

1                    HOUSE    BILL NO. 31  
2    INTRODUCED BY BARDANOUE

3  
4    A BILL FOR AN ACT ENTITLED: "AN ACT FOR THE RECODIFICATION  
5    AND GENERAL REVISION OF CHAPTERS 1 AND 4 OF TITLE 51, R.C.M.  
6    1947, RELATING TO UNFAIR TRADE PRACTICES, AND TO AMEND  
7    SECTION 84-2412, R.C.M. 1947, TO STRIKE THE REFERENCE TO THE  
8    UNFAIR PRACTICES ACT."

9  
10    BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
11        Section 1. Section 51-117, R.C.M. 1947, is renumbered  
12        51-501, and is amended to read as follows:

13            "~~51-117~~ 51-501. ~~Construction of act~~ Purpose. The  
14        legislature declares that the purpose of this ~~act~~ chapter is  
15        to safeguard the public against the creation or perpetuation  
16        of monopolies and to foster and encourage competition, by  
17        prohibiting unfair and discriminatory practices by which  
18        fair and honest competition is destroyed or prevented. This  
19        ~~act~~ chapter shall be literally construed so that its  
20        beneficial purposes may be subserved."

21            Section 2. There is a new R.C.M. section numbered  
22        51-502 that reads as follows:

23            51-502. Definitions. As used in this chapter, unless  
24        the context indicates otherwise, the following definitions  
25        apply:

1            (1) "Department" means the department of business  
2        regulation provided for in 82A-401.

3            (2) "Article of commerce" includes but is not limited  
4        to any commodity, product, service or output of a service  
5        trade or profession, any product or service of a public  
6        utility, and any product of the soil.

7            (3) "Cost" as applied to production includes the cost  
8        of raw materials, labor, and all overhead expenses of the  
9        producer.

10           (4) "Cost" as applied to distribution means either the  
11        invoice price of the article or product sold or the cost to  
12        the dealer or vendor for replacing the article or product in  
13        the quantity last purchased within 90 days prior to the sale  
14        of the article or product, whichever is lesser, less all  
15        trade discounts except customary cash discounts, plus the  
16        cost of doing business by the vendor.

17           (5) "Customary cash discount" means any allowance not  
18        exceeding 2%, whether a part of a larger discount or not,  
19        made to a wholesale or retail vendor when such vendor pays  
20        for merchandise within a limited or specified time.

21           (6) "Cost of doing business" or "overhead expense"  
22        includes all costs of doing business incurred in the conduct  
23        of a business and includes, without being limited to, the  
24        following items of expense:

25           (a) labor (including salaries of executives and

1 officers);  
 2 (b) rent;  
 3 (c) interest on borrowed capital;  
 4 (d) depreciation;  
 5 (e) selling cost;  
 6 (f) maintenance of equipment;  
 7 (g) delivery costs;  
 8 (h) credit losses;  
 9 (i) all types of licenses;  
 10 (j) taxes;  
 11 (k) insurance and advertising.  
 12 (7) "Person" includes any person, partnership, firm,  
 13 corporation, joint-stock company, or other association  
 14 engaged in business within this state.  
 15 (8) "Vendor" includes not only any person acting as  
 16 one known generally and legally as a vendor but also any  
 17 person who performs work upon, renovates, alters, or  
 18 improves any personal property belonging to another person.  
 19 (9) "Business" includes any person, as defined in (7),  
 20 domestic or foreign, engaged in the production, manufacture,  
 21 distribution, purchasing, or sale of any article of commerce  
 22 within the state of Montana.  
 23 Section 3. Section 51-102, R.C.M. 1947, is renumbered  
 24 51-503, and is amended to read as follows:  
 25 "~~51-102~~ 51-503. Persons ~~deemed~~ responsible. Any person

1 who, either as director, officer, or agent of any firm or  
 2 corporation or as agent of any person, ~~violating the~~  
 3 ~~provisions of this act~~, assists or aids, directly or  
 4 indirectly, in ~~such a violation of this chapter shall be~~ is  
 5 responsible therefor equally with the person, firm, or  
 6 corporation for whom or which he acts.  
 7 ~~In the prosecution of any person as officer, director~~  
 8 ~~or agent, it shall be sufficient to allege and prove the~~  
 9 ~~unlawful intent of the person, firm, or corporation for whom~~  
 10 ~~or which he acts."~~  
 11 Section 4. There is a new R.C.M. section numbered  
 12 51-504 that reads as follows:  
 13 51-504. Proof of intent. In an injunction proceeding  
 14 or in the prosecution of a person acting as an officer,  
 15 director, or agent, it is sufficient to allege and prove the  
 16 unlawful intent of the person, firm, or corporation for whom  
 17 or which he acts.  
 18 Section 5. There is a new R.C.M. section numbered  
 19 51-505 that reads as follows:  
 20 51-505. Unlawful restraint of trade. It is unlawful  
 21 for a person or group of persons, directly or indirectly:  
 22 (1) to enter an agreement for the purpose of fixing  
 23 the price or regulating the production of an article of  
 24 commerce;  
 25 (2) for the purpose of creating or carrying out any

1 restriction in trade, to:

2 (a) limit productions;

3 (b) increase or reduce the price of merchandise or  
4 commodities;

5 (c) prevent competition in the distribution or sale of  
6 merchandise or commodities;

7 (d) fix a standard or figure whereby the price of an  
8 article of commerce intended for sale, use, or consumption  
9 will be in any way controlled;

10 (e) agree to add to a bid for any contract an amount,  
11 fixed by percentage or otherwise, for the purpose of making  
12 a refund or sharing costs of bidding with any other bidder;

13 (f) return a part of any amount added to a bid by  
14 collusive agreement among bidders to any person;

15 (g) create a monopoly in the manufacture, sale, or  
16 transportation of an article of commerce;

17 (h) enter into an agreement which binds any person not  
18 to manufacture, sell, or transport an article of commerce  
19 below a common standard or figure or which keeps such  
20 article or transportation at a fixed or graduated figure or  
21 by which the price of such article is settled so as to  
22 preclude unrestricted competition.

23 Section 6. Section 51-402, R.C.M. 1947, is renumbered  
24 51-506, and is amended to read as follows:

25 "~~51-402 51-506. Certain agreements between laborers~~

1 Labor excepted. The provisions of ~~this act~~ 51-505 do not  
2 apply to any arrangements, agreement, or combination between  
3 laborers, made with the object of lessening the number of  
4 hours of labor or increasing wages."

5 Section 7. There is a new R.C.M. section numbered  
6 51-507 that reads as follows:

7 51-507. Unfair competition in sales. (1) It is unlawful  
8 for any business, with the intent to destroy the competition  
9 of any regular established dealer of any article of commerce  
10 or to prevent the competition of any person who in good  
11 faith intends or attempts to become such dealer, to  
12 discriminate between different localities in this state by  
13 selling or furnishing such article at a lower rate in one  
14 locality than in another, after making allowance for  
15 difference, if any, in the grade, quality, quantity, and  
16 actual cost of transportation from the point of production  
17 or manufacture of the article.

18 (2) This section does not prohibit the meeting in good  
19 faith of a competitive rate or prevent a reasonable  
20 classification of service by public utilities for the  
21 purpose of establishing rates.

22 (3) The prohibition against locality discrimination  
23 includes any scheme of special rebates, collateral  
24 contracts, or any device of any nature whereby such  
25 discrimination is, in substance or fact, effected in

1 violation of the spirit and intent of this section.

2 (4) Willfully and knowingly advertising, offering for  
3 sale, or selling any commodity at less than the price  
4 stipulated in a contract entered into under this section,  
5 whether or not the person so advertising, offering for sale,  
6 or selling is a party to such contract, is unfair  
7 competition, and a person damaged thereby may bring an  
8 action.

9 Section 8. There is a new R.C.M. section numbered  
10 51-508 that reads as follows:

11 51-508. Unfair competition in purchasing. (1) Any  
12 business which, for the purpose of creating a monopoly or  
13 destroying the business of a regularly established dealer or  
14 preventing the competition of any person who in good faith  
15 intends or attempts to become such dealer discriminates  
16 between different persons or localities of this state by  
17 purchasing any article of commerce at a higher rate or price  
18 in one locality than in another, after making due allowance  
19 for the difference in the actual cost of transportation from  
20 the point of purchase to the point of manufacture, sale,  
21 storage, or distribution and for the difference in the grade  
22 and quality of such article, is guilty of unfair  
23 discrimination, which is prohibited and unlawful.

24 (2) Proof that any person has paid a higher rate or  
25 price for any article of commerce in one locality than in

1 another, after making due allowance for the difference in  
2 the actual cost of transportation and for the difference in  
3 the grade and quality of such article, shall be prima facie  
4 evidence of a violation of this section.

5 (3) The payment of a higher rate or price in one  
6 locality than in another, after making such allowance  
7 provided above, is not unfair discrimination provided such  
8 higher rate or price is paid for the purpose of meeting the  
9 rate or price set by a competitor in such locality. The  
10 burden of proof of such fact is upon the person charged with  
11 unfair discrimination.

12 Section 9. There is a new R.C.M. section numbered  
13 51-509 that reads as follows:

14 51-509. Sales at less than cost forbidden. It is  
15 unlawful for a vendor to sell, offer for sale, or advertise  
16 for sale any article of commerce at less than the cost  
17 thereof to the vendor, or to give, offer to give, or  
18 advertise the intent to give away any article of commerce  
19 for the purpose of injuring competitors and destroying  
20 competition.

21 Section 10. There is a new R.C.M. section numbered  
22 51-510 that reads as follows:

23 51-510. Cost survey as evidence of cost. Whenever a  
24 particular trade or industry, of which the person complained  
25 against is a member, has an established cost survey for the

1 locality in which the offense is committed, such cost survey  
2 is competent evidence to be used in proving the costs of the  
3 person complained against.

4 Section 11. Section 51-114, R.C.M. 1947, is  
5 renumbered 51-511, and is amended to read as follows:

6 "~~51-114~~ 51-511. Procedure for establishing  
7 Establishing cost survey ~~hearing notice~~. (1) The  
8 department shall, whenever application has been made by ~~two~~  
9 ~~(1)~~ or more persons, ~~firms, or corporations~~ within a  
10 particular trade or business, establish the cost survey  
11 provided for in ~~section 51-105~~ 51-510. When petition for a  
12 cost survey has been so presented to the department, the  
13 department shall, as soon as possible, fix a time for a  
14 public hearing upon the question of whether the cost survey  
15 should be established, and if so, upon the matter of  
16 establishing such cost survey. The hearing shall be held at  
17 the office of the department and upon that notice which the  
18 department ~~may by rule require~~ require by rule. However,  
19 notice of the hearing shall be published for at least ~~two~~  
20 ~~(2)~~ successive weeks in the daily newspaper or newspapers as  
21 the department may designate as most commonly circulated in  
22 the counties to be affected by the cost survey. The notice  
23 shall further state the locality or area in respect to which  
24 the cost survey is proposed to be established and the  
25 particular trade or business to be affected by it.

1 (2) At the time fixed in the notice any person, ~~firm,~~  
2 ~~or corporation~~ may appear and be heard by the department  
3 upon all questions to be determined by it as provided in  
4 this section. If the department determines that a cost  
5 survey ~~shall~~ should be established, it shall at the same  
6 hearing proceed to classify and define the particular trade  
7 or business, or parts thereof, to be affected, determine and  
8 delimit the particular area within which the trade or  
9 business ~~shall~~ will be affected, and find and determine the  
10 probable "cost of doing business" or "overhead expense,"  
11 stated in percentage of invoice or replacement cost which  
12 would probably be incurred by the most efficient person,  
13 ~~firm, or corporation~~ in the trade or business within the  
14 area.

15 (3) ~~Where~~ If the department determines that the  
16 probable "cost of doing business" or "overhead expense,"  
17 stated in percentage of invoice or replacement cost which  
18 would probably be incurred by the most efficient person,  
19 ~~firm, or corporation~~ in the trade or business is the same  
20 for the entire state, then the department may, upon proper  
21 notice given as provided in this section, create one trade  
22 area embracing the entire state.

23 (4) The percentage so determined shall be presumed to  
24 be the actual "cost of doing business" and "overhead  
25 expense" of any person, ~~firm, or corporation~~ in the trade or

1 business and within the area affected by the cost survey."

2 Section 12. Section 51-104, R.C.M. 1947, is  
3 renumbered 51-512, and is amended to read as follows:

4 "~~51-104~~ 51-512. ~~Enforced~~ Forced sales not basis of  
5 cost price. In establishing the cost of a given article or  
6 product to the distributor and vendor, the invoice cost of  
7 ~~said the~~ article or product purchased at a forced, bankrupt,  
8 closeout sale, or other sale outside of the ordinary  
9 channels of trade may not be used as a basis for justifying  
10 a price lower than one based upon the replacement cost as of  
11 ~~the~~ date of ~~said~~ sale of ~~said the~~ article or product  
12 replaced through the ordinary channels of trade, unless:

13 (1) ~~said the~~ article or product is kept separate from  
14 goods purchased in the ordinary channels of trade; ~~and~~  
15 ~~unless-said~~

16 (2) ~~the~~ article or product is advertised and sold as  
17 merchandise purchased at a forced, bankrupt, or closeout  
18 sale, or by means other than through the ordinary channels  
19 of trade, and ~~said such~~ advertising ~~shall state~~ states the  
20 conditions under which ~~said the~~ goods were ~~so~~ purchased, and  
21 the quantity of ~~such~~ merchandise to be sold or offered for  
22 sale."

23 Section 13. Section 51-107, R.C.M. 1947, is  
24 renumbered 51-513, and is amended to read as follows:

25 "~~51-107~~ 51-513. ~~Exceptions~~ Sales excepted. The

1 ~~provisions of sections Sections~~ Sections ~~51-103, 51-104 and 51-105~~  
2 ~~shall~~ 51-509, 51-510, and 51-512 do not apply to any sale  
3 made:

4 (a) (1) ~~In~~ in closing out in good faith, the owner's  
5 stock or any part thereof, for the purpose of discontinuing  
6 his trade in any ~~such stock or commodity, and in the case of~~  
7 ~~the sale~~ article of commerce;

8 (2) of seasonal goods; ~~or to the bona fide sale~~  
9 (3) in good faith of perishable goods to prevent loss  
10 to the vendor by spoilage or depreciation, provided notice  
11 is given to the public thereof;

12 (b) (4) ~~When~~ when the goods are damaged or deteriorated  
13 in quality, and notice is given to the public thereof;

14 (c) (5) ~~By~~ by an officer acting under the orders of any  
15 court;

16 (d) (6) ~~In~~ in an a good faith endeavor ~~made in good~~  
17 ~~faith~~ to meet the legal prices of a competitor ~~as herein~~  
18 ~~defined~~ selling the same article ~~or product, or service or~~  
19 ~~output of a service trade, of commerce~~ in the same locality  
20 or trade area; or

21 (e) (7) ~~To~~ to the state of Montana or any of its  
22 institutions.

23 ~~Any person, firm or corporation who performs work upon,~~  
24 ~~renovates, alters or improves any personal property~~  
25 ~~belonging to another person, firm or corporation, shall be~~

1 ~~construed to be a vendor within the meaning of this act."~~

2 Section 14. Section 51-106, R.C.M. 1947, is  
3 renumbered 51-514, and is amended to read as follows:

4 "~~51-106~~ 51-514. Fair price for agricultural products,  
5 ~~how determined~~. (1) The following method shall be used in  
6 determining fair prices for agricultural products sold on  
7 local markets, in a trade area, district, or city in which  
8 the major portion of an agricultural commodity or product is  
9 produced within or adjacent to the trade area, city, or  
10 district:

11 (a) When ~~seventy-five percent (75%)~~ of the producers  
12 of an agricultural product or commodity marketing those  
13 products or commodities within a trade area, district, or  
14 city determine what is a fair price based upon competitive  
15 and other factors for their product or commodity, it shall  
16 be ~~considered~~ the fair price for that product or commodity  
17 under the terms of this ~~act~~ chapter.

