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INTRODUCED SY Quelin Vincent May

A BILL FOR AN ACT ENTITEED: "AN ACT TO CLARIFY THAT THE CONSUMER COUNSEL HAS DISCOVERY POWERS IN CONTESTED CASES THAT ARISE DEFORE ANY ADMINISTRATIVE AGENCY OF THE STATE OF MONTANA: AMENDING SECTION 70-707, R.C. No. 1947."

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

Section 1. Section 70-707, R.C.M. 1947, is amended to read as follows:

"70-707. Powers and duties of consumer counsel -- annual report. The consumer counsel:

- (1) may appear at public hearings conducted by the commission, as the representative of the consuming public, on all matters which come before the commission which in any way affect the consuming public, and shall have all the rights and sowers of any party in interest appearing before the commission regarding examination and cross-examination of witnesses, presentation of evidence and other matters;
- (2) may institute proceedings before the commission against regulated companies;
- (3) has all the investigatory powers necessary to perform his duties as provided herein and—mall—discovery powers—sanctioned—by—the-Montana-Rules-of-Civil-Procedure

and-the-Montana--Administrative--Procedure--Act; \_\_including discovery nowers similar to those contemplated by the Montana rules of civil procedure for court cases, which may be exercised unless discovery is otherwise provided for by alency rules of practice and procedure. Inese discovery powers include the power to take depositions, under oath, of any officer, director, manager, consultant, amployes, or attorney of record for any regulated company in a pending administrative contested case; the power to interpose 10 written interrogatories to any officer, director, manager, 11 consultant. employee. or attorney of record for any 12 resultated company in any pending case, answerable within a 13 reasonable period of time: the power to request the 14 production of relevant documents by any regulated company in 15 any pending case; and the power to demand\_admissions of\_fact from any regulated company in a pending administrative 16 1.7 contested case. The discovery powers of the consumer counsel 1 ರ exercisable before any stare agministrative agency may be 19 enforced by that agency by refusing to grant the relief 20 requested by the regulated company or by continuing the 21 hearing on the application of the regulated company until 22 the regulated company responds to discovery. Inc regulated 23 company may object to specific interrogatories, requests, or 24 demands, and the agency has the power, subject to judicial 25 review: to grant relief from improper or oppressive LC 0938/01

LC 0938/01

ı	discovery sought by the consumer counsel by way of orders
Z	limiting discovery or protecting witnesses or proprietary
3	documents from discovery.

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- (4) may examine in any commission proceedings under oath any officer, director, manager, or employee of any regulated company and inspect the business and corporate records of any regulated company in accordance with the law to aid in the exercise of his duties;
- 9 (5) may institute, intervene in, or otherwise participate in appropriate proceedings in the state and 10 federal courts and administrative agencies in the name of 11 and on behalf of the utility and transportation consuming 12 13 public of the state of Montana or substantial elements thereof including review of decisions rendered by, or 14 15 failure to act by the commission and applications for 16 restraining orders pending the investigation of and decision 17 upon a matter by the commission, pursuant to section 13 93-4215.
- 19 (6) shall meet and confer with members or 20 representatives of the consuming public at such times and 21 places as he determines appropriate;
  - (7) shall prapare and submit a yearly report and such other interim reports he determines advisable concerning his activities during the year and may recommend appropriate remedial legislation to the committee; and

1 (8) has such other powers necessary to fully represent
2 the interests of the consuming public before the commission
3 as may be granted and promulgated by the committee in
4 accordance with the provisions of the Montana Administrative
5 Procedure Act.\*\*

