

SENATE BILL NO. 190

INTRODUCED BY WEEDING, WHALEN, YELLOWTAIL, DRISCOLL,  
O'KEEFE, GRADY, MEASURE, BRUSKI, SVRCEK, REA,  
DOHERTY, HALLIGAN

IN THE SENATE

JANUARY 23, 1991                   INTRODUCED AND REFERRED TO COMMITTEE  
ON JUDICIARY.

                                      FIRST READING.

FEBRUARY 9, 1991                   COMMITTEE RECOMMEND BILL  
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 11, 1991                  PRINTING REPORT.

                                      SECOND READING, DO PASS.

FEBRUARY 12, 1991                  ENGROSSING REPORT.

                                      THIRD READING, PASSED.  
AYES, 41; NOES, 6.

                                      TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 12, 1991                  INTRODUCED AND REFERRED TO COMMITTEE  
ON BUSINESS & ECONOMIC DEVELOPMENT.

FEBRUARY 13, 1991                  FIRST READING.

MARCH 11, 1991                    COMMITTEE RECOMMEND BILL BE  
CONCURRED IN. REPORT ADOPTED.

MARCH 14, 1991                    SECOND READING, CONCURRED IN AS  
AMENDED.

MARCH 15, 1991                    THIRD READING, CONCURRED IN.  
AYES, 61; NOES, 38.

                                      RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

MARCH 23, 1991                    RECEIVED FROM HOUSE.

                                      SECOND READING, AMENDMENTS  
CONCURRED IN.

MARCH 25, 1991

THIRD READING, AMENDMENTS  
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *Senate* BILL NO. 190  
 2 INTRODUCED BY *Cynthia Whalen Yellowtail*  
 3 *Maui Hafe Brady Mason Burke Givens Rose*  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE METHOD OF  
 5 ENFORCEMENT AND PENALTIES FOR UNFAIR TRADE PRACTICES;  
 6 REPEALING SECTION 30-14-222, MCA."

7  
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9 NEW SECTION. Section 1. Injunction -- triple damages  
 10 -- presumption of injury. (1) Any person, including the  
 11 state and any political subdivision of the state, who is  
 12 injured directly or indirectly by a violation of this part  
 13 shall recover three times the actual damages sustained,  
 14 together with prejudgment interest, costs, disbursements,  
 15 and reasonable attorney fees.

16 (2) Any person, including the state and any political  
 17 subdivision of the state, who is injured or threatened with  
 18 injury directly or indirectly by a violation of this part  
 19 may bring an action for appropriate injunctive relief,  
 20 including but not limited to an action for divesture of a  
 21 portion of a corporation's assets if the court finds that  
 22 the corporate assets are causing the violation.

23 (3) Any person, including the state and any political  
 24 subdivision of the state, is presumed to be injured by a  
 25 violation of this part if the person:

- 1 (a) purchases directly or indirectly from the violator;
- 2 (b) sells directly or indirectly to the violator;
- 3 (c) deals in the same commodity or service as the
- 4 violator; or
- 5 (d) was in competition with the violator to acquire the
- 6 whole or any part of the stock or other share of capital of
- 7 another corporation acquired by the violator in violation of
- 8 this part.

9 NEW SECTION. Section 2. Repealer. Section 30-14-222,  
 10 MCA, is repealed.

11 NEW SECTION. Section 3. Codification instruction.  
 12 [Section 1] is intended to be codified as an integral part  
 13 of Title 30, chapter 14, part 2, and the provisions of Title  
 14 30, chapter 14, part 2, apply to [section 1].

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0190, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

The bill would revise the method of enforcement and penalties for unfair trade practices and repeal 30-14-222, MCA.

ASSUMPTIONS:


1. The state, or a political subdivision of the state, would be able to recover three times the actual damages sustained as well as other costs for unfair trade practices. However, the potential fiscal impact, if any, is not subject to reasonable estimation.

FISCAL IMPACT:

Not subject to estimate.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Local governments would be able to recover damages and other costs under this bill but the potential fiscal impact, if any, is not subject to reasonable estimation.

  
\_\_\_\_\_  
ROD SUNDSTED, BUDGET DIRECTOR                      DATE  
Office of Budget and Program Planning

  
\_\_\_\_\_  
CECIL F. WEEDING, PRIMARY SPONSOR                      DATE

Fiscal Note for SB0190, as introduced

**SB 190**

APPROVED BY COMMITTEE  
ON JUDICIARY

SENATE BILL NO. 190

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NEW SECTION. Section 1. Injunction -- triple damages  
-- presumption--of-injury STANDING TO BRING ACTION. (1) Any  
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the state, who-is injured directly or indirectly IN HIS  
BUSINESS OR PROPERTY by a violation of this part shall  
recover three times the actual damages sustained, together  
with prejudgment interest, costs, disbursements, and  
reasonable attorney fees.

