

THE MINUTES OF THE MEETING OF THE AGRICULTURE COMMITTEE
January 30, 1981

The meeting of the Agriculture Committee was called to order on January 30, 1981 at 12:30 p.m. in room 431 of the Capitol. Roll call was taken with all members present but REPRESENTATIVE UNDERDALE and REPRESENTATIVE CONROY.

HOUSE BILL 452 was a request bill and was presented by REPRESENTATIVE ERNST. The bill is "AN ACT FOR A GENERAL REVISION OF PESTICIDE REGISTRATION, LICENSING, ENFORCEMENT, AND PENALTIES PROVISIONS: AMENDING SECTIONS 80-8-204, 80-8-207, 80-8-209, AND 80-8-301 THROUGH 80-8-306, MCA." (EXHIBIT A)

GORDON MCOMBER, Commissioner of Agriculture, introduced the bill which is a request by the Department of Agriculture. Mr. McOmber said that this was one bill that was broken into seven bills and now put into one bill with seven issues in it. In the Agriculture's point of view, it would eliminate the need to require from an aerial applicator, clearance from the federal people and the state aeronautics people. He said that they found themselves enforcing state and federal laws in that area and created a great deal of problems for applicators and for them.

The Department of Community Affairs have agreed that they would be notified when an aerial applicator applies for a license and this would eliminate an applicator requiring a license each year and would extend it to a five year period on a rotating, staggered basis, to accomodate the agriculture people.

The other issue is a provision that will give the department more authority when authority is questioned or nonexistent. This issue was brought up when a Gt. Falls chemical company, that is a formulator which combines components to blend pesticides. No federal, state or local authority has jurisdiction over that plant. The Department of Agriculture's authority extends only to distributors and applicators. Mr. McOmber said that it was questionable whether they can go into cities.

GARY GINGERY, Administer of Pesticide Control, reviewed the bill page by page, explaining the modifications, underlined or deleted in the bill. On page 12, line 21 of a document (EXHIBIT B), authorize deleting the word "sample. The other amendment is on page 13, line 8, inserting the words, "on persons not possessing a license or permit" between the words "exercised" and "only" (EXHIBIT B)

JO BRUNNER, representing W.I.F.E. and Montana Agriculture Business Association, spoke as a proponent and expressed their concerns as stated in the written statement attached.
(EXHIBIT C)

DOUGLAS JOHNSON, of the Cascade Pesticide program, spoke as a proponent and as an applicator and asked that clarification be made on the odor clause. They do not believe the department should be called in everytime someone would smell odors from spraying. They recommended a 'do pass' with an amendment regarding odor.

There being no other proponents and no opponents, the meeting was opened up for question.

REPRESENTATIVE JACOBSEN asked what kind of application and problem of certification aerial sprayers have.

MR. GINGERY stated that they must have an aviation license from state and federal government.

REPRESENTATIVE FEDA asked if there are complaints and if there are costs, who pays.

MR. McOMBER stated that the defendant will have to take care of the bills.

REPRESENTATIVE HOLLIDAY asked Mr. McOmber if they have the force to do the work with the investigation problems. MR. McOMBER stated that they did.

Question was asked regarding page 14, section 2, and in putting the odor in that section. It was also asked if a county road crew or farmer sprays and it goes over into the neighbors, is there a problem with the sprayer being in violation.

MR. McOMBER said the label indicates that you must prevent drift, therefore you are in violation.

A question was asked regarding who will pay the costs if there is a complaint charged in the various counties and if Lewis & Clark County has to pay.

MR. McOMBER stated the action can be taken in the county of the complaint or Lewis & Clark County. They will take care of their bills, but the defendant will take care of his own.

It was asked if it will prohibit anyone from spraying trees, etc., in the cities, and the answer was that homeowners cannot use restricted pesticides.

REPRESENTATIVE HOLLIDAY referred to page 3, line 24 asking that if Mr. Gingery believed the words "as identified by the department" should be inserted in making reference to the agricultural districts, when it was clarified.

MR. GINGERY said the governor did establish boundries, but there is a bill that might state "yes, these bounderies should be established".

REPRESENTATIVE FEDA questioned the disposal of the container and if there were some way these container could be turned in.

MR. McCOMBER said that a triple rinse should make these containers safe.

REPRESENTATIVE SMITH asked if this bill will have any bearing on the counties supplying the pesticides.

MR. GINGERY said if the sprayer is certified he is allowed to receive the pesticides. This is the County Weed Control Act.

GORDON McCOMBER closed by asking the support of this bill and stated that the amendments can be added without problems and eliminate the word "odor from this bill.

REPRESENTATIVE ERNST, REPRESENTATIVE ROBBINS AND REPRESENTATIVE SCHULTZ were chosen as a subcommittee to meet with the Department of Agriculture to draw up the amendments.

HOUSE BILL 345 was discussed, in that REPRESENTATIVE ELLERD asked for a ruling from the Attorney General as to whether the NFO would be included under the present law, that is H.B. 800 as passed last time, as a organization that would have to be licensed and regulated under that law.

DAVE COGLEY, Legal Counsel, said that there is apparently no authoritative decision on that matter but there is an attorney general's opinion on the law that existed prior to 1979 that said the NFO was not included. The intent that was expressed during the course of the legislation on action on H.B. 800 last time, indicated that the NFO is not to be included, however, the question still exists and has not been authoritatively decided, Representative Ellerd and representatives of the NFO ask to be an attorney generals opinion about whether or not the NFO is actually included.

