

SENATE BILL 509

IN THE SENATE

February 14, 1979	Introduced and referred to Committee on Agriculture, Livestock and Irrigation.
February 19, 1979	Committee recommend bill, do pass.
February 20, 1979	Printed and placed on members' desks.
February 21, 1979	Second reading, pass consideration.
February 22, 1979	Second reading, as amended.
February 23, 1979	On motion, rules suspended and bill placed on Calendar for Third reading this day.

IN THE HOUSE

February 27, 1979	Introduced and referred to Committee on Agriculture, Livestock and Irrigation.
April 20, 1979	Died in Committee.

Senate BILL NO. *509*
Comer Boyle

1
2 INTRODUCED BY _____

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR SEED
5 POTATO CERTIFICATION; GENERALLY REVISING THE LAW RELATING TO
6 SEED POTATOES; AMENDING SECTIONS 80-3-601 AND 80-5-201, MCA;
7 AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

8
9 WHEREAS, an association of Montana seed potato growers
10 and Montana state university have jointly participated in
11 the certification, inspection, and improvement of potato
12 seed in this state since 1922; and

13 WHEREAS, the Montana potato improvement association, a
14 nonprofit organization of seed growers, has been the
15 official agent of the state, through Montana state
16 university, pursuant to Chapter 11, Laws of 1951, as
17 amended, since 1952; and

18 WHEREAS, the association, through its members, has done
19 such seed potato certification work on a self-supporting
20 basis and without direct state financial support; and

21 WHEREAS, the association has contributed to the
22 construction cost of the Montana state university greenhouse
23 addition and potato virus laboratory and also toward the
24 purchase of special scientific equipment therein; and

25 WHEREAS, Montana state university, the agricultural

1 experiment station, and the cooperative extension service
2 have provided, throughout the certification program, various
3 technical assistance, guidance, scientific knowledge, and
4 office, laboratory, and greenhouse space to the association.

5 THEREFORE, it is the policy of the legislature that the
6 association and university continue to work together in
7 joint cooperation to provide seed potato certification
8 services to growers that are designed to eradicate or
9 control common potato diseases and disorders.

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

12 NEW SECTION. Section 1. Short title. [This act] may
13 be cited as the "Montana Seed Potato Act".

14 NEW SECTION. Section 2. Purpose. It is the intent of
15 the legislature of this state to provide for a method of
16 certifying Montana seed potatoes by a self-regulating,
17 quasi-public association of growers and to provide for the
18 establishment and enforcement of standard grades for Montana
19 certified seed potatoes by the state department of
20 agriculture. Nothing contained in [this act] shall be
21 construed to limit or regulate the right and freedom of any
22 person to grow potatoes or seed potato stock in this state
23 and to sell, distribute, trade, or market his products.

24 NEW SECTION. Section 3. Definitions. When used in
25 [this act]:

-2- SB 509
INTRODUCED BILL

1 (1) "Association" means the Montana potato improvement
2 association, a nonprofit growers' organization incorporated
3 under the laws of this state.

4 (2) "Certified seed potatoes" or "certified potato
5 seed" means potato seed stock that has passed limited field
6 and storage inspections and has been grown in accordance
7 with the certification rules and regulations of an official
8 seed potato certifying agency of this state or another.

9 (3) "Department" means the department of agriculture
10 as provided for in 2-15-3001.

11 (4) "Person" means an individual, firm, partnership,
12 corporation, company, association, or separate business or
13 legal entity.

14 (5) "Seed certification" means the process of
15 inspecting and certifying as to seed variety, state of
16 origin, source, acreage, generation, limited field and
17 storage inspection results, general horticultural practices,
18 and other limited factors set forth by an official seed
19 certification agency. Certification does not mean standard
20 grade.

21 (6) "Seed potatoes" or "potato seed" means all
22 varieties of potato tubers, stems, and other plant parts of
23 the herb plant known as *Solanum tuberosum* L. which are
24 intended or used for seed purposes, planting, propagation,
25 or reproduction.

1 (7) "Seed potato certification funds" means all money
2 collected by the association in the form of fees,
3 assessments, service charges, sales, interest earnings,
4 donations, grants, and all other incomes resulting from the
5 inspection, certification, and improvement of Montana seed
6 potatoes, whatever the source.

7 NEW SECTION. Section 4. Scope. A person who puts
8 before the public any representation or description
9 pertaining to seed potatoes in which the words "Montana
10 state certified", "state certified", "Montana certified", or
11 "certified seed potatoes" are used is subject to [sections 4
12 through 10].

13 NEW SECTION. Section 5. Certification. (1) The
14 association shall be the state's sole agent for the purpose
15 of potato seed certification and inspection.

16 (2) The association shall establish procedures and
17 rules for the certification of seed potatoes.

18 (3) Any applicant who is a resident of the state shall
19 be accepted for admission to the association provided he
20 complies with the procedures and rules provided for in
21 subsection (2).

22 (4) The certification of seed potatoes shall not imply
23 an expressed or implied warranty or an implied warranty of
24 merchantability, fitness for a particular purpose, or any
25 assurance that the seed is disease-free on the part of the

1 state, the association, or its agents or employees.

2 (5) When certification is refused, the association
3 shall supply the applicant for certification a detailed
4 memorandum explaining why certification was not granted. The
5 applicant may then seek a writ of mandamus in district
6 court.

