MINUTES OF THE MEETING OF THE JUDICIARY COMMITTEE
February 3, 1981

The meeting of the Judiciary Committee was called to order by Chairman Kerry Keyser at 8:00 a.m. in Room 437 of the Capitol. All committee members were present except Rep. Daily and Rep. Teague, who both showed up shortly after the meeting started. Jim Lear, Legislative Council, was present.

HOUSE BILL 546 REP. PISTORIA, stated this was a bill to revise the motor vehicle mandatory liability protection law by requiring certification of possession of insurance. During the '77 session House Bill 708 became law. The bill has been criticized because it is not strict enough. The bill was amended and it was weakened. The bill was a copy of an Idaho law with added Montana measures. House Bill 546 is the exact same bill as last session except line 16 on page 1 has been changed to must certify and the words "and display"are to be deleted. REP. PISTORIA noted to the committee other areas which are to be deleted and added to the bill.

When a person goes to get insurance the insurance company would give the person a card and notify the licensing department.

REP. PISTORIA felt the bill would be easy to amend. The demand by the public is cancellations.

EMERY GEYER supports the bill.

LARRY MAJERIS, Motor Vehicles, supports the bill.

LARRY TOBIASON supports this bill. He stated it is really cheaper to violate the law then to pay for insurance. He questioned the proper procedure of the use of the card. It is to be approved by the division, does this mean every insurance organization will have to buy the exact paper and make the cards the same? TOBIASON stated insurance can be obtained for 6 months, 1 year or 2 years. A person can obtain insurance and cancel it. The certificate he carries would be good for one year. Should insurance companies notify the registrar's office each time an insurance policy is cancelled? Fifty percent of the car owners insured do not reside within the local distance of their office. Notices would have to be mailed out which would be an added expense to the companies.

There were no other proponents.

There were no opponents.

In closing, REP. PISTORIA stated this is a controversy and something has to be done. He hopes the subcommittee can work out amendments.

REP. SEIFERT asked if there was any litigation going on because it is unconstitutional in Montana. REP. PISTORIA felt that every law passed was unconstitutional.

There were no further questions.

HOUSE BILL 444 REP. KEEDY stated this bill is to promote free and open competition and to preserve the free-enterprise market system. It is to help small businessmen and consumers. A bill similar to this has been adopted recently in the jurisdictions of New Mexico, Utah, Florida and Arizona. Montana needs a law to control interest and a statute which will supplement the law pursuing illegal activities. The bill entitles the small businessman the right to bring civil actions and recover damages. If we continue to allow violations to go unchecked it will result in higher prices. It will force the small businessman out of business and the larger businesses and corporations will monopolize the market.

JEROME CATE, Attorney General's office, gave written testimony from which he read. EXHIBIT 1.

MIKE GREELY, Attorney General, stated he was chairman for the Antitrust Committee of the National Association, which has representatives from the 50 states and 4 districts. In 1976 congress permited states to do their own work on antitrust suits. As a result they provided money to the states. Seventeen states started a new system. The objective was to educate the public and bring it to their attention. Strict enforcement has only been a short time. GREELY feels an important factor of the bill is the exclusions.

TOM HONZEL, County Attorneys, supports the bill. These types of cases are often difficult to investigate and prepare.

DOUG STEWART, Missoula, stated he has had experience with an antitrust case with his competition. The competition raised their price on a particular commodity. Before the state could get involved he had to go through a lot of investigations by the federal antitrust department. Basically name calling and threats took place. STEWART stated this type of practice is taking place now and the small businessman is often put out of business. The competition raises their price and when the other business drops out the competition lowers the price. STEWART feels this bill would help the small businessman.

VALENCIA LANE, Insurance Department, supports the concept of the bill but would like insurance companies excluded. EXHIBIT 2.

THOMAS MATKOSS, Lobbyist for the Tobacco Industry, stated that the tobacco industries should be excluded from this bill also since they were federally regulated.

GLEN DRAKE, American Insurance Association, reaffirmed LANE's comments that insurance companies should be excluded.

ANN SCOTT, Montana Farmers Union, supports antitrust action in the state. SCOTT feels there is higher prices because there is not an adequate antitrust law in Montana.