18 (b) Those producers through their agents shall file  
19 with the department the fair price and request a hearing for  
20 the establishment of fair prices to jobbers, wholesalers,  
21 retailers, and consumers of the agricultural products or  
22 commodities. ~~Any~~ An organization representing consumers may  
23 not be denied representation at the ~~meeting~~ hearing.

24 (2) After the establishment of a schedule of fair  
25 prices for the agricultural products or commodities, it is a

1 violation of this ~~act~~ chapter for a producer, jobber,  
2 wholesaler, or retailer to sell or buy an agricultural  
3 commodity or product below the price established by the  
4 department. ~~That~~ Such action is punishable under the terms  
5 provided in this ~~act~~ chapter."

6 Section 15. Section 51-108, R.C.M. 1947, is  
7 renumbered 51-515, and is amended to read as follows:

8 "~~51-108~~ 51-515. Rebates forbidden—~~co-operatives~~.  
9 (1) The secret payment or allowance of rebates, refunds,  
10 commissions, or unearned discounts, whether in the form of  
11 money or otherwise, or secretly extending to certain  
12 purchasers special services or privileges not extended to  
13 all purchasers purchasing upon like terms and conditions, to  
14 the injury of a competitor and ~~where~~ when such payment or  
15 allowance tends to destroy competition, is an unfair trade  
16 practice and any person, ~~firm, partnership, corporation, or~~  
17 ~~association~~ resorting to such trade practice ~~shall be deemed~~  
18 is guilty of a misdemeanor and on conviction ~~thereof shall~~  
19 be is subject to the penalties set out in ~~section 51-112~~  
20 51-524.

21 ~~Provided, however, that~~ (2) ~~However,~~ nothing in this  
22 ~~act shall~~ section ~~prevent~~ prevents a ~~co-operative~~  
23 cooperative association, organized and operating on a true  
24 ~~co-operative~~ cooperative basis, from returning to the  
25 members, producers, or consumers the whole or any part of

1 the net earnings or surplus resulting from its trading  
2 operations, in proportion to their purchases or sales from,  
3 to, or through the association."

4 Section 16. Section 51-411, R.C.M. 1947, is  
5 renumbered 51-516, and is amended to read as follows:

6 "~~51-411~~ 51-516. Pooling in purchase, sale or handling  
7 of grain by warehousemen prohibited. (1) It shall be is  
8 unlawful for any person, ~~firm, or corporation~~ engaged in the  
9 buying, selling, or handling of grain in any public local  
10 warehouse in this state, or for the local agent in charge of  
11 such warehouse, or any other agent of the person, ~~firm, or~~  
12 ~~corporation~~ operating the same, to enter into any a  
13 contract, agreement, ~~combination,~~ or understanding with any  
14 other person, ~~firm, or corporation,~~ owning or operating any  
15 other public local warehouse at any railway station, or with  
16 its agent ~~or agents,~~ whereby:

17 (a) the amount of grain to be received or handled by  
18 said the warehouses at such station ~~or stations shall is to~~  
19 be equalized or pooled between said the warehouses; ~~or~~  
20 ~~whereby~~

21 (b) the profits or earnings derived from said the  
22 warehouses shall are to be divided, ~~or~~ pooled, or  
23 apportioned in any manner, ~~or whereby~~

24 (c) the price to be paid for any kind of grain, at  
25 such station, shall is to be fixed or in any manner

1 affected, ~~and each~~

2 (2) Each day of the continuance of any such agreement,  
3 contract, or understanding shall ~~constitute~~ constitutes a  
4 separate offense."

5 Section 17. Section 51-413, R.C.M. 1947, is  
6 renumbered 51-517, and is amended to read as follows:

7 "~~51-413~~ 51-517. Destruction of food in restraint of  
8 trade. It shall be is unlawful for any person, ~~firm, or~~  
9 ~~corporation~~ to destroy, or to withhold from sale for a  
10 period of time which makes it necessary to destroy, in  
11 restraint of trade, any fish, fowl, animal, vegetable, or  
12 other ~~stuff, products~~ product, or ~~articles~~ article, which  
13 are is customary food, or which ~~are~~ proper food for human  
14 beings, and ~~are~~ is in fit sanitary condition to be used as  
15 such."

16 Section 18. Section 51-116, R.C.M. 1947, is  
17 renumbered 51-518, and is amended to read as follows:

18 "~~51-116~~ 51-518. Alteration of invoices ~~unlawful~~  
19 ~~prohibited~~. It is unlawful for a person, ~~partnership, firm,~~  
20 ~~corporation, joint stock company, or other association, as~~  
21 ~~defined in section 51-103,~~ to change, alter, substitute, or  
22 falsify an invoice ~~where if~~ the practice tends to injure a  
23 competitor, ~~or to~~ destroy competition, or ~~to~~ mislead a court  
24 or the department ~~of business regulation.~~ That Such practice  
25 is unfair trade practice and a person, ~~firm, partnership,~~



1 ~~corporation, or association~~ resorting to that trade practice  
2 is guilty of a misdemeanor and is subject to the penalties  
3 provided in ~~section 51-112~~ 51-524."

4 Section 19. Section 51-113, R.C.M. 1947, is  
5 renumbered 51-519, and is amended to read as follows:

6 "~~51-113 51-519. Department administration of act~~  
7 ~~by intervention orders review appeals process~~  
8 ~~finality of order Enforcement by department.~~ (1) The  
9 department shall prevent a person, ~~firm, or corporation~~ from  
10 violating any of the provisions of this chapter.

11 (2) Upon receiving notice that a person, ~~firm or~~  
12 ~~corporation~~ is violating or has violated any of the  
13 provisions of this chapter, the department shall immediately  
14 ~~notify direct~~ the person giving ~~that the~~ notice either to  
15 appear before the director of the department or to make a  
16 written reply to show probable cause of ~~that a~~ violation.  
17 If probable cause is shown, the department ~~must then~~ shall:

- 18 (a) make its own investigation; and  
19 (b) within ~~sixty (60)~~ days of the finding of probable  
20 cause ~~must~~ make a written report of its investigation; and  
21 ~~must~~  
22 (c) mail a copy of its findings to the person  
23 initially giving notice of a violation.

24 (3) (a) If, ~~after an investigation~~ the department,  
25 after an investigation, has reason to believe that the

1 person, ~~firm, or corporation~~ has been or is engaging in any  
2 course of conduct or doing any act in violation of this  
3 chapter and if it appears to the department that a  
4 proceeding by it would be ~~to~~ in the interest of the public,  
5 it shall issue and serve upon the person, ~~firm or~~  
6 ~~corporation~~ a complaint stating ~~its the~~ charges ~~in that~~  
7 ~~respect,~~ and containing a notice of a hearing ~~upon a day and~~  
8 at a place ~~therein fixed~~ and upon a day not less than ~~five~~  
9 ~~(5)~~ days after the service of the complaint.

10 (b) A complaint may be amended by the department in  
11 its discretion at any time ~~five (5)~~ days prior to the  
12 issuance of an order based on it.

13 (c) The person, ~~firm or corporation~~ so complained of  
14 against may appear at the place and time so fixed and show  
15 cause why an order should not be entered by the department  
16 requiring ~~that such~~ person, ~~firm, or corporation~~ to stop the  
17 violation of the law charged in the complaint.

18 (d) Any person, ~~firm or corporation~~ may make  
19 application, and upon good cause shown may be allowed by the  
20 department to intervene and appear in the proceeding by  
21 counsel or in person.

22 (e) The testimony in the proceeding shall be reduced  
23 to writing and filed ~~in the office of~~ with the department.

24 (f) If upon the hearing the department believes that  
25 the act or conduct in question is prohibited by this

1 chapter, it shall make a ~~report~~ findings of fact in writing  
 2 ~~in which it shall state its findings as to the facts and~~  
 3 ~~shall issue and cause to be served on that the person, firm,~~  
 4 ~~or corporation charged an order requiring that such person,~~  
 5 ~~firm, or corporation to stop the acts or conduct.~~

6 (q) Until a transcript of the record in the hearing  
 7 has been filed in a district court, ~~as hereinafter provided,~~  
 8 the department may at any time, upon the notice and in the  
 9 manner as it considers proper, modify or set aside, in  
 10 whole or in part, ~~any a~~ report or ~~any an~~ order made or  
 11 issued by it under this section.

12 (4) A court reviewing an order of the department may  
 13 issue such writs as are ancillary to its jurisdiction or are  
 14 necessary in its judgment to prevent injury to the public or  
 15 to competitors pending the outcome of the suit.

16 (5) To the extent that the order of the department is  
 17 affirmed, the court shall thereupon issue its own order  
 18 commanding obedience to the terms of the order of the  
 19 department.

20 (6) Proceedings ~~in the district court under this~~  
 21 ~~section~~ shall be given precedence over other civil cases  
 22 pending ~~therein in the district court,~~ and shall be in every  
 23 way expedited.

24 (7) A person, ~~firm, or corporation~~ who violates an  
 25 order of the department ~~to cease and desist~~ after it has

1 become final, and while the order is in effect shall  
 2 forfeit and pay to ~~this the~~ state a penalty of not more than  
 3 ~~one thousand dollars (\$1,000) for each violation, which~~  
 4 ~~shall accrue to this state and may be recovered in a civil~~  
 5 ~~action brought by this state.~~

6 (8) The remedies and method of enforcement of this  
 7 chapter provided for in this section are concurrent and in  
 8 addition to the other remedies provided in this chapter."

9 Section 20. Section 51-115, B.C.M. 1947, is  
 10 renumbered 51-520, and is amended to read as follows:

11 "~~51-115 51-520. Hearings and investigations~~  
 12 ~~concepts~~ Investigations. (1) The department, for the  
 13 purpose of conducting hearings and investigations which, in  
 14 the opinion of the department, are necessary and proper for  
 15 the exercise of the powers vested in it by this chapter, ~~has~~  
 16 ~~the following powers:~~

17 (1) ~~The department~~ shall at all reasonable times have  
 18 access to, ~~for the purpose of examination, and the right to~~  
 19 ~~copy~~ any evidence ~~of concerning~~ a person being investigated  
 20 or proceeded against that relates to any matter under  
 21 investigation or in question and the right to copy such  
 22 evidence. ~~Any member of the The~~ department may issue  
 23 subpoenas requiring the attendance and testimony of  
 24 witnesses and the production of any evidence that relates to  
 25 any matter under investigation or in question, before the

1 department, or before its duly authorized agent conducting  
2 the investigation. An agent, duly authorized by the  
3 department for those purposes, may administer oaths and  
4 affirmations, examine witnesses, and receive evidence. The  
5 attendance of witnesses and the production of evidence may  
6 be required from any place in this state at any designated  
7 place of hearing.

8 (2) Upon application by the department in any a  
9 case of contumacy or refusal to obey a subpoena issued to a  
10 person, ~~any~~ a district court of this state, within ~~any~~ the  
11 district where the inquiry is carried on or where a person  
12 guilty of contumacy or refusal to obey is found, ~~or~~ resides,  
13 or transacts business, ~~upon application by the department~~  
14 has jurisdiction to issue to that person, an order  
15 requiring him to appear before the department, or its duly  
16 authorized agent, and ~~there~~ to produce evidence if so  
17 ordered, or ~~there~~ to give testimony regarding the matter  
18 under investigation. Failure to obey the order of the court  
19 may be punished by the court as a contempt.

20 (3) A person may not be excused from attending and  
21 testifying or from producing books, records, correspondence,  
22 documents, or other evidence in obedience to the subpoena of  
23 the department, on the ground that the testimony or evidence  
24 required of him may tend to incriminate him or subject him  
25 to a penalty or forfeiture. An individual may not be

1 prosecuted or subjected to a penalty or forfeiture for or on  
2 account of a transaction, matter, or thing concerning which  
3 he is compelled, to testify or produce evidence, after  
4 having claimed his privilege against ~~self-incrimination~~  
5 self-incrimination, ~~to testify or produce evidence, except~~  
6 ~~that~~ ~~an~~ An individual so testifying is not exempt from  
7 prosecution and punishment for perjury committed in  
8 testifying."

9 Section 21. Section 51-111, R.C.M. 1947, is  
10 renumbered 51-521, and is amended to read as follows:

11 "~~51-111~~ 51-521. ~~Who may enjoin violations~~ Injunctions  
12 ~~— damages — production of evidence. {1} Any person, firm,~~  
13 ~~private corporation or municipal or other public~~  
14 ~~corporation, or trade association, if injured thereby, may~~  
15 maintain an action to enjoin a continuance of ~~any~~ an act ~~or~~  
16 acts in violation of ~~sections 51-101 to 51-108, inclusive,~~  
17 ~~if injured thereby, 51-505 through 51-518, and~~ for the  
18 recovery of damages. If, in such action, the court ~~shall~~  
19 ~~find~~ finds that the defendant is violating or has violated  
20 any of the provisions of ~~sections 51-101 to 51-108,~~  
21 ~~inclusive~~ 51-505 through 51-518, it shall enjoin the  
22 defendant from a continuance thereof. It ~~shall~~ is not be  
23 necessary ~~that~~ to allege or prove actual damages to the  
24 plaintiff ~~be alleged or proved~~.

25 (2) In addition to such injunctive relief, the

1 plaintiff ~~in said action shall be~~ is entitled to recover  
2 from the defendant three times the amount of ~~the~~ actual  
3 damages, ~~if any,~~ sustained.

4 ~~(3) Any a~~ defendant in an action brought under ~~the~~  
5 ~~provisions of~~ this section may be required to testify under  
6 ~~the provisions of the Code Montana Rules~~ of Civil Procedure  
7 ~~of this state,~~ in addition the books and records of any  
8 such defendant may be brought into court and introduced, ~~by~~  
9 ~~reference, into evidence,~~ into evidence by reference,  
10 ~~provided, however, that no~~ no information so obtained may be  
11 used against the defendant as a basis for a misdemeanor  
12 prosecution under ~~the provisions of sections 51-101 to~~  
13 ~~51-108, inclusive, and 51-112~~ 51-505 through 51-518 and  
14 51-524."

15 Section 22. Section 51-110, R.C.M. 1947, is  
16 renumbered 51-522, and is amended to read as follows:

17 "~~51-110 51-522. Illegal contracts recovery Recovery~~  
18 on illegal contracts forbidden. ~~Any a~~ contract, express or  
19 implied, made by ~~any a~~ person, ~~firm or corporation~~ in  
20 violation of any of the provisions of ~~sections 51-101 to~~  
21 ~~51-108, inclusive,~~ 51-505 through 51-518 is ~~declared to be~~  
22 an illegal contract and no recovery thereon ~~shall~~ may be  
23 had."

24 Section 23. Section 51-109, R.C.M. 1947, is  
25 renumbered 51-523, and is amended to read as follows:

1 "~~51-109 51-523. Attorney general Department~~ to  
2 institute suit, ~~when.~~ Upon the third violation of any of the  
3 provisions of ~~sections 51-101 to 51-108, inclusive,~~ 51-505  
4 through 51-518 by any corporation, ~~it shall be the duty of~~  
5 ~~the attorney general department to shall~~ institute proper  
6 suits or quo warranto proceedings in ~~any a~~ court of  
7 competent jurisdiction for the forfeiture of its charter,  
8 rights, franchises or privileges, and powers exercised by  
9 such corporation, and to permanently enjoin it from  
10 transacting business in this state. If in such action the  
11 court ~~shall find~~ finds that ~~each the~~ corporation is  
12 violating or has violated any of the provisions of ~~sections~~  
13 ~~51-101 to 51-108, inclusive,~~ 51-505 through 51-518, it ~~must~~  
14 shall enjoin ~~said the~~ corporation from doing business in  
15 this state permanently or for such time as the court ~~shall~~  
16 ~~order orders,~~ or ~~must~~ shall annul the charter, or revoke the  
17 franchise of such corporation."

