

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON AGRICULTURE, LIVESTOCK, & IRRIGATION

Call to Order: By CHAIR LINDA NELSON, on February 18, 1991, at 2:30 p.m.

ROLL CALL

Members Present:

Linda Nelson, Chair (D)
Don Steppler, Vice-Chairman (D)
Bob Bachini (D)
Joe Barnett (R)
Gary Beck (D)
Jane DeBruycker (D)
Roger DeBruycker (R)
Jim Elliott (D)
Marian Hanson (R)
Harriet Hayne (R)
Vernon Keller (R)
Don Larson (D)
Jim Madison (D)
Ed McCaffree (D)
John Phillips (R)
John Scott (D)

Staff Present: Connie Erickson, Legislative Council
Claudia Johnson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

HEARING ON HB 771

Presentation and Opening Statement by Sponsor:

REP. MIKE FOSTER, House District 32, Townsend, said this bill clarifies the current law in the area of commodities warehouse and commodity dealer licensing. He distributed amendments that clarify the language and said this bill is mainly a housekeeping bill. **EXHIBIT 1**

Proponents' Testimony:

Ray Bjornson, Montana Department of Agriculture, read a position

statement. **EXHIBIT 2** He said this last year the department has gone through some trials and tribulations in trying to solve elevator cases in determining why commodity dealers are not paying for their commodities. This bill will make it easier and faster to administer. The first \$30,000 of a person's annual grain purchases from producers are exempt. The proposed amendment would require an applicant to file for a license for the next succeeding year if the exemption is exceeded. He said the department does have a problem on page 15, line 20, which says the minimum amount of a bond required by any commodity dealer is \$20,000 and the maximum as prescribed in 80-405. He said this statement needs to be left in the bill so the commodity dealer can identify what the minimum and the maximum bond that is required will be. In past dealings with the commodity dealer on insolvent problems, it was determined that the records were not sufficient to prove whether the grain was sold or if something else happened to it. He urged the committee for a do pass on HB 771.

Pam Langley, Montana Grain Elevator Association and the Pacific Northwest Grain Association, said both groups support the changes proposed in HB 771 with most of the amendments. She said they will benefit the industries as well as a benefit to the producer to insure accurate record keeping as well as sound business practices are followed.

Opponents' Testimony: None

Questions From Committee Members:

REP. STEPLER asked if the scale tickets that are used for proof of delivery and the mention of trading the scale tickets for warehouse receipts, if it wouldn't be best to use the warehouse receipts instead of the scale tickets. He said in his area, the outdoor scale house is used for a lot more than just grain. **Mr. Bjornson** said the commodity dealer cannot issue warehouse receipts. All commodities that are purchased by the commodity dealer are essentially his. All this bill says is there needs to be some type of transaction that has occurred and scale tickets are one way of keeping track of it. Only warehousemen can issue warehouse receipts. A scale ticket is not an negotiable item, therefore, it allows an entry to be made, e.g., like a checkbook register that double checks the transaction.

REP. BECK said he had a problem on page 7, lines 10 to 14, where it states "a person acting as a commodity dealer warehouseman can only sell warehouse receipts for agriculture commodities that he is not authorized to sell", isn't this already covered in the statutes somewhere. **REP. BECK** also questioned the bottom of page 7 where the statement says "who fails to pay the purchased agriculture commodities is guilty of a felony". **Mr. Bjornson** said the current law does not address when someone willfully or fraudulently sells warehouse receipted grain or takes the grain and sells it and does not pay the farmer on the commodity dealers

side. If there is a property written contract and all conditions of the contract are met, than this would not apply.

Closing by Sponsor:

REP. FOSTER thanked the committee for a good hearing. He said this should clear up the language and questions that have been involved in this area. He urged the committee for a do pass.

HEARING ON HB 674

Presentation and Opening Statement by Sponsor:

REP. JOHN COBB, House District 42, Augusta, said one of the competitive advantages the poultry industry can claim over beef is the water weight. Poultry can gain up to 8 - 12%, depending on its packaging process. The law allows weight gain by the poultry and prohibits such weight gain in red meat which makes it a very economic imbalance. The regulations of the 8 - 12% water weight is a hold over from time when the chilling technology is not what it is today, these regulations of ice bathing are out-of-date. Now in the 1990's, there are other mechanisms to chill the carcass quicker, but still allow the water advantage to be used. He said this bill will keep the industries from continuing the water process. He offered amendments for HB 674. EXHIBIT 3 He said the bill is unconstitutional, because USDA labeling laws supersede and state labeling requirements. He said this has been court challenged in other states and the USDA has been waiting on the outcome. The labels cannot be changed, but it can be changed to adulterated which means under Montana law the water weight can be changed, e.g., instead of 8%, it can be changed to 2%. Any out of state company, i.e., Albertsons, package their meat and ship it to Montana would have to conform to Montana's law on the required water weight. He said Congress has been asked to do this on the National level, but at this time nothing has been done. REP. COBB hoped that maybe Montana would set precedent and the USDA would change their rules and regulations.

