

1 H BILL NO. 304
 2 INTRODUCED BY Menchau
 3 BY REQUEST OF THE DEPARTMENT OF BUSINESS REGULATION

4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT FOR THE RECODIFICATION
 6 AND GENERAL REVISION OF CHAPTERS 1 AND 4 OF TITLE 51, R.C.M.
 7 1947, RELATING TO UNFAIR TRADE PRACTICES; AMENDING SECTIONS
 8 8-103.4, 82A-401.1, 82A-404, AND 84-2412, R.C.M. 1947, TO
 9 STRIKE INCORRECT REFERENCES TO THE UNFAIR PRACTICES ACT; AND
 10 REPEALING SECTIONS 51-101, 51-101.1, 51-103, 51-104, 51-105,
 11 51-107, 51-109, 51-112, 51-114, 51-118, 51-401, 51-403
 12 THROUGH 51-410, 51-412, AND 51-414, R.C.M. 1947."

13
 14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15 Section 1. Section 51-117, R.C.M. 1947, is renumbered
 16 51-501 and is amended to read as follows:

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

25 Section 2. There is a new R.C.M. section numbered

1 51-502 that reads as follows:

2 51-502. Definitions. As used in this chapter, unless
 3 the context indicates otherwise, the following definitions
 4 apply:

5 (1) "Article of commerce" includes but is not limited
 6 to any commodity, product, service, or output of a service
 7 trade.

8 (2) "Business" includes any person, as defined herein,
 9 domestic or foreign, engaged in the production, manufacture,
 10 distribution, purchase, or sale of any article of commerce
 11 within the state of Montana.

12 (3) "Cost to retailer" means the invoice cost of the
 13 merchandise to the retailer within 30 days prior to the date
 14 of sale or replacement cost of the merchandise to the
 15 retailer, whichever is lower, less all trade discounts
 16 except customary discounts for cash, plus any excise taxes
 17 imposed on such merchandise or the sale thereof other than
 18 excise taxes collected by the retailer, and any cost
 19 incurred for transportation and any other charges not
 20 otherwise included in the invoice cost or the replacement
 21 cost of the merchandise as herein set forth, to which shall
 22 be added a markup to cover a proportionate part of the cost
 23 of doing business, which markup, in the absence of proof of
 24 a lesser cost, shall be 6% of the cost to the retailer as
 25 herein set forth.

1 (4) "Cost to wholesaler" means the invoice cost of the
 2 merchandise to the wholesaler within 30 days prior to the
 3 date of sale or the replacement cost of the merchandise to
 4 the wholesaler, whichever is lower, less all trade discounts
 5 except customary discounts for cash, plus any excise taxes
 6 imposed on the sale thereof prior to the sale at retail, and
 7 any cost incurred for transportation and any other charges
 8 not otherwise included in the invoice cost or the
 9 replacement cost of the merchandise as herein set forth, to
 10 which shall be added a markup to cover a proportionate part
 11 of the cost of doing business, which markup, in the absence
 12 of proof of a lesser cost, shall be 3% of the cost to the
 13 wholesaler as herein set forth.

14 (5) "Cost to retailer" and "cost to wholesaler" as
 15 defined in subsections (3) and (4) mean bona fide costs, and
 16 purchases made by retailers or wholesalers at prices which
 17 cannot be justified by prevailing market conditions within
 18 this state shall not be used in determining cost to the
 19 retailer or cost to the wholesaler. Prices at which
 20 purchases of merchandise are made by retailers or
 21 wholesalers cannot be justified by prevailing market
 22 conditions in this state when they are below the lowest
 23 prices at which the manufacturer or producer of such
 24 merchandise sells to other retailers or wholesalers in this
 25 state.

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

3 (7) "Person" includes any natural person, partnership,
 4 firm, corporation, joint-stock company, or other association
 5 engaged in business within this state.

6 (8) "Replacement cost" means the cost, computed as
 7 specified in subsections (3) and (4), at which the
 8 merchandise sold could have been bought by the seller at any
 9 time within 30 days prior to the date of sale if bought in
 10 the same quantity as the seller's last purchase of the same
 11 merchandise.

12 (9) "Retailer" includes every person engaged in the
 13 business of making sales at retail within this state, but in
 14 the case of a person engaged in the business of making both
 15 sales at retail and sales at wholesale, such term shall be
 16 applied only to the retail portion of such business.

17 (10) "Sell", "sale", or "sold" includes any advertising
 18 or offer to sell or any transfer of merchandise where title
 19 is retained by the seller as security for the payment of the
 20 purchase price. In determining the selling price of
 21 merchandise by wholesalers and retailers under this chapter,
 22 all fractions of a cent shall be carried to the next full
 23 cent.

24 (11) "Sell at retail", "sales at retail", and "retail
 25 sale" mean any transfer for a valuable consideration, made

1 in the ordinary course of trade or in the usual conduct of
2 the seller's business, of title to tangible personal
3 property to the purchaser for consumption or use other than
4 resale or further processing or manufacturing.

5 (12) "Sell at wholesale", "sales at wholesale", and
6 "wholesale sales" include any transfer for a valuable
7 consideration, made in the ordinary course of trade or the
8 usual conduct of the seller's business, of title to tangible
9 personal property to the purchaser for purposes of resale or
10 further processing or manufacturing.

11 (13) The term "trade discount" does not include
12 advertising, display, or promotional allowances in the
13 absence of a statement in writing from the grantor that
14 receipt of such allowance is not conditioned on the
15 performance of any service or expenditure of any money for
16 promotion, advertising, or any other purpose.

17 (14) "Wholesaler" includes every person engaged in the
18 business of making sales at wholesale within this state, but
19 in the case of a person engaged in the business of making
20 both sales at wholesale and sales at retail, such term shall
21 be applied only to the wholesale portion of such business.

22 (15) "Wholesaler" and "retailer" shall both be applied
23 to any business which buys merchandise for resale at retail
24 from the manufacturer or producer thereof, and as to such
25 merchandise, the terms "cost to retailer" and "cost to

1 wholesaler" as defined in subsections (3) and (4) shall both
2 be applied, including the markup requirements.

3 (16) Any person who sells at retail and who also sells
4 to other retailers shall use the invoice cost to other
5 retailers in computing his selling price at retail under
6 subsection (3); and if such person is a manufacturer or
7 producer, both subsections (3) and (4) shall be used in
8 computing his selling price at retail. In the absence of
9 sales to other retailers, the manufacturer's or producer's
10 invoice cost to wholesalers shall be used in computing the
11 manufacturer's or producer's selling price at retail as
12 provided in subsections (3) and (4).

13 (17) When one or more items of merchandise are
14 furnished or sold in combination with or on condition of the
15 purchase of one or more other items or are so advertised,
16 all items shall be included in determining cost under
17 subsections (3) or (4); and if any of the items included
18 therein are separately priced, such separate price shall be
19 subject to the requirements of this chapter.

20 Section 3. Section 51-102, R.C.M. 1947, is renumbered
21 51-503 and is amended to read as follows:

22 ~~"51-102. 51-503.~~ Persons deemed responsible. Any
23 person who, either as director, officer, or agent of any
24 firm or corporation or as agent of any person, ~~violating the~~
25 ~~provisions of this act,~~ assists or aids, directly or

1 indirectly, in such a violation of this chapter shall be is
 2 responsible therefor equally with the person, firm, or
 3 corporation for whom or which he acts.

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

8 Section 4. There is a new R.C.M. section numbered
 9 51-504 that reads as follows:

10 51-504. Proof of intent. In an injunction proceeding
 11 or in the prosecution of a person acting as an officer,
 12 director, or agent, it is sufficient to allege and prove the
 13 unlawful intent of the person, firm, or corporation for whom
 14 or which he acts.

15 Section 5. There is a new R.C.M. section numbered
 16 51-505 that reads as follows:

17 51-505. Unlawful restraint of trade. It is unlawful
 18 for a person or a group of persons, directly or indirectly:

19 (1) to enter an agreement for the purpose of fixing
 20 the price or regulating the production of an article of
 21 commerce;

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

24 (a) limit production;

25 (b) increase or reduce the price of merchandise or

1 commodities;

2 (c) prevent competition in the distribution or sale of
 3 merchandise or commodities;

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

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

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

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

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

20 Section 6. Section 51-402, R.C.M. 1947, is renumbered
 21 51-506 and is amended to read as follows:

22 ~~"51-402, 51-506. Certain agreements between laborers~~
 23 ~~labor~~ excepted. The provisions of ~~this act 51-505~~ do not
 24 apply to any ~~arrangements~~ arrangement, agreement, or
 25 combination between laborers, made with the object of

1 lessening the number of hours of labor or increasing wages."

2 Section 7. There is a new R.C.M. section numbered
3 51-507 that reads as follows:

4 51-507. Unfair competition in sales. (1) It is
5 unlawful for any business, with the intent to destroy the
6 competition of any retailer or wholesaler or to prevent the
7 competition of any person who intends or attempts to become
8 a retailer or wholesaler, to discriminate between different
9 localities in this state by selling or furnishing articles
10 of commerce at a lower rate in one locality than in another,
11 after making allowance for the difference, if any, in the
12 grade, quality, quantity, and actual cost of transportation.

13 (2) Evidence of any sale at a lower rate in one
14 locality than in another shall be prima facie evidence of
15 intent to destroy the competition of any retailer or
16 wholesaler or intent to prevent the competition of any
17 person who intends or attempts to become a retailer or
18 wholesaler.

19 (3) This section does not apply to any sale made in an
20 endeavor, made in good faith, to meet the legal prices of a
21 competitor selling the same article in the same locality or
22 trade area.

23 (4) The inhibition against locality discrimination
24 includes any scheme of special rebates, collateral
25 contracts, or any device of any nature whereby such

1 discrimination is, in substance or fact, effected in
2 violation of the spirit and intent of this section.

3 Section 8. There is a new R.C.M. section numbered
4 51-508 that reads as follows:

5 51-508. Unfair competition in purchasing. (1) Any
6 business which, for the purpose of creating a monopoly or
7 destroying the business of a regularly established retailer
8 or wholesaler or preventing the competition of any person
9 who intends to become a retailer or wholesaler,
10 discriminates between different persons or localities of
11 this state by purchasing any article of commerce at a higher
12 rate or price in one locality than in another, after making
13 allowance for the difference, if any, in the grade, quality,
14 quantity, and actual cost of transportation, is guilty of
15 unfair discrimination, which is prohibited and unlawful.

16 (2) Evidence that any person has paid a higher rate or
17 price for any article of commerce in one locality than in
18 another, after making due allowance for the difference, if
19 any, in the grade, quality, quantity, and actual cost of
20 transportation, is prima facie evidence of a violation of
21 this section.

22 (3) The payment of a higher rate or price in one
23 locality than in another, after making the allowances
24 provided above, is not unfair discrimination, provided such
25 higher rate or price is paid for the purpose of meeting the

1 rate or price set by a competitor in that locality. The
2 burden of proof of such fact is upon the person charged with
3 unfair discrimination.

4 Section 9. There is a new R.C.M. section numbered
5 51-509 that reads as follows:

6 51-509. Unfair sales. (1) The practice of selling
7 certain articles of commerce below cost in order to attract
8 patronage is generally a form of deceptive advertising and
9 an unfair method of competition in commerce. Such practices
10 cause commercial dislocations, mislead the consumer, work
11 back against the farmer, directly burden and obstruct
12 commerce, and divert business from dealers who maintain a
13 fair price policy. Bankruptcies among merchants who fail
14 because of the competition of those who use such methods
15 result in unemployment, disruption of leases, and nonpayment
16 of taxes and loans, and contribute to an inevitable train of
17 undesirable consequences, including economic depression.

18 (2) Any sale of any article of commerce, either by a
19 retailer or wholesaler, at less than cost as defined in this
20 chapter, with the intent or effect of inducing the purchase
21 of other merchandise or of unfairly diverting trade from a
22 competitor, impairs and prevents fair competition, injures
23 public welfare, is unfair competition, and is contrary to
24 public policy and the policy of this section. Such sales are
25 prohibited. Evidence of any sale of any article of commerce

1 by any retailer or wholesaler at less than cost as defined
2 in this chapter is prima facie evidence of intent or effect
3 to induce the purchase of other merchandise or to unfairly
4 divert trade from a competitor or to otherwise injure a
5 competitor.

6 (3) The provisions of this section shall not apply to
7 sales at retail or sales at wholesale where:

8 (a) merchandise is sold in a bona fide clearance sale;
9 (b) perishable merchandise must be promptly sold in
10 order to forestall loss;

11 (c) merchandise is imperfect or damaged or is being
12 discontinued;

13 (d) merchandise is sold upon a final liquidation of
14 any business;

15 (e) merchandise is sold for charitable purposes or to
16 relief agencies;

17 (f) merchandise is sold on contract to departments of
18 the government or governmental institutions;

19 (g) the price of merchandise is set in good faith to
20 meet an existing price of a competitor and is based on
21 evidence in the possession of the seller in the form of an
22 advertisement, proof of sale, or receipted merchandise;

23 (h) merchandise is sold by any officer acting under
24 the order or direction of any court.

25 (4) No person may claim the exemptions under

1 subsections (3)(a) through (3)(d) if he limits or otherwise
 2 restricts the quantity of such merchandise that can be
 3 purchased by any buyer or if he fails to conspicuously
 4 disclose the reason for such sale in all advertisements
 5 relating thereto and on a label or tag on such merchandise
 6 or on a placard where the merchandise is displayed for sale.

