MINUTES

MONTANA HOUSE OF REPRESENTATIVES
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT

Call to Order: By **CHAIRMAN BOB BACHINI** on January 29, 1991, at 8:00 a.m.

ROLL CALL

Members Present:

Bob Bachini, Chairman (D)
Sheila Rice, Vice-Chair (D)
Joe Barnett (R)
Steve Benedict (R)
Brent Cromley (D)
Tim Dowell (D)
Alvin Ellis, Jr. (R)
Stella Jean Hansen (D)
H.S. "Sonny" Hanson (R)
Tom Kilpatrick (D)
Dick Knox (R)
Don Larson (D)
Scott McCulloch (D)
Bob Pavlovich (D)
John Scott (D)
Don Steppler (D)
Rolph Tunby (R)
Norm Wallin (R)

Staff Present: Paul Verdon, Legislative Council
Jo Lahti, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

HEARING ON HB 279

Presentation and Opening Statement by Sponsor:

REP. TED SCHYE, House District 18, Glasgow, said HB 279 is also sponsored by **REP. BOB GILBERT, House District 22, Sidney.** It is an act prohibiting the use of computerized calls pertaining to sales, not by an actual person. Even after the person receiving the call hangs up the phone, the computer still ties up the phone line for as long as the computer is making the "speel." If people have answering machines, the computerized call can tie up the answering machine. In 1989, there were 450 pieces of legislation in the United States to deal with computerized solicitation. REP. GILBERT was also going to put in a draft request for the same thing, but his bill included unsolicited FAX

messages. REP. GILBERT said that one of the problems that he had on his FAX machines, they are paying for the FAX paper for everything that comes off the machine. If they are getting unsolicited advertisements, it ties up the FAX machine and costs them money. Some concerns are that telephone companies, co-ops, Sears, Montgomery Ward, and others use computerized calls to tell people their order is in. Co-ops use it to say a bill is due. All of those are excluded in the bill. This bill pertains to unsolicited sales calls.

Proponents' Testimony: None

Opponents' Testimony: None

Questions From Committee Members:

REP. LARSON said other states are now permitting telephone users to put computers on their telephone to track incoming calls. He asked if this bill interfere with that. **REP. SCHYE** said it would not have anything to do with that. That is a computer that is not trying to sell anything. This is for solicitation for the sales of goods only.

REP. BENEDICT said the bill pertained just to sales, but the bill says soliciting information or gathering data or statistics. There are many data-gathering companies that do use recorded messages to gather information, for example polls. **REP. SCHYE** said if somebody is trying to poll with a computer, there should still be the right to say no and not have the telephone lines tied up. If someone is going to poll, he should do it himself. If gathering data takes 20 minutes with a computer, or if the person hangs up his phone line is tied up for 20 minutes. **REP. BENEDICT** said the University of Montana business bureau uses a similar system where people punch 1 for yes or 2 for to determine results on a statewide poll. **REP. BENEDICT** asked how many other states have this law. **REP. SCHYE** said he didn't say exactly how many, but many states have introduced laws to deal with this. This bill is similar to the Wyoming law. The Texas law deals with the facsimile machines. Some of the other laws are different in their standards.

REP. CROMLEY asked **REP. SCHYE** if anything could be done on the federal level. Most of the full scale computerized calls don't relate to Montana anyway. **REP. SCHYE** said the hope is that people will look at the law and decide not to come into Montana. He doesn't know if there is anything on the federal level. **REP. CROMLEY** said he has heard that most people get a dial tone after they hang up. **REP. SCHYE** said according to the articles that he has read if a person hangs up and the automated call is still running, the telephone line will be tied up. **CHAIRMAN BACHINI** said the calling phone has the controlling line. If the receiver hangs up and the caller doesn't, the receivers line is tied up. **REP. SCHYE** said some computerized calls are different. In his research, he found some of them do hang up after the receiver of

the call hangs up his phone. Some of them are sophisticated enough to do that but not all of them.

Closing by Sponsor:

REP. SCHYE said he took his bill to the telephone companies. He did give it to the US West lobbyist and the rural coop telephone boards. They suggested some of the changes in the bill. The bill wasn't written exactly like he had it. The legislation needs to be started. At least when someone calls on the phone, a person can say no or don't call again. That's what this law will do.

HEARING ON SB 2

Presentation and Opening Statement by Sponsor:

SEN. TOM HAGER, Senate District 48, Billings, said SB 2 was put in at the request of the State Auditor. It repeals the provision that makes the regional ratemaking law temporary. When the law was passed two years ago, it had a sunset provision. SB 2 makes that law permanent. Montana has a competitive rating law. However, in certain situations competition may not be sufficient to assure rates are appropriate. In these cases the Commissioner of Insurance needs to have additional authority to gather information and regulate insurers. This act provides additional authority for lines that are non-competitive. The act gives the Commissioner of Insurance the mechanism to deal with future specific problems, for example, the obstetrics crisis, the daycare crisis, liquor liability, and court liability insurance crisis. The act has been available to the Commissioner of Insurance since the 1989 legislative session. Since enactment, the Commissioner's office has been gathering data for use in insuring rates for lines that are non-competitive or volatile. The Commissioner has hired an actuary to assist with the implementation of legislation. Since enactment, two of the largest raters of medical malpractice in Montana have lowered their rates by approximately 17 percent.

Proponents' Testimony:

Susan Witte, Chief Legal Counsel, State Auditor's Office, presented written testimony. **EXHIBIT 1**

Jerry Loendorf, Montana Medical Association, said the Association is particularly concerned about non-competitive lines. The law enacted last session defines non-competitive lines as being a small number of insurers willing to transact a particular line. In the medical malpractice area, there are now only three insurers that actively sell the insurance, although others replace current policies. Medical malpractice rates remain extremely high, although, this past year one insurer did reduce its rates, which is the first time it has happened in perhaps 20 years. This bill gives insurers an incentive to comply with its

purpose, that rates are not to become excessive or discriminatory. With this incentive it will help insurers continue to charge fair rates. He said they do not know of any insurer that who is charging unfair premiums.

REP. TIM WHALEN, House District 93, Billings, presented a handout. **EXHIBIT 2** He said that he and SEN. HAGER carried this bill two years ago for the Insurance Commissioner's Office. SB 2 repeals the sunset provision that was placed on the bill two years ago in the Senate to get that bill through the Senate in the Business and Industry Committee. SB 2, which was formerly HB 247, provides regional ratemaking. The concept is that an insurance company doing business in Montana doesn't have enough actuarial data in Montana in order to properly set a rate. Oftentimes, insurance companies will set their rate based on all the statistical data they have in regard to all states they do business with. Many times that can be unfair to Montanans. There are dramatically lower claims, not as litigious as some larger states or larger municipalities. The loss experience is less. SB 2 is important because one of the applications concerning medical malpractice insurance premiums. There is a problem in rural areas with doctors being able to sustain enough income in order to service the high medical malpractice premiums that are generally charged to medical doctors. It behooves this state to make every effort necessary to insure that the insurance industry is charging a reasonable rate for Montanans because of that situation in the rural communities.

Opponents' Testimony:

Steve Browning, representing State Farm Insurance, presented written testimony. **EXHIBIT 3**

SEN. BOB WILLIAMS, Senate District 15, Hobson, presented written testimony. **EXHIBIT 4**

Jacqueline Terrell, American Insurance Association, presented written testimony and attachments. **EXHIBIT 5.** The first attachment is the copy of the act, and Section 33-16-233, MCA, is the definitions. Lines considered non-competitive or volatile are those SB 2 attempts to address. Those terms are not defined in any specific way. In Section 234, the introductory language in Subsection 1 says the Commissioner shall designate by rule which lines of insurance are covered because they are non-competitive or volatile. This is not a matter of discretion. Once those lines have been determined to be non-competitive or volatile, then the Commissioner is required to require from insurers transacting business in Montana enormous amounts of data for five years past claims experience in each state that the insurer is transacting business. Once the data is collected then the Commissioner is required to apply her own standards to the ratemaking. That is then submitted for an actuarial review. Once the actuarial review has been performed, the insurer who is being reviewed is required to pay for that process. This is

mandatory legislation and not within the Commissioner's discretion. SB 2 proposes to charge the insurer for the review. The Commissioner may determine that the rates are perfectly accurate and appropriate for the State of Montana. The second attachment is a copy of the Competitive Rating Law. The third attachment is a copy of the proposed adoption F rules pertaining to pricing of non-competitive or volatile lines.

Roger McGlenn, Executive Director, Independent Insurance Agents' Association of Montana, said there is concern of the availability of hard to place or hard to find insurance markets for the Montana insurance consumer. There is a question of the need for making this permanent. The existing statute, Chapter 16, Title 33, provides all the necessary regulatory authority to accomplish the intent of these rules. As was stated in the 1989 session, the Association has a concern with the definitions of non-competitive and volatile. The Independent Insurance Agents feel that this law combined with the reporting requirements outlined in the administrative rules in the public hearing on December 19 make the rules seem onerous and unnecessarily broad. One of the major concerns in the Proposed Rules (Distributed by Ms. Terrell, Exhibit 5) is Rule 5, Subsection (1) (a). If there are a limited number of companies writing a specialty line of insurance in Montana and this line of coverage is declared non-competitive or volatile, they are subject to these onerous reporting requirements under the administrative rules. The company may tell the Insurance Department that they will solve the problem and remove themselves from the marketplace in Montana. There are small amount of policies in Montana and they would be forced to comply with the reporting requirements from all 50 states for this line of coverage. In the mid 1980s there were companies providing coverage in other states surrounding Montana, but there was no access in Montana. Companies have been encouraged to come to Montana and make these products available to Montana insurance consumers. If Montana has this legislation combined with administrative rules, the companies may decline to make their products available in Montana. Montana is a small limited marketing area. This bill does nothing to keep markets in Montana.

Questions From Committee Members:

CHAIRMAN BACHINI asked if this Committee put that one Section back in the bill with a sunset provision for 1993, what would the Senate Chambers do since it would be including a Section that they want to remove. **SEN. WILLIAMS** said he believed that it would pass as amended back to the way it came out of the Senate. **CHAIRMAN BACHINI** asked if he would have an objection if the two years were extended to possibly four years. **SEN. WILLIAMS** said he would have no objection. **CHAIRMAN BACHINI** asked if the amendment was reinstated, the Senate would adhere to that. **SEN. WILLIAMS** said his main concern is that the rules are not there to work with. The bill will pass the Senate Floor.

REP. PAVLOVICH asked who was the impartial judge in the rulemaking authority. **Dave Barnhill, Deputy Insurance Commissioner,** said he was the hearings officer for the adoption of these rules. The process is that he will make a recommendation to the Commissioner about whether those proposed rules should be adopted or amended. **REP. PAVLOVICH** asked if the rulemaking judges come from the same Department how can they be impartial. **Mr. Barnhill** said there rulemaking judges where there is an adversarial hearing where there is a contest that somebody was in violation of a law. This was not the case. The promulgation of rules implemented the statute. Therefore, it is appropriate that the hearing officer be from the agency. If somebody went before the Insurance Department on the basis that they had misrepresented the terms of the policy and they were contesting that, the hearings officer would be from outside the agency. **REP. PAVLOVICH** asked why it took so long to have this hearing. The bill was implemented last session. **Mr. Barnhill** said the bill requires that an actuary be on staff to be enforced. The 1987 Legislature authorized the Department to hire an actuary and appropriated a certain level of funding. The Department immediately began a nationwide search for an actuary and with that level of funding it did not get a single applicant. In 1989, the Legislature raised the appropriated level for the funding of an actuary and again began a nationwide search. The position was advertised for over six months in national publications. There were some applications that came in over an extended period of time. He was concerned in getting an actuary that would be qualified to handle Workers' Compensation. The 1989 Legislature regulated the Workers' Compensation Fund to come under jurisdiction. It took months to get an applicant with considerable Workers' Compensation background. The actuary was hired in the late spring of 1990. This person became immediately involved in Workers' Compensation matters. After that, he had to become familiar with the Department. This was the second major task that was assigned to the actuary. **REP. PAVLOVICH** asked if the Department would object to a sunset provision for two more years. **Mr. Barnhill** said they want this bill to be permanent. They feel that this bill does not suspend the competitive rating law. Companies will still file rates competitively. They will have to do it on experience that is relevant to Montana. Experience is not the only factor that goes into a rate. There are also the company's loss adjustment expenses, administrative expenses in settling claims, deferred acquisition costs, administrative expenses in selling policies, and the return on investment. All of those factors are untouched by this law. The only factor that is dealt with by this law is the experience. It requires that the experience be relevant to Montana. It doesn't affect the competitive rating. The experience might indicate that there should be a rate increase in Montana.

REP. BENEDICT said he was familiar with the attempts to buy specialized lines in Montana and the withdrawal of some companies. He asked **Mr. McGlenn** if Montana is down to three companies soliciting malpractice insurance. **Mr. McGlenn** said

there are three companies actively soliciting business, but there are numerous companies who still have minor and in some cases insignificant portions of the medical malpractice businesses. **REP. BENEDICT** said they are not just down to three companies, and if they go away then there's no one who would write medical malpractice in Montana. **Mr. McGlenn** said there is potential for additional companies to be involved other than the major three, which are The Doctors' Company, Utah Medical, and St. Paul. He has had no indication if one or more of those were dropped that others would step forward. He doesn't represent those companies.

