

HOUSE BILL NO. 193

INTRODUCED BY TUSS, CHRISTIAENS

IN THE HOUSE

JANUARY 15, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON AGRICULTURE, LIVESTOCK, & IRRIGATION.  FIRST READING.
FEBRUARY 5, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 6, 1993	PRINTING REPORT.
FEBRUARY 8, 1993	SECOND READING, DO PASS.  ON MOTION, REREFERRED TO COMMITTEE ON APPROPRIATIONS.
FEBRUARY 18, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 19, 1993	ON MOTION, CONSIDERATION PASSED FOR THE DAY.
FEBRUARY 22, 1993	PRINTING REPORT.  SECOND READING, DO PASS.
FEBRUARY 23, 1993	ENGROSSING REPORT.
FEBRUARY 24, 1993	THIRD READING, PASSED. AYES, 99; NOES, 0.  TRANSMITTED TO SENATE.

IN THE SENATE

MARCH 1, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON AGRICULTURE, LIVESTOCK, & IRRIGATION.  FIRST READING.
MARCH 11, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 12, 1993	ON MOTION, REREFERRED TO COMMITTEE ON TAXATION.

APRIL 3, 1993

COMMITTEE RECOMMEND BILL BE  
CONCURRED IN AS AMENDED. REPORT  
ADOPTED.

APRIL 8, 1993

SECOND READING, CONCURRED IN.

APRIL 12, 1993

THIRD READING, CONCURRED IN.  
AYES, 38; NOES, 10.

RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 14, 1993

SECOND READING, AMENDMENTS  
CONCURRED IN.

APRIL 15, 1993

THIRD READING, AMENDMENTS  
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 House BILL NO. 193  
2 INTRODUCED BY Conley  
3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT IMPLEMENTING THE  
5 MONTANA PRODUCE ACT BY GENERALLY UPDATING PROCEDURES AND  
6 REPLACING LAWS RELATED TO HORTICULTURE AND FARM PRODUCE;  
7 REPEALING SECTIONS 80-3-101, 80-3-102, 80-3-103, 80-3-104,  
8 80-3-105, 80-3-106, 80-3-107, 80-3-108, 80-3-109, 80-3-110,  
9 80-3-111, 80-3-201, 80-3-202, 80-3-203, 80-3-204, 80-3-205,  
10 80-3-206, 80-3-207, 80-3-211, 80-3-212, 80-3-601, 80-3-602,  
11 80-3-603, 80-3-604, 80-3-605, 80-3-606, 80-3-607, 80-3-608,  
12 80-3-609, 80-3-610, 80-3-611, 80-3-612, 80-3-613, 80-3-701,  
13 80-3-702, 80-3-703, 80-3-704, 80-3-705, 80-3-706, 80-3-707,  
14 80-3-708, 80-3-709, 80-3-710, 80-3-711, 80-3-712, AND  
15 80-3-713, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A  
16 RETROACTIVE APPLICABILITY DATE, AND A TRANSITION PROVISION."

17  
18 STATEMENT OF INTENT

19 A statement of intent is required for this bill because  
20 the following sections extend additional rulemaking  
21 authority to the department of agriculture's present  
22 authority to regulate horticulture and farm produce:

23 (1) The definition of "produce" in [section 2] is  
24 intended to allow the department to establish by rule what  
25 products constitute produce and are subject to the Montana

1 Produce Act.

2 (2) [Section 6(3)] is intended to allow the department  
3 to establish a penalty matrix that sets out the kinds of  
4 administrative penalties applicable to violations of the  
5 Montana Produce Act and delineate the degrees of penalty  
6 that may be assessed for initial and subsequent  
7 administrative violations.

8 (3) [Section 10(1)] is intended to grant the department  
9 the discretion to set and adjust the produce assessment fee,  
10 within the statutory range, to cover the department's  
11 assessment costs.

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

14 NEW SECTION. Section 1. Short title. [Sections 1  
15 through 14] may be cited as the "Montana Produce Act".

16 NEW SECTION. Section 2. Definitions. As used in  
17 [sections 1 through 14], unless the context indicates  
18 otherwise, the following definitions apply:

19 (1) "Container" means any package, sack, box, crate,  
20 carton, basket, or other object used for the shipping of  
21 produce.

22 (2) "Director" means the director of agriculture  
23 appointed pursuant to 2-15-3001.

24 (3) "Person" means an individual, firm, association,  
25 corporation, partnership, or any other form of business

enterprise.

(4) "Produce" means any fruit, vegetable, or other natural product designated by department rule.

(5) "Produce dealer" means a person who engages in a business involving or who as part of a business participates in purchasing, exchanging, negotiating, or soliciting the sale, resale, exchange, or transfer of produce in this state.

(6) "Produce unit" means the standard size container for a given type of produce. A produce unit may be established by department rule.

(7) "Retail" means sale of produce to the ultimate consumer.

(8) "Shipping point inspection" means an inspection of produce shipped from this state.

(9) "Stop sale order" means a written notice to hold produce from sale or movement until a violation has been resolved and the produce is released by the department.

(10) "Wholesale" means the sale of produce intended for resale. The term does not include the sale of Montana-grown produce when sold by the Montana grower for purposes of resale.

**NEW SECTION. Section 3. Powers and duties of department.** (1) The department may:

(a) enter a premises at any reasonable time to inspect

produce for condition, for grade, or for determining compliance with the provisions of [sections 1 through 14]; and

(b) cooperate with and enter into agreements with governmental agencies of this state, agencies of other states, agencies of the U.S. government, and private associations, in furtherance of [sections 1 through 14].

(2) The department shall adopt rules necessary for the efficient implementation of [sections 1 through 14].

**NEW SECTION. Section 4. Produce account -- disposition of funds.** (1) There is a produce account in the state special revenue fund. All inspection, license, and penalty fee revenue authorized and collected under [sections 1 through 14] must be deposited in the account to the credit of the department.

(2) Money received as revenue under [sections 1 through 14] that is not immediately required for the purposes of [sections 1 through 14] must be invested under provisions of the unified investment program established in Title 17, chapter 6, part 2. All interest earned on the account must be deposited in the account.

**NEW SECTION. Section 5. Enforcement -- stop sale order -- injunction.** (1) The department may place a stop sale order on any lot of produce sold or transported without proper labeling or in violation of [sections 1 through 14].

(2) If a person violates any provision of [sections 1 through 14], the department may seek to enjoin that person from further business until the person has complied with [sections 1 through 14]. The department may file an injunction action in the first judicial district court. The injunction provided for by this section is in addition to the misdemeanor penalty provided for in [section 6].

**NEW SECTION. Section 6. Penalties.** (1) A person who violates or aids in the violation of any provision of [sections 1 through 14] or rules adopted under [sections 1 through 14] is subject to one or both of the following penalties:

(a) an administrative civil penalty of not more than \$1,000 for each offense;

(b) a misdemeanor penalty of not less than \$300 or more than \$1,000.

(2) Assessment of a civil penalty under subsection (1)(a) may be made in conjunction with any other warning, order, or administrative action authorized by [sections 1 through 6] that is issued by the department.

(3) The department shall establish by rule a penalty matrix that schedules the types of penalties, the amounts for initial and subsequent offenses, and other matters necessary for the administration of civil penalties under subsection (1)(a). The issuance of a civil penalty is

subject to the contested case procedures of Title 2, chapter 4, part 6.

(4) Nothing in [sections 1 through 14] may be construed as requiring the department or its authorized representative to report violations of [sections 1 through 14] when a reasonable belief exists that the public interest will be served by a suitable warning.

(5) It is the duty of a county attorney to whom any violation is reported to cause appropriate proceedings to be initiated and prosecuted in a court of competent jurisdiction without delay.

**NEW SECTION. Section 7. Standard grades for produce.**

(1) Unless a Montana grade standard has been established, the standard grades for produce:

(a) are limited to the U.S. grades governing the produce;

(b) must conform in all respects and be identical with the most recent standards established by the U.S. department of agriculture for the produce; and

(c) when conforming, must be accepted as the legal standards for this state.

(2) The department may by rule establish state grades for produce grown in Montana when the amount grown reaches a volume rendering it of market importance or when requested by the industry.

1 (3) The grade "Montana unclassified" must contain at  
2 least 50% of produce that would grade U.S. No. 2 or better.

3 (4) Produce not conforming to established grades may be  
4 sold if it is marked in the same manner as graded produce,  
5 except that in place of specifying the grade, the word  
6 "ungraded" or "unclassified" must be used.