Proponents' Testimony: None

Opponents' Testimony: None

Questions From Committee Members:

REP. ELLIOTT asked why beef packers were mentioned as competition with poultry. REP. COBB said that beef cannot be sold with water in it unless it is properly labeled, but water can be sold in poultry, i.e., ham is labeled as water added. He said the object of this bill is to make all meats the same for water weight.

REP. MCCAFFREE asked about the effect of the amendment on the title. REP. COBB said the language for labeling had to be taken out because the Department of Health said if labeling is inserted in the bill by itself, it would be lost because USDA law

supersedes Montana's laws. He said that Montana can get around the labeling by setting the water weight limit.

Closing by Sponsor:

REP. COBB thanked the committee for a good hearing and informed the committee this is an important bill and wanted to make it fair across the board for everyone. EXHIBIT 4

HEARING ON HB 756

Presentation and Opening Statement by Sponsor:

REP. ED MCCAFFREE, House District 27, Forsyth, said this bill changes the date from July 1, to December 31 for the issuance of the nursery license. The reason for this is so the department can correspond with the other licenses they issue to the nursery growers. A number of the small growers will purchase their license in April or May not realizing they have to purchase another license again on July 1.

Proponents' Testimony: None

Opponents' Testimony: None

Questions From Committee Members: None

Closing by Sponsor:

REP. MCCAFFREE thanked the committee and reminded them this was a committee bill. He urged a do pass.

EXECUTIVE ACTION ON HB 756

Motion: REP. ELLIOTT MOVED HB 756 DO PASS.

Motion/Vote: Voice vote was taken.

Vote: HB 756 DO PASS. Motion CARRIED unanimously. REP. DEBRUYCKER (Roger) moved HB 756 be placed on the consent calendar. Voice vote was taken. Motion CARRIED unanimously.

EXECUTIVE ACTION ON HB 674

Motion: REP. ELLIOTT MOVED HB 674 DO PASS.

Discussion: REP. ELLIOTT moved amendment. EXHIBIT 3 Voice vote was taken. Motion CARRIED unanimously.

Motion/Vote: REP. PHILLIPS MADE A SUBSTITUTE MOTION THAT HB 674 DO PASS AS AMENDED.

Vote: HB 674 DO PASS AS AMENDED. Motion CARRIED unanimously.

EXECUTIVE ACTION ON HB 771

Motion: REP. PHILLIPS MOVED HB 771 DO PASS.

Discussion: REP. PHILLIPS moved to adopt the amendment. EXHIBIT 1 Connie Erickson discussed the amendment. She said the issue regarding this bill limits the minimum and maximum set on the bond. On page 15, lines 20 - 22 (this is language that was stricken from the bill), reads "the minimum amount of bond required by any commodity dealers \$20,000, and the maximum is prescribed in 80-4-405 provides the maximum amount of million dollars for a commodity dealers bond". That section of the law was not amended in this bill. She was concerned that by simply striking those words on the maximum as described in 80-4-405 actually removes the maximum amount of the bond, because the language in 80-4-405 was not changed at all. After reading it a second time, Ms. Erickson thought it removed the minimum amount instead of the maximum amount. She said if the committee wanted to leave the language in, the bill would have to be amended to amend the other section or leave the maximum amount in and remove the language.

Motion/Vote: REP. ELLIOTT made a substitute motion to suspend action on HB 771 until Ms. Erickson can finish the amendments. Voice vote was taken. Motion CARRIED unanimously.

Vote: MOTION ON HB 771 WAS SUSPENDED.

EXECUTIVE ACTION ON SB 158

Motion: REP. BACHINI MOVED SB 158 BE CONCURRED IN.

Discussion: REP. BACHINI moved the John Deere amendments for discussion purposes. REP. BACHINI spoke to his motion. He said they do just the opposite of what the implement dealers are asking for. He hoped the committee would resist the amendments. He said this is one of the ways to strip the bill.

