

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT

Call to Order: By CHAIRMAN STEVE BENEDICT, on March 4, 1993, at 9:00 A.M.

ROLL CALL

Members Present:

Rep. Steve Benedict, Chairman (R)
Rep. Sonny Hanson, Vice Chairman (R)
Rep. Bob Bachini (D)
Rep. Joe Barnett (R)
Rep. Ray Brandewie (R)
Rep. Vicki Cocchiarella (D)
Rep. Fritz Daily (D)
Rep. Tim Dowell (D)
Rep. Alvin Ellis (R)
Rep. Stella Jean Hansen (D)
Rep. Jack Herron (R)
Rep. Dick Knox (R)
Rep. Don Larson (D)
Rep. Norm Mills (R)
Rep. Bob Pavlovich (D)
Rep. Bruce Simon (R)
Rep. Carley Tuss (X) D
Rep. Doug Wagner (R)

Members Excused: None

Members Absent: None

Staff Present: Susan Fox, Legislative Council
Claudia Johnson, Committee Secretary

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

Committee Business Summary:

Hearing: SB 132, SB 134 and SB 390
Executive Action: SB 132 and SB 134

HEARING ON SB 132

Opening Statement by Sponsor:

SEN. BARRY "SPOOK" STANG, Senate District 26, St. Regis, said SB 132 will authorize the Public Service Commission (PSC) to adopt

standards for utility products and services by administrative rule or ordered tariff provision. This bill is intended to clarify the difference of opinion between the legislative auditor and the PSC. The PSC has maintained that the statute which has existed since 1913 permits the public utilities be determined by the ordered tariff, and the legislative auditor maintains the statute reflects standards provided by administrative rule. This bill provides the PSC to adopt standards for utility products and services by administrative rule or ordered tariff provision.

Proponents' Testimony:

Gene Phillips, representing Pacific Power and Light Company, Kalispell, said they support this bill as amended in the Senate, and urged the committee to concur on SB 132.

Martin Jacobson, representing Public Service Commission, said this bill is at their request and support it for the reasons addressed by SEN. STANG.

John Alke, Montana/Dakota Utilities, said they also support SB 132 as amended.

Gary Willis, Montana Power, said they support the bill as amended.

Opponents' Testimony:

None

Questions From Committee Members and Responses:

None

Closing by Sponsor:

SEN. STANG closed.

EXECUTIVE ACTION ON SB 132

Motion: REP. PAVLOVICH MOVED SB 132 BE CONCURRED IN.

Discussion: None

Motion/Vote: REP. BRANDEWIE called the question. Voice vote was taken. Motion carried unanimously.

Vote: SB 132 BE CONCURRED IN. Motion carried 18 - 0.

HEARING ON SB 134Opening Statement by Sponsor:

SEN. B.F. "CHRIS" CHRISTIAENS, Senate District 18, Great Falls, said SB 134 will revise the unfair competition in purchasing laws; eliminating the burden of proof on a person paying a higher price in one locality than in another to prove that the action is not unfair discrimination and eliminating the provision that payment of a higher price in one locality than in another is prima facie evidence of a violation of the unfair competition in purchasing statute. The current statute states when a business has more than one location the business is subject to a suit by a single location competitor every time they are out-bid.

Proponents' Testimony:

Tuck Vosburg, Pacific Hide & Fur Depot, said the company supports SB 134 amending the area of price discrimination statute. His company is a multi-location business with twelve branches in Montana. He said the first employee of Pacific Hide & Fur started in Montana in 1919, the same year this statute came into existence. The present statute states that if they have more than one location, Pacific is subject to a suit for unfair competition by a single location competitor every time they pay one penny more for aluminum cans in one location than another. He said what may be more dangerous is the party bringing the suit doesn't carry the burden of proof. Pacific has to prove they are not guilty. He said pricing aluminum cans one penny above is prima facie evidence that Pacific has violated the statute. If Pacific wins the suit, and the single location competitor does not have burden of proof, he will be encouraged to file another suit the first time Pacific pays one farmer one dollar more for scrap iron in one location than another. The bill as presently written does not benefit the consumer. It discourages paying the public the highest price they can obtain as a result of good competition. It does encourage a single location firm to sue or threaten to sue all multiple location firms if they ever pay one penny more than the lowest price in any other location. This bill allows the single location firm to limit prices. He said that Pacific is involved in this kind of litigation at this time. The judge has not dismissed the case, even though they have asked him to. He quoted the judge who said "What appears to the court on review of all the charts and graphs, but especially from the daily purchase ticket charts, is that both parties have engaged in a healthy competition in prices which ultimately benefits the consumer". He suggested the statute be amended as proposed; by eliminating paragraph 2 concerning the prima facie evidence puts the burden of proof where it normally is on the plaintiff. By encouraging competition so the public receives the best price by changing the wording in paragraph 3 to "competing with", and by preventing any competitor from driving out another with unfair prices by keeping the statute on the books as amended. **EXHIBIT 5**

Bruce MacKenzie, representing Pacific Hide and Fur, Great Falls, said that a supreme court justice once said "that a page of history is worth a volume of logic". He said this page of history has been provided by him with his written testimony.

EXHIBIT 1

Opponents' Testimony:

Jim Gallup, Golden Recycling, Billings, said SB 134 will allow the large recycler the ability to have open season on the rest of the recyclers in Montana and drive them out of business. He said that once the small recyclers, civic organizations and handicapped organizations are out of business, the only one left would control recycling in Montana. He said by removing subsection 2, the prima facie, and changing the words in subsection 3, no one will be able to prove a case. Mr. Gallup said if this law takes effect, the large recycler could run him out of business. He urged the committee to vote against SB 134.

