

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT

Call to Order: By REP. BOB BACHINI, CHAIRMAN, on March 5, 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)
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)

Member Excused: Rep. Tim Dowell

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

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

Announcements/Discussion: HB 244, SB 8, SB 190 were heard.
Executive Action was taken on SB 8, SB 89, SB 190.

HEARING ON SENATE BILL 244

SEN. GREG JERGESON, SD 8, Chinook, said this bill from the
Legislative Audit Committee will require Business and Licensing
Boards who expand their responsibilities to consult the
Department of Commerce for the possible availability of money.
If there is not a budget they need to find a way to raise money.
Members of the Legislative Audit Committee will answer questions.
There were no objections to this bill when it passed the Senate.

Proponents' Testimony:

Steve Meloy, Bureau Chief, Professional and Occupational Licensing, Department of Commerce, agreed with the testimony by SEN. JERGSON and submitted testimony. EXHIBIT 1 Boards have created new programs overtaking existing staff and as a result there was no way to meet all of the work demands. Any expansion of a licensing program would require input from the Bureau.

Opponents' Testimony: None

Questions from the Committee: None

Closing by the Sponsor: SEN. JERGSON closed.

EXECUTIVE ACTION ON SENATE BILL 244

Motion/Vote: REP. BOB PAVLOVICH moved SB 244 Be Concurred In. Motion Carried unanimously. REPS. CROMLEY and DOWELL were absent.

HEARING ON SENATE BILL 8

SEN. JOE MAZUREK, SD 23, Helena, said SB 8 would create a licensing board for real estate appraisers. It is an Act regulating the practice of real estate appraising; establishing the Board of Real Estate Appraisers; providing for licensure and certification of real estate appraisers; providing penalties; establishing fees; and providing an immediate effective date. This is a result of the fallout from the federal savings and loan crisis. If states are to have Farm Home Loans (FHA), VA Loans, HUD Loans and SBA Loans, they must be processed through institutions and the appraisals upon which those are based must be done by state licensed and certified appraisers. If this bill is not passed, none of these loans will be available in Montana after July 1, 1991.

The state must maintain and send to Washington D.C. lists of certified appraisers. SB 8 establishes two levels of appraisers. The higher level is certified and is required for any loan of more than \$1 million. For transactions of \$50,000 or higher, the loaning institution must rely on a licensed appraiser. As it passed the Senate an attempt was made to achieve minimal requirements to comply with what federal law says and not go beyond that. The Board will still have five members: three appraisers and two public members. If the Governor wants to appoint the head of the Department of Revenue (DOR) or a banker, he can do so.

The bill does not require a person to be a licensed appraiser to express an opinion about the value of property. Realtors may still estimate value. Insurance adjustors may also express opinions of the value of property; however, they may not present themselves to be certified licensed appraisers if they are not.

No one is grandfathered in under this law. To qualify for licensure, a person must complete 165 hours of classroom study. At least 15 hours must be standards and professional practice. They must pass an exam and meet some experience guidelines. The Board shall adopt and administer a written examination for certified real estate appraisers and establish standards of acceptable performance, but they may not be any more stringent than the federal law requires. Section 20 sets forth the levels of classification of which there are two: certified and licensed. There are general and specific classes of certification. This is an independent Board attached to the Department of Commerce.

Proponents' Testimony:

Tom Hopgood, Montana Association of Realtors and the National Association of Independent Fee Appraisers, said both organizations are in strong support of SB 8. He emphasized the seriousness of passage of this bill in order for federal transactions to happen in Montana. Both the appraisers and the realtors worked with **SEN. MAZUREK** on this bill to see that it meets the federal guidelines. The amendments placed on it in the Senate are agreed to by all the parties concerned. Only three of the members of the Board have to be certified. He urged SB 8 be given a Do Pass recommendation.

Joe B. Moore, Montana Chapter, National Association of Independent Fee Appraisers, said this organization has worked with other appraisal organizations, realtors and other interested persons in the State to put this bill together. Montana is the 50th state that doesn't have this in place. It has to be in place by July 1, 1991, so time is important. He urged passage of SB 8.

Ronald Appel, Montana Chapter, American Society of Farm Managers and Rural Appraisers, represents 75 real estate appraisers and the organization is in support of SB 8. Compliance with federal law is mandated by July 1, 1991. He asked SB 8 be given favorable consideration.

Steve Hall, Rocky Mountain Chapter, Appraisal Institute, said there has been a federal mandate, but it would be better to do this on a voluntary basis. They did begin work on the bill three years ago under a voluntary certification. There have been changes to the bill. It has been rewritten allowing a significant amount of flexibility. A residence appraiser certification law could be included later, but this bill does not include that at this time. SB 8 will require some fine tuning over time. This legislation is the current reflection of Title 11 and is initiated on a national level. He asked SB 8 Be Concurred In.

William Spilker, Montana Association of Realtors, is a real estate broker. He emphasized the urgency of passage of this legislation because of the federal mandate which would eliminate many federal loans if it and the necessary administration set up is not in place by July 1, 1991. EXHIBIT 2

Pat Asay, International Right-of-Way Association, said SB 8 is needed to satisfy federal requirements, and as it is written it does that. Appraisal legislation is in its infancy and it is naive to think all things have been included, some cannot be anticipated. SB 8 does allow necessary flexibility.

Bill Leary, Montana Bankers Association, said they concur in the adoption of SB 8, and appreciate its flexibility.

Jock Anderson, MT League of Savings Institutions, supports SB 8.

