

HOUSE BILL NO. 564

INTRODUCED BY BERGSAGEL
BY REQUEST OF THE DEPARTMENT OF AGRICULTURE

IN THE HOUSE

FEBRUARY 10, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON AGRICULTURE, LIVESTOCK, & IRRIGATION. FIRST READING.
FEBRUARY 19, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 20, 1993	PRINTING REPORT. SECOND READING, DO PASS. ON MOTION, REREFERRED TO COMMITTEE ON APPROPRIATIONS.
FEBRUARY 22, 1993	ENGROSSING REPORT.
MARCH 5, 1993	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
MARCH 6, 1993	PRINTING REPORT.
MARCH 8, 1993	ON MOTION, CONSIDERATION PASSED FOR THE DAY.
MARCH 13, 1993	ON MOTION, CONSIDERATION PASSED FOR THE DAY.
MARCH 15, 1993	SECOND READING, DO PASS.
MARCH 16, 1993	ENGROSSING REPORT.
MARCH 18, 1993	THIRD READING, PASSED. AYES, 86; NOES, 9.
MARCH 19, 1993	TRANSMITTED TO SENATE.

IN THE SENATE

MARCH 20, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON AGRICULTURE, LIVESTOCK, & IRRIGATION. FIRST READING.
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MARCH 25, 1993

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

MARCH 27, 1993

SECOND READING, CONCURRED IN.

MARCH 29, 1993

THIRD READING, CONCURRED IN.
AYES, 47; NOES, 0.

RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 1, 1993

ON MOTION, CONSIDERATION PASSED
FOR THE DAY.

APRIL 2, 1993

SECOND READING, AMENDMENTS
CONCURRED IN.

APRIL 5, 1993

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 House BILL NO. 564
2 INTRODUCED BY Bourgeois
3 BY REQUEST OF THE DEPARTMENT OF AGRICULTURE
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE
6 AGRICULTURAL WAREHOUSE, COMMODITY DEALER, AND GRAIN
7 STANDARDS ACT RELATING TO LICENSE FEES, REVENUE ACCOUNTS,
8 BONDING REQUIREMENTS, AND PASSAGE OF TITLE ON GRAIN SALES;
9 CREATING A COMMODITY DEALER/PUBLIC WAREHOUSE OPERATORS
10 ACCOUNT AND STATUTORILY APPROPRIATING ACCOUNT FUNDS TO THE
11 DEPARTMENT OF AGRICULTURE FOR OPERATION OF THE ACT; AMENDING
12 SECTIONS 17-7-502, 80-4-402, 80-4-422, 80-4-425, 80-4-427,
13 80-4-429, 80-4-503, 80-4-505, 80-4-525, 80-4-527, 80-4-538,
14 80-4-602, 80-4-604, 80-4-608, AND 80-4-612, MCA; AND
15 PROVIDING AN EFFECTIVE DATE."
16

17 STATEMENT OF INTENT

18 A statement of intent is required for this bill because
19 80-4-503 and 80-4-602 grant to the department of agriculture
20 the authority to set license fees outside the statutory
21 scale established in those sections. It is intended that the
22 department, as part of the ongoing administration of the
23 commodity dealer and public warehouse operator program,
24 evaluate the amount of revenue generated by license fees and
25 adjust the fees as necessary within the statutory maximum to

1 ensure proper operation of the program.

2
3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

4 Section 1. Section 80-4-402, MCA, is amended to read:

5 "80-4-402. Definitions. As used in parts 4 through 7 of
6 this chapter, the following definitions apply:

7 (1) "Agent" means any person who contracts for or
8 solicits any agricultural commodities from a producer or
9 warehouseman warehouse operator or negotiates the
10 consignment or purchase of any agricultural commodity on
11 behalf of any commodity dealer.

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

17 (3) "Bond" means the bond required to be filed by part
18 5 or 6 of this chapter and includes any equivalent
19 established by department rule, as provided in 80-4-504 and
20 80-4-604.

21 (4) "Commodity dealer" means any person who engages in
22 a business involving or, as part of his the business,
23 participates in buying, exchanging, negotiating, or
24 soliciting the sale, resale, exchange, or transfer of any
25 agricultural commodity in the state of Montana. The term

1 does not include:

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

4 (b) a person who buys agricultural commodities from a
5 licensed commodity dealer;

6 (c) a person who does not purchase more than \$30,000
7 worth of agricultural commodities from producers during a
8 licensing year; however, once a person exceeds the \$30,000
9 exemption, he the person shall obtain a license and is not
10 eligible for the exemption for the succeeding year;

11 (d) a person who is the producer of agricultural
12 commodities that he the person actually plants, nurtures,
13 and harvests; or

14 (e) a person whose trading in agricultural commodities
15 is limited to trading in commodity futures on a recognized
16 futures exchange.

17 (5) "~~Credit-sale~~ Delayed payment contract" means a
18 written contract for the sale of an agricultural commodity
19 when the sale price is to be paid at a date after delivery
20 of the agricultural commodity to the buyer and includes but
21 is not limited to those contracts commonly referred to as
22 deferred payment contracts, deferred pricing contracts,
23 no-price-established contracts, or price-later contracts. A
24 delayed payment contract does not include those contracts in
25 which the parties intend payment to be made immediately upon

1 determination of weights and grades.

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

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

10 (8) "Director" means the director of the department of
11 agriculture.

12 (9) "Grain" means all grains for which standards have
13 been established under the United States Grain Standards Act
14 (7 U.S.C. 71 through 87) and all other agricultural
15 commodities, such as mustard, oil seed crops, or other crops
16 which may be designated by rule of the department.

17 (10) "Grain Standards Act" means the United States Grain
18 Standards Act (7 U.S.C. 71 through 87).

19 (11) "Inspector" means any person so designated by the
20 director to assist in the administration of parts 4 through
21 6 of this chapter. The term includes warehouse auditors or
22 examiners.

23 (12) "Official grain inspectors" means any official
24 personnel who perform or supervise the performance of
25 official inspection services and certify the results thereof

1 of inspections, including the grade of the grain.

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

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

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

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

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

20 (18) "Public warehouse" or "warehouse" means any
21 elevator, mill, warehouse, subterminal grain warehouse,
22 public warehouse, or other structure or facility in which,
23 for compensation, agricultural commodities are received for
24 storage, handling, processing, or shipment. The term
25 includes facilities which commingle commodities belonging to

1 different lots of agricultural commodities.

2 (19) "Purchase contract" means a delayed payment
3 contract or other written contract for the purchase of
4 agricultural commodities by a commodity dealer.

5 (20) "Receipt" means a warehouse receipt.

6 ~~(20)~~(21) "Scale weight ticket" means a load slip or
7 other evidence of delivery, other than a receipt, given to a
8 depositor by a warehouseman warehouse operator licensed
9 under the provisions of part 5 of this chapter upon initial
10 delivery of the agricultural commodity to the warehouse.

11 ~~(21)~~(22) "Station" means a warehouse located more than 3
12 miles from the central office of the warehouse.

13 ~~(22)~~(23) "Subterminal warehouse" means any warehouse at
14 which an intermediate function is performed in which
15 agricultural commodities are customarily received from
16 dealers or producers and where the commodities are
17 accumulated prior to shipment.

18 ~~(23)~~(24) "Terminal grain warehouse" means any warehouse
19 authorized by a grain exchange to receive or disburse grain
20 on consignment as presented by the rules and regulations of
21 a grain exchange.

22 ~~(24)~~(25) "Warehouseman" "Warehouse operator" means a
23 person operating or controlling a public warehouse.

24 ~~(25)~~(26) "Warehouse receipt" means every receipt,
25 whether negotiable or nonnegotiable, issued under part 5 of

1 this chapter by a warehouseman warehouse operator, except
2 scale weight tickets."

3 **Section 2.** Section 80-4-422, MCA, is amended to read:

4 "80-4-422. Credit--sale Delayed payment or purchase
5 contracts. (1) A commodity dealer who purchases agricultural
6 commodities by credit-sale purchase contract shall maintain
7 books, records, and other documents as required by the
8 department to establish compliance with the provisions of
9 this section.

10 (2) In addition to other required information, a credit
11 sale purchase contract must contain or provide for all of
12 the following:

13 (a) the seller's and purchaser's name and address;

14 (b) the conditions of delivery;

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

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

18 (e) the date payment is to be made; and

19 (f) a notice of financial risk involved in the credit
20 sale contract, in a form the department shall adopt pursuant
21 to the rulemaking authority provided in 80-4-403.

22 (3) Title to all agricultural commodities sold by
23 credit--sale purchase contract is in the purchaser as of the
24 time the contract-is-executed agricultural commodities are
25 delivered to and in physical control of the purchaser unless

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

18 (4) Any contract that does not satisfy the conditions
19 imposed by this part is considered a sale other than a
20 purchase contract and is subject to the provisions of
21 80-4-608."

22 **Section 3.** Section 80-4-425, MCA, is amended to read:

23 "80-4-425. Action on bond by persons injured --
24 liability of surety -- statute of limitations. (1) All
25 claims against a bond must be made by and through the

department. 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: file a complaint with the department. The department shall then investigate the complaint and determine whether it is valid and whether there are any other outstanding obligations due. If the department finds that there are one or more valid obligations, the department shall make demand upon the warehouse operator or commodity dealer and the commodity dealer's surety for payment. If the payment is not made promptly, the department shall commence an action on the bond to enforce payment. If the department determines that a complaint is without merit, the department shall notify the complainant of that determination in writing. The complainant may then bring a contested case under Title 2, chapter 4, part 6, to the department for a determination of whether the department should pursue the claim against the bond.

(2) ~~Liability of the surety upon the bond is limited to the amount of the bond. However, if~~ 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 must be prorated by the surety among all of those injured.

(3) The liability of a surety under a bond extends to all obligations from commodity dealers' or public warehouse operators' transactions entered into during the year in which the bond was in effect, up to the maximum amount of the bond. Claims must be brought against the bond within 2 succeeding license years."

Section 4. Section 80-4-427, MCA, is amended to read:

"80-4-427. Injunction. If a person without a license is found to have engaged in any business for which a license is required under parts 5 and 6 of this chapter, the court shall enjoin him that person from further business until he the person 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 department may, in its discretion, file the action in the first judicial district court. The injunction provided by this section is an additional remedy to the criminal penalty provided for in 80-4-428."

Section 5. Section 80-4-429, MCA, is amended to read:

"80-4-429. Penalty. (1) Except as otherwise provided, any person who violates any provision of parts 4 through 6 of this chapter or rules promulgated thereunder under parts 4 through 6 or who impedes, obstructs, hinders, or otherwise prevents or attempts to prevent the director or his duty an authorized representative in the performance of his a duty under parts 4 through 6 of this chapter is guilty of a misdemeanor and is punishable by imprisonment in a county jail not to exceed 6 months or by a fine of not more than \$1,000, or both.

(2) A person who refuses to permit inspection of licensed premises, books, accounts, records, or other documents required by parts 4 through 7 of this chapter or who uses a scale weight ticket or credit-sale purchase contract that fails to satisfy the requirements of parts 4 through 7 of this chapter is guilty of a misdemeanor.

(3) A person acting as a commodity dealer or warehouseman warehouse operator who knowingly sells warehouse-receipted agricultural commodities that he the person is not authorized to sell or who fails to pay for purchased agricultural commodities is guilty of a felony."

Section 6. Section 80-4-503, MCA, is amended to read:

"80-4-503. Fees of department. (1) The department shall collect an annual warehouseman warehouse operator license fee, based on the number of warehouses owned by the

warehouseman warehouse operator, according to the following schedule:

For each warehouse listed in the application:

<u>Capacity in Hundredweight</u>	<u>Rate</u>
0 to 25,000	\$ 35
25,001 to 50,000	60
50,001 to 125,000	85
125,001 to 250,000	110
250,001 to 375,000	135
over 375,000	160

(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. If, after evaluation of the commodity dealer/public warehouse operator program, the department determines that revenue from license fees is inadequate to accomplish the purposes of this chapter, the department may by rule increase the license fees, but the fee may not exceed \$1,000 for a facility.~~

~~(4) (3) The department shall collect a fee of \$150 a day or fraction thereof of a day for maintaining an employee of the department at a warehouse to supervise the correction of a deficiency.~~

~~(5) (4) All license fees collected under subsection (1) and deficiency fees collected under subsection (3) must be~~

1 deposited into the state--treasury--and--credited--to--the
2 general--fund commodity dealer/public warehouse operators
3 account."