Connie Erickson explained the amendment. On page 2, Ron Waterman, representing John Deere, wanted to strike subsection 5 in its entirety which says a designated family member. On page 3, strike subsection 6, which is the section which defines a designated successor. She said Mr. Waterman offered language in place of subsection 6, but the language he used for designated successor and in the rest of the amendments did not use designated successor. Ms. Erickson said it is not defined in the bill if it is not going to be used. The amendment Ms. Erickson drafted does not include a new definition of designated successor. The other amendments Mr. Waterman asked for was to strike subsection 8 on page 3, the new language relating to good

cause. Mr. Waterman asked to strike beginning in page 4, sections 2, 3, 4 and 5 in their entirety. That is mainly the new portion of the bill that relate to the procedure for passing on a dealership to a designated successor or family member. Mr. Waterman's language they offered to replace these sections with; is that a grantor could not withhold consent on the transfer of a dealership to a proposed successor or a family member. They could not withhold consent if the person proposed to be successor meets the requirements they set up, which are business qualifications, financial qualifications, character experience. This is also the same for a family member. Mr. Waterman also provided in the portion where a family member could succeed by including a 30 day provision that says a "grantor shall have 30 days to consider a dealers request to make a transfer to a family member, but there was no similar time request for a transfer request for a successor.

REP. DEBRUYCKER (Roger) wanted section 8 left out, but leave the rest in.

REP. ELLIOTT said he had spoke with SEN. JERGESON before the committee hearing and it was his feeling and also the feeling of several republican senators that the Mr. Waterman amendment would be rejected by the Senate.

REP. BARNETT spoke in support of the amendment. He said in the testimony on Friday, the membership was not informed of the amendments addressed until the second reading in the Senate. He than said he would have to rise in opposition because of the concern of a constituent in his district. CHAIR LINDA NELSON asked REP. BARNETT if he meant he was in support of the amendments. REP. BARNETT said he is.

REP. BECK asked Chuck Brooke, Hardware/Implement representative, what he thought of the amendments. Mr. Brooke thought the amendments really stripped the bill. Mr. Brooke said what happened, the association was very interested in moving the returned inventory from 85% to 100% plus freight. He said SEN. JERGESON had a bill and was combined to make one bill. He said it is no secret that Mr. Waterman is going to close some of the smaller dealerships in this state. The larger dealers will end up with this territory. He said it is his duty to protect that dealer out there that will lose his 15, 20, or 30 years of effort in building the line of merchandise so he can recover his life time savings, which will be tied up in the business when he is shut down. He said this should be a major concern of everyone, and it is no secret that the farmer/rancher will pay the price by having to travel further to get parts and service.

Motion/Vote: REP. ELLIOTT made a substitute motion to strike the John Deere amendment. Voice vote was taken. The motion CARRIED 11 to 5 with REP. PHILLIPS, REP. KELLER, REP. DEBRUYCKER (Roger), CHAIR LINDA NELSON and REP. BARNETT voting no.

HOUSE AGRICULTURE, LIVESTOCK, & IRRIGATION COMMITTEE

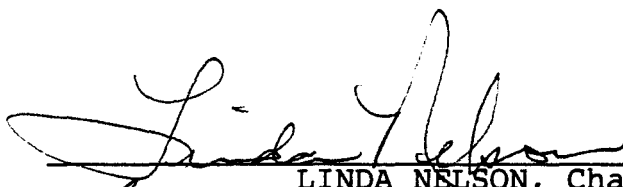
February 18, 1991

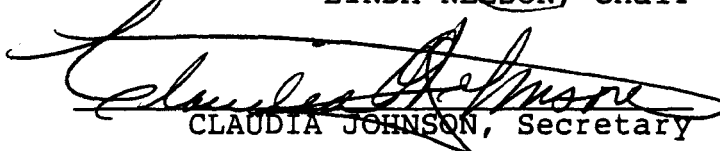
Page 7 of 7

Vote: SB 158 BE CONCURRED IN. Motion CARRIED 9 to 7 with REP.
HAYNE, REP. HANSON, REP. BARNETT, REP. LARSON, REP. DEBRUYCKER
(Roger), REP. KELLER and REP. PHILLIPS voting no.

ADJOURNMENT

Adjournment: 4:45 p.m.


LINDA NELSON, Chair


CLAUDIA JOHNSON, Secretary

LN/cj

HOUSE OF REPRESENTATIVES

AGRICULTURE, LIVESTOCK AND IRRIGATION COMMITTEE

ROLL CALL

DATE 2-18-91

NAME	PRESENT	ABSENT	EXCUSED
REP. DON STEPLER, VICE-CHAIRMAN	✓		
REP. BOB BACHINI	✓		
REP. JOE BARNETT	✓		
REP. GARY BECK	✓		
REP. JANE DEBRUYCKER	✓		
REP. ROGER DEBRUYCKER	✓		
REP. JIM ELLIOTT	✓		
REP. MARIAN HANSON	✓		
REP. HARRIET HAYNE	✓		
REP. VERNON KELLER	✓		
REP. DON LARSON	✓		
REP. JIM MADISON	✓		
REP. ED MCCAFFREE	✓		
REP. JOHN PHILLIPS	✓		
REP. JOHN SCOTT	✓		
REP. LINDA NELSON, CHAIR	✓		

HOUSE STANDING COMMITTEE REPORT

February 18, 1991

Page 1 of 3

Mr. Speaker: We, the committee on Agriculture, Livestock, and Irrigation report that House Bill 674 (first reading copy -- white) do pass as amended .

