

HOUSE BILL 717

Introduced by Ellison, et al.

2/08	Introduced
2/08	Referred to Appropriations
2/09	First Reading
3/07	Hearing
3/23	Tabled in Committee

1 *House* BILL NO. *717*
 2 INTRODUCED BY ~~Richard Elyson Weidung~~
 3 *Yellowtail* ~~Richard Elyson Weidung~~ *McClure* *Whalen* *Blaylock*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THE ATTORNEY
 5 GENERAL WITH INVESTIGATORY AND ENFORCEMENT POWERS AND
 6 RELATED AUTHORITY IN ANTITRUST MATTERS; APPROPRIATING MONEY
 7 FROM THE GENERAL FUND FOR THE PURPOSE OF IMPLEMENTING THIS
 8 ACT; AMENDING SECTIONS 30-14-220, 30-14-221, AND 30-14-223,
 9 MCA; AND PROVIDING AN EFFECTIVE DATE."

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

11 **Section 1.** Section 30-14-220, MCA, is amended to read:

12 **"30-14-220. Enforcement by department or attorney**
 13 **general.** (1) The department or the attorney general shall
 14 prevent a person from violating any of the provisions of
 15 this part.

16 (2) Upon receiving notice that a person is violating or
 17 has violated any of the provisions of this part, the
 18 department or the attorney general shall immediately direct
 19 the person giving the notice either to appear before the
 20 director of the department or the attorney general or to
 21 make a written reply to show probable cause of a violation.
 22 If probable cause is shown, the department or the attorney
 23 general shall:

24 (a) make ~~its own~~ an investigation;

1 (b) within 60 days of the finding of probable cause
2 make a written report of ~~its~~ the investigation; and

3 (c) mail a copy of ~~its~~ the findings to the person
4 initially giving notice of a violation.

5 (3) (a) If the department or the attorney general,
 6 after an investigation, has reason to believe that the
 7 person has been or is engaging in any course of conduct or
 8 doing any act in violation of this part and if it appears to
 9 the department or the attorney general that a proceeding by
 10 ~~it~~ the department or the attorney general would be in the
 11 interest of the public, ~~it shall issue a complaint must be~~
 12 issued and ~~serve~~ served upon the person ~~a complaint--stating~~
 13 that states the charges and ~~containing~~ contains a notice of
 14 a hearing at a place and upon a day not less than 5 days
 15 after the service of the complaint.

16 (b) A complaint may be amended by the department or the
 17 attorney general in ~~its~~ the department's or the attorney
 18 general's discretion at any time 5 days prior to the
 19 issuance of an order based on it.

20 (c) The person so complained against may appear at the
 21 place and time so fixed and show cause why an order should
 22 not be entered by the department or the attorney general
 23 requiring such person to stop the violation of the law
 24 charged in the complaint.

25 (d) Any person may make application and upon good cause



1 shown may be allowed by the department or the attorney
 2 general to intervene and appear in the proceeding by counsel
 3 or in person.

4 (e) The testimony in the proceeding shall be reduced to
 5 writing and filed with the department or the attorney
 6 general.

7 (f) If upon the hearing the department or the attorney
 8 general believes that the act or conduct in question is
 9 prohibited by this part, ~~it shall make~~ findings of fact must
 10 be made in writing and the department or the attorney
 11 general shall issue and cause to be served on the person
 12 charged an order requiring ~~such~~ the person to stop the acts
 13 or conduct.

14 (g) Until a transcript of the record in the hearing has
 15 been filed in a district court, the department or the
 16 attorney general may at any time, upon the notice and in the
 17 manner ~~it considers~~ considered proper, modify or set aside,
 18 in whole or in part, a report or an order made or issued by
 19 ~~it~~ the department or the attorney general under this
 20 section.

21 (4) A court reviewing an order of the department or the
 22 attorney general may issue such writs as are ancillary to
 23 its jurisdiction or are necessary in its judgment to prevent
 24 injury to the public or to competitors pending the outcome
 25 of the suit.

1 (5) To the extent that the order of the department or
 2 the attorney general is affirmed, the court shall thereupon
 3 issue its own order commanding obedience to the terms of the
 4 order of the department or the attorney general.