7 NEW SECTION. Section 8. Markings -- exceptions. (1) A  
8 person may not sell, pack, offer for sale or transport,  
9 deliver, or consign in interstate or intrastate commerce  
10 produce prepared for market unless each container has been  
11 legibly marked with the declared grade of the produce and  
12 the name and address of the person responsible for the  
13 packing and grading. The grade declared must conform to the  
14 provisions of [sections 1 through 14].

15 (2) Produce that is grown in Montana or any other  
16 produce arriving or found in Montana in containers that have  
17 no grade marking must meet the requirements of the U.S. No.  
18 1 grade or be marked with the proper grade.

19 (3) This section does not apply to:

20 (a) a person selling to the ultimate consumer produce  
21 that was grown by that person and that is not for resale; or

22 (b) the display of produce on a free choice rack.

23 (4) Produce may be sold for seed purposes when graded  
24 under rules adopted by the department and plainly marked for  
25 seed purposes.

1 NEW SECTION. Section 9. Advertisements -- grade  
2 stated. Produce for which a grade is established in  
3 [sections 1 through 14], when advertised with a price  
4 stated, must meet the requirements of U.S. No. 1 grade or  
5 better or must show, in addition to the price quoted, the  
6 true grade of the produce as provided by law. Price tags  
7 exhibited in a place of business on exposed produce are not  
8 considered advertising under this section.

9 NEW SECTION. Section 10. Reporting requirements --  
10 assessment fees -- exceptions. (1) Produce sold or  
11 distributed in this state must be reported, on forms  
12 approved by the department, by number of produce units per  
13 type of produce and must be assessed a fee per produce unit.  
14 The fee amount may be adjusted by rule but must be at least  
15 3 cents and not more than 10 cents per produce unit.

16 (2) The produce dealer who first distributes produce in  
17 this state or a grower who retails Montana-grown produce  
18 with gross annual sales exceeding \$10,000 shall pay the  
19 produce assessment fee established in subsection (1).  
20 However, any produce dealer in possession of the produce may  
21 be held responsible for payment of the fee if it has not  
22 previously been paid.

23 (3) The report and fees are due on or before the 30th  
24 day of the month following each calendar quarter.

25 (4) Payment of the produce assessment fee is not

1 required on produce that is:

2 (a) grown and retailed in Montana by the grower if  
3 annual gross retail sales by the grower do not exceed  
4 \$10,000;

5 (b) grown in this state, not packaged for market, and  
6 sold for resale by the grower; or

7 (c) purchased from or distributed by a produce dealer  
8 licensed under [section 12] if the produce has been reported  
9 and the assessment fee has been paid.

10 **NEW SECTION. Section 11. Shipping point inspection --**  
11 **fees.** Produce graded and prepared for shipment is subject to  
12 a shipping point inspection by the department upon request.  
13 Inspection fees must be set by rule and must be commensurate  
14 with the cost of providing the inspection.

15 **NEW SECTION. Section 12. Produce dealer license --**  
16 **exception -- renewal.** (1) A produce dealer license is  
17 required for any person who:

18 (a) wholesales produce in this state;

19 (b) transports produce from out of state into this  
20 state for retail sale; or

21 (c) retails produce grown by the produce dealer in this  
22 state when gross retail sales exceed \$10,000 annually.

23 (2) A produce dealer license is not required for a  
24 person who complies with the requirements of [sections 1  
25 through 14] and who:

1 (a) retails produce grown by that person in this state  
2 if annual gross produce sales do not exceed \$10,000;  
3 however, the person shall, upon request by the department,  
4 furnish a sworn statement providing that the produce was  
5 grown by that person, stating the location where the produce  
6 was grown, and stating the amount of gross sales; or

7 (b) is a nonprofit organization that is recognized by  
8 the director and that retails only produce purchased from  
9 licensed produce dealers or from Montana produce dealers who  
10 are in compliance with [sections 1 through 14].

11 (3) An applicant for a produce dealer license shall  
12 provide any information that the department finds necessary  
13 to carry out the provisions of [sections 1 through 14].  
14 Produce dealer licenses expire on December 31 of the year of  
15 issuance. New produce dealers and previously licensed  
16 produce dealers who do not renew their licenses prior to  
17 January 1 of the following year shall pay a nonrefundable  
18 fee of \$75 for a license. A produce dealer who renews a  
19 license prior to January 1 of the following year shall pay a  
20 nonrefundable fee of \$50. A separate license is required for  
21 each place of business, including vehicles. The license fee  
22 must be credited toward the produce assessment fee  
23 prescribed in [section 10].

24 (4) A produce dealer license, if required, must be  
25 carried at any time produce is sold and the license is

1 subject to inspection by any person.

2 (5) A license issued under this section may not be sold  
3 or transferred from one vehicle or location to another  
4 without the written consent of the department.

5 NEW SECTION. Section 13. Revocation, suspension, and  
6 nonrenewal of license. The department may revoke, suspend,  
7 or refuse to renew a produce dealer license if the  
8 department has reasonable cause to believe that the licensee  
9 has committed any of the following acts:

10 (1) refusal or consistent failure to file a produce  
11 report or to pay the assessment fee required in [section  
12 10];

13 (2) intentional or consistent failure to grade or mark  
14 produce as required in [section 8];

15 (3) aiding another person in the violation of any of  
16 the provisions of [sections 1 through 14];

17 (4) failure or refusal to allow inspection of or to  
18 maintain and provide records, reports, or other information  
19 required by the department; or

20 (5) violation, failure, or refusal to comply with any  
21 other provision of [sections 1 through 14] or a rule adopted  
22 by the department in the implementation of [sections 1  
23 through 14].

24 NEW SECTION. Section 14. Publication of reports. The  
25 department may publish the names and addresses of persons

1 licensed under [sections 1 through 14] and may also publish  
2 a list of licenses revoked, suspended, or not renewed  
3 pursuant to [section 13] and the reasons for revocation,  
4 suspension, or nonrenewal.

5 NEW SECTION. Section 15. Repealer. Sections 80-3-101,  
6 80-3-102, 80-3-103, 80-3-104, 80-3-105, 80-3-106, 80-3-107,  
7 80-3-108, 80-3-109, 80-3-110, 80-3-111, 80-3-201, 80-3-202,  
8 80-3-203, 80-3-204, 80-3-205, 80-3-206, 80-3-207, 80-3-211,  
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12 80-3-705, 80-3-706, 80-3-707, 80-3-708, 80-3-709, 80-3-710,  
13 80-3-711, 80-3-712, and 80-3-713, MCA, are repealed.

14 NEW SECTION. Section 16. Severability. If a part of  
15 [this act] is invalid, all valid parts that are severable  
16 from the invalid part remain in effect. If a part of [this  
17 act] is invalid in one or more of its applications, the part  
18 remains in effect in all valid applications that are  
19 severable from the invalid applications.

20 NEW SECTION. Section 17. Transition. In order to  
21 implement the provisions of the produce dealer license  
22 established in [section 12] on a calendar year basis, the  
23 department shall issue a new 1993 produce dealer license to  
24 any licensee who has paid the license fee for 1993. The  
25 state treasurer shall transfer \$50 of the 1993 fee to the



1 produce account established in [section 4]. All remaining  
2 license fees must be refunded to the licensee at the time  
3 the new license is issued.

4 NEW SECTION. **Section 18.** Effective date -- retroactive  
5 applicability. [This act] is effective on passage and  
6 approval and applies retroactively, within the meaning of  
7 1-2-109, to produce dealer licenses issued and fees  
8 collected on and after January 1, 1993.

9 NEW SECTION. **Section 19.** Codification instruction.  
10 [Sections 1 through 14] are intended to be codified as an  
11 integral part of Title 80, chapter 3, and the provisions of  
12 Title 80 apply to [sections 1 through 14].

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0193, as introduced.

**DESCRIPTION OF PROPOSED LEGISLATION:**

An act implementing the Montana Produce Act by generally updating procedures and replacing laws related to horticulture and farm produce; repealing existing sections; and providing an immediate effective date, a retroactive applicability date, and a transition provision.

