CHAPTER NO. _1.37

SENATE BILL NO. 39

INTRODUCED BY HAZELBAKER, GOODOVER

BY REQUEST OF THE CODE COMMISSIONER

IN THE SENATE

Introduced and referred to January 6, 1979 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.

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

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1	SENATE BILL NO. 39	1	goods directed to a warehouseman, carrier or other person
2	INTRODUCED BY	ź	who in the ordinary course of business issues warehouse
3	BY REQUEST OF THE CODE COMMISSIONER	3	receipts or bills of lading.
4		4	(e) "Document" means document of title as defined in
5	A BILL FOR AN ACT ENTITLED: MAN ACT TO GENERALLY REVISE AND	5	the-general-artinition-in-Ehoptor-1-430-1-201(151).
6	CLARIFY THE LAW RELATING TO TRADE AND COMMERCE; AMEMOING	6	(f) "Goods" means all things which are treated as
7	SECTIONS 30-7-102, 30-7-210, 30-9-105; 30-10-201, 30-11-115;	7	movable for the purposes of a contract of storage or
8	30-12-1002, 30-13-133, 30-14-142, 30-14-224, AND 30-14-506;	8	transportation.
9	MCA; AND REPEALING SECTIONS 67-1705, 84-2805 THROUGH	7	(g) "Issuer" means a balled who issues a document
10	84-2812, AND 85-201 THROUGH 85-208, R∘C.M. 1947.ª	10	except that in relation to an unaccepted delivery order it
11		11	_means the person who orders the possessor of goods to
12	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HONTANA:	12	deliver. Issuer includes any person for shos an agent or
13	Section 1. Section 30-7-102, MCA, is amended to read:	13	employee purports to act in issuing a document if the agent
14	*30-7-102. Definitions and index of definitions. (1)	14	or employee has real or apparent authority to issue
15	In this chapter, unless the context otherwise requires:	15	documents, notwithstanding that the issuer received no goods
16	(a) "Bailee" means the person who by a warehouse	16	or that the goods were misdescribed or that in any other
17	receipt, bill of ladin; or other document of title	17	respect the agent or employee violated his instructions.
18	acknowledges possession of goods and contracts to deliver	13	(h) Warehouseman ^e is a person engaged in the business
17	them.	19	of storing goods for hire.
20	(b) "Consignee" means the person named in a bill to	20	(2) Other definitions applying to this chapter or to
21	whom or to whose order the bill promises delivery.	21	specified parts thereofy and the sections in which they
Z 2	(c) "Consignor" means the person named in a bill as	22	appear are:
23	the person from whom the goods have been received for	23	"Duly negotiate". 30~7-501.
24	shipment.	24	"Person entitled under the document". 3D-7-403(4).
25	(d) "Delivery order" means a written order to deliver	25	(3) Definitions in other chapters applying to this

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INTRODUCED BILL

1 chapter and the sections in which they appear are: z "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 and principles of construction and interpretation applicable 6 7 throughout this chapter." 8 Section 2. Section 30-7-210, NCA, 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 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 notification must include a statement of the amount due, the 15 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 therefor, or if he sells at the price current in such market 23 at the time of his sale, or if he has otherwise sold in 24 25 conformity with commercially reasonable practices among

dealers in the type of goods sold, he has sold in a 1 consercially reasonable manner. A sale of more goods than 2 apparently necessary to be offered to insure satisfaction of 3 the obligation is not commercially reasonable except in cases covered by the preceding sentence. 5 (2) A warehouseman's lien on goods other than goods 6 stored by a merchant in the course of his business may be 7 enforced only as follows: . (a) All persons known to claim an interest in the 9 goods must be notified. 10 (b) The notification must be delivered in person or 11 sent by registered or certified letter to the last known 12 address of any person to be notified. 13 (c) The notification must include an itemized 14 statement of the claim, a description of the goods subject 15 to the lien, a demand for payment within a specified time 16 not less than 10 days after receipt of the notification. and 17 18 a conspicuous statement that unless the claim is paid within that time the goods will be advertised for sale and sold by 19 auction at a specified time and place. 20 (d) The sale must conform to the terms of the 21 notification. 22 (e) The sale must be held at the nearest suitable 23 place to that where the goods are held or stored. 24 (f) After the expiration of the time given in the 25

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

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

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

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

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

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 whom he would have been bound to deliver the goods. 3 (7) The rights provided by this section shall be in addition to all other rights allowed by law to a creditor ansinst his debtors

ŝ (8) Where a lien is on goods stored by a serchant in the course of his business the lien may be enforced in 8 9 eccordance with alther subsection (1) or (2).