7 Section 10. Section 51-106, R.C.M. 1947, is
 8 renumbered 51-510 and is amended to read as follows:

9 ~~"51-106"~~ 51-510. Fair price for agricultural products,
 10 ~~how--determined.~~ (1) The following method shall be used in
 11 determining fair prices for agricultural products sold on
 12 local markets, in a trade area, district, or city in which
 13 the major portion of an agricultural commodity or product is
 14 produced within or adjacent to the trade area, city, or
 15 district:

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

23 (b) Those producers through their agents shall file
 24 with the department the fair price and request a hearing for
 25 the establishment of fair prices to ~~for~~ jobbers,

1 wholesalers, retailers, and consumers of the agricultural
 2 products or commodities. ~~Any An~~ organization representing
 3 consumers may not be denied representation at the ~~meeting~~
 4 hearing.

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

12 Section 11. Section 51-108, R.C.M. 1947, is
 13 renumbered 51-511 and is amended to read as follows:

14 ~~"51-108"~~ 51-511. Rebates forbidden--co-operatives. (1)
 15 The secret payment or allowance of rebates, refunds,
 16 commissions, or unearned discounts, whether in the form of
 17 money or otherwise, or secretly extending to certain
 18 purchasers special services or privileges not extended to
 19 all purchasers purchasing upon like terms and conditions, to
 20 the injury of a competitor and where ~~when~~ such payment or
 21 allowance tends to destroy competition, is an unfair trade
 22 practice and any person--firm--partnership--corporation--or
 23 ~~association~~ resorting to such trade practice ~~shall-be-deemed~~
 24 ~~guilty--of--a-misdemeanor-and-on-conviction-thereof--shall-be~~
 25 ~~is~~ subject to the penalties set out in ~~section--51-112~~

1 ~~51-519.~~
 2 ~~(2) Provided--however--that~~ However, nothing in this
 3 ~~act--shall--prevent~~ section prevents a co-operative
 4 cooperative association, organized and operating on a true
 5 co-operative cooperative basis, from returning to the
 6 members, producers, or consumers the whole or any part of
 7 the net earnings or surplus resulting from its trading
 8 operations, in proportion to their purchases or sales from,
 9 to, or through the association."

10 Section 12. Section 51-411, R.C.M. 1947, is
 11 renumbered 51-512 and is amended to read as follows:

12 ~~"51-411, 51-512. Pooling in-purchase-sale-or-handling~~
 13 ~~of grain by--warehousemen prohibited. (1) It shall-be is~~
 14 ~~unlawful for any person--firm--or-corporation~~ engaged in the
 15 buying, selling, or handling of grain in any public local
 16 warehouse in this state, or for the local agent in charge of
 17 such warehouse, or any other agent of the person--firm--or
 18 corporation operating the same, to enter into any a
 19 contract, agreement, combination, or understanding with any
 20 other person--firm--or-corporation, owning or operating any
 21 other public local warehouse at any railway station, or with
 22 its agent ~~or-agents,~~ whereby:

23 (a) the amount of grain to be received or handled by
 24 ~~said the~~ warehouses at such station ~~or-stations-shall is to~~
 25 be equalized or pooled between ~~said the~~ warehouses, or

1 whereby

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

5 (c) the price to be paid for any kind of grain, at
 6 such station, ~~shall is to~~ be fixed or in any manner
 7 affected, and each

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

11 Section 13. Section 51-413, R.C.M. 1947, is
 12 renumbered 51-513 and is amended to read as follows:

13 ~~"51-413, 51-513. Destruction of food in--restraint--of~~
 14 ~~trade. It shall--be is~~ unlawful for any person--firm--or
 15 corporation to destroy, or to withhold from sale for a
 16 period of time which makes it necessary to destroy, in
 17 restraint of trade, any fish, fowl, animal, vegetable, or
 18 other stuff, products product, or articles article, which
 19 are is customary food, or ~~which-are~~ proper food for human
 20 beings, and are is in fit sanitary condition to be used as
 21 such."

22 Section 14. Section 51-116, R.C.M. 1947, is
 23 renumbered 51-514 and is amended to read as follows:

24 ~~"51-116, 51-514. Alteration of invoices unlawful~~
 25 ~~prohibited.~~ It is unlawful for a person--partnership--firm,

1 ~~corporation, joint stock company or other association as~~
 2 ~~defined in section 51-183,~~ to change, alter, substitute, or
 3 falsify an invoice ~~where if~~ the practice tends to injure a
 4 competitor, ~~or to~~ destroy competition, ~~or to~~ mislead a court
 5 or the department of business regulation. That Such practice
 6 is an unfair trade practice and a person, ~~firm, partnership,~~
 7 ~~corporation or association~~ resorting to that trade practice
 8 is guilty of a misdemeanor and is subject to the penalties
 9 provided in ~~section 51-112~~ 51-519."

10 Section 15. Section 51-113, R.C.M. 1947, is
 11 renumbered 51-515 and is amended to read as follows:

12 "~~51-113, 51-515. Department administration of act~~
 13 ~~by intervention orders review appeals process~~
 14 ~~finality of order Enforcement by department.~~ (1) The
 15 department shall prevent a person, ~~firm or corporation~~ from
 16 violating any of the provisions of this chapter.

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

24 (a) make its own investigation; and
 25 (b) within ~~sixty (60)~~ days of the finding of probable

1 cause ~~must~~ make a written report of its investigation; and
 2 ~~must~~

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

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

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

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

24 (d) Any person, ~~firm or corporation~~ may make
 25 application and upon good cause shown may be allowed by the

1 department to intervene and appear in the proceeding by
2 counsel or in person.

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

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

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

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

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

1 (6) Proceedings ~~in-the-district-court~~ under this
2 ~~section~~ shall be given precedence over other civil cases
3 pending ~~therein~~ in the district court and shall be in every
4 way expedited.

5 (7) A person~~y-firmy-or-corporation~~ who violates an
6 order of the department ~~to-cess-and-desist-after-it-has~~
7 ~~become-final~~ and while the order is in effect shall forfeit
8 and pay to this state a penalty of not ~~more-than-one~~
9 ~~thousand-dollars-(\$1,000)~~ less than \$50 or more than \$500
10 for the first offense and not less than \$200 or more than
11 \$1,000 for the second and each subsequent offense, for ~~each~~
12 ~~violation~~ which ~~shall-accrue-to-this-state~~ and may be
13 recovered in a civil action brought by ~~this-state~~ the
14 department.

15 (8) The remedies and method of enforcement of this
16 ~~chapter-provided-for-in-this~~ section are concurrent and in
17 addition to the other remedies provided in this chapter."

18 Section 16. Section 51-115, R.C.M. 1947, is
19 renumbered 51-516 and is amended to read as follows:

20 "~~51-115~~ 51-516. Hearings ~~and investigations~~
21 ~~contempts~~ Investigations. (1) The department, for the
22 purpose of conducting hearings and investigations which, in
23 the opinion of the department, are necessary and proper for
24 the exercise of the powers vested in it by this chapter, ~~has~~
25 ~~the-following-powers~~

1 ~~{}~~--The department shall at all reasonable times have
 2 access ~~to~~~~for the purpose of examination~~~~and the right to~~
 3 copy any evidence of concerning a person being investigated
 4 or proceeded against that relates to any matter under
 5 investigation or in question and the right to copy such
 6 evidence. ~~Any member of the~~ The department may issue
 7 subpoenas requiring the attendance and testimony of
 8 witnesses and the production of any evidence that relates to
 9 any matter under investigation or in question, before the
 10 department, or before its duly authorized agent conducting
 11 the investigation. An agent, duly authorized by the
 12 department for those purposes, may administer oaths and
 13 affirmations, examine witnesses, and receive evidence. The
 14 attendance of witnesses and the production of evidence may
 15 be required from any place in this state at any designated
 16 place of hearing.

17 (2) Upon application of the department in in any a
 18 case of contumacy or refusal to obey a subpoena issued to a
 19 person, any a district court of this state, within any the
 20 district where the inquiry is carried on or where a person
 21 guilty of contumacy or refusal to obey is found, or resides,
 22 or transacts business, ~~upon application by the department~~
 23 has jurisdiction to issue to that person, an order
 24 requiring him to appear before the department, or its duly
 25 authorized agent, and there to produce evidence if so

1 ordered, or there to give testimony regarding the matter
 2 under investigation. Failure to obey the order of the court
 3 may be punished by the court as a contempt.

4 (3) A person may not be excused from attending and
 5 testifying or from producing books, records, correspondence,
 6 documents, or other evidence in obedience to the subpoena of
 7 the department, on the ground that the testimony or evidence
 8 required of him may tend to incriminate him or subject him
 9 to a penalty or forfeiture. An individual may not be
 10 prosecuted or subjected to a penalty or forfeiture for or on
 11 account of a transaction, matter, or thing concerning which
 12 he is compelled to testify or produce evidence, after
 13 having claimed his privilege against ~~self-incrimination~~
 14 self-incrimination, ~~to testify or produce evidence, except~~
 15 ~~that an~~ An individual so testifying is not exempt from
 16 prosecution and punishment for perjury committed in
 17 testifying."

18 Section 17. Section 51-111, R.C.M. 1947, is
 19 renumbered 51-517 and is amended to read as follows:

20 "~~51-111~~ 51-517, ~~Who may enjoin violations~~ Injunctions
 21 -- damages -- production of evidence. (1) Any person, firm,
 22 private corporation or municipal or other public
 23 corporation, or trade association, if injured thereby, may
 24 maintain an action to enjoin a continuance of any an act or
 25 acts in violation of sections ~~51-101 to 51-108, inclusive,~~

1 ~~if injured thereby~~ the prohibitions of this Chapter and for
 2 the recovery of damages. If in such action, the court shall
 3 ~~find~~ finds that the defendant is violating or has violated
 4 any of the ~~provisions of sections 51-101 to 51-100,~~
 5 ~~inclusive~~ prohibitions of this chapter, it shall enjoin the
 6 defendant from a continuance thereof. It shall ~~is~~ not be
 7 necessary ~~that to allege or prove~~ actual damages to the
 8 plaintiff ~~be alleged or proved.~~

9 (2) In addition to such injunctive relief, the
 10 plaintiff ~~in said action shall be~~ is entitled to recover
 11 from the defendant three times the amount of the actual
 12 ~~damages if any~~ sustained, plus costs and attorneys' fees.

13 (3) Any ~~A~~ defendant in an action brought under the
 14 ~~provisions of this section may be required to testify under~~
 15 ~~the provisions of the Code Montana Rules~~ of Civil Procedure,
 16 ~~of this state in~~ In addition the books and records of any
 17 such defendant may be brought into court and introduced ~~by~~
 18 ~~reference~~ into evidence, by reference, provided, ~~however,~~
 19 ~~that no~~ No information so obtained may be used against the
 20 defendant as a basis for a misdemeanor prosecution under the
 21 ~~provisions of sections 51-101 to 51-100, inclusive, and~~
 22 ~~51-112~~ this chapter."

23 Section 18. Section 51-110, R.C.M. 1947, is
 24 renumbered 51-518 and is amended to read as follows:

25 "~~51-110. 51-518. Illegal contracts-----recovery~~

1 Recovery on illegal contracts forbidden. Any ~~A~~ contract,
 2 express or implied, made by ~~any a person--firm--or~~
 3 ~~corporation~~ in violation of any of the provisions of
 4 ~~sections 51-101 to 51-100, inclusive,~~ this chapter is
 5 ~~declared to be~~ an illegal contract and no recovery thereon
 6 shall ~~may~~ be had."

7 Section 19. There is a new R.C.M. section numbered
 8 51-519 that reads as follows:

9 51-519. Penalties. (1) Except as otherwise provided in
 10 this section, a person, whether principal, agent, officer,
 11 or director, who violates any of the provisions of this
 12 chapter is guilty of a misdemeanor for each violation and
 13 upon conviction thereof shall be fined not less than \$100 or
 14 more than \$1,000 or imprisoned for a term not to exceed 6
 15 months, or both.

16 (2) A violation of 51-505 is punishable by
 17 imprisonment in the county jail for a period not less than
 18 24 hours or more than 1 year or by fine not exceeding
 19 \$25,000, or both.

20 (3) When there is a violation of 51-512, in addition
 21 to the penalty specified in subsection (1) of this section,
 22 the court before which a conviction is had shall, within 10
 23 days after judgment of conviction is given, forward a
 24 certified copy of the judgment to the department of
 25 agriculture and the department shall revoke any license

1 issued to the person so convicted. In such case no new
2 license may be granted to the person whose license is
3 revoked or to anyone either directly or indirectly engaged
4 with him in such business, for a period of 1 year.

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

7 *8-103.4. Approval of carrier agreements. (1) Any
8 carrier as defined in section 8-101(h) which is a party to
9 an agreement between or among two ~~(2)~~ or more carriers
10 relating to rates, fares, classifications, divisions,
11 allowances, or charges (including charges between carriers
12 and compensation paid or received for the use of facilities
13 and equipment), or rules pertaining thereto, or procedures
14 for the joint consideration, initiation, or establishment
15 thereof, may, under such rules as the commission prescribes,
16 apply to the public service commission for approval of the
17 agreement and the commission shall by order approve any
18 agreement, if approval thereof is not prohibited by
19 subsections (3), (4), or (5) of this section. The approval
20 of the commission shall be granted only upon such terms and
21 conditions as the commission may prescribe as necessary to
22 enable it to grant its approval in accordance with this
23 subsection.