18 Section 24. There is a new R.C.M. section numbered  
19 51-524 that reads as follows:

20 51-524. Penalties. (1) Except as otherwise provided in  
21 this section, a person, whether as principal, agent,  
22 officer, or director, who violates any of the provisions of  
23 51-505 through 51-518, is guilty of a misdemeanor for each  
24 single violation and upon conviction thereof shall be fined  
25 not less than \$100 or more than \$1,000 or imprisoned for a

1 term not to exceed 6 months or both.

2 (2) A violation of 51-505 is punishable by  
3 imprisonment in the county jail for a period not less than  
4 24 hours or more than 1 year or by fine not exceeding  
5 \$25,000 or both.

6 (3) When there is a violation of 51-516, in addition  
7 to the penalty specified in (1), the court before which a  
8 conviction is had shall, within 10 days after judgment of  
9 conviction is given, forward a certified copy of the  
10 judgment to the department of agriculture, and that  
11 department shall revoke any license issued to the person so  
12 convicted. In such case no new license may be granted to the  
13 person whose license is revoked, nor to anyone either  
14 directly or indirectly engaged with him in such business,  
15 for a period of 1 year.

16 Section 25. Section 8-103.4, R.C.M. 1947, is amended  
17 to read as follows:

18 "8-103.4. Approval of carrier agreements. (1) Any  
19 carrier as defined in ~~section~~ 8-101(h) which is a party to  
20 an agreement between or among two ~~(2)~~ or more carriers  
21 relating to rates, fares, classifications, divisions,  
22 allowances, or charges (including charges between carriers  
23 and compensation paid or received for the use of facilities  
24 and equipment), or rules pertaining thereto, or procedures  
25 for the joint consideration, initiation or establishment

1 thereof, may, under such rules as the commission prescribes,  
2 apply to the public service commission for approval of the  
3 agreement and the commission shall by order approve any  
4 agreement, if approval thereof is not prohibited by  
5 subsections (3), (4), or (5) of this section. The approval  
6 of the commission shall be granted only upon such terms and  
7 conditions as the commission may prescribe as necessary to  
8 enable it to grant its approval in accordance with this  
9 subsection.

10 (2) Each conference, bureau, committee, or other  
11 organization established or continued pursuant to any  
12 agreement approved by the commission and the provisions of  
13 this section, shall maintain such accounts, records, files,  
14 and memoranda and shall submit to the commission such  
15 reports, as may be prescribed by the commission, and all  
16 such accounts, records, files, and memoranda shall be  
17 subject to inspection by the commission or its duly  
18 authorized representative.

19 (3) The commission may not approve under this section  
20 any agreement between a carrier by highway and a carrier by  
21 rail unless it finds that such agreement is of the character  
22 described in this section and is limited to matters relating  
23 to the transportation under joint rates or over through  
24 routes.

25 (4) The commission may not approve under this section

1 any agreement which it finds is an agreement with respect to  
2 pooling or division of traffic, service, or earnings.

3 (5) The commission may not approve under this section  
4 any agreement which establishes a procedure for the  
5 determination of any matter through joint consideration  
6 unless it finds that under the agreement there is accorded  
7 to each party the free and unrestrained right to take  
8 independent action either before or after any determination  
9 arrived at through such procedure.

10 (6) The commission may, upon complaint or upon its own  
11 initiative without complaint, investigate and determine  
12 whether any agreement previously approved by it under this  
13 section, or any terms or conditions upon which such approval  
14 was granted, is not in conformity with this section or  
15 whether any such ~~term~~ terms or conditions ~~is~~ are not  
16 necessary for the purpose of conformity with this section.  
17 After such investigation, the commission may by order  
18 terminate or modify its approval of such agreement if it  
19 finds such action necessary to insure conformity with this  
20 section, and may modify the terms and conditions upon which  
21 such approval was granted to the extent it finds necessary  
22 to insure conformity with this section or to the extent it  
23 finds its terms and conditions unnecessary to insure such  
24 conformity. The effective date of any order terminating or  
25 modifying approval, or modifying terms and conditions, may

1 be postponed for such period as the commission determines is  
2 reasonably necessary to avoid undue hardship.

3 (7) No order may be entered under this section except  
4 after interested parties have been afforded reasonable  
5 opportunity for hearing.

6 (8) The parties to any agreement approved by the  
7 commission under this section and other persons are, if the  
8 approval of such agreement is not prohibited by subsections  
9 (3), (4), or (5) of this section, hereby exempted from  
10 Montana antitrust laws with respect to such agreement,  
11 including ~~section 51-401~~ chapter 5, Title 51 or any other  
12 statutes prohibiting monopolies, price fixing, or restraint  
13 of trade.

14 (9) Any action of the commission under this section in  
15 approving an agreement, or in denying an application for  
16 such approval, or in terminating or modifying its approval  
17 of an agreement, or in prescribing terms and conditions upon  
18 which its approval is to be granted, or in modifying such  
19 terms and conditions, shall be construed as having effect  
20 solely with reference to the applicability of subsection  
21 (8)."

22 Section 26. Section 82A-401.1, R.C.M. 1947, is amended  
23 to read as follows:

24 "82A-401.1. Functions of department. The department  
25 and its units are responsible for administering laws

1 pertaining to business regulation, including, but not  
2 limited to, laws pertaining to:

3 (1) ~~Banks~~ banks and banking (Title 5, chapters 1  
4 through 14);

5 (2) ~~Building~~ building and loan associations (Title 7,  
6 chapter 1);

7 (3) ~~Credit~~ credit unions (Title 14, chapter 1);

8 (4) ~~Consumer~~ consumer protection (Title 85, chapter  
9 4);

10 (5) ~~Supervision~~ supervision of the milk industry  
11 (Title 27, chapter 4);

12 (6) ~~Consumer~~ consumer loans (Title 47, chapter 2);

13 (7) ~~Sale~~ sale and marketing of coal (Title 50, chapter  
14 6);

15 (8) ~~Unfair~~ unfair business practices (Title 51,  
16 chapter 4 5);

17 (9) ~~Regulation~~ regulation of petroleum products (Title  
18 60, chapter 2);

19 (10) ~~Retail~~ retail installment sales (Title 74, chapter  
20 6);

21 (11) ~~Standard~~ standard weights and measures (Title 90,  
22 chapter 1);

23 (12) ~~Proprietary~~ proprietary ~~post-secondary~~  
24 postsecondary educational institutions (Title 75, chapter  
25 92)."

1 Section 27. Section 82A-404, R.C.M. 1947, is amended  
2 to read as follows:

3 "82A-404. Board of trade abolished — functions  
4 transferred. (1) The board of trade, provided for in ~~title~~  
5 Title 27, chapter 3, is abolished and its functions in ~~title~~  
6 Title 51, chapter 4 5 (~~pertainig to the Unfair Practices~~  
7 ~~Act~~) are transferred to the department of business  
8 regulation. Unless inconsistent with this act, any reference  
9 in the Revised Codes of Montana, 1947, to the Montana state  
10 board of food distributors or the board of trade means the  
11 department of business regulation."

12 Section 28. Section 84-2412, R.C.M. 1947, is amended  
13 to read as follows:

14 "84-2412. Employment of help — disposal of license  
15 money. The ~~state~~ department of revenue is hereby authorized  
16 to employ such clerical and field assistance as ~~may be found~~  
17 necessary to carry out and to administer the provisions of  
18 this act. All money collected under the provisions of this  
19 act shall be paid into the state treasury, with ~~five dollars~~  
20 ~~(\$5)~~ of the fee collected from each store license sold  
21 credited to an earmarked revenue fund for administration of  
22 ~~the Unfair Practices Act chapter 5, Title 51~~, by the  
23 department of business regulation and the rest to the credit  
24 of the general fund."

25 Section 29. Repealer. Sections 51-101, 51-101.1,

LC 0001/01

- 1 51-103, 51-105, 51-112, 51-118, 51-401, 51-403, 51-404,
- 2 51-405, 51-406, 51-407, 51-408, 51-409, 51-410, 51-412, and
- 3 51-414, R.C.M. 1947, are repealed.

-End-



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LC 0001

1977 Legislature  
Code Commissioner Bill - Summary

House Bill No. 31

FOR THE RECODIFICATION AND GENERAL REVISION OF CHAPTERS 1  
AND 4, TITLE 51, R.C.M. 1947, RELATING TO UNFAIR TRADE PRACTICES.

(This summary does not include discussion of routine form  
or grammatical changes.)

Because of the duplication and conflict in chapters 1 and 4 of Title 51, R.C.M. 1947, concerning unfair trade practices it is necessary to rewrite both chapters into one consistent, coherent chapter. The new chapter would be chapter 5, Title 51, R.C.M. 1947. The consolidation cannot be accomplished by mere recodification because of substantive conflict in existing provisions, which is beyond the authority of the code commissioner to resolve. For example, 51-113 places enforcement responsibility in the department of business regulation, while 51-408 places it in the attorney general's office.

The provisions of chapter 4 were transferred from the old Title 94 upon adoption of the 1973 criminal code. Most of them date back to 1909 or 1913, and are much older than the provisions of chapter 1, several of which were amended in 1975. Hence generally where there is duplication or conflict, this bill adopts the chapter 1 provision.

The overall approach in consolidating these two chapters is to transfer all the offenses enumerated in both chapters to one new part and establish a standard penalty clause for all offenses with the exception of forming an unlawful trust (as set out in 51-401). All penalties would be set out in one penalty section.

The other substantive change is to transfer all enforcement functions to the department of business regulation. This would relieve the attorney general from the duties spelled out in 51-408 and 51-404. The responsibility for prosecuting third-time offenders (for any of the offenses listed in the new part) will also go to the department under 51-523.

It should be noted that this bill and an explanation were submitted to both the department of business regulation and the attorney general. The department has since drafted an almost identical bill which is to be submitted by the governor. This bill is composed strictly of existing law, whereas the department's bill goes a little farther in updating and introducing a few new items. This bill is drafted primarily to be submitted in case the other bill is acted upon adversely.

An outline is attached at the end of this explanation to further illustrate the transfer of old sections into the new chapter.

Section 1. 51-117, the purpose clause of chapter 1, is adopted as the purpose for the new chapter.

Section 2. A new definition section is created, collecting definitions found in 51-101.1, 51-103, 51-107, and 51-401.

Section 3. The first paragraph of 51-102 is codified here, stating who is legally responsible for violations.

Section 4. The last paragraph of 51-102 and the first sentence of 51-105 are combined here in a new section on proof of intent.

Section 5. This is a revised version of the old 51-401. Painstaking effort was taken to determine and preserve the original meaning; however, it is probably arguable whether this was accomplished. As a note of interest, the department's bill adopted this version also.

Section 6. 51-402 is placed here, without any substantive revision.

Section 7. This new section is a consolidation of 51-407 and 51-101. Those two sections were strikingly similar, hence the composite was relatively simple.

Section 8. This is a revised version of 51-403. There is no substantive change.

Section 9. The first paragraph, less the penalty, of 51-103 is placed here, concerning sales at less than cost.

Section 10. This section concerning cost surveys is the second sentence of 51-105. There is no change.

Section 11. 51-114 is codified here without substantive change.

Section 12. 51-104 is codified here without substantive change.

Section 13. 51-107 is codified here without substantive change.

Section 14. 51-106 is codified here without substantive change.

Section 15. 51-108 is codified here without substantive change.

Section 16. 51-411 is codified here without substantive change.

Section 17. 51-413 is codified here without substantive change.

Section 18. 51-116 is codified here without substantive change.

Section 19. 51-113 is codified here without substantive change.

Section 20. 51-115 is codified here without substantive change.

Section 21. 51-111 is codified here without substantive change.

Section 22. 51-110 is codified here without substantive change.

Section 23. 51-109 is codified here. It is revised to include all offenses in both chapters rather than merely those offenses listed in chapter 1, and changes the prosecution function from the attorney general to the department of business regulation.

Section 24. 51-524 incorporates the penalty provisions of 51-103, 51-112, 51-401, 51-405, 51-409, 51-412, and 51-414, i.e., all the penalty provisions of both chapters. The potential fine for violations of old 51-411 and 51-413 are raised by this proposed section and the minimum fine is deleted. The potential fines of 51-405 and 51-409 are also changed. If the old restrictions are desired, they can be added as subsections to this section.

Section 25. The reference in 8-103.4(8) to 51-401 is changed to chapter 5, Title 51.

Section 26. The reference in 82A-401.1(8) to chapter 1, Title 51, is changed to chapter 5.

Section 27. The reference in 82A-404 to Title 51, chapter 1, is changed to chapter 5. The reference to "Unfair Practices Act" is deleted.

Section 28. After the adoption of this bill there will no longer be an "Unfair Practices Act" denominated as such. Hence the reference to "Unfair Practices Act" in 84-2412 is changed to "Chapter 5, Title 51".

Section 29. Section 51-101 is repealed and replaced by 51-507.

Section 51-101.1 is repealed and replaced in 51-502.

Section 51-103 is repealed and replaced by provisions in 51-502, 51-509, and 51-524.

Section 51-105 is repealed and replaced in provisions in 51-504 and 51-510.

Section 51-112 is repealed and replaced in provisions in 51-524.

Section 51-116 is repealed and replaced in provisions in 51-518.

Section 51-401 is repealed and replaced in provisions in 51-505, 51-502, and 51-524.

Section 51-403 is repealed and replaced in provisions in 51-508.

Section 51-404 is repealed and the prosecution function transferred to the department of business regulation.

Section 51-405 is repealed and replaced in 51-524.

Section 51-406 is repealed and is not replaced.

Section 51-407 is repealed and is replaced by 51-507.

Section 51-408 is repealed and the prosecution function is transferred to the department of business regulation.

Section 51-409 is repealed and replaced in provisions in 51-524.

Section 51-410 is repealed and is not replaced.

Section 51-412 is repealed and replaced in provisions in 51-524.

Section 51-414 is repealed and replaced in provisions in 51-524.

<u>New</u>	<u>Old</u>	<u>Catch line</u>
51-501	51-117	Purpose
51-502	51-103, 51-101.1, 51-401, 51-107	Definitions
51-503	51-102	Persons responsible
51-504	51-102, 51-105	Proof of intent
51-505	51-401	Unlawful restraint of trade
51-506	51-402	Labor excepted
51-507	51-407, 51-101	Discrimination in sales
51-508	51-403	Unfair competition in purchasing
51-509	51-103	Sale at less than cost forbidden
51-510	51-105	Cost surveys
51-511	51-114	Establishing cost survey
51-512	51-104	Forced sale not basis of cost price
51-513	51-107	Sales excepted
51-514	51-106	Fair price for agricultural products
51-515	51-108	Rebates forbidden
51-516	51-411	Pooling of grain prohibited
51-517	51-413	Destruction of food in restraint of trade
51-518	51-116	Alteration of invoices prohibited
51-519	51-113	Enforcement by department
51-520	51-115	Investigations

<u>New</u>	<u>Old</u>	<u>Catch line</u>
51-521	51-111	Injunctions - damages
51-522	51-110	Recovery on illegal contracts forbidden
51-523	51-109	Department to institute suit
51-524	51-103, 51-112, 51-401, 51-405, 51-409, 51-412, 51-414	Penalty

Approved by Committee  
on Business and Industry

1            HOUSE BILL NO. 31  
2 INTRODUCTION BY BARDANOUE

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT FOR THE RECODIFICATION  
5 AND GENERAL REVISION OF CHAPTERS 1 AND 4 OF TITLE 51, R.C.M.  
6 1947, RELATING TO UNFAIR TRADE PRACTICES, AND TO AMEND  
7 SECTION 84-2412, R.C.M. 1947, TO STRIKE THE REFERENCE TO THE  
8 UNFAIR PRACTICES ACT."