7 NEW SECTION. Section 6. Certification work on
8 self-supporting basis -- fiscal provisions. (1) Seed potato
9 certification work shall be on a self-supporting basis and
10 not for financial profit.

11 (2) Seed potato certification funds shall be
12 considered private funds. The board of directors of the
13 association shall have supervision and control of all
14 certification funds collected and shall insure strict
15 financial accountability of all money received and spent by
16 the association and shall provide for an annual independent
17 audit of all accounts and property of the association.

18 (3) All equipment, vehicles, and scientific materials
19 purchased with seed potato certification funds shall be
20 considered property of the association and under the control
21 of the board of directors.

22 NEW SECTION. Section 7. Liabilities of the
23 association. (1) The association and its agents and
24 employees shall be civilly and criminally liable for all
25 violations of [this act]. For the purposes of prosecution,

1 the association and its agents and employees are considered
2 public servants as defined in 45-2-101(51) and are subject
3 to the provisions of Title 45, chapter 7, parts 1, 2, and 4.

4 (2) The association and its agents and employees may
5 not market, sell, or directly advertise Montana certified
6 seed potatoes on behalf of its members or any one grower.
7 Nothing contained in this subsection prohibits the
8 association or Montana state cooperative extension service
9 from carrying out educational programs related to Montana
10 certified seed potatoes.

11 NEW SECTION. Section 8. Cooperation with state
12 agencies. Montana state university, the Montana agricultural
13 experiment station, and the cooperative extension service
14 shall cooperate with the association to provide
15 certification services, field inspections, disease
16 diagnosis, greenhouse indexing, education or extension
17 programs, office or laboratory space, or any other
18 activities authorized by [this act].

19 NEW SECTION. Section 9. Licensing and registration of
20 seed potato sellers or dealers. (1) No person may carry on
21 the business of a seller or dealer of seed potatoes in this
22 state without first:

23 (a) possessing a valid federal license pursuant to the
24 provisions of the Perishable Agricultural Commodities Act,
25 1930 (7 U.S.C. 499), as amended;

1 (b) registering with the department as a licensee in
2 good standing under the Perishable Agricultural Commodities
3 Act; and

4 (c) filing a copy of the license application and
5 United States department of agriculture statement of
6 approval with the department at the time of registration.

7 (2) The seller or dealer must notify the department of
8 any change in the status of his license.

9 (3) This section does not apply to a person who buys
10 or sells potatoes he has grown himself in the regular course
11 of his business.

12 NEW SECTION. Section 10. Enforcement. The association
13 may seek relief in district court against:

14 (1) any unauthorized use of the terms "Montana state
15 certified", "state certified", "Montana certified", or
16 "certified seed potatoes";

17 (2) any person selling potatoes as certified seed
18 potatoes that have not been inspected and certified by a
19 certifying agent of any state;

20 (3) the unauthorized issuance, alteration, or
21 destruction of a certificate, inspection report, tag, label,
22 or record.

23 NEW SECTION. Section 11. Imported seed potatoes --
24 inspection, limitations -- penalties. (1) To control and
25 prevent the spread of highly contagious diseases among seed

1 potato stock.

2 (a) seed potatoes may not be imported into this state
3 for any commercial or agricultural purpose unless such seed
4 potatoes are:

5 (i) the equivalent of the United States No. 1 seed
6 potato grade in Montana;

7 (ii) inspected at the Montana receiving point by a
8 federal or state-federal standard grade inspector;

9 (iii) shipped in a clean, disinfected container; and

10 (iv) accompanied by a United States department of
11 agriculture or state of origin certificate of inspection
12 describing the seed variety, class, standard grade, quality
13 or condition, and seed source and have affixed to each
14 container, in a conspicuous place, an official state seed
15 potato certification tag or label;

16 (b) no potatoes, equipment, or container known to be
17 diseased or contaminated with bacterial ring rot, nematode,
18 or tuber moth may be brought in to this state.

19 (2) The provisions of this section do not apply to
20 Montana state university or the association for research or
21 educational uses.

22 (3) Any person violating any provision of this section
23 is guilty of a misdemeanor and upon conviction shall be
24 punished as provided by law. The department shall enforce
25 this section.

1 NEW SECTION. Section 12. Standard grades for Montana
 2 certified seed potatoes. (1) The standard grades for Montana
 3 certified seed potatoes shall be equivalent to or better in
 4 all respects than the latest standards established by the
 5 United States secretary of agriculture for a respective
 6 grade of seed potatoes, and thus conforming, shall be
 7 accepted as the legal standards for the state. If no United
 8 States standards are established for a particular grade of
 9 seed potatoes, then the state may establish its own grade
 10 pursuant to subsection (2).

11 (2) The department, in joint concurrence with the
 12 Montana potato improvement association, may establish
 13 standard seed potato grades and tag colors for Montana
 14 certified seed potatoes.

15 (3) A person may not ship or deliver Montana certified
 16 seed potatoes in interstate or intrastate commerce unless
 17 such seed potatoes:

- 18 (a) meet the requirements of the grade declared;
 19 (b) are inspected at the time and point of shipping by
 20 either a federal or federal-state grade inspector or an
 21 equivalent representative of the association;
 22 (c) are shipped in a clean, disinfected container; and
 23 (d) are accompanied with a United States department of
 24 agriculture or Montana certificate of inspection describing
 25 the seed variety, class, standard grade, quality or

1 condition, and seed source, and have affixed to each
 2 container, in a conspicuous place, an official Montana seed
 3 potato certification tag.

