishes to combine them, the new receipt so issued must state
24 the fact that it was issued in lieu of existing receipts. An
25 assembly or recapitulation statement must be made whenever

1 receipts are so combined, and the number or other
2 identification of the statement must be referenced on the
3 new combined receipt. The assembly sheet must be kept on
4 file in the warehouse office. Each canceled receipt must
5 have stamped across its face "Canceled by No. ___" (showing
6 the number of the new combination receipt).

7 (7) A warehouseman who is a grower and conducts such an
8 enterprise may receive his own grain and issue warehouse
9 receipts for agricultural commodities, in the same manner
10 and without discrimination, as though the warehouse and
11 growing enterprises were of separate ownership. However, the
12 warehouseman shall report to the department all warehouse
13 receipts issued to himself as a grower.

14 (8) When warehouse receipts are prepared on duplicate
15 or triplicate forms, the original copy is the warehouse
16 receipt and must be given upon request to the person storing
17 the agricultural commodity covered by such receipt. The
18 other copies shall have plainly printed across the face the
19 words "duplicate", "triplicate", or "nonnegotiable".

20 (9) Each warehouse receipt issued must show the amount
21 of cash or value of any merchandise the warehouseman has
22 advanced on the agricultural commodity represented by the
23 receipt, but such notation may not be construed as fixing
24 the date of sale of such grain.

25 (10) All warehouse receipts must be numbered

1 consecutively as issued by each warehouseman.

2 (11) Warehouse receipts must be issued WHEN STORAGE IS
 3 CHARGED BUT no later than 30 days after delivery unless
 4 agreed to in writing by both parties."

5 **Section 5.** Section 80-4-538, MCA, is amended to read:

6 **"80-4-538. Warehouse shortage -- remedies.** (1) For
 7 purposes of this section, whenever a warehouseman stores
 8 agricultural commodities of different kinds, a receipt
 9 holder has a claim against all commodities in storage,
 10 regardless of their kind, under his receipt.

11 (2) Whenever it appears, after an investigation, that a
 12 warehouseman does not have in his possession sufficient
 13 agricultural commodities to cover the outstanding warehouse
 14 receipts, scale weight tickets, or other evidence of storage
 15 liability issued or assumed by him or when a warehouseman
 16 refuses to submit his books, papers, or property to lawful
 17 inspection, the department may give notice to the
 18 warehouseman to comply with the following requirements:

19 (a) to cover such shortage;

20 (b) to give an additional bond as requested by the
 21 department; or

22 (c) to submit to such inspection as the department
 23 considers necessary.

24 ~~(2)~~(3) If the warehouseman fails to comply with the
 25 terms of such notice within 24 hours from the date of

1 issuance of the notice or within such further time as the
 2 department may allow, the department may petition the
 3 district court of the first judicial district, Lewis and
 4 Clark County, or the district court in the county where the
 5 licensee's principal place of business is located, as shown
 6 by the license application, for an order:

7 (a) authorizing the department to seize and take
 8 possession of any or all agricultural commodities in the
 9 warehouse or warehouses owned, operated, or controlled by
 10 the warehouseman and of all books, papers, and property of
 11 all kinds used in connection with the conduct or the
 12 operation of the warehouse business and any materials that
 13 pertain in any way to that business; and

14 (b) enjoining the warehouseman from interfering with
 15 the department in the discharge of its duties as required by
 16 this part.

17 ~~(3)~~(4) Upon taking possession, the department shall
 18 give written notice of its action to the surety on the bond
 19 of the warehouseman and may notify the holders of record, as
 20 shown by the warehouseman's record, of all warehouse
 21 receipts or scale weight tickets issued for agricultural
 22 commodities to present their warehouse receipts or other
 23 evidence of deposits for inspection or to account for the
 24 same. The department may thereupon cause an audit to be made
 25 of the affairs of the warehouse, including but not limited

1 to the agricultural commodities of which there is an
 2 apparent shortage, to determine the amount of shortage and,
 3 if possible, to compute the shortage as to each depositor as
 4 shown by the warehouseman's records. The department shall
 5 notify the warehouseman and the surety on his bond of the
 6 amount of the shortage and notify each affected depositor by
 7 sending notices to the depositor's last-known address as
 8 shown by the records of the warehouseman.

9 ~~(4)~~(5) The department shall retain possession of the
 10 agricultural commodities in the warehouse or warehouses and
 11 the books, papers, and property of the warehouseman until
 12 such time as:

13 (a) the warehouseman or the surety on the bond has
 14 satisfied the claims of all holders of warehouse receipts or
 15 other evidence of deposits;

16 (b) the surety on the bond has satisfied all such
 17 claims pro rata, if the shortage exceeds the amount of the
 18 bond; or

19 (c) the department is ordered by the court to surrender
 20 possession.

21 ~~(5)~~(6) If during or after the audit provided for in
 22 this section or at any other time the department has
 23 evidence that the warehouseman is insolvent or is unable to
 24 satisfy the claims of all holders of warehouse receipts or
 25 other evidence of deposits, the department may petition the

1 district court for the appointment of the department to
 2 operate or liquidate the business of the warehouse.

3 ~~(6)~~(7) At any time within 10 days after the department
 4 takes possession of any agricultural commodities or the
 5 books, papers, or property of any warehouse, the
 6 warehouseman may serve notice on the department to appear in
 7 the district court of the county in which the warehouse is
 8 located, at a time to be fixed by the court, and show cause
 9 why the agricultural commodities, books, papers, and other
 10 property should not be restored to his possession.

11 ~~(7)~~(8) All necessary expenses incurred by the
 12 department in carrying out the provisions of this section
 13 may be recovered in a separate civil action brought by the
 14 department in district court or recovered at the same time
 15 and as part of the seizure action filed under subsection
 16 ~~(2)~~(a) ~~(3)~~(a).

17 ~~(8)~~(9) As a part of the expenses so incurred, the
 18 department is authorized to include the cost of adequate
 19 liability insurance necessary to protect the department, its
 20 officers, and others engaged in carrying out this section.

21 ~~(9)~~(10) The department shall set by rule the time limits
 22 for:

23 (a) notification of its action on the surety bond of a
 24 warehouseman;

25 (b) the holders of warehouse receipts or scale weight

1 tickets to provide to the department such evidence of
2 deposit; and

3 (c) satisfaction of the claims of all holders of
4 warehouse receipts or other evidence of deposits."

5 **Section 6.** Section 80-4-604, MCA, is amended to read:

6 **"80-4-604. Bonding requirement amounts -- cancellation.**

7 (1) An applicant for a license to operate as a commodity
8 dealer shall, before a license may be issued, file with the
9 department a surety bond or its equivalent, as established
10 by department rule, payable to the state. The aggregate
11 annual liability of the surety may not exceed the sum of the
12 bond.