(2) Any person, including the state and any political  
subdivision of the state, who-is injured or threatened with  
injury directly or indirectly IN HIS BUSINESS OR PROPERTY by  
a violation of this part, OR THE ATTORNEY GENERAL, may bring  
an action for appropriate injunctive relief, --including--but  
not--limited--to--an--action-for-divesture-of-a-portion-of-a  
corporation's-assets-if-the-court-finds-that--the--corporate

assets--are--causing-the-violation. IN ADDITION TO ANY OTHER  
RELIEF AWARDED, THE COURT MAY GRANT ANY MANDATORY  
INJUNCTIONS REASONABLY NECESSARY TO RESTORE AND PRESERVE  
FAIR COMPETITION IN THE TRADE OR COMMERCE AFFECTED BY THE  
VIOLATION.

(3) Any person, including the state and any political  
subdivision of the state, is-presumed-to--be--injured--by--a  
violation-of-this-part HAS STANDING TO BRING AN ACTION UNDER  
SUBSECTION (1) OR (2) if the person:

- (a) purchases directly or indirectly from the violator;
- (b) sells directly or indirectly to the violator; OR
- (c) deals in the same commodity or service as the  
violator; or.
- (d)--was-in-competition-with-the-violator-to-acquire-the  
whole-or-any-part-of-the-stock-or-other-share-of-capital--of  
another-corporation-acquired-by-the-violator-in-violation-of  
this-part.

(4) THE ATTORNEY GENERAL MAY BRING AN ACTION UNDER THIS  
SECTION IN THE NAME OF THE PEOPLE OF THE STATE OF MONTANA AS  
PARENS PATRIAE ON BEHALF OF ANY PERSON RESIDING IN THE STATE  
TO SECURE MONETARY RELIEF AS PROVIDED IN THIS SECTION FOR  
INJURY SUSTAINED BY THE PERSON BY REASON OF ANY VIOLATION OF  
THIS PART. THE COURT SHALL EXCLUDE FROM THE AMOUNT OF  
MONETARY RELIEF AWARDED IN THE ACTION ANY AMOUNT OF MONETARY  
RELIEF THAT DUPLICATES AMOUNTS THAT HAVE BEEN AWARDED FOR

**SECOND READING**



1 THE SAME INJURY.

2 (5) IN ANY ACTION BROUGHT UNDER THIS SECTION IN WHICH  
3 CLAIMS ARE ASSERTED BY BOTH DIRECT PURCHASERS AND INDIRECT  
4 PURCHASERS, THE COURT IS AUTHORIZED TO EXERCISE ITS  
5 DISCRETION IN THE APPORTIONMENT OF DAMAGES, IN THE TRANSFER  
6 AND CONSOLIDATION OF CASES TO AVOID THE DUPLICATION OF THE  
7 RECOVERY OF DAMAGES AND THE MULTIPLICITY OF SUITS, AND IN  
8 OTHER RESPECTS TO OBTAIN SUBSTANTIAL FAIRNESS.

9 NEW SECTION. Section 2. Repealer. Section 30-14-222,  
10 MCA, is repealed.

11 NEW SECTION. Section 3. Codification instruction.  
12 [Section 1] is intended to be codified as an integral part  
13 of Title 30, chapter 14, part 2, and the provisions of Title  
14 30, chapter 14, part 2, apply to [section 1].

-End-

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with prejudgment interest, costs, disbursements, and  
reasonable attorney fees.

(2) Any person, including the state and any political  
subdivision of the state, ~~who-is~~ injured or threatened with  
injury directly or indirectly IN HIS BUSINESS OR PROPERTY by  
a violation of this part, OR THE ATTORNEY GENERAL, may bring  
an action for appropriate injunctive relief, ~~including-but~~  
~~not-limited-to-an-action-for-divestiture-of-a-portion-of-a~~  
~~corporation's-assets-if-the-court-finds-that-the-corporate~~

~~assets--are--causing-the-violation.~~ IN ADDITION TO ANY OTHER  
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violator; ~~or,~~

~~(d)--was-in-competition-with-the-violator-to-acquire-the~~  
~~whole-or-any-part-of-the-stock-or-other-share-of-capital--of~~  
~~another-corporation-acquired-by-the-violator-in-violation-of~~  
~~this-part.~~

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13 of Title 30, chapter 14, part 2, and the provisions of Title  
14 30, chapter 14, part 2, apply to [section 1].

