

HOUSE BILL NO. 673

INTRODUCED BY IVERSON, MANUEL

BY REQUEST OF THE DEPARTMENT OF AGRICULTURE

IN THE HOUSE

February 7, 1983	Introduced and referred to Committee on Agriculture, Livestock and Irrigation.
February 16, 1983	Committee recommend bill do pass. Report adopted.
February 18, 1983	Bill printed and placed on members' desks.
February 19, 1983	Second reading, pass consideration.
February 21, 1983	Second reading, do pass.
February 22, 1983	Considered correctly engrossed.
	Third reading, passed. Transmitted to Senate.

IN THE SENATE

March 1, 1983	Introduced and referred to Committee on Agriculture, Livestock and Irrigation.
March 15, 1983	Committee recommend bill be concurred in. Report adopted.
March 17, 1983	Statement of Intent attached. Second reading, concurred in.
March 19, 1983	Third reading, concurred in. Ayes, 50; Noes, 0.

IN THE HOUSE

March 19, 1983

Returned to House with
Statement of Intent.

March 31, 1983

Second reading, Statement of
Intent concurred in.

April 1, 1983

Third reading, Statement of
Intent concurred in.

Sent to enrolling.

Reported correctly enrolled.

1 ~~House~~ BILL NO. 673
2 INTRODUCED BY Manuel
3 BY REQUEST OF THE DEPARTMENT OF AGRICULTURE
4
5 A BILL FOR AN ACT ENTITLED: "THE AGRICULTURAL WAREHOUSE,
6 COMMODITY DEALER, AND GRAIN STANDARDS ACT; GENERALLY
7 REVISING THE STATUTES RELATING TO THE WAREHOUSING OF AND
8 DEALING IN AGRICULTURAL COMMODITIES; AMENDING SECTIONS
9 80-5-201 THROUGH 80-5-203, MCA; REPEALING SECTIONS 80-3-501
10 THROUGH 80-3-513, 80-4-101 THROUGH 80-4-106, 80-4-111
11 THROUGH 80-4-126, 80-4-201 THROUGH 80-4-209, 80-4-221
12 THROUGH 80-4-234, AND 80-4-311 THROUGH 80-4-313, MCA; AND
13 PROVIDING AN EFFECTIVE DATE."
14
15 WHEREAS, the existing statutes regulating certain
16 aspects of the agricultural industry have become antiquated,
17 as well as being contradictory and illogical in their
18 organization.
19 THEREFORE, it is necessary to extensively revise those
20 statutes and adopt them as new sections.
21
22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
23 NEW SECTION. Section 1. Short title. [Sections 1
24 through 71] may be cited as the "Agricultural Warehouse,
25 Commodity Dealer, and Grain Standards Act".

1 NEW SECTION. Section 2. Definitions. As used in
2 [sections 1 through 71], the following definitions apply:
3 (1) "Agent" means any person who contracts for or
4 solicits any agricultural commodities from a producer or
5 warehouseman or negotiates the consignment or purchase of
6 any agricultural commodity on behalf of any commodity
7 dealer.
8 (2) "Agricultural commodity" means any grain, beans,
9 safflower, sunflower seeds, tame mustards, rapeseed,
10 flaxseed, leguminous seed, or other small seed, and other
11 agricultural commodities designated by rule of the
12 department.
13 (3) "Commodity dealer" means any person who engages in
14 a business involving or, as part of his business,
15 participates in buying, exchanging, negotiating, or
16 soliciting the sale, resale, exchange, or transfer of any
17 agricultural commodity in the state of Montana. The term
18 does not include:
19 (a) a person engaged solely in storing, shipping, or
20 handling agricultural commodities for hire;
21 (b) a person who buys or handles less than \$10,000
22 worth of agricultural commodities in a licensing year;
23 (c) a person who is the producer of agricultural
24 commodities that he actually plants, nurtures, and harvests;
25 or

1 (d) a person whose trading in agricultural commodities
2 is limited to trading in commodity futures on a recognized
3 futures exchange.

4 (4) "Credit sale contract" means a contract for the
5 sale of an agricultural commodity when the sale price is to
6 be paid at a date after delivery of the agricultural
7 commodity to the buyer and includes but is not limited to
8 those contracts commonly referred to as deferred payment
9 contracts, deferred pricing contracts, or price-later
10 contracts.

11 (5) "Department" means the department of agriculture
12 provided for in 2-15-3001.

13 (6) "Depositor" means any person who deposits an
14 agricultural commodity in a warehouse for storage,
15 processing, handling, or shipment or who is the owner or
16 legal holder of an outstanding warehouse receipt or who is
17 lawfully entitled to possession of the agricultural
18 commodity.

19 (7) "Director" means the director of the department of
20 agriculture.

21 (8) "Grain" means all grains for which standards have
22 been established under the United States Grain Standards Act
23 (7 U.S.C. sections 71 through 87) and all other agricultural
24 commodities, such as mustard, oil seed crops, or other crops
25 which may be designated by rule of the department.

1 (9) "Grain Standards Act" means the United States
2 Grain Standards Act (7 U.S.C. sections 71 through 87) as
3 that act reads on [the effective date of this act].

4 (10) "Inspector" means any person so designated by the
5 director to assist in the administration of [sections 1
6 through 54]. The term includes warehouse auditors or
7 examiners.

8 (11) "Official grain inspectors" means any official
9 personnel who perform or supervise the performance of
10 official inspection services and certify the results
11 thereof, including the grade of the grain.

12 (12) "Official grain samplers" or "samplers" means any
13 official personnel who perform or supervise the performance
14 of official sampling services and certify the results
15 thereof.

16 (13) "Official grain standards" means the standards of
17 quality and condition of grain that establish the grades
18 defined by the Grain Standards Act.

19 (14) "Official grain weighers" means any official
20 personnel who perform or supervise the performance of class
21 X or class Y weighing services and certify the results
22 thereof, including the weight of the grain.

23 (15) "Person" means any individual, firm, association,
24 corporation, partnership, or any other form of business
25 enterprise.

1 (16) "Producer" means the owner, tenant, or operator of
 2 land in this state who has an interest in and receives all
 3 or part of the proceeds from the sale of agricultural
 4 commodities produced on that land.

5 (17) "Public warehouse" or "warehouse" means any
 6 elevator, mill, warehouse, subterminal grain warehouse,
 7 public warehouse, or other structure or facility in which,
 8 for compensation, agricultural commodities are received for
 9 storage, handling, processing, or shipment. The term
 10 includes facilities which commingle commodities belonging to
 11 different lots of agricultural commodities.

12 (18) "Receipt" means a warehouse receipt.

13 (19) "Scale weight ticket" means a load slip or other
 14 evidence of delivery, other than a receipt, given to a
 15 depositor by a warehouseman licensed under the provisions of
 16 [sections 22 through 46] upon initial delivery of the
 17 agricultural commodity to the warehouse.

18 (20) "Station" means a warehouse located more than 3
 19 miles from the central office of the warehouse.

20 (21) "Subterminal warehouse" means any warehouse at
 21 which an intermediate function is performed in which
 22 agricultural commodities are customarily received from
 23 dealers or producers and where the commodities are
 24 accumulated prior to shipment.

25 (22) "Terminal grain warehouse" means any warehouse

1 authorized by a grain exchange to receive or disburse grain
 2 on consignment as presented by the rules and regulations of
 3 a grain exchange.

4 (23) "Warehouseman" means a person operating or
 5 controlling a public warehouse.

6 (24) "Warehouse receipt" means every receipt, whether
 7 negotiable or nonnegotiable, issued under [sections 22
 8 through 46] by a warehouseman, except scale weight tickets.

9 NEW SECTION. Section 3. Rules -- adoption. The
 10 department shall adopt such rules as it determines necessary
 11 for the efficient execution of the provisions of [sections 1
 12 through 71].

13 NEW SECTION. Section 4. Terms of licenses --
 14 renewals. Each license issued or renewed under [sections 22
 15 through 54] shall be issued for a period to be prescribed by
 16 rule of the department.

17 NEW SECTION. Section 5. Maximum bond amount. The
 18 maximum amount of any public warehouseman bond may not
 19 exceed \$1 million and the maximum amount of a commodity
 20 dealer bond may not exceed \$1 million, except:

21 (1) any bonds compensating for net asset deficiencies
 22 prescribed in [sections 22 through 54] must be added to the
 23 maximum bond amount; and

24 (2) the maximum bond amount must be adjusted each year
 25 based upon the percentage increase or decrease in the annual

1 average index of prices received by Montana farmers for food
2 and feed grains as computed by the Montana crop and
3 livestock reporting service.

4 **NEW_SECTION.** Section 6. Appointment by nonresident
5 licensee of agent to receive process. A nonresident applying
6 for a license under this chapter shall file a written power
7 of attorney, designating the secretary of state as his agent
8 upon whom service of process may be had if legal action is
9 brought against the nonresident. A nonresident who has a
10 duly appointed resident agent upon whom legal process may be
11 served as provided by law is not required to designate the
12 secretary of state as his agent for service of process. The
13 department must be furnished a copy of the designation of
14 the resident agent, which copy shall be certified by the
15 secretary of state.

16 **NEW_SECTION.** Section 7. Reports to the department.
17 Each person licensed under [sections 22 through 54] shall
18 report to the department at intervals set by rule of the
19 department on forms prepared by it. The reports must show
20 the total weight of each kind of agricultural commodity
21 received and shipped, the amount of outstanding warehouse
22 receipts on that date, and a statement of the amount of
23 agricultural commodities on hand to cover the outstanding
24 warehouse receipts. The department may also, by rule,
25 require special reports at any time.

1 **NEW_SECTION.** Section 8. Examination of books. The
2 department is authorized, through its officials, employees,
3 or designated agents, to examine or copy all books, records,
4 papers, and accounts of persons licensed under [sections 22
5 through 54].

6 **NEW_SECTION.** Section 9. Confidentiality of records.
7 All financial statements of warehousemen and commodity
8 dealers required under the provisions of [sections 22
9 through 54] shall be kept confidential by the department and
10 are not subject to disclosure except:

- 11 (1) upon written permission of the licensee;
- 12 (2) in actions or administrative proceedings commenced
13 under the provisions of [sections 1 through 54];
- 14 (3) when required by subpoena or court order;
- 15 (4) when disclosed to law enforcement agencies in
16 connection with the investigation or prosecution of criminal
17 offenses; or
- 18 (5) when released to a bonding company approved by the
19 department.

20 **NEW_SECTION.** Section 10. Publication of reports. The
21 department may publish the results of any investigation
22 made. It may publish the names and addresses of persons
23 licensed under [sections 22 through 54], and it may also
24 publish a list of all licenses terminated under [sections 22
25 through 54] and the causes therefor.

1 NEW SECTION. Section 11. Employment of assistants.
 2 The department is authorized to employ qualified persons not
 3 regularly in the service of the state for temporary
 4 assistance in carrying out the provisions of [sections 1
 5 through 71].

6 NEW SECTION. Section 12. License suspension and
 7 revocation -- renewal. (1) The department may revoke,
 8 suspend, or modify a license when it has reasonable cause to
 9 believe that the licensee has committed any of the following
 10 acts, each of which is a violation of [sections 22 through
 11 54]:

12 (a) failure to maintain all initial licensing
 13 requirements, including insurance, bonding, and net asset
 14 requirements. In determining compliance with net asset
 15 requirements, the department may consider the licensee's
 16 status under any prior or current bankruptcy proceedings, as
 17 well as any outstanding civil settlements or judgments.

18 (b) aiding or abetting another person in the violation
 19 of the licensure or any other provisions of [sections 22
 20 through 54];

21 (c) conviction of any criminal offense defined under
 22 Title 45;

23 (d) failure or refusal to allow inspection or maintain
 24 and provide records, reports, and other information required
 25 by the department;

1 (e) failure or refusal to post storage and other
 2 charges as filed with the department;

3 (f) failure or refusal to accept agricultural
 4 commodities for storage as required under [section 31];

5 (g) failure to comply with the warehouse receipt and
 6 scale weight ticket requirements of [sections 32 and 34];

7 (h) failure of a warehouseman to maintain and deliver
 8 upon request sufficient agricultural commodities to cover
 9 outstanding warehouse receipts as required under [section
 10 38];

11 (i) discrimination in charges by a warehouseman as
 12 provided in [section 31];

13 (j) failure to provide payment for any agricultural
 14 commodity; or

15 (k) violation of or failure or refusal to comply with
 16 any other provision of [sections 1 through 54] or rule
 17 adopted by the department.

18 (2) The department may refuse to issue or renew a
 19 license if the applicant or licensee:

20 (a) has a license as a warehouseman or commodity
 21 dealer that was previously or is currently suspended or
 22 revoked. In determining the sufficiency of cause hereunder,
 23 the department shall consider the nature and length of the
 24 action and any subsequent licensure or other evidence of
 25 rehabilitation.

1 (b) does not satisfy the bonding, insurance, or net
2 asset requirements as specified in subsection (1)(a) or any
3 other provisions required as a condition to licensing;

4 (c) has been convicted of a criminal offense and the
5 denial or refusal is made after considering Title 37,
6 chapter 1, part 2.

7 (3) The issuance of a license based on information
8 provided by the applicant which the department subsequently
9 determines incorrect must be considered void, and any
10 conduct under that license is a violation.

11 (4) All proceedings brought under subsections (1) and
12 (2) must be conducted under the provisions of the Montana
13 Administrative Procedure Act.

14 (5) The department is authorized to issue summary
15 revocations, suspensions, or denials without hearing
16 pursuant to the procedures established in 2-4-631.

17 NEW_SECTION. Section 13. Credit sale contracts. (1) A
18 commodity dealer who purchases agricultural commodities by
19 credit sale contract shall maintain books, records, and
20 other documents as required by the department to establish
21 compliance with the provisions of this section.

22 (2) In addition to other required information, a
23 credit sale contract must contain or provide for all of the
24 following:

25 (a) the seller's name and address;

1 (b) the conditions of delivery;

2 (c) the amount and kind of agricultural commodities
3 delivered;

4 (d) the price per unit or basis of value; and

5 (e) the date payment is to be made.

6 (3) Title to all agricultural commodities sold by
7 credit sale contract is in the purchaser as of the time the
8 contract is executed unless the contract provides otherwise.
9 The contract must be signed by both parties and executed in
10 duplicate. One copy shall be retained by the commodity
11 dealer, and one copy shall be delivered to the seller. Upon
12 revocation, suspension, or termination of a warehouseman's
13 license, the department may advance the payment date for all
14 credit sale contracts to a date not later than 30 days
15 following the effective date of the revocation, suspension,
16 or termination. When not otherwise provided, the purchase
17 price for all agricultural commodities shall be determined
18 as of the effective date of revocation, suspension, or
19 termination in accordance with all other provisions of the
20 contract. However, if the business of the commodity dealer
21 is sold to another licensed commodity dealer, credit sale
22 contracts may be assigned to the purchasing commodity
23 dealer.

24 NEW_SECTION. Section 14. Delivery of agricultural
25 commodities containing toxic chemicals to warehouse or to

commodity dealer unlawful. It is unlawful for any person to deliver to any warehouse or commodity dealer an agricultural commodity in bulk if the commodity contains toxic chemicals if the person knew or upon the exercise of reasonable diligence should have known of the presence of the toxic chemicals in the commodity.

NEW_SECTION. Section 15. Director's authority -- investigative hearing. The director may upon his own motion, whenever he has reason to believe a violation has occurred or upon verified complaint of any person in writing, investigate the actions of any person and, if he finds probable cause, shall notify the person that he must appear for an investigative hearing before the director 20 days from receipt of written notice.

NEW_SECTION. Section 16. Action on bond by persons injured. (1) A person injured by the breach of an obligation for which a bond is given to the department may take action against the bond in his own name to recover damages caused by the breach. The director shall then make demand upon the warehouseman or the commodity dealer and his surety for payment of damages. If the damages are not promptly paid, the director shall commence an action on the bond to enforce payment of damages.

(2) Liability of the surety upon the bond is limited to the amount of the bond. However, if two or more persons

are injured by breach of the obligation for which the bond is given and the damages for violating the conditions of the bond exceed the specified amount of the bond, the recovery on the bond shall be prorated by the surety among all of those injured.

NEW_SECTION. Section 17. Duty to prosecute. A county attorney who has appropriate jurisdiction and to whom any violation is reported shall cause appropriate proceedings to be instituted and prosecute without delay in a court of competent jurisdiction.

NEW_SECTION. Section 18. Injunction. If a person without a license is found to have engaged in any business for which a license is required under [sections 22 through 54], the court shall enjoin him from further business until he has been duly licensed. It is not necessary that the department show that an individual has been injured by the actions complained of in order to issue the injunction. The procedure for injunctive relief is the same as any other action for an injunction under Title 27. The injunction provided by this section is an additional remedy to the criminal penalty provided for in [section 20].

NEW_SECTION. Section 19. Penalty for operating without a license -- misrepresentation. (1) A person acting as a warehouseman or a commodity dealer without a license or in any way representing by action or words that he is a

1 warehouseman or a commodity dealer and is not so licensed
2 violates the provisions of [sections 22 through 54], is
3 guilty of a felony, and is punishable by imprisonment for
4 not more than 10 years or by a fine of not more than
5 \$10,000, or both.

6 (2) A person who issues or aids in the issuance of a
7 fraudulent receipt for any commodity is guilty of a felony
8 and is punishable by imprisonment for not more than 10 years
9 or by a fine of not more than \$10,000, or both.

10 (3) A person who knowingly submits false information
11 to or who knowingly withholds information from the
12 department when that information is required to be submitted
13 is guilty of a felony.

14 NEW_SECTION. Section 20. Penalty. (1) Except as
15 otherwise provided, any person who violates any provision of
16 [sections 1 through 54] or rules promulgated thereunder or
17 who impedes, obstructs, hinders, or otherwise prevents or
18 attempts to prevent the director or his duly authorized
19 representative in the performance of his duty under
20 [sections 1 through 54] is guilty of a misdemeanor and is
21 punishable by imprisonment in a county jail not to exceed 6
22 months or by a fine of not more than \$1,000, or both.

23 (2) A person who refuses to permit inspection of
24 licensed premises, books, accounts, records, or other
25 documents required by [sections 1 through 71] or who uses a

1 scale weight ticket or credit sale contract that fails to
2 satisfy the requirements of [sections 1 through 71] is
3 guilty of a misdemeanor.

4 NEW_SECTION. Section 21. Director's enforcement
5 action. Nothing in [sections 1 through 71] may be construed
6 to require the director or his authorized representative to
7 report for prosecution or for the institution of civil
8 action a violation if he believes that the public interest
9 will best be served by a suitable warning.

10 NEW_SECTION. Section 22. License necessary to operate
11 public warehouse. (1) No person may act as a warehouseman
12 without first having obtained an annual license from the
13 department. This requirement does not apply to operators of
14 warehouses that are federally licensed under the "United
15 States Warehouse Act".

16 (2) If a warehouseman operates two or more warehouses
17 in the same city or immediately adjacent thereto or in the
18 same immediate area, in conjunction with each other and with
19 the same work force, and where one set of books and records
20 are kept for all such warehouses and cash slips, scale
21 weight tickets, warehouse receipts, and checks of one series
22 are used for agricultural commodities stored therein, only
23 one warehouseman's license is required for the operation of
24 all such warehouses.

25 NEW_SECTION. Section 23. Licenses to warehouseman --

issuance -- renewal -- conditions precedent. (1) The department is authorized to issue or renew, upon application, a license to any warehouseman for the conduct of a warehouse or warehouses in accordance with [sections 22 through 54], provided the following conditions are met:

(a) Each applicant shall file and maintain satisfactory evidence of an effective policy of insurance issued by an insurance company authorized to do business in this state, insuring all agricultural commodities that are stored in the warehouse, including agricultural commodities owned by the warehouseman. The insurance shall insure the commodities for the full market value at the time of loss of such commodities against loss by fire, internal explosion, lightning, or tornado.

(b) Each warehouse must be found suitable for the proper storage of the particular agricultural commodity stored therein.

(c) A license fee must be submitted to the department as prescribed by [section 24].

(d) A current drawing of the warehouse, showing storage facilities and capacity of the warehouse, must be submitted to the department.

(e) A sufficient and valid bond must be filed and maintained as required by [sections 25 and 26].

(f) The applicant has submitted to the department a

current financial statement prepared by a licensed accountant according to generally accepted accounting principles, showing that the applicant has and does maintain current assets equal to or greater than current liabilities.

(g) The applicant must submit a sample warehouse receipt and subsequent revisions to the department for approval and filing.

(h) The applicant must have complied with the terms of [sections 22 through 46] and the rules prescribed thereunder.

(2) All documents required for renewal of a license must be received by the department prior to the expiration date of the warehouse license. An expired warehouse license may be reinstated by the department upon receipt of all required licensing documents and a penalty fee of \$50 if the documents are filed within 30 days from the date of expiration of the warehouse license. All license applications received after the 30-day penalty period must be considered original applications and an initial license fee must be assessed according to [section 24].

NEW SECTION. Section 24. Fees of department. (1) The department shall collect an annual warehouseman license fee, based on the number of warehouses owned by the warehouseman, according to the following schedule:

For each warehouse listed in the application:

Capacity in Hundredweight	Rate
0 to 25,000	\$ 25
25,001 to 50,000	50
50,001 to 125,000	75
125,001 to 250,000	100
250,001 to 375,000	125
over 375,000	150

(2) The department shall collect a fee of \$50 for each initial licensing inspection of a warehouse or station.

(3) The department shall collect a fee of \$25 for each amendment of a license.

(4) The department shall collect a fee of \$150 a day or fraction thereof for maintaining an employee of the department at a warehouse to supervise the correction of a deficiency.

(5) All fees must be deposited into the state treasury and credited to the general fund account.

NEW SECTION. Section 25. Bond of applicant for license -- additional bond -- additional obligations. (1) Each applicant for a warehouseman's license shall file a bond with the department. The bond must be in such form and must contain such terms and conditions as the department may prescribe by rule to carry out the purpose of [sections 25 and 26].

(2) The department may demand an additional bond if

the nature or volume of the business conducted by the warehouseman warrants an increase.

(3) The warehouseman may give a single bond to cover all warehouses operated by him.

(4) Any changes in the capacity of a warehouse or installation of any new warehouse involving a change in the bond liability under [section 26] must be reported in writing to the director, and an appropriate bond must be filed prior to the operation thereof.

NEW SECTION. Section 26. Amount of bond -- cancellation. (1) The amount of the bond to be furnished for each warehouse must be fixed at a rate of 20 cents per hundredweight for the first 500,000 hundredweight of licensed capacity; 15 cents per hundredweight for the next 500,000 hundredweight of licensed capacity; and 10 cents per hundredweight for all licensed capacity over 1 million hundredweight. The amount of the bond may not be less than \$20,000 or more than the maximum prescribed in [section 5]. The licensed capacity is the maximum number of hundredweight of agricultural commodities that the warehouse can accommodate.

(2) If a warehouseman is also operating as a commodity dealer, he shall also provide a bond as prescribed in [section 50].

(3) If there occurs a deficiency in net assets as

1 required under [section 27], there shall be added to the
2 amount of bond determined in accordance with subsection (1)
3 an amount equal to that deficiency.

4 (4) Each warehouseman bond shall run continuously with
5 the warehouseman license until canceled by the bonding
6 company. The aggregate annual liability of the surety may in
7 no event exceed the sum of the bond. A continuous bond shall
8 obligate a new penal sum with the commencement of each
9 licensing year.

10 (5) A 30-day written notice must be given to the
11 department by the bonding company before any bond is
12 canceled.

13 **NEW_SECTION.** Section 27. Net asset requirements. (1)
14 Each licensee or applicant for a license shall maintain,
15 above all exemptions and liabilities, total net assets
16 liable for the payment of any indebtedness arising from the
17 conduct of the warehouse or warehouses of at least 40 cents
18 per hundredweight of all agricultural commodities that his
19 warehouse or warehouses can accommodate.

20 (2) No person may be licensed as a warehouseman unless
21 he has and maintains allowable net assets of at least
22 \$10,000.

23 (3) In determining total net assets, credit may be
24 given for insurable property, such as buildings, machinery,
25 equipment, and merchandise inventory, only to the extent

1 that such property is protected by insurance against loss or
2 damage by fire. The insurance must be in the form of lawful
3 policies issued by one or more insurance companies
4 authorized to do business and subject to service of process
5 in suits brought in this state.

6 (4) If a warehouseman is licensed or applies for
7 licenses to operate two or more warehouses, the maximum
8 number of hundredweight which all such warehouses will
9 accommodate must be considered in determining whether the
10 warehouseman meets the net asset requirements specified in
11 this section.

12 **NEW_SECTION.** Section 28. Duties of warehouseman --
13 content of records. (1) Each warehouseman shall maintain in
14 a safe place current and complete records at all times with
15 respect to all agricultural commodities stored, conditioned,
16 handled, or shipped by him, including agricultural
17 commodities owned by him. Such records must include but are
18 not limited to a daily position record, showing the total
19 quantity of each kind and class of agricultural commodity
20 received and loaded out and the amount remaining in storage
21 at the close of each business day and the warehouseman's
22 total storage obligations for each kind and class of
23 agricultural commodity at the close of each business day.

24 (2) Every warehouseman purchasing any agricultural
25 commodity from a depositor thereof shall promptly make and

1 keep for 5 years a correct record showing in detail the
2 following information:

- 3 (a) the name and address of the depositor;
- 4 (b) the date purchased;
- 5 (c) the terms of the sale; and
- 6 (d) the quality and quantity purchased by the
7 warehouseman and, where applicable, the dockage, tare,
8 grade, size, and net weight.

9 NEW SECTION. Section 29. Schedule of charges --
10 posting. (1) Before a license to conduct a warehouse is
11 granted, the warehouseman shall file with the director a
12 copy of the schedule of charges for storage and other
13 services. The schedule must be posted in a conspicuous place
14 in his warehouse.

15 (2) All charges made by any warehouseman for the
16 handling and storage of agricultural commodities must be
17 just and reasonable. However, the director may, upon the
18 complaint of any person or upon his own motion, hold a
19 public hearing and may declare any existing charges for
20 handling or storage of any agricultural commodity to be
21 unreasonable or unjust. After the hearing, the director
22 shall determine and order what is a just and reasonable
23 charge to be imposed or enforced in place of that found to
24 be unreasonable or unjust.