**ASSUMPTIONS:**

1. Produce program in the Department of Agriculture, Plant Industry Division will become self-supporting.
2. Produce license and inspection revenue estimates are based on FY92 actual experience.
3. The current produce program license fees (Produce Wholesaler \$200, Itinerant Merchant \$60) will be lowered to the proposed \$50 Produce Dealer license fee upon passage. The transition clause requires the balance of the license fees paid from the beginning of the license year (January 1, 1993) until passage to be refunded to the licensee resulting in an estimated net revenue reduction to the FY93 general fund of \$4,945.
4. Produce program funding will be converted from general fund to state special revenue effective upon passage. Produce assessment fees, including \$50 of the license fees, collected retroactive to January 1, 1993, will be transferred to the special revenue account.
5. Produce revenue assessments will convert from a monthly to quarterly due date.
6. Revenue to be deposited in the special revenue account between January 1, 1993 and June 30, 1993 is estimated to be \$137,281, based on actual FY92 experience. These monies will be required to fund the program until receipt of first quarterly assessment which is due October 30, 1993. Estimated expenses of \$106,566 are based on average monthly FY94 expenses.
7. Revenue to FY93 general fund will be reduced by \$137,281.
8. Approximately 45% of total program general fund expenditures occur in the produce program (based on historical employee time and expense data). FY94 and FY95 expenditures are based on executive budget data which includes an indirect charge for services provided by the department. Indirect costs are calculated using 18.28% of personnel services in FY94 and 18.31% in FY95.
9. The shipping point produce inspection fees for potatoes and cherries will not change.
10. The produce assessment fee will increase from \$0.035/produce unit to \$0.055/produce unit.
11. Produce dealer license renewals prior to January 1 of the following year will pay a \$50 non-refundable fee. The fee is credited towards the produce assessment fee.

(continued on next page)

*David Lewis* 1-20-93

DAVID LEWIS, BUDGET DIRECTOR DATE  
Office of Budget and Program Planning

*Carley Tuss*

CARLEY TUSS, PRIMARY SPONSOR DATE

Fiscal Note for HB0193, as introduced

**HB 193**

**FISCAL IMPACT:**

	<u>FY '94</u>			<u>FY '95</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
<b><u>Expenditures:</u></b>						
Personal Services	\$199,774	\$199,774		\$200,324	\$200,324	\$
Operating	83,374	83,374		76,972	76,972	
Indirects	<u>36,519</u>	<u>36,519</u>		<u>36,679</u>	<u>36,679</u>	
	\$319,667	\$319,667	\$ -0-	\$313,975	\$313,975	-0-
<b><u>Funding:</u></b>						
General Fund	\$319,667	-0-	(\$319,667)	\$313,975	-0-	(\$313,975)
State Special Fund	-0-	\$319,667	\$319,667	-0-	\$313,975	\$313,975
<b><u>Revenues:</u></b>						
Produce Dealer License	\$ 8,845	\$ 3,900	(\$ 4,945)	\$ 8,845	\$ 3,900	(\$ 4,945)
Produce Inspection Fees	101,000	101,000	-0-	101,000	101,000	-0-
Produce Assessment	<u>130,473</u>	<u>214,767</u>	<u>84,294</u>	<u>130,473</u>	<u>214,500</u>	<u>84,027</u>
	\$240,318	\$319,667	\$ 79,349	\$240,318	\$319,400	\$79,082
<b><u>Disposition of Revenue:</u></b>						
General Fund	\$240,318	-0-	(\$240,318)	\$240,318	-0-	(\$240,318)
State Special Fund	-0-	\$319,667	\$319,667	-0-	\$319,400	\$319,400
<b><u>Net Impact:</u></b>						
General Fund	\$ 79,349	-0-	(\$79,349)	\$ 73,657	-0-	(\$73,657)
State Special Fund	-0-	-0-	-0-	-0-	\$ 5,425	5,425

FY93 General Fund lost revenue is \$ 142,226

APPROVED BY COMMITTEE  
ON AGRICULTURE LIVESTOCK  
& IRRIGATION

HOUSE BILL NO. 193

INTRODUCED BY TUSS, CHRISTIAENS

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20 through 6] that is issued by the department.

21 (3) The department shall establish by rule a penalty  
22 matrix that schedules the types of penalties, the amounts  
23 for initial and subsequent offenses, and other matters  
24 necessary for the administration of civil penalties under  
25 subsection (1)(a). The issuance of a civil penalty is

1 subject to the contested case procedures of Title 2, chapter  
2 4, part 6.

3 (4) Nothing in [sections 1 through 14] may be construed  
4 as requiring the department or its authorized representative  
5 to report violations of [sections 1 through 14] when a  
6 reasonable belief exists that the public interest will be  
7 served by a suitable warning.

8 (5) It is the duty of a county attorney to whom any  
9 violation is reported to cause appropriate proceedings to be  
10 initiated and prosecuted in a court of competent  
11 jurisdiction without delay.

12 NEW SECTION. Section 7. Standard grades for produce.

13 (1) Unless a Montana grade standard has been established,  
14 the standard grades for produce:

15 (a) are limited to the U.S. grades governing the  
16 produce;

17 (b) must conform in all respects and be identical with  
18 the most recent standards established by the U.S. department  
19 of agriculture for the produce; and

20 (c) when conforming, must be accepted as the legal  
21 standards for this state.

22 (2) The department may by rule establish state grades  
23 for produce grown in Montana when the amount grown reaches a  
24 volume rendering it of market importance or when requested  
25 by the industry.

(3) The grade "Montana unclassified" must contain at least 50% of produce that would grade U.S. No. 2 or better.

(4) Produce not conforming to established grades may be sold if it is marked in the same manner as graded produce, except that in place of specifying the grade, the word "ungraded" or "unclassified" must be used.

**NEW SECTION. Section 8. Markings -- exceptions.** (1) A person may not sell, pack, offer for sale or transport, deliver, or consign in interstate or intrastate commerce produce prepared for market unless each container has been legibly marked with the declared grade of the produce and the name and address of the person responsible for the packing and grading. The grade declared must conform to the provisions of [sections 1 through 14].

(2) Produce that is grown in Montana or any other produce arriving or found in Montana in containers that have no grade marking must meet the requirements of the U.S. No. 1 grade or be marked with the proper grade.

(3) This section does not apply to:

(a) a person selling to the ultimate consumer produce that was grown by that person and that is not for resale; or

(b) the display of produce on a free choice rack.

(4) Produce may be sold for seed purposes when graded under rules adopted by the department and plainly marked for seed purposes.

**NEW SECTION. Section 9. Advertisements -- grade stated.** Produce for which a grade is established in [sections 1 through 14], when advertised with a price stated, must meet the requirements of U.S. No. 1 grade or better or must show, in addition to the price quoted, the true grade of the produce as provided by law. Price tags exhibited in a place of business on exposed produce are not considered advertising under this section.

**NEW SECTION. Section 10. Reporting requirements -- assessment fees -- exceptions.** (1) Produce sold or distributed in this state must be reported, on forms approved by the department, by-number-of-produce--units--per type--of-produce and must be assessed a fee per produce unit OR EQUIVALENT POUNDAGE. The fee amount may be adjusted by rule but must be at least 3 cents and not more than 10 cents per produce unit.

(2) The produce dealer who first distributes produce in this state or a grower who retails Montana-grown produce with gross annual sales exceeding ~~\$10,000~~ \$15,000 shall pay the produce assessment fee established in subsection (1). However, any produce dealer in possession of the produce may be held responsible for payment of the fee ~~if--it--has--not previously--been--paid~~ UNLESS THE GROWER HAS PAID FOR A PRODUCE DEALER LICENSE OR HAS MADE AVAILABLE TO THE PRODUCE DEALER A WRITTEN FORM PROVIDED BY THE DEPARTMENT STATING

1 THAT THE ASSESSMENT FEES ARE BEING PAID.

2 (3) The report and fees are due on or before the 30th  
3 day of the month following each calendar quarter.

4 (4) Payment of the produce assessment fee is not  
5 required on produce that is:

6 (a) grown and retailed in Montana by the grower if  
7 annual gross retail sales by the grower do not exceed  
8 \$10,000 \$15,000;

9 (b) grown in this state, not packaged for market, and  
10 sold for resale by the grower; or

11 (c) purchased from or distributed by a produce dealer  
12 licensed under [section 12] if the produce has been reported  
13 and the assessment fee has been paid.

14 NEW SECTION. Section 11. Shipping point inspection --  
15 fees. Produce graded and prepared for shipment is subject to  
16 a shipping point inspection by the department upon request.  
17 Inspection fees must be set by rule and must be commensurate  
18 with the cost of providing the inspection.

