

SENATE BILL NO. 19
INTRODUCED BY JERGESON

IN THE SENATE

DECEMBER 28, 1990 INTRODUCED AND REFERRED TO COMMITTEE
 ON AGRICULTURE, LIVESTOCK, & IRRIGATION.

JANUARY 7, 1991 FIRST READING.

FEBRUARY 23, 1991 COMMITTEE RECOMMEND BILL
 DO PASS. REPORT ADOPTED.

FEBRUARY 25, 1991 PRINTING REPORT.

 SECOND READING, DO PASS.

FEBRUARY 26, 1991 ENGROSSING REPORT.

 THIRD READING, PASSED.
 AYES, 28; NOES, 22.

 TRANSMITTED TO HOUSE.

IN THE HOUSE

MARCH 4, 1991 INTRODUCED AND REFERRED TO COMMITTEE
 ON AGRICULTURE, LIVESTOCK, & IRRIGATION.

 FIRST READING.

MARCH 20, 1991 COMMITTEE RECOMMEND BILL BE
 CONCURRED IN AS AMENDED. REPORT
 ADOPTED.

APRIL 5, 1991 SECOND READING, CONCURRED IN.

APRIL 6, 1991 THIRD READING, CONCURRED IN.
 AYES, 72; NOES, 24.

 RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 9, 1991 RECEIVED FROM HOUSE.

 SECOND READING, AMENDMENTS
 CONCURRED IN.

APRIL 10, 1991 THIRD READING, AMENDMENTS

CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 SENATE BILL NO. 19

2 INTRODUCED BY JERGESON

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO CLARIFY THAT TITLE
5 TO AGRICULTURAL COMMODITIES SOLD BY CREDIT SALE CONTRACT AND
6 INTENDED FOR INTERSTATE SHIPMENT DOES NOT TRANSFER UNTIL A
7 PRICE IS ESTABLISHED BY CONTRACT; AMENDING SECTIONS 30-2-401
8 AND 80-4-422, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE
9 AND AN APPLICABILITY DATE."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 Section 1. Section 80-4-422, MCA, is amended to read:

13 "80-4-422. Credit sale contracts. (1) A commodity
14 dealer who purchases agricultural commodities by credit sale
15 contract shall maintain books, records, and other documents
16 as required by the department to establish compliance with
17 the provisions of this section.

18 (2) In addition to other required information, a credit
19 sale contract must contain or provide for all of the
20 following:

- 21 (a) the seller's name and address;
22 (b) the conditions of delivery;
23 (c) the amount and kind of agricultural commodities
24 delivered;
25 (d) the price per unit or basis of value; and

1 (e) the date payment is to be made.

2 (3) (a) ~~Title~~ Except as provided in subsection (3)(b),
3 title to all agricultural commodities sold by credit sale
4 contract is in the purchaser as of the time the contract is
5 executed unless the contract provides otherwise. The
6 contract must be signed by both parties and executed in
7 duplicate. One copy shall must be retained by the commodity
8 dealer, and one copy shall must be delivered to the seller.
9 Upon revocation, suspension, or termination of a
10 warehouseman's license, the department may advance the
11 payment date for all credit sale contracts to a date not
12 later than 30 days following the effective date of the
13 revocation, suspension, or termination. When not otherwise
14 provided, the purchase price for all agricultural
15 commodities shall must be determined as of the effective
16 date of revocation, suspension, or termination in accordance
17 with all other provisions of the contract. However, if the
18 business of the commodity dealer is sold to another licensed
19 commodity dealer, credit sale contracts may be assigned to
20 the purchasing commodity dealer.

21 (b) Title to agricultural commodities sold by credit
22 sale contract and intended for interstate shipment is in the
23 purchaser as of the time a contract for price is executed. A
24 credit sale contract involving interstate shipment of
25 agricultural commodities that purports to transfer title to

1 agricultural commodities without establishing the sale
 2 price, commonly referred to as a "no price established"
 3 contract, is void."

4 **Section 2.** Section 30-2-401, MCA, is amended to read:

5 **"30-2-401.** Passing of title -- reservation for security
 6 -- limited application of this section. Each provision of
 7 this chapter with regard to the rights, obligations, and
 8 remedies of the seller, the buyer, purchasers, or other
 9 third parties applies irrespective of title to the goods
 10 except where the provision refers to such title. insofar--as
 11 if situations are not covered by the other provisions of
 12 this chapter and matters concerning title become material,
 13 the following rules apply:

14 (1) Title to goods cannot pass under a contract for
 15 sale prior to their identification to the contract
 16 (30-2-501), and unless otherwise explicitly agreed, the
 17 buyer acquires by their identification a special property as
 18 limited by this code. Any retention or reservation by the
 19 seller of the title (property) in goods shipped or delivered
 20 to the buyer is limited in effect to a reservation of a
 21 security interest. Subject to these provisions and to the
 22 provisions of the Chapter on Secured Transactions (Chapter
 23 9), title to goods passes from the seller to the buyer in
 24 any manner and on any conditions explicitly agreed on by the
 25 parties.