25 (3) Failure to file and post scheduled charges for the

1 current year will keep in full force the most recently
2 posted and filed schedule rates.

- 3 (4) In all cases, the producers will receive the first
4 15 days of storage without charge.

5 NEW SECTION. Section 30. Required receipt of
6 agricultural commodities according to capacity. A
7 warehouseman shall receive for storage, conditioning,
8 handling, or shipment without discrimination of any kind, so
9 far as the capacity of his warehouse will permit, all
10 agricultural commodities tendered him in the usual course of
11 business in suitable condition for storage. However, a
12 warehouseman may not be compelled to accept and hold
13 agricultural commodities for storage in such quantities as
14 to block his regular cash agricultural commodity business. A
15 warehouseman may not be required to accept agricultural
16 commodities for storage in excess of working capacity.
17 However, his appointment of space may be modified by rule
18 upon proof that such appointment operates to the
19 disadvantage of either the public or the warehouseman.

20 NEW SECTION. Section 31. Discrimination in charge by
21 warehouseman prohibited. A warehouseman may not directly or
22 indirectly, by a special charge, rebate, drawback, or other
23 device, collect from any person a greater or lesser
24 compensation for any service rendered in the storage,
25 conditioning, handling, or shipment of agricultural

1 commodities than he collects from any other person for a
2 similar circumstance or condition. A warehouseman may not
3 make or give any advantage to any person, company, or
4 corporation or subject any person, company, or corporation
5 to any undue or unreasonable prejudice or disadvantage.

6 **NEW SECTION.** Section 32. Scale weight tickets -- form
7 -- issuance. (1) Scale weight tickets must be bound in books
8 of convenient size and must be numbered consecutively. The
9 original scale weight ticket must be delivered to the person
10 from whom the agricultural commodities are received. One
11 carbon copy of each scale weight ticket must remain as a
12 permanent record.

13 (2) A scale weight ticket must be issued for each load
14 of agricultural commodity received by the warehouseman.

15 (3) A scale weight ticket may not be issued or held in
16 lieu of a warehouse receipt. The retention of scale weight
17 tickets in lieu of warehouse receipts by the owner of the
18 grain is at the owner's risk.

19 (4) There must be plainly printed across the face of
20 such scale weight ticket issued by the warehouseman, in bold
21 type, the words "THIS IS NOT A WAREHOUSE RECEIPT. IT MUST BE
22 EXCHANGED FOR A WAREHOUSE RECEIPT IF GRAIN IS HELD IN
23 STORAGE".

24 (5) There must be plainly printed across the face of a
25 combination scale weight ticket and warehouse receipt issued

1 by the warehouseman, in bold type, the words "COMBINATION
2 SCALE WEIGHT TICKET AND WAREHOUSE RECEIPT".

3 (6) All scale weight tickets must be signed by the
4 warehouseman or his agent.

5 (7) When scale weight tickets are exchanged for
6 warehouse receipts, the scale weight tickets must be
7 surrendered to the warehouseman.

8 (8) All scale weight tickets must be converted into
9 cash or warehouse receipts on demand.

10 **NEW SECTION.** Section 33. Warehouse receipts --
11 written terms. (1) Warehouse receipts under this part must
12 contain in written terms:

13 (a) a statement that the warehouse is operated under a
14 license issued by the department;

15 (b) a statement showing whether it is an original,
16 duplicate, triplicate, or other copy;

17 (c) a statement showing the name of the warehouse;

18 (d) a statement showing the name of the city or town
19 where the warehouse is located;

20 (e) the date the warehouse receipt is issued;

21 (f) the number of the warehouse receipt. All receipts
22 must be numbered consecutively.

23 (g) a statement that the grain is "received in store"
24 from the person named;

25 (h) a statement of gross weight, dockage, and net

1 weight and the sample report used for grade and protein
2 analysis;

3 (i) a statement of encumbrances, such as cash or other
4 advances;

5 (j) a statement that, upon the return of the receipt
6 properly endorsed by the person to whom the order was issued
7 and the payment of the proper charges for storing and
8 handling, delivery will be made in accordance with [sections
9 22 through 46];

10 (k) a statement that the grain is properly insured for
11 the benefit of the owner; and

12 (l) the name of the manager or agent of the warehouse.

13 (2) The face of the warehouse receipt may also provide
14 for other statements, such as:

15 (a) the scale weight ticket numbers or the assembly
16 sheet number;

17 (b) the grade; and

18 (c) the protein certificate used.

19 (3) The back of the warehouse receipt may include
20 printed statements, such as:

21 (a) delivery provisions;

22 (b) actual-delivery-of-grain provisions;

23 (c) bailment provisions;

24 (d) act-of-God provisions;

25 (e) nonnegotiable provisions; and

1 (f) endorsements and other statements pertinent to
2 bookkeeping data whenever such statements do not conflict
3 with any state or federal law pertaining to public
4 warehousing or the grading or testing of grain.

5 (4) A copy of the warehouse receipt issued by the
6 warehouseman must accompany each application for a
7 warehouseman's license.

8 NEW SECTION. Section 34. Warehouse receipt --
9 issuance. (1) A warehouse receipt is a receipt issued by a
10 licensed warehouseman on a form containing all the
11 information required by [section 33].

12 (2) No warehouse receipt may be issued except for an
13 agricultural commodity actually delivered to a warehouse for
14 storage.

15 (3) All warehousemen are required to issue a warehouse
16 receipt for each lot of agricultural commodity received for
17 storage or make payment for the agricultural commodity.

18 (4) A warehouse receipt that does not in fact
19 represent an agricultural commodity actually delivered into
20 a warehouse for storage and the origin of which cannot be
21 traced to the actual delivery of the grain represented:

22 (a) is not legal and is of no value;

23 (b) has no claim on the agricultural commodity stored
24 in a warehouse; and

25 (c) has no claim on the warehouseman's bond.

(5) All agricultural commodities in a warehouse belong to the holder of outstanding warehouse receipts except those commodities that are in excess of the total of all outstanding storage obligations. An outstanding warehouse receipt is a warehouse receipt that has not been returned and paid in full on the basis of grade, quality, and quantity by the warehouseman issuing it.

(6) If for convenience the holder of two or more warehouse receipts covering like agricultural commodities wishes to combine them, the new receipt so issued must state the fact that it was issued in lieu of existing receipts. An assembly or recapitulation statement must be made whenever receipts are so combined, and the number or other identification of the statement must be referenced on the new combined receipt. The assembly sheet must be kept on file in the warehouse office. Each canceled receipt must have stamped across its face "Canceled by No. __" (showing the number of the new combination receipt).

(7) A warehouseman who is a grower and conducts such an enterprise may receive his own grain and issue warehouse receipts for agricultural commodities, in the same manner and without discrimination, as though the warehouse and growing enterprises were of separate ownership. However, the warehouseman shall report to the department all warehouse receipts issued to himself as a grower.

(8) When warehouse receipts are prepared on duplicate or triplicate forms, the original copy is the warehouse receipt and must be given to the person storing the agricultural commodity covered by such receipt. The other copies shall have plainly printed across the face the words "duplicate", "triplicate", or "nonnegotiable".

(9) Each warehouse receipt issued must show the amount of cash or value of any merchandise the warehouseman has advanced on the agricultural commodity represented by the receipt, but such notation may not be construed as fixing the date of sale of such grain.

(10) All warehouse receipts must be numbered consecutively as issued by each warehouseman.

NEW SECTION. Section 35. Penalty for unlawful issue of warehouse receipts. A person violating any of the provisions of [section 34] or a designated employee knowingly permitting any agricultural commodity to be delivered contrary to the provisions of [section 34] is guilty of a misdemeanor and punishable as provided in [section 20].

NEW SECTION. Section 36. Partial withdrawal of agricultural commodities -- adjustment or substitution of receipt -- duties of warehouseman. When partial withdrawal of his agricultural commodity is made by a depositor, the warehouseman shall make an appropriate notation thereof on

1 the depositor's warehouse receipt or claim or shall cancel
2 and replace it with a warehouse receipt showing the amount
3 of the depositor's agricultural commodity remaining in the
4 warehouse. The warehouseman is liable for the redelivery of
5 all agricultural commodities specified on all outstanding
6 warehouse receipts.

7 NEW SECTION. Section 37. Shipment of stored grain to
8 a terminal grain warehouse outside the state. (1) Warehouse
9 receipts or signed agreements from the owners of grain, on a
10 form approved by the department and in an amount equal to
11 the number of bushels the warehouseman has in a terminal
12 grain warehouse outside the state, are required for all
13 grain shipped out of state by a warehouseman.

14 (2) Warehouse receipts covering grain in terminal
15 grain warehouses outside the state must have the words
16 "Owner waives redelivery at point of origin of grain
17 represented by this receipt" printed or stamped on the back.

18 (3) Waiver or agreements to accept terminal warehouse
19 receipts must be signed in triplicate by the owner of the
20 grain or his agent and by a duly authorized representative
21 of the warehouse, with:

- 22 (a) the original to be mailed to the department;
- 23 (b) the duplicate copy to be retained by the
- 24 warehouseman; and
- 25 (c) the triplicate copy to be given to the holder of

1 the warehouse receipt.

2 (4) All grain must be held in bonded and approved
3 terminal warehouses, fully insured for the benefit of the
4 holder of Montana warehouse receipts.

5 (5) No grain held in terminal warehouses is subject to
6 any lien, mortgage, or encumbrance.

7 NEW SECTION. Section 38. Duty to deliver stored
8 agricultural commodities -- damages. (1) The duty of the
9 warehouseman to deliver agricultural commodities stored is
10 governed by [sections 22 through 46]. Upon the return of a
11 properly endorsed warehouse receipt to the warehouseman and
12 upon payment or tender of all advances and legal charges,
13 agricultural commodities of the grade and quantity named
14 therein must be delivered to the holder of the warehouse
15 receipt.

16 (2) A warehouseman's duty to deliver any agricultural
17 commodity is fulfilled if delivery is made pursuant to the
18 contract with the depositor as rapidly as it can be done by
19 ordinary diligence. When delivery is made within 48 hours
20 from date of demand or as agreed upon in writing by all
21 parties concerned, the delivery complies with the provisions
22 of this section. An extension of the delivery period may be
23 granted by the department upon written request.

24 (3) All redeliveries must be made at the warehouse or
25 station where the agricultural commodity was received unless

otherwise agreed.

(4) At the option of the depositor, the warehouseman shall deliver the agricultural commodity at a terminal or, if mutually agreed, shall pay to the depositor the equivalent market value of the agricultural commodity on that date, less any freight and storage charges to the terminal and less other charges which may be allowed by the department.

(5) In addition to other penalties provided, a warehouseman failing to deliver agricultural commodities within the time provided in this section is subject to suit by the person entitled to delivery of the agricultural commodities and may be ordered by a court of competent jurisdiction to pay actual damages or liquidated damages of 1/2 of 1% of the value for each day's delay.

NEW SECTION. Section 39. Delivery of grain from different warehouse. (1) Any warehouseman owning or operating more than one warehouse in this state may deliver grain from one warehouse in settlement of warehouse receipts issued for grain stored in another warehouse when grain for storage has been presented at any warehouse in excess of its available storage capacity.

(2) Nothing in subsection (1) confers upon the warehouseman a right to make delivery of grain of substantially lower value than that delivered for storage,

though of the same technical grade, in settlement of warehouse receipts.

(3) The warehouseman shall at all times keep on hand in bonded warehouses grain of sufficient quality and quantity to settle all outstanding warehouse receipts.

(4) Freight and other charges must be determined at the point of receipt.

NEW SECTION. Section 40. Loss of receipts -- conditions of reissue. While an original warehouse receipt is outstanding and uncanceled by the issuing warehouseman, no other or further receipt may be issued for the agricultural commodity or any part of it covered thereby. However, if a warehouse receipt is lost or destroyed, a new receipt may be issued upon giving satisfactory security in compliance with rules adopted by the department. The new receipt must contain the same terms and conditions and must bear on its face the number and date of the receipt in lieu of which it is issued.

NEW SECTION. Section 41. Cancellation of insurance -- suspension of license. Upon cancellation of any policy of insurance required by [sections 23 and 27], the insurance company involved shall give 30 days' advance notice to the department by certified mail, return receipt requested, of cancellation of the policy. If the policy is canceled, the department shall immediately suspend the license of such

uninsured warehouseman without a hearing, pursuant to the Montana Administrative Procedure Act. The suspension may not be removed until satisfactory evidence of the existence of an effective policy of insurance complying with the requirements of [sections 23 and 27] has been submitted to the department or until further order by the department or a court of competent jurisdiction.

NEW SECTION. Section 42. Date of termination of storage contracts evidenced by warehouse receipts. All storage contracts on grain in store in warehouses, as evidenced by a warehouse receipt, must terminate on the last day of the license period as prescribed by rule.

NEW SECTION. Section 43. Termination of storage contract -- sale of agricultural commodities for charges -- notice required. (1) Storage of agricultural commodities may be terminated by the depositor at any time by the payment or tender of all legal charges and the surrender of the warehouse receipt, together with a demand for delivery of the agricultural commodities or a notice to the warehouseman to sell the commodities.

(2) In the absence of a demand for delivery, order to sell, or mutual agreement for the renewal of the storage contract entered into prior to the expiration of the storage contract, the warehouseman shall, upon the expiration of the storage contract, sell so much of the stored agricultural

commodities at the local market price at the close of business on that day as is sufficient to pay the accrued storage charges. He shall then issue new warehouse receipts for the balance of the agricultural commodity to the depositor upon the depositor's surrender of the original warehouse receipts. The warehouseman shall notify all warehouse receipt holders of the provisions of this section 30 days prior to the end of the storage period.

NEW SECTION. Section 44. Examination of stored agricultural commodities. A department inspector may examine at any reasonable time during ordinary business hours any stored agricultural commodity and all parts of any warehouse, provided the warehouse or the agricultural commodities stored therein are not endangered by such inspections. Every warehouseman or his agent shall furnish safe and reasonable access to facilities for such examination.

NEW SECTION. Section 45. Warehouse shortage -- remedies. (1) Whenever it appears, after an investigation, that a warehouseman does not have in his possession sufficient agricultural commodities to cover the outstanding warehouse receipts, scale weight tickets, or other evidence of storage liability issued or assumed by him or when a warehouseman refuses to submit his books, papers, or property to lawful inspection, the department may give

notice to the warehouseman to comply with the following requirements:

(a) to cover such shortage;

(b) to give an additional bond as requested by the department; or

(c) to submit to such inspection as the department considers necessary.

(2) If the warehouseman fails to comply with the terms of such notice within 24 hours from the date of issuance of the notice or within such further time as the department may allow, the department may petition the district court in the county where the licensee's principal place of business is located, as shown by the license application, for an order:

(a) authorizing the department to seize and take possession of any or all agricultural commodities in the warehouse or warehouses owned, operated, or controlled by the warehouseman and of all books, papers, and property of all kinds used in connection with the conduct or the operation of the warehouse business and any materials that pertain in any way to that business; and

(b) enjoining the warehouseman from interfering with the department in the discharge of its duties as required by [sections 22 through 46].

(3) Upon taking possession, the department shall give written notice of its action to the surety on the bond of

the warehouseman and may notify the holders of record, as shown by the warehouseman's record, of all warehouse receipts or scale weight tickets issued for agricultural commodities to present their warehouse receipts or other evidence of deposits for inspection or to account for the same. The department may thereupon cause an audit to be made of the affairs of the warehouse, including but not limited to the agricultural commodities of which there is an apparent shortage, to determine the amount of shortage and, if possible, to compute the shortage as to each depositor as shown by the warehouseman's records. The department shall notify the warehouseman and the surety on his bond of the amount of the shortage and notify each affected depositor by sending notices to the depositor's last-known address as shown by the records of the warehouseman.

(4) The department shall retain possession of the agricultural commodities in the warehouse or warehouses and the books, papers, and property of the warehouseman until such time as:

(a) the warehouseman or the surety on the bond has satisfied the claims of all holders of warehouse receipts or other evidence of deposits;

(b) the surety on the bond has satisfied all such claims pro rata, if the shortage exceeds the amount of the bond; or

1 (c) the department is ordered by the court to
2 surrender possession.

3 (5) If during or after the audit provided for in this
4 section or at any other time the department has evidence
5 that the warehouseman is insolvent or is unable to satisfy
6 the claims of all holders of warehouse receipts or other
7 evidence of deposits, the department may petition the
8 district court for the appointment of the department to
9 operate or liquidate the business of the warehouse.

10 (6) At any time within 10 days after the department
11 takes possession of any agricultural commodities or the
12 books, papers, or property of any warehouse, the
13 warehouseman may serve notice on the department to appear in
14 the district court of the county in which the warehouse is
15 located, at a time to be fixed by the court, and show cause
16 why the agricultural commodities, books, papers, and other
17 property should not be restored to his possession.

18 (7) All necessary expenses incurred by the department
19 in carrying out the provisions of this section may be
20 recovered in a separate civil action brought by the
21 department in district court or recovered at the same time
22 and as part of the seizure action filed under subsection
23 (2)(a).

24 (8) As a part of the expenses so incurred, the
25 department is authorized to include the cost of adequate

1 liability insurance necessary to protect the department, its
2 officers, and others engaged in carrying out this section.

3 (9) The department shall set by rule the time limits
4 for:

5 (a) notification of its action on the surety bond of a
6 warehouseman;

7 (b) the holders of warehouse receipts or scale weight
8 tickets to provide to the department such evidence of
9 deposit; and

10 (c) satisfaction of the claims of all holders of
11 warehouse receipts or other evidence of deposits.

12 ~~NEW SECTION~~ Section 46. Inspection by the
13 department. (1) The department may investigate any
14 warehouseman who has applied for or who had previously been
15 issued a license and may inspect his warehouse for purposes
16 of determining compliance with [sections 22 through 45] and
17 rules of the department.

18 (2) The department may investigate any warehouseman or
19 inspect any warehouse that it has reasonable cause to
20 believe is operating in violation of [sections 22 through
21 46] and rules of the department.

22 ~~NEW SECTION~~ Section 47. Commodity dealer license
23 requirements -- financial responsibility. (1) A person may
24 not engage in the business of a commodity dealer in this
25 state without first having obtained a license issued by the

department.

(2) An application for a license to engage in business as a commodity dealer must be filed with the department and must be on a form prescribed by the department.

(3) A license application must include the following:

(a) the name of the applicant;

(b) the names of the officers and directors if the applicant is a corporation;

(c) the names of the partners if the applicant is a partnership;

(d) the location of the principal places of business;

(e) a sufficient and valid bond as specified in [section 50];

(f) the number and description of trucks or tractor-trailer units owned or leased by the applicant that will be used in the transportation of agricultural commodities purchased pursuant to the provisions of [sections 47 through 54];

(g) a complete financial statement prepared by a licensed accountant according to generally accepted accounting principles, setting forth the applicant's assets, liabilities, and net worth. The commodity dealer shall have and maintain current assets equal to or greater than current liabilities. Assets must be shown at original cost less depreciation. Upon written request filed with the

department, the director may allow asset valuations in accordance with a competent appraisal.

(h) any other reasonable information the department finds necessary to carry out the provisions and purpose of [sections 47 through 54].

(4) In order to receive and retain a commodity dealer's license, a commodity dealer shall have and maintain net assets of at least \$50,000 or maintain a bond in the amount of \$2,000 for each \$1,000 or fraction thereof of net assets deficiency. However, a minimum of \$10,000 net assets is required by a commodity dealer to qualify for a license. A bond submitted for purposes of this subsection is in addition to any bond otherwise required under [sections 47 through 50].

(5) The department shall adopt rules relating to the form and time of filing of financial statements. The department may require additional information or verification regarding the financial resources of the applicant and the applicant's ability to pay producers for agricultural commodities purchased from them.

NEW SECTION. Section 48. License fees. (1) The department shall collect an annual fee for each commodity dealer license according to the following schedule:

Hundredweight	Rate
(Previous_license_year_cwt	(per

<u>volume or estimated yearly cwt</u>	<u>facility</u>
0 to 25,000	\$ 25
25,001 to 50,000	50
50,001 to 125,000	75
125,001 to 250,000	100
250,001 to 375,000	125
over 375,000	150

(2) Each applicant shall also pay a fee of \$25 for each truck operated by it in the operation of his business as a commodity dealer.

(3) All fees collected under this section must be placed in the general fund.

NEW SECTION. Section 49. License issuance -- renewal -- expiration. (1) The department shall issue a license when the applicant has filed the application and complied with the terms and conditions of [sections 47 through 50] and the rules of the department.

(2) A commodity dealer's license may be renewed annually by submitting all required licensing documents.

(3) A commodity dealer's license that has expired may be reinstated by the department upon receipt of all licensing documents required and a penalty fee in the amount of \$50 if the document is filed within 30 days from the date of expiration of the commodity dealer's license. At no time during the 30-day period or thereafter may the person act as

a commodity dealer. All license applications received after the 30-day penalty period must be considered original applications.

(4) A commodity dealer's license is not transferable.

(5) Any partnership with a partner or any corporation that has an officer, director, or majority stockholder owning at least 10% of issued stock who has had a license revoked under [sections 47 through 50] or the United States Warehouse Act is subject to the provisions of [section 12].

NEW SECTION. Section 50. Bonding requirement amounts -- cancellation. (1) An applicant for a license to operate as a commodity dealer shall, before a license may be issued, file with the department a surety bond payable to the state. The aggregate annual liability of the surety may not exceed the sum of the bond. A continuous bond shall obligate a new penal sum with the commencement of each licensing year.

(2) Unless set by department rule, the bond for a commodity dealer may not exceed 2% of the value of the agricultural commodities purchased by the commodity dealer from the producer or warehouseman during the previous 12-month period. The bond for all new applicants is 2% of the estimated value of all agricultural commodities to be purchased during the coming 12-month period. The department may by rule require a greater percentage in each instance. The minimum amount of bond required by any commodity dealer

is \$20,000, and the maximum is prescribed in [section 5].

(3) A surety shall notify the commodity dealer and the department by certified mail at least 30 days prior to the cancellation of the bond. The liability of the surety covers purchases made by the commodity dealer during the time the bond is in force. A commodity dealer's bond filed with the department is continuous until canceled by the surety upon 30 days' notice.

NEW_SECTION. Section 51. Posting of license. The commodity dealer's license must be posted in a conspicuous location at his place of business. A duplicate commodity dealer's license must be posted at each location at which records are maintained for transactions of the commodity dealer and also within each truck operated by him in the state.

NEW_SECTION. Section 52. Inspection of premises, books, and records. The department may at any reasonable time inspect the premises and records of any commodity dealer used in the conduct of his business. A commodity dealer shall, upon request of the director, furnish to the department at any reasonable time and place all books, accounts, records, and papers relating to agricultural commodity transactions within the state. If there exists good cause to believe that a person is doing business as a commodity dealer without a license, the department may

inspect the books, papers, and records of the person that pertain to agricultural commodity purchases.

NEW_SECTION. Section 53. Insufficient checks -- prohibition. No person engaged in business as a commodity dealer may draw or deliver any check, draft, or order for payment of money upon any bank for the purchase of agricultural commodities when at the time of drawing or delivery the maker or drawer does not have sufficient funds or has failed to arrange for credit with the bank or depository for payment in full upon presentation of the check, draft, or order for payment of money. The word "credit" as used in this section means an arrangement or understanding with the bank or depository for payment of the check, draft, or order.

NEW_SECTION. Section 54. Payment of purchase price -- definitions. (1) A person required to be licensed as a commodity dealer shall pay 90% of the purchase price to the owner or his agent for agricultural commodities upon delivery and demand by the owner or agent and the remaining 10% not later than 30 days after delivery by the owner or agent unless otherwise agreed to in writing by the parties.

(2) As used in this section, the following definitions apply:

(a) "Delivery" means the transfer by the seller of title to and possession of agricultural commodities to the

1 commodity dealer or to another person in accordance with the
2 agreement between the seller and the commodity dealer.

3 (b) "Payment" means the actual payment or tender of
4 payment of the agreed purchase price by the commodity dealer
5 to the seller.

6 NEW_SECTION. Section 55. Official grain inspectors,
7 samplers, and weighers -- designation of seasonal inspection
8 points -- assignment of inspectors. (1) The department shall
9 provide inspectors, samplers, and weighers to enforce
10 [sections 55 through 71]. At all inspection points
11 designated by the department, the department shall provide
12 sufficient official grain inspectors, samplers, and weighers
13 to inspect and weigh all grain subject to state inspection.

14 (2) The department may, during the grain-marketing
15 season, appoint inspectors to visit the grain-growing
16 districts to investigate the grading, dockage, and weighing
17 of grain and to enforce the rules of the department.

18 (3) Expenditures for the inspection and weighing at
19 the points designated by the department may not exceed total
20 fee receipts at those points.

21 NEW_SECTION. Section 56. Qualifications of official
22 grain inspectors, samplers, and weighers. Official grain
23 inspectors, samplers, and weighers must be qualified in
24 accordance with the Grain Standards Act. Official grain
25 inspectors, samplers, and weighers may not be directly or

1 indirectly interested in the handling, sorting, shipping,
2 purchasing, or selling of grain or grain commodities.

3 NEW_SECTION. Section 57. Penalty for misconduct. (1)
4 Any official grain inspector, sampler, or weigher guilty of
5 neglect of duty or who knowingly or carelessly inspects,
6 samples, or weighs grain improperly or who directly or
7 indirectly accepts any money or other consideration for
8 neglect of duty or improper performance of duty is guilty of
9 official misconduct and is punishable as provided in
10 45-7-401.

11 (2) Any person who improperly influences or attempts
12 to improperly influence any official grain inspector,
13 sampler, or weigher in the performance of his duties is
14 guilty of bribery and is punishable as provided in 45-7-101.

15 (3) Upon conviction of an offense described in
16 subsection (1), an officer must be removed by the department
17 pursuant to procedures established by department rule.

18 NEW_SECTION. Section 58. Establishment of standard
19 grain grades. (1) The department shall by rule establish
20 standard grades to apply to all grain bought or handled by
21 warehouses in this state. The department shall adopt as
22 state grade standards all grades for grain established by
23 the United States department of agriculture.