13 (2) ~~Unless set by department rule, the~~ The bond for a
14 commodity dealer may not exceed 2% of the value of the
15 agricultural commodities purchased by the commodity dealer
16 from the producer during the previous 12-month period. The
17 bond for all new applicants is 2% of the estimated value of
18 all agricultural commodities to be purchased during the
19 coming 12-month period. ~~The department may by rule require a~~
20 ~~greater percentage in each instance. The minimum amount of~~
21 ~~bond required by any commodity dealer is \$20,000, and the~~
22 ~~maximum is prescribed in 80-4-405.~~ THE MINIMUM AMOUNT OF
23 BOND REQUIRED BY ANY COMMODITY DEALER IS \$20,000, AND THE
24 MAXIMUM IS PRESCRIBED IN 80-4-405.

25 (3) A surety shall notify the commodity dealer and the

1 department by certified mail at least 60 days prior to the
2 cancellation of the bond. The liability of the surety covers
3 purchases made by the commodity dealer during the time the
4 bond is in force. A commodity dealer's bond filed with the
5 department is continuous until canceled by the surety upon
6 60 days' notice; however, such cancellation does not
7 terminate any liability of the surety incurred prior to the
8 date of cancellation."

9 NEW SECTION. Section 7. Commodity dealer defaults --
10 remedies. (1) If the department finds that a commodity
11 dealer has failed to comply with the terms of a written
12 contract or has failed to pay for a commodity purchase under
13 an oral agreement in the manner and within the time provided
14 in 80-4-608, the department may petition the district court
15 of the first judicial district, Lewis and Clark County, for
16 an order authorizing the department to seize and take
17 possession of:

18 (a) any agricultural commodities in the facilities
19 owned, operated, or controlled by the commodity dealer;

20 (b) all books, papers, and property used in connection
21 with the operation of the commodity dealer business; and

22 (c) any material that pertains in any way to that
23 business.

24 (2) If during or after an audit or at any other time
25 the department has evidence that the commodity dealer is

1 insolvent or is unable to satisfy the claims of all
 2 commodity dealer creditors covered by the bond, the
 3 department may petition the district court of the first
 4 judicial district, Lewis and Clark County, for the
 5 appointment of the department to operate or liquidate the
 6 business of the commodity dealer.

7 NEW SECTION. **Section 8. Records.** (1) A commodity
 8 dealer shall provide evidence of delivery, such as scale
 9 tickets, for all agricultural commodities purchased from a
 10 producer.

11 (2) A commodity dealer shall keep daily position
 12 records or their equivalent showing purchases, deliveries,
 13 or payments to producers.

14 NEW SECTION. **Section 9. Claims on bond by injured**
 15 **person.** A person injured by the breach of an obligation for
 16 which the bond is given may file a claim with the
 17 department. Claims will be accepted only from producers and
 18 for agricultural commodities grown in Montana.

19 NEW SECTION. **Section 10. Codification instruction.**
 20 [Sections 7, 8, and 9] are intended to be codified as an
 21 integral part of Title 80, chapter 4, part 6, and the
 22 provisions of Title 80, chapter 4, part 6, apply to
 23 [sections 7, 8, and 9].

24 NEW SECTION. **Section 11. 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.

-End-

HOUSE BILL NO. 771

INTRODUCED BY FOSTER, KOEHNKE, STEPLER, JERGESON

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE AGRICULTURAL WAREHOUSE, COMMODITY DEALER, AND GRAIN STANDARDS ACT; REVISING USE OF THE \$30,000 EXEMPTION; PROVIDING A PENALTY FOR FRAUD; ELIMINATING USE OF A COMBINATION SCALE WEIGHT TICKET AND WAREHOUSE RECEIPT; ~~ELIMINATING THE REQUIREMENT THAT SCALE WEIGHT TICKETS BE EXCHANGED FOR WAREHOUSE RECEIPTS;~~ ESTABLISHING A TIME LIMIT FOR ISSUING A WAREHOUSE RECEIPT; REQUIRING A PRODUCER TO REQUEST A WAREHOUSE RECEIPT; ALLOWING THE POOLING OF AGRICULTURAL COMMODITIES IN STORAGE TO COVER SHORTAGES; ALLOWING THE DEPARTMENT OF AGRICULTURE TO SEEK REMEDY IN THE FIRST JUDICIAL DISTRICT; CHANGING THE AGGREGATE LIABILITY OF SURETY BONDS FROM CUMULATIVE TO NONCUMULATIVE; ELIMINATING THE ABILITY OF THE DEPARTMENT OF AGRICULTURE TO SET BOND AMOUNTS BY RULE; ~~REMOVING THE MINIMUM AND MAXIMUM AMOUNTS OF BONDS FOR A COMMODITY DEALER;~~ PROVIDING REMEDIES FOR COMMODITY DEALER DEFAULTS; REQUIRING COMMODITY DEALERS TO KEEP RECORDS; PROVIDING FOR CLAIMS ON THE BOND BY AN INJURED PERSON; AND AMENDING SECTIONS 80-4-402, 80-4-429, 80-4-525, 80-4-527, 80-4-538, AND 80-4-604, MCA."

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

Section 1. Section 80-4-402, MCA, is amended to read:

"80-4-402. Definitions. As used in parts 4 through 7 of this chapter, the following definitions apply:

(1) "Agent" means any person who contracts for or solicits any agricultural commodities from a producer or warehouseman or negotiates the consignment or purchase of any agricultural commodity on behalf of any commodity dealer.

(2) "Agricultural commodity" means any grain, beans, safflower, sunflower seeds, tame mustards, rapeseed, flaxseed, leguminous seed, or other small seed, and other agricultural commodities designated by rule of the department.

(3) "Bond" means the bond required to be filed by part 5 or 6 of this chapter and includes any equivalent established by department rule, as provided in 80-4-504 and ~~80-4-604~~ AND 80-4-604.

(4) "Commodity dealer" means any person who engages in a business involving or, as part of his business, participates in buying, exchanging, negotiating, or soliciting the sale, resale, exchange, or transfer of any agricultural commodity in the state of Montana. The term does not include:

(a) a person engaged solely in storing, shipping, or handling agricultural commodities for hire;

1 (b) a person who buys agricultural commodities from a
2 licensed commodity dealer; or

3 (c) a person who does not purchase more than \$30,000
4 worth of agricultural commodities from producers during a
5 licensing year; however, once a person exceeds the \$30,000
6 exemption, he shall obtain a license and is not eligible for
7 the exemption for the succeeding year;

8 (d) a person who is the producer of agricultural
9 commodities that he actually plants, nurtures, and harvests;
10 or

11 (e) a person whose trading in agricultural
12 commodities is limited to trading in commodity futures on a
13 recognized futures exchange.

