

HOUSE BILL NO. 50

INTRODUCED BY J. KRAUTTER

BY REQUEST OF THE DEPARTMENT OF AGRICULTURE

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5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING AGRICULTURAL COMMODITY PENALTY
6 LAWS; PROVIDING ADDITIONAL CIVIL PENALTIES FOR VIOLATIONS OF AGRICULTURAL COMMODITIES
7 LAWS; ALLOWING THE DEPARTMENT TO SEEK CIVIL PENALTIES FOR VIOLATIONS OF AGRICULTURAL
8 COMMODITY LAWS; PROVIDING FOR AN ADMINISTRATIVE PENALTY FOR OPERATING WITHOUT A
9 WAREHOUSE OPERATOR OR COMMODITY DEALER LICENSE; PROVIDING RULEMAKING AUTHORITY
10 TO THE DEPARTMENT TO DEVELOP A PENALTY MATRIX; PROVIDING CONTESTED CASE
11 PROCEEDINGS FOR ADMINISTRATIVE PENALTIES; AMENDING SECTIONS 80-4-426, 80-4-427, 80-4-428,
12 AND 80-4-429, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

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16 **Section 1.** Section 80-4-426, MCA, is amended to read:

17 **"80-4-426. Duty to prosecute.** (1) A county attorney who has appropriate jurisdiction and to whom any
18 violation is reported shall cause appropriate proceedings to be instituted and prosecute without delay in a court
19 of competent jurisdiction.

20 (2) In addition to or exclusive of the remedy in subsection (1), the department may seek a civil penalty
21 for any violation of this part."

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23 **Section 2.** Section 80-4-427, MCA, is amended to read:

24 **"80-4-427. Injunction.** If a person without a license is found to have engaged in any business for which
25 a license is required under parts 5 and 6 of this chapter, the court shall enjoin that person from further business
26 until the person has been licensed. It is not necessary that the department show that an individual has been
27 injured by the actions complained of in order to issue the injunction. The procedure for injunctive relief is the same
28 as any other action for an injunction under Title 27. The department may, in its discretion, file the action in the
29 first judicial district court. The injunction provided by this section is an additional remedy to the criminal ~~penalty~~
30 or civil penalties provided for in 80-4-428."

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2 **Section 3.** Section 80-4-428, MCA, is amended to read:

3 **"80-4-428. Penalty for operating without license -- misrepresentation.** (1) A person acting as a
4 warehouse operator or a commodity dealer without a license or in any way representing by action or words that
5 the person is a warehouse operator or a commodity dealer when not licensed violates the provisions of Title 80,
6 chapter 4, parts 5 and 6, is guilty of a felony, and is punishable by imprisonment for not more than 10 years or
7 by a fine of not more than \$10,000, or both.

8 (2) A person who issues or aids in the issuance of a fraudulent receipt for any commodity is guilty of a
9 felony and is punishable by imprisonment for not more than 10 years or by a fine of not more than \$10,000, or
10 both.

11 (3) A person who knowingly submits false information to or who knowingly withholds information from
12 the department when that information is required to be submitted is guilty of a felony.

13 (4) (a) A person who violates any provision of this section is subject to an administrative civil penalty of
14 not more than \$100,000 for each transaction in violation.

15 (b) The department may SHALL establish by rule a penalty matrix that schedules the types of penalties,
16 the amounts for initial and subsequent offenses, and other matters necessary for the administration of civil
17 penalties under this subsection (4). The issuance of a civil penalty is subject to the contested case procedures
18 of Title 2, chapter 4, part 6. THE DEPARTMENT SHALL ADOPT THE RULES WITHIN 3 MONTHS OF [THE EFFECTIVE DATE OF
19 THIS ACT]. THE DEPARTMENT MAY NOT ENFORCE PENALTIES PROVIDED FOR IN THIS SECTION UNTIL THE RULES ARE
20 ADOPTED.

21 (c) Funds received in the form of civil penalties must be deposited in the general fund."

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

24 **"80-4-429. Penalty.** (1) Except as otherwise provided, a person who violates any provision of parts 4
25 through 7 of this chapter or rules promulgated under parts 4 through 7 or who impedes, obstructs, hinders, or
26 otherwise prevents or attempts to prevent the director or an authorized representative in the performance of a
27 duty under parts 4 through 7 of this chapter is guilty of a misdemeanor.

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

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

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

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

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

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

13 (c) a registered or approved substance that has not been used or applied according to label directions
 14 or other government standards.

15 (6) (a) A person who violates any provision of this section is subject to an administrative civil penalty of
 16 not more than \$100,000 for each transaction in violation.

17 (b) The department ~~may~~ SHALL establish by rule a penalty matrix that schedules the types of penalties,
 18 the amounts for initial and subsequent offenses, and other matters necessary for the administration of civil
 19 penalties under this subsection (6). The issuance of a civil penalty is subject to the contested case procedures
 20 of Title 2, chapter 4, part 6. THE DEPARTMENT SHALL ADOPT THE RULES WITHIN 3 MONTHS OF [THE EFFECTIVE DATE OF
 21 THIS ACT]. THE DEPARTMENT MAY NOT ENFORCE PENALTIES PROVIDED FOR IN THIS SECTION UNTIL THE RULES ARE
 22 ADOPTED.

23 (c) Funds received in the form of civil penalties must be deposited in the general fund."

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25 NEW SECTION. Section 5. Effective date. [This act] is effective July 1, 2019.

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