

1 H BILL NO. 253  
 2 INTRODUCED BY John Linn Kanduch  
 3 BY REQUEST OF THE DEPARTMENT OF AGRICULTURE  
 4

5 A BILL FOR AN ACT ENTITLED: "AN ACT FOR THE GENERAL  
 6 REVISION OF LAWS RELATING TO HORTICULTURE, BEAN  
 7 WAREHOUSEMEN, ITINERANT MERCHANTS, AND WHOLESALE PRODUCE  
 8 DEALERS; AMENDING SECTIONS 3-704, 3-1212, 3-1402, 3-3203,  
 9 3-3206, AND 3-3303, R.C.M. 1947."  
 10

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

12 Section 1. Section 3-704, R.C.M. 1947, is amended to  
 13 read as follows:

14 "3-704. License required of persons warehousing beans  
 15 — fee — disposal of moneys — expiration date. A person in  
 16 the business of buying and selling at wholesale, or  
 17 warehousing and storing beans, or receiving or soliciting  
 18 beans for purchase, sale, or storage, within or outside this  
 19 state shall, before engaging in the business, obtain a  
 20 license from the department of agriculture and pay a license  
 21 fee to the department of ~~fifteen dollars (\$15)~~ not to exceed  
 22 \$30, as established by rule by the department. The license  
 23 fee shall be deposited with the state treasurer and credited  
 24 to the general fund. Licenses shall be renewed annually and  
 25 the prescribed fee paid annually. All licenses shall be

1 issued for the ~~fiscal~~ calendar year ending ~~June 30~~ December  
 2 31 or a fraction of the ~~fiscal~~ calendar year."

3 Section 2. Section 3-1212, R.C.M. 1947, is amended to  
 4 read as follows:

5 "3-1212. License required of nurserymen —  
 6 application and payment of fees. (1) A person, before  
 7 engaging in the business of selling, dealing in, or  
 8 importing nursery stock into this state for sale or  
 9 distribution; or acting as agent, salesman, or solicitor for  
 10 any nurseryman or dealer in nursery stock; or soliciting  
 11 orders for the purchase of nursery stock must obtain a  
 12 license for each place of business from the department. A  
 13 person may not falsely represent that he is an agent,  
 14 salesman, solicitor, or representative of any nurseryman or  
 15 dealer in nursery stock.

16 (2) The department shall provide application forms for  
 17 prospective licensees. Applications for licenses may be made  
 18 at any time before engaging in business, except seasonal  
 19 nurserymen must make application at least ~~thirty~~ (30) days  
 20 in advance of doing business in this state.

21 (3) Licenses shall be in the name of the person  
 22 licensed, and shall indicate the purpose for which issued  
 23 and the name and location of the nursery or place of  
 24 business of the nurseryman or dealer licensed or represented  
 25 by an agent, salesman, or solicitor. Licenses, except

1 seasonal nurserymen's licenses, shall bear the date of issue  
2 and expire ~~July 1 next following the date of issue~~ December  
3 31 of each year. Seasonal nurserymen's licenses shall bear  
4 the date of issue and expire on the date provided on the  
5 license by the department.

6 (4) The license fee ~~is fifteen dollars (\$15)~~ may not  
7 exceed \$30 a year for a general nursery, dealing in all  
8 kinds of nursery products; ~~may not be less than ten dollars~~  
9 ~~(\$10)~~ a year for a nursery dealing in small fruits,  
10 ornamental shrubs, bulbs, and perennials; ~~five dollars (\$5)~~  
11 may not exceed \$10 a year for a nursery dealing in bulbs and  
12 perennials only; and ~~fifteen dollars (\$15)~~ may not exceed  
13 \$30 a year for seasonal nurserymen. Agents, salesmen, and  
14 solicitors for licensed nurseries shall be granted  
15 salesmen's licenses, free of charge, upon the request of the  
16 licensee. The department may by rule establish the license  
17 fees."