Bob Pyfer, VP, MT Credit Unions League, supports the bill.

Annie Bartos, Chief Legal Counsel, Department of Commerce, said the Department supports SB 8. The federal law mandates this Board be in place by July 1, 1991. The real estate market in Montana needs this legislation.

See the Visitor's Register for more proponents who were present.

Opponents' Testimony: None

Questions from the Committee:

REP. SONNY HANSON couldn't see any reference to existing organizations. Is it not the intent to give existing appraisers some credit? SEN. MAZUREK said members of those organizations will be represented but this bill does not recognize any particular entity. Members of the MIA organizations have to go through this licensure as well if they want to go beyond that. They will still do appraising, but it won't under the scheme of things in this bill.

REP. BENEDICT asked why the bill states "consent of the Senate". What would be done when the Legislature was not in session? SEN. MAZUREK explained that is standard for virtually every board. All of the Governor's appointments have to be approved by the Senate. Once the Governor appoints, they serve until confirmed.

REP. LARSON asked if the Board of Appraisers would develop a test procedure. SEN. MAZUREK said they will have to meet the minimum requirements based on experience, and would have to pass the examination if they want to be certified. REP. LARSON asked if the requirements and tests are commensurate with the national. REP. MAZUREK said they would have to comply with the federal legislation. Mr. Hopgood said there are two national testing services approved by the appraisal subcommittee. He anticipates the Board would use their services.

REP. LARSON asked how fee schedules were determined. Mr. Hopgood referred the question to one of the appraisers. Mr. Hall said fees are based on hours. That will vary depending upon the experience level of the appraiser. There will never be uniformity. Other states have developed some of their own tests

that have been approved. Once this gets implemented, other states can be considered and a Montana planned test can be sent for approval.

REP. STELLA JEAN HANSEN asked if colleges were set up for these courses. **Mr. Hall** said there wasn't anything at the university level at the moment. The National Appraisers organizations offer education throughout the State. They have a 40-hour course that can be attended out-of-state. **REP. STELLA JEAN HANSEN** asked if after July 1 an appraiser could be used who wasn't licensed. **Mr. Hall** said not for federally related transactions. The last information he had was that there would not be an extension. The states would like a six-month extension. **REP. S.J.HANSEN** asked how soon could these appraisers be licensed. **Mr. Hall** said if SB 8 is passed and the Appraiser Board is in place, two tests are available and could be taken and passed by July 1. **REP. S.J.HANSEN** asked how they could get in 75 hours. **Mr. Hall** said there are many people who have the education. The education requirement does not have any time line. There is nothing in the law that says 15-year old education is not O.K. **EXHIBIT 3. REP. S.J.HANSEN** asked if the grandfathering did not include the education. **Mr. Hall** said the education does not come under a timeline.

REP. SHEILA RICE asked if the Legislature could transmit to Congress some feeling there was unfairness built into the law. This could raise consumer prices and would reduce the number of appraisers available. Is there opposition in other states in terms of the federal law? **Mr. Moore** said one year ago the National Association of Certified Review Appraisers and Mortgage Underwriters had opposed it. They are not a member of the Appraisal organization. They don't have testing procedures in place to grant designations and they are not widely accepted by lenders at present. **REP. S.RICE** asked if the federal law weren't mandated, would the appraisers be proposing licensure. **Mr. Moore** said probably. During the last session, it was proposed but in a different light. It was voluntary and not under a mandate.

REP. WALLIN asked if SBA loans would not be available. **SEN. MAZUREK** said he believed that was correct. A state certified appraiser would have to do the appraising for real estate loans.

REP. PAVLOVICH asked if the Department of Commerce had any problems with the bill. **Mr. Meloy** said no. They had worked with the sponsor and with members and found the fiscal note should address their concerns. The man hours should equate to a .25 FTE.

REP. STEPPLER asked what will happen in the third year. **Mr. Meloy** said the fiscal note shows a surplus the first year, a deficit the second year and the third year the Board by rule could adjust their fees. If a Board spends less than its appropriated budget, which occasionally happens, some of that appropriation may be shifted so it can be held until such time as the Board can adjust its fees and mitigate any loss.

REP. BACHINI said he hopes the Board will allow for more than one place for the education to be accessible. Mr. Meloy said Boards do find ways to move their examination sites. It is more costly but it is more accessible. REP. BACHINI suggested the universities could be used. Mr. Meloy would welcome any resource.

REP. LARSON said there is no definition of the mechanics of an appraisal and there is no provision for a review of the fees.

SEN. MAZUREK advised appraisers are private business people. He thinks this is a market factor open to bargaining. He said it was pointed out that the VA and FHA set appraisal fees. In the Senate two lending groups said this will increase the cost of borrowing.

REP. LARSON suggested some elements of an appraisal may not be needed. SEN. MAZUREK said this will work in conjunction with the bank which should have a list of appraisers and what they charge. By setting some standards there will be better appraisers. We don't want to end up with problems that have happened in other areas. He doesn't think the State can tell people what to charge. This will be market driven, and people will be able to shop around for appraisers.

Closing by Sponsor:

SEN. MAZUREK said once continuing education is required there will be a growth industry all over the State. Accessibility might be a problem. He did not ask anyone to carry the bill. REP. BACHINI said REP. SHEILA RICE had agreed to carry SB 8 in the House.

