

## **MINUTES**

### **MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON AGRICULTURE, LIVESTOCK, & IRRIGATION**

**Call to Order:** By Senator Greg Jergeson, on March 27, 1991, at 3:00 P.M.

#### **ROLL CALL**

##### **Members Present:**

Greg Jergeson, Chairman (D)  
Francis Koehnke, Vice Chairman (D)  
Gary Aklestad (R)  
Thomas Beck (R)  
Betty Bruski (D)  
Gerry Devlin (R)  
Jack Rea (D)  
Bernie Swift (R)  
Bob Williams (D)

**Members Excused:** None

**Staff Present:** Connie Erickson (Legislative Council).

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

**Announcements/Discussion:** None

#### **EXECUTIVE ACTION ON HOUSE BILL 893**

House Bill 893, sponsored by Representative Betty Lou Kasten, District 28, is an act revising the law relating to the filing of threshers' liens.

##### **Recommendation and Vote:**

Senator Beck made a motion that House Bill 893 BE CONCURRED IN. Those in favor - 9; opposed - 0. MOTION CARRIED.

Senator Beck will carry HB 893 to the floor of the Senate.

#### **EXECUTIVE ACTION ON HOUSE BILL 574**

House Bill 574, sponsored by Representative Bob Thoft, District 63, is an act which would require registration of sites related to insects and plant pathogens.

Discussion:

Chairman Jergeson advised that an unofficial gray bill was prepared by Legal Counsel Connie Erickson, and circulated to interested parties as well as committee members. He asked Ms. Erickson if she had any comments about how the bill operates, after reviewing it in gray bill form.

Ms. Erickson informed that basically what was done was to strike all the references to the registration provision and to just provide for a notification. Upon re-reading the bill after it was put together, she stated some questions arose in her mind. She referred to Section 3 of the bill, and pointed out the new language requires "written permission" to collect biological insects or plant pathogens. Concerns in her mind were (1) who provides the required permission; (2) the language says written permission "may" include date of collection, number, times of collections and names of plant pathogens. The use of "may" makes it discretionary. Another concern expressed by an opponent of the bill was new section 8 regarding the confidentiality of the records. She stated it would appear these are public records, and therefore they would be subject to inspection by the general public. She stated the Department would have to show what would be the privacy interest to be protected in putting in a section on confidentiality. In dialogue with Greg Petesch, Legislative Council, she advised that it was his feeling that these are public records and should be open to public inspection unless the Department can prove there is a compelling state interest to keep those records confidential. She referred to a 1979 opinion of the Attorney General that addressed the Department of Agriculture keeping confidential pesticide applicator records, and the Attorney General held that they were public records and the Department must show the demand of privacy clearly outweighs the demand for public disclosure. It was her opinion the confidentiality section of HB 574 would be open to challenge.

Ms. Erickson referred to the handout from Mr. Noah Poritz, Biological Control of Weeds, Bozeman, which still voiced his opposition to HB 574 after he had an opportunity to examine the Gray Bill (See Exhibit #1).

Also presenting written opposition following review of the Gray Bill, was the Headwaters RC&D Area Inc., Range Weed Committee, Butte, furnished by Dave Pickett, Secretary (See Exhibit #2).

Recommendation and Vote:

Senator Beck made a motion that House Bill 574 BE TABLED. Those in favor - 9; opposed - 0. MOTION CARRIED.

Chairman Jergeson suggested that the Unofficial Gray Bill be made a part of the record for possible future study (Exhibit #3).

EXECUTIVE ACTION ON HOUSE BILL 814Discussion:

Jo Brunner, Montana Water Resources Association, stated that following the Hearing on March 22, their group had some discussion, and prior to that they had met with the representatives of the Department of Natural Resources. She presented copies of proposed amendments to committee members (Exhibit #4). She wished the committee to know their group would prefer to have the bill killed; however, they recognize that is not feasible, and they understand the veto portion and that they do have to offer a petition. She believes the suggested amendments would make their people feel more comfortable. She explained the amendments and their reasons for wishing them inserted.

Senator Devlin asked what had been deleted, to which Ms. Brunner stated they had hardly deleted anything, but rather added. She referred to Section 1, page 3, and indicated they were very concerned that although the code indicated they would receive their water rights, it was not in the law, so they wished to include "the transfer of pertinent water rights" in the bill.

