

CHAPTER NO. 137

SENATE BILL NO. 39

INTRODUCED BY HAZELBAKER, GOODOVER

BY REQUEST OF THE CODE COMMISSIONER

IN THE SENATE

January 6, 1979	Introduced and referred to Committee on Business and Industry. On motion, Senators Hazelbaker and Goodover were added as authors to the prefiled bill.
January 22, 1979	Committee recommend bill do pass and be placed on Consent Calendar. Report adopted.
January 23, 1979	Printed and placed on members' desks.
January 24, 1979	Consent Calendar discussion.
January 25, 1979	Consent Calendar, do pass. Transmitted to second house.

IN THE HOUSE

January 26, 1979	Introduced and referred to Committee on Business and Industry.
March 1, 1979	Committee recommend bill be be concurred in as amended. Report adopted.
March 2, 1979	Second reading, concurred in.
March 5, 1979	Third reading, concurred in as amended.

IN THE SENATE

March 6, 1979

Returned from second house.
Concurred in as amended.

March 7, 1979

Second reading, amendments
adopted.

March 8, 1979

Third reading, amendments
adopted. Sent to enrolling.

Reported correctly enrolled.

SENATE BILL NO. 39

INTRODUCED BY _____

BY REQUEST OF THE CODE COMMISSIONER

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY THE LAW RELATING TO TRADE AND COMMERCE; AMENDING SECTIONS 30-7-102, 30-7-210, 30-9-105, 30-10-201, 30-11-115, 30-12-1002, 30-13-133, 30-14-142, 30-14-224, AND 30-14-506, MCA; AND REPEALING SECTIONS 67-1705, 84-2805 THROUGH 84-2812, AND 85-201 THROUGH 85-208, R.C.M. 1947."

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

Section 1. Section 30-7-102, MCA, is amended to read:

"30-7-102. Definitions and index of definitions. (1)

In this chapter, unless the context otherwise requires:

(a) "Bailee" means the person who by a warehouse receipt, bill of lading or other document of title acknowledges possession of goods and contracts to deliver them.

(b) "Consignee" means the person named in a bill to whom or to whose order the bill promises delivery.

(c) "Consignor" means the person named in a bill as the person from whom the goods have been received for shipment.

(d) "Delivery order" means a written order to deliver

goods directed to a warehouseman, carrier or other person who in the ordinary course of business issues warehouse receipts or bills of lading.

(e) "Document" means document of title as defined in ~~the general definition in Chapter 1 (30-1-201(15))~~.

(f) "Goods" means all things which are treated as movable for the purposes of a contract of storage or transportation.

(g) "Issuer" means a bailee who issues a document except that in relation to an unaccepted delivery order it means the person who orders the possessor of goods to deliver. Issuer includes any person for whom an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, notwithstanding that the issuer received no goods or that the goods were misdescribed or that in any other respect the agent or employee violated his instructions.

(h) "Warehouseman" is a person engaged in the business of storing goods for hire.

(2) Other definitions applying to this chapter or to specified parts thereof, and the sections in which they appear are:

"Duly negotiate". 30-7-501.

"Person entitled under the document". 30-7-403(4).

(3) Definitions in other chapters applying to this

1 chapter and the sections in which they appear are:

2 "Contract for sale". 30-2-106.

3 "Overseas". 30-2-323.

4 "Receipt" of goods. 30-2-103.

5 (4) In addition Chapter 1 contains general definitions
6 and principles of construction and interpretation applicable
7 throughout this chapter."

8 Section 2. Section 30-7-210, MCA, is amended to read:

9 "30-7-210. Enforcement of warehouseman's lien. (1)
10 Except as provided in subsection (2), a warehouseman's lien
11 may be enforced by public or private sale of the goods in
12 ~~one~~ block or in parcels, at any time or place and on any
13 terms which are commercially reasonable, after notifying all
14 persons known to claim an interest in the goods. Such ~~the~~
15 notification must include a statement of the amount due, the
16 nature of the proposed sale and the time and place of any
17 public sale. The fact that a better price could have been
18 obtained by a sale at a different time or in a different
19 method from that selected by the warehouseman is not of
20 itself sufficient to establish that the sale was not made in
21 a commercially reasonable manner. If the warehouseman either
22 sells the goods in the usual manner in any recognized market
23 therefor, or if he sells at the price current in such market
24 at the time of his sale, or if he has otherwise sold in
25 conformity with commercially reasonable practices among

1 dealers in the type of goods sold, he has sold in a
2 commercially reasonable manner. A sale of more goods than
3 apparently necessary to be offered to insure satisfaction of
4 the obligation is not commercially reasonable except in
5 cases covered by the preceding sentence.

6 (2) A warehouseman's lien on goods other than goods
7 stored by a merchant in the course of his business may be
8 enforced only as follows:

9 (a) All persons known to claim an interest in the
10 goods must be notified.

11 (b) The notification must be delivered in person or
12 sent by registered or certified letter to the last known
13 address of any person to be notified.

14 (c) The notification must include an itemized
15 statement of the claim, a description of the goods subject
16 to the lien, a demand for payment within a specified time
17 not less than 10 days after receipt of the notification, and
18 a conspicuous statement that unless the claim is paid within
19 that time the goods will be advertised for sale and sold by
20 auction at a specified time and place.

21 (d) The sale must conform to the terms of the
22 notification.

23 (e) The sale must be held at the nearest suitable
24 place to that where the goods are held or stored.

25 (f) After the expiration of the time given in the

1 notification, an advertisement of the sale must be published
 2 once a week for 2 weeks consecutively in a newspaper of
 3 general circulation where the sale is to be held. The
 4 advertisement must include a description of the goods, the
 5 name of the person on whose account they are being held, and
 6 the time and place of the sale. The sale must take place at
 7 least 15 days after the first publication. If there is no
 8 newspaper of general circulation where the sale is to be
 9 held, the advertisement must be posted at least 10 days
 10 before the sale in not less than six conspicuous places in
 11 the neighborhood of the proposed sale.

12 (3) Before any sale pursuant to this section any
 13 person claiming a right in the goods may pay the amount
 14 necessary to satisfy the lien and the reasonable expenses
 15 incurred under this section. In that event the goods must
 16 not be sold, but must be retained by the warehouseman
 17 subject to the terms of the receipt and this chapter.

18 (4) The warehouseman may buy at any public sale
 19 pursuant to this section.

20 (5) A purchaser in good faith of goods sold to enforce
 21 a warehouseman's lien takes the goods free of any rights of
 22 persons against whom the lien was valid, despite
 23 noncompliance by the warehouseman with the requirements of
 24 this section.

25 (6) The warehouseman may satisfy his lien from the

1 proceeds of any sale pursuant to this section but must hold
 2 the balance, if any, for delivery on demand to any person to
 3 whom he would have been bound to deliver the goods.

4 (7) The rights provided by this section shall be in
 5 addition to all other rights allowed by law to a creditor
 6 against his debtor.

7 (8) Where a lien is on goods stored by a merchant in
 8 the course of his business the lien may be enforced in
 9 accordance with either subsection (1) or (2).

10 (9) The warehouseman is liable for damages caused by
 11 failure to comply with the requirements for sale under this
 12 section and in case of willful violation is liable for
 13 conversion."

14 Section 3. Section 30-9-105, NCA, is amended to read:

15 "30-9-105. Definitions and index of definitions. (1)
 16 In this chapter unless the context otherwise requires:

17 (a) "Account debtor" means the person who is obligated
 18 on an account, chattel paper, contract right or general
 19 intangible;

20 (b) "Chattel paper" means a writing or writings which
 21 evidence both a monetary obligation and a security interest
 22 in or a lease of specific goods. When a transaction is
 23 evidenced both by such a security agreement or a lease and
 24 by an instrument or a series of instruments, the group of
 25 writings taken together constitutes chattel paper;

1 (c) "Collateral" means the property subject to a
2 security interest, and includes accounts, contract rights
3 and chattel paper which have been sold;

4 (d) "Debtor" means the person who owes payment or
5 other performance of the obligation secured, whether or not
6 he owns or has rights in the collateral, and includes the
7 seller of accounts, contract rights or chattel paper. Where
8 ~~then~~ the debtor and the owner of the collateral are not the
9 same person, the term "debtor" means the owner of the
10 collateral in any provision of the chapter dealing with the
11 collateral, the obligor in any provision dealing with the
12 obligation, and may include both where the context so
13 requires;

14 (e) "Document" means document of title as defined in
15 ~~the general definitions of Chapter 1 (30-1-201(15))~~;

16 (f) "Goods" includes all things which are movable at
17 the time the security interest attaches or which are
18 fixtures (30-9-313), but does not include money, documents,
19 instruments, accounts, chattel paper, general intangibles,
20 contract rights and other things in action. "Goods" also
21 ~~include~~ includes the unborn young of animals and growing
22 crops;

23 (g) "Instrument" means a negotiable instrument
24 (defined in 30-3-104), or a security (defined in 30-8-102)
25 or any other writing which evidences a right to the payment

1 c. money and is not itself a security agreement or lease and
2 is of a type which is in ordinary course of business
3 transferred by delivery with any necessary endorsement or
4 assignment;

5 (h) "Security agreement" means an agreement which
6 creates or provides for a security interest;

7 (i) "Secured party" means a lender, seller or other
8 person in whose favor there is a security interest,
9 including a person to whom accounts, contract rights or
10 chattel paper have been sold. When the holders of
11 obligations issued under an indenture of trust, equipment
12 trust agreement or the like are represented by a trustee or
13 other person, the representative is the secured party.