HEARING ON SENATE BILL 190

SEN. CECIL WEEDING, SD 14, Jordan, explained SB 190 would redefine "standing to bring action" under the Antitrust Articles of the law. It is an Act revising the method of enforcement and penalties for Unfair Trade practices; repealing Section 30-14-222, MCA. SB 190 would be included in the Fair Trade and Practices Section of the law. The language is new and the stricken language has been deleted. The key term is indirect. Under current law directly injured people have the right to seek relief. Indirectly damaged persons do not have that right. That term is being added. This has to do with a sustained business injury.

As an agricultural producer his reason for bringing this bill, it has been found there is tremendous concentration in the supporting agriculture and wholesale industries, processing industries in particular. Producers don't deal directly with, and can't seek any relief if they feel that something is amiss in that industry. It becomes an ever increasingly smaller group of people to dictate the prices as they go on. Three packers control of 80% of the lamb markets today; four packers control beef packing. That is a lot of concentration of power in the hands of a few people. The producer has no standing and believes there has been price fixing. Page 2, Subsection 4 addresses the problem by

allowing the Attorney General to bring an action in the name of the people of the State as parens patriae on behalf of any person residing in Montana to secure monetary relief. The United States Supreme Court has struck down a lot of indirect relief from many antitrust actions and the states are picking up these same authorities. In the last few years thirteen states and the District of Columbia have enacted similar legislation to enable them to pursue Antitrust actions. The Justice Department is encouraging states to take up some reform action.

Proponents' Testimony:

Neva Hassanein, Northern Plains Resource Council, said monopolies have been a problem in the United States for a long time. This has been addressed through the Antitrust laws. Monopolistic practices can threaten small business people, workers, consumers, and producers. There has been concentration in the food industries, particularly threatening to Montana are concentration and vertical and horizontal integration in the food industries. Montana probably won't work on its own, but will work in coalition with other states to arrive at compensatory Supreme Court decisions. SB 190 will give Montana's producers the ability to enforce Montana's Unfair Trade Practices Act and preserve free markets in which to sell.

The purpose is to address several U.S. Supreme Court decisions which have severely limited who can take an action to enforce antitrust laws. SB 190 sets forth who can take an action to enforce the antitrust laws. It addresses through state law what federal law does not currently allow. Several recent antitrust cases have been thrown out of court on the basis of who was the right person to take the case. The demonstration of injury would have to meet the test outlined in the bill. It would have to be determined if there has been a violation of the law and injury done. Fines are triple damages. The court did not rule that the recovery of damages by indirect victims was unconstitutional, but only that it was not explicitly allowed in the law. It is important to make competition fair and reasonable and to stop any illegal activities rather than to get hung up on who should bring suit. EXHIBIT 4

Chase Hibbard, Montana Stockgrowers, Montana Woolgrowers, said SB 190 gives standing to third parties, political subdivisions and the Attorney General's office to the opportunity to sue under the Unfair Trade Practices Act. This gets at price fixing or market collusion which is existing in the meat packing industry. He is a reluctant proponent. A few years ago, the beef industry through the National Cattlemen's Association conducted an in-depth two-year study of the concentration issue. In that study no real evidence of collusion was found but in fact, evidence of keen competition was found. Today record high prices for cattle and calves are being experienced and have been for the past two or three years. The sheep industry is different. There has been considerable concentration and excessive profits. Since 1975 over

twenty lamb slaughter facilities have been lost. There are six or seven active now. The top three represent 60.5% of the market. With only six or seven it is not surprising that three do have 60.5% of the market. The prices they are receiving for lambs are down. The prices in the supermarkets have continued to go up.

It is convenient to blame that on price fixing or collusion but that may not be the entire story. One of the reasons the prices for lambs are so low is the pelts are now worth 25% less than the \$10-\$13 that had been received; offal is worth less. This is also a seasonal industry. The Woolgrowers Association is working with the USDA and the packing industry. The problem with implementing SB 190 is that the national associations are already working on the problem and seem to be more effective. They are trying to strengthen the Packers and Stockyards Act. There are so few players in the market now, if they are threatened there may be fewer and that might effect the market worse.

Beth Baker, Department of Justice, said this bill was first drafted by a citizen's organization. The Department became involved after it was introduced and assisted with the preparation of the amendments in order to tighten it up. She said this time has been called the period of Renaissance of State Antitrust enforcement. This is evidenced by articles in recent legal publications as well as activities of the National Association of Attorneys General. One reason for the recent states' emergence in antitrust enforcement is the current federal policy. Between 1980-1986 the volume of merger transactions increased by 300%. Federal enforcement during that period decreased to one-fifth of its pre-1980 level. SB 190 would give standing to indirect purchasers and to those in competition with the violator to enforce Montana's Unfair Trade Practices Law. Proof of actual injury would still be required to recover any damages. Antitrust violations are difficult to prove and often result in protracted and costly litigation. The Department of Justice has no staff devoted to antitrust enforcement and the Department of Commerce has minimal staff devoted to consumer protection.

Opponents' Testimony:

Ward Shanahan, Attorney, Chevron Corporation, and the Montana Chamber of Commerce (their representative was unable to attend the hearing), said there are three problems with SB 190. There are significant changes with the word "indirect". There is lack of evidence. The third problem is broadening the right to sue. **EXHIBIT 5** Chevron is interested in any antitrust legislation because it is attempting to get uniform antitrust laws in the United States among the states. There is federal antitrust law. This expands the number of people who can bring action for vague reasons and on flimsy evidence. It is not limited to the sheep or the beef industry; it covers everybody.