MR. COGLEY said they will not accept a request from an individual legislature, but will have to come from the Speaker of the House or the President of the Senate, Speaker of the House, Bob Marks has agreed to do this and asked that Mr. Cogley draw up the request that has to be accompanied with a memorandum

setting out the legal issues involved. This has been done as is shown as EXHIBIT D attached.

MR. COGLEY said that he had talked to Mr. McGraff, assistant in the attorney general's office, who said that they could probably have this Opinion out within three weeks. It may be necessary to pass the bill on through in order to meet transmittal deadline, with the understanding it would be considered in the Senate in conjunction with the Attorney General's Opinion.

MOTION was made by REPRESENTATIVE BENGTON that the Attorney General draw up this Opinion. The MOTION PASSED unanimously.

JOHN RYAN, REPRESENTATIVE from District 49, presented a request from a county commission, who would like to put in a committee bill to clarify the language in the average inventory tax bill, passed a few years ago. This is to simplify the procedure of returning small amounts like 26¢ by checks.

DAVE COGLEY, said that an option was made available where they could use average inventory method or use a one time inventory method, like March 31st, when they would inventory their livestock for property taxation. That this may be what they are asking about.

REPRESENTATIVE RYAN said that this is just to clear up the inventory part of it so instead of refunding they just credit to next year taxes instead of writting these small checks.

MOTION was made by REPRESENTATIVE RYAN that DAVE COGLEY prepare a rough draft of a Committee Bill. All members were in favor.

The meeting adjourned at 2:15 p.m.



CARL SMITH, CHAIRMAN

lmw

1 ~~HOUSE~~ BILL NO. ~~452~~
 2 INTRODUCED BY *Meyer Ernst Hoff*
 3 *Baughman*
 4 REQUEST OF THE DEPARTMENT OF AGRICULTURE

5 A BILL FOR AN ACT ENTITLED: "AN ACT FOR A GENERAL REVISION
 6 OF PESTICIDE REGISTRATION, LICENSING, ENFORCEMENT, AND
 7 PENALTIES PROVISIONS; AMENDING SECTIONS 80-8-204, 80-8-207,
 8 80-8-209, 80-8-211, AND 80-8-301 THROUGH 80-8-306, MCA."

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

11 Section 1. Section 80-8-204, MCA, is amended to read:

12 "80-8-204. Application for applicator's license. (1)

13 Application for a pesticide applicator's license provided
 14 for in 80-8-203 shall be made annually to the department
 15 before applying pesticides in any calendar year, provided
 16 that pesticide applicators applying for renewal of license
 17 shall do so on or before May 1 of that calendar year. Any
 18 applicator applying for renewal of license after May 1 shall
 19 be assessed a \$15 late licensing fee.

20 (2) ~~if the application is made an individual applying~~
 21 for a license to engage in aerial application of pesticides,
 22 ~~the applicant shall first meet~~ ~~certify on the application~~
 23 ~~that he has met all of the requirements of the federal~~
 24 ~~aviation agency administration and the department of~~
 25 ~~community affairs to operate the equipment described in the~~

1 ~~application requirements for aerial pesticide applicators."~~

2 Section 2. Section 80-8-207, MCA, is amended to read:

3 "80-8-207. Dealers. (1) It is unlawful for ~~a dealer~~
 4 ~~any person~~ to sell, ~~offer for sale~~, deliver, or have
 5 delivered within this state any pesticide without first
 6 procuring a license from the department of agriculture for
 7 each calendar year or portion thereof. A separate dealer's
 8 license and fee shall be required for each location or
 9 outlet from which pesticides are distributed, sold, held for
 10 sale, or offered for sale. Pesticide fieldmen or salesmen
 11 employed directly out of the same location or outlet and
 12 under a licensed dealer shall not be required to obtain a
 13 license. The dealer shall furnish the department the names
 14 and addresses of its fieldmen and salesmen selling
 15 pesticides within the state.

16 (2) The application for a license shall be accompanied
 17 by a fee of \$15. Dealers applying for renewal of license
 18 shall do so on or before May 1 of that calendar year. Any
 19 dealer applying for renewal of license after May 1 shall be
 20 assessed a \$15 late licensing fee.

21 (3) The dealer shall require the purchaser of any
 22 restricted pesticide to exhibit his license or permit issued
 23 under authority of this chapter before completing a sale.

24 (4) Dealers may make one application for two annual
 25 licenses if the application is accompanied by a \$15

1 licensing fee for each year of the state biennium.

2 (5) Pharmacists licensed as provided for in 37-7-302
3 and 37-7-303, veterinarians licensed as provided for in
4 37-13-302 and 37-18-303, and certified pharmacies licensed
5 under 37-7-321 shall not be required to be licensed to sell
6 pesticides, provided that the certified pharmacies and
7 veterinarians shall register with the department each year.
8 However, the certified pharmacies and veterinarians shall be
9 required to meet all other requirements concerning the
10 commercial sale of pesticides. The department shall take
11 into account the professional licensing requirements of
12 pharmacists, certified pharmacies, and veterinarians when
13 adopting rules."