19 NEW SECTION. Section 12. Produce dealer license --  
20 exception -- renewal. (1) A produce dealer license is  
21 required for any person who:

22 (a) wholesales produce in this state;

23 (b) transports produce from out of state into this  
24 state for retail sale; or

25 (c) retails produce grown by the produce dealer in this

1 state when gross retail sales exceed \$10,000 \$15,000  
2 annually.

3 (2) A produce dealer license is not required for a  
4 person who complies with the requirements of [sections 1  
5 through 14] and who:

6 (a) retails produce grown by that person in this state  
7 if annual gross produce sales do not exceed \$10,000 \$15,000;  
8 however, the person shall, upon request by the department,  
9 furnish a sworn statement providing that the produce was  
10 grown by that person, stating the location where the produce  
11 was grown, and stating the amount of gross sales; or

12 (b) is a nonprofit organization that is recognized by  
13 the director and that retails only produce purchased from  
14 licensed produce dealers or from Montana produce dealers who  
15 are in compliance with [sections 1 through 14].

16 (3) An applicant for a produce dealer license shall  
17 provide any information that the department finds necessary  
18 to carry out the provisions of [sections 1 through 14].  
19 Produce dealer licenses expire on December 31 of the year of  
20 issuance. ~~New--produce--dealers--and--previously--licensed~~  
21 ~~produce-dealers-who-do-not-renew--their--licenses--prior--to~~  
22 ~~January--1--of--the-following-year-shall-pay-a-nonrefundable~~  
23 ~~fee-of-\$75-for-a-license.~~ A produce dealer who ~~renews--a~~  
24 ~~license-prior-to-January-1-of-the-following-year~~ shall pay a  
25 nonrefundable LICENSE fee of \$50. A separate license is



1 required for each place of business, including vehicles. The  
2 license fee must be credited toward the produce assessment  
3 fee prescribed in [section 10].

4 (4) A produce dealer license, if required, must be  
5 carried at any time produce is sold and the license is  
6 subject to inspection by any person.

7 (5) A license issued under this section may not be sold  
8 or transferred from one vehicle or location to another  
9 without the written consent of the department.

10 NEW SECTION. Section 13. Revocation, suspension, and  
11 nonrenewal of license. The department may revoke, suspend,  
12 or refuse to renew a produce dealer license if the  
13 department has reasonable cause to believe that the licensee  
14 has committed any of the following acts:

15 (1) refusal or consistent failure to file a produce  
16 report or to pay the assessment fee required in [section  
17 10];

18 (2) intentional or consistent failure to grade or mark  
19 produce as required in [section 8];

20 (3) aiding another person in the violation of any of  
21 the provisions of [sections 1 through 14];

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

25 (5) violation, failure, or refusal to comply with any

1 other provision of [sections 1 through 14] or a rule adopted  
2 by the department in the implementation of [sections 1  
3 through 14].

4 NEW SECTION. Section 14. Publication of reports. The  
5 department may publish the names and addresses of persons  
6 licensed under [sections 1 through 14] and may also publish  
7 a list of licenses revoked, suspended, or not renewed  
8 pursuant to [section 13] and the reasons for revocation,  
9 suspension, or nonrenewal.

10 NEW SECTION. Section 15. Repealer. Sections 80-3-101,  
11 80-3-102, 80-3-103, 80-3-104, 80-3-105, 80-3-106, 80-3-107,  
12 80-3-108, 80-3-109, 80-3-110, 80-3-111, 80-3-201, 80-3-202,  
13 80-3-203, 80-3-204, 80-3-205, 80-3-206, 80-3-207, 80-3-211,  
14 80-3-212, 80-3-601, 80-3-602, 80-3-603, 80-3-604, 80-3-605,  
15 80-3-606, 80-3-607, 80-3-608, 80-3-609, 80-3-610, 80-3-611,  
16 80-3-612, 80-3-613, 80-3-701, 80-3-702, 80-3-703, 80-3-704,  
17 80-3-705, 80-3-706, 80-3-707, 80-3-708, 80-3-709, 80-3-710,  
18 80-3-711, 80-3-712, and 80-3-713, MCA, are repealed.

19 NEW SECTION. Section 16. Severability. If a part of  
20 [this act] is invalid, all valid parts that are severable  
21 from the invalid part remain in effect. If a part of [this  
22 act] is invalid in one or more of its applications, the part  
23 remains in effect in all valid applications that are  
24 severable from the invalid applications.

25 NEW SECTION. Section 17. Transition. In order to

1 implement the provisions of the produce dealer license  
 2 established in [section 12] on a calendar year basis, the  
 3 department shall issue a new 1993 produce dealer license to  
 4 any licensee who has paid the license fee for 1993. The  
 5 state treasurer shall transfer \$50 of the 1993 fee to the  
 6 produce account established in [section 4]. All remaining  
 7 license fees must be refunded to the licensee at the time  
 8 the new license is issued.

9 NEW SECTION. **Section 18.** Effective date -- retroactive  
 10 applicability. [This act] is effective on passage and  
 11 approval and applies retroactively, within the meaning of  
 12 1-2-109, to produce dealer licenses issued and fees  
 13 collected on and after January 1, 1993.

14 NEW SECTION. **Section 19.** Codification instruction.  
 15 [Sections 1 through 14] are intended to be codified as an  
 16 integral part of Title 80, chapter 3, and the provisions of  
 17 Title 80 apply to [sections 1 through 14].

-End-

## 1 HOUSE BILL NO. 193

2 INTRODUCED BY TUSS, CHRISTIAENS

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT IMPLEMENTING THE  
5 MONTANA PRODUCE ACT BY GENERALLY UPDATING PROCEDURES AND  
6 REPLACING LAWS RELATED TO HORTICULTURE AND FARM PRODUCE;  
7 REPEALING SECTIONS 80-3-101, 80-3-102, 80-3-103, 80-3-104,  
8 80-3-105, 80-3-106, 80-3-107, 80-3-108, 80-3-109, 80-3-110,  
9 80-3-111, 80-3-201, 80-3-202, 80-3-203, 80-3-204, 80-3-205,  
10 80-3-206, 80-3-207, 80-3-211, 80-3-212, 80-3-601, 80-3-602,  
11 80-3-603, 80-3-604, 80-3-605, 80-3-606, 80-3-607, 80-3-608,  
12 80-3-609, 80-3-610, 80-3-611, 80-3-612, 80-3-613, 80-3-701,  
13 80-3-702, 80-3-703, 80-3-704, 80-3-705, 80-3-706, 80-3-707,  
14 80-3-708, 80-3-709, 80-3-710, 80-3-711, 80-3-712, AND  
15 80-3-713, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A  
16 RETROACTIVE APPLICABILITY DATE, AND A TRANSITION PROVISION."

17  
18 STATEMENT OF INTENT

19 A statement of intent is required for this bill because  
20 the following sections extend additional rulemaking  
21 authority to the department of agriculture's present  
22 authority to regulate horticulture and farm produce:

23 (1) The definition of "produce" in [section 2] is  
24 intended to allow the department to establish by rule what  
25 products constitute produce and are subject to the Montana

1 Produce Act.

2 (2) [Section 6(3)] is intended to allow the department  
3 to establish a penalty matrix that sets out the kinds of  
4 administrative penalties applicable to violations of the  
5 Montana Produce Act and delineate the degrees of penalty  
6 that may be assessed for initial and subsequent  
7 administrative violations.

8 (3) [Section 10(1)] is intended to grant the department  
9 the discretion to set and adjust the produce assessment fee,  
10 within the statutory range, to cover the department's  
11 assessment costs.

12  
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14 NEW SECTION. Section 1. Short title. [Sections 1  
15 through 14] may be cited as the "Montana Produce Act".

16 NEW SECTION. Section 2. Definitions. As used in  
17 [sections 1 through 14], unless the context indicates  
18 otherwise, the following definitions apply:

19 (1) "Container" means any package, sack, box, crate,  
20 carton, basket, or other object used for the shipping of  
21 produce.

22 (2) "Director" means the director of agriculture  
23 appointed pursuant to 2-15-3001.

24 (3) "Person" means an individual, firm, association,  
25 corporation, partnership, or any other form of business

1 enterprise.

2 (4) "Produce" means any fruit, vegetable, or other  
3 natural product designated by department rule.

4 (5) "Produce dealer" means a person who engages in a  
5 business involving or who as part of a business participates  
6 in purchasing, exchanging, negotiating, or soliciting the  
7 sale, resale, exchange, or transfer of produce in this  
8 state.