4 **Section 7.** Section 80-4-505, MCA, is amended to read:

5 "80-4-505. Amount of bond -- cancellation. (1) The
6 amount of the bond to be furnished for each warehouse must
7 be fixed at a rate of 20 cents per hundredweight for the
8 first 500,000 hundredweight of licensed capacity; 15 cents
9 per hundredweight for the next 500,000 hundredweight of
10 licensed capacity; and 10 cents per hundredweight for all
11 licensed capacity over 1 million hundredweight. The amount
12 of the bond may not be less than \$20,000 or more than the
13 maximum prescribed in 80-4-405. The licensed capacity is the
14 maximum number of hundredweight of agricultural commodities
15 that the warehouse can accommodate.

16 (2) If a warehouseman warehouse operator is also
17 operating as a commodity dealer, he the warehouse operator
18 shall also provide a bond as prescribed in 80-4-604.

19 (3) If there occurs a deficiency in net assets as
20 required under 80-4-506, there shall be added to the amount
21 of bond determined in accordance with subsection (1) an
22 amount equal to that deficiency.

23 (4) Each warehouseman warehouse operator bond shall run
24 continuously with the warehouseman license until canceled by
25 the bonding company. ~~The aggregate liability of--the--surety~~

1 ~~may-in-no-event-exceed-the-sum-of-the-bond.~~

2 (5) A 60-day written notice must be given to the
3 department by the bonding company before any bond is
4 canceled; however, such the cancellation does not terminate
5 any liability of the surety incurred prior to the date of
6 cancellation."

7 **Section 8.** Section 80-4-525, MCA, is amended to read:

8 "80-4-525. Scale weight tickets -- form -- issuance.

9 (1) Scale weight tickets must be bound in books of
10 convenient size and must be numbered consecutively. The
11 original scale weight ticket must be delivered to the person
12 from whom the agricultural commodities are received. One
13 carbon copy of each scale weight ticket must remain as a
14 permanent record.

15 (2) A scale weight ticket must be issued for each load
16 of agricultural commodity received by the warehouseman
17 warehouse operator.

18 (3) A scale weight ticket may not be issued or held in
19 lieu of a warehouse receipt. ~~The retention of scale weight~~
20 ~~tickets in lieu of warehouse receipts by the owner of the~~
21 ~~grain is at the owner's risk.~~ However, an agricultural
22 commodity under scale weight ticket is considered warehoused
23 liability, and title remains with the depositor until:

24 (a) the agricultural commodity is sold under a purchase
25 contract;

(b) the agricultural commodity is paid for under 80-4-608; or

(c) a warehouse receipt is issued.

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

(5) All scale weight tickets must be signed by the warehouseman warehouse operator or his the warehouse operator's agent.

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

Section 9. Section 80-4-527, MCA, is amended to read:

"80-4-527. Warehouse receipt -- issuance -- cancellation. (1) A warehouse receipt is a receipt issued by a licensed warehouseman warehouse operator on a form containing all the information required by 80-4-526.

(2) No A warehouse receipt may not be issued except for an agricultural commodity actually delivered to a warehouse for storage.

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

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

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

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

(c) has no claim on the warehouseman's warehouse operator'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 warehouse operator 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

1 have stamped across its face "Canceled by No. ___" (showing
2 the number of the new combination receipt).

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

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

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

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

1 operator.

2 (11) Warehouse receipts must be issued when storage is
3 charged but no later than 30 days after delivery unless
4 agreed to in writing by both parties.

5 (12) Warehouse receipts must be canceled by drawing a
6 diagonal line and writing "CANCELED" across the face of the
7 original copy of the warehouse receipt. The cancellation
8 date and method of settlement, such as check number or
9 purchase contract number, must also be noted on the face of
10 the original copy of the warehouse receipt. The warehouse
11 receipt holder or the receipt holder's agent shall sign and
12 date the reverse side of the original copy of the warehouse
13 receipt at the time of settlement. If the agricultural
14 commodity is redelivered to the receipt holder, that fact
15 must be noted."

16 Section 10. Section 80-4-538, MCA, is amended to read:

17 "80-4-538. Warehouse shortage -- remedies. (1) For
18 purposes of this section, whenever a warehouseman warehouse
19 operator stores agricultural commodities of different kinds,
20 a receipt holder has a claim against all commodities in
21 storage, regardless of their kind, under his the warehouse
22 operator's receipt.

23 (2) Whenever it appears, after an investigation, that a
24 warehouseman warehouse operator does not have in his the
25 warehouse operator's possession sufficient agricultural

1 commodities to cover the outstanding warehouse receipts,
 2 scale weight tickets, or other evidence of storage liability
 3 issued or assumed by him the warehouse operator or when a
 4 warehouseman warehouse operator refuses to submit his the
 5 warehouse operator's books, papers, or property to lawful
 6 inspection, the department may give notice to the
 7 warehouseman warehouse operator to comply with the following
 8 requirements:

- 9 (a) to cover such the shortage;
- 10 (b) to give an additional bond as requested by the
 11 department; or
- 12 (c) to submit to such an inspection as the department
 13 considers necessary.

14 (3) If the warehouseman warehouse operator fails to
 15 comply with the terms of such the notice within 24 hours
 16 from the date of issuance of the notice or within such a
 17 further time as the department may allow, the department may
 18 petition the district court of the first judicial district,
 19 Lewis and Clark County, or the district court in the county
 20 where the licensee's principal place of business is located,
 21 as shown by the license application, for an order:

- 22 (a) authorizing the department to seize and take
 23 possession of any or all agricultural commodities in the
 24 warehouse or warehouses owned, operated, or controlled by
 25 the warehouseman warehouse operator and of all books,

1 papers, and property of all kinds used in connection with
 2 the conduct or the operation of the warehouse business and
 3 any materials that pertain in any way to that business; and
 4 (b) enjoining the warehouseman warehouse operator from
 5 interfering with the department in the discharge of its
 6 duties as required by this part.

7 (4) Upon taking possession, the department shall give
 8 written notice of its action to the surety on the bond of
 9 the warehouseman warehouse operator and may notify the
 10 holders of record, as shown by the warehouseman's warehouse
 11 operator's record, of all warehouse receipts or scale weight
 12 tickets issued for agricultural commodities to present their
 13 warehouse receipts or other evidence of deposits for
 14 inspection or to account for the same receipts or evidence
 15 of deposits. The department may thereupon cause an audit to
 16 be made of the affairs of the warehouse, including but not
 17 limited to the agricultural commodities of which there is an
 18 apparent shortage, to determine the amount of shortage and,
 19 if possible, to compute the shortage as to each depositor as
 20 shown by the warehouseman's warehouse operator's records.
 21 The department shall notify the warehouseman warehouse
 22 operator and the surety on his the bond of the amount of the
 23 shortage and notify each affected depositor by sending
 24 notices to the depositor's last-known address as shown by
 25 the records of the warehouseman warehouse operator.

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

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

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

11 (c) the department is ordered by the court to surrender
12 possession.

13 (6) If during or after the audit provided for in this
14 section or at any other time the department has evidence
15 that the warehouseman warehouse operator is insolvent or is
16 unable to satisfy the claims of all holders of warehouse
17 receipts or other evidence of deposits, the department may
18 petition the first judicial district court for the
19 appointment of the department to operate or liquidate the
20 business of the warehouse.

21 (7) At any time within 10 days after the department
22 takes possession of any agricultural commodities or the
23 books, papers, or property of any warehouse, the
24 warehouseman warehouse operator may serve notice on the
25 department to appear in the first judicial district court of

1 ~~the county in which the warehouse is located~~, at a time to
2 be fixed by the court, and show cause why the agricultural
3 commodities, books, papers, and other property should not be
4 restored to his the warehouse operator's possession.

5 (8) All necessary expenses incurred by the department
6 in carrying out the provisions of this section may be
7 recovered at the discretion of the department from the
8 assets of the licensee, from the agricultural commodities
9 held by the licensee under warehouse receipt, or in a
10 separate civil action brought by the department in the first
11 judicial district court or recovered at the same time and as
12 part of the seizure action filed under subsection (3)(a).

13 (9) As a part of the expenses so incurred, the
14 department is authorized to include the cost of adequate
15 liability insurance necessary to protect the department, its
16 officers, and others engaged in carrying out this section
17 part.

18 (10) The department shall set by rule the time limits
19 for:

20 (a) notification of its action on the surety bond of a
21 warehouseman warehouse operator;

22 (b) the holders of warehouse receipts or scale weight
23 tickets to provide to the department such evidence of
24 deposit; and

25 (c) satisfaction of the claims of all holders of

warehouse receipts or other evidence of deposits."

Section 11. Section 80-4-602, MCA, is amended to read:

"80-4-602. License fees. (1) The department shall collect an annual fee for each commodity dealer license according to the following schedule:

<u>Hundredweight</u>	<u>Rate</u>
<u>(Previous license year cwt</u>	<u>(per</u>
<u>volume or estimated yearly cwt)</u>	<u>facility)</u>
0 to 25,000 <u>125,000</u>	\$ 35 <u>125</u>
25,001 to 50,000	60
50,001 to 125,000	85
125,001 to 250,000	110
250,001 <u>125,001</u> to 375,000	135 <u>300</u>
over 375,000	160 <u>400</u>

(2) ~~Each applicant shall also pay a fee of \$25 for each truck operated by it in the operation of its business as a commodity dealer.~~ If, after evaluation of the commodity dealer/public warehouse operator program, the department determines that revenue from license fees is inadequate to accomplish the purposes of this chapter, the department may by rule increase the license fees, but the fee may not exceed \$1,000 for a facility.

(3) All fees collected under this section must be placed in the general fund commodity dealer/public warehouse operators account."

Section 12. Section 80-4-604, MCA, is amended to read:

"80-4-604. 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 or its equivalent, as established by department rule, payable to the state. ~~The aggregate liability of the surety may not exceed the sum of the bond.~~

(2) 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 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 minimum amount of bond required by any commodity dealer is \$20,000, and the maximum is prescribed in 80-4-405.

(3) A surety shall notify the commodity dealer and the department by certified mail at least 60 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 60 days' notice; however, such cancellation does not terminate any liability of the surety incurred prior to the date of cancellation."

Section 13. Section 80-4-608, MCA, is amended to read:

"80-4-608. 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 the owner's 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. When agricultural commodities are delivered to a commodity dealer, title to the commodities remains with the original owner until a purchase contract has been executed or 90% of the purchase price has been paid to the seller.

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

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

Section 14. Section 80-4-612, MCA, is amended to read:

"80-4-612. Commodity dealer defaults -- remedies. (1)

If the department finds that a commodity dealer has failed to comply with the terms of a written contract or has failed to pay for a commodity purchase under an oral agreement in

the manner and within the time provided in 80-4-608, the department may petition the district court of the first judicial district, Lewis and Clark County, for an order authorizing the department to seize and take possession of:

(a) any agricultural commodities in the facilities owned, operated, or controlled by the commodity dealer;

(b) all books, papers, and property used in connection with the operation of the commodity dealer business; and

(c) any material that pertains in any way to that business.

(2) If during or after an audit or at any other time the department has evidence that the commodity dealer is insolvent or is unable to satisfy the claims of all commodity dealer creditors covered by the bond, the department may petition the district court of the first judicial district, Lewis and Clark County, for the appointment of the department to operate or liquidate the business of the commodity dealer.

(3) All necessary expenses incurred by the department in carrying out the provisions of this part may be recovered at the discretion of the department from:

(a) the bond;

(b) the assets of the licensee;

(c) the agricultural commodities delivered for purchase but not yet paid for; or

(d) in a separate civil action brought by the department in the first judicial district court.