14 (5) "Credit sale contract" means a contract for the
15 sale of an agricultural commodity when the sale price is to
16 be paid at a date after delivery of the agricultural
17 commodity to the buyer and includes but is not limited to
18 those contracts commonly referred to as deferred payment
19 contracts, deferred pricing contracts, or price-later
20 contracts.

21 (6) "Department" means the department of agriculture
22 provided for in 2-15-3001.

23 (7) "Depositor" means any person who deposits an
24 agricultural commodity in a warehouse for storage,
25 processing, handling, or shipment or who is the owner or

1 legal holder of an outstanding warehouse receipt or who is
2 lawfully entitled to possession of the agricultural
3 commodity.

4 (8) "Director" means the director of the department of
5 agriculture.

6 (9) "Grain" means all grains for which standards have
7 been established under the United States Grain Standards Act
8 (7 U.S.C. 71 through 87) and all other agricultural
9 commodities, such as mustard, oil seed crops, or other crops
10 which may be designated by rule of the department.

11 (10) "Grain Standards Act" means the United States Grain
12 Standards Act (7 U.S.C. 71 through 87) ~~as that act reads on~~
13 ~~July 17, 1983.~~

14 (11) "Inspector" means any person so designated by the
15 director to assist in the administration of parts 4 through
16 6 of this chapter. The term includes warehouse auditors or
17 examiners.

18 (12) "Official grain inspectors" means any official
19 personnel who perform or supervise the performance of
20 official inspection services and certify the results
21 thereof, including the grade of the grain.

22 (13) "Official grain samplers" or "samplers" means any
23 official personnel who perform or supervise the performance
24 of official sampling services and certify the results
25 thereof.

1 (14) "Official grain standards" means the standards of
2 quality and condition of grain that establish the grades
3 defined by the Grain Standards Act.

4 (15) "Official grain weighers" means any official
5 personnel who perform or supervise the performance of class
6 X or class Y weighing services and certify the results
7 thereof, including the weight of the grain.

8 (16) "Person" means any individual, firm, association,
9 corporation, partnership, or any other form of business
10 enterprise.

11 (17) "Producer" means the owner, tenant, or operator of
12 land in this state who has an interest in and receives all
13 or part of the proceeds from the sale of agricultural
14 commodities produced on that land.

15 (18) "Public warehouse" or "warehouse" means any
16 elevator, mill, warehouse, subterminal grain warehouse,
17 public warehouse, or other structure or facility in which,
18 for compensation, agricultural commodities are received for
19 storage, handling, processing, or shipment. The term
20 includes facilities which commingle commodities belonging to
21 different lots of agricultural commodities.

22 (19) "Receipt" means a warehouse receipt.

23 (20) "Scale weight ticket" means a load slip or other
24 evidence of delivery, other than a receipt, given to a
25 depositor by a warehouseman licensed under the provisions of

1 part 5 of this chapter upon initial delivery of the
2 agricultural commodity to the warehouse.

3 (21) "Station" means a warehouse located more than 3
4 miles from the central office of the warehouse.

5 (22) "Subterminal warehouse" means any warehouse at
6 which an intermediate function is performed in which
7 agricultural commodities are customarily received from
8 dealers or producers and where the commodities are
9 accumulated prior to shipment.

10 (23) "Terminal grain warehouse" means any warehouse
11 authorized by a grain exchange to receive or disburse grain
12 on consignment as presented by the rules and regulations of
13 a grain exchange.

14 (24) "Warehouseman" means a person operating or
15 controlling a public warehouse.

16 (25) "Warehouse receipt" means every receipt, whether
17 negotiable or nonnegotiable, issued under part 5 of this
18 chapter by a warehouseman, except scale weight tickets."

19 **Section 2.** Section 80-4-429, MCA, is amended to read:

20 "80-4-429. Penalty. (1) Except as otherwise provided,
21 any person who violates any provision of parts 4 through 6
22 of this chapter or rules promulgated thereunder or who
23 impedes, obstructs, hinders, or otherwise prevents or
24 attempts to prevent the director or his duly authorized
25 representative in the performance of his duty under parts 4

1 through 6 of this chapter is guilty of a misdemeanor and is
2 punishable by imprisonment in a county jail not to exceed 6
3 months or by a fine of not more than \$1,000, or both.

4 (2) A person who refuses to permit inspection of
5 licensed premises, books, accounts, records, or other
6 documents required by parts 4 through 7 of this chapter or
7 who uses a scale weight ticket or credit sale contract that
8 fails to satisfy the requirements of parts 4 through 7 of
9 this chapter is guilty of a misdemeanor.

10 (3) A person acting as a commodity dealer or
11 warehouseman who knowingly sells warehouse-receipted
12 agricultural commodities that he is not authorized to sell
13 or who fails to pay for purchased agricultural commodities
14 is guilty of a felony."

15 **Section 3.** Section 80-4-525, MCA, is amended to read:

16 **"80-4-525. Scale weight tickets -- form -- issuance.**

17 (1) Scale weight tickets must be bound in books of
18 convenient size and must be numbered consecutively. The
19 original scale weight ticket must be delivered to the person
20 from whom the agricultural commodities are received. One
21 carbon copy of each scale weight ticket must remain as a
22 permanent record.

23 (2) A scale weight ticket must be issued for each load
24 of agricultural commodity received by the warehouseman.

25 (3) A scale weight ticket may not be issued or held in

1 lieu of a warehouse receipt. The retention of scale weight
2 tickets in lieu of warehouse receipts by the owner of the
3 grain is at the owner's risk.

4 (4) There must be plainly printed across the face of
5 such scale weight ticket issued by the warehouseman, in bold
6 type, the words "THIS IS NOT A WAREHOUSE RECEIPT. ~~IT MUST BE~~
7 ~~EXCHANGED FOR IT MUST BE EXCHANGED FOR~~ A WAREHOUSE RECEIPT
8 ~~WILL BE ISSUED UPON REQUEST~~ IF GRAIN IS HELD IN STORAGE".

9 ~~(5) -- There -- must -- be -- plainly -- printed -- across -- the -- face -- of -- a~~
10 ~~combination -- scale -- weight -- ticket -- and -- warehouse -- receipt -- issued~~
11 ~~by -- the -- warehouseman -- in -- bold -- type -- the -- words -- "COMBINATION~~
12 ~~SCALE -- WEIGHT -- TICKET -- AND -- WAREHOUSE -- RECEIPT".~~

13 (6)(5) All scale weight tickets must be signed by the
14 warehouseman or his agent.