-End-



# 5

HOUSE COMMITTEE OF THE WHOLE AMENDMENT  
Senate Bill 190  
Representative D. Brown

March 11, 1991 9:21 am  
Page 1 of 1

Mr. Chairman: I move to amend Senate Bill 190 (third reading copy -- blue).

Signed: *Dave Brown*  
Representative D. Brown

#1

And, that such amendments to Senate Bill 190 read as follows:

*Passed*

- 1. Page 1, line 17.  
Following: "with"  
Strike: "prejudgment interest,"  
Following: "costs,"  
Insert: "and"  
Following: "disbursements"  
Strike: "and"  
Insert: "."

#2  
*Failed*

- 2. Page 1, line 18.  
Strike: line 18 in its entirety

HOUSE COMMITTEE OF THE WHOLE AMENDMENT  
Senate Bill 190  
Representative Dave Brown

March 14, 1991 2:10 pm  
Page 1 of 1

Mr. Chairman: I move to amend Senate Bill 190 (third reading copy -- blue).

Signed: *Dave Brown*  
Representative Dave Brown

And, that such amendments to Senate Bill 190 read as follows:

- 1. Page 1, line 11.  
Strike: "triple"  
Insert: "double"
- 2. Page 1, line 16.  
Strike: "three"  
Insert: "two"

ADOPT

REJECT

HOUSE

520920CW.HPD

ADOPT

REJECT

HOUSE

*SB 190*  
*SB 190.7*  
551410CW.HSF

SENATE BILL NO. 190

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

NEW SECTION. Section 1. Injunction -- ~~triple~~ DOUBLE  
DAMAGES -- presumption-of-injury STANDING TO BRING ACTION.

(1) Any person, including the state and any political  
subdivision of the state, ~~who--is~~ injured directly or  
indirectly IN HIS BUSINESS OR PROPERTY by a violation of  
this part shall recover ~~three~~ TWO times the actual damages  
sustained, together with ~~prejudgment---~~ interest costs,  
disbursements, and reasonable attorney fees.

(2) Any person, including the state and any political  
subdivision of the state, ~~who-is~~ injured or threatened with  
injury directly or indirectly IN HIS BUSINESS OR PROPERTY by  
a violation of this part, OR THE ATTORNEY GENERAL, may bring  
an action for appropriate injunctive relief, ~~including-but~~  
~~not-limited-to-an-action-for-divestiture-of--a--portion--of--a~~  
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~~assets-are-causing-the-violation.~~ IN ADDITION TO ANY OTHER  
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(c) deals in the same commodity or service as the  
violator; ~~or.~~

~~(d)--was-in-competition-with-the-violator-to-acquire-the~~  
~~whole--or-any-part-of-the-stock-or-other-share-of-capital-of~~  
~~another-corporation-acquired-by-the-violator-in-violation-of~~  
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13 of Title 30, chapter 14, part 2, and the provisions of Title  
14 30, chapter 14, part 2, apply to [section 1].

-End-



AN ACT REVISING THE METHOD OF ENFORCEMENT AND PENALTIES FOR UNFAIR TRADE PRACTICES; REPEALING SECTION 30-14-222, MCA.

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

Section 1. Injunction -- double damages -- standing to bring action. (1) Any person, including the state and any political subdivision of the state, injured directly or indirectly in his business or property by a violation of this part shall recover two times the actual damages sustained, together with costs, disbursements, and reasonable attorney fees.

(2) Any person, including the state and any political subdivision of the state, injured or threatened with injury directly or indirectly in his business or property by a violation of this part, or the attorney general, may bring an action for appropriate injunctive relief. In addition to any other relief awarded, the court may grant any mandatory injunctions reasonably necessary to restore and preserve fair competition in the trade or commerce affected by the violation.

(3) Any person, including the state and any political subdivision of the state, has standing to bring an action under subsection (1) or (2) if the person:

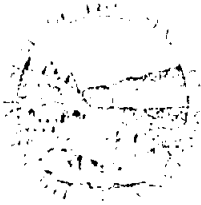
- (a) purchases directly or indirectly from the violator;
  - (b) sells directly or indirectly to the violator; or
  - (c) deals in the same commodity or service as the violator.
- (4) The attorney general may bring an action under this

section in the name of the people of the state of Montana as parens patriae on behalf of any person residing in the state to secure monetary relief as provided in this section for injury sustained by the person by reason of any violation of this part. The court shall exclude from the amount of monetary relief awarded in the action any amount of monetary relief that duplicates amounts that have been awarded for the same injury.