4 (4) This section shall be enforced by the department
 5 pursuant to sections 80-3-108 through 80-3-111.

6 Section 13. Section 80-3-601, MCA, is amended to read:
 7 "80-3-601. Definitions. Unless the context requires
 8 otherwise, in this part the following definitions apply:

9 (1) "Dealer at wholesale" means a person who buys to
 10 sell at wholesale or contracts to buy to sell at wholesale
 11 or who handles at wholesale on account of or as agent for
 12 another.

13 (2) "Person" means an individual, group of persons,
 14 exchange, firm, partnership, corporation, or association.

15 (3) "Produce" means the natural products of the farm
 16 and includes but is not limited to natural products of the
 17 orchard, vineyard, garden, and apiary, raw and manufactured
 18 (except grains, dairy products, livestock, poultry, and
 19 poultry products), when handled for the purpose of resale.
 20 The term does not include seed potatoes.

21 Section 14. Section 80-5-201, MCA, is amended to read:
 22 "80-5-201. Definitions. When used in this part, the
 23 following definitions apply:

24 (1) "Agricultural seed" means the seeds of grass,
 25 forage, cereal, and fiber crops and any other kinds of seeds

1 commonly recognized within this state as agricultural seeds
2 and includes lawn seeds and mixtures of seeds, but does not
3 include seed potatoes.

4 (2) "Bin-run seed sales from one farmer to another
5 farmer" means buyer beware.

6 (3) "Montana certified seed grower" means a member of
7 an authorized Montana seed certifying agency who has
8 consented to produce seed under the rules for certified
9 classes of seed, with respect to the maintenance of genetic
10 purity and variety identity, set forth by the certifying
11 agency.

12 (4) "Person" means any individual, firm, partnership,
13 corporation, or association.

14 (5) "Public agricultural seed warehouse" means any
15 warehouse or structure in which agricultural seed is
16 received from the public for storage, assembling, or
17 cleaning.

18 (6) "Screening" means chaff, sterile florets, immature
19 seeds, weed seeds, inert matter, and any other materials
20 removed from seed by any kind of cleaning or processing.

21 (7) "Seed buyer" means any person engaged in the
22 business of buying agricultural seed for shipment, cleaning,
23 processing, or resale and who does not own, control, or
24 operate a public agricultural seed warehouse. Any
25 individual employed by a seed buyer is not included in this

1 term.

2 (8) "Seed dealer" means any person who offers for
3 sale, sells, or barter agricultural seeds to the ultimate
4 consumer.

5 (9) "Seed labeler" means any person affixing labels to
6 agricultural seeds with his name and address listed as
7 required in 80-5-102 when such seed is distributed in
8 Montana.

9 (10) "Seed processing plant" means any place of
10 business that repackages, cleans, blends, treats, or
11 otherwise manipulates agricultural seeds.

12 (11) "Seed warehouseman" means any person owning,
13 controlling, or operating a public agricultural seed
14 warehouse."

15 Section 15. Codification. (1) Sections 1 through 10
16 are intended to be codified as an integral part of Title 80,
17 chapter 5, and the provisions contained in Title 80, chapter
18 5, apply to sections 1 through 10.

19 (2) Section 11 is intended to be codified as an
20 integral part of Title 80, chapter 7, and the provisions
21 contained in Title 80, chapter 7, apply to section 11.

22 (3) Section 12 is intended to be codified as an
23 integral part of Title 80, chapter 3, and the provisions
24 contained in Title 80, chapter 3, apply to section 12.

25 Section 16. Severability. If a part of this act is

LC 1532/01

1 invalid, all valid parts that are severable from the invalid
2 part remain in effect. If a part of this act is invalid in
3 one or more of its applications, the part remains in effect
4 in all valid applications that are severable from the
5 invalid applications.

6 Section 17. Effective date. This act is effective on
7 passage and approval.

-End-

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Senate BILL NO. *509*
Conrad Doyle

INTRODUCED BY _____
A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR SEED
POTATO CERTIFICATION; GENERALLY REVISING THE LAW RELATING TO
SEED POTATOES; AMENDING SECTIONS 80-3-601 AND 80-5-201, MCA;
AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, an association of Montana seed potato growers
and Montana state university have jointly participated in
the certification, inspection, and improvement of potato
seed in this state since 1922; and

WHEREAS, the Montana potato improvement association, a
nonprofit organization of seed growers, has been the
official agent of the state, through Montana state
university, pursuant to Chapter 11, Laws of 1951, as
amended, since 1952; and

WHEREAS, the association, through its members, has done
such seed potato certification work on a self-supporting
basis and without direct state financial support; and

WHEREAS, the association has contributed to the
construction cost of the Montana state university greenhouse
addition and potato virus laboratory and also toward the
purchase of special scientific equipment therein; and

WHEREAS, Montana state university, the agricultural

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

experiment station, and the cooperative extension service
have provided, throughout the certification program, various
technical assistance, guidance, scientific knowledge, and
office, laboratory, and greenhouse space to the association.

THEREFORE, it is the policy of the legislature that the
association and university continue to work together in
joint cooperation to provide seed potato certification
services to growers that are designed to eradicate or
control common potato diseases and disorders.