There were no further proponents.

J. C. WEINGARTNER, State Bar Association, was opposed to the bill. He stated this is almost the exact same bill put in two years ago. WEINGARTNER said whatever the attorney general would like in this bill is already included in the law. The only distinction is the Department of Justice presently has the governing actual control. Instead of trying to get the authority transferred to the Department of Justice, we are repealing one law and putting in another law that is the same.

The bill states "if the Attorney General has reasonable cause", WEINGARTNER asked what is reasonable cause, it is only what the attorney general believes it to be. It is unregulated.

The small businessman has the duty to prove his innocence rather than the other way around. The small businessman can go broke paying his attorney from keeping himself undiscriminated against. This bill does not protect against the fifth amendment. The present law states if you do come in and bring your records then you cannot be prosecuted for that. This bill does not give the same type of immunity.

One big problem is the person does not know whether he is being charged with a felony or a misdemeanor. There can be two businesses doing the exact same thing. One might be fined $50,000 and thrown in jail. The other might be fined only $25.00. Will the state keep the money or will it be returned to the citizens who have been harmed by an antitrust case?

Montana courts are not prepared for this. In 1969 there was a case that went on 7 years. The amount of time spent is unbelievable.

JOE MAIERLE, Montana Chamber, stated it is difficult for the chamber to oppose free enterprise and open competition. The broad investigation could compel a businessman to be examined by revealing his records to the Attorney General's office. It is the businessman's responsibility to prove his innocence. MAIERLE felt the federal government already does a good job in this area.

LARRY HUSS, State Bar of Montana, stated in the summer of 1980 a similar action was proposed to the State Bar Convention. The proposed measure was overwhelmingly defeated. HUSS was concerned with the statement "if you are not guilty you would not have reason to object to showing your records." HUSS stated just because someone wants to look at his records does not mean the records are available for anyone's use, whether guilty or not. Records are private. HUSS stated he wondered how many of the proponents would want their records reviewed whether they were guilty or not.

C. B. HANSON, Montana Retailers Association, stated this bill scares him. EXHIBIT 3.

In closing, KEEDY stated this bill is not addressed to further regulate or control small businesses but to protect them. The fact that Montana courts may face difficult issues is really no argument against this bill.

REP. ANDERSON questioned why insurance companies and tobacco companies were not exempt from the bill. CATE stated the Parker v. Brown Doctrine.

REP. SEIFERT asked the number of staff and the case load CATE has. CATE replied there was a cement, fertilizer, Burlington Northern, sugar and Master Key cases. In his office there are two attorneys, a paralegal, an accountant, econcomic expert, and an intern. There are three students from Carroll College who received college credit but are not compensated for their work. Ten thousand dollars in state money has been used to date, the rest has been federal money. His budget is $146,000. More work could be done if more money was granted.

REP. HANNAH inquired in Parker v. Brown Doctrine, couldn't any type of business come in and request they be exempt because they are governmentally regulated. CATE stated he feels that could be done and they would have the right to do that.

REP. CURTISS asked if CATE's office receives federal funds. CATE said yes, $10,000 the first year was state money, the rest was federal grants. REP. CURTISS asked the total amount of federal grants. CATE replied $130,000 the first year, $131,000 the second year and $101,000 approximately the third year.

REP. EUDAILY mentioned the fiscal note; what were the state appropriations requested? CATE stated he did not know what the budget committee had decided. Any amount that is received goes into the revolving account.

REP. TEAGUE asked about the fines. CATE felt $50,000 and three years in jail was a harsh penalty. Federal action is $100,000

for a violation by a private party and one million dollars for a corporation. He has no objection to reducing the fine.

HOUSE BILL 480 REP. MATSKO stated this is a bill to revise the Youth Court Act. REP. MATSKO pointed out the changes in the bill to the committee.

There were no proponents.

Opponent, DICK MEEKER, Probation Officers Association, objected to the change on page 1, line 19. He felt there was no problem with the present five working days that is established. The youth courts usually provide additional time if needed.

On page 8, line 11 he feels abuse could result if photographs and fingerprints were retained.