24 (2) Each conference, bureau, committee, or other
25 organization established or continued pursuant to any

1 agreement approved by the commission and the provisions of
2 this section shall maintain such accounts, records, files,
3 and memoranda and shall submit to the commission such
4 reports, as may be prescribed by the commission, and all
5 such accounts, records, files, and memoranda shall be
6 subject to inspection by the commission or its duly
7 authorized representative.

8 (3) The commission may not approve under this section
9 any agreement between a carrier by highway and a carrier by
10 rail unless it finds that such agreement is of the character
11 described in this section and is limited to matters relating
12 to the transportation under joint rates or over through
13 routes.

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

17 (5) The commission may not approve under this section
18 any agreement which establishes a procedure for the
19 determination of any matter through joint consideration
20 unless it finds that under the agreement there is accorded
21 to each party the free and unrestrained right to take
22 independent action either before or after any determination
23 arrived at through such procedure.

24 (6) The commission may, upon complaint or upon its own
25 initiative without complaint, investigate and determine

1 whether any agreement previously approved by it under this
 2 section or any terms or conditions upon which such approval
 3 was granted is not in conformity with this section or
 4 whether any such term ~~terms~~ or conditions ~~is are~~ not
 5 necessary for the purpose of conformity with this section.
 6 After such investigation, the commission may by order
 7 terminate or modify its approval of such agreement if it
 8 finds such action necessary to insure conformity with this
 9 section and may modify the terms and conditions upon which
 10 such approval was granted to the extent it finds necessary
 11 to insure conformity with this section or to the extent it
 12 finds its terms and conditions unnecessary to insure such
 13 conformity. The effective date of any order terminating or
 14 modifying approval or modifying terms and conditions may
 15 be postponed for such period as the commission determines is
 16 reasonably necessary to avoid undue hardship.

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

20 (8) The parties to any agreement approved by the
 21 commission under this section and other persons are, if the
 22 approval of such agreement is not prohibited by subsections
 23 (3), (4), or (5) of this section, hereby exempted from
 24 Montana antitrust laws with respect to such agreement,
 25 including ~~section--51-401~~ Title 51, chapter 5, or any other

1 statutes prohibiting monopolies, price fixing, or restraint
 2 of trade.

3 (9) Any action of the commission under this section in
 4 approving an agreement or in denying an application for
 5 such approval, or in terminating or modifying its approval
 6 of an agreement or in prescribing terms and conditions upon
 7 which its approval is to be granted, or in modifying such
 8 terms and conditions, shall be construed as having effect
 9 solely with reference to the applicability of subsection
 10 (8)."

11 Section 21. Section 82A-401.1, R.C.M. 1947, is amended
 12 to read as follows:

13 "82A-401.1. Functions of department. The department
 14 and its units are responsible for administering laws
 15 pertaining to business regulation, including but not
 16 limited to laws pertaining to:

17 (1) Banks ~~banks~~ and banking (Title 5, chapters 1
 18 through 14);

19 (2) Building ~~building~~ and loan associations (Title 7,
 20 chapter 1);

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

22 (4) Consumer ~~consumer~~ protection (Title 85, chapter
 23 4);

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

- 1 (6) ~~Consumer~~ consumer loans (Title 47, chapter 2);
 2 (7) ~~State~~ sale and marketing of coal (Title 50, chapter
 3 6);
 4 (8) ~~Unfair~~ unfair business practices (Title 51,
 5 chapter ~~1~~ 5);
 6 (9) ~~Regulation~~ regulation of petroleum products (Title
 7 60, chapter 2);
 8 (10) ~~Retail~~ retail installment sales (Title 74, chapter
 9 6);
 10 (11) ~~Standard~~ standard weights and measures (Title 90,
 11 chapter 1);
 12 (12) ~~Proprietary-----post-secondary~~ Proprietary
 13 postsecondary educational institutions (Title 75, chapter
 14 92)."

15 Section 22. Section 82A-404, R.C.M. 1947, is amended
 16 to read as follows:

17 "82A-404. Board of trade abolished -- functions
 18 transferred. (1) The board of trade, provided for in ~~title~~
 19 Title 27, chapter 3, is abolished and its functions in ~~title~~
 20 Title 51, chapter ~~1~~ 5, ~~(pertaining to the--Unfair--Practices~~
 21 ~~Act)~~ are transferred to the department of business
 22 regulation. Unless inconsistent with this act, any reference
 23 in the Revised Codes of Montana, 1947, to the Montana state
 24 board of food distributors or the board of trade, means the
 25 department of business regulation."

1 Section 23. Section 84-2412, R.C.M. 1947, is amended
 2 to read as follows:

3 "84-2412. Employment of help -- disposal of license
 4 money. The state department of revenue is hereby authorized
 5 to employ such clerical and field assistance as ~~may be found~~
 6 necessary to carry out and to administer the provisions of
 7 this act. All money collected under the provisions of this
 8 act shall be paid into the state treasury, with ~~five-dollars~~
 9 ~~{5}~~ of the fee collected from each store license sold
 10 credited to an earmarked revenue fund for administration of
 11 ~~the--Unfair--Practices--Act~~ Title 51, chapter 5 by the
 12 department of business regulation and the rest to the credit
 13 of the general fund."

14 Section 24. Repealer. Sections 51-101, 51-101.1,
 15 51-103, 51-104, 51-105, 51-107, 51-109, 51-112, 51-114,
 16 51-118, 51-401, 51-403, 51-404, 51-405, 51-406, 51-407,
 17 51-408, 51-409, 51-410, 51-412, and 51-414, R.C.M. 1947, are
 18 repealed.

-End-

STATE OF MONTANA

REQUEST NO. 549-77

FISCAL NOTE

Form BD-15

In compliance with a written request received February 15, 19 77, there is hereby submitted a Fiscal Note for House Bill 304 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

An act for the recodification and general revision of Chapters 1 and 4 of Title 51, R.C.M. 1947, relating to unfair trade practices.

ASSUMPTIONS:

1. Enforcement activity under the Unfair Practices Act will increase substantially under the modifications proposed by the bill.
2. Transfer of enforcement authority under Title 51, Chapter 4, R.C.M. 1947 (Unfair Competition, Discrimination and Combinations in Restraint of Trade) from the Attorney General to the Department will require increased investigatory capability by the Department.
3. One additional FTE, an Investigator, will need to be added to the Department to permit adequate investigation of Unfair Practices and Unfair Competition. There are approximately 12,300 stores licensed to do business in Montana. It is difficult to estimate the number of required investigations because under Section 51-502 - Definitions . . . "Article of commerce" includes but is not limited to any commodity, product, service or output of a service of trade, . . ." and "(2) "Business" includes any person, as defined herein, domestic or foreign, engaged in the production, manufacture, distribution, purchase, or sale of any article of commerce within the state of Montana."
4. Some operating expenses arising from the new departmental responsibilities can be absorbed under present program appropriations.
5. Earmarked revenue currently being generated through license fees will be adequate to fund the increased costs.
6. No reduction in expenditures in the Attorney General's office can be made.

FISCAL IMPACT:

	<u>FY 78</u>	<u>FY 79</u>
Estimated expenditure increase by category		
Personal services	\$16,016	\$17,137
Operating expense	<u>6,937</u>	<u>6,812</u>
Additional cost of proposed legislation	<u>\$22,953</u>	<u>\$23,949</u>

Richard L. Drayton
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-22-77

Approved by Committee
on Business and Industry

1 HOUSE BILL NO. 304

2 INTRODUCED BY MENAHAN

3 BY REQUEST OF THE DEPARTMENT OF BUSINESS REGULATION

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT FOR THE RECODIFICATION
6 AND GENERAL REVISION OF CHAPTERS 1 AND 4 OF TITLE 51, R.C.M.
7 1947, RELATING TO UNFAIR TRADE PRACTICES; AMENDING SECTIONS
8 8-103.4, 82A-401.1, 82A-404, AND 84-2412, R.C.M. 1947, TO
9 STRIKE INCORRECT REFERENCES TO THE UNFAIR PRACTICES ACT; AND
10 REPEALING SECTIONS 51-101, 51-101.1, 51-103, 51-104, 51-105,
11 51-107, ~~51-109~~, 51-112, 51-114, ~~51-118~~, 51-401, 51-403
12 THROUGH 51-410, 51-412, AND 51-414, R.C.M. 1947."

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15 Section 1. Section 51-117, R.C.M. 1947, is renumbered
16 51-501 and is amended to read as follows:

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

25 Section 2. There is a new R.C.M. section numbered

1 51-502 that reads as follows:

2 51-502. Definitions. As used in this chapter, unless
3 the context indicates otherwise, the following definitions
4 apply:

5 (1) "Article of commerce" includes but is not limited
6 to any commodity, product, service, or output of a service
7 trade, EXCEPT THAT ANY PRODUCT OR SERVICE OF A PUBLIC
8 UTILITY SHALL NOT BE INCLUDED WITHIN THE TERM "ARTICLE OF
9 COMMERCE".

10 (2) "Business" includes any person, as defined herein,
11 domestic or foreign, engaged in the production, manufacture,
12 distribution, purchase, or sale of any article of commerce
13 within the state of Montana.

14 (3) "Cost to retailer" means the invoice cost of the
15 merchandise to the retailer within 30 days prior to the date
16 of sale or replacement cost of the merchandise to the
17 retailer, whichever is lower, less all trade discounts
18 except customary discounts for cash, plus any excise taxes
19 imposed on such merchandise or the sale thereof other than
20 excise taxes collected by the retailer, and any cost
21 incurred for transportation and any other charges not
22 otherwise included in the invoice cost or the replacement
23 cost of the merchandise as herein set forth, to which shall
24 be added a markup to cover a proportionate part of the cost
25 of doing business, which markup, in the absence of proof of

1 a lesser cost, shall be 6% of the cost to the retailer as
2 herein set forth.

3 (4) "Cost to wholesaler" means the invoice cost of the
4 merchandise to the wholesaler within 30 days prior to the
5 date of sale or the replacement cost of the merchandise to
6 the wholesaler, whichever is lower, less all trade discounts
7 except customary discounts for cash, plus any excise taxes
8 imposed on the sale thereof prior to the sale at retail, and
9 any cost incurred for transportation and any other charges
10 not otherwise included in the invoice cost or the
11 replacement cost of the merchandise as herein set forth, to
12 which shall be added a markup to cover a proportionate part
13 of the cost of doing business, which markup, in the absence
14 of proof of a lesser cost, shall be 3% of the cost to the
15 wholesaler as herein set forth.

16 (5) "Cost to retailer" and "cost to wholesaler" as
17 defined in subsections (3) and (4) mean bona fide costs, and
18 purchases made by retailers or wholesalers at prices which
19 cannot be justified by prevailing market conditions within
20 this state shall not be used in determining cost to the
21 retailer or cost to the wholesaler. Prices at which
22 purchases of merchandise are made by retailers or
23 wholesalers cannot be justified by prevailing market
24 conditions in this state when they are below the lowest
25 prices at which the manufacturer or producer of such

1 merchandise sells to other retailers or wholesalers in this
2 state.

3 (6) "Department" means the department of business
4 regulation provided for in 82A-401.

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

8 (8) "Replacement cost" means the cost, computed as
9 specified in subsections (3) and (4), at which the
10 merchandise sold could have been bought by the seller at any
11 time within 30 days prior to the date of sale if bought in
12 the same quantity as the seller's last purchase of the same
13 merchandise.

14 (9) "Retailer" includes every person engaged in the
15 business of making sales at retail within this state, but in
16 the case of a person engaged in the business of making both
17 sales at retail and sales at wholesale, such term shall be
18 applied only to the retail portion of such business.

19 (10) "Sell", "sale", or "sold" includes any advertising
20 or offer to sell or any transfer of merchandise where title
21 is retained by the seller as security for the payment of the
22 purchase price. In determining the selling price of
23 merchandise by wholesalers and retailers under this chapter,
24 all fractions of a cent shall be carried to the next full
25 cent.

1 (11) "Sell at retail", "sales at retail", and "retail
2 sale" mean any transfer for a valuable consideration, made
3 in the ordinary course of trade or in the usual conduct of
4 the seller's business, of title to tangible personal
5 property to the purchaser for consumption or use other than
6 resale or further processing or manufacturing.

7 (12) "Sell at wholesale", "sales at wholesale", and
8 "wholesale sales" include any transfer for a valuable
9 consideration, made in the ordinary course of trade or the
10 usual conduct of the seller's business, of title to tangible
11 personal property to the purchaser for purposes of resale or
12 further processing or manufacturing.

13 (13) The term "trade discount" does not include
14 advertising, display, or promotional allowances in the
15 absence of a statement in writing from the grantor that
16 receipt of such allowance is not conditioned on the
17 performance of any service or expenditure of any money for
18 promotion, advertising, or any other purpose.

19 (14) "Wholesaler" includes every person engaged in the
20 business of making sales at wholesale within this state, but
21 in the case of a person engaged in the business of making
22 both sales at wholesale and sales at retail, such term shall
23 be applied only to the wholesale portion of such business.