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

NEW SECTION. Section 1. Short title. [This act] may
be cited as the "Montana Seed Potato Act".

NEW SECTION. Section 2. Purpose. It is the intent of
the legislature of this state to provide for a method of
certifying Montana seed potatoes by a self-regulating,
quasi-public association of growers and to provide for the
establishment and enforcement of standard grades for Montana
certified seed potatoes by the state department of
agriculture. Nothing contained in [this act] shall be
construed to limit or regulate the right and freedom of any
person to grow potatoes or seed potato stock in this state
and to sell, distribute, trade, or market his products.

NEW SECTION. Section 3. Definitions. When used in
[this act]:

SB 509

1 (1) "Association" means the Montana potato improvement
2 association, a nonprofit growers' organization incorporated
3 under the laws of this state.

4 (2) "Certified seed potatoes" or "certified potato
5 seed" means potato seed stock that has passed limited field
6 and storage inspections and has been grown in accordance
7 with the certification rules and regulations of an official
8 seed potato certifying agency of this state or another.

9 (3) "Department" means the department of agriculture
10 as provided for in 2-15-3001.

11 (4) "Person" means an individual, firm, partnership,
12 corporation, company, association, or separate business or
13 legal entity.

14 (5) "Seed certification" means the process of
15 inspecting and certifying as to seed variety, state of
16 origin, source, acreage, generation, limited field and
17 storage inspection results, general horticultural practices,
18 and other limited factors set forth by an official seed
19 certification agency. Certification does not mean standard
20 grade.

21 (6) "Seed potatoes" or "potato seed" means all
22 varieties of potato tubers, stems, and other plant parts of
23 the herb plant known as *Solanum tuberosum* L. which are
24 intended or used for seed purposes, planting, propagation,
25 or reproduction.

1 (7) "Seed potato certification funds" means all money
2 collected by the association in the form of fees,
3 assessments, service charges, sales, interest earnings,
4 donations, grants, and all other incomes resulting from the
5 inspection, certification, and improvement of Montana seed
6 potatoes, whatever the source.

7 NEW SECTION. Section 4. Scope. A person who puts
8 before the public any representation or description
9 pertaining to seed potatoes in which the words "Montana
10 state certified", "state certified", "Montana certified", or
11 "certified seed potatoes" are used is subject to [sections 4
12 through 10].

13 NEW SECTION. Section 5. Certification. (1) The
14 association shall be the state's sole agent for the purpose
15 of potato seed certification and inspection.

16 (2) The association shall establish procedures and
17 rules for the certification of seed potatoes.

18 (3) Any applicant who is a resident of the state shall
19 be accepted for admission to the association provided he
20 complies with the procedures and rules provided for in
21 subsection (2).

22 (4) The certification of seed potatoes shall not imply
23 an expressed or implied warranty or an implied warranty of
24 merchantability, fitness for a particular purpose, or any
25 assurance that the seed is disease-free on the part of the

1 state, the association, or its agents or employees.

2 (5) When certification is refused, the association
3 shall supply the applicant for certification a detailed
4 memorandum explaining why certification was not granted. The
5 applicant may then seek a writ of mandamus in district
6 court.

7 NEW SECTION. Section 6. Certification work on
8 self-supporting basis -- fiscal provisions. (1) Seed potato
9 certification work shall be on a self-supporting basis and
10 not for financial profit.

11 (2) Seed potato certification funds shall be
12 considered private funds. The board of directors of the
13 association shall have supervision and control of all
14 certification funds collected and shall insure strict
15 financial accountability of all money received and spent by
16 the association and shall provide for an annual independent
17 audit of all accounts and property of the association.

18 (3) All equipment, vehicles, and scientific materials
19 purchased with seed potato certification funds shall be
20 considered property of the association and under the control
21 of the board of directors.

22 NEW SECTION. Section 7. Liabilities of the
23 association. (1) The association and its agents and
24 employees shall be civilly and criminally liable for all
25 violations of [this act]. For the purposes of prosecution,

1 the association and its agents and employees are considered
2 public servants as defined in 45-2-101(51) and are subject
3 to the provisions of Title 45, chapter 7, parts 1, 2, and 4.

4 (2) The association and its agents and employees may
5 not market, sell, or directly advertise Montana certified
6 seed potatoes on behalf of its members or any one grower.
7 Nothing contained in this subsection prohibits the
8 association or Montana state cooperative extension service
9 from carrying out educational programs related to Montana
10 certified seed potatoes.

11 NEW SECTION. Section 8. Cooperation with state
12 agencies. Montana state university, the Montana agricultural
13 experiment station, and the cooperative extension service
14 shall cooperate with the association to provide
15 certification services, field inspections, disease
16 diagnosis, greenhouse indexing, education or extension
17 programs, office or laboratory space, or any other
18 activities authorized by [this act].

19 NEW SECTION. Section 9. Licensing and registration of
20 seed potato sellers or dealers. (1) No person may carry on
21 the business of a seller or dealer of seed potatoes in this
22 state without first:

23 (a) possessing a valid federal license pursuant to the
24 provisions of the Perishable Agricultural Commodities Act,
25 1930 (7 U.S.C. 499), as amended;

1 (b) registering with the department as a licensee in
2 good standing under the Perishable Agricultural Commodities
3 Act; and

4 (c) filing a copy of the license application and
5 United States department of agriculture statement of
6 approval with the department at the time of registration.