14 Section 3. Section 80-8-209, MCA, is amended to read:
15 "80-8-209. Farm applicators. (1) Farm applicators
16 shall obtain a ~~certificate or~~ special-use permit prior to
17 purchasing and using any pesticide designated by the
18 department as a restricted-use pesticide. ~~The certificate~~
19 ~~to be issued for 5 calendar years must be renewed annually~~
20 ~~by the department or its authorized representatives the~~
21 ~~5-year certificate period shall commence on January 1~~
22 ~~1978~~ The special-use permit shall be effective for 5
23 calendar years. The department may establish a staggered
24 years system of issuing permits by agricultural districts so
25 that all permits issued in one of the five agricultural

1 districts will be renewed in the same year but permits from
2 only one district will be renewed in any 1 year. Permits
3 issued in the course of a given district's 5-year effective
4 period will be effective only for the duration of the 5-year
5 period and then will be renewable for 5 years at the same
6 time as all other permits issued in the same district.

7 (2) Restricted pesticides may not be utilized by farm
8 applicators or their employees except for the purpose of
9 producing or protecting any agricultural commodity on
10 property owned, leased, or rented by such applicator or as
11 provided in (6) of this section.

12 (3) Farm applicators shall qualify for the certificate
13 or permit by either passing a graded written examination or
14 attending a training course approved by the department with
15 or without and taking an ungraded written examination. The
16 examination or examinations and course shall include ~~require~~
17 and demonstrate practical knowledge as to of the
18 applicator's ability to:

19 (a) recognize common pests to be controlled and damage
20 caused by them;

21 (b) read and understand the label and labeling
22 information, including the common name of the pesticide(s)
23 applied, pest(s) to be controlled, timing and methods of
24 application, safety precautions, any preharvest or reentry
25 restrictions, and any specific disposal procedures;

1 (c) apply pesticides in accordance with label
 2 instructions and warnings, including the ability to prepare
 3 the proper concentration of pesticides to be used under
 4 particular circumstances, taking into account such factors
 5 as area to be covered, speed at which application equipment
 6 will be driven, and the quantity dispersed in a given period
 7 of operation;

8 (d) recognize local environmental situations that must
 9 be considered during application to avoid contamination; and
 10 (e) recognize poisoning symptoms and procedures to
 11 follow in case of a pesticide accident.

12 (4) The department may require farm applicators to
 13 attend a mandatory training session and pass a written
 14 examination for those restricted pesticides that are
 15 extremely toxic or for which an effective antidote is not
 16 available. The department may require farm applicators
 17 handling these pesticides to maintain use records.

18 (5) Farm applicators ~~having~~ having---verified manifesting
 19 reading disabilities may become certified to use up-to as
 20 many ~~as two~~ restricted-use pesticides by passing a specific
 21 oral examination on the particular pesticide(s) if the
 22 applicator documents that a certified applicator in the
 23 immediate vicinity can advise him.

24 (6) Provisions of this chapter relating to
 25 certification of farm applicators do not apply to any farm

1 applicator applying nonrestricted pesticides on his own land
 2 or on lands of his neighbors if he:
 3 (a) operates farm property and operates and maintains
 4 pesticide application equipment primarily for his own use;
 5 (b) is not regularly engaged in the business of
 6 applying pesticides for hire and does not publicly hold
 7 himself out as a pesticide applicator;

8 (c) operates his pesticide application equipment only
 9 in the vicinity of his own property and for the
 10 accommodation of his immediate neighbors."

11 Section 4. Section 80-8-211, MCA, is amended to read:
 12 "80-8-211. Revocation of licenses and permits. (1) The
 13 department shall establish the policy and procedures on the
 14 revocation of licenses or permits. The department may refuse
 15 to grant, renew, or may revoke ~~or~~ modify a license or
 16 permit, as the case may require, when the department is
 17 satisfied that the licensee or holder of a permit is not
 18 qualified to sell, use, or apply pesticides under the
 19 conditions in the locality in which he operates or has
 20 operated or that he has committed any of the following acts,
 21 each of which is declared to be a violation of this chapter:

22 (a) made false or fraudulent claims or recommendations
 23 through any media misrepresenting the effect of materials or
 24 methods to be utilized;

25 (b) applied ~~or sold~~ unapproved or illegal materials or

1 applied or sold a pesticide without possessing a current and
2 appropriate license or permit;

3 (c) operated in a faulty, careless, or negligent
4 manner;

5 (d) operated faulty or unsafe equipment;

6 (e) refused or neglected to comply with the provisions

7 of this chapter, the rules adopted hereunder, or any lawful
8 order of the department;

9 (f) refused or neglected to keep and maintain the
10 records required by this chapter or to make reports when and
11 as required;

12 (g) made false or fraudulent records or reports;

13 (h) operated equipment for the commercial application
14 of a pesticide without having a license or permit;

15 (i) used fraud or misrepresentation in making an
16 application for a license or permit or renewal of a license
17 or permit;

18 (j) used or applied a registered pesticide
19 inconsistent with its labeling or the label or the
20 department restrictions on the use of that pesticide;

21 (k) made false or misleading statements in connection
22 with a pest inspection of lands, crops, yards, or any
23 premises in an attempt to induce any person to engage his
24 services to eliminate, control, or mitigate the alleged pest
25 or made statements intended to overcome any concern

1 expressed by a customer about the effectiveness of any
2 application of pesticides.