(4) The department is authorized to include as part of the recoverable expenses the cost of adequate liability insurance necessary to protect the department, its officers, and others engaged in carrying out the provisions of this part."

Section 15. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations -- definition -- requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111; 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117;

15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-409; 17-7-304; 19-5-404; 19-6-709; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 19-15-101; 20-4-109; 20-6-406; 20-8-111; 20-9-361; 20-26-1503; 22-3-811; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 27-12-206; 37-43-204; 37-51-501; 39-71-2504; 44-12-206; 44-13-102; 53-6-150; 53-24-206; 61-5-121; 67-3-205; 75-1-1101; 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103; [section 17]; 80-11-310; 82-11-136; 82-11-161; 85-1-220; 90-3-301; 90-4-215; 90-6-331; 90-7-220; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon

death of last recipient eligible for supplemental benefit;
and pursuant to sec. 18, Ch. 748, L. 1991, the inclusion of
22-3-811 terminates June 30, 1993.)"

NEW SECTION. Section 16. Creation of commodity
dealer/public warehouse operators account -- deposit of
funds. (1) There is an account in the state special revenue
fund. All revenue received under this chapter must be
deposited in the account.

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

NEW SECTION. Section 17. Deposit of deficiency funds
and liquidation funds. Revenue based on actual expenses
received from the liquidation of commodity dealers and
public warehouse operators, as authorized in 80-4-538 and
80-4-612, and from deficiency fees, authorized in 80-4-503,
must be deposited in the account established in [section 16]
and is statutorily appropriated, as provided in 17-7-502, to
the department for the purposes of this chapter. Funds
deposited under this chapter must be used to pay actual
expenses incurred in the liquidation of commodity dealers
and public warehouse operators or for the correction of
storage deficiencies. Actual expenses include but are not

limited to legal fees, court costs, travel expenses, per
diem, and communication.

NEW SECTION. Section 18. Codification instruction.
[Sections 16 and 17] are intended to be codified as an
integral part of Title 80, chapter 4, and the provisions of
Title 80, chapter 4, apply to [sections 16 and 17].

NEW SECTION. Section 19. Code commissioner
instruction. Wherever the term "warehouseman" or its
equivalent appears in Title 80, chapter 4, parts 4 through
7, or in legislation enacted by the 1993 legislature, the
code commissioner shall substitute the term "warehouse
operator" or its equivalent and make any necessary
grammatical changes to reflect the name change.

NEW SECTION. Section 20. Effective date. [This act] is
effective July 1, 1993.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0564, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION: An act generally revising the agricultural warehouse, commodity dealer, and grain standards act relating to license fees, revenue accounts, bonding requirements, and passage of title on grain sales; creating a commodity dealer/public warehouse operators account and statutorily appropriating account funds to the Department of Agriculture for operation of the act; amending existing statutes and providing an effective date.

ASSUMPTIONS:

1. The Department of Agriculture commodity dealer/public warehouse program will become 50% self supporting and 50% general fund effective July 1, 1993.
2. License fees are based on amount of grain purchased and stored. Revenues can fluctuate due to crop failure, e.g., drought, hail and insect damage. Excess revenues are required for maintaining program funding during low production years.
3. License fee revenue projections are based on FY92 actuals.
4. Approximately 23% of total program general fund expenditures occur in the commodity dealer/public warehouse 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 of Agriculture. Indirect costs are calculated using 18.28% of 50% personal services in FY94 and 18.31% in FY95.
5. Statutory appropriation authority would provide the Department of Agriculture a method to expend revenues authorized in sections 80-4-538, 80-4-612 and 80-4-503, MCA, due to the additional expenses incurred as a result of grain warehouse deficiency or shortage, or company liquidation or bankruptcy.

FISCAL IMPACT:

	FY '94			FY '95		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
Expenditures:						
Personal Services	102,107	102,107	-0-	102,388	102,388	-0-
Operating Expenses	21,793	21,793	-0-	18,520	18,520	-0-
Indirect Costs	9,333	9,333	-0-	9,374	9,374	-0-
	133,233	133,233	-0-	130,282	130,282	-0-
Funding:						
General Fund	133,233	66,616	(66,617)	130,282	65,141	(65,141)
State Special	-0-	66,617	66,617	-0-	65,141	65,141
	133,233	133,233	-0-	130,282	130,282	-0-

(Continued)

David Lewis 2-15-93

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

Ernest Bergsagel 2/16/93
ERNEST BERGSAGEL, PRIMARY SPONSOR DATE

Fiscal Note for HB0564, as introduced

HB564

Fiscal Note Request, HB0564, as introduced
Form BD-15 page 2
(continued)

	FY '94			FY '95		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
<u>Revenues:</u>						
Commodity Dealer Lic.Fee	23,255	57,150	33,895	23,255	57,150	33,895
Public Warehouseman Lic.	<u>9,785</u>	<u>21,400</u>	<u>11,615</u>	<u>9,785</u>	<u>21,400</u>	<u>11,615</u>
	33,040	78,550	45,510	33,040	78,550	45,510
<u>Net Impact:</u>						
General Fund	100,193	(66,616)	(33,577)	97,242	(65,141)	(32,101)
State Special	-0-	11,933	11,933	-0-	13,409	13,409

HB 564

APPROVED BY COMMITTEE
ON AGRICULTURE LIVESTOCK
& IRRIGATION

HOUSE BILL NO. 564

INTRODUCED BY BERGSAGEL

BY REQUEST OF THE DEPARTMENT OF AGRICULTURE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE AGRICULTURAL WAREHOUSE, COMMODITY DEALER, AND GRAIN STANDARDS ACT RELATING TO LICENSE FEES, REVENUE ACCOUNTS, BONDING REQUIREMENTS, AND PASSAGE OF TITLE ON GRAIN AGRICULTURAL COMMODITY SALES; PROVIDING FOR A PRODUCER'S LIEN ON AGRICULTURAL COMMODITIES; CREATING A COMMODITY DEALER/PUBLIC WAREHOUSE OPERATORS ACCOUNT AND STATUTORILY APPROPRIATING ACCOUNT FUNDS TO THE DEPARTMENT OF AGRICULTURE FOR OPERATION OF THE ACT; AMENDING SECTIONS 17-7-502, 80-4-402, 80-4-422, 80-4-425, 80-4-427, 80-4-429, 80-4-503, 80-4-505, 80-4-525, 80-4-527, 80-4-538, 80-4-602, 80-4-604, 80-4-608, AND 80-4-612, MCA; AND PROVIDING AN EFFECTIVE DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill because 80-4-503 and 80-4-602 grant to the department of agriculture the authority to set license fees outside the statutory scale established in those sections. It is intended that the department, as part of the ongoing administration of the commodity dealer and public warehouse operator program,

evaluate the amount of revenue generated by license fees and adjust the fees as necessary within the statutory maximum to ensure proper operation of the program.

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

Section 1. Section 80-4-402, MCA, is amended to read:

"80-4-402. Definitions. As used in parts 4 through 7 of this chapter, the following definitions apply:

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

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

(3) "Bond" means the bond required to be filed by part 5 or 6 of this chapter and includes any equivalent established by department rule, as provided in 80-4-504 and 80-4-604.

(4) "Commodity dealer" means any person who engages in a business involving or, as part of his the business, participates in buying, exchanging, negotiating, or

1 soliciting the sale, resale, exchange, or transfer of any
2 agricultural commodity in the state of Montana. The term
3 does not include:

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

6 (b) a person who buys agricultural commodities from a
7 licensed commodity dealer;

8 (c) a person who does not purchase more than \$30,000
9 worth of agricultural commodities from producers during a
10 licensing year; however, once a person exceeds the \$30,000
11 exemption, he the person shall obtain a license and is not
12 eligible for the exemption for the succeeding year;

13 (d) a person who is the producer of agricultural
14 commodities that he the person actually plants, nurtures,
15 and harvests; or

16 (e) a person whose trading in agricultural commodities
17 is limited to trading in commodity futures on a recognized
18 futures exchange.

19 (5) "~~Credit-sale~~ Delayed payment contract" means a
20 written contract for the sale of an agricultural commodity
21 when the sale price is to be paid at a date after delivery
22 of the agricultural commodity to the buyer and includes but
23 is not limited to those contracts commonly referred to as
24 deferred payment contracts, deferred pricing contracts,
25 no-price-established contracts, or price-later contracts. A

1 delayed payment contract does not include those contracts in
2 which the parties intend payment to be made immediately upon
3 determination of weights and grades.

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

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

12 (8) "Director" means the director of the department of
13 agriculture.

14 (9) "Grain" means all grains for which standards have
15 been established under the United States Grain Standards Act
16 (7 U.S.C. 71 through 87) and all other agricultural
17 commodities, such as mustard, oil seed crops, or other crops
18 which may be designated by rule of the department.

19 (10) "Grain Standards Act" means the United States Grain
20 Standards Act (7 U.S.C. 71 through 87).

21 (11) "Inspector" means any person so designated by the
22 director to assist in the administration of parts 4 through
23 6 of this chapter. The term includes warehouse auditors or
24 examiners.

25 (12) "Official grain inspectors" means any official

1 personnel who perform or supervise the performance of
2 official inspection services and certify the results thereof
3 of inspections, including the grade of the grain.

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

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

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

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

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

22 (18) "Public warehouse" or "warehouse" means any
23 elevator, mill, warehouse, subterminal grain warehouse,
24 public warehouse, or other structure or facility in which,
25 for compensation, agricultural commodities are received for

1 storage, handling, processing, or shipment. The term
2 includes facilities which commingle commodities belonging to
3 different lots of agricultural commodities.

4 (19) "Purchase contract" means a delayed payment
5 contract or other written contract for the purchase of
6 agricultural commodities by a commodity dealer.

7 (20) "Receipt" means a warehouse receipt.

8 ~~(20)~~(21) "Scale weight ticket" means a load slip or
9 other evidence of delivery, other than a receipt, given to a
10 depositor by a warehouseman warehouse operator licensed
11 under the provisions of part 5 of this chapter upon initial
12 delivery of the agricultural commodity to the warehouse.

13 ~~(21)~~(22) "Station" means a warehouse located more than 3
14 miles from the central office of the warehouse.

15 ~~(22)~~(23) "Subterminal warehouse" means any warehouse at
16 which an intermediate function is performed in which
17 agricultural commodities are customarily received from
18 dealers or producers and where the commodities are
19 accumulated prior to shipment.

20 ~~(23)~~(24) "Terminal grain warehouse" means any warehouse
21 authorized by a grain exchange to receive or disburse grain
22 on consignment as presented by the rules and regulations of
23 a grain exchange.

24 ~~(24)~~(25) "Warehouseman" "Warehouse operator" means a
25 person operating or controlling a public warehouse.

~~(25)~~(26) "Warehouse receipt" means every receipt, whether negotiable or nonnegotiable, issued under part 5 of this chapter by a warehouseman warehouse operator, except scale weight tickets."

Section 2. Section 80-4-422, MCA, is amended to read:

"80-4-422. Credit--sale Delayed payment or purchase contracts. (1) A commodity dealer who purchases agricultural commodities by credit-sale purchase 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 purchase contract must contain or provide for all of the following:

- (a) the seller's and purchaser'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;
- (e) the date payment is to be made; and
- (f) a notice of financial risk involved in the credit sale DELAYED PAYMENT contract, in a form the department shall adopt pursuant to the rulemaking authority provided in 80-4-403.

(3) Title to all agricultural commodities sold by

credit-sale purchase contract is in the purchaser as of the time the contract-is-executed agricultural commodities are delivered to and in physical control of the purchaser unless the contract provides otherwise. The contract must be signed by both parties and executed in duplicate. One copy must be retained by the commodity dealer, and one copy must be delivered provided to the seller. Upon revocation, suspension, or termination of a commodity dealer's or warehouseman's warehouse operator's license, the department may advance the payment date for all credit--sale delayed payment 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 must 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 purchase contracts may be assigned to the purchasing commodity dealer.

(4) Any contract that does not satisfy the conditions imposed by this part is considered a sale other than a purchase contract and is subject to the provisions of 80-4-608."