15 (7) ~~When -- scale -- weight -- tickets -- are -- exchanged -- for~~
16 ~~warehouse -- receipts -- the -- scale -- weight -- tickets -- must -- be~~
17 ~~surrendered -- to -- the -- warehouseman --~~

18 (8)(6) All scale weight tickets must be converted into
19 cash or warehouse receipts on demand."

20 **Section 4.** Section 80-4-527, MCA, is amended to read:

21 **"80-4-527. Warehouse receipt -- issuance.** (1) A
22 warehouse receipt is a receipt issued by a licensed
23 warehouseman on a form containing all the information
24 required by 80-4-526.

25 (2) No warehouse receipt may be issued except for an

1 agricultural commodity actually delivered to a warehouse for
2 storage.

3 (3) All warehousemen are required to issue a warehouse
4 receipt for each lot of agricultural commodity received for
5 storage or make payment for the agricultural commodity.

6 (4) A warehouse receipt that does not in fact represent
7 an agricultural commodity actually delivered into a
8 warehouse for storage and the origin of which cannot be
9 traced to the actual delivery of the grain represented:

10 (a) is not legal and is of no value;

11 (b) has no claim on the agricultural commodity stored
12 in a warehouse; and

13 (c) has no claim on the warehouseman's bond.

14 (5) All agricultural commodities in a warehouse belong
15 to the holder of outstanding warehouse receipts except those
16 commodities that are in excess of the total of all
17 outstanding storage obligations. An outstanding warehouse
18 receipt is a warehouse receipt that has not been returned
19 and paid in full on the basis of grade, quality, and
20 quantity by the warehouseman issuing it.

21 (6) If for convenience the holder of two or more
22 warehouse receipts covering like agricultural commodities
23 wishes to combine them, the new receipt so issued must state
24 the fact that it was issued in lieu of existing receipts. An
25 assembly or recapitulation statement must be made whenever

1 receipts are so combined, and the number or other
2 identification of the statement must be referenced on the
3 new combined receipt. The assembly sheet must be kept on
4 file in the warehouse office. Each canceled receipt must
5 have stamped across its face "Canceled by No. ___" (showing
6 the number of the new combination receipt).

7 (7) A warehouseman who is a grower and conducts such an
8 enterprise may receive his own grain and issue warehouse
9 receipts for agricultural commodities, in the same manner
10 and without discrimination, as though the warehouse and
11 growing enterprises were of separate ownership. However, the
12 warehouseman shall report to the department all warehouse
13 receipts issued to himself as a grower.

14 (8) When warehouse receipts are prepared on duplicate
15 or triplicate forms, the original copy is the warehouse
16 receipt and must be given upon request to the person storing
17 the agricultural commodity covered by such receipt. The
18 other copies shall have plainly printed across the face the
19 words "duplicate", "triplicate", or "nonnegotiable".

20 (9) Each warehouse receipt issued must show the amount
21 of cash or value of any merchandise the warehouseman has
22 advanced on the agricultural commodity represented by the
23 receipt, but such notation may not be construed as fixing
24 the date of sale of such grain.

25 (10) All warehouse receipts must be numbered

1 consecutively as issued by each warehouseman.

2 (1) Warehouse receipts must be issued WHEN STORAGE IS
3 CHARGED BUT no later than 30 days after delivery unless
4 agreed to in writing by both parties."

5 **Section 5.** Section 80-4-538, MCA, is amended to read:

6 **"80-4-538. Warehouse shortage -- remedies.** (1) For
7 purposes of this section, whenever a warehouseman stores
8 agricultural commodities of different kinds, a receipt
9 holder has a claim against all commodities in storage,
10 regardless of their kind, under his receipt.

11 (2) Whenever it appears, after an investigation, that a
12 warehouseman does not have in his possession sufficient
13 agricultural commodities to cover the outstanding warehouse
14 receipts, scale weight tickets, or other evidence of storage
15 liability issued or assumed by him or when a warehouseman
16 refuses to submit his books, papers, or property to lawful
17 inspection, the department may give notice to the
18 warehouseman to comply with the following requirements:

19 (a) to cover such shortage;

20 (b) to give an additional bond as requested by the
21 department; or

22 (c) to submit to such inspection as the department
23 considers necessary.

24 ~~(2)~~(3) If the warehouseman fails to comply with the
25 terms of such notice within 24 hours from the date of

1 issuance of the notice or within such further time as the
2 department may allow, the department may petition the
3 district court of the first judicial district, Lewis and
4 Clark County, or the district court in the county where the
5 licensee's principal place of business is located, as shown
6 by the license application, for an order:

7 (a) authorizing the department to seize and take
8 possession of any or all agricultural commodities in the
9 warehouse or warehouses owned, operated, or controlled by
10 the warehouseman and of all books, papers, and property of
11 all kinds used in connection with the conduct or the
12 operation of the warehouse business and any materials that
13 pertain in any way to that business; and

14 (b) enjoining the warehouseman from interfering with
15 the department in the discharge of its duties as required by
16 this part.

17 ~~(3)~~(4) Upon taking possession, the department shall
18 give written notice of its action to the surety on the bond
19 of the warehouseman and may notify the holders of record, as
20 shown by the warehouseman's record, of all warehouse
21 receipts or scale weight tickets issued for agricultural
22 commodities to present their warehouse receipts or other
23 evidence of deposits for inspection or to account for the
24 same. The department may thereupon cause an audit to be made
25 of the affairs of the warehouse, including but not limited

1 to the agricultural commodities of which there is an
 2 apparent shortage, to determine the amount of shortage and,
 3 if possible, to compute the shortage as to each depositor as
 4 shown by the warehouseman's records. The department shall
 5 notify the warehouseman and the surety on his bond of the
 6 amount of the shortage and notify each affected depositor by
 7 sending notices to the depositor's last-known address as
 8 shown by the records of the warehouseman.

9 ~~††~~(5) The department shall retain possession of the
 10 agricultural commodities in the warehouse or warehouses and
 11 the books, papers, and property of the warehouseman until
 12 such time as:

13 (a) the warehouseman or the surety on the bond has
 14 satisfied the claims of all holders of warehouse receipts or
 15 other evidence of deposits;

16 (b) the surety on the bond has satisfied all such
 17 claims pro rata, if the shortage exceeds the amount of the
 18 bond; or

19 (c) the department is ordered by the court to surrender
 20 possession.

21 ~~††~~(6) If during or after the audit provided for in
 22 this section or at any other time the department has
 23 evidence that the warehouseman is insolvent or is unable to
 24 satisfy the claims of all holders of warehouse receipts or
 25 other evidence of deposits, the department may petition the

1 district court for the appointment of the department to
 2 operate or liquidate the business of the warehouse.