On page 10, line 3 there is a new ruling by the Attorney General's office if a youth is appointed counsel and the parents can afford to pay for it, the judge can make the parents pay even if the court provides the counsel. Changing which to may on line 2 is tampering with Supreme Court cases, Kent and Galt, in the 60's.

MEEKER felt that officers should not be allowed to look into the youth's files. Abuse could result. The files contain confidential counseling sessions, progress sheets, observations, etc. MEEKER felt most police stations keep a record of the youths anyway. If they have to get the files they can get a court order.

MEEKER objected to line 17 on page 14. At this time welfare does this. His office does not have the staff or time. When the welfare department or SRS does it, why should they do it also.

No other opponents.

In closing, REP. MATSKO briefly went over the changes of the bill.

REP. EUDAILY was confused about changing shall to may and visa versa on the various lines of the bill.

REP. HUENNEKENS felt page 1, lines 18-19 the authority was being given to the county attorneys and the judge would have no say in the matter. REP. MATSKO replied the court has the option of keeping the juvenile in his court or transferring to district court.

REP. CONN inquired if MEEKER could see a large potential for abuse by law enforcement officers. MEEKER replied yes.

REP. EUDAILY inquired about the 5 days being increased to 10 days. REP. MATSKO replied all the defense attorneys, officers, probation officers he spoke with did not have an objection to this change.

MEEKER stated his office was not consulted.

EXECUTIVE SESSION

The House Judiciary Committee went into executive session at 10:45 a.m.

HOUSE BILL 463 REP. EUDAILY moved do pass.

REP. HUENNEKENS moved to strike lines 16, 17, 18, 19, 21 and to strike "UNDER CERTAIN CIRCUMSTANCES" from the title. The amendment passed unanimously.

REP. ANDERSON referred to Amber Webb's letter to the committee which states "student security force". REP. ANDERSON stated are we talking about student security force that takes a six week course are then allowed to carry a gun? REP. KEYSER felt each security person comes out of a professional field. REP. MATSKO mentioned the academy does not have easy standards that just anyone could pass.

REP. ANDERSON believed it is possible for a part-time student to be a guard and carry a gun on campus on his off-duty. REP. SEIFERT stated firearms have to be checked in and out of the dorms in most cases.

REP. ANDERSON stated these campuses are not isolated from the surrounding city. Police forces are in effect in those cities. It seems this is a separate police force and there will be a jurisdiction problem. REP. ANDERSON is not sure if that is not a responsibility of the community since the community benefits from the students being there.

REP. CONN replied there is a security force on campuses now. It is not something new, just allowing them to carry firearms at all times. Sometimes the police cannot respond quick enough. REP. CONN feels it assist in many situations and that the students are probably paying for this protection through their tuition.

REP. HUENNEKENS felt it was senseless to send an officer out on duty without the proper equipment to do the job.

REP. SEIFERT moved do pass as amended. The bill pass with only REP. ANDERSON voting no. (REP. BENNETT and REP. DAILY were absent during the vote).

HOUSE BILL 476 REP. HUENNEKENS moved do not pass. The motion carried. (REP. BENNETT and REP. DAILY were absent during the vote).

HOUSE BILL 480 REP. EUDAILY moved do not pass.

REP. CURTISS stated there is a contradiction of fingerprints and photographs.

REP. CONN said there is a great potential for abuse.

REP. MATSKO disagreed and made a substitute motion of do pass.

REP. ANDERSON moved to amend page 10, line 2 reinserting "shall" and striking "may". The amendment passed. (REP. IVERSON, REP. HANNAH, REP. BENNETT, and REP. DAILY were all absent during the vote).

REP. TEAGUE moved to strike "10" and reinsert "5" on page 7, line 6 and to adjust the title accordingly. REP. MATSKO opposed the amendment because sometimes 5 days is not ample time. REP. TEAGUE's amendment passed. The no votes were: SEIFERT, ABRAMS, MCLANE, HUENNEKENS, CURTISS and MATSKO. (REP. HANNAH, IVERSON, and BENNETT were absent during the vote).

REP. HUENNEKENS moved to amend page 1, line 19 from "shall" to "may". A roll call vote resulted. Those voting yes were: CONN, EUDAILY, HUENNEKENS, SHELDEN and BROWN. Those voting no were: KEYSER, SEIFERT, CURTISS, MATSKO, MCLANE, ANDERSON, DAILY, ABRAMS, KEEDY and TEAGUE. The amendment failed 10 to 5.