Senator Beck asked how the Department felt about the amendments being presented. Karen Barclay, Director, Department of Natural Resources, advised that the definition of a state project includes water rights, right-of-way, etc., and is quite inclusive. The Department did not feel it was necessary to redefine it in the bill. It was felt if the bill was too specific, it might leave the assumption that something was not included if it was not specifically listed. Ms. Barclay said they have no problem with the second amendment regarding "fair market value".

Senator Devlin pointed out that the legal document would include the water rights when the project is returned to the water users, and it would be written in the contract. Ms. Brunner said the transition would be easier if mention of water rights was included in the bill.

Senator Beck commented that if the water users have until 1994 to make any decision, and during that time there is a 30% veto option, he feels that offers a lot of protection. Ms. Brunner pointed out that their association is in a difficult position. They believe the projects should be returned to the water users, but they were not fully prepared at this time. She is interested in making a bill which would be more acceptable to their people during this process.

Ms. Barclay stated that after a quick perusal she did not see anything in the amendments that would destroy the bill, nor

did she see any substantive changes. She voiced concern that if the bill is sent back to the House for approval, she wondered in what form it would come out.

Senator Beck stated that the bill is a selling tool by the DNRC to the water users to take back the projects. He reiterated that he feels there is enough protection in the bill as is.

Senator Williams asked Ms. Brunner if they attempted to put these amendments in during the House hearing, to which she replied that none of their members were aware of the bill being heard in the House. The water projects were informed around noon on the day the bill was heard. Confusion developed because they believed the bill was being heard by the Natural Resources Committee instead of the Agriculture Committee.

Senator Swift pointed out it would be more difficult to amend the bill on the floor of the Senate than by the committee. He stated the amendments clarify and do the bill no harm, and he stated he would like to see them placed in the bill.

#### Amendments, Discussion, and Votes:

Senator Swift made a motion that the amendments, as drafted by the Legal Researcher in proper form, be adopted.

Senator Aklestad expressed concern that they might be trying to write a contract by statute by adding too many things that might be contractual. Senator Devlin added that he believes it is paramount that the committee get this bill on its way because when water in this state comes under attack regarding instream flow, it would be easier to approach the state rather than individuals. Senator Swift indicated he would not support the bill unless it contains some statement pertaining to water rights even though he has heard and discussed the issue with the Director. He believes the basic point of this is the water right and how it is going to be handled. If that is not clear, there is no way anything will be accomplished. Senator Beck defended his view that the water rights would be handled through contract.

Senator Swift stated he would be amenable to a substitute motion which would insert the first portion inserting "transfer of pertinent water rights" in the bill. Chairman Jergeson stated the motion would be to vote on two amendments, the first motion would pertain to adopting paragraph one, and the second motion would include the balance of the proposed amendments.

Further discussion was had regarding the word "pertinent". Ms. Brunner said that perhaps "appropriate" would fit better. It was Ms. Barclay's contention that by inserting either of those words, it could be surmised that "all" the water rights may not be transferred. She stated they chose to leave it in statute, which would include everything.

SENATE AGRICULTURE, LIVESTOCK, & IRRIGATION COMMITTEE

March 27, 1991

Page 5 of 5

Gary Fritz, Administrator, Water Resources Division, advised that the Department's job is to convince the water users that it is a good idea to take over their water projects, and he is sure the users will not take them over unless the water rights are included. Ms. Barclay expressed concern that the legislation might be modified to the degree that it might limit what the Department can dispose of and make available to the water users.

Senator Swift made a substitute motion that paragraph one of the handout be adopted as an amendment. Those in favor - 1 (Swift). opposed - 8; MOTION FAILED.

Senator Swift moved that the balance of the proposed amendments be adopted. Those in favor - 1 (Swift); opposed - 8. MOTION FAILED.

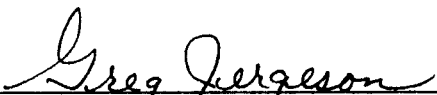
Recommendation and Vote:

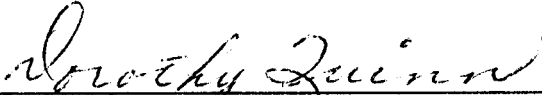
Senator Aklestad made a motion that HB 814 BE CONCURRED IN. Those in favor - 8; opposed - 1 (Swift). MOTION CARRIED.

