

SENATE BILL NO. 162

INTRODUCED BY J. KEANE

1
2
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING HAIL INSURANCE LAWS;
5 TRANSFERRING THE ADMINISTRATIVE RESPONSIBILITY FOR HAIL INSURANCE FEES FROM THE
6 DEPARTMENT OF REVENUE TO THE DEPARTMENT OF AGRICULTURE; TRANSFERRING CERTAIN
7 ADMINISTRATIVE DUTIES FOR THE HAIL INSURANCE PROGRAM FROM THE BOARD OF HAIL
8 INSURANCE TO THE DEPARTMENT OF AGRICULTURE; CLARIFYING THE HAIL INSURANCE
9 APPLICATION PROCESS; IMPOSING INTEREST ON DELINQUENT HAIL INSURANCE FEES; PROVIDING
10 RULEMAKING AUTHORITY; CLARIFYING THE PROCESS FOR ADJUSTING CROP LOSSES FROM HAIL
11 FOR THE PURPOSES OF THE HAIL INSURANCE PROGRAM; AMENDING SECTIONS 80-2-203, 80-2-204,
12 80-2-206, 80-2-207, 80-2-208, 80-2-221, 80-2-222, 80-2-224, 80-2-225, 80-2-230, 80-2-232, 80-2-242, 80-2-243,
13 AND 80-2-244, MCA; REPEALING SECTIONS 80-2-226 AND 80-2-231, MCA; AND PROVIDING A DELAYED
14 EFFECTIVE DATE."

15

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

17

18 **Section 1.** Section 80-2-203, MCA, is amended to read:

19 **"80-2-203. Participation in program -- fee.** (1) A person or an association of persons engaged in the
20 growing of crops or other agricultural or horticultural products subject to injury or destruction by hail may, by
21 individual or joint election filed with and approved by the board of hail insurance, accept the provisions of this part
22 and elect to become subject to this part. The risks may be classified by the board, and suitable fees may be
23 imposed as agreed upon by the board and the persons. The persons are entitled to the benefits and protection
24 afforded by the insurance provisions of this part.

25 (2) Each person who ~~signifies a desire~~ desires to become subject to the provisions of this part shall file
26 with the department of revenue the properly filled out form not later than August 15. The person is chargeable
27 with the fee provided for on lands growing crops subject to injury or destruction by hail and shall share in the
28 protection and benefits under the hail insurance provisions of this part. The application for hail insurance is in full
29 force and effect at 12:01 a.m. on the day immediately following the ~~acceptance~~ submission of the application by
30 to the department of revenue.

1 (3) This part may not be construed to empower anyone except the actual owner of the land to make the
2 land subject to the hail fee provided in this part."

3

4 **Section 2.** Section 80-2-204, MCA, is amended to read:

5 **"80-2-204. Duty of department of revenue -- election of benefits of law.** The department of revenue
6 shall upon request explain the provisions of this part to each person engaged in the growing of crops subject to
7 injury or destruction by hail ~~the provisions of this part~~. The department of revenue shall issue hail insurance
8 policies to each person who desires to become subject to this part, to become liable for the fee provided for in
9 this part, and to be eligible for the benefits and protection of this part. A person who elects to become subject to
10 this part is liable for the fees for hail insurance and shall participate in the benefits and protection afforded by this
11 part. The owners of lands worked by others under lease or contract or the lessee of land under lease or contract
12 may make the election for hail insurance, ~~or the lessee of the land and~~ may tender payment, ~~in cash,~~ of the fee
13 ~~levied~~ charged for hail insurance to the officer authorized to receive payment."

14

15 **Section 3.** Section 80-2-206, MCA, is amended to read:

16 **"80-2-206. ~~Cash payment~~ Payment.** When an applicant for hail insurance ~~tenders cash~~ pays for the
17 insurance ~~to the department of revenue at the time of application,~~ the applicant is allowed a discount of 4%. ~~The~~
18 hail, less any transaction fees, and the insurance must be issued upon the cash payment less the 4% when the
19 application and payment are received. ~~The charge for the insurance must be based on the maximum rates shown~~
20 ~~on the application for hail insurance. If the current rates are reduced later, the board of hail insurance shall~~
21 ~~arrange for the proper refund to the insured. All cash payments for hail insurance received by the department of~~
22 ~~revenue must be deposited with~~ transferred to the state treasurer for deposit pursuant to 80-2-232."