14 (2) Other definitions applying to this chapter and the
15 sections in which they appear are:

16 "Account". 30-9-106.

17 "Consumer goods". 30-9-109(1).

18 "Contract right". 30-9-106.

19 "Equipment". 30-9-109(2).

20 "Farm products". 30-9-109(3).

21 "General intangibles". 30-9-106.

22 "Inventory". 30-9-109(4).

23 "Lien creditor". 30-9-301(3).

24 "Proceeds". 30-9-306(1).

25 "Purchase money security interest". 30-9-107.

1 (3) The following definitions in other chapters apply
2 to this chapters

- 3 "Check". 30-3-104.
4 "Contract for sale". 30-2-106.
5 "Holder in due course". 30-3-302.
6 "Note". 30-3-104.
7 "Sale". 30-2-106.

8 (4) In addition Chapter 1 contains general definitions
9 and principles of construction and interpretation applicable
10 throughout this chapter.

11 Section 4. Section 30-10-201, NCA, is amended to read
12 "30-10-201. Registration of broker-dealers, salesmen,
13 and investment advisers. (1) It is unlawful for any person
14 to transact business in this state as a broker-dealer or
15 salesman, except in transactions exempt under 30-10-105,
16 unless he is registered under parts 1 through 3 of this
17 chapter. It is unlawful for any person to transact business
18 in this state as an investment adviser unless:

19 (a) he is so registered under parts 1 through 3 of
20 this chapter;

21 (b) he is registered as a broker-dealer under parts 1
22 through 3 of this chapter; or

23 (c) his only clients in this state are investment
24 companies, as defined in the Investment Company Act of 1940,
25 or insurance companies.

1 (2) A broker-dealer or a salesman, acting as an agent
2 for an issuer or as an agent for a broker-dealer in the
3 offer or sale of securities for an issuer, or an investment
4 adviser may apply for registration by filing with the
5 commissioner an application in such form as the commissioner
6 prescribes and payment of the fee prescribed in 30-10-209.
7 Except for persons in the employ of brokerage firms governed
8 by the regulations of the securities and exchange
9 commission, all salesmen must be legal residents of this
10 state and must have actually resided in this state for a
11 period of at least 1 year next prior to the date of
12 application for registration. The commissioner may, upon
13 request and for good cause shown by an applicant, waive the
14 residency requirements. Salesmen shall also file with the
15 commissioner a bond of a surety company duly authorized to
16 transact business in this state. The bond shall be in the
17 sum of \$5,000, payable to the state of Montana and
18 conditioned upon the faithful compliance with the provisions
19 of parts 1 through 3 of this chapter, and provide that upon
20 failure to so comply, the salesman shall be liable to any
21 and all persons who may suffer loss by reason thereof.

22 (3) The application shall contain whatever information
23 the commissioner requires.

24 (4) If no denial order is in effect and no proceeding
25 is pending under subsection (8) of this section.

1 registration becomes effective at noon of the 30th day after
 2 an application is filed. The commissioner may specify an
 3 earlier effective date, and he may by order defer the
 4 effective date for an additional 60 days. The effective day
 5 after the filing of any amendment shall be noon of the 30th
 6 day thereafter unless otherwise accelerated by the
 7 commissioner.

8 (5) Registration of a broker-dealer, salesman, or
 9 investment adviser shall be effective until March 1
 10 following such registration and may be renewed. The
 11 registration of a salesman is not effective during any
 12 period when he is not associated with an issuer or a
 13 registered broker-dealer specified in his application. When
 14 a salesman begins or terminates a connection with an issuer
 15 or registered broker-dealer, the salesman and the issuer or
 16 broker-dealer shall promptly notify the commissioner.

17 (6) Registration of a broker-dealer, salesman, or
 18 investment adviser may be renewed by filing with the
 19 commissioner prior to the expiration thereof an application
 20 containing such information as the commissioner may require
 21 to indicate any material change in the information contained
 22 in the original application or any renewal application for
 23 registration as a broker-dealer, salesman, or investment
 24 adviser filed with the commissioner by the applicant,
 25 payment of the prescribed fee, and, in the case of a

1 broker-dealer, by filing a financial statement showing the
 2 financial condition of such broker-dealer as of a date
 3 within 90 days. A registered broker-dealer or investment
 4 adviser may file an application for registration of a
 5 successor, to become effective upon approval of the
 6 commissioner.

7 (7) Every registered broker-dealer and investment
 8 adviser shall make and keep such accounts and other records,
 9 except with respect to securities exempt under 30-10-104(1),
 10 as may be prescribed by the commissioner. All records so
 11 required shall be preserved for 3 years unless the
 12 commissioner prescribes otherwise for particular types of
 13 records. All the records of a registered broker-dealer or
 14 investment adviser are subject at any time or from time to
 15 time to such reasonable periodic, special, or other
 16 examinations, within or without this state, by
 17 representatives of the commissioner, as the commissioner
 18 considers necessary or appropriate in the public interest or
 19 for the protection of investors.

20 (8) The commissioner may by order deny, suspend, or
 21 revoke registration of any broker-dealer, salesman, or
 22 investment adviser if he finds that the order is in the
 23 public interest and that the applicant or registrant or, in
 24 the case of a broker-dealer or investment adviser, any
 25 partner, officer, or director:

1 (a) has filed an application for registration under
 2 this section which, as of its effective date or as of any
 3 date after filing in the case of an order denying
 4 effectiveness, was incomplete in any material respect or
 5 contained any statement which was, in the light of the
 6 circumstances under which it was made, false or misleading
 7 with respect to any material fact;

8 (b) has willfully violated or willfully failed to
 9 comply with any provision of parts 1 through 3 of this
 10 chapter or a predecessor law or any rule or order under
 11 parts 1 through 3 of this chapter or a predecessor law;

12 (c) has been convicted of any misdemeanor involving a
 13 security or any aspect of the securities business or any
 14 felony;

15 (d) is permanently or temporarily enjoined by any
 16 court of competent jurisdiction from engaging in or
 17 continuing any conduct or practice involving any aspect of
 18 the securities business;

19 (e) is the subject of an order of the commissioner
 20 denying, suspending, or revoking registration as a
 21 broker-dealer, salesman, or investment adviser;

22 (f) is the subject of an order entered within the past
 23 5 years by the securities administrator of any other state
 24 or by the federal securities and exchange commission denying
 25 or revoking registration as a broker-dealer or salesman or

1 the substantial equivalent of those terms as defined in
 2 parts 1 through 3 of this chapter or is the subject of an
 3 order of the federal securities and exchange commission
 4 suspending or expelling him from a national securities
 5 exchange or national securities association registered under
 6 the Securities Exchange Act of 1934 or is the subject of a
 7 United States post office fraud order, but:

8 (i) the commissioner may not institute a revocation or
 9 suspension proceeding under this subsection (f) more than 1
 10 year from the date of the order relied on; and

11 (ii) he may not enter any order under this subsection
 12 (f) on the basis of an order unless that order was based on
 13 facts which would currently constitute a ground for an order
 14 under this section;

15 (g) has engaged in dishonest or unethical practices in
 16 the securities business;

17 (h) is insolvent, either in the sense that his
 18 liabilities exceed his assets or in the sense that he cannot
 19 meet his obligations as they mature, but the commissioner
 20 may not enter an order against a broker-dealer or investment
 21 adviser under this subsection (h) without a finding of
 22 insolvency as to the broker-dealer or investment adviser;

23 (i) has not complied with a condition imposed by the
 24 commissioner under subsection (8) of this section or is not
 25 qualified on the basis of such factors as training,

1 experience, or knowledge of the securities business; or
 2 (j) has failed to pay the proper filing fee, but the
 3 commissioner may enter only a denial order under this
 4 subsection (j), and he shall vacate any such order when the
 5 deficiency has been corrected. The commissioner may by order
 6 summarily postpone or suspend registration pending final
 7 determination of any proceeding under this section.
 8 (9) Upon the entry of the order under subsection (8)
 9 of this section, the commissioner shall promptly notify the
 10 applicant or registrant, as well as the employer or
 11 prospective employer if the applicant or registrant is a
 12 salesman, that it has been entered and of the reasons
 13 therefor and that if requested by the applicant or
 14 registrant within 15 days after the receipt of the
 15 commissioner's notification the matter will be promptly set
 16 down for hearing. If no hearing is requested within 15 days
 17 and none is ordered by the commissioner, the order will
 18 remain in effect until it is modified or vacated by the
 19 commissioner. If a hearing is requested or ordered, the
 20 commissioner, after notice of and opportunity for hearing,
 21 may affirm, modify, or vacate the order.
 22 (10) If the commissioner finds that any registrant or
 23 applicant for registration is no longer in existence or has
 24 ceased to do business as a broker-dealer, investment
 25 adviser, or salesman or is subject to an adjudication of