3 (2) Decisions of the department relating to the
4 issuing of licenses or permits may be appealed.*

5 Section 5. Section 80-9-301, MCA, is amended to read:

6 "80-9-301. Report of loss or damage -- effect of
7 failure to report. (1) A person suffering loss or damage
8 resulting from the use or application of any pesticide by
9 any person shall, within 30 days from the time the
10 occurrence of the loss became known to him, file with the
11 department of agriculture a verified report of loss setting
12 forth, so far as known to the claimant, the following:

13 (a) name and address of claimant;

14 (b) type, kind, and location of property alleged to be
15 injured or damaged;

16 (c) date the alleged injury or damage occurred;

17 (d) name of person applying the pesticide and
18 allegedly responsible for the loss or damage;

19 (e) name of the owner or occupant of the property for
20 whom such pesticide application was made.

21 (2) The filing of such a report or the failure to file
22 such a report shall not be alleged in any complaint which
23 might be filed in a court of law, and the failure to file
24 shall not of itself be considered any bar to the maintenance
25 of any criminal or civil action.

1 (3) The failure to file such a report shall not be a
 2 violation of this chapter. However, if the person failing to
 3 file such report is the only one injured from such use or
 4 application of a pesticide by any person, the department may
 5 refuse to hold a hearing for the denial, suspension, or
 6 revocation of a license issued under this chapter until such
 7 report is filed. The filing of such report shall not
 8 constitute institution of a civil or criminal suit in any
 9 court, state or federal."

10 Section 6. Section 80-8-302, MCA, is amended to read:
 11 "80-8-302. Sampling and analysis. (1) The department
 12 shall have the authority to sample, inspect, make analysis
 13 of pesticides or devices distributed within this state at
 14 such time and place and to such extent as it may deem
 15 necessary to determine whether such pesticides or devices
 16 are in compliance with the provisions of this chapter. The
 17 department is authorized with a warrant or the consent of
 18 the inhabitant or owner to enter upon any public or private
 19 premises including any vehicle of transport in order to have
 20 access to pesticides or devices and to records relating to
 21 their distribution.

22 (2) The methods of sampling and analysis shall be
 23 those adopted by the department from sources such as the
 24 Journal of the Association of Official Analytical Chemists.
 25 (3) In all administrative or legal actions involving

1 the composition, identification, or quantification of a
 2 pesticide, a certified copy of the official analysis signed
 3 by the department's authorized chemist shall be accepted as
 4 prima facie evidence of the determinations set forth
 5 therein."

6 Section 7. Section 80-8-303, MCA, is amended to read:
 7 "80-8-303. Embargo. (1) Whenever a duly authorized
 8 agent of the department of agriculture finds or has probable
 9 cause to believe that any pesticide or device is adulterated
 10 or misbranded, has not been registered under the provisions
 11 of 80-8-201(5), fails to bear on its label the information
 12 required by this chapter, or is a white powder pesticide and
 13 is not colored as required under this chapter, he shall
 14 affix to such article a tag or other appropriate marking
 15 giving notice thereof and stating that the article has been
 16 detained or embargoed and warning all persons not to remove
 17 or dispose of such article by sale or otherwise until
 18 permission for removal or disposal is given by such agent or
 19 the court. It is unlawful for any ~~any~~ person to remove who
 20 removes or dispose disposes of such detained or embargoed
 21 article by sale or otherwise, without such prior permission,
 22 or to remove removes or alter alters the tag or marking, is
 23 guilty of a misdemeanor and may be charged accordingly or
 24 may be subjected to appropriate administrative proceedings,
 25 or both.

(2) When an article detained or embargoed under subsection (1) has been found by such agent to be in violation, if after 30 days the violation has not been resolved, he may petition the district court in whose jurisdiction the article is detained or embargoed for a condemnation of such article. When such agent has found that an article so detained or embargoed is not adulterated or misbranded, he shall remove the tag or other marking.

(3) If the court finds that a detained or embargoed article is in violation of this chapter or rules adopted thereunder, such article shall after entry of the decree be destroyed at the expense of the claimant thereof, under the supervision of such agent, and all court costs and fees and storage and other proper expenses shall be assessed against the claimant of such pesticide or device or his agent, provided that when the adulteration or misbranding can be corrected by proper labeling or processing of the article, the court, after entry of the decree and after such costs, fees, and expenses have been paid and a good and sufficient bond has been executed, conditioned upon the proper labeling or processing of such pesticide or device, may by order direct that such article be delivered to the claimant thereof for such labeling or processing under the supervision of an agent of the department. The expense of such supervision shall be paid by claimant. The article

shall be returned to the claimant of the pesticide or device on the representation to the court by the department that the article is no longer in violation of this chapter, and that the expenses of such supervision have been paid."