EXHIBITS 2, 6, 7, 8, and 9

Douglas Stewart, Montana Recycling, said the present law was last used in the 1930s, and does not have a history of abuse. He presented written testimony. EXHIBIT 3

Lars Gallup, part owner of Golden Recycling, Billings, presented written testimony. EXHIBIT 4

Informational Testimony:

Paul Rosin, President, Rosin Bros., Inc. Butte, faxed written testimony in opposition of SB 134. EXHIBIT 10

Questions From Committee Members and Responses:

REP. LARSON asked Doug Stewart to explain the differences of the commodities he perceives between a large recycler i.e., Pacific Hide & Fur that handles a lot of heavy steel and other types of recyclables, compared to Montana Recycling? Mr. Stewart said he handles a lot of the same types of material that Pacific Hide & Fur handles except iron. Montana Recycling handles household commodities, i.e., glass, newspapers, industrial paper, etc.

REP. LARSON asked Tuck Vosburg what the percentage is of the household goods he recycles through Pacific Hide & Fur? Mr. Vosburg said about 5% to 10%. REP. LARSON asked him what is the largest commodity that he recycles? Mr. Vosburg said iron.

REP. COCCHIARELLA asked Doug Stewart why he isn't on the side of Pacific Hide and Fur when his business, Montana Recycling, is located in six different places? Mr. Stewart said he works with a lot of non-profit organizations in the state. The law presently takes into account the competition that is out there, and if a ma and pa operation is brought into a suit, they will not be able to prove the unfair competition.

CHAIRMAN BENEDICT asked Lars Gallup about his testimony stating if SB 134 passes in its present form, it would give advantage to Pacific Hide & Fur in the court case that he has against them at this time. How will it affect him when this bill does not go into effect until October of 1993? **Mr. Gallup** said if Pacific can go into court in June and tell the jury that this bill was brought before the Montana Legislature, and the legislators felt the bill wasn't any good, it would go a long way in influencing the jury.

REP. SIMON asked Lars Gallup about his statement that Pacific would run Golden Recycling out of business with Pacific's checkbook, and asked him what record was he referring to? **Mr. Gallup** said the record of the hearing on the summary judgement that Pacific filed and the record that Golden filed last April before Judge Baugh. It came out of the hearing by one of the ex-employees from Pacific that the interim manager informed him he shouldn't leave Pacific and go to work for Golden because Pacific was going to use their checkbook to run Golden out of business, then he would be out of a job.

REP. SIMON asked Tuck Vosburg to respond to Lars Gallup's comment. **Mr. Vosburg** said that is a contention, but it was stated by Golden that it is a contention rebutted strongly by Pacific in those same documents that Mr. Gallup referred to. It will have to be tried in court, because Pacific has witnesses who say that Golden said that.

Closing by Sponsor:

SEN. CHRISTIAENS closed stating that the opponents would have the committee believe that SB 134 is nothing but a recycling issue and it isn't. This bill covers commodities of all types. He said SB 134 is for the consumers to receive the best price possible. He said SB 134 makes a level playing field for all, the most for competition, and the best for all consumers.

HEARING ON SB 390

Opening Statement by Sponsor:

SEN. B.F. "CHRIS" CHRISTIAENS, Senate District 18, Great Falls, said SB 390 will require a premises licensed for on-premise consumption of alcoholic beverages to be separated by walls from the rest of the building in which it is located, but provides that it may have inside access irrespective of the type of businesses or uses in the rest of the building. He said this bill comes specifically from a problem in Great Falls with a tavern that is under the same roof that has other multiple businesses. When a small restaurant was added this past year it was found that under the present law they could only have access from outside of the building. SB 390 will allow them to have access to the restaurant that serves food from within the bar. There are other bars in the state where the people have to leave

the bar and enter the other premises from outside of the building, i.e., Frontier Town now has a separate door to enter the bar, the people cannot walk through the curio shop into the bar. He said this bill will clarify this situation.

Proponents' Testimony:

Mark Staples, representing Montana Tavern Association, gave a synopsis and background of SB 390. He said on-premise consumption requires a beer and wine license in order to have gaming machines on the premises. In the last 2-3 years there has been a real growth of gaming in convenience stores. He said that several gaming machines had been grandfathered in for the convenience stores, but felt it was the legislative intent for the gaming to be strictly held within the premises where on-premise consumption was held. The convenience stores were buying wine and beer licenses, turning hot dogs on a stick and calling themselves a restaurant becoming an on-premise consumption establishment and offering gaming. He said the public was up in arms about it, and the Tavern Association was taking a beating for it, so the association approached the convenience stores, truckstops, etc., and then they all met with the Department of Revenue to find a new definition for "on-premise" consumption where alcoholic beverages are served. The department proposed new rules for on-premises consumption, and the general intent is the premises on which alcohol is served should be separated from other businesses. He said this bill would keep them from having keno, corn flakes and kleenex. The department went a step further than what was anticipated and that was to cut off the access entirely. The department gave two reasons why they didn't feel they went too far: 1) the Council of Churches opposed saying there shouldn't be any inside access. **Mr. Staples** said Harley Warner clarified that was not their position and did not mean for it to happen this way; and 2) the department said it would not really hurt Montana historically. There are many premises where there may be a tackle shop in the front or a museum that a person would have to walk through to enter a bar. He said the department would grandfather in those kinds of places. The department's position was to deny access only when a building was remodeled, so this rule was placed into effect. The family business in Great Falls is a combination of a tavern and a laundromat. The people wanted to build a restaurant to connect the tavern and laundromat, the department called it remodeling so the access was cut off and now the people have to enter the restaurant outside of the premise. **Mr. Staples** felt this was not the intent of the bill. The Department of Revenue did not oppose this bill on the Senate side, and didn't think they would today. He said this is an unintended consequence and said there wasn't any opposition to the bill. There will still be separation by walking through a door into the next premise.

Larry Akey, representing the Montana Coin Machine Operators Association, said the Machine Operators support SB 390 for the same reasons expressed by Mark Staples.

Bill Stevens, member of the Montana Food Distributors Association, said some of his members are the convenience stores that had been grandfathered in. He said they support this bill mainly because if there is remodeling done, those stores that were grandfathered in would be affected.

REP. LARSON, House District 65, Seeley Lake, said he wanted to be noted as an proponent for SB 390.