24 (15) "Wholesaler" and "retailer" shall both be applied
25 to any business which buys merchandise for resale at retail

1 from the manufacturer or producer thereof, and as to such
2 merchandise, the terms "cost to retailer" and "cost to
3 wholesaler" as defined in subsections (3) and (4) shall both
4 be applied, including the markup requirements.

5 (16) Any person who sells at retail and who also sells
6 to other retailers shall use the invoice cost to other
7 retailers in computing his selling price at retail under
8 subsection (3); and if such person is a manufacturer or
9 producer, both subsections (3) and (4) shall be used in
10 computing his selling price at retail. In the absence of
11 sales to other retailers, the manufacturer's or producer's
12 invoice cost to wholesalers shall be used in computing the
13 manufacturer's or producer's selling price at retail as
14 provided in subsections (3) and (4).

15 (17) When one or more items of merchandise are
16 furnished or sold in combination with or on condition of the
17 purchase of one or more other items or are so advertised,
18 all items shall be included in determining cost under
19 subsections (3) or (4); and if any of the items included
20 therein are separately priced, such separate price shall be
21 subject to the requirements of this chapter.

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

24 ~~"51-102, 51-501.~~ Persons deemed responsible. Any
25 person who, either as director, officer, or agent of any

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

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

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

12 51-504. Proof of intent. In an injunction proceeding
 13 or in the prosecution of a person acting as an officer,
 14 director, or agent, it is sufficient to allege and prove the
 15 unlawful intent of the person, firm, or corporation for whom
 16 or which he acts.

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

19 51-505. Unlawful restraint of trade. It is unlawful
 20 for a person or a group of persons, directly or indirectly:

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

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

1 (a) limit production;

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

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

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

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

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

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

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

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

24 ~~"51-402, 51-506. Certain agreements between laborers~~
 25 ~~Labor~~ excepted. The provisions of this act 51-505 do not

1 apply to any ~~arrangements~~ arrangement, agreement, or
 2 combination between laborers, made with the object of
 3 lessening the number of hours of labor or increasing wages.*

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

6 51-507. Unfair competition in sales. (1) It is
 7 unlawful for any business, with the intent to destroy the
 8 competition of any retailer or wholesaler or to prevent the
 9 competition of any person who intends or attempts to become
 10 a retailer or wholesaler, to discriminate between different
 11 localities in this state by selling or furnishing articles
 12 of commerce at a lower rate in one locality than in another,
 13 after making allowance for the difference, if any, in the
 14 grade, quality, quantity, and actual cost of transportation.

15 (2) Evidence of any sale at a lower rate in one
 16 locality than in another shall be prima facie evidence of
 17 intent to destroy the competition of any retailer or
 18 wholesaler or intent to prevent the competition of any
 19 person who intends or attempts to become a retailer or
 20 wholesaler.

21 (3) This section does not apply to any sale made in an
 22 endeavor, made in good faith, to meet the legal prices of a
 23 competitor selling the same article in the same locality or
 24 trade area.

25 (4) The inhibition 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 Section 8. There is a new R.C.M. section numbered
 6 51-508 that reads as follows:

7 51-508. Unfair competition in purchasing. (1) Any
 8 business which, for the purpose of creating a monopoly or
 9 destroying the business of a regularly established retailer
 10 or wholesaler or preventing the competition of any person
 11 who intends to become a retailer or wholesaler,
 12 discriminates between different persons or localities of
 13 this state by purchasing any article of commerce at a higher
 14 rate or price in one locality than in another, after making
 15 allowance for the difference, if any, in the grade, quality,
 16 quantity, and actual cost of transportation, is guilty of
 17 unfair discrimination, which is prohibited and unlawful.

18 (2) Evidence that any person has paid a higher rate or
 19 price for any article of commerce in one locality than in
 20 another, after making due allowance for the difference, if
 21 any, in the grade, quality, quantity, and actual cost of
 22 transportation, is prima facie evidence of a violation of
 23 this section.

24 (3) The payment of a higher rate or price in one
 25 locality than in another, after making the allowances

1 provided above, is not unfair discrimination, provided such
 2 higher rate or price is paid for the purpose of meeting the
 3 rate or price set by a competitor in that locality. The
 4 burden of proof of such fact is upon the person charged with
 5 unfair discrimination.

6 Section 9. There is a new R.C.M. section numbered
 7 51-509 that reads as follows:

8 51-509. Unfair sales. (1) The practice of selling
 9 certain articles of commerce below cost in order to attract
 10 patronage is generally a form of deceptive advertising and
 11 an unfair method of competition in commerce. Such practices
 12 cause commercial dislocations, mislead the consumer, work
 13 back against the farmer, directly burden and obstruct
 14 commerce, and divert business from dealers who maintain a
 15 fair price policy. Bankruptcies among merchants who fail
 16 because of the competition of those who use such methods
 17 result in unemployment, disruption of leases, and nonpayment
 18 of taxes and loans, and contribute to an inevitable train of
 19 undesirable consequences, including economic depression.

20 (2) Any sale of any article of commerce, either by a
 21 retailer or wholesaler, at less than cost as defined in this
 22 chapter, with the intent or effect of inducing the purchase
 23 of other merchandise or of unfairly diverting trade from a
 24 competitor, impairs and prevents fair competition, injures
 25 public welfare, is unfair competition, and is contrary to

1 public policy and the policy of this section. Such sales are
 2 prohibited. Evidence of any sale of any article of commerce
 3 by any retailer or wholesaler at less than cost as defined
 4 in this chapter is prima facie evidence of intent or effect
 5 to induce the purchase of other merchandise or to unfairly
 6 divert trade from a competitor or to otherwise injure a
 7 competitor.

8 (3) The provisions of this section shall not apply to
 9 sales at retail or sales at wholesale where:

10 (a) merchandise is sold in a bona fide clearance sale;

11 (b) perishable merchandise must be promptly sold in
 12 order to forestall loss;

13 (c) merchandise is imperfect or damaged or is being
 14 discontinued;

15 (d) merchandise is sold upon a final liquidation of
 16 any business;

17 (e) merchandise is sold for charitable purposes or to
 18 relief agencies;

19 (f) merchandise is sold on contract to departments of
 20 the government or governmental institutions;

21 (g) the price of merchandise is set in good faith to
 22 meet an existing price of a competitor and is based on
 23 evidence in the possession of the seller in the form of an
 24 advertisement, proof of sale, or receipted merchandise;

25 (h) merchandise is sold by any officer acting under

1 the order or direction of any court.

2 (4) No person may claim the exemptions under
3 subsections (3)(a) through (3)(d) if he limits or otherwise
4 restricts the quantity of such merchandise that can be
5 purchased by any buyer or if he fails to conspicuously
6 disclose the reason for such sale in all advertisements
7 relating thereto and on a label or tag on such merchandise
8 or on a placard where the merchandise is displayed for sale.

9 Section 10. Section 51-106, R.C.M. 1947, is
10 renumbered 51-510 and is amended to read as follows:

11 ~~"51-106. 51-510.~~ Fair price for agricultural products
12 ~~how--determined.~~ (1) The following method shall be used in
13 determining fair prices for agricultural products sold on
14 local markets, in a trade area, district, or city in which
15 the major portion of an agricultural commodity or product is
16 produced within or adjacent to the trade area, city, or
17 district:

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

25 (b) Those producers through their agents shall file

1 with the department the fair price and request a hearing for
2 the establishment of fair prices to ~~for~~ jobbers,
3 wholesalers, retailers, and consumers of the agricultural
4 products or commodities. ~~Any An~~ organization representing
5 consumers may not be denied representation at the ~~meeting~~
6 ~~hearing~~.

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

14 Section 11. Section 51-108, R.C.M. 1947, is
15 renumbered 51-511 and is amended to read as follows:

16 ~~"51-108. 51-511.~~ Rebates forbidden--~~co-operatives.~~ (1)
17 The secret payment or allowance of rebates, refunds,
18 commissions, or unearned discounts, whether in the form of
19 money or otherwise, or secretly extending to certain
20 purchasers special services or privileges not extended to
21 all purchasers purchasing upon like terms and conditions, to
22 the injury of a competitor and ~~where when~~ such payment or
23 allowance tends to destroy competition, is an unfair trade
24 practice and any person--~~firm--partnership--corporation--or~~
25 ~~association~~ resorting to such trade practice shall be deemed

1 guilty--of--a-misdemeanor-and-on-conviction-thereof-shall-be
 2 is subject to the penalties set out in section--51-112
 3 51-519.

4 [2] Provided--however--that However, nothing in this
 5 act--shall--prevent section prevents a co-operative
 6 cooperative association, organized and operating on a true
 7 co-operative cooperative basis, from returning to the
 8 members, producers, or consumers the whole or any part of
 9 the net earnings or surplus resulting from its trading
 10 operations, in proportion to their purchases or sales from,
 11 to, or through the association."

12 Section 12. Section 51-411, R.C.M. 1947, is
 13 renumbered 51-512 and is amended to read as follows:

14 "51-411 51-512. Pooling in-purchase-sale-or-handling
 15 of grain by--warehousemen prohibited. (1) It shall-be is
 16 unlawful for any person--firm--or-corporation engaged in the
 17 buying, selling, or handling of grain in any public local
 18 warehouse in this state, or for the local agent in charge of
 19 such warehouse, or any other agent of the person--firm--or
 20 corporation operating the same, to enter into any a
 21 contract, agreement, combination, or understanding with any
 22 other person--firm--or-corporation, owning or operating any
 23 other public local warehouse at any railway station, or with
 24 its agent or-agents, whereby:

25 (a) the amount of grain to be received or handled by

1 said the warehouses at such station or-stations-shall is to
 2 be equalized or pooled between said the warehouses; or
 3 whereby

4 (b) the profits or earnings derived from said the
 5 warehouses shall are to be divided, or pooled, or
 6 apportioned in any manner; or whereby

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

10 (2) Each day of the continuance of any such agreement,
 11 contract, or understanding shall--constitute constitutes a
 12 separate offense."

13 Section 13. Section 51-413, R.C.M. 1947, is
 14 renumbered 51-513 and is amended to read as follows:

15 "51-413 51-513. Destruction of food in--restraint--of
 16 trade. It shall--be is unlawful for any person--firm--or
 17 corporation to destroy, or to withhold from sale for a
 18 period of time which makes it necessary to destroy, in
 19 restraint of trade, any fish, fowl, animal, vegetable, or
 20 other stuff, products product, or articles article, which
 21 are is customary food, or which-are proper food for human
 22 beings, and are is in fit sanitary condition to be used as
 23 such."

24 Section 14. Section 51-116, R.C.M. 1947, is
 25 renumbered 51-514 and is amended to read as follows:

1 ~~"51-116 51-514.~~ Alteration of invoices ~~unlawful~~
 2 ~~prohibited.~~ It is unlawful for a person~~y-partnership--firm~~
 3 ~~corporation--joint-stock-company-or-other-association--as~~
 4 ~~defined-in-section-51-103,~~ to change, alter, substitute, or
 5 falsify an invoice where if the practice tends to injure a
 6 competitor, or to destroy competition, or to mislead a court
 7 or the department of business regulation. ~~That~~ Such practice
 8 is an unfair trade practice and a person~~y-firm-partnership~~
 9 ~~corporation-or-association~~ resorting to that trade practice
 10 is guilty of a misdemeanor and is subject to the penalties
 11 provided in ~~section-51-112~~ 51-519."

12 Section 15. Section 51-113, R.C.M. 1947, is
 13 renumbered 51-515 and is amended to read as follows:

14 ~~"51-113 51-515. Department-----administration-of--act~~
 15 ~~by---intervention---orders---review---appeals---process~~
 16 ~~-----finality--of--order~~ Enforcement by department. (1) The
 17 department shall prevent a person~~y-firm-or-corporation~~ from
 18 violating any of the provisions of this chapter.

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

1 (a) make its own investigation; and
 2 (b) within ~~sixty-(60)~~ days of the finding of probable
 3 cause ~~must~~ make a written report of its investigation; and
 4 ~~must~~

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

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

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

21 (c) The person~~y-firm-or-corporation~~ so complained of
 22 against may appear at the place and time so fixed and show
 23 cause why an order should not be entered by the department
 24 requiring ~~that such~~ person~~y-firm-or-corporation~~ to stop the
 25 violation of the law charged in the complaint.

1 ~~(d)~~ Any persons ~~firm or corporation~~ may make
 2 application and upon good cause shown may be allowed by the
 3 department to intervene and appear in the proceeding by
 4 counsel or in person.

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

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

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

20 (4) A court reviewing an order of the department may
 21 issue such writs as are ancillary to its jurisdiction or are
 22 necessary in its judgment to prevent injury to the public or
 23 to competitors pending the suit.

24 (5) To the extent that the order of the department is
 25 affirmed, the court shall thereupon issue its own order

1 commanding obedience to the terms of the order of the
 2 department.

3 (6) Proceedings ~~in the district court~~ under this
 4 section shall be given precedence over other civil cases
 5 pending therein in the district court and shall be in every
 6 way expedited.

7 (7) A person ~~firm or corporation~~ who violates an
 8 order of the department ~~to cease and desist after it has~~
 9 ~~become final~~ and while the order is in effect shall forfeit
 10 and pay to this state a penalty of not more than one
 11 ~~thousand dollars (\$1,000)~~ less than \$50 or more than \$500
 12 for the first offense and not less than \$200 or more than
 13 \$1,000 for the second and each subsequent offense, for each
 14 violation which shall ~~accrue to this state~~ and may be
 15 recovered in a civil action brought by ~~this state~~ the
 16 department.