Section 3. Section 80-4-425, MCA, is amended to read:

1 ~~"80-4-425. Action on bond by persons injured --~~
2 ~~liability of surety -- statute of limitations. (1) All~~
3 ~~claims against a bond must be made by and through the~~
4 ~~department. A person injured by the breach of an obligation~~
5 ~~for which a bond is given to the department may take action~~
6 ~~against the bond in his own name to recover damages caused~~
7 ~~by the breach. The director shall then make demand upon the~~
8 ~~warehouseman or the commodity dealer and his surety for~~
9 ~~payment of damages. If the damages are not promptly paid,~~
10 ~~the director shall commence an action on the bond to enforce~~
11 ~~payment of damages. file a complaint with the department.~~
12 ~~The department shall then investigate the complaint and~~
13 ~~determine whether it is valid and whether there are any~~
14 ~~other outstanding obligations due. If the department finds~~
15 ~~that there are one or more valid obligations, the department~~
16 ~~shall make demand upon the warehouse operator or commodity~~
17 ~~dealer and the commodity dealer's surety for payment. If the~~
18 ~~payment is not made promptly, the department shall commence~~
19 ~~an action on the bond to enforce payment. If the department~~
20 ~~determines that a complaint is without merit, the department~~
21 ~~shall notify the complainant of that determination in~~
22 ~~writing. The complainant may then bring a contested case~~
23 ~~under Title 2, chapter 4, part 6, to the department for a~~
24 ~~determination of whether the department should pursue the~~
25 ~~claim against the bond.~~

1 ~~(2) Liability of the surety upon the bond is limited to~~
2 ~~the amount of the bond. However, if~~ If two or more persons
3 are injured by breach of the obligation for which the bond
4 is given and the damages for violating the conditions of the
5 bond exceed the specified amount of the bond, the recovery
6 on the bond ~~shall~~ must be prorated by the surety among all
7 of those injured.

8 ~~(3) The liability of a surety under a bond extends to~~
9 ~~all obligations from commodity dealers' or public warehouse~~
10 ~~operators' transactions entered into during the year in~~
11 ~~which the bond was in effect, up to the maximum amount of~~
12 ~~the bond. Claims must be brought against the bond within 2~~
13 ~~succeeding license years."~~

14 **Section 4.** Section 80-4-427, MCA, is amended to read:

15 ~~"80-4-427. Injunction. If a person without a license is~~
16 found to have engaged in any business for which a license is
17 required under parts 5 and 6 of this chapter, the court
18 shall enjoin ~~him~~ that person from further business until ~~he~~
19 the person has been ~~duy~~ duy licensed. It is not necessary that
20 the department show that an individual has been injured by
21 the actions complained of in order to issue the injunction.
22 The procedure for injunctive relief is the same as any other
23 action for an injunction under Title 27. The department may,
24 in its discretion, file the action in the first judicial
25 district court. The injunction provided by this section is

an additional remedy to the criminal penalty provided for in 80-4-428."

Section 5. Section 80-4-429, MCA, is amended to read:

"80-4-429. **Penalty.** (1) Except as otherwise provided, any person who violates any provision of parts 4 through 6 of this chapter or rules promulgated thereunder under parts 4 through 6 or who impedes, obstructs, hinders, or otherwise prevents or attempts to prevent the director or his duty an authorized representative in the performance of his a duty under parts 4 through 6 of this chapter is guilty of a misdemeanor and is punishable by imprisonment in a county jail not to exceed 6 months or by a fine of not more than \$1,000, or both.

(2) A person who refuses to permit inspection of licensed premises, books, accounts, records, or other documents required by parts 4 through 7 of this chapter or who uses a scale weight ticket or credit--sale purchase contract that fails to satisfy the requirements of parts 4 through 7 of this chapter is guilty of a misdemeanor.

(3) A person acting as a commodity dealer or warehouseman warehouse operator who knowingly sells warehouse-receipted agricultural commodities that he the person is not authorized to sell or who fails to pay for purchased agricultural commodities is guilty of a felony."

Section 6. Section 80-4-503, MCA, is amended to read:

"80-4-503. **Fees of department.** (1) The department shall collect an annual warehouseman warehouse operator license fee,--based-on-the-number-of-warehouses-owned-by-the OF \$232 FOR EACH WAREHOUSE OWNED OR OPERATED BY THE warehouseman warehouse operator, according-to-the-following-schedule:

For each warehouse listed in the application:

Capacity-in-Hundredweight	Rate
0-to-25,000 125,000	\$ 35 125
25,001-to-50,000	60
50,001-to-125,000	85
125,001-to-250,000	110
250,001 125,001 to-375,000	135 300
over-375,000	160 400

(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: If, after evaluation of the commodity dealer/public warehouse operator program, the department determines that revenue from license fees is inadequate to accomplish the purposes of this chapter, the department may by rule increase the license fees, but the fee may not exceed ~~\$1,000~~ \$500 for a facility.

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

1 a deficiency.

2 ~~(5)~~(4) All license fees collected under subsection (1)
3 and deficiency fees collected under subsection (3) must be
4 deposited into the ~~state--treasury--and--credited--to--the~~
5 ~~general--fund~~ commodity dealer/public warehouse operators
6 account."

7 **Section 7.** Section 80-4-505, MCA, is amended to read:

8 "80-4-505. Amount of bond -- cancellation. (1) The
9 amount of the bond to be furnished for each warehouse must
10 be fixed at a rate of 20 cents per hundredweight for the
11 first 500,000 hundredweight of licensed capacity; 15 cents
12 per hundredweight for the next 500,000 hundredweight of
13 licensed capacity; and 10 cents per hundredweight for all
14 licensed capacity over 1 million hundredweight. The amount
15 of the bond may not be less than \$20,000 or more than the
16 maximum prescribed in 80-4-405. The licensed capacity is the
17 maximum number of hundredweight of agricultural commodities
18 that the warehouse can accommodate.

19 (2) If a warehouseman warehouse operator is also
20 operating as a commodity dealer, he the warehouse operator
21 shall also provide a bond as prescribed in 80-4-604.

22 (3) If there occurs a deficiency in net assets as
23 required under 80-4-506, there shall be added to the amount
24 of bond determined in accordance with subsection (1) an
25 amount equal to that deficiency.

1 (4) Each warehouseman warehouse operator bond shall run
2 continuously with the warehouseman license until canceled by
3 the bonding company. ~~The aggregate liability of--the--surety~~
4 ~~may in no event exceed the sum of the bond.~~

5 (5) A 60-day written notice must be given to the
6 department by the bonding company before any bond is
7 canceled; however, such the cancellation does not terminate
8 any liability of the surety incurred prior to the date of
9 cancellation."

10 **Section 8.** Section 80-4-525, MCA, is amended to read:

11 "80-4-525. Scale weight tickets -- form -- issuance.

12 (1) Scale weight tickets must be bound in books of
13 convenient size and must be numbered consecutively. The
14 original scale weight ticket must be delivered to the person
15 from whom the agricultural commodities are received. One
16 carbon copy of each scale weight ticket must remain as a
17 permanent record.

18 (2) A scale weight ticket must be issued for each load
19 of agricultural commodity received by the warehouseman
20 warehouse operator.

21 (3) A scale weight ticket may not be issued or held in
22 lieu of a warehouse receipt. ~~The retention of scale weight~~
23 ~~tickets in lieu of warehouse receipts by the--owner--of--the~~
24 ~~grain--is--at--the--owner's--risk.~~ However, an agricultural
25 commodity under scale weight ticket is considered warehoused

1 liability, and title remains with the depositor until:

2 (a) the agricultural commodity is sold under a purchase
3 contract;

4 (b) the agricultural commodity is paid for under
5 80-4-608; or

6 (c) a warehouse receipt is issued.

7 (4) There must be plainly printed across the face of
8 such the scale weight ticket issued by the warehouseman
9 warehouse operator, in bold type, the words "THIS IS NOT A
10 WAREHOUSE RECEIPT. IT MUST BE EXCHANGED FOR A WAREHOUSE
11 RECEIPT IF GRAIN IS HELD IN STORAGE".

12 (5) All scale weight tickets must be signed by the
13 warehouseman warehouse operator or his the warehouse
14 operator's agent.

15 (6) All scale weight tickets must be converted into
16 cash or warehouse receipts on demand."

17 **Section 9.** Section 80-4-527, MCA, is amended to read:

18 "80-4-527. Warehouse receipt -- issuance --
19 cancellation. (1) A warehouse receipt is a receipt issued by
20 a licensed warehouseman warehouse operator on a form
21 containing all the information required by 80-4-526.

22 (2) No A warehouse receipt may not be issued except for
23 an agricultural commodity actually delivered to a warehouse
24 for storage.

25 (3) All warehousemen warehouse operators are required

1 to issue a warehouse receipt for each lot of agricultural
2 commodity received for storage or make payment for the
3 agricultural commodity.

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

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

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

11 (c) has no claim on the warehouseman's warehouse
12 operator's bond.

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

20 (6) If for convenience the holder of two or more
21 warehouse receipts covering like agricultural commodities
22 wishes to combine them, the new receipt ~~so~~-issued must state
23 the fact that it was issued in lieu of existing receipts. An
24 assembly or recapitulation statement must be made whenever
25 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 warehouse operator who is a grower ~~and---conducts---such---an---enterprise~~ may receive his the warehouse operator's 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 warehouse operator shall report to the department all warehouse receipts issued to himself the warehouse operator 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 upon request to the person storing the agricultural commodity covered by such the receipt. The other copies ~~shall~~ must 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 warehouse operator has advanced on the agricultural commodity represented by the receipt, but such the notation may not be construed as fixing the date of sale of such the

grain.

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

(11) Warehouse receipts must be issued when storage is charged but no later than 30 days after delivery unless agreed to in writing by both parties.

(12) Warehouse receipts must be canceled by drawing a diagonal line and writing "CANCELED" across the face of the original copy of the warehouse receipt. The cancellation date and method of settlement, such as check number or purchase contract number, must also be noted on the face of the original copy of the warehouse receipt. The warehouse receipt holder or the receipt holder's agent shall sign and date the reverse side of the original copy of the warehouse receipt at the time of settlement. If the agricultural commodity is redelivered to the receipt holder, that fact must be noted."

Section 10. Section 80-4-538, MCA, is amended to read:

"80-4-538. Warehouse shortage -- remedies. (1) For purposes of this section, whenever a warehouseman warehouse operator stores agricultural commodities of different kinds, a receipt holder has a claim against all commodities in storage, regardless of their kind, under his the warehouse operator's receipt.

(2) Whenever it appears, after an investigation, that a warehouseman warehouse operator does not have in his the warehouse operator's possession sufficient agricultural commodities to cover the outstanding warehouse receipts, scale weight tickets, or other evidence of storage liability issued or assumed by him the warehouse operator or when a warehouseman warehouse operator refuses to submit his the warehouse operator's books, papers, or property to lawful inspection, the department may give notice to the warehouseman warehouse operator to comply with the following requirements:

(a) to cover such the shortage;

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

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

(3) If the warehouseman warehouse operator fails to comply with the terms of such the notice within 24 hours from the date of issuance of the notice or within such a further time as the department may allow, the department may petition the district court of the first judicial district, Lewis and Clark County, or 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 warehouse operator 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 warehouse operator from interfering with the department in the discharge of its duties as required by this part.

(4) Upon taking possession, the department shall give written notice of its action to the surety on the bond of the warehouseman warehouse operator and may notify the holders of record, as shown by the warehouseman's warehouse operator'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 receipts or evidence of deposits. 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 warehouse operator's records. The department shall notify the warehouseman warehouse operator and the surety on his the bond of the amount of the

1 shortage and notify each affected depositor by sending
2 notices to the depositor's last-known address as shown by
3 the records of the warehouseman warehouse operator.

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

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

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

14 (c) the department is ordered by the court to surrender
15 possession.

16 (6) If during or after the audit provided for in this
17 section or at any other time the department has evidence
18 that the warehouseman warehouse operator is insolvent or is
19 unable to satisfy the claims of all holders of warehouse
20 receipts or other evidence of deposits, the department may
21 petition the first judicial district court for the
22 appointment of the department to operate or liquidate the
23 business of the warehouse.