9  
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
11 Section 1. Section 51-117, R.C.M. 1947, is renumbered  
12 51-501, and is amended to read as follows:

13        ~~"51-117~~ 51-501. ~~Construction of act~~ Purpose. The  
14 legislature declares that the purpose of this ~~act~~ chapter is  
15 to safeguard the public against the creation or perpetuation  
16 of monopolies and to foster and encourage competition, by  
17 prohibiting unfair and discriminatory practices by which  
18 fair and honest competition is destroyed or prevented. This  
19 ~~act~~ chapter shall be literally construed so that its  
20 beneficial purposes may be subserved."

21 Section 2. There is a new R.C.M. section numbered  
22 51-502 that reads as follows:

23        51-502. Definitions. As used in this chapter, unless  
24 the context indicates otherwise, the following definitions  
25 apply:

1            (1) "Department" means the department of business  
2 regulation provided for in 82A-401.

3            (2) "Article of commerce" includes but is not limited  
4 to any commodity, product, service or output of a service  
5 trade or profession, any product or service of a public  
6 utility, and any product of the soil.

7            (3) "Cost" as applied to production includes the cost  
8 of raw materials, labor, and all overhead expenses of the  
9 producer.

10           (4) "Cost" as applied to distribution means either the  
11 invoice price of the article or product sold or the cost to  
12 the dealer or vendor for replacing the article or product in  
13 the quantity last purchased within 90 days prior to the sale  
14 of the article or product, whichever is lesser, less all  
15 trade discounts except customary cash discounts, plus the  
16 cost of doing business by the vendor.

17           (5) "Customary cash discount" means any allowance not  
18 exceeding 2%, whether a part of a larger discount or not,  
19 made to a wholesale or retail vendor when such vendor pays  
20 for merchandise within a limited or specified time.

21           (6) "Cost of doing business" or "overhead expense"  
22 includes all costs of doing business incurred in the conduct  
23 of a business and includes, without being limited to, the  
24 following items of expense:

25           (a) labor (including salaries of executives and

1 officers);

2 (b) rent;

3 (c) interest on borrowed capital;

4 (d) depreciation;

5 (e) selling cost;

6 (f) maintenance of equipment;

7 (g) delivery costs;

8 (h) credit losses;

9 (i) all types of licenses;

10 (j) taxes;

11 (k) insurance and advertising.

12 (7) "Person" includes any person, partnership, firm,  
13 corporation, joint-stock company, or other association  
14 engaged in business within this state.

15 (8) "Vendor" includes not only any person acting as  
16 one known generally and legally as a vendor but also any  
17 person who performs work upon, renovates, alters, or  
18 improves any personal property belonging to another person.

19 (9) "Business" includes any person, as defined in (7),  
20 domestic or foreign, engaged in the production, manufacture,  
21 distribution, purchasing, or sale of any article of commerce  
22 within the state of Montana.

23 Section 3. Section 51-102, R.C.M. 1947, is renumbered  
24 51-503, and is amended to read as follows:

25 ~~"51-102~~ 51-503. Persons ~~deemed~~ responsible. Any person

1 who, either as director, officer, or agent of any firm or  
2 corporation or as agent of any person, ~~violating the~~  
3 ~~provisions of this act,~~ assists or aids, directly or  
4 indirectly, in ~~such a violation of this chapter shall be~~ is  
5 responsible therefor equally with the person, firm, or  
6 corporation for whom or which he acts.

7 ~~In the prosecution of any person as officer, director~~  
8 ~~or agent, it shall be sufficient to allege and prove the~~  
9 ~~unlawful intent of the person, firm, or corporation for whom~~  
10 ~~or which he acts."~~

11 Section 4. There is a new R.C.M. section numbered  
12 51-504 that reads as follows:

13 51-504. Proof of intent. In an injunction proceeding  
14 or in the prosecution of a person acting as an officer,  
15 director, or agent, it is sufficient to allege and prove the  
16 unlawful intent of the person, firm, or corporation for whom  
17 or which he acts.

18 Section 5. There is a new R.C.M. section numbered  
19 51-505 that reads as follows:

20 51-505. Unlawful restraint of trade. It is unlawful  
21 for a person or group of persons, directly or indirectly:

22 (1) to enter an agreement for the purpose of fixing  
23 the price or regulating the production of an article of  
24 commerce;

25 (2) for the purpose of creating or carrying out any



1 restriction in trade, to:

- 2 (a) limit productions;
- 3 (b) increase or reduce the price of merchandise or  
4 commodities;
- 5 (c) prevent competition in the distribution or sale of  
6 merchandise or commodities;
- 7 (d) fix a standard or figure whereby the price of an  
8 article of commerce intended for sale, use, or consumption  
9 will be in any way controlled;
- 10 (e) agree to add to a bid for any contract an amount,  
11 fixed by percentage or otherwise, for the purpose of making  
12 a refund or sharing costs of bidding with any other bidder;
- 13 (f) return a part of any amount added to a bid by  
14 collusive agreement among bidders to any person;
- 15 (g) create a monopoly in the manufacture, sale, or  
16 transportation of an article of commerce;
- 17 (h) enter into an agreement which binds any person not  
18 to manufacture, sell, or transport an article of commerce  
19 below a common standard or figure or which keeps such  
20 article or transportation at a fixed or graduated figure or  
21 by which the price of such article is settled so as to  
22 preclude unrestricted competition.

23 Section 6. Section 51-402, R.C.M. 1947, is renumbered  
24 51-506, and is amended to read as follows:

25 "~~51-402 51-506. Certain agreements between laborers~~

1 labor excepted. The provisions of ~~this act 51-505~~ do not  
2 apply to any arrangements, agreement, or combination between  
3 laborers, made with the object of lessening the number of  
4 hours of labor or increasing wages."

5 Section 7. There is a new R.C.M. section numbered  
6 51-507 that reads as follows:

7 51-507. Unfair competition in sales. (1) It is unlawful  
8 for any business, with the intent to destroy the competition  
9 of any regular established dealer of any article of commerce  
10 or to prevent the competition of any person who in good  
11 faith intends or attempts to become such dealer, to  
12 discriminate between different localities in this state by  
13 selling or furnishing such article at a lower rate in one  
14 locality than in another, after making allowance for  
15 difference, if any, in the grade, quality, quantity, and  
16 actual cost of transportation from the point of production  
17 or manufacture of the article.

18 (2) This section does not prohibit the setting in good  
19 faith of a competitive rate or prevent a reasonable  
20 classification of service by public utilities for the  
21 purpose of establishing rates.

22 (3) The prohibition against locality discrimination  
23 includes any scheme of special rebates, collateral  
24 contracts, or any device of any nature whereby such  
25 discrimination is, in substance or fact, effected in

1 violation of the spirit and intent of this section.

2 (4) Willfully and knowingly advertising, offering for  
3 sale, or selling any commodity at less than the price  
4 stipulated in a contract entered into under this section,  
5 whether or not the person so advertising, offering for sale,  
6 or selling is a party to such contract, is unfair  
7 competition, and a person damaged thereby may bring an  
8 action.

9 Section 8. There is a new R.C.M. section numbered  
10 51-508 that reads as follows:

11 51-508. Unfair competition in purchasing. (1) Any  
12 business which, for the purpose of creating a monopoly or  
13 destroying the business of a regularly established dealer or  
14 preventing the competition of any person who in good faith  
15 intends or attempts to become such dealer discriminates  
16 between different persons or localities of this state by  
17 purchasing any article of commerce at a higher rate or price  
18 in one locality than in another, after making due allowance  
19 for the difference in the actual cost of transportation from  
20 the point of purchase to the point of manufacture, sale,  
21 storage, or distribution and for the difference in the grade  
22 and quality of such article, is guilty of unfair  
23 discrimination, which is prohibited and unlawful.

24 (2) Proof that any person has paid a higher rate or  
25 price for any article of commerce in one locality than in

1 another, after making due allowance for the difference in  
2 the actual cost of transportation and for the difference in  
3 the grade and quality of such article, shall be prima facie  
4 evidence of a violation of this section.

5 (3) The payment of a higher rate or price in one  
6 locality than in another, after making such allowance  
7 provided above, is not unfair discrimination provided such  
8 higher rate or price is paid for the purpose of meeting the  
9 rate or price set by a competitor in such locality. The  
10 burden of proof of such fact is upon the person charged with  
11 unfair discrimination.

12 Section 9. There is a new R.C.M. section numbered  
13 51-509 that reads as follows:

14 51-509. Sales at less than cost forbidden. It is  
15 unlawful for a vendor to sell, offer for sale, or advertise  
16 for sale any article of commerce at less than the cost  
17 thereof to the vendor, or to give, offer to give, or  
18 advertise the intent to give away any article of commerce  
19 for the purpose of injuring competitors and destroying  
20 competition.

21 Section 10. There is a new R.C.M. section numbered  
22 51-510 that reads as follows:

23 51-510. Cost survey as evidence of cost. Whenever a  
24 particular trade or industry, of which the person complained  
25 against is a member, has an established cost survey for the

1 locality in which the offense is committed, such cost survey  
2 is competent evidence to be used in proving the costs of the  
3 person complained against.

4 Section 11. Section 51-114, R.C.M. 1947, is  
5 renumbered 51-511, and is amended to read as follows:

6 "~~51-114~~ 51-511. Procedure for establishing  
7 Establishing cost survey ~~hearing~~ notice. (1) The  
8 department shall, whenever application has been made by ~~ten~~  
9 ~~(10)~~ or more persons, ~~firms, or corporations~~ within a  
10 particular trade or business, establish the cost survey  
11 provided for in ~~section 51-105~~ 51-510. When petition for a  
12 cost survey has been so presented to the department, the  
13 department shall, as soon as possible, fix a time for a  
14 public hearing upon the question of whether the cost survey  
15 should be established, and if so, upon the matter of  
16 establishing such cost survey. The hearing shall be held at  
17 the office of the department and upon that notice which the  
18 department ~~may by rule require~~ require by rule. However,  
19 notice of the hearing shall be published for at least ~~two~~  
20 ~~(2)~~ successive weeks in the daily newspaper or newspapers as  
21 the department may designate as most commonly circulated in  
22 the counties to be affected by the cost survey. The notice  
23 shall further state the locality or area in respect to which  
24 the cost survey is proposed to be established and the  
25 particular trade or business to be affected by it.

1 (2) At the time fixed in the notice any person, ~~firm,~~  
2 ~~or corporation~~ may appear and be heard by the department  
3 upon all questions to be determined by it as provided in  
4 this section. If the department determines that a cost  
5 survey ~~shall~~ should be established, it shall at the same  
6 hearing proceed to classify and define the particular trade  
7 or business, or parts thereof, to be affected, determine and  
8 delimit the particular area within which the trade or  
9 business ~~shall will~~ be affected, and find and determine the  
10 probable "cost of doing business" or "overhead expense,"  
11 stated in percentage of invoice or replacement cost which  
12 would probably be incurred by the most efficient person,  
13 ~~firm, or corporation~~ in the trade or business within the  
14 area.

15 (3) ~~Where~~ If the department determines that the  
16 probable "cost of doing business" or "overhead expense,"  
17 stated in percentage of invoice or replacement cost which  
18 would probably be incurred by the most efficient person,  
19 ~~firm, or corporation~~ in the trade or business is the same  
20 for the entire state, then the department may, upon proper  
21 notice given as provided in this section, create one trade  
22 area embracing the entire state.

23 (4) The percentage so determined shall be presumed to  
24 be the actual "cost of doing business" and "overhead  
25 expense" of any person, ~~firm, or corporation~~ in the trade or

1 business and within the area affected by the cost survey."  
 2 Section 12. Section 51-104, R.C.M. 1947, is  
 3 renumbered 51-512, and is amended to read as follows:  
 4 "~~51-104~~ 51-512. ~~Enforced forced~~ sales not basis of  
 5 cost price. In establishing the cost of a given article or  
 6 product to the distributor and vendor, the invoice cost of  
 7 ~~said the~~ article or product purchased at a forced, bankrupt,  
 8 closeout sale, or other sale outside of the ordinary  
 9 channels of trade may not be used as a basis for justifying  
 10 a price lower than one based upon the replacement cost as of  
 11 ~~the~~ date of ~~said~~ sale of ~~said the~~ article or product  
 12 replaced through the ordinary channels of trade, unless:  
 13 (1) ~~said the~~ article or product is kept separate from  
 14 goods purchased in the ordinary channels of trade; ~~and~~  
 15 ~~unless said~~  
 16 (2) ~~the~~ article or product is advertised and sold as  
 17 merchandise purchased at a forced, bankrupt, ~~or~~ closeout  
 18 sale, or by means other than through the ordinary channels  
 19 of trade, and ~~said such~~ advertising ~~shall state~~ states the  
 20 conditions under which ~~said the~~ goods were ~~so~~ purchased, and  
 21 the quantity of ~~each~~ merchandise to be sold or offered for  
 22 sale."  
 23 Section 13. Section 51-107, R.C.M. 1947, is  
 24 renumbered 51-513, and is amended to read as follows:  
 25 "~~51-107~~ 51-513. ~~Exceptions Sales~~ excepted. The

1 ~~provisions of sections Sections 51-103, 51-104 and 51-105~~  
 2 ~~shall 51-509, 51-510, and 51-512 do not apply to any sale~~  
 3 made:  
 4 ~~(a)(1)~~ In in closing out in good faith, the owner's  
 5 stock or any part thereof, for the purpose of discontinuing  
 6 his trade in any ~~such stock or commodity, and in the case of~~  
 7 ~~the sale article of commerce;~~  
 8 (2) of seasonal goods; ~~or to the bona fide sale~~  
 9 (3) in good faith of perishable goods to prevent loss  
 10 to the vendor by spoilage or depreciation, provided notice  
 11 is given to the public thereof;  
 12 ~~(b)(4)~~ ~~When when~~ the goods are damaged or deteriorated  
 13 in quality, and notice is given to the public thereof;  
 14 ~~(c)(5)~~ ~~By~~ by an officer acting under the orders of any  
 15 court;  
 16 ~~(d)(6)~~ In in an a good faith endeavor ~~made in good~~  
 17 ~~faith~~ to meet the legal prices of a competitor ~~as herein~~  
 18 ~~defined~~ selling the same article ~~or product, or service or~~  
 19 ~~output of a service trade, of commerce~~ in the same locality  
 20 or trade area; ~~or~~  
 21 ~~(e)(7)~~ ~~To~~ to the state of Montana or any of its  
 22 institutions.  
 23 ~~Any person, firm or corporation who performs work upon,~~  
 24 ~~renovates, alters or improves any personal property~~  
 25 ~~belonging to another person, firm or corporation, shall be~~

1 ~~construed to be a vendor within the meaning of this act.~~

2 Section 14. Section 51-106, R.C.M. 1947, is  
3 renumbered 51-514, and is amended to read as follows:

4 "~~51-106~~ 51-514. Fair price for agricultural products,  
5 ~~how determined.~~ (1) The following method shall be used in  
6 determining fair prices for agricultural products sold on  
7 local markets, in a trade area, district, or city in which  
8 the major portion of an agricultural commodity or product is  
9 produced within or adjacent to the trade area, city, or  
10 district:

11 (a) When ~~seventy-five percent (75%)~~ of the producers  
12 of an agricultural product or commodity marketing those  
13 products or commodities within a trade area, district, or  
14 city determine what is a fair price based upon competitive  
15 and other factors for their product or commodity, it shall  
16 be ~~considered~~ the fair price for that product or commodity  
17 under the terms of this ~~act~~ chapter.

18 (b) Those producers through their agents shall file  
19 with the department the fair price and request a hearing for  
20 the establishment of fair prices to jobbers, wholesalers,  
21 retailers, and consumers of the agricultural products or  
22 commodities. ~~Any~~ an organization representing consumers may  
23 not be denied representation at the ~~meeting~~ hearing.

24 (2) After the establishment of a schedule of fair  
25 prices for the agricultural products or commodities, it is a

1 violation of this ~~act~~ chapter for a producer, jobber,  
2 wholesaler, or retailer to sell or buy an agricultural  
3 commodity or product below the price established by the  
4 department. ~~That~~ Such action is punishable under the terms  
5 provided in this ~~act~~ chapter."