David Johnson, CPA, Montana Society of CPAs, Helena, said they urge SB 190 be defeated, primarily for the reasons that Mr. Shanahan had articulated. It applies to all businesses in the State. There are certain presumptions and it is vague. It is difficult enough to deal with direct damages, indirect damages tend to lose their objectivity.

Questions from the Committee:

REP. ALVIN ELLIS asked what unfair practices Ms. Hassanein was talking about. Ms. Hassanein said the intent of the testimony was not to allege that anyone was violating the law. REP. ELLIS asked which practices in the Bill are specifically addressed. Ms. Hassanein said it was listed in Chapter 30-14. REP. ELLIS asked for an example. Ms. Baker said she would answer the question. It would be plugged into the present unfair trade practices act which attempts to get at price fixing. There are specific violations listed. Ms. Hassanein said there was a request from the Department of Administration to look into purchase of football helmets for the State. They haven't completed the investigation yet. There had been an agreement that the State would only have a single distributor. This Bill would allow them to go after the manufacturer of the football helmets. This bill addresses a person engaging in an illegal activity and gets beyond the question of who has the right to sue and to allow directly and indirectly injured people. REP. ELLIS asked what has happened in the packing industry so they have not improved their efficiency. Mr. Hibbard said big isn't always better. REP. ELLIS asked what percentage of retail outlets offer lamb. Mr. Hibbard said the marketing of lamb is regionalized. There is lamb available in grocery stores in Montana but there isn't a great demand in Montana.

REP. KILPATRICK asked how this bill compares with Robinson-Pitman Act. Could the Department of Commerce work with both of them. Ms. Bartos said this bill focuses on the issue of indirect sales.

REP. HANSON asked for a definition of service or service output. Does this mean attorneys or engineers? Ms. Baker said the definition is fairly broad. This Bill addresses the remedy.

REP. TUNBY asked if this Bill would increase litigation. Ms. Baker said she thought Mr. Shanahan was wrong. This will not increase litigation. These statutes have coexisted with federal legislation for thirteen years. The fact remains, there must be a proven antitrust violation.

REP. LARSON asked what is being done to make Montana's unfair trade practices legislation consistent with other states. Ms. Baker said many states have antitrust statutes that are patterned after the federal Sherman Act or the Clayton Act. Montana's is somewhat different. It seeks to prohibit unlawful conspiracies or contracts in restraint of trade. There is a substantial body of federal case law that can be looked to in interpreting what

the words and definitions mean. The United States Supreme Court has said that states can have laws of their own that will not interfere with the federal system. The states traditionally have regulated the business practice field. The state has the primary authority.

REP. ELLIS asked what indirect purchases might include. Mr. Shanahan said they are talking about the sale by the rancher or farmer to the local livestock yard which then takes the animal to a feed lot or a packer. Direct sale would be between the person who actually sells the animal to the person who is guilty of the violation. He said there is a fear, but no evidence, that there would be an effect on the market. REP. ELLIS asked what might a successful suit in either the beef or the sheep market cost. Mr. Shanahan stated, normally, there would be a class action suit. This would include anyone who might be affected. That is the problem with the word indirect. Under both state and federal procedures there are rights to bring a class action suit.

REP. ELLIS asked again what would the cost be for a suit. Mr. Shanahan said there would be a fact finding period in the case to determine who has been damaged and what the damage was. It would probably take one and a half to two years and there would need to be statisticians, accountants and economists to generate information to determine what the damages were. An estimate would be one half million dollars. Recently he appeared in the ninth circuit and was behind people arguing an antitrust case and there were seven lawyers on one side and five on the other. It is a major effort.

REP. CROMLEY said similar statutes exist in thirteen states and the District of Columbia and asked how this Bill compares to those. Mr. Shanahan said he had not studied all of the states. They object to the word indirectly. There are three times the amount of damages which is standard in antitrust actions. This induces people to bring these actions.

REP. CROMLEY asked Ms. Baker if this Bill is broader than those in other states. Ms. Baker said when she worked on the amendments, she had studied the other states that had this legislation. She tried to take the best from the other statutes. Some statutes are longer and broader. Some language came from the California statutes, some from federal law and some came from Hawaii. REP. CROMLEY asked about indirect injury. He asked if there are states that do allow that, and if so, which states. Ms. Baker said some states allow that any person injured directly or indirectly may bring suit under the state's antitrust laws. Some states word it differently, saying any person purchasing something directly or indirectly may bring suit. That is the intent of all of them.

REP. SCOTT asked if the fact the consumer can get involved in the antitrust process, is what makes the Bill bad. Mr. Shanahan said no he did not say that. There are some other pieces of legislation coming up that deal with sales below cost,

particularly, the Pitman-Robinson Trade Act, which is a fair trade bill. It has to do with retail prices, that is where the consumer has some protection. This Bill has a citizen suit statute. It has been broadened by the word indirectly, but the terms haven't been defined. Then, everybody has the right to sue. There are some inducements in it; Section 1, in addition to three times the actual damages, there is prejudgment interest. In most Tort cases, the interest is fixed. In this Bill, the interest is determined later and the interest is assessed from the time the injury is alleged to have occurred. REP. SCOTT asked if the citizen doesn't pick up the tab when a monopoly occurs. Mr. Shanahan replied that he did not argue with him on that.

Closing by Sponsor: REP. WEEDING said he views this Bill as a consumer protection act similar to many consumer acts that have been on the books for many years. The allegation that lamb prices may be due to the pelt price or over feeding is not the fact. The Montford Company did break the competitors by glutting the market. Cattle are at a high price but considering the value it should be today, it is not that high. He views the suits more as a multi-state action, if that ever happens. There would have to be fact finding. He did not agree with Mr. Shanahan's contention that many people would file suits. The indirectly injured party could go to court.