Senator Aklestad will carry HB 814 to the floor of the Senate.

ADJOURNMENT

Adjournment At: 4:20 P.M.

  
\_\_\_\_\_  
GREG JERGESON, Chairman

  
\_\_\_\_\_  
DOROTHY QUINN, Secretary

GJ/dq

AG032791.SM1

ROLL CALL

Agriculture COMMITTEE

DATE 3/27/91

52nd LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
SEN. JERGSON	X		
SEN. KOEHNKE	X		
SEN. AKLESTAD	X		<i>arrived later</i> X
SEN. BECK	X		
SEN. BRUSKI	X		
SEN. DEVLIN	X		
SEN. REA	X		
SEN. SWIFT	X		
SEN. WILLIAMS	X		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
March 27, 1991

MR. PRESIDENT:

We, your committee on Agriculture, Livestock, and Irrigation having had under consideration House Bill No. 893 (third reading copy -- blue), respectfully report that House Bill No. 893 be concurred in.

Signed: \_\_\_\_\_

*Greg Jergeson*  
Greg Jergeson, Chairman

B. 3/27/91

Amd. Coord.

SN 3/28 2:20

Sec. of Senate

SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
March 28, 1991

MR. PRESIDENT:

We, your committee on Agriculture, Livestock, and Irrigation having had under consideration House Bill No. 814 (third reading copy as amended -- blue), respectfully report that House Bill No. 814 be concurred in.

Signed: Greg Jergeson

Greg Jergeson, Chairman

3-28-91  
And. Coord.

3-28-91  
Sec. of Senate



EXHIBIT NO. #1

DATE 3/27/91

BILL NO. #574

Statement of Opposition to HB 574/GRAY, the "Montana Biological Agent Introduction, Collection and Distribution Control Act", as introduced by Representatives Thoft and Harper.

By:

Noah and Leona Poritz  
Biological Control of Weeds  
1140 Cherry Drive  
Bozeman, MT 59715

406-586-5111

March 25, 1991

Overview

Presentations were made to the Senate Agricultural, Livestock, and Irrigation Committee on March 18, 1991 regarding HB 574. At that time Mr. Jim Story, Research Entomologist with the Montana Agricultural Experiment Station (MAES) stated on Mr. Thoft's behalf:

"...this legislation is intended to discourage unscrupulous entrepreneurs from stealing insects from research sites."

If this is the intention, then HB 574 goes far beyond what Mr. Story stated. It creates an additional level of state bureaucracy which will ultimately hinder state, Federal, and private biological control activities in Montana.

Sections 1 - 3, 10(c), and 13 - 17 would perfectly satisfy the intent of this legislation as stated to the committee by Representative Thoft and Mr. Story.

Sections 4 - 9, 10(a, b, d) 11, and 12 are unnecessary to Mr. Story's stated intent and unnecessary to the practice of biological control. Their administration by the Montana Department of Agriculture (MDOA) will produce unnecessary costs and an unneeded bureaucracy.

We are concerned about the secretive nature by which HB 574 was drafted by state employees. This process virtually excluded the private sector in its formulation. Additionally, the substantial eleventh hour changes brought to the Senate by Mr. Thoft raises further doubts in our minds as to the need for this legislation at all.

We object to HB 574 and feel that it should be tabled during this legislative session.

If your committee feels that some legislation should be enacted, here are additional, practical concerns of ours:

#### Section 5.

We disagree with the requirement that written authorization from an appropriate official of the foreign country, from which bio-controls are collected, be provided to the MDOA.

Current state and Federal legislation requires that insects and pathogens collected in foreign countries have approved permits (Plant Protection and Quarantine Form 526). These are issued by the MDOA and USDA Animal and Plant Health Inspection Service (APHIS). These foreign importation permits are scrutinized by these agencies and are subject to rigorous conditions.

Usually, foreign collections of insects or pathogens only require permission from the owner of the property on which the insect or pathogen appears. To require foreign government officials to become involved by providing written authorization to collect these agents will result in unnecessary, and perhaps costly, paperwork. Undoubtedly, a loss of critically important collection time will also occur in this process.

#### Section 6 (f & g).

The MAES, USDA-ARS, USDA-APHIS, and county weed districts are under no requirement to provide written documentation that the release site will not adversely affect a research site. To require this of people prior to releasing an insect or plant pathogen will increase the time, in years, in getting new sites established for weed control. We wonder if releases made by MAES, ARS, APHIS, and counties will comply with this section-- Will they write letters of permission to themselves?