18 Section 3. Section 3-1402, R.C.M. 1947, is amended to  
19 read as follows:

20 "3-1402. Definitions. Unless the context requires  
21 otherwise in this act, the following definitions apply:

22 (1) "Montana farm products" means all products of the  
23 farm grown commercially in Montana or elsewhere and intended  
24 for table use such as potatoes, cherries, and dry beans.

25 (2) "Other farm products" means all farm products

1 which are not normally grown commercially in Montana such as  
2 grapefruit and oranges.

3 (3) "Container" or "package" means cloth or fibre  
4 sacks, barrel, box, crate, carton, hamper, or baskets,  
5 customarily used for the shipment of Montana farm products  
6 and other farm products.

7 (4) "Person" as used herein ~~shall mean~~ means any  
8 grower, dealer, shipper, society, association, organization,  
9 corporation, or their agents or representatives.

10 (5) The terms defined in subsections (1) and (2) do  
11 not include livestock and its by-products, poultry and its  
12 products, apiary products, dairy products, grain, or apples.

13 (6) "Small retail package" means all packages or  
14 containers the total contents of which weigh 3 pounds or  
15 less."

16 Section 4. Section 3-3203, R.C.M. 1947, is amended to  
17 read as follows:

18 "3-3203. Persons not included. The term "itinerant  
19 merchant" does not include the following:

20 (1) ~~a~~ a person using a motor vehicle owned by him,  
21 whether operated by him or his agent, for the transportation  
22 of produce produced by him on owned or leased premises, when  
23 the entire course of the transportation extends not more  
24 than ~~one hundred fifty (150)~~ miles from his residence,  
25 whether the residence is within or outside this state;

1 (2) \* a person handling produce grown by him who has  
 2 secured from the department of agriculture, before offering  
 3 the produce for sale, a permit of exemption. The permit  
 4 shall be issued by the department upon application and  
 5 payment of a minimum fee of ~~one dollar (\$1)~~ \$5. The  
 6 applicant must first be able to satisfactorily show that he  
 7 will sell, or offer for sale, only produce of his own  
 8 production. The permit shall only allow the sale of produce  
 9 of his own production and is forfeited if the holder sells  
 10 or offers to sell any produce not of his own production;

11 (3) \* a person transporting property owned by him in a  
 12 motor vehicle owned by him, whether operated by him or his  
 13 agent, when the transportation is incident to a business  
 14 conducted by him at an established place of business  
 15 operated by him, either within or outside this state, and  
 16 when the property is being transported to or from an  
 17 established place of business, operated by him in this  
 18 state;

19 (4) \* a person transporting property for his own  
 20 consumption or use and not for sale."

21 Section 5. Section 3-3206, R.C.M. 1947, is amended to  
 22 read as follows:

23 "3-3206. Application for license — fee. (1) An  
 24 application for a license to engage in business as an  
 25 itinerant merchant shall be made to the department upon

1 forms prepared by it.

2 (2) A separate application and license is required for  
 3 each motor vehicle to be operated. The application shall  
 4 contain those facts the department requires. The minimum fee  
 5 for each license is ~~one hundred dollars (\$100)~~ \$150 for the  
 6 calendar year in which it is issued, and each license  
 7 expires December 31 of the calendar year in which issued.  
 8 The proper fee shall accompany the application. The  
 9 application shall be signed and sworn to by the applicant.  
 10 The department may by rule establish the license or permit  
 11 of exemption fee."

12 Section 6. Section 3-3303, R.C.M. 1947, is amended to  
 13 read as follows:

14 "3-3303. Application for license — contents — bond  
 15 — expiration date — schedule of commissions and charges to  
 16 be filed. (1) Licenses to engage in the business of a  
 17 dealer at wholesale in this state shall be issued by the  
 18 department to reputable persons who apply for a license and  
 19 pay the prescribed fee.