REP. ANDERSON moved to postpone the bill. After a brief discussion he withdrew his motion.

REP. MCLANE moved do pass as amended. A roll call vote resulted. Those voting yes were: KEYSER, SEIFERT, CURTISS, HANNAH, IVERSON, MATSKO, MCLANE, ANDERSON, DAILY, ABRAMS, KEEDY, and YARDLEY. Those voting no were: CONN, EUDAILY, HUENNEKENS, SHELDEN, YARDLEY, and BROWN. House Bill 480 passed as amended 12 to 6.

The meeting adjourned at 11:20 a.m.

KERRY KEYSER, CHAIRMAN

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Exhibit I

TESTIMONY OF JEROME J. CATE, CHIEF,
ANTITRUST ENFORCEMENT BUREAU, MONTANA DEPARTMENT OF JUSTICE
IN SUPPORT OF HOUSE BILL NO. 444

Before the House Judiciary Committee
February 3, 1981

Mr. Chairman, Members of the Committee.

My name is Jerome Cate. I am Chief of the Montana Department of Justice, Antitrust Enforcement Bureau. I am appearing here today in support of House Bill No. 444, the Montana Small Business and Consumer Antitrust Protection Act, which was introduced by Representative Michael Keedy at the request of the Attorney General.

This legislation was drafted by a committee of citizens from various walks of life who volunteered their time and effort at the request of the Attorney General to write an antitrust law for the State of Montana that would be acceptable to the business community, the legal community, and the consumer alike. We think that this committee accomplished that task. We acknowledge and thank them for it.

When the Attorney General came to me almost three years ago, and pursuaded me to leave private practice for public service to set up an antitrust bureau, I wondered about the need in Montana for antitrust enforcement. I, like so many of my brothers at the legal bar, had no legal expertise in antitrust. I soon learned by experience from other state antitrust bureaus, that illegal anticompetitive activities were everywhere. An examination of the list of complaints from businessmen across this state will reveal the broad variety of cases that have come to us for investigation and resolution.

From malting barley to anesthesiologists, from railroads to wrecking yards, we have covered the field. It is obvious that this white-collar crime is being perpetrated on our businessmen and consumers at every level of our economic community.

It is difficult to say how much this white-collar crime is costing Montanans, but on a national scale the U.S. Department of Justice estimates that in 1979 it cost 41 billion dollars.

We need a state Antitrust Act to prevent our share of that $41 billion in white-collar crime being taken from our businessmen and citizens.

We need a state antitrust law for a lot of other reasons as well. Let me point out a few.

Many restraints of trade affect only local commerce, not "interstate commerce," and thus are jurisdictionally outside federal antitrust law. We need a State Act to reach those "local" activities.

Additionally, even if a restraint affects interstate commerce, it may be too small, in the opinion of the Federal Trade Commission or the U.S. Antitrust Division, to warrant their attention. Federal agencies will likely choose to prosecute a national or regional case rather than a small local case. An example of this phenomenon was a case here in Montana. When a large out-of-state corporation purchased a local business, it controlled about 94% of the market for a product in Montana. We feared that without competition prices would rise rapidly. We asked both Justice and the FTC to do something about it because we had no enforceable Act at that time. Both of these federal agencies refused because financial criteria did not meet their standards. There wasn't

enough money or people involved for them to be interested--only the entire population of Montana. The prices of that product have doubled since the takeover. One can see that we need a state Antitrust Act to complement the federal law in this area so we don't have to rely on the federal government for the protection we need.

We need a State Act to assist our Bureau in our damage recoveries, in the multidistrict cases we participate in such as the Sugar, Cement, Master Key, Fine Paper, Fertilizer, Ampicillin, and Electrical Device cases. A couple of years ago the Supreme Court of the United States said that the states under federal law could only recover damages in antitrust for direct purchases. As a result of this Court-made law our recoveries in the big federal antitrust cases have either been severely limited, or even eliminated. This Act would solve that problem and allow Montana to recover for direct as well as indirect purchases. States that have antitrust statutes similar to this have not been as adversely affected as we have.