Privatized biological control companies may be unfairly treated by this biased, time consuming process. HB 574 would allow the MAES, ARS, and APHIS to take complete control of biological control and exclude all privatization of biological control activities in Montana. MAES, ARS, and APHIS could attempt to control our private collection and sale of biological control agents by denying approval of sites for which our livelihood depends. Vendettas by state and Federal employees against privatization or us personally could shut down our business.

#### Section 8.

Article 2, Section 9 of the Montana Constitution allows for the public examination of all public records. HB 574 denies the

public this privilege through its provisions of confidentiality of records. Citizens have the right to examine all public records pertaining to insect release activity on the part of county, state and Federal employees. To attempt to take this privilege away from the public is unconstitutional.

Records requested and received by the MDOA should be available to the public for examination. Because of the importance of individual and agency accountability in the field of biological control, records should be available to the public for examination.

More importantly, as each bio-control agent population expands and moves beyond research sites, people could obtain permission to collect these agents from outside these sites. This natural insect expansion and movement outside of research sites is how 99% of all private biological control collection takes place. Public examination of these records will provide the necessary information needed to ask permission to collect outside of specific research sites.

#### Summary

If the state desires a greater degree of control over the collection and movement of biological control agents, let's work within the previously enacted legislation to bring about this improvement. Or, let's certify and license all professional practitioners of biological control to guarantee a minimum degree of competency and integrity. We are not controlled by the MDOA when we spray herbicides, let's not allow arbitrary and bureaucratic control of using insects.

We object to HB 574 and feel that it should be tabled during this legislative session.

HEADWATERS RC&D AREA INC.  
RANGE WEED COMMITTEE  
305 W. MERCURY, BUTTE, MT. 59701

SENATE AGRICULTURE  
EXHIBIT NO. #2  
DATE 3/27/91  
BILL NO. 574

MARCH 25, 1991

TO: MEMBERS OF SENATE AGRICULTURE COMMITTEE

SUBJECT: HB 574 REGULATION OF BIOLOGICAL CONTROL PROGRAMS

The Headwaters Range Weed Committee includes landowners and other people interested in weed management in a 8 county area in Southwest Montana. Many of our members have been involved in biological control of weeds for a number of years, and we are concerned that this bill will stifle proper use of biological control agents by landowners in their war on weeds. We have reviewed the GRAY BILL on HB 574, thank you for sending a copy.

SECTION 3 - Landowners who now have insectary sites on their land would be required to get permission to move them to other sites on their ranch. How long would it take to get permission? Weed Boards have insectaries and will be establishing more. In the case of knapweed gallfly, Butte- Silver Bow allowed people to go to the site each spring, collect galls, and take them home. It would be very difficult to know ahead of time who is going to come and where they are going to take the bugs, how are we going to get permission in this case? Section 4 will cause these problems also. Butte allows people from other counties to collect gallflies at their site.

SECTION 6 - It is unreasonable to ask a weed board to get written permission from MSU, ARS, or APHIS in conducting biocontrol programs in their county. Counties work with these agencies in the initial setting up of programs, but it seems pointless to require each subsequent action to be cleared by these agencies.

We wonder how the Dept. of Agriculture is going to enforce this bill and who is going to pay for it. We have heard a \$50 fee will be charged, although the bill is silent on this. We assume this will come in the rulemaking process, where you have given the Department broad authority to adopt rules which could further inhibit the use of biocontrol in weed management.

## **P-2 Testimony on HB 574 Headwaters Range Weed Committee**

**This bill is an obvious attempt to harass one commercial biocontrol business based on the unfounded assumption that this business steals bugs from research agencies doing biocontrol work. Testimony has shown there is NO evidence to support this wild accusation. It's pretty easy to steal a car. It's setting there and you take it. How many people can even find these bugs when an agency puts them out for research, let alone spend days picking them up? We point out that the goal of biocontrol is use of these agents by landowners to manage noxious weeds.**

**Bugs are not just something to study. After researchers do their work, we need to let landowners and private enterprise take over to reach our goal, just as we use chemicals or other means. All too often, we find that researchers just can't let go. They want to control where bugs go, who gets them and when, like an overprotective parent. We urge you allow good weed management to progress, avoid burdening state government with more unneeded regulatory duties, and reject HB 574. Thank you.**