Opponents' Testimony:

None

Questions From Committee Members and Responses:

REP. PAVLOVICH asked Gary Blewett, Administrator of the Liquor Division, Department of Revenue, if amendments would be drafted to grandfather everyone in? Mr. Blewett said currently they have a grandfather clause built into the rules which states, "any configuration in which there is an alcoholic beverage on-premise service and grocery store that is not separated to continue that way until such time when they remodel". He said this proposed legislation does not have a grandfather clause built into it, but at the committee's request they would draft a grandfather amendment to incorporate them.

REP. LARSON asked Gary Blewett why the department is so interested in the layout of the premises? Mr. Blewett said the law specifically requires the department to check out two things when a licensed premise is to be established or renewed: 1) the qualifications of the individual or licensee; and 2) the suitability of the premises. He said the law does not define suitability, so the department has gone through some rule-making to do that. Historically, the department's interest in suitability found the language to be "reasonable control of the service of alcoholic beverages". The rules prohibit that there wouldn't be any on-line sight observation of the entire operation while alcoholic beverages were being consumed, which makes the licensee reasonably responsible for what happens on the premise. The suitability will include compliance with all the laws of the state associated with the operation of the premises. When there is remodeling done or a new premise location, the department makes sure that the building code inspectors, local zoning people, the buyer inspectors, and all the entities associated with what is a safe and proper building are notified that they are going through the process of making a change. The department receives the information from these people to check if there is any issuance on their part.

REP. DAILY asked Gary Blewett when do the rules for the grandfather clause go into effect? Mr. Blewett said this summer.

Closing by Sponsor:

SEN. CHRISTIAENS said from the discussions and questions in the committee there is a need for SB 390 because of the inconsistencies. SEN. CHRISTIAENS asked the committee if they could wait to take action on the bill at this time to allow an amendment to be drafted for full clarification.

EXECUTIVE ACTION ON SB 134

Motion: REP. BRANDEWIE MOVED SB 134 BE NOT CONCURRED IN.

Discussion: None

Motion: REP. PAVLOVICH MADE A SUBSTITUTE MOTION THAT SB 134 BE TABLED.

Motion/Vote: REP. BACHINI called the question. Voice vote was taken. Motion carried 17 - 1 with CHAIRMAN BENEDICT voting no.


Vote: SB 134 BE TABLED. Motion carried 17 - 1.

ADJOURNMENT

Adjournment: 10:20 A.M.



STEVE BENEDICT, Chair


CLAUDIA JOHNSON, Secretary

SB/cj

HOUSE OF REPRESENTATIVES
53RD LEGISLATURE - 1993
BUSINESS AND ECONOMIC DEVELOPMENT COMMITTEE

ROLL CALL

DATE

3-4-93

NAME	PRESENT	ABSENT	EXCUSED
REP. ALVIN ELLIS	✓		
REP. DICK KNOX	✓		
REP. NORM MILLS	✓		
REP. JOE BARNETT	✓		
REP. RAY BRANDEWIE	✓		
REP. JACK HERRON	✓		
REP. TIM DOWELL	✓		
REP. CARLEY TUSS	✓		
REP. STELLA JEAN HANSEN	✓		
REP. BOB PAVLOVICH	✓		
REP. VICKI COCCHIARELLA	✓		
REP. FRITZ DAILY	✓		
REP. BOB BACHINI	✓		
REP. DON LARSON	✓		
REP. BRUCE SIMON	✓		
REP. DOUG WAGNER	✓		
REP. SONNY HANSON, VICE CHAIRMAN	✓		
REP. STEVE BENEDICT, CHAIRMAN	✓		

HR:1993

wp.rollcall.man

HOUSE STANDING COMMITTEE REPORT

March 4, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Business and Economic Development report that Senate Bill 132 (third reading copy - blue) be concurred in .

Signed: _____

Steve Benedict, Chair

Carried by: Rep. Larson

EXHIBIT 1
DATE 3-4-93
SB 134

MEMORANDUM

TO: Chairman Dick Benedict
House Business and Economic Development Committee

FROM: Bruce A. MacKenzie

RE: Senate Bill 134 Amending Area Price Discrimination Statute

DATE: March 4, 1993

Montana Code Section 30-14-208 was initially adopted in Montana in 1913 probably in response to the Congress's efforts at the time preparing for the adoption of the Clayton Act in 1914. Section 2 of the Clayton Act prohibited territorial price discrimination. After a Federal Trade Commission study, however, Section 2 of the Clayton Act was found to be ineffective and in 1926 the Robinson Patman Act was enacted. The Robinson Patman Act eliminated the territorial basis for determining price discrimination and adopting a broad price discrimination provision for interstate commerce.

State area price discrimination laws which restrict the sale of the same commodity in different localities in the state at a different price have survived as little Robinson Patman Acts. For the most part, any time an individual is engaged in a state's commerce in different localities they are most likely involved in interstate commerce and would be subject to the Robinson Patman Act. As a result these state statutes have fallen into disuse. It is important to note that the Robinson Patman Act requires more than proof of a difference in price. The Act requires proof that the pricing results in an "injury to competition" which entails more than injury to one competitor.

Area price discrimination statutes are not price fixing laws and as a general rule, are not intended to prevent consumers from being over-charged. They were enacted to prevent the destruction of competition by depressing prices in one locality where there is competition and offsetting the loss by raising prices in another locality where there is no competition. The real purpose of area discrimination statutes is to prevent unfair practices by which competition is stifled and monopolies are created. Most area price discrimination statutes relate to the sale of goods and not to the purchase of goods. Montana Section 30-24-208 is an exception to this in that it prevents purchasers of certain commodities from buying at different prices in different localities within the state.

The statute presents problems for a multi-community operation that is purchasing goods for its own manufacture or sale. If such a business pays a higher rate or price in one locality than another, after making due allowance for the difference in the actual cost of transportation and for the difference in grade or quality of such article, such activity constitutes prima facie evidence of a violation. The business has the burden of proving that the higher price paid in one locality is not unfair discrimination. This is a significantly lower standard of proof for a prima facie case than is required under the provisions of the Robinson Patman Act. There is no requirement to prove "injury to competition" or that the prices paid are unfair or actually discriminatory.