24 (2) Grain standards adopted by the department do not
25 apply to grain contracted for before the effective date of

1 the adoption of such standards.

2 NEW SECTION. Section 59. Rules governing dockage --
3 sample inspection. The department shall adopt rules
4 governing the dockage on inferior grades, which shall apply
5 in all executory contracts entered into after their
6 adoption. If the price or amount to be paid depends on
7 terminal weight or grade, the rules shall control the
8 dockage insofar as dockage affects the price to be paid.
9 The department shall also provide for sample inspection of
10 grain, adopt rules governing sample inspection, and provide
11 that the sample inspection, when made, is final.

12 NEW SECTION. Section 60. Special inspection of grain.
13 (1) If grain is sold based on Montana grade and is to be
14 shipped from places not provided with state inspection, the
15 buyer, seller, or person making the delivery may have it
16 inspected by notifying an inspector, who shall have the
17 grain inspected. After inspection, the inspector shall
18 issue, on request of the buyer, seller, or person delivering
19 the grain, an inspector's certificate showing the grade of
20 the grain. The person calling for the inspection shall pay a
21 reasonable fee fixed by department rule.

22 (2) Grain that is shipped to points in this state
23 where no inspection is maintained may be inspected on
24 request of either the buyer or seller, and a certificate may
25 be issued showing the grade of the grain. The charge for the

1 service shall at least equal the entire cost of providing it
2 and shall be paid by the party calling for the inspection.

3 NEW SECTION. Section 61. Sampling grain. Samples may
4 be drawn from all grain shipped to warehouses and from all
5 grain inspected or weighed. The samples are the property of
6 the state, subject to disposition by the department under
7 rules adopted by the department.

8 NEW SECTION. Section 62. Examination of grain cars at
9 destination. (1) An official grain inspector, sampler, or
10 weigher, before opening the doors of a car containing grain
11 upon its arrival at any of the places designated by the
12 department for inspection, shall first ascertain the
13 condition of the car and determine whether any leakages have
14 occurred while the car was in transit, determine whether the
15 doors were properly secured and sealed at the point of
16 shipment, and make a record of those facts in all cases,
17 giving seal numbers.

18 (2) After examinations have been made, the official
19 grain inspector, sampler, or weigher shall securely close
20 and reseal the opened doors, using the special seal of the
21 department.

22 (3) A record must be kept by the official grain
23 inspectors, samplers, or weighers of all original seals
24 broken, the number of seals, and the date when broken. An
25 official grain inspector, sampler, or weigher shall break

the seal, weigh, and superintend the loading of all cars of grain subject to inspection. Any other person who breaks the seal or officially weighs the cars of grain is guilty of a misdemeanor.

NEW SECTION. Section 63. Protein testing laboratory.

(1) The department shall maintain an official protein testing laboratory so designated by the Grain Standards Act.

(2) No other laboratory may officially certify the grade or protein content of grain unless the laboratory is licensed by the department under rules adopted by the department.

(3) The department shall by rule determine the standards of analysis controlling all other official protein testing laboratories in this state.

(4) The department may by rule determine the form of protein certificates issued by it.

NEW SECTION. Section 64. Protein test available on all grain delivered to grain warehouses -- manner of making test -- procedure -- fee -- penalty. (1) Each warehouseman shall take samples from each load of grain delivered to his warehouse and preserve the sample in a moistureproof container with the owner's name on it. A 1-pint portion of the composite sample may be submitted to the department, and the balance must be held in the owner's container.

(2) If either the warehouseman or owner is

dissatisfied with the results of the protein tests, he may appeal to the department. In case of an appeal, a 1-pint portion of the remainder of the owner's sample must be submitted to the department with a statement of facts of the appeal. A final test, in duplicate, must be made by the department. The department's certificate of the test is final and binding upon both parties in establishing the basis of the price paid by the warehouseman.

(3) A fee established by the department commensurate with the cost of each protein test must be deducted and paid at the time of final settlement.

(4) Upon written request of the owner, an official protein test must be made.

(5) Each warehouseman shall post in a conspicuous place a placard indicating that producers may request, in writing, an official grade and protein certificate. The department shall issue the placard.

(6) A person violating this section is guilty of a misdemeanor.

NEW SECTION. Section 65. Fees for inspection, testing, and weighing grain -- disposition -- investment.

(1) The department shall by rule fix the fees for inspection, testing, and weighing of grain.

(2) Those fees or proceeds are a lien upon the grain until paid.

1 (3) All fees and other charges fixed by rule,
2 including fees for the inspection, grading, weighing, and
3 protein testing of grain, shall reflect as nearly as
4 possible the actual cost of the services.

5 (4) All those fees and charges must be paid to the
6 department and deposited with the state treasurer. The state
7 treasurer shall place all money in the earmarked revenue
8 fund. Fees deposited in the earmarked revenue fund may be
9 used to pay approved claims for expenses incurred in
10 inspecting, grading, weighing, and protein testing of grain.

11 (5) The department may direct the board of investments
12 to invest funds from the earmarked revenue fund pursuant to
13 the provisions of the unified investment program for state
14 funds. The income from such investments must be credited to
15 the proper department account in the earmarked revenue fund.

16 ~~NEW SECTION.~~ Section 66. Records of inspection. (1)
17 The official grain inspectors, samplers, and weighers have
18 exclusive control at places provided for state inspection of
19 the weighing and grading of grain to be inspected. Suitable
20 books and records must be kept in which must be entered an
21 accurate record of every carload or truckload of grain
22 inspected or weighed by them. The records must show for each
23 car or truck:

24 (a) the number or other designation of the car or
25 truck;

1 (b) the net weight of the grain;

2 (c) the kind of grain and its grade and, if graded
3 below standard No. 1 grade, the reason for such grade.

4 (2) For each carload or truckload of grain, the
5 official grain inspector shall give a certificate of
6 inspection, showing the kind and grade of the grain, the
7 reason for all grades below No. 1, and the amount to be
8 allowed for dockage, if any. For each carload or truckload
9 weighed, the weigher shall give a weight certificate showing
10 the true weight thereof and containing a statement on the
11 condition of the car or truck and evidences of leakage or
12 damage, if any.

13 (3) The inspection and weight certificates must be
14 made available to the warehouse loading or unloading the
15 grain, the shipper or his agent, and the railroad company or
16 other carrier by which the grain was shipped or carried.

17 (4) Official grain inspectors and weighers shall also
18 keep an accurate record of all appeals and decisions and a
19 complete record of every official act, which books and
20 records must be open to inspection by any party of interest.

21 ~~NEW SECTION.~~ Section 67. Appeals to department --
22 hearing and order. (1) If an owner, consignee, shipper of
23 grain, or warehouseman disagrees with the grade given by the
24 department, he may appeal to the department from the
25 decision within 5 days from the date of certificate by

1 giving notice of appeal. A fee must be charged if the appeal
 2 supports the original grade. The notice of appeal may be
 3 given by letter stating that the party appeals from the
 4 decision of the official grain inspector and specifying the
 5 initials and numbers of the cars in which the grain was
 6 contained when inspected and graded.

7 (2) The appellant shall also file with the department
 8 a list containing the name and address of each party
 9 interested in the subject matter. The department, upon
 10 receiving the notice and list of interested parties, shall
 11 immediately notify the interested parties of the time and
 12 place designated by it for a hearing under the Montana
 13 Administrative Procedure Act. At the hearing, which must be
 14 5 days from the date of receiving the notice, the department
 15 shall inquire into the reasonableness and correctness of the
 16 original grading. After the hearing, the department shall
 17 affirm or modify the grade as justified by the facts and
 18 evidence.

19 **NEW SECTION.** Section 68. Coloration of grain treated
 20 with injurious or toxic substances. Any grain treated with
 21 any injurious or toxic substance or chemical must at the
 22 same time be colored or dyed a color contrasting with the
 23 natural color of the grain so that the treated grain is
 24 readily identifiable as having been treated with an
 25 injurious or toxic substance or chemical.

1 **NEW SECTION.** Section 69. Sale or offering for sale of
 2 treated product prohibited. No person may sell or offer for
 3 sale grain that has been treated with any injurious or toxic
 4 substance or chemical unless the grain has been colored or
 5 dyed a color contrasting with the natural color of the
 6 grain. [Section 68] and this section do not apply to the
 7 treatment of grain solely for the killing of insects which
 8 might be present therein. A person violating this section is
 9 guilty of a misdemeanor.

10 **NEW SECTION.** Section 70. Copies of grades and rules
 11 to be furnished and displayed by warehousemen. (1) The
 12 department shall, immediately after the adoption of rules
 13 establishing grades fixing dockage, supply all warehousemen
 14 with a copy of the grades and rules. A warehouseman shall
 15 keep a copy on file in a convenient place in each warehouse.
 16 If an office is maintained in connection with the warehouse,
 17 a copy of the grades and rules shall be kept on file in the
 18 office. A placard notice must be posted in a conspicuous
 19 place in every warehouse and office, reading "A copy of
 20 Montana grades and rules is on file here for information of
 21 interested parties".

22 (2) A warehouseman shall exhibit a copy of the grades
 23 and rules to any interested party at any warehouse or office
 24 and permit the interested party to examine the copy.

25 **NEW SECTION.** Section 71. Dispute as to grade or

1 dockage -- laboratory test to be made. If a disagreement
 2 arises between the party receiving and the party delivering
 3 the grain at any warehouse in this state as to the proper
 4 grade or dockage of grain in accordance with standards at
 5 terminal points, an agreed average sample of at least 1
 6 quart of the grain in dispute may be taken by the interested
 7 parties and forwarded to the department in a suitable
 8 container, marked for identification by the interested
 9 parties, mail or express charges prepaid, with the names and
 10 addresses of the parties affixed thereto. The department
 11 shall examine the grain and determine the appropriate grade
 12 and dockage under the inspection rules. The findings of the
 13 inspection are binding upon both parties, subject to appeal
 14 as provided in [section 67]. If the grain in question is
 15 damp, musty, or otherwise out of condition, this fact, with
 16 any other necessary information, must accompany the sample.

17 Section 72. Section 80-5-201, MCA, is amended to read:
 18 "80-5-201. Definitions. When used in this part, the
 19 following definitions apply:

20 (1) "Agricultural seed" means the seeds of grass,
 21 forage, cereal, and fiber crops and any other kinds of seeds
 22 commonly recognized within this state as agricultural seeds
 23 and includes lawn seeds and mixtures of seeds.

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

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

7 (4) "Person" means any individual, firm, partnership,
 8 corporation, or association.

9 ~~(5) "Public agricultural seed warehouse" means any~~
 10 ~~warehouse or structure in which agricultural seed is~~
 11 ~~received from the public for storage, assembly, or~~
 12 ~~cleaning.~~

13 ~~(6) "Screening" means chaff, sterile florets,~~
 14 ~~immature seed, weed seed, inert matter, and any other~~
 15 ~~materials removed from seed by any kind of cleaning or~~
 16 ~~processing.~~

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

23 ~~(8) "Seed dealer" means any person who offers for~~
 24 ~~sale, sells, or barter agricultural seeds to the ultimate~~
 25 ~~consumer.~~

1 ~~(1)~~ "Seed labeler" means any person affixing labels
2 to agricultural seeds with his name and address listed as
3 required in 80-5-102 when such seed is distributed in
4 Montana.

5 ~~(2)~~ "Seed processing plant" means any place of
6 business that repackages, cleans, blends, treats, or
7 otherwise manipulates agricultural seeds.

8 ~~(3) "Seed warehouseman" means any person owning,~~
9 ~~controlling, or operating a public agricultural seed~~
10 ~~warehouse."~~

11 Section 73. Section 80-5-202, MCA, is amended to read:

12 "80-5-202. Licensing -- issuance -- application -- fee
13 -- bonding -- insurance. (1) All seed processing plants, and
14 seed labelers, ~~seed buyers, and public agricultural seed~~
15 ~~warehouses~~ shall obtain a license from the department before
16 doing business in this state; however, a Montana certified
17 seed grower, when processing or labeling certified seed from
18 his own production, is not required to be licensed under
19 this section. Bin-run seed sales from one farmer to another
20 are exempt from this part.

21 (2) All licenses are issued on a fiscal-year basis and
22 expire on June 30 of each year. ~~A license may cover any or~~
23 ~~as many as all four activities: processing plants, seed~~
24 ~~labelers, seed buyers, and public agricultural seed warehouses.~~

25 (3) Application for license is made in a manner and on

1 forms provided by the department. A nonresident shall file a
2 written power of attorney designating the secretary of state
3 as his agent, and the power of attorney shall be so prepared
4 and in such form as to render effective the jurisdiction of
5 the courts of the state of Montana over the nonresident
6 applicant. A nonresident who has a duly appointed resident
7 agent upon whom process may be served as provided by law is
8 not required to designate the secretary of state as his
9 agent. The department shall be furnished with a certified
10 copy of the designation of the secretary of state or of a
11 resident agent.

12 (4) The department may establish by rule minimum
13 standards for equipment and handling procedures for
14 facilities to be licensed and may carry out inspections
15 during normal business hours to determine that these
16 standards are being adhered to.

17 (5) Each license shall cost no more than \$50 a year.
18 The department may by rule establish license fees which bear
19 a reasonable relationship to the cost of administering this
20 part.

21 (6) Failure on the part of a licensee to comply with
22 the rules issued under the authority of this section is
23 sufficient cause for cancellation of a license by the
24 department, provided the licensee is given a reasonable
25 opportunity to correct inadvertent and nonrecurring

1 deficiencies.
2 ~~{7}--the--department--may--by--rule--establish--bonding--and~~
3 ~~insurance--requirements--for--each--class--of--licensee"~~

4 Section 74. Section 80-5-203, MCA, is amended to read:
5 "80-5-203. Dealer's license -- exception -- fee --
6 application -- violation. (1) No person may distribute seed
7 without obtaining a dealer's license from the department for
8 each place of business. No license is required of a person
9 who distributes seeds only in sealed packages of less than
10 10 pounds, packed by a licensed seed labeler and bearing his
11 name and address. Each dealer's license shall cost no more
12 than \$20 a year and expires on June 30 of each year. The
13 department may by rule establish license fees which bear a
14 reasonable relationship to the cost of administering this
15 part. Any licensed processing plant, or seed labeler, or seed
16 buyer, or public agricultural seed warehouse may obtain a
17 dealer's license without additional fee.

18 (2) Application for a dealer's license shall be made
19 in a manner and on forms provided by the department. Such
20 forms shall require among other things the name of a person
21 domiciled in this state authorized to receive and accept
22 service or legal notices of all kinds.

23 (3) Violation of provisions of this section or the
24 distribution of agricultural seeds not legally labeled
25 constitutes adequate grounds for canceling a license or

1 denying a license to a dealer."

2 NEW SECTION. Section 75. Repealer. Sections 80-3-501
3 through 80-3-513, 80-4-101 through 80-4-106, 80-4-111
4 through 80-4-126, 80-4-201 through 80-4-209, 80-4-221
5 through 80-4-234, and 80-4-311 through 80-4-313, MCA, are
6 repealed.

7 NEW SECTION. Section 76. Severability. If a part of
8 this act is invalid, all valid parts that are severable from
9 the invalid part remain in effect. If a part of this act is
10 invalid in one or more of its applications, the part remains
11 in effect in all valid applications that are severable from
12 the invalid applications.

13 NEW SECTION. Section 77. Effective date. This act is
14 effective July 1, 1983.

-End-

STATE OF MONTANA

REQUEST NO. 362-83

FISCAL NOTE

Form BD-15

In compliance with a written request received February 9, , 19 83 , there is hereby submitted a Fiscal Note for House Bill 673 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA).

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 673 revises statutes relating to warehousing and dealing in agricultural commodities and amends various sections of MCA.

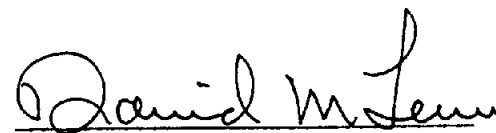
ASSUMPTIONS:

- 1) Assume warehouseman license fee be increased based on number of warehouses owned according to graduated schedules of cwt. capacity of each facility.
- 2) Assume average of two new elevators annually generate revenue of \$50 each.
- 3) Assume amendments of license at \$25 be virtually impossible to estimate.
- 4) Assume increase fees be deposited to general fund.
- 5) Assume consolidation of elevators effect revenue in FY 85.
- 6) Assume expenses associated with the act include personnel and operational costs. These costs are to be considered by House Appropriations.
- 7) Assume fees for inspection, testing and weighing grain to continue funding operations of grain services (earmarked fund).
- 8) Assume effective date of act is July 1, 1983.

FISCAL IMPACT:

	<u>FY84</u>	<u>FY85</u>
Revenue:		
Under Current Law	\$17,534	\$17,534
Under Proposed Law	<u>47,466</u>	<u>42,466</u>
Increased Revenue	<u>\$29,932</u>	<u>\$24,932</u>

FISCAL NOTE 13:1/1



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-14-83

Approved by Committee
on Agriculture Livestock
& Irrigation

1 ~~House~~ BILL NO. 673
2 INTRODUCED BY Juan Manuel
3 BY REQUEST OF THE DEPARTMENT OF AGRICULTURE
4
5 A BILL FOR AN ACT ENTITLED: "THE AGRICULTURAL WAREHOUSE,
6 COMMODITY DEALER, AND GRAIN STANDARDS ACT; GENERALLY
7 REVISING THE STATUTES RELATING TO THE WAREHOUSING OF AND
8 DEALING IN AGRICULTURAL COMMODITIES; AMENDING SECTIONS
9 80-5-201 THROUGH 80-5-203, MCA; REPEALING SECTIONS 80-3-501
10 THROUGH 80-3-513, 80-4-101 THROUGH 80-4-106, 80-4-111
11 THROUGH 80-4-126, 80-4-201 THROUGH 80-4-209, 80-4-221
12 THROUGH 80-4-234, AND 80-4-311 THROUGH 80-4-313, MCA; AND
13 PROVIDING AN EFFECTIVE DATE."
14
15 WHEREAS, the existing statutes regulating certain
16 aspects of the agricultural industry have become antiquated,
17 as well as being contradictory and illogical in their
18 organization.
19 THEREFORE, it is necessary to extensively revise those
20 statutes and adopt them as new sections.
21
22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
23 ~~NEW SECTION.~~ Section 1. Short title. [Sections 1
24 through 71] may be cited as the "Agricultural Warehouse,
25 Commodity Dealer, and Grain Standards Act".

1 ~~NEW SECTION.~~ Section 2. Definitions. As used in
2 [sections 1 through 71], the following definitions apply:
3 (1) "Agent" means any person who contracts for or
4 solicits any agricultural commodities from a producer or
5 warehouseman or negotiates the consignment or purchase of
6 any agricultural commodity on behalf of any commodity
7 dealer.
8 (2) "Agricultural commodity" means any grain, beans,
9 safflower, sunflower seeds, tame mustards, rapeseed,
10 flaxseed, leguminous seed, or other small seed, and other
11 agricultural commodities designated by rule of the
12 department.
13 (3) "Commodity dealer" means any person who engages in
14 a business involving or, as part of his business,
15 participates in buying, exchanging, negotiating, or
16 soliciting the sale, resale, exchange, or transfer of any
17 agricultural commodity in the state of Montana. The term
18 does not include:
19 (a) a person engaged solely in storing, shipping, or
20 handling agricultural commodities for hire;
21 (b) a person who buys or handles less than \$10,000
22 worth of agricultural commodities in a licensing year;
23 (c) a person who is the producer of agricultural
24 commodities that he actually plants, nurtures, and harvests;
25 or

(d) a person whose trading in agricultural commodities is limited to trading in commodity futures on a recognized futures exchange.

(4) "Credit sale contract" means a contract for the sale of an agricultural commodity when the sale price is to be paid at a date after delivery of the agricultural commodity to the buyer and includes but is not limited to those contracts commonly referred to as deferred payment contracts, deferred pricing contracts, or price-later contracts.

(5) "Department" means the department of agriculture provided for in 2-15-3001.

(6) "Depositor" means any person who deposits an agricultural commodity in a warehouse for storage, processing, handling, or shipment or who is the owner or legal holder of an outstanding warehouse receipt or who is lawfully entitled to possession of the agricultural commodity.

(7) "Director" means the director of the department of agriculture.

(8) "Grain" means all grains for which standards have been established under the United States Grain Standards Act (7 U.S.C. sections 71 through 87) and all other agricultural commodities, such as mustard, oil seed crops, or other crops which may be designated by rule of the department.

(9) "Grain Standards Act" means the United States Grain Standards Act (7 U.S.C. sections 71 through 87) as that act reads on [the effective date of this act].

(10) "Inspector" means any person so designated by the director to assist in the administration of [sections 1 through 54]. The term includes warehouse auditors or examiners.

(11) "Official grain inspectors" means any official personnel who perform or supervise the performance of official inspection services and certify the results thereof, including the grade of the grain.

(12) "Official grain samplers" or "samplers" means any official personnel who perform or supervise the performance of official sampling services and certify the results thereof.

(13) "Official grain standards" means the standards of quality and condition of grain that establish the grades defined by the Grain Standards Act.

(14) "Official grain weighers" means any official personnel who perform or supervise the performance of class X or class Y weighing services and certify the results thereof, including the weight of the grain.

(15) "Person" means any individual, firm, association, corporation, partnership, or any other form of business enterprise.

(16) "Producer" means the owner, tenant, or operator of land in this state who has an interest in and receives all or part of the proceeds from the sale of agricultural commodities produced on that land.

(17) "Public warehouse" or "warehouse" means any elevator, mill, warehouse, subterminal grain warehouse, public warehouse, or other structure or facility in which, for compensation, agricultural commodities are received for storage, handling, processing, or shipment. The term includes facilities which commingle commodities belonging to different lots of agricultural commodities.

(18) "Receipt" means a warehouse receipt.

(19) "Scale weight ticket" means a load slip or other evidence of delivery, other than a receipt, given to a depositor by a warehouseman licensed under the provisions of [sections 22 through 46] upon initial delivery of the agricultural commodity to the warehouse.

(20) "Station" means a warehouse located more than 3 miles from the central office of the warehouse.

(21) "Subterminal warehouse" means any warehouse at which an intermediate function is performed in which agricultural commodities are customarily received from dealers or producers and where the commodities are accumulated prior to shipment.

(22) "Terminal grain warehouse" means any warehouse

authorized by a grain exchange to receive or disburse grain on consignment as presented by the rules and regulations of a grain exchange.

(23) "Warehouseman" means a person operating or controlling a public warehouse.

(24) "Warehouse receipt" means every receipt, whether negotiable or nonnegotiable, issued under [sections 22 through 46] by a warehouseman, except scale weight tickets.

NEW SECTION. Section 3. Rules -- adoption. The department shall adopt such rules as it determines necessary for the efficient execution of the provisions of [sections 1 through 71].

NEW SECTION. Section 4. Terms of licenses -- renewals. Each license issued or renewed under [sections 22 through 54] shall be issued for a period to be prescribed by rule of the department.

NEW SECTION. Section 5. Maximum bond amount. The maximum amount of any public warehouseman bond may not exceed \$1 million and the maximum amount of a commodity dealer bond may not exceed \$1 million, except:

(1) any bonds compensating for net asset deficiencies prescribed in [sections 22 through 54] must be added to the maximum bond amount; and

(2) the maximum bond amount must be adjusted each year based upon the percentage increase or decrease in the annual

1 average index of prices received by Montana farmers for food
2 and feed grains as computed by the Montana crop and
3 livestock reporting service.

4 **NEW_SECTION.** Section 6. Appointment by nonresident
5 licensee of agent to receive process. A nonresident applying
6 for a license under this chapter shall file a written power
7 of attorney, designating the secretary of state as his agent
8 upon whom service of process may be had if legal action is
9 brought against the nonresident. A nonresident who has a
10 duly appointed resident agent upon whom legal process may be
11 served as provided by law is not required to designate the
12 secretary of state as his agent for service of process. The
13 department must be furnished a copy of the designation of
14 the resident agent, which copy shall be certified by the
15 secretary of state.

16 **NEW_SECTION.** Section 7. Reports to the department.
17 Each person licensed under [sections 22 through 54] shall
18 report to the department at intervals set by rule of the
19 department on forms prepared by it. The reports must show
20 the total weight of each kind of agricultural commodity
21 received and shipped, the amount of outstanding warehouse
22 receipts on that date, and a statement of the amount of
23 agricultural commodities on hand to cover the outstanding
24 warehouse receipts. The department may also, by rule,
25 require special reports at any time.

1 **NEW_SECTION.** Section 8. Examination of books. The
2 department is authorized, through its officials, employees,
3 or designated agents, to examine or copy all books, records,
4 papers, and accounts of persons licensed under [sections 22
5 through 54].

6 **NEW_SECTION.** Section 9. Confidentiality of records.
7 All financial statements of warehousemen and commodity
8 dealers required under the provisions of [sections 22
9 through 54] shall be kept confidential by the department and
10 are not subject to disclosure except:

- 11 (1) upon written permission of the licensee;
- 12 (2) in actions or administrative proceedings commenced
13 under the provisions of [sections 1 through 54];
- 14 (3) when required by subpoena or court order;
- 15 (4) when disclosed to law enforcement agencies in
16 connection with the investigation or prosecution of criminal
17 offenses; or
- 18 (5) when released to a bonding company approved by the
19 department.

20 **NEW_SECTION.** Section 10. Publication of reports. The
21 department may publish the results of any investigation
22 made. It may publish the names and addresses of persons
23 licensed under [sections 22 through 54], and it may also
24 publish a list of all licenses terminated under [sections 22
25 through 54] and the causes therefor.

1 NEW SECTION. Section 11. Employment of assistants.
 2 The department is authorized to employ qualified persons not
 3 regularly in the service of the state for temporary
 4 assistance in carrying out the provisions of [sections 1
 5 through 71].

6 NEW SECTION. Section 12. License suspension and
 7 revocation -- renewal. (1) The department may revoke,
 8 suspend, or modify a license when it has reasonable cause to
 9 believe that the licensee has committed any of the following
 10 acts, each of which is a violation of [sections 22 through
 11 54]:

12 (a) failure to maintain all initial licensing
 13 requirements, including insurance, bonding, and net asset
 14 requirements. In determining compliance with net asset
 15 requirements, the department may consider the licensee's
 16 status under any prior or current bankruptcy proceedings, as
 17 well as any outstanding civil settlements or judgments.