Signed: 
Linda Nelson, Chairman

And, that such amendments read:

1. Title, lines 4 and 5.

Following: "THAT" on line 4

Strike: remainder of line 4 through "ALL" on line 5

Insert: "RULES BE ADOPTED TO DETERMINE WHEN EXCESSIVE ADDED WATER
OR ICE RENDERS

2. Title, lines 6 and 7.

Following: line 5

Strike: all of line 6 through "PROCESSING" on line 7

Insert: "ADULTERATED; AND AMENDING SECTION 50-31-202, MCA"

3. Page 1, line 8.

Insert: " STATEMENT OF INTENT

A statement of intent is provided for this bill because it is intended to authorize the department of health and environmental sciences to provide rules for the regulation of the sale as well as the labeling of chicken or turkey that is packaged with excessive added water or ice."

4. Page 1, lines 10 through 18.

Strike: sections 1 and 2 in their entirety

Insert: " Section 1. Section 50-31-202, MCA, is amended to read:
"50-31-202. When food adulterated. A food shall be deemed to be adulterated if:

(1) it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance, such food shall not be considered adulterated under this subsection if the quantity of such substance in such food does not ordinarily render it

injurious to health;

(2) it bears or contains any added poisonous or added deleterious substance, other than one which is:

(a) a pesticide chemical in or on a raw agricultural commodity;

(b) a food additive; or

(c) a color additive, which is unsafe within the meaning of 50-31-109;

(3) it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of section 408(a) of the federal act as amended;

(4) it is or it bears or contains any food additive which is unsafe within the meaning of section 409 of the federal act as amended; provided that where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or tolerance prescribed under section 408 of the federal act and such raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the residue of such pesticide chemical remaining in or on such processed food shall, notwithstanding the provisions of 50-31-108, 50-31-109, and subsection (4) of this section, not be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice and the concentration of such residue in the processed food when ready to eat is not greater than the tolerance prescribed for the raw agricultural commodity;

(5) it consists in whole or in part of a diseased, contaminated, filthy, putrid, or decomposed substance or if it is otherwise unfit for food;

(6) it has been produced, prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth or whereby it may have been rendered diseased, unwholesome, or injurious to health;

(7) it is the product of a diseased animal or an animal which has died otherwise than by slaughter or that has been fed upon the uncooked offal from a slaughterhouse;

(8) its container is composed in whole or in part of any poisonous or deleterious substance which may render the contents injurious to health;

(9) any valuable constituent has been in whole or in part omitted or abstracted therefrom;

(10) any substance has been substituted wholly or in part therefor;

(11) damage or inferiority has been concealed in any manner;

(12) any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, reduce its quality or strength, or make it appear better or of greater value than it is;

(13) it is confectionery and it bears or contains any

February 18, 1991

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alcohol or nonnutritive article or substance except harmless coloring, harmless flavoring, harmless resinous glaze not in excess of .4%, harmless natural wax not in excess of .4%, or harmless natural gum and pectin; provided that this paragraph shall not apply to any confectionery by reason of its containing less than .5% by volume of alcohol derived solely from the use of flavoring extracts or to any chewing gum by reason of its containing harmless nonnutritive masticatory substances;

(14) it is or bears or contains any color additive which is unsafe within the meaning of the federal act;

(15) it is chicken or turkey packaged with excessive added water or ice as determined by department rule."

4:40
2-18-91
JDB

HOUSE STANDING COMMITTEE REPORT

February 18, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Agriculture, Livestock, and Irrigation report that House Bill 756 (first reading copy -- white) do pass and be placed on consent calendar.

Signed: _____


Linda Nelson, Chairman

HOUSE STANDING COMMITTEE REPORT

February 18, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Agriculture, Livestock, and Irrigation report that Senate Bill 158 (third reading copy -- blue) be concurred in .