The Antitrust Bureau needs this Act to assist us in our investigations. Like all state government agencies we operate on a very limited budget. The Civil Investigative Demand provision of this Act will save us months of litigation, many hours of manpower, and literally thousands of dollars in investigative costs. Pursuing antitrust violations without a CID provision or a grand jury proceeding has proven to be a very expensive, time and resource-consuming effort. An example is the gasoline price-fixing case we are pursuing in Missoula. That case has cost us a very large sum to prosecute and almost two years of time. With a CID system such as is in this bill we could have cut that cost, and certainly the time involved, in half. We could then have used that time and money to pursue other antitrust matters.

As Attorney General, Mike Greely has made the decision to pursue white-collar crime and to enforce the antitrust laws. You, as a Legislature, have agreed with that decision and have appropriated the monies to finance that law enforcement effort. To get the most out of that appropriated tax dollar we need the right legal tools, modern and up to date. This act is such a tool. To create our Bureau and to finance it with tax dollars, and then not to have the enforcement tools to work with would be foolhardy.

There is still another reason why this Act should be adopted. On the national level last year 94% of the antitrust actions filed were filed by private parties. Only 6% were filed by governmental enforcement agencies. Montana businessmen and consumers need this act for their own protection so that they can pursue privately the damages that they may be entitled to as a result of anticompetitive activities. Presently the businessmen and consumers have no workable statute. Failure to pass this act will deprive them of a needed remedy. Forty-seven other states have antitrust laws similar to this one. Massachusetts has had one for 100 years, since 1880.

From the standpoint of our State Antitrust Enforcement Bureau this bill will also eliminate our need to sue the local merchants from whom the State has purchased goods as we now must do. With this legislation we can sue the price-fixing manufacturer direct and leave our local merchant, who may have unknowingly sold the price-fixed goods, out of the lawsuit.

The proposed Montana Small Business and Consumer Antitrust Protection Act creates no new crimes or causes of action. What is prohibited by this act is already prohibited by federal law. If you compare Sections 4

and 5 of this act to Sections 1 and 2 of the Sherman Antitrust Act, you will find them to be much the same, almost word for word. What this act does is simply give us the ability to enforce antitrust law here at home in Montana, in our State courts where it belongs. This bill puts antitrust in the hands of the State rather than the federal government.

With these thoughts about the need for this bill in mind, let us move to the summary of this bill which we have prepared for you.

Except for questions that any of you may have, this concludes my presentation.

Thank you.

SUMMARY OF "MONTANA SMALL BUSINESS AND CONSUMER ANTITRUST PROTECTION ACT"

Sections 1 & 2 are self-explanatory.

Section 3 Definitions:

(1) Person: defines person to include any type of legal entity

(2) Trade/Commerce: are basically defined to mean any type of economic activity

(3) Commodity: standard definition

(4) Service: specifically includes personal service; professional service, rental, leasing, and licensing for use

Section 4 This section comes directly from the federal Sherman Act, and corresponds to Section 1 of that Act. The Sherman Act was enacted in 1890; therefore, the language in this section has 90 years of precedent for our courts to look to. Actually Section 1 did nothing more than codify the well known rules of the common law applicable to restraints of trade. This section requires the concurrence of four elements to become operable:

(1) a contract, combination or conspiracy

(2) that is unreasonable

(3) that is in restraint of trade

(4) part of which is within Montana.

Section 4 would prohibit: price-fixing, bid-rigging; tie-in arrangements; group boycotts; market divisions, etc.

Section 5(1) This section is taken from Section 2 of the Sherman Act, and therefore also has the benefit of many years of interpretation. While the sweep of the statute may seem broad, case law has narrowed the requirements considerably. We have further narrowed the applicability of this section by adding a requirement that the effect be unreasonable, a requirement the federal law does not have. The section names two separate offenses: (1) actual monopolization, and (2) attempts to monopolize, which must have the effect of limiting or excluding competition or controlling, fixing or maintaining prices.

Section 5(2) Merely states the manner in which an antitrust monopolization case may be proven, i.e., statistics, economic analysis and circumstantial evidence. This is, in fact, the manner in which proof is offered in most antitrust cases.