-End-

HB 0395/02

## Approved by Committee on Business and Industry

1	HOUSE BILL NO. 395
2	INTRODUCED BY QUILICI, VINCENT, MELOY
3	
4	A BILL FOR AN ACT ENTITLED: "AN ACT TO CLARIPY THAT THE
5	CONSUMER COUNSEL HAS DISCOVERY POWERS IN CONTESTED CASES
6	THAT ARISE BEFORE ANY ADMINISTRATIVE AGENCY OF THE STATE OF
7	MONTANA; AMENDING SECTION 70-707, R.C.M. 1947; AND PEPFALING
8	SECTION 70-708, R.C.B. 1947."
9	
10	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
11	Section 1. Section 70-707, R.C.E. 1947, is amended to
12	read as follows:
13	770-707. Powers and duties of consumer counsel —
14	annual report. The consumer counsel:
15	(1) may appear at public hearings conducted by the
16	commission, as the representative of the consuming public,
17	on all matters which come before the commission which in any
18	way affect the consuming public, and shall have all the
19	rights and powers of any party in interest appearing before
20	the commission regarding examination and cross-examination
21	of witnesses, presentation of evidence and other matters;
22	(2) may institute proceedings before the commission
23	against regulated companies;
24	(3) has all the investigatory powers necessary to
25	perform his duties as provided herein and-all-discovery

1	powers sanctioned by the Montana Bules of Civil Procedure
2	and the Montana Administrative Procedure Act; ANC ALL
3	DISCOVERY POWERS SANCTIONED BY THE MONTANA RULES OF CIVIL
4	PROCEDURE AND THE MONTANA ADMINISTRATIVE PROCEDURE ACT.
5	ingluding discovery powers similar to those contemplated by
6	the Montana_rales_of_civil procedure_for_court_cases which
7	may be exercised unless discovery is otherwise provided for
8	by agency rules of practice and procedure. These discovers
9	POWOIS include the power to take depositions, under outhy of
0	any officer, director, manager, consultant, capleyee, or
1	attorney of record for any rogulated company in a pending
2	administrativecontested dase1 thepower teinterpose
3	Written interrogatories to any officer, director, manager,
4	consultant, omployee, or attorney of record for any
5	regulated company in any pending case, answerable within
6	reasonableperiodoftimes-thepowertorequestthe
17	<u>production of relevant decuments by any regulated sompany in </u>
8	any pending cases and the power to depand admissions of fact
19	from any requiated gompany in a pending administrative
10	gontested_caser_The_discovery_powers_of_the_consumer_counsel
1	exercicable before any state administrative agency may be
22	enforced by that agency by refusing to grant the relief
23	requested by the regulated sompony or by sontinging the
24	hearing on the application of the regulated gemmany until
25	the regulated company responds to discovery. The regulated

HB 0395/02 HB 0395/02

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1	company pay object to specific interregatories, requests, o
2	demands, and the agency has the power, subject to judicia
3	coview. to grant relief from improper or oppression
4	discovery sought by the consumer sounsel by way of grace
5	limiting discovery or protosting witnesses or proprietar
6	described from discovery IT IS THE SPECIFIC INTENT OF THE
7	SECTION TO PROVIDE THE AUTHORITY AND AVAILABILITY OF TH
8	PROCESS OF DISCOVERY TO THE CONSUMER COUNSEL I
9	ADMINISTRATIVE CONTESTED-CASE PROCEDURE, VIOLATIONS OF
10	DISCOVERY PROCEDURE SHALL BE HEARD AND ADMINISTERED BY TH
11	DISTRICT COURT. IN THE EVENT OF AN APPEAL TO DISTRICT COURT
12	FOR EMPORCEMENT OF DISCOVERY PROCEDURES, THE TIME LIMIT
13	IMPOSED BY SECTION 70-113, R.C.M. 1947, SHALL BE SUSPENDE
14	PENDING ORDER OF THE DISTRICT COURT.
15	(4) way examine in any commission proceedings unde

(4) may examine in any commission proceedings under oath any officer, director, manager, or employee of any regulated company and inspect the business and corporate records of any regulated company in accordance with the law to aid in the exercise of his duties;

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20 (5) may institute, intervene in, or otherwise
21 participate in appropriate proceedings in the state and
22 federal courts and administrative agencies in the name of
23 and on behalf of the utility and transportation consuming
24 public of the state of Montana or substantial elements
25 thereof including review of decisions rendered by, or

failure to act by the commission and applications for restraining orders pending the investigation of and decision upon a matter by the commission, pursuant to section 93-4215.