18 (b) aiding or abetting another person in the violation
 19 of the licensure or any other provisions of [sections 22
 20 through 54];

21 (c) conviction of any criminal offense defined under
 22 Title 45;

23 (d) failure or refusal to allow inspection or maintain
 24 and provide records, reports, and other information required
 25 by the department;

1 (e) failure or refusal to post storage and other
 2 charges as filed with the department;

3 (f) failure or refusal to accept agricultural
 4 commodities for storage as required under [section 31];

5 (g) failure to comply with the warehouse receipt and
 6 scale weight ticket requirements of [sections 32 and 34];

7 (h) failure of a warehouseman to maintain and deliver
 8 upon request sufficient agricultural commodities to cover
 9 outstanding warehouse receipts as required under [section
 10 38];

11 (i) discrimination in charges by a warehouseman as
 12 provided in [section 31];

13 (j) failure to provide payment for any agricultural
 14 commodity; or

15 (k) violation of or failure or refusal to comply with
 16 any other provision of [sections 1 through 54] or rule
 17 adopted by the department.

18 (2) The department may refuse to issue or renew a
 19 license if the applicant or licensee:

20 (a) has a license as a warehouseman or commodity
 21 dealer that was previously or is currently suspended or
 22 revoked. In determining the sufficiency of cause hereunder,
 23 the department shall consider the nature and length of the
 24 action and any subsequent licensure or other evidence of
 25 rehabilitation.

(b) does not satisfy the bonding, insurance, or net asset requirements as specified in subsection (1)(a) or any other provisions required as a condition to licensing;

(c) has been convicted of a criminal offense and the denial or refusal is made after considering Title 37, chapter 1, part 2.

(3) The issuance of a license based on information provided by the applicant which the department subsequently determines incorrect must be considered void, and any conduct under that license is a violation.

(4) All proceedings brought under subsections (1) and (2) must be conducted under the provisions of the Montana Administrative Procedure Act.

(5) The department is authorized to issue summary revocations, suspensions, or denials without hearing pursuant to the procedures established in 2-4-631.

NEW_SECTION. Section 13. Credit sale contracts. (1) A commodity dealer who purchases agricultural commodities by credit sale contract shall maintain books, records, and other documents as required by the department to establish compliance with the provisions of this section.

(2) In addition to other required information, a credit sale contract must contain or provide for all of the followings:

(a) the seller's name and address;

(b) the conditions of delivery;

(c) the amount and kind of agricultural commodities delivered;

(d) the price per unit or basis of value; and

(e) the date payment is to be made.

(3) Title to all agricultural commodities sold by credit sale contract is in the purchaser as of the time the contract is executed unless the contract provides otherwise. The contract must be signed by both parties and executed in duplicate. One copy shall be retained by the commodity dealer, and one copy shall be delivered to the seller. Upon revocation, suspension, or termination of a warehouseman's license, the department may advance the payment date for all credit sale contracts to a date not later than 30 days following the effective date of the revocation, suspension, or termination. When not otherwise provided, the purchase price for all agricultural commodities shall be determined as of the effective date of revocation, suspension, or termination in accordance with all other provisions of the contract. However, if the business of the commodity dealer is sold to another licensed commodity dealer, credit sale contracts may be assigned to the purchasing commodity dealer.

NEW_SECTION. Section 14. Delivery of agricultural commodities containing toxic chemicals to warehouse or to

1 commodity dealer unlawful. It is unlawful for any person to
 2 deliver to any warehouse or commodity dealer an agricultural
 3 commodity in bulk if the commodity contains toxic chemicals
 4 if the person knew or upon the exercise of reasonable
 5 diligence should have known of the presence of the toxic
 6 chemicals in the commodity.

7 NEW SECTION. Section 15. Director's authority --
 8 investigative hearing. The director may upon his own motion,
 9 whenever he has reason to believe a violation has occurred
 10 or upon verified complaint of any person in writing,
 11 investigate the actions of any person and, if he finds
 12 probable cause, shall notify the person that he must appear
 13 for an investigative hearing before the director 20 days
 14 from receipt of written notice.

15 NEW SECTION. Section 16. Action on bond by persons
 16 injured. (1) A person injured by the breach of an obligation
 17 for which a bond is given to the department may take action
 18 against the bond in his own name to recover damages caused
 19 by the breach. The director shall then make demand upon the
 20 warehouseman or the commodity dealer and his surety for
 21 payment of damages. If the damages are not promptly paid,
 22 the director shall commence an action on the bond to enforce
 23 payment of damages.

24 (2) Liability of the surety upon the bond is limited
 25 to the amount of the bond. However, if two or more persons

1 are injured by breach of the obligation for which the bond
 2 is given and the damages for violating the conditions of the
 3 bond exceed the specified amount of the bond, the recovery
 4 on the bond shall be prorated by the surety among all of
 5 those injured.

6 NEW SECTION. Section 17. Duty to prosecute. A county
 7 attorney who has appropriate jurisdiction and to whom any
 8 violation is reported shall cause appropriate proceedings to
 9 be instituted and prosecute without delay in a court of
 10 competent jurisdiction.

11 NEW SECTION. Section 18. Injunction. If a person
 12 without a license is found to have engaged in any business
 13 for which a license is required under [sections 22 through
 14 54], the court shall enjoin him from further business until
 15 he has been duly licensed. It is not necessary that the
 16 department show that an individual has been injured by the
 17 actions complained of in order to issue the injunction. The
 18 procedure for injunctive relief is the same as any other
 19 action for an injunction under Title 27. The injunction
 20 provided by this section is an additional remedy to the
 21 criminal penalty provided for in [section 20].

22 NEW SECTION. Section 19. Penalty for operating
 23 without a license -- misrepresentation. (1) A person acting
 24 as a warehouseman or a commodity dealer without a license or
 25 in any way representing by action or words that he is a

1 warehouseman or a commodity dealer and is not so licensed
2 violates the provisions of [sections 22 through 54], is
3 guilty of a felony, and is punishable by imprisonment for
4 not more than 10 years or by a fine of not more than
5 \$10,000, or both.

6 (2) A person who issues or aids in the issuance of a
7 fraudulent receipt for any commodity is guilty of a felony
8 and is punishable by imprisonment for not more than 10 years
9 or by a fine of not more than \$10,000, or both.

10 (3) A person who knowingly submits false information
11 to or who knowingly withholds information from the
12 department when that information is required to be submitted
13 is guilty of a felony.

14 NEW SECTION. Section 20. Penalty. (1) Except as
15 otherwise provided, any person who violates any provision of
16 [sections 1 through 54] or rules promulgated thereunder or
17 who impedes, obstructs, hinders, or otherwise prevents or
18 attempts to prevent the director or his duly authorized
19 representative in the performance of his duty under
20 [sections 1 through 54] is guilty of a misdemeanor and is
21 punishable by imprisonment in a county jail not to exceed 6
22 months or by a fine of not more than \$1,000, or both.

23 (2) A person who refuses to permit inspection of
24 licensed premises, books, accounts, records, or other
25 documents required by [sections 1 through 71] or who uses a

1 scale weight ticket or credit sale contract that fails to
2 satisfy the requirements of [sections 1 through 71] is
3 guilty of a misdemeanor.

4 NEW SECTION. Section 21. Director's enforcement
5 action. Nothing in [sections 1 through 71] may be construed
6 to require the director or his authorized representative to
7 report for prosecution or for the institution of civil
8 action a violation if he believes that the public interest
9 will best be served by a suitable warning.

10 NEW SECTION. Section 22. License necessary to operate
11 public warehouse. (1) No person may act as a warehouseman
12 without first having obtained an annual license from the
13 department. This requirement does not apply to operators of
14 warehouses that are federally licensed under the "United
15 States Warehouse Act".

16 (2) If a warehouseman operates two or more warehouses
17 in the same city or immediately adjacent thereto or in the
18 same immediate area, in conjunction with each other and with
19 the same work force, and where one set of books and records
20 are kept for all such warehouses and cash slips, scale
21 weight tickets, warehouse receipts, and checks of one series
22 are used for agricultural commodities stored therein, only
23 one warehouseman's license is required for the operation of
24 all such warehouses.

25 NEW SECTION. Section 23. Licenses to warehouseman --

1 issuance -- renewal -- conditions precedent. (1) The
2 department is authorized to issue or renew, upon
3 application, a license to any warehouseman for the conduct
4 of a warehouse or warehouses in accordance with [sections 22
5 through 54], provided the following conditions are met:

6 (a) Each applicant shall file and maintain
7 satisfactory evidence of an effective policy of insurance
8 issued by an insurance company authorized to do business in
9 this state, insuring all agricultural commodities that are
10 stored in the warehouse, including agricultural commodities
11 owned by the warehouseman. The insurance shall insure the
12 commodities for the full market value at the time of loss of
13 such commodities against loss by fire, internal explosion,
14 lightning, or tornado.

15 (b) Each warehouse must be found suitable for the
16 proper storage of the particular agricultural commodity
17 stored therein.

18 (c) A license fee must be submitted to the department
19 as prescribed by [section 24].

20 (d) A current drawing of the warehouse, showing
21 storage facilities and capacity of the warehouse, must be
22 submitted to the department.

23 (e) A sufficient and valid bond must be filed and
24 maintained as required by [sections 25 and 26].

25 (f) The applicant has submitted to the department a

1 current financial statement prepared by a licensed
2 accountant according to generally accepted accounting
3 principles, showing that the applicant has and does maintain
4 current assets equal to or greater than current liabilities.

5 (g) The applicant must submit a sample warehouse
6 receipt and subsequent revisions to the department for
7 approval and filing.

8 (h) The applicant must have complied with the terms of
9 [sections 22 through 46] and the rules prescribed
10 thereunder.

11 (2) All documents required for renewal of a license
12 must be received by the department prior to the expiration
13 date of the warehouse license. An expired warehouse license
14 may be reinstated by the department upon receipt of all
15 required licensing documents and a penalty fee of \$50 if the
16 documents are filed within 30 days from the date of
17 expiration of the warehouse license. All license
18 applications received after the 30-day penalty period must
19 be considered original applications and an initial license
20 fee must be assessed according to [section 24].

21 NEW SECTION. Section 24. Fees of department. (1) The
22 department shall collect an annual warehouseman license fee,
23 based on the number of warehouses owned by the warehouseman,
24 according to the following schedule:

25 For each warehouse listed in the application:

Capacity in Hundredweight	Rate
0 to 25,000	\$ 25
25,001 to 50,000	50
50,001 to 125,000	75
125,001 to 250,000	100
250,001 to 375,000	125
over 375,000	150

(2) The department shall collect a fee of \$50 for each initial licensing inspection of a warehouse or station.

(3) The department shall collect a fee of \$25 for each amendment of a license.

(4) The department shall collect a fee of \$150 a day or fraction thereof for maintaining an employee of the department at a warehouse to supervise the correction of a deficiency.

(5) All fees must be deposited into the state treasury and credited to the general fund account.

NEW SECTION. Section 25. Bond of applicant for license -- additional bond -- additional obligations. (1) Each applicant for a warehouseman's license shall file a bond with the department. The bond must be in such form and must contain such terms and conditions as the department may prescribe by rule to carry out the purpose of [sections 25 and 26].

(2) The department may demand an additional bond if

the nature or volume of the business conducted by the warehouseman warrants an increase.

(3) The warehouseman may give a single bond to cover all warehouses operated by him.

(4) Any changes in the capacity of a warehouse or installation of any new warehouse involving a change in the bond liability under [section 26] must be reported in writing to the director, and an appropriate bond must be filed prior to the operation thereof.

NEW SECTION. Section 26. Amount of bond -- cancellation. (1) The amount of the bond to be furnished for each warehouse must be fixed at a rate of 20 cents per hundredweight for the first 500,000 hundredweight of licensed capacity; 15 cents per hundredweight for the next 500,000 hundredweight of licensed capacity; and 10 cents per hundredweight for all licensed capacity over 1 million hundredweight. The amount of the bond may not be less than \$20,000 or more than the maximum prescribed in [section 5]. The licensed capacity is the maximum number of hundredweight of agricultural commodities that the warehouse can accommodate.

(2) If a warehouseman is also operating as a commodity dealer, he shall also provide a bond as prescribed in [section 50].

(3) If there occurs a deficiency in net assets as

1 required under [section 27], there shall be added to the
2 amount of bond determined in accordance with subsection (1)
3 an amount equal to that deficiency.

4 (4) Each warehouseman bond shall run continuously with
5 the warehouseman license until canceled by the bonding
6 company. The aggregate annual liability of the surety may in
7 no event exceed the sum of the bond. A continuous bond shall
8 obligate a new penal sum with the commencement of each
9 licensing year.

10 (5) A 30-day written notice must be given to the
11 department by the bonding company before any bond is
12 canceled.

13 NEW SECTION. Section 27. Net asset requirements. (1)
14 Each licensee or applicant for a license shall maintain,
15 above all exemptions and liabilities, total net assets
16 liable for the payment of any indebtedness arising from the
17 conduct of the warehouse or warehouses of at least 40 cents
18 per hundredweight of all agricultural commodities that his
19 warehouse or warehouses can accommodate.

20 (2) No person may be licensed as a warehouseman unless
21 he has and maintains allowable net assets of at least
22 \$10,000.

23 (3) In determining total net assets, credit may be
24 given for insurable property, such as buildings, machinery,
25 equipment, and merchandise inventory, only to the extent

1 that such property is protected by insurance against loss or
2 damage by fire. The insurance must be in the form of lawful
3 policies issued by one or more insurance companies
4 authorized to do business and subject to service of process
5 in suits brought in this state.

6 (4) If a warehouseman is licensed or applies for
7 licenses to operate two or more warehouses, the maximum
8 number of hundredweight which all such warehouses will
9 accommodate must be considered in determining whether the
10 warehouseman meets the net asset requirements specified in
11 this section.

12 NEW SECTION. Section 28. Duties of warehouseman --
13 content of records. (1) Each warehouseman shall maintain in
14 a safe place current and complete records at all times with
15 respect to all agricultural commodities stored, conditioned,
16 handled, or shipped by him, including agricultural
17 commodities owned by him. Such records must include but are
18 not limited to a daily position record, showing the total
19 quantity of each kind and class of agricultural commodity
20 received and loaded out and the amount remaining in storage
21 at the close of each business day and the warehouseman's
22 total storage obligations for each kind and class of
23 agricultural commodity at the close of each business day.

24 (2) Every warehouseman purchasing any agricultural
25 commodity from a depositor thereof shall promptly make and

1 keep for 5 years a correct record showing in detail the
2 following information:

- 3 (a) the name and address of the depositor;
- 4 (b) the date purchased;
- 5 (c) the terms of the sale; and
- 6 (d) the quality and quantity purchased by the
7 warehouseman and, where applicable, the dockage, tare,
8 grade, size, and net weight.

9 NEW SECTION. Section 29. Schedule of charges --
10 posting. (1) Before a license to conduct a warehouse is
11 granted, the warehouseman shall file with the director a
12 copy of the schedule of charges for storage and other
13 services. The schedule must be posted in a conspicuous place
14 in his warehouse.

15 (2) All charges made by any warehouseman for the
16 handling and storage of agricultural commodities must be
17 just and reasonable. However, the director may, upon the
18 complaint of any person or upon his own motion, hold a
19 public hearing and may declare any existing charges for
20 handling or storage of any agricultural commodity to be
21 unreasonable or unjust. After the hearing, the director
22 shall determine and order what is a just and reasonable
23 charge to be imposed or enforced in place of that found to
24 be unreasonable or unjust.

25 (3) Failure to file and post scheduled charges for the

1 current year will keep in full force the most recently
2 posted and filed schedule rates.

3 (4) In all cases, the producers will receive the first
4 15 days of storage without charge.

5 NEW SECTION. Section 30. Required receipt of
6 agricultural commodities according to capacity. A
7 warehouseman shall receive for storage, conditioning,
8 handling, or shipment without discrimination of any kind, so
9 far as the capacity of his warehouse will permit, all
10 agricultural commodities tendered him in the usual course of
11 business in suitable condition for storage. However, a
12 warehouseman may not be compelled to accept and hold
13 agricultural commodities for storage in such quantities as
14 to block his regular cash agricultural commodity business. A
15 warehouseman may not be required to accept agricultural
16 commodities for storage in excess of working capacity.
17 However, his appointment of space may be modified by rule
18 upon proof that such appointment operates to the
19 disadvantage of either the public or the warehouseman.

20 NEW SECTION. Section 31. Discrimination in charge by
21 warehouseman prohibited. A warehouseman may not directly or
22 indirectly, by a special charge, rebate, drawback, or other
23 device, collect from any person a greater or lesser
24 compensation for any service rendered in the storage,
25 conditioning, handling, or shipment of agricultural

1 commodities than he collects from any other person for a
2 similar circumstance or condition. A warehouseman may not
3 make or give any advantage to any person, company, or
4 corporation or subject any person, company, or corporation
5 to any undue or unreasonable prejudice or disadvantage.

6 **NEW SECTION.** Section 32. Scale weight tickets -- form
7 -- issuance. (1) Scale weight tickets must be bound in books
8 of convenient size and must be numbered consecutively. The
9 original scale weight ticket must be delivered to the person
10 from whom the agricultural commodities are received. One
11 carbon copy of each scale weight ticket must remain as a
12 permanent record.

13 (2) A scale weight ticket must be issued for each load
14 of agricultural commodity received by the warehouseman.

15 (3) A scale weight ticket may not be issued or held in
16 lieu of a warehouse receipt. The retention of scale weight
17 tickets in lieu of warehouse receipts by the owner of the
18 grain is at the owner's risk.

19 (4) There must be plainly printed across the face of
20 such scale weight ticket issued by the warehouseman, in bold
21 type, the words "THIS IS NOT A WAREHOUSE RECEIPT. IT MUST BE
22 EXCHANGED FOR A WAREHOUSE RECEIPT IF GRAIN IS HELD IN
23 STORAGE".

24 (5) There must be plainly printed across the face of a
25 combination scale weight ticket and warehouse receipt issued

1 by the warehouseman, in bold type, the words "COMBINATION
2 SCALE WEIGHT TICKET AND WAREHOUSE RECEIPT".

3 (6) All scale weight tickets must be signed by the
4 warehouseman or his agent.

5 (7) When scale weight tickets are exchanged for
6 warehouse receipts, the scale weight tickets must be
7 surrendered to the warehouseman.

8 (8) All scale weight tickets must be converted into
9 cash or warehouse receipts on demand.

10 **NEW SECTION.** Section 33. Warehouse receipts --
11 written terms. (1) Warehouse receipts under this part must
12 contain in written terms:

13 (a) a statement that the warehouse is operated under a
14 license issued by the department;

15 (b) a statement showing whether it is an original,
16 duplicate, triplicate, or other copy;

17 (c) a statement showing the name of the warehouse;

18 (d) a statement showing the name of the city or town
19 where the warehouse is located;

20 (e) the date the warehouse receipt is issued;

21 (f) the number of the warehouse receipt. All receipts
22 must be numbered consecutively.

23 (g) a statement that the grain is "received in store"
24 from the person named;

25 (h) a statement of gross weight, dockage, and net

1 weight and the sample report used for grade and protein
2 analysis;

3 (i) a statement of encumbrances, such as cash or other
4 advances;

5 (j) a statement that, upon the return of the receipt
6 properly endorsed by the person to whom the order was issued
7 and the payment of the proper charges for storing and
8 handling, delivery will be made in accordance with [sections
9 22 through 46];

10 (k) a statement that the grain is properly insured for
11 the benefit of the owner; and

12 (1) the name of the manager or agent of the warehouse.

13 (2) The face of the warehouse receipt may also provide
14 for other statements, such as:

15 (a) the scale weight ticket numbers or the assembly
16 sheet number;

17 (b) the grade; and

18 (c) the protein certificate used.

19 (3) The back of the warehouse receipt may include
20 printed statements, such as:

21 (a) delivery provisions;

22 (b) actual-delivery-of-grain provisions;

23 (c) bailment provisions;

24 (d) act-of-God provisions;

25 (e) nonnegotiable provisions; and

1 (f) endorsements and other statements pertinent to
2 bookkeeping data whenever such statements do not conflict
3 with any state or federal law pertaining to public
4 warehousing or the grading or testing of grain.

5 (4) A copy of the warehouse receipt issued by the
6 warehouseman must accompany each application for a
7 warehouseman's license.

8 ~~NEW SECTION.~~ Section 34. Warehouse receipt --
9 issuance. (1) A warehouse receipt is a receipt issued by a
10 licensed warehouseman on a form containing all the
11 information required by [section 33].

12 (2) No warehouse receipt may be issued except for an
13 agricultural commodity actually delivered to a warehouse for
14 storage.

15 (3) All warehousemen are required to issue a warehouse
16 receipt for each lot of agricultural commodity received for
17 storage or make payment for the agricultural commodity.

18 (4) A warehouse receipt that does not in fact
19 represent an agricultural commodity actually delivered into
20 a warehouse for storage and the origin of which cannot be
21 traced to the actual delivery of the grain represented:

22 (a) is not legal and is of no value;

23 (b) has no claim on the agricultural commodity stored
24 in a warehouse; and

25 (c) has no claim on the warehouseman's bond.

1 (5) All agricultural commodities in a warehouse belong
2 to the holder of outstanding warehouse receipts except those
3 commodities that are in excess of the total of all
4 outstanding storage obligations. An outstanding warehouse
5 receipt is a warehouse receipt that has not been returned
6 and paid in full on the basis of grade, quality, and
7 quantity by the warehouseman issuing it.

8 (6) If for convenience the holder of two or more
9 warehouse receipts covering like agricultural commodities
10 wishes to combine them, the new receipt so issued must state
11 the fact that it was issued in lieu of existing receipts. An
12 assembly or recapitulation statement must be made whenever
13 receipts are so combined, and the number or other
14 identification of the statement must be referenced on the
15 new combined receipt. The assembly sheet must be kept on
16 file in the warehouse office. Each canceled receipt must
17 have stamped across its face "Canceled by No. __" (showing
18 the number of the new combination receipt).

19 (7) A warehouseman who is a grower and conducts such
20 an enterprise may receive his own grain and issue warehouse
21 receipts for agricultural commodities, in the same manner
22 and without discrimination, as though the warehouse and
23 growing enterprises were of separate ownership. However, the
24 warehouseman shall report to the department all warehouse
25 receipts issued to himself as a grower.

1 (8) When warehouse receipts are prepared on duplicate
2 or triplicate forms, the original copy is the warehouse
3 receipt and must be given to the person storing the
4 agricultural commodity covered by such receipt. The other
5 copies shall have plainly printed across the face the words
6 "duplicate", "triplicate", or "nonnegotiable".

7 (9) Each warehouse receipt issued must show the amount
8 of cash or value of any merchandise the warehouseman has
9 advanced on the agricultural commodity represented by the
10 receipt, but such notation may not be construed as fixing
11 the date of sale of such grain.

12 (10) All warehouse receipts must be numbered
13 consecutively as issued by each warehouseman.

14 NEW SECTION. Section 35. Penalty for unlawful issue
15 of warehouse receipts. A person violating any of the
16 provisions of [section 34] or a designated employee
17 knowingly permitting any agricultural commodity to be
18 delivered contrary to the provisions of [section 34] is
19 guilty of a misdemeanor and punishable as provided in
20 [section 20].

21 NEW SECTION. Section 36. Partial withdrawal of
22 agricultural commodities -- adjustment or substitution of
23 receipt -- duties of warehouseman. When partial withdrawal
24 of his agricultural commodity is made by a depositor, the
25 warehouseman shall make an appropriate notation thereof on

1 the depositor's warehouse receipt or claim or shall cancel
2 and replace it with a warehouse receipt showing the amount
3 of the depositor's agricultural commodity remaining in the
4 warehouse. The warehouseman is liable for the redelivery of
5 all agricultural commodities specified on all outstanding
6 warehouse receipts.

7 **NEW SECTION.** Section 37. Shipment of stored grain to
8 a terminal grain warehouse outside the state. (1) Warehouse
9 receipts or signed agreements from the owners of grain, on a
10 form approved by the department and in an amount equal to
11 the number of bushels the warehouseman has in a terminal
12 grain warehouse outside the state, are required for all
13 grain shipped out of state by a warehouseman.

14 (2) Warehouse receipts covering grain in terminal
15 grain warehouses outside the state must have the words
16 "Owner waives redelivery at point of origin of grain
17 represented by this receipt" printed or stamped on the back.

18 (3) Waiver or agreements to accept terminal warehouse
19 receipts must be signed in triplicate by the owner of the
20 grain or his agent and by a duly authorized representative
21 of the warehouse, with:

- 22 (a) the original to be mailed to the department;
- 23 (b) the duplicate copy to be retained by the
24 warehouseman; and
- 25 (c) the triplicate copy to be given to the holder of

1 the warehouse receipt.

2 (4) All grain must be held in bonded and approved
3 terminal warehouses, fully insured for the benefit of the
4 holder of Montana warehouse receipts.

5 (5) No grain held in terminal warehouses is subject to
6 any lien, mortgage, or encumbrance.

7 **NEW SECTION.** Section 38. Duty to deliver stored
8 agricultural commodities -- damages. (1) The duty of the
9 warehouseman to deliver agricultural commodities stored is
10 governed by [sections 22 through 46]. Upon the return of a
11 properly endorsed warehouse receipt to the warehouseman and
12 upon payment or tender of all advances and legal charges,
13 agricultural commodities of the grade and quantity named
14 therein must be delivered to the holder of the warehouse
15 receipt.

16 (2) A warehouseman's duty to deliver any agricultural
17 commodity is fulfilled if delivery is made pursuant to the
18 contract with the depositor as rapidly as it can be done by
19 ordinary diligence. When delivery is made within 48 hours
20 from date of demand or as agreed upon in writing by all
21 parties concerned, the delivery complies with the provisions
22 of this section. An extension of the delivery period may be
23 granted by the department upon written request.

24 (3) All redeliveries must be made at the warehouse or
25 station where the agricultural commodity was received unless

1 otherwise agreed.