6 Section 15. Section 51-108, R.C.M. 1947, is  
7 renumbered 51-515, and is amended to read as follows:

8 "~~51-108~~ 51-515. Rebates forbidden—~~co-operatives~~.  
9 (1) The secret payment or allowance of rebates, refunds,  
10 commissions, or unearned discounts, whether in the form of  
11 money or otherwise, or secretly extending to certain  
12 purchasers special services or privileges not extended to  
13 all purchasers purchasing upon like terms and conditions, to  
14 the injury of a competitor and ~~where~~ when such payment or  
15 allowance tends to destroy competition, is an unfair trade  
16 practice and any person, ~~firm, partnership, corporation, or~~  
17 ~~association~~ resorting to such trade practice ~~shall be deemed~~  
18 is guilty of a misdemeanor and on conviction ~~thereof shall~~  
19 ~~be~~ is subject to the penalties set out in ~~section 51-142~~  
20 51-524.

21 ~~Provided, however, that~~ (2) However, nothing in this  
22 ~~act shall section prevent~~ prevents a ~~co-operative~~  
23 cooperative association, organized and operating on a true  
24 ~~co-operative~~ cooperative basis, from returning to the  
25 members, producers, or consumers the whole or any part of

1 the net earnings or surplus resulting from its trading  
2 operations, in proportion to their purchases or sales from,  
3 to, or through the association."

4 Section 16. Section 51-411, R.C.M. 1947, is  
5 renumbered 51-516, and is amended to read as follows:

6 "~~51-411~~ 51-516. Pooling ~~is purchase, sale or handling~~  
7 of grain ~~by warehousemen prohibited~~. (1) It shall be is  
8 unlawful for any person, ~~firm, or corporation~~ engaged in the  
9 buying, selling, or handling of grain in any public local  
10 warehouse in this state, or for the local agent in charge of  
11 such warehouse, or any other agent of the person, ~~firm, or~~  
12 ~~corporation~~ operating the same, to enter into any a  
13 contract, agreement, ~~combination,~~ or understanding with any  
14 other person, ~~firm, or corporation,~~ owning or operating any  
15 other public local warehouse at any railway station, or with  
16 its agent ~~or agents,~~ whereby:

17 (a) the amount of grain to be received or handled by  
18 said the warehouses at such station ~~or stations shall is to~~  
19 be equalized or pooled between said the warehouses; ~~or~~  
20 whereby

21 (b) the profits or earnings derived from said the  
22 warehouses shall are to be divided, ~~or~~ pooled, or  
23 apportioned in any manner; ~~or~~ whereby

24 (c) the price to be paid for any kind of grain, at  
25 such station, shall is to be fixed or in any manner

1 affected, ~~and each~~

2 (2) Each day of the continuance of any such agreement,  
3 contract, or understanding shall ~~constitute~~ constitutes a  
4 separate offense."

5 Section 17. Section 51-413, R.C.M. 1947, is  
6 renumbered 51-517, and is amended to read as follows:

7 "~~51-413~~ 51-517. Destruction of food ~~in restraint of~~  
8 trade. It shall be is unlawful for any person, ~~firm, or~~  
9 ~~corporation~~ to destroy, or to withhold from sale for a  
10 period of time which makes it necessary to destroy, in  
11 restraint of trade, any fish, fowl, animal, vegetable, or  
12 other ~~stuff, products~~ product, or ~~articles~~ article, which  
13 are is customary food, or ~~which are~~ proper food for human  
14 beings, and are is in fit sanitary condition to be used as  
15 such."

16 Section 18. Section 51-116, R.C.M. 1947, is  
17 renumbered 51-518, and is amended to read as follows:

18 "~~51-116~~ 51-518. Alteration of invoices ~~unlawful~~  
19 prohibited. It is unlawful for a person, ~~partnership, firm,~~  
20 ~~corporation, joint stock company, or other association, as~~  
21 ~~defined in section 51-103,~~ to change, alter, substitute, or  
22 falsify an invoice ~~where if~~ the practice tends to injure a  
23 competitor, ~~or to~~ destroy competition, or ~~to~~ mislead a court  
24 or the department of ~~business regulation~~. ~~That~~ Such practice  
25 is unfair trade practice and a person, ~~firm, partnership,~~

1 ~~corporation, or association~~ resorting to that trade practice  
2 is guilty of a misdemeanor and is subject to the penalties  
3 provided in ~~section 51-442~~ 51-524."

4 Section 19. Section 51-113, R.C.H. 1947, is  
5 renumbered 51-519, and is amended to read as follows:

6 "~~51-113~~ 51-519. ~~Department administration of act~~  
7 ~~by intervention orders review appeals process~~  
8 ~~finality of order~~ Enforcement by department. (1) The  
9 department shall prevent a person, ~~firm, or corporation~~ from  
10 violating any of the provisions of this chapter.

11 (2) Upon receiving notice that a person, ~~firm or~~  
12 ~~corporation~~ is violating or has violated any of the  
13 provisions of this chapter, the department shall immediately  
14 notify direct the person giving ~~that the~~ notice either to  
15 appear before the director of the department or to make a  
16 written reply to show probable cause of ~~that a~~ violation.  
17 If probable cause is shown, the department ~~must then~~ shall:

18 (a) make its own investigation; and

19 (b) within ~~sixty~~ (60) days of the finding of probable  
20 cause ~~must~~ make a written report of its investigation; and  
21 ~~must~~

22 (c) mail a copy of its findings to the person  
23 initially giving notice of a violation.

24 (3) (a) ~~If, after an investigation~~ the department,  
25 after an investigation, has reason to believe that the

1 person, ~~firm, or corporation~~ has been or is engaging in any  
2 course of conduct or doing any act in violation of this  
3 chapter and if it appears to the department that a  
4 proceeding by it would be ~~to~~ in the interest of the public,  
5 it shall issue and serve upon the person, ~~firm or~~  
6 ~~corporation~~ a complaint stating ~~its the~~ charges ~~in that~~  
7 ~~respect,~~ and containing a notice of a hearing ~~upon a day and~~  
8 at a place ~~therein fixed~~ and upon a day not less than ~~five~~  
9 ~~(5)~~ days after the service of the complaint.

10 (b) A complaint may be amended by the department in  
11 its discretion at any time ~~five~~ (5) days prior to the  
12 issuance of an order based on it.

13 (c) The person, ~~firm or corporation~~ so complained of  
14 against may appear at the place and time so fixed and show  
15 cause why an order should not be entered by the department  
16 requiring ~~that such~~ person, ~~firm, or corporation~~ to stop the  
17 violation of the law charged in the complaint.

18 (d) Any person, ~~firm or corporation~~ may make  
19 application, and upon good cause shown may be allowed by the  
20 department to intervene and appear in the proceeding by  
21 counsel or in person.

22 (e) The testimony in the proceeding shall be reduced  
23 to writing and filed ~~in the office of~~ with the department.

24 (f) If upon the hearing the department believes that  
25 the act or conduct in question is prohibited by this

1 chapter, it shall make ~~a report~~ findings of fact in writing  
 2 ~~in which it shall state its findings as to the facts~~ and  
 3 shall issue and cause to be served on ~~that the~~ person, ~~firm,~~  
 4 ~~or corporation~~ charged an order requiring ~~that such~~ person,  
 5 ~~firm, or corporation~~ to stop the acts or conduct.

6 (g) Until a transcript of the record in the hearing  
 7 has been filed in a district court, ~~as hereinafter provided,~~  
 8 the department may at any time, upon the notice and in the  
 9 manner as it considers proper, modify or set aside, in  
 10 whole or in part, ~~any a~~ report or ~~any an~~ order made or  
 11 issued by it under this section.

12 (4) A court reviewing an order of the department may  
 13 issue such writs as are ancillary to its jurisdiction or are  
 14 necessary in its judgment to prevent injury to the public or  
 15 to competitors pending the outcome of the suit.

16 (5) To the extent that the order of the department is  
 17 affirmed, the court shall thereupon issue its own order  
 18 commanding obedience to the terms of the order of the  
 19 department.

20 (6) Proceedings ~~in the district court~~ under this  
 21 section shall be given precedence over other civil cases  
 22 pending ~~therein in the district court,~~ and shall be in every  
 23 way expedited.

24 (7) A person, ~~firm, or corporation~~ who violates an  
 25 order of the department ~~to cease and desist~~ after it has

1 become final, and while the order is in effect shall  
 2 forfeit and pay to ~~this the~~ state a penalty of not more than  
 3 ~~one thousand dollars (\$1,000)~~ for each violation, ~~which~~  
 4 ~~shall accrue to this state and may be recovered in a civil~~  
 5 ~~action brought by this state.~~

6 (8) The remedies and method of enforcement of this  
 7 chapter provided for in this section are concurrent and in  
 8 addition to the other remedies provided in this chapter."

9 Section 20. Section 51-115, R.C.M. 1947, is  
 10 renumbered 51-520, and is amended to read as follows:

11 "~~51-115 51-520. Hearings and investigations~~  
 12 ~~constitute Investigations.~~ (1) The department, for the  
 13 purpose of conducting hearings and investigations which, in  
 14 the opinion of the department, are necessary and proper for  
 15 the exercise of the powers vested in it by this chapter, ~~has~~  
 16 ~~the following powers:~~

17 (1) ~~The department~~ shall at all reasonable times have  
 18 access to, ~~for the purpose of examination, and the right to~~  
 19 ~~copy~~ any evidence of concerning a person being investigated  
 20 or proceeded against that relates to any matter under  
 21 investigation or in question and the right to copy such  
 22 evidence. ~~Any member of the~~ The department may issue  
 23 subpoenas requiring the attendance and testimony of  
 24 witnesses and the production of any evidence that relates to  
 25 any matter under investigation or in question, before the



1 department, or before its duly authorized agent conducting  
2 the investigation. An agent, duly authorized by the  
3 department for those purposes, may administer oaths and  
4 affirmations, examine witnesses, and receive evidence. The  
5 attendance of witnesses and the production of evidence may  
6 be required from any place in this state at any designated  
7 place of hearing.

8 (2) Upon application by the department in any a  
9 case of contumacy or refusal to obey a subpoena issued to a  
10 person, ~~any~~ a district court of this state, within ~~any~~ the  
11 district where the inquiry is carried on or where a person  
12 guilty of contumacy or refusal to obey is found, ~~or~~ resides,  
13 or transacts business, ~~upon application by the department~~  
14 has jurisdiction to issue to that person, an order  
15 requiring him to appear before the department, or its duly  
16 authorized agent, and ~~there~~ to produce evidence if so  
17 ordered, or ~~there~~ to give testimony regarding the matter  
18 under investigation. Failure to obey the order of the court  
19 may be punished by the court as a contempt.

20 (3) A person may not be excused from attending and  
21 testifying or from producing books, records, correspondence,  
22 documents, or other evidence in obedience to the subpoena of  
23 the department, on the ground that the testimony or evidence  
24 required of him may tend to incriminate him or subject him  
25 to a penalty or forfeiture. An individual may not be

1 prosecuted or subjected to a penalty or forfeiture for or on  
2 account of a transaction, matter, or thing concerning which  
3 he is compelled, to testify or produce evidence, after  
4 having claimed his privilege against ~~self-incrimination~~  
5 self-incrimination, ~~to testify or produce evidence, except~~  
6 ~~that as an~~ individual so testifying is not exempt from  
7 prosecution and punishment for perjury committed in  
8 testifying."

9 Section 21. Section 51-111, R.C.M. 1947, is  
10 renumbered 51-521, and is amended to read as follows:

11 "~~51-111~~ 51-521. ~~Who may enjoin violations~~ Injunctions  
12 ~~— damages — production of evidence. (1) Any person, firm,~~  
13 ~~private corporation or municipal or other public~~  
14 ~~corporation, or trade association, if injured thereby, may~~  
15 maintain an action to enjoin a continuance of ~~any~~ an act ~~or~~  
16 acts in violation of ~~sections 51-101 to 51-109, inclusive,~~  
17 ~~if injured thereby,~~ 51-505 through 51-518, and for the  
18 recovery of damages. If, in such action, the court ~~shall~~  
19 ~~find~~ finds that the defendant is violating or has violated  
20 any of the provisions of ~~sections 51-101 to 51-109,~~  
21 ~~inclusive~~ 51-505 through 51-518, it shall enjoin the  
22 defendant from a continuance thereof. It ~~shall~~ is not be  
23 necessary ~~that~~ to allege or prove actual damages to the  
24 plaintiff ~~be alleged or proved.~~

25 (2) In addition to such injunctive relief, the

1 plaintiff ~~is said action shall be~~ is entitled to recover  
2 from the defendant three times the amount of ~~the~~ actual  
3 damages, ~~if any,~~ sustained.

4 (3) Any A defendant in an action brought under ~~the~~  
5 ~~provisions of~~ this section may be required to testify under  
6 ~~the provisions of the Code Montana Rules~~ of Civil Procedure  
7 ~~of this state,~~ in In addition the books and records of any  
8 such defendant may be brought into court and introduced, ~~by~~  
9 ~~reference, into evidence,~~ into evidence by reference,  
10 ~~provided, however, that no~~ no information so obtained may be  
11 used against the defendant as a basis for a misdemeanor  
12 prosecution under ~~the provisions of sections 51-101 to~~  
13 ~~51-108, inclusive, and 51-112~~ 51-505 through 51-518 and  
14 51-524."

15 Section 22. Section 51-110, R.C.M. 1947, is  
16 renumbered 51-522, and is amended to read as follows:

17 ~~"51-110 51-522. Illegal contracts recovery~~ Recovery  
18 on illegal contracts forbidden. ~~Any A~~ contract, express or  
19 implied, made by ~~any a~~ person, ~~firm or corporation~~ in  
20 violation of any of the provisions of ~~sections 51-101 to~~  
21 ~~51-108, inclusive,~~ 51-505 through 51-518 is ~~declared to be~~  
22 an illegal contract and no recovery thereon ~~shall~~ may be  
23 had."

24 Section 23. Section 51-109, R.C.M. 1947, is  
25 renumbered 51-523, and is amended to read as follows:

1 ~~"51-109 51-523. Attorney-general Department~~ to  
2 institute suit, ~~when.~~ Upon the third violation of any of the  
3 provisions of ~~sections 51-101 to 51-108, inclusive,~~ 51-505  
4 through 51-518 by any corporation, ~~it shall be the duty of~~  
5 ~~the attorney-general department to~~ shall institute proper  
6 suits or quo warranto proceedings in ~~any a~~ court of  
7 competent jurisdiction for the forfeiture of its charter,  
8 rights, franchises or privileges, and powers exercised by  
9 such corporation, and to permanently enjoin it from  
10 transacting business in this state. If in such action the  
11 court ~~shall find~~ finds that ~~such the~~ corporation is  
12 violating or has violated any of the provisions of ~~sections~~  
13 ~~51-101 to 51-108, inclusive,~~ 51-505 through 51-518, it ~~must~~  
14 shall enjoin ~~said the~~ corporation from doing business in  
15 this state permanently or for such time as the court ~~shall~~  
16 ~~order orders,~~ or ~~must~~ shall annul the charter, or revoke the  
17 franchise of such corporation."

18 Section 24. There is a new R.C.M. section numbered  
19 51-524 that reads as follows:

20 51-524. Penalties. (1) Except as otherwise provided in  
21 this section, a person, whether as principal, agent,  
22 officer, or director, who violates any of the provisions of  
23 51-505 through 51-518, is guilty of a misdemeanor for each  
24 single violation and upon conviction thereof shall be fined  
25 not less than \$100 or more than \$1,000 or imprisoned for a

1 term not to exceed 6 months or both.

2 (2) A violation of 51-505 is punishable by  
3 imprisonment in the county jail for a period not less than  
4 24 hours or more than 1 year or by fine not exceeding  
5 \$25,000 or both.