7 (2) The seller or dealer must notify the department of
8 any change in the status of his license.

9 (3) This section does not apply to a person who buys
10 or sells potatoes he has grown himself in the regular course
11 of his business.

12 **NEW SECTION.** Section 10. Enforcement. The association
13 may seek relief in district court against:

14 (1) any unauthorized use of the terms "Montana state
15 certified", "state certified", "Montana certified", or
16 "certified seed potatoes";

17 (2) any person selling potatoes as certified seed
18 potatoes that have not been inspected and certified by a
19 certifying agent of any state;

20 (3) the unauthorized issuance, alteration, or
21 destruction of a certificate, inspection report, tag, label,
22 or record.

23 **NEW SECTION.** Section 11. Imported seed potatoes --
24 inspection, limitations -- penalties. (1) To control and
25 prevent the spread of highly contagious diseases among seed

1 potato stock:

2 (a) seed potatoes may not be imported into this state
3 for any commercial or agricultural purpose unless such seed
4 potatoes are:

5 (i) the equivalent of the United States No. 1 seed
6 potato grade in Montana;

7 (ii) inspected at the Montana receiving point by a
8 federal or state-federal standard grade inspector;

9 (iii) shipped in a clean, disinfected container; and

10 (iv) accompanied by a United States department of
11 agriculture or state of origin certificate of inspection
12 describing the seed variety, class, standard grade, quality
13 or condition, and seed source and have affixed to each
14 container, in a conspicuous place, an official state seed
15 potato certification tag or label;

16 (b) no potatoes, equipment, or container known to be
17 diseased or contaminated with bacterial ring rot, nematode,
18 or tuber moth may be brought in to this state.

19 (2) The provisions of this section do not apply to
20 Montana state university or the association for research or
21 educational uses.

22 (3) Any person violating any provision of this section
23 is guilty of a misdemeanor and upon conviction shall be
24 punished as provided by law. The department shall enforce
25 this section.

1 NEW SECTION. Section 12. Standard grades for Montana
 2 certified seed potatoes. (1) The standard grades for Montana
 3 certified seed potatoes shall be equivalent to or better in
 4 all respects than the latest standards established by the
 5 United States secretary of agriculture for a respective
 6 grade of seed potatoes, and thus conforming, shall be
 7 accepted as the legal standards for the state. If no United
 8 States standards are established for a particular grade of
 9 seed potatoes, then the state may establish its own grade
 10 pursuant to subsection (2).

11 (2) The department, in joint concurrence with the
 12 Montana potato improvement association, may establish
 13 standard seed potato grades and tag colors for Montana
 14 certified seed potatoes.

15 (3) A person may not ship or deliver Montana certified
 16 seed potatoes in interstate or intrastate commerce unless
 17 such seed potatoes:

- 18 (a) meet the requirements of the grade declared;
 19 (b) are inspected at the time and point of shipping by
 20 either a federal or federal-state grade inspector or an
 21 equivalent representative of the association;
 22 (c) are shipped in a clean, disinfected container; and
 23 (d) are accompanied with a United States department of
 24 agriculture or Montana certificate of inspection describing
 25 the seed variety, class, standard grade, quality or

1 condition, and seed source, and have affixed to each
 2 container, in a conspicuous place, an official Montana seed
 3 potato certification tag.

4 (4) This section shall be enforced by the department
 5 pursuant to sections 80-3-108 through 80-3-111.

6 Section 13. Section 80-3-601, MCA, is amended to read:
 7 "80-3-601. Definitions. Unless the context requires
 8 otherwise, in this part the following definitions apply:

9 (1) "Dealer at wholesale" means a person who buys to
 10 sell at wholesale or contracts to buy to sell at wholesale
 11 or who handles at wholesale on account of or as agent for
 12 another.

13 (2) "Person" means an individual, group of persons,
 14 exchange, firm, partnership, corporation, or association.

15 (3) "Produce" means the natural products of the farm
 16 and includes but is not limited to natural products of the
 17 orchard, vineyard, garden, and apiary, raw and manufactured
 18 (except grains, dairy products, livestock, poultry, and
 19 poultry products), when handled for the purpose of resale.
 20 The term does not include seed potatoes.

21 Section 14. Section 80-5-201, MCA, is amended to read:
 22 "80-5-201. Definitions. When used in this part, the
 23 following definitions apply:

24 (1) "Agricultural seed" means the seeds of grass,
 25 forage, cereal, and fiber crops and any other kinds of seeds

1 commonly recognized within this state as agricultural seeds
2 and includes lawn seeds and mixtures of seeds, but does not
3 include seed potatoes.

4 (2) "Bin-run seed sales from one farmer to another
5 farmer" means buyer beware.

6 (3) "Montana certified seed grower" means a member of
7 an authorized Montana seed certifying agency who has
8 consented to produce seed under the rules for certified
9 classes of seed, with respect to the maintenance of genetic
10 purity and variety identity, set forth by the certifying
11 agency.

12 (4) "Person" means any individual, firm, partnership,
13 corporation, or association.

14 (5) "Public agricultural seed warehouse" means any
15 warehouse or structure in which agricultural seed is
16 received from the public for storage, assembling, or
17 cleaning.

18 (6) "Screening" means chaff, sterile florets, immature
19 seed, weed seed, inert matter, and any other materials
20 removed from seed by any kind of cleaning or processing.