REP. CROMLEY said he was curious about the terms non-competitive and volatile. He asked **Mr. Barnhill** if he could give the Committee a list of lines of insurance that would be regulated if the regulations as proposed were passed. **Mr. Barnhill** said the term non-competitive has a very practical meaning. If a business owner can only get one quote for a line of insurance, there is no competition. They would define non-competitive in practical terms as the ability of the consumer to shop around for competitive rates for a particular line of insurance. In regard to volatility, there are relatively low numbers of claims in Montana and because of that the value of the claim tends to fluctuate greatly. If there are low numbers of claims in Montana in a particular line of insurance in a particular year, and one of those was a $2 million claim, that would have the affect of artificially indicating to the insurance companies that they have to increase their rates dramatically when the chances are there will be no such outrageous claim for the rest of the century. They would take a look at some preliminary data, such as complaints filed with our office, and do a survey to identify those that would give suspicion that they are volatile or non-competitive. That would trigger the implementation of the Act and the further collection of data to determine if the line is non-competitive or volatile. **REP. CROMLEY** asked him if he has suspicions. **Mr. Barnhill** said yes. Some examples are: medical malpractice and daycare liability.

REP. SONNY HANSON asked **Mr. Barnhill** if all of his actions were based on complaints that have been filed. **Mr. Barnhill** said one of the advantages of this law is the Department can be proactive in rate review. Under the competitive rating law, insurers file rates with the Department and they go into effect unless the Department denies them. The Department didn't have the means to review a rate that was filed until the actuary was hired. Under this law, the Department tends to be proactive. If a rate is in effect, they must wait until they receive a consumer complaint from someone saying that their rate is too high before taking action. Then they have to conduct a hearing. If the hearing determines the rate is too high, they can force that rate to be revoked. Under the competitive regional ratemaking law, they can be proactive, because it says they can take actions to assure that rates will be based on Montana data. It is just not consumer complaints that they look at; they will take publications from the industry and conversations with insurance

departments in other states to get a feel of whether a line might be non-competitive or volatile.

CHAIRMAN BACHINI asked **Mr. Loendorf** if he would object to placing the sunset clause in the bill. **Mr. Loendorf** said he would like the Insurance Commissioner to get an adequate opportunity to do something.

Closing by Sponsor:

SEN. HAGER referred to the statement of the medical malpractice dropping 17 percent. The law had been considered by the Legislature at that time. The fact was that the law was being considered and was on the books subsequently and the rates did drop. The question on the two-year continuation of the law, the sunset provision, is this a case where that wouldn't work very well. This law is dependent on having an actuary in the Department. Actuaries don't work fast. Having an actuary doesn't automatically give an answer. The fact that it has taken this long to bring an actuary on board in the Department, shows that this law should be continued on a permanent basis so the actuary can get some more experience and become more valuable in this area. REP. WHALEN will carry the bill.

HEARING ON HB 76

Presentation and Opening Statement by Sponsor:

REP. R. BUDD GOULD, House District 61, Missoula, said HB 76 is very similar to the one introduced last session. It is a fairness bill. The wine distributor has to do his job, stay in sound financial condition, and do the right thing with the wine makers. The intent of HB 76 is to make the wineries and the small businessmen feel that they have an even playing field and that Montana is a good place to do business. The bill covers dual distributorships. It is important because one particular person can't be frozen out. In his second session, Rep. Jacobson introduced a bill that was passed that dealt with farm implement dealers. At that time, the prices of combines and tractors were going from $10-100,000. Big companies felt that if they had a dealership in Bismarck, one wasn't needed until Havre or Spokane. Many of these were small business people, as the wine distributors in Montana. Legislation was passed to protect those people in Montana. This bill is to make sure that the business person in Montana is able to stay in business. It is hard to be in business in Montana with the tax structure.

Proponents' Testimony:

Brian Clark, Distributor, Fun Beverage Inc., Kalispell, and President, Montana Beer and Wine Wholesalers' Association, said the Board of the Beer and Wine Wholesalers' Association identified and the general membership ratified the priority of wine legislation as the single most important issue in the 1991

Legislature. Currently, there is no legislation. As a result, they operate with no agreement or contract. He presented written testimoney and a standard for distributor agreement. **EXHIBITS 6 and 7.** Termination of distributorship rights can be with or without cause provided that the partner desiring to terminate gives as short as a 30-day written notice. If there are non-exclusive territories or dual distribution within the same territory, the Company may change the territory by giving notice in writing (highlighted on the exhibit). Dual distribution is disincentive for a wholesaler to aggressively gain distribution on a brand because there is no assurance that the product placed in a store on Monday will be there to get repeat sales on Friday if the person doesn't get there before his competitor does. He would then get the repeat sales. Another example of dual distribution, is where a retailer had asked his salesman to pick some defective product. They may not know whether that product was sold by him or not. As a result, it may be refused. Ironically, the competitor said the same thing.

Robert Zucconi, Zeke's Distributing, Helena, said the present law for contracts in Montana does not cover beer and wine wholesalers in a fair manner. In, 1983, Zeke's Distributing started handling California Coolers, which was the first of its kind in that category. Equipment was bought, and people were added to the organization. Many hours were spent setting up sections in stores to accommodate the product. Four years later, a registered letter informed him that Zeke's was no longer the distributor of that product. At that time the product of California Coolers was 24 percent of his business. It causes great concern when a person loses 24 percent of his business via a letter. It took three years to get to court. The case went to a jury trial and he won the trial. The settlement was in the $150,000 category, which was fair. They took it to the Supreme Court. They had some evidence that they thought shouldn't have been put in, which was a letter from the winery telling the other wholesaler who was getting the product that if he didn't take it he would be canceled also. That evidence was taken out of the case, so they settled for pennies on the dollar. This bill is fair for both the wine distributors and the business people of Montana and the wineries themselves.

Dave Hewitt, Clausen Distributing Company, said he was on the other side of the coin with Mr. Zucconi. Clausen Distributing was the distributor of products for Brown-Forman. He presented a letter from Brown-Forman that said if Clausen Distributing wanted to continue to sell market brands that it was currently selling under them, then it would have to sell California Coolers. **EXHIBIT 8**

Kevin Devine, Devine & Asselstine Inc., a beer and wine distributorship in Great Falls, said there was a similar but stronger law for beer since 1974. It gives distributors some of the major protection that employees have in the wrongful discharge law, which is protection against abrupt and arbitrary

termination. If one brewery thought poor job was being done and could document it, they could terminate the distributor. If an employee was doing a bad job and could document it, that employee could be fired. It could not be done on a whim.

Pete Decker, Briggs Distributing, Billings, said he was terminated as a distributor four years ago. The calendar year before that his sales were close to one-quarter of a million dollars. He considered getting out of the wine business at the time. If that had occurred, five jobs would have been lost.

Bill Watkins, Zip Beverage, Missoula, said he was terminated under the Brown-Forman Act.

Ed Brandt, Cardinal Distributing, Bozeman, said he lost California Cooler on a 30-day notice of termination without cause. At the time, Cardinal Distributing was selling approximately 8,000 cases of product the year before. If they had not been a beer wholesaler and a wine wholesaler, they would not be in the wine business. There is no guarantee of equipment, hiring people, spending money on marketing if we there is a 30 day notice and then no longer be in business. This is a very fair bill.

Roger Tippy, Executive Secretary and Legal Counsel, Montana Beer & Wine Wholesalers' Association, presented a copy of the Private Franchise Contracts. **EXHIBIT 9**

Opponents' Testimony:

Mona Jamison, Wine Institute, stated her opposition to the bill as introduced because it is governmental interference. It would interfere with people being able to come together and negotiate the terms and conditions they believe are reasonable based on their needs and expectations. This is government telling people what must be in contracts. She urged Committee members think about this bill as it relates to their own businesses. She asked how many would like to find out that the Legislature said there are provisions that must be included in contracts. There are the reasons that you can cancel and cannot cancel. This type of governmental interference in Montana with the ability to negotiate and come to contract conditions is unacceptable. Over the past two to four years, there is no significant evidence indicating that a law as proposed in HB 76 is necessary. Like any other business dealings there are problems that arise; to use those as a reason to have the government step in and dictate what is a reason for termination of a contract is not acceptable to Montanans. This bill regulates the business relations between wine distributors and the suppliers. The implications of HB 76 create full regulation of the market. It creates monopolies and contracts that could exist in perpetuity. It allows the business of the distributorship to be passed down from father to son. In some cases that is reasonable, because they are good business people. There are no public policy reasons in Montana to support

this intrusion into the business relationships between suppliers and distributors. If the expectations and agreements are violated, contract law should and does provide the remedy. California Coolers is now out of business. Perhaps what was happening with the distributorship was being driven by the market. The courts and contracts did work. There was a jury trial. People heard testimony on both sides to determine if it was fair or a violation. As expensive as the courts might be, a case by case analysis is better for Montana than the government dictating the provisions of contracts. There are reasons to treat distributors of beer and wine differently. The nature of the distribution is different. Distributors of wine are franchised to the manufacturer to distribute many brands of various wines. They are not as vulnerable to economic pressures of the manufacturers as are the beer distributors. Beer distributors traditionally handle two or three main brands of beer. HB 76 mandates perpetual contracts. All wine distributor arrangements, at the option of the wholesaler, are converted into contracts of infinite duration except for those suppliers who have enough money to liquidate and break the franchise. It basically hurts the small wineries and aids the larger ones. This Bill undercuts contract law. State laws governing contract including the uniform commercial code which is in effect in Montana and long-standing common law principles are an expression of public policy on a matter of great import to the functioning of the free enterprise system. Limitations on the freedom of parties to make agreements should be enacted only with the clearest understanding of their impacts and implications. This Bill as directed discourages competition in the market. The definition of good cause, as is in this Bill, Section 1, is totally unacceptable. If a definition of "good cause" must remain in the Bill, other language must be added which would also address business reasons as a reasons for termination of a contract. There is no way the Legislature could foresee various market reasons which would justify termination. They would submit other language to address that particular provision. The area of dual appointments again goes to point of how many people should be able to sell various products within a region or area. Competition serves the consumers and the customers. There are amendments submitted. **EXHIBIT 10** She urged a do not pass.

Corbin Houchins, General Counsel, Washington Wine Institute, and Special Counsel to the Oregon Wine Growers Association, said there are approximately 140 wineries. These are businesses which enter into agreements. Some agreements are wise, some not so wise, some safe and some speculative. Brand identification, especially for wineries that are not so well known, is a fragile thing. Competition is meant to be uncomfortable. He said the legitimate interests are already protected. He suggested putting them in the uniform commercial code or in some cases in the corporate code where they modify existing provisions. The one provision he wanted was to repeat opposition to the attempt to be omniscient.

Sydney Abrams, Wine Institute, said the beer industry has an equity agreement with wholesalers and the wine industry does not. The two industries are different. The beer industry is doing 90% of the business. There are close to 700 wineries in California. In the past 15 years, Washington has 90 etc. These are small wineries. The largest wineries rarely changes wholesalers. The wholesaler is needed. Franchise laws give problems and legal expenses.

Questions from the Committee:

REP. BENEDICT asked if one party breaks a binding contract with another, shouldn't there be a reason for breaking it.

Ms. Jamison said they don't find any fault with that position. They want them to consider the court system to deal with that. She thinks this Bill will box people in so that business cannot be done.

REP. PAVLOVICH asked if "good cause" needs to be in there. **Ms. Jamison** deferred it to Mr. Houchins. **Mr. Houchins** said the brewing industry contracts have a different history. Beer industry contracts became a standard for concentrated hearings. There are many winery agreements which define the terms under which either party may terminate the relationship. The industry is more standard.

REP. PAVLOVICH asked if one winery has canceled a distributor in the United States. **Mr. Tippy** said the court said if the distributor consistently fails to meet sales expectation; follows a market philosophy contrary to that of the winery; fails to take sufficient steps as promised to improve its performance this could cause cancellation, if there are notices of deficiencies. All of the problems must be documented and given time to improve performance.

REP. WALLIN asked about requirements. **Ms. Jamison** said as there are differences between vehicles there are requirements of different manufacturers. These drive franchise legislation to become acceptable or unacceptable.

REP. SCOTT asked if they didn't need large distributors to survive. He asked if the smaller vineyards are just offering variety. **Mr. Tippy** said yes, but with one exception. Every distributing warehouse in Montana is either Gallo or one of the majors.

REP. SCOTT asked if today the major wineries or supplier could have the ability to cancel anytime without cause. **Mr. Houchins** said it would depend upon what had been promised in order to obtain the brand. The brand drives the product. **REP. SCOTT** asked if the major suppliers dictate and hold it over others' heads. **Mr. Houchins** said yes if the contract says "and we can dictate". A contract normally states a person will supply needs

and the other person will do certain things in the marketplace. If one person does not uphold the promise the other person does not have to uphold the promise. The supplier never has the option of getting an injunction because the treatment of market is too sensitive.

REP. ELLIS asked if the marketplace doesn't mandate a certain unfairness. **Mr. Houchins** said most wineries would like to get a written agreement but can't because normally wholesalers do not want to provide written agreements. The larger winery is constrained by the economics of a limited number of licensees and the requirement to sell. It is impossible to say that there is an overall balance of power.

REP. BENEDICT asked if Brown/Forman arbitrarily bullies distributors into taking their products. **Mr. Houchins** said no. He said wineries get into litigation and sometimes lose. When they lose they say the system is wrong. **REP. BENEDICT** asked if "the failure to sign said agreement will result in immediate termination of your distribution..." is bullying. **Mr. Houchins** said he can't answer yes or no. If that is what is consistent with the promise made by the distributor, or if that is inconsistent, then it is illegal.