(9) The warehouseman is liable for damages caused by 20 failure to comply with the requirements for sale under this 11 12 section and in case of willful violation is liable for 13 conversion.*

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

17 (a) "Account debtor" means the person who is obligated on an account, chattel paper, contract right or general 13 19 intancible:

(b) "Chattel paper" means a writing or writings which 20 evidence both a sometary obligation and a security interest 21 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 writings taken together constitutes chattel paper; 25

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

(d) "Debtor" mans the person who over payment or 4 other serfergence of the obligation securate whether or est 5 he owns of has rights in the collateral, and includes the 6 7 seller of accounts, contract rights or chattel paper. Whore then the debter and the enner of the collateral are not the . 9 same person, the term "debtor" maps the enger of the collateral in any provision of the chapter dualing with the 10 collateral, the obligor in any provision dealing with the 11 obligation, and may include both where the context so 12 13 requires;

14 (e) "Document" means document of title as defined in 15 the general-definitions of these -1-(30-1-201/151);

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 intengibles, 20 centract rights and other things in action. "Goods" also 21 include includes the unborn young of animals and growing 22 crops;

(g) "Instrument" means a megotiable instrument
(defined in 30-3-104) + or a security (defined in 30-8-102)
or any other writing which evidences a right to the payment

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

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

7 (1) "Second party" means a lender, seller or other 8 person in skown favor there is a security interest, 9 including a person to sham interest, contract rights or 10 chettel paper have been solds when the holders of 11 oblightions 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". 30-7-106.
- 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". 30-7-106.
- 22 "Inventory". 30-9-109(4).
- 23 *Lien creditor*. 30-9-301(3).
- 24 "Preceeds". 30-9-306(1).
- 25 "Furchase money security interert", 30-9-107.

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

3 "Check", 30-3-104,

4 *Contract for sale^o, 30-2-106.

5 Pholder in dus course", 30-3-302.

6 "Note". 30-3-1294.

7 "Sele", 30-2-106.

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

Section to Section 30-10-201, NEA, is baended to report 13. "30-10-201, Registration of broker-sealersd calesses, 12 and investment advisors. (1) It is unlattel for any parson 13 to transact business in this state as a protocredualer or 14 salesgan, except in transactions exempt under 30-20-105c 25 unless ha is registered under parts 1 through 3 of this 16 17 chapter. It is unlawful for any person to transact business. in this state as an investment adviser unless: 18

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

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

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

1 (2) A broker-dealer or a salasman, 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 issuare or an investment 4 advisor pay apply for registration by filing with the 5 commissioner an application in such fore as the commissioner 6 prescribes and payment of the fee prescribed in 30-10-209. 7 Except for persons in the esploy of brokerage firms governed 8 by the centrations of the securities and exchange ç commissions all selecton must be legal routidents of this 10 state and must have actually cosided in this state for a period of at least 1 year next prior to the date of 12 22 application for registrations the completioner may, usen 13 request and for good cause shown by an applicant, weive the 2.0 residency rewirczents. Salesmen shall also file sith the 15 countrations a bond of a surger compony duty antherade to transoct business in this state. The bond shall be in the 26 17 sup of \$5,000, payable to the state of Mentona ക്കർ 18 conditioned upon the faithful compliance with the provisions 19 of parts 1 through 3 of this chapters and provide that open 20 failure to so cooply, the salesman shall be liable to any 21 and all persons the may suffer loss by reason thereof. 22 (3) The application shall contain whatever information 23 the commissionar requires. 24

24 (4) If no denial order is in effect and no proceeding25 is pending under subsection (8) of this section;

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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 moon of the 30th
6 day thereafter unless otherwise accelerated by the
7 commissioner.