21 (7) "Seed buyer" means any person engaged in the
22 business of buying agricultural seed for shipment, cleaning,
23 processing, or resale and who does not own, control, or
24 operate a public agricultural seed warehouse. Any
25 individual employed by a seed buyer is not included in this

1 term.

2 (8) "Seed dealer" means any person who offers for
3 sale, sells, or barter agricultural seeds to the ultimate
4 consumer.

5 (9) "Seed labeler" means any person affixing labels to
6 agricultural seeds with his name and address listed as
7 required in 80-5-102 when such seed is distributed in
8 Montana.

9 (10) "Seed processing plant" means any place of
10 business that repackages, cleans, blends, treats, or
11 otherwise manipulates agricultural seeds.

12 (11) "Seed warehouseman" means any person owning,
13 controlling, or operating a public agricultural seed
14 warehouse."

15 Section 15. Codification. (1) Sections 1 through 10
16 are intended to be codified as an integral part of Title 80,
17 chapter 5, and the provisions contained in Title 80, chapter
18 5, apply to sections 1 through 10.

19 (2) Section 11 is intended to be codified as an
20 integral part of Title 80, chapter 7, and the provisions
21 contained in Title 80, chapter 7, apply to section 11.

22 (3) Section 12 is intended to be codified as an
23 integral part of Title 80, chapter 3, and the provisions
24 contained in Title 80, chapter 3, apply to section 12.

25 Section 16. Severability. If a part of this act is

LC 1532/01

1 invalid, all valid parts that are severable from the invalid
2 part remain in effect. If a part of this act is invalid in
3 one or more of its applications, the part remains in effect
4 in all valid applications that are severable from the
5 invalid applications.

6 Section 17. Effective date. This act is effective on
7 passage and approval.

-End-

SB509

1 SENATE BILL NO. 509
 2 INTRODUCED BY CONOVER, BOYLAN
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR SEED
 5 POTATO CERTIFICATION; GENERALLY REVISING THE LAW RELATING TO
 6 SEED POTATOES; AMENDING SECTIONS 80-3-601 AND 80-5-201, MCA;
 7 AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

8
 9 WHEREAS, an association of Montana seed potato growers
 10 and Montana state university have jointly participated in
 11 the certification, inspection, and improvement of potato
 12 seed in this state since 1922; and

13 WHEREAS, the Montana potato improvement association, a
 14 nonprofit organization of seed growers, has been the
 15 official agent of the state, through Montana state
 16 university, pursuant to Chapter 11, Laws of 1951, as
 17 amended, since 1952; and

18 WHEREAS, the association, through its members, has done
 19 such seed potato certification work on a self-supporting
 20 basis and without direct state financial support; and

21 WHEREAS, the association has contributed to the
 22 construction cost of the Montana state university greenhouse
 23 addition and potato virus laboratory and also toward the
 24 purchase of special scientific equipment therein; and

25 WHEREAS, Montana state university, the agricultural

1 experiment station, and the cooperative extension service
 2 have provided, throughout the certification program, various
 3 technical assistance, guidance, scientific knowledge, and
 4 office, laboratory, and greenhouse space to the association.
 5 THEREFORE, it is the policy of the legislature that the
 6 association and university continue to work together in
 7 joint cooperation to provide seed potato certification
 8 services to growers that are designed to eradicate or
 9 control common potato diseases and disorders.

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

12 NEW SECTION. Section 1. Short title. [This act] may
 13 be cited as the "Montana Seed Potato Act".

14 NEW SECTION. Section 2. Purpose. It is the intent of
 15 the legislature of this state to provide for a method of
 16 certifying Montana seed potatoes by a self-regulating,
 17 quasi-public association of growers and to provide for the
 18 establishment and enforcement of standard grades for Montana
 19 certified seed potatoes by the state department of
 20 agriculture. Nothing contained in [this act] shall be
 21 construed to limit or regulate the right and freedom of any
 22 person to grow potatoes or seed potato stock in this state
 23 and to sell, distribute, trade, or market his products.

24 NEW SECTION. Section 3. Definitions. When used in
 25 [this act]:

1 (1) "Association" means the Montana potato improvement
2 association, a nonprofit growers' organization incorporated
3 under the laws of this state.

4 (2) "Certified seed potatoes" or "certified potato
5 seed" means potato seed stock that has passed limited field
6 and storage inspections and has been grown in accordance
7 with the certification rules and regulations of an official
8 seed potato certifying agency of this state or another.

9 (3) "Department" means the department of agriculture
10 as provided for in 2-15-3001.

11 (4) "Person" means an individual, firm, partnership,
12 corporation, company, association, or separate business or
13 legal entity.

14 (5) "Seed certification" means the process of
15 inspecting and certifying as to seed variety, state of
16 origin, source, acreage, generation, limited field and
17 storage inspection results, general horticultural practices,
18 and other limited factors set forth by an official seed
19 certification agency. Certification does not mean standard
20 grade.

21 (6) "Seed potatoes" or "potato seed" means all
22 varieties of potato tubers, stems, and other plant parts of
23 the herb plant known as *Solanum tuberosum* L. which are
24 intended or used for seed purposes, planting, propagation,
25 or reproduction.

1 (7) "Seed potato certification funds" means all money
2 collected by the association in the form of fees,
3 assessments, service charges, sales, interest earnings,
4 donations, grants, and all other incomes resulting from the
5 inspection, certification, and improvement of Montana seed
6 potatoes, whatever the source.