3 ~~†6~~(7) At any time within 10 days after the department
 4 takes possession of any agricultural commodities or the
 5 books, papers, or property of any warehouse, the
 6 warehouseman may serve notice on the department to appear in
 7 the district court of the county in which the warehouse is
 8 located, at a time to be fixed by the court, and show cause
 9 why the agricultural commodities, books, papers, and other
 10 property should not be restored to his possession.

11 ~~†7~~(8) All necessary expenses incurred by the
 12 department in carrying out the provisions of this section
 13 may be recovered in a separate civil action brought by the
 14 department in district court or recovered at the same time
 15 and as part of the seizure action filed under subsection
 16 ~~†2~~(a) ~~(3)~~(a).

17 ~~†8~~(9) As a part of the expenses so incurred, the
 18 department is authorized to include the cost of adequate
 19 liability insurance necessary to protect the department, its
 20 officers, and others engaged in carrying out this section.

21 ~~†9~~(10) The department shall set by rule the time limits
 22 for:

23 (a) notification of its action on the surety bond of a
 24 warehouseman;

25 (b) the holders of warehouse receipts or scale weight

1 tickets to provide to the department such evidence of
2 deposit; and

3 (c) satisfaction of the claims of all holders of
4 warehouse receipts or other evidence of deposits."

5 **Section 6.** Section 80-4-604, MCA, is amended to read:

6 **"80-4-604. Bonding requirement amounts -- cancellation.**

7 (1) An applicant for a license to operate as a commodity
8 dealer shall, before a license may be issued, file with the
9 department a surety bond or its equivalent, as established
10 by department rule, payable to the state. The aggregate
11 annual liability of the surety may not exceed the sum of the
12 bond.

13 (2) ~~Unless set by department rule, the~~ The bond for a
14 commodity dealer may not exceed 2% of the value of the
15 agricultural commodities purchased by the commodity dealer
16 from the producer during the previous 12-month period. The
17 bond for all new applicants is 2% of the estimated value of
18 all agricultural commodities to be purchased during the
19 coming 12-month period. ~~The department may by rule require a~~
20 ~~greater percentage in each instance. The minimum amount of~~
21 ~~bond required by any commodity dealer is \$20,000, and the~~
22 ~~maximum is prescribed in 80-4-405. THE MINIMUM AMOUNT OF~~
23 BOND REQUIRED BY ANY COMMODITY DEALER IS \$20,000, AND THE
24 MAXIMUM IS PRESCRIBED IN 80-4-405.

25 (3) A surety shall notify the commodity dealer and the

1 department by certified mail at least 60 days prior to the
2 cancellation of the bond. The liability of the surety covers
3 purchases made by the commodity dealer during the time the
4 bond is in force. A commodity dealer's bond filed with the
5 department is continuous until canceled by the surety upon
6 60 days' notice; however, such cancellation does not
7 terminate any liability of the surety incurred prior to the
8 date of cancellation."

9 **NEW SECTION. Section 7. Commodity dealer defaults --**
10 **remedies.** (1) If the department finds that a commodity
11 dealer has failed to comply with the terms of a written
12 contract or has failed to pay for a commodity purchase under
13 an oral agreement in the manner and within the time provided
14 in 80-4-608, the department may petition the district court
15 of the first judicial district, Lewis and Clark County, for
16 an order authorizing the department to seize and take
17 possession of:

18 (a) any agricultural commodities in the facilities
19 owned, operated, or controlled by the commodity dealer;

20 (b) all books, papers, and property used in connection
21 with the operation of the commodity dealer business; and

22 (c) any material that pertains in any way to that
23 business.

24 (2) If during or after an audit or at any other time
25 the department has evidence that the commodity dealer is

1 insolvent or is unable to satisfy the claims of all
 2 commodity dealer creditors covered by the bond, the
 3 department may petition the district court of the first
 4 judicial district, Lewis and Clark County, for the
 5 appointment of the department to operate or liquidate the
 6 business of the commodity dealer.

7 NEW SECTION. Section 8. Records. (1) A commodity
 8 dealer shall provide evidence of delivery, such as scale
 9 tickets, for all agricultural commodities purchased from a
 10 producer.

11 (2) A commodity dealer shall keep daily position
 12 records or their equivalent showing purchases, deliveries,
 13 or payments to producers.

14 NEW SECTION. Section 9. Claims on bond by injured
 15 person. A person injured by the breach of an obligation for
 16 which the bond is given may file a claim with the
 17 department. Claims will be accepted only from producers and
 18 for agricultural commodities grown in Montana.

19 NEW SECTION. Section 10. Codification instruction.
 20 [Sections 7, 8, and 9] are intended to be codified as an
 21 integral part of Title 80, chapter 4, part 6, and the
 22 provisions of Title 80, chapter 4, part 6, apply to
 23 [sections 7, 8, and 9].

24 NEW SECTION. Section 11. 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.

-End-

1 HOUSE BILL NO. 771

2 INTRODUCED BY FOSTER, KOEHNKE, STEPLER, JERGSON

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
5 AGRICULTURAL WAREHOUSE, COMMODITY DEALER, AND GRAIN
6 STANDARDS ACT; REVISING USE OF THE \$30,000 EXEMPTION;
7 PROVIDING A PENALTY FOR FRAUD; ELIMINATING USE OF A
8 COMBINATION SCALE WEIGHT TICKET AND WAREHOUSE RECEIPT;
9 ~~ELIMINATING THE REQUIREMENT THAT SCALE WEIGHT TICKETS BE~~
10 ~~EXCHANGED FOR WAREHOUSE RECEIPTS~~; ESTABLISHING A TIME LIMIT
11 FOR ISSUING A WAREHOUSE RECEIPT; REQUIRING A PRODUCER TO
12 REQUEST A WAREHOUSE RECEIPT; ALLOWING THE POOLING OF
13 AGRICULTURAL COMMODITIES IN STORAGE TO COVER SHORTAGES;
14 ALLOWING THE DEPARTMENT OF AGRICULTURE TO SEEK REMEDY IN THE
15 FIRST JUDICIAL DISTRICT; CHANGING THE AGGREGATE LIABILITY OF
16 SURETY BONDS FROM CUMULATIVE TO NONCUMULATIVE; ELIMINATING
17 THE ABILITY OF THE DEPARTMENT OF AGRICULTURE TO SET BOND
18 ~~AMOUNTS BY RULE; REMOVING THE MINIMUM AND MAXIMUM AMOUNTS OF~~
19 ~~BONDS FOR A COMMODITY DEALER~~; PROVIDING REMEDIES FOR
20 COMMODITY DEALER DEFAULTS; REQUIRING COMMODITY DEALERS TO
21 KEEP RECORDS; PROVIDING FOR CLAIMS ON THE BOND BY AN INJURED
22 PERSON; AND AMENDING SECTIONS 80-4-402, 80-4-429, 80-4-525,
23 80-4-527, 80-4-538, AND 80-4-604, MCA."