REP. CROMLEY asked how difficult it was to become a wholesale wine distributor in Montana. **Mr. Tippy** said there is no quota system. The license fee is $500. The law requires sufficient capital to secure warehouse and retail accounts. **REP. CROMLEY** asked if the supplier would be able to terminate after a sixty day notice for any reason. **Mr. Tippy** said this Bill, patterned after the Washington State Law, states, that if a winery terminates without good cause, without following the notice of deficiency and opportunity to cure, they must buy the inventory and pay blue sky or good will value of the business. It is usually several dollars per case. If the deficiencies are not cured there is no such obligation to make that compensation. **REP. CROMLEY** asked if any supplier can enter into a contract with any wholesaler who wants to. **Mr. Tippy** said 2, Sub 3, usually requires that the winery enter into written agreements with suppliers who are interested in entering into a relationship with them. **REP. CROMLEY** asked what happened to the market. He asked if a supplier isn't normally interested in a financial background. **Mr. Tippy** said he wants to go back and look at the Washington Codes to be certain it was copied correctly. The questions were perceptive. The intent would seem to be, if there were an agreement, based on a voluntary meeting of the minds, it must be reviewed in writing by the Department of Revenue.

REP. HANSEN asked if the Beer and Wine Wholesaler's Distributor Supply Equity Act in Washington was restrictive. **Mr. Houchins** said it doesn't apply to the wine industry and he doesn't have direct information. On the wine side, it applied to out-of-state wineries. **REP HANSEN** asked if it didn't apply at all to the distributors. **Mr. Houchins** said they did not have much

experience with it because it hasn't applied. **REP. HANSEN** asked Mr. Abrams the same question. **Mr. Abrams** said he didn't know if California had a similar law. He said he was not a lawyer. In California a winery is allowed to market its own. That law says only the court can determine "good cause". A small winery cannot afford to go to court.

REP. LARSON asked if the amendments had been reviewed. **Mr. Tippy** said yes. **REP. LARSON** asked him to comment on them. **Mr. Tippy** said they delete the ability to cure deficiencies within sixty days and they delete fee obligation to buy "good will" or inventory no matter how arbitrary the cancellation has been. They delete any Robinson-Patton type requirement to give the same price to two distributors in the same market. Essentially, they could not find favor with any of those four.

REP. S. RICE asked what the five largest wineries would be and what percentage of total wine sales they would be in the United States. **Mr. Abrams** said the largest winery in Delaware has about 22% of the market; Anhauser Busch has 44.6%; Millers has 22.7%; Coors has 10% and Strohs has 10%. Things change so much. If some of the brands stop advertising, the sales go down. **REP. S. RICE** asked what share of the market would be for Almaden, Paul Mason and Gallo. **Mr. Abrams** thought 30-35%. **REP. S. RICE** asked if Gallo was 22%. **Mr. Abrams** said yes.

REP. BENEDICT asked how the system relates to this Bill. **Mr. Abrams** said in some states the large operators don't want small distributors. There may be laws to require minimum inventory.

REP. PAVLOVICH asked if he doesn't think only five or six distributors will be in business in the United States eventually. **Mr. Abrams** said some people think that will be the case. He said wines are different. **REP. PAVLOVICH** asked what happened to the application of law with California Coolers. **Mr. Tippy** said yes, the Washington Law applied to out-of-state wineries, such as California Coolers.

They sent out the same type of letter that Mr. Zucconi stating, "You are canceled as of the end of next week".

REP. ELLIS asked if the law ended up in the demise of them. **Mr. Abrams** said yes.

REP. KNOX asked what he thought about Section 5. **Mr. Abrams** said he did not believe in dual distribution. He knows it would be difficult to remove that distribution.

CHAIRMAN BACHINI said he had hoped the parties would be able to come to a compromise. It is his intention to put it in a Subcommittee. He named **REP. PAVLOVICH**, Chairman; **REP. LARSON** and **REP. WALLIN.**

Closing by the Sponsor: **REP. GOULD** said Ms. Jamison mentioned

government intervention. He said at some time it is necessary for the government to get involved. One example, is the seat belt law.

EXECUTIVE ACTION ON HB 279

Motion: **REP. BOB PAVLOVICH moved HB 279 DO PASS.**

Discussion: **REP. RICE** said it seemed the biggest objection to this bill was the fact that it tied up your telephone line, that you couldn't just hang up. Is that valid? Is the technology here or coming that when you hang up the phone is disconnected. She has concerns about this limiting free speech. **REP. SCOTT** said you can tie up your own lines by having someone call you, hang up your phone, and pick it back up in five minutes and the caller will still be here. **REP. CROMLEY** said in Billings phones could be tied up.

REP. BACHINI said a party had called him and forgot to hang up the phone to close the connection, and he finally had to go over to the house and ask him to hang up the unit. Is that statewide with U.S. West?

REP. STEPPLER called his wife, his niece hung up the phone, and when no dial tone came on, there was no change. He waited for four minutes and redialed.

REP. LARSON spoke as a strong supporter of the bill. There is the right of privacy and this bill supports that.

REP. HANSON addressed the difference between here and Billings where they have new electronic equipment. They spent millions updating it. That is why there is the difference. If you have had facsimile machines and have had the advertisers start sending stuff into the fax machines, it really does tie it up. I support this bill wholeheartedly.

REP. CROMLEY said he supports the bill although he didn't think it would do much good.

REP. BENEDICT supports the intent of the bill with the exception of soliciting information and gathering data. Those are two areas he is really concerned with. He has done polls at the radio station, and been involved with the University polls where they have to call 500-700 phone calls. They record that message and send it out. If you agree with the sales tax, push one; if you don't agree, push two. That solicitation to gather data maybe don't belong in there.

REP. BACHINI disagreed, saying that if that poll needs to be taken, they should have that person to person poll, where you at least have the opportunity to say no. Testimony stated that some of the automated devices will continue to go the length of the question that was asked. If it does that is his opposition.

REP. LARSON asked REP. CROMLEY if out of state calls are covered by ITC regulations? Is there any regulation over out of state calls. **Mr. Verdon** said the Communications Commission has authority.

REP. WALLIN said his wife gets canned messages that her order is in, and it is always the same. Would that be prohibited under this bill? **REP. BACHINI** said that would not be prohibited under this bill.

Vote: **HB 279 DO PASS** with **REP. RICE** voting no.

EXECUTIVE ACTION ON SB 2

Motion: **REP. STELLA JEAN HANSEN MOVED SB 2 BE CONCURRED IN.**

Motion to amend: **REP. SONNY HANSON** moved that the section dealing with the expiration in 1993 be reinserted. **REP. HANSEN** objected. In a previous grueling session it was obvious there would be trouble if we didn't get an actuary and determine what kinds of claims were being settled in this state as to malpractice, etc. The insurance rate did not reflect any of the business that went on in Montana. Those actuaries were all out of the state. We have been working hard ever since, first to get appropriations, and to get the permission to hire this actuary every session. We couldn't get enough money in it for the price they thought we could. We finally got this actuary, and we should give him all the latitude he needs to compile the data. We get jerked around so badly by companies out of the State away from almost the Western part of the country and those actuarial figures were imposed upon us in Montana and determined in spite of our insurance rates. That was the most unfair thing of all the insurance business that we had to in the special session that we heard in this committee. Now we have a tool where we are going to find out, and this bill should not be limited at all. It should go through just the way it is and let them work in the Auditor's office and figure out some way to establish actuarial figures that will help us lower the rates. We have half the claims against the insurer that other states have had. Why should that determine our insurance rates?

REP. BACHINI asked if he would consider changing his motion to a four year period? **REP. SONNY HANSON** said he would accept either. To him it is important that the proof exists. We haven't had any results from what has been created to this date. They have just got the individual on board, in fact they haven't developed any rules or regulations. Before this becomes a permanent aspect of our statutes, we should have a track record on it.

REP. PAVLOVICH agreed but disagrees with the way they handle rulemaking authority. For rulemaking authority you should have an impartial hearing on it. Under rulemaking authority they can do anything until December 1990. That was two months ago, and yet they want to make it permanent. They haven't had time to let the

rules develop themselves to see what is going on. Give them two or four more years and then let them come back.

REP. KNOX said it occurred to him that the actuary would continue to work under the sunset provision. He failed to see how that would be effective at all.

REP. STELLA JEAN HANSEN said you heard him say how difficult it was to hire an actuarial. He is not going to stay here if he knows his job is going to sunset in four more years. How are you going to keep someone working in the State if you send them the message this is only a temporary job. Without this there is no use having an actuarial.

REP. KNOX visited with Dave and inquired about the salary the State of Montana is paying an actuary. The salary level is so low that it is highly questionable that individual will stay any length of time. We are not anywhere near the competitive level with other salaries in the nation.

REP. LARSON spoke strongly against the amendments for sunsetting in two years. The auditor's office is a consumer protection group. They do their jobs as we permit them to. An actuary is a valid part of their efforts. Because we are only .3 of 1% of the insurance market of the United States, we don't matter to the insurance people, but he feels that is all the more reason for us to have effective enforcement.

REP. TUNBY said if **REP. HANSON** would amend it to four years, he would support the amendment.

REP. KILPATRICK said this bill came over from the Senate. We are going to send it back to the Senate if we put that amendment on which is always a pain. They took that two years off and now we are going to put it back on. He will vote for it as is.

REP. BACHINI said the committee should determine if it will be two or four years or leave it as is.

REP. WALLIN said with the few cases we have in Montana one bad case could get those rates sky high. It should be given more time.

REP. CROMLEY spoke on amendments. This state does have a high proportionate rate against the insurers. He doesn't have a problem with setting the rates. He doesn't know how expensive it is to write insurance in Montana.

REP. HANSON repeated his motion to reinsert line 16, that section 13 terminates October 1, 1995.

REP. BENEDICT said this is a repealer then, and we are not really repealing, we are sunsetting it to 1995, so we have to change the language. **Mr. Verdon** said you just amend that section, you don't

repeal it. Just have to change the date. Line 14 the change the Senate put in section 1 is amended to read and then restricted.

Vote: Amendment to sunset in 1995. **Motion carried** with **REPS. McCULLOCH, KILPATRICK, LARSON, STEPPLER, HANSEN, SCOTT** voting **NO.**

Motion/Vote: **SB 2 BE CONCURRED IN AS AMENDED.** Motion carried with **REP. LARSON** voting **NO.**

ADJOURNMENT

Adjournment: 11:25 a.m.

Rep. Bob Bachini
BOB BACHINI, Chair

Jo Lahti
JO LAHTI, Secretary

BB/jl

HOUSE OF REPRESENTATIVES

BUSINESS AND ECONOMIC DEVELOPMENT COMMITTEE

ROLL CALL **DATE** Jan. 29, 1991

NAME	PRESENT	ABSENT	EXCUSED
REP. JOE BARNETT	✓		
REP. STEVE BENEDICT	✓		
REP. BRENT CROMLEY	✓		
REP. TIM DOWELL			✓
REP. ALVIN ELLIS, JR.	✓		
REP. STELLA JEAN HANSEN	✓		
REP. H.S."SONNY" HANSON	✓		
REP. TOM KILPATRICK	✓		
REP. DICK KNOX	✓		
REP. DON LARSON	✓		
REP. SCOTT MCCULLOCH	✓		
REP. BOB PAVLOVICH	✓		
REP. JOHN SCOTT	✓		
REP. DON STEPPLER	✓		
REP. ROLPH TUNBY	✓		
REP. NORM WALLIN	✓		
REP. SHEILA RICE, VICE-CHAIR	✓		
REP. BOB BACHINI, CHAIRMAN	✓		

January 29, 1991

Page 1 of 1

HOUSE STANDING COMMITTEE REPORT

January 30, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Business and Economic Development, report that Senate Bill 2 (third reading copy -- blue) be concurred in as amended.

Signed:

[illegible], Chairman

And, that such amendments read:

1. Title, lines 6 and 8.
Strike: "REPEALING"
Insert: "AMENDING"

2. Page 1, lines 13 and 19.
Strike: section 1 in its entirety
Insert: "Section 1. Section 13, Chapter 400, Laws of 1989, is amended to read:
"Section 13. Termination. [This act] terminates October 1, ~~1991~~ 1995.""

EXHIBIT 6 #2
DATE 1-29-91
HB 502

Testimony on Senate Bill 2, the Ratemaking Act
Susan C. Witte, Chief Legal Counsel, State Auditor's Office
House Business and Economic Dev., January 29, 1991

For the record, my name is Susan C. Witte. I am the Chief Legal Counsel for the State Auditor's Office, and am here today representing State Auditor and Commissioner of Insurance Bennett, to speak in favor of this bill. I would like to thank our sponsor, Senator Hager, for carrying this bill and the committee for its consideration of this legislation.

We urge passage of this bill, which would make the Ratemaking Act a permanent addition to the Montana Insurance Code. Currently, the Act contains an October 1, 1991 sunset provision.

The Insurance Code contains a "competitive rating law." Insurers must file the rates they intend to use, along with statistical support which demonstrates that those rates are not excessive, inadequate, nor unfairly discriminatory. Once filed, the insurer may use those rates without "formal approval" from the Montana Insurance Department. The express intent of our regulation of insurers' rates is, and I quote, "to permit and encourage competition between insurers on a sound financial basis" 33-16-102, MCA. As long as competition is healthy, market forces should keep rates at reasonable levels.