The effect of such a statute is to expose multi-community businesses to lawsuits in which they must prove the prices they are paying in one locality to compete with a local business within that locality are not unfair. In other words, the mere fact of competition presents the potential for a lawsuit in any community where the business may purchase goods in competition with another business.

In Fairmont Creamery Company vs. Minnesota 274 US 1 (1927) the U.S. Supreme Court ruled unconstitutional a similar state statute which outlawed locality price discrimination by purchasers of dairy products for manufacture or sale. The Court declared the statute invalid as a violation of the freedom of contract because in effect it fixed uniform pricing and had no reasonable relation to the anticipated evil of high bidding to destroy competition.

The purpose of the statute is to protect the public by preventing unfair pricing which would destroy competition. The effect of the statute as presently written, however, is quite the opposite. Through the threat of litigation over any price difference, the statute results in companies doing business in multiple locations in the state having to pay a uniform price throughout the state regardless of market conditions in order to avoid costly litigation. This uniform price typically would not be based upon a competitive market but often on a location where there is no competition. Under the existing statute, a business with only one location could threaten a lawsuit and effectively hold the price paid by a multiple location competitor below its own without ever having to prove that the prices paid to the public by the competitor were meant to destroy the competition. To force a company to maintain non-competitive prices turns the antitrust laws on their heads.

The amendments within Senate Bill 134 would require proof by a local competitor that the pricing scheme of the business with multiple locations is unfair and anticompetitive. This revision is in keeping with the proof required for business engaging in unfair sales practices as found in M.C.A. § 30-14-207(3) (sales prices must be contrary to the spirit and intent of the section). Such an amendment also recognizes the changes that have occurred in litigation procedures since 1913. When this statute was first enacted, a small business would have had a difficult time obtaining internal documents of its competitor relating to pricing methods. Today, with modern discovery rules, the documents are available to any business

that brings such a suit through the use of a document production request. If the competitor is uncooperative, the court will enforce the request for documents.

Finally, the amendment makes it clear that it is a valid defense to the claim of unfair pricing if the price paid by a business is meant to "compete" directly with another business. In other words, it is a valid defense if a price paid to the public is higher than another business in the same locality if that price is paid to compete. To establish the defense under the current law the defendant must show that the price paid was designed only to "meet" the price paid by the competition. This makes it unclear whether the price could be higher than the competitor or simply equal. It seems contrary to public policy that the statute should restrict competition by fixing the price to that of a competitor. Therefore, a defense would be available if the company could show that a higher price was paid in a locality as a result of competition.

EXHIBIT

1

DATE

3-4-93

SG 134

EXHIBIT 2
DATE 3-4-93
SB 134

JIM GALLUP'S TESTIMONY

Chairman Benedict, Vice-Chairman Hanson, and committee members:

Thank you for the opportunity to voice my opinion on Senate Bill #~~134~~. My name is Jim Gallup. I am president of a small recycling center in Billings. I have 13 years of recycling experience with Pacific Hide & Fur and 1-1/2 years with Golden Recycling.

The first point I would like to make is how this bill will effect recycling in Montana. Currently there is one large recycler with 12 locations in Montana, 2 medium sized recyclers with approximately 5 locations and over 30 small recyclers with one location. The small recyclers include one location businesses, civic organizations, and handicap organizations. Of the small recyclers: There are businesses that recycle for a profit, civic organizations that recycle to raise funds for the support of their own facilities. Handicap organizations have recycling programs to provide jobs for their clients. To a handicapped individual having a job and being self supporting is a privilege most of us take for granted. There are 18 handicapped organizations listed with "Keep Montana Clean & Beautiful", providing jobs for handicapped individuals in the recycling industry.

To amend the present law as Senate Bill 134 reads, it would give the large recycler the ability to open season on the

rest of the recyclers in Montana and drive them out of business. Once the small recyclers civic organizations and handicapped organization are out of business. The one left would control recycling in Montana.

2nd point. To change this law the only beneficiary would be the one large recycler. I have personally talked with both medium sized recyclers in our state. They both have said they like to law just the way it is in it's original form. I have talked with over a dozen of the small one location recyclers and they would also like the law left as is. The changes to the law, as Senate Bill 134 suggest to do, would them become a piece of special legislation that would benefit only the one large recycler with 12 location. Are law changes supposed to benefit the one over the many or should they benefit the many over the one?

3rd Point. How would the one large recycler benefit from this law change? Removing sub-section 2 would take the guts out of the law. If you remove the prima facia evidence as a violation in Sub Section 2 combined with the changing of words and removal of sentences in Sub-Section 3, no one could prove a case. The unfair competitor only need to say "We are competing with the rate or price set by a competitor in that location. The law in it's original form allows a multi-location facility to pay a higher price for the purpose of meeting the competition.

EXHIBIT 2
DATE 3-4-93
SB 134

In short - If the law is changed, the one large recycler may "for the purpose of competing with the rate or price set by a competitor in that locality", discriminate in the purchasing of commodities. This change means the large recycler can pay more than competition in some locations and pay less than fair market value in other locations where little or no competition exists. This law from my understanding was originally wrote to make sure all Montana Farmers received a fair price for their crops. ~~I believe~~ I believe the citizens of Montana should receive a fair price for their recyclable commodities. The law, in its' original form will ensure Montana citizens a fair market price for their crops or and recyclables.

Not only would this special legislation hurt the citizens of Montana but also business. We want business in Montana to grow and prosper. I have invested thousands of hours and hundreds of thousands of dollars in my small recycling center by comparison my total sales are about ^{17%}~~17%~~ of the large recyclers total sales. I employ 6 full time employees with an annual payroll of \$150,000. I also pay for the complete health insurance premiums for them and their families. We also pay tens of thousands of dollars in taxes to Montana. I believe this is the sort of business we want in Montana. If this law change takes effect, the large

recycler could run me out of business. Would this be the business and economic development that Montana is known for?