- (6) shall neet and confer with members or representatives of the consuming public at such times and places as he determines appropriate;
- (7) shall prepare and submit a yearly report and such other interim reports he determines advisable concerning his activities during the year and may recommend appropriate remedial legislation to the committee; and
- 12 (8) has such other powers necessary to fully represent
  13 the interests of the consuming public before the commission
  14 as may be granted and promulgated by the committee in
  15 accordance with the provisions of the Montana Administrative
  16 Procedure Act."
- 17 <u>SECTION 2. BEPEALER. SECTION 70-708, R.C.M. 1947. IS</u>
  18 REPEALED.

-Fnd-

\_4\_ RB 395

-3- HB 395

45th Legislature HB 0395/02 HB 0395/02

1	HOUSE BILL NO. 395
2	INTRODUCED BY QUILICI, VINCENT, MELOY
3	
4	A BILL FOR AW ACT ENTITLED: "AN ACT TO CLARIFY THAT THE
5	CONSUMER COURSEL HAS DISCOVERY POWERS IN CONTESTED CASES
6	THAT ARISE BEFORE ANY ADMINISTRATIVE AGENCY OF THE STATE OF
7	MONTANA; AMENDING SECTION 70-707, R.C.M. 1947: AND REPEALING
8	SECTION 70-708, R.C.B. 1947."
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10	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
11	Section 1. Section 70-707, R.C.B. 1947, is amended to
12	read as follows:
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16	commission, as the representative of the consuming public,
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18	way affect the consuming public, and shall have all the
19	rights and powers of any party in interest appearing before
20	the commission regarding examination and cross-examination
21	of witnesses, presentation of evidence and other matters;
22	(2) may institute proceedings before the commission
23	against regulated companies:
24	(3) has all the investigatory powers necessary to

perform his duties as provided herein and all discovery

24 25

1	powers-sanctioned-by-the-Hentana-Rules of Civil Procedur
2	and the Montana Administrative Procedure Act; AND Al
3	DISCOVERY POWERS SANCTIONED BY THE MONTAWA RULES OF CIVI
4	PROCEDURE AND THE MONTANA ADMINISTRATIVE PROCEDURE ACT.
5	including discovery powers similar to these contemplated h
6	the tentana rules of civil procedure for court cases, -whis
7	mar be exercised unless dissevery is otherwise provided for
8	by aconor rules of practice and procedure. These discover
9	powers include the power to take depocitions, under outh, a
10	ant officer, director, samecor, consultant, employee, e
11	attorney of record for any regulated company in a pendin
12	administrative contested case; the pewer to interned
13	<u> sritten interrogategies to any officer, director, canader</u>
14	consultant, employee, or attorner of record for an
15	requisted company in any pending case, approvable within
16	reasonable period of times the power to resuest th
17	predaction of relevant decuments by any requisted sempany i
18	any pending cases and the power to demand admissions of fac
19	from any regulated gompany in a pending administrative
20	gentested case. The discovery powers of the seneure; sounse
21	exercicable before amy state administrative accoust may h
22	enformed by that agency by refuging to grant the relie
23	requested by the regulated general or by continuing th
24	hearing on the application of the regulated company nation
25	the regulated general responds to dissevery. The regulate

BB 0395/02

BB 0395/02

- 1 company say object to specific interposatories, requests, or desands, and the agency has the power, subject to judicial 2 3 roview, to graph relief from improper or oppressive 4 discovery cought by the consumer counsel by way of orders 5 limiting discovery or protecting withesass or proprietary 6 decurrence from discovery IT IS THE SPECIFIC INTENT OF THIS 7 SECTION TO PROVIDE THE AUTHORITY ARD AVAILABILITY OF THE PROCESS OF DISCOVERY TO THE CONSUER COURSEL IN ADMINISTRATIVE CONTESTED-CASE PROCEDURE. VIOLATIONS OF 9 10 DISCOVERY PROCEDURE SHALL BE HEARD AND ADMINISTERED BY THE 11 DISTRICT COURT. IN THE EVERT OF AN APPEAL TO DISTRICT COURT 12 FOR ENFORCEMENT OF DISCOVERY PROCEDURES, THE TIME LIMITS INPOSED BY SECTION 70-113, R.C.M. 1947, SHALL BE SUSPENDED 13 14 PENDING ORDER OF THE DISTRICT COURT.
  - (4) may examine in any commission proceedings under oath any officer, director, manager, or employee of any regulated company and inspect the husiness and corporate records of any regulated company in accordance with the law to aid in the exercise of his duties;