24 (7) At any time within 10 days after the department
25 takes possession of any agricultural commodities or the

1 books, papers, or property of any warehouse, the
2 warehouseman warehouse operator may serve notice on the
3 department to appear in the first judicial district court of
4 the-county-in-which-the-warehouse-is-located, at a time to
5 be fixed by the court, and show cause why the agricultural
6 commodities, books, papers, and other property should not be
7 restored to his the warehouse operator's possession.

8 (8) All necessary expenses incurred by the department
9 in carrying out the provisions of this section may be
10 recovered at the discretion of the department from the
11 assets of the licensee, from the agricultural commodities
12 held by the licensee under warehouse receipt, or in a
13 separate civil action brought by the department in the first
14 judicial district court or-recovered-at-the-same-time-and-as
15 part-of-the-seizure-action-filed-under-subsection-(3)(a).

16 (9) As a part of the expenses so incurred, the
17 department is authorized to include the cost of adequate
18 liability insurance necessary to protect the department, its
19 officers, and others engaged in carrying out this section
20 part.

21 (10) The department shall set by rule the time limits
22 for:

23 (a) notification of its action on the surety bond of a
24 warehouseman warehouse operator;

25 (b) the holders of warehouse receipts or scale weight

1 tickets to provide to the department such evidence of
2 deposit; and

3 (c) satisfaction of the claims of all holders of
4 warehouse receipts or other evidence of deposits."

5 **Section 11.** Section 80-4-602, MCA, is amended to read:

6 "80-4-602. License fees. (1) The department shall
7 collect an annual fee OF \$232 for each commodity dealer
8 license, according-to-the-following-schedule:

<u>Hundredweight</u>	<u>Rate</u>
<u>{Previous-license-year-cwt</u>	<u>{per</u>
<u>volume-or-estimated-yearly-cwt}</u>	<u>facility}</u>
0-to-25,000 <u>±25,000</u>	\$ 35 <u>±25</u>
25,001-to-50,000	60
50,001-to-125,000	85
125,001-to-250,000	110
250,001 <u>±25,001</u> to-375,000	135 <u>300</u>
over-375,000	160 <u>400</u>

18 (2) Each-applicant-shall-also-pay-a-fee-of-\$25-for-each
19 truck-operated-by-it-in-the-operation-of-its-business--as--a
20 commodity--dealer. If, after evaluation of the commodity
21 dealer/public warehouse operator program, the department
22 determines that revenue from license fees is inadequate to
23 accomplish the purposes of this chapter, the department may
24 by rule increase the license fees, but the fee may not
25 exceed \$1,000 \$500 for a facility.

1 (3) All fees collected under this section must be
2 placed in the general-fund commodity dealer/public warehouse
3 operators account."

4 **Section 12.** Section 80-4-604, MCA, is amended to read:

5 "80-4-604. Bonding requirement amounts -- cancellation.

6 (1) An applicant for a license to operate as a commodity
7 dealer shall, before a license may be issued, file with the
8 department a surety bond or its equivalent, as established
9 by department rule, payable to the state. The--aggregate
10 liability-of-the-surety-may-not-exceed-the-sum-of-the-bond.

11 (2) The bond for a commodity dealer may not exceed 2%
12 of the value of the agricultural commodities purchased by
13 the commodity dealer from the producer during the previous
14 12-month period. The bond for all new applicants is 2% of
15 the estimated value of all agricultural commodities to be
16 purchased during the coming 12-month period. The minimum
17 amount of bond required by any commodity dealer is \$20,000,
18 and the maximum is prescribed in 80-4-405.

19 (3) A surety shall notify the commodity dealer and the
20 department by certified mail at least 60 days prior to the
21 cancellation of the bond. The-liability-of-the-surety-covers
22 purchases-made-by-the-commodity-dealer-during-the--time--the
23 bond--is--in-force. A commodity dealer's bond filed with the
24 department is continuous until canceled by the surety upon
25 60 days' notice; however, such cancellation does not

1 terminate any liability of the surety incurred prior to the
2 date of cancellation."

3 **Section 13.** Section 80-4-608, MCA, is amended to read:

4 **"80-4-608. Payment of purchase price -- definitions.**

5 (1) A person required to be licensed as a commodity dealer
6 shall pay 90% of the purchase price to the owner or his the
7 owner's agent for agricultural commodities upon delivery and
8 demand by the owner or agent and the remaining 10% not later
9 than 30 days after delivery by the owner or agent unless
10 otherwise agreed to in writing by the parties. ~~When~~
11 ~~agricultural commodities are delivered to a commodity~~
12 ~~dealer, title to the commodities remains with the original~~
13 ~~owner until a purchase contract has been executed or 90% of~~
14 ~~the purchase price has been paid to the seller.~~ TITLE TO
15 AGRICULTURAL COMMODITIES SOLD TO A COMMODITY DEALER UNDER
16 THIS SECTION TRANSFERS TO THE COMMODITY DEALER UPON PHYSICAL
17 DELIVERY OF THE COMMODITY.

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

20 (a) "Delivery" means the transfer by the seller of
21 title to and possession of agricultural commodities to the
22 commodity dealer or to another person in accordance with the
23 agreement between the seller and the commodity dealer.

24 (b) "Payment" means the actual payment or tender of
25 payment of the agreed purchase price by the commodity dealer

1 to the seller."

2 **Section 14.** Section 80-4-612, MCA, is amended to read:

3 **"80-4-612. Commodity dealer defaults -- remedies. (1)**

4 If the department finds that a commodity dealer has failed
5 to comply with the terms of a written contract or has failed
6 to pay for a commodity purchase under an oral agreement in
7 the manner and within the time provided in 80-4-608, the
8 department may petition the district court of the first
9 judicial district, Lewis and Clark County, for an order
10 authorizing the department to seize and take possession of:

11 (a) any agricultural commodities in the facilities
12 owned, operated, or controlled by the commodity dealer;

13 (b) all books, papers, and property used in connection
14 with the operation of the commodity dealer business; and

15 (c) any material that pertains in any way to that
16 business.

17 (2) If during or after an audit or at any other time
18 the department has evidence that the commodity dealer is
19 insolvent or is unable to satisfy the claims of all
20 commodity dealer creditors covered by the bond, the
21 department may petition the district court of the first
22 judicial district, Lewis and Clark County, for the
23 appointment of the department to operate or liquidate the
24 business of the commodity dealer.

25 (3) All necessary expenses incurred by the department

in carrying out the provisions of this part may be recovered at the discretion of the department from:

(a) the bond;

(b) the assets of the licensee;

(c) the agricultural commodities delivered for purchase but not yet paid for; or

(d) in a separate civil action brought by the department in the first judicial district court.

(4) The department is authorized to include as part of the recoverable expenses the cost of adequate liability insurance necessary to protect the department, its officers, and others engaged in carrying out the provisions of this part."

Section 15. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations -- definition -- requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory

appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111; 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-409; 17-7-304; 19-5-404; 19-6-709; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 19-15-101; 20-4-109; 20-6-406; 20-8-111; 20-9-361; 20-26-1503; 22-3-811; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 27-12-206; 37-43-204; 37-51-501; 39-71-2504; 44-12-206; 44-13-102; 53-6-150; 53-24-206; 61-5-121; 67-3-205; 75-1-1101; 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103; [section 17]; 80-11-310; 82-11-136; 82-11-161; 85-1-220; 90-3-301; 90-4-215; 90-6-331; 90-7-220; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state

1 treasurer, for deposit in accordance with 17-2-101 through
 2 17-2-107, as determined by the state treasurer, an amount
 3 sufficient to pay the principal and interest as due on the
 4 bonds or notes have statutory appropriation authority for
 5 the payments. (In subsection (3): pursuant to sec. 7, Ch.
 6 567, L. 1991, the inclusion of 19-6-709 terminates upon
 7 death of last recipient eligible for supplemental benefit;
 8 and pursuant to sec. 18, Ch. 748, L. 1991, the inclusion of
 9 22-3-811 terminates June 30, 1993.)"

10 NEW SECTION. Section 16. Creation of commodity
 11 dealer/public warehouse operators account -- deposit of
 12 funds. (1) There is an account in the state special revenue
 13 fund. All revenue received under this chapter must be
 14 deposited in the account.

15 (2) Money received as revenue under this chapter that
 16 is not immediately required for the purposes of this chapter
 17 must be invested under the provisions of the unified
 18 investment program established in Title 17, chapter 6, part
 19 2. All earned interest must be deposited in the account.

20 NEW SECTION. Section 17. Deposit of deficiency funds
 21 and liquidation funds. Revenue based on actual expenses
 22 received from the liquidation of commodity dealers and
 23 public warehouse operators, as authorized in 80-4-538 and
 24 80-4-612, and from deficiency fees, authorized in 80-4-503,
 25 must be deposited in the account established in [section 16]

1 and is statutorily appropriated, as provided in 17-7-502, to
 2 the department for the purposes of this chapter. Funds
 3 deposited under this chapter must be used to pay actual
 4 expenses incurred in the liquidation of commodity dealers
 5 and public warehouse operators or for the correction of
 6 storage deficiencies. Actual expenses include but are not
 7 limited to legal fees, court costs, travel expenses, per
 8 diem, and communication.

9 NEW SECTION. SECTION 18. PRODUCER'S LIEN. (1)
 10 AGRICULTURAL COMMODITIES CONTAINED ON THE PREMISES OF A
 11 PUBLIC WAREHOUSE OPERATOR OR COMMODITY DEALER, INCLUDING
 12 AGRICULTURAL COMMODITIES OWNED BY THE WAREHOUSE OPERATOR OR
 13 COMMODITY DEALER, ARE SUBJECT TO A FIRST PRIORITY LIEN IN
 14 FAVOR OF HOLDERS OF OUTSTANDING WAREHOUSE RECEIPTS, PURCHASE
 15 CONTRACTS, SCALE WEIGHT TICKETS, OR ANY OTHER EVIDENCE OF
 16 STORAGE OR SALE.

17 (2) THE LIEN MUST BE PREFERRED TO A LIEN OR SECURITY
 18 INTEREST IN FAVOR OF A CREDITOR OF THE WAREHOUSE OPERATOR OR
 19 COMMODITY DEALER REGARDLESS OF THE TIME WHEN THE CREDITOR'S
 20 LIEN OR SECURITY INTEREST ATTACHED TO THE AGRICULTURAL
 21 COMMODITIES. NOTICE OF THE LIEN NEED NOT BE FILED IN ORDER
 22 TO PERFECT THE LIEN.

23 (3) THE LIEN IS DISCHARGED AS TO AGRICULTURAL
 24 COMMODITIES SOLD BY THE WAREHOUSE OPERATOR OR COMMODITY
 25 DEALER TO A BUYER IN THE ORDINARY COURSE OF BUSINESS. THE

1 SALE DOES NOT DISCHARGE THE LIEN IN FAVOR OF AN INDIVIDUAL
2 HOLDER OF OUTSTANDING WAREHOUSE RECEIPTS, PURCHASE
3 CONTRACTS, SCALE WEIGHT TICKETS, OR OTHER EVIDENCE OF
4 STORAGE OR SALE, ON THE REMAINING AGRICULTURAL COMMODITIES
5 ON THE PREMISES.

6 NEW SECTION. Section 19. Codification instruction. (1)
7 [Sections 16 and 17] are intended to be codified as an
8 integral part of Title 80, chapter 4, and the provisions of
9 Title 80, chapter 4, apply to [sections 16 and 17].

10 (2) [SECTION 18] IS INTENDED TO BE CODIFIED AS AN
11 INTEGRAL PART OF TITLE 80, CHAPTER 4, PART 4, AND THE
12 PROVISIONS OF TITLE 80, CHAPTER 4, PART 4, APPLY TO [SECTION
13 18].

14 NEW SECTION. Section 20. Code commissioner
15 instruction. Wherever the term "warehouseman" or its
16 equivalent appears in Title 80, chapter 4, parts 4 through
17 7, or in legislation enacted by the 1993 legislature, the
18 code commissioner shall substitute the term "warehouse
19 operator" or its equivalent and make any necessary
20 grammatical changes to reflect the name change.