23

24 **Section 4.** Section 80-2-207, MCA, is amended to read:

25 **"80-2-207. Delinquent fees -- application by delinquent -- crop lien.** (1) An owner of land who ~~has~~
26 ~~more than 1 year's~~ is delinquent in paying fees on the land pursuant to this part may not be allowed hail insurance
27 under the provisions of this part; unless the owner's application is accompanied by a ~~cash~~ payment for the
28 delinquent amount, including interest imposed under 80-2-230, plus the amount that would be due on the
29 application for that year.

30 (2) Any grower who is unable to secure state hail insurance under the provisions of this part because

1 of delinquent fees or for other reasons may make an application to the department of revenue, and the
 2 department of revenue may receive and accept the application when the applicant furnishes a sufficient crop lien
 3 that is subject only to a seed lien. The crop lien may be accepted only under rules and requirements that may
 4 be prescribed by the board of hail insurance and under the provision that the board may cancel any hail insurance
 5 accepted in violation of the rules and requirements. Upon receipt of the application, the department of revenue
 6 shall make a record of the application and shall file the original in the office of the clerk and recorder of the county
 7 lien with the secretary of state. The department of revenue shall also send a bill to the grower for the proper
 8 amount due for hail insurance under the provisions of this part.

9 (3) A tenant who has delinquent hail insurance that was secured by a crop lien and was not secured but
 10 not by real estate may is not be allowed another policy in any succeeding year until the delinquent amount,
 11 including interest imposed pursuant to 80-2-230, is paid or until the tenant pays cash for the current hail
 12 insurance.

13 (4) If a tenant becomes delinquent in paying for hail insurance after having failed to apply for relief as
 14 provided by the board under 80-2-229, the tenant may apply to the board for a reduction in the fee initially
 15 charged. If the reasons for requesting a reduction are approved by the board, the board may reduce the charge
 16 fee to not less than one-half the original amount charged."

17

18 **Section 5.** Section 80-2-208, MCA, is amended to read:

19 **"80-2-208. Maximum insurance.** ~~When the reserve fund is determined actuarially sound, as provided~~
 20 ~~in 80-2-228, the~~ The board may write not more than \$50 of insurance on each acre of crops on nonirrigated land
 21 and not more than \$76 of insurance on each acre on irrigated land, except that the board may specify different
 22 maximums for specialty crops. When more than one party desires hail insurance on the same crop, each party
 23 is entitled to the share of the maximum provided on each acre as represented by that person's interest in the crop.
 24 ~~Either~~ Any party may insure the party's share in the crop for any amount up to and including the maximum on
 25 each acre if the ~~others~~ other parties waive their right to insure."

26

27 **Section 6.** Section 80-2-221, MCA, is amended to read:

28 **"80-2-221. Fee for hail insurance.** (1) A fee is imposed on all ~~lands~~ land in this state growing crops
 29 subject to injury or destruction by hail; if the owners of which the land have elected to become subject to the
 30 provisions of this part.

1 (2) The board of hail insurance shall annually estimate, as accurately as possible, the amount required
 2 to pay all losses, interest on warrants, and costs of administration and shall recommend to the department a fee
 3 to be imposed on each kind of land ~~respectively~~, subject to the provisions of this part, ~~to the department of~~
 4 ~~revenue~~. The rates recommended to apply on the ~~lands of owners~~ land must be applied in the same proportions
 5 to the crops of those landowners insured on a personal basis."
 6

7 **Section 7.** Section 80-2-222, MCA, is amended to read:

8 **"80-2-222. Board to establish amount of rates -- disposition of funds.** (1) The board of hail insurance
 9 may, when it considers it advisable, establish as many districts as it considers advisable and may maintain
 10 maximum rates in various parts of the state. The rates must be commensurate with the risk incurred as nearly
 11 as it can determine from past experiences or from any records available.