But when healthy competition does not exist, there is a greater likelihood that the standards applicable to rates will not be met; that is, that rates will become inadequate, excessive or unfairly discriminatory. The Ratemaking Act dictates that in such situations, the insurance department gather some additional information, evaluate that information, and be in a position to know whether the rates of the few active competitors are reasonable in light of the standards. This would apply to lines of insurance designated as "non-competitive."

Similarly, competition may not be an effective regulator of rates if the volume of statistics is insufficient to produce stable and reliable estimates of future results. It is common in these "volatile" lines, for insurers to use country-wide data in their ratemaking to complement Montana data. But use of country-wide data may again result in rates in Montana that do not comply with those standards. For example, regarding liability insurance, some states may be much more litigious than Montana. Suits may be much more frequent than in Montana, and/or settlements may be much larger. If an insurer used the data from such states in developing its Montana rates, the resultant Montana rates would be, or at least could be, excessive. The Act again dictates that in such cases, information be gathered and evaluated by the insurance department, to assure that rates are reasonable in light of the standards.

Commissioner Bennett strongly believes that when the next "crisis" comes, the Ratemaking Act will be of great value in assuring that Montana's consumers can get insurance at a reasonable price. The commissioner does not "set" rates. Rather, by this Act, she determines what type of information the insurer can use in setting those rates to cover risks in Montana. Specifically, the Act requires that rates are based as much as possible on Montana experience. The commissioner is not averse to rate increases if they are justified, and in fact has no authority to intervene as long as sufficient statistical data is included to support the filing.

We wish to point out up front that the Act may not be the solution to all such crises. For example, creative court decisions outside Montana may mandate that insurers pay claims that the insurers feel are outside the scope of the policy's coverage. Insurers might become fearful that similar court interpretations would expand the scope of coverage here. Invoking the Act in such a situation may not help.

But in other situations, we believe the Act would benefit Montana consumers. For example, when medical malpractice insurance became unavailable for obstetricians (that is, when it became a non-competitive line), invoking the Act may have helped. The information gathered by the insurance department under the Act may have revealed that insurers' concerns which emanated from other states were unfounded in this state. Such a conclusion, if properly supported, could have encouraged many insurers to make coverage available, and could also have instilled confidence in insurers as to the appropriateness of rates they felt were inadequate.

The intent of the Act has, to date, been used though no lines have been declared volatile or non-competitive simply because competition is working well right now. We have requested companies writing, for example, psychologists' professional liability and medical professional liability with none or few losses in Montana over the past four years to provide a breakdown of their country-wide data into the various states, for our review. Use of country-wide experience may have, for some companies, produced rates which reflect an anticipated frequency or severity of loss totally inappropriate for Montana. We have also drafted proposed rules for use in evaluating a line of insurance that may be volatile or non-competitive. A hearing has been held on these proposed rules, and a final draft for adoption is in the makes. We have hired an actuary to assist us in implementing the Act. We urge you to leave the Ratemaking Act in place, so that it may be used to mitigate or eliminate the next crisis, to the benefit of Montana's consumers.

I, Mr. Borchardt or Mr. Barnhill, would be pleased to respond to any questions.

SB 2
EXHIBIT 2
DATE 1-29-91
SB 582
Bus. Ins.

NATIONAL INSURANCE CONSUMER ORGANIZATION

Here's information America's insurance industry *doesn't* want you to have!

from Wheeler

Dear Fellow Insurance Sufferer,

If Sears and J.C. Penney's got together and fixed prices for their merchandise, that would be a felony.

Yet insurance companies owned by these same two retail giants can get together with other insurance companies to fix prices for their coverages -- with complete impunity!

No wonder that Sears makes more money from insurance than from its retail stores!

And Sears is not the only one working this gold mine! ITT makes more from insurance than from telecommunications, and American Express more than from credit cards.

Ownership of an insurance company in America has become the ticket to unlimited profits, totally free from any federal regulation.

The industry's $1.5 trillion assets are greater than the assets of the nation's 50 largest industrial corporations combined!

Each year, the insurance industry accounts for 13% of America's gross national product.

One of the things that keeps this money pump so well oiled is the fact that insurance is the ONLY major industry not subject to our antitrust laws.

Thus its members are free to engage in price fixing and other anti-competitive practices forbidden to other industries --

-- no matter how blatantly these practices may victimize American people.

Most businesses that suffer losses look for ways to cut costs.

Not the insurance industry. They had a "bad" year in 1984, with a 5% premium shortfall. How did they deal with it?

They blamed it on liability and malpractice claims, and sent

(over, please)

121 N. Payne Street
Alexandria, Virginia 22314
(703) 549-8050

the rates for those coverages into orbit.

70% increases for obstetricians/gynecologists; 300% to 900% for lawyers and architects; 200% to 500% for day-care centers (if available at all); 300% to 1,000% for public transit authorities.

It worked! That 5% shortfall became a $5 billion profit in 1985, $8 billion by 1987 and grew to 12.5 billion in 1988!

Now take a look at auto insurance. Government statistics show that, in recent years, cars have become safer and litigation, claim frequency, auto-related deaths and injuries have all decreased --

-- but auto insurance rates have gone up four times faster than the rate of inflation!

In some big cities car owners pay more for insurance than they do for their cars!

Health insurance costs are also skyrocketing. In some states insuring a family of four costs 400% more today than in 1980!

That's why some 37 million Americans have no health insurance at all. They can't afford it!

Is the lawsuit crisis to blame for those whopping rate increases? NO!

Per capita, there are no more lawsuits today than there were 30 years ago. Adjusted for inflation, the typical amount awarded by the courts has remained a steady $8,000!

Actually, the "lawsuit crisis" was created by a carefully-planned multi-million dollar insurance industry advertising campaign to justify obscene premium hikes!

My friend, you and I and our fellow insurance sufferers all across the nation pay for these industry excesses!

Insurance is our nation's third highest expenditure. We make up only 5% of the world's population, yet we pay half of the world's total of insurance premiums --

-- premiums exorbitantly higher than they need to be!

Why this special treatment? Why don't insurance companies have to play by the same rules as other American businesses?

Why are they given free rein to exercise their ruthless disregard for everything except increasing their profits?

Because they have the most powerful lobbying force in the country. By far!

They're exempt from federal regulation and they lobby

Ex 2
1-29-91
SB 2

Congress continually to keep it that way. Plus, insurance lobbyists outnumber all others in virtually every state.

What's more, their political action committees (PACs) pour millions of dollars a year into the campaign coffers of carefully selected political candidates.

Not content to influence lawmakers, they also dominate the state government insurance departments.

A government report found a classic "revolving door" policy -- half of all insurance regulators came from the industry and half move back into industry jobs when they leave.

So, is there nothing we can do? Are we helpless?

NO! There's plenty we can do. And we're doing it. But ~~today we need your support so we can help you. Let me explain.~~

In 1980, I founded the National Insurance Consumer Organization, a nonprofit public interest group dedicated to help insurance buyers like you fight this monopolistic industry.

And, we're winning!

Look at California's Proposition 103, for example, which called for a major rollback of auto insurance rates.

The insurance industry there spent $70 million trying to defeat that proposal. And they lost!

When asked what they learned, a representative answered, "We should have spent $150 million."

They never worry about spending too much because they can get it back by raising rates.

But not this time. This time <u>we stopped them</u>!

~~We stopped them in Texas too, when instead of a 5.5% increase~~ in auto insurance rates, consumers got a 3.8% <u>decrease</u>, resulting in an annual savings of $250 million!

We've also fought successfully for lower insurance rates in North Carolina, California, Virginia and other states.

But we've only scratched the surface.

While continuing our attacks against this powerful force, we must pressure Congress to make the insurance industry play by the same rules that govern the rest of America's businesses.

Their exemption from antitrust laws must be repealed. <u>Now</u>!

(over, please)

Ex. 2
1-29-91
SB 2

The only lobbying force powerful enough to match the insurance lobby's influence on Congress is the American people!

We saw the power of that force during the recent furor over Congressional pay raises.

Now we need to use it to strip insurance companies of their power to fix premium prices and engage in other outrageous anticompetitive practices.

We <u>can</u> do it, but not without <u>your</u> help!

By joining other insurance victims in supporting the National Insurance Consumer Organization, you will increase our strength and improve our chances to win this crucial battle against the insurance industry.

Here's what I'm asking you to do.

First, please read and sign the enclosed NICO Congressional Petition Form.

Then return your completed Petition Form -- along with the most generous contribution you can possibly afford -- in the envelope provided.

As a NICO Supporter, you won't have to wait for Congress to act before you can begin reducing your insurance costs.

To show my appreciation for your support, I'll send you a free copy of our "Buyer's Guide to Insurance," a booklet filled with money-saving information -- the kind of "insider" information the insurance companies don't want you to have.

But if you're like me, you may get the greatest satisfaction of all from finally fighting back!

Alone, we can only watch helplessly as the insurance industry continues to get away with legalized robbery.

Together, we can stop it!

Please let me hear from you today.

Sincerely,

Robert Hunter

Robert Hunter, President
(Former Federal Insurance
Administrator)

P.S. I'd like to deliver thousands of Petitions to Congressional leaders within the next 30 days. Please return your signed petition with your contribution right away. Thank you!

EXHIBIT 1
DATE 1-29-91
SB 2

SB 2
BUS
OPP

January 29, 1991
Senate Bill #2
State Farm Insurance Company

Mr. Chairman and members of the committee I am Steve Browning. I am testifying today on behalf of State Farm Insurance in opposition to Senate Bill 2.

I would like to provide a brief history of the enactment of the ratemaking law in Montana.

The ratemaking law was first introduced on January 17, 1989 by Representative Tim Whalen (House District 93). As introduced, the legislation was designed to deal with volatile and noncompetitive lines of insurance in this geographical region. Subsequently, the bill was amended to deal with similar states, rather than a geographical region. Also, as introduced, the bill dealt with all lines of insurance that might be considered volatile and noncompetitive. However, at no time were the terms "volatile" and "noncompetitive" defined.

After the bill encountered considerable difficulty in the 1989 legislature--indeed, at one point it was killed by the House Business and Economic Development Committee--the bill was amended to include a statement of purpose in which the topic of medical malpractice insurance was noted.

I would note for the record that medical malpractice in Montana is handled principally by three carriers, The Doctors' Company, St. Paul Companies, and The Utah Company. As it happened, prior to the 1989 session, The Doctors' Company announced a sales promotion in which it offered a 20 percent discount in its medical malpractice insurance premiums. Under the terms of this offer, the Montana Medical Association (MMA) would receive a two percent rebate, and the remaining 18 percent reduction would be passed on to any MMA member who signed up for The Doctors' Company malpractice insurance.

The 1989 session spent nearly four months working on House Bill 247. It was the subject of a variety of amendments, and the bill was ultimately signed into law by the Governor on April 1, 1989.

Nearly two years later, the state Insurance Commissioner has yet to adopt final rules for the implementation of the ratemaking law. On December 19, 1990 the Insurance Commissioner held a public hearing in the matter of the proposed adoption of rules pertaining to the pricing of noncompetitive and volatile lines, but those rules are not yet finalized.

A month before the Insurance Commissioner's hearing, The Doctors' Company extended its discount on medical malpractice insurance to all physicians throughout the United States, and announcement that was totally unrelated to the still-to-be-implemented regional ratemaking law.

Earlier this month, Senate Bill 2 was introduced to eliminate the sunset on House Bill 247, which is scheduled to expire October 1 of this year.

In spite of the above, the Insurance Commissioner's staff has

Ex 3
1-29-91
SB2

released information suggesting (or permitting the inference) that the reductions in medical malpractice insurance premiums has been caused by the ratemaking law.

State Farm Insurance has consistently opposed Montana's ratemaking law. This law has not been adopted by any other state, contrary to the initial claims of the proponents, who suggested that the bill was law in Iowa.

It is the view of State Farm that the lines of insurance which it sells in Montana, including primarily auto, home and fire, are among the most competitive lines of insurance available in Montana. It seems unnecessary to have extensive reporting requirements, such as that mandated by the ratemaking law for lines of insurance that are neither volatile or noncompetitive. Accordingly, if the ratemaking law is to be continued in its current form, it is the view of State Farm that either the new law should exclude lines of insurance such as auto, fire and homeowners which are clearly intensely competitive lines of insurance. Failing that, the legislature should move to establish firm definitions about what it intends the Insurance Commissioner to find as noncompetitive and volatile lines of insurance.

Thank you for the opportunity to testify this morning.

EXHIBIT 4
DATE 1-29-91
HB SB 2

SB #2 BUS OPP

SENATE BILL #2
SENATOR BOB WILLIAMS, S.D. 15
JANUARY 29, 1991

FOR THE RECORD, MY NAME IS BOB WILLIAMS, REPRESENTING SENATE DISTRICT 15. I APPEAR TODAY TO EXPRESS GENUINE CONCERN ABOUT THE CIRCUMSTANCES SURROUNDING SENATE PASSAGE OF SB 2.

I HAVE BEEN A PARTICIPANT IN THE PASSAGE OF BOTH SB 2, SPONSORED BY SENATOR TOM HAGER. ALSO, I WAS A PARTICIPANT IN THE PASSAGE OF SB 2'S PREDECESSOR, HB 247, SPONSORED BY REPRESENTATIVE TIM WHALEN, WHICH ENACTED DURING THE 51ST LEGISLATURE IN 1989.