**Dave Pickett, Secty. - Treasurer, Headwaters Range Weed Committee**

DATE 3/27/91

COMMITTEE ON Agriculture

## 1

[illegible]

(Please leave prepared statement with Secretary)

# ROLL CALL VOTE

AGRICULTURE

SENATE COMMITTEE \_\_\_\_\_

Date 3/27/93 Bill No. HB 893 Time 3:30 PM

NAME	YES	NO
SEN. AKLESTAD	X	
SEN. BECK	X	
SEN. BRUSKI	X	
SEN. DEVLIN	X	
SEN. REA	X	
SEN. SWIFT	X	
SEN. WILLIAMS	X	
SEN. KOEHNKE	X	
SEN. JERGESON	X	

DOROTHY QUINN

GREG JERGESON

Secretary

Chairman

Motion: Senator Beck made a  
motion that HB 893 BE CONCURRED  
IN. Those in favor - 7; opposed - 0  
Motion CARRIED.

# ROLL CALL VOTE

SENATE COMMITTEE \_\_\_\_\_ AGRICULTURE

Date 3/27/91 Bill No. HB 574 Time 3:40

NAME	YES	NO
SEN. AKLESTAD	X	
SEN. BECK	X	
SEN. BRUSKI	X	
SEN. DEVLIN	X	
SEN. REA	X	
SEN. SWIFT	X	
SEN. WILLIAMS	X	
SEN. KOEHNKE	X	
SEN. JERGESON	X	

DOROTHY QUINN  
Secretary

GREG JERGESON  
Chairman

Motion: Sen. Beck made a motion  
that HB 574 BE TABLED.  
In favor - 9; opposed - 0.  
MOTION CARRIED.



# ROLL CALL VOTE

AGRICULTURE

SENATE COMMITTEE \_\_\_\_\_

Date 3/27/91 Bill No. HB 814 Time \_\_\_\_\_

NAME	YES	NO
SEN. AKLESTAD		X
SEN. BECK		X
SEN. BRUSKI		X
SEN. DEVLIN		X
SEN. REA		X
SEN. SWIFT	X	
SEN. WILLIAMS		X
SEN. KOEHNKE		X
SEN. JERGESON		X

DOROTHY QUINN

GREG JERGESON

Secretary \_\_\_\_\_

Chairman \_\_\_\_\_

Motion: Sen Swift made a motion  
that the Swift #1 (1st paragraph)  
amendment be adopted  
Those in favor - In Favor - 1 (Sen Swift)  
opposed - 8; MOTION FAILED.

# ROLL CALL VOTE

AGRICULTURE

SENATE COMMITTEE \_\_\_\_\_

Date 3/27/91 Bill No. 814 Time \_\_\_\_\_

NAME	YES	NO
SEN. AKLESTAD		X
SEN. BECK		X
SEN. BRUSKI		X
SEN. DEVLIN		X
SEN. REA		X
SEN. SWIFT	X	
SEN. WILLIAMS		X
SEN. KOEHNKE		X
SEN. JERGESON		X

DOROTHY QUINN

GREG JERGESON

Secretary \_\_\_\_\_

Chairman \_\_\_\_\_

Motion: Sen Swift made a motion that  
the balance of the proposed amendments  
be adopted. In favor - 1 (Swift);  
Opposed - 8. MOTION FAILED.

# ROLL CALL VOTE

AGRICULTURE

SENATE COMMITTEE \_\_\_\_\_

Date 3/27/91 Bill No. HB 814 Time 4:18

NAME	YES	NO
SEN. AKLESTAD	X	
SEN. BECK	X	
SEN. BRUSKI	X	
SEN. DEVLIN	X	
SEN. REA	X	
SEN. SWIFT		X
SEN. WILLIAMS	X	
SEN. KOEHNKE	X	
SEN. JERGESON	X	

DOROTHY QUINN

GREG JERGESON

Secretary \_\_\_\_\_

Chairman \_\_\_\_\_

Motion: Sen Aklestad moved that  
HB 814 BE CONCURRED IN  
Those in favor - 8; opposed - 1  
MOTION CARRIED, (Swift)

SENATE AGRICULTURE

EXHIBIT NO. #4

DATE 3/27/91

BILL NO. #814

Amendments to HB 814 Senate Ag.