5 (6) Proceedings under this section shall be given
 6 precedence over other civil cases pending in the district
 7 court and shall be in every way expedited.

8 (7) A person who violates an order of the department or
 9 the attorney general after it has become final and while the
 10 order is in effect shall forfeit and pay to the state a
 11 penalty of not more than \$1,000 for each violation.

12 (8) The remedies and method of enforcement of this part
 13 provided for in this section are concurrent and in addition
 14 to the other remedies provided in this part."

15 **Section 2.** Section 30-14-221, MCA, is amended to read:

16 "30-14-221. Investigations. (1) The department or the
 17 attorney general, for the purpose of conducting hearings and
 18 investigations which in the opinion of the department or the
 19 attorney general are necessary and proper for the exercise
 20 of the powers vested in ~~it~~ the department or the attorney
 21 general by this part, shall at all reasonable times have
 22 access to any evidence concerning a person being
 23 investigated or proceeded against that relates to any matter
 24 under investigation or in question and the right to copy
 25 such evidence. The department or the attorney general may

1 issue subpoenas requiring the attendance and testimony of
 2 witnesses and the production of any evidence that relates to
 3 any matter under investigation or in question before the
 4 department or the attorney general or before its a duly
 5 authorized agent conducting the investigation. An agent,
 6 duly authorized by the department or the attorney general
 7 for those purposes, may administer oaths and affirmations,
 8 examine witnesses, and receive evidence. The attendance of
 9 witnesses and the production of evidence may be required
 10 from any place in this state at any designated place of
 11 hearing.

12 (2) Upon application by the department or the attorney
 13 general in a case of contumacy or refusal to obey a subpoena
 14 issued to a person, a district court of this state, within
 15 the district where the inquiry is carried on or where a
 16 person guilty of contumacy or refusal to obey is found,
 17 resides, or transacts business, has jurisdiction to issue to
 18 that person an order requiring him to appear before the
 19 department or the attorney general or its a duly authorized
 20 agent and to produce evidence if so ordered or to give
 21 testimony regarding the matter under investigation. Failure
 22 to obey the order of the court may be punished by the court
 23 as a contempt.

24 (3) A person may not be excused from attending and
 25 testifying or from producing books, records, correspondence,

1 documents, or other evidence in obedience to the subpoena of
 2 the department or the attorney general on the ground that
 3 the testimony or evidence required of him may tend to
 4 incriminate him or subject him to a penalty or forfeiture;
 5 but no compelled testimony or evidence or any information
 6 directly or indirectly derived from such testimony or
 7 evidence may be used against the witness in any criminal
 8 prosecution. Nothing in this section prohibits the
 9 department or the attorney general from granting immunity
 10 from prosecution for or on account of any transaction,
 11 matter, or thing concerning which a witness is compelled to
 12 testify if the department or the attorney general
 13 determines, in its the department's or the attorney
 14 general's sole discretion, that the ends of justice would be
 15 served thereby. Immunity may not extend to prosecution or
 16 punishment for false statements given pursuant to the
 17 subpoena."

18 **Section 3.** Section 30-14-223, MCA, is amended to read:

19 **"30-14-223. Department or attorney general to institute**
 20 **suit.** Upon the third violation of any of the provisions of
 21 30-14-205 through 30-14-218 by any business, the department
 22 or the attorney general shall institute proper suits or quo
 23 warranto proceedings in a court of competent jurisdiction
 24 for the forfeiture of its charter, rights, franchises or
 25 privileges, and powers exercised by such business and to

1 permanently enjoin it from transacting business in this
2 state. If in such action the court finds that the business
3 is violating or has violated any of the provisions of
4 30-14-205 through 30-14-218, it shall enjoin the business
5 from doing business in this state permanently or for such
6 time as the court orders or shall annul the charter or
7 revoke the franchise of such business."

8 NEW SECTION. **Section 4. Appropriation.** The following
9 appropriation is made from the general fund to the
10 department of justice for the purpose of implementing [this
11 act] and of administering Title 30, chapter 14, part 2:

12	Fiscal year 1992	\$129,000
13	Fiscal year 1993	121,000

14 NEW SECTION. **Section 5. Effective date.** [This act] is
15 effective July 1, 1991.

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