THE LEGISLATIVE HISTORY ON HB 247, THE PARENT OF SB 2, WAS QUITE TORTURED. IT SEEMED TO DIE SEVERAL TIMES DURING THE 1989 LEGISLATURE, ONLY TO BE REVIVED AND SIGNED INTO LAW. ONE OF THE REASONS HB 247 SURVIVED IS THAT THE SENATE ATTACHED TO IT A TWO-YEAR SUNSET PROVISION, WHICH IS SCHEDULED TO EXPIRE ON OCTOBER 1, 1991, UNLESS OTHERWISE RENEWED BY THIS LEGISLATURE.

EARLIER THIS MONTH, SB 2 WAS INTRODUCED BY MY FRIEND AND COLLEAGUE SENATOR TOM HAGER. SENATOR HAGER'S BILL WOULD HAVE COMPLETELY ELIMINATED THE SUNSET PROVISION WHICH, AS NOTED PREVIOUSLY, HAD BEEN ATTACHED TO THE RATEMAKING LAW TWO YEARS AGO. AFTER WE HEARD THIS BILL IN THE SENATE, THE SENATE BUSINESS AND INDUSTRY COMMITTEE AMENDED SENATOR HAGER'S BILL BY EXTENDING THE SUNSET PROVISION FOR ANOTHER TWO YEARS (UNTIL OCTOBER 1, 1993).

ON THE SENATE FLOOR OUR COMMITTEE'S AMENDMENT TO RETAIN THE SUNSET FOR ANOTHER TWO YEARS WAS DROPPED. SEVERAL ARGUMENTS WERE OFFERED TO DROP THE 1993 SUNSET REQUIREMENT. UNFORTUNATELY, THOSE ARGUMENTS WERE SUPPORTED BY INFORMATION THAT WAS EITHER INACCURATE OR MISLEADING.

RARELY, AM I PROMPTED TO SPEAK OUT PUBLICLY AGAINST THE LEGISLATIVE PROCESS. MY PHILOSOPHY IS THAT EVERYBODY SHOULD HAVE THEIR CHANCE TO SPEAK FOR OR AGAINST A BILL, AND WHATEVER ITS OUTCOME ON THE FINAL VOTE, THAT'S DEMOCRACY AT WORK. NO MORE NEED BE SAID.

HOWEVER, WHEN THERE IS CONSIDERABLE MISINFORMATION PROVIDED ABOUT A BILL DURING FLOOR DEBATE AND WHEN THAT MISINFORMATION CHANGES THE OUTCOME OF THE LEGISLATIVE PROCESS, AND WHEN SOMETHING CAN BE DONE TO RECTIFY THAT ERROR, I FEEL COMPELLED TO SPEAK OUT. I BELIEVE THAT'S THE CASE HERE.

Ex. 4
1-29-91
SB 2

THE ARGUMENT WAS MADE ON THE FLOOR OF THE SENATE THAT THE 1989 RATEMAKING LAW WAS RESPONSIBLE FOR SIGNIFICANT REDUCTION IN MEDICAL MALPRACTICE INSURANCE PREMIUMS. LET ME SUGGEST THAT ANY REDUCTION IN MEDICAL MALPRACTICE INSURANCE PREMIUMS COULD NOT HAVE BEEN A PRODUCT OF MONTANA'S 1989 RATEMAKING LAW. THE REASON, QUITE SIMPLY, IS THAT THERE ARE NO RULES IN PLACE FOR THE REGIONAL RATEMAKING LAW. THE INSURANCE COMMISSIONER ONLY PROPOSED RULES LAST MONTH, NEARLY TWO YEARS AFTER PASSAGE OF HB 247, AND THOSE RULES ARE YET TO BE FINALIZED.

MORE IMPORTANTLY, UPON MY OWN INDEPENDENT CHECKING, I HAVE LEARNED FROM A REPRESENTATIVE OF SAINT PAUL INSURANCE COMPANIES THAT MEDICAL MALPRACTICE INSURANCE REDUCTIONS ANNOUNCED LAST YEAR IN MONTANA ACTUALLY PRECEDED THE PASSAGE OF THE REGIONAL RATEMAKING LAW. IN SHORT, CONTRARY TO THE ASSERTIONS ON THE SENATE FLOOR, THAT LAW HAD NO IMPACT ON THE CURRENT INSURANCE PREMIUM RATES PAID BY HEALTH CARE PROVIDERS.

MY VIEW IS THAT A RESPONSIBLE AND APPROPRIATE COURSE OF ACTION FOR THE LEGISLATURE IS TO CONTINUE THE RATEMAKING LAW FOR ANOTHER TWO YEARS TO DETERMINE PRECISELY WHAT IMPACT, IF ANY, IT WILL HAVE ON THE AVAILABILITY OF INSURANCE IN MONTANA.

THE PURPOSE OF THE REGIONAL RATEMAKING LAW IS TO ALLOW THE COMMISSIONER SOME LATITUDE IN DEALING WITH COMPETITIVE AND VOLATILE LINES OF INSURANCE. PERSONALLY, I THINK THE APPROPRIATE THING FOR THE LEGISLATURE TO DO WOULD BE TO DEFINE PRECISELY WHAT IS MEANT BY "VOLATILE" AND "NONCOMPETITIVE" LINES OF INSURANCE.

ALSO, I BELIEVE THAT THE LEGISLATURE SHOULD RECONSIDER THE REQUIREMENT THAT INSURANCE COMPANIES SHOULD BE REQUIRED TO FUND ACTUARIAL STUDIES THAT WOULD BE PROMPTED BY THE RATEMAKING LAW.

HOWEVER, THESE IMPROVEMENTS ARE BEYOND THE SCOPE OF THE BILL BEFORE YOU THIS MORNING. ACCORDINGLY, I WOULD SUGGEST THE APPROPRIATE COURSE OF ACTION WOULD BE TO EXTEND THE BILL FOR ANOTHER TWO YEARS AND TO MONITOR ITS IMPACT ON OUR CONSUMERS OF INSURANCE IN MONTANA.

THANK YOU.

EXHIBIT 5
DATE 1-27-91
SB 2

SB #2
105

STATEMENT OF
AMERICAN INSURANCE ASSOCIATION
BY
JACQUELINE N. TERRELL
RE: SENATE BILL 2

Mr. Chairman and members of the committee:

My name is Jacqueline N. Terrell. I am a lawyer from Helena and a lobbyist for the American Insurance Association. The American Insurance Association is a national trade association that promotes the economic, legislative, and public standing of its some 200-plus-member property-casualty insurance companies. The Association represents its participating companies before federal and state legislatures on matters of industry concern.

The American Insurance Association strongly opposes the repeal of the sunset on the Regional Ratemaking Act, Senate Bill 2. The American Insurance Association additionally specifically endorses the testimony that has been and will be provided to you by lobbyists for State Farm Insurance, the Independent Agents, and by Senator Williams.

To attack a problem sensibly it is necessary to understand what the problem really is. That must precede any credible proposal for solving the problem. There has been little effort to ascertain in an objective way the nature of the problem we think we are addressing today. Most analysis had the goal of supporting preconceived conclusions, i.e., it has been advocate's research. Further, there has been no clear identification of the problem that this legislation proposes to address.

Ex. 5
1-29-91
SB 2

This legislation began as a proposal to address a misunderstanding of the insurance industry's rating process in Montana. The bill was promoted with the belief that the insurance industry rated in Montana by the claims experience of high risk states such as Florida, New York, and California, or that Montana was subsidizing such high risk states.

As originally conceived, the legislation contemplated lumping Montana with those states that are geographically contiguous to Montana. The thinking was that those states are similar to Montana in terms of claims experience. Such thinking, however, did not take into consideration the differing judicial systems of those states, the likely different claims experience, and the government and industry goals in any given state. Assuming that because Montana shares a border with a contiguous state it is all respects similar for insurance purposes was simply erroneous.

The legislation was amended during the legislative process, deleting the geographic rating concept, but allowing the Commissioner to make the determination which states should be used with Montana to determine an appropriate premium rate.

Both concepts, however, are premised on an incorrect notion that this act somehow suspends or modifies Montana's competitive rating law. Section 33-16-101 of the Montana Code Annotated provides "...Nothing in this chapter is intended to give the Commissioner power to fix and determine a rate level by classification or otherwise." This legislation effectively does exactly that in direct contravention to Montana's rating law.

Regulating an insurer's rate, which is quite properly within the Insurance Commissioner's scope of authority and duty, is quite different from making the rate, which is properly in the scope of the company's authority. The Commissioner has ample regulatory authority under the provisions of Title 33, chapter 16, part 1 to prevent rate gouging should it occur.

Additionally, the original legislation was enacted during a perceived insurance crisis. Again, during the legislative process, a statement of intent was added to the bill indicating that it would address the medical malpractice insurance crisis. One would assume from reading the statement of intent to House Bill 247 that the legislation affected only medical malpractice insurance, and the statement accurately reflects the type of testimony given by proponents in both House and Senate committees in 1989. The statement of intent is wholly inconsistent with the legislation, however. Not confined only to malpractice insurance, the legislation itself can affect all types of property and casualty insurance, including auto, where there are approximately 200 carriers in the state. The legislation is far broader than it was sold. Regardless, the legislation clearly has not addressed the obstetrical malpractice insurance crisis that was presented to this Legislature two years ago, as the Commissioner's office did not begin drafting rules to implement the provisions of the legislation until last month.

The legislation is replete with burdensome reporting and statistical compilation requirements unlike requirements that exist in any other state. The proposed rules promulgated by the

Ex. 5
1-29-91
SB 2

Commissioner contemplate an insurer providing five years' past experience for all states, broken down by state, in seeking information that the insurer may or may not use in developing its own trend factors and rating. As I discussed with you previously with regard to the data reporting bill, not every insurer keeps every item of information broken down by state or in the categories contemplated by this legislation. Such burdensome reporting requirements sometimes seek proprietary and confidential information and can only send an negative message to the insurance industry.

Under the legislation as enacted, and the administrative rules that have been recently proposed to implement the legislation, those insurers which do continue to provide valuable insurance products to Montanans can be penalized for their effort to make that insurance available to Montana consumers by requiring them to submit to what amounts to a market conduct review. Additionally, in a market atmosphere where there are only a few insurers willing to provide insurance products to Montanans, those that do provide the products are further penalized by requiring them to pay for the examination. Mont. Code Ann. §33-16-236(2) (1989).

This legislation is vague and provides constitutional challenges regarding its delegation of legislative authority to the Commissioner of Insurance. Douglas v. Judge, 174 Mont. 32, 568 P.2d 530, 533-35 (1977). It provides no effective definition of "noncompetitive" or "volatile" by which the Commissioner of

Insurance may determine with reasonable clarity the limits of power delegated to her. To validly delegate legislative authority to the Commissioner the provisions of this legislation must be "sufficiently clear, definite, and certain to enable the [Commissioner] to know [her] rights and obligations." Douglas, 174 Mont. 32, 568 P.2d at 534. Again, the recently proposed rules to implement this legislation demonstrate how difficult that task is under the legislation as enacted.

There was great pressure in 1989 to enact this legislation, with the promise that it would be used to bring medical malpractice insurance premiums into line. It has not done so. Medical malpractice rates have come down in response to industry competition and natural market forces. The legislation carried with it the authority to and duty to implement it through administrative rules. Those rules still have not been adopted. The legislation directly conflicts with the statutory authority and limitations granted to the Commissioner by Montana's competitive rating law, in which there is sufficient authority for the commissioner to regulate rates so they are not excessive, inadequate, or unfairly discriminatory. The bill is overbroad and burdensome to those very insurers who are willing in difficult times to provide insurance products to Montanans.

The American Insurance Association respectfully urges this Committee to give this bill a do not pass recommendation and to allow the underlying legislation to sunset as was proposed and enacted in 1989.

Ex. 5
1-29-91
SB 2

Submitted to the House Business and Economic Development Committee for hearing on SB 2, January 29, 1991, 8:00 a.m.

Respectfully submitted

Jacqueline N. Terrell

Montana
Beer & Wine
Wholesalers
Association
Post Office Box 124 • Helena, Montana 59624 • Telephone (406) 442-4451

EXHIBIT 6
DATE 1-29-91
76

BEFORE THE BUSINESS & ECONOMIC DEVELOPMENT COMMITTEE
MONTANA HOUSE OF REPRESENTATIVES

Hearing on HB76	)	TESTIMONY
(Wine Distribution Act)	)	IN SUPPORT
January 29, 1991	)	

The most common reasons state legislatures enact laws regulating private franchise contracts are that the parties do not have equal bargaining power and that one party is likely to engage in coercive or oppressive behavior. The courts, asked to apply traditional contract law, don't take these market conditions into account because inequality, coercion and the like are more appropriately legislative judgments. The common law doesn't work, as Mr. Zucconi's story so clearly shows.

House Bill 76 is not an unusual idea in the codes of Montana or of most other states. Besides the 1974 law regulating beer distributing agreements, this legislature has enacted laws for the automobile dealers in 1977 and for the farm implement dealers in 1985, extending the latter statute to cover snowmobiles, motorcycles and recreational vehicles in 1989. One of our exhibits shows how widespread the enactment of franchise laws has been in all 50 states. About 20 of the states have enacted laws which cover the winery-wine distributor relationship. We have looked at most of them and selected the law of the state of Washington as our model.

The Washington law is weaker than many of the other state's laws. It does not provide for exclusive territory. It does not provide for attorneys' fees for a distributor who prevails in a lawsuit to enjoin or recover damages for a cancellation. And it does not define good cause.