A (5) Registration of a broker-dealers salesmans or investment "adviser shall be effective until Harch 1 9 following such registration and may be renewed. The 10 11 registration of a salesman is not effective during any period when he is not associated with an issuer or a 12 registered broker-dealer specified in his application. When 13 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 containing such information as the commissioner may require 20 21 to indicate any material change in the information contained 22 in the original application or any renewal application for registration as a broker-dealer, salesman, or investment 23 24 adviser filed with the commissioner by the applicant, 25 payment of the prescribed fee, and, in the case of a

broker-dealer, <u>by filing</u> a financial statement showing the financial condition of such broker-dealer as of a date within 90 days. A registered broker-dealer or investment adviser may file an application for registration of a successor, to become effective upon approval of the commissioner.

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

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

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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;

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8 (b) has willfully vielated 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;

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

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

the substantial equivalent of those terms as defined in parts 1 through 3 of this chapter or is the subject of an order of the federal securities and exchange commission suspending or expelling him from a national securities exchange or national securities association registered under the Securities Exchange Act of 1934 or is the subject of a United States post office fraud order, but: (i) the commissioner may not institute a revocation or suspension proceeding under this subsection [f] more than 1 year from the date of the order relied on; and (ii) he may not enter any order under this subsection [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;

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

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1 experience, or knowledge of the securities business; or

2 (j) has failed to pay the proper filing fee, but the 3 commissioner way 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 prospective employer if the applicant or registrant is a 11 12 salesman, that it has been entered and of the reasons 13 therefor and that if requested by the applicant or registrent within 15 days after the receipt of the 14 commissioner's notification the matter will be promptly set 15 down for hearing. If no hearing is requested within 15 days 16 and none is ordered by the commissioner, the order will 17 remain in effect until it is modified or vacated by the 18 commissioner. If a hearing is requested or ordered, the 19 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 wental incompetance or to the control of a committee;
 conservator, or guardian or cannot be located after
 reasonable search; the commissioner may by order cancel the
 registration or application."

Section 5. Section 30-11-115. MCA, is amended to read:
"30-11-115. Uniform Commercial Code overrides. The
provisions of this <u>fiart</u>; shell <u>do</u> not apply to exchanges
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 shall have access to all places of business. factories. 13 stores, and buildings used for the manufacture or sale of 14 paints or other products described in 30-12-1001. The 15 department way purchase and open any package, can, jar, tub 16 tube, or other receptacle containing any of the articles 17 described in 30-12-1001 and found during an inspection." 18

Section 7. Section 30-13-133, MCA, is amended to read:
 "30-13-133. Transfer. The owner of any product of the
 mind or of any representation or expression thereof may
 transfer his property interest in the same."

Section 8. Section 30-14-142, MCA, is amended to read:
 "30-14-142. Penalties. (1) Any & person who violates
 the terms of an injunction issued under 30-14-111 shall

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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 <u>shall be</u> 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 env 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-*

Section 9. Section 30-14-224. MCA. is amended to read:
 P30-14-224. Penalties. (1) Except as otherwise
 provided in this section, a person, whether as principal.
 agent. officer, or director, who violates any of the

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provisions of 30-14-205 through 30-14-218 is quilty of a 1 2 misdepeanor for each single violation and upon conviction thereof shall be fined not less than \$100 or more than 3 \$1,000 or imprisoned for a term not to exceed 6 months, or 4 5 both. 6 +spr+sonsont-in-the-county-jati-for-a-period-not--less--than 7 а \$25,060,-er-bocks ø (3)(2) When there is a violation of 30-14-216, in 10 addition to the penalty specified in subsection (1), the 11 court before which a conviction is had shall, within 10 days 12 after judgment of conviction is given, forward a certified 13 copy of the judgment to the department of agriculture and 14 15 that department shall revoke any license issued to the person so convicted. In such case no new license may be 16 granted to the person whose license is revokedy or to anyone 17 either directly or indirectly engaged with him in such 18 19 businessy for a period of 1 year." 20 Section 10. Section 30-14-506, MCA, is amended to 21 read1 22 *30-14-506. Repayment to buyer --- retention of goods 23 by buyer. (1) Except as provided in this section, within 10