Section 6 This section grants an exemption to the traditional antitrust-exempt organizations such as public utilities, labor unions, cooperatives and common carriers which are regulated by other statutory provisions.

Section 7 This section provides for venue. An action may be brought in the district of the defendant; the Attorney General is also allowed the option of bringing the action in Lewis and Clark County in order to save the State the expense of litigation in distant areas.

Section 8 This section provides that the Attorney General or county attorney can serve a civil investigative demand if he has reasonable cause to believe that a person has information relevant to an investigation of a violation of the antitrust laws. A person or business that has not participated in unlawful or anticompetitive conduct would have no objection to testifying or opening its records.

"Reasonable cause to believe" is a legal term which requires the Attorney General or county attorney to attain a specified degree of certainty before issuing the civil investigative demand. In addition, section 8(3) provides that if the person objects or fails to comply with the demand, the Attorney General must then go to court in the county in which the person resides and petition for an order to enforce the demand. A hearing will then be held, and the court will determine whether the demand is proper. If it is improper the State can be ordered to pay the expense of the private entity. All testimony taken or material produced under Section 8 must be kept confidential by the Attorney General or county attorney (unless confidentiality is waived, or the court so orders). This section is similar to the federal civil investigative demand, and is an indispensable tool in the enforcement of the antitrust laws. It eliminates to some degree the need for a grand jury type proceeding in antitrust cases.

Section 9 Allows the state to bring an injunctive action to stop violation of this act and also provides for a civil penalty (fine) of not more than $50,000 for each violation.

Section 10 This section provides for criminal penalties for violation of the act. The section provides for fines of not more than $50,000 or imprisonment not to exceed three years, or both. Criminal actions would only be brought against informed, blatant antitrust violators. The section allows the judge to determine upon conviction whether the crime is a misdemeanor or a felony by the term, if any, imposed. It permits a defendant to plead

to a misdemeanor with the court's consent. The crime originally charged, however, under present Montana criminal procedure would be a felony for jurisdiction and statute of limitation purposes.

Section 11 — This section allows the state, or any person injured (or threatened with injury) from a violation of the act to bring an injunctive action and also provides for treble the amount of actual damages and attorneys fees. This section is the same as federal law.

Section 12 — This section authorizes the Attorney General to represent all the consumers of Montana in an action for treble damages for violation of the act. This is similar to federal law.

Section 13 — If the State has obtained a final judgment, decree or conviction under this act for violation of sections 4 or 5, it can be used as prima facie evidence in a subsequent civil action by a person who was injured by the defendant's illegal conduct. This does not apply to consent judgments or decrees entered before trial has commenced. This will make it much easier for individuals injured to recover. They will not have to go through the ordeal of proving the offense again, they will only be concerned with proving damages.

Section 14 — Allows specifically for consent judgments or decrees, which are commonly used in antitrust actions. This section provides that the court must approve the decree.

Section 15 — Statute of limitations.

Section 9 (civil penalty and injunctive relief by state) - 4 years

Section 11 (injunctive relief and damages) - 4 years (or 1 year after state action under sections 9 or 11(1))

Section 16 — Self-explanatory; means that one or more of the remedies under the act may be sought by an injured party or by the State.

Section 17 — This section directs courts to attempt to be uniform in application of this law and interpretation of similar state cases, and that per se violations of federal law are unreasonable acts under sections 4 and 5 of this act.

Section 18 — Standard severability section.

Section 19 — Act effective upon passage and approval.

Section 20 — Repeals Part 2 of the Montana Uniform Trade Practices and Consumer Protection Act of 1973.

Exhibit 2

Proposed Amendment to HB 444 (Introduced) proposed by Montana Insurance Department.

Page 3, line 7.
Following: "labor unions,"
Insert: "insurance companies and related entities engaged in the business of insurance as regulated by the commissioner of insurance under Title 33,"

STATEMENT IN SUPPORT OF PROPOSED AMENDMENT:

Insurance is generally excepted from federal anti-trust provisions where insurance is comprehensively regulated by state law by virtue of the McCarran-Ferguson Act (15USC § 1012(b)). Insurance is extensively regulated in Montana by the Insurance Commissioner under the authority of Title 33, MCA.