EXECUTIVE ACTION on SB 8

Motion: REP. CROMLEY MOVED SB 8 BE CONCURRED IN.

Discussion: REP. LARSON said he would probably vote for the Bill. The Board of Real Estate Appraisers is a five member Board to set up rules and regulations pertaining to licensure. It appears that the mechanics of an appraisal are complex. An appraiser can give anything they want. There are "canned" appraisals done.

REP. ELLIS said a realtor had written to him. He sent back information and asked for the opinions of the realtors. They were in favor of this.

REP. HANSON said it is difficult to arrive at a specific outline that is required. Most appraisers used in Mr. Hanson's business are nationally recognized. FHA does list their properties and asks what appraisers would quote. FHA does list what they want. They all vary.

REP. HANSEN said in the real estate business, the realtors usually use an appraiser they trust. Many real estate appraisals depend on the area. This bill will make appraisals better but also probably more expensive. In addition to the national tests the appraisers will need to be schooled in state law.

Vote: Motion Carried unanimously. REP. DOWELL absent.

EXECUTIVE ACTION on SB 89

Discussion:

REP. LARSON asked if a person worked for a large company in Missoula, and asked the personnel manager to let him know if any new people were looking for a residence, would that be a violation of this law. This makes the definition of a realtor unclear.

REP. ELLIS said he understood that only if a person made a practice of doing referrals would he be subject to the law.

REP. HANSEN said this Bill was to address the real estate agencies that advertise themselves as "For Sale by Owner". There are fees at times for referrals. She sees a difference in the "For Sale for Owner" because there are fees collected for referral information.

REP. LARSON asked why can't the Board of Realty Regulation do this by rule. Why is the Bill needed? REP. HANSEN said because the statutes do not state that a broker's license is needed.

Vote: Motion Carried with REPS. LARSON and BENEDICT Voting No.

HEARING ON SB 190

Motion: REP. ELLIS SB 190 BE NOT CONCURRED IN.

Discussion: REP. ELLIS said the incentive for this legislation has to do with livestock marketing. Beef packing industries have become much more efficient in the past years. Once the beef industry sold meat in boxes instead of carcasses, there were increases in the prices. They did not have to force a sale. Since 1985 there have been profits in the industry. The meat packing industry would not be helped with this legislation.

Substitute Motion: REP. STELLA JEAN HANSEN made a Substitute Motion SB 190 BE CONCURRED IN.

Discussion: REP. HANSEN thinks the Bill is not just about the livestock industry. It is a fairness issue. She has been involved in two antitrust suit. These were collective suits. It took ten years to be paid off. Antitrust laws are not as bad as Mr. Shanahan would lead people to believe.

REP. SCOTT spoke in favor of Rep. Hansen's motion. This is much needed, preventive legislation due to the loss of the federal antitrust enforcement. He cited the example of the McCarthy farm case. It has been in litigation for eleven years. This was a case where the railroads were overcharging Montana farmers.

REP. LARSON spoke in favor of the substitute motion. During the session, the Legislature has given the Attorney General

considerable antitrust authority. This is another piece of that. Eventually there will be an antitrust division in the Attorney General's Office. This Bill will not apply only to the cattle industry, it would apply to any unfair trade practices. This gives the Attorney General the authority to find these, if they occur. This does create a deterrent effect.

REP. MCCULLOCH spoke in favor of the substitute motion. There are different opinions of why the packing plant in Billings closed. This Bill will not provide more litigation, it has not in other states. It addresses through state law what federal law does not cover. He thought Mr. Shanahan's testimony was exaggerated. This Bill protects the consumer from large monopolies.

REP. SONNY HANSON said he opposes the substitute motion. He said they had an Antitrust Division at the Attorney General's Office. It was in existence for three years. It cost \$750,000 per year. To his knowledge, nothing was accomplished. There were no areas they could attack. They tried but when they got into it, they couldn't do that. When the federal government withdrew the funding, the state refused to fund the Division because there was no record there. Secondly, the shipping grain incident has nothing to do with this Bill. This Bill merely extends that particular section of law dealing with direct or indirect effect. Most importantly, there must be proof of intent to destroy. He said Ms. Baker could not define service or service output. He thinks this Bill is quite broad.

REP. KNOX had some of the same concerns as voiced by Rep. Hanson. This Bill could have fundamental potentially heavy impact on the State of Montana. He is uncomfortable in taking Executive Action. He would prefer to speak to some of the people in the agricultural community before making a decision. He would support the substitute motion.

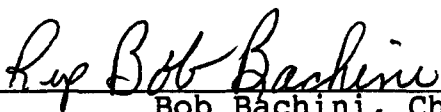
REP. ELLIS said his primary opposition is that the Bill will increase lawsuits.


REP. TUNBY said he favors the Bill.

Vote: Substitute Motion carried 9 to 7.

ADJOURNMENT

Adjournment: 10:45 a.m.


Bob Bachini, Chair


Jo Lahti, Secretary

HOUSE OF REPRESENTATIVES

BUSINESS AND ECONOMIC DEVELOPMENT COMMITTEE

ROLL CALL

DATE March 5, 1991

[illegible]

HOUSE STANDING COMMITTEE REPORT

March 6, 1991

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Mr. Speaker: We, the committee on Business and Economic Development report that Senate Bill 244 (third reading copy - blue) be concurred in .

