

SENATE BILL NO. 73

INTRODUCED BY S. HINEBAUCH

BY REQUEST OF THE DEPARTMENT OF AGRICULTURE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING CERTAIN AGRICULTURAL COMMODITY LICENSING REQUIREMENTS; EXPANDING THE DEFINITION OF "COMMODITY DEALER" TO INCLUDE BROKERING AND ONLINE TRANSACTIONS; ALLOWING PUBLICLY TRADED COMPANIES TO POST BONDS FOR SUBSIDIARIES; ALLOWING THE DEPARTMENT TO WAIVE A REQUIREMENT TO PROVIDE A COMPLETE FINANCIAL STATEMENT; ADDING BONDING AND LIABILITY REQUIREMENTS FOR COMMODITY DEALERS ACTING AS BROKERS; ~~AND~~ AMENDING SECTIONS 80-4-402, 80-4-405, 80-4-601, AND 80-4-604, MCA; AND PROVIDING AN IMMEDIATE 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, brokering, exchanging, negotiating, or soliciting the sale, resale, exchange, bailment, or transfer of any agricultural commodity in the state of Montana, including online transactions of

1 agricultural commodities grown in Montana.

2 (b) The term does not include:

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

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

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

8 (iv) a person who is the producer of agricultural commodities that the person actually plants, nurtures,
9 and harvests;

10 (v) a person whose trading in agricultural commodities is limited to trading in commodity futures on a
11 recognized futures exchange; or

12 (vi) a person who buys agricultural commodities used exclusively for the feeding of livestock.

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 (11) "FGIS" means the federal grain inspection service, a program administered by the federal grain
28 inspection, packers, and stockyards administration (GIPSA).

29 (12) "Grain" means all grains for which standards have been established under the Grain Standards Act
30 and all other agricultural commodities, such as mustard, oil seed crops, or other crops, that may be designated

1 by rule of the department.

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

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

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

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

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

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

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

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

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

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

27 (25) "Scale weight ticket" means a load slip or other evidence of delivery, other than a receipt, given to
28 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 (26) "Station" means a warehouse located more than 3 miles from the central office of the warehouse.

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

4 (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 (29) "Warehouse operator" means a person operating or controlling a public warehouse.

7 (30) "Warehouse receipt" means every receipt, whether negotiable or nonnegotiable, issued under part
 8 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 equity or working capital deficiencies prescribed in parts 5 and 6 of this
 16 chapter must be added to the maximum bond amount. If the public warehouse operator is also licensed as a
 17 commodity dealer, only one 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 (3)(2) if required as part of a commodity warehouse operator's or commodity dealer's license modified
 22 by the department pursuant to 80-4-421."

23

24 **Section 3.** Section 80-4-601, MCA, is amended to read:

25 **"80-4-601. Commodity dealer license requirements -- financial responsibility.** (1) A person may not
 26 engage in the business of a commodity dealer in this state without first having obtained a license issued by the
 27 department.

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

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

- 1 (i) the name of the applicant;
- 2 (ii) the names of the officers and directors if the applicant is a corporation;
- 3 (iii) the names of the partners if the applicant is a partnership;
- 4 (iv) the location of the principal places of business;
- 5 (v) a sufficient and valid bond as specified in 80-4-604, plus the bond specified in subsection (5)(a)(i)
- 6 or (5)(a)(ii) if applicable, or as specified in subsection (5)(a)(iii);
- 7 (vi) a complete financial statement prepared by a certified public accountant according to generally
- 8 accepted accounting principles, setting forth the applicant's COST OF ALL COMMODITIES PURCHASED IN MONTANA,
- 9 assets, liabilities, and equity; and
- 10 (vii) any other reasonable information the department finds necessary to carry out the provisions and
- 11 purpose of this part.
- 12 (b) In determining the value of assets for the purposes of commodity dealer licensing:
- 13 (i) the value of the assets must be shown at original cost less depreciation, except that upon written
- 14 request filed with the department, the director may allow asset valuations in accordance with a competent
- 15 appraisal; and
- 16 (ii) credit may be given for insurable property, such as buildings, machinery, equipment, and merchandise
- 17 inventory, only to the extent that the insurable property is protected against loss or damage by fire by insurance
- 18 in the form of lawful policies issued by one or more insurance companies authorized to do business and subject
- 19 to service of process in suits brought in this state.
- 20 (4) Except as provided in subsection (5), in order to receive and retain a commodity dealer's license, a
- 21 commodity dealer shall have and maintain:
- 22 (a) equity of \$50,000;
- 23 (b) positive working capital; and
- 24 (c) the bond required under 80-4-604.
- 25 (5) (a) An applicant for a commodity dealer's license:
- 26 (i) that meets the condition specified in subsection (4)(c) and has maintained positive equity but does
- 27 not meet the condition specified in subsection (4)(a) shall provide the department with additional bonding in the
- 28 amount of \$2,000 for each \$1,000 or fraction of \$1,000 that the applicant's equity is less than \$50,000; and
- 29 (ii) that meets the condition specified in subsection (4)(c) but does not meet the condition specified in
- 30 subsection (4)(b) shall provide the department with additional bonding in the amount of \$2,000 for each \$1,000

1 or fraction of \$1,000 that the applicant's current liabilities exceed the applicant's current assets; or
 2 (iii) that cannot or chooses not to meet the requirements of subsections (4)(a), (4)(b), and (4)(c) may, at
 3 the applicant's discretion and with the consent of the department, provide the department with a bond in the
 4 amount of 110% of the value of commodities the applicant or dealer intends to purchase during the term of the
 5 license or 110% of the value of commodities the dealer purchased during the preceding 12 months, whichever
 6 is greater. The minimum bond is \$20,000.