17 (8) The remedies and method of enforcement of this
 18 ~~chapter provided for in this~~ section are concurrent and in
 19 addition to the other remedies provided in this chapter."

20 Section 16. Section 51-115, R.C.M. 1947, is
 21 renumbered 51-516 and is amended to read as follows:

22 ~~"51-115, 51-516. Hearings and investigations and~~
 23 ~~contempts investigations.~~ (1) The department, for the
 24 purpose of conducting hearings and investigations which, in
 25 the opinion of the department, are necessary and proper for

1 the exercise of the powers vested in it by this chapter, has
2 the following powers:

3 ~~(1) The department~~ shall at all reasonable times have
4 access ~~to~~ ~~for the purpose of examination~~ ~~and the right to~~
5 copy any evidence of concerning a person being investigated
6 or proceeded against that relates to any matter under
7 investigation or in question and the right to copy such
8 evidence. ~~Any member of the~~ The department may issue
9 subpoenas requiring the attendance and testimony of
10 witnesses and the production of any evidence that relates to
11 any matter under investigation or in question before the
12 department or before its duly authorized agent conducting
13 the investigation. An agent, duly authorized by the
14 department for those purposes, may administer oaths and
15 affirmations, examine witnesses, and receive evidence. The
16 attendance of witnesses and the production of evidence may
17 be required from any place in this state at any designated
18 place of hearing.

19 (2) Upon application of the department in in any a
20 case of contumacy or refusal to obey a subpoena issued to a
21 person, any a district court of this state, within any the
22 district where the inquiry is carried on or where a person
23 guilty of contumacy or refusal to obey is found, or resides,
24 or transacts business, upon application by the department
25 has jurisdiction to issue to that person an order

1 requiring him to appear before the department, or its duly
2 authorized agent, and there to produce evidence if so
3 ordered, or there to give testimony regarding the matter
4 under investigation. Failure to obey the order of the court
5 may be punished by the court as a contempt.

6 (3) A person may not be excused from attending and
7 testifying or from producing books, records, correspondence,
8 documents, or other evidence in obedience to the subpoena of
9 the department, on the ground that the testimony or evidence
10 required of him may tend to incriminate him or subject him
11 to a penalty or forfeiture. An individual may not be
12 prosecuted or subjected to a penalty or forfeiture for or on
13 account of a transaction, matter, or thing concerning which
14 he is compelled to testify or produce evidence, after
15 having claimed his privilege against ~~self-incrimination~~
16 self-incrimination, ~~to testify or produce evidence, except~~
17 ~~that an~~ An individual so testifying is not exempt from
18 prosecution and punishment for perjury committed in
19 testifying."

20 Section 17. Section 51-111, R.C.M. 1947, is
21 renumbered 51-517 and is amended to read as follows:

22 "~~51-111, 51-517. Who may enjoin violations~~ Injunctions
23 ~~-- damages -- production of evidence. (1) Any person, firm,~~
24 ~~private corporation or municipal or other public~~
25 ~~corporation or trade association, if injured thereby,~~ may

1 maintain an action to enjoin a continuance of any an act or
 2 acts in violation of sections-51-101-to-51-100v-inclusive
 3 if-injured-thereby, the prohibitions of this chapter and for
 4 the recovery of damages. If in such action, the court shall
 5 find finds that the defendant is violating or has violated
 6 any of the provisions--of--sections--51-101--to--51-100v
 7 inclusive prohibitions of this chapter, it shall enjoin the
 8 defendant from a continuance thereof. It shall is not be
 9 necessary that to allege or prove actual damages to the
 10 plaintiff be-alleged-or-proved.

11 (2) In addition to such injunctive relief, the
 12 plaintiff in-said-action-shall-be is entitled to recover
 13 from the defendant three times the amount of the actual
 14 damages-if-any, sustained, plus costs and attorneys' fees.

15 (3) Any A defendant in an action brought under the
 16 provisions-of this section may be required to testify under
 17 the provisions-of-the-Code Montana Rules of Civil Procedure,
 18 of--this--state, in In addition the books and records of any
 19 such defendant may be brought into court and introducedv--by
 20 reference, into evidence, by reference, providedv-however
 21 that-no No information so obtained may be used against the
 22 defendant as a basis for a misdemeanor prosecution under the
 23 provisions--of--sections--51-101--to--51-100v-inclusive, and
 24 51-112 this chapter."

25 SECTION 18. SECTION 51-109, R.C.M., 1947, IS

1 RENUMBERED 51-520 AND IS AMENDED TO READ AS FOLLOWS:

2 "51-109 51-520. Attorney--general Department to
 3 institute suit, when. Upon the third violation of any of the
 4 provisions of sections-51-101-to-51-100v--inclusive 51-505
 5 through 51-514 by any corporation, it-shall-be-the-duty-of
 6 the attorney-general department to shall institute proper
 7 suits or quo warranto proceedings in any a court of
 8 competent jurisdiction for the forfeiture of its charter,
 9 rights, franchises or privileges, and powers exercised by
 10 such corporation, and to permanently enjoin it from
 11 transacting business in this state. If in such action the
 12 court shall--find finds that such the corporation is
 13 violating or has violated any of the provisions of sections
 14 51-101-to-51-100v-inclusive 51-505 through 51-514, it must
 15 shall enjoin said the corporation from doing business in
 16 this state permanently or for such time as the court shall
 17 order orders, or must shall annul the charter, or revoke the
 18 franchise of such corporation."

19 Section 19. Section 51-110, R.C.M., 1947, is
 20 renumbered 51-518 and is amended to read as follows:

21 "51-110v 51-518. illegal---contracts-----recovery
 22 Recovery on illegal contracts forbidden. Any A contract,
 23 express or implied, made by any a personv---firm---or
 24 corporation in violation of any of the provisions of
 25 sections--51-101--to--51-100v--inclusive, this chapter is

1 ~~declared--to--be~~ an illegal contract and no recovery thereon
2 ~~shall may~~ be had."

3 Section 20. There is a new R.C.M. section numbered
4 51-519 that reads as follows:

5 51-519. Penalties. (1) Except as otherwise provided in
6 this section, a person, whether principal, agent, officer,
7 or director, who violates any of the provisions of this
8 chapter is guilty of a misdemeanor for each violation and
9 upon conviction thereof shall be fined not less than \$100 or
10 more than \$1,000 or imprisoned for a term not to exceed 6
11 months, or both.

12 (2) A violation of 51-505 is punishable by
13 imprisonment in the county jail for a period not less than
14 24 hours or more than 1 year or by fine not exceeding
15 \$25,000, or both.

16 (3) When there is a violation of 51-512, in addition
17 to the penalty specified in subsection (1) of this section,
18 the court before which a conviction is had shall, within 10
19 days after judgment of conviction is given, forward a
20 certified copy of the judgment to the department of
21 agriculture and the department shall revoke any license
22 issued to the person so convicted. In such case no new
23 license may be granted to the person whose license is
24 revoked or to anyone either directly or indirectly engaged
25 with him in such business, for a period of 1 year.

1 Section 21. Section 8-103.4, R.C.M. 1947, is amended
2 to read as follows:

3 "8-103.4. Approval of carrier agreements. (1) Any
4 carrier as defined in section 8-101(h) which is a party to
5 an agreement between or among two {2} or more carriers
6 relating to rates, fares, classifications, divisions,
7 allowances, or charges (including charges between carriers
8 and compensation paid or received for the use of facilities
9 and equipment), or rules pertaining thereto, or procedures
10 for the joint consideration, initiation, or establishment
11 thereof, may, under such rules as the commission prescribes,
12 apply to the public service commission for approval of the
13 agreement and the commission shall by order approve any
14 agreement, if approval thereof is not prohibited by
15 subsections (3), (4), or (5) of this section. The approval
16 of the commission shall be granted only upon such terms and
17 conditions as the commission may prescribe as necessary to
18 enable it to grant its approval in accordance with this
19 subsection.

20 (2) Each conference, bureau, committee, or other
21 organization established or continued pursuant to any
22 agreement approved by the commission and the provisions of
23 this section, shall maintain such accounts, records, files,
24 and memoranda and shall submit to the commission such
25 reports, as may be prescribed by the commission, and all

1 such accounts, records, files, and memoranda shall be
2 subject to inspection by the commission or its duly
3 authorized representative.

4 (3) The commission may not approve under this section
5 any agreement between a carrier by highway and a carrier by
6 rail unless it finds that such agreement is of the character
7 described in this section and is limited to matters relating
8 to the transportation under joint rates or over through
9 routes.

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

13 (5) The commission may not approve under this section
14 any agreement which establishes a procedure for the
15 determination of any matter through joint consideration
16 unless it finds that under the agreement there is accorded
17 to each party the free and unrestrained right to take
18 independent action either before or after any determination
19 arrived at through such procedure.

20 (6) The commission may, upon complaint or upon its own
21 initiative without complaint, investigate and determine
22 whether any agreement previously approved by it under this
23 section, or any terms or conditions upon which such approval
24 was granted, is not in conformity with this section or
25 whether any such term terms or conditions is are not

1 necessary for the purpose of conformity with this section.
2 After such investigation, the commission may by order
3 terminate or modify its approval of such agreement if it
4 finds such action necessary to insure conformity with this
5 section, and may modify the terms and conditions upon which
6 such approval was granted to the extent it finds necessary
7 to insure conformity with this section or to the extent it
8 finds its terms and conditions unnecessary to insure such
9 conformity. The effective date of any order terminating or
10 modifying approval, or modifying terms and conditions, may
11 be postponed for such period as the commission determines is
12 reasonably necessary to avoid undue hardship.

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

16 (8) The parties to any agreement approved by the
17 commission under this section and other persons are, if the
18 approval of such agreement is not prohibited by subsections
19 (3), (4), or (5) of this section, hereby exempted from
20 Montana antitrust laws with respect to such agreement,
21 including ~~section 51-40~~ Title 51, chapter 5, or any other
22 statutes prohibiting monopolies, price fixing, or restraint
23 of trade.

24 (9) Any action of the commission under this section in
25 approving an agreement, or in denying an application for

1 such approval or in terminating or modifying its approval
 2 of an agreement or in prescribing terms and conditions upon
 3 which its approval is to be granted or in modifying such
 4 terms and conditions shall be construed as having effect
 5 solely with reference to the applicability of subsection
 6 (8)."

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

9 "82A-401.1. Functions of department. The department
 10 and its units are responsible for administering laws
 11 pertaining to business regulation, including but not
 12 limited to laws pertaining to:

- 13 (1) Banks ~~banks~~ and banking (Title 5, chapters 1
 14 through 14);
- 15 (2) ~~Building~~ building and loan associations (Title 7,
 16 chapter 1);
- 17 (3) ~~Credit~~ credit unions (Title 14, chapter 1);
- 18 (4) ~~Consumer~~ consumer protection (Title 85, chapter
 19 4);
- 20 (5) ~~Supervision~~ supervision of the milk industry
 21 (Title 27, chapter 4);
- 22 (6) ~~Consumer~~ consumer loans (Title 47, chapter 2);
- 23 (7) ~~State~~ sale and marketing of coal (Title 50, chapter
 24 6);
- 25 (8) ~~Unfair~~ unfair business practices (Title 51,

1 chapter 4 5);

2 (9) ~~Regulation~~ regulation of petroleum products (Title
 3 60, chapter 2);

4 (10) ~~Retail~~ retail installment sales (Title 74, chapter
 5 6);

6 (11) ~~Standard~~ standard weights and measures (Title 90,
 7 chapter 1);

8 (12) ~~Proprietary post-secondary~~ Proprietary PROPRIETARY
 9 postsecondary f educational institutions (Title 75, chapter
 10 92)."

11 Section 23. Section 82A-404, R.C.M. 1947, is amended
 12 to read as follows:

13 "82A-404. Board of trade abolished -- functions
 14 transferred. (1) The board of trade, provided for in ~~title~~
 15 Title 27, chapter 3, is abolished and its functions in ~~title~~
 16 Title 51, chapter 4 5, ~~(pertaining to the Unfair Practices~~
 17 ~~Act)~~ are transferred to the department of business
 18 regulation. Unless inconsistent with this act, any reference
 19 in the Revised Codes of Montana, 1947, to the Montana state
 20 board of food distributors or the board of trade means the
 21 department of business regulation."

22 Section 24. Section 84-2412, R.C.M. 1947, is amended
 23 to read as follows:

24 "84-2412. Employment of help -- disposal of license
 25 money. The ~~state~~ department of revenue is hereby authorized

1 to employ such clerical and field assistance as ~~may be found~~
2 necessary to carry out and to administer the provisions of
3 this act. All money collected under the provisions of this
4 act shall be paid into the state treasury, with ~~five dollars~~
5 ~~(\$5)~~ of the fee collected from each store license sold
6 credited to an earmarked revenue fund for administration of
7 ~~the Unfair Practices Act~~ Title 51, chapter 5, by the
8 department of business regulation and the rest to the credit
9 of the general fund."

10 Section 25. Repealer. Sections 51-101, 51-101.1,
11 51-103, 51-104, 51-105, 51-107, ~~51-109,~~ 51-112, 51-114,
12 51-118, 51-401, 51-403, 51-404, 51-405, 51-406, 51-407,
13 51-408, 51-409, 51-410, 51-412, and 51-414, R.C.H. 1947, are
14 repealed.