I know for a fact that there has been a lawsuit filed using this Montana statute. I also know that an Attorney of the Dorsey Whitney Firm asked Mr. Russ Fagg to co-sponsor this bill. The one large recycler is a client of the Dorsey Whitney Firm.. I believe this shows even more that the changing of the law is a piece of special legislation only good for the one large recycler.

In conclusion, I would ask that you oppose this special legislation and allow fair competition to take its' course. Be fair to all Montana citizens and promote business and economic development in Montana. Do not allow this special legislation which is only good for one to proceed out of you committee. Please vote against Senate Bill 134.

Thank you again for time concerning this critical matter.

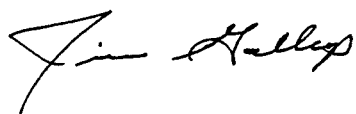
A handwritten signature in cursive script, appearing to read "Jim Halley".

EXHIBIT 3
DATE 3-4-93
SB 134

Montana Recycling, Inc.



March 3, 1993

House standing committee
Business and Economic Development

At present there is legislation before the Montana Legislators known as Senate Bill No. 134. The purpose of the Senate Bill 134 is to amend Section 30-14-208 MCA. In it's present form Section 30-14-208 MCA makes it unlawful for an entity such as a large corporation to engage in a marketing area for the avowed purpose of creating a monopoly in the marketing area or destroying other existing dealers in the marketing area.

Section 1. The basic purpose of the statute is clearly to foster competition by prohibiting any single corporation or small group of corporations from selectively and artificially setting prices in such a manner as to squelch the competition of smaller entities or individuals. Ultimately, the purpose of the statute is to benefit the public through the fostering of such competition. The purpose is also to insure that the smaller, local corporations are not driven out of business by short-term pricing strategies of larger, regional or multistate corporations that are trying to eliminate competition so that they can keep prices to the end consumers at artificially high levels. The proposed change to 30-14-208 in contrary to these purposes because it makes the statute more expensive to use.

Section 2. Shifting the burden of proof back to the plaintiff would substantially increase the cost of enforcing the statute for the smaller corporation or individual proprietor. With the burden resting permanently on the plaintiff, not only would the statute be more expensive to utilize, it consequently would have a "chilling" effect on the use of the statute. Again the result would be contrary to the purpose of the statute. The only beneficiary of modifying the statute would be the large regional or multistate corporations that can afford to temporarily raise or lower prices in various regions in order to drive competition out. As a result, the smaller corporations and proprietorships and ultimately the public, all suffer.

Section 3. Finally, it should be noted that the statute does not have a history of abuse. It does not have a track record indicating that it has been used to harass or extort. Since this is the case, the only effect of changing the statute would be anti-competitive.

Montana Recycling, Inc. has multi- operations throughout the state of Montana and we feel that as we now do business, this law does not need to have any changes.

Doug Stewart
President

TESTIMONY ON SENATE BILL 134 BEFORE HOUSE COMMITTEE

Chairman Benedict, Vice-Chairman Hanson and committee members: My name is Lars Gallup, I'm part owner of Golden Recycling in Billings. I have over 30 years of experience in the recycling business both for Pacific Hide & Fur as a large recycler and Golden as a small recycler.

1. The American way of business was founded on free enterprise and competition in business. Senate Bill 134 erodes this foundation.

2. Senate Bill 134 is Special Legislation promoted by the largest recycler in Montana with multiple locations for their benefit only.

3. In Montana there is one large recycler, Pacific Hide & Fur with multiple locations, two medium sized recyclers with multiple locations and many smaller recyclers with one location. In talking with most of the recyclers in the state, no one is bothered by how the present law is written, except the one large recycler that is requesting these amendments to the present law. This brings to mind the question of why does the one large recycler need the amendment to eliminate prima facia responsibility?

Golden Recycling has filed charges against Pacific Hide & Fur under Section 20-14-208 MCA in its' present form. The purpose of Pacific's attempt to amend this statute with Senate Bill 134 is to hinder or eliminate the action we have filed against them. It is a matter of record in this ^{litigation} ~~legislation~~ that Pacific's interim manager in Billings made the statement "They would run us out of business with Pacific's checkbook." *Pacific also filed Summary Judgment AND WAS DENIED Summary Judgment by Dist Judge Todd BAUGH.* This litigation filed against Pacific is scheduled for trial by jury in District Court in Billings, Montana on June 19, 1993. To date Pacific has given up over 1/2 million dollars in profits at their Billings Recycling branch trying to run us out of business. Only a large business like Pacific could afford to absorb this kind of loss over an 18 month period at one location. Pacific has 12 recycling locations in Montana, ten recycling locations in Idaho, 3 recycling locations in Wyoming, 3 recycling location in Washington, and one recycling location in Oregon.

4. By changing the wording in Section 1 and 3, and deleting Section 2 you will allow Pacific the privilege of predatory pricing without regard to the damage it does to the small recycling centers. Again, the American way is free enterprise and competition in business. With these amendments the large multi-location recycler can eliminate

competition by eliminating the small recyclers profits, without profit they are out of business. The result being they can control the Montana markets and the recycling industry in Montana.

Several years ago there was litigation filed against Pacific under the Federal Anti-Trust statutes by another recycler for doing the same thing they are doing to us now. They chose to settle out of court.

5. This is not good for the people of Montana nor the small business man that pays taxes and employs Montana citizens who also pay taxes and support the economy of Montana.

6. This legislation benefits one entity. I urge you to consider this legislation very carefully and get all the facts before you act on changing the present law. Recycling in Montana needs to grow, not be controlled by any one entity. Please vote NO to the Senate Bill 134.