6 (3) When there is a violation of 51-516, in addition  
7 to the penalty specified in (1), the court before which a  
8 conviction is had shall, within 10 days after judgment of  
9 conviction is given, forward a certified copy of the  
10 judgment to the department of agriculture, and that  
11 department shall revoke any license issued to the person so  
12 convicted. In such case no new license may be granted to the  
13 person whose license is revoked, nor to anyone either  
14 directly or indirectly engaged with him in such business,  
15 for a period of 1 year.

16 Section 25. Section 8-103.4, R.C.M. 1947, is amended  
17 to read as follows:

18 "8-103.4. Approval of carrier agreements. (1) Any  
19 carrier as defined in ~~section~~ 8-101(h) which is a party to  
20 an agreement between or among two ~~(2)~~ or more carriers  
21 relating to rates, fares, classifications, divisions,  
22 allowances, or charges (including charges between carriers  
23 and compensation paid or received for the use of facilities  
24 and equipment), or rules pertaining thereto, or procedures  
25 for the joint consideration, initiation or establishment

1 thereof, may, under such rules as the commission prescribes,  
2 apply to the public service commission for approval of the  
3 agreement and the commission shall by order approve any  
4 agreement, if approval thereof is not prohibited by  
5 subsections (3), (4), or (5) of this section. The approval  
6 of the commission shall be granted only upon such terms and  
7 conditions as the commission may prescribe as necessary to  
8 enable it to grant its approval in accordance with this  
9 subsection.

10 (2) Each conference, bureau, committee, or other  
11 organization established or continued pursuant to any  
12 agreement approved by the commission and the provisions of  
13 this section, shall maintain such accounts, records, files,  
14 and memoranda and shall submit to the commission such  
15 reports, as may be prescribed by the commission, and all  
16 such accounts, records, files, and memoranda shall be  
17 subject to inspection by the commission or its duly  
18 authorized representative.

19 (3) The commission may not approve under this section  
20 any agreement between a carrier by highway and a carrier by  
21 rail unless it finds that such agreement is of the character  
22 described in this section and is limited to matters relating  
23 to the transportation under joint rates or over through  
24 routes.

25 (4) The commission may not approve under this section

1 any agreement which it finds is an agreement with respect to  
2 pooling or division of traffic, service, or earnings.

3 (5) The commission may not approve under this section  
4 any agreement which establishes a procedure for the  
5 determination of any matter through joint consideration  
6 unless it finds that under the agreement there is accorded  
7 to each party the free and unrestrained right to take  
8 independent action either before or after any determination  
9 arrived at through such procedure.

10 (6) The commission may, upon complaint or upon its own  
11 initiative without complaint, investigate and determine  
12 whether any agreement previously approved by it under this  
13 section, or any terms or conditions upon which such approval  
14 was granted, is not in conformity with this section or  
15 whether any such ~~term~~ terms or conditions ~~is~~ are not  
16 necessary for the purpose of conformity with this section.  
17 After such investigation, the commission may by order  
18 terminate or modify its approval of such agreement if it  
19 finds such action necessary to insure conformity with this  
20 section, and may modify the terms and conditions upon which  
21 such approval was granted to the extent it finds necessary  
22 to insure conformity with this section or to the extent it  
23 finds its terms and conditions unnecessary to insure such  
24 conformity. The effective date of any order terminating or  
25 modifying approval, or modifying terms and conditions, may

1 be postponed for such period as the commission determines is  
2 reasonably necessary to avoid undue hardship.

3 (7) No order may be entered under this section except  
4 after interested parties have been afforded reasonable  
5 opportunity for hearing.

6 (8) The parties to any agreement approved by the  
7 commission under this section and other persons are, if the  
8 approval of such agreement is not prohibited by subsections  
9 (3), (4), or (5) of this section, hereby exempted from  
10 Montana antitrust laws with respect to such agreement,  
11 including ~~section 51-404~~ chapter 5, Title 51 or any other  
12 statutes prohibiting monopolies, price fixing, or restraint  
13 of trade.

14 (9) Any action of the commission under this section in  
15 approving an agreement, or in denying an application for  
16 such approval, or in terminating or modifying its approval  
17 of an agreement, or in prescribing terms and conditions upon  
18 which its approval is to be granted, or in modifying such  
19 terms and conditions, shall be construed as having effect  
20 solely with reference to the applicability of subsection  
21 (8)."

22 Section 26. Section 82A-401.1, R.C.M. 1947, is amended  
23 to read as follows:

24 "82A-401.1. Functions of department. The department  
25 and its units are responsible for administering laws

1 pertaining to business regulation, including, but not  
2 limited to, laws pertaining to:

- 3 (1) ~~Banks~~ banks and banking (Title 5, chapters 1  
4 through 14);
- 5 (2) ~~Building~~ building and loan associations (Title 7,  
6 chapter 1);
- 7 (3) ~~Credit~~ credit unions (Title 14, chapter 1);
- 8 (4) ~~Consumer~~ consumer protection (Title 85, chapter  
9 4);
- 10 (5) ~~Supervision~~ supervision of the milk industry  
11 (Title 27, chapter 4);
- 12 (6) ~~Consumer~~ consumer loans (Title 47, chapter 2);
- 13 (7) ~~Sale~~ sale and marketing of coal (Title 50, chapter  
14 6);
- 15 (8) ~~Unfair~~ unfair business practices (Title 51,  
16 chapter 4 5);
- 17 (9) ~~Regulation~~ regulation of petroleum products (Title  
18 60, chapter 2);
- 19 (10) ~~Retail~~ retail installment sales (Title 74, chapter  
20 6);
- 21 (11) ~~Standard~~ standard weights and measures (Title 90,  
22 chapter 1);
- 23 (12) ~~Proprietary~~ proprietary ~~post-secondary~~  
24 postsecondary educational institutions (Title 75, chapter  
25 92)."

1 Section 27. Section 82A-404, R.C.M. 1947, is amended  
2 to read as follows:

3 "82A-404. Board of trade abolished -- functions  
4 transferred. (1) The board of trade, provided for in ~~title~~  
5 Title 27, chapter 3, is abolished and its functions in ~~title~~  
6 Title 51, chapter 4 5 (~~pertainig to the Unfair Practices~~  
7 ~~Act~~) are transferred to the department of business  
8 regulation. Unless inconsistent with this act, any reference  
9 in the Revised Codes of Montana, 1947, to the Montaaa state  
10 board of food distributors or the board of trade means the  
11 department of business regulation."

12 Section 28. Section 84-2412, R.C.M. 1947, is amended  
13 to read as follows:

14 "84-2412. Employment of help -- disposal of license  
15 money. The ~~state~~ department of revenue is hereby authorized  
16 to employ such clerical and field assistance as ~~may be found~~  
17 necessary to carry out and to administer the provisions of  
18 this act. All money collected under the provisions of this  
19 act shall be paid into the state treasury, with ~~five dollars~~  
20 ~~4\$5~~ of the fee collected from each store license sold  
21 credited to an earmarked revenue fund for administration of  
22 ~~the Unfair Practices Act~~ chapter 5, Title 51, by the  
23 department of business regulation and the rest to the credit  
24 of the general fund."

25 Section 29. Repealer. Sections 51-101, 51-101.1,

LC 0001/01

- 1 51-103, 51-105, 51-112, 51-118, 51-401, 51-403, 51-404,
- 2 51-405, 51-406, 51-407, 51-408, 51-409, 51-410, 51-412, and
- 3 51-414, R.C.M. 1947, are repealed.

-End-

## 1 HOUSE BILL NO. 31

2 INTRODUCED BY BARDANQUE

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT FOR THE RECODIFICATION  
5 AND GENERAL REVISION OF CHAPTERS 1 AND 4 OF TITLE 51, R.C.M.  
6 1947, RELATING TO UNFAIR TRADE PRACTICES, AND TO AMEND  
7 ~~SECTION SECTIONS 8-103, 4, 82A-401.1, 82A-404, AND 84-2412,~~  
8 R.C.M. 1947, TO STRIKE THE REFERENCE TO THE UNFAIR PRACTICES  
9 ACT."

10  
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:12 Section 1. Section 51-117, R.C.M. 1947, is renumbered  
13 51-501, and is amended to read as follows:

14 ~~"51-117~~ 51-501. Construction--of--act Purpose. The  
15 legislature declares that the purpose of this ~~act chapter~~ is  
16 to safeguard the public against the creation or perpetuation  
17 of monopolies and to foster and encourage competition by  
18 prohibiting unfair and discriminatory practices by which  
19 fair and honest competition is destroyed or prevented. This  
20 ~~act chapter~~ shall be literally construed so that its  
21 beneficial purposes may be subserved."

22 Section 2. There is a new R.C.M. section numbered  
23 51-502 that reads as follows:24 51-502. Definitions. As used in this chapter, unless  
25 the context indicates otherwise, the following definitions

1 apply:

2 (1) "Department" means the department of business  
3 regulation provided for in 82A-401.4 (2) "Article of commerce" includes but is not limited  
5 to any commodity, product, service or output of a service  
6 trade or ~~profession, any product or service of a public~~  
7 ~~utility, and any product of the soil. A PRODUCT OR SERVICE~~  
8 OF A PUBLIC UTILITY IS NOT INCLUDED WITHIN THE TERM "ARTICLE  
9 OF COMMERCE".10 (3) "Cost" as applied to production includes the cost  
11 of raw materials, labor, and all overhead expenses of the  
12 producer.13 (4) "Cost" as applied to distribution means either the  
14 invoice price of the article or product sold or the cost to  
15 the dealer or vendor for replacing the article or product in  
16 the quantity last purchased within 90 days prior to the sale  
17 of the article or product, whichever is lesser, less all  
18 trade discounts except customary cash discounts, plus the  
19 cost of doing business by the vendor.20 (5) "Customary cash discount" means any allowance not  
21 exceeding 2%, whether a part of a larger discount or not,  
22 made to a wholesale or retail vendor when such vendor pays  
23 for merchandise within a limited or specified time.24 (6) "Cost of doing business" or "overhead expense"  
25 includes all costs of doing business incurred in the conduct

1 of a business and includes, without being limited to, the  
 2 following items of expense:

- 3 (a) labor (including salaries of executives and
- 4 officers);
- 5 (b) rent;
- 6 (c) interest on borrowed capital;
- 7 (d) depreciation;
- 8 (e) selling cost;
- 9 (f) maintenance of equipment;
- 10 (g) delivery costs;
- 11 (h) credit losses;
- 12 (i) all types of licenses;
- 13 (j) taxes;
- 14 (k) insurance and advertising.
- 15 (7) "Person" includes any person, partnership, firm,
- 16 corporation, joint-stock company, or other association
- 17 engaged in business within this state.
- 18 (8) "Vendor" includes not only any person acting as
- 19 one known generally and legally as a vendor but also any
- 20 person who performs work upon, renovates, alters, or
- 21 improves any personal property belonging to another person.
- 22 (9) "Business" includes any person, as defined in (7),
- 23 domestic or foreign, engaged in the production, manufacture,
- 24 distribution, purchasing, or sale of any article of commerce
- 25 within the state of Montana.

1 Section 3. Section 51-102, R.C.M. 1947, is renumbered  
 2 51-503, and is amended to read as follows:

3 ~~"51-102 51-503.~~ Persons deemed responsible. Any person  
 4 who, either as director, officer, or agent of any firm or  
 5 corporation or as agent of any person, ~~violating--the~~  
 6 ~~provisions--of--this--act,~~ assists or aids, directly or  
 7 indirectly, in such a violation of this chapter ~~shall be~~ is  
 8 responsible therefor equally with the person, firm, or  
 9 corporation for whom or which he acts.

10 ~~In the prosecution of any person as officer, director~~  
 11 ~~or agent, it shall be sufficient to allege and prove the~~  
 12 ~~unlawful intent of the person, firm, or corporation for whom~~  
 13 ~~or which he acts."~~

14 Section 4. There is a new R.C.M. section numbered  
 15 51-504 that reads as follows:

16 51-504. Proof of intent. In an injunction proceeding  
 17 or in the prosecution of a person acting as an officer,  
 18 director, or agent, it is sufficient to allege and prove the  
 19 unlawful intent of the person, firm, or corporation for whom  
 20 or which he acts.

21 Section 5. There is a new R.C.M. section numbered  
 22 51-505 that reads as follows:

23 51-505. Unlawful restraint of trade. It is unlawful  
 24 for a person or group of persons, directly or indirectly:

- 25 (1) to enter an agreement for the purpose of fixing



1 the price or regulating the production of an article of  
2 commerce;

3 (2) for the purpose of creating or carrying out any  
4 restriction in trade, to:

5 (a) limit productions;

6 (b) increase or reduce the price of merchandise or  
7 commodities;

8 (c) prevent competition in the distribution or sale of  
9 merchandise or commodities;

10 (d) fix a standard or figure whereby the price of an  
11 article of commerce intended for sale, use, or consumption  
12 will be in any way controlled;

13 (e) agree to add to a bid for any contract an amount,  
14 fixed by percentage or otherwise, for the purpose of making  
15 a refund or sharing costs of bidding with any other bidder;

16 (f) return a part of any amount added to a bid by  
17 collusive agreement among bidders to any person;

18 (g) create a monopoly in the manufacture, sale, or  
19 transportation of an article of commerce;

20 (h) enter into an agreement which binds any person not  
21 to manufacture, sell, or transport an article of commerce  
22 below a common standard or figure or which keeps such  
23 article or transportation at a fixed or graduated figure or  
24 by which the price of such article is settled so as to  
25 preclude unrestricted competition.

1 Section 6. Section 51-402, R.C.M. 1947, is renumbered  
2 51-506, and is amended to read as follows:

3 "~~51-402 51-506. Certain--agreements--between--laborers~~  
4 ~~Labor~~ excepted. The provisions of ~~this act 51-505~~ do not  
5 apply to any arrangements, agreement, or combination between  
6 laborers, made with the object of lessening the number of  
7 hours of labor or increasing wages."

8 Section 7. There is a new R.C.M. section numbered  
9 51-507 that reads as follows:

10 51-507. Unfair competition in sales. (1) It is unlawful  
11 for any business, with the intent to destroy the competition  
12 of any regular established dealer of any article of commerce  
13 or to prevent the competition of any person who in good  
14 faith intends or attempts to become such dealer, to  
15 discriminate between different localities in this state by  
16 selling or furnishing such article at a lower rate in one  
17 locality than in another, after making allowance for  
18 difference, if any, in the grade, quality, quantity, and  
19 actual cost of transportation from the point of production  
20 or manufacture of the article.

21 (2) This section does not prohibit the meeting in good  
22 faith of a competitive rate or prevent a reasonable  
23 classification of service by public utilities for the  
24 purpose of establishing rates.

25 (3) The prohibition against locality discrimination

1 includes any scheme of special rebates, collateral  
2 contracts, or any device of any nature whereby such  
3 discrimination is, in substance or fact, effected in  
4 violation of the spirit and intent of this section.

5 (4) Willfully and knowingly advertising, offering for  
6 sale, or selling any commodity at less than the price  
7 stipulated in a contract entered into under this section,  
8 whether or not the person so advertising, offering for sale,  
9 or selling is a party to such contract, is unfair  
10 competition, and a person damaged thereby may bring an  
11 action.

12 Section 8. There is a new R.C.M. section numbered  
13 51-508 that reads as follows:

14 51-508. Unfair competition in purchasing. (1) Any  
15 business which, for the purpose of creating a monopoly or  
16 destroying the business of a regularly established dealer or  
17 preventing the competition of any person who in good faith  
18 intends or attempts to become such dealer discriminates  
19 between different persons or localities of this state by  
20 purchasing any article of commerce at a higher rate or price  
21 in one locality than in another, after making due allowance  
22 for the difference in the actual cost of transportation from  
23 the point of purchase to the point of manufacture, sale,  
24 storage, or distribution and for the difference in the grade  
25 and quality of such article, is guilty of unfair

1 discrimination, which is prohibited and unlawful.