2 (4) At the option of the depositor, the warehouseman
3 shall deliver the agricultural commodity at a terminal or,
4 if mutually agreed, shall pay to the depositor the
5 equivalent market value of the agricultural commodity on
6 that date, less any freight and storage charges to the
7 terminal and less other charges which may be allowed by the
8 department.

9 (5) In addition to other penalties provided, a
10 warehouseman failing to deliver agricultural commodities
11 within the time provided in this section is subject to suit
12 by the person entitled to delivery of the agricultural
13 commodities and may be ordered by a court of competent
14 jurisdiction to pay actual damages or liquidated damages of
15 1/2 of 1% of the value for each day's delay.

16 ~~NEW SECTION.~~ Section 39. Delivery of grain from
17 different warehouse. (1) Any warehouseman owning or
18 operating more than one warehouse in this state may deliver
19 grain from one warehouse in settlement of warehouse receipts
20 issued for grain stored in another warehouse when grain for
21 storage has been presented at any warehouse in excess of its
22 available storage capacity.

23 (2) Nothing in subsection (1) confers upon the
24 warehouseman a right to make delivery of grain of
25 substantially lower value than that delivered for storage,

1 though of the same technical grade, in settlement of
2 warehouse receipts.

3 (3) The warehouseman shall at all times keep on hand
4 in bonded warehouses grain of sufficient quality and
5 quantity to settle all outstanding warehouse receipts.

6 (4) Freight and other charges must be determined at
7 the point of receipt.

8 ~~NEW SECTION.~~ Section 40. Loss of receipts --
9 conditions of reissue. While an original warehouse receipt
10 is outstanding and uncanceled by the issuing warehouseman,
11 no other or further receipt may be issued for the
12 agricultural commodity or any part of it covered thereby.
13 However, if a warehouse receipt is lost or destroyed, a new
14 receipt may be issued upon giving satisfactory security in
15 compliance with rules adopted by the department. The new
16 receipt must contain the same terms and conditions and must
17 bear on its face the number and date of the receipt in lieu
18 of which it is issued.

19 ~~NEW SECTION.~~ Section 41. Cancellation of insurance --
20 suspension of license. Upon cancellation of any policy of
21 insurance required by [sections 23 and 27], the insurance
22 company involved shall give 30 days' advance notice to the
23 department by certified mail, return receipt requested, of
24 cancellation of the policy. If the policy is canceled, the
25 department shall immediately suspend the license of such

uninsured warehouseman without a hearing, pursuant to the Montana Administrative Procedure Act. The suspension may not be removed until satisfactory evidence of the existence of an effective policy of insurance complying with the requirements of [sections 23 and 27] has been submitted to the department or until further order by the department or a court of competent jurisdiction.

NEW_SECTION. Section 42. Date of termination of storage contracts evidenced by warehouse receipts. All storage contracts on grain in store in warehouses, as evidenced by a warehouse receipt, must terminate on the last day of the license period as prescribed by rule.

NEW_SECTION. Section 43. Termination of storage contract -- sale of agricultural commodities for charges -- notice required. (1) Storage of agricultural commodities may be terminated by the depositor at any time by the payment or tender of all legal charges and the surrender of the warehouse receipt, together with a demand for delivery of the agricultural commodities or a notice to the warehouseman to sell the commodities.

(2) In the absence of a demand for delivery, order to sell, or mutual agreement for the renewal of the storage contract entered into prior to the expiration of the storage contract, the warehouseman shall, upon the expiration of the storage contract, sell so much of the stored agricultural

commodities at the local market price at the close of business on that day as is sufficient to pay the accrued storage charges. He shall then issue new warehouse receipts for the balance of the agricultural commodity to the depositor upon the depositor's surrender of the original warehouse receipts. The warehouseman shall notify all warehouse receipt holders of the provisions of this section 30 days prior to the end of the storage period.

NEW_SECTION. Section 44. Examination of stored agricultural commodities. A department inspector may examine at any reasonable time during ordinary business hours any stored agricultural commodity and all parts of any warehouse, provided the warehouse or the agricultural commodities stored therein are not endangered by such inspections. Every warehouseman or his agent shall furnish safe and reasonable access to facilities for such examination.

NEW_SECTION. Section 45. Warehouse shortage -- remedies. (1) Whenever it appears, after an investigation, that a warehouseman does not have in his possession sufficient agricultural commodities to cover the outstanding warehouse receipts, scale weight tickets, or other evidence of storage liability issued or assumed by him or when a warehouseman refuses to submit his books, papers, or property to lawful inspection, the department may give

1 notice to the warehouseman to comply with the following
2 requirements:

- 3 (a) to cover such shortage;
4 (b) to give an additional bond as requested by the
5 department; or
6 (c) to submit to such inspection as the department
7 considers necessary.

8 (2) If the warehouseman fails to comply with the terms
9 of such notice within 24 hours from the date of issuance of
10 the notice or within such further time as the department may
11 allow, the department may petition the district court in the
12 county where the licensee's principal place of business is
13 located, as shown by the license application, for an order:

14 (a) authorizing the department to seize and take
15 possession of any or all agricultural commodities in the
16 warehouse or warehouses owned, operated, or controlled by
17 the warehouseman and of all books, papers, and property of
18 all kinds used in connection with the conduct or the
19 operation of the warehouse business and any materials that
20 pertain in any way to that business; and

21 (b) enjoining the warehouseman from interfering with
22 the department in the discharge of its duties as required by
23 [sections 22 through 46].

24 (3) Upon taking possession, the department shall give
25 written notice of its action to the surety on the bond of

1 the warehouseman and may notify the holders of record, as
2 shown by the warehouseman's record, of all warehouse
3 receipts or scale weight tickets issued for agricultural
4 commodities to present their warehouse receipts or other
5 evidence of deposits for inspection or to account for the
6 same. The department may thereupon cause an audit to be made
7 of the affairs of the warehouse, including but not limited
8 to the agricultural commodities of which there is an
9 apparent shortage, to determine the amount of shortage and,
10 if possible, to compute the shortage as to each depositor as
11 shown by the warehouseman's records. The department shall
12 notify the warehouseman and the surety on his bond of the
13 amount of the shortage and notify each affected depositor by
14 sending notices to the depositor's last-known address as
15 shown by the records of the warehouseman.

16 (4) The department shall retain possession of the
17 agricultural commodities in the warehouse or warehouses and
18 the books, papers, and property of the warehouseman until
19 such time as:

20 (a) the warehouseman or the surety on the bond has
21 satisfied the claims of all holders of warehouse receipts or
22 other evidence of deposits;

23 (b) the surety on the bond has satisfied all such
24 claims pro rata, if the shortage exceeds the amount of the
25 bond; or

1 (c) the department is ordered by the court to
2 surrender possession.

3 (5) If during or after the audit provided for in this
4 section or at any other time the department has evidence
5 that the warehouseman is insolvent or is unable to satisfy
6 the claims of all holders of warehouse receipts or other
7 evidence of deposits, the department may petition the
8 district court for the appointment of the department to
9 operate or liquidate the business of the warehouse.

10 (6) At any time within 10 days after the department
11 takes possession of any agricultural commodities or the
12 books, papers, or property of any warehouse, the
13 warehouseman may serve notice on the department to appear in
14 the district court of the county in which the warehouse is
15 located, at a time to be fixed by the court, and show cause
16 why the agricultural commodities, books, papers, and other
17 property should not be restored to his possession.

18 (7) All necessary expenses incurred by the department
19 in carrying out the provisions of this section may be
20 recovered in a separate civil action brought by the
21 department in district court or recovered at the same time
22 and as part of the seizure action filed under subsection
23 (2)(a).

24 (8) As a part of the expenses so incurred, the
25 department is authorized to include the cost of adequate

1 liability insurance necessary to protect the department, its
2 officers, and others engaged in carrying out this section.

3 (9) The department shall set by rule the time limits
4 for:

5 (a) notification of its action on the surety bond of a
6 warehouseman;

7 (b) the holders of warehouse receipts or scale weight
8 tickets to provide to the department such evidence of
9 deposit; and

10 (c) satisfaction of the claims of all holders of
11 warehouse receipts or other evidence of deposits.

12 NEW SECTION. Section 46. Inspection by the
13 department. (1) The department may investigate any
14 warehouseman who has applied for or who had previously been
15 issued a license and may inspect his warehouse for purposes
16 of determining compliance with [sections 22 through 45] and
17 rules of the department.

18 (2) The department may investigate any warehouseman or
19 inspect any warehouse that it has reasonable cause to
20 believe is operating in violation of [sections 22 through
21 46] and rules of the department.

22 NEW SECTION. Section 47. Commodity dealer license
23 requirements -- financial responsibility. (1) A person may
24 not engage in the business of a commodity dealer in this
25 state without first having obtained a license issued by the

1 department.

2 (2) An application for a license to engage in business
3 as a commodity dealer must be filed with the department and
4 must be on a form prescribed by the department.

5 (3) A license application must include the following:

6 (a) the name of the applicant;

7 (b) the names of the officers and directors if the
8 applicant is a corporation;

9 (c) the names of the partners if the applicant is a
10 partnership;

11 (d) the location of the principal places of business;

12 (e) a sufficient and valid bond as specified in
13 [section 50];

14 (f) the number and description of trucks or
15 tractor-trailer units owned or leased by the applicant that
16 will be used in the transportation of agricultural
17 commodities purchased pursuant to the provisions of
18 [sections 47 through 54];

19 (g) a complete financial statement prepared by a
20 licensed accountant according to generally accepted
21 accounting principles, setting forth the applicant's assets,
22 liabilities, and net worth. The commodity dealer shall have
23 and maintain current assets equal to or greater than current
24 liabilities. Assets must be shown at original cost less
25 depreciation. Upon written request filed with the

1 department, the director may allow asset valuations in
2 accordance with a competent appraisal.

3 (h) any other reasonable information the department
4 finds necessary to carry out the provisions and purpose of
5 [sections 47 through 54].

6 (4) In order to receive and retain a commodity
7 dealer's license, a commodity dealer shall have and maintain
8 net assets of at least \$50,000 or maintain a bond in the
9 amount of \$2,000 for each \$1,000 or fraction thereof of net
10 assets deficiency. However, a minimum of \$10,000 net assets
11 is required by a commodity dealer to qualify for a license.
12 A bond submitted for purposes of this subsection is in
13 addition to any bond otherwise required under [sections 47
14 through 50].

15 (5) The department shall adopt rules relating to the
16 form and time of filing of financial statements. The
17 department may require additional information or
18 verification regarding the financial resources of the
19 applicant and the applicant's ability to pay producers for
20 agricultural commodities purchased from them.

21 NEW SECTION. Section 48. License fees. (1) The
22 department shall collect an annual fee for each commodity
23 dealer license according to the following schedule:

24	Hundredweight	Rate
25	(Previous license year cwt	per

1	volume or estimated yearly cwt	facility
2	0 to 25,000	\$ 25
3	25,001 to 50,000	50
4	50,001 to 125,000	75
5	125,001 to 250,000	100
6	250,001 to 375,000	125
7	over 375,000	150

8 (2) Each applicant shall also pay a fee of \$25 for
9 each truck operated by it in the operation of his business
10 as a commodity dealer.

11 (3) All fees collected under this section must be
12 placed in the general fund.

13 NEW SECTION. Section 49. License issuance -- renewal
14 -- expiration. (1) The department shall issue a license when
15 the applicant has filed the application and complied with
16 the terms and conditions of [sections 47 through 50] and the
17 rules of the department.

18 (2) A commodity dealer's license may be renewed
19 annually by submitting all required licensing documents.

20 (3) A commodity dealer's license that has expired may
21 be reinstated by the department upon receipt of all
22 licensing documents required and a penalty fee in the amount
23 of \$50 if the document is filed within 30 days from the date
24 of expiration of the commodity dealer's license. At no time
25 during the 30-day period or thereafter may the person act as

1 a commodity dealer. All license applications received after
2 the 30-day penalty period must be considered original
3 applications.

4 (+) A commodity dealer's license is not transferable.

5 (5) Any partnership with a partner or any corporation
6 that has an officer, director, or majority stockholder
7 owning at least 10% of issued stock who has had a license
8 revoked under [sections 47 through 50] or the United States
9 Warehouse Act is subject to the provisions of [section 12].

10 NEW SECTION. Section 50. Bonding requirement amounts
11 -- cancellation. (1) An applicant for a license to operate
12 as a commodity dealer shall, before a license may be issued,
13 file with the department a surety bond payable to the state.
14 The aggregate annual liability of the surety may not exceed
15 the sum of the bond. A continuous bond shall obligate a new
16 penal sum with the commencement of each licensing year.

17 (2) Unless set by department rule, the bond for a
18 commodity dealer may not exceed 2% of the value of the
19 agricultural commodities purchased by the commodity dealer
20 from the producer or warehouseman during the previous
21 12-month period. The bond for all new applicants is 2% of
22 the estimated value of all agricultural commodities to be
23 purchased during the coming 12-month period. The department
24 may by rule require a greater percentage in each instance.
25 The minimum amount of bond required by any commodity dealer

1 is \$20,000, and the maximum is prescribed in [section 5].

2 (3) A surety shall notify the commodity dealer and the
3 department by certified mail at least 30 days prior to the
4 cancellation of the bond. The liability of the surety covers
5 purchases made by the commodity dealer during the time the
6 bond is in force. A commodity dealer's bond filed with the
7 department is continuous until canceled by the surety upon
8 30 days' notice.

9 NEW_SECTION. Section 51. Posting of license. The
10 commodity dealer's license must be posted in a conspicuous
11 location at his place of business. A duplicate commodity
12 dealer's license must be posted at each location at which
13 records are maintained for transactions of the commodity
14 dealer and also within each truck operated by him in the
15 state.

16 NEW_SECTION. Section 52. Inspection of premises,
17 books, and records. The department may at any reasonable
18 time inspect the premises and records of any commodity
19 dealer used in the conduct of his business. A commodity
20 dealer shall, upon request of the director, furnish to the
21 department at any reasonable time and place all books,
22 accounts, records, and papers relating to agricultural
23 commodity transactions within the state. If there exists
24 good cause to believe that a person is doing business as a
25 commodity dealer without a license, the department may

1 inspect the books, papers, and records of the person that
2 pertain to agricultural commodity purchases.

3 NEW_SECTION. Section 53. Insufficient checks --
4 prohibition. No person engaged in business as a commodity
5 dealer may draw or deliver any check, draft, or order for
6 payment of money upon any bank for the purchase of
7 agricultural commodities when at the time of drawing or
8 delivery the maker or drawer does not have sufficient funds
9 or has failed to arrange for credit with the bank or
10 depository for payment in full upon presentation of the
11 check, draft, or order for payment of money. The word
12 "credit" as used in this section means an arrangement or
13 understanding with the bank or depository for payment of the
14 check, draft, or order.

15 NEW_SECTION. Section 54. Payment of purchase price --
16 definitions. (1) A person required to be licensed as a
17 commodity dealer shall pay 90% of the purchase price to the
18 owner or his agent for agricultural commodities upon
19 delivery and demand by the owner or agent and the remaining
20 10% not later than 30 days after delivery by the owner or
21 agent unless otherwise agreed to in writing by the parties.

22 (2) As used in this section, the following definitions
23 apply:

24 (a) "Delivery" means the transfer by the seller of
25 title to and possession of agricultural commodities to the

1 commodity dealer or to another person in accordance with the
2 agreement between the seller and the commodity dealer.

3 (b) "Payment" means the actual payment or tender of
4 payment of the agreed purchase price by the commodity dealer
5 to the seller.

6 NEW SECTION. Section 55. Official grain inspectors,
7 samplers, and weighers -- designation of seasonal inspection
8 points -- assignment of inspectors. (1) The department shall
9 provide inspectors, samplers, and weighers to enforce
10 [sections 55 through 71]. At all inspection points
11 designated by the department, the department shall provide
12 sufficient official grain inspectors, samplers, and weighers
13 to inspect and weigh all grain subject to state inspection.

14 (2) The department may, during the grain-marketing
15 season, appoint inspectors to visit the grain-growing
16 districts to investigate the grading, dockage, and weighing
17 of grain and to enforce the rules of the department.

18 (3) Expenditures for the inspection and weighing at
19 the points designated by the department may not exceed total
20 fee receipts at those points.

21 NEW SECTION. Section 56. Qualifications of official
22 grain inspectors, samplers, and weighers. Official grain
23 inspectors, samplers, and weighers must be qualified in
24 accordance with the Grain Standards Act. Official grain
25 inspectors, samplers, and weighers may not be directly or

1 indirectly interested in the handling, sorting, shipping,
2 purchasing, or selling of grain or grain commodities.

3 NEW SECTION. Section 57. Penalty for misconduct. (1)
4 Any official grain inspector, sampler, or weigher guilty of
5 neglect of duty or who knowingly or carelessly inspects,
6 samples, or weighs grain improperly or who directly or
7 indirectly accepts any money or other consideration for
8 neglect of duty or improper performance of duty is guilty of
9 official misconduct and is punishable as provided in
10 45-7-401.

11 (2) Any person who improperly influences or attempts
12 to improperly influence any official grain inspector,
13 sampler, or weigher in the performance of his duties is
14 guilty of bribery and is punishable as provided in 45-7-101.

15 (3) Upon conviction of an offense described in
16 subsection (1), an officer must be removed by the department
17 pursuant to procedures established by department rule.

18 NEW SECTION. Section 58. Establishment of standard
19 grain grades. (1) The department shall by rule establish
20 standard grades to apply to all grain bought or handled by
21 warehouses in this state. The department shall adopt as
22 state grade standards all grades for grain established by
23 the United States department of agriculture.

24 (2) Grain standards adopted by the department do not
25 apply to grain contracted for before the effective date of

1 the adoption of such standards.

2 **NEW_SECTION.** Section 59. Rules governing dockage --
3 sample inspection. The department shall adopt rules
4 governing the dockage on inferior grades, which shall apply
5 in all executory contracts entered into after their
6 adoption. If the price or amount to be paid depends on
7 terminal weight or grade, the rules shall control the
8 dockage insofar as dockage affects the price to be paid.
9 The department shall also provide for sample inspection of
10 grain, adopt rules governing sample inspection, and provide
11 that the sample inspection, when made, is final.

12 **NEW_SECTION.** Section 60. Special inspection of grain.
13 (1) If grain is sold based on Montana grade and is to be
14 shipped from places not provided with state inspection, the
15 buyer, seller, or person making the delivery may have it
16 inspected by notifying an inspector, who shall have the
17 grain inspected. After inspection, the inspector shall
18 issue, on request of the buyer, seller, or person delivering
19 the grain, an inspector's certificate showing the grade of
20 the grain. The person calling for the inspection shall pay a
21 reasonable fee fixed by department rule.

22 (2) Grain that is shipped to points in this state
23 where no inspection is maintained may be inspected on
24 request of either the buyer or seller, and a certificate may
25 be issued showing the grade of the grain. The charge for the

1 service shall at least equal the entire cost of providing it
2 and shall be paid by the party calling for the inspection.

3 **NEW_SECTION.** Section 61. Sampling grain. Samples may
4 be drawn from all grain shipped to warehouses and from all
5 grain inspected or weighed. The samples are the property of
6 the state, subject to disposition by the department under
7 rules adopted by the department.

8 **NEW_SECTION.** Section 62. Examination of grain cars at
9 destination. (1) An official grain inspector, sampler, or
10 weigher, before opening the doors of a car containing grain
11 upon its arrival at any of the places designated by the
12 department for inspection, shall first ascertain the
13 condition of the car and determine whether any leakages have
14 occurred while the car was in transit, determine whether the
15 doors were properly secured and sealed at the point of
16 shipment, and make a record of those facts in all cases,
17 giving seal numbers.

18 (2) After examinations have been made, the official
19 grain inspector, sampler, or weigher shall securely close
20 and reseal the opened doors, using the special seal of the
21 department.

22 (3) A record must be kept by the official grain
23 inspectors, samplers, or weighers of all original seals
24 broken, the number of seals, and the date when broken. An
25 official grain inspector, sampler, or weigher shall break

1 the seal, weigh, and superintend the loading of all cars of
2 grain subject to inspection. Any other person who breaks the
3 seal or officially weighs the cars of grain is guilty of a
4 misdemeanor.

5 **NEW SECTION.** Section 63. Protein testing laboratory.

6 (1) The department shall maintain an official protein
7 testing laboratory so designated by the Grain Standards Act.

8 (2) No other laboratory may officially certify the
9 grade or protein content of grain unless the laboratory is
10 licensed by the department under rules adopted by the
11 department.

12 (3) The department shall by rule determine the
13 standards of analysis controlling all other official protein
14 testing laboratories in this state.

15 (4) The department may by rule determine the form of
16 protein certificates issued by it.

17 **NEW SECTION.** Section 64. Protein test available on
18 all grain delivered to grain warehouses -- manner of making
19 test -- procedure -- fee -- penalty. (1) Each warehouseman
20 shall take samples from each load of grain delivered to his
21 warehouse and preserve the sample in a moistureproof
22 container with the owner's name on it. A 1-pint portion of
23 the composite sample may be submitted to the department, and
24 the balance must be held in the owner's container.

25 (2) If either the warehouseman or owner is

1 dissatisfied with the results of the protein tests, he may
2 appeal to the department. In case of an appeal, a 1-pint
3 portion of the remainder of the owner's sample must be
4 submitted to the department with a statement of facts of the
5 appeal. A final test, in duplicate, must be made by the
6 department. The department's certificate of the test is
7 final and binding upon both parties in establishing the
8 basis of the price paid by the warehouseman.

9 (3) A fee established by the department commensurate
10 with the cost of each protein test must be deducted and paid
11 at the time of final settlement.

12 (4) Upon written request of the owner, an official
13 protein test must be made.

14 (5) Each warehouseman shall post in a conspicuous
15 place a placard indicating that producers may request, in
16 writing, an official grade and protein certificate. The
17 department shall issue the placard.

18 (6) A person violating this section is guilty of a
19 misdemeanor.

20 **NEW SECTION.** Section 65. Fees for inspection,
21 testing, and weighing grain -- disposition -- investment.

22 (1) The department shall by rule fix the fees for
23 inspection, testing, and weighing of grain.

24 (2) Those fees or proceeds are a lien upon the grain
25 until paid.

(3) All fees and other charges fixed by rule, including fees for the inspection, grading, weighing, and protein testing of grain, shall reflect as nearly as possible the actual cost of the services.

(4) All those fees and charges must be paid to the department and deposited with the state treasurer. The state treasurer shall place all money in the earmarked revenue fund. Fees deposited in the earmarked revenue fund may be used to pay approved claims for expenses incurred in inspecting, grading, weighing, and protein testing of grain.

(5) The department may direct the board of investments to invest funds from the earmarked revenue fund pursuant to the provisions of the unified investment program for state funds. The income from such investments must be credited to the proper department account in the earmarked revenue fund.

NEW SECTION. Section 66. Records of inspection. (1) The official grain inspectors, samplers, and weighers have exclusive control at places provided for state inspection of the weighing and grading of grain to be inspected. Suitable books and records must be kept in which must be entered an accurate record of every carload or truckload of grain inspected or weighed by them. The records must show for each car or truck:

(a) the number or other designation of the car or truck;

(b) the net weight of the grain;

(c) the kind of grain and its grade and, if graded below standard No. 1 grade, the reason for such grade.

(2) For each carload or truckload of grain, the official grain inspector shall give a certificate of inspection, showing the kind and grade of the grain, the reason for all grades below No. 1, and the amount to be allowed for dockage, if any. For each carload or truckload weighed, the weigher shall give a weight certificate showing the true weight thereof and containing a statement on the condition of the car or truck and evidences of leakage or damage, if any.

(3) The inspection and weight certificates must be made available to the warehouse loading or unloading the grain, the shipper or his agent, and the railroad company or other carrier by which the grain was shipped or carried.

(4) Official grain inspectors and weighers shall also keep an accurate record of all appeals and decisions and a complete record of every official act, which books and records must be open to inspection by any party of interest.

NEW SECTION. Section 67. Appeals to department -- hearing and order. (1) If an owner, consignee, shipper of grain, or warehouseman disagrees with the grade given by the department, he may appeal to the department from the decision within 5 days from the date of certificate by

1 giving notice of appeal. A fee must be charged if the appeal
2 supports the original grade. The notice of appeal may be
3 given by letter stating that the party appeals from the
4 decision of the official grain inspector and specifying the
5 initials and numbers of the cars in which the grain was
6 contained when inspected and graded.

7 (2) The appellant shall also file with the department
8 a list containing the name and address of each party
9 interested in the subject matter. The department, upon
10 receiving the notice and list of interested parties, shall
11 immediately notify the interested parties of the time and
12 place designated by it for a hearing under the Montana
13 Administrative Procedure Act. At the hearing, which must be
14 5 days from the date of receiving the notice, the department
15 shall inquire into the reasonableness and correctness of the
16 original grading. After the hearing, the department shall
17 affirm or modify the grade as justified by the facts and
18 evidence.

19 **NEW_SECTION.** Section 68. Coloration of grain treated
20 with injurious or toxic substances. Any grain treated with
21 any injurious or toxic substance or chemical must at the
22 same time be colored or dyed a color contrasting with the
23 natural color of the grain so that the treated grain is
24 readily identifiable as having been treated with an
25 injurious or toxic substance or chemical.

1 **NEW_SECTION.** Section 69. Sale or offering for sale of
2 treated product prohibited. No person may sell or offer for
3 sale grain that has been treated with any injurious or toxic
4 substance or chemical unless the grain has been colored or
5 dyed a color contrasting with the natural color of the
6 grain. [Section 68] and this section do not apply to the
7 treatment of grain solely for the killing of insects which
8 might be present therein. A person violating this section is
9 guilty of a misdemeanor.

10 **NEW_SECTION.** Section 70. Copies of grades and rules
11 to be furnished and displayed by warehousemen. (1) The
12 department shall, immediately after the adoption of rules
13 establishing grades fixing dockage, supply all warehousemen
14 with a copy of the grades and rules. A warehouseman shall
15 keep a copy on file in a convenient place in each warehouse.
16 If an office is maintained in connection with the warehouse,
17 a copy of the grades and rules shall be kept on file in the
18 office. A placard notice must be posted in a conspicuous
19 place in every warehouse and office, reading "A copy of
20 Montana grades and rules is on file here for information of
21 interested parties".