24
25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:1 **Section 1.** Section 80-4-402, MCA, is amended to read:2 **"80-4-402. Definitions.** As used in parts 4 through 7 of
3 this chapter, the following definitions apply:4 (1) "Agent" means any person who contracts for or
5 solicits any agricultural commodities from a producer or
6 warehouseman or negotiates the consignment or purchase of
7 any agricultural commodity on behalf of any commodity
8 dealer.9 (2) "Agricultural commodity" means any grain, beans,
10 safflower, sunflower seeds, tame mustards, rapeseed,
11 flaxseed, leguminous seed, or other small seed, and other
12 agricultural commodities designated by rule of the
13 department.14 (3) "Bond" means the bond required to be filed by part
15 5 or 6 of this chapter and includes any equivalent
16 established by department rule, as provided in 80-4-504 and
17 ~~80-4-604~~ AND 80-4-604.18 (4) "Commodity dealer" means any person who engages in
19 a business involving or, as part of his business,
20 participates in buying, exchanging, negotiating, or
21 soliciting the sale, resale, exchange, or transfer of any
22 agricultural commodity in the state of Montana. The term
23 does not include:24 (a) a person engaged solely in storing, shipping, or
25 handling agricultural commodities for hire;

1 (b) a person who buys agricultural commodities from a
2 licensed commodity dealer; or

3 (c) a person who does not purchase more than \$30,000
4 worth of agricultural commodities from producers during a
5 licensing year; however, once a person exceeds the \$30,000
6 exemption, he shall obtain a license and is not eligible for
7 the exemption for the succeeding year;

8 (d) a person who is the producer of agricultural
9 commodities that he actually plants, nurtures, and harvests;
10 or

11 (e) a person whose trading in agricultural
12 commodities is limited to trading in commodity futures on a
13 recognized futures exchange.

14 (5) "Credit sale contract" means a contract for the
15 sale of an agricultural commodity when the sale price is to
16 be paid at a date after delivery of the agricultural
17 commodity to the buyer and includes but is not limited to
18 those contracts commonly referred to as deferred payment
19 contracts, deferred pricing contracts, or price-later
20 contracts.

21 (6) "Department" means the department of agriculture
22 provided for in 2-15-3001.

23 (7) "Depositor" means any person who deposits an
24 agricultural commodity in a warehouse for storage,
25 processing, handling, or shipment or who is the owner or

1 legal holder of an outstanding warehouse receipt or who is
2 lawfully entitled to possession of the agricultural
3 commodity.

4 (8) "Director" means the director of the department of
5 agriculture.

6 (9) "Grain" means all grains for which standards have
7 been established under the United States Grain Standards Act
8 (7 U.S.C. 71 through 87) and all other agricultural
9 commodities, such as mustard, oil seed crops, or other crops
10 which may be designated by rule of the department.

11 (10) "Grain Standards Act" means the United States Grain
12 Standards Act (7 U.S.C. 71 through 87) ~~as that act reads on~~
13 ~~July 17, 1983.~~

14 (11) "Inspector" means any person so designated by the
15 director to assist in the administration of parts 4 through
16 6 of this chapter. The term includes warehouse auditors or
17 examiners.

18 (12) "Official grain inspectors" means any official
19 personnel who perform or supervise the performance of
20 official inspection services and certify the results
21 thereof, including the grade of the grain.

22 (13) "Official grain samplers" or "samplers" means any
23 official personnel who perform or supervise the performance
24 of official sampling services and certify the results
25 thereof.

1 (14) "Official grain standards" means the standards of
2 quality and condition of grain that establish the grades
3 defined by the Grain Standards Act.

4 (15) "Official grain weighers" means any official
5 personnel who perform or supervise the performance of class
6 X or class Y weighing services and certify the results
7 thereof, including the weight of the grain.

8 (16) "Person" means any individual, firm, association,
9 corporation, partnership, or any other form of business
10 enterprise.

11 (17) "Producer" means the owner, tenant, or operator of
12 land in this state who has an interest in and receives all
13 or part of the proceeds from the sale of agricultural
14 commodities produced on that land.

15 (18) "Public warehouse" or "warehouse" means any
16 elevator, mill, warehouse, subterminal grain warehouse,
17 public warehouse, or other structure or facility in which,
18 for compensation, agricultural commodities are received for
19 storage, handling, processing, or shipment. The term
20 includes facilities which commingle commodities belonging to
21 different lots of agricultural commodities.

22 (19) "Receipt" means a warehouse receipt.

23 (20) "Scale weight ticket" means a load slip or other
24 evidence of delivery, other than a receipt, given to a
25 depositor by a warehouseman licensed under the provisions of

1 part 5 of this chapter upon initial delivery of the
2 agricultural commodity to the warehouse.

3 (21) "Station" means a warehouse located more than 3
4 miles from the central office of the warehouse.

5 (22) "Subterminal warehouse" means any warehouse at
6 which an intermediate function is performed in which
7 agricultural commodities are customarily received from
8 dealers or producers and where the commodities are
9 accumulated prior to shipment.

10 (23) "Terminal grain warehouse" means any warehouse
11 authorized by a grain exchange to receive or disburse grain
12 on consignment as presented by the rules and regulations of
13 a grain exchange.

14 (24) "Warehouseman" means a person operating or
15 controlling a public warehouse.

16 (25) "Warehouse receipt" means every receipt, whether
17 negotiable or nonnegotiable, issued under part 5 of this
18 chapter by a warehouseman, except scale weight tickets."

19 **Section 2.** Section 80-4-429, MCA, is amended to read:

20 **"80-4-429. Penalty.** (1) Except as otherwise provided,
21 any person who violates any provision of parts 4 through 6
22 of this chapter or rules promulgated thereunder or who
23 impedes, obstructs, hinders, or otherwise prevents or
24 attempts to prevent the director or his duly authorized
25 representative in the performance of his duty under parts 4

1 through 6 of this chapter is guilty of a misdemeanor and is
2 punishable by imprisonment in a county jail not to exceed 6
3 months or by a fine of not more than \$1,000, or both.

4 (2) A person who refuses to permit inspection of
5 licensed premises, books, accounts, records, or other
6 documents required by parts 4 through 7 of this chapter or
7 who uses a scale weight ticket or credit sale contract that
8 fails to satisfy the requirements of parts 4 through 7 of
9 this chapter is guilty of a misdemeanor.