9 (6) "Produce unit" means the standard size container  
10 for a given type of produce. A produce unit may be  
11 established by department rule.

12 (7) "Retail" means sale of produce to the ultimate  
13 consumer.

14 (8) "Shipping point inspection" means an inspection of  
15 produce shipped from this state.

16 (9) "Stop sale order" means a written notice to hold  
17 produce from sale or movement until a violation has been  
18 resolved and the produce is released by the department.

19 (10) "Wholesale" means the sale of produce intended for  
20 resale. The term does not include the sale of Montana-grown  
21 produce when sold by the Montana grower for purposes of  
22 resale.

23 NEW SECTION. Section 3. Powers and duties of  
24 department. (1) The department may:

25 (a) enter a premises at any reasonable time to inspect

1 produce for condition, for grade, or for determining  
2 compliance with the provisions of [sections 1 through 14];  
3 and

4 (b) cooperate with and enter into agreements with  
5 governmental agencies of this state, agencies of other  
6 states, agencies of the U.S. government, and private  
7 associations, in furtherance of [sections 1 through 14].

8 (2) The department shall adopt rules necessary for the  
9 efficient implementation of [sections 1 through 14].

10 NEW SECTION. Section 4. ~~Produce account--disposition~~  
11 ~~DISPOSITION~~ of funds. ~~{1}-There-is-a-produce-account-in--the~~  
12 ~~state--special--revenue--fund.~~ All inspection, license, and  
13 penalty fee revenue authorized and collected under [sections  
14 1 through 14] must be deposited in the account-to-the-credit  
15 of-the-department.

16 ~~{2}--Money-received-as-revenue-under-{sections-1-through~~  
17 ~~14}-that-is-not-immediately-required--for--the--purposes--of~~  
18 ~~{sections-1-through-14}-must-be-invested-under-provisions-of~~  
19 ~~the--unified--investment--program--established--in>Title-17,~~  
20 ~~chapter-67-part-2.-All-interest-earned-on-the--account--must~~  
21 ~~be-deposited-in-the-account.~~ GENERAL FUND.

22 NEW SECTION. Section 5. Enforcement -- stop sale order  
23 -- injunction. (1) The department may place a stop sale  
24 order on any lot of produce sold or transported without  
25 proper labeling or in violation of [sections 1 through 14].

(2) If a person violates any provision of [sections 1 through 14], the department may seek to enjoin that person from further business until the person has complied with [sections 1 through 14]. The department may file an injunction action in the first judicial district court. The injunction provided for by this section is in addition to the misdemeanor penalty provided for in [section 6].

**NEW SECTION. Section 6. Penalties.** (1) A person who violates or aids in the violation of any provision of [sections 1 through 14] or rules adopted under [sections 1 through 14] is subject to one or both of the following penalties:

(a) an administrative civil penalty of not more than \$1,000 for each offense;

(b) a misdemeanor penalty of not less than \$300 or more than \$1,000.

(2) Assessment of a civil penalty under subsection (1)(a) may be made in conjunction with any other warning, order, or administrative action authorized by [sections 1 through 6] that is issued by the department.

(3) The department shall establish by rule a penalty matrix that schedules the types of penalties, the amounts for initial and subsequent offenses, and other matters necessary for the administration of civil penalties under subsection (1)(a). The issuance of a civil penalty is

subject to the contested case procedures of Title 2, chapter 4, part 6.

(4) Nothing in [sections 1 through 14] may be construed as requiring the department or its authorized representative to report violations of [sections 1 through 14] when a reasonable belief exists that the public interest will be served by a suitable warning.

(5) It is the duty of a county attorney to whom any violation is reported to cause appropriate proceedings to be initiated and prosecuted in a court of competent jurisdiction without delay.

**NEW SECTION. Section 7. Standard grades for produce.**

(1) Unless a Montana grade standard has been established, the standard grades for produce:

(a) are limited to the U.S. grades governing the produce;

(b) must conform in all respects and be identical with the most recent standards established by the U.S. department of agriculture for the produce; and

(c) when conforming, must be accepted as the legal standards for this state.

(2) The department may by rule establish state grades for produce grown in Montana when the amount grown reaches a volume rendering it of market importance or when requested by the industry.

1 (3) The grade "Montana unclassified" must contain at  
2 least 50% of produce that would grade U.S. No. 2 or better.

3 (4) Produce not conforming to established grades may be  
4 sold if it is marked in the same manner as graded produce,  
5 except that in place of specifying the grade, the word  
6 "ungraded" or "unclassified" must be used.

7 NEW SECTION. Section 8. Markings -- exceptions. (1) A  
8 person may not sell, pack, offer for sale or transport,  
9 deliver, or consign in interstate or intrastate commerce  
10 produce prepared for market unless each container has been  
11 legibly marked with the declared grade of the produce and  
12 the name and address of the person responsible for the  
13 packing and grading. The grade declared must conform to the  
14 provisions of [sections 1 through 14].

15 (2) Produce that is grown in Montana or any other  
16 produce arriving or found in Montana in containers that have  
17 no grade marking must meet the requirements of the U.S. No.  
18 1 grade or be marked with the proper grade.

19 (3) This section does not apply to:

20 (a) a person selling to the ultimate consumer produce  
21 that was grown by that person and that is not for resale; or

22 (b) the display of produce on a free choice rack.

23 (4) Produce may be sold for seed purposes when graded  
24 under rules adopted by the department and plainly marked for  
25 seed purposes.

1 NEW SECTION. Section 9. Advertisements -- grade  
2 stated. Produce for which a grade is established in  
3 [sections 1 through 14], when advertised with a price  
4 stated, must meet the requirements of U.S. No. 1 grade or  
5 better or must show, in addition to the price quoted, the  
6 true grade of the produce as provided by law. Price tags  
7 exhibited in a place of business on exposed produce are not  
8 considered advertising under this section.

9 NEW SECTION. Section 10. Reporting requirements --  
10 assessment fees -- exceptions. (1) Produce sold or  
11 distributed in this state must be reported, on forms  
12 approved by the department, ~~by-number-of-produce--units--per~~  
13 ~~type--of-produce~~ and must be assessed a fee per produce unit  
14 OR EQUIVALENT POUNDAGE. The fee amount may be adjusted by  
15 rule but must be at least 3 cents and not more than 10 cents  
16 per produce unit.

17 (2) The produce dealer who first distributes produce in  
18 this state or a grower who retails Montana-grown produce  
19 with gross annual sales exceeding ~~\$10,000~~ \$15,000 shall pay  
20 the produce assessment fee established in subsection (1).  
21 However, any produce dealer in possession of the produce may  
22 be held responsible for payment of the fee ~~if--it--has--not~~  
23 ~~previously--been--paid~~ UNLESS THE GROWER HAS PAID FOR A  
24 PRODUCE DEALER LICENSE OR HAS MADE AVAILABLE TO THE PRODUCE  
25 DEALER A WRITTEN FORM PROVIDED BY THE DEPARTMENT STATING

1 THAT THE ASSESSMENT FEES ARE BEING PAID.

2 (3) The report and fees are due on or before the 30th  
3 day of the month following each calendar quarter.

4 (4) Payment of the produce assessment fee is not  
5 required on produce that is:

6 (a) grown and retailed in Montana by the grower if  
7 annual gross retail sales by the grower do not exceed  
8 \$10,000 \$15,000;

9 (b) grown in this state, not packaged for market, and  
10 sold for resale by the grower; or

11 (c) purchased from or distributed by a produce dealer  
12 licensed under [section 12] if the produce has been reported  
13 and the assessment fee has been paid.

14 NEW SECTION. Section 11. Shipping point inspection --  
15 fees. Produce graded and prepared for shipment is subject to  
16 a shipping point inspection by the department upon request.  
17 Inspection fees must be set by rule and must be commensurate  
18 with the cost of providing the inspection.

19 NEW SECTION. Section 12. Produce dealer license --  
20 exception -- renewal. (1) A produce dealer license is  
21 required for any person who:

22 (a) wholesales produce in this state;

23 (b) transports produce from out of state into this  
24 state for retail sale; or

25 (c) retails produce grown by the produce dealer in this

1 state when gross retail sales exceed \$10,000 \$15,000  
2 annually.