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20 (5) may institute, intervene in, or otherwise
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22 federal courts and administrative agencies in the name of
23 and on behalf of the utility and transportation consuming
24 public of the state of montana or substantial elements
25 thereof including review of decisions rendered by, or

failure to act by the commission and applications for restraining orders pending the investigation of and decision

3 upon a matter by the commission, pursuant to section

4 93-4215.

5 (6) shall meet and confer with members or 6 representatives of the consuming public at such times and 7 places as he determines appropriate;

8 (7) shall prepare and submit a yearly report and such
9 other interim reports he determines advisable concerning his
10 activities during the year and may recommend appropriate
11 remedial legislation to the committee; and

12 (8) has such other powers necessary to fully represent
13 the interests of the consuming public before the commission
14 as may be granted and promulgated by the committee in
15 accordance with the provisions of the Montana Administrative
16 Procedure Act.\*\*

17 <u>SECTION 2. BEPPEALER. SECTION 70-708, R.C.M. 1947, IS</u>
18 <u>REPEALED.</u>

-Pnd-

-3- HB 395

BB 395

нь 0395/02

1	HOUSE BILL NO. 395
2	INTRODUCED BY QUILICI+ VINCENT+ MELOY

3

45th Legislature

A BILL FOR AN ACT ENTITLED: MAN ACT TO CLARIFY THAT THE
CONSUMER COUNSEL HAS DISCOVERY POWERS IN CONTESTED CASES
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1	powerssanctionedbythe-montana-Rules-of-Civil-Procedure
2	and-theMontanaAdministrativeProcedureAct; AND ALL
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4	PROCEDURE AND THE MONTANA ADMINISTRATIVE PROCEDURE ACTAX
5	including-discovery-powers-similar-to-thosecontemplated-by-
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9	powers-include-the-power-to-take-depositionsx_under-outhx-of
10	anyofficerxdirectorymanagery_consultanty_employeey_or
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12	administrative contested coset the power to interpose-
13	written_interrogatories_to-any_officery_directory_managery
14	consultantxemployeexorattorneyofrecordforany
15	regulated-company-in-any-pending-casex-answerablewithina
16	reasonableperiodoftimetthepowertorequestthe
17	production_of_relevant-documents-by-any-regulated-company-in
18	pny-pending-coses-and-the-power-to-demand-admissions-of-fact
19	from env-regulated-company in a pending administrative
20	contested-cosex-The-discovery-powers-pf-the-consumer-counsel
21	exercisable before any -state - administrative agency - may - be
22	enforced-by-that-agency-byrefusingtogranttherelief
23	requested-by-the-regulated-company-or-by-continuing-the
24	hearing-on-the-application-of-theregulatedcompanyuntil
25	therequiated-company-responds-to-discoveryThe-requiated

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1	company-may-object-to-specific-interrogatoriesy-requestsy-or
2	demands - and the agency has the power - subject - to judicial
3	reviews to grant relief from improper or oppressive
4	discovery-sought-by-the-consumer-counsel-by-way-oforders-
ŝ	limiting_discovery_or_protecting_witnesses_or_proprietor;
6	documents-from discovery* II IS THE SPECIFIC INTENT OF THIS
7	SECTION TO PROVIDE THE AUTHORITY AND AVAILABILITY OF THE
8	PROCESS OF DISCOVERY TO THE CONSUMER COUNSEL IN
9	ADMINISTRATIVE CONTESTED-CASE PROCEDURE. VIOLATIONS OF
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-3-

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  15 accordance with the provisions of the Montana Administrative
  16 Procedure Act. M
- 17 <u>SECTION 2. REPEALER. SECTION 70-708. ReC.M. 1947. IS</u>
  18 <u>REPEALED.</u>

-End-

-4- HB 395