-End-

1 HOUSE BILL NO. 304

2 INTRODUCED BY MENAHAN

3 BY REQUEST OF THE DEPARTMENT OF BUSINESS REGULATION

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT FOR THE RECODIFICATION
6 AND GENERAL REVISION OF CHAPTERS 1 AND 4 OF TITLE 51, R.C.M.
7 1947, RELATING TO UNFAIR TRADE PRACTICES; AMENDING SECTIONS
8 8-103.4, 82A-401.1, 82A-404, AND 84-2412, R.C.M. 1947, TO
9 STRIKE INCORRECT REFERENCES TO THE UNFAIR PRACTICES ACT; AND
10 REPEALING SECTIONS 51-101, 51-101.1, 51-103, 51-104, 51-105,
11 51-107, ~~51-109~~, 51-112, 51-114, 51-118, 51-401, 51-403
12 THROUGH 51-410, 51-412, AND 51-414, R.C.M. 1947."

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:15 Section 1. Section 51-117, R.C.M. 1947, is renumbered
16 51-501 and is amended to read as follows:

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

25 Section 2. There is a new R.C.M. section numbered

1 51-502 that reads as follows:

2 51-502. Definitions. As used in this chapter, unless
3 the context indicates otherwise, the following definitions
4 apply:

5 (1) "Article of commerce" includes but is not limited
6 to any commodity, product, service, or output of a service
7 trade, EXCEPT THAT ANY PRODUCT OR SERVICE OF A PUBLIC
8 UTILITY SHALL NOT BE INCLUDED WITHIN THE TERM "ARTICLE OF
9 COMMERCE".

10 (2) "Business" includes any person, as defined herein,
11 domestic or foreign, engaged in the production, manufacture,
12 distribution, purchase, or sale of any article of commerce
13 within the state of Montana.

14 (3) "Cost to retailer" means the invoice cost of the
15 merchandise to the retailer within 30 days prior to the date
16 of sale or replacement cost of the merchandise to the
17 retailer, whichever is lower, less all trade discounts
18 except customary discounts for cash, plus any excise taxes
19 imposed on such merchandise or the sale thereof other than
20 excise taxes collected by the retailer, and any cost
21 incurred for transportation and any other charges not
22 otherwise included in the invoice cost or the replacement
23 cost of the merchandise as herein set forth, to which shall
24 be added a markup to cover a proportionate part of the cost
25 of doing business, which markup, in the absence of proof of

*There are no changes in HB 304
Refer To yellow bill.* THIRD READING

1 a lesser cost, shall be 6% of the cost to the retailer as
2 herein set forth.

3 (4) "Cost to wholesaler" means the invoice cost of the
4 merchandise to the wholesaler within 30 days prior to the
5 date of sale or the replacement cost of the merchandise to
6 the wholesaler, whichever is lower, less all trade discounts
7 except customary discounts for cash, plus any excise taxes
8 imposed on the sale thereof prior to the sale at retail, and
9 any cost incurred for transportation and any other charges
10 not otherwise included in the invoice cost or the
11 replacement cost of the merchandise as herein set forth, to
12 which shall be added a markup to cover a proportionate part
13 of the cost of doing business, which markup, in the absence
14 of proof of a lesser cost, shall be 3% of the cost to the
15 wholesaler as herein set forth.

16 (5) "Cost to retailer" and "cost to wholesaler" as
17 defined in subsections (3) and (4) mean bona fide costs, and
18 purchases made by retailers or wholesalers at prices which
19 cannot be justified by prevailing market conditions within
20 this state shall not be used in determining cost to the
21 retailer or cost to the wholesaler. Prices at which
22 purchases of merchandise are made by retailers or
23 wholesalers cannot be justified by prevailing market
24 conditions in this state when they are below the lowest
25 prices at which the manufacturer or producer of such

1 merchandise sells to other retailers or wholesalers in this
2 state.

3 (6) "Department" means the department of business
4 regulation provided for in 82A-401.

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

8 (8) "Replacement cost" means the cost, computed as
9 specified in subsections (3) and (4), at which the
10 merchandise sold could have been bought by the seller at any
11 time within 30 days prior to the date of sale if bought in
12 the same quantity as the seller's last purchase of the same
13 merchandise.

14 (9) "Retailer" includes every person engaged in the
15 business of making sales at retail within this state, but in
16 the case of a person engaged in the business of making both
17 sales at retail and sales at wholesale, such term shall be
18 applied only to the retail portion of such business.

19 (10) "Sell", "sale", or "sold" includes any advertising
20 or offer to sell or any transfer of merchandise where title
21 is retained by the seller as security for the payment of the
22 purchase price. In determining the selling price of
23 merchandise by wholesalers and retailers under this chapter,
24 all fractions of a cent shall be carried to the next full
25 cent.

April 1, 1977

STANDING COMMITTEE REPORT
Senate Committee on Business & Industry

That House Bill No. 304 be amended as follows:

1. Amend page 1, section 1, line 22 through 24.
Following: "prevented."
Strike: the last sentence of section 1 in its entirety.
2. Amend page 3, section 2, line 1.
Following: "retailer"
Insert: "and is not a maximum markup"
3. Amend page 3, section 2, line 15.
Following: "wholesaler"
Insert: "and is not a maximum markup"
4. Amend page 3, section 2, line 17 on page 3 through line 2 on page 4.
Following: "costs,"
Strike: the balance of line 17 on page 3 through line 2 on page 4.
5. Amend page 9, section 7, line 4.
Following: Line 3
Strike: Section 7 in its entirety.
6. Amend page 10, section 8, line 5.
Following: Line 4.
Strike: Section 8 in its entirety.
Re-number: Following sections.
7. Amend page 22, section 17, line 25.
Following: "if injured thereby"
Insert: "or the attorney general,"
8. Amend page 31, line 14.
Following: Line 14
Insert: "Section 26. Severability. If any part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more applications, the part remains in effect in all valid applications that are severable from the invalid applications."

1 HOUSE BILL NO. 304

2 INTRODUCED BY MENAHAN

3 BY REQUEST OF THE DEPARTMENT OF BUSINESS REGULATION

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT FOR THE RECODIFICATION
6 AND GENERAL REVISION OF CHAPTERS 1 AND 4 OF TITLE 51, R.C.M.
7 1947, RELATING TO UNFAIR TRADE PRACTICES; AMENDING SECTIONS
8 8-103.4, 82A-401.1, 82A-404, AND 84-2412, R.C.M. 1947, TO
9 STRIKE INCORRECT REFERENCES TO THE UNFAIR PRACTICES ACT; AND
10 REPEALING SECTIONS 51-101, 51-101.1, 51-103, 51-104, 51-105,
11 51-107, ~~51-109~~, 51-112, 51-114, 51-118, 51-401, 51-403
12 THROUGH 51-410, 51-412, AND 51-414, R.C.M. 1947."

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15 Section 1. Section 51-117, R.C.M. 1947, is renumbered
16 51-501 and is amended to read as follows:

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

25 Section 2. There is a new R.C.M. section numbered

1 51-502 that reads as follows:

2 51-502. Definitions. As used in this chapter, unless
3 the context indicates otherwise, the following definitions
4 apply:

5 (1) "Article of commerce" includes but is not limited
6 to any commodity, product, service, or output of a service
7 trade, EXCEPT THAT ANY PRODUCT OR SERVICE OF A PUBLIC
8 UTILITY SHALL NOT BE INCLUDED WITHIN THE TERM "ARTICLE OF
9 COMMERCE".

10 (2) "Business" includes any person, as defined herein,
11 domestic or foreign, engaged in the production, manufacture,
12 distribution, purchase, or sale of any article of commerce
13 within the state of Montana.

14 (3) "Cost to retailer" means the invoice cost of the
15 merchandise to the retailer within 30 days prior to the date
16 of sale or replacement cost of the merchandise to the
17 retailer, whichever is lower, less all trade discounts
18 except customary discounts for cash, plus any excise taxes
19 imposed on such merchandise or the sale thereof other than
20 excise taxes collected by the retailer, and any cost
21 incurred for transportation and any other charges not
22 otherwise included in the invoice cost or the replacement
23 cost of the merchandise as herein set forth, to which shall
24 be added a markup to cover a proportionate part of the cost
25 of doing business, which markup, in the absence of proof of

1 a lesser cost, shall be 6% of the cost to the retailer AND
 2 IS NOT A MAXIMUM MARKUP as herein set forth.

3 (4) "Cost to wholesaler" means the invoice cost of the
 4 merchandise to the wholesaler within 30 days prior to the
 5 date of sale or the replacement cost of the merchandise to
 6 the wholesaler, whichever is lower, less all trade discounts
 7 except customary discounts for cash, plus any excise taxes
 8 imposed on the sale thereof prior to the sale at retail, and
 9 any cost incurred for transportation and any other charges
 10 not otherwise included in the invoice cost or the
 11 replacement cost of the merchandise as herein set forth, to
 12 which shall be added a markup to cover a proportionate part
 13 of the cost of doing business, which markup, in the absence
 14 of proof of a lesser cost, shall be 3% of the cost to the
 15 wholesaler AND IS NOT A MAXIMUM MARKUP as herein set forth.

16 (5) "Cost to retailer" and "cost to wholesaler" as
 17 defined in subsections (3) and (4) mean bona fide costs, and
 18 ~~purchases made by retailers or wholesalers at prices which~~
 19 ~~cannot be justified by prevailing market conditions within~~
 20 ~~this state shall not be used in determining cost to the~~
 21 ~~retailer or cost to the wholesaler. Prices at which~~
 22 ~~purchases of merchandise are made by retailers or~~
 23 ~~wholesalers cannot be justified by prevailing market~~
 24 ~~conditions in this state when they are below the lowest~~
 25 ~~prices at which the manufacturer or producer of such~~

1 ~~merchandise sells to other retailers or wholesalers in this~~
 2 ~~state.~~

3 (6) "Department" means the department of business
 4 regulation provided for in 82A-401.

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

8 (8) "Replacement cost" means the cost, computed as
 9 specified in subsections (3) and (4), at which the
 10 merchandise sold could have been bought by the seller at any
 11 time within 30 days prior to the date of sale if bought in
 12 the same quantity as the seller's last purchase of the same
 13 merchandise.

14 (9) "Retailer" includes every person engaged in the
 15 business of making sales at retail within this state, but in
 16 the case of a person engaged in the business of making both
 17 sales at retail and sales at wholesale, such term shall be
 18 applied only to the retail portion of such business.

19 (10) "Sell", "sale", or "sold" includes any advertising
 20 or offer to sell or any transfer of merchandise where title
 21 is retained by the seller as security for the payment of the
 22 purchase price. In determining the selling price of
 23 merchandise by wholesalers and retailers under this chapter,
 24 all fractions of a cent shall be carried to the next full
 25 cent.

1 (11) "Sell at retail", "sales at retail", and "retail
2 sale" mean any transfer for a valuable consideration, made
3 in the ordinary course of trade or in the usual conduct of
4 the seller's business, of title to tangible personal
5 property to the purchaser for consumption or use other than
6 resale or further processing or manufacturing.

7 (12) "Sell at wholesale", "sales at wholesale", and
8 "wholesale sales" include any transfer for a valuable
9 consideration, made in the ordinary course of trade or the
10 usual conduct of the seller's business, of title to tangible
11 personal property to the purchaser for purposes of resale or
12 further processing or manufacturing.

13 (13) The term "trade discount" does not include
14 advertising, display, or promotional allowances in the
15 absence of a statement in writing from the grantor that
16 receipt of such allowance is not conditioned on the
17 performance of any service or expenditure of any money for
18 promotion, advertising, or any other purpose.

19 (14) "Wholesaler" includes every person engaged in the
20 business of making sales at wholesale within this state, but
21 in the case of a person engaged in the business of making
22 both sales at wholesale and sales at retail, such term shall
23 be applied only to the wholesale portion of such business.

24 (15) "Wholesaler" and "retailer" shall both be applied
25 to any business which buys merchandise for resale at retail

1 from the manufacturer or producer thereof, and as to such
2 merchandise, the terms "cost to retailer" and "cost to
3 wholesaler" as defined in subsections (3) and (4) shall both
4 be applied, including the markup requirements.

5 (16) Any person who sells at retail and who also sells
6 to other retailers shall use the invoice cost to other
7 retailers in computing his selling price at retail under
8 subsection (3); and if such person is a manufacturer or
9 producer, both subsections (3) and (4) shall be used in
10 computing his selling price at retail. In the absence of
11 sales to other retailers, the manufacturer's or producer's
12 invoice cost to wholesalers shall be used in computing the
13 manufacturer's or producer's selling price at retail as
14 provided in subsections (3) and (4).

15 (17) When one or more items of merchandise are
16 furnished or sold in combination with or on condition of the
17 purchase of one or more other items or are so advertised,
18 all items shall be included in determining cost under
19 subsections (3) or (4); and if any of the items included
20 therein are separately priced, such separate price shall be
21 subject to the requirements of this chapter.

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

24 ~~"51-102"~~ 51-503. Persons deemed responsible. Any
25 person who, either as director, officer, or agent of any

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

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

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

12 51-504. Proof of intent. In an injunction proceeding
 13 or in the prosecution of a person acting as an officer,
 14 director, or agent, it is sufficient to allege and prove the
 15 unlawful intent of the person, firm, or corporation for whom
 16 or which he acts.