12 (2) Notice of the various rates established for any year must be plainly printed on the application for hail
 13 insurance, and the rates for the year must be determined and imposed by the board of hail insurance for each
 14 of the various districts as established, in proportions that will in the board's judgment be fair and equitable.

15 (3) The ~~board of hail insurance~~ department may accept and expend all funds received by it, including
 16 amounts repaid as principal and interest on investments. The funds are statutorily appropriated, as provided in
 17 17-7-502, to the board of hail insurance for the purposes of this chapter. Expenditures for actual and necessary
 18 expenses required for the efficient administration of this part must be made from temporary appropriations, as
 19 described in 17-7-501(1) or (2), made for that purpose.

20 (4) In establishing the rates provided in this section, the board of hail insurance shall provide for:

21 (a) the payment of all expenses of administration, together with all interest owed or to be owing on
 22 registered warrants;

23 (b) that portion of the losses incurred during the current year that are not paid from funds drawn from
 24 the reserve;

25 (c) the maintenance of the reserve, a part or all of which may be used in any 1 year for the purpose of
 26 paying the costs of administration, interest on the warrants, and losses as settled and adjusted by the board,
 27 including the losses sustained in any prior year or years under the hail insurance law that have not been paid.

28 (5) If at the end of any hail insurance season the board determines that more funds are accumulating
 29 from the current year's rates than were estimated when the rates were established and are in excess of the need
 30 for the payment of losses and expenses and maintenance of the reserve, the board may, at its discretion, refund

1 the excess to the persons insured for the year; on a pro rata or percentage basis.

2 (6) The board of hail insurance may direct the board of investments to invest funds from the enterprise
3 fund pursuant to the provisions of the unified investment program for state funds. The income from the
4 investments must be credited to the board of hail insurance account in the enterprise fund."

5

6 **Section 8.** Section 80-2-224, MCA, is amended to read:

7 **"80-2-224. Fee -- notice -- when payable.** ~~Notice of the fee must be mailed by the department of~~
8 ~~revenue to~~ No later than November 1, the department shall notify each person insured ~~in the same manner and~~
9 ~~at the same time as notices of property taxes~~ of the amount of the fee due. ~~The~~ for hail insurance and that the
10 ~~fee is payable~~ must be paid to the department of revenue by November 30."

11

12 **Section 9.** Section 80-2-225, MCA, is amended to read:

13 **"80-2-225. Real estate lien -- creation.** The hail insurance fees chargeable to the lands of each person
14 who elects to become subject to this part must be collected by the department of revenue. If the fees are not paid,
15 they are a lien on the lands against which they are imposed."

16

17 **Section 10.** Section 80-2-230, MCA, is amended to read:

18 **"80-2-230. Collection of fees -- release of lien -- interest.** (1) The department of revenue shall collect
19 all fees imposed under this part. ~~The department of revenue shall deposit and transfer~~ the money with ~~collected~~
20 to the state treasurer for deposit pursuant to 80-2-232. The department of revenue shall use due diligence in
21 ~~making the collections of~~ collecting the fees provided for in this part.

22 (2) All insurance fees, ~~whether imposed against land or in the form of special assessments secured by~~
23 ~~crop liens,~~ are payable in full ~~and not in semiannual payments~~ on or before November 30 of each year in which
24 the fees are imposed.

25 (3) When the amount due on any hail insurance secured by a ~~crop~~ lien is paid, the department of
26 revenue shall promptly endorse on the lien ~~on file in the office of the county clerk and recorder~~ the amount paid
27 ~~with~~ and the date of payment. The endorsement is considered a satisfaction and release of the lien.

28 (4) ~~The penalty and~~ department shall impose interest ~~provisions of 15-1-216 apply to~~ for late payments
29 of fees imposed under this part: at the rate of 2% a month or fraction of a month on the unpaid fees. The interest
30 imposed under this subsection accrues daily on all unpaid fees from the date on which the fees were originally

1 due."

2

3 **Section 11.** Section 80-2-232, MCA, is amended to read:

4 **"80-2-232. Department of revenue's Department's duty -- warrants -- transfers to state general**
 5 **fund.** (1) The department of revenue shall ~~receive~~ transfer to the state treasurer all money ~~paid~~ collected under
 6 this part and shall place the money in trust for the hail insurance program to the credit of the enterprise fund. All
 7 money collected by the board must be deposited for deposit in the enterprise fund, ~~and all~~. All covered losses
 8 must be paid from ~~that~~ the fund.