We have gone along with the Washington law in most of these concessions to the wineries. The difference is that we have

suggested a statutory definition of "good cause." This is because the Ninth Circuit Court of Appeals did hold, in construing a Nevada law similar to Washington's, that "good cause" could include the winery's desire to reorganize its distributors after the winery was acquired by another company. American Mart Corp. v. Jos. Seagram & Sons, Inc., 824 F.2d 733 (1987). After this decision the Nevada legislature added a definition of good cause in its law similar to what we propose.

We have been before you before with this concept. In 1981 our bill would have added wine into the beer franchise law. The wineries objected and brought about the bill's defeat. In 1985 we came back with a new bill, specifically written for the wine business. This committee tabled the bill, expressing dissatisfaction with the territory and attorney fee provisions. In 1989 we proposed a strong law modelled on the Michigan statute but negotiated that down to the Washington law. This committee tabled that bill by a close vote, probably because of some provisions relating to fortified dessert wines which are not in the bill before you today. Please remember that the Wine Institute was willing to accept the Washington law two years ago.

We are back before you today with the Washington law plus two small items. One is the good cause definition, necessary because of the court decision. The other is Section 5 dealing with equal support under dual appointments. This is probably nothing more than the Robinson-Patman Act's principals put into the Montana Alcoholic Beverage Code.

EXHIBIT 7
DATE 1-29-87
PG 76

[redacted] Wineries and Distilleries

STANDARD FORM DISTRIBUTOR AGREEMENT

THIS AGREEMENT made this 1st day of September, 19 8[redacted], A.D., by and between [redacted] WINERIES AND DISTILLERIES, organized under the laws of the State of California, hereinafter called Company, and

[redacted]

(of State of Organization, if any)

☐ an individual ☐ a Copartnership ☒ a Corporation

hereinafter called Distributor, WITNESSETH:

1. PRODUCTS. The term "Products" as used in this agreement means:

[redacted]

2. GRANT OF SELLING PRIVILEGE AND TERRITORY. Company hereby appoints Distributor as a distributor of the Products and the area in which Distributor shall be primarily responsible for the sale and distribution of such Products shall be the following territory, to wit:

[redacted] Montana

The territory assigned to Distributor herein is not exclusive and it is agreed that the Company may, at any time, change said territory by giving notice in writing of such change, without otherwise affecting the terms of this agreement.

3. ACCEPTANCE AND AGREEMENT TO SELL. Distributor hereby accepts said appointment to sell and distribute the Products and agrees that its primary responsibility is to adequately represent the Company in the territory, and Distributor shall devote sufficient time and shall use its best efforts to sell, and promote the sale of, said Products in the territory.

4. DISTRIBUTOR NOT MADE AGENT OR LEGAL REPRESENTATIVE OF COMPANY. It is agreed that this agreement does not constitute Distributor the agent or legal representative of the Company for any purpose whatsoever. Distributor is not granted any right or authority to assume or to recreate any obligation or responsibility, express or implied, in behalf of or in the name of Company or to bind Company in any manner or thing whatsoever.

5. CONTINUING TERM OF AGREEMENT AND RIGHTS OF CANCELLATION. This agreement shall continue in force and govern all transactions and relations between the parties hereto until terminated. Either party may terminate this agreement at any time with or without cause, provided the party desiring to terminate the same gives unto the other a written notice (by registered mail or other means of delivery) delivered to the last known address of the other party, such termination to become effective 30 days after receipt of notice.

It is understood that any bona fide customer order which may have been taken by Distributor prior to receipt of notice of termination shall be subject to Company's approval and acceptance. It is agreed that such termination will not release Distributor from payment of any sum which may then be owing Company.

6. NO CHANGES FROM PRINTED FORMS ARE PERMITTED. No change, addition, or erasure of this agreement (except filling in of blank lines) shall be valid or binding upon either party unless in writing and signed by both parties hereto. It is declared by both parties that there are no oral or other agreements or understandings between them affecting this agreement, or related to the selling of Products. This agreement supersedes all previous agreements between the parties.

7. PAYMENT BY DISTRIBUTOR. The Distributor agrees to pay the Company current list prices, which said prices may be changed from time to time without notice, on the following terms: Net 30 days from date of invoice except where contrary to law.

8. ACCEPTANCE OF ORDERS. All orders of Products received from Distributor by Company are subject to acceptance in writing by Company and Company agrees that it will endeavor to fill the accepted orders as promptly as practicable, subject, however, to delays caused by Government orders or requirements, transportation conditions, labor or material shortages, strikes, labor disputes, fires, or any other cause beyond Company's control. Distributor expressly releases Company from liabilities for any loss or damage arising from the failure of Company to fill any orders of Distributor.

9. RETURN OF PRODUCTS FOR CREDIT. Returns may be made only after prior written approval from Company.

10. AUDITING OF BOOKS. Distributor further agrees to have his books audited at least annually by a competent accountant or auditor and to furnish a certfied copy of such audit to Company for its permanent record.

11. TITLE TO PRODUCTS. Title to any Products ordered by Distributor shall pass to Distributor when such Products have been loaded into Distributor's own or contracted conveyance or when such Products shall have been delivered to and accepted by a common carrier for the account of Distributor.

12. REPORTS TO COMPANY. In order to enable Company to have a complete record of Products sold, Distributor agrees to make available to Company at Company's request a report of all sales of Products made in the territory.

Ex. 7.
1-29-91
HB 76

13. COMPANY'S RIGHT TO REPURCHASE WHEN AGREEMENT IS TERMINATED. In case of the termination of this agreement by either party for any reason, Company may at its option repurchase from Distributor at the net price paid by Distributor to Company, plus actual freight on shipments to Distributor, any or all of the Products on hand in Distributor's place of business or in the possession of Distributor, and upon demand, Distributor shall be obligated to deliver such goods to Company forthwith against payment by the Company of the repurchase price. The Company, however, reserves the right to reject any product not in first class condition.

14. AGREEMENT NOT ASSIGNABLE. This agreement constitutes a personal contract and Distributor shall not transfer or assign same or any part thereof without Company's written consent.

15. NO IMPLIED WAIVERS. The failure of either party at any time to require performance by the other party of any provision hereof shall in no way affect the full right to require such performance at any time thereafter; or shall the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of the provision itself.

16. LAW OF AGREEMENT. This agreement is to be governed by and construed according to the laws of the State of California and venue for any action entered under the agreement is agreed to be the State of California.

17. CHANGE OF PRODUCT. Company reserves the right to change any Products or part thereof at any time without notice to Distributor. If any such change is made, there will be no obligation on Company to make such changes upon any Products shipped upon the orders of Distributor, nor shall Company be obligated to make a similar change on any Product or parts previously shipped to Distributor.

18. NOTICE OF CLAIMS AND ADJUSTMENTS AFTER TERMINATION OF AGREEMENT. If during the term of this agreement Distributor shall have reason to believe it has any claim against Company in respect of any transaction growing out of this agreement it shall in writing notify Company within 30 days after Distributor knows or has any reason to know the basis of any such claim. Failure to give such notice shall relieve Company from any and all liability on any claim in respect of any transaction growing out of this agreement, notice and full details of which are not given to Company in writing within 30 days after such termination. The provisions of this paragraph shall survive the termination of other portions of this agreement.

19. NOTICES. Any notice, request, demand, or other communication required or permitted under this agreement shall be deemed to be properly given when deposited in the United States mail, postage prepaid, or when deposited with a public telegraph company for transmittal, charges prepaid, addressed:

(a) In the case of the Company, to its President at the address set forth for the Company below or to such other person or address as the Company may from time to time furnish in writing to the Distributor.

(b) In the case of the Distributor, to the Distributor at the address set forth for the Distributor below or to such other person or address as the Distributor may from time to time furnish in writing to the Company.

20. AUTHORITY TO MAKE AGREEMENT. This agreement is not valid or binding until and unless executed by the President or a Vice President of the Company.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands the day and year first above written.

"DISTRIBUTOR"

[redacted]
Company Name

By [redacted]
Name

[redacted]
Title

Date [redacted]

"COMPANY"

[redacted] VINERIES AND DISTILLERIES

By [redacted]
Name

[redacted]
Title

Date [redacted]

EXHIBIT "B"

EXHIBIT 8
DATE 1-29-91
HB 76

Brown-Forman Corporation

P O BOX 000 LOUISVILLE, KY 40200 502 585-1100

February 12, 1987

Mr. Robert Clausen, Owner
CLAUSEN'S DISTRIBUTING COMPANY
PO BOX 238
Helena, MT 59624

Dear Robert:

As you know, Brown-Forman has recently announced a major reorganization of its sales organization. The four selling divisions — Jack Daniel Distillery, B-F Spirits Ltd., The Jos. Garneau Co. and California Cooler Company - were consolidated into a single sales force. Our reorganization was done to recognize changing market conditions, to make Brown-Forman more competitive, and to maintain Brown-Forman's position as a major beverage marketer in the future.

To accomplish our goals, Brown-Forman intends to continue its long-term policy of distributor consolidation, wherever possible, to make its new organization more effective in an increasingly competitive marketplace.

The need for a definitive understanding of our business relationship has never been more important. Therefore, we will require your execution of a standard contract for California Cooler products and, in the very near future, a standard contract covering Brown-Forman products currently sold by you. Your refusal to execute an agreement covering Brown-Forman products currently distributed will be detrimental to our continued relationship and could ultimately lead to a termination of our relationship.

I trust you will share our desire for a contract and will find the proposed agreement fair and equitable when you have an opportunity to review it.

PLAINTIFF'S EXHIBIT 27

Finally, our assignment of California Cooler is conditioned upon your execution of the agreement covering Brown-Forman products currently distributed. Your failure to sign said agreement will result in immediate termination of your distribution of California Cooler.

BROWN-FORMAN CORPORATION

Richard Balicki

RICHARD BALICKI
Vice President
& General Manager

ACCEPTED AND AGREED:

DISTRIBUTOR:_____

BY:_____
(Authorized Signature)

PRINTED SIGNATURE NAME:

_____

TITLE:_____

P.S. Please sign and return one copy of this contract as soon as possible to:

Michael Mercer
Brown-Forman Corporation
14711 NE 29th Place, Suite #220
Bellevue, WA 98007

Ltr.
21787

§ 295. State Localizer

ALABAMA:
Deceptive Trade Practices Act (Ala Code) §§ 8-19-1 to 8-19-15.
Motor Vehicle Franchise Act (Ala Code) §§ 8-20-1 to 8-20-12.
Farm Equipment Inventory (Ala Code) §§ 8-21-1 to 8-21-14.
Motor Fuel Marketing Act (Ala Code) §§ 8-22-1 to 8-22-18.
Liquor (Ala Code) §§ 28-8-1 to 28-8-8.

ALASKA:
Gasoline Products Leasing Act (Ak Stat) §§ 45.50.800 to 45.50.850.

ARIZONA:
Motor Vehicle Act (Ariz Rev Stat) §§ 28-1302, 28-1304.02.
Petroleum Products Franchises (Ariz Rev Stat) §§ 44-1551, 44-1559.
Termination of Beer and Liquor Franchises (Ariz Rev Stat) §§ 44-1565 to 44-1567.

ARKANSAS:
Franchise Practice Act (Ark Stat Annot) §§ 4-72-201 to 4-72-209 (formerly §§ 70-807 to 70-817).
Gasoline Distributors and Dealers Acts (Ark Stat Annot) §§ 4-72-401 to 4-72-403 (formerly §§ 53-1001 to 53-1003); 4-72-501 to 4-72-503 (formerly §§ 53-1101 to 53-1103).
Farm Equipment Retailer Protection Act (Ark Stat Annot) §§ 4-72-301 to 4-72-309 (formerly §§ 70-819 to 70-826).
Arkansas Motor Vehicle Commission Act (Ark Stat Annot) §§ 23-112-101 to 23-112-105, 23-112-201 to 23-112-205, 23-112-301 to 23-112-311, 23-112-402 to 23-112-406, 23-112-501 to 23-112-509 (formerly §§ 75-2301 to 75-2312).

CALIFORNIA:
Franchise Investment Law (Ca Corp Code) §§ 31000 to 31516 (disclosure and registration requirements).
Permit Processing Times (Ca Admin Code) §§ 250.50, 250.51.
Franchise Relations Act (Ca Bus and Prof Code) §§ 20000 to 20043 (relationship termination and renewal laws).
Contracts for Seller-Assisted Marketing Plans (Ca Civil Code) §§ 1812.200 to 1812.220 (business opportunity laws).
Automobile Dealers Act (Ca Veh Code) §§ 3060 to 3069.
Petroleum Dealers and Distributors (Ca Bus and Prof Code) §§ 20999 to 20999.4.
California Fair Dealership Law (Ca Civil Code) §§ 80 to 86.
Relocation of Franchises in Shopping Centers (Laws of 1980, Ch 1355 § 5).
Discrimination (Ca Civ Code) Div 1, Part 2 § 51.8.

COLORADO:[93]
Automobile Dealers (Colo Rev Stat) §§ 12-6-101, 12-6-102, 12-6-118 to 12-6-122, 12-6-301 to 12-6-303.
Farm Implements (Colo Rev Stat) §§ 35-38-101 to 35-38-110.

CONNECTICUT:[94]
Termination and Renewal Law (Conn Gen Stat) §§ 42-133e to 42-133h.