1 mental incompetence or to the control of a committee,
 2 conservator, or guardian or cannot be located after
 3 reasonable search, the commissioner may by order cancel the
 4 registration or application."
 5 Section 5. Section 30-11-115, MCA, is amended to read:
 6 "30-11-115. Uniform Commercial Code overrides. The
 7 provisions of this part shall not apply to exchanges
 8 subject to the Uniform Commercial Code."
 9 Section 6. Section 30-12-1002, MCA, is amended to
 10 read:
 11 "30-12-1002. Enforcement of part. The department of
 12 business regulation shall enforce this part. The department
 13 shall have access to all places of business, factories,
 14 stores, and buildings used for the manufacture or sale of
 15 paints or other products described in 30-12-1001. The
 16 department may purchase and open any package, can, jar, tub
 17 tube, or other receptacle containing any of the articles
 18 described in 30-12-1001 and found during an inspection."
 19 Section 7. Section 30-13-133, MCA, is amended to read:
 20 "30-13-133. Transfer. The owner of any product of the
 21 kind or of any representation or expression thereof may
 22 transfer his property interest in the same."
 23 Section 8. Section 30-14-142, MCA, is amended to read:
 24 "30-14-142. Penalties. (1) Any person who violates
 25 the terms of an injunction issued under 30-14-111 shall

1 forfeit and pay to the state a civil penalty of not more
2 than \$10,000 per violation. For the purposes of this
3 section, the district court issuing an injunction retains
4 jurisdiction and the cause shall be continued, and in such
5 cases the department acting in the name of the state may
6 petition for recovery of civil penalties.

7 (2) In any an action brought under 30-14-111, if the
8 court finds that a person is willfully using or has
9 willfully used a method, act, or practice declared unlawful
10 by 30-14-103, the department, upon petition to the court,
11 may recover on behalf of the state a civil penalty of not
12 more than \$500 per violation.

13 (3) Any A person who engages in a fraudulent course of
14 conduct declared unlawful by 30-14-103 shall upon conviction
15 be fined not more than \$2,000, imprisoned for not more than
16 1 year, or both, in the discretion of the court. Nothing in
17 this subsection limits any other provision of this part.

18 (4) For purposes of this section, a willful violation
19 occurs when the party committing the violation knew or
20 should have known that his conduct was a violation of
21 30-14-103."

22 Section 9. Section 30-14-224, MCA, is amended to read:

23 "30-14-224. Penalties. (1) Except as otherwise
24 provided in this section, a person, whether as principal,
25 agent, officer, or director, who violates any of the

1 provisions of 30-14-205 through 30-14-218 is guilty of a
2 misdemeanor for each single violation and upon conviction
3 thereof shall be fined not less than \$100 or more than
4 \$1,000 or imprisoned for a term not to exceed 6 months, or
5 both.

6 ~~(2) A violation of 30-14-205 is punished by~~
7 ~~imprisonment in the county jail for a period not less than~~
8 ~~24 hours or more than 1 year or by fine not exceeding~~
9 ~~\$25,000, or both.~~

10 (3)(2) When there is a violation of 30-14-216, in
11 addition to the penalty specified in subsection (1), the
12 court before which a conviction is had shall, within 10 days
13 after judgment of conviction is given, forward a certified
14 copy of the judgment to the department of agriculture and
15 that department shall revoke any license issued to the
16 person so convicted. In such case no new license may be
17 granted to the person whose license is revoked, or to anyone
18 either directly or indirectly engaged with him in such
19 business for a period of 1 year."

20 Section 10. Section 30-14-506, MCA, is amended to
21 read:

22 "30-14-506. Repayment to buyer -- retention of goods
23 by buyer. (1) Except as provided in this section, within 10
24 days after a personal solicitation sale has been canceled or
25 an offer to purchase revoked, the seller shall tender to the

1 buyer any payments made by the buyer and any note or
2 other evidence of indebtedness.

3 (2) If the down payment includes goods traded in, the
4 goods shall be tendered in substantially as good condition
5 as when received by the seller. If the seller fails to
6 tender the goods as provided by this section, the buyer may
7 elect to recover an amount equal to the trade-in allowance
8 stated in the agreement.

9 (3) If the seller refuses within the period prescribed
10 by subsection (1) to return the cash down payment or goods
11 tendered as down payment, he shall be liable to the buyer
12 for the entire down payment, and if the buyer is successful
13 in his action therefor, the court shall also award him \$100
14 plus reasonable attorneys' fees and costs.

15 (4) Until the seller has complied with this section,
16 the buyer may retain possession of goods delivered to him by
17 the seller and shall have a lien on the goods in his
18 possession or control for any recovery to which he may be
19 entitled."

20 Section 11. Repealer. Sections 67-1705, 84-2805
21 through 84-2812, and 85-201 through 85-208, R.C.M. 1947,
22 are repealed.

-End-

SENATE MEMBERS

CARROLL GRAHAM
CHAIRMAN

FRANK HAZELBAKER
VICE CHAIRMAN

GHEI BLAYLOCK

PAT M. GOODOVER

DIANA S. DOWLING
EXECUTIVE DIRECTOR
CODE COMMISSIONER

ELEANOR ECK
ADMINISTRATIVE ASSISTANT

ROBERTA MOODY
DIRECTOR, LEGISLATIVE SERVICES



Montana Legislative Council

State Capitol
Helena, 59601

(406) 449-3064

HOUSE MEMBERS

JOHN B. DRISCOLL

OSCAR KVAALIN

J.D. LYNCH

ROBERT L. MARKS

H. DAVID COGLEY
DIRECTOR, LEGAL SERVICES

ROBERT PERSON
DIRECTOR, RESEARCH

LC 0008

1979 Legislature
Code Commissioner Bill - Summary

SENATE Bill No. 39

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAW RELATING TO
TRADE AND COMMERCE.

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

Section 1. 30-7-102. Grammatical change - makes the
section consistent with the uniform act (U.C.C.).

Section 2. 30-7-210. "block" is the correct spelling
and is used in the uniform act.

Section 3. 30-9-105. "includes" is grammatically
correct and consistent within the statute. Makes the section
consistent with the uniform act.

Section 4. 30-10-201. The amendment makes it clear
that a broker-dealer is required to file a financial statement.

Section 5. 30-11-115. "part" was bracketed in recodi-
fication because it is technically an incorrect reference.
In recodification, Chapter 5 and Chapter 1 of Title 74,
R.C.M. 1947, were placed in part 6 of Chapter 11, Title 30,
MCA.

Chapter 5 dealt with exchanges, and Chapter 1 dealt
with sales and sales agreements. In the statute "part" was
"chapter" and referred to Chapter 5 of Title 74, R.C.M.
1947. The word "part" now refers to the former Chapter 1 of
Title 74, R.C.M. 1947, as well as to the former Chapter 5 of
Title 74, R.C.M. 1947.

Since 30-11-115 limits its application to exchanges,
there is no substantive change by using "part".

Section 6. 30-12-1002. Amendment allows inspection of tubes of paint.

Section 7. 30-13-133. The word "property" is changed to "interest" which is the more precise term.

Section 8. 30-14-142. Addition of "shall be" makes the statute's meaning clear. Also makes minor grammatical changes.

Section 9. 30-14-224. The amendment eliminates confusion about the double penalty provision in subsections (1) and (2) for a violation of 30-14-205.

Section 10. 30-14-506. The amendment makes the meaning of the statute clear - that all evidence of indebtedness is to be returned to the buyer.

Section 11. 67-1705, R.C.M. 1947, is not necessary since the subject is covered by 30-2-402 in the Uniform Commercial Code.

84-2805 through 84-2812, R.C.M. 1947. These sections relating to trading stamps were declared unconstitutional by Garden Spot Market, Inc. v. Byrne, 141 Mont. 382 (1963).

85-201 through 85-208, R.C.M. 1947. These sections comprising the Fair Trade Act of 1937 were declared unconstitutional by Union Carbide and Carbon Corp. v. Skaggs Drug Center, Inc., 139 Mont. 15 (1961).

Approved by Committee
on Business and Industry

SENATE BILL NO. 39

INTRODUCED BY *Hayden Goodson*
BY REQUEST OF THE CODE COMMISSIONER

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY THE LAW RELATING TO TRADE AND COMMERCE; AMENDING SECTIONS 30-7-102, 30-7-210, 30-9-105, 30-10-201, 30-11-115, 30-12-1002, 30-13-133, 30-14-142, 30-14-224, AND 30-14-506, MCA; AND REPEALING SECTIONS 67-1705, 84-2805 THROUGH 84-2812, AND 85-201 THROUGH 85-208, R.C.M. 1947."