7 **NEW SECTION.** Section 4. Scope. A person who puts
8 before the public any representation or description
9 pertaining to seed potatoes in which the words "Montana
10 state certified", "state certified", "Montana certified", or
11 "certified seed potatoes" are used is subject to [sections 4
12 through 10].

13 **NEW SECTION.** Section 5. Certification. (1) The
14 association shall be the state's sole agent for the purpose
15 of potato seed certification and inspection.

16 (2) The association shall establish procedures and
17 rules for the certification of seed potatoes.

18 (3) Any applicant who is a resident of the state shall
19 be accepted for admission to the association provided he
20 complies with the procedures and rules provided for in
21 subsection (2).

22 ~~(4) The certification of seed potatoes shall not imply~~
23 ~~an expressed or implied warranty or an implied warranty of~~
24 ~~merchantability, fitness for a particular purpose or any~~
25 ~~assurance that the seed is disease free on the part of the~~

1 ~~state, the association, or its agents or employees.~~
 2 (5)(4) When certification is refused, the association
 3 shall supply the applicant for certification a detailed
 4 memorandum explaining why certification was not granted. The
 5 applicant may then seek a writ of mandamus in district
 6 court.

7 **NEW SECTION.** Section 6. Certification work on
 8 self-supporting basis -- fiscal provisions. (1) Seed potato
 9 certification work shall be on a self-supporting basis and
 10 not for financial profit.

11 (2) Seed potato certification funds shall be
 12 considered private funds. The board of directors of the
 13 association shall have supervision and control of all
 14 certification funds collected and shall insure strict
 15 financial accountability of all money received and spent by
 16 the association and shall provide for an annual independent
 17 audit of all accounts and property of the association.

18 (3) All equipment, vehicles, and scientific materials
 19 purchased with seed potato certification funds shall be
 20 considered property of the association and under the control
 21 of the board of directors.

22 **NEW SECTION.** Section 7. Liabilities of the
 23 association. (1) The association and its agents and
 24 employees shall be civilly and criminally liable for all
 25 violations of [this act]. For the purposes of prosecution,

1 the association and its agents and employees are considered
 2 public servants as defined in 45-2-101(51) and are subject
 3 to the provisions of Title 45, chapter 7, parts 1, 2, and 4.

4 (2) The association and its agents and employees may
 5 not market, sell, or directly advertise Montana certified
 6 seed potatoes on behalf of its members or any one grower.
 7 Nothing contained in this subsection prohibits the
 8 association or Montana state cooperative extension service
 9 from carrying out educational programs related to Montana
 10 certified seed potatoes.

11 **NEW SECTION.** Section 8. Cooperation with state
 12 agencies. Montana state university, the Montana agricultural
 13 experiment station, and the cooperative extension service
 14 shall cooperate with the association to provide
 15 certification services, field inspections, disease
 16 diagnosis, greenhouse indexing, education or extension
 17 programs, office or laboratory space, or any other
 18 activities authorized by [this act].

19 **NEW SECTION.** Section 9. Licensing and registration of
 20 seed potato sellers or dealers. (1) No person may carry on
 21 the business of a seller or dealer of seed potatoes in this
 22 state without first:

23 (a) possessing a valid federal license pursuant to the
 24 provisions of the Perishable Agricultural Commodities Act,
 25 1930 (7 U.S.C. 499), as amended;

1 (b) registering with the department as a licensee in
2 good standing under the Perishable Agricultural Commodities
3 Act; and

4 (c) filing a copy of the license application and
5 United States department of agriculture statement of
6 approval with the department at the time of registration.

7 (2) The seller or dealer must notify the department of
8 any change in the status of his license.

9 (3) This section does not apply to a person who buys
10 or sells potatoes he has grown himself in the regular course
11 of his business.

12 NEW SECTION. Section 10. Enforcement. The association
13 may seek relief in district court against:

14 (1) any unauthorized use of the terms "Montana state
15 certified", "state certified", "Montana certified", or
16 "certified seed potatoes";

17 (2) any person selling potatoes as certified seed
18 potatoes that have not been inspected and certified by a
19 certifying agent of any state;

20 (3) the unauthorized issuance, alteration, or
21 destruction of a certificate, inspection report, tag, label,
22 or record.

23 NEW SECTION. Section 11. Imported seed potatoes --
24 inspection, limitations -- penalties. (1) To control and
25 prevent the spread of highly contagious diseases among seed

1 potato stocks:

2 (a) seed potatoes may not be imported into this state
3 for any commercial or agricultural purpose unless such seed
4 potatoes are:

5 (i) the equivalent of the United States No. 1 seed
6 potato grade in Montana;

7 (ii) inspected at the Montana receiving point by a
8 federal or state-federal standard grade inspector;

9 (iii) shipped in a clean, disinfected container; and

10 (iv) accompanied by a United States department of
11 agriculture or state of origin certificate of inspection
12 describing the seed variety, class, standard grade, quality
13 or condition, and seed source and have affixed to each
14 container, in a conspicuous place, an official state seed
15 potato certification tag or label;

16 (b) no potatoes, equipment, or container known to be
17 diseased or contaminated with bacterial ring rot, nematode,
18 or tuber moth may be brought in to this state.

19 (2) The provisions of this section do not apply to
20 Montana state university or the association for research or
21 educational uses.