2 (2) Proof that any person has paid a higher rate or  
3 price for any article of commerce in one locality than in  
4 another, after making due allowance for the difference in  
5 the actual cost of transportation and for the difference in  
6 the grade and quality of such article, shall be prima facie  
7 evidence of a violation of this section.

8 (3) The payment of a higher rate or price in one  
9 locality than in another, after making such allowance  
10 provided above, is not unfair discrimination provided such  
11 higher rate or price is paid for the purpose of meeting the  
12 rate or price set by a competitor in such locality. The  
13 burden of proof of such fact is upon the person charged with  
14 unfair discrimination.

15 Section 9. There is a new R.C.M. section numbered  
16 51-509 that reads as follows:

17 51-509. Sales at less than cost forbidden. It is  
18 unlawful for a vendor to sell, offer for sale, or advertise  
19 for sale any article of commerce at less than the cost  
20 thereof to the vendor, or to give, offer to give, or  
21 advertise the intent to give away any article of commerce  
22 for the purpose of injuring competitors and destroying  
23 competition.

24 Section 10. There is a new R.C.M. section numbered  
25 51-510 that reads as follows:

1 51-510. Cost survey as evidence of cost. Whenever a  
2 particular trade or industry, of which the person complained  
3 against is a member, has an established cost survey for the  
4 locality in which the offense is committed, such cost survey  
5 is competent evidence to be used in proving the costs of the  
6 person complained against.

7 Section 11. Section 51-114, R.C.M. 1947, is  
8 renumbered 51-511, and is amended to read as follows:

9 ~~"51-114~~ 51-511. Procedure ~~for~~ ~~establishing~~  
10 Establishing cost survey ~~---hearing~~ ~~---notice~~. (1) The  
11 department shall, whenever application has been made by ~~ten~~  
12 ~~{10}~~ or more persons, ~~firms, or corporations~~ within a  
13 particular trade or business, establish the cost survey  
14 provided for in ~~section 51-105~~ 51-510. When petition for a  
15 cost survey has been so presented to the department, the  
16 department shall, as soon as possible, fix a time for a  
17 public hearing upon the question of whether the cost survey  
18 should be established, and if so, upon the matter of  
19 establishing such cost survey. The hearing shall be held at  
20 the office of the department and upon that notice which the  
21 department may ~~by rule~~ ~~require~~ require by rule. However,  
22 notice of the hearing shall be published for at least ~~two~~  
23 ~~{2}~~ successive weeks in the daily newspaper or newspapers as  
24 the department may designate as most commonly circulated in  
25 the counties to be affected by the cost survey. The notice

1 shall further state the locality or area in respect to which  
2 the cost survey is proposed to be established and the  
3 particular trade or business to be affected by it.

4 (2) At the time fixed in the notice any person ~~firm~~  
5 ~~or corporation~~ may appear and be heard by the department  
6 upon all questions to be determined by it as provided in  
7 this section. If the department determines that a cost  
8 survey ~~shall~~ should be established, it shall at the same  
9 hearing proceed to classify and define the particular trade  
10 or business, or parts thereof, to be affected, determine and  
11 delimit the particular area within which the trade or  
12 business ~~shall~~ will be affected, and find and determine the  
13 probable "cost of doing business" or "overhead expense",  
14 stated in percentage of invoice or replacement cost which  
15 would probably be incurred by the most efficient person  
16 ~~firm or corporation~~ in the trade or business within the  
17 area.

18 (3) Where if the department determines that the  
19 probable "cost of doing business" or "overhead expense"  
20 stated in percentage of invoice or replacement cost which  
21 would probably be incurred by the most efficient person  
22 ~~firm or corporation~~ in the trade or business is the same  
23 for the entire state, then the department may, upon proper  
24 notice given as provided in this section, create one trade  
25 area embracing the entire state.

1 (4) The percentage so determined shall be presumed to  
 2 be the actual "cost of doing business" and "overhead  
 3 expense" of any person, firm, or corporation in the trade or  
 4 business and within the area affected by the cost survey."

5 Section 12. Section 51-104, R.C.M. 1947, is  
 6 renumbered 51-512, and is amended to read as follows:

7 "~~51-104~~ 51-512. Enforced ~~Forced~~ sales not basis of  
 8 cost price. In establishing the cost of a given article or  
 9 product to the distributor and vendor, the invoice cost of  
 10 ~~said the~~ article or product purchased at a forced, bankrupt,  
 11 closeout ~~sale~~, or other sale outside of the ordinary  
 12 channels of trade may not be used as a basis for justifying  
 13 a price lower than one based upon the replacement cost as of  
 14 ~~the~~ date of ~~said~~ sale of ~~said the~~ article or product  
 15 replaced through the ordinary channels of trade, unless:

16 (1) ~~said the~~ article or product is kept separate from  
 17 goods purchased in the ordinary channels of trade; and  
 18 ~~unless-said~~

19 (2) ~~the~~ article or product is advertised and sold as  
 20 merchandise purchased at a forced, bankrupt, ~~or~~ closeout  
 21 sale, or by means other than through the ordinary channels  
 22 of trade, and ~~said such~~ advertising ~~shall state~~ states the  
 23 conditions under which ~~said the~~ goods were ~~so~~ purchased, and  
 24 the quantity of ~~such~~ merchandise to be sold or offered for  
 25 sale."

1 Section 13. Section 51-107, R.C.M. 1947, is  
 2 renumbered 51-513, and is amended to read as follows:

3 "~~51-107~~ 51-513. Exceptions ~~Sales~~ excepted. ~~The~~  
 4 ~~provisions--of--sections~~ Sections 51-103, 51-104, and 51-105  
 5 ~~shall~~ 51-509, 51-510, and 51-512 do not apply to any sale  
 6 made:

7 (a) ~~(1)~~ (1) in in closing out in good faith, the owner's  
 8 stock or any part thereof, for the purpose of discontinuing  
 9 his trade in any such stock or commodity, and in the case of  
 10 ~~the sale~~ article of commerce;

11 (2) of seasonal goods; ~~or to the bona-fide sale~~  
 12 (3) in good faith of perishable goods to prevent loss  
 13 to the vendor by spoilage or depreciation, provided notice  
 14 is given to the public thereof;

15 (b) ~~(4)~~ (4) When ~~when~~ the goods are damaged or deteriorated  
 16 in quality, and notice is given to the public thereof;

17 (c) ~~(5)~~ (5) By ~~by~~ an officer acting under the orders of any  
 18 court;

19 (d) ~~(6)~~ (6) in in an a good faith endeavor ~~made in good~~  
 20 ~~faith~~ to meet the legal prices of a competitor ~~as herein~~  
 21 defined selling the same article ~~or product or service or~~  
 22 ~~output of a service trade~~ of commerce in the same locality  
 23 or trade area; ~~or~~

24 (e) ~~(7)~~ (7) to to the state of Montana or any of its  
 25 institutions.

1 ~~Any person, firm or corporation who performs work upon~~  
 2 ~~renovates, alters or improves any personal property~~  
 3 ~~belonging to another person, firm or corporation shall be~~  
 4 ~~construed to be a vendor within the meaning of this act."~~

5 Section 14. Section 51-106, R.C.M. 1947, is  
 6 renumbered 51-514, and is amended to read as follows:

7 ~~"51-106~~ 51-514. Fair price for agricultural products  
 8 ~~how determined.~~ (1) The following method shall be used in  
 9 determining fair prices for agricultural products sold on  
 10 local markets, in a trade area, district, or city in which  
 11 the major portion of an agricultural commodity or product is  
 12 produced within or adjacent to the trade area, city, or  
 13 district:

14 (a) When ~~seventy-five percent (75%) of the~~ producers  
 15 of an agricultural product or commodity marketing those  
 16 products or commodities within a trade area, district, or  
 17 city determine what is a fair price based upon competitive  
 18 and other factors for their product or commodity, it shall  
 19 be considered the fair price for that product or commodity  
 20 under the terms of this act chapter.

21 (b) Those producers through their agents shall file  
 22 with the department the fair price and request a hearing for  
 23 the establishment of fair prices to jobbers, wholesalers,  
 24 retailers, and consumers of the agricultural products or  
 25 commodities. Any an organization representing consumers may

1 not be denied representation at the meeting hearing.

2 (2) After the establishment of a schedule of fair  
 3 prices for the agricultural products or commodities, it is a  
 4 violation of this ~~act~~ chapter for a producer, jobber,  
 5 wholesaler, or retailer to sell or buy an agricultural  
 6 commodity or product below the price established by the  
 7 department. ~~That~~ Such action is punishable under the terms  
 8 provided in this ~~act~~ chapter."

9 Section 15. Section 51-108, R.C.M. 1947, is  
 10 renumbered 51-515, and is amended to read as follows:

11 ~~"51-108~~ 51-515. Rebates forbidden—~~co-operatives~~.  
 12 (1) The secret payment or allowance of rebates, refunds,  
 13 commissions, or unearned discounts, whether in the form of  
 14 money or otherwise, or secretly extending to certain  
 15 purchasers special services or privileges not extended to  
 16 all purchasers purchasing upon like terms and conditions, to  
 17 the injury of a competitor and ~~where~~ when such payment or  
 18 allowance tends to destroy competition, is an unfair trade  
 19 practice and any person, ~~firm, partnership, corporation, or~~  
 20 ~~association~~ resorting to such trade practice ~~shall be deemed~~  
 21 is guilty of a misdemeanor and on conviction ~~thereof shall~~  
 22 be ~~is~~ subject to the penalties set out in ~~section--51-112~~  
 23 51-524.

24 ~~Provided, however, that~~ (2) ~~However,~~ nothing in this  
 25 ~~act shall~~ section prevent ~~prevents~~ a co-operative

1 ~~cooperative~~ association, organized and operating on a true  
 2 ~~co-operative cooperative~~ basis, from returning to the  
 3 members, producers, or consumers the whole or any part of  
 4 the net earnings or surplus resulting from its trading  
 5 operations, in proportion to their purchases or sales from,  
 6 to, or through the association."

7 Section 16. Section 51-411, R.C.M. 1947, is  
 8 renumbered 51-516, and is amended to read as follows:

9 "~~51-411 51-516~~. Pooling in purchase, sale or handling  
 10 of grain by warehousemen prohibited. (1) It shall be is  
 11 unlawful for any person, firm, or corporation engaged in the  
 12 buying, selling, or handling of grain in any public local  
 13 warehouse in this state, or for the local agent in charge of  
 14 such warehouse, or any other agent of the person, firm, or  
 15 corporation operating the same, to enter into any a  
 16 contract, agreement, combination, or understanding with any  
 17 other person, firm, or corporation, owning or operating any  
 18 other public local warehouse at any railway station, or with  
 19 its agent or agent, whereby:

20 (a) the amount of grain to be received or handled by  
 21 said the warehouses at such station or stations shall is to  
 22 be equalized or pooled between said the warehouses; or  
 23 whereby

24 (b) the profits or earnings derived from said the  
 25 warehouses shall are to be divided, or pooled, or

1 apportioned in any manner, or whereby

2 (c) the price to be paid for any kind of grain, at  
 3 such station, shall is to be fixed or in any manner  
 4 affected, and each

5 (2) Each day of the continuance of any such agreement,  
 6 contract, or understanding shall constitute constitutes a  
 7 separate offense."

8 Section 17. Section 51-413, R.C.M. 1947, is  
 9 renumbered 51-517, and is amended to read as follows:

10 "~~51-413 51-517~~. Destruction of food in restraint of  
 11 trade. It shall be is unlawful for any person, firm, or  
 12 corporation to destroy, or to withhold from sale for a  
 13 period of time which makes it necessary to destroy, in  
 14 restraint of trade, any fish, fowl, animal, vegetable, or  
 15 other stuff, products, product, or articles article, which  
 16 are is customary food, or which are proper food for human  
 17 beings, and are is in fit sanitary condition to be used as  
 18 such."

19 Section 18. Section 51-116, R.C.M. 1947, is  
 20 renumbered 51-518, and is amended to read as follows:

21 "~~51-116 51-518~~. Alteration of invoices unlawful  
 22 prohibited. It is unlawful for a person, partnership, firm,  
 23 corporation, joint stock company, or other association, as  
 24 defined in section 51-103, to change, alter, substitute, or  
 25 falsify an invoice where if the practice tends to injure a

1 competitor, ~~or to destroy competition,~~ or to mislead a court  
 2 or the department of ~~business regulation.~~ That Such practice  
 3 is unfair trade practice and a person, ~~firm, partnership,~~  
 4 ~~corporation, or association~~ resorting to that trade practice  
 5 is guilty of a misdemeanor and is subject to the penalties  
 6 provided in ~~section 51-112~~ 51-524."

7 Section 19. Section 51-113, R.C.M. 1947, is  
 8 renumbered 51-519, and is amended to read as follows:

9 "~~51-113 51-519. Department administration of act~~  
 10 ~~by intervention orders review appeals process~~  
 11 ~~finality of order Enforcement by department.~~ (1) The  
 12 department shall prevent a person, ~~firm, or corporation~~ from  
 13 violating any of the provisions of this chapter.

14 (2) Upon receiving notice that a person, ~~firm, or~~  
 15 ~~corporation~~ is violating or has violated any of the  
 16 provisions of this chapter, the department shall immediately  
 17 notify direct the person giving that the notice either to  
 18 appear before the director of the department or to make a  
 19 written reply to show probable cause of that a violation.  
 20 If probable cause is shown, the department ~~must then~~ shall:

- 21 (a) make its own investigation; and
- 22 (b) within ~~sixty~~ (60) days of the finding of probable
- 23 cause ~~must~~ make a written report of its investigation; and
- 24 ~~must~~
- 25 (c) mail a copy of its findings to the person

1 initially giving notice of a violation.

2 (3)(a) If ~~after an investigation~~ the department,  
 3 ~~after an investigation,~~ has reason to believe that the  
 4 person, ~~firm, or corporation~~ has been or is engaging in any  
 5 course of conduct or doing any act in violation of this  
 6 chapter and if it appears to the department that a  
 7 proceeding by it would be ~~to~~ in the interest of the public,  
 8 it shall issue and serve upon the person, ~~firm, or~~  
 9 ~~corporation~~ a complaint stating its ~~the~~ charges ~~in that~~  
 10 respect, and containing a notice of a hearing ~~upon a day and~~  
 11 at a place ~~therein fixed and upon a day~~ not less than five  
 12 ~~(5)~~ days after the service of the complaint.

13 (b) A complaint may be amended by the department in  
 14 its discretion at any time ~~five~~ (5) days prior to the  
 15 issuance of an order based on it.

16 (c) The person, ~~firm, or corporation~~ so complained of  
 17 ~~against~~ may appear at the place and time so fixed and show  
 18 cause why an order should not be entered by the department  
 19 requiring that such person, ~~firm, or corporation~~ to stop the  
 20 violation of the law charged in the complaint.

21 (d) Any person, ~~firm, or corporation~~ may make  
 22 application, and upon good cause shown may be allowed by the  
 23 department to intervene and appear in the proceeding by  
 24 counsel or in person.

25 (e) The testimony in the proceeding shall be reduced

1 to writing and filed ~~in the office of~~ with the department.

2 (f) If upon the hearing the department believes that  
 3 the act or conduct in question is prohibited by this  
 4 chapter, it shall make ~~a report~~ findings of fact in writing  
 5 ~~in which it shall state its findings as to the facts~~ and  
 6 ~~shall~~ issue and cause to be served on ~~that the~~ the ~~person~~ person ~~firm~~  
 7 ~~or corporation~~ charged an order requiring that such ~~person~~  
 8 ~~firm or corporation~~ to stop the acts or conduct.

9 (g) Until a transcript of the record in the hearing  
 10 has been filed in a district court, ~~as hereinafter provided~~  
 11 the department may at any time, upon the notice and in the  
 12 manner as it considers proper, modify or set aside, in  
 13 whole or in part, ~~any a~~ report or ~~any an~~ order made or  
 14 issued by it under this section.