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

Section 1. Section 30-7-102, MCA, is amended to read:

"30-7-102. Definitions and index of definitions. (1)

In this chapter, unless the context otherwise requires:

(a) "Bailee" means the person who by a warehouse receipt, bill of lading, or other document of title acknowledges possession of goods and contracts to deliver them.

(b) "Consignee" means the person named in a bill to whom or to whose order the bill promises delivery.

(c) "Consignor" means the person named in a bill as the person from whom the goods have been received for shipment.

(d) "Delivery order" means a written order to deliver

goods directed to a warehouseman, carrier or other person who in the ordinary course of business issues warehouse receipts or bills of lading.

(e) "Document" means document of title as defined in ~~the general definition in Chapter 1 (30-1-201(15))~~.

(f) "Goods" means all things which are treated as movable for the purposes of a contract of storage or transportation.

(g) "Issuer" means a bailee who issues a document except that in relation to an unaccepted delivery order it means the person who orders the possessor of goods to deliver. Issuer includes any person for whom an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, notwithstanding that the issuer received no goods or that the goods were misdescribed or that in any other respect the agent or employee violated his instructions.

(h) "Warehouseman" is a person engaged in the business of storing goods for hire.

(2) Other definitions applying to this chapter or to specified parts thereof, and the sections in which they appear are:

"Duly negotiate". 30-7-501.

"Person entitled under the document". 30-7-403(4).

(3) Definitions in other chapters applying to this

1 chapter and the sections in which they appear are:

2 "Contract for sale". 30-2-106.

3 "Overseas". 30-2-323.

4 "Receipt" of goods. 30-2-103.

5 (4) In addition Chapter 1 contains general definitions
6 and principles of construction and interpretation applicable
7 throughout this chapter."

8 Section 2. Section 30-7-210, MCA, is amended to read:

9 "30-7-210. Enforcement of warehouseman's lien. (1)
10 Except as provided in subsection (2), a warehouseman's lien
11 may be enforced by public or private sale of the goods in
12 one ~~block~~ or in parcels, at any time or place and on any
13 terms which are commercially reasonable, after notifying all
14 persons known to claim an interest in the goods. Such ~~the~~
15 notification must include a statement of the amount due, the
16 nature of the proposed sale and the time and place of any
17 public sale. The fact that a better price could have been
18 obtained by a sale at a different time or in a different
19 method from that selected by the warehouseman is not of
20 itself sufficient to establish that the sale was not made in
21 a commercially reasonable manner. If the warehouseman either
22 sells the goods in the usual manner in any recognized market
23 therefor, or if he sells at the price current in such market
24 at the time of his sale, or if he has otherwise sold in
25 conformity with commercially reasonable practices among

1 dealers in the type of goods sold, he has sold in a
2 commercially reasonable manner. A sale of more goods than
3 apparently necessary to be offered to insure satisfaction of
4 the obligation is not commercially reasonable except in
5 cases covered by the preceding sentence.

6 (2) A warehouseman's lien on goods other than goods
7 stored by a merchant in the course of his business may be
8 enforced only as follows:

9 (a) All persons known to claim an interest in the
10 goods must be notified.

11 (b) The notification must be delivered in person or
12 sent by registered or certified letter to the last known
13 address of any person to be notified.

14 (c) The notification must include an itemized
15 statement of the claim, a description of the goods subject
16 to the lien, a demand for payment within a specified time
17 not less than 10 days after receipt of the notification, and
18 a conspicuous statement that unless the claim is paid within
19 that time the goods will be advertised for sale and sold by
20 auction at a specified time and place.

21 (d) The sale must conform to the terms of the
22 notification.

23 (e) The sale must be held at the nearest suitable
24 place to that where the goods are held or stored.

25 (f) After the expiration of the time given in the

1 notification, an advertisement of the sale must be published
 2 once a week for 2 weeks consecutively in a newspaper of
 3 general circulation where the sale is to be held. The
 4 advertisement must include a description of the goods, the
 5 name of the person on whose account they are being held, and
 6 the time and place of the sale. The sale must take place at
 7 least 15 days after the first publication. If there is no
 8 newspaper of general circulation where the sale is to be
 9 held, the advertisement must be posted at least 10 days
 10 before the sale in not less than six conspicuous places in
 11 the neighborhood of the proposed sale.

12 (3) Before any sale pursuant to this section any
 13 person claiming a right in the goods may pay the amount
 14 necessary to satisfy the lien and the reasonable expenses
 15 incurred under this section. In that event the goods must
 16 not be sold, but must be retained by the warehouseman
 17 subject to the terms of the receipt and this chapter.

18 (4) The warehouseman may buy at any public sale
 19 pursuant to this section.

20 (5) A purchaser in good faith of goods sold to enforce
 21 a warehouseman's lien takes the goods free of any rights of
 22 persons against whom the lien was valid, despite
 23 noncompliance by the warehouseman with the requirements of
 24 this section.

25 (6) The warehouseman may satisfy his lien from the

1 proceeds of any sale pursuant to this section but must hold
 2 the balance, if any, for delivery on demand to any person to
 3 whom he would have been bound to deliver the goods.

4 (7) The rights provided by this section shall be in
 5 addition to all other rights allowed by law to a creditor
 6 against his debtor.

7 (8) Where a lien is on goods stored by a merchant in
 8 the course of his business the lien may be enforced in
 9 accordance with either subsection (1) or (2).

10 (9) The warehouseman is liable for damages caused by
 11 failure to comply with the requirements for sale under this
 12 section and in case of willful violation is liable for
 13 conversion."

14 Section 3. Section 30-9-105, MCA, is amended to read:

15 "30-9-105. Definitions and index of definitions. (1)

16 In this chapter unless the context otherwise requires:

17 (a) "Account debtor" means the person who is obligated
 18 on an account, chattel paper, contract right or general
 19 intangible;

20 (b) "Chattel paper" means a writing or writings which
 21 evidence both a monetary obligation and a security interest
 22 in or a lease of specific goods. When a transaction is
 23 evidenced both by such a security agreement or a lease and
 24 by an instrument or a series of instruments, the group of
 25 writings taken together constitutes chattel paper;

1 (c) "Collateral" means the property subject to a
2 security interest, and includes accounts, contract rights
3 and chattel paper which have been sold;

4 (d) "Debtor" means the person who owes payment or
5 other performance of the obligation secured, whether or not
6 he owns or has rights in the collateral, and includes the
7 seller of accounts, contract rights or chattel paper. ~~Where~~
8 ~~When~~ the debtor and the owner of the collateral are not the
9 same person, the term "debtor" means the owner of the
10 collateral in any provision of the chapter dealing with the
11 collateral, the obligor in any provision dealing with the
12 obligation, and may include both where the context so
13 requires;

14 (e) "Document" means document of title as defined in
15 ~~the general definitions of Chapter 1 (30-1-201(15))~~;

16 (f) "Goods" includes all things which are movable at
17 the time the security interest attaches or which are
18 fixtures (30-9-313), but does not include money, documents,
19 instruments, accounts, chattel paper, general intangibles,
20 contract rights and other things in action. "Goods" also
21 ~~include~~ includes the unborn young of animals and growing
22 crops;

23 (g) "Instrument" means a negotiable instrument
24 (defined in 30-3-104), or a security (defined in 30-8-102)
25 or any other writing which evidences a right to the payment

1 of money and is not itself a security agreement or lease and
2 is of a type which is in ordinary course of business
3 transferred by delivery with any necessary endorsement or
4 assignment;

5 (h) "Security agreement" means an agreement which
6 creates or provides for a security interest;

7 (i) "Secured party" means a lender, seller or other
8 person in whose favor there is a security interest,
9 including a person to whom accounts, contract rights or
10 chattel paper have been sold. When the holders of
11 obligations issued under an indenture of trust, equipment
12 trust agreement or the like are represented by a trustee or
13 other person, the representative is the secured party.

14 (2) Other definitions applying to this chapter and the
15 sections in which they appear are:

16 "Account". 30-9-106.

17 "Consumer goods". 30-9-109(1).

18 "Contract right". 30-9-106.

19 "Equipment". 30-9-109(2).

20 "Farm products". 30-9-109(3).

21 "General intangibles". 30-9-106.

22 "Inventory". 30-9-109(4).

23 "Lien creditor". 30-9-301(3).

24 "Proceeds". 30-9-306(1).

25 "Purchase money security interest". 30-9-107.

1 (3) The following definitions in other chapters apply
2 to this chapter:

3 "Check". 30-3-104.

4 "Contract for sale". 30-2-106.

5 "Holder in due course". 30-3-302.

6 "Note". 30-3-104.

7 "Sale". 30-2-106.

8 (4) In addition Chapter 1 contains general definitions
9 and principles of construction and interpretation applicable
10 throughout this chapter."