22 (2) A warehouseman shall exhibit a copy of the grades
23 and rules to any interested party at any warehouse or office
24 and permit the interested party to examine the copy.

25 **NEW_SECTION.** Section 71. Dispute as to grade or

1 dockage -- laboratory test to be made. If a disagreement
2 arises between the party receiving and the party delivering
3 the grain at any warehouse in this state as to the proper
4 grade or dockage of grain in accordance with standards at
5 terminal points, an agreed average sample of at least 1
6 quart of the grain in dispute may be taken by the interested
7 parties and forwarded to the department in a suitable
8 container, marked for identification by the interested
9 parties, mail or express charges prepaid, with the names and
10 addresses of the parties affixed thereto. The department
11 shall examine the grain and determine the appropriate grade
12 and dockage under the inspection rules. The findings of the
13 inspection are binding upon both parties, subject to appeal
14 as provided in [section 67]. If the grain in question is
15 damp, musty, or otherwise out of condition, this fact, with
16 any other necessary information, must accompany the sample.

17 Section 72. Section 80-5-201, MCA, is amended to read:
18 "80-5-201. Definitions. When used in this part, the
19 following definitions apply:

20 (1) "Agricultural seed" means the seeds of grass,
21 forage, cereal, and fiber crops and any other kinds of seeds
22 commonly recognized within this state as agricultural seeds
23 and includes lawn seeds and mixtures of seeds.

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

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

7 (4) "Person" means any individual, firm, partnership,
8 corporation, or association.

9 ~~(5) "Public agricultural seed warehouse" means any~~
10 ~~warehouse or structure in which agricultural seed is~~
11 ~~received from the public for storage, assembling, or~~
12 ~~cleaning.~~

13 ~~(6)~~ (5) "Screening" means chaff, sterile florets,
14 immature seed, weed seed, inert matter, and any other
15 materials removed from seed by any kind of cleaning or
16 processing.

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

23 ~~(8)~~ (6) "Seed dealer" means any person who offers for
24 sale, sells, or barter agricultural seeds to the ultimate
25 consumer.

1 ~~(9)(11)~~ "Seed labeler" means any person affixing labels
2 to agricultural seeds with his name and address listed as
3 required in 80-5-102 when such seed is distributed in
4 Montana.

5 ~~(10)(18)~~ "Seed processing plant" means any place of
6 business that repackages, cleans, blends, treats, or
7 otherwise manipulates agricultural seeds.

8 ~~(11)"Seed---warehousemen"--means--any--person--owning~~
9 ~~controlling--or--operating--a--public--agricultural--seed~~
10 ~~warehouse"~~

11 Section 73. Section 80-5-202, MCA, is amended to read:

12 "80-5-202. Licensing -- issuance -- application -- fee
13 -- bonding -- insurance. (1) All seed processing plants, and
14 seed labelers, ~~seed-buyers, and public-agricultural-seed~~
15 ~~warehouses~~ shall obtain a license from the department before
16 doing business in this state; however, a Montana certified
17 seed grower, when processing or labeling certified seed from
18 his own production, is not required to be licensed under
19 this section. Bin-run seed sales from one farmer to another
20 are exempt from this part.

21 (2) All licenses are issued on a fiscal-year basis and
22 expire on June 30 of each year. ~~A license may cover any or~~
23 ~~as many as--at--four--activities--processing--plants--seed~~
24 ~~labelers--seed-buyers--and--public--agricultural--seed-warehouses~~

25 (3) Application for license is made in a manner and on

1 forms provided by the department. A nonresident shall file a
2 written power of attorney designating the secretary of state
3 as his agent, and the power of attorney shall be so prepared
4 and in such form as to render effective the jurisdiction of
5 the courts of the state of Montana over the nonresident
6 applicant. A nonresident who has a duly appointed resident
7 agent upon whom process may be served as provided by law is
8 not required to designate the secretary of state as his
9 agent. The department shall be furnished with a certified
10 copy of the designation of the secretary of state or of a
11 resident agent.

12 (4) The department may establish by rule minimum
13 standards for equipment and handling procedures for
14 facilities to be licensed and may carry out inspections
15 during normal business hours to determine that these
16 standards are being adhered to.

17 (5) Each license shall cost no more than \$50 a year.
18 The department may by rule establish license fees which bear
19 a reasonable relationship to the cost of administering this
20 part.

21 (6) Failure on the part of a licensee to comply with
22 the rules issued under the authority of this section is
23 sufficient cause for cancellation of a license by the
24 department, provided the licensee is given a reasonable
25 opportunity to correct inadvertent and nonrecurring

1 deficiencies.

2 ~~{77}--The--department--may--by--rule--establish--bonding--and~~
3 ~~insurance--requirements--for--each--class--of--licensee--"~~

4 Section 74. Section 80-5-203, MCA, is amended to read:

5 "80-5-203. Dealer's license -- exception -- fee --
6 application -- violation. (1) No person may distribute seed
7 without obtaining a dealer's license from the department for
8 each place of business. No license is required of a person
9 who distributes seeds only in sealed packages of less than
10 10 pounds, packed by a licensed seed labeler and bearing his
11 name and address. Each dealer's license shall cost no more
12 than \$20 a year and expires on June 30 of each year. The
13 department may by rule establish license fees which bear a
14 reasonable relationship to the cost of administering this
15 part. Any licensed processing plant, or seed labeler, or seed
16 buyer, or public agricultural seed warehouse may obtain a
17 dealer's license without additional fee.

18 (2) Application for a dealer's license shall be made
19 in a manner and on forms provided by the department. Such
20 forms shall require among other things the name of a person
21 domiciled in this state authorized to receive and accept
22 service or legal notices of all kinds.

23 (3) Violation of provisions of this section or the
24 distribution of agricultural seeds not legally labeled
25 constitutes adequate grounds for canceling a license or

1 denying a license to a dealer."

2 NEW SECTION. Section 75. Repealer. Sections 80-3-501
3 through 80-3-513, 80-4-101 through 80-4-106, 80-4-111
4 through 80-4-126, 80-4-201 through 80-4-209, 80-4-221
5 through 80-4-234, and 80-4-311 through 80-4-313, MCA, are
6 repealed.

7 NEW SECTION. Section 76. Severability. If a part of
8 this act is invalid, all valid parts that are severable from
9 the invalid part remain in effect. If a part of this act is
10 invalid in one or more of its applications, the part remains
11 in effect in all valid applications that are severable from
12 the invalid applications.

13 NEW SECTION. Section 77. Effective date. This act is
14 effective July 1, 1983.

-End-

1 ~~House~~ BILL NO. 673
2 INTRODUCED BY Manuel
3 BY REQUEST OF THE DEPARTMENT OF AGRICULTURE
4

5 A BILL FOR AN ACT ENTITLED: "THE AGRICULTURAL WAREHOUSE,
6 COMMODITY DEALER, AND GRAIN STANDARDS ACT; GENERALLY
7 REVISING THE STATUTES RELATING TO THE WAREHOUSING OF AND
8 DEALING IN AGRICULTURAL COMMODITIES; AMENDING SECTIONS
9 80-5-201 THROUGH 80-5-203, MCA; REPEALING SECTIONS 80-3-501
10 THROUGH 80-3-513, 80-4-101 THROUGH 80-4-106, 80-4-111
11 THROUGH 80-4-126, 80-4-201 THROUGH 80-4-209, 80-4-221
12 THROUGH 80-4-234, AND 80-4-311 THROUGH 80-4-313, MCA; AND
13 PROVIDING AN EFFECTIVE DATE."

14
15 WHEREAS, the existing statutes regulating certain
16 aspects of the agricultural industry have become antiquated,
17 as well as being contradictory and illogical in their
18 organization.

19 THEREFORE, it is necessary to extensively revise those
20 statutes and adopt them as new sections.

21
22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

23 ~~NEW SECTION.~~ Section 1. Short title. [Sections 1
24 through 71] may be cited as the "Agricultural Warehouse,
25 Commodity Dealer, and Grain Standards Act".

THIRD READING

There are no changes on HB 673.
Please refer to second reading
(yellow) or introduced copy
(white) for complete text.

HB 673

March 17, 1983

COMMITTEE OF THE WHOLE AMENDMENT

That House Bill No. 673 have Statement of Intent Added:

A statement of intent is required for this bill because of the general rulemaking authorization in section 3 and various other specific authorizations located throughout the remainder of the bill.

The Legislature intends that under the general authorization the Department of Agriculture have authority to adopt any rules it may from time to time consider necessary to properly implement the general provisions and the respective sections relating to public warehousing, commodity dealing and grain standards.

The Legislature further intends in those sections containing specific rulemaking authorization that rules will be adopted implementing the language, requirements, and procedures stated therein.

Senate

1 STATEMENT OF INTENT

2 HOUSE BILL 673

3

4 A statement of intent is required for this bill because
5 of the general rulemaking authorization in section 3 and
6 various other specific authorizations located throughout the
7 remainder of the bill.

8 The Legislature intends that under the general
9 authorization the Department of Agriculture have authority
10 to adopt any rules it may from time to time consider
11 necessary to properly implement the general provisions and
12 the respective sections relating to public warehousing,
13 commodity dealing, and grain standards.

14 The Legislature further intends in those sections
15 containing specific rulemaking authorization that rules will
16 be adopted implementing the language, requirements, and
17 procedures stated therein.

REFERENCE BILL

HB 673

1 HOUSE BILL NO. 673

2 INTRODUCED BY IVERSON, MANUEL

3 BY REQUEST OF THE DEPARTMENT OF AGRICULTURE

4
5 A BILL FOR AN ACT ENTITLED: "THE AGRICULTURAL WAREHOUSE,
6 COMMODITY DEALER, AND GRAIN STANDARDS ACT; GENERALLY
7 REVISING THE STATUTES RELATING TO THE WAREHOUSING OF AND
8 DEALING IN AGRICULTURAL COMMODITIES; AMENDING SECTIONS
9 80-5-201 THROUGH 80-5-203, MCA; REPEALING SECTIONS 80-3-501
10 THROUGH 80-3-513, 80-4-101 THROUGH 80-4-106, 80-4-111
11 THROUGH 80-4-126, 80-4-201 THROUGH 80-4-209, 80-4-221
12 THROUGH 80-4-234, AND 80-4-311 THROUGH 80-4-313, MCA; AND
13 PROVIDING AN EFFECTIVE DATE."

14
15 WHEREAS, the existing statutes regulating certain
16 aspects of the agricultural industry have become antiquated,
17 as well as being contradictory and illogical in their
18 organization.

19 THEREFORE, it is necessary to extensively revise those
20 statutes and adopt them as new sections.

21
22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

23 ~~NEW_SECTION~~ Section 1. Short title. [Sections 1
24 through 71] may be cited as the "Agricultural Warehouse,
25 Commodity Dealer, and Grain Standards Act".

1 ~~NEW_SECTION~~ Section 2. Definitions. As used in
2 [sections 1 through 71], the following definitions apply:

3 (1) "Agent" means any person who contracts for or
4 solicits any agricultural commodities from a producer or
5 warehouseman or negotiates the consignment or purchase of
6 any agricultural commodity on behalf of any commodity
7 dealer.

8 (2) "Agricultural commodity" means any grain, beans,
9 safflower, sunflower seeds, tame mustards, rapeseed,
10 flaxseed, leguminous seed, or other small seed, and other
11 agricultural commodities designated by rule of the
12 department.

13 (3) "Commodity dealer" means any person who engages in
14 a business involving or, as part of his business,
15 participates in buying, exchanging, negotiating, or
16 soliciting the sale, resale, exchange, or transfer of any
17 agricultural commodity in the state of Montana. The term
18 does not include:

19 (a) a person engaged solely in storing, shipping, or
20 handling agricultural commodities for hire;

21 (b) a person who buys or handles less than \$10,000
22 worth of agricultural commodities in a licensing year;

23 (c) a person who is the producer of agricultural
24 commodities that he actually plants, nurtures, and harvests;
25 or

1 (d) a person whose trading in agricultural commodities
2 is limited to trading in commodity futures on a recognized
3 futures exchange.

4 (4) "Credit sale contract" means a contract for the
5 sale of an agricultural commodity when the sale price is to
6 be paid at a date after delivery of the agricultural
7 commodity to the buyer and includes but is not limited to
8 those contracts commonly referred to as deferred payment
9 contracts, deferred pricing contracts, or price-later
10 contracts.

11 (5) "Department" means the department of agriculture
12 provided for in 2-15-3001.

13 (6) "Depositor" means any person who deposits an
14 agricultural commodity in a warehouse for storage,
15 processing, handling, or shipment or who is the owner or
16 legal holder of an outstanding warehouse receipt or who is
17 lawfully entitled to possession of the agricultural
18 commodity.

19 (7) "Director" means the director of the department of
20 agriculture.

21 (8) "Grain" means all grains for which standards have
22 been established under the United States Grain Standards Act
23 (7 U.S.C. sections 71 through 87) and all other agricultural
24 commodities, such as mustard, oil seed crops, or other crops
25 which may be designated by rule of the department.

1 (9) "Grain Standards Act" means the United States
2 Grain Standards Act (7 U.S.C. sections 71 through 87) as
3 that act reads on [the effective date of this act].

4 (10) "Inspector" means any person so designated by the
5 director to assist in the administration of [sections 1
6 through 54]. The term includes warehouse auditors or
7 examiners.

8 (11) "Official grain inspectors" means any official
9 personnel who perform or supervise the performance of
10 official inspection services and certify the results
11 thereof, including the grade of the grain.

12 (12) "Official grain samplers" or "samplers" means any
13 official personnel who perform or supervise the performance
14 of official sampling services and certify the results
15 thereof.

16 (13) "Official grain standards" means the standards of
17 quality and condition of grain that establish the grades
18 defined by the Grain Standards Act.

19 (14) "Official grain weighers" means any official
20 personnel who perform or supervise the performance of class
21 X or class Y weighing services and certify the results
22 thereof, including the weight of the grain.

23 (15) "Person" means any individual, firm, association,
24 corporation, partnership, or any other form of business
25 enterprise.

(16) "Producer" means the owner, tenant, or operator of land in this state who has an interest in and receives all or part of the proceeds from the sale of agricultural commodities produced on that land.

(17) "Public warehouse" or "warehouse" means any elevator, mill, warehouse, subterminal grain warehouse, public warehouse, or other structure or facility in which, for compensation, agricultural commodities are received for storage, handling, processing, or shipment. The term includes facilities which commingle commodities belonging to different lots of agricultural commodities.

(18) "Receipt" means a warehouse receipt.

(19) "Scale weight ticket" means a load slip or other evidence of delivery, other than a receipt, given to a depositor by a warehouseman licensed under the provisions of [sections 22 through 46] upon initial delivery of the agricultural commodity to the warehouse.

(20) "Station" means a warehouse located more than 3 miles from the central office of the warehouse.

(21) "Subterminal warehouse" means any warehouse at which an intermediate function is performed in which agricultural commodities are customarily received from dealers or producers and where the commodities are accumulated prior to shipment.

(22) "Terminal grain warehouse" means any warehouse

authorized by a grain exchange to receive or disburse grain on consignment as presented by the rules and regulations of a grain exchange.

(23) "Warehouseman" means a person operating or controlling a public warehouse.

(24) "Warehouse receipt" means every receipt, whether negotiable or nonnegotiable, issued under [sections 22 through 46] by a warehouseman, except scale weight tickets.

NEW SECTION. Section 3. Rules -- adoption. The department shall adopt such rules as it determines necessary for the efficient execution of the provisions of [sections 1 through 71].

NEW SECTION. Section 4. Terms of licenses -- renewals. Each license issued or renewed under [sections 22 through 54] shall be issued for a period to be prescribed by rule of the department.

NEW SECTION. Section 5. Maximum bond amount. The maximum amount of any public warehouseman bond may not exceed \$1 million and the maximum amount of a commodity dealer bond may not exceed \$1 million, except:

(1) any bonds compensating for net asset deficiencies prescribed in [sections 22 through 54] must be added to the maximum bond amount; and

(2) the maximum bond amount must be adjusted each year based upon the percentage increase or decrease in the annual

1 average index of prices received by Montana farmers for food
2 and feed grains as computed by the Montana crop and
3 livestock reporting service.

4 **NEW_SECTION.** Section 6. Appointment by nonresident
5 licensee of agent to receive process. A nonresident applying
6 for a license under this chapter shall file a written power
7 of attorney, designating the secretary of state as his agent
8 upon whom service of process may be had if legal action is
9 brought against the nonresident. A nonresident who has a
10 duly appointed resident agent upon whom legal process may be
11 served as provided by law is not required to designate the
12 secretary of state as his agent for service of process. The
13 department must be furnished a copy of the designation of
14 the resident agent, which copy shall be certified by the
15 secretary of state.

16 **NEW_SECTION.** Section 7. Reports to the department.
17 Each person licensed under [sections 22 through 54] shall
18 report to the department at intervals set by rule of the
19 department on forms prepared by it. The reports must show
20 the total weight of each kind of agricultural commodity
21 received and shipped, the amount of outstanding warehouse
22 receipts on that date, and a statement of the amount of
23 agricultural commodities on hand to cover the outstanding
24 warehouse receipts. The department may also, by rule,
25 require special reports at any time.

1 **NEW_SECTION.** Section 8. Examination of books. The
2 department is authorized, through its officials, employees,
3 or designated agents, to examine or copy all books, records,
4 papers, and accounts of persons licensed under [sections 22
5 through 54].

6 **NEW_SECTION.** Section 9. Confidentiality of records.
7 All financial statements of warehousemen and commodity
8 dealers required under the provisions of [sections 22
9 through 54] shall be kept confidential by the department and
10 are not subject to disclosure except:

- 11 (1) upon written permission of the licensee;
- 12 (2) in actions or administrative proceedings commenced
13 under the provisions of [sections 1 through 54];
- 14 (3) when required by subpoena or court order;
- 15 (4) when disclosed to law enforcement agencies in
16 connection with the investigation or prosecution of criminal
17 offenses; or
- 18 (5) when released to a bonding company approved by the
19 department.

20 **NEW_SECTION.** Section 10. Publication of reports. The
21 department may publish the results of any investigation
22 made. It may publish the names and addresses of persons
23 licensed under [sections 22 through 54], and it may also
24 publish a list of all licenses terminated under [sections 22
25 through 54] and the causes therefor.

1 NEW SECTION. Section 11. Employment of assistants.
 2 The department is authorized to employ qualified persons not
 3 regularly in the service of the state for temporary
 4 assistance in carrying out the provisions of [sections 1
 5 through 71].

6 NEW SECTION. Section 12. License suspension and
 7 revocation -- renewal. (1) The department may revoke,
 8 suspend, or modify a license when it has reasonable cause to
 9 believe that the licensee has committed any of the following
 10 acts, each of which is a violation of [sections 22 through
 11 54]:

12 (a) failure to maintain all initial licensing
 13 requirements, including insurance, bonding, and net asset
 14 requirements. In determining compliance with net asset
 15 requirements, the department may consider the licensee's
 16 status under any prior or current bankruptcy proceedings, as
 17 well as any outstanding civil settlements or judgments.

18 (b) aiding or abetting another person in the violation
 19 of the licensure or any other provisions of [sections 22
 20 through 54];

21 (c) conviction of any criminal offense defined under
 22 Title 45;

23 (d) failure or refusal to allow inspection or maintain
 24 and provide records, reports, and other information required
 25 by the department;

1 (e) failure or refusal to post storage and other
 2 charges as filed with the department;

3 (f) failure or refusal to accept agricultural
 4 commodities for storage as required under [section 31];

5 (g) failure to comply with the warehouse receipt and
 6 scale weight ticket requirements of [sections 32 and 34];

7 (h) failure of a warehouseman to maintain and deliver
 8 upon request sufficient agricultural commodities to cover
 9 outstanding warehouse receipts as required under [section
 10 38];

11 (i) discrimination in charges by a warehouseman as
 12 provided in [section 31];

13 (j) failure to provide payment for any agricultural
 14 commodity; or

15 (k) violation of or failure or refusal to comply with
 16 any other provision of [sections 1 through 54] or rule
 17 adopted by the department.

18 (2) The department may refuse to issue or renew a
 19 license if the applicant or licensee:

20 (a) has a license as a warehouseman or commodity
 21 dealer that was previously or is currently suspended or
 22 revoked. In determining the sufficiency of cause hereunder,
 23 the department shall consider the nature and length of the
 24 action and any subsequent licensure or other evidence of
 25 rehabilitation.

1 (b) does not satisfy the bonding, insurance, or net
2 asset requirements as specified in subsection (1)(a) or any
3 other provisions required as a condition to licensing;

4 (c) has been convicted of a criminal offense and the
5 denial or refusal is made after considering Title 37,
6 chapter 1, part 2.

7 (3) The issuance of a license based on information
8 provided by the applicant which the department subsequently
9 determines incorrect must be considered void, and any
10 conduct under that license is a violation.

11 (4) All proceedings brought under subsections (1) and
12 (2) must be conducted under the provisions of the Montana
13 Administrative Procedure Act.

14 (5) The department is authorized to issue summary
15 revocations, suspensions, or denials without hearing
16 pursuant to the procedures established in 2-4-631.

17 **NEW_SECTION.** Section 13. Credit sale contracts. (1) A
18 commodity dealer who purchases agricultural commodities by
19 credit sale contract shall maintain books, records, and
20 other documents as required by the department to establish
21 compliance with the provisions of this section.

22 (2) In addition to other required information, a
23 credit sale contract must contain or provide for all of the
24 following:

25 (a) the seller's name and address;

1 (b) the conditions of delivery;

2 (c) the amount and kind of agricultural commodities
3 delivered;

4 (d) the price per unit or basis of value; and

5 (e) the date payment is to be made.

6 (3) Title to all agricultural commodities sold by
7 credit sale contract is in the purchaser as of the time the
8 contract is executed unless the contract provides otherwise.
9 The contract must be signed by both parties and executed in
10 duplicate. One copy shall be retained by the commodity
11 dealer, and one copy shall be delivered to the seller. Upon
12 revocation, suspension, or termination of a warehouseman's
13 license, the department may advance the payment date for all
14 credit sale contracts to a date not later than 30 days
15 following the effective date of the revocation, suspension,
16 or termination. When not otherwise provided, the purchase
17 price for all agricultural commodities shall be determined
18 as of the effective date of revocation, suspension, or
19 termination in accordance with all other provisions of the
20 contract. However, if the business of the commodity dealer
21 is sold to another licensed commodity dealer, credit sale
22 contracts may be assigned to the purchasing commodity
23 dealer.

24 **NEW_SECTION.** Section 14. Delivery of agricultural
25 commodities containing toxic chemicals to warehouse or to

1 commodity dealer unlawful. It is unlawful for any person to
 2 deliver to any warehouse or commodity dealer an agricultural
 3 commodity in bulk if the commodity contains toxic chemicals
 4 if the person knew or upon the exercise of reasonable
 5 diligence should have known of the presence of the toxic
 6 chemicals in the commodity.

7 NEW SECTION. Section 15. Director's authority --
 8 Investigative hearing. The director may upon his own motion,
 9 whenever he has reason to believe a violation has occurred
 10 or upon verified complaint of any person in writing,
 11 investigate the actions of any person and, if he finds
 12 probable cause, shall notify the person that he must appear
 13 for an investigative hearing before the director 20 days
 14 from receipt of written notice.

15 NEW SECTION. Section 16. Action on bond by persons
 16 injured. (1) A person injured by the breach of an obligation
 17 for which a bond is given to the department may take action
 18 against the bond in his own name to recover damages caused
 19 by the breach. The director shall then make demand upon the
 20 warehouseman or the commodity dealer and his surety for
 21 payment of damages. If the damages are not promptly paid,
 22 the director shall commence an action on the bond to enforce
 23 payment of damages.

24 (2) Liability of the surety upon the bond is limited
 25 to the amount of the bond. However, if two or more persons

1 are injured by breach of the obligation for which the bond
 2 is given and the damages for violating the conditions of the
 3 bond exceed the specified amount of the bond, the recovery
 4 on the bond shall be prorated by the surety among all of
 5 those injured.

6 NEW SECTION. Section 17. Duty to prosecute. A county
 7 attorney who has appropriate jurisdiction and to whom any
 8 violation is reported shall cause appropriate proceedings to
 9 be instituted and prosecute without delay in a court of
 10 competent jurisdiction.

11 NEW SECTION. Section 18. Injunction. If a person
 12 without a license is found to have engaged in any business
 13 for which a license is required under [sections 22 through
 14 54], the court shall enjoin him from further business until
 15 he has been duly licensed. It is not necessary that the
 16 department show that an individual has been injured by the
 17 actions complained of in order to issue the injunction. The
 18 procedure for injunctive relief is the same as any other
 19 action for an injunction under Title 27. The injunction
 20 provided by this section is an additional remedy to the
 21 criminal penalty provided for in [section 20].

22 NEW SECTION. Section 19. Penalty for operating
 23 without a license -- misrepresentation. (1) A person acting
 24 as a warehouseman or a commodity dealer without a license or
 25 in any way representing by action or words that he is a

1 warehouseman or a commodity dealer and is not so licensed
2 violates the provisions of [sections 22 through 54], is
3 guilty of a felony, and is punishable by imprisonment for
4 not more than 10 years or by a fine of not more than
5 \$10,000, or both.

6 (2) A person who issues or aids in the issuance of a
7 fraudulent receipt for any commodity is guilty of a felony
8 and is punishable by imprisonment for not more than 10 years
9 or by a fine of not more than \$10,000, or both.

10 (3) A person who knowingly submits false information
11 to or who knowingly withholds information from the
12 department when that information is required to be submitted
13 is guilty of a felony.

14 **NEW_SECTION.** Section 20. Penalty. (1) Except as
15 otherwise provided, any person who violates any provision of
16 [sections 1 through 54] or rules promulgated thereunder or
17 who impedes, obstructs, hinders, or otherwise prevents or
18 attempts to prevent the director or his duly authorized
19 representative in the performance of his duty under
20 [sections 1 through 54] is guilty of a misdemeanor and is
21 punishable by imprisonment in a county jail not to exceed 6
22 months or by a fine of not more than \$1,000, or both.

23 (2) A person who refuses to permit inspection of
24 licensed premises, books, accounts, records, or other
25 documents required by [sections 1 through 71] or who uses a

1 scale weight ticket or credit sale contract that fails to
2 satisfy the requirements of [sections 1 through 71] is
3 guilty of a misdemeanor.