(5) In any action brought under this section in which claims are asserted by both direct purchasers and indirect purchasers, the court is authorized to exercise its discretion in the apportionment of damages, in the transfer and consolidation of cases to avoid the duplication of the recovery of damages and the multiplicity of suits, and in other respects to obtain substantial fairness.

Section 2. Repealer. Section 30-14-222, MCA, is repealed.

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 30, chapter 14, part 2, and the provisions of Title 30, chapter 14, part 2, apply to [section 1].



State of Montana  
Office of the Governor  
Helena, Montana 59620  
406-444-3111

STAN STEPHENS  
GOVERNOR

April 8, 1991

The Honorable Joseph P. Mazurek  
President of the Senate  
State Capitol  
Helena, Montana 59620

The Honorable Hal Harper  
Speaker of the House  
State Capitol  
Helena, Montana 59620

Dear President Mazurek and Speaker Harper:

In accordance with the power vested in me as Governor by the Constitution and laws of the State of Montana, I hereby veto the adoption of Senate Bill 190, "AN ACT REVISING THE METHOD OF ENFORCEMENT AND PENALTIES FOR UNFAIR TRADE PRACTICES; REPEALING SECTION 30-14-222, MCA."

The intentions of Senate Bill 190's sponsors and proponents are laudable. Businesses of every size must have adequate protection against predatory practices of other businesses. However, Senate Bill 190 is a punitive bill aimed at the very heart of legitimate Montana businesses. By allowing suit by a remotely interested party and the pursuit of "double damages," this bill will spur an endless stream of debilitating lawsuits and create an anti-business climate for our state.

Proponents contend there is no need to fear frivolous law suits because plaintiffs would be facing financial suicide in bringing unsound actions. The provisions of this bill declare vociferously that such fear is justified. The double damages provided for in this legislation will precipitate increased litigation against businesses in Montana. Even if suits are not tried, businesses will be forced to incur additional legal expenses and will be pressured into seeking to settle cases to avoid the risk of trial. The double damage provision will be an incentive to bring suit in very weak cases.

Additionally, Senate Bill 190 allows any person to bring suit against a business if they purchase directly or indirectly, sell directly or indirectly, or deal in the same commodity or

service as the alleged violator. There are six possible groups of plaintiffs. Because the damages are doubled, there is a possibility of a recovery of twelve times the actual damages. This is the kind of potential which creates a paradise for litigation lawyers. Montana businesses cannot afford this phenomenal degree of possible liability.

Montana businesses are not naked prey to the ravages of big business as this bill would imply. Current federal anti-trust law provides more than adequate remedies for aggrieved individuals.

Senate Bill 190 runs contrary to important legal precedence. The U.S. Supreme Court (Illinois Brick Co. v. Illinois, 431 U.S. 720 (1977)) prohibited indirectly injured parties from suing. The Court rejected suits by indirectly injured parties because it would expose defendants to multiple liability and would unduly burden the courts and parties with costly and prolonged trials to determine who was injured and by how much.

The one ameliorating factor in the bill is the discretion given the court to mitigate the harsh provisions of this law. However, this discretion applies only to direct purchasers and indirect purchasers but not to the other potential groups of plaintiffs. This is discriminatory and violates equal protection principles of the State and Federal Constitutions.

Numerous Montana organizations that initially supported this legislation have requested a veto. These groups include Montana Certified Public Accounts, Montana Stockgrowers, the Montana Grain Growers, Montana Automobile Dealers' Association, the Montana Wool Growers, Montana Cattlewomen, the Montana Farm Bureau and the Montana Independent Elevator Operators. They speak in a unified voice regarding this legislation.

Senate Bill 190 represents another chilling impact on the course of business in this state. Fair trade practices cases are inherently complex and legally expensive. By stimulating an increased volume of business litigation, not only would Senate Bill 190 drive up the cost of doing business in Montana, it would also represent a significant impediment to our efforts to attract new businesses to the state.

For these reasons, I find it essential to veto Senate Bill 190 and prevent Montana businesses from being litigated into oblivion.

Sincerely,



STAN STEPHENS  
Governor