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

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

13 ~~(6) A publicly traded company may post a bond required by this part for a subsidiary company if the~~
 14 ~~corporate bonds are rated Aa3 or better by Moody's investors service, inc., or AA- or better by Standard and~~
 15 ~~Poor's corporation and are issued with the full credit of the parent corporation. If the company posts the maximum~~
 16 ~~amount of bond, the company or subsidiary may request the department waive the requirement to file a complete~~
 17 ~~financial statement pursuant to subsection (3)(a)(vi) for a licensing year. The director shall grant or deny the~~
 18 ~~request within 14 days.~~

19 ~~(6) A PUBLICLY TRADED COMPANY MAY POST A BOND REQUIRED BY THIS PART FOR A SUBSIDIARY COMPANY IF~~
 20 ~~THE CORPORATE BONDS ARE RATED AS AA3 OR BETTER BY MOODY'S INVESTORS SERVICE, INC., OR AS AA- OR BETTER~~
 21 ~~BY STANDARD AND POOR'S FINANCIAL SERVICES AND ARE ISSUED WITH THE FULL CREDIT OF THE PARENT CORPORATION.~~

22 ~~(7) (A) A PUBLICLY TRADED COMPANY OR ITS SUBSIDIARY MAY REQUEST THAT THE DEPARTMENT WAIVE THE~~
 23 ~~REQUIREMENT TO FILE A COMPLETE FINANCIAL STATEMENT PURSUANT TO SUBSECTION (3)(A)(VI) FOR A LICENSING YEAR,~~
 24 ~~THE DEFICIT BONDING REQUIREMENTS IN 80-4-405(1), OR BOTH, IF THE COMPANY:~~

25 ~~(I) HAS BEEN LICENSED FOR 1 YEAR;~~

26 ~~(II) HAS CORPORATE BONDS RATED AS BAA3 OR BETTER BY MOODY'S INVESTORS SERVICE, INC., AS BBB- OR~~
 27 ~~BETTER BY STANDARD AND POOR'S FINANCIAL SERVICES, OR AS INVESTMENT GRADE BY AN EQUIVALENT RATING SYSTEM~~
 28 ~~AS DETERMINED BY DEPARTMENT RULE; AND~~

29 ~~(III) POSTS THE MAXIMUM BOND AMOUNT REQUIRED BY 80-4-405.~~

30 ~~(B) THE DIRECTOR SHALL GRANT OR DENY THE REQUEST WITHIN 14 DAYS.~~

1 (8) (A) A COMPANY OR ITS SUBSIDIARY MAY REQUEST THAT THE DEPARTMENT WAIVE THE REQUIREMENT OF
 2 SUBSECTION (4)(A) OR (4)(B), OR BOTH, IF THE COMPANY:

3 (I) HAS BEEN LICENSED FOR 1 YEAR;

4 (II) POSTS THE MAXIMUM BOND AMOUNT REQUIRED BY 80-4-405; AND

5 (III) INCLUDES A PROFIT OR LOSS STATEMENT FROM THE COMPANY'S OR SUBSIDIARY'S PREVIOUS FISCAL YEAR
 6 THAT SHOWS OPERATIONAL INCOME EQUAL TO OR IN EXCESS OF THE VALUE OF COMMODITIES INTENDED TO BE
 7 PURCHASED DURING THE TERM OF THE COMMODITY DEALER LICENSE.

8 (B) THE DIRECTOR SHALL GRANT OR DENY THE REQUEST WITHIN 14 DAYS.

9 (9) A PUBLICLY TRADED COMPANY WHOSE BUSINESS STRUCTURE INCLUDES ONE OR MORE SUBSIDIARY
 10 LOCATIONS MAY FILE THE PARENT COMPANY'S FINANCIAL STATEMENT TO MEET THE REQUIREMENT OF SUBSECTION
 11 (3)(A)(VI). FINANCIAL STATEMENTS ARE NOT REQUIRED FOR EACH SUBSIDIARY LOCATION.

12 ~~(6)(7)(10)~~ The department shall adopt rules relating to the form and time of filing of financial statements.
 13 The department may require additional information or verification regarding the financial resources of the
 14 applicant and the applicant's ability to pay producers for agricultural commodities purchased from them."
 15

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

17 **"80-4-604. Bonding requirement amounts -- cancellation.** (1) An applicant for a license to operate
 18 as a commodity dealer shall, before a license may be issued, file with the department a surety bond or its
 19 equivalent, as established by department rule, payable to the state.

20 (2) Except as provided in 80-4-601(5)(b) and subsection (3) of this section:

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

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

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

27 (3) (a) A commodity dealer acting as a broker and contracting or otherwise conducting business with a
 28 commodity dealer licensed in Montana shall post the minimum amount of bond pursuant to subsection (2)(c).

29 (b) A commodity dealer acting as a broker and contracting or otherwise conducting business with a buyer
 30 not licensed as a commodity dealer in Montana shall:

- 1 (i) post the maximum amount of bond required by 80-4-405; and
2 (ii) be held jointly liable with the buyer for failure to comply with terms of a written contract or failure to
3 pay for a commodity purchase under an oral agreement pursuant to 80-4-612.

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

8

9 NEW SECTION. SECTION 5. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE ON PASSAGE AND APPROVAL.

10

- END -