1 (2) Unless otherwise explicitly agreed, title passes to
 2 the buyer at the time and place at which the seller
 3 completes his performance with reference to the physical
 4 delivery of the goods, despite any reservation of a security
 5 interest and even though a document of title is to be
 6 delivered at a different time or place; and in particular
 7 and despite any reservation of a security interest by the
 8 bill of lading:

9 (a) if the contract requires or authorizes the seller
 10 to send the goods to the buyer but does not require him to
 11 deliver them at destination, title passes to the buyer at
 12 the time and place of shipment; but

13 (b) if the contract requires delivery at destination,
 14 title passes on tender there.

15 (3) Unless otherwise explicitly agreed, where when
 16 delivery is to be made without moving the goods:

17 (a) if the seller is to deliver a document of title,
 18 title passes at the time when and the place where he
 19 delivers such the documents; or

20 (b) if the goods are at the time of contracting already
 21 identified and no documents are to be delivered, title
 22 passes at the time and place of contracting.

23 (4) For transactions involving interstate shipment of
 24 cattle or cattle being released from auction yards for
 25 interstate shipment, the seller may issue a regular title or

1 bill of sale, or give a conditional transfer of title or
2 bill of sale. The conditional transfer of title or bill of
3 sale is fully validated and the title passes when the
4 following conditions are met:

5 (a) the bank on which the buyer's warrant, check, or
6 draft was drawn notifies the seller, or his designated bank,
7 that the instrument of payment has cleared the bank for
8 payment; and

9 (b) a copy of the notification from the buyer's bank is
10 attached to the conditional transfer of title or bill of
11 sale.

12 (5) For credit sale contract transactions involving
13 interstate shipment of agricultural commodities, title does
14 not transfer until a contract for price is executed.

15 ~~(5)~~(6) A rejection or other refusal by the buyer to
16 receive or retain the goods, whether or not justified, or a
17 justified revocation of acceptance reverts title to the
18 goods in the seller. ~~Such~~ This reversioning occurs by operation
19 of law and is not a "sale".

20 NEW SECTION. Section 3. Effective date --
21 applicability. [This act] is effective on passage and
22 approval and applies to credit sale contracts entered into
23 after [the effective date of this act].

-End-

APPROVED BY COMMITTEE
ON AGRICULTURE LIVESTOCK
AND IRRIGATION

SENATE BILL NO. 19

INTRODUCED BY JERGESON

A BILL FOR AN ACT ENTITLED: "AN ACT TO CLARIFY THAT TITLE TO AGRICULTURAL COMMODITIES SOLD BY CREDIT SALE CONTRACT AND INTENDED FOR INTERSTATE SHIPMENT DOES NOT TRANSFER UNTIL A PRICE IS ESTABLISHED BY CONTRACT; AMENDING SECTIONS 30-2-401 AND 80-4-422, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

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"80-4-422. Credit sale contracts. (1) A commodity dealer who purchases agricultural commodities by credit sale contract shall maintain books, records, and other documents as required by the department to establish compliance with the provisions of this section.

(2) In addition to other required information, a credit sale contract must contain or provide for all of the following:

- (a) the seller's name and address;
- (b) the conditions of delivery;
- (c) the amount and kind of agricultural commodities delivered;
- (d) the price per unit or basis of value; and

(e) the date payment is to be made.

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(b) Title to agricultural commodities sold by credit sale contract and intended for interstate shipment is in the purchaser as of the time a contract for price is executed. A credit sale contract involving interstate shipment of agricultural commodities that purports to transfer title to

1 agricultural commodities without establishing the sale
 2 price, commonly referred to as a "no price established"
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 20 to the buyer is limited in effect to a reservation of a
 21 security interest. Subject to these provisions and to the
 22 provisions of the Chapter on Secured Transactions (Chapter
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 5 interest and even though a document of title is to be
 6 delivered at a different time or place; and in particular
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3 sale is fully validated and the title passes when the
4 following conditions are met:

5 (a) the bank on which the buyer's warrant, check, or
6 draft was drawn notifies the seller, or his designated bank,
7 that the instrument of payment has cleared the bank for
8 payment; and

9 (b) a copy of the notification from the buyer's bank is
10 attached to the conditional transfer of title or bill of
11 sale.

12 (5) For credit sale contract transactions involving
13 interstate shipment of agricultural commodities, title does
14 not transfer until a contract for price is executed.

15 ~~(5)~~(6) A rejection or other refusal by the buyer to
16 receive or retain the goods, whether or not justified, or a
17 justified revocation of acceptance revests title to the
18 goods in the seller. Such This reversion occurs by operation
19 of law and is not a "sale".