9 (2) (a) All ~~other~~ costs other than covered losses are administrative expenses and must be paid from the
 10 ~~board's~~ enterprise fund.

11 (b) If registered warrants are presented and there is no money to pay the warrants, the warrants must
 12 be registered and bear interest at the rate of 4% a year until called for payment by the state treasurer.

13 ~~————(2) The department of revenue may retain 2% of the gross annual fees imposed and collected under this~~
 14 ~~part for administrative costs associated with billing and collection of hail insurance premiums.~~

15 (3) Upon authorization from the board of hail insurance, the ~~state treasurer~~ department shall transfer ~~out~~
 16 ~~of the board's~~ from the enterprise fund to the state general fund of the state of Montana 1.5% of the gross annual
 17 ~~fees imposed and~~ hail insurance premiums collected in the state of Montana during the calendar year NOT TO
 18 EXCEED \$100,000."

19

20 **Section 12.** Section 80-2-242, MCA, is amended to read:

21 **"80-2-242. Appraisers Adjusters -- appointment -- qualifications -- duties.** (1) The department of
 22 agriculture shall ~~as soon as practicable each year~~ retain a sufficient number of ~~appraisers~~ adjusters to appraise
 23 all losses by hail incurred that are covered by hail insurance under this part in the various counties. The persons
 24 so appointed shall be actively engaged in farming or shall have had practical experience in farming.

25 (2) The ~~board~~ department may call on one or more of the ~~duly appointed appraisers~~ for the adjustment
 26 ~~of adjusters to appraise~~ each and every loss, and the ~~said appraisers~~ adjusters shall promptly report their findings
 27 to the ~~board~~ department according to the rules ~~provided~~ adopted by the board.

28 (3) ~~No appraiser who shall be~~ An adjuster who is a relative, attorney, agent, employee, or creditor of a
 29 person incurring a crop loss due to hail and subject to insurance coverage under this part or in any manner
 30 interested by who has an interest in a lien, or mortgage, or otherwise in on the crop injured or destroyed shall ~~may~~

1 ~~not appraise or~~ assist in adjusting any such appraising the loss.

2 ~~(4) The board may send any duly appointed appraiser or appraisers into any county as the occasion may~~
3 ~~require."~~

4

5 **Section 13.** Section 80-2-243, MCA, is amended to read:

6 **"80-2-243. Disputed appraisal.** (1) If the party that has sustained the loss is dissatisfied with and
7 refuses to accept the ~~adjustment~~ appraisal made by the official ~~appraiser~~ adjuster, the party has the right to
8 appeal to the board of hail insurance. The party shall make the appeal ~~by certified mail~~ within 10 days after
9 receiving the ~~adjustment offer of the board in writing~~ appraisal. The board of hail insurance shall arrange for a
10 second appraisal by another adjuster. ~~Also the board may require the posting of a cash bond of \$25 with the~~
11 ~~request for reappraisal of the first adjustment. If the board requires the posting of the \$25 bond, the board may~~
12 ~~retain it if an increase is not allowed. If an increase is obtained, the board shall return the bond to the claimant.~~

13 (2) If the adjuster who makes ~~the a~~ second appraisal pursuant to the appeal fails to secure an
14 agreement, the claimant may submit the matter to arbitration as provided in this subsection or sue the board in
15 the district court of the county where the loss occurred, within 90 days from the date of receipt of written notice
16 of the second appraisal. The actions must be trials de novo and the Montana Rules of Civil Procedure apply. If
17 ~~a claimant demands arbitration, the claimant shall, if required by the board, furnish a cash bond to the board in~~
18 ~~the sum of \$50, which must accompany the application. If there is not sufficient allowance made to any claimant~~
19 ~~after arbitration to cover the cost of arbitration without the use of the \$50 bond, the board may use a part or all~~
20 ~~of the cash bond. If the claimant secures an increase, the bond must be promptly returned to the claimant. If the~~
21 ~~claimant elects to submit the matter to arbitration, the claimant shall then appoint one disinterested person as~~
22 ~~appraiser~~ an adjuster, the official ~~appraiser~~ adjuster shall appoint another person as ~~appraiser~~ an adjuster, the
23 two shall select a third disinterested person as an adjuster, and the three shall then proceed to adjust appraise
24 the loss in the same manner as specified in 80-2-242. The judgment of the majority is the judgment of the
25 ~~appraisers~~ adjusters and is binding upon both parties as the final determination of the loss.