Section 1, page 3 paragraph (5) line 8, after the words 'state property' insert a period. Insert the words " The disposition of the project, to the water users, shall include the transfer of pertinent water rights to the water users, upon completion of contract.

Section 1, page 3, paragraph (5) line 10, after the words 'department as to' delete the word the and insert the words "a fair" to then read -- determination shall be made by the department as to a fair market value, etc.

Page 4, Section 1, (6) sub-paragraph (B) lines 5, 6 and 7. Delete the complete sentence. Repetitive of (5) Section 1.

Sub-paragraph (B) line 8 after the word 'association' delete the word the and insert the word "a".

Page 4, sub-paragraph (B) line 8, after the word 'project, insert the words "as defined in Section (6)" to then read --users' association on a canal project as defined in Section 6, the provisions, etc.

Page 4, Section 1 (C) line 19 and line 21 define the top limit for the O&M to be canceled, written off, or the payment. It does not define the bottom limit to be considered.

Page 4, Section 1 (C) line 23, after the words 'canal projects' delete the word 'are responsible for' and insert the words "will be assessed" and after the word 'department's' insert the word "actual", to then read, --the water users of the canal project will be assessed the departments actual administrative costs, etc.

Page 5, Section 1, (7) line 8 insert a semi-colon [;] after the words canal project.

Line 8, after the words 'salvage or remove' insert the words "state owned" and delete the word 'project'

Line 9, after the word 'property' insert the words "from the project"

Those lines would then read, after the semi-colon: entry to salvage or to remove state owned property from the project, and to make physical alternations, etc.

Line 12, after the word 'land' insert the words "and to remove, salvage or to make physical alterations to the property"

## UNOFFICIAL GRAY BILL

SENATE AGRICULTURE

EXHIBIT NO. # 3DATE 3/27/91BILL NO. 574

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

## STATEMENT OF INTENT

A statement of intent is required for this bill because [section 8 7] grants the department of agriculture the authority to adopt rules regarding the registration notification of insectaries or sites used for insects or plant pathogens intended for use in biological ~~weed~~ control. It is intended that the rules address, at a minimum:

~~(1) registration notification requirements and information required for proper application for registration of insectaries or sites, including a registration fee;~~

~~(2)~~(1) requirements related to interstate, intrastate, and international notification;

~~{3}{2}~~ recordkeeping ~~required of persons registering an insectary or site~~  
requirements;

~~{4}{3}~~ inspection and investigation of persons ~~maintaining registered~~  
~~insectaries or sites~~ introducing, collecting, or distributing biological control insects  
or plant pathogens;

~~{5}~~ ~~suspension or revocation of registrations;~~

~~{6}{4}~~ structuring of administrative penalties; and

~~{7}{5}~~ other issues regarding the administration and enforcement of the  
provisions of this bill.

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

NEW SECTION. Section 1. **Short title.** [Sections 1 through ~~15~~ 16 14] may  
be cited as the "Montana Biological Agent Introduction, Collection, and Distribution  
~~Weed~~ Control Act".

NEW SECTION. Section 2. **Definitions.** Unless the context requires  
otherwise, in [sections 1 through ~~15~~ 16 14] the following definitions apply:

(1) "Department" means the department of agriculture established in 2-15-  
3001.

(2) "Insectary or site" means a place or location for propagating, rearing,  
keeping, selling, distributing, or collecting insects or plant pathogens intended for

the biological control of weeds.

(3) "Person" means an individual, group, firm, cooperative, corporation, association, partnership, political subdivision, state or federal government agency, or other organization or entity.

NEW SECTION. Section 3. ~~Insectary or site registration exception.~~ ~~(1) It is unlawful for any person to establish an insectary or site or to propagate, rear, sell, release, distribute, or collect insects or plant pathogens intended for the biological control of weeds without annually registering the insectary or site with the department. A person may not propagate, rear, sell, release, distribute, or collect any insects or plant pathogens until the insectary or site is approved and registered with the department.~~

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

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

Collection of biological insects or plant pathogens. (1) A person must obtain written permission to collect biological insects or plant pathogens at a research insectary or site or a person's initial insectary or site used to propagate and increase the number of insects or plant pathogens prior to further distribution by

the person. The written permission may include date of collection, numbers to be collected, number of times collections may occur, and names of biological insects or plant pathogens used for weed or insect control.