Signed: _____

Bob Bachini

Bob Bachini, Chairman

Carried by: Rep. Pavlovich

HOUSE STANDING COMMITTEE REPORT

March 6, 1991

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Mr. Speaker: We, the committee on Business and Economic Development report that Senate Bill 8 (third reading copy -- blue) be concurred in.

Signed: Bob Bachini
Bob Bachini, Chairman

Carried by: Rep. S. Rice

Bob Bachini

HOUSE STANDING COMMITTEE REPORT

March 8, 1991

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Mr. Speaker: We, the committee on Business and Economic Development report that Senate Bill 190 (third reading copy - blue) be concurred in .

Signed: Bob Bachini
Bob Bachini, Chairman

Carried by: Rep. McCaffree

EXHIBIT 21
DATE 3/5/91
NO. 244 Page 1

TESTIMONY ON SB 244

POL BUREAU
PUBLIC SAFETY DIVISION
DEPARTMENT OF COMMERCE

SB 244 is the result of discussions held during the "Sunrise" process, in the Legislative Audit Committee. The situation addressed during those discussions was how does the Bureau have input into a board's decision to expand their licensing program, under existing legislation, to a point that the Bureau does not have adequate staffing to carry out the additional duties.

The Bureau has experienced a number of instances where boards have created a new programs that over taxed existing staff resources and as a result there was no way to meet all of the work demands. As drafted the bill would require a board considering expansion of their licensing program to obtain input from the Bureau to decide how the additional work could be handled. The end result might require the board to contract additional help to meet the work load demands, if the board has the needed funding and revenue.

Through the process provided by the proposed legislation an opportunity is provided to weigh the benefits and costs of a program expansion, which then can result in a decision to implement or not implement the expansion.

Testimony to Senate Bill 8
~~House~~ Senate Business and Industry *Econ Development*

March ~~A~~, 1991
5

My name is William M. Spilker - I am a real estate broker and am appearing on my own behalf and as a representative of the Montana Association of Realtors.

Senate Bill 8 is perhaps one of the most important pieces of legislation that will come before you this Legislative session. The Federal Government has issued a mandate that any real property mortgages used to secure loans which are insured, guaranteed or financed with Federal participation must have a real estate appraisal completed by a state licensed or state certified real estate appraiser.

This mandate applies to loans made on July 1, 1991 and there after. That means unless this bill is passed and the necessary administrative procedures are put in place come July 1, there will be no -

VA home loans, Small Business Administration participating loans, Federal Land Bank loans, Farm Credit System loans, Farm Home loans - (both for individual rural housing or agricultural production loans), no more Montana Board of Housing loans.

You can appreciate the daily reliance on the agencies by Montana Homeowners, Montana farmers and Montana small businessmen as a source of available financing in their operations. Senate Bill 8 sets in motion the response to the mandate.

Montana Association of Realtors is especially interested in seeing this legislation pass because of the major impact it will have on the ability of people to purchase homes. The home financing industry has evolved into a structure of major reliance on Banks, Savings & Loan and Mortgage Company originating loans and in turn selling those loans to out of state investors, mortgage bankers and loan servicers. These loans are only saleable if they have guarantees by the Federal Government through FHA or VA.

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SB 8

To give you an idea of the impact of this financing availability I want to cite two examples:

Western Federal Savings & Loan is a large Savings & Loan with offices in Missoula, Helena, Hamilton, Great Falls and Bozeman. During its fiscal year ending June 30, 1990 - 66% of its fixed rate loans were either FHA insured or VA guaranteed. The year ending June 1989 the percentage was even higher at 71%.

Closer to home I can cite some numbers from my own Brokerage business that tend to parallel and support those statistics of the lending institutions.

	1990	1989	1988
% of residences sold requiring bank financing (excludes cash, assumption and seller financed)	71	63	67
% of those bank financed loans which were Federally backed	76	81	78

We believe this is good legislation. The appraisal organizations have worked very closely with Senator Mazurek to develop a bill that is tailored to meet the criteria demanded by the Federal mandate, this has not been an easy task. They have also worked diligently to cooperate with the various related interest groups who have a desire to see this legislation pass. And this has not been easy. We support the manner in which they have structured their board and the need to locate the function in the Bureau of Occupational and Professional licensing.

We also concur in the amendments to the bill by the Senate.

I hope you will give this a prompt **do** pass in order to move this legislation along so the administrative machinery can be put in place in order for Montana to comply with the July 1, 1991 deadline.

SB8 - file
fed. regulations
EXHIBIT 13
DATE 3/5/91
SB8

3. Experience

Equivalent of two years appraisal experience. If requested, experience documentation in the form of reports or file memoranda should be available to support the claim for experience.

a. A year is defined in terms of hours within a calendar year. One thousand hours constitutes a year of appraisal experience. A minimum of two calendar years is required. Hours may be treated as cumulative in order to achieve the necessary 2,000 hours of appraisal experience.

b. Acceptable appraisal experience includes, but is not limited to, the following:

Fee and staff appraisal, ad valorem tax appraisal, review appraisal, appraisal analysis, real estate counseling, highest and best use analysis, feasibility analysis/study and teaching of appraisal courses.

This should not be construed as limiting experience credit to only those individuals who are state certified or state licensed.

c. The verification for experience credit claimed by an applicant shall be via affidavit on forms prescribed by the state certification/licensing agency.