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days after a personal solicitation sale has been canceled or

an offer to purchase revoked, the seller shall tender to the

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buyer any payments made by the buyer and any note of or
 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 by subsection (1) to return the cash down payment or goods tendered as down payment, he shall be liable to the buyer for the entire down payment, and if the buyer is successful in his action therefor, the court shall also award him \$100 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."

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SENATE MEMBERS

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TRANK HAZELBAKER VICE CHAIRMAN

CHET BLAYLOCK

PALM GOODOVER

DIANA S. DOWLING EXECUTIVE DIRECTOR CODE COMMISSIONER

ELEANOR ECK ADMINISTRATIVE ASSISTANT

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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. <u>30-11-115</u>. "part" was bracketed in recodification 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".

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Section 6. <u>30-12-1002</u>. Amendment allows inspection of tubes of paint.

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

Section 8. <u>30-14-142</u>. 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. $\underline{67-1705}$, 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

1	SENATE BILL NO. 39
2	INTRODUCED BY Jallan Bookown
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 THRDUGH 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 ladin; or other document of title
18	acknowledges possession of goods and contracts to deliver
19	then.
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

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

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

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 employee purports to act in issuing a document if the agent 13 14 or employee has real or apparent authority to issue documents, notwithstanding that the issuer received no goods 15 or that the goods were misdescribed or that in any other 16 respect the agent or employee violated his instructions. 17

18 (h) "Warehouseman" is a person engaged in the business
19 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:

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

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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	block or in parcels, at any time or place and on any
13	terms which are commercially reasonables after notifying all
14	persons known to claim an interest in the goods. Such Ibg
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

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2 commercially reasonable manner. A sale of more goods than apparently necessary to be offered to insure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.
6 (2) A warehouseman's lien on goods other than goods stored by a merchant in the course of his business may be

dealers in the type of goods sold, he has sold in a

8 enforced only as follows:
9 (a) All persons known to claim an interest in the

10 goods must be notified.

(b) The notification must be delivered in person or
 sent by registered or certified letter to the last known
 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

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

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

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

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

(6) The warehouseman may satisfy his lien from the

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proceeds of any sale pursuant to this section but must hold 1 the balance, if any, for delivery on demand to any person to 2 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 the course of his business the lien may be enforced in 8 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 section and in case of willful violation is liable for 12 conversion.* 13

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

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

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

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

(d) "Debtor" means the person who owes payment or 4 5 other performance of the obligation secured, whether or not he owns or has rights in the collateral, and includes the 6 7 seller of accounts, contract rights or chattel paper. Where <u>When</u> the debtor and the owner of the collateral are not the 8 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

of money and is not itself a security agreement or lease and
 is of a type which is in ordinary course of business
 transferred by delivery with any necessary endorsement or
 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 the15 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.

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(3) The following definitions in other shapters apply 1 to this chapter: 2 3 "Check". 30-3-104. "Contract for sale". 30-2-106. 4 "Holder in due course". 30-3-302. 5 "Note", 30-3-104. 6 "Sale". 30-2-106. 7 8 (4) In addition Chapter 1 contains general definitions and principles of construction and interpretation applicable 9 throughout this chapter." 10 Section 4. Section 30-10-201. MCA. is Gaunded to read: 11 #30-10-201. Registration of broker-dealers/ salesmen. 12 and investment advisers. (1) It is unlawful for any person 13 to transact business in this state as a broker-dealer or 14 salesman, except i, transactions exempt under 30-10-105. 15 unless he is registered under parts 1 through 3 of this 16 chapter. It is unlawful for any person to transact business 17 18 in this state as: an investment adviser unless:

19 (a) he is so registered under parts 1 through 3 of20 this chapter;