93. McKenzie, Franchise regulation (Colo) 15 Colo Lawyer 395(3), March 1986.

94. Farrell, Franchising in Connecticut—can anybody here play this game? 54 Conn BJ 446, Oct 1980.

Business Opportunities Law (Conn Gen Stat) §§ 36-503 to 36-521.
Petroleum Product Franchisors (Conn Gen Stat) §§ 42-133j to 42-133n.
Liquor Dealers (Conn Gen Stat) § 30-17.
Automobile Dealerships (Conn Gen Stat) §§ 42-133r to 42-133ee.

DELAWARE:
Prohibited Trade Practices (Del Code Annot) §§ 6-2551 to 6-2564.
Retail Sales of Motor Fuel (Del Code Annot) §§ 6-2901 to 6-2912.
Motor Vehicle Franchising Practices Act (Del Code Annot) §§ 6-4901 to 6-4918.
Pyramid or Chain Distribution Schemes (Del Code Annot) §§ 6-2561 to 2564.
Equipment Dealer Contracts (Del Code Annot) §§ 6-2720 to 6-2727 (construction, farm, industrial or outdoor power equipment).

FLORIDA:
Misrepresentation Law (Fla Stat Annot) § 817.416.
Business Opportunity Law (Fla Stat Annot) §§ 559.80 to 559.815.
Motor Vehicle Dealers (Fla Stat Annot) §§ 320.64 et seq.
Farm Equipment (Fla Stat Annot) §§ 686.201 to 686.418.
Motor Fuel (Fla Stat Annot) §§ 526.301 to 526.3135.
Beer (Fla Stat Annot) § 563.022.

GEORGIA:[95]
Sale of Business Opportunities (Geo Code) §§ 10-1-410 to 10-1-416.
Gasoline Marketing Practices Act (Geo Code) §§ 10-1-230 to 10-1-241.
Motor Vehicle Franchise Practices Act (Geo Code) §§ 10-1-620 to 10-1-663.
Farm Equipment (Geo Code) §§ 13-8-31 to 13-8-45.
Optical Firms (Geo Code) § 43-30-5.1.

HAWAII:
Franchise Investment Law (HI Rev Stat) §§ 482E-1 to 482E-12.
Automobile Dealers Act (HI Rev Stat) § 437-28(b).
Gasoline Dealers Act (HI Rev Stat) §§ 486H-1 to 486H-9.
Office Machines (HI Rev Stat) §§ 481G-1 to 481G-8.

IDAHO:
Farm Implement Dealers (ID Code) §§ 28-23-101 to 28-23-111.
Automobile Dealers (ID Code) § 49-2414.
Beer Distributors (ID Code) § 23-1033A.
Wine Distribution (ID Code) § 23-1328A.

ILLINOIS:
Franchise Disclosure Act of 1987, Laws 1987, P.A. 85-551 §§ 1 to 44.
Motor Vehicle Franchise Act (Ill Rev Stat) Ch 121 1/2 §§ 751 to 764.
Farm, Industrial and Outdoor Power Equipment Fair Dealership Act (Ill Rev Stat) Ch 5 §§ 1501 to 1511.
Beer Wholesalers (Ill Rev Stat) Ch 43 §§ 301.1 to 302.

INDIANA:
Indiana Franchise Disclosure Law (Ind Code) §§ 23-2-2.5-1 to 23-2-2.5-50.
Indiana Deceptive Franchise Practice Law (Ind Code) §§ 23-2-2.7-1 to 23-2-2.7-7.

95. Branch, Franchising in Georgia, 24 Ga St BJ 92, Nov 1987.

Indiana Business Opportunity Transactions Act (Ind Code) §§ 24-5-8-1 to 24-5-8-21.
Motor Vehicle Code (Ind Code) §§ 9-10-1-1 to 9-10-5-5.
Beer Distributors (Ind Code) § 7.1-5-5-9.

IOWA:
Business Opportunity Sales Law (Iowa Code) §§ 523B.1 to 523B.11.
Motor Vehicle Franchisors (Iowa Code) §§ 322A.1 to 322A.17.
Marketing and Distribution of Motor Fuel and Special Fuel (Iowa Code) §§ 323.1 to 323.13, 323A.1 to 323A.3.
Farm Implements, Motorcycle and Parts Franchises (Iowa Code) §§ 322D-1 to 322D-8.

KANSAS:
Motor Vehicle Dealers (Kans Stat Annot) §§ 8-2401 et seq., (formerly §§ 8-2301 to 8-2323).
Farm Equipment Dealers (Kans Stat Annot) §§ 16-1001 to 16-1006.
Liquor Franchisors (Kans Stat Annot) §§ 41-410 to 41-411.

KENTUCKY:
Sale of Business Opportunities (Ky Rev Stat) §§ 367.801 to 367.819, 367.990.
Motor Vehicle Dealers (Ky Rev Stat) §§ 190.010 to 190.080.

LOUISIANA:
Business Opportunity Sellers and Agents (La Rev Stat) §§ 51:1821 to 51:1824.
Service Station Dealers Day in Court Law (La Rev Stat) §§ 51:1451 to 51:1454.
Motor Vehicle Dealers (La Rev Stat) § 32:1254A(4)(c).
Farm Equipment Dealers (La Rev Stat) §§ 51:481 to 51:487.
Sales Representatives (La Rev Stat) §§ 51:441 to 51:445.
Real Estate Agencies (Laws of 1983, Pub. Law No. 83-381).
Marine Products (Laws of 1987, Act 168).
Motorcycles (Laws of 1988, Act 327).
Motorcycles and ATV's (Laws of 1988, Act 820).

MAINE:
Business Opportunity Law (Maine Rev Stat Annot) Title 32, Ch 69-B §§ 4691 to 4700-B.
Motor Vehicle (Maine Rev Stat Annot) Title 10, Ch 204 §§ 1171 to 1186.
Motor Fuel Distribution Act (Maine Rev Stat Annot) Title 10, Ch 215 §§ 1451 to 1456.
Wine Franchises (Maine Rev Stat Annot) Title 28-A, Ch 57, §§ 1451 to 1465.

MARYLAND:
Franchise Registration and Disclosure Act (Annot Code of Md) Art 56 §§ 345 to 365D.
Franchise Registration and Disclosure Regulations Title 02, subtitle 02, Ch 10; State Law Dept, Div of Securities.
Business Opportunities Sales Act (Annot Code of Md) Art 56 §§ 401 to 415.
Gasoline Products Marketing Act (Annot Code of Md—Art Commercial Law, Title 11) §§ 11-301 to 11-308.
Beer Franchise Fair Dealing Act (Annot Code of Md) Art 2B §§ 203A to 203G.

Equity Participation Investment Program Law (Statute Extending Program to Franchising) (Annot Code of Md) Art 13 §§ 235 to 241.

MASSACHUSETTS:
Automobile Dealers' Act (Mass Gen Laws) Ch 93B §§ 1 to 15.
Gasoline Dealers' Act (Mass Gen Laws) Ch 93E §§ 1 to 9.
Alcoholic Liquors (Mass Gen Laws) Ch 138 § 25E (Unfair Trade Practices).

MICHIGAN:
Franchise Investment Law (Mich Compiled Laws) §§ 445.1501 to 445.1545.[96]
Business Opportunity Act (Mich Compiled Laws) § 445.902.
Motor Vehicle Dealers (Mich Compiled Laws) §§ 445.1561 to 445.1583.
Farm and Utility Equipment Franchise Act (Mich Compiled Laws) §§ 445.1451 et seq.
Beer and Wine Wholesalers (Mich Compiled Laws) §§ 436.30a to 436.30d.

MINNESOTA:
Franchise Law (Minn Stat) §§ 80C.01 to 80C.22 (includes relationship termination and renewal provisions).[97]
Powers of Commissioner of Commerce (Minn Stat) §§ 45.026 to 45.028 (includes investigation, hearing and enforcement powers pertaining to Ch 80C).
Automobile Dealers (Minn Stat) §§ 80E.01 to 80E.18.
Farm Implement Dealers (Minn Stat) § 325E.05.
Brewers and Beer Wholesalers (Minn Stat) §§ 325B.01 to 325B.17.
Motor Fuel Dealers (Minn Stat) § 80C.145.
Burglar Alarm Franchises (Minn Stat) § 80C.30.

MISSISSIPPI:
Pyramid Sales Schemes (Miss Code Annot) §§ 75-24-51 to 75-24-61 (termination and renewal laws).
Motor Vehicle Commission Act (Miss Code Annot) §§ 63-17-51 to 63-17-139.
Inventory Repurchase (Miss Code Annot) §§ 75-77-1 to 75-77-19.

MISSOURI:
Merchandising Practices Act (Mo Rev Stat) §§ 407.400 to 407.420 (includes pyramid sales law and termination law).
Farm Machinery Dealers' Dealership Agreements. Inventory Act (Mo Rev Stat) §§ 407.838 to 407.848.
Farm Implement Manufacturer or Distributors—Repurchase of Retail Inventories (Mo Sess Laws, Mo Rev Stat) §§ 407.850 to 407.885.
Motor Vehicle Franchise Practices Act (Mo Rev Stat) §§ 407.810 to 407.835.

MONTANA:
Automobile Dealers (Mont Code Annot) §§ 61-4-201 to 61-4-210.
Brewers and Beer Sellers (Mont Code Annot) §§ 16-3-221 to 16-3-226.

NEBRASKA:

96. May and Steinberg, Great expectations: 1984 amendments to the Michigan Franchise Investment Law, 64 Mich BJ 32, Jan 1985; Foley, The Slippery Slope of Renewal of Notice Filing under Michigan's Franchise Investment Law, 8 Franchise LJ 3, Spring 1989.

97. Alden, Overview of franchising for general practitioner, 54 Hennepin Lawyer 12 (May-June 1985).

Franchise Practices Act (Nebr Rev Stat) §§ 87-401 to 87-410.
Seller-Assisted Marketing Plans (Nebr Rev Stat) §§ 59-1701 to 59-1761.
Motor Vehicle Industry Licensing Act (Nebr Rev Stat) §§ 60-1401.01 to 60-1435.
Farm Implement Dealers (Nebr Rev Stat) §§ 69-1501 to 69-1504.
Motor Fuel Dealers Succession Act (Nebr Rev Stat) §§ 87-411 to 87-414.

NEVADA:
Automobile Dealers (Nev Rev Stat) Title 43 §§ 482.36311 to 482.3665.
Liquor and Beer Dealers (Nev Rev Stat) Title 52 §§ 598.290 to 598.350.
Petroleum Products Dealers (Nev Rev Stat) Title 52 §§ 598.650 to 598.680.

NEW HAMPSHIRE:
Distributorship Disclosure Act (NH Rev Stat Annot) §§ 358-E:1 to 358E:6.
Motor Vehicle Franchises (NH Rev Stat Annot) §§ 357-C et seq. (formerly §§ 357B:1 to 357B:17).
Gasoline Franchises (NH Rev Stat Annot) §§ 339C:1 to 339C:9.

NEW JERSEY:
Franchise Practices Act (NJ Rev Stat) §§ 56:10-1 to 56:10-15.[98]

NEW MEXICO:
Automobile Dealers (N Mex Stat Annot) §§ 57-16-1 to 57-16-16.
Liquor and Beer Dealers (N Mex Stat Annot) §§ 60-8A-1 to 60-8A-11 (formerly §§ 60-9-3 to 60-9-12); Laws 1981, Ch 39.
Farm Equipment Dealers (N Mex Stat Annot) §§ 57-23-1 to 57-23-8.

NEW YORK:[99]
Franchise Sales Act (NY Gen Bus Law) Art 33 §§ 680 to 695.
Automobile Dealers (NY Veh and Traff Law) Art 17A §§ 460 to 471; (NY Gen Bus Law) Art 11-A § 197.
Gasoline Dealers (NY Gen Bus Law) Art 11-B §§ 199-a to 199-k.

NORTH CAROLINA:
Business Opportunity Sales Law (NC Gen Stat) §§ 66-94 to 66-100.
Motor Vehicle Dealers (NC Gen Stat) § 20-305.
Brewers (NC Gen Stat) § 18B-1114.

NORTH DAKOTA:
Franchise Investment Law (ND Century Code) §§ 51-19-01 to 51-19-17.
Farm Implement and Motor Vehicle Dealers (ND Century Code) §§ 51-07-01, 51-07-01.1.
Recreational Vehicles (ND Century Code) §§ 51-20-01, 51-20-02.
Heavy Construction Equipment Franchises (ND Century Code) §§ 51-20.1-01 to 51-20.1-05.
General Dealer Law S.B. 2403 apprvd April 1, 1987 eff July 1, 1987.

OHIO:
Business Opportunity Law (Ohio Rev Code) §§ 1334.01 to 1334.15, 1334.99.
Motor Vehicle Franchises (Ohio Rev Code) §§ 4517.01 to 4517.65.
Alcoholic Beverages Franchise Act (Ohio Rev Code) §§ 1333.82 to 1333.87.

98. Espersen, Overview of Franchise Practice Act (New Jersey) NJ Law 44, Spring 1985.

99. DeBiase, Franchising: a primer for the general practitioner in New York, 56 NY St BJ 26(5), July 1984.

OKLAHOMA:
Business Opportunity Sales Act (Okla Stat) Title 71 §§ 801 to 827 (added by Laws 1985, H.B. No. 1289, approved June 13, 1985, eff November 1, 1985).
Automobile Dealers (Okla Stat) Title 47, Ch 62 §§ 561-575.

OREGON:
Franchise Law (Oreg Rev Stat) Title 50 §§ 650.005 to 650.085.
Administrative Rules Ch 815, Div 40.
Motor Vehicle Dealerships (Oreg Rev Stat) Title 50 §§ 650.120 to 650.170.