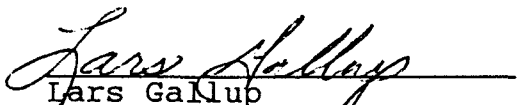

Lars Gallup
Golden Recycling & Salvage

EXHIBIT 4
DATE 3-4-93
SB 134

EXHIBIT 5
DATE 3-4-93
SB 134

SENATE BILL 134
HEARING - HOUSE BUSINESS AND ECONOMIC DEVELOPMENT COMMITTEE
MARCH 4, 1993

GOOD MORNING MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:
MY NAME IS TUCK VOSBURG, PRESIDENT OF PACIFIC HIDE & FUR DEPOT
OUR COMPANY SUPPORTS SENATE BILL 134

AMENDING THE AREA PRICE DISCRIMINATION STATUTE

OUR COMPANY IS A MULTI-LOCATION BUSINESS WITH 12 BRANCHES IN MONT.
OUR FIRST EMPLOYEE CAME TO MONTANA IN 1919, ABOUT THE TIME THIS
STATUTE CAME INTO EXISTENCE

1992 WAS THE FIRST YEAR WE LEARNED THAT SUCH A STATUTE EXISTED

THE PRESENT STATUTE SAYS THAT BECAUSE WE HAVE MORE THAN ONE
LOCATION, PACIFIC IS SUBJECT TO A SUIT FOR UNFAIR COMPETITION BY A
SINGLE-LOCATION COMPETITOR EVERYTIME WE PAY ONE PENNY MORE FOR
ALUMINUM CANS IN ONE LOCATION THAN ANOTHER.

AND WHAT MAY BE MORE DANGEROUS, THE PARTY BRINGING THE SUIT DOESN'T
CARRY THE BURDEN OF PROOF. WE HAVE TO PROVE WE ARE NOT GUILTY!

THAT IS BECAUSE PRICING ALUMINUM CANS ONE PENNY ABOVE IS
PRIMA FACIE EVIDENCE THAT WE HAVE VIOLATED THE STATUTE.

AND LET'S SAY WE WIN THE SUIT. SINCE OUR SINGLE-LOCATION COMPETITOR
DOES NOT HAVE THE BURDEN OF PROOF AS IN MOST SUITS, HE IS
ENCOURAGED TO FILE ANOTHER SUIT THE FIRST TIME WE PAY A FARMER
ONE DOLLAR MORE FOR SCRAP IRON IN ONE LOCATION VERSUS ANOTHER.

THE STATUTE AS PRESENTLY WRITTEN DOES NOT SEEM TO BENEFIT THE
PUBLIC

- * IT DISCOURAGES PAYING THE PUBLIC THE HIGHEST PRICE THEY
CAN OBTAIN AS A RESULT OF GOOD COMPETITION.
- * INSTEAD, IT ENCOURAGES A SINGLE-LOCATION FIRM TO SUE OR
THREATEN TO SUE ALL MULTIPLE-LOCATION FIRMS IF THEY EVER
PAY A PENNY MORE THAN THE LOWEST PRICE PAID IN ANY OTHER
LOCATION.
- * THIS ALLOWS THE SINGLE-LOCATION FIRM TO LIMIT PRICES

PACIFIC NOW KNOWS THIS CAN HAPPEN.

WE ARE INVOLVED IN JUST SUCH LITIGATION.

THE JUDGE HAS NOT DISMISSED THE CASE YET THOUGH WE ASKED
BUT IN HIS ORDER HE DID SAY:

"WHAT APPEARS TO THE COURT UPON REVIEW OF ALL THE CHARTS
AND GRAPHS, BUT ESPECIALLY FROM THE DAILY PURCHASE TICKET
CHARTS, IS THAT BOTH PARTIES HAVE ENGAGED IN A HEALTHY
COMPETITION IN PRICES WHICH ULTIMATELY BENEFITS THE
CONSUMER."

THEREFORE, WE WOULD SUGGEST THAT THE STATUTE BE AMENDED AS
PROPOSED:

BY ELIMINATING PARAGRAPH (2) CONCERNING PRIMA FACIE EVIDENCE
PUTS THE BURDEN OF PROOF WHERE IT NORMALLY IS - ON THE
PLAINTIFF

BY ENCOURAGING COMPETITION SO THAT THE PUBLIC RECEIVES THE
BEST PRICE BY CHANGING THE WORDING IN PARAGRAPH (3) TO
"COMPETING WITH"

BY PREVENTING ANY COMPETITOR FROM DRIVING OUT ANOTHER WITH
UNFAIR PRICES BY KEEPING THE STATUTE ON THE BOOKS AS AMENDED

THANK YOU FOR YOUR ATTENTION

BORDER

(406) 365-4398 or 365-8635

MT WATTS 1-800-423-5219

HC 66, Box 6034 • Glendive, MT 59330

(701) 663-6450

ND WATTS 1-800-422-1291

HCO4, Box 57 • Mandan, ND 58554

STEEL AND RECYCLING

32-9

REP. BETTY LOU KASTEN
HELENA, MT

EXHIBIT 6
DATE 3-4-93
SB 134

REP. KASTEN,

I WOULD LIKE TO DRAW YOUR ATTENTION TO SENATE BILL 134 THAT HAS PASSED SENATE & IS HEADING YOUR WAY. THIS BILL IF PASSED BY THE HOUSE WOULD CREATE A HARDSHIP ON SOME 24 SMALL RECYCLERS & ONLY BENEFIT 1 LARGER RECYCLER IN THE STATE.

IN A NUTSHELL THIS BILL WILL ONLY HELP ONE COMPANY IN THIS STATE & APPEARS TO BE DRAFTED FOR THAT SOLE PURPOSE. WITH INCREASED COUNTY TAXES & WORKERS COMP. RATES WE AT BORDER STEEL DO NOT NEED THIS STONE AROUND OUR NECKS. THANK YOU FOR YOUR TIME. IF YOU HAVE ANY QUESTIONS, PLEASE CALL ME AT THE NUMBER CIRCLED ABOVE

SINCERELY

Customer Service is Our #1 Priority

Bret Smelser

BORDER

(406) 365-4398 or 365-8635

MT WATTS 1-800-423-5219

HC 66, Box 6034 • Glendive, MT 59330

(701) 663-6450

ND WATTS 1-800-422-1291

HCO4, Box 57 • Mandan, ND 58554

STEEL AND RECYCLING

3-2-93

REP BOB GILBERT
MONTANA HOUSE OF REP.
HELENA, MT

EXHIBIT 7
DATE 3-4-93
SB 134

BOB,

I CALLED A COUPLE OF WEEKS AGO & MISSED YOUR RETURN CALL. I WANTED TO DRAW YOUR ATTENTION TO SENATE BILL 134 THAT IS HEADED TO THE HOUSE. THIS BILL THAT WAS SPONSORED BY SEN. CHRIS CHRISTIAENS OF GT FALLS APPEARS TO HAVE BEEN DRAFTED TO BENEFIT ONE COMPANY IN THIS STATE. IF THIS BILL BECOMES LAW IT WOULD CREATE A UNDUE HARD-SHIP ON SMALL & SMALLER RECYCLERS IN THIS STATE LIKE BORDER STEEL.