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

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

1 (2) A broker-dealer or a salesman acting as an agent Z for an issuer or as an agent for a broker-dealer in the offer or sale of securities for an issuer, or an investment 3 adviser may apply for registration by filing with the 4 5 commissioner an application in such form as the commissioner prescribes and payment of the fee prescribed in 30-10-209. 6 Except for persons in the employ of brokerage firms governed 7 by the regulations of the securities and exchange . commission, all salesmen must be legal residents of this 9 10 state and must have actually recided in this state for a 11 period of at least 1 year next prior to the date of 1Z 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 transact business in this state. The bond shall be in the 16 17 sum of \$5,000, payable to the state of Montana and conditioned upon the faithful compliance with the provisions 18 19 of parts 1 through 3 of this chapter, and provide that upon failure to so comply, the salesman shall be liable to any 20 21 and all persons who may suffer loss by reason thereof. 2Z (3) The application shall contain whatever information 23 the commissioner requires. (4) If no denial order is in effect and no proceeding 24

is pending under subsection (8) of this section:

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

(5) Registration of a broker-dealer, salesman, or 8 9 investment "edviser shall be effective until derch 1 10 following such registration and may be removed. The registration of a salesman is not effective during any 11 period when he is not associated with an issuer or a 12 13 registered broker-dealer specified in his application. When a salesman begins or terminates a connection with an dissuer 14 15 or registered broker-dealer, the salesman and the issuer or 16 broker-dualer 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 containing such information as the commissioner may require 20 to indicate any material change in the information contained 21 in the original application or any renewal application for 22 23 registration as a broker-dealer, salesman, or investment adviser filed with the commissioner by the applicant, 24 payment of the prescribed fee, and, in the case of a 25

broker-dealer, <u>by filing</u> a financial statement showing the financial condition of such broker-dealer as of a date within 90 days. A registered broker-dealer or investment adviser may file an application for registration of a successor, to become effective upon approval of the commissioner.

(7) Every registered broker-dealer and investment 7 8 adviser shall make and keep such accounts and other records. except with respect to securities exempt under 30-10-104(1). 9 as may be prescribed by the compissioner. All records so 10 required shall be preserved for 3 years unless the 11 commissioner prescribes otherwise for particular types of 12 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 examinations, within or without this state, bγ 16 representatives of the commissioner, as the commissioner 17 considers necessary or appropriate in the public interest or 18 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:

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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 permittently 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;

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

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

the substantial equivalent of those terms as defined in 1 parts 1 through 3 of this chapter or is the subject of an 2 3 order of the federal securities and exchange complexion suspending or expelling him from a national securities 4 exchange or national securities association registered under 5 the Securities Exchange Act of 1934 or is the subject of a 6 United States post office fraud order, but: 7 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 (13) he may not enter any order under this subsection 12 if) on the basis of an order unless that order was based on facts which would currently constitute a ground for an order 13 14 under this section: (g) has engaged in dishonest or unethical practices in 15 the securities business: 16 17 (h) is insolventy 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 may not enter an order against a broker-dealer or investment 20 21 adviser under this subsection (h) without a finding of insolvency as to the broker-dealer or investment adviser; 22 (i) has not complied with a condition imposed by the

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

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experience, or knowledge of the securities business; or
(j) has failed to pay the proper filing fee, but the commissioner may enter only a denial order under this subsection (j), and he shall vacate any such order when the deficiency has been corrected. The commissioner may by; order summarily postpone or suspend registration pending final determination of any proceeding under this section.

8 (9) Upon the entry of the order under subsection (8) 9 of this section, the combissioner shall promptly notify the 10 applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is a 11 12 salesman, that it has been entered and of the reasons 13 therefor and that if requested by the applicant or registrant within 15 days after the receipt of the 14 commissioner's notification the matter will be promotly set 15 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 commissioner. If a hearing is requested or ordered, the 19 commissioner, after notice of and opportunity for hearing, 20 may affirm, modify, or vacate the order. 21

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 mental incompetence or to the control of a committee, conservator, or guardian or cannot be located after reasonable search, the commissioner may by order cancel the registration or application."