20 NEW SECTION. Section 3. Effective date --
21 applicability. [This act] is effective on passage and
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23 after [the effective date of this act].

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(2) In addition to other required information, a credit sale contract must contain or provide for all of the following:

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 8 remedies of the seller, the buyer, purchasers, or other
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2 bill of sale. The conditional transfer of title or bill of
3 sale is fully validated and the title passes when the
4 following conditions are met:

5 (a) the bank on which the buyer's warrant, check, or
6 draft was drawn notifies the seller, or his designated bank,
7 that the instrument of payment has cleared the bank for
8 payment; and

9 (b) a copy of the notification from the buyer's bank is
10 attached to the conditional transfer of title or bill of
11 sale.

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13 interstate shipment of agricultural commodities, title does
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19 of law and is not a "sale".

20 NEW SECTION. Section 3. Effective date --
21 applicability. [This act] is effective on passage and
22 approval and applies to credit sale contracts entered into
23 after [the effective date of this act].

-End-

HOUSE STANDING COMMITTEE REPORT

March 19, 1991
Page 2 of 2

March 19, 1991

Page 1 of 2

Mr. Speaker: We, the committee on Agriculture, Livestock, and Irrigation report that Senate Bill 19 (third reading copy -- blue) be concurred in as amended.

Signed: 

Linda Nelson, Chairman

Carried by: Rep. Nelson

And, that such amendments read:

1. Title, lines 4 and 5.
Following: "TO" on line 4
Strike: "CLARIFY THAT TITLE TO"
Insert: "REQUIRE THAT CONTRACTS FOR"
2. Title, lines 5 through 7.
Following: "CONTRACT" on line 5
Strike: remainder of line 5 through "CONTRACT" on line 7
Insert: "CONTAIN A NOTICE OF FINANCIAL RISK IN A FORM ESTABLISHED BY DEPARTMENT OF AGRICULTURE RULE"
3. Title, lines 7 and 8.
Following: "AMENDING" on line 7
Strike: "SECTIONS 30-2-401 AND"
Insert: "SECTION"
4. Title, line 8.
Strike: "IMMEDIATE"
5. Page 1, line 10.
Insert: "STATEMENT OF INTENT
A statement of intent is required for this bill because 80-4-422(2)(f) requires the department of agriculture to adopt rules regarding the form of a notice of financial risk required to appear on credit sale contracts for the sale of agricultural commodities. It is intended that the warning appear on the face of the contract, in boldface type, and be in substantially the following form:
NOTICE TO SELLER OF FINANCIAL RISK
The seller recognizes that in the event of foreclosure or bankruptcy, this contract is equivalent to an unsecured loan

to the purchaser. The seller and any of the seller's creditors should be advised of the financial risks involved in this contract."

6. Page 1, line 25.
Strike: "and"
7. Page 2, line 1.
Following: "made"
Insert: "; and
(f) a notice of financial risk involved in the credit sale contract, in a form the department shall adopt pursuant to the rulemaking authority provided in 80-4-403"
8. Page 2, lines 2 and 3.
Strike: "(a)" on line 2
Following: "title" on line 2
Strike: remainder of line 2 through "title" on line 3
Insert: "Title"
Following: "all" on line 3
Insert: "all"
9. Page 2, line 21 through page 3, line 3.
Strike: subsection (b) in its entirety
10. Page 3, line 4 through page 5, line 19.
Strike: section 2 in its entirety
Renumber: subsequent section.
11. Page 5, lines 21 and 22.
Following: "effective" on line 21
Strike: remainder of line 21 through "approval" on line 22
Insert: "July 1, 1991,"
12. Page 5, line 22.
Following: "contracts"
Insert: "for agricultural commodities"
13. Page 5, line 23.
Strike: "[the effective date of this act]"
Insert: "July 1, 1991"

1 SENATE BILL NO. 19

2 INTRODUCED BY JERGESON

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO CLARIFY--THAT--TITLE
 5 ~~TO~~ REQUIRE THAT CONTRACTS FOR AGRICULTURAL COMMODITIES SOLD
 6 BY CREDIT SALE CONTRACT AND INTENDED FOR INTERSTATE SHIPMENT
 7 DOES NOT TRANSFER UNTIL A PRICE IS ESTABLISHED BY CONTRACT
 8 CONTAIN A NOTICE OF FINANCIAL RISK IN A FORM ESTABLISHED BY
 9 DEPARTMENT OF AGRICULTURE RULE; AMENDING SECTIONS--30-2-401
 10 AND SECTION 80-4-422, MCA; AND PROVIDING AN IMMEDIATE
 11 EFFECTIVE DATE AND AN APPLICABILITY DATE."