Northern Plains Resource Council

EXHIBIT

DATE 3/5/91
83190

Senate Bill 190:

AN ACT REVISING THE METHOD OF ENFORCEMENT AND PENALTIES FOR UNFAIR TRADE PRACTICES

WHAT IS THE PURPOSE OF SB 190?

The purpose of Senate Bill 190, sponsored by Senator Cecil Weeding of Jordan, is to address several U.S. Supreme Court decisions which have severely limited who can take an action to enforce antitrust laws. It addresses through state law, what federal law does not currently cover. SB 190 allows any person or political subdivision who is injured "directly or indirectly" or the Attorney General on behalf of the injured, to take an action to enforce Montana's Unfair Trade Practices Act (30-14-201 et seq.). Fourteen states, plus the District of Columbia, have made similar amendments to their state law. Often these laws are referred to as "indirect purchaser provisions."

WHY DO WE CARE ABOUT THE ANTITRUST LAWS?

Monopolies have been problems for a long time in the United States. There are numerous industries which have tended toward monopoly, such as: large petroleum companies trying to force independent gas station owners out of business; national supermarket chains driving out the local grocery store; and cement producers fixing cement prices. Monopolistic practices can threaten small businesspeople, consumers or workers. One example which is particularly threatening to Montana is the trend toward concentration and vertical and horizontal integration in the food industries. The market share of the top four beef packing companies was just 25% in 1977 and rose to 74% of the market in 1987. Concentration among packing companies which slaughter sheep and lambs has increased from four firms controlling 58% in 1977 to three firms controlling at least 76% in 1987. Unfair trade practices threaten free enterprise, as well as the economic vitality of our communities which are dependent on the livestock industry.

WHAT HAS THE U.S. SUPREME COURT SAID?

Several recent antitrust cases have been thrown out of court on the basis of questions surrounding who is the right person to take the case.

In 1977 the U.S. Supreme Court held in *Illinois Brick Co. v. Illinois* (431 US 720) that only someone who is directly harmed by an antitrust violation can sue for civil damages under U.S. antitrust laws. Thus, farmers and ranchers, for example, cannot sue meatpacking companies for illegal activities which directly harm only those who buy or sell directly from the meatpacker. The court did not rule that recovery of damages by indirect victims was unconstitutional, but only that U.S. antitrust laws did not clearly allow it. Furthermore, the U.S. Supreme Court found that "indirect purchaser laws" are not preempted by federal law in *California v. ARC America Corp.* 109 S.Ct. 1661 (1989). That is, this law is constitutionally sound.

In *Cargill v. Monfort*, 479 US 104 (1986) the Supreme Court found in Cargill's favor saying the antitrust laws are there to protect competition, not competitors - that is, mergers which increase market share are good for competition, and those who are in competition can't bring a suit. Seeing the handwriting on the wall, Monfort merged with ConAgra three months after the decision. Most recently in *Atlantic Richfield Co. (ARCO) v. USA Petroleum*, 109 L Ed 2d 333 (1990) the Supreme Court held that even assuming ARCO committed an antitrust violation by trying to drive out competitors, the independent retailer of gasoline could not do anything about it because they were competitors.

Effectively, the Supreme Court has limited who can enforce the antitrust laws to people who buy or sell "directly" from the defendant. People who must deal with a corporation that is potentially engaging in monopolistic practices are not very likely to take such a suit when they deal with the company every day. This bill would allow people who the monopolist cannot exert direct retaliation upon to seek enforcement. Essentially, this bill would move the point at which the plaintiff would have to demonstrate injury. Injury would not be a test to get into court, but rather injury would be determined after resolving the question of whether a violation has occurred and damages must be rewarded. We think the important thing is to make competition fair and reasonable and to stop any illegal activities.

CHRON 5
DATE 3/5/91
50190

Statement of Chevron Corporation
in Opposition to SB 190

March 5, 1991

We make several arguments in opposition to SB 190:

1. Lack of Evidence: The sponsors only pointed to the sheep industry as being adversely affected by "concentration" in the number of slaughter houses dealing with slaughter and sale of lamb. No one knows what the effect of the disease "scrapie" is on this market, not to mention the effects of the sale of by-products and pelts on this market.

Our problem is that SB 190 deals with all markets, not just lamb markets. Thus, we believe there is great doubt that a significant change in state law is needed.

2. Significant Changes:

(a) Under federal antitrust legislation, a plaintiff indirectly injured or threatened with injury by reason of an antitrust violation can obtain injunctive relief, but cannot obtain damages. The practical effect of the latter distinction is important. If, for example, plaintiffs have been overcharged in purchasing products from one or more members of a price fixing conspiracy, then may seek treble damages from the conspirators. They are the persons "directly" injured by the conspiracy. In contrast, those to whom the direct purchasers resell at prices that may be inflated by the conspiracy are not permitted to sue the conspirators.

In establishing this principle, the U. S. Supreme Court reasoned that permitting both directly and indirectly injured parties to sue would (i) expose defendants to multiple liability; would (ii) blunt the effective private enforcement of the antitrust laws by diluting the recovery of those most likely to sue, i.e. those directly injured; and would (iii) unduly burden the courts and the parties with costly and prolonged trials to determine who was injured and by how much (see Illinois Brick Co. v. Illinois, 431 U.S. 720 (1977)). SB 190 would reject this sound analysis.