Signed: 
Linda Nelson, Chairman

Carried by: Rep. Linda Nelson

Proposed Amendments to House Bill No. 771

1. Title, Line 18
Following: ", "
Strike: "Removing the minimum and maximum"
2. Title, line 19
Strike: "bonds for a commodity dealer;"
3. Page 2, line 16
Following: "80-4-504"
Insert: "80-4-604"
4. Page 8, line 6
Following: "."
Insert: IT MUST BE
5. Page 8, line 7
Insert: EXCHANGED FOR
Following: "Receipt"
Strike: WILL BE ISSUED UPON
6. Page 8, line 8
Strike: "Request"
7. Page 11, line 2
Following: "issued"
Insert: "When storage is charged but"
8. Page 15, line 20
Following: "."
Insert: "The minimum amount of"
9. Page 15, line 22
Insert: "maximum is prescribed in 80-4-405"

Memorandum 2/18/91

Plant Industry Division

Position Statement

House Bill 771 "An act to generally revise the agricultural warehouseman, commodity dealer, and the grain standards act"; revising use of the \$30,000 exemption; providing a penalty for fraud; eliminating use of a combination scale 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 commodity dealers; providing remedies for commodity dealer defaults; requiring commodity dealers to keep records; providing for claims on the bond by an injured person.

The proposed changes to the Public Warehouseman and the Commodity Dealer laws as recommended in HB 771 are needed to clarify the intent of the law.

Section 80-4-402. Definition: (3) Bond indicates that the Department by rule may allow other equivalents such as Certificate of Deposit, and letters of Credit, etc. The method in which the department handles these other equivalents are set by rule. Therefore, line 17 Section 80-4-604 as required this section sets the minimum and maximum for the Commodity Dealer Bond or its equivalent.

(4)(c) The first \$30,000 of a person's annual grain purchases from producers are exempt. The intent of this exemption is to allow small feedlot, small grain dealers, and farmer to farmer purchases to occur without being in violation of the licensing requirement. The definition creates a problem for the department as some grain companies, feedlot operators and truckers have used this exception to avoid the licensing requirement or to avoid renewing their Commodity Dealer license in a timely manner. The proposed amendment would require an applicant to file for a license for the next succeeding year if the exemption is exceeded.

Definition (10) if proposed as a housekeeping amendment. The proposed amendment would allow the state law to always be in compliance if changes are made in the USDA-Grain Standard Act.

Section 80-4-429 (3) Penalty: Providing a penalty for a person who intentionally commits fraud. The proposed amendment would strengthen the penalty from a misdemeanor to a felony. The current law imposes felonies for non-licensed and issuing fraudulent receipts. This amendment adds felony penalties for unauthorized sale of warehouse receipts or failing to pay for purchased commodities. The penalty would not apply to Credit Sales Contracts if properly executed between the buyer and seller if they comply with the terms of the contract.

Section 80-4-525 (4) addressess the language that should be on a scale ticket so that the scale ticket is not confused with a warehouse receipt. THE department prefers the current language "THIS IS NOT A WAREHOUSE RECEIPT. IT MUST BE EXCHANGED FOR A WAREHOUSE RECEIPT IF GRAIN IS HELD IN STORAGE". The issue of concern as expressed by the proposed amendment is address in Section 80-4-527 (8).

(7) Eliminate the use of a Combination Scale Ticket and Warehouse Receipt. The proposed amendment would eliminate the use of a combination scale-warehouse receipt. Public warehouseman have eliminated the use of this type of receipts. CCC auditors will not allow the use of these receipts if the warehouseman has in place a Uniform Storage Agreement.

(8) The proposed amendment would allow the Public Warehouse to retain the original copy of the warehouse receipt rather than give the original to the producer. The producer may receive the original upon request of the public warehousemen. If the proposed amendment is allowed, the department will insist that all original copies of the warehouse receipts will be kept in a safe place.

(11) To clarify when a warehouse receipt must be issued. The proposed amendment would prevent the warehouse from keeping open storage using scale tickets. The proposed amendment to definition does present a technical problem with Section 80-4-522 whereby, 15 days of free storage will be granted to the producer. If warehouse receipts are not issued for 30 days a problem will exist. Consider adding language -- after issued insert WHEN STORAGE IS CHARGED BUT --- no later than 30 days after delivery unless agreed to in writing by both parties.

Section 80-4-538. Agricultural Commodities in storage will be pooled to pay off shortages: The proposed amendment will clarify how warehouse receipt claims are to be handled when a grain company becomes insolvent.

In subsection (3), the proposed amendment will save the department time and money when filing legal petitions.

Section 80-4-604. (1) To Change the aggregate liability of surety bonds from cumulative to noncumulative: The proposed amendment would re-align the Commodity Dealer bond with the

EXHIBIT 2
DATE 2-18-91
HB 771

Public Warehouseman bond which is now noncumulative. The noncumulative status will make it easier to industry to acquire surety bonds.