(2) A copy of the written permission must be submitted by the person to the department.

NEW SECTION. Section 4. Application for registration — fee — EXCEPTION.

~~(1) A person desiring to register an insectary or site shall apply for registration on forms approved by the department.~~

~~(2) Information required for registration must include:~~

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

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

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

~~(d) a list of INSECTS OR weeds present at the site and a list of the INSECTS OR weeds THAT the insects or plant pathogens are intended to control; and~~

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

~~(3) The person making application DEPARTMENT shall obtain A written verification RECOMMENDATION from the appropriate county weed district and the Montana state university agricultural experiment station that the REGARDING THE ESTABLISHMENT OF AN insectary or site does not THAT MAY conflict with or~~



~~adversely affect an insectary or site established by a government agency or the university.~~

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

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

NEW SECTION. Section 54. Interstate and intrastate notification required.

A person shall notify the department in writing prior to introducing or distributing any insect or plant pathogen for biological control ~~of weeds~~ into the state or between counties within the state. ~~The department may not approve the introduction or distribution until registration is approved under [section 4] or distribution or sale of the insect or plant pathogen to another person is verified.~~  
The written notification must include the person's name and address and the applicable recordkeeping requirements in [section 6].

NEW SECTION. Section 65. International notification required. A person shall notify the department in writing prior to collecting in a foreign country any insect or plant pathogen intended for subsequent introduction or distribution in Montana for biological ~~weed~~ control. The person shall possess all valid state and federal permits and written authorization by an appropriate official of the foreign

country. The department may not approve the introduction or distribution until ~~registration is approved under [section 4] or distribution or sale of the insect or plant pathogen to another person is verified~~ copies of all the valid permits, the written authorization, and the name and address of the person are provided to the department.

NEW SECTION. Section 76. Recordkeeping. (1) A person ~~who registers an insectary or site under [section 4]~~ shall maintain records on the introduction, propagation, rearing, sale, release, distribution, and collection of insects and plant pathogens for weed BIOLOGICAL control. The records must be submitted to the department annually ~~or upon the department's request.~~ The records must be available for review by any government agency involved with the propagation, rearing, sale, release, distribution, or collection of insects or plant pathogens. (2) The records must include the following information:

(a) any permits or authorizations required by [section 5];

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

(c) the name of the owner or manager of the land on which the insectary or site is located;

(d) the scientific and common name of the biological insect or plant pathogen;

(e) the name of the insects or weeds the biological insect or plant pathogen are intended to control;

(f) written documentation from the Montana state university experiment station, the United States department of agriculture, agricultural research service, or animal and plant health inspection service that the insectary or site will not conflict or adversely affect a research insectary or site; and

(g) written verification from the appropriate county weed district that the insectary or site will not conflict or adversely affect a district's initial insectary or site for propagating and increasing the number of biological insects or plant pathogens prior to further distribution in the county.

(3) A person who establishes an insectary or site on their own land or on land under their management and uses the biological insects or plant pathogens for their personal and non-commercial control of insects or weeds is exempt from the requirements of this section, except when the requirement in [section 4] applies.

**NEW SECTION. Section 87. Rules.** The department may adopt any rules necessary to carry out the provisions of [sections 1 through ~~15 16~~ 14]. The rules may prescribe procedures and criteria for:

- ~~(1) registration of insectaries or sites and the fee for registration;~~
- ~~(2)~~(1) notification required under [sections ~~5 4~~ and ~~6 5~~];
- ~~(3)~~(2) recordkeeping required under [section ~~7 6~~];
- ~~(4)~~(3) inspection and investigation of persons ~~maintaining registration under [section 4]~~ to determine compliance with [sections 1 through ~~15 16~~ 14];
- ~~(5) suspension or revocation of registration;~~
- ~~(6)~~(4) structuring of administrative penalties imposed under [section ~~14 15~~];

13]; and

~~(7)~~(5) other requirements consistent with the provisions of [sections 1 through ~~15~~ 16 14].