3 (2) A produce dealer license is not required for a  
4 person who complies with the requirements of [sections 1  
5 through 14] and who:

6 (a) retails produce grown by that person in this state  
7 if annual gross produce sales do not exceed \$10,000 \$15,000;  
8 however, the person shall, upon request by the department,  
9 furnish a sworn statement providing that the produce was  
10 grown by that person, stating the location where the produce  
11 was grown, and stating the amount of gross sales; or

12 (b) is a nonprofit organization that is recognized by  
13 the director and that retails only produce purchased from  
14 licensed produce dealers or from Montana produce dealers who  
15 are in compliance with [sections 1 through 14].

16 (3) An applicant for a produce dealer license shall  
17 provide any information that the department finds necessary  
18 to carry out the provisions of [sections 1 through 14].  
19 Produce dealer licenses expire on December 31 of the year of  
20 issuance. ~~New--produce--dealers--and--previously--licensed~~  
21 ~~produce-dealers-who-do-not-renew--their--licenses--prior--to~~  
22 ~~January--1--of--the-following-year-shall-pay-a-nonrefundable~~  
23 ~~fee-of-\$75-for-a-license.~~ A produce dealer who--renews--a  
24 license-prior-to-January-1-of-the-following-year shall pay a  
25 nonrefundable LICENSE fee of \$50. A separate license is

required for each place of business, including vehicles. The license fee must be credited toward the produce assessment fee prescribed in [section 10].

(4) A produce dealer license, if required, must be carried at any time produce is sold and the license is subject to inspection by any person.

(5) A license issued under this section may not be sold or transferred from one vehicle or location to another without the written consent of the department.

**NEW SECTION. Section 13.** Revocation, suspension, and nonrenewal of license. The department may revoke, suspend, or refuse to renew a produce dealer license if the department has reasonable cause to believe that the licensee has committed any of the following acts:

(1) refusal or consistent failure to file a produce report or to pay the assessment fee required in [section 10];

(2) intentional or consistent failure to grade or mark produce as required in [section 8];

(3) aiding another person in the violation of any of the provisions of [sections 1 through 14];

(4) failure or refusal to allow inspection of or to maintain and provide records, reports, or other information required by the department; or

(5) violation, failure, or refusal to comply with any

other provision of [sections 1 through 14] or a rule adopted by the department in the implementation of [sections 1 through 14].

**NEW SECTION. Section 14.** Publication of reports. The department may publish the names and addresses of persons licensed under [sections 1 through 14] and may also publish a list of licenses revoked, suspended, or not renewed pursuant to [section 13] and the reasons for revocation, suspension, or nonrenewal.

**NEW SECTION. Section 15.** Repealer. Sections 80-3-101, 80-3-102, 80-3-103, 80-3-104, 80-3-105, 80-3-106, 80-3-107, 80-3-108, 80-3-109, 80-3-110, 80-3-111, 80-3-201, 80-3-202, 80-3-203, 80-3-204, 80-3-205, 80-3-206, 80-3-207, 80-3-211, 80-3-212, 80-3-601, 80-3-602, 80-3-603, 80-3-604, 80-3-605, 80-3-606, 80-3-607, 80-3-608, 80-3-609, 80-3-610, 80-3-611, 80-3-612, 80-3-613, 80-3-701, 80-3-702, 80-3-703, 80-3-704, 80-3-705, 80-3-706, 80-3-707, 80-3-708, 80-3-709, 80-3-710, 80-3-711, 80-3-712, and 80-3-713, MCA, are repealed.

**NEW SECTION. Section 16.** Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**NEW SECTION. Section 17.** Transition. In order to



1 implement the provisions of the produce dealer license  
 2 established in [section 12] on a calendar year basis, the  
 3 department shall issue a new 1993 produce dealer license to  
 4 any licensee who has paid the license fee for 1993. The  
 5 state treasurer shall transfer RETAIN \$50 of the 1993 fee to  
 6 ~~the-produce-account-established-in-{section-4}~~ AND DEPOSIT  
 7 IT IN THE GENERAL FUND. All remaining license fees must be  
 8 refunded to the licensee at the time the new license is  
 9 issued.

10 NEW SECTION. Section 18. Effective date -- retroactive  
 11 applicability. [This act] is effective on passage and  
 12 approval and applies retroactively, within the meaning of  
 13 1-2-109, to produce dealer licenses issued and fees  
 14 collected on and after January 1, 1993.

15 NEW SECTION. Section 19. Codification instruction.  
 16 [Sections 1 through 14] are intended to be codified as an  
 17 integral part of Title 80, chapter 3, and the provisions of  
 18 Title 80 apply to [sections 1 through 14].

-End-

SENATE STANDING COMMITTEE REPORT

Page 2 of 2  
March 11, 1993

Page 1 of 2  
March 11, 1993

MR. PRESIDENT:

We, your committee on Agriculture, Livestock, and Irrigation having had under consideration House Bill No. 193 (first reading copy -- blue), respectfully report that House Bill No. 193 be amended as follows and as so amended be concurred in.

Signed: Jack "Doc" Rea  
Senator Jack "Doc" Rea, Chair

That such amendments read:

1. Page 3, line 3.  
Following: "rule."  
Insert: "The term does not include livestock and its byproducts, poultry and its byproducts, apiary products, dairy products, or grain."
2. Page 3, line 8.  
Following: "state"  
Insert: ", except vegetative seed potato products intended or used for planting purposes"
3. Page 3, line 15.  
Following: "produce"  
Insert: "at the location from which it was"  
Following: "shipped"  
Strike: "from this state"
4. Page 3, line 22.  
Following: "resale"  
Insert: "or vegetative seed potato products intended or used for planting purposes"
5. Page 4, line 11.  
Following: "funds"  
Insert: "-- produce account"  
Following: "."  
Insert: "(1) There is a produce account in the state special revenue fund."
6. Page 4, line 21.  
Strike: "GENERAL FUND."  
Insert: "account to the credit of the department."  
(2) Money received as revenue under [sections 1 through 14] that is not immediately required for the purposes of [sections 1 through 14] must be invested under the provisions of the unified investment program established in Title 17, chapter 6, part 2. All interest earned on the account must be deposited in the account."

7. Page 5, lines 15 and 16.

Following: "misdemeanor" on line 15  
Strike: remainder of line 15 through "\$1,000" on line 16  
Insert: "punishable as provided in 46-18-212"

8. Page 6, line 25.

Following: "industry."  
Insert: "State produce grades must be established in consultation with representatives of the various components of the produce industry, including growers, sellers, buyers, traders, wholesalers, retailers, and consumers."

9. Page 8, line 15.

Strike: "10"  
Insert: "7"

10. Page 9, line 10.

Following: "grower;"  
Insert: "(c) in the case of vegetative seed potato products, intended or used for planting purposes;"  
Renumber: subsequent subsection

11. Page 9, line 16.

Following: "request"  
Insert: "; however, Montana-grown seed potatoes that are entered in the Montana seed certification program and prepared for shipment off the farm for planting purposes are subject to a shipping point inspection by the department"

12. Page 13, line 5.

Strike: "RETAIN"  
Insert: "transfer"

13. Page 13, lines 6 and 7.

Strike: "AND" on line 6 through "FUND" on line 7  
Insert: "to the produce account established in [section 4]"

-END-

M- Amd. Coord.  
M- Sec. of Senate

Christians  
Senator Carrying Bill

551031SC.Sma

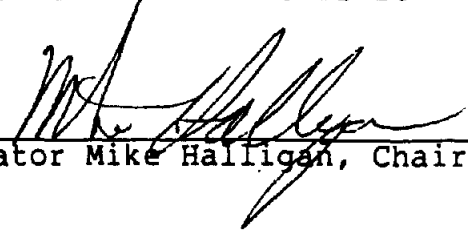
SENATE  
HB 193  
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SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
April 2, 1993

MR. PRESIDENT:

We, your committee on Taxation having had under consideration House Bill No. 193 (third reading copy -- blue), respectfully report that House Bill No. 193 be amended as follows and as so amended be concurred in.

Signed: 

Senator Mike Halligan, Chair

That such amendments read:

1. Page 4, lines 12 and 13.

Following: "inspection" on line 12

Strike: ", "

Insert: "and"

Following: "license" on line 12

Strike: remainder of line 12 through "penalty" on line 13

2. Page 5, line 20.

Following: "."

Insert: "The proceeds of a civil penalty must be deposited in the general fund."