Section 8. Section 80-8-304, MCA, is amended to read: "80-8-304. **Enforcement Investigation and enforcement authority.** ~~all~~ In enforcing this chapter, the department or its duly authorized agents, upon reasonable cause, may enter upon private and public premises and property with a warrant or consent of the inhabitant or owner to inspect or investigate at reasonable times:

~~(1) equipment subject to this chapter used for applying pesticides;~~

~~(2) actual or reported adverse effects caused by pesticides in humans, crops, animals, land, or other property;~~

~~(3) records on the selling or use of pesticides and the person's stock of pesticides;~~

~~(4) storage and disposal of pesticides by persons licensed or regulated under this chapter any person;~~

~~(5) sample pesticides being applied or to be applied and to sample the pesticides; or~~

~~(6) the use and application of a pesticide; or~~

~~(g) the environment alleged to have been exposed to pesticides and to collect and analyze environmental samples.~~

1 (2) The department is authorized to investigate all
 2 incidents involving the application, introduction, or
 3 utilization of registered pesticides or compounds capable of
 4 acting in the manner of pesticides when the incidents have a
 5 reasonable potential to adversely affect the public
 6 environment or persons other than the applicator.

7 (3) The investigation authority provided for in this
 8 section may be exercised only upon receipt of a complaint or
 9 report of an incident."

10 Section 9. Section 80-8-305, MCA, is amended to read:
 11 "80-8-305. ~~Regarding pesticides~~ General violations.

12 (1) It shall be unlawful for any person:

13 (a) to discard any pesticide or pesticide container in
 14 such a manner as to cause injury to humans, domestic
 15 animals, or wildlife, or to pollute any waterway in a way
 16 harmful to any wildlife therein or to the environment;

17 (b) to handle, transport, store, display, or
 18 distribute pesticides or pesticide containers in such a
 19 manner as to endanger man or the environment or to endanger
 20 food or any other products that may be transported, stored,
 21 displayed, or distributed with such pesticides;

22 (c) to handle, apply, or attempt to apply any
 23 registered pesticide for which he does not have an
 24 appropriate, complete, or legible label at hand; or

25 (d) to apply or attempt to apply any registered

1 pesticide in a manner inconsistent with the label, as
 2 defined in 80-8-102.

3 (2) It is unlawful for any person to manufacture,
 4 formulate, use, store, apply, or attempt to apply any
 5 registered pesticide or component or byproduct thereof in
 6 such a manner that the pesticide or any component or
 7 byproduct cannot be contained or confined within the
 8 boundaries of the lands owned by or under the appropriate
 9 control of the person involved."

10 Section 10. Section 80-8-306, MCA, is amended to read:
 11 "80-8-306. Violation Penalties. (1) Any person

12 convicted of violating any of the provisions of this chapter
 13 or the rules issued thereunder or who may misrepresent,
 14 impede, obstruct, hinder, or otherwise prevent or attempt to
 15 prevent the department or its duly authorized agent in
 16 performance of its duty in connection with the provisions of
 17 this chapter shall be adjudged guilty of a misdemeanor and
 18 shall be fined not less than \$100 but not more than \$500 or
 19 imprisoned in the county jail for a term not to exceed 6
 20 months, or both.

21 (2) The department or its authorized representative is
 22 hereby authorized to apply to the district court of the
 23 county or any county wherein a violation is about to occur
 24 or has occurred to grant a temporary or permanent injunction
 25 restraining any person from violating or continuing to

1 violate any of the provisions of this chapter or any rule
 2 promulgated under the chapter notwithstanding the existence
 3 of other remedies of law. When a person makes pesticide
 4 applications without a license or permit or in violation of
 5 a lawful written order of the department, the district court
 6 of Lewis and Clark County has concurrent jurisdiction with
 7 the district court of any other county wherein a violation
 8 has occurred or is about to occur, and the department may
 9 select and proceed in the court most appropriate under the
 10 circumstances. The injunction is to be issued without bond.
 11 (3) Nothing in this chapter is to be construed as
 12 requiring the department or its authorized agent to report
 13 minor violations of the chapter for prosecution or for the
 14 institution of seizure proceedings when it believes the
 15 public interest will be best served by other remedial
 16 action, or by a suitable notice of warning in writing or a
 17 lawful written order; nor is any part of this chapter to be
 18 construed to apply to common carriers transporting shipments
 19 tendered to them by the general public.

20 (4) Notwithstanding--any--other--provisions--of--this
 21 section--if--any ANY person who with intent to defraud uses
 22 or reveals information relative to formulas of products
 23 acquired under the authority of 80-8-201~~v~~--he shall, upon
 24 conviction, be fined not more than \$500 or imprisoned for
 25 not more than 1 year, or both.

1 (5) --in--all--prosecutions--under--the--registration--section
 2 involving--the--composition--of--a--lot--of--pesticide--a--certified
 3 copy--of--the--official--analysis--signed--by--the--department's
 4 authorized--chemist--shall--be--accepted--as--prima--facie--evidence
 5 of--the--composition."

--End--

Amendments to HB 452

Recommended by the Montana Department of Agriculture.

Page 12 line ~~21~~ delete the word "sample"

Page 13 line 8 insert the words:

"on persons not possessing a license or permit"
between the words "exercised" and "only".