(2) Allows the Department to set the amount of bond or its equivalent not to exceed 2% of the value of agricultural commodities purchased over a 12 month period. The proposed amendment would not allow the department to increase bond by rule. The proposed amendment would also eliminate the minimum amount and the maximum. The statement setting forth the minimum and the maximum are needed by the department.

NEW SECTION: To provide remedies for Commodity Dealer defaults: The proposed amendment would allow the department to deal with defaults in the same manner as we deal with defaults in the public warehouseman area. The amendment would grant the department authority to take possession of commodities and records in the facilities. The amendment would also allow the department to petition the court for the authority to liquidate the business.

NEW SECTION: To provide record keeping requirement for Commodity Dealers: The purpose of this amendment requiring commodities to keep records showing daily positions, purchases deliveries or payments. The current law does not require commodities to issue scale tickets and this causes problems for the field auditor.

NEW SECTION: To clarify who may make a claim on a bond by a person injured: The proposed amendment would clarify that only claims could be accepted from Montana producers and agricultural commodities grown in Montana.

hb771

Amendments to House Bill No. 674
First Reading Copy

Requested by John Cobb
For the Committee on Agriculture

Prepared by Greg Petesch
February 18, 1991

1. Title, lines 4 and 5.
Following: "THAT" on line 4
Strike: remainder of line 4 through "ALL" on line 5
Insert: "RULES BE ADOPTED TO DETERMINE WHEN EXCESSIVE ADDED WATER
OR ICE RENDERS

2. Title, lines 6 and 7.
Following: line 5
Strike: all of line 6 through "PROCESSING" on line 7
Insert: "ADULTERATED; AND AMENDING SECTION 50-31-202, MCA"

3. Page 1, line 8.
Insert: " STATEMENT OF INTENT

A statement of intent is provided for this bill because it is intended to authorize the department of health and environmental sciences to provide rules for the regulation of the sale as well as the labeling of chicken or turkey that is packaged with excessive added water or ice."

4. Page 1, lines 10 through 18.
Strike: sections 1 and 2 in their entirety
Insert: " **Section 1.** Section 50-31-202, MCA, is amended to read:
"50-31-202. When food adulterated. A food shall be deemed to be adulterated if:

(1) it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance, such food shall not be considered adulterated under this subsection if the quantity of such substance in such food does not ordinarily render it injurious to health;

(2) it bears or contains any added poisonous or added deleterious substance, other than one which is:

(a) a pesticide chemical in or on a raw agricultural commodity;

(b) a food additive; or

(c) a color additive, which is unsafe within the meaning of 50-31-109;

(3) it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of section 408(a) of the federal act as amended;

(4) it is or it bears or contains any food additive which

is unsafe within the meaning of section 409 of the federal act as amended; provided that where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or tolerance prescribed under section 408 of the federal act and such raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the residue of such pesticide chemical remaining in or on such processed food shall, notwithstanding the provisions of 50-31-108, 50-31-109, and subsection (4) of this section, not be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice and the concentration of such residue in the processed food when ready to eat is not greater than the tolerance prescribed for the raw agricultural commodity;

(5) it consists in whole or in part of a diseased, contaminated, filthy, putrid, or decomposed substance or if it is otherwise unfit for food;

(6) it has been produced, prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth or whereby it may have been rendered diseased, unwholesome, or injurious to health;

(7) it is the product of a diseased animal or an animal which has died otherwise than by slaughter or that has been fed upon the uncooked offal from a slaughterhouse;

(8) its container is composed in whole or in part of any poisonous or deleterious substance which may render the contents injurious to health;

(9) any valuable constituent has been in whole or in part omitted or abstracted therefrom;

(10) any substance has been substituted wholly or in part therefor;

(11) damage or inferiority has been concealed in any manner;

(12) any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, reduce its quality or strength, or make it appear better or of greater value than it is;

(13) it is confectionery and it bears or contains any alcohol or nonnutritive article or substance except harmless coloring, harmless flavoring, harmless resinous glaze not in excess of .4%, harmless natural wax not in excess of .4%, or harmless natural gum and pectin; provided that this paragraph shall not apply to any confectionery by reason of its containing less than .5% by volume of alcohol derived solely from the use of flavoring extracts or to any chewing gum by reason of its containing harmless nonnutritive masticatory substances;

(14) it is or bears or contains any color additive which is unsafe within the meaning of the federal act;

(15) it is chicken or turkey packaged with excessive added water or ice as determined by department rule."

IBP Decries Inequities

Feds allow poultry to market water gain.