-END-

SENATE

HB 193

741559SC.Sma

VM - Amd. Coord.  
TW Sec. of Senate

Christiaens  
Senator Carrying Bill

## HOUSE BILL NO. 193

INTRODUCED BY TUSS, CHRISTIAENS

A BILL FOR AN ACT ENTITLED: "AN ACT IMPLEMENTING THE MONTANA PRODUCE ACT BY GENERALLY UPDATING PROCEDURES AND REPLACING LAWS RELATED TO HORTICULTURE AND FARM PRODUCE; REPEALING SECTIONS 80-3-101, 80-3-102, 80-3-103, 80-3-104, 80-3-105, 80-3-106, 80-3-107, 80-3-108, 80-3-109, 80-3-110, 80-3-111, 80-3-201, 80-3-202, 80-3-203, 80-3-204, 80-3-205, 80-3-206, 80-3-207, 80-3-211, 80-3-212, 80-3-601, 80-3-602, 80-3-603, 80-3-604, 80-3-605, 80-3-606, 80-3-607, 80-3-608, 80-3-609, 80-3-610, 80-3-611, 80-3-612, 80-3-613, 80-3-701, 80-3-702, 80-3-703, 80-3-704, 80-3-705, 80-3-706, 80-3-707, 80-3-708, 80-3-709, 80-3-710, 80-3-711, 80-3-712, AND 80-3-713, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A TRANSITION PROVISION."

## STATEMENT OF INTENT

A statement of intent is required for this bill because the following sections extend additional rulemaking authority to the department of agriculture's present authority to regulate horticulture and farm produce:

(1) The definition of "produce" in [section 2] is intended to allow the department to establish by rule what products constitute produce and are subject to the Montana

Produce Act.

(2) [Section 6(3)] is intended to allow the department to establish a penalty matrix that sets out the kinds of administrative penalties applicable to violations of the Montana Produce Act and delineate the degrees of penalty that may be assessed for initial and subsequent administrative violations.

(3) [Section 10(1)] is intended to grant the department the discretion to set and adjust the produce assessment fee, within the statutory range, to cover the department's assessment costs.

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

NEW SECTION. **Section 1.** Short title. [Sections 1 through 14] may be cited as the "Montana Produce Act".

NEW SECTION. **Section 2.** Definitions. As used in [sections 1 through 14], unless the context indicates otherwise, the following definitions apply:

(1) "Container" means any package, sack, box, crate, carton, basket, or other object used for the shipping of produce.

(2) "Director" means the director of agriculture appointed pursuant to 2-15-3001.

(3) "Person" means an individual, firm, association, corporation, partnership, or any other form of business

enterprise.

(4) "Produce" means any fruit, vegetable, or other natural product designated by department rule. THE TERM DOES NOT INCLUDE LIVESTOCK AND ITS BYPRODUCTS, POULTRY AND ITS BYPRODUCTS, APIARY PRODUCTS, DAIRY PRODUCTS, OR GRAIN.

(5) "Produce dealer" means a person who engages in a business involving or who as part of a business participates in purchasing, exchanging, negotiating, or soliciting the sale, resale, exchange, or transfer of produce in this state, EXCEPT VEGETATIVE SEED POTATO PRODUCTS INTENDED OR USED FOR PLANTING PURPOSES.

(6) "Produce unit" means the standard size container for a given type of produce. A produce unit may be established by department rule.

(7) "Retail" means sale of produce to the ultimate consumer.

(8) "Shipping point inspection" means an inspection of produce AT THE LOCATION FROM WHICH IT WAS shipped from--this state.

(9) "Stop sale order" means a written notice to hold produce from sale or movement until a violation has been resolved and the produce is released by the department.

(10) "Wholesale" means the sale of produce intended for resale. The term does not include the sale of Montana-grown produce when sold by the Montana grower for purposes of

resale OR VEGETATIVE SEED POTATO PRODUCTS INTENDED OR USED FOR PLANTING PURPOSES.

NEW SECTION. Section 3. Powers and duties of  
department. (1) The department may:

(a) enter a premises at any reasonable time to inspect produce for condition, for grade, or for determining compliance with the provisions of [sections 1 through 14]; and

(b) cooperate with and enter into agreements with governmental agencies of this state, agencies of other states, agencies of the U.S. government, and private associations, in furtherance of [sections 1 through 14].

(2) The department shall adopt rules necessary for the efficient implementation of [sections 1 through 14].

NEW SECTION. Section 4. ~~Produce account~~---disposition  
DISPOSITION of funds -- PRODUCE ACCOUNT. (1) THERE IS A  
PRODUCE ACCOUNT IN THE STATE SPECIAL REVENUE FUND. {1}-There  
is--a-produce-account-in-the-state-special-revenue-fund. All  
inspection, AND license, and penalty fee revenue authorized  
and collected under [sections 1 through 14] must be  
deposited in the account-to-the-credit-of-the-department.

{2}--Money received as revenue under {sections 1 through  
14}-that-is-not-immediately-required--for--the--purposes--of  
{sections 1 through 14}-must-be-invested-under-provisions-of  
the--unified--investment--program--established--in Title 17,

chapter 6, part 2. All interest earned on the account must be deposited in the account: GENERAL FUND: ACCOUNT TO THE CREDIT OF THE DEPARTMENT.

(2) MONEY RECEIVED AS REVENUE UNDER [SECTIONS 1 THROUGH 14] THAT IS NOT IMMEDIATELY REQUIRED FOR THE PURPOSES OF [SECTIONS 1 THROUGH 14] MUST BE INVESTED UNDER PROVISIONS OF THE UNIFIED INVESTMENT PROGRAM ESTABLISHED IN TITLE 17, CHAPTER 6, PART 2. ALL INTEREST EARNED ON THE ACCOUNT MUST BE DEPOSITED IN THE ACCOUNT.

NEW SECTION. Section 5. Enforcement -- stop sale order -- injunction. (1) The department may place a stop sale order on any lot of produce sold or transported without proper labeling or in violation of [sections 1 through 14].

(2) If a person violates any provision of [sections 1 through 14], the department may seek to enjoin that person from further business until the person has complied with [sections 1 through 14]. The department may file an injunction action in the first judicial district court. The injunction provided for by this section is in addition to the misdemeanor penalty provided for in [section 6].

NEW SECTION. Section 6. Penalties. (1) A person who violates or aids in the violation of any provision of [sections 1 through 14] or rules adopted under [sections 1 through 14] is subject to one or both of the following penalties:

(a) an administrative civil penalty of not more than \$1,000 for each offense;

(b) a misdemeanor penalty of not less than \$300 or more than \$1,000 PUNISHABLE AS PROVIDED IN 46-18-212.

(2) Assessment of a civil penalty under subsection (1)(a) may be made in conjunction with any other warning, order, or administrative action authorized by [sections 1 through 6] that is issued by the department. THE PROCEEDS OF A CIVIL PENALTY MUST BE DEPOSITED IN THE GENERAL FUND.

(3) The department shall establish by rule a penalty matrix that schedules the types of penalties, the amounts for initial and subsequent offenses, and other matters necessary for the administration of civil penalties under subsection (1)(a). The issuance of a civil penalty is subject to the contested case procedures of Title 2, chapter 4, part 6.

(4) Nothing in [sections 1 through 14] may be construed as requiring the department or its authorized representative to report violations of [sections 1 through 14] when a reasonable belief exists that the public interest will be served by a suitable warning.

(5) It is the duty of a county attorney to whom any violation is reported to cause appropriate proceedings to be initiated and prosecuted in a court of competent jurisdiction without delay.

**NEW SECTION. Section 7. Standard grades for produce.**

(1) Unless a Montana grade standard has been established, the standard grades for produce:

(a) are limited to the U.S. grades governing the produce;

(b) must conform in all respects and be identical with the most recent standards established by the U.S. department of agriculture for the produce; and

(c) when conforming, must be accepted as the legal standards for this state.

(2) The department may by rule establish state grades for produce grown in Montana when the amount grown reaches a volume rendering it of market importance or when requested by the industry. STATE PRODUCE GRADES MUST BE ESTABLISHED IN CONSULTATION WITH REPRESENTATIVES OF THE VARIOUS COMPONENTS OF THE PRODUCE INDUSTRY, INCLUDING GROWERS, SELLERS, BUYERS, TRADERS, WHOLESALERS, RETAILERS, AND CONSUMERS.

(3) The grade "Montana unclassified" must contain at least 50% of produce that would grade U.S. No. 2 or better.

(4) Produce not conforming to established grades may be sold if it is marked in the same manner as graded produce, except that in place of specifying the grade, the word "ungraded" or "unclassified" must be used.