11 Section 4. Section 30-10-201, MCA, is amended to read:

12 "30-10-201. Registration of broker-dealers, salesmen,
13 and investment advisers. (1) It is unlawful for any person
14 to transact business in this state as a broker-dealer or
15 salesman, except in transactions exempt under 30-10-105,
16 unless he is registered under parts 1 through 3 of this
17 chapter. It is unlawful for any person to transact business
18 in this state as an investment adviser unless:

19 (a) he is so registered under parts 1 through 3 of
20 this chapter;

21 (b) he is registered as a broker-dealer under parts 1
22 through 3 of this chapter; or

23 (c) his only clients in this state are investment
24 companies, as defined in the Investment Company Act of 1940,
25 or insurance companies.

1 (2) A broker-dealer or a salesman, acting as an agent
2 for an issuer or as an agent for a broker-dealer in the
3 offer or sale of securities for an issuer, or an investment
4 adviser may apply for registration by filing with the
5 commissioner an application in such form as the commissioner
6 prescribes and payment of the fee prescribed in 30-10-209.
7 Except for persons in the employ of brokerage firms governed
8 by the regulations of the securities and exchange
9 commission, all salesmen must be legal residents of this
10 state and must have actually resided in this state for a
11 period of at least 1 year next prior to the date of
12 application for registration. The commissioner may, upon
13 request and for good cause shown by an applicant, waive the
14 residency requirement. Salesmen shall also file with the
15 commissioner a bond of a surety company duly authorized to
16 transact business in this state. The bond shall be in the
17 sum of \$5,000, payable to the state of Montana and
18 conditioned upon the faithful compliance with the provisions
19 of parts 1 through 3 of this chapter, and provide that upon
20 failure to so comply, the salesman shall be liable to any
21 and all persons who may suffer loss by reason thereof.

22 (3) The application shall contain whatever information
23 the commissioner requires.

24 (4) If no denial order is in effect and no proceeding
25 is pending under subsection (8) of this section,

1 registration becomes effective at noon of the 30th day after
 2 an application is filed. The commissioner may specify an
 3 earlier effective date, and he may by order defer the
 4 effective date for an additional 60 days. The effective day
 5 after the filing of any amendment shall be noon of the 30th
 6 day thereafter unless otherwise accelerated by the
 7 commissioner.

8 (5) Registration of a broker-dealer, salesman, or
 9 investment adviser shall be effective until March 1
 10 following such registration and may be renewed. The
 11 registration of a salesman is not effective during any
 12 period when he is not associated with an issuer or a
 13 registered broker-dealer specified in his application. When
 14 a salesman begins or terminates a connection with an issuer
 15 or registered broker-dealer, the salesman and the issuer or
 16 broker-dealer shall promptly notify the commissioner.

17 (6) Registration of a broker-dealer, salesman, or
 18 investment adviser may be renewed by filing with the
 19 commissioner prior to the expiration thereof an application
 20 containing such information as the commissioner may require
 21 to indicate any material change in the information contained
 22 in the original application or any renewal application for
 23 registration as a broker-dealer, salesman, or investment
 24 adviser filed with the commissioner by the applicant,
 25 payment of the prescribed fee, and, in the case of a

1 broker-dealer, by filing a financial statement showing the
 2 financial condition of such broker-dealer as of a date
 3 within 90 days. A registered broker-dealer or investment
 4 adviser may file an application for registration of a
 5 successor, to become effective upon approval of the
 6 commissioner.

7 (7) Every registered broker-dealer and investment
 8 adviser shall make and keep such accounts and other records,
 9 except with respect to securities exempt under 30-10-104(1),
 10 as may be prescribed by the commissioner. All records so
 11 required shall be preserved for 3 years unless the
 12 commissioner prescribes otherwise for particular types of
 13 records. All the records of a registered broker-dealer or
 14 investment adviser are subject at any time or from time to
 15 time to such reasonable periodic, special, or other
 16 examinations, within or without this state, by
 17 representatives of the commissioner, as the commissioner
 18 considers necessary or appropriate in the public interest or
 19 for the protection of investors.

20 (8) The commissioner may by order deny, suspend, or
 21 revoke registration of any broker-dealer, salesman, or
 22 investment adviser if he finds that the order is in the
 23 public interest and that the applicant or registrant or, in
 24 the case of a broker-dealer or investment adviser, any
 25 partner, officer, or director:

1 (a) has filed an application for registration under
 2 this section which, as of its effective date or as of any
 3 date after filing in the case of an order denying
 4 effectiveness, was incomplete in any material respect or
 5 contained any statement which was, in the light of the
 6 circumstances under which it was made, false or misleading
 7 with respect to any material fact;

8 (b) has willfully violated or willfully failed to
 9 comply with any provision of parts 1 through 3 of this
 10 chapter or a predecessor law or any rule or order under
 11 parts 1 through 3 of this chapter or a predecessor law;

12 (c) has been convicted of any misdemeanor involving a
 13 security or any aspect of the securities business or any
 14 felony;

15 (d) is permanently or temporarily enjoined by any
 16 court of competent jurisdiction from engaging in or
 17 continuing any conduct or practice involving any aspect of
 18 the securities business;

19 (e) is the subject of an order of the commissioner
 20 denying, suspending, or revoking registration as a
 21 broker-dealer, salesman, or investment adviser;

22 (f) is the subject of an order entered within the past
 23 5 years by the securities administrator of any other state
 24 or by the federal securities and exchange commission denying
 25 or revoking registration as a broker-dealer or salesman or

1 the substantial equivalent of those terms as defined in
 2 parts 1 through 3 of this chapter or is the subject of an
 3 order of the federal securities and exchange commission
 4 suspending or expelling him from a national securities
 5 exchange or national securities association registered under
 6 the Securities Exchange Act of 1934 or is the subject of a
 7 United States post office fraud order, but:

8 (i) the commissioner may not institute a revocation or
 9 suspension proceeding under this subsection (f) more than 1
 10 year from the date of the order relied on; and

11 (ii) he may not enter any order under this subsection
 12 (f) on the basis of an order unless that order was based on
 13 facts which would currently constitute a ground for an order
 14 under this section;

15 (g) has engaged in dishonest or unethical practices in
 16 the securities business;

17 (h) is insolvent, either in the sense that his
 18 liabilities exceed his assets or in the sense that he cannot
 19 meet his obligations as they mature, but the commissioner
 20 may not enter an order against a broker-dealer or investment
 21 adviser under this subsection (h) without a finding of
 22 insolvency as to the broker-dealer or investment adviser;

23 (i) has not complied with a condition imposed by the
 24 commissioner under subsection (8) of this section or is not
 25 qualified on the basis of such factors as training,

1 experience, or knowledge of the securities business; or
 2 (j) has failed to pay the proper filing fee, but the
 3 commissioner may enter only a denial order under this
 4 subsection (j), and he shall vacate any such order when the
 5 deficiency has been corrected. The commissioner may by order
 6 summarily postpone or suspend registration pending final
 7 determination of any proceeding under this section.
 8 (9) Upon the entry of the order under subsection (8)
 9 of this section, the commissioner shall promptly notify the
 10 applicant or registrant, as well as the employer or
 11 prospective employer if the applicant or registrant is a
 12 salesman, that it has been entered and of the reasons
 13 therefor and that if requested by the applicant or
 14 registrant within 15 days after the receipt of the
 15 commissioner's notification the matter will be promptly set
 16 down for hearing. If no hearing is requested within 15 days
 17 and none is ordered by the commissioner, the order will
 18 remain in effect until it is modified or vacated by the
 19 commissioner. If a hearing is requested or ordered, the
 20 commissioner, after notice of and opportunity for hearing,
 21 may affirm, modify, or vacate the order.
 22 (10) If the commissioner finds that any registrant or
 23 applicant for registration is no longer in existence or has
 24 ceased to do business as a broker-dealer, investment
 25 adviser, or salesman or is subject to an adjudication of

1 mental incompetence or to the control of a committee,
 2 conservator, or guardian or cannot be located after
 3 reasonable search, the commissioner may by order cancel the
 4 registration or application."
 5 Section 5. Section 30-11-115, MCA, is amended to read:
 6 "30-11-115. Uniform Commercial Code overrides. The
 7 provisions of this [part] shall ~~do~~ not apply to exchanges
 8 subject to the Uniform Commercial Code."
 9 Section 6. Section 30-12-1002, MCA, is amended to
 10 read:
 11 "30-12-1002. Enforcement of part. The department of
 12 business regulation shall enforce this part. The department
 13 shall have access to all places of business, factories,
 14 stores, and buildings used for the manufacture or sale of
 15 paints or other products described in 30-12-1001. The
 16 department may purchase and open any package, can, jar, tub
 17 ~~tub~~, or other receptacle containing any of the articles
 18 described in 30-12-1001 and found during an inspection."
 19 Section 7. Section 30-13-133, MCA, is amended to read:
 20 "30-13-133. Transfer. The owner of any product of the
 21 kind or of any representation or expression thereof may
 22 transfer his property interest in the same."
 23 Section 8. Section 30-14-142, MCA, is amended to read:
 24 "30-14-142. Penalties. (1) Any ~~a~~ person who violates
 25 the terms of an injunction issued under 30-14-111 shall

1 forfeit and pay to the state a civil penalty of not more
2 than \$10,000 per violation. For the purposes of this
3 section, the district court issuing an injunction retains
4 jurisdiction and the cause shall be continued, and in such
5 cases the department acting in the name of the state may
6 petition for recovery of civil penalties.

7 (2) In any an action brought under 30-14-111, if the
8 court finds that a person is willfully using or has
9 willfully used a method, act, or practice declared unlawful
10 by 30-14-103, the department, upon petition to the court,
11 may recover on behalf of the state a civil penalty of not
12 more than \$500 per violation.

13 (3) Any a person who engages in a fraudulent course of
14 conduct declared unlawful by 30-14-103 shall upon conviction
15 be fined not more than \$2,000, imprisoned for not more than
16 1 year, or both, in the discretion of the court. Nothing in
17 this subsection limits any other provision of this part.

18 (4) For purposes of this section, a willful violation
19 occurs when the party committing the violation knew or
20 should have known that his conduct was a violation of
21 30-14-103."

22 Section 9. Section 30-14-224, MCA, is amended to read:

23 *30-14-224. Penalties. (1) Except as otherwise
24 provided in this section, a person, whether as principal,
25 agent, officer, or director, who violates any of the

1 provisions of 30-14-205 through 30-14-218 is guilty of a
2 misdemeanor for each single violation and upon conviction
3 thereof shall be fined not less than \$100 or more than
4 \$1,000 or imprisoned for a term not to exceed 6 months, or
5 both.

6 ~~(2) A violation of 30-14-205 is punishable by~~
7 ~~imprisonment in the county jail for a period not less than~~
8 ~~24 hours or more than 1 year or by fine not exceeding~~
9 ~~\$25,000, or both.~~

10 (3)(2) When there is a violation of 30-14-216, in
11 addition to the penalty specified in subsection (1), the
12 court before which a conviction is had shall, within 10 days
13 after judgment of conviction is given, forward a certified
14 copy of the judgment to the department of agriculture and
15 that department shall revoke any license issued to the
16 person so convicted. In such case no new license may be
17 granted to the person whose license is revoked, or to anyone
18 either directly or indirectly engaged with him in such
19 business for a period of 1 year."

20 Section 10. Section 30-14-506, MCA, is amended to
21 read:

22 *30-14-506. Repayment to buyer -- retention of goods
23 by buyer. (1) Except as provided in this section, within 10
24 days after a personal solicitation sale has been canceled or
25 an offer to purchase revoked, the seller shall tender to the

1 buyer any payments made by the buyer and any note or
2 other evidence of indebtedness.

3 (2) If the down payment includes goods traded in, the
4 goods shall be tendered in substantially as good condition
5 as when received by the seller. If the seller fails to
6 tender the goods as provided by this section, the buyer may
7 elect to recover an amount equal to the trade-in allowance
8 stated in the agreement.

9 (3) If the seller refuses within the period prescribed
10 by subsection (1) to return the cash down payment or goods
11 tendered as down payment, he shall be liable to the buyer
12 for the entire down payment, and if the buyer is successful
13 in his action therefor, the court shall also award him \$100
14 plus reasonable attorneys' fees and costs.

15 (4) Until the seller has complied with this section,
16 the buyer may retain possession of goods delivered to him by
17 the seller and shall have a lien on the goods in his
18 possession or control for any recovery to which he may be
19 entitled."

20 Section 11. Repealer. Sections 67-1705, 84-2805
21 through 84-2812, and 85-201 through 85-208, R.C.M. 1947,
22 are repealed.

-End-

HOUSE OF REPRESENTATIVES

March 1, 1979

Business & Industry Committee amendments to Senate Bill 39,
3rd Reading Copy, as follows:

1. Page 18, line 1.

Following: "provisions of"

Strike: "30-14-205"

Insert: "30-14-206"

2. Page 18.

Following: line 9

Insert: "(2) A violation of 30-14-205 is punishable by
imprisonment in the county jail for a period not less than
24 hours or more than 1 year or by fine not exceeding
\$25,000, or both."

Renumber: subsequent subsection.

AND AS AMENDED
BE CONCURRED IN

1 SENATE BILL NO. 39
 2 INTRODUCED BY HAZELBAKER, GOODOVER
 3 BY REQUEST OF THE CODE COMMISSIONER
 4

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND
 6 CLARIFY THE LAW RELATING TO TRADE AND COMMERCE; AMENDING
 7 SECTIONS 30-7-102, 30-7-210, 30-9-105, 30-10-201, 30-11-115,
 8 30-12-1002, 30-13-133, 30-14-142, 30-14-224, AND 30-14-506,
 9 MCA; AND REPEALING SECTIONS 67-1705, 84-2805 THROUGH
 10 84-2812, AND 85-201 THROUGH 85-208, R.C.M. 1947."
 11

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

13 Section 1. Section 30-7-102, MCA, is amended to read:

14 "30-7-102. Definitions and index of definitions. (1)

15 In this chapter, unless the context otherwise requires:

16 (a) "Bailee" means the person who by a warehouse
 17 receipt, bill of lading or other document of title
 18 acknowledges possession of goods and contracts to deliver
 19 them.

20 (b) "Consignee" means the person named in a bill to
 21 whom or to whose order the bill promises delivery.

22 (c) "Consignor" means the person named in a bill as
 23 the person from whom the goods have been received for
 24 shipment.

25 (d) "Delivery order" means a written order to deliver

1 goods directed to a warehouseman, carrier or other person
 2 who in the ordinary course of business issues warehouse
 3 receipts or bills of lading.

4 (e) "Document" means document of title as defined in
 5 ~~the general definition in Chapter 1 (30-1-201(151)).~~

6 (f) "Goods" means all things which are treated as
 7 movable for the purposes of a contract of storage or
 8 transportation.

9 (g) "Issuer" means a bailee who issues a document
 10 except that in relation to an unaccepted delivery order it
 11 means the person who orders the possessor of goods to
 12 deliver. Issuer includes any person for whom an agent or
 13 employee purports to act in issuing a document if the agent
 14 or employee has real or apparent authority to issue
 15 documents, notwithstanding that the issuer received no goods
 16 or that the goods were misdescribed or that in any other
 17 respect the agent or employee violated his instructions.

18 (h) "Warehouseman" is a person engaged in the business
 19 of storing goods for hire.

20 (2) Other definitions applying to this chapter or to
 21 specified parts thereof, and the sections in which they
 22 appear are:

23 "Duly negotiate". 30-7-501.

24 "Person entitled under the document". 30-7-403(4).

25 (3) Definitions in other chapters applying to this

1 chapter and the sections in which they appear are:

2 "Contract for sale". 30-2-106.

3 "Overseas". 30-2-323.

4 "Receipt" of goods. 30-2-103.

5 (4) In addition Chapter 1 contains general definitions
6 and principles of construction and interpretation applicable
7 throughout this chapter."

8 Section 2. Section 30-7-210, MCA, is amended to read:

9 "30-7-210. Enforcement of warehouseman's lien. (1)

10 Except as provided in subsection (2), a warehouseman's lien
11 may be enforced by public or private sale of the goods in
12 ~~the~~ **block** or in parcels, at any time or place and on any
13 terms which are commercially reasonable, after notifying all
14 persons known to claim an interest in the goods. Such ~~the~~
15 notification must include a statement of the amount due, the
16 nature of the proposed sale and the time and place of any
17 public sale. The fact that a better price could have been
18 obtained by a sale at a different time or in a different
19 method from that selected by the warehouseman is not of
20 itself sufficient to establish that the sale was not made in
21 a commercially reasonable manner. If the warehouseman either
22 sells the goods in the usual manner in any recognized market
23 therefor, or if he sells at the price current in such market
24 at the time of his sale, or if he has otherwise sold in
25 conformity with commercially reasonable practices among

1 dealers in the type of goods sold, he has sold in a
2 commercially reasonable manner. A sale of more goods than
3 apparently necessary to be offered to insure satisfaction of
4 the obligation is not commercially reasonable except in
5 cases covered by the preceding sentence.

6 (2) A warehouseman's lien on goods other than goods
7 stored by a merchant in the course of his business may be
8 enforced only as follows:

9 (a) All persons known to claim an interest in the
10 goods must be notified.

11 (b) The notification must be delivered in person or
12 sent by registered or certified letter to the last known
13 address of any person to be notified.

14 (c) The notification must include an itemized
15 statement of the claim, a description of the goods subject
16 to the lien, a demand for payment within a specified time
17 not less than 10 days after receipt of the notification, and
18 a conspicuous statement that unless the claim is paid within
19 that time the goods will be advertised for sale and sold by
20 auction at a specified time and place.

21 (d) The sale must conform to the terms of the
22 notification.

23 (e) The sale must be held at the nearest suitable
24 place to that where the goods are held or stored.

25 (f) After the expiration of the time given in the

1 notification, an advertisement of the sale must be published
 2 once a week for 2 weeks consecutively in a newspaper of
 3 general circulation where the sale is to be held. The
 4 advertisement must include a description of the goods, the
 5 name of the person on whose account they are being held, and
 6 the time and place of the sale. The sale must take place at
 7 least 15 days after the first publication. If there is no
 8 newspaper of general circulation where the sale is to be
 9 held, the advertisement must be posted at least 10 days
 10 before the sale in not less than six conspicuous places in
 11 the neighborhood of the proposed sale.

12 (3) Before any sale pursuant to this section any
 13 person claiming a right in the goods may pay the amount
 14 necessary to satisfy the lien and the reasonable expenses
 15 incurred under this section. In that event the goods must
 16 not be sold, but must be retained by the warehouseman
 17 subject to the terms of the receipt and this chapter.

18 (4) The warehouseman may buy at any public sale
 19 pursuant to this section.

20 (5) A purchaser in good faith of goods sold to enforce
 21 a warehouseman's lien takes the goods free of any rights of
 22 persons against whom the lien was valid, despite
 23 noncompliance by the warehouseman with the requirements of
 24 this section.

25 (6) The warehouseman may satisfy his lien from the

1 proceeds of any sale pursuant to this section but must hold
 2 the balance, if any, for delivery on demand to any person to
 3 whom he would have been bound to deliver the goods.

4 (7) The rights provided by this section shall be in
 5 addition to all other rights allowed by law to a creditor
 6 against his debtor.

7 (8) Where a lien is on goods stored by a merchant in
 8 the course of his business the lien may be enforced in
 9 accordance with either subsection (1) or (2).

10 (9) The warehouseman is liable for damages caused by
 11 failure to comply with the requirements for sale under this
 12 section and in case of willful violation is liable for
 13 conversion."

14 Section 3. Section 30-9-105, MCA, is amended to read:
 15 "30-9-105. Definitions and index of definitions. (1)
 16 In this chapter unless the context otherwise requires:

17 (a) "Account debtor" means the person who is obligated
 18 on an account, chattel paper, contract right or general
 19 intangible;

20 (b) "Chattel paper" means a writing or writings which
 21 evidence both a monetary obligation and a security interest
 22 in or a lease of specific goods. When a transaction is
 23 evidenced both by such a security agreement or a lease and
 24 by an instrument or a series of instruments, the group of
 25 writings taken together constitutes chattel paper;

1 (c) "Collateral" means the property subject to a
2 security interest, and includes accounts, contract rights
3 and chattel paper which have been sold;

4 (d) "Debtor" means the person who owes payment or
5 other performance of the obligation secured, whether or not
6 he owns or has rights in the collateral, and includes the
7 seller of accounts, contract rights or chattel paper. Where
8 ~~when~~ the debtor and the owner of the collateral are not the
9 same person, the term "debtor" means the owner of the
10 collateral in any provision of the chapter dealing with the
11 collateral, the obligor in any provision dealing with the
12 obligation, and may include both where the context so
13 requires;

14 (e) "Document" means document of title as defined in
15 ~~the general definitions of Chapter 1 (30-1-201(1))~~;

16 (f) "Goods" includes all things which are movable at
17 the time the security interest attaches or which are
18 fixtures (30-9-313), but does not include money, documents,
19 instruments, accounts, chattel paper, general intangibles,
20 contract rights and other things in action. "Goods" also
21 ~~include~~ includes the unborn young of animals and growing
22 crops;

23 (g) "Instrument" means a negotiable instrument
24 (defined in 30-3-104), or a security (defined in 30-8-102)
25 or any other writing which evidences a right to the payment

1 of money and is not itself a security agreement or lease and
2 is of a type which is in ordinary course of business
3 transferred by delivery with any necessary endorsement or
4 assignment;

5 (h) "Security agreement" means an agreement which
6 creates or provides for a security interest;

7 (i) "Secured party" means a lender, seller or other
8 person in whose favor there is a security interest,
9 including a person to whom accounts, contract rights or
10 chattel paper have been sold. When the holders of
11 obligations issued under an indenture of trust, equipment
12 trust agreement or the like are represented by a trustee or
13 other person, the representative is the secured party.

14 (2) Other definitions applying to this chapter and the
15 sections in which they appear are:

16 "Account". 30-9-106.

17 "Consumer goods". 30-9-109(1).

18 "Contract right". 30-9-106.

19 "Equipment". 30-9-109(2).

20 "Farm products". 30-9-109(3).

21 "General intangibles". 30-9-106.

22 "Inventory". 30-9-109(4).

23 "Lien creditor". 30-9-301(3).

24 "Proceeds". 30-9-306(1).

25 "Purchase money security interest". 30-9-107.

1 (3) The following definitions in other chapters apply
2 to this chapter:

3 "Check". 30-3-104.

4 "Contract for sale". 30-2-106.

5 "Holder in due course". 30-3-302.

6 "Note". 30-3-104.

7 "Sale". 30-2-106.

8 (4) In addition Chapter 1 contains general definitions
9 and principles of construction and interpretation applicable
10 throughout this chapter."

11 Section 4. Section 30-10-201, MCA, is amended to read:

12 "30-10-201. Registration of broker-dealers, salesmen,
13 and investment advisers. (1) It is unlawful for any person
14 to transact business in this state as a broker-dealer or
15 salesman, except in transactions exempt under 30-10-105,
16 unless he is registered under parts 1 through 3 of this
17 chapter. It is unlawful for any person to transact business
18 in this state as an investment adviser unless:

19 (a) he is so registered under parts 1 through 3 of
20 this chapter;

21 (b) he is registered as a broker-dealer under parts 1
22 through 3 of this chapter; or

23 (c) his only clients in this state are investment
24 companies, as defined in the Investment Company Act of 1940,
25 or insurance companies.

1 (2) A broker-dealer or a salesman, acting as an agent
2 for an issuer or as an agent for a broker-dealer in the
3 offer or sale of securities for an issuer, or an investment
4 adviser may apply for registration by filing with the
5 commissioner an application in such form as the commissioner
6 prescribes and payment of the fee prescribed in 30-10-209.
7 Except for persons in the employ of brokerage firms governed
8 by the regulations of the securities and exchange
9 commission, all salesmen must be legal residents of this
10 state and must have actually resided in this state for a
11 period of at least 1 year next prior to the date of
12 application for registration. The commissioner may, upon
13 request and for good cause shown by an applicant, waive the
14 residency requirement. Salesmen shall also file with the
15 commissioner a bond of a surety company duly authorized to
16 transact business in this state. The bond shall be in the
17 sum of \$5,000, payable to the state of Montana and
18 conditioned upon the faithful compliance with the provisions
19 of parts 1 through 3 of this chapter, and provide that upon
20 failure to so comply, the salesman shall be liable to any
21 and all persons who may suffer loss by reason thereof.

22 (3) The application shall contain whatever information
23 the commissioner requires.

24 (4) If no denial order is in effect and no proceeding
25 is pending under subsection (8) of this section,

1 registration becomes effective at noon of the 30th day after
 2 an application is filed. The commissioner may specify an
 3 earlier effective date, and he may by order defer the
 4 effective date for an additional 60 days. The effective day
 5 after the filing of any amendment shall be noon of the 30th
 6 day thereafter unless otherwise accelerated by the
 7 commissioner.

8 (5) Registration of a broker-dealer, salesman, or
 9 investment adviser shall be effective until March 1
 10 following such registration and may be renewed. The
 11 registration of a salesman is not effective during any
 12 period when he is not associated with an issuer or a
 13 registered broker-dealer specified in his application. When
 14 a salesman begins or terminates a connection with an issuer
 15 or registered broker-dealer, the salesman and the issuer or
 16 broker-dealer shall promptly notify the commissioner.

17 (6) Registration of a broker-dealer, salesman, or
 18 investment adviser may be renewed by filing with the
 19 commissioner prior to the expiration thereof an application
 20 containing such information as the commissioner may require
 21 to indicate any material change in the information contained
 22 in the original application or any renewal application for
 23 registration as a broker-dealer, salesman, or investment
 24 adviser filed with the commissioner by the applicant,
 25 payment of the prescribed fee, and, in the case of a

1 broker-dealer, by filing a financial statement showing the
 2 financial condition of such broker-dealer as of a date
 3 within 90 days. A registered broker-dealer or investment
 4 adviser may file an application for registration of a
 5 successor, to become effective upon approval of the
 6 commissioner.

7 (7) Every registered broker-dealer and investment
 8 adviser shall make and keep such accounts and other records,
 9 except with respect to securities exempt under 30-10-104(1),
 10 as may be prescribed by the commissioner. All records so
 11 required shall be preserved for 3 years unless the
 12 commissioner prescribes otherwise for particular types of
 13 records. All the records of a registered broker-dealer or
 14 investment adviser are subject at any time or from time to
 15 time to such reasonable periodic, special, or other
 16 examinations, within or without this state, by
 17 representatives of the commissioner, as the commissioner
 18 considers necessary or appropriate in the public interest or
 19 for the protection of investors.

20 (8) The commissioner may by order deny, suspend, or
 21 revoke registration of any broker-dealer, salesman, or
 22 investment adviser if he finds that the order is in the
 23 public interest and that the applicant or registrant or, in
 24 the case of a broker-dealer or investment adviser, any
 25 partner, officer, or director:

1 (a) has filed an application for registration under
 2 this section which, as of its effective date or as of any
 3 date after filing in the case of an order denying
 4 effectiveness, was incomplete in any material respect or
 5 contained any statement which was, in the light of the
 6 circumstances under which it was made, false or misleading
 7 with respect to any material fact;

8 (b) has willfully violated or willfully failed to
 9 comply with any provision of parts 1 through 3 of this
 10 chapter or a predecessor law or any rule or order under
 11 parts 1 through 3 of this chapter or a predecessor law;

12 (c) has been convicted of any misdemeanor involving a
 13 security or any aspect of the securities business or any
 14 felony;

15 (d) is permanently or temporarily enjoined by any
 16 court of competent jurisdiction from engaging in or
 17 continuing any conduct or practice involving any aspect of
 18 the securities business;

19 (e) is the subject of an order of the commissioner
 20 denying, suspending, or revoking registration as a
 21 broker-dealer, salesman, or investment adviser;

22 (f) is the subject of an order entered within the past
 23 5 years by the securities administrator of any other state
 24 or by the federal securities and exchange commission denying
 25 or revoking registration as a broker-dealer or salesman or

1 the substantial equivalent of those terms as defined in
 2 parts 1 through 3 of this chapter or is the subject of an
 3 order of the federal securities and exchange commission
 4 suspending or expelling him from a national securities
 5 exchange or national securities association registered under
 6 the Securities Exchange Act of 1934 or is the subject of a
 7 United States post office fraud order, but:

8 (i) the commissioner may not institute a revocation or
 9 suspension proceeding under this subsection (f) more than 1
 10 year from the date of the order relied on; and

11 (ii) he may not enter any order under this subsection
 12 (f) on the basis of an order unless that order was based on
 13 facts which would currently constitute a ground for an order
 14 under this section;

15 (g) has engaged in dishonest or unethical practices in
 16 the securities business;

17 (h) is insolvent, either in the sense that his
 18 liabilities exceed his assets or in the sense that he cannot
 19 meet his obligations as they mature, but the commissioner
 20 may not enter an order against a broker-dealer or investment
 21 adviser under this subsection (h) without a finding of
 22 insolvency as to the broker-dealer or investment adviser;

23 (i) has not complied with a condition imposed by the
 24 commissioner under subsection (8) of this section or is not
 25 qualified on the basis of such factors as training,

1 experience, or knowledge of the securities business; or
 2 (j) has failed to pay the proper filing fee, but the
 3 commissioner may enter only a denial order under this
 4 subsection (j), and he shall vacate any such order when the
 5 deficiency has been corrected. The commissioner may by order
 6 summarily postpone or suspend registration pending final
 7 determination of any proceeding under this section.
 8 (9) Upon the entry of the order under subsection (8)
 9 of this section, the commissioner shall promptly notify the
 10 applicant or registrant, as well as the employer or
 11 prospective employer if the applicant or registrant is a
 12 salesman, that it has been entered and of the reasons
 13 therefor and that if requested by the applicant or
 14 registrant within 15 days after the receipt of the
 15 commissioner's notification the matter will be promptly set
 16 down for hearing. If no hearing is requested within 15 days
 17 and none is ordered by the commissioner, the order will
 18 remain in effect until it is modified or vacated by the
 19 commissioner. If a hearing is requested or ordered, the
 20 commissioner, after notice of and opportunity for hearing,
 21 may affirm, modify, or vacate the order.
 22 (10) If the commissioner finds that any registrant or
 23 applicant for registration is no longer in existence or has
 24 ceased to do business as a broker-dealer, investment
 25 adviser, or salesman or is subject to an adjudication of

1 mental incompetence or to the control of a committee,
 2 conservator, or guardian or cannot be located after
 3 reasonable search, the commissioner may by order cancel the
 4 registration or application."
 5 Section 5. Section 30-11-115, MCA, is amended to read:
 6 "30-11-115. Uniform Commercial Code overrides. The
 7 provisions of this [part] shall ~~do~~ not apply to exchanges
 8 subject to the Uniform Commercial Code."
 9 Section 6. Section 30-12-1002, MCA, is amended to
 10 read:
 11 "30-12-1002. Enforcement of part. The department of
 12 business regulation shall enforce this part. The department
 13 shall have access to all places of business, factories,
 14 stores, and buildings used for the manufacture or sale of
 15 paints or other products described in 30-12-1001. The
 16 department may purchase and open any package, can, jar, tub
 17 tube, or other receptacle containing any of the articles
 18 described in 30-12-1001 and found during an inspection."
 19 Section 7. Section 30-13-133, MCA, is amended to read:
 20 "30-13-133. Transfer. The owner of any product of the
 21 mind or of any representation or expression thereof may
 22 transfer his property interest in the same."
 23 Section 8. Section 30-14-142, MCA, is amended to read:
 24 "30-14-142. Penalties. (1) Any A person who violates
 25 the terms of an injunction issued under 30-14-111 shall

1 forfeit and pay to the state a civil penalty of not more
 2 than \$10,000 per violation. For the purposes of this
 3 section, the district court issuing an injunction retains
 4 jurisdiction and the cause shall be continued, and in such
 5 cases the department acting in the name of the state may
 6 petition for recovery of civil penalties.

7 (2) In any ~~an~~ action brought under 30-14-111, if the
 8 court finds that a person is willfully using or has
 9 willfully used a method, act, or practice declared unlawful
 10 by 30-14-103, the department, upon petition to the court,
 11 may recover on behalf of the state a civil penalty of not
 12 more than \$500 per violation.

13 (3) Any ~~A~~ person who engages in a fraudulent course of
 14 conduct declared unlawful by 30-14-103 shall upon conviction
 15 be fined not more than \$2,000, imprisoned for not more than
 16 1 year, or both, in the discretion of the court. Nothing in
 17 this subsection limits any other provision of this part.

18 (4) For purposes of this section, a willful violation
 19 occurs when the party committing the violation knew or
 20 should have known that his conduct was a violation of
 21 30-14-103."

22 Section 9. Section 30-14-224, MCA, is amended to read:

23 "30-14-224. Penalties. (1) Except as otherwise
 24 provided in this section, a person, whether as principal,
 25 agent, officer, or director, who violates any of the

1 provisions of ~~30-14-205~~ ~~30-14-206~~ through 30-14-218 is
 2 guilty of a misdemeanor for each single violation and upon
 3 conviction thereof shall be fined not less than \$100 or more
 4 than \$1,000 or imprisoned for a term not to exceed 6 months,
 5 or both.

6 ~~(2) A violation of 30-14-205 is punishable by~~
 7 ~~imprisonment in the county jail for a period not less than~~
 8 ~~24 hours or more than 1 year or by fine not exceeding~~
 9 ~~\$25,000 or both.~~

10 (2) A VIOLATION OF 30-14-205 IS PUNISHABLE BY
 11 IMPRISONMENT IN THE COUNTY JAIL FOR A PERIOD NOT LESS THAN
 12 24 HOURS OR MORE THAN 1 YEAR OR BY FINE NOT EXCEEDING
 13 \$25,000, OR BOTH.

14 ~~(3)(2)(3)~~ When there is a violation of 30-14-216, in
 15 addition to the penalty specified in subsection (1), the
 16 court before which a conviction is had shall, within 10 days
 17 after judgment of conviction is given, forward a certified
 18 copy of the judgment to the department of agriculture and
 19 that department shall revoke any license issued to the
 20 person so convicted. In such case no new license may be
 21 granted to the person whose license is revoked, or to anyone
 22 either directly or indirectly engaged with him in such
 23 business, for a period of 1 year."

24 Section 10. Section 30-14-506, MCA, is amended to
 25 read:

1 *30-14-506. Repayment to buyer -- retention of goods
 2 by buyer. (1) Except as provided in this section, within 10
 3 days after a personal solicitation sale has been canceled or
 4 an offer to purchase revoked, the seller shall tender to the
 5 buyer any payments made by the buyer and any note or ~~or~~
 6 other evidence of indebtedness.

7 (2) If the down payment includes goods traded in, the
 8 goods shall be tendered in substantially as good condition
 9 as when received by the seller. If the seller fails to
 10 tender the goods as provided by this section, the buyer may
 11 elect to recover an amount equal to the trade-in allowance
 12 stated in the agreement.

13 (3) If the seller refuses within the period prescribed
 14 by subsection (1) to return the cash down payment or goods
 15 tendered as down payment, he shall be liable to the buyer
 16 for the entire down payment, and if the buyer is successful
 17 in his action therefor, the court shall also award him \$100
 18 plus reasonable attorneys' fees and costs.

19 (4) Until the seller has complied with this section,
 20 the buyer may retain possession of goods delivered to him by
 21 the seller and shall have a lien on the goods in his
 22 possession or control for any recovery to which he may be
 23 entitled."

24 Section 11. Repealer. Sections 67-1705, 84-2805
 25 through 84-2812, and 85-201 through 85-208, R.C.M. 1947,

1 are repealed.

-End-