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

19 51-505. Unlawful restraint of trade. It is unlawful
 20 for a person or a group of persons, directly or indirectly:

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

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

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

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

24 ~~"51-402, 51-506. Certain agreements between laborers~~
 25 ~~Labor~~ excepted. The provisions of this act 51-505 do not

1 apply to any arrangements ~~arrangement~~, agreement, or
2 combination between laborers, made with the object of
3 lessening the number of hours of labor or increasing wages."

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

6 ~~51-507. Unfair competition in sales. (1) It is~~
7 ~~unlawful for any business, with the intent to destroy the~~
8 ~~competition of any retailer or wholesaler or to prevent the~~
9 ~~competition of any person who intends or attempts to become~~
10 ~~a retailer or wholesaler, to discriminate between different~~
11 ~~localities in this state by selling or furnishing articles~~
12 ~~of commerce at a lower rate in one locality than in another~~
13 ~~after making allowance for the difference, if any, in the~~
14 ~~grade, quality, quantity, and actual cost of transportation.~~

15 ~~(2) Evidence of any sale at a lower rate in one~~
16 ~~locality than in another shall be prima facie evidence of~~
17 ~~intent to destroy the competition of any retailer or~~
18 ~~wholesaler or intent to prevent the competition of any~~
19 ~~person who intends or attempts to become a retailer or~~
20 ~~wholesaler.~~

21 ~~(3) This section does not apply to any sale made in an~~
22 ~~endeavor, made in good faith, to meet the legal prices of a~~
23 ~~competitor selling the same article in the same locality or~~
24 ~~trade area.~~

25 ~~(4) The inhibition 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 ~~Section 8. There is a new R&M section numbered~~
6 ~~51-508 that reads as follows:~~

7 ~~51-508. Unfair competition in purchasing. (1) Any~~
8 ~~business which, for the purpose of creating a monopoly or~~
9 ~~destroying the business of a regularly established retailer~~
10 ~~or wholesaler or preventing the competition of any person~~
11 ~~who intends to become a retailer or wholesaler,~~
12 ~~discriminates between different persons or localities of~~
13 ~~this state by purchasing any article of commerce at a higher~~
14 ~~rate or price in one locality than in another, after making~~
15 ~~allowance for the difference, if any, in the grade, quality,~~
16 ~~quantity, and actual cost of transportation, is guilty of~~
17 ~~unfair discrimination, which is prohibited and unlawful.~~

18 ~~(2) Evidence that any person has paid a higher rate or~~
19 ~~price for any article of commerce in one locality than in~~
20 ~~another, after making due allowance for the difference, if~~
21 ~~any, in the grade, quality, quantity, and actual cost of~~
22 ~~transportation, is prima facie evidence of a violation of~~
23 ~~this section.~~

24 ~~(3) The payment of a higher rate or price in one~~
25 ~~locality than in another, after making the allowances~~

~~1 provided above is not unfair discrimination, provided such
2 higher rate or price is paid for the purpose of meeting the
3 rate or price set by a competitor in that locality. The
4 burden of proof of such fact is upon the person charged with
5 unfair discrimination.~~

6 Section 7. There is a new R.C.M. section numbered
7 51-509 that reads as follows:

8 51-509. Unfair sales. (1) The practice of selling
9 certain articles of commerce below cost in order to attract
10 patronage is generally a form of deceptive advertising and
11 an unfair method of competition in commerce. Such practices
12 cause commercial dislocations, mislead the consumer, work
13 back against the farmer, directly burden and obstruct
14 commerce, and divert business from dealers who maintain a
15 fair price policy. Bankruptcies among merchants who fail
16 because of the competition of those who use such methods
17 result in unemployment, disruption of leases, and nonpayment
18 of taxes and loans, and contribute to an inevitable train of
19 undesirable consequences, including economic depression.

20 (2) Any sale of any article of commerce, either by a
21 retailer or wholesaler, at less than cost as defined in this
22 chapter, with the intent or effect of inducing the purchase
23 of other merchandise or of unfairly diverting trade from a
24 competitor, impairs and prevents fair competition, injures
25 public welfare, is unfair competition, and is contrary to

1 public policy and the policy of this section. Such sales are
2 prohibited. Evidence of any sale of any article of commerce
3 by any retailer or wholesaler at less than cost as defined
4 in this chapter is prima facie evidence of intent or effect
5 to induce the purchase of other merchandise or to unfairly
6 divert trade from a competitor or to otherwise injure a
7 competitor.

8 (3) The provisions of this section shall not apply to
9 sales at retail or sales at wholesale where:

10 (a) merchandise is sold in a bona fide clearance sale;

11 (b) perishable merchandise must be promptly sold in
12 order to forestall loss;

13 (c) merchandise is imperfect or damaged or is being
14 discontinued;

15 (d) merchandise is sold upon a final liquidation of
16 any business;

17 (e) merchandise is sold for charitable purposes or to
18 relief agencies;

19 (f) merchandise is sold on contract to departments of
20 the government or governmental institutions;

21 (g) the price of merchandise is set in good faith to
22 meet an existing price of a competitor and is based on
23 evidence in the possession of the seller in the form of an
24 advertisement, proof of sale, or receipted merchandise;

25 (h) merchandise is sold by any officer acting under

1 the order or direction of any court.

2 (4) No person may claim the exemptions under
3 subsections (3)(a) through (3)(d) if he limits or otherwise
4 restricts the quantity of such merchandise that can be
5 purchased by any buyer or if he fails to conspicuously
6 disclose the reason for such sale in all advertisements
7 relating thereto and on a label or tag on such merchandise
8 or on a placard where the merchandise is displayed for sale.

9 Section 8. Section 51-106, R.C.M. 1947, is renumbered
10 51-510 and is amended to read as follows:

11 ~~"51-106, 51-510.~~ Fair price for agricultural products
12 ~~how-determined.~~ (1) The following method shall be used in
13 determining fair prices for agricultural products sold on
14 local markets in a trade area, district, or city in which
15 the major portion of an agricultural commodity or product is
16 produced within or adjacent to the trade area, city, or
17 district:

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

25 (b) Those producers through their agents shall file

1 with the department the fair price and request a hearing for
2 the establishment of fair prices to ~~for~~ jobbers,
3 wholesalers, retailers, and consumers of the agricultural
4 products or commodities. ~~Any An~~ organization representing
5 consumers may not be denied representation at the ~~meeting~~
6 ~~hearing.~~

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

14 Section 9. Section 51-108, R.C.M. 1947, is renumbered
15 51-511 and is amended to read as follows:

16 ~~"51-108, 51-511.~~ Rebates forbidden ~~co-operatives.~~ (1)
17 The secret payment or allowance of rebates, refunds,
18 commissions, or unearned discounts, whether in the form of
19 money or otherwise, or secretly extending to certain
20 purchasers special services or privileges not extended to
21 all purchasers purchasing upon like terms and conditions, to
22 the injury of a competitor and ~~where when~~ such payment or
23 allowance tends to destroy competition, is an unfair trade
24 practice and any person ~~firm, partnership, corporation, or~~
25 ~~association~~ resorting to such trade practice ~~shall be deemed~~

1 ~~guilty of a misdemeanor and on conviction thereof shall be~~
 2 ~~is~~ subject to the penalties set out in ~~section 51-112~~
 3 ~~51-519.~~

4 ~~(2) Provided, however, that~~ However, nothing in this
 5 ~~act shall prevent~~ section prevents a co-operative
 6 cooperative association, organized and operating on a true
 7 co-operative cooperative basis, from returning to the
 8 members, producers, or consumers the whole or any part of
 9 the net earnings or surplus resulting from its trading
 10 operations, in proportion to their purchases or sales from,
 11 to, or through the association."

12 Section 10. Section 51-411, R.C.M. 1947, is
 13 renumbered 51-512 and is amended to read as follows:

14 ~~"51-411. 51-512. Pooling in purchase, sale or handling~~
 15 ~~of grain by warehousemen prohibited. (1) It shall be is~~
 16 ~~unlawful for any person, firm or corporation engaged in the~~
 17 ~~buying, selling, or handling of grain in any public local~~
 18 ~~warehouse in this state, or for the local agent in charge of~~
 19 ~~such warehouse, or any other agent of the person, firm, or~~
 20 ~~corporation operating the same, to enter into any a~~
 21 ~~contract, agreement, combination, or understanding with any~~
 22 ~~other person, firm, or corporation, owning or operating any~~
 23 ~~other public local warehouse at any railway station, or with~~
 24 ~~its agent or agents, whereby:~~

25 (a) the amount of grain to be received or handled by

1 ~~said the~~ warehouses at such station ~~or stations shall is to~~
 2 be equalized or pooled between ~~said the~~ warehouses; or
 3 whereby

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

7 (c) the price to be paid for any kind of grain, at
 8 such station, ~~shall is to~~ be fixed or in any manner
 9 affected, and each

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

13 Section 11. Section 51-413, R.C.M. 1947, is
 14 renumbered 51-513 and is amended to read as follows:

15 ~~"51-413. 51-513. Destruction of food in restraint of~~
 16 ~~trade. It shall be is~~ unlawful for any person, ~~firm, or~~
 17 ~~corporation~~ to destroy, or to withhold from sale for a
 18 period of time which makes it necessary to destroy, in
 19 restraint of trade, any fish, fowl, animal, vegetable, or
 20 other stuff, ~~products product, or articles article,~~ which
 21 ~~are is~~ customary food, or which ~~are~~ proper food for human
 22 beings, and ~~are is~~ in fit sanitary condition to be used as
 23 such."

24 Section 12. Section 51-116, R.C.M. 1947, is
 25 renumbered 51-514 and is amended to read as follows:

1 ~~"51-116 51-514.~~ Alteration of invoices ~~unlawful~~
 2 ~~prohibited.~~ It is unlawful for a person, ~~partnership, firm,~~
 3 ~~corporation, joint-stock company, or other association, as~~
 4 ~~defined in section 51-103,~~ to change, alter, substitute, or
 5 falsify an invoice where if the practice tends to injure a
 6 competitor, ~~or to destroy competition,~~ or to mislead a court
 7 or the department of ~~business regulation.~~ That Such practice
 8 is an unfair trade practice and a person, ~~firm, partnership,~~
 9 ~~corporation, or association~~ resorting to that trade practice
 10 is guilty of a misdemeanor and is subject to the penalties
 11 provided in ~~section 51-112~~ 51-512."

12 Section 13. Section 51-113, R.C.M. 1947, is
 13 renumbered 51-515 and is amended to read as follows:

14 ~~"51-113 51-515. Department administration of act~~
 15 ~~by intervention orders review appeals process~~
 16 ~~finality of order Enforcement by department.~~ (1) The
 17 department shall prevent a person, ~~firm, or corporation~~ from
 18 violating any of the provisions of this chapter.

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

1 (a) make its own investigation; and

2 (b) within ~~sixty~~ {60} days of the finding of probable
 3 cause must make a written report of its investigation; and
 4 must

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

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

18 (b) A complaint may be amended by the department in
 19 its discretion at any time ~~five~~ {5} days prior to the
 20 issuance of an order based on it.

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

1 ~~(d)~~ Any person ~~firm or corporation~~ may make
2 application and upon good cause shown may be allowed by the
3 department to intervene and appear in the proceeding by
4 counsel or in person.

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

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

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

20 (4) A court reviewing an order of the department may
21 issue such writs as are ancillary to its jurisdiction or are
22 necessary in its judgment to prevent injury to the public or
23 to competitors pending the suit.

24 (5) To the extent that the order of the department is
25 affirmed, the court shall thereupon issue its own order

1 commanding obedience to the terms of the order of the
2 department.

3 (6) Proceedings ~~in the district court~~ under this
4 section shall be given precedence over other civil cases
5 pending therein ~~in the district court~~ and shall be in every
6 way expedited.

7 (7) A person ~~firm or corporation~~ who violates an
8 order of the department ~~to cease and desist after it has~~
9 ~~become final~~ and while the order is in effect shall forfeit
10 and pay to this state a penalty of not ~~more than one~~
11 ~~thousand dollars (\$1,000)~~ less than \$50 or more than \$500
12 for the first offense and not less than \$200 or more than
13 \$1,000 for the second and each subsequent offense, for each
14 violation, which shall ~~accrue to this state~~ and may be
15 recovered in a civil action brought by ~~this state~~ the
16 department.

17 (8) The remedies and method of enforcement of this
18 ~~chapter provided for in this~~ section are concurrent and in
19 addition to the other remedies provided in this chapter."

20 Section 14. Section 51-115, R.C.M. 1947, is
21 renumbered 51-516 and is amended to read as follows:

22 "~~51-115. 51-516. Hearings and investigations.~~
23 contempts Investigations. (1) The department, for the
24 purpose of conducting hearings and investigations which, in
25 the opinion of the department, are necessary and proper for

1 the exercise of the powers vested in it by this chapter, has
2 ~~the following powers:~~

3 ~~(1) The department shall at all reasonable times have~~
4 ~~access to for the purpose of examination, and the right to~~
5 ~~copy any evidence of concerning a person being investigated~~
6 ~~or proceeded against that relates to any matter under~~
7 ~~investigation or in question and the right to copy such~~
8 ~~evidence. Any member of the~~ The department may issue
9 subpoenas requiring the attendance and testimony of
10 witnesses and the production of any evidence that relates to
11 any matter under investigation or in question, before the
12 department, or before its duly authorized agent conducting
13 the investigation. An agent, duly authorized by the
14 department for those purposes, may administer oaths and
15 affirmations, examine witnesses, and receive evidence. The
16 attendance of witnesses and the production of evidence may
17 be required from any place in this state at any designated
18 place of hearing.