PENNSYLVANIA:
Petroleum Products Dealers (Penn Stat Annot) Title 73 §§ 202-1 to 202-8 (Purdon).
Motor Vehicle Act (Penn Acts of 1973) Act No 144 §§ 1 to 11.

RHODE ISLAND:
Franchise and Distributorship Investment Regulations Act (Gen Laws of RI) §§ 19-28-1 to 19-28-15.
Motor Vehicle Laws (Gen Laws of RI) §§ 31-5.1-1 et seq.
Motor Fuel Distribution and Sales (Gen Laws of RI) §§ 5-55-1 et seq.
Beer Industry Fair Dealing Law (Gen Laws of RI) §§ 3-13-1 et seq.

SOUTH CAROLINA:
Business Opportunity Sales Act (SC Code) §§ 39-57-10 to 39-57-80.
Motor Vehicle Dealers (SC Code) §§ 56-15-10 to 56-15-130.

SOUTH DAKOTA:
Franchises for Brand-Name Goods and Services (S Dak Codified Laws) §§ 37-5A-1 to 37-5A-87.
Business Opportunities Act (S Dak Laws 1985) H.B. No. 1076, approved March 2, 1985, eff July 1, 1985.
Farm Implement Dealers (S Dak Codified Laws) §§ 37-5-1 to 37-5-9.
Motor Vehicle Dealers (S Dak Codified Laws) §§ 32-6A-1 to 32-6A-16 [repealed by SL 1986, Ch 250 § 63].
Beer Distributors (S Dak Laws 1978) Ch 266.

TENNESSEE:
Petroleum Trade Practices Act (Tenn Code Annot) §§ 47-25-601 to 47-25-607, 47-25-621 to 47-25-624 (formerly §§ 69-7-701 to 69-7-707, 69-7-721 to 69-7-724).
Farm Implement and Industrial Equipment Dealers (Tenn Code Annot) §§ 47-25-1301 et seq. (formerly §§ 47-19-101 to 47-19-110).
Motor Vehicle Dealers (Tenn Code Annot) § 55-13-103 (formerly § 59-13-1303).

TEXAS:[1]
Business Opportunity Act (Tex Rev Civ Stat) Title 79, Ch 16, Art 16.01 to 16.15 as amend eff Aug 29, 1983 and May 24, 1985.
Business Opportunity Regulations 1 TAC §§ 97.21 to 97.23.
Motor Vehicles Dealers (Tex Motor Veh Commission Code) Art 4413(36).

UTAH:
Business Opportunity Disclosure Act (Utah Code Annot) §§ 13-15-1 to 13-15-6.

1. Miller, Franchising in Texas, 14 St Mary's LJ 301, Spring 1983; Braly, Price and Keffler, Franchising in Texas, 6 Franchise LJ 1, Fall 1986; Lewis, Franchise litigation in Texas: analyzing claims and defenses (Symposium: Business Tort Litigation) 19 St. Mary's LJ 663, Winter 1988.

Automobile Dealers (Utah Code Annot) Title 41, Chs 3 and 4.
Gasoline Products Marketing Act §§ 13-12-1 to 13-12-8.

VERMONT:

Motor Vehicle Dealers Act (Vt Stat Annot) Title 9, Ch 107 §§ 4083 to 4100.
Gasoline Service Station Franchises (Vt Stat Annot) Title 9, Ch 109 §§ 4101 to 4109.
Beer and Wine Franchises (Vt Stat Annot) Title 7, Ch 23 §§ 701 to 708.

VIRGINIA:

Retail Franchising Act (Va Code) §§ 13.1-557 to 13.1-574.[2]
Business Opportunity Sales Act (Va Code) §§ 59.1-262 to 59.1-269.
Petroleum Products Franchise Act (Va Code) §§ 59.1-21.8 to 59.1-21.18:1
Motor Vehicle Dealers (Va Code) §§ 46.1-546 to 46.1-550:5.
Beer Franchise Act (Va Code) §§ 4-118.3 to 4-118.20.

WASHINGTON:

Franchise Investment Protection Act (Wash Rev Code) §§ 19.100.010 to 19.100.940.
Business Opportunities Fraud Act (Wash Rev Code) §§ 19.110.010 to 19.110.930.
Motor Vehicles Dealers (Wash Rev Code) §§ 46.70.180(11), 46.70.190.
Farm Implement Dealers (Wash Rev Code) §§ 19.98.010 to 19.98.910.
Beer and Wine Wholesale Distributor Supplier Equity Act Wash 1984 Session Laws, Ch 169.
Gasoline Dealers' Bill of Rights Act 1986 Reg Session Laws, Ch 320.

WEST VIRGINIA:

Brewers and Beer Distributors Act (W Va Code) §§ 11-16-12a, 11-16-13b.
Motor Vehicle Manufacturers and Dealers (W Va Code) §§ 47-17-1 to 47-17-10. Repealed and replaced by Laws 1982, House Bill 1927, eff June 10, 1982 [now §§ 17A-6A-1 et seq.].
Petroleum Products Franchise Act (W Va Code) §§ 47-11C-1 to 47-11C-8.

WISCONSIN:

Franchise Investment Law (Wis Stat Annot) §§ 553.01 to 553.78.
Fair Dealership Law (Wis Stat Annot) §§ 135.01 to 135.07.
Automobile Dealers' Act (Wis Stat Annot) § 218.01(3)(a).

WYOMING:

Motor Vehicle Franchise Act (Wyo Stat Annot) §§ 40-15-101 to 40-15-109.
Repurchase of Farm Machinery Act (Wyo Stat Annot) §§ 40-18-101 to 40-18-107.

Practice guide: For a detailed analysis of franchise relationship laws, including popular names, types of law, statutory examples of good cause for termination, procedural requirements for termination and nonrenewal, and examples of other unlawful practices under various state statutory provisions, see the appendices following the article cited below.[3]

§ 296. —Other jurisdictions

PUERTO RICO:

Dealers' Contracts Act (PR Laws Annot) Title 10, Ch 14 §§ 278 to 278d (termination).

2. Clinard and Peters, The Virginia experience: retail franchise regulation, 9 Va BAJ 20, Spring 1983.

3. Pitegoff, Franchise Relationship Laws: A Minefield for Franchisors, 45 Business Lawyer 289 (Nov. 1989), at pp 321 et seq.

VIRGIN ISLANDS:

Consumer Protection Law Title 12A §§ 130-139 (Franchised Businesses).

ALBERTA, CANADA:

Franchises Act (Alb Rev Stat) Ch F-17 (disclosure and registration requirements).
Franchises Regulations Alberta Regulation 201/72.

B. Franchise Laws and Documents; Disclosure/Registration Requirements [§§ 297–323]

Research References

ALR Digest to 3d, 4th, and Federal, Franchises § 14
Index to Annotations, Franchises

1. In General; Validity [§§ 297–303]

§ 297. Generally

As noted earlier, some states have enacted laws dealing directly with the franchise relationship, including statutes requiring disclosure and/or registration patterned after federal and state securities acts, for the purpose of forcing complete disclosure of the information necessary to permit prospective franchisees to make intelligent decisions prior to the purchase of the franchise.[4] Other franchise laws are concerned with the subsequent equally difficult problem of wrongful terminations, cancellations, or nonrenewals.[5] However, there is no great uniformity among these statutes, which have various names, including Franchise Investment Law, Franchise Practices Act, Franchise Relations Act, Franchise Disclosure Act, Franchise Registration and Disclosure Act, or, very simply, Franchise Law.[6]

A state franchise sales statute serves legitimate state interests since the state has a valid interest in protecting prospective franchisees from unscrupulous franchisors, and the protection of investors is without question a legitimate state objective.[7]

Observation: Some state franchise statutes contain an anti-waiver

4. § 292.

5. Generally as to termination, cancellation, or nonrenewal of franchises, see the discussion in §§ 507 et seq.

6. Horwitz and Volpe, Regulating the franchise relationship, 54 St John's L Rev 217, Winter 1980; Santoni, Franchising: a critical assessment of state and federal regulation, 14 Creighton L Rev 67, Fall 1980; Cantor, The federal and state regulation of franchises (part 1), 27 Practical Lawyer 55, Sept 1981; Cantor, The federal and state regulation of franchises (part 2), 27 Practical Lawyer 77, Oct 15, 1981; Rudnick, The Franchise Relationship: Problem Areas for the 1980s: Part I—Government Regulation, 2 Franchise LJ 1, Summer/Fall 1982; Casey, An Overview of Franchising Regulation, 11 ALI-ABA Course Materials Journal 53, October 1986; Selden, Public Regulation of Franchising: Choking the Goose That Lays the Golden Eggs? 9 Franchise LJ 1, Fall 1989.

American Bar Association 12th Annual Forum on Franchising (1989): Barkoff, Calvani, and Hayden, The Search for Uniformity in Franchise Sales Regulation—Don Quixote Rides Again; Bjerke, Hayden, Maxey, Ringo and Tregillus, Practical Problems under Registration and Disclosure Laws; Spandorf, An Overview of the Law and Requirements of Franchise Registration.

7. Mon-Shore Management, Inc. v Family Media, Inc. (SD NY) 584 F Supp 186.

EXHIBIT 10
DATE 1-29-91
HB 74

House Bill 76

Page 1, line
following: enacting clause
insert: STATEMENT OF INTENT

The legislature intends to adopt most of the provisions of the Washington wholesaler/supplier equity agreement act (RCW 19.126.010 et seq.) and intends that the department of revenue look to the administrative interpretations and policies of its counterpart agency in Washington in carrying out this act. The legislature intends, however, to avoid the result stated in Birkenwald Distributing Co. v. Heublein, Inc., 55 Wash. App. 1, 776 P.2d 721 (1989), in which the court decided that the Washington act did not apply to existing contracts. In section 10 the legislature expressly declares its intent that this act apply to existing contracts, within the constitutional limits stated in Neel v. First Federal Savings & Loan Association, 207 Mont. 376, 675 P.2d 96 (1984).

p. 4, line 4
following: "(3)"
insert: "or (4)"

p. 5, line 5
following: line 4
insert: "(4) A supplier may terminate an agreement of distributorship for any other legitimate and good faith business reason, if the department of revenue finds, after opportunity for hearing to the distributor and to other interested persons, that public convenience and necessity would be served thereby."

p. 5, line 10
following: "territories"
strike: "the supplier shall offer the same prices, delivery, terms, and promotional support to each table wine distributor."
insert: "it shall first secure the approval of the department of revenue. The department may approve dual or overlapping territories only upon finding, after opportunity for hearing, that public convenience and necessity would be served by such appointment.

(2) An all-beverage licensee may, upon presentation of his license or a photocopy of his license, personally obtain from any distributor's warehouse such quantities of table wine as he and the distributor may agree to buy and sell.

p. 10, line 11
following: line 10
insert: "NEW SECTION. Section 10. Applicability--retroactive effect. (1) The legislature finds that the business of selling and marketing wine has been pervasively regulated in Montana for many years, and that suppliers and distributors of table wine have entered into contracts which generally contemplate that state governments may enact regulations subsequent to the execution of such contracts which will affect obligations under those contracts.

(2) This act therefore applies to all contracts written or oral, in effect in Montana as of January 1, 1991, when the bill enacting this act was introduced. To that extent this act is declared to be retroactive within the meaning of 1-2-109, MCA.

Tom Roger Tippy

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Bus. & Econ Dev COMMITTEE BILL NO. SB 2

DATE Jan 29, 1991 SPONSOR(S) Senator Tom Hager

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Jacqueline Terrell	Amer. Ins. Assoc	SB 2	X	
[illegible]	[illegible]	2	X	
Dave Barnhill	Insurance dept	2		+
Susan Witte	" "	2		+
Jim Borchardt	" "	2		+
Jerome T Loendorf	Mt. Med Assn	2		✓
Roger McGlenn	Ind. Ins. Agents Assoc. of MT	SB 2	X	
Tom Hager	SD 42 (Sponsor)	SB 2		X
Steve Brown	State Farm Insurance	SB 2	X	
Gene Phillips	NAII; Alliance	SB 2	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES 1 of 2

VISITOR'S REGISTER

Business & Econ Dev. COMMITTEE BILL NO. HB 76

DATE 1/29/91 SPONSOR(S) Rep. Gould

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
DIANA KOON	D of REVENUE			
Roger Tippy	Mt Beer & Wine Wholesalers	HB76		X
Robert E. Zacconi	" "Zeke's Dist.	HB76		X
Peter E. Decker	Briggs Liq Co., Billings	HB76		X
Bill Watkins	" " " " Zip Beverage	HB76		X
CORBIN HOUCHINS	WASH. WINE INST. ORE WINEGROWERS ASSN	HB76	X	
Kevin C. Devine	Devine & Asselstine Inc	HB76		X
BRIAN C. CLARK	FUN BEVERAGE, INC	HB76		X
DAVE HEWITT	CLAUSEN DIST CO	HB76		X
ED BRANDT	CARDINAL DIST Co	HB76		X
Myra Jamieson	WINE Institute	HB 76	X	
SYDNEY ABRAMS	WINE INSTITUTE	76	X	
Steve Browning	Anheuser Busch Companies	76		

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Business & Econ. Development COMMITTEE BILL NO. HB 76

DATE Jan. 29, 1991 SPONSOR(S) Rep. Gould

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
R Budd Gould	~~HB~~ Myself			✓

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.