

SENATE BILL NO. 55

INTRODUCED BY M. COLE

BY REQUEST OF THE DEPARTMENT OF AGRICULTURE

1
2
3
4
5
6
7
8
9

A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING "BAILMENT" AND CLARIFYING THAT BAILMENT TRANSACTIONS ARE COMMODITY DEALER TRANSACTIONS FOR WHICH LICENSING AND BONDING ARE REQUIRED; AMENDING SECTIONS 80-4-402, 80-4-429, AND 80-4-526, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

11

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

12

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

13
14

(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.

15
16
17

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

18
19

(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.

20
21
22
23

~~(3)~~(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.

24
25

~~(4)~~(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.

26
27
28

(b) The term does not include:

29

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

30

- 1 ~~(b)~~(ii) a person who buys agricultural commodities from a licensed commodity dealer;
- 2 ~~(c)~~(iii) a person who does not purchase more than \$30,000 worth of agricultural commodities from
3 producers during a licensing year; however, once a person exceeds the \$30,000 exemption, the person
4 shall obtain a license and is not eligible for the exemption for the succeeding year;
- 5 ~~(d)~~(iv) a person who is the producer of agricultural commodities that the person actually plants,
6 nurtures, and harvests;
- 7 ~~(e)~~(v) a person whose trading in agricultural commodities is limited to trading in commodity futures
8 on a recognized futures exchange; or
- 9 ~~(f)~~(vi) a person who buys agricultural commodities used exclusively for the feeding of livestock and
10 not for resale.
- 11 ~~(5)~~(6) "Delayed payment contract" means a written contract for the sale of an agricultural
12 commodity when the purchase price is to be paid at a date after delivery of the agricultural commodity to
13 the buyer and includes but is not limited to those contracts commonly referred to as deferred payment
14 contracts, deferred pricing contracts, no-price-established contracts, or price-later contracts. A delayed
15 payment contract does not include those contracts in which the parties intend payment to be made
16 immediately upon determination of weights and grades.
- 17 ~~(6)~~(7) "Department" means the department of agriculture provided for in 2-15-3001.
- 18 ~~(7)~~(8) "Depositor" means a person who delivers an agricultural commodity to a commodity dealer
19 for sale, who deposits an agricultural commodity in a warehouse for storage, processing, handling, or
20 shipment, who is the owner or legal holder of an outstanding warehouse receipt, or who is lawfully entitled
21 to possession of the agricultural commodity.
- 22 ~~(8)~~(9) "Director" means the director of the department of agriculture.
- 23 ~~(9)~~(10) "FGIS" means the federal grain inspection service, a program administered by the federal
24 grain inspection, packers, and stockyards administration (GIPSA).
- 25 ~~(10)~~(11) "Grain" means all grains for which standards have been established under the Grain
26 Standards Act and all other agricultural commodities, such as mustard, oil seed crops, or other crops, that
27 may be designated by rule of the department.
- 28 ~~(11)~~(12) "Grain standards" means the official standards of quality and condition of grain that
29 establish the grades defined by the Grain Standards Act or those standards adopted by department rule.
- 30 ~~(12)~~(13) "Grain Standards Act" means the United States Grain Standards Act, 7 U.S.C. 71 through

1 87.

2 ~~(13)~~(14) "Inspector" means a person designated by the director to assist in the administration of
3 parts 4 through 7 of this chapter. The term includes warehouse auditors or examiners.

4 ~~(14)~~(15) "Official agricultural commodity inspectors" means official personnel who perform or
5 supervise the performance of official inspection services and certify the results of inspections, including
6 the grade of agricultural commodities.

7 ~~(15)~~(16) "Official agricultural commodity samplers" or "samplers" means official personnel who
8 perform or supervise the performance of official sampling services and certify the results of the sampling.

9 ~~(16)~~(17) "Official agricultural commodity weighers" means official personnel who perform or
10 supervise the performance of class X or class Y weighing services and certify the results of the services,
11 including the weight of the agricultural commodity.

12 ~~(17)~~(18) "Person" means an individual, firm, association, corporation, partnership, or any other
13 form of business enterprise.

14 ~~(18)~~(19) "Producer" means the owner, tenant, or operator of land in this state who has an interest
15 in and receives all or part of the proceeds from the sale of agricultural commodities produced on that land.