21 NEW SECTION. Section 21. Effective date. [This act] is
22 effective July 1, 1993.

-End-

1 HOUSE BILL NO. 564

2 INTRODUCED BY BERGSAGEL

3 BY REQUEST OF THE DEPARTMENT OF AGRICULTURE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE
6 AGRICULTURAL WAREHOUSE, COMMODITY DEALER, AND GRAIN
7 STANDARDS ACT RELATING TO LICENSE FEES, REVENUE ACCOUNTS,
8 BONDING REQUIREMENTS, AND PASSAGE OF TITLE ON GRAIN
9 AGRICULTURAL COMMODITY SALES; PROVIDING FOR A PRODUCER'S
10 LIEN ON AGRICULTURAL COMMODITIES; CREATING A COMMODITY
11 DEALER/PUBLIC WAREHOUSE OPERATORS ACCOUNT AND STATUTORILY
12 APPROPRIATING ACCOUNT FUNDS TO THE DEPARTMENT OF AGRICULTURE
13 FOR OPERATION OF THE ACT; AMENDING SECTIONS 17-7-502,
14 80-4-402, 80-4-422, 80-4-425, 80-4-427, 80-4-429, 80-4-503,
15 80-4-505, 80-4-525, 80-4-527, 80-4-538, 80-4-602, 80-4-604,
16 80-4-608, AND 80-4-612, MCA; AND PROVIDING AN EFFECTIVE
17 DATE."

19 STATEMENT OF INTENT

20 A statement of intent is required for this bill because
21 80-4-503 and 80-4-602 grant to the department of agriculture
22 the authority to set license fees outside the statutory
23 scale established in those sections. It is intended that the
24 department, as part of the ongoing administration of the
25 commodity dealer and public warehouse operator program,

1 evaluate the amount of revenue generated by license fees and
2 adjust the fees as necessary within the statutory maximum to
3 ensure proper operation of the program.

4
5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

6 Section 1. Section 80-4-402, MCA, is amended to read:

7 "80-4-402. Definitions. As used in parts 4 through 7 of
8 this chapter, the following definitions apply:

9 (1) "Agent" means any person who contracts for or
10 solicits any agricultural commodities from a producer or
11 warehouseman warehouse operator or negotiates the
12 consignment or purchase of any agricultural commodity on
13 behalf of any commodity dealer.

14 (2) "Agricultural commodity" means any grain, beans,
15 safflower, sunflower seeds, tame mustards, rapeseed,
16 flaxseed, leguminous seed, or other small seed, and other
17 agricultural commodities designated by rule of the
18 department.

THERE ARE NO CHANGES IN THIS BILL
AND WILL NOT BE REPRINTED. PLEASE
REFER TO YELLOW COPY FOR COMPLETE TEXT.

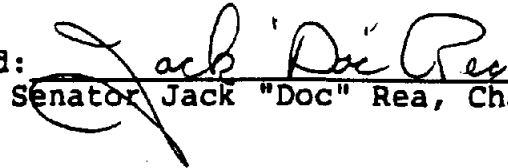
SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 25, 1993

MR. PRESIDENT:

We, your committee on Agriculture, Livestock, and Irrigation having had under consideration House Bill No. 564 (first reading copy -- blue), respectfully report that House Bill No. 564 be amended as follows and as so amended be concurred in.

Signed:


Senator Jack "Doc" Rea, Chair

That such amendments read:

1. Page 23, line 6.

Strike: "The"

Insert: "Except as provided in subsection (3), the"


2. Page 23.


Following: line 25

Insert: "(3) The license fee for a commodity dealer who is licensed as a seed dealer under 80-5-202(4) is \$100 a year if the majority of the dealer's annual expenditures for agricultural commodities is for agricultural seed intended for resale as agricultural seed."

Renumber: subsequent subsection

-END-

 Amd. Coord.
Sec. of Senate


Senator Carrying Bill

SENATE

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1 HOUSE BILL NO. 564

2 INTRODUCED BY BERGSAGEL

3 BY REQUEST OF THE DEPARTMENT OF AGRICULTURE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE
6 AGRICULTURAL WAREHOUSE, COMMODITY DEALER, AND GRAIN
7 STANDARDS ACT RELATING TO LICENSE FEES, REVENUE ACCOUNTS,
8 BONDING REQUIREMENTS, AND PASSAGE OF TITLE ON GRAIN
9 AGRICULTURAL COMMODITY SALES; PROVIDING FOR A PRODUCER'S
10 LIEN ON AGRICULTURAL COMMODITIES; CREATING A COMMODITY
11 DEALER/PUBLIC WAREHOUSE OPERATORS ACCOUNT AND STATUTORILY
12 APPROPRIATING ACCOUNT FUNDS TO THE DEPARTMENT OF AGRICULTURE
13 FOR OPERATION OF THE ACT; AMENDING SECTIONS 17-7-502,
14 80-4-402, 80-4-422, 80-4-425, 80-4-427, 80-4-429, 80-4-503,
15 80-4-505, 80-4-525, 80-4-527, 80-4-538, 80-4-602, 80-4-604,
16 80-4-608, AND 80-4-612, MCA; AND PROVIDING AN EFFECTIVE
17 DATE."

18
19 STATEMENT OF INTENT

20 A statement of intent is required for this bill because
21 80-4-503 and 80-4-602 grant to the department of agriculture
22 the authority to set license fees outside the statutory
23 scale established in those sections. It is intended that the
24 department, as part of the ongoing administration of the
25 commodity dealer and public warehouse operator program,

1 evaluate the amount of revenue generated by license fees and
2 adjust the fees as necessary within the statutory maximum to
3 ensure proper operation of the program.
4

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

6 **Section 1.** Section 80-4-402, MCA, is amended to read:7 **"80-4-402. Definitions.** As used in parts 4 through 7 of
8 this chapter, the following definitions apply:9 (1) "Agent" means any person who contracts for or
10 solicits any agricultural commodities from a producer or
11 warehouseman warehouse operator or negotiates the
12 consignment or purchase of any agricultural commodity on
13 behalf of any commodity dealer.14 (2) "Agricultural commodity" means any grain, beans,
15 safflower, sunflower seeds, tame mustards, rapeseed,
16 flaxseed, leguminous seed, or other small seed, and other
17 agricultural commodities designated by rule of the
18 department.19 (3) "Bond" means the bond required to be filed by part
20 5 or 6 of this chapter and includes any equivalent
21 established by department rule, as provided in 80-4-504 and
22 80-4-604.23 (4) "Commodity dealer" means any person who engages in
24 a business involving or, as part of his the business,
25 participates in buying, exchanging, negotiating, or

1 soliciting the sale, resale, exchange, or transfer of any
2 agricultural commodity in the state of Montana. The term
3 does not include:

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

6 (b) a person who buys agricultural commodities from a
7 licensed commodity dealer;

8 (c) a person who does not purchase more than \$30,000
9 worth of agricultural commodities from producers during a
10 licensing year; however, once a person exceeds the \$30,000
11 exemption, he the person shall obtain a license and is not
12 eligible for the exemption for the succeeding year;

13 (d) a person who is the producer of agricultural
14 commodities that he the person actually plants, nurtures,
15 and harvests; or

16 (e) a person whose trading in agricultural commodities
17 is limited to trading in commodity futures on a recognized
18 futures exchange.

19 (5) "Credit-sale Delayed payment contract" means a
20 written contract for the sale of an agricultural commodity
21 when the sale price is to be paid at a date after delivery
22 of the agricultural commodity to the buyer and includes but
23 is not limited to those contracts commonly referred to as
24 deferred payment contracts, deferred pricing contracts,
25 no-price-established contracts, or price-later contracts. A

1 delayed payment contract does not include those contracts in
2 which the parties intend payment to be made immediately upon
3 determination of weights and grades.

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

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

12 (8) "Director" means the director of the department of
13 agriculture.

14 (9) "Grain" means all grains for which standards have
15 been established under the United States Grain Standards Act
16 (7 U.S.C. 71 through 87) and all other agricultural
17 commodities, such as mustard, oil seed crops, or other crops
18 which may be designated by rule of the department.

19 (10) "Grain Standards Act" means the United States Grain
20 Standards Act (7 U.S.C. 71 through 87).

21 (11) "Inspector" means any person so designated by the
22 director to assist in the administration of parts 4 through
23 6 of this chapter. The term includes warehouse auditors or
24 examiners.

25 (12) "Official grain inspectors" means any official

1 personnel who perform or supervise the performance of
2 official inspection services and certify the results thereof
3 of inspections, including the grade of the grain.

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

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

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

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

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

22 (18) "Public warehouse" or "warehouse" means any
23 elevator, mill, warehouse, subterminal grain warehouse,
24 public warehouse, or other structure or facility in which,
25 for compensation, agricultural commodities are received for

1 storage, handling, processing, or shipment. The term
2 includes facilities which commingle commodities belonging to
3 different lots of agricultural commodities.

4 (19) "Purchase contract" means a delayed payment
5 contract or other written contract for the purchase of
6 agricultural commodities by a commodity dealer.

7 (20) "Receipt" means a warehouse receipt.

8 ~~(20)~~(21) "Scale weight ticket" means a load slip or
9 other evidence of delivery, other than a receipt, given to a
10 depositor by a warehouseman warehouse operator licensed
11 under the provisions of part 5 of this chapter upon initial
12 delivery of the agricultural commodity to the warehouse.

13 ~~(21)~~(22) "Station" means a warehouse located more than 3
14 miles from the central office of the warehouse.

15 ~~(22)~~(23) "Subterminal warehouse" means any warehouse at
16 which an intermediate function is performed in which
17 agricultural commodities are customarily received from
18 dealers or producers and where the commodities are
19 accumulated prior to shipment.

20 ~~(23)~~(24) "Terminal grain warehouse" means any warehouse
21 authorized by a grain exchange to receive or disburse grain
22 on consignment as presented by the rules and regulations of
23 a grain exchange.

24 ~~(24)~~(25) "Warehouseman" "Warehouse operator" means a
25 person operating or controlling a public warehouse.

1 ~~(25)~~(26) "Warehouse receipt" means every receipt,
2 whether negotiable or nonnegotiable, issued under part 5 of
3 this chapter by a warehouseman warehouse operator, except
4 scale weight tickets."

5 **Section 2.** Section 80-4-422, MCA, is amended to read:

6 "80-4-422. ~~Credit--sale~~ Delayed payment or purchase
7 contracts. (1) A commodity dealer who purchases agricultural
8 commodities by ~~credit-sale~~ purchase contract shall maintain
9 books, records, and other documents as required by the
10 department to establish compliance with the provisions of
11 this section.

12 (2) In addition to other required information, a ~~credit~~
13 ~~sale~~ purchase contract must contain or provide for all of
14 the following:

- 15 (a) the seller's and purchaser's name and address;
- 16 (b) the conditions of delivery;
- 17 (c) the amount and kind of agricultural commodities
18 delivered;
- 19 (d) the price per unit or basis of value;
- 20 (e) the date payment is to be made; and
- 21 (f) a notice of financial risk involved in the ~~credit~~
22 ~~sale~~ DELAYED PAYMENT contract, in a form the department
23 shall adopt pursuant to the rulemaking authority provided in
24 80-4-403.

25 (3) Title to all agricultural commodities sold by

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

21 (4) Any contract that does not satisfy the conditions
22 imposed by this part is considered a sale other than a
23 purchase contract and is subject to the provisions of
24 80-4-608."