26 (3) (a) If the insured does not recover a greater sum than allowed by the official ~~appraiser~~ adjuster in the
27 first instance, the insured shall pay the expenses of the three ~~appraisers~~ adjusters and their witnesses in making
28 the ~~adjustment~~ appraisal, but if the insured is awarded a larger sum, the expenses must be paid by the ~~board~~
29 department.

30 (b) If the insured is required to pay the expenses of the ~~reappraisement~~ reappraisal as provided in

1 subsection (3)(a), the ~~board~~ department may deduct the amount of the expenses from the amount allowed the
 2 insured before making settlement for the loss.

3 (4) The ~~department or the board~~ shall examine all reports of ~~appraisers~~ adjusters and verify the reports
 4 and adjust all losses and for those purposes may order hearings, subpoena witnesses, conduct examinations,
 5 and do all things necessary to secure a fair and impartial ~~appraisement~~ appraisal of losses by hail."

6

7 **Section 14.** Section 80-2-244, MCA, is amended to read:

8 **"80-2-244. Payment of losses.** (1) The ~~board of hail insurance~~ department shall, as soon as practicable
 9 after the loss has been sustained, arrange for the payment of the loss in the following manner. From the amount
 10 of the loss as adjusted for each claimant, the ~~board~~ department shall deduct the amount that the claimant then
 11 owes as a delinquent hail insurance fee and the maximum amount assessed as a hail insurance fee for the
 12 current year.

13 (2) The ~~board~~ department shall on or before November 1 order payment for the balance of the
 14 adjustment to be sent to the claimant, provided that the payment for loss may not exceed the maximum amounts
 15 established in 80-2-208. A claimant may not receive payment for any loss incurred if the loss does not equal or
 16 exceed 5% of the total value of the crop insured. If the losses in any year exceed the current fees plus the
 17 reserve, then the payment of all losses must be prorated among all growers having loss claims adjusted and
 18 approved, and the unpaid balance of the losses must be paid out of the reserve without interest in the order that
 19 the ~~board~~ department directs when, in the judgment of the ~~board~~ department, there is sufficient money to provide
 20 for the payment of the claims and other items payable out of the reserve. ~~In any year, the board may by resolution~~
 21 ~~authorize its presiding officer and secretary to borrow money that the board may consider necessary for the~~
 22 ~~purpose of paying all warrants as issued.~~

23 ~~———(3) For any money borrowed under the provisions of this part, the board shall cause warrants to be~~
 24 ~~drawn. The warrants must bear interest at a rate not to exceed 6% a year, and the warrants and the interest on~~
 25 ~~the warrants must be paid out of funds from the state hail insurance program as they are collected. The board~~
 26 ~~may not at any time borrow a total sum greater than the amount of the fees imposed for the current year, together~~
 27 ~~with delinquent fees that remain unpaid."~~

28

29 **NEW SECTION. Section 15. Rules -- hail insurance fees.** The department and the board of hail
 30 insurance shall adopt rules necessary for the administration and collection of hail insurance fees pursuant to this

1 part.

2

3 NEW SECTION. Section 16. Repealer. The following sections of the Montana Code Annotated are
4 repealed:

5 80-2-226. Crop lien -- when created -- assessment.

6 80-2-231. Foreclosure of lien.

7

8 NEW SECTION. Section 17. Codification instruction. [Section 15] is intended to be codified as an
9 integral part of Title 80, chapter 2, part 2, and the provisions of Title 80, chapter 2, part 2, apply to [section 15].

10

11 NEW SECTION. Section 18. Effective date. [This act] is effective January 1, 2014.

12

- END -