Section 5. Section 30-11-115. MCA, is amended to read:
"30-11-115. Uniform Commercial Code overrides. The
provisions of this fpart; shell do not apply to exchanges
subject to the Uniform Commercial Code."

9 Section 6. Section 30-12-1002, MCA, is amended to 10 read:

11 "30-12-1902. 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 department may purchase and open any package, can, jar, tub 16 17 tube, or other receptacle containing any of the articles described in 30-12-1001 and found during an inspection." 18

Section 7. Section 30-13-133, MCA, is amended to read:
 "30-13-133. Transfer. The owner of any product of the
 mind or of any representation or expression thereof may
 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 :

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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 <u>shall be</u> 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 env an action brought under 30-14-111, if the 8 court finds that a person is willfully using or has 9 willfully used a methody 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 △ 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 provisions of 30-14-205 through 30-14-218 is guilty of a
 misdemeanor for each single violation and upon conviction
 thereof shall be fined not less than \$100 or more than
 \$1,000 or imprisoned for a term not to exceed 6 months, or
 both.

 6
 (2)--A---vielution---of---30-24-205--is--publishable--by

 7
 : imprisonment-in-the-county-jeil-for-s-period-not--less--than

 8
 24--hours--or--uore--than--2--year--or-by-find-not-exceeding

9 #25+898+~er-boths

10 (9)(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 that department shall revoke any license issued to the 15 person so convicted. In such case no new license may be 16 17 granted to the person whose license is revokede or to anyone either directly or indirectly engaged with him in such 18 19 businessy for a period of 1 year."

20 Section 10. Section 30-14-506, NCA, 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

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buyer any payments made by the buyer and any note of <u>or</u>
 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. Repeater.
 Sections 67-1705, 84-2805

 21
 through 84-2812, and 85-201 through 85-208, R.C.M. 1947,

 22
 are repealed.

-End-

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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	1	goods directed to a warehouseman, carrier or other person
z	INTRODUCED BY HAZELBAKER. GODDOVER	2	who in the ordinary course of business issues warehouse
3	BY REQUEST OF THE CODE COMMISSIONER	3	receipts or bills of lading.
4		4	(e) "Document" means document of title as defined in
5	A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND	5	the-general-definition-in-thepter-1-(30-1-201 <u>(151</u>).
6	CLARIFY THE LAW RELATING TO TRADE AND COMMERCE; AMENDING	6	(f) "Goods" means all things which are treated as
7	SECTIONS 30-7-102, 30-7-210, 30-9-105, 30-10-201, 30-11-115,	7	movable for the purposes of a contract of storage or
8	30-12-1002+ 30-13-133+ 30-14-142+ 30-14-224+ AND 30-14-506+	8	transportation.
9	MCA; AND REPEALING SECTIONS 67-1705+ ' 84-2805 THRDUGH	9	(g) "Issuer" means a bailee who issues a document
10	84-2812, AND 85-201 THROUGH 85-208, R.C.M. 1947."	10	except that in relation to an unaccepted delivery order it
11		11	means the person who orders the possessor of goods to
12	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:	12	deliver. Issuer includes any person for whom an agent or
13	Section 1. Section 30-7-102, MCA, is amended to read:	13	employee purports to act in issuing a document if the agent
14	"30-7-102. Definitions and index of definitions. (1)	14	or employee has real or apparent authority to issue
15	In this chapter, unless the context otherwise requires:	15	documents, notwithstanding that the issuer received no goods
16	(a) "Bailee" means the person who by a warehouse	16	or that the goods were misdescribed or that in any other
17	receipt, bill of lading or other document of title	17	respect the agent or employee violated his instructions.
18	acknowledges possession of goods and contracts to deliver	18	(h) "Warehouseman" is a person engaged in the business
19	them.	19	of storing goods for hire.
20	(b) "Consignee" means the person named in a bill to	20	(2) Other definitions applying to this chapter or to
21	whom or to whose order the bill promises delivery.	21	specified parts thereof, and the sections in which they
22	(c) "Consignor" means the person named in a bill as	22	appear are:
23	the person from whom the goods have been received for	23	"Duły negotiate"。 30-7-501.
24	shipment.	24	"Person entitled under the document". 30-7-403(4).
25	(d) "Delivery order" means a written order to deliver	25	(3) Definitions in other chapters applying to this

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SENATE CONSENT CALENDAR HOUSE REFERENCE BILL.