19 (2) ~~Upon application of the department in in any a~~
20 case of contumacy or refusal to obey a subpoena issued to a
21 person, ~~any a~~ district court of this state, within ~~any the~~
22 district where the inquiry is carried on or where a person
23 guilty of contumacy or refusal to obey is found, or resides,
24 or transacts business, ~~upon application by the department~~
25 has jurisdiction to issue to that person, an order

1 requiring him to appear before the department, or its duly
2 authorized agent, and there to produce evidence if so
3 ordered, or there to give testimony regarding the matter
4 under investigation. Failure to obey the order of the court
5 may be punished by the court as a contempt.

6 (3) A person may not be excused from attending and
7 testifying or from producing books, records, correspondence,
8 documents, or other evidence in obedience to the subpoena of
9 the department, on the ground that the testimony or evidence
10 required of him may tend to incriminate him or subject him
11 to a penalty or forfeiture. An individual may not be
12 prosecuted or subjected to a penalty or forfeiture for or on
13 account of a transaction, matter, or thing concerning which
14 he is compelled, to testify or produce evidence, after
15 having claimed his privilege against ~~self-incrimination~~
16 ~~self-incrimination, to testify or produce evidence, except~~
17 ~~that--an~~ An individual so testifying is not exempt from
18 prosecution and punishment for perjury committed in
19 testifying."

20 Section 15. Section 51-111, R.C.M. 1947, is
21 renumbered 51-517 and is amended to read as follows:

22 "51-111, 51-517, ~~Who may enjoin violations~~ Injunctions
23 -- damages -- production of evidence. (1) Any person, firm,
24 private corporation, or municipal or other public
25 corporation or trade association, if injured thereby, OR

1 ~~THE ATTORNEY GENERAL,~~ may maintain an action to enjoin a
 2 continuance of any an act or acts in violation of sections
 3 ~~51-101 to 51-100, inclusive, if injured thereby the~~
 4 ~~prohibitions of this chapter and~~ for the recovery of
 5 damages. If in such action, the court ~~shall find~~ finds that
 6 the defendant is violating or has violated any of the
 7 ~~provisions of sections 51-101 to 51-100, inclusive~~
 8 ~~prohibitions of this chapter,~~ it shall enjoin the defendant
 9 from a continuance thereof. It ~~shall~~ is not be necessary
 10 that ~~to allege or prove~~ actual damages to the plaintiff be
 11 ~~alleged or proved.~~

12 (2) In addition to such injunctive relief, the
 13 plaintiff ~~in said action shall be~~ is entitled to recover
 14 from the defendant three times the amount of the actual
 15 ~~damages, if any, sustained, plus costs and attorneys' fees.~~

16 (3) Any A defendant in an action brought under the
 17 ~~provisions of this section may be required to testify under~~
 18 ~~the provisions of the Code Montana Rules of Civil Procedure,~~
 19 ~~of this state, in~~ In addition the books and records of any
 20 such defendant may be brought into court and introduced, by
 21 ~~reference, into evidence, by reference, provided, however,~~
 22 ~~that no~~ No information so obtained may be used against the
 23 defendant as a basis for a misdemeanor prosecution under the
 24 ~~provisions of sections 51-101 to 51-100, inclusive, and~~
 25 ~~51-112 this chapter."~~

1 ~~SECTION 16, SECTION 51-109, R.C.M., 1947, IS~~
 2 ~~RENUMBERED 51-520 AND IS AMENDED TO READ AS FOLLOWS:~~

3 "51-109 51-520. Attorney general Department to
 4 institute suit when. Upon the third violation of any of the
 5 provisions of ~~sections 51-101 to 51-100, inclusive, 51-505~~
 6 ~~through 51-514~~ by any corporation, ~~it shall be the duty of~~
 7 the attorney general department to shall institute proper
 8 suits or quo warranto proceedings in any a court of
 9 competent jurisdiction for the forfeiture of its charter,
 10 rights, franchises or privileges, and powers exercised by
 11 such corporation, and to permanently enjoin it from
 12 transacting business in this state. If in such action the
 13 court ~~shall find~~ finds that such the corporation is
 14 violating or has violated any of the provisions of sections
 15 ~~51-101 to 51-100, inclusive, 51-505 through 51-514,~~ it must
 16 shall enjoin said the corporation from doing business in
 17 this state permanently or for such time as the court shall
 18 order orders, or must shall annul the charter, or revoke the
 19 franchise of such corporation."

20 Section 17. Section 51-110, R.C.M. 1947, is
 21 renumbered 51-518 and is amended to read as follows:

22 "51-110 51-518. Illegal contracts recovery
 23 Recovery on illegal contracts forbidden. Any A contract,
 24 express or implied, made by any a person, firm or
 25 corporation in violation of any of the provisions of

1 ~~sections 51-101 to 51-100, inclusive, this chapter is~~
 2 ~~declared to be an illegal contract and no recovery thereon~~
 3 ~~shall may be had."~~

4 Section 18. There is a new R.C.M. section numbered
 5 51-519 that reads as follows:

6 51-519. Penalties. (1) Except as otherwise provided in
 7 this section, a person, whether principal, agent, officer,
 8 or director, who violates any of the provisions of this
 9 chapter is guilty of a misdemeanor for each violation and
 10 upon conviction thereof shall be fined not less than \$100 or
 11 more than \$1,000 or imprisoned for a term not to exceed 6
 12 months, or both.

13 (2) A violation of 51-505 is punishable by
 14 imprisonment in the county jail for a period not less than
 15 24 hours or more than 1 year or by fine not exceeding
 16 \$25,000, or both.

17 (3) When there is a violation of 51-512, in addition
 18 to the penalty specified in subsection (1) of this section,
 19 the court before which a conviction is had shall, within 10
 20 days after judgment of conviction is given, forward a
 21 certified copy of the judgment to the department of
 22 agriculture and the department shall revoke any license
 23 issued to the person so convicted. In such case no new
 24 license may be granted to the person whose license is
 25 revoked or to anyone either directly or indirectly engaged

1 with him in such business, for a period of 1 year.

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

4 "8-103.4. Approval of carrier agreements. (1) Any
 5 carrier as defined in section 8-101(h) which is a party to
 6 an agreement between or among two ~~(2)~~ or more carriers
 7 relating to rates, fares, classifications, divisions,
 8 allowances, or charges (including charges between carriers
 9 and compensation paid or received for the use of facilities
 10 and equipment) or rules pertaining thereto, or procedures
 11 for the joint consideration, initiation, or establishment
 12 thereof may, under such rules as the commission prescribes,
 13 apply to the public service commission for approval of the
 14 agreement and the commission shall by order approve any
 15 agreement, if approval thereof is not prohibited by
 16 subsections (3), (4), or (5) of this section. The approval
 17 of the commission shall be granted only upon such terms and
 18 conditions as the commission may prescribe as necessary to
 19 enable it to grant its approval in accordance with this
 20 subsection.

21 (2) Each conference, bureau, committee, or other
 22 organization established or continued pursuant to any
 23 agreement approved by the commission and the provisions of
 24 this section shall maintain such accounts, records, files,
 25 and memoranda and shall submit to the commission such

1 reports, as may be prescribed by the commission, and all
2 such accounts, records, files, and memoranda shall be
3 subject to inspection by the commission or its duly
4 authorized representative.

5 (3) The commission may not approve under this section
6 any agreement between a carrier by highway and a carrier by
7 rail unless it finds that such agreement is of the character
8 described in this section and is limited to matters relating
9 to the transportation under joint rates or over through
10 routes.

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

14 (5) The commission may not approve under this section
15 any agreement which establishes a procedure for the
16 determination of any matter through joint consideration
17 unless it finds that under the agreement there is accorded
18 to each party the free and unrestrained right to take
19 independent action either before or after any determination
20 arrived at through such procedure.

21 (6) The commission may, upon complaint or upon its own
22 initiative without complaint, investigate and determine
23 whether any agreement previously approved by it under this
24 section or any terms or conditions upon which such approval
25 was granted, is not in conformity with this section or

1 whether any such term ~~terms~~ or conditions ~~is~~ are not
2 necessary for the purpose of conformity with this section.
3 After such investigation, the commission may by order
4 terminate or modify its approval of such agreement if it
5 finds such action necessary to insure conformity with this
6 section, and may modify the terms and conditions upon which
7 such approval was granted to the extent it finds necessary
8 to insure conformity with this section or to the extent it
9 finds its terms and conditions unnecessary to insure such
10 conformity. The effective date of any order terminating or
11 modifying approval, or modifying terms and conditions, may
12 be postponed for such period as the commission determines is
13 reasonably necessary to avoid undue hardship.

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

17 (8) The parties to any agreement approved by the
18 commission under this section and other persons are, if the
19 approval of such agreement is not prohibited by subsections
20 (3), (4), or (5) of this section, hereby exempted from
21 Montana antitrust laws with respect to such agreement,
22 including ~~section--51-401~~ Title 51, chapter 5, or any other
23 statutes prohibiting monopolies, price fixing, or restraint
24 of trade.

25 (9) Any action of the commission under this section in

1 approving an agreement, or in denying an application for
 2 such approval, or in terminating or modifying its approval
 3 of an agreement, or in prescribing terms and conditions upon
 4 which its approval is to be granted, or in modifying such
 5 terms and conditions, shall be construed as having effect
 6 solely with reference to the applicability of subsection
 7 (8)."

8 Section 20. Section 82A-401.1, R.C.M. 1947, is amended
 9 to read as follows:

10 "82A-401.1. Functions of department. The department
 11 and its units are responsible for administering laws
 12 pertaining to business regulation, including, but not
 13 limited to, laws pertaining to:

- 14 (1) ~~Banks~~ banks and banking (Title 5, chapters 1
 15 through 14);
- 16 (2) ~~Building~~ building and loan associations (Title 7,
 17 chapter 1);
- 18 (3) ~~Credit~~ credit unions (Title 14, chapter 1);
- 19 (4) ~~Consumer~~ consumer protection (Title 85, chapter
 20 4);
- 21 (5) ~~Supervision~~ supervision of the milk industry
 22 (Title 27, chapter 4);
- 23 (6) ~~Consumer~~ consumer loans (Title 47, chapter 2);
- 24 (7) ~~Safe~~ sale and marketing of coal (Title 50, chapter
 25 6);

1 (8) ~~Unfair~~ unfair business practices (Title 51,
 2 chapter 1 5);

3 (9) ~~Regulation~~ regulation of petroleum products (Title
 4 60, chapter 2);

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

7 (11) ~~Standard~~ standard weights and measures (Title 90,
 8 chapter 1);

9 (12) ~~Proprietary-post-secondary~~ Proprietary ~~PROPRIETARY~~
 10 ~~postsecondary~~ educational institutions (Title 75, chapter
 11 92)."

12 Section 21. Section 82A-404, R.C.M. 1947, is amended
 13 to read as follows:

14 "82A-404. Board of trade abolished -- functions
 15 transferred. (1) The board of trade, provided for in ~~title~~
 16 Title 27, chapter 3, is abolished and its functions in ~~title~~
 17 Title 51, chapter 1 5, (~~pertaining to the Unfair Practices~~
 18 ~~Act~~) are transferred to the department of business
 19 regulation. Unless inconsistent with this act, any reference
 20 in the Revised Codes of Montana, 1947, to the Montana state
 21 board of food distributors or the board of trade means the
 22 department of business regulation."

23 Section 22. Section 84-2412, R.C.M. 1947, is amended
 24 to read as follows:

25 "84-2412. Employment of help -- disposal of license

1 money. The state department of revenue is hereby authorized
 2 to employ such clerical and field assistance as ~~may be found~~
 3 necessary to carry out and to administer the provisions of
 4 this act. All money collected under the provisions of this
 5 act shall be paid into the state treasury, with ~~five dollars~~
 6 ~~{ \$5 }~~ of the fee collected from each store license sold
 7 credited to an earmarked revenue fund for administration of
 8 ~~the Unfair Practices Act Title 51, chapter 5,~~ by the
 9 department of business regulation and the rest to the credit
 10 of the general fund."

11 Section 23. Repealer. Sections 51-101, 51-101.1,
 12 51-103, 51-104, 51-105, 51-107, ~~51-109,~~ 51-112, 51-114,
 13 51-118, 51-401, 51-403, 51-404, 51-405, 51-406, 51-407,
 14 51-408, 51-409, 51-410, 51-412, and 51-414, R.C.M. 1947, are
 15 repealed.

16 SECTION 24. SEVERABILITY. IF ANY PART OF THIS ACT IS
 17 INVALID, ALL VALID PARTS THAT ARE SEVERABLE FROM THE INVALID
 18 PART REMAIN IN EFFECT. IF A PART OF THIS ACT IS INVALID IN
 19 ONE OR MORE APPLICATIONS, THE PART REMAINS IN EFFECT IN ALL
 20 VALID APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID
 21 APPLICATIONS.

-End-