**NEW SECTION. Section 8. Markings -- exceptions.** (1) A person may not sell, pack, offer for sale or transport,

deliver, or consign in interstate or intrastate commerce produce prepared for market unless each container has been legibly marked with the declared grade of the produce and the name and address of the person responsible for the packing and grading. The grade declared must conform to the provisions of [sections 1 through 14].

(2) Produce that is grown in Montana or any other produce arriving or found in Montana in containers that have no grade marking must meet the requirements of the U.S. No. 1 grade or be marked with the proper grade.

(3) This section does not apply to:

(a) a person selling to the ultimate consumer produce that was grown by that person and that is not for resale; or

(b) the display of produce on a free choice rack.

(4) Produce may be sold for seed purposes when graded under rules adopted by the department and plainly marked for seed purposes.

**NEW SECTION. Section 9. Advertisements** -- grade stated. Produce for which a grade is established in [sections 1 through 14], when advertised with a price stated, must meet the requirements of U.S. No. 1 grade or better or must show, in addition to the price quoted, the true grade of the produce as provided by law. Price tags exhibited in a place of business on exposed produce are not considered advertising under this section.

1 NEW SECTION. Section 10. Reporting requirements --  
 2 assessment fees -- exceptions. (1) Produce sold or  
 3 distributed in this state must be reported, on forms  
 4 approved by the department, by-number-of-produce-units-per  
 5 type-of-produce and must be assessed a fee per produce unit  
 6 OR EQUIVALENT POUNDAGE. The fee amount may be adjusted by  
 7 rule but must be at least 3 cents and not more than 10 7  
 8 cents per produce unit.

9 (2) The produce dealer who first distributes produce in  
 10 this state or a grower who retails Montana-grown produce  
 11 with gross annual sales exceeding \$10,000 \$15,000 shall pay  
 12 the produce assessment fee established in subsection (1).  
 13 However, any produce dealer in possession of the produce may  
 14 be held responsible for payment of the fee if--it--has--not  
 15 previously--been--paid UNLESS THE GROWER HAS PAID FOR A  
 16 PRODUCE DEALER LICENSE OR HAS MADE AVAILABLE TO THE PRODUCE  
 17 DEALER A WRITTEN FORM PROVIDED BY THE DEPARTMENT STATING  
 18 THAT THE ASSESSMENT FEES ARE BEING PAID.

19 (3) The report and fees are due on or before the 30th  
 20 day of the month following each calendar quarter.

21 (4) Payment of the produce assessment fee is not  
 22 required on produce that is:

23 (a) grown and retailed in Montana by the grower if  
 24 annual gross retail sales by the grower do not exceed  
 25 \$10,000 \$15,000;

1 (b) grown in this state, not packaged for market, and  
 2 sold for resale by the grower;

3 (C) IN THE CASE OF VEGETATIVE SEED POTATO PRODUCTS,  
 4 INTENDED OR USED FOR PLANTING PURPOSES; or

5 (d) purchased from or distributed by a produce  
 6 dealer licensed under [section 12] if the produce has been  
 7 reported and the assessment fee has been paid.

8 NEW SECTION. Section 11. Shipping point inspection --  
 9 fees. Produce graded and prepared for shipment is subject to  
 10 a shipping point inspection by the department upon request;  
 11 HOWEVER, MONTANA-GROWN SEED POTATOES THAT ARE ENTERED IN THE  
 12 MONTANA SEED CERTIFICATION PROGRAM AND PREPARED FOR SHIPMENT  
 13 OFF THE FARM FOR PLANTING PURPOSES ARE SUBJECT TO A SHIPPING  
 14 POINT INSPECTION BY THE DEPARTMENT. Inspection fees must be  
 15 set by rule and must be commensurate with the cost of  
 16 providing the inspection.

17 NEW SECTION. Section 12. Produce dealer license --  
 18 exception -- renewal. (1) A produce dealer license is  
 19 required for any person who:

20 (a) wholesales produce in this state;

21 (b) transports produce from out of state into this  
 22 state for retail sale; or

23 (c) retails produce grown by the produce dealer in this  
 24 state when gross retail sales exceed \$10,000 \$15,000  
 25 annually.



(2) A produce dealer license is not required for a person who complies with the requirements of [sections 1 through 14] and who:

(a) retails produce grown by that person in this state if annual gross produce sales do not exceed ~~\$10,000~~ \$15,000; however, the person shall, upon request by the department, furnish a sworn statement providing that the produce was grown by that person, stating the location where the produce was grown, and stating the amount of gross sales; or

(b) is a nonprofit organization that is recognized by the director and that retails only produce purchased from licensed produce dealers or from Montana produce dealers who are in compliance with [sections 1 through 14].

(3) An applicant for a produce dealer license shall provide any information that the department finds necessary to carry out the provisions of [sections 1 through 14]. Produce dealer licenses expire on December 31 of the year of issuance. ~~New--produce--dealers--and--previously---licensed produce--dealers--who--do--not--renew--their--licenses--prior--to January--1--of--the--following--year--shall--pay--a--nonrefundable fee--of--\$75--for--a--licensee.~~ A produce dealer who ~~renews a license prior to January 1 of the following year~~ shall pay a nonrefundable LICENSE fee of \$50. A separate license is required for each place of business, including vehicles. The license fee must be credited toward the produce assessment

fee prescribed in [section 10].

(4) A produce dealer license, if required, must be carried at any time produce is sold and the license is subject to inspection by any person.

(5) A license issued under this section may not be sold or transferred from one vehicle or location to another without the written consent of the department.

**NEW SECTION. Section 13. Revocation, suspension, and nonrenewal of license.** The department may revoke, suspend, or refuse to renew a produce dealer license if the department has reasonable cause to believe that the licensee has committed any of the following acts:

(1) refusal or consistent failure to file a produce report or to pay the assessment fee required in [section 10];

(2) intentional or consistent failure to grade or mark produce as required in [section 8];

(3) aiding another person in the violation of any of the provisions of [sections 1 through 14];

(4) failure or refusal to allow inspection of or to maintain and provide records, reports, or other information required by the department; or

(5) violation, failure, or refusal to comply with any other provision of [sections 1 through 14] or a rule adopted by the department in the implementation of [sections 1

through 14].

**NEW SECTION. Section 14.** Publication of reports. The department may publish the names and addresses of persons licensed under [sections 1 through 14] and may also publish a list of licenses revoked, suspended, or not renewed pursuant to [section 13] and the reasons for revocation, suspension, or nonrenewal.

**NEW SECTION. Section 15.** Repealer. Sections 80-3-101, 80-3-102, 80-3-103, 80-3-104, 80-3-105, 80-3-106, 80-3-107, 80-3-108, 80-3-109, 80-3-110, 80-3-111, 80-3-201, 80-3-202, 80-3-203, 80-3-204, 80-3-205, 80-3-206, 80-3-207, 80-3-211, 80-3-212, 80-3-601, 80-3-602, 80-3-603, 80-3-604, 80-3-605, 80-3-606, 80-3-607, 80-3-608, 80-3-609, 80-3-610, 80-3-611, 80-3-612, 80-3-613, 80-3-701, 80-3-702, 80-3-703, 80-3-704, 80-3-705, 80-3-706, 80-3-707, 80-3-708, 80-3-709, 80-3-710, 80-3-711, 80-3-712, and 80-3-713, MCA, are repealed.

**NEW SECTION. Section 16.** Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**NEW SECTION. Section 17.** Transition. In order to implement the provisions of the produce dealer license established in [section 12] on a calendar year basis, the

department shall issue a new 1993 produce dealer license to any licensee who has paid the license fee for 1993. The state treasurer shall transfer ~~RETAIN~~ TRANSFER \$50 of the 1993 fee ~~to-the-produce-account-established-in--{section--4}~~ AND--DEPOSIT--IT--IN--THE-GENERAL-FUND TO THE PRODUCE ACCOUNT ESTABLISHED IN [SECTION 4]. All remaining license fees must be refunded to the licensee at the time the new license is issued.

**NEW SECTION. Section 18.** Effective date -- retroactive applicability. [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to produce dealer licenses issued and fees collected on and after January 1, 1993.

**NEW SECTION. Section 19.** Codification instruction. [Sections 1 through 14] are intended to be codified as an integral part of Title 80, chapter 3, and the provisions of Title 80 apply to [sections 1 through 14].

-End-