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chapter and the sections in which they appear are: 1 "Contract for sale". 30-2-106. 2 "Overseas". 30-2-323. 3 "Receipt" of goods. 30-2-103. (4) In addition Chapter 1 contains general definitions 5 and principles of construction and interpretation applicable 6 7 throughout this chapter." Section 2. Section 30-7-210, MCA, is amended to read: 8 *30-7-210. Enforcement of warehouseman's lien. (1) 9 10 Except as provided in subsection (2), a warehouseman's lien may be enforced by public or private sale of the goods in 11 12 block or in parcels, at any time or place and on any terms which are commercially reasonable, after notifying all 13 persons known to claim an interest in the goods. Such The 14 notification must include a statement of the amount due, the 15 nature of the proposed sale and the time and place of any 16 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 sells the goods in the usual manner in any recognized market 22 therefor, or if he sells at the price current in such market 23 at the time of his sale, or if he has otherwise sold in 24 25 conformity with commercially reasonable practices among

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dealers in the type of goods sold, he has sold in a 1 commercially reasonable manner. A sale of more goods than 2 apparently necessary to be offered to insure satisfaction of 3 the obligation is not commercially reasonable except in 4 cases covered by the preceding sentence. 5 (2) A warehouseman's lien on goods other than goods 6 stored by a merchant in the course of his business may be 7 enforced only as follows: 8 (a) All persons known to claim an interest in the 9 acods must be notified. 10 (b) The notification must be delivered in person or 11 sent by registered or certified letter to the last known 12 address of any person to be notified. 13 (c) The notification must include an itemized 14 statement of the claim, a description of the goods subject 15 to the lien, a demand for payment within a specified time 16 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 auction at a specified time and place. 20 (d) The sale must conform to the terms of the 21 notification. 22 (e) The sale must be held at the nearest suitable 23 place to that where the goods are held or stored. 24

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

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

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 sale19 pursuant to this section.

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

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

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proceeds of any sale pursuant to this section but must hold
 the balance. if any, for delivery on demand to any person to
 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.*

Section 3. Section 30-9-105, MCA, is amended to read:
*30-9-105. Definitions and index of definitions. (1)
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;

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

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

(d) "Debtor" means the person who owes payment or 4 other performance of the obligation secured, whether or not 5 he owns or has rights in the collateral, and includes the 6 seller of accounts, contract rights or chattel paper. Where 7 When the debtor and the owner of the collateral are not the 8 9 same person, the term "debtor" means the owner of the collateral in any provision of the chapter dealing with the 10 collateral, the obligor in any provision dealing with the 11 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-t-t30-1-201(151);

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;

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

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

5 (h) "Security agreement" means an agreement which
 b 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.

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2 to this chapter: 3 "Check". 30-3-104. "Contract for sale". 30-2-106. "Holder in due course". 30-3-302. 5 "Note". 30-3-104. 6 7 *Sale*. 30-2-106. (4) In addition Chapter 1 contains general definitions A 9 and principles of construction and interpretation applicable throughout this chapter." 10 11 Section 4. Section 30-10-201, MCA, is amended to read: "30-10-201. Registration of broker-dealers, salesmen, 12 13 and investment advisers. (1) It is unlawful for any person to transact business in this state as a broker-dealer or 14 salesman, except in transactions exempt under 30-10-105, 15 unless he is registered under parts 1 through 3 of this 16 chapter. It is unlawful for any person to transact business 17 in this state as an investment adviser unless: 18

(3) The following definitions in other chapters apply

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

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

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

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

22 (3) The application shall contain whatever information23 the commissioner requires.