NAME Geordon McInnes BILL No. 457
ADDRESS Geo. Building DATE Jan 30
WHOM DO YOU REPRESENT Dept. Ag.
SUPPORT ✓ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

NAME Larry Lingner BILL No. 45-2
ADDRESS Helena DATE _____
WHOM DO YOU REPRESENT Mt. Dept. of Agric
SUPPORT ☒ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

*amends ~~attache~~
recommended.*

NAME Douglas L Johnson BILL No. 452
ADDRESS 521 1st Ave N.W. DATE 1/30/81
WHOM DO YOU REPRESENT Cascade Co. Pesticide Program
SUPPORT _____ OPPOSE _____ AMEND ✓

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

NAME Raymond W. Sault BILL No. HB 452
ADDRESS Helena, Mt DATE Jan 30, 1981
WHOM DO YOU REPRESENT Dept of Agri
SUPPORT ☒ OPPOSE ☐ AMEND ☐

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

NAME J. Brunner BILL No. HB 452
 ADDRESS 531 5 Oaks DATE 1/30/81
 WHOM DO YOU REPRESENT W.I.F.E. + Montana Agriculture Business Assoc
 SUPPORT _____ OPPOSE _____ AMEND Y
 PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

We do not dispute the need for such a bill. Speaking for W.I.F.E. we have encouraged such a bill.

We are concerned about Sec. 9. ppg 13 para. 2. which will not allow the by-products - odor - to go off the land sprayed. This is virtually impossible - and with the language from Sec 8. page 12 - line 14 - actual or reported adverse effects - page 13 - line 1-2 authorized to investigate all incidents. ect

We see a problem with Sec. 2. specifically. Many people are not aware that the odor alone is not harmful - and it can travel a considerable distance. We ask that this be amended to designate or delete - which ever is applicable - wording that will legally allow

odor to ~~cross~~ cross fence lines without
the nuisance it could entail to both
the department and the applicant.



The Big Sky Country

MONTANA STATE HOUSE OF REPRESENTATIVES

Robert L. Marks, Speaker
Legislative Council
Rules Committee
Home Address:
P.O. Box 302
Lump Gulch Route
Clancy, MT 59634

January 30, 1981

The Honorable Mike Greely
Attorney General
State of Montana
Helena, Montana 59601

Dear Mr. Greely:

On behalf of the House of Representatives of the 47th Legislature, I hereby request your formal opinion on the following question:

Do the provisions of the Montana Livestock Marketing Act, Section 81-8-211, et seq, MCA, require the licensure and regulation of the National Farmers Organization as a livestock broker, livestock dealer, or livestock market in order for the National Farmers Organization to lawfully act in the sale of livestock owned by its members?

Your prompt response would be appreciated in order to facilitate consideration by the 47th Legislature of certain legislation which has been introduced. A memorandum is attached for your consideration.

Sincerely,

Robert L. Marks
Speaker of the House of Representatives
47th Legislature

MEMORANDUM IN SUPPORT OF REQUEST FOR ATTORNEY GENERAL'S OPINION

House Bill 800 of the 46th Legislature of the State of Montana enacted the Montana Livestock Marketing Act, which is codified as Title 81, chapter 8, part 2, MCA. The law, among other things, imposes certain requirements on any business defined in 81-8-213 as a "livestock broker", "livestock dealer", or "livestock market". Concern was expressed at the time HB 800 was considered as to whether it would require licensure and regulation of groups such as the National Farmers Organization (NFO). Licensing of that group under the pre-1979 law had been determined not to be required, as stated by the Attorney General in Opinion No. 91 of Volume 37.

When HB 800 was considered in the House Agriculture, Livestock, and Irrigation Committee, a statement of intent was adopted with it, pursuant to 5-4-404, MCA. The statement contained certain language indicating that producer organizations such as the NFO were not intended to be included under the scope of the act. The pertinent language appeared at lines 17 through 23 of page 2 of the statement (see attachment #1), and was included despite the sponsor's objection.

It was the opinion of the staff attorney for the Department of Livestock, Charles Brown, at the time HB 800 was considered, that the NFO did not fit under any of the definitions in the act. In reliance on that opinion, the department entered into an agreement with the sponsor of HB 800 and a representative of the NFO to the effect that the department would not seek to enforce the act on the NFO. (See attachment #2.)

When the bill was considered in the Senate Agriculture, Livestock and Irrigation Committee, the language referred to above in the statement of intent was stricken at the sponsor's request, on the basis of the agreement and the sponsor's testimony that the NFO was not intended to be covered. (See attachment #3.)

The NFO is a non-profit corporation which assists agricultural producers in receiving adequate returns on their commodities through collective bargaining. Insofar as this technique is used in Montana for the sale of livestock, the procedure commences when a rancher signs a membership agreement with the NFO. Briefly, this agreement allows the NFO to act as the member's exclusive agent in the marketing of his commodities for a period of three years. This agreement places duties on the NFO to actively locate marketing outlets purchasing the commodities at the best possible price, and provides for an organizational structure to handle the marketing.

Secondly, the livestock of a number of NFO members are blocked together through sales contracts between the NFO and the members. The contract requires the member to identify the number, kind, grade, weight, and approximate delivery date of the livestock to be sold. Ownership of the livestock does not pass to the NFO but remains with the member. The

NFO is given the power to negotiate the price paid for the livestock and other terms of sale, subject to a ratifying vote of the members involved in the sale. The agreement gives the NFO injunctive powers against the member and the right to seek specific performance in the event of a breach.

The NFO then, with knowledge of the number and quality of the livestock, attempts to locate a buyer. When a purchaser is found, the livestock are collected, and shipped directly to the purchaser. To serve the convenience of the purchaser, he writes a single check to the NFO trust fund. After authorized deductions to the NFO, the net proceeds are disbursed to each member-producer.