22 (3) Any person violating any provision of this section
23 is guilty of a misdemeanor and upon conviction shall be
24 punished as provided by law. The department shall enforce
25 this section.

1 NEW SECTION. Section 12. Standard grades for Montana
 2 certified seed potatoes. (1) The standard grades for Montana
 3 certified seed potatoes shall be equivalent to or better in
 4 all respects than the latest standards established by the
 5 United States secretary of agriculture for a respective
 6 grade of seed potatoes, and thus conforming, shall be
 7 accepted as the legal standards for the state. If no United
 8 States standards are established for a particular grade of
 9 seed potatoes, then the state may establish its own grade
 10 pursuant to subsection (2).

11 (2) The department, in joint concurrence with the
 12 Montana potato improvement association, may establish
 13 standard seed potato grades and tag colors for Montana
 14 certified seed potatoes.

15 (3) A person may not ship or deliver Montana certified
 16 seed potatoes in interstate or intrastate commerce unless
 17 such seed potatoes:

- 18 (a) meet the requirements of the grade declared;
- 19 (b) are inspected at the time and point of shipping by
 20 either a federal or federal-state grade inspector or an
 21 equivalent representative of the association;
- 22 (c) are shipped in a clean, disinfected container; and
- 23 (d) are accompanied with a United States department of
 24 agriculture or Montana certificate of inspection describing
 25 the seed variety, class, standard grade, quality or

1 condition, and seed source, and have affixed to each
 2 container, in a conspicuous place, an official Montana seed
 3 potato certification tag.

4 (4) This section shall be enforced by the department
 5 pursuant to sections 80-3-108 through 80-3-111.

6 Section 13. Section 80-3-601, MCA, is amended to read:
 7 "80-3-601. Definitions. Unless the context requires
 8 otherwise, in this part the following definitions apply:

9 (1) "Dealer at wholesale" means a person who buys to
 10 sell at wholesale or contracts to buy to sell at wholesale
 11 or who handles at wholesale on account of or as agent for
 12 another.

13 (2) "Person" means an individual, group of persons,
 14 exchange, firm, partnership, corporation, or association.

15 (3) "Produce" means the natural products of the farm
 16 and includes but is not limited to natural products of the
 17 orchard, vineyard, garden, and apiary, raw and manufactured
 18 (except grains, dairy products, livestock, poultry, and
 19 poultry products), when handled for the purpose of resale.
 20 The term does not include seed potatoes.

21 Section 14. Section 80-5-201, MCA, is amended to read:
 22 "80-5-201. Definitions. When used in this part, the
 23 following definitions apply:

24 (1) "Agricultural seed" means the seeds of grass,
 25 forage, cereal, and fiber crops and any other kinds of seeds

1 commonly recognized within this state as agricultural seeds
2 and includes lawn seeds and mixtures of seeds, but does not
3 include seed potatoes.

4 (2) "Bin-run seed sales from one farmer to another
5 farmer" means buyer beware.

6 (3) "Montana certified seed grower" means a member of
7 an authorized Montana seed certifying agency who has
8 consented to produce seed under the rules for certified
9 classes of seed, with respect to the maintenance of genetic
10 purity and variety identity, set forth by the certifying
11 agency.

12 (4) "Person" means any individual, firm, partnership,
13 corporation, or association.

14 (5) "Public agricultural seed warehouse" means any
15 warehouse or structure in which agricultural seed is
16 received from the public for storage, assembling, or
17 cleaning.

18 (6) "Screening" means chaff, sterile florets, immature
19 seed, weed seed, inert matter, and any other materials
20 removed from seed by any kind of cleaning or processing.

21 (7) "Seed buyer" means any person engaged in the
22 business of buying agricultural seed for shipment, cleaning,
23 processing, or resale and who does not own, control, or
24 operate a public agricultural seed warehouse. Any
25 individual employed by a seed buyer is not included in this

1 term.

2 (8) "Seed dealer" means any person who offers for
3 sale, sells, or barter agricultural seeds to the ultimate
4 consumer.

5 (9) "Seed labeler" means any person affixing labels to
6 agricultural seeds with his name and address listed as
7 required in 80-5-102 when such seed is distributed in
8 Montana.

9 (10) "Seed processing plant" means any place of
10 business that repackages, cleans, blends, treats, or
11 otherwise manipulates agricultural seeds.

12 (11) "Seed warehouseman" means any person owning,
13 controlling, or operating a public agricultural seed
14 warehouse."

15 Section 15. Codification. (1) Sections 1 through 10
16 are intended to be codified as an integral part of Title 80,
17 chapter 5, and the provisions contained in Title 80, chapter
18 5, apply to sections 1 through 10.

19 (2) Section 11 is intended to be codified as an
20 integral part of Title 80, chapter 7, and the provisions
21 contained in Title 80, chapter 7, apply to section 11.

22 (3) Section 12 is intended to be codified as an
23 integral part of Title 80, chapter 3, and the provisions
24 contained in Title 80, chapter 3, apply to section 12.

25 Section 16. Severability. If a part of this act is

SB 0509/02

1 invalid, all valid parts that are severable from the invalid
2 part remain in effect. If a part of this act is invalid in
3 one or more of its applications, the part remains in effect
4 in all valid applications that are severable from the
5 invalid applications.

6 Section 17. Effective date. This act is effective on
7 passage and approval.

-End-