10 (3) A person acting as a commodity dealer or
11 warehouseman who knowingly sells warehouse-receipted
12 agricultural commodities that he is not authorized to sell
13 or who fails to pay for purchased agricultural commodities
14 is guilty of a felony."

15 **Section 3.** Section 80-4-525, MCA, is amended to read:

16 "80-4-525. Scale weight tickets -- form -- issuance.

17 (1) Scale weight tickets must be bound in books of
18 convenient size and must be numbered consecutively. The
19 original scale weight ticket must be delivered to the person
20 from whom the agricultural commodities are received. One
21 carbon copy of each scale weight ticket must remain as a
22 permanent record.

23 (2) A scale weight ticket must be issued for each load
24 of agricultural commodity received by the warehouseman.

25 (3) A scale weight ticket may not be issued or held in

1 lieu of a warehouse receipt. The retention of scale weight
2 tickets in lieu of warehouse receipts by the owner of the
3 grain is at the owner's risk.

4 (4) There must be plainly printed across the face of
5 such scale weight ticket issued by the warehouseman, in bold
6 type, the words "THIS IS NOT A WAREHOUSE RECEIPT. ~~IT MUST BE~~
7 ~~EXCHANGED FOR~~ IT MUST BE EXCHANGED FOR A WAREHOUSE RECEIPT
8 WILL BE ISSUED UPON REQUEST IF GRAIN IS HELD IN STORAGE".

9 (5) ~~There must be plainly printed across the face of a~~
10 ~~combination scale weight ticket and warehouse receipt issued~~
11 ~~by the warehouseman, in bold type, the words "COMBINATION~~
12 ~~SCALE WEIGHT TICKET AND WAREHOUSE RECEIPT".~~

13 (6) (5) All scale weight tickets must be signed by the
14 warehouseman or his agent.

15 (7) ~~When scale weight tickets are exchanged for~~
16 ~~warehouse receipts, the scale weight tickets must be~~
17 ~~surrendered to the warehouseman.~~

18 (8) (6) All scale weight tickets must be converted into
19 cash or warehouse receipts on demand."

20 **Section 4.** Section 80-4-527, MCA, is amended to read:

21 "80-4-527. Warehouse receipt -- issuance. (1) A
22 warehouse receipt is a receipt issued by a licensed
23 warehouseman on a form containing all the information
24 required by 80-4-526.

25 (2) No warehouse receipt may be issued except for an

1 agricultural commodity actually delivered to a warehouse for
2 storage.

3 (3) All warehousemen are required to issue a warehouse
4 receipt for each lot of agricultural commodity received for
5 storage or make payment for the agricultural commodity.

6 (4) A warehouse receipt that does not in fact represent
7 an agricultural commodity actually delivered into a
8 warehouse for storage and the origin of which cannot be
9 traced to the actual delivery of the grain represented:

10 (a) is not legal and is of no value;

11 (b) has no claim on the agricultural commodity stored
12 in a warehouse; and

13 (c) has no claim on the warehouseman's bond.

14 (5) All agricultural commodities in a warehouse belong
15 to the holder of outstanding warehouse receipts except those
16 commodities that are in excess of the total of all
17 outstanding storage obligations. An outstanding warehouse
18 receipt is a warehouse receipt that has not been returned
19 and paid in full on the basis of grade, quality, and
20 quantity by the warehouseman issuing it.

21 (6) If for convenience the holder of two or more
22 warehouse receipts covering like agricultural commodities
23 wishes to combine them, the new receipt so issued must state
24 the fact that it was issued in lieu of existing receipts. An
25 assembly or recapitulation statement must be made whenever

1 receipts are so combined, and the number or other
2 identification of the statement must be referenced on the
3 new combined receipt. The assembly sheet must be kept on
4 file in the warehouse office. Each canceled receipt must
5 have stamped across its face "Canceled by No. __" (showing
6 the number of the new combination receipt).

7 (7) A warehouseman who is a grower and conducts such an
8 enterprise may receive his own grain and issue warehouse
9 receipts for agricultural commodities, in the same manner
10 and without discrimination, as though the warehouse and
11 growing enterprises were of separate ownership. However, the
12 warehouseman shall report to the department all warehouse
13 receipts issued to himself as a grower.

14 (8) When warehouse receipts are prepared on duplicate
15 or triplicate forms, the original copy is the warehouse
16 receipt and must be given upon request to the person storing
17 the agricultural commodity covered by such receipt. The
18 other copies shall have plainly printed across the face the
19 words "duplicate", "triplicate", or "nonnegotiable".

20 (9) Each warehouse receipt issued must show the amount
21 of cash or value of any merchandise the warehouseman has
22 advanced on the agricultural commodity represented by the
23 receipt, but such notation may not be construed as fixing
24 the date of sale of such grain.

25 (10) All warehouse receipts must be numbered

1 consecutively as issued by each warehouseman.

2 (1) Warehouse receipts must be issued WHEN STORAGE IS
3 CHARGED BUT no later than 30 days after delivery unless
4 agreed to in writing by both parties."

5 **Section 5.** Section 80-4-538, MCA, is amended to read:

6 **"80-4-538. Warehouse shortage -- remedies.** (1) For
7 purposes of this section, whenever a warehouseman stores
8 agricultural commodities of different kinds, a receipt
9 holder has a claim against all commodities in storage,
10 regardless of their kind, under his receipt.

11 (2) Whenever it appears, after an investigation, that a
12 warehouseman does not have in his possession sufficient
13 agricultural commodities to cover the outstanding warehouse
14 receipts, scale weight tickets, or other evidence of storage
15 liability issued or assumed by him or when a warehouseman
16 refuses to submit his books, papers, or property to lawful
17 inspection, the department may give notice to the
18 warehouseman to comply with the following requirements:

- 19 (a) to cover such shortage;
- 20 (b) to give an additional bond as requested by the
- 21 department; or
- 22 (c) to submit to such inspection as the department
- 23 considers necessary.

24 †2†(3) If the warehouseman fails to comply with the
25 terms of such notice within 24 hours from the date of

1 issuance of the notice or within such further time as the
2 department may allow, the department may petition the
3 district court of the first judicial district, Lewis and
4 Clark County, or the district court in the county where the
5 licensee's principal place of business is located, as shown
6 by the license application, for an order:

7 (a) authorizing the department to seize and take
8 possession of any or all agricultural commodities in the
9 warehouse or warehouses owned, operated, or controlled by
10 the warehouseman and of all books, papers, and property of
11 all kinds used in connection with the conduct or the
12 operation of the warehouse business and any materials that
13 pertain in any way to that business; and

14 (b) enjoining the warehouseman from interfering with
15 the department in the discharge of its duties as required by
16 this part.