13 STATEMENT OF INTENT

14 A STATEMENT OF INTENT IS REQUIRED FOR THIS BILL BECAUSE
 15 80-4-422(2)(F) REQUIRES THE DEPARTMENT OF AGRICULTURE TO
 16 ADOPT RULES REGARDING THE FORM OF A NOTICE OF FINANCIAL RISK
 17 REQUIRED TO APPEAR ON CREDIT SALE CONTRACTS FOR THE SALE OF
 18 AGRICULTURAL COMMODITIES. IT IS INTENDED THAT THE WARNING
 19 APPEAR ON THE FACE OF THE CONTRACT, IN BOLDFACE TYPE, AND BE
 20 IN SUBSTANTIALLY THE FOLLOWING FORM:

21 NOTICE TO SELLER OF FINANCIAL RISK

22 THE SELLER RECOGNIZES THAT IN THE EVENT OF FORECLOSURE
 23 OR BANKRUPTCY, THIS CONTRACT IS EQUIVALENT TO AN UNSECURED
 24 LOAN TO THE PURCHASER. THE SELLER AND ANY OF THE SELLER'S
 25 CREDITORS SHOULD BE ADVISED OF THE FINANCIAL RISKS INVOLVED

1 IN THIS CONTRACT.2
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 14 (b) the conditions of delivery;
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 16 delivered;
 17 (d) the price per unit or basis of value; and
 18 (e) the date payment is to be made; AND
 19 (F) A NOTICE OF FINANCIAL RISK INVOLVED IN THE CREDIT

20 SALE CONTRACT, IN A FORM THE DEPARTMENT SHALL ADOPT PURSUANT
 21 TO THE RULEMAKING AUTHORITY PROVIDED IN 80-4-403.

22 (3) ~~(a) Title Except-as-provided-in-subsection-(3)(b)7~~
 23 title TITLE to all ALL agricultural commodities sold by
 24 credit sale contract is in the purchaser as of the time the
 25 contract is executed unless the contract provides otherwise.

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 2 duplicate. One copy shall must be retained by the commodity
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 22 the buyer at the time and place at which the seller
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 24 delivery of the goods, despite any reservation of a security
 25 interest and even though a document of title is to be

1 delivered--at--a--different-time-or-place, and-in-particular
2 and-despite-any-reservation-of-a-security--interest--by--the
3 bill-of-lading;

4 (a)--if--the--contract-requires-or-authorizes-the-seller
5 to-send-the-goods-to-the-buyer-but-does-not-require--him--to
6 deliver--them--at--destination, title-passes-to-the-buyer-at
7 the-time-and-place-of-shipment, but

8 (b)--if-the-contract-requires-delivery--at--destination,
9 title-passes-on-tender-there.

10 (3)--Unless--otherwise--explicitly--agreed, where when
11 delivery-is-to-be-made-without-moving-the-goods,;

12 (a)--if--the--seller--is-to-deliver-a-document-of-title,
13 title-passes-at--the--time--when--and--the--place--where--he
14 delivers-such the documents, or

15 (b)--if-the-goods-are-at-the-time-of-contracting-already
16 identified--and--no--documents--are--to--be-delivered, title
17 passes-at-the-time-and-place-of-contracting;

18 (4)--For-transactions-involving-interstate--shipment--of
19 cattle--or--cattle--being--released--from--auction-yards-for
20 interstate-shipment, the-seller-may-issue-a-regular-title-or
21 bill-of-sale, or-give-a-conditional--transfer--of--title--or
22 bill--of--sale. The-conditional-transfer-of-title-or-bill-of
23 sale-is-fully--validated--and--the--title--passes--when--the
24 following-conditions-are-met:

25 (a)--the--bank--on--which-the-buyer's-warranty-check, or

1 draft-was-drawn-notifies-the-seller, or-his-designated-bank,
2 that-the-instrument-of-payment--has--cleared--the--bank--for
3 payment, and

4 (b)--a-copy-of-the-notification-from-the-buyer's-bank-is
5 attached--to--the--conditional--transfer-of-title-or-bill-of
6 sale;

7 (5)--For-credit--sale--contract--transactions--involving
8 interstate--shipment-of-agricultural-commodities, title-does
9 not-transfer-until-a-contract-for-price-is-executed,

10 (5)(6)--A-rejection-or-other-refusal--by--the--buyer--to
11 receive--or-retain-the-goods, whether-or-not-justified, or-a
12 justified-revocation-of--acceptance--revests--title--to--the
13 goods-in-the-seller. Such This revesting-occurs-by-operation
14 of-law-and-is-not-a-"sale".

15 NEW SECTION. Section 2. Effective date --
16 applicability. [This act] is effective on--passage--and
17 approval JULY 1, 1991, and applies to credit sale contracts
18 FOR AGRICULTURAL COMMODITIES entered into after {the
19 effective-date-of-this-act} JULY 1, 1991.

-End-