To all the well-known competitive advantages the poultry industry can lay claim to over beef, there's one more few consumers or cattlemen are aware of, IBP's George Spencer and Jim Lockner told an NCA animal health and inspection subcommittee. It's water weight.

IBP's vice-president of public affairs and vice-president of technical services, respectively, appeared before an NCA midyear committee session. Lockner began by asking the approximately 40 attendees: "How many in this room know poultry can gain up to 8 percent (weight gain as water), and in some cases, up to 12 percent, depending on the style and presentation of the bird?" One hand went up.

See accompanying table compiled from USDA's Food Safety and Inspection Service regulations, Section 381.66, Paragraph D, Section 2.

Spencer called this situation, which allows water weight gain by poultry and prohibits such weight gain in red meat: "a very serious economic imbalance.

"The point isn't really the percentage," Spencer said, "The bottom line is that every day we're out there marketing what you produce, in the box or whatever form, we're competing not only with the basic white meat of poultry, but the water as well.

"If we can't contest the efficiency of their operation — their 21-day incubation period, their short production period, etc., just the added water makes it that much more competitive in the marketplace with the price of the product with that water added," he said.

Lockner said the regulations are holdovers from a time when chilling technology wasn't what it is today.

"When these regulations were put together, ice bath chilling was very common. We're now in the 1990s and there are mechanisms that can chill birds in a very effective way, without allowing them to gain weight," Lockner said.

Spencer and Lockner both advised

against the cattle industry advocating that water weight gain be allowed for its products.

"I don't believe we should be in the business of selling unnatural or added water. We're here to press the issue that poultry, with the technology that exists in chilling today, should not be allowed to continue to add this percentage of water," Lockner said.

Spencer was certain most consumers aren't aware of the added water weight in poultry. "And I'm not sure they should become aware," he said. "But I do think the cattle industry needs to be aware of the inequity and decide if and what it wants to do about it."

One possibility, Lockner added, could be labeling of poultry as containing added water. "That would make it more acceptable because the consumer would be aware of it," he said.

The cost of the inequity to the red meat industry is significant, Lockner said, although IBP hadn't computed those numbers as of press time. The two men agreed to provide NCA with a report citing the regulations and the economic ramifications.

"If you look at the percentage of water in poultry and the average prices at which poultry moves in the marketplace, you have a good economic story there," Spencer added.

In response to a question by cattleman Jim Mullins, Lockner said this issue hadn't surfaced previously because of a greater predominance of safety issues rather than economic.

"But there are at least two or three more glaring disparities in the poultry regulations. Another is 'mechanically separated.' It means something totally different than in red meat,"

FSIS limit for maximum moisture absorption in preparation for all classes of poultry to be consumer packaged, frozen or cooked as whole poultry.

Average ready-to-cook carcass weight prior to final washer (less necks and giblets)	Average percent increase in weight over weight of carcass prior to final washer (less necks and giblets)	
	Zone A	Zone B
Chickens 4 1/4 pounds and under	8.0	8.7
Chickens over 4 1/4 pounds and all other classes of poultry other than turkeys	6.0	16.7
Turkeys 8 lbs., 8 oz. and under	8.0	9.0
Turkeys 8 lbs., 9 oz. to 15 lbs., 15 oz.	6.0	6.4
Turkeys 16 lbs. to 16 lbs., 15 oz.	5.8	6.05
Turkeys 17 lbs. to 17 lbs., 15 oz.	5.5	5.75
Turkeys 18 lbs. to 18 lbs., 15 oz.	5.3	5.55
Turkeys 19 lbs. to 19 lbs., 15 oz.	5.1	5.35
Turkeys 20 lbs. to 20 lbs., 15 oz.	4.9	5.15
Turkeys 21 lbs. to 21 lbs., 15 oz.	4.8	5.05
Turkeys 22 lbs. to 22 lbs., 15 oz.	4.6	4.85
Turkeys 23 lbs. to 23 lbs., 15 oz.	4.5	4.75
Turkeys 24 lbs. to 26 lbs., 15 oz.	4.4	4.65
Turkeys 27 lbs. and over	4.3	4.55

Lockner said.

Mechanically-separated red meat must be labelled. Mechanically-separated poultry needn't be. "The value of red meat so labelled is very much lower in economic value," Spencer said.

In response to another question, Spencer said the American Meat Institute had no position on the issue. "The consist of AMI's membership is changing and I think the industry is evolving in a different way. A good number of the big players in the beef and pork industry today are also big players in poultry. I don't think we need to say more," he said.