4 **NEW_SECTION.** Section 21. Director's enforcement
5 action. Nothing in [sections 1 through 71] may be construed
6 to require the director or his authorized representative to
7 report for prosecution or for the institution of civil
8 action a violation if he believes that the public interest
9 will best be served by a suitable warning.

10 **NEW_SECTION.** Section 22. License necessary to operate
11 public warehouse. (1) No person may act as a warehouseman
12 without first having obtained an annual license from the
13 department. This requirement does not apply to operators of
14 warehouses that are federally licensed under the "United
15 States Warehouse Act".

16 (2) If a warehouseman operates two or more warehouses
17 in the same city or immediately adjacent thereto or in the
18 same immediate area, in conjunction with each other and with
19 the same work force, and where one set of books and records
20 are kept for all such warehouses and cash slips, scale
21 weight tickets, warehouse receipts, and checks of one series
22 are used for agricultural commodities stored therein, only
23 one warehouseman's license is required for the operation of
24 all such warehouses.

25 **NEW_SECTION.** Section 23. Licenses to warehouseman --

1 issuance -- renewal -- conditions precedent. (1) The
2 department is authorized to issue or renew, upon
3 application, a license to any warehouseman for the conduct
4 of a warehouse or warehouses in accordance with [sections 22
5 through 54], provided the following conditions are met:

6 (a) Each applicant shall file and maintain
7 satisfactory evidence of an effective policy of insurance
8 issued by an insurance company authorized to do business in
9 this state, insuring all agricultural commodities that are
10 stored in the warehouse, including agricultural commodities
11 owned by the warehouseman. The insurance shall insure the
12 commodities for the full market value at the time of loss of
13 such commodities against loss by fire, internal explosion,
14 lightning, or tornado.

15 (b) Each warehouse must be found suitable for the
16 proper storage of the particular agricultural commodity
17 stored therein.

18 (c) A license fee must be submitted to the department
19 as prescribed by [section 24].

20 (d) A current drawing of the warehouse, showing
21 storage facilities and capacity of the warehouse, must be
22 submitted to the department.

23 (e) A sufficient and valid bond must be filed and
24 maintained as required by [sections 25 and 26].

25 (f) The applicant has submitted to the department a

1 current financial statement prepared by a licensed
2 accountant according to generally accepted accounting
3 principles, showing that the applicant has and does maintain
4 current assets equal to or greater than current liabilities.

5 (g) The applicant must submit a sample warehouse
6 receipt and subsequent revisions to the department for
7 approval and filing.

8 (h) The applicant must have complied with the terms of
9 [sections 22 through 46] and the rules prescribed
10 thereunder.

11 (2) All documents required for renewal of a license
12 must be received by the department prior to the expiration
13 date of the warehouse license. An expired warehouse license
14 may be reinstated by the department upon receipt of all
15 required licensing documents and a penalty fee of \$50 if the
16 documents are filed within 30 days from the date of
17 expiration of the warehouse license. All license
18 applications received after the 30-day penalty period must
19 be considered original applications and an initial license
20 fee must be assessed according to [section 24].

21 NEW SECTION. Section 24. Fees of department. (1) The
22 department shall collect an annual warehouseman license fee,
23 based on the number of warehouses owned by the warehouseman,
24 according to the following schedule:

25 For each warehouse listed in the application:

Capacity in Hundredweight	Rate
0 to 25,000	\$ 25
25,001 to 50,000	50
50,001 to 125,000	75
125,001 to 250,000	100
250,001 to 375,000	125
over 375,000	150

(2) The department shall collect a fee of \$50 for each initial licensing inspection of a warehouse or station.

(3) The department shall collect a fee of \$25 for each amendment of a license.

(4) The department shall collect a fee of \$150 a day or fraction thereof for maintaining an employee of the department at a warehouse to supervise the correction of a deficiency.

(5) All fees must be deposited into the state treasury and credited to the general fund account.

NEW SECTION. Section 25. Bond of applicant for license -- additional bond -- additional obligations. (1) Each applicant for a warehouseman's license shall file a bond with the department. The bond must be in such form and must contain such terms and conditions as the department may prescribe by rule to carry out the purpose of [sections 25 and 26].

(2) The department may demand an additional bond if

the nature or volume of the business conducted by the warehouseman warrants an increase.

(3) The warehouseman may give a single bond to cover all warehouses operated by him.

(4) Any changes in the capacity of a warehouse or installation of any new warehouse involving a change in the bond liability under [section 26] must be reported in writing to the director, and an appropriate bond must be filed prior to the operation thereof.

NEW SECTION. Section 26. Amount of bond -- cancellation. (1) The amount of the bond to be furnished for each warehouse must be fixed at a rate of 20 cents per hundredweight for the first 500,000 hundredweight of licensed capacity; 15 cents per hundredweight for the next 500,000 hundredweight of licensed capacity; and 10 cents per hundredweight for all licensed capacity over 1 million hundredweight. The amount of the bond may not be less than \$20,000 or more than the maximum prescribed in [section 5]. The licensed capacity is the maximum number of hundredweight of agricultural commodities that the warehouse can accommodate.

(2) If a warehouseman is also operating as a commodity dealer, he shall also provide a bond as prescribed in [section 50].

(3) If there occurs a deficiency in net assets as

1 required under [section 27], there shall be added to the
2 amount of bond determined in accordance with subsection (1)
3 an amount equal to that deficiency.

4 (4) Each warehouseman bond shall run continuously with
5 the warehouseman license until canceled by the bonding
6 company. The aggregate annual liability of the surety may in
7 no event exceed the sum of the bond. A continuous bond shall
8 obligate a new penal sum with the commencement of each
9 licensing year.

10 (5) A 30-day written notice must be given to the
11 department by the bonding company before any bond is
12 canceled.

13 **NEW_SECTION.** Section 27. Net asset requirements. (1)
14 Each licensee or applicant for a license shall maintain,
15 above all exemptions and liabilities, total net assets
16 liable for the payment of any indebtedness arising from the
17 conduct of the warehouse or warehouses of at least 40 cents
18 per hundredweight of all agricultural commodities that his
19 warehouse or warehouses can accommodate.

20 (2) No person may be licensed as a warehouseman unless
21 he has and maintains allowable net assets of at least
22 \$10,000.

23 (3) In determining total net assets, credit may be
24 given for insurable property, such as buildings, machinery,
25 equipment, and merchandise inventory, only to the extent

1 that such property is protected by insurance against loss or
2 damage by fire. The insurance must be in the form of lawful
3 policies issued by one or more insurance companies
4 authorized to do business and subject to service of process
5 in suits brought in this state.

6 (4) If a warehouseman is licensed or applies for
7 licenses to operate two or more warehouses, the maximum
8 number of hundredweight which all such warehouses will
9 accommodate must be considered in determining whether the
10 warehouseman meets the net asset requirements specified in
11 this section.

12 **NEW_SECTION.** Section 28. Duties of warehouseman --
13 content of records. (1) Each warehouseman shall maintain in
14 a safe place current and complete records at all times with
15 respect to all agricultural commodities stored, conditioned,
16 handled, or shipped by him, including agricultural
17 commodities owned by him. Such records must include but are
18 not limited to a daily position record, showing the total
19 quantity of each kind and class of agricultural commodity
20 received and loaded out and the amount remaining in storage
21 at the close of each business day and the warehouseman's
22 total storage obligations for each kind and class of
23 agricultural commodity at the close of each business day.

24 (2) Every warehouseman purchasing any agricultural
25 commodity from a depositor thereof shall promptly make and

1 keep for 5 years a correct record showing in detail the
2 following information:

- 3 (a) the name and address of the depositor;
- 4 (b) the date purchased;
- 5 (c) the terms of the sale; and
- 6 (d) the quality and quantity purchased by the
7 warehouseman and, where applicable, the dockage, tare,
8 grade, size, and net weight.

9 NEW SECTION. Section 29. Schedule of charges --
10 posting. (1) Before a license to conduct a warehouse is
11 granted, the warehouseman shall file with the director a
12 copy of the schedule of charges for storage and other
13 services. The schedule must be posted in a conspicuous place
14 in his warehouse.

15 (2) All charges made by any warehouseman for the
16 handling and storage of agricultural commodities must be
17 just and reasonable. However, the director may, upon the
18 complaint of any person or upon his own motion, hold a
19 public hearing and may declare any existing charges for
20 handling or storage of any agricultural commodity to be
21 unreasonable or unjust. After the hearing, the director
22 shall determine and order what is a just and reasonable
23 charge to be imposed or enforced in place of that found to
24 be unreasonable or unjust.

25 (3) Failure to file and post scheduled charges for the

1 current year will keep in full force the most recently
2 posted and filed schedule rates.

3 (4) In all cases, the producers will receive the first
4 15 days of storage without charge.

5 NEW SECTION. Section 30. Required receipt of
6 agricultural commodities according to capacity. A
7 warehouseman shall receive for storage, conditioning,
8 handling, or shipment without discrimination of any kind, so
9 far as the capacity of his warehouse will permit, all
10 agricultural commodities tendered him in the usual course of
11 business in suitable condition for storage. However, a
12 warehouseman may not be compelled to accept and hold
13 agricultural commodities for storage in such quantities as
14 to block his regular cash agricultural commodity business. A
15 warehouseman may not be required to accept agricultural
16 commodities for storage in excess of working capacity.
17 However, his appointment of space may be modified by rule
18 upon proof that such appointment operates to the
19 disadvantage of either the public or the warehouseman.

20 NEW SECTION. Section 31. Discrimination in charge by
21 warehouseman prohibited. A warehouseman may not directly or
22 indirectly, by a special charge, rebate, drawback, or other
23 device, collect from any person a greater or lesser
24 compensation for any service rendered in the storage,
25 conditioning, handling, or shipment of agricultural

1 commodities than he collects from any other person for a
2 similar circumstance or condition. A warehouseman may not
3 make or give any advantage to any person, company, or
4 corporation or subject any person, company, or corporation
5 to any undue or unreasonable prejudice or disadvantage.

6 **NEW_SECTION.** Section 32. Scale weight tickets -- form
7 -- issuance. (1) Scale weight tickets must be bound in books
8 of convenient size and must be numbered consecutively. The
9 original scale weight ticket must be delivered to the person
10 from whom the agricultural commodities are received. One
11 carbon copy of each scale weight ticket must remain as a
12 permanent record.

13 (2) A scale weight ticket must be issued for each load
14 of agricultural commodity received by the warehouseman.

15 (3) A scale weight ticket may not be issued or held in
16 lieu of a warehouse receipt. The retention of scale weight
17 tickets in lieu of warehouse receipts by the owner of the
18 grain is at the owner's risk.

19 (4) There must be plainly printed across the face of
20 such scale weight ticket issued by the warehouseman, in bold
21 type, the words "THIS IS NOT A WAREHOUSE RECEIPT. IT MUST BE
22 EXCHANGED FOR A WAREHOUSE RECEIPT IF GRAIN IS HELD IN
23 STORAGE".

24 (5) There must be plainly printed across the face of a
25 combination scale weight ticket and warehouse receipt issued

1 by the warehouseman, in bold type, the words "COMBINATION
2 SCALE WEIGHT TICKET AND WAREHOUSE RECEIPT".

3 (6) All scale weight tickets must be signed by the
4 warehouseman or his agent.

5 (7) When scale weight tickets are exchanged for
6 warehouse receipts, the scale weight tickets must be
7 surrendered to the warehouseman.

8 (8) All scale weight tickets must be converted into
9 cash or warehouse receipts on demand.

10 **NEW_SECTION.** Section 33. Warehouse receipts --
11 written terms. (1) Warehouse receipts under this part must
12 contain in written terms:

13 (a) a statement that the warehouse is operated under a
14 license issued by the department;

15 (b) a statement showing whether it is an original,
16 duplicate, triplicate, or other copy;

17 (c) a statement showing the name of the warehouse;

18 (d) a statement showing the name of the city or town
19 where the warehouse is located;

20 (e) the date the warehouse receipt is issued;

21 (f) the number of the warehouse receipt. All receipts
22 must be numbered consecutively.

23 (g) a statement that the grain is "received in store"
24 from the person named;

25 (h) a statement of gross weight, dockage, and net

1 weight and the sample report used for grade and protein
2 analysis;

3 (i) a statement of encumbrances, such as cash or other
4 advances;

5 (j) a statement that, upon the return of the receipt
6 properly endorsed by the person to whom the order was issued
7 and the payment of the proper charges for storing and
8 handling, delivery will be made in accordance with [sections
9 22 through 46];

10 (k) a statement that the grain is properly insured for
11 the benefit of the owner; and

12 (1) the name of the manager or agent of the warehouse.

13 (2) The face of the warehouse receipt may also provide
14 for other statements, such as:

15 (a) the scale weight ticket numbers or the assembly
16 sheet number;

17 (b) the grade; and

18 (c) the protein certificate used.

19 (3) The back of the warehouse receipt may include
20 printed statements, such as:

21 (a) delivery provisions;

22 (b) actual-delivery-of-grain provisions;

23 (c) bailment provisions;

24 (d) act-of-God provisions;

25 (e) nonnegotiable provisions; and

1 (f) endorsements and other statements pertinent to
2 bookkeeping data whenever such statements do not conflict
3 with any state or federal law pertaining to public
4 warehousing or the grading or testing of grain.

5 (4) A copy of the warehouse receipt issued by the
6 warehouseman must accompany each application for a
7 warehouseman's license.

8 ~~NEW SECTION.~~ Section 34. Warehouse receipt --
9 issuance. (1) A warehouse receipt is a receipt issued by a
10 licensed warehouseman on a form containing all the
11 information required by [section 33].

12 (2) No warehouse receipt may be issued except for an
13 agricultural commodity actually delivered to a warehouse for
14 storage.

15 (3) All warehousemen are required to issue a warehouse
16 receipt for each lot of agricultural commodity received for
17 storage or make payment for the agricultural commodity.

18 (4) A warehouse receipt that does not in fact
19 represent an agricultural commodity actually delivered into
20 a warehouse for storage and the origin of which cannot be
21 traced to the actual delivery of the grain represented:

22 (a) is not legal and is of no value;

23 (b) has no claim on the agricultural commodity stored
24 in a warehouse; and

25 (c) has no claim on the warehouseman's bond.

1 (5) All agricultural commodities in a warehouse belong
2 to the holder of outstanding warehouse receipts except those
3 commodities that are in excess of the total of all
4 outstanding storage obligations. An outstanding warehouse
5 receipt is a warehouse receipt that has not been returned
6 and paid in full on the basis of grade, quality, and
7 quantity by the warehouseman issuing it.

8 (6) If for convenience the holder of two or more
9 warehouse receipts covering like agricultural commodities
10 wishes to combine them, the new receipt so issued must state
11 the fact that it was issued in lieu of existing receipts. An
12 assembly or recapitulation statement must be made whenever
13 receipts are so combined, and the number or other
14 identification of the statement must be referenced on the
15 new combined receipt. The assembly sheet must be kept on
16 file in the warehouse office. Each canceled receipt must
17 have stamped across its face "Canceled by No. --" (showing
18 the number of the new combination receipt).

19 (7) A warehouseman who is a grower and conducts such
20 an enterprise may receive his own grain and issue warehouse
21 receipts for agricultural commodities, in the same manner
22 and without discrimination, as though the warehouse and
23 growing enterprises were of separate ownership. However, the
24 warehouseman shall report to the department all warehouse
25 receipts issued to himself as a grower.

1 (8) When warehouse receipts are prepared on duplicate
2 or triplicate forms, the original copy is the warehouse
3 receipt and must be given to the person storing the
4 agricultural commodity covered by such receipt. The other
5 copies shall have plainly printed across the face the words
6 "duplicate", "triplicate", or "nonnegotiable".

7 (9) Each warehouse receipt issued must show the amount
8 of cash or value of any merchandise the warehouseman has
9 advanced on the agricultural commodity represented by the
10 receipt, but such notation may not be construed as fixing
11 the date of sale of such grain.

12 (10) All warehouse receipts must be numbered
13 consecutively as issued by each warehouseman.

14 NEW SECTION. Section 35. Penalty for unlawful issue
15 of warehouse receipts. A person violating any of the
16 provisions of [section 34] or a designated employee
17 knowingly permitting any agricultural commodity to be
18 delivered contrary to the provisions of [section 34] is
19 guilty of a misdemeanor and punishable as provided in
20 [section 20].

21 NEW SECTION. Section 36. Partial withdrawal of
22 agricultural commodities -- adjustment or substitution of
23 receipt -- duties of warehouseman. When partial withdrawal
24 of his agricultural commodity is made by a depositor, the
25 warehouseman shall make an appropriate notation thereof on

1 the depositor's warehouse receipt or claim or shall cancel
2 and replace it with a warehouse receipt showing the amount
3 of the depositor's agricultural commodity remaining in the
4 warehouse. The warehouseman is liable for the redelivery of
5 all agricultural commodities specified on all outstanding
6 warehouse receipts.

7 **NEW_SECTION.** Section 37. Shipment of stored grain to
8 a terminal grain warehouse outside the state. (1) Warehouse
9 receipts or signed agreements from the owners of grain, on a
10 form approved by the department and in an amount equal to
11 the number of bushels the warehouseman has in a terminal
12 grain warehouse outside the state, are required for all
13 grain shipped out of state by a warehouseman.

14 (2) Warehouse receipts covering grain in terminal
15 grain warehouses outside the state must have the words
16 "Owner waives redelivery at point of origin of grain
17 represented by this receipt" printed or stamped on the back.

18 (3) Waiver or agreements to accept terminal warehouse
19 receipts must be signed in triplicate by the owner of the
20 grain or his agent and by a duly authorized representative
21 of the warehouse, with:

- 22 (a) the original to be mailed to the department;
- 23 (b) the duplicate copy to be retained by the
24 warehouseman; and
- 25 (c) the triplicate copy to be given to the holder of

1 the warehouse receipt.

2 (4) All grain must be held in bonded and approved
3 terminal warehouses, fully insured for the benefit of the
4 holder of Montana warehouse receipts.

5 (5) No grain held in terminal warehouses is subject to
6 any lien, mortgage, or encumbrance.

7 **NEW_SECTION.** Section 38. Duty to deliver stored
8 agricultural commodities -- damages. (1) The duty of the
9 warehouseman to deliver agricultural commodities stored is
10 governed by [sections 22 through 46]. Upon the return of a
11 properly endorsed warehouse receipt to the warehouseman and
12 upon payment or tender of all advances and legal charges,
13 agricultural commodities of the grade and quantity named
14 therein must be delivered to the holder of the warehouse
15 receipt.

16 (2) A warehouseman's duty to deliver any agricultural
17 commodity is fulfilled if delivery is made pursuant to the
18 contract with the depositor as rapidly as it can be done by
19 ordinary diligence. When delivery is made within 48 hours
20 from date of demand or as agreed upon in writing by all
21 parties concerned, the delivery complies with the provisions
22 of this section. An extension of the delivery period may be
23 granted by the department upon written request.

24 (3) All redeliveries must be made at the warehouse or
25 station where the agricultural commodity was received unless

1 otherwise agreed.

2 (4) At the option of the depositor, the warehouseman
3 shall deliver the agricultural commodity at a terminal or,
4 if mutually agreed, shall pay to the depositor the
5 equivalent market value of the agricultural commodity on
6 that date, less any freight and storage charges to the
7 terminal and less other charges which may be allowed by the
8 department.

9 (5) In addition to other penalties provided, a
10 warehouseman failing to deliver agricultural commodities
11 within the time provided in this section is subject to suit
12 by the person entitled to delivery of the agricultural
13 commodities and may be ordered by a court of competent
14 jurisdiction to pay actual damages or liquidated damages of
15 1/2 of 1% of the value for each day's delay.

16 NEW SECTION. Section 39. Delivery of grain from
17 different warehouse. (1) Any warehouseman owning or
18 operating more than one warehouse in this state may deliver
19 grain from one warehouse in settlement of warehouse receipts
20 issued for grain stored in another warehouse when grain for
21 storage has been presented at any warehouse in excess of its
22 available storage capacity.

23 (2) Nothing in subsection (1) confers upon the
24 warehouseman a right to make delivery of grain of
25 substantially lower value than that delivered for storage,

1 though of the same technical grade, in settlement of
2 warehouse receipts.

3 (3) The warehouseman shall at all times keep on hand
4 in bonded warehouses grain of sufficient quality and
5 quantity to settle all outstanding warehouse receipts.

6 (4) Freight and other charges must be determined at
7 the point of receipt.

8 NEW SECTION. Section 40. Loss of receipts --
9 conditions of reissue. While an original warehouse receipt
10 is outstanding and uncanceled by the issuing warehouseman,
11 no other or further receipt may be issued for the
12 agricultural commodity or any part of it covered thereby.
13 However, if a warehouse receipt is lost or destroyed, a new
14 receipt may be issued upon giving satisfactory security in
15 compliance with rules adopted by the department. The new
16 receipt must contain the same terms and conditions and must
17 bear on its face the number and date of the receipt in lieu
18 of which it is issued.

19 NEW SECTION. Section 41. Cancellation of insurance --
20 suspension of license. Upon cancellation of any policy of
21 insurance required by [sections 23 and 27], the insurance
22 company involved shall give 30 days' advance notice to the
23 department by certified mail, return receipt requested, of
24 cancellation of the policy. If the policy is canceled, the
25 department shall immediately suspend the license of such

1 uninsured warehouseman without a hearing, pursuant to the
 2 Montana Administrative Procedure Act. The suspension may not
 3 be removed until satisfactory evidence of the existence of
 4 an effective policy of insurance complying with the
 5 requirements of [sections 23 and 27] has been submitted to
 6 the department or until further order by the department or a
 7 court of competent jurisdiction.

8 NEW_SECTION. Section 42. Date of termination of
 9 storage contracts evidenced by warehouse receipts. All
 10 storage contracts on grain in store in warehouses, as
 11 evidenced by a warehouse receipt, must terminate on the last
 12 day of the license period as prescribed by rule.

13 NEW_SECTION. Section 43. Termination of storage
 14 contract -- sale of agricultural commodities for charges --
 15 notice required. (1) Storage of agricultural commodities may
 16 be terminated by the depositor at any time by the payment or
 17 tender of all legal charges and the surrender of the
 18 warehouse receipt, together with a demand for delivery of
 19 the agricultural commodities or a notice to the warehouseman
 20 to sell the commodities.

21 (2) In the absence of a demand for delivery, order to
 22 sell, or mutual agreement for the renewal of the storage
 23 contract entered into prior to the expiration of the storage
 24 contract, the warehouseman shall, upon the expiration of the
 25 storage contract, sell so much of the stored agricultural

1 commodities at the local market price at the close of
 2 business on that day as is sufficient to pay the accrued
 3 storage charges. He shall then issue new warehouse receipts
 4 for the balance of the agricultural commodity to the
 5 depositor upon the depositor's surrender of the original
 6 warehouse receipts. The warehouseman shall notify all
 7 warehouse receipt holders of the provisions of this section
 8 30 days prior to the end of the storage period.

9 NEW_SECTION. Section 44. Examination of stored
 10 agricultural commodities. A department inspector may examine
 11 at any reasonable time during ordinary business hours any
 12 stored agricultural commodity and all parts of any
 13 warehouse, provided the warehouse or the agricultural
 14 commodities stored therein are not endangered by such
 15 inspections. Every warehouseman or his agent shall furnish
 16 safe and reasonable access to facilities for such
 17 examination.

18 NEW_SECTION. Section 45. Warehouse shortage --
 19 remedies. (1) Whenever it appears, after an investigation,
 20 that a warehouseman does not have in his possession
 21 sufficient agricultural commodities to cover the outstanding
 22 warehouse receipts, scale weight tickets, or other evidence
 23 of storage liability issued or assumed by him or when a
 24 warehouseman refuses to submit his books, papers, or
 25 property to lawful inspection, the department may give

1 notice to the warehouseman to comply with the following
2 requirements:

3 (a) to cover such shortage;

4 (b) to give an additional bond as requested by the
5 department; or

6 (c) to submit to such inspection as the department
7 considers necessary.

8 (2) If the warehouseman fails to comply with the terms
9 of such notice within 24 hours from the date of issuance of
10 the notice or within such further time as the department may
11 allow, the department may petition the district court in the
12 county where the licensee's principal place of business is
13 located, as shown by the license application, for an order:

14 (a) authorizing the department to seize and take
15 possession of any or all agricultural commodities in the
16 warehouse or warehouses owned, operated, or controlled by
17 the warehouseman and of all books, papers, and property of
18 all kinds used in connection with the conduct or the
19 operation of the warehouse business and any materials that
20 pertain in any way to that business; and

21 (b) enjoining the warehouseman from interfering with
22 the department in the discharge of its duties as required by
23 [sections 22 through 46].

24 (3) Upon taking possession, the department shall give
25 written notice of its action to the surety on the bond of

1 the warehouseman and may notify the holders of record, as
2 shown by the warehouseman's record, of all warehouse
3 receipts or scale weight tickets issued for agricultural
4 commodities to present their warehouse receipts or other
5 evidence of deposits for inspection or to account for the
6 same. The department may thereupon cause an audit to be made
7 of the affairs of the warehouse, including but not limited
8 to the agricultural commodities of which there is an
9 apparent shortage, to determine the amount of shortage and,
10 if possible, to compute the shortage as to each depositor as
11 shown by the warehouseman's records. The department shall
12 notify the warehouseman and the surety on his bond of the
13 amount of the shortage and notify each affected depositor by
14 sending notices to the depositor's last-known address as
15 shown by the records of the warehouseman.

16 (4) The department shall retain possession of the
17 agricultural commodities in the warehouse or warehouses and
18 the books, papers, and property of the warehouseman until
19 such time as:

20 (a) the warehouseman or the surety on the bond has
21 satisfied the claims of all holders of warehouse receipts or
22 other evidence of deposits;

23 (b) the surety on the bond has satisfied all such
24 claims pro rata, if the shortage exceeds the amount of the
25 bond; or

1 (c) the department is ordered by the court to
2 surrender possession.

3 (5) If during or after the audit provided for in this
4 section or at any other time the department has evidence
5 that the warehouseman is insolvent or is unable to satisfy
6 the claims of all holders of warehouse receipts or other
7 evidence of deposits, the department may petition the
8 district court for the appointment of the department to
9 operate or liquidate the business of the warehouse.