NEW SECTION. SECTION 98. CONFIDENTIALITY OF RECORDS. ALL  
INSECTARY OR SITE REGISTRATION INFORMATION REQUIRED IN [SECTIONS 4  
THROUGH 7] Records requested and received by the department and any  
notification documents MUST BE KEPT CONFIDENTIAL BY THE DEPARTMENT  
AND MAY NOT BE DISCLOSED, EXCEPT:

(1) UPON WRITTEN PERMISSION OF THE REGISTRANT person providing  
the records and documents to the department;

(2) IN ACTIONS OR ADMINISTRATIVE PROCEEDINGS COMMENCED  
UNDER THE PROVISIONS OF [SECTIONS 1 THROUGH ~~16~~ 14];

(3) WHEN REQUIRED BY SUBPOENA OR COURT ORDER;

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

(5) WHEN SUMMARIZED IN DEPARTMENT PROGRAM REPORTS THAT DO  
NOT INCLUDE SITE-SPECIFIC information OR REGISTRANT-SPECIFIC  
INFORMATION the name and address of any person.

NEW SECTION. Section 10. Funding. Registration fees collected under  
[section 4] and administrative penalties collected under [section 14 15] must be

~~credited to the commercial biological weed control agent account in the state special revenue fund for use of the department. Funds may be used only for the administration of [sections 1 through 15 16].~~

NEW SECTION. Section ~~14~~19. **Investigative and inspection authority.** An authorized agent or representative of the department may, upon presentation of department credentials, at reasonable times or under emergency conditions enter an insectary or site or any public or private property that the department reasonably believes to be associated with an insectary or site to:

- (1) investigate conditions relating to compliance with [sections 1 through ~~15 16~~ 14] and with compliance orders issued under [section ~~12 13~~ 11]; and
- (2) gain access to and copy any records required to be kept under [section ~~7~~ 6].

NEW SECTION. Section ~~12~~10. **Prohibited activities -- exemption.** (1) It is unlawful for a person in ~~whose name an insectary or site is registered to:~~

- ~~(1)(a)~~ violate any provisions of [sections 1 through ~~15 16~~ 14];
- ~~(2)~~ propagate, rear, sell, release, distribute, or collect any insects or plant pathogens for weed BIOLOGICAL control without registering with the department;
- ~~(3)(b)~~ introduce or distribute insects or plant pathogens to be used for weed BIOLOGICAL control without notifying the department;
- ~~(4)(c)~~ collect insects or plant pathogens for weed BIOLOGICAL control from an insectary or site established by another person, government agency, or unit of

the university system without obtaining written permission of the landowner or person who established the insectary or site; or

~~(5)(d)~~ collect insects or plant pathogens for ~~weed~~ BIOLOGICAL control from outside the state or to introduce or distribute the insects or plant pathogens in this state without complying with the ~~registration~~ provisions of ~~[section~~ sections 3 and 5].

(2) Biological control agents registered under 80-8-201 and persons using these registered products are exempt from the provisions of [this act].

NEW SECTION. Section ~~43~~11. Compliance orders and emergency orders.

(1) In furtherance of ~~[section 40 ~~11~~ 9]~~, the department may issue a compliance order or emergency order to any person, including the person's employees, agents, or subcontractors, who violates the provisions of ~~[sections 1 through 45 ~~16~~ 14]~~.

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

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

NEW SECTION. Section ~~44~~12. Injunction authorized. The department may commence a civil action seeking appropriate relief, including a permanent or temporary injunction, for a violation that is subject to a compliance order under

[section ~~42~~ ~~13~~ 11].

**NEW SECTION.** Section ~~45~~13. **Administrative civil penalty.** (1) A person who commits a violation of [sections 1 through ~~45~~ ~~16~~ 14] may be assessed an administrative civil penalty of not more than \$1,000 for each offense. Assessment of a civil penalty may be made in conjunction with any other warning, order, or administrative action authorized by [sections 1 through ~~45~~ ~~16~~ 14].

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

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

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

**NEW SECTION.** Section ~~46~~14. **Judicial civil penalty.** A person who commits a violation as specified in [section ~~44~~ ~~12~~ 10] is subject to a judicial civil penalty not to exceed \$5,000. Each occurrence constitutes a separate violation.

**NEW SECTION.** Section ~~47~~15. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**NEW SECTION.** Section ~~48~~16. **Codification instruction.** [Sections 1 through ~~45~~ ~~16~~ 14] are intended to be codified as an integral part of Title 80, and the provisions of Title 80 apply to [sections 1 through ~~45~~ ~~16~~ 14].

**NEW SECTION.** Section ~~49~~17. **Effective date.** [This act] is effective July 1, 1991.

-End-