Subsections (4), (5), and (6) of 81-8-213, MCA, define "livestock broker", "livestock dealer", and "livestock market" as follows:

"(4) "Livestock broker" means a business, not including facilities, conducted for the receiving, handling, and care of livestock and involving livestock purchased by it for its own account for resale, for the account of any principal for delivery to him, or for slaughter. It does not include a farmer or rancher who buys or sells livestock in the ordinary course of his farming or ranching operation.

(5) "Livestock dealer" means a business conducted in facilities utilized for the receiving, handling, and care of livestock purchased by it for its own account for resale, for the account of any principal for delivery to him, or for slaughter. It does not include a farmer or rancher who buys or sells livestock in the ordinary course of his farming or ranching operation.

(6) "Livestock market" means a place where a person for compensation assembles livestock for sale, except:

(a) a place used solely for a dispersal sale of the livestock of a farmer, dairyman, livestock breeder, or feeder who is discontinuing business and at which no other livestock is sold or offered for sale;

(b) a farm, ranch, or place where livestock either raised or kept thereon for the grazing season or for fattening is sold and to which no other livestock is brought for sale or to be offered for sale;

(c) the premises of a butcher, packer, or processor who receives animals exclusively for immediate slaughter;

(d) the premises of a person engaged in the raising of livestock for breeding purposes only, who limits his sale to livestock of his own production;

(e) a place where a breeder or an association of breeders of livestock of any class assembles and offers for sale and sells under his or its own management any livestock, when the breeder or association of breeders assumes all responsibility for the sale and the title of livestock sold."

The reasoning involved in the previous Attorney General's opinion would indicate that neither the term "livestock broker" or "livestock dealer" would include the NFO, since those definitions require the actual purchase of livestock, and, as indicated in the opinion, the NFO does not purchase or acquire ownership of the livestock of its members, and is in fact prohibited from doing so.

The term "livestock market" is defined primarily by exception, listing those types of places which are not a livestock market. None of the exceptions include NFO-type selling arrangements. The general language indicates a market is a place, rather than a business per se, where a person for compensation assembles livestock for sale. Because the NFO has no regular facility where it assembles livestock for sale, each sale it effects would have to be separately licensed, if licensing were required. A certificate of public convenience and necessity would have to be obtained for each sale under 81-8-251. A number of other requirements imposed by both statute and department rule concerning physical capacity, sanitary standards, etc., would have to be met. So despite the definition of a "market" being phrased in terms of any physical place, the requirements imposed are more applicable to a permanent facility, or business. Indeed, HB 345 of the 47th Legislature is attempting to amend the definition to clarify that a market is a business rather than a place. Therefore, it seems that the term "livestock market" contemplates a regularly-used facility, rather than any particular physical place where livestock may be grouped at one time by producers for sale.

It is also questionable whether the NFO receives compensation for arranging the sale. It receives certain fees, the nature of which are more like service fees than business profit or compensation.

In conclusion, both legislative intent and a close reading of the definitions involved would indicate the NFO-type marketing arrangement is not included under the scope of the Livestock Marketing Act.

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STATEMENT OF INTENT RE: HB 800

A statement of intent is required for this bill in that it delegates authority to adopt rules in section 4.

The purpose of the "Montana Livestock Marketing Act" as stated in the bill is to simplify, clarify, and modernize the law governing livestock marketing businesses and livestock marketing transactions; to promote open, free, and competitive factors in the market place in relation to all market conditions involving the sale and purchase of livestock; and to encourage, stimulate, and stabilize the livestock economy of the state.

The Department of Livestock is given, under section 4, authority to enforce and to adopt rules necessary to carry out the act. It is the legislative intent in delegating this rulemaking authority that the discretion granted the Department of Livestock is for the purpose of supervising and regulating livestock markets, livestock brokers, and livestock dealers in the state; of regulating the properties, facilities, operations, services, and practices of all livestock markets, livestock brokers, and livestock dealers; and of supervising and regulating livestock markets in all matters affecting the relationship between the livestock market and owners of livestock and between the

livestock markets and purchasers of livestock.

A major concern of the act is to establish stiff penalties for unfair, deceptive, and fraudulent market practices. It is intended that by providing stricter penalties and that by giving the Department of Livestock authority to assess civil penalties for some violations, livestock marketing in Montana will be strengthened.

It is the intent of this bill that in the adoption of rules under section 4 and in the general enforcement of this act that the Livestock Department's first function is to protect livestock producers consigning livestock to markets or selling livestock to or through dealers and brokers. Secondly, it is the intent of the legislature that so long as the purpose of protecting livestock producers is met, the enforcement and rules under this act not unduly interfere with the operations of the businesses of livestock markets, livestock dealers, and livestock brokers. ~~It---is---the legislature's---further---intent---that---the---definitions---of livestock-broker, dealer, and market contained in section--3 are---not---applicable---to---the-kind-of-marketing-of-livestock presently-undertaken-by-various--agricultural--organizations who--group--livestock--of--member-producers-in-order-to-gain better-prices.~~

First adopted by the HOUSE COMMITTEE ON AGRICULTURE, LIVESTOCK, AND IRRIGATION on February 19, 1979.