15 (4) A court reviewing an order of the department may  
 16 issue such writs as are ancillary to its jurisdiction or are  
 17 necessary in its judgment to prevent injury to the public or  
 18 to competitors pending the outcome of the suit.

19 (5) To the extent that the order of the department is  
 20 affirmed, the court shall thereupon issue its own order  
 21 commanding obedience to the terms of the order of the  
 22 department.

23 (6) Proceedings ~~in the district court~~ under this  
 24 section shall be given precedence over other civil cases  
 25 pending therein in the district court, and shall be in every

1 way expedited.

2 (7) A ~~person~~ ~~firm~~ ~~or~~ ~~corporation~~ who violates an  
 3 order of the department ~~to cease and desist~~ after it has  
 4 become final, and while the order is in effect shall  
 5 forfeit and pay to ~~this the~~ state a penalty of not more than  
 6 ~~one thousand dollars~~ ~~{ \$1,000 }~~ for each violation, ~~which~~  
 7 ~~shall accrue to this state and may be recovered in a civil~~  
 8 ~~action brought by this state.~~

9 (8) The remedies and method of enforcement of this  
 10 chapter provided for in this section are concurrent and in  
 11 addition to the other remedies provided in this chapter."

12 Section 20. Section 51-115, R.C.M. 1947, is  
 13 renumbered 51-520, and is amended to read as follows:

14 ~~"51-115 51-520. Hearings and investigations~~  
 15 ~~contempts~~ Investigations. (1) The department, for the  
 16 purpose of conducting hearings and investigations which, in  
 17 the opinion of the department, are necessary and proper for  
 18 the exercise of the powers vested in it by this chapter, ~~has~~  
 19 ~~the following powers:~~

20 (1) ~~The~~ department shall at all reasonable times have  
 21 access ~~to~~ ~~for the purpose of examination~~ ~~and the right to~~  
 22 ~~copy~~ any evidence of concerning a person being investigated  
 23 or proceeded against that relates to any matter under  
 24 investigation or in question and the right to copy such  
 25 evidence. ~~Any member of the~~ the department may issue



1 subpoenas requiring the attendance and testimony of  
 2 witnesses and the production of any evidence that relates to  
 3 any matter under investigation or in question before the  
 4 department or before its duly authorized agent conducting  
 5 the investigation. An agent, duly authorized by the  
 6 department for those purposes, may administer oaths and  
 7 affirmations, examine witnesses, and receive evidence. The  
 8 attendance of witnesses and the production of evidence may  
 9 be required from any place in this state at any designated  
 10 place of hearing.

11 (2) ~~Upon application by the department in~~ in any a  
 12 case of contumacy or refusal to obey a subpoena issued to a  
 13 person, any a district court of this state, within any the  
 14 district where the inquiry is carried on or where a person  
 15 guilty of contumacy or refusal to obey is found, or resides,  
 16 or transacts business, ~~upon application by the department~~  
 17 has jurisdiction to issue to that person, an order  
 18 requiring him to appear before the department, or its duly  
 19 authorized agent, and there to produce evidence if so  
 20 ordered, or there to give testimony regarding the matter  
 21 under investigation. Failure to obey the order of the court  
 22 may be punished by the court as a contempt.

23 (3) A person may not be excused from attending and  
 24 testifying or from producing books, records, correspondence,  
 25 documents, or other evidence in obedience to the subpoena of

1 the department, on the ground that the testimony or evidence  
 2 required of him may tend to incriminate him or subject him  
 3 to a penalty or forfeiture. An individual may not be  
 4 prosecuted or subjected to a penalty or forfeiture for or on  
 5 account of a transaction, matter, or thing concerning which  
 6 he is compelled, ~~to testify or produce evidence,~~ after  
 7 having claimed his privilege against ~~self-incrimination~~  
 8 ~~self-incrimination,~~ to testify or produce evidence, except  
 9 that--an An individual so testifying is not exempt from  
 10 prosecution and punishment for perjury committed in  
 11 testifying."

12 Section 21. Section 51-111, R.C.M. 1947, is  
 13 renumbered 51-521, and is amended to read as follows:

14 ~~"51-111 51-521. Who may enjoin violations Injunctions~~  
 15 ~~-- damages -- production of evidence. (1) Any person, firm~~  
 16 ~~private--corporation--or--municipal--or--other--public~~  
 17 ~~corporation, or trade association, if injured thereby, OR~~  
 18 ~~THE ATTORNEY GENERAL,~~ may maintain an action to enjoin a  
 19 continuance of any an act or acts in violation of sections  
 20 ~~51-101 to 51-100, inclusive, if injured thereby, 51-505~~  
 21 ~~through 51-518, and for the recovery of damages. If, in such~~  
 22 ~~action, the court shall find finds that the defendant is~~  
 23 ~~violating or has violated any of the provisions of sections~~  
 24 ~~51-101 to 51-100, inclusive 51-505 through 51-518, it shall~~  
 25 ~~enjoin the defendant from a continuance thereof. It shall is~~

1 not be necessary that to allege or prove actual damages to  
2 the plaintiff ~~be alleged or proved.~~

3 (2) In addition to such injunctive relief, the  
4 plaintiff ~~in said action shall be~~ is entitled to recover  
5 from the defendant three times the amount of the actual  
6 damages, ~~if any~~ sustained.

7 (3) Any A defendant in an action brought under the  
8 provisions of this section may be required to testify under  
9 the provisions of the Code Montana Rules of Civil Procedure  
10 of this state, ~~in~~ In addition the books and records of any  
11 such defendant may be brought into court and introduced, ~~by~~  
12 ~~reference, into evidence,~~ into evidence by reference,  
13 ~~provided, however, that no~~ No information so obtained may be  
14 used against the defendant as a basis for a misdemeanor  
15 prosecution under ~~the provisions of sections 51-101 to~~  
16 ~~51-100, inclusive, and 51-112~~ 51-505 through 51-518 and  
17 51-524."

18 Section 22. Section 51-110, R.C.M. 1947, is  
19 renumbered 51-522, and is amended to read as follows:

20 "51-110 ~~51-522. Illegal contracts--recovery~~ Recovery  
21 on illegal contracts forbidden. Any A contract, express or  
22 implied, made by any a person, ~~firm or corporation~~ in  
23 violation of any of the provisions of ~~sections 51-101 to~~  
24 ~~51-100, inclusive,~~ 51-505 through 51-518 is ~~declared to be~~  
25 an illegal contract and no recovery thereon shall may be

1 had."

2 Section 23. Section 51-109, R.C.M. 1947, is  
3 renumbered 51-523, and is amended to read as follows:

4 "51-109 ~~51-523. Attorney--general~~ Department to  
5 institute suit, ~~when.~~ Upon the third violation of any of the  
6 provisions of ~~sections 51-101 to 51-100, inclusive,~~ 51-505  
7 ~~through 51-518~~ by any corporation, ~~it shall be the duty of~~  
8 the ~~attorney--general~~ department to shall institute proper  
9 suits or quo warranto proceedings in any a court of  
10 competent jurisdiction for the forfeiture of its charter,  
11 rights, franchises or privileges, and powers exercised by  
12 such corporation, and to permanently enjoin it from  
13 transacting business in this state. If in such action the  
14 court ~~shall find~~ finds that ~~such the~~ corporation is  
15 violating or has violated any of the provisions of ~~sections~~  
16 ~~51-101 to 51-100, inclusive,~~ 51-505 through 51-518, it ~~must~~  
17 shall enjoin ~~said the~~ corporation from doing business in  
18 this state permanently or for such time as the court ~~shall~~  
19 ~~order~~ orders, or ~~must shall~~ annul the charter, or revoke the  
20 franchise of such corporation."

21 Section 24. There is a new R.C.M. section numbered  
22 51-524 that reads as follows:

23 51-524. Penalties. (1) Except as otherwise provided in  
24 this section, a person, whether as principal, agent,  
25 officer, or director, who violates any of the provisions of

1 51-505 through 51-518, is guilty of a misdemeanor for each  
 2 single violation and upon conviction thereof shall be fined  
 3 not less than \$100 or more than \$1,000 or imprisoned for a  
 4 term not to exceed 6 months or both.

5 (2) A violation of 51-505 is punishable by  
 6 imprisonment in the county jail for a period not less than  
 7 24 hours or more than 1 year or by fine not exceeding  
 8 \$25,000 or both.

9 (3) When there is a violation of 51-516, in addition  
 10 to the penalty specified in (1), the court before which a  
 11 conviction is had shall, within 10 days after judgment of  
 12 conviction is given, forward a certified copy of the  
 13 judgment to the department of agriculture, and that  
 14 department shall revoke any license issued to the person so  
 15 convicted. In such case no new license may be granted to the  
 16 person whose license is revoked, nor to anyone either  
 17 directly or indirectly engaged with him in such business,  
 18 for a period of 1 year.

19 Section 25. Section 8-103.4, R.C.M. 1947, is amended  
 20 to read as follows:

21 "8-103.4. Approval of carrier agreements. (1) Any  
 22 carrier as defined in section 8-101(h) which is a party to  
 23 an agreement between or among two ~~(2)~~ or more carriers  
 24 relating to rates, fares, classifications, divisions,  
 25 allowances, or charges (including charges between carriers

1 and compensation paid or received for the use of facilities  
 2 and equipment), or rules pertaining thereto, or procedures  
 3 for the joint consideration, initiation or establishment  
 4 thereof, may, under such rules as the commission prescribes,  
 5 apply to the public service commission for approval of the  
 6 agreement and the commission shall by order approve any  
 7 agreement, if approval thereof is not prohibited by  
 8 subsections (3), (4), or (5) of this section. The approval  
 9 of the commission shall be granted only upon such terms and  
 10 conditions as the commission may prescribe as necessary to  
 11 enable it to grant its approval in accordance with this  
 12 subsection.

13 (2) Each conference, bureau, committee, or other  
 14 organization established or continued pursuant to any  
 15 agreement approved by the commission and the provisions of  
 16 this section, shall maintain such accounts, records, files,  
 17 and memoranda and shall submit to the commission such  
 18 reports, as may be prescribed by the commission, and all  
 19 such accounts, records, files, and memoranda shall be  
 20 subject to inspection by the commission or its duly  
 21 authorized representative.

22 (3) The commission may not approve under this section  
 23 any agreement between a carrier by highway and a carrier by  
 24 rail unless it finds that such agreement is of the character  
 25 described in this section and is limited to matters relating

1 to the transportation under joint rates or over through  
2 routes.

3 (4) The commission may not approve under this section  
4 any agreement which it finds is an agreement with respect to  
5 pooling or division of traffic, service, or earnings.

6 (5) The commission may not approve under this section  
7 any agreement which establishes a procedure for the  
8 determination of any matter through joint consideration  
9 unless it finds that under the agreement there is accorded  
10 to each party the free and unrestrained right to take  
11 independent action either before or after any determination  
12 arrived at through such procedure.

13 (6) The commission may, upon complaint or upon its own  
14 initiative without complaint, investigate and determine  
15 whether any agreement previously approved by it under this  
16 section, or any terms or conditions upon which such approval  
17 was granted, is not in conformity with this section or  
18 whether any such ~~term terms~~ or conditions ~~is are~~ not  
19 necessary for the purpose of conformity with this section.  
20 After such investigation, the commission may by order  
21 terminate or modify its approval of such agreement if it  
22 finds such action necessary to insure conformity with this  
23 section, and may modify the terms and conditions upon which  
24 such approval was granted to the extent it finds necessary  
25 to insure conformity with this section or to the extent it

1 finds its terms and conditions unnecessary to insure such  
2 conformity. The effective date of any order terminating or  
3 modifying approval, or modifying terms and conditions, may  
4 be postponed for such period as the commission determines is  
5 reasonably necessary to avoid undue hardship.

6 (7) No order may be entered under this section except  
7 after interested parties have been afforded reasonable  
8 opportunity for hearing.

9 (8) The parties to any agreement approved by the  
10 commission under this section and other persons are, if the  
11 approval of such agreement is not prohibited by subsections  
12 (3), (4), or (5) of this section, hereby exempted from  
13 Montana antitrust laws with respect to such agreement,  
14 including ~~section 51-401~~ chapter 5, Title 51 or any other  
15 statutes prohibiting monopolies, price fixing, or restraint  
16 of trade.

17 (9) Any action of the commission under this section in  
18 approving an agreement, or in denying an application for  
19 such approval, or in terminating or modifying its approval  
20 of an agreement, or in prescribing terms and conditions upon  
21 which its approval is to be granted, or in modifying such  
22 terms and conditions, shall be construed as having effect  
23 solely with reference to the applicability of subsection  
24 (8)."

25 Section 26. Section 82A-401.1, R.C.M. 1947, is amended

1 to read as follows:  
 2 "82A-401.1. Functions of department. The department  
 3 and its units are responsible for administering laws  
 4 pertaining to business regulation, including, but not  
 5 limited to, laws pertaining to:  
 6 (1) Banks ~~banks~~ and banking (Title 5, chapters 1  
 7 through 14);  
 8 (2) Building ~~building~~ and loan associations (Title 7,  
 9 chapter 1);  
 10 (3) Credit ~~credit~~ unions (Title 14, chapter 1);  
 11 (4) Consumer ~~consumer~~ protection (Title 85, chapter  
 12 4);  
 13 (5) Supervision ~~supervision~~ of the milk industry  
 14 (Title 27, chapter 4);  
 15 (6) Consumer ~~consumer~~ loans (Title 47, chapter 2);  
 16 (7) ~~State~~ ~~sale~~ and marketing of coal (Title 50, chapter  
 17 6);  
 18 (8) Unfair ~~unfair~~ business practices (Title 51,  
 19 chapter ~~± 5~~);  
 20 (9) Regulation ~~regulation~~ of petroleum products (Title  
 21 60, chapter 2);  
 22 (10) Retail ~~retail~~ installment sales (Title 74, chapter  
 23 6);  
 24 (11) Standard ~~standard~~ weights and measures (Title 90,  
 25 chapter 1);

1 (12) Proprietary ~~proprietary~~ post-secondary  
 2 ~~postsecondary~~ educational institutions (Title 75, chapter  
 3 92)."  
 4 Section 27. Section 82A-404, R.C.M. 1947, is amended  
 5 to read as follows:  
 6 "82A-404. Board of trade abolished -- functions  
 7 transferred. (1) The board of trade, provided for in ~~title~~  
 8 ~~Title~~ 27, chapter 3, is abolished and its functions in ~~title~~  
 9 ~~Title~~ 51, chapter ~~± 5~~ (~~pertaining to the Unfair Practices~~  
 10 ~~Act~~) are transferred to the department of business  
 11 regulation. Unless inconsistent with this act, any reference  
 12 in the Revised Codes of Montana, 1947, to the Montana state  
 13 board of food distributors or the board of trade means the  
 14 department of business regulation."  
 15 Section 28. Section 84-2412, R.C.M. 1947, is amended  
 16 to read as follows:  
 17 "84-2412. Employment of help -- disposal of license  
 18 money. The state department of revenue is hereby authorized  
 19 to employ such clerical and field assistance as ~~may be found~~  
 20 necessary to carry out and to administer the provisions of  
 21 this act. All money collected under the provisions of this  
 22 act shall be paid into the state treasury, with ~~five dollars~~  
 23 ~~(\$5)~~ of the fee collected from each store license sold  
 24 credited to an earmarked revenue fund for administration of  
 25 ~~the Unfair Practices Act~~ ~~chapter 5, Title 51,~~ by the

1 department of business regulation and the rest to the credit  
2 of the general fund."\*

3 Section 29. Repealer. Sections 51-101, 51-101.1,  
4 51-103, 51-105, 51-112, 51-118, 51-401, 51-403, 51-404,  
5 51-405, 51-406, 51-407, 51-408, 51-409, 51-410, 51-412, and  
6 51-414, R.C.M. 1947, are repealed.

-End-