Ex. 5
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SB 190

(b) Additional Elements of Damages: SB 190 adds additional elements to the plaintiff's recovery which do not presently exist in § 30-14-222 which is repealed by SB 190. These are:

(i) Prejudgment interest: This is interest which seems to be calculated on the damages recovered from the time the injury is alleged to have occurred to the date of the entry judgment. Normally prejudgment interest is recoverable only where the parties have agreed by contract as to an interest rate, or the amount in controversy was ascertainable at the time the injury occurred. Here the damages would not be readily ascertainable until some time in the future, they then would be trebled, and interest would then be calculated on the amount for several years before the judgment. This could well make the damages quadruple or more.

(ii) Disbursements: It is not clear what the difference is between costs and disbursements, but SB 190 confuses the present Montana "cost recovery" statute which deals specifically with what costs are allowable in litigation, by adding "disbursements."

(iii) Attorney's fees are not normally recoverable unless the parties have agreed that attorney's fees are payable. Clearly they are intended as a punishment in SB 190. The treble damages plus the prejudgment interest with the attorney's fee could raise the total recovery substantially beyond the present law.

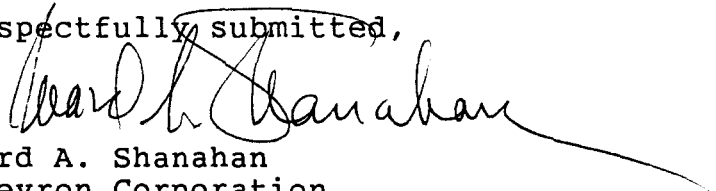
3. Broadening the Right to Sue: The Attorney General's prepared testimony deals with SB 190 as an "antitrust enforcement law." Clearly it would be, if it is inserted in the existing code in place of § 30-14-222. But, as you can see from reading the bill, that is not what the bill does. It allows any person injured directly or indirectly to not only ask for an injunction to prevent unlawful action, but it provides treble damages, prejudgment interest, costs and attorney's fees, not only for indirect purchasers, but also for indirect sellers and competitors. SB 190 would not only create a criminal enforcement statute, but it would also encourage private litigation by a broad range of plaintiffs.

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Summary

We respectfully submit that SB 190, which is based upon suspicion rather than evidence, when considered along side HB 261 (Little-Robinson-Patman Act) and HB 538 (below-cost sales) already acted on by this Committee, sends a negative signal to anyone doing business in Montana or with Montanans. It is simply no argument in favor of the bill to say "we haven't had much trouble up to this time, therefore, we should go looking for more." We respectfully request that you give SB 190 a DO NOT PASS.

Respectfully submitted,



Ward A. Shanahan
Chevron Corporation
301 First Bank Building
P. O. Box 1715
Helena, MT 59601
(406) 442-8560

8979W

HOUSE OF REPRESENTATIVES

BUSINESS AND ECONOMIC DEVELOPMENT COMMITTEE

DATE March 5, 1991 ROLL CALL VOTE BILL NO. SB190 NUMBER 1
 MOTION: Do Concur

NAME	AYE	NO
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	✓	
TOTAL	9	7

obtain

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Business & Economic Development

COMMITTEE

BILL NO. SB 244

DATE March 5, 1991 SPONSOR(S) Sen. Jergeson, et al

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NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
SCOTT SERRAULT	LEGISLATIVE Auditor	SB 244		X
STEVE MELOI	Dept of Comm.			X

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

HOUSE OF REPRESENTATIVES

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Business & Economic Development

COMMITTEE

BILL NO. SB 8

DATE March 5, 1991 SPONSOR(S) Sen. Mazurek

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NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
W ^{MC} M Spilken	MT Assoc Realty	SB 8		X
Joe B. Moore	MT Chapter Natl. Ass. Independent Fee Apprais	SB 8		X
STEVEN HALL	MONTANA CHAPTER APPRAISAL INSTITUTE	SB 8		X
Pat Asay	International Right-of-Way Assoc.	SB 8		X
Ron Appel	MT Chapter - Am Society Farm Managers & Rural Appraisers	SB-8		X
Jack B Moore	Natl Assn. Indep. Fee Appr	SB 8		X
W. D. Diehl	NAIFA	SB 8		X
Tom Hopgood	Mont Assoc Realtors Indep Fee Appraisers	SB 8		✓
John Lee	mt. League of Savings Inst	SB 8		✓
Allen Jones	Self	SB 8		✓
Bill Leary	MT Bankers Assn	SB 8		✓
Bob Ryfer	MT Credit Union League	SB 8		✓
Terry Zimmer in AL	National Assoc IFA	SB 8		✓

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STEVE MELOY

Commerce

info. ✓

ANNIE BARNES

Commerce

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

2062

BIZ & ECON

COMMITTEE

BILL NO.

SB 8

DATE

3/5/91

SPONSOR(S)

MAZUREK

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Tim Moore	Independent Appraiser	X	

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**HOUSE OF REPRESENTATIVES
VISITOR REGISTER**

Business & Economic Development **COMMITTEE**

BILL NO. SB 190

DATE March 5, 1991 **SPONSOR(S)** Sen. Weeding

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
HELENA WARD SHANDHAN	CHEVRON CORPORATION		✓
BETH BAKER	DEPT OF JUSTICE	✓	
DAVID JOHNSON, HELENA	MT SOCIETY OF CPAs		✓
PAUL SLITER	WESTERN PETROLEUM MARKETERS ASSN	✓	
NEVA HASSANIAN	NPRC	✓	
JAMES TUTWILER	MT Chamber Commerce		✓
Marguerite N. Verrill	Am. Ins. Assoc.		X
Chris Hubbard	MT STOCKGROWERS MT WOOLGROWERS	X	

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