The Insurance Code contains an Unfair Trade Practices Act (Title 33, Chapter 18) which prohibits boycotting, coercion or intimidation rebating and discrimination and false advertising among other things.

Also, the Insurance Code specifically allows insurance companies to act in concert for rate-making and joint underwriting purposes (Title 33, Chapter 16).

In conclusion, the business of insurance is already comprehensively regulated by the State of Montana by the Insurance Commissioner under authority of Title 33. The Insurance Code regulates insurance in all manners contemplated by HB 444. In an effort to avoid joint jurisdiction of insurance business in Montana, the Insurance Department urges that HB 444 be amended as recommended above to exclude the business of insurance from the scope of this anti-trust bill.

Exhibit 3

Executive Office
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34 West Sixth
Helena, MT 59624
Phone (406) 442-3388

HOUSE BILL NO. 444

BEFORE THE HOUSE JUDICIARY COMMITTEE - FEBRUARY 3, 1981

"AN ACT TO PROMOTE FREE AND OPEN COMPETITION AND TO PRESERVE THE FREE-ENTERPRISE MARKET SYSTEM BY PROHIBITING MONOPOLISTIC AND RELATED PARCTICES AND COMBINATIONS AND CONSPIRACIES IN RESTRAINT OF TRADE FOR THE PROTECTION OF MONTANA SMALL BUSINESS AND CONSUMERS; PROVIDING A METHOD OF ENFORCEMENT AND PENALTIES; REPEALING SECTIONS 30-14-201 THROUGH 30-14-224, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

How could any honest and sincere businessman be against anything that had a title like that? Like; Hotdogs, The American Flag, Motherhood and Apple pie, Who would dare to be against anything like that?
We have a problem with only two (2) words in the entire bill. Those two words are on page 7, line 16 and are or indirectly. These seemingly harmless little words have consumed more time in the courts of this country than you would believe. We believe that the proper party to sue for and receive damages in an antitrust case, is the person who dealt directly with the violator, rather than others who are removed from the violator by one or more intervening links in the chain of distribution.

In addition to the great complexity that would be added to anti-trust litigation, in attempting to determine the rights and liabilities of successive links in the chain of distribution, the Supreme Court of the United States emphasized the injustice and unfairness, both to defendants and to potential plaintiffs not before the court, in the use

of the pass-on theory.

Litigation involving indirect parties will undoubtedly degenerate into an endless morass, consuming enormous amounts of the overburdened courts time, resources of plaintiffs who will probably even if successful collect only a few dollars each, and millions of dollars in legal fees to busuness to defend against these types of overly complex cases.

As the Supreme Court stated,

> The evidentiary complexities and uncertainties ... are multiplied in the offensive use of pass-on by a plaintiff several steps removed from the defendant in the chain of distribution. The demonstration of how much of the overcharge was passed on by the first purchaser (seller) must be repleated at each point at which the price-fixed goods changed hands before they reached the plaintiff.

The court further pointed out that simplistic economic theories, under which each link in the chain of distribution automatically and mechanically "passes on" an overcharge or underpayment to the next link in the chain, do not necessarily hold true in the real world.

The types of lawsuits implicitly criticized by the court such as anti-trust class actions and joint actions for confiscatory damages and attorney's fees, have increasingly become a tool for quick enrichment in the hands of ambitious plaintiffs' attorneys. Because of the overwhelming complexity of these types of lawsuits, the costs involved even inasuccessful defense are enormous. In addition, the possibility of an adverse judgment with its ruinous consequences almost always forces the defendants to settle these cases regardless of the merits of the case. Thus, the mere initiation of the action is often enough to assure the plaintiffs' lawyers a sizeable

award, while the recovery for individual plaintiffs is ordinarily relatively small.

A number of considerations regarding these suits are pertinent:

1. The size or wealth of a company does not always have a bearing on whether or not it will be sued. Smaller companies, as well as larger companies often become defendants. Plaintiffs' attorneys seek, in their complaints, to portray a conspiracy which cuts across an entire industry, creating a possible psychological effect on the judge and jury. They also believe that smaller companies can frequently be induced to make substantial settlement payments early in litigation, thereby providing a "war chest" to carry on the prosecution of the litigation.