16 ~~(19)~~(20) "Public warehouse" or "warehouse" means an elevator, mill, warehouse, subterminal grain
17 warehouse, public warehouse, or other structure or facility in which, for compensation, agricultural
18 commodities are received for storage, handling, processing, or shipment. The term includes facilities that
19 commingle commodities belonging to different lots of agricultural commodities.

20 ~~(20)~~(21) "Purchase contract" means a delayed payment contract or other written contract for the
21 purchase of agricultural commodities by a commodity dealer.

22 ~~(21)~~(22) "Purchase price" means the final price after premiums and discounts are assessed.

23 ~~(22)~~(23) "Receipt" means a warehouse receipt.

24 ~~(23)~~(24) "Scale weight ticket" means a load slip or other evidence of delivery, other than a receipt,
25 given to a depositor by a warehouse operator licensed under the provisions of part 5 of this chapter upon
26 initial delivery of the agricultural commodity to the warehouse.

27 ~~(24)~~(25) "Station" means a warehouse located more than 3 miles from the central office of the
28 warehouse.

29 ~~(25)~~(26) "Subterminal warehouse" means a warehouse where an intermediate function is
30 performed in which agricultural commodities are customarily received from dealers or producers and where

1 the commodities are accumulated prior to shipment.

2 ~~(26)~~(27) "Terminal grain warehouse" means a warehouse authorized by a grain exchange to receive
3 or disburse grain on consignment as presented by the rules and regulations of a grain exchange.

4 ~~(27)~~(28) "Warehouse operator" means a person operating or controlling a public warehouse.

5 ~~(28)~~(29) "Warehouse receipt" means every receipt, whether negotiable or nonnegotiable, issued
6 under part 5 of this chapter by a warehouse operator, except scale weight tickets."

7

8 **Section 2.** Section 80-4-429, MCA, is amended to read:

9 **"80-4-429. Penalty.** (1) Except as otherwise provided, a person who violates any provision of
10 parts 4 through 7 of this chapter or rules promulgated under parts 4 through 7 or who impedes, obstructs,
11 hinders, or otherwise prevents or attempts to prevent the director or an authorized representative in the
12 performance of a duty under parts 4 through 7 of this chapter is guilty of a misdemeanor.

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

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

20 (4) A person exempted from licensure as a commodity dealer under the provisions of
21 ~~80-4-402(4)(f)~~ ~~80-4-402(5)(f)~~ ~~80-4-402(5)(B)(vi)~~ who fails to pay in full all amounts due to a producer for
22 the sale of agricultural commodities is guilty of a felony and is also subject to any additional administrative
23 penalty authorized by this chapter.

24 (5) A person is guilty of a felony if that person knowingly delivers to a commodity dealer or
25 warehouse operator or upon the exercise of reasonable diligence should have known of the delivery to that
26 person of an agricultural commodity that contains:

27 (a) a nitrogen fertilizer added to harvested grain;

28 (b) a poisonous, deleterious, or other substance not registered or approved by federal or state
29 statutes, regulations, or rules; or

30 (c) a registered or approved substance that has not been used or applied according to label

1 directions or other government standards."
2

3 **Section 3.** Section 80-4-526, MCA, is amended to read:

4 **"80-4-526. Warehouse receipts -- written terms.** (1) Warehouse receipts under this part must
5 contain in written terms:

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

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

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

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

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

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

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

13 (h) a statement of gross weight, dockage, and net weight and the sample report used for grade
14 and protein analysis;

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

16 (j) a statement that, upon the return of the receipt properly endorsed by the person to whom the
17 order was issued and the payment of the proper charges for storing and handling, delivery will be made
18 in accordance with this part;

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

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

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

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

23 (b) the grade; and

24 (c) the protein certificate used.

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

26 (a) delivery provisions;

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

28 (c) bailment provisions provided for in Title 30, chapter 7, part 2, that do not conflict with this
29 part;

30 (d) act-of-God provisions;

1 (e) nonnegotiable provisions; and

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

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

7

8 NEW SECTION. **Section 4. Saving clause.** [This act] does not affect rights and duties that
9 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this
10 act].

11

12 NEW SECTION. **Section 5. Effective date.** [This act] is effective on passage and approval.

13

- END -