25 **Section 3.** Section 80-4-425, MCA, is amended to read:

1 ~~"80-4-425. Action on bond by persons injured --~~
 2 ~~liability of surety -- statute of limitations. (1) All~~
 3 ~~claims against a bond must be made by and through the~~
 4 ~~department. A person injured by the breach of an obligation~~
 5 ~~for which a bond is given to the department may take action~~
 6 ~~against the bond in his own name to recover damages caused~~
 7 ~~by the breach. The director shall then make demand upon the~~
 8 ~~warehouseman or the commodity dealer and his surety for~~
 9 ~~payment of damages. If the damages are not promptly paid,~~
 10 ~~the director shall commence an action on the bond to enforce~~
 11 ~~payment of damages. file a complaint with the department.~~
 12 ~~The department shall then investigate the complaint and~~
 13 ~~determine whether it is valid and whether there are any~~
 14 ~~other outstanding obligations due. If the department finds~~
 15 ~~that there are one or more valid obligations, the department~~
 16 ~~shall make demand upon the warehouse operator or commodity~~
 17 ~~dealer and the commodity dealer's surety for payment. If the~~
 18 ~~payment is not made promptly, the department shall commence~~
 19 ~~an action on the bond to enforce payment. If the department~~
 20 ~~determines that a complaint is without merit, the department~~
 21 ~~shall notify the complainant of that determination in~~
 22 ~~writing. The complainant may then bring a contested case~~
 23 ~~under Title 2, chapter 4, part 6, to the department for a~~
 24 ~~determination of whether the department should pursue the~~
 25 ~~claim against the bond.~~

1 ~~(2) Liability of the surety upon the bond is limited to~~
 2 ~~the amount of the bond. However, if~~ If two or more persons
 3 are injured by breach of the obligation for which the bond
 4 is given and the damages for violating the conditions of the
 5 bond exceed the specified amount of the bond, the recovery
 6 on the bond ~~shall~~ must be prorated by the surety among all
 7 of those injured.

8 (3) The liability of a surety under a bond extends to
 9 all obligations from commodity dealers' or public warehouse
 10 operators' transactions entered into during the year in
 11 which the bond was in effect, up to the maximum amount of
 12 the bond. Claims must be brought against the bond within 2
 13 succeeding license years."

14 **Section 4.** Section 80-4-427, MCA, is amended to read:

15 ~~"80-4-427. Injunction. If a person without a license is~~
 16 found to have engaged in any business for which a license is
 17 required under parts 5 and 6 of this chapter, the court
 18 shall enjoin him ~~that person~~ from further business until he
 19 the person has been duly licensed. It is not necessary that
 20 the department show that an individual has been injured by
 21 the actions complained of in order to issue the injunction.
 22 The procedure for injunctive relief is the same as any other
 23 action for an injunction under Title 27. The department may,
 24 in its discretion, file the action in the first judicial
 25 district court. The injunction provided by this section is

an additional remedy to the criminal penalty provided for in 80-4-428."

Section 5. Section 80-4-429, MCA, is amended to read:

"80-4-429. Penalty. (1) Except as otherwise provided, any person who violates any provision of parts 4 through 6 of this chapter or rules promulgated thereunder under parts 4 through 6 or who impedes, obstructs, hinders, or otherwise prevents or attempts to prevent the director or his duty an authorized representative in the performance of his a duty under parts 4 through 6 of this chapter is guilty of a misdemeanor and is punishable by imprisonment in a county jail not to exceed 6 months or by a fine of not more than \$1,000, or both.

(2) A person who refuses to permit inspection of licensed premises, books, accounts, records, or other documents required by parts 4 through 7 of this chapter or who uses a scale weight ticket or credit--sale purchase contract that fails to satisfy the requirements of parts 4 through 7 of this chapter is guilty of a misdemeanor.

(3) A person acting as a commodity dealer or warehouseman warehouse operator who knowingly sells warehouse-receipted agricultural commodities that he the person is not authorized to sell or who fails to pay for purchased agricultural commodities is guilty of a felony."

Section 6. Section 80-4-503, MCA, is amended to read:

"80-4-503. Fees of department. (1) The department shall collect an annual warehouseman warehouse operator license fee--based-on-the-number-of-warehouses-owned-by-the OF \$232 FOR EACH WAREHOUSE OWNED OR OPERATED BY THE warehouseman warehouse operator, according-to-the-following-schedule:

For each warehouse listed in the application:

<u>Capacity-in-Hundredweight</u>	<u>Rate</u>
0-to-25,000 125,000	\$ 35 125
25,001-to-50,000	60
50,001-to-125,000	85
125,001-to-250,000	110
250,001 125,001 to-375,000	135 300
over-375,000	160 400

(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: If, after evaluation of the commodity dealer/public warehouse operator program, the department determines that revenue from license fees is inadequate to accomplish the purposes of this chapter, the department may by rule increase the license fees, but the fee may not exceed \$1,000 \$500 for a facility.

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

1 a deficiency.

2 ~~{5}~~(4) All license fees collected under subsection (1)
3 and deficiency fees collected under subsection (3) must be
4 deposited into the ~~state--treasury--and--credited--to--the~~
5 ~~general--fund~~ commodity dealer/public warehouse operators
6 account."

7 **Section 7.** Section 80-4-505, MCA, is amended to read:

8 "80-4-505. Amount of bond -- cancellation. (1) The
9 amount of the bond to be furnished for each warehouse must
10 be fixed at a rate of 20 cents per hundredweight for the
11 first 500,000 hundredweight of licensed capacity; 15 cents
12 per hundredweight for the next 500,000 hundredweight of
13 licensed capacity; and 10 cents per hundredweight for all
14 licensed capacity over 1 million hundredweight. The amount
15 of the bond may not be less than \$20,000 or more than the
16 maximum prescribed in 80-4-405. The licensed capacity is the
17 maximum number of hundredweight of agricultural commodities
18 that the warehouse can accommodate.

19 (2) If a warehouseman warehouse operator is also
20 operating as a commodity dealer, he the warehouse operator
21 shall also provide a bond as prescribed in 80-4-604.

22 (3) If there occurs a deficiency in net assets as
23 required under 80-4-506, there shall be added to the amount
24 of bond determined in accordance with subsection (1) an
25 amount equal to that deficiency.

1 (4) Each warehouseman warehouse operator bond shall run
2 continuously with the warehouseman license until canceled by
3 the bonding company. ~~The aggregate liability of--the--surety~~
4 ~~may-in-no-event-exceed-the-sum-of-the-bond.~~

5 (5) A 60-day written notice must be given to the
6 department by the bonding company before any bond is
7 canceled; however, such the cancellation does not terminate
8 any liability of the surety incurred prior to the date of
9 cancellation."

10 **Section 8.** Section 80-4-525, MCA, is amended to read:

11 "80-4-525. Scale weight tickets -- form -- issuance.

12 (1) Scale weight tickets must be bound in books of
13 convenient size and must be numbered consecutively. The
14 original scale weight ticket must be delivered to the person
15 from whom the agricultural commodities are received. One
16 carbon copy of each scale weight ticket must remain as a
17 permanent record.

18 (2) A scale weight ticket must be issued for each load
19 of agricultural commodity received by the warehouseman
20 warehouse operator.

21 (3) A scale weight ticket may not be issued or held in
22 lieu of a warehouse receipt. ~~The retention of scale weight~~
23 ~~tickets in lieu of warehouse receipts by the owner of the~~
24 ~~grain is at the owner's risk.~~ However, an agricultural
25 commodity under scale weight ticket is considered warehoused

1 liability, and title remains with the depositor until:
 2 (a) the agricultural commodity is sold under a purchase
 3 contract;
 4 (b) the agricultural commodity is paid for under
 5 80-4-608; or
 6 (c) a warehouse receipt is issued.
 7 (4) There must be plainly printed across the face of
 8 such the scale weight ticket issued by the warehouseman
 9 warehouse operator, in bold type, the words "THIS IS NOT A
 10 WAREHOUSE RECEIPT. IT MUST BE EXCHANGED FOR A WAREHOUSE
 11 RECEIPT IF GRAIN IS HELD IN STORAGE".
 12 (5) All scale weight tickets must be signed by the
 13 warehouseman warehouse operator or his the warehouse
 14 operator's agent.
 15 (6) All scale weight tickets must be converted into
 16 cash or warehouse receipts on demand."
 17 **Section 9.** Section 80-4-527, MCA, is amended to read:
 18 "80-4-527. Warehouse receipt -- issuance --
 19 cancellation. (1) A warehouse receipt is a receipt issued by
 20 a licensed warehouseman warehouse operator on a form
 21 containing all the information required by 80-4-526.
 22 (2) No A warehouse receipt may not be issued except for
 23 an agricultural commodity actually delivered to a warehouse
 24 for storage.
 25 (3) All warehousemen warehouse operators are required

1 to issue a warehouse receipt for each lot of agricultural
 2 commodity received for storage or make payment for the
 3 agricultural commodity.
 4 (4) A warehouse receipt that does not in fact represent
 5 an agricultural commodity actually delivered into a
 6 warehouse for storage and the origin of which cannot be
 7 traced to the actual delivery of the grain represented:
 8 (a) is not legal and is of no value;
 9 (b) has no claim on the agricultural commodity stored
 10 in a warehouse; and
 11 (c) has no claim on the warehouseman's warehouse
 12 operator's bond.
 13 (5) All agricultural commodities in a warehouse belong
 14 to the holder of outstanding warehouse receipts except those
 15 commodities that are in excess of the total of all
 16 outstanding storage obligations. An outstanding warehouse
 17 receipt is a warehouse receipt that has not been returned
 18 and paid in full on the basis of grade, quality, and
 19 quantity by the warehouseman warehouse operator issuing it.
 20 (6) If for convenience the holder of two or more
 21 warehouse receipts covering like agricultural commodities
 22 wishes to combine them, the new receipt ~~so-issued~~ must state
 23 the fact that it was issued in lieu of existing receipts. An
 24 assembly or recapitulation statement must be made whenever
 25 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 warehouse operator who is a grower ~~and---conducts--such--an--enterprise~~ may receive his the warehouse operator's 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 warehouse operator shall report to the department all warehouse receipts issued to himself the warehouse operator 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 upon request to the person storing the agricultural commodity covered by such the receipt. The other copies ~~shall~~ must 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 warehouse operator has advanced on the agricultural commodity represented by the receipt, but such the notation may not be construed as fixing the date of sale of such the

grain.

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

(11) Warehouse receipts must be issued when storage is charged but no later than 30 days after delivery unless agreed to in writing by both parties.

(12) Warehouse receipts must be canceled by drawing a diagonal line and writing "CANCELED" across the face of the original copy of the warehouse receipt. The cancellation date and method of settlement, such as check number or purchase contract number, must also be noted on the face of the original copy of the warehouse receipt. The warehouse receipt holder or the receipt holder's agent shall sign and date the reverse side of the original copy of the warehouse receipt at the time of settlement. If the agricultural commodity is redelivered to the receipt holder, that fact must be noted."

Section 10. Section 80-4-538, MCA, is amended to read:

"80-4-538. Warehouse shortage -- remedies. (1) For purposes of this section, whenever a warehouseman warehouse operator stores agricultural commodities of different kinds, a receipt holder has a claim against all commodities in storage, regardless of their kind, under his the warehouse operator's receipt.

1 (2) Whenever it appears, after an investigation, that a
 2 warehouseman warehouse operator does not have in his the
 3 warehouse operator's possession sufficient agricultural
 4 commodities to cover the outstanding warehouse receipts,
 5 scale weight tickets, or other evidence of storage liability
 6 issued or assumed by him the warehouse operator or when a
 7 warehouseman warehouse operator refuses to submit his the
 8 warehouse operator's books, papers, or property to lawful
 9 inspection, the department may give notice to the
 10 warehouseman warehouse operator to comply with the following
 11 requirements:

- 12 (a) to cover such the shortage;
 13 (b) to give an additional bond as requested by the
 14 department; or
 15 (c) to submit to such an inspection as the department
 16 considers necessary.

17 (3) If the warehouseman warehouse operator fails to
 18 comply with the terms of such the notice within 24 hours
 19 from the date of issuance of the notice or within such a
 20 further time as the department may allow, the department may
 21 petition the district court of the first judicial district,
 22 Lewis and Clark County, or the district court in the county
 23 where the licensee's principal place of business is located,
 24 as shown by the license application, for an order:

- 25 (a) authorizing the department to seize and take

1 possession of any or all agricultural commodities in the
 2 warehouse or warehouses owned, operated, or controlled by
 3 the warehouseman warehouse operator and of all books,
 4 papers, and property of all kinds used in connection with
 5 the conduct or the operation of the warehouse business and
 6 any materials that pertain in any way to that business; and
 7 (b) enjoining the warehouseman warehouse operator from
 8 interfering with the department in the discharge of its
 9 duties as required by this part.

10 (4) Upon taking possession, the department shall give
 11 written notice of its action to the surety on the bond of
 12 the warehouseman warehouse operator and may notify the
 13 holders of record, as shown by the warehouseman's warehouse
 14 operator's record, of all warehouse receipts or scale weight
 15 tickets issued for agricultural commodities to present their
 16 warehouse receipts or other evidence of deposits for
 17 inspection or to account for the same receipts or evidence
 18 of deposits. The department may thereupon cause an audit to
 19 be made of the affairs of the warehouse, including but not
 20 limited to the agricultural commodities of which there is an
 21 apparent shortage, to determine the amount of shortage and,
 22 if possible, to compute the shortage as to each depositor as
 23 shown by the warehouseman's warehouse operator's records.
 24 The department shall notify the warehouseman warehouse
 25 operator and the surety on his the bond of the amount of the

1 shortage and notify each affected depositor by sending
2 notices to the depositor's last-known address as shown by
3 the records of the warehouseman warehouse operator.

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

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

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

14 (c) the department is ordered by the court to surrender
15 possession.

16 (6) If during or after the audit provided for in this
17 section or at any other time the department has evidence
18 that the warehouseman warehouse operator is insolvent or is
19 unable to satisfy the claims of all holders of warehouse
20 receipts or other evidence of deposits, the department may
21 petition the first judicial district court for the
22 appointment of the department to operate or liquidate the
23 business of the warehouse.

24 (7) At any time within 10 days after the department
25 takes possession of any agricultural commodities or the

1 books, papers, or property of any warehouse, the
2 warehouseman warehouse operator may serve notice on the
3 department to appear in the first judicial district court of
4 ~~the-county-in-which-the-warehouse-is-located~~, at a time to
5 be fixed by the court, and show cause why the agricultural
6 commodities, books, papers, and other property should not be
7 restored to his the warehouse operator's possession.

8 (8) All necessary expenses incurred by the department
9 in carrying out the provisions of this section may be
10 recovered at the discretion of the department from the
11 assets of the licensee, from the agricultural commodities
12 held by the licensee under warehouse receipt, or in a
13 separate civil action brought by the department in the first
14 judicial district court ~~or-recovered-at-the-same-time-and-as~~
15 ~~part-of-the-seizure-action-filed-under-subsection-(3)(a)~~.

16 (9) As a part of the expenses so incurred, the
17 department is authorized to include the cost of adequate
18 liability insurance necessary to protect the department, its
19 officers, and others engaged in carrying out this section
20 part.

21 (10) The department shall set by rule the time limits
22 for:

23 (a) notification of its action on the surety bond of a
24 warehouseman warehouse operator;

25 (b) the holders of warehouse receipts or scale weight

1 tickets to provide to the department such evidence of
2 deposit; and

3 (c) satisfaction of the claims of all holders of
4 warehouse receipts or other evidence of deposits."

5 **Section 11.** Section 80-4-602, MCA, is amended to read:

6 "80-4-602. License fees. (1) THE EXCEPT AS PROVIDED IN
7 SUBSECTION (3), THE department shall collect an annual fee
8 OF \$232 for each commodity dealer license, according to--the
9 following schedule:

<u>Hundredweight</u>	<u>Rate</u>
<u>(Previous-license-year-cwt</u>	<u>(per</u>
<u>volume-or-estimated-yearly-cwt)</u>	<u>facility)</u>
0-to-25,000 <u>125,000</u>	\$ 35 <u>125</u>
25,001-to-50,000	60
50,001-to-125,000	85
125,001-to-250,000	110
250,001 <u>125,001</u> to-375,000	135 <u>300</u>
over-375,000	160 <u>400</u>

19 (2) Each applicant shall also pay a fee of \$25 for each
20 truck--operated--by it in the operation of its business as a
21 commodity dealer. If, after evaluation of the commodity
22 dealer/public warehouse operator program, the department
23 determines that revenue from license fees is inadequate to
24 accomplish the purposes of this chapter, the department may
25 by rule increase the license fees, but the fee may not

1 exceed \$1,000 \$500 for a facility.

2 (3) THE LICENSE FEE FOR A COMMODITY DEALER WHO IS
3 LICENSED AS A SEED DEALER UNDER 80-5-202(4) IS \$100 A YEAR
4 IF THE MAJORITY OF THE DEALER'S ANNUAL EXPENDITURES FOR
5 AGRICULTURAL COMMODITIES IS FOR AGRICULTURAL SEED INTENDED
6 FOR RESALE AS AGRICULTURAL SEED.

7 (3)(4) All fees collected under this section must be
8 placed in the general fund commodity dealer/public warehouse
9 operators account."

10 **Section 12.** Section 80-4-604, MCA, is amended to read:

11 "80-4-604. Bonding requirement amounts -- cancellation.

12 (1) An applicant for a license to operate as a commodity
13 dealer shall, before a license may be issued, file with the
14 department a surety bond or its equivalent, as established
15 by department rule, payable to the state. The aggregate
16 liability of the surety may not exceed the sum of the bond

17 (2) The bond for a commodity dealer may not exceed 2%
18 of the value of the agricultural commodities purchased by
19 the commodity dealer from the producer during the previous
20 12-month period. The bond for all new applicants is 2% of
21 the estimated value of all agricultural commodities to be
22 purchased during the coming 12-month period. The minimum
23 amount of bond required by any commodity dealer is \$20,000,
24 and the maximum is prescribed in 80-4-405.

25 (3) A surety shall notify the commodity dealer and the

department by certified mail at least 60 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 60 days' notice; however, such cancellation does not terminate any liability of the surety incurred prior to the date of cancellation."

Section 13. Section 80-4-608, MCA, is amended to read:

"80-4-608. 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~~ the owner's 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. When agricultural commodities are delivered to a commodity dealer, title to the commodities remains with the original owner until a purchase contract has been executed or 90% of the purchase price has been paid to the seller. TITLE TO AGRICULTURAL COMMODITIES SOLD TO A COMMODITY DEALER UNDER THIS SECTION TRANSFERS TO THE COMMODITY DEALER UPON PHYSICAL DELIVERY OF THE COMMODITY.

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

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

Section 14. Section 80-4-612, MCA, is amended to read:

"80-4-612. Commodity dealer defaults -- remedies. (1)

If the department finds that a commodity dealer has failed to comply with the terms of a written contract or has failed to pay for a commodity purchase under an oral agreement in the manner and within the time provided in 80-4-608, the department may petition the district court of the first judicial district, Lewis and Clark County, for an order authorizing the department to seize and take possession of:

(a) any agricultural commodities in the facilities owned, operated, or controlled by the commodity dealer;

(b) all books, papers, and property used in connection with the operation of the commodity dealer business; and

(c) any material that pertains in any way to that business.

(2) If during or after an audit or at any other time the department has evidence that the commodity dealer is insolvent or is unable to satisfy the claims of all

commodity dealer creditors covered by the bond, the department may petition the district court of the first judicial district, Lewis and Clark County, for the appointment of the department to operate or liquidate the business of the commodity dealer.

(3) All necessary expenses incurred by the department in carrying out the provisions of this part may be recovered at the discretion of the department from:

(a) the bond;

(b) the assets of the licensee;

(c) the agricultural commodities delivered for purchase but not yet paid for; or

(d) in a separate civil action brought by the department in the first judicial district court.

(4) The department is authorized to include as part of the recoverable expenses the cost of adequate liability insurance necessary to protect the department, its officers, and others engaged in carrying out the provisions of this part."

Section 15. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations -- definition -- requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111; 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-409; 17-7-304; 19-5-404; 19-6-709; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 19-15-101; 20-4-109; 20-6-406; 20-8-111; 20-9-361; 20-26-1503; 22-3-811; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 27-12-206; 37-43-204; 37-51-501; 39-71-2504; 44-12-206; 44-13-102; 53-6-150; 53-24-206; 61-5-121; 67-3-205; 75-1-1101; 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103; [section 17]; 80-11-310; 82-11-136; 82-11-161; 85-1-220; 90-3-301; 90-4-215; 90-6-331; 90-7-220; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 18, Ch. 748, L. 1991, the inclusion of 22-3-811 terminates June 30, 1993.)"

NEW SECTION. Section 16. Creation of commodity dealer/public warehouse operators account -- deposit of funds. (1) There is an account in the state special revenue fund. All revenue received under this chapter must be deposited in the account.

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

NEW SECTION. Section 17. Deposit of deficiency funds and liquidation funds. Revenue based on actual expenses received from the liquidation of commodity dealers and public warehouse operators, as authorized in 80-4-538 and 80-4-612, and from deficiency fees, authorized in 80-4-503, must be deposited in the account established in [section 16] and is statutorily appropriated, as provided in 17-7-502, to the department for the purposes of this chapter. Funds deposited under this chapter must be used to pay actual expenses incurred in the liquidation of commodity dealers and public warehouse operators or for the correction of storage deficiencies. Actual expenses include but are not limited to legal fees, court costs, travel expenses, per diem, and communication.

NEW SECTION. SECTION 18. PRODUCER'S LIEN. (1)
AGRICULTURAL COMMODITIES CONTAINED ON THE PREMISES OF A PUBLIC WAREHOUSE OPERATOR OR COMMODITY DEALER, INCLUDING AGRICULTURAL COMMODITIES OWNED BY THE WAREHOUSE OPERATOR OR COMMODITY DEALER, ARE SUBJECT TO A FIRST PRIORITY LIEN IN FAVOR OF HOLDERS OF OUTSTANDING WAREHOUSE RECEIPTS, PURCHASE CONTRACTS, SCALE WEIGHT TICKETS, OR ANY OTHER EVIDENCE OF STORAGE OR SALE.

(2) THE LIEN MUST BE PREFERRED TO A LIEN OR SECURITY INTEREST IN FAVOR OF A CREDITOR OF THE WAREHOUSE OPERATOR OR COMMODITY DEALER REGARDLESS OF THE TIME WHEN THE CREDITOR'S

1 LIEN OR SECURITY INTEREST ATTACHED TO THE AGRICULTURAL
 2 COMMODITIES. NOTICE OF THE LIEN NEED NOT BE FILED IN ORDER
 3 TO PERFECT THE LIEN.

4 (3) THE LIEN IS DISCHARGED AS TO AGRICULTURAL
 5 COMMODITIES SOLD BY THE WAREHOUSE OPERATOR OR COMMODITY
 6 DEALER TO A BUYER IN THE ORDINARY COURSE OF BUSINESS. THE
 7 SALE DOES NOT DISCHARGE THE LIEN IN FAVOR OF AN INDIVIDUAL
 8 HOLDER OF OUTSTANDING WAREHOUSE RECEIPTS, PURCHASE
 9 CONTRACTS, SCALE WEIGHT TICKETS, OR OTHER EVIDENCE OF
 10 STORAGE OR SALE, ON THE REMAINING AGRICULTURAL COMMODITIES
 11 ON THE PREMISES.

12 NEW SECTION. Section 19. Codification instruction. (1)
 13 [Sections 16 and 17] are intended to be codified as an
 14 integral part of Title 80, chapter 4, and the provisions of
 15 Title 80, chapter 4, apply to [sections 16 and 17].

16 (2) [SECTION 18] IS INTENDED TO BE CODIFIED AS AN
 17 INTEGRAL PART OF TITLE 80, CHAPTER 4, PART 4, AND THE
 18 PROVISIONS OF TITLE 80, CHAPTER 4, PART 4, APPLY TO [SECTION
 19 18].

20 NEW SECTION. Section 20. Code commissioner
 21 instruction. Wherever the term "warehouseman" or its
 22 equivalent appears in Title 80, chapter 4, parts 4 through
 23 7, or in legislation enacted by the 1993 legislature, the
 24 code commissioner shall substitute the term "warehouse
 25 operator" or its equivalent and make any necessary

1 grammatical changes to reflect the name change.

2 NEW SECTION. Section 21. Effective date. [This act] is
 3 effective July 1, 1993.

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