10 (6) At any time within 10 days after the department
11 takes possession of any agricultural commodities or the
12 books, papers, or property of any warehouse, the
13 warehouseman may serve notice on the department to appear in
14 the district court of the county in which the warehouse is
15 located, at a time to be fixed by the court, and show cause
16 why the agricultural commodities, books, papers, and other
17 property should not be restored to his possession.

18 (7) All necessary expenses incurred by the department
19 in carrying out the provisions of this section may be
20 recovered in a separate civil action brought by the
21 department in district court or recovered at the same time
22 and as part of the seizure action filed under subsection
23 (2)(a).

24 (8) As a part of the expenses so incurred, the
25 department is authorized to include the cost of adequate

1 liability insurance necessary to protect the department, its
2 officers, and others engaged in carrying out this section.

3 (9) The department shall set by rule the time limits
4 for:

5 (a) notification of its action on the surety bond of a
6 warehouseman;

7 (b) the holders of warehouse receipts or scale weight
8 tickets to provide to the department such evidence of
9 deposit; and

10 (c) satisfaction of the claims of all holders of
11 warehouse receipts or other evidence of deposits.

12 ~~NEW SECTION.~~ Section 46. Inspection by the
13 department. (1) The department may investigate any
14 warehouseman who has applied for or who had previously been
15 issued a license and may inspect his warehouse for purposes
16 of determining compliance with [sections 22 through 46] and
17 rules of the department.

18 (2) The department may investigate any warehouseman or
19 inspect any warehouse that it has reasonable cause to
20 believe is operating in violation of [sections 22 through
21 46] and rules of the department.

22 ~~NEW SECTION.~~ Section 47. Commodity dealer license
23 requirements -- financial responsibility. (1) A person may
24 not engage in the business of a commodity dealer in this
25 state without first having obtained a license issued by the

1 department.

2 (2) An application for a license to engage in business
3 as a commodity dealer must be filed with the department and
4 must be on a form prescribed by the department.

5 (3) A license application must include the following:

6 (a) the name of the applicant;

7 (b) the names of the officers and directors if the
8 applicant is a corporation;

9 (c) the names of the partners if the applicant is a
10 partnership;

11 (d) the location of the principal places of business;

12 (e) a sufficient and valid bond as specified in
13 [section 50];

14 (f) the number and description of trucks or
15 tractor-trailer units owned or leased by the applicant that
16 will be used in the transportation of agricultural
17 commodities purchased pursuant to the provisions of
18 [sections 47 through 54];

19 (g) a complete financial statement prepared by a
20 licensed accountant according to generally accepted
21 accounting principles, setting forth the applicant's assets,
22 liabilities, and net worth. The commodity dealer shall have
23 and maintain current assets equal to or greater than current
24 liabilities. Assets must be shown at original cost less
25 depreciation. Upon written request filed with the

1 department, the director may allow asset valuations in
2 accordance with a competent appraisal.

3 (h) any other reasonable information the department
4 finds necessary to carry out the provisions and purpose of
5 [sections 47 through 54].

6 (4) In order to receive and retain a commodity
7 dealer's license, a commodity dealer shall have and maintain
8 net assets of at least \$50,000 or maintain a bond in the
9 amount of \$2,000 for each \$1,000 or fraction thereof of net
10 assets deficiency. However, a minimum of \$10,000 net assets
11 is required by a commodity dealer to qualify for a license.
12 A bond submitted for purposes of this subsection is in
13 addition to any bond otherwise required under [sections 47
14 through 50].

15 (5) The department shall adopt rules relating to the
16 form and time of filing of financial statements. The
17 department may require additional information or
18 verification regarding the financial resources of the
19 applicant and the applicant's ability to pay producers for
20 agricultural commodities purchased from them.

21 NEW SECTION. Section 48. License fees. (1) The
22 department shall collect an annual fee for each commodity
23 dealer license according to the following schedule:

24	<u>Hundredweight</u>	<u>Rate</u>
25	<u>(previous_license_year_cwt</u>	<u>per</u>

<u>volume_or_estimated_yearly_cwt</u>	<u>facility</u>
0 to 25,000	\$ 25
25,001 to 50,000	50
50,001 to 125,000	75
125,001 to 250,000	100
250,001 to 375,000	125
over 375,000	150

(2) Each applicant shall also pay a fee of \$25 for each truck operated by it in the operation of his business as a commodity dealer.

(3) All fees collected under this section must be placed in the general fund.

NEW SECTION. Section 49. License issuance -- renewal -- expiration. (1) The department shall issue a license when the applicant has filed the application and complied with the terms and conditions of [sections 47 through 50] and the rules of the department.

(2) A commodity dealer's license may be renewed annually by submitting all required licensing documents.

(3) A commodity dealer's license that has expired may be reinstated by the department upon receipt of all licensing documents required and a penalty fee in the amount of \$50 if the document is filed within 30 days from the date of expiration of the commodity dealer's license. At no time during the 30-day period or thereafter may the person act as

a commodity dealer. All license applications received after the 30-day penalty period must be considered original applications.

(4) A commodity dealer's license is not transferable.

(5) Any partnership with a partner or any corporation that has an officer, director, or majority stockholder owning at least 10% of issued stock who has had a license revoked under [sections 47 through 50] or the United States Warehouse Act is subject to the provisions of [section 12].

NEW SECTION. Section 50. Bonding requirement amounts -- cancellation. (1) An applicant for a license to operate as a commodity dealer shall, before a license may be issued, file with the department a surety bond payable to the state. The aggregate annual liability of the surety may not exceed the sum of the bond. A continuous bond shall obligate a new penal sum with the commencement of each licensing year.

(2) Unless set by department rule, the bond for a commodity dealer may not exceed 2% of the value of the agricultural commodities purchased by the commodity dealer from the producer or warehouseman during the previous 12-month period. The bond for all new applicants is 2% of the estimated value of all agricultural commodities to be purchased during the coming 12-month period. The department may by rule require a greater percentage in each instance. The minimum amount of bond required by any commodity dealer

1 is \$20,000, and the maximum is prescribed in [section 5].

2 (3) A surety shall notify the commodity dealer and the
3 department by certified mail at least 30 days prior to the
4 cancellation of the bond. The liability of the surety covers
5 purchases made by the commodity dealer during the time the
6 bond is in force. A commodity dealer's bond filed with the
7 department is continuous until canceled by the surety upon
8 30 days' notice.

9 NEW SECTION. Section 51. Posting of license. The
10 commodity dealer's license must be posted in a conspicuous
11 location at his place of business. A duplicate commodity
12 dealer's license must be posted at each location at which
13 records are maintained for transactions of the commodity
14 dealer and also within each truck operated by him in the
15 state.

16 NEW SECTION. Section 52. Inspection of premises,
17 books, and records. The department may at any reasonable
18 time inspect the premises and records of any commodity
19 dealer used in the conduct of his business. A commodity
20 dealer shall, upon request of the director, furnish to the
21 department at any reasonable time and place all books,
22 accounts, records, and papers relating to agricultural
23 commodity transactions within the state. If there exists
24 good cause to believe that a person is doing business as a
25 commodity dealer without a license, the department may

1 inspect the books, papers, and records of the person that
2 pertain to agricultural commodity purchases.

3 NEW SECTION. Section 53. Insufficient checks --
4 prohibition. No person engaged in business as a commodity
5 dealer may draw or deliver any check, draft, or order for
6 payment of money upon any bank for the purchase of
7 agricultural commodities when at the time of drawing or
8 delivery the maker or drawer does not have sufficient funds
9 or has failed to arrange for credit with the bank or
10 depository for payment in full upon presentation of the
11 check, draft, or order for payment of money. The word
12 "credit" as used in this section means an arrangement or
13 understanding with the bank or depository for payment of the
14 check, draft, or order.

15 NEW SECTION. Section 54. Payment of purchase price --
16 definitions. (1) A person required to be licensed as a
17 commodity dealer shall pay 90% of the purchase price to the
18 owner or his agent for agricultural commodities upon
19 delivery and demand by the owner or agent and the remaining
20 10% not later than 30 days after delivery by the owner or
21 agent unless otherwise agreed to in writing by the parties.

22 (2) As used in this section, the following definitions
23 apply:

24 (a) "Delivery" means the transfer by the seller of
25 title to and possession of agricultural commodities to the

1 commodity dealer or to another person in accordance with the
2 agreement between the seller and the commodity dealer.

3 (b) "Payment" means the actual payment or tender of
4 payment of the agreed purchase price by the commodity dealer
5 to the seller.

6 **NEW_SECTION.** Section 55. Official grain inspectors,
7 samplers, and weighers -- designation of seasonal inspection
8 points -- assignment of inspectors. (1) The department shall
9 provide inspectors, samplers, and weighers to enforce
10 [sections 55 through 71]. At all inspection points
11 designated by the department, the department shall provide
12 sufficient official grain inspectors, samplers, and weighers
13 to inspect and weigh all grain subject to state inspection.

14 (2) The department may, during the grain-marketing
15 season, appoint inspectors to visit the grain-growing
16 districts to investigate the grading, dockage, and weighing
17 of grain and to enforce the rules of the department.

18 (3) Expenditures for the inspection and weighing at
19 the points designated by the department may not exceed total
20 fee receipts at those points.

21 **NEW_SECTION.** Section 56. Qualifications of official
22 grain inspectors, samplers, and weighers. Official grain
23 inspectors, samplers, and weighers must be qualified in
24 accordance with the Grain Standards Act. Official grain
25 inspectors, samplers, and weighers may not be directly or

1 indirectly interested in the handling, sorting, shipping,
2 purchasing, or selling of grain or grain commodities.

3 **NEW_SECTION.** Section 57. Penalty for misconduct. (1)
4 Any official grain inspector, sampler, or weigher guilty of
5 neglect of duty or who knowingly or carelessly inspects,
6 samples, or weighs grain improperly or who directly or
7 indirectly accepts any money or other consideration for
8 neglect of duty or improper performance of duty is guilty of
9 official misconduct and is punishable as provided in
10 45-7-401.

11 (2) Any person who improperly influences or attempts
12 to improperly influence any official grain inspector,
13 sampler, or weigher in the performance of his duties is
14 guilty of bribery and is punishable as provided in 45-7-101.

15 (3) Upon conviction of an offense described in
16 subsection (1), an officer must be removed by the department
17 pursuant to procedures established by department rule.

18 **NEW_SECTION.** Section 58. Establishment of standard
19 grain grades. (1) The department shall by rule establish
20 standard grades to apply to all grain bought or handled by
21 warehouses in this state. The department shall adopt as
22 state grade standards all grades for grain established by
23 the United States department of agriculture.

24 (2) Grain standards adopted by the department do not
25 apply to grain contracted for before the effective date of

1 the adoption of such standards.

2 **NEW_SECTION.** Section 59. Rules governing dockage --
3 sample inspection. The department shall adopt rules
4 governing the dockage on inferior grades, which shall apply
5 in all executory contracts entered into after their
6 adoption. If the price or amount to be paid depends on
7 terminal weight or grade, the rules shall control the
8 dockage insofar as dockage affects the price to be paid.
9 The department shall also provide for sample inspection of
10 grain, adopt rules governing sample inspection, and provide
11 that the sample inspection, when made, is final.

12 **NEW_SECTION.** Section 60. Special inspection of grain.
13 (1) If grain is sold based on Montana grade and is to be
14 shipped from places not provided with state inspection, the
15 buyer, seller, or person making the delivery may have it
16 inspected by notifying an inspector, who shall have the
17 grain inspected. After inspection, the inspector shall
18 issue, on request of the buyer, seller, or person delivering
19 the grain, an inspector's certificate showing the grade of
20 the grain. The person calling for the inspection shall pay a
21 reasonable fee fixed by department rule.

22 (2) Grain that is shipped to points in this state
23 where no inspection is maintained may be inspected on
24 request of either the buyer or seller, and a certificate may
25 be issued showing the grade of the grain. The charge for the

1 service shall at least equal the entire cost of providing it
2 and shall be paid by the party calling for the inspection.

3 **NEW_SECTION.** Section 61. Sampling grain. Samples may
4 be drawn from all grain shipped to warehouses and from all
5 grain inspected or weighed. The samples are the property of
6 the state, subject to disposition by the department under
7 rules adopted by the department.

8 **NEW_SECTION.** Section 62. Examination of grain cars at
9 destination. (1) An official grain inspector, sampler, or
10 weigher, before opening the doors of a car containing grain
11 upon its arrival at any of the places designated by the
12 department for inspection, shall first ascertain the
13 condition of the car and determine whether any leakages have
14 occurred while the car was in transit, determine whether the
15 doors were properly secured and sealed at the point of
16 shipment, and make a record of those facts in all cases,
17 giving seal numbers.

18 (2) After examinations have been made, the official
19 grain inspector, sampler, or weigher shall securely close
20 and reseal the opened doors, using the special seal of the
21 department.

22 (3) A record must be kept by the official grain
23 inspectors, samplers, or weighers of all original seals
24 broken, the number of seals, and the date when broken. An
25 official grain inspector, sampler, or weigher shall break

1 the seal, weigh, and superintend the loading of all cars of
2 grain subject to inspection. Any other person who breaks the
3 seal or officially weighs the cars of grain is guilty of a
4 misdemeanor.

5 **NEW SECTION.** Section 63. Protein testing laboratory.
6 (1) The department shall maintain an official protein
7 testing laboratory so designated by the Grain Standards Act.

8 (2) No other laboratory may officially certify the
9 grade or protein content of grain unless the laboratory is
10 licensed by the department under rules adopted by the
11 department.

12 (3) The department shall by rule determine the
13 standards of analysis controlling all other official protein
14 testing laboratories in this state.

15 (4) The department may by rule determine the form of
16 protein certificates issued by it.

17 **NEW SECTION.** Section 64. Protein test available on
18 all grain delivered to grain warehouses -- manner of making
19 test -- procedure -- fee -- penalty. (1) Each warehouseman
20 shall take samples from each load of grain delivered to his
21 warehouse and preserve the sample in a moistureproof
22 container with the owner's name on it. A 1-pint portion of
23 the composite sample may be submitted to the department, and
24 the balance must be held in the owner's container.

25 (2) If either the warehouseman or owner is

1 dissatisfied with the results of the protein tests, he may
2 appeal to the department. In case of an appeal, a 1-pint
3 portion of the remainder of the owner's sample must be
4 submitted to the department with a statement of facts of the
5 appeal. A final test, in duplicate, must be made by the
6 department. The department's certificate of the test is
7 final and binding upon both parties in establishing the
8 basis of the price paid by the warehouseman.

9 (3) A fee established by the department commensurate
10 with the cost of each protein test must be deducted and paid
11 at the time of final settlement.

12 (4) Upon written request of the owner, an official
13 protein test must be made.

14 (5) Each warehouseman shall post in a conspicuous
15 place a placard indicating that producers may request, in
16 writing, an official grade and protein certificate. The
17 department shall issue the placard.

18 (6) A person violating this section is guilty of a
19 misdemeanor.

20 **NEW SECTION.** Section 65. Fees for inspection,
21 testing, and weighing grain -- disposition -- investment.
22 (1) The department shall by rule fix the fees for
23 inspection, testing, and weighing of grain.

24 (2) Those fees or proceeds are a lien upon the grain
25 until paid.

1 (3) All fees and other charges fixed by rule,
2 including fees for the inspection, grading, weighing, and
3 protein testing of grain, shall reflect as nearly as
4 possible the actual cost of the services.

5 (4) All those fees and charges must be paid to the
6 department and deposited with the state treasurer. The state
7 treasurer shall place all money in the earmarked revenue
8 fund. Fees deposited in the earmarked revenue fund may be
9 used to pay approved claims for expenses incurred in
10 inspecting, grading, weighing, and protein testing of grain.

11 (5) The department may direct the board of investments
12 to invest funds from the earmarked revenue fund pursuant to
13 the provisions of the unified investment program for state
14 funds. The income from such investments must be credited to
15 the proper department account in the earmarked revenue fund.

16 **NEW_SECTION.** Section 66. Records of inspection. (1)
17 The official grain inspectors, samplers, and weighers have
18 exclusive control at places provided for state inspection of
19 the weighing and grading of grain to be inspected. Suitable
20 books and records must be kept in which must be entered an
21 accurate record of every carload or truckload of grain
22 inspected or weighed by them. The records must show for each
23 car or truck:

24 (a) the number or other designation of the car or
25 truck;

1 (b) the net weight of the grain;

2 (c) the kind of grain and its grade and, if graded
3 below standard No. 1 grade, the reason for such grade.

4 (2) For each carload or truckload of grain, the
5 official grain inspector shall give a certificate of
6 inspection, showing the kind and grade of the grain, the
7 reason for all grades below No. 1, and the amount to be
8 allowed for dockage, if any. For each carload or truckload
9 weighed, the weigher shall give a weight certificate showing
10 the true weight thereof and containing a statement on the
11 condition of the car or truck and evidences of leakage or
12 damage, if any.

13 (3) The inspection and weight certificates must be
14 made available to the warehouse loading or unloading the
15 grain, the shipper or his agent, and the railroad company or
16 other carrier by which the grain was shipped or carried.

17 (4) Official grain inspectors and weighers shall also
18 keep an accurate record of all appeals and decisions and a
19 complete record of every official act, which books and
20 records must be open to inspection by any party of interest.

21 **NEW_SECTION.** Section 67. Appeals to department --
22 hearing and order. (1) If an owner, consignee, shipper of
23 grain, or warehouseman disagrees with the grade given by the
24 department, he may appeal to the department from the
25 decision within 5 days from the date of certificate by

1 giving notice of appeal. A fee must be charged if the appeal
 2 supports the original grade. The notice of appeal may be
 3 given by letter stating that the party appeals from the
 4 decision of the official grain inspector and specifying the
 5 initials and numbers of the cars in which the grain was
 6 contained when inspected and graded.

7 (2) The appellant shall also file with the department
 8 a list containing the name and address of each party
 9 interested in the subject matter. The department, upon
 10 receiving the notice and list of interested parties, shall
 11 immediately notify the interested parties of the time and
 12 place designated by it for a hearing under the Montana
 13 Administrative Procedure Act. At the hearing, which must be
 14 5 days from the date of receiving the notice, the department
 15 shall inquire into the reasonableness and correctness of the
 16 original grading. After the hearing, the department shall
 17 affirm or modify the grade as justified by the facts and
 18 evidence.

19 NEW SECTION. Section 68. Coloration of grain treated
 20 with injurious or toxic substances. Any grain treated with
 21 any injurious or toxic substance or chemical must at the
 22 same time be colored or dyed a color contrasting with the
 23 natural color of the grain so that the treated grain is
 24 readily identifiable as having been treated with an
 25 injurious or toxic substance or chemical.

1 NEW SECTION. Section 69. Sale or offering for sale of
 2 treated product prohibited. No person may sell or offer for
 3 sale grain that has been treated with any injurious or toxic
 4 substance or chemical unless the grain has been colored or
 5 dyed a color contrasting with the natural color of the
 6 grain. [Section 68] and this section do not apply to the
 7 treatment of grain solely for the killing of insects which
 8 might be present therein. A person violating this section is
 9 guilty of a misdemeanor.

10 NEW SECTION. Section 70. Copies of grades and rules
 11 to be furnished and displayed by warehousemen. (1) The
 12 department shall, immediately after the adoption of rules
 13 establishing grades fixing dockage, supply all warehousemen
 14 with a copy of the grades and rules. A warehouseman shall
 15 keep a copy on file in a convenient place in each warehouse.
 16 If an office is maintained in connection with the warehouse,
 17 a copy of the grades and rules shall be kept on file in the
 18 office. A placard notice must be posted in a conspicuous
 19 place in every warehouse and office, reading "A copy of
 20 Montana grades and rules is on file here for information of
 21 interested parties".

22 (2) A warehouseman shall exhibit a copy of the grades
 23 and rules to any interested party at any warehouse or office
 24 and permit the interested party to examine the copy.

25 NEW SECTION. Section 71. Dispute as to grade or

1 dockage -- laboratory test to be made. If a disagreement
 2 arises between the party receiving and the party delivering
 3 the grain at any warehouse in this state as to the proper
 4 grade or dockage of grain in accordance with standards at
 5 terminal points, an agreed average sample of at least 1
 6 quart of the grain in dispute may be taken by the interested
 7 parties and forwarded to the department in a suitable
 8 container, marked for identification by the interested
 9 parties, mail or express charges prepaid, with the names and
 10 addresses of the parties affixed thereto. The department
 11 shall examine the grain and determine the appropriate grade
 12 and dockage under the inspection rules. The findings of the
 13 inspection are binding upon both parties, subject to appeal
 14 as provided in [section 67]. If the grain in question is
 15 damp, musty, or otherwise out of condition, this fact, with
 16 any other necessary information, must accompany the sample.

17 Section 72. Section 80-5-201, MCA, is amended to read:

18 "80-5-201. Definitions. When used in this part, the
 19 following definitions apply:

20 (1) "Agricultural seed" means the seeds of grass,
 21 forage, cereal, and fiber crops and any other kinds of seeds
 22 commonly recognized within this state as agricultural seeds
 23 and includes lawn seeds and mixtures of seeds.

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

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

7 (4) "Person" means any individual, firm, partnership,
 8 corporation, or association.

9 ~~(5) "Public agricultural seed warehouse" means any~~
 10 ~~warehouse or structure in which agricultural seed is~~
 11 ~~received from the public for storage, assembling, or~~
 12 ~~cleaning.~~

13 ~~(6) "Screening" means chaff, sterile florets,~~
 14 ~~immature seed, weed seed, inert matter, and any other~~
 15 ~~materials removed from seed by any kind of cleaning or~~
 16 ~~processing.~~

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

23 ~~(8) "Seed dealer" means any person who offers for~~
 24 ~~sale, sells, or barter agricultural seeds to the ultimate~~
 25 ~~consumer.~~

1 ~~(9)~~(11) "Seed labeler" means any person affixing labels
2 to agricultural seeds with his name and address listed as
3 required in 80-5-102 when such seed is distributed in
4 Montana.

5 ~~(10)~~(18) "Seed processing plant" means any place of
6 business that repackages, cleans, blends, treats, or
7 otherwise manipulates agricultural seeds.

8 ~~(11)~~"Seed---warehouseman"--means--any--person--owning
9 controlling--or--operating--a--public--agricultural--seed
10 warehouse."

11 Section 73. Section 80-5-202, MCA, is amended to read:

12 "80-5-202. Licensing -- issuance -- application -- fee
13 -- bonding -- insurance. (1) All seed processing plants ~~and~~
14 seed labelers ~~seed buyers and public agricultural seed~~
15 warehouses shall obtain a license from the department before
16 doing business in this state; however, a Montana certified
17 seed grower, when processing or labeling certified seed from
18 his own production, is not required to be licensed under
19 this section. Bin-run seed sales from one farmer to another
20 are exempt from this part.

21 (2) All licenses are issued on a fiscal-year basis and
22 expire on June 30 of each year. ~~A license may cover any or~~
23 ~~as many as all four activities of processing plants seed~~
24 ~~labelers seed buyers and public agricultural seed warehouses~~

25 (3) Application for license is made in a manner and on

1 forms provided by the department. A nonresident shall file a
2 written power of attorney designating the secretary of state
3 as his agent, and the power of attorney shall be so prepared
4 and in such form as to render effective the jurisdiction of
5 the courts of the state of Montana over the nonresident
6 applicant. A nonresident who has a duly appointed resident
7 agent upon whom process may be served as provided by law is
8 not required to designate the secretary of state as his
9 agent. The department shall be furnished with a certified
10 copy of the designation of the secretary of state or of a
11 resident agent.

12 (4) The department may establish by rule minimum
13 standards for equipment and handling procedures for
14 facilities to be licensed and may carry out inspections
15 during normal business hours to determine that these
16 standards are being adhered to.

17 (5) Each license shall cost no more than \$50 a year.
18 The department may by rule establish license fees which bear
19 a reasonable relationship to the cost of administering this
20 part.

21 (6) Failure on the part of a licensee to comply with
22 the rules issued under the authority of this section is
23 sufficient cause for cancellation of a license by the
24 department, provided the licensee is given a reasonable
25 opportunity to correct inadvertent and nonrecurring

1 deficiencies.

2 ~~{7}--The--department--may--by--rule--establish--bonding--and~~
3 ~~insurance--requirements--for--each--class--of--licensee"~~

4 Section 74. Section 80-5-203, MCA, is amended to read:

5 "80-5-203. Dealer's license -- exception -- fee --
6 application -- violation. (1) No person may distribute seed
7 without obtaining a dealer's license from the department for
8 each place of business. No license is required of a person
9 who distributes seeds only in sealed packages of less than
10 10 pounds, packed by a licensed seed labeler and bearing his
11 name and address. Each dealer's license shall cost no more
12 than \$20 a year and expires on June 30 of each year. The
13 department may by rule establish license fees which bear a
14 reasonable relationship to the cost of administering this
15 part. Any licensed processing plant~~y~~ or seed labeler~~--seed~~
16 ~~buyer--or--public--agricultural--seed--warehouse~~ may obtain a
17 dealer's license without additional fee.

18 (2) Application for a dealer's license shall be made
19 in a manner and on forms provided by the department. Such
20 forms shall require among other things the name of a person
21 domiciled in this state authorized to receive and accept
22 service or legal notices of all kinds.

23 (3) Violation of provisions of this section or the
24 distribution of agricultural seeds not legally labeled
25 constitutes adequate grounds for canceling a license or

1 denying a license to a dealer."

2 NEW SECTION. Section 75. Repealer. Sections 80-3-501
3 through 80-3-513, 80-4-101 through 80-4-106, 80-4-111
4 through 80-4-126, 80-4-201 through 80-4-209, 80-4-221
5 through 80-4-234, and 80-4-311 through 80-4-313, MCA, are
6 repealed.

7 NEW SECTION. Section 76. Severability. If a part of
8 this act is invalid, all valid parts that are severable from
9 the invalid part remain in effect. If a part of this act is
10 invalid in one or more of its applications, the part remains
11 in effect in all valid applications that are severable from
12 the invalid applications.

13 NEW SECTION. Section 77. Effective date. This act is
14 effective July 1, 1983.

-End-