I BELIEVE THE LAW AS WRITTEN NOW IS FAIR. IF THIS BILL IS ENACTED IT WOULD GIVE ONE COMPANY LEGAL RIGHT TO RUN SMALLER COMPANIES OUT OF BUSINESS WITH UNFAIR TRADE POLICIES. THANK YOU FOR YOUR TIME. IF YOU HAVE ANY QUESTIONS CALL ME ON THE TOLL FREE CIRCLED ABOVE.

Customer Service is Our #1 Priority

SINCERELY,
Bob + Smelton



ROSIN BROS., INC.

Scrap • Salvage

609 E. ALUMINUM

BUTTE, MT 59703

BUSINESS PHONE (406) 782-2341 FAX (406) 782-2343

P. O. BOX 429

EXHIBIT 8
DATE 3-4-93
SB 134



MARCH 3, 1993

STATE OF MONTANA
HOUSE OF REPRESENTATIVES
HOUSE BUSINESS & ECONOMIC DEVELOPEMENT COMMITTEE

RE: SENATE BILL #134

DEAR COMMITTEE MEMBERS:

WE AT ROSIN BROTHERS INC. ARE VERY MUCH OPPOSED TO THE
PASSAGE OF SENATE BILL #134, AMENDING SECTION 30-14-208 MCA.

ROSIN BROTHERS INC. IS A SMALL RECYCLING BUSINESS, OPERATING
IN ONE LOCATION. THE CHANGES PROPOSED IN SENATE BILL #134
WOULD ALLOW ENTITIES WITH MULTIPLE LOCATIONS, TO PAY LOW PRICES
FOR COMMODITIES AT ONE LOCATION AND USE THE PROFITS FROM THE
LOW PRICES TO SUBSIDIZE THE SUBSTANTIALLY HIGHER PRICES PAID
AT ANOTHER LOCATION. THE CHANGES REQUESTED IN THE AMENDMENT
WOULD MAKE IT VIRTUALLY IMPOSSIBLE FOR THE SMALL DEALER TO PROVE
THAT PRICE DISCRIMINATION OR PREDATORY PRICING EXISTS.

THE LAW AS IT IS NOW WRITTEN, REQUIRES AN ENTITY WITH MULTIPLE
LOCATIONS IN THE STATE OF MONTANA TO PAY THE SAME AT ALL LOCATIONS
WITH DUE CONSIDERATION GIVEN TO QUALITY AND FREIGHT DIFFERENCES.

THE PASSAGE OF SENATE BILL #134 WOULD DO GREAT HARM TO THE SMALL
RECYCLING BUSINESSES, POSSIBLY PUTTING SOME OUT OF BUSINESS.
MONTANA CAN ILL AFFORD THIS POSSIBILITY.

ROSIN BROTHERS INC. RESPECTFULLY REQUESTS THAT THIS BILL NOT BE
PASSED.

SINCERELY

Paul Rosin

PAUL ROSIN PRESIDENT

CHAIRMAN BENEDICT, VICE-CHAIRMAN HANSON
AND COMMITTEE MEMBERS

THANK YOU FOR THE OPPORTUNITY TO VOICE
MY OPION ON S. B. 134. MY NAME
IS JIM GALLUP. I AM PRESIDENT OF
A SMALL ONE LOCATION RECYCLING CENTER IN
BILLINGS. I HAVE OVER 14 YEARS
EXPERIENCE WITH THE RECYCLING INDUSTRY,
IN MONTANA.

THE 1ST POINT I WOULD LIKE TO
MAKE IS ~~HOW~~ ^{WHO} THIS BILL ~~S.B. 134~~ ^{BILL} WOULD
AFFECT. CURRENTLY THERE IS 1 LARGE
MULTI-FACILITY RECYCLER, ^{WITH 12 LOCATIONS IN MONT.} 2 MEDIUM SIZED
RECYCLERS WITH APX 5 LOCATIONS EACH
AND OVER 30 SMALL 1 LOCATION
RECYCLERS. THE SMALL RECYCLERS INCLUDE
BUSINESSES, CIVIC ORGANIZATIONS AND
HANDICAPP ORGANIZATIONS.

②

THE ONE LARGE RECYCLER, PACIFIC
HIDE & FUR DEPOT, IS THE ONLY
BUSINESS OR ORGANIZATION THAT WANTS
S.B. 134. MR VOSBERG OF PACIFIC HIDE
& FUR DEPOT ALSO DOING BUSINESS AS
PACIFIC RECYCLING, PACIFIC STEEL
PACIFIC HIDE & ~~FUR DEPOT~~ STEEL AND
RECYCLING, PACIFIC STEEL & RECYCLING
TESTIFIED BEFORE THE SENATE
BUSINESS & INDUSTRY COMMITTEE ON 1/20/93.
IN HIS TESTIMONY HE SAID "BECAUSE
PACIFIC HAS MORE THAN ONE LOCATION, THEY
ARE SUBJECT TO SUIT BY A SINGLE-
LOCATION COMPETITOR ANY TIME PACIFIC
OUT BIDS THE COMPETITOR. THE PARTY
BRINGING THE SUIT DOESN'T CARRY THE
BURDEN OF PROOF: THE DEFENDANT
PACIFIC MUST PROVE THEY ARE NOT
GUILTY." THIS IS UNTRUE ^{WITH THE LAW IN ITS FAVOR} SINCE
THE PARTY BRING SUITE MUST FIRST
PROVE PACIFIC'S INTENT TO CREATE
A MONOPOLY, DESTROY THE BUSINESS, OR
PREVENT A NEW COMPETITOR FROM
BECOMING A DEALER. IF THERE IS
PROOF OF INTENT TO DESTROY OR PREVENT
COMPITION, THEN AND ONLY THEN WOULD
A COMPANY LIKE PACIFIC HAVE TO PROVE
THEIR INNOCENTS. SENATOR CHRISTENSEN.
PREPARED TESTIMONY SAYS THAT A