17 †3†(4) Upon taking possession, the department shall
18 give written notice of its action to the surety on the bond
19 of the warehouseman and may notify the holders of record, as
20 shown by the warehouseman's record, of all warehouse
21 receipts or scale weight tickets issued for agricultural
22 commodities to present their warehouse receipts or other
23 evidence of deposits for inspection or to account for the
24 same. The department may thereupon cause an audit to be made
25 of the affairs of the warehouse, including but not limited

1 to the agricultural commodities of which there is an
 2 apparent shortage, to determine the amount of shortage and,
 3 if possible, to compute the shortage as to each depositor as
 4 shown by the warehouseman's records. The department shall
 5 notify the warehouseman and the surety on his bond of the
 6 amount of the shortage and notify each affected depositor by
 7 sending notices to the depositor's last-known address as
 8 shown by the records of the warehouseman.

9 ~~(4)~~(5) The department shall retain possession of the
 10 agricultural commodities in the warehouse or warehouses and
 11 the books, papers, and property of the warehouseman until
 12 such time as:

13 (a) the warehouseman or the surety on the bond has
 14 satisfied the claims of all holders of warehouse receipts or
 15 other evidence of deposits;

16 (b) the surety on the bond has satisfied all such
 17 claims pro rata, if the shortage exceeds the amount of the
 18 bond; or

19 (c) the department is ordered by the court to surrender
 20 possession.

21 ~~(5)~~(6) If during or after the audit provided for in
 22 this section or at any other time the department has
 23 evidence that the warehouseman is insolvent or is unable to
 24 satisfy the claims of all holders of warehouse receipts or
 25 other evidence of deposits, the department may petition the

1 district court for the appointment of the department to
 2 operate or liquidate the business of the warehouse.

3 ~~(6)~~(7) At any time within 10 days after the department
 4 takes possession of any agricultural commodities or the
 5 books, papers, or property of any warehouse, the
 6 warehouseman may serve notice on the department to appear in
 7 the district court of the county in which the warehouse is
 8 located, at a time to be fixed by the court, and show cause
 9 why the agricultural commodities, books, papers, and other
 10 property should not be restored to his possession.

11 ~~(7)~~(8) All necessary expenses incurred by the
 12 department in carrying out the provisions of this section
 13 may be recovered in a separate civil action brought by the
 14 department in district court or recovered at the same time
 15 and as part of the seizure action filed under subsection
 16 ~~(2)~~(a) (3)(a).

17 ~~(8)~~(9) As a part of the expenses so incurred, the
 18 department is authorized to include the cost of adequate
 19 liability insurance necessary to protect the department, its
 20 officers, and others engaged in carrying out this section.

21 ~~(9)~~(10) The department shall set by rule the time limits
 22 for:

23 (a) notification of its action on the surety bond of a
 24 warehouseman;

25 (b) the holders of warehouse receipts or scale weight

1 tickets to provide to the department such evidence of
2 deposit; and

3 (c) satisfaction of the claims of all holders of
4 warehouse receipts or other evidence of deposits."

5 **Section 6.** Section 80-4-604, MCA, is amended to read:

6 **"80-4-604. Bonding requirement amounts -- cancellation.**

7 (1) An applicant for a license to operate as a commodity
8 dealer shall, before a license may be issued, file with the
9 department a surety bond or its equivalent, as established
10 by department rule, payable to the state. The aggregate
11 annual liability of the surety may not exceed the sum of the
12 bond.

13 (2) ~~Unless set by department rule, the~~ The bond for a
14 commodity dealer may not exceed 2% of the value of the
15 agricultural commodities purchased by the commodity dealer
16 from the producer during the previous 12-month period. The
17 bond for all new applicants is 2% of the estimated value of
18 all agricultural commodities to be purchased during the
19 coming 12-month period. ~~The department may by rule require a~~
20 ~~greater percentage in each instance. The minimum amount of~~
21 ~~bond required by any commodity dealer is \$20,000 and the~~
22 ~~maximum is prescribed in 80-4-405. THE MINIMUM AMOUNT OF~~
23 BOND REQUIRED BY ANY COMMODITY DEALER IS \$20,000, AND THE
24 MAXIMUM IS PRESCRIBED IN 80-4-405.

25 (3) A surety shall notify the commodity dealer and the

1 department by certified mail at least 60 days prior to the
2 cancellation of the bond. The liability of the surety covers
3 purchases made by the commodity dealer during the time the
4 bond is in force. A commodity dealer's bond filed with the
5 department is continuous until canceled by the surety upon
6 60 days' notice; however, such cancellation does not
7 terminate any liability of the surety incurred prior to the
8 date of cancellation."

9 NEW SECTION. Section 7. Commodity dealer defaults --
10 remedies. (1) If the department finds that a commodity
11 dealer has failed to comply with the terms of a written
12 contract or has failed to pay for a commodity purchase under
13 an oral agreement in the manner and within the time provided
14 in 80-4-608, the department may petition the district court
15 of the first judicial district, Lewis and Clark County, for
16 an order authorizing the department to seize and take
17 possession of:

18 (a) any agricultural commodities in the facilities
19 owned, operated, or controlled by the commodity dealer;

20 (b) all books, papers, and property used in connection
21 with the operation of the commodity dealer business; and

22 (c) any material that pertains in any way to that
23 business.

24 (2) If during or after an audit or at any other time
25 the department has evidence that the commodity dealer is

1 insolvent or is unable to satisfy the claims of all
 2 commodity dealer creditors covered by the bond, the
 3 department may petition the district court of the first
 4 judicial district, Lewis and Clark County, for the
 5 appointment of the department to operate or liquidate the
 6 business of the commodity dealer.

7 NEW SECTION. Section 8. Records. (1) A commodity
 8 dealer shall provide evidence of delivery, such as scale
 9 tickets, for all agricultural commodities purchased from a
 10 producer.

11 (2) A commodity dealer shall keep daily position
 12 records or their equivalent showing purchases, deliveries,
 13 or payments to producers.

14 NEW SECTION. Section 9. Claims on bond by injured
 15 person. A person injured by the breach of an obligation for
 16 which the bond is given may file a claim with the
 17 department. Claims will be accepted only from producers and
 18 for agricultural commodities grown in Montana.

19 NEW SECTION. Section 10. Codification instruction.
 20 [Sections 7, 8, and 9] are intended to be codified as an
 21 integral part of Title 80, chapter 4, part 6, and the
 22 provisions of Title 80, chapter 4, part 6, apply to
 23 [sections 7, 8, and 9].

24 NEW SECTION. Section 11. 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.

-End-