20 (2) The application shall be in writing, accompanied  
 21 by the prescribed fee, and under oath. It shall state:

22 (a) the place where the applicant intends to carry on  
 23 the business for which the license is desired;

24 (b) the estimated amount of business to be done  
 25 monthly;

1 (c) the full names of the persons constituting the  
2 firm, if the applicant is a ~~partnership~~ partnership;

3 (d) the names of the officers ~~of the corporation,~~ and  
4 the place of incorporation, ~~{if a}~~ the applicant is a  
5 corporation; and

6 (e) a financial statement showing in a general way the  
7 value and character ~~in a general way~~ of the assets and the  
8 amount of liabilities of the applicant.

9 (3) Before issuing a license, the department shall  
10 require the applicant to file with it a bond to ~~this the~~ the  
11 state in an amount to be fixed by the department based on  
12 the monthly business to be transacted by the applicant. The  
13 bond ~~shall~~ may not be for less than ~~one thousand dollars~~  
14 ~~(\$1,000).~~ The department ~~may~~ require, under penalty of  
15 revoking the license, additional bond if the business  
16 transacted warrants an increase, ~~under penalty of revoking~~  
17 ~~the license.~~ The bond shall cover all wholesale produce  
18 business transacted in this state. The bond shall be  
19 executed by the applicant as principal and a surety company  
20 authorized to do business in ~~this the~~ state as surety. The  
21 form of the bond shall be fixed by the department,  
22 conditioned upon:

23 (a) faithful performance of his duties as a dealer at  
24 wholesale;

25 (b) observance of all laws relating to the business of

1 a dealer at wholesale;

2 (c) payment, when due, of the purchase price of  
3 produce purchased by him;

4 (d) ~~for~~ the prompt reporting of sales as required by  
5 law to all persons consigning produce to the dealer as  
6 licensee for sale on commission; and

7 (e) the prompt payment to persons entitled to the  
8 proceeds of the sales less lawful charges, disbursements,  
9 and commissions. ~~The bond shall cover all wholesale produce~~  
10 ~~business transacted in this state.~~

11 (4) All licenses expire December 31 of each year. The  
12 license, or a certified copy of the license, shall be kept  
13 posted in the office of the licensee at each place in this  
14 state where he transacts business. The fee for each license  
15 ~~is one hundred dollars (\$100) may not exceed \$150~~ and for  
16 each certified copy of a license, ~~one dollar (\$1) \$5.~~ If a  
17 truck is the place of business the minimum license fee for  
18 the first truck is ~~one hundred dollars (\$100) \$150~~ and for  
19 each additional truck ~~fifty dollars (\$50) \$75.~~

20 (5) The applicant shall file with the department a  
21 schedule of his commissions and charges for services in  
22 connection with produce handling on account of or as agent  
23 for another.

24 (6) A separate license is required for each place of  
25 business. Each truck used for assembling and distributing

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1 produce, other than from a permanently established place of  
2 business through which all business of sales and accounts is  
3 handled, is a separate place of business and must be  
4 licensed."

-End-

STATE OF MONTANA

REQUEST NO. 122-77

FISCAL NOTE

Form BD-15

In compliance with a written request received January 20, 19 77, there is hereby submitted a Fiscal Note for House Bill 253 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

House Bill increases license fees relating to horticulture, bean warehousemen, itinerant merchants, and wholesale produce dealers, and authorizes the Department to increase fees to the maximum authorized by administrative rule.

ASSUMPTIONS:

1. The department does not anticipate increasing fees during the 1979 biennium.
2. The number of licenses issued in the affected categories will remain stable.
3. The purpose of the bill is to secure authority to adjust fees through administrative rules rather than legislative action.

FISCAL IMPACT:

None.

TECHNICAL NOTE:

1. Page 8, line 18, should read \$100, not \$150.
2. Page 8, line 19, should read \$50, not \$75.

*Richard D. Z...*  
BUDGET DIRECTOR  
Office of Budget and Program Planning  
Date: 1-26-77