Jim Mullins advocated approaching the issue from the economic standpoint, lest consumer credibility of the food inspection system be affected. "I think there are some issues in food safety here (referring to communal baths typically used to chill poultry), but I'd be concerned on approaching it from that side rather than the economic," Mullins said.

In the end, committee members voted to study the issue before deciding on a course of action. ♦

(continued)

up on street corners in Montana, possibly being sold by the very people involved in the thefts from nurseries in other states. With the licensing procedure completed in January, there is some possibility that these thieves can be apprehended. With the licensing procedure remaining in July, the unlicensed salesman can appeal that he has made application ... and we are back to square one.

Therefore, the Montana Association of Nurserymen strongly urges the approval of the change in licensing and renewal from July 1st to January 1st.



Gene R. Barry
EXECUTIVE DIRECTOR

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EXHIBIT 6
DATE 2-18-91
HB 756

RE: House Bill #756 (McCaffree)

Date: 18 February, 1991

By: Jane R. Barry, Executive Director

Rarely does a bill come before the Legislature which will serve both the agency involved and the industry which that agency regulates. Such is the case with House Bill #756.

The Montana Association of Nurserymen fully supports House Bill #756, having voted on this issue during their Annual Business Meeting, January 10, 1991. The vote in support of this matter was unanimous, the discussion preceding the vote brought up no opposition discussion on the matter.

By changing the nursery licensing date from July 1st to January 1st, the Plant Industry Division of the Montana Department of Agriculture will be able to utilize their computer capabilities to generate nursery license invoices and to get them mailed in a more cost-effective manner. They will also be putting the deadline for both new licenses and for renewal licenses at a time of the year when those involved in the sale and planting of nursery stock are in their offices dealing with the paper work that is required, rather than out on the job. This will allow the nurseries to return the renewal forms more quickly, resulting in the Plant Industry division's completing the licensing process more quickly. In past years the time frame has been extended simply because many licensees have not been in their offices to complete the necessary paper work.

Keeping in mind that every activity of the nursery industry is weather-driven, the change in the licensing/renewal date will serve to allow them to complete this process during a time of the year which they naturally devote to such paper work rather than during that portion of the year when they are out on the job.

In dealing, at the wholesale level with other nurseries and landscape firms, the question has always been "Do you have a Montana Nursery license?" With this change in licensing date the question will now be "What is your Montana Nursery license number?" This will help to insure that all who are selling plant material are, in fact, licensed and in accordance with the law of Montana.

Another aspect of the licensing law, which I have been loath to put into writing until this time, is the plain matter of fact that illegal sales of nursery stock can be completed on any street corner in the state, from the back of a pick-up truck. With the date for licensing falling on July 1st, it was a simple matter for the unlicensed salesperson to say that a nursery license had been applied for, but the salesman hadn't been notified yet as to their nursery license number. And it was virtually impossible to check out the validity of the application in a timely manner. By the time such information had been received, the illegal salesperson had moved their pick-up truck to another community and had opened his operation up again with little fear that he would be caught.

Over the past year nurseries in California, Oregon and Washington nurseries have been victims of theft of many thousands of dollars of nursery stock. During the months of May, June and July, I fully expect some of that stock to show

(continued on back of page)

Memorandum 2/18/91

EXHIBIT 5
DATE 2-18-91
HB 756

Plant Industry Division

Position Statement

House Bill 756 - "An act changing the nurserymen license expiration date from July 1 to December 31; Amending sections 80-7-102, MCA."

The Department of Agriculture with the use of a data information system finds it compatible to issue licenses on a calendar year rather than on a fiscal year end basis. The goal of the Department is to establish a master license list for the Plant Industry Division. The end result will be to license various business establishments using a single license.

The proposed license expiration date of December 31, would accommodate the nursery industry at a more convenient time for licensing.

The Department of Agriculture anticipates no fiscal impact. Nurserymen who hold a current nursery license at the time of bill passage would be allowed to continue operation from July 1, to December 31 without any additional license fee. Nurserymen who do not hold a license on the date of passage would be required to purchase a license at the time of application.

hb756

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Agriculture COMMITTEE 1 BILL NO. HB 771
DATE 2-18-91 SPONSOR(S) Rep Foster

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Pam Langley, Helena	Montana Grain Elevator Assn	✓	
Mike Foster, Townsend	House Distr. # 32	✓	
Roy Bjornson	MT. Dept. of Agr.		

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HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Agriculture COMMITTEE HB 674
DATE 2-15-91 SPONSOR(S) Rep. Cobb

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HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Agriculture COMMITTEE BILL NO. HB 756
DATE 2-18-91 SPONSOR(S) Rep. McCaffree

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Roy Byrnes	Ut. Dept. of Ag.		

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