JUDGE, Governor



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STATE OF MONTANA
DEPARTMENT OF LIVESTOCK
HELENA, MONTANA 59601

(406) 449-2043

March 15, 1979

TO WHOM IT MAY CONCERN:

Impact of HB 800 on NFO Type Marketing Activities

It is the opinion of the attorney of the Department of Livestock that the definitions of livestock dealer, livestock broker, and livestock market, as contained in House Bill 800, do not require the licensing of the NFO for the kinds of marketing in which it presently is engaged. The Department therefore goes on record that should HB 800 become law it will not seek to license the NFO as a dealer for the kinds of livestock marketing activities presently engaged in by the NFO.

ROBERT G. BARTHELMESS, Chairman
Board of Livestock

A handwritten signature in cursive script, appearing to read "Les Graham".
by LES GRAHAM, Administrator
Brands-Enforcement Division

March 23, 1979

I agree with and endorse the above resolution as a true representation of my intent as sponsor of HB 800.

A handwritten signature in cursive script, appearing to read "Representative Robert A. Ellerd".
Representative Robert A. Ellerd

Witness:

A handwritten signature in cursive script, appearing to read "Terry Murphy".
Terry Murphy, NFO. Lobbyist

MINUTES OF THE MEETING
AGRICULTURE, LIVESTOCK & IRRIGATION
MONTANA STATE SENATE

March 23, 1979

The twenty-seventh meeting of the Agriculture, Livestock and Irrigation Committee was called to order on the above date in Room 442 of the State Capitol by Chairman Galt at 9:00 a.m.

ROLL CALL: All members were present with the exception of Senator Graham.

CONSIDERATION OF HOUSE BILL 800: Representative Ellerd had introduced this bill which generally revises the livestock marketing laws in Montana. Some of the definitions are changed from the current law and it also increases the penalties for fraud by changing them from a misdemeanor to a felony. He said the industry is growing and the price of livestock is at the highest it has ever been and the amount of fraud has increased. This bill has been several years in the drafting process. It was originally drafted by the Livestock Marketing Association and was not in good shape when he received it. The Legislative Council and Charles Brown from the Department of Livestock worked on the bill and made the necessary changes and he had agreed with the changes. The statement of intent came up in the House Committee on the last day before transmittal and he was opposed to one part of the statement and an attempt to amend the statement failed. He presented a resolution to the committee, attachment #1, from the Board of Livestock and signed by Representative Ellerd and Terry Murphy, lobbyist for the NFO. The objection to the bill came from the NFO because there were some misunderstandings as to the NFO's position under the bill. Under the present bill they are exempt from buying a license to deal in cattle and it was his intention that they be exempt under this bill. The Attorney General cannot make a ruling on this until it becomes law. This attached resolution would make it clear that the NFO be exempt under this bill and that the department goes on record that they would not attempt to license the NFO. He also had a proposed amendment to the statement of intent see attachment #2. This amendment would strike the last sentence, lines 17 through 23 of the statement of intent.

Terry Murphy, representing the NFO, said they did have a problem with the bill as it was originally presented because they felt the NFO's position was not clearly spelled out in the bill. He said currently the NFO is exempt from the licensing provision under the present law and this came from an Attorney General's opinion. They wanted it made clear in the new law that it was the intent of the bill that the NFO's position was

still to be exempt. He said the NFO has agreed to this bill with the resolution and the amendment to the statement of intent in a spirit of compromise to support a new law primarily because of the increase in cattle prices. With the resolution endorsed by the Board of Livestock and Representative Ellerd and in print, if anyone, in the future, tries to challenge the Board to try to get the NFO to purchase a license there would be evidence that it was not the intent of the Legislature or the Board to have the NFO buy a license.

Charles Brown, Department of Livestock, said the department had been involved with the bill during its preparation and they now felt they could support the bill and felt it would provide some much needed protection.

Alice Fryslie, Montana Cattlemen's Association, commended the NFO and Representative Ellerd in resolving the problems that had occurred as a result of the bill and the statement of intent. She felt the final result was a good bill and felt the penalties should be more stringent and they supported the bill with the amendment and the resolution.

Mons Teigen, Montana Stockgrowers and Woolgrowers, said this had been a frustrating piece of legislation and felt the statement of intent had been the problem. They now support the bill.

Chris Johanson, Montana Farmers Union, had no objection with House Bill 800 with the proposed amendments.

Representative Ellerd in closing said the livestock dealers license had been increased to a \$50 fee and this would probably generate enough money for the department to enforce the act. He thanked all the people that had been involved in getting this bill satisfactory to all concerned.

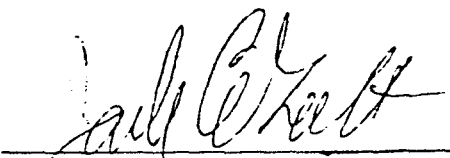
Senator Conover moved that the proposed amendment be adopted. Motion carried.

DISPOSITION OF HOUSE BILL 800: Senator Conover moved that House Bill 800 BE CONCURRED IN As Amended. Motion carried. Senator Graham absent.

Senator Galt will carry the bill on the floor.

Senator Hager moved that if the bill could go through the Senate faster that it be placed on the Consent Calendar. Motion carried.

The meeting was then adjourned.


SENATOR JACK E. GALT, Chairman