PRICE PAID THAT WAS DESIGNED ONLY TO MEET COMPETITION IS A DEFENSE UNDER THE CURRENT LAW. I DO NOT SEE HOW OUTBIDDING A SINGLE LOCATION COMPETITOR WOULD BRING ON LAWSUITS TO MULTI LOCATION COMPANIES AS MR Vosberg TESTIFIED TO IN HIS SENATE TESTIMONY. AGAIN THE PARTY FILING SUIT MUST PROVE INTENT TO DESTROY OR PREVENT COMPETITION. PROVING INTENT WOULD NOT BE AN EASY CHORE. THE ORIGINAL LAW ALLOWS ^{SMALLER} A LARGE COMPANY TO MEET ANY PRICE SET BY LOCAL COMPETITION INCLUDING PACIFIC. THE CURRENT LAW DOES NOT ALLOW A LARGE COMPANY LIKE PACIFIC, TO PAY EXTREMELY HIGH PRICES IN ONE CITY IN ORDER TO DESTROY OR PREVENT COMPETITION, WHILE PAYING LOW PRICES IN ANOTHER CITY IN ORDER TO MAINTAIN TOTAL CORPORATE PROFITS. S.B. 134 IS SPECIAL LEGISLATION WHICH WOULD ONLY BENEFIT PACIFIC HIDE & FUR DEPOT.

EXHIBIT 9

DATE 3-4-93

SB 134

IN CONCLUSION, I WOULD ASK THAT YOU OPPOSE
THIS SPECIAL LEGISLATION AND ALLOW
FAIR COMPETITION TO TAKE ITS COURSE.
DO NOT ALLOW THIS SPECIAL LEGISLATION
WHICH IS ONLY GOOD FOR THE ONE TO
PROCEED OUT OF YOUR COMMITTEE.
PLEASE VOTE AGAINST S.B. 134.

THANK YOU AGAIN FOR YOUR TIME
CONCERNING THIS CRITICAL MATTER

EXHIBIT 10DATE 3-4-93SB 134

ROSIN BROS., INC.

Scrap • Salvage

609 E. ALUMINUM

P. O. BOX 429

BUTTE, MT 59703

BUSINESS PHONE (406) 782-2341 FAX (406) 782-2343



MARCH 3,1993

STATE OF MONTANA
HOUSE OF REPRESENTATIVES
—HOUSE BUSINESS & ECONOMIC DEVELOPEMENT COMMITTEE

RE: SENATE BILL #134

DEAR COMMITTEE MEMBERS:

WE AT ROSIN BROTHERS INC. ARE VERY MUCH OPPOSED TO THE
PASSAGE OF SENATE BILL #134, AMENDING SECTION 30-14-208 MCA.

ROSIN BROTHERS INC. IS A SMALL RECYCLING BUSINESS, OPERATING
IN ONE LOCATION. THE CHANGES PROPOSED IN SENATE BILL #134
WOULD ALLOW ENTITIES WITH MULTIPLE LOCATIONS, TO PAY LOW PRICES
FOR COMMODITIES AT ONE LOCATION AND USE THE PROFITS FROM THE
LOW PRICES TO SUBSIDIZE THE SUBSTANTIALLY HIGHER PRICES PAID
AT ANOTHER LOCATION. THE CHANGES REQUESTED IN THE AMENDMENT
WOULD MAKE IT VIRTUALLY IMPOSSIBLE FOR THE SMALL DEALER TO PROVE
THAT PRICE DISCRIMINATION OR PREDATORY PRICING EXISTS.

THE LAW AS IT IS NOW WRITTEN, REQUIRES AN ENTITY WITH MULTIPLE
LOCATIONS IN THE STATE OF MONTANA TO PAY THE SAME AT ALL LOCATIONS
WITH DUE CONSIDERATION GIVEN TO QUALITY AND FREIGHT DIFFERENCES.

THE PASSAGE OF SENATE BILL #134 WOULD DO GREAT HARM TO THE SMALL
RECYCLING BUSINESSES, POSSIBLY PUTTING SOME OUT OF BUSINESS.
MONTANA CAN ILL AFFORD THIS POSSIBILITY.

ROSIN BROTHERS INC. RESPECTFULLY REQUESTS THAT THIS BILL NOT BE
PASSED.

SINCERELY

Paul Rosin

PAUL ROSIN PRESIDENT

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Business & Ec.

COMMITTEE

BILL NO. SB 390

DATE March 4, 1993 SPONSOR(S)

C. Christensen

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
LARRY AIKEY	COIN OPERATORS ASSOC	✓	

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 & Ec.

COMMITTEE

BILL NO.

SB 134

DATE March 4, 1993 SPONSOR(S)

E. Christaens

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Tim Gallup	Golden Recycling		X
Mr. Vosburg	Pacific Hiltol Farm	X	
David Owen	MT chamber of commerce	✓	
LARS Gallup	Golden Recycling		X
Douglas H. Hunsat	Mountain Recycling		✓
Bruce Mac Kenzie	Pacific Hiltol	X	

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 & Ec. COMMITTEE BILL NO. SB 132
DATE March 4, 1993 SPONSOR(S) D. Stang
PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Martin Jacobson	Public Service Commission	✓	
GENE PHILLIPS	DP&L	X	
John Aek	WNU	X	
Gary Willis	M.P.C	X	
Wm Egan	MT Conf. Elect Works	X	
MICHAEL S. MIZENKO	MONT STATE Bldg & CONSTRUCTION COUNCIL	X	

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