2. The impulse to settle an antitrust class action is virtually irresistable. The consequences of an adverse judgment can often be fatal. If potential liability is several million dollars, and the cost of a successful defense approximates $750,000, which would be a relatively conservative figure, settlement of even a clearly baseless claim for $500,000 would need to be seriously considered by business. Thus, a sizeable settlement may be the only practical course of action for the defendant. Even where a company conducts a successful defense, and remains viable, its assets may often be so depleted as to put it at a substantial competitive disadvantage as to companies not named in the suit.

3. The fact that a company has not committed an antitrust violation does not mean that it won't be sued. The high visibility of an industry to consumers and its presence in the public limelight is often enough to make firms in that industry the targets of antitrust actions. The continuing mutual stimulus of government investigation, and class action lawsuits, is a potent force under these circumstances, even where no wrongdoing is found.

4. Finally, even if some firms are not themselves sued as defendants, they suffer adverse consequences from a rash of antitrust class actions against other industry members. Unfortunately, the mere prevalence of antitrust claims of an industrywide conspiracy, is often enough to generate widespread public suspicion of the industry's responsibility and economic performance. Of course, this suspicion is multiplied where any judgment is entered which is adverse to firms in a consumer goods industry. Additionally, the ability and even the willingness of industry firms to carry on wholly legal cooperative ventures, designed to increase productivity or improve technology, through a trade association or otherwise, becomes sharply limited under these circumstances.

The limiting of actions for alleged antitrust violations to governmental entities and individuals directly injured, is in the best interests of all segments of society. If the citizens of the state of Montana are indirectly injured by a violation of this act, I am sure they should and could look to our Attorney General to protect their interests without the

possibility and probability of abuses by over ambitious plaintiffs' attorneys out for self-enrichment.

I would hope that you would see your way clear to amend this bill to eliminate or strike the words or indirectly from Page 7, line 16, and make this truly an act, TO PROMOTE FREE AND OPEN COMPETITION AND TO PRESERVE THE FREE ENTERPRISE MARKET SYSTEM AND FOR THE PROTECTION OF MONTANA SMALL BUSINESS AND CONSUMERS.

Curtis B. Hansen
Executive Vice President
Montana Retail Association

VISITORS' REGISTER

HOUSE JUDICIARY COMMITTEE

BILL 480 Date 2/02/81

SPONSOR Matsko

NAME	RESIDENCE	REPRESENTING	SUPPORT	OPPO
Dick Meeh	Helena Project Assoc.	Project Assoc		✓

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

HOUSE JUDICIARY COMMITTEE

BILL 444 Date 2/02/81

SPONSOR Keedy

NAME	RESIDENCE	REPRESENTING	SUPPORT	OPPOSE
F. J. Buck Boles	HELENA	MONT CHAMBER		✓
JO: MANIERLE	"	"		✓
J.C. WEINGARTNER	"	State Bar		—
H. S. Hanson	"	MT. Tech Council		✓
Jerome Cate	Choteau	Attorney General	✓	
George A. Goicoechea	1701 Choteau - Helena	Agri. Bus.	✓	
Valencia Lane	215 Dakota Helena	Dro Dept	✓ with amdt	
Glen Drake	Helena	Am Bus Assn	amend	
Don Allen	Helena	MT. Petroleum Assn		✓
OZZIE BERG	BOZEMAN	INDIVIDUAL		✓
Dan Stewart	Helena			
MIKE GREELY	HELENA	ATTORNEY GENERAL	✓	
Tom Payne	Helena	County Att'ys	✓	
Ann Scott	Great Falls	Mont Farmers Union	✓	
C R HANSEN	Helena	MT Retail Assn	✓ with Amendments	
Larry Huss	Helena	State Bar of Montana		✓
MIKE MELOY	HELENA	MTCA	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

HOUSE JUDICIARY COMMITTEE

BILL 546 Date 2/02/81

SPONSOR Pistoria

NAME	RESIDENCE	REPRESENTING	SUPPORT	OPPOS
L Tobiason	Helena	M.A.A.	✓	
Roger McGlenn	HELENA	IND. INS AGENTS	✓	
Larry Majerus	Helena	Motor Vehicle	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.