24 (4) If no denial order is in effect and no proceeding25 is pending under subsection (8) of this section,

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registration becomes effective at noon of the 30th day after an application is filed. The commissioner may specify an earlier effective date, and he may by order defer the effective date for an additional 60 days. The effective day after the filing of any amendment shall be noon of the 30th day thereafter unless otherwise accelerated by the 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 registration of a salesman is not effective during any 11 12 period when he is not associated with an issuer or a registered broker-dealer specified in his application. When 13 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 adviser filed with the commissioner by the applicant. 24 25 payment of the prescribed fee, and, in the case of a

broker-dealer, <u>by filing</u> a financial statement showing the
 financial condition of such broker-dealer as of a date
 within 90 days. A registered broker-dealer or investment
 adviser may file an application for registration of a
 successor, to become effective upon approval of the
 commissioner.

7 (7) Every registered broker-dealer and investment adviser shall make and keep such accounts and other records, 6 except with respect to securities exempt under $30-10-104(1)_{+}$ 9 as may be prescribed by the commissioner. All records so 10 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 time to such reasonable periodic, special, or other 15 16 examinations, within or without this state. bγ representatives of the commissioner, as the commissioner 17 18 considers necessary or appropriate in the public interest or 19 for the protection of investors.

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

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

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

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

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

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

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

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the substantial equivalent of those terms as defined in parts 1 through 3 of this chapter or is the subject of an order of the federal securities and exchange commission З. suspending or expelling him from a national securities exchange or national securities association registered under 5 the Securities Exchange Act of 1934 or is the subject of a 7 United States post office fraud order, but: (i) the commissioner may not institute a revocation or suspension proceeding under this subsection (f) more than 1 year from the date of the order relied on; and (ii) he may not enter any order under this subsection (f) on the basis of an order unless that order was based on 13 facts which would currently constitute a ground for an order under this section: 14 (g) has engaged in dishonest or unethical practices in the securities business: (h) is insolvent, either in the sense that his liabilities exceed his assets or in the sense that he cannot meet his obligations as they mature, but the commissioner may not enter an order against a broker-dealer or investment adviser under this subsection (h) without a finding of insolvency as to the broker-dealer or investment adviser; 22 (i) has not complied with a condition imposed by the

23 24 commissioner under subsection (B) of this section or is not qualified on the basis of such factors as training, 25

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experience, or knowledge of the securities business; or
(j) has failed to pay the proper filing fee, but the
commissioner may enter only a denial order under this
subsection (j), and he shall vacate any such order when the
deficiency has been corrected. The commissioner may by order
summarily postpone or suspend registration pending final
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 applicant or registrant, as well as the employer or 10 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 commissioner's notification the matter will be promptly set 15 16 down for hearing. If no hearing is requested within 15 days 17 and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the 18 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.

(10) If the commissioner finds that any registrant or
applicant for registration is no longer in existence or has
ceased to do business as a broker-dealer, investment
adviser, or salesman or is subject to an adjudication of

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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."

Section 5. Section 30-11-115. MCA. is amended to read:
"30-11-115. Uniform Commercial Code overrides. The
provisions of this [part] shall do not apply to exchanges
subject to the Uniform Commercial Code."

9 Section 6. Section 30-12-1002, MCA, is amended to 10 read:

#30-12-1002. Enforcement of part. The department of 11 12 business regulation shall enforce this part. The department shall have access to all places of business, factories, 13 stores, and buildings used for the manufacture or sale of 14 paints or other products described in 30-12-1001. The 15 department may purchase and open any package, can, jar, tub 16 tube, or other receptacle containing any of the articles 17 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 ▲ person who violates
25 the terms of an injunction issued under 30-14-111 shall

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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 <u>shall_be</u> 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 env 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

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L	provisions of 38-14-285 <u>30-14-206</u> 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	t2)Avioletionof30-14-285ispunishableby
7	imprisonment-in-the-county-joil-for-a -per iod-notlessthan
8	24hoursormorethantyearar-by-fine-not-exceeding
9	\$25+888+-or-both#
10	(2) A VIOLATION OF 30-14-205 IS PUBLISHABLE BY
11	IMPRISONMENT_IN_IHE_COUNTY_JAIL_EOR_A_PERIOD_NOT_LESS_THAN
12	24 HOURS OR