

SENATE BILL NO. 74

INTRODUCED BY D. STEINBEISSER

BY REQUEST OF THE DEPARTMENT OF AGRICULTURE

A BILL FOR AN ACT ENTITLED: "AN ACT CONFORMING CERTAIN TERMS REGARDING THE FINANCIAL STATUS OF COMMODITY DEALERS AND COMMODITY WAREHOUSE OPERATORS TO TERMS USED IN GENERALLY ACCEPTED ACCOUNTING PRINCIPLES; REVISING AND CLARIFYING THE LICENSING REQUIREMENTS FOR COMMODITY DEALERS; ALLOWING FOR FULL OR 100% BONDING BY A COMMODITY DEALER OF COMMODITIES PURCHASED ON CONTRACT; AMENDING SECTIONS 80-4-402, 80-4-405, 80-4-421, 80-4-502, 80-4-505, 80-4-506, 80-4-601, AND 80-4-604, MCA; AND PROVIDING AN EFFECTIVE DATE."

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 a person who contracts for or solicits any agricultural commodities from a producer or warehouse operator or negotiates the consignment or purchase of any agricultural commodity on behalf of a commodity dealer.

(2) "Agricultural commodity" means any grain, oil seed crops, seed, or other crops designated by rule of the department.

(3) "Bailment" means the transfer, by written or verbal contract, of an agricultural commodity by an owner of a commodity to a producer for the purpose of obtaining the producer's services in planting, growing, harvesting, or delivering back to the owner the agricultural commodity. The term includes any one or all of the enumerated transactions, whether title passes or not.

(4) "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.

(5) (a) "Commodity dealer" means a person who engages in a business involving or, as part of the business, participates in buying, exchanging, negotiating, or soliciting the sale, resale, exchange, bailment, or transfer of any agricultural commodity in the state of Montana.

- 1 (b) The term does not include:
- 2 (i) a person engaged solely in storing, shipping, or handling agricultural commodities for hire;
- 3 (ii) a person who buys agricultural commodities from a licensed commodity dealer;
- 4 (iii) a person who does not purchase more than \$30,000 worth of agricultural commodities from producers
- 5 during a licensing year; however, once a person exceeds the \$30,000 exemption, the person shall obtain a
- 6 license and is not eligible for the exemption for the succeeding year;
- 7 (iv) a person who is the producer of agricultural commodities that the person actually plants, nurtures,
- 8 and harvests;
- 9 (v) a person whose trading in agricultural commodities is limited to trading in commodity futures on a
- 10 recognized futures exchange; or
- 11 (vi) a person who buys agricultural commodities used exclusively for the feeding of livestock and not for
- 12 resale.
- 13 (6) "Delayed payment contract" means a written contract for the sale of an agricultural commodity when
- 14 the purchase price is to be paid at a date after delivery of the agricultural commodity to the buyer and includes
- 15 but is not limited to those contracts commonly referred to as deferred payment contracts, deferred pricing
- 16 contracts, no-price-established contracts, or price-later contracts. A delayed payment contract does not include
- 17 those contracts in which the parties intend payment to be made immediately upon determination of weights and
- 18 grades.
- 19 (7) "Department" means the department of agriculture provided for in 2-15-3001.
- 20 (8) "Depositor" means a person who delivers an agricultural commodity to a commodity dealer for sale,
- 21 who deposits an agricultural commodity in a warehouse for storage, processing, handling, or shipment, who is
- 22 the owner or legal holder of an outstanding warehouse receipt, or who is lawfully entitled to possession of the
- 23 agricultural commodity.
- 24 (9) "Director" means the director of the department of agriculture.
- 25 (10) "Equity" means the residual interest in the assets of a person that remains after deducting the
- 26 liabilities of the person under generally accepted accounting principles.
- 27 ~~(10)~~(11) "FGIS" means the federal grain inspection service, a program administered by the federal grain
- 28 inspection, packers, and stockyards administration (GIPSA).
- 29 ~~(11)~~(12) "Grain" means all grains for which standards have been established under the Grain Standards
- 30 Act and all other agricultural commodities, such as mustard, oil seed crops, or other crops, that may be

1 designated by rule of the department.

2 ~~(12)~~(13) "Grain standards" means the official standards of quality and condition of grain that establish
3 the grades defined by the Grain Standards Act or those standards adopted by department rule.

4 ~~(13)~~(14) "Grain Standards Act" means the United States Grain Standards Act, 7 U.S.C. 71 through 87.

5 ~~(14)~~(15) "Inspector" means a person designated by the director to assist in the administration of parts
6 4 through 7 of this chapter. The term includes warehouse auditors or examiners.

7 ~~(15)~~(16) "Official agricultural commodity inspectors" means official personnel who perform or supervise
8 the performance of official inspection services and certify the results of inspections, including the grade of
9 agricultural commodities.

10 ~~(16)~~(17) "Official agricultural commodity samplers" or "samplers" means official personnel who perform
11 or supervise the performance of official sampling services and certify the results of the sampling.

12 ~~(17)~~(18) "Official agricultural commodity weighers" means official personnel who perform or supervise
13 the performance of class X or class Y weighing services and certify the results of the services, including the
14 weight of the agricultural commodity.

15 ~~(18)~~(19) "Person" means an individual, firm, association, corporation, partnership, or any other form of
16 business enterprise.

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

19 ~~(20)~~(21) "Public warehouse" or "warehouse" means an elevator, mill, warehouse, subterminal grain
20 warehouse, public warehouse, or other structure or facility in which, for compensation, agricultural commodities
21 are received for storage, handling, processing, or shipment. The term includes facilities that commingle
22 commodities belonging to different lots of agricultural commodities.

23 ~~(24)~~(22) "Purchase contract" means a delayed payment contract or other written contract for the purchase
24 of agricultural commodities by a commodity dealer.

25 ~~(22)~~(23) "Purchase price" means the final price after premiums and discounts are assessed.

26 ~~(23)~~(24) "Receipt" means a warehouse receipt.

27 ~~(24)~~(25) "Scale weight ticket" means a load slip or other evidence of delivery, other than a receipt, given
28 to a depositor by a warehouse operator licensed under the provisions of part 5 of this chapter upon initial delivery
29 of the agricultural commodity to the warehouse.

30 ~~(25)~~(26) "Station" means a warehouse located more than 3 miles from the central office of the warehouse.

1 ~~(26)~~(27) "Subterminal warehouse" means a warehouse where an intermediate function is performed in
2 which agricultural commodities are customarily received from dealers or producers and where the commodities
3 are accumulated prior to shipment.

4 ~~(27)~~(28) "Terminal grain warehouse" means a warehouse authorized by a grain exchange to receive or
5 disburse grain on consignment as presented by the rules and regulations of a grain exchange.

6 ~~(28)~~(29) "Warehouse operator" means a person operating or controlling a public warehouse.

7 ~~(29)~~(30) "Warehouse receipt" means every receipt, whether negotiable or nonnegotiable, issued under
8 part 5 of this chapter by a warehouse operator, except scale weight tickets.

9 (31) "Working capital" means the excess of current assets over current liabilities under generally
10 accepted accounting principles."

11

12 **Section 2.** Section 80-4-405, MCA, is amended to read:

13 **"80-4-405. Maximum bond amount.** The maximum amount of any public warehouse operator bond may
14 not exceed \$1 million and the maximum amount of a commodity dealer bond may not exceed \$1 million, except:

15 (1) any bonds compensating for ~~net asset~~ equity or working capital deficiencies prescribed in parts 5 and
16 6 of this chapter must be added to the maximum bond amount. ~~In the event that~~ If the public warehouse operator
17 is also licensed as a commodity dealer, only one ~~net asset deficiency bond~~ amount is required.

18 (2) the maximum bond amount must be adjusted each year based upon the percentage increase or
19 decrease in the annual average index of prices received by Montana farmers for food and feed grains as
20 computed by the Montana crop and livestock reporting service."

21

22 **Section 3.** Section 80-4-421, MCA, is amended to read:

23 **"80-4-421. License suspension and revocation -- renewal.** (1) The department may revoke, suspend,
24 or modify a commodity warehouse operator's or commodity dealer's license when it has reasonable cause to
25 believe that the licensee has committed any of the following acts, each of which is a violation of parts 4 through
26 7 of this chapter:

27 (a) failure to maintain all initial licensing requirements, including insurance, bonding, ~~and net asset equity,~~
28 and working capital requirements. In determining compliance with ~~net asset equity and working capital~~
29 requirements, the department may consider the licensee's status under any prior or current bankruptcy
30 proceedings, as well as any outstanding civil settlements or judgments.

- 1 (b) aiding or abetting another person in the violation of the licensure or any other provisions of parts 4
2 through 7 of this chapter;
- 3 (c) conviction of any criminal offense defined under Title 45, after considering Title 37, chapter 1, part
4 2;
- 5 (d) failure or refusal to allow inspection or maintain and provide records, reports, and other information
6 required by the department;
- 7 (e) failure or refusal to post storage and other charges as filed with the department;
- 8 (f) failure or refusal to accept agricultural commodities for storage as required under 80-4-523;
- 9 (g) failure to comply with the warehouse receipt and scale weight ticket requirements of 80-4-525 and
10 80-4-527;
- 11 (h) failure of a warehouse operator to maintain and deliver upon request sufficient agricultural
12 commodities to cover outstanding warehouse receipts as required under 80-4-531;
- 13 (i) discrimination in charges by a warehouse operator as provided in 80-4-524;
- 14 (j) failure to provide payment for any agricultural commodity;
- 15 (k) failure to satisfy a judgment entered as a result of a violation of this chapter;
- 16 (l) violation of or failure or refusal to comply with any other provision of parts 4 through 7 of this chapter
17 or any rule adopted by the department pursuant to parts 4 through 7; or
- 18 (m) failure to assess, report, or pay an assessment authorized and required pursuant to Title 80, chapter
19 4 or 11.
- 20 (2) The department may refuse to issue or renew a license if the applicant or licensee:
- 21 (a) has a license as a warehouse operator or commodity dealer that was previously or is currently
22 suspended or revoked. In determining the sufficiency of cause, the department shall consider the nature and
23 length of the action and any subsequent licensure or other evidence of rehabilitation.
- 24 (b) does not satisfy the bonding, insurance, ~~or net asset equity, or working capital~~ requirements as
25 specified in subsection (1)(a) or any other provisions required as a condition to licensing;
- 26 (c) has been convicted of a criminal offense and the denial or refusal is made after considering Title 37,
27 chapter 1, part 2.
- 28 (3) The issuance of a license based on information provided by the applicant that the department
29 subsequently determines incorrect is void, and any conduct under that license is a violation.
- 30 (4) All proceedings brought under subsections (1) and (2) must be conducted under the provisions of

1 the Montana Administrative Procedure Act.

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

4

5 **Section 4.** Section 80-4-502, MCA, is amended to read:

6 **"80-4-502. Licenses to warehouse operator -- issuance -- renewal -- conditions precedent.** (1) The
7 department is authorized to issue or renew, upon application, a license to any warehouse operator for the conduct
8 of a warehouse or warehouses in accordance with parts 5 and 6 of this chapter, provided the following conditions
9 are met:

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

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

17 (c) A license fee must be submitted to the department as prescribed by 80-4-503.

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

20 (e) A sufficient and valid bond must be filed and maintained as required by 80-4-504 and 80-4-505.

21 (f) (i) ~~The~~ Except as provided in subsection (1)(f)(ii), the applicant has submitted to the department a
22 current financial statement prepared by a licensed accountant according to generally accepted accounting
23 principles, showing that the applicant has and ~~does maintain current assets equal to or greater than current~~
24 ~~liabilities~~ maintains positive working capital. ~~Applicants not having adequate current assets equal to or greater~~
25 ~~than current liabilities~~

26 (ii) An applicant without positive working capital may provide the department with additional bonding, or
27 an equivalent in the form of a certificate of deposit or irrevocable letter of credit, in the amount of \$2,000 for each
28 \$1,000 of deficit. The bond or equivalent ~~must be~~ required in this subsection (1)(f)(ii) is in addition to the bond
29 amount required in 80-4-505.

30 (g) The applicant must submit a sample warehouse receipt and subsequent revisions to the department

1 for approval and filing.

2 (h) The applicant must have complied with the terms of this part and the rules prescribed thereunder.

3 (2) All documents required for renewal of a license must be received by the department prior to the
4 expiration date of the warehouse license. An expired warehouse license may be reinstated by the department
5 upon receipt of all required licensing documents and a penalty fee of \$50 if the documents are filed within 30 days
6 from the date of expiration of the warehouse license. All license applications received after the 30-day penalty
7 period must be considered original applications and an initial license fee must be assessed according to
8 80-4-503."

9

10 **Section 5.** Section 80-4-505, MCA, is amended to read:

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

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

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

22 (4) Each warehouse operator bond ~~shall run~~ runs continuously with the license until canceled by the
23 bonding company.

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

27

28 **Section 6.** Section 80-4-506, MCA, is amended to read:

29 **"80-4-506. Net asset Equity requirements.** (1) Each licensee or applicant for a license shall maintain,
30 above all exemptions and liabilities, total ~~net assets~~ equity liable for the payment of any indebtedness arising from

1 the conduct of the warehouse or warehouses of at least 40 cents per hundredweight of all agricultural
2 commodities that the licensee's or applicant's warehouse or warehouses can accommodate.

3 (2) A person may not be licensed as a warehouse operator unless the person has and maintains
4 allowable ~~net assets~~ equity of at least \$10,000.

5 (3) Assets must be valued at original cost less depreciation, except that upon written request filed with
6 the department, the director may allow asset valuations in accordance with a competent appraisal.

7 (4) In determining total ~~net assets~~ equity, credit may be given for insurable property, such as buildings,
8 machinery, equipment, and merchandise inventory, only to the extent that the property is protected by insurance
9 against loss or damage by fire. The insurance must be in the form of lawful policies issued by one or more
10 insurance companies authorized to do business and subject to service of process in suits brought in this state.

11 (5) If a warehouse operator is licensed or applies for licenses to operate two or more warehouses, the
12 maximum number of hundredweight that all warehouses will accommodate must be considered in determining
13 whether the warehouse operator meets the ~~net asset~~ equity requirements specified in this section."
14

15 **Section 7.** Section 80-4-601, MCA, is amended to read:

16 **"80-4-601. Commodity dealer license requirements -- financial responsibility.** (1) A person may not
17 engage in the business of a commodity dealer in this state without first having obtained a license issued by the
18 department.

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

21 (3) (a) A license application must include the following:

22 ~~(a)~~(i) the name of the applicant;

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

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

25 ~~(d)~~(iv) the location of the principal places of business;

26 ~~(e)~~(v) a sufficient and valid bond as specified in 80-4-604, plus the bond specified in subsection (5)(a)(i)
27 or (5)(a)(ii) if applicable, or as specified in subsection (5)(a)(iii);

28 ~~(f) the number and description of trucks or tractor-trailer units owned or leased by the applicant that will~~
29 ~~be used in the transportation of agricultural commodities purchased pursuant to the provisions of this part;~~

30 ~~_____ (g)(vi) a complete financial statement prepared by a licensed accountant according to generally accepted~~

1 accounting principles, setting forth the applicant's assets, liabilities, and net worth equity; ~~and. The commodity~~
 2 ~~dealer shall have and maintain current assets equal to or greater than current liabilities. Applicants not having~~
 3 ~~adequate current assets equal to or greater than current liabilities may provide the department with additional~~
 4 ~~bonding, or an equivalent in the form of a certificate of deposit or irrevocable letter of credit, in the amount of~~
 5 ~~\$2,000 for each \$1,000 of deficit. The bond or equivalent must be in addition to the bond amount required in~~
 6 ~~80-4-604.~~

7 ~~(h)(vii)~~ any other reasonable information the department finds necessary to carry out the provisions and
 8 purpose of this part.

9 (b) In determining the value of assets for the purposes of commodity dealer licensing:

10 (i) the value of the assets must be shown at original cost less depreciation, except that upon written
 11 request filed with the department, the director may allow asset valuations in accordance with a competent
 12 appraisal; and

13 (ii) credit may be given for insurable property, such as buildings, machinery, equipment, and merchandise
 14 inventory, only to the extent that the insurable property is protected against loss or damage by fire by insurance
 15 in the form of lawful policies issued by one or more insurance companies authorized to do business and subject
 16 to service of process in suits brought in this state.

17 ~~(4) In~~ Except as provided in subsection (5), in order to receive and retain a commodity dealer's license,
 18 a commodity dealer shall have and maintain ~~net assets of at least \$50,000 or maintain a bond in the amount of~~
 19 ~~\$2,000 for each \$1,000 or fraction thereof of net assets deficiency. However, a minimum of \$10,000 net assets~~
 20 ~~is required by a commodity dealer to qualify for a license. Assets must be shown at original cost less~~
 21 ~~depreciation, except that upon written request filed with the department, the director may allow asset valuations~~
 22 ~~in accordance with a competent appraisal. In determining total net assets, credit may be given for insurable~~
 23 ~~property, such as buildings, machinery, equipment, and merchandise inventory, only to the extent that such~~
 24 ~~property is protected by insurance against loss or damage by fire. The insurance must be in the form of lawful~~
 25 ~~policies issued by one or more insurance companies authorized to do business and subject to service of process~~
 26 ~~in suits brought in this state. A bond submitted for purposes of this subsection is in addition to any bond otherwise~~
 27 ~~required under this part.;~~

28 (a) equity of \$50,000;

29 (b) positive working capital; and

30 (c) the bond required under 80-4-604.

1 (5) (a) An applicant for a commodity dealer's license:

2 (i) that meets the conditions specified in subsections (4)(b) and (4)(c) but does not meet the condition
 3 specified in subsection (4)(a) shall provide the department with additional bond in the amount of \$2,000 for each
 4 \$1,000 or fraction of \$1,000 that the applicant's equity is less than \$50,000;

5 (ii) that meets the conditions specified in subsections (4)(a) and (4)(c) but does not meet the condition
 6 specified in subsection (4)(b) shall provide the department with additional bond in the amount of \$2,000 for each
 7 \$1,000 or fraction of \$1,000 that the applicant's current liabilities exceed the applicant's current assets; or

8 (iii) may, at the applicant's discretion, provide the department with a bond in the amount of 110% of the
 9 value of commodities the applicant or dealer intends to purchase during the term of the license or 110% of the
 10 value of commodities the dealer purchased during the preceding 12 months, whichever is greater.

11 (b) An applicant or commodity dealer that provides a bond under subsection (5)(a)(i) or (5)(a)(ii) is
 12 exempt from the bonding requirement in 80-4-604(2).

13 (c) If a commodity dealer posts a bond or equivalent under subsection (5)(a)(iii) and at any time has
 14 unpaid contracts that exceed 90% of the dealer's bond or equivalent, the dealer shall either pay off contracts of
 15 sufficient value or increase the bond amount so that the total value of the unpaid contracts is less than 90% of
 16 the bond or equivalent.

17 ~~(5)(6)~~ The department shall adopt rules relating to the form and time of filing of financial statements. The
 18 department may require additional information or verification regarding the financial resources of the applicant
 19 and the applicant's ability to pay producers for agricultural commodities purchased from them."
 20

21 **Section 8.** Section 80-4-604, MCA, is amended to read:

22 **"80-4-604. Bonding requirement amounts -- cancellation.** (1) An applicant for a license to operate
 23 as a commodity dealer shall, before a license may be issued, file with the department a surety bond or its
 24 equivalent, as established by department rule, payable to the state.

25 (2) ~~The~~ Except as provided in 80-4-601(5)(b):

26 (a) the bond for a commodity dealer may not exceed 2% of the value of the agricultural commodities
 27 purchased by the commodity dealer from the producer during the previous 12-month period.~~The;~~

28 (b) the bond for all new applicants is 2% of the estimated value of all agricultural commodities to be
 29 purchased during the coming 12-month period.~~The; and~~

30 (c) the minimum amount of bond required by any commodity dealer is \$20,000; and the maximum is

1 prescribed in 80-4-405.

2 (3) A surety shall notify the commodity dealer and the department by certified mail at least 60 days prior
3 to the cancellation of the bond. A commodity dealer's bond filed with the department is continuous until canceled
4 by the surety upon 60 days' notice; however, cancellation does not terminate any liability of the surety incurred
5 prior to the date of cancellation."

6

7 NEW SECTION. **Section 9. Effective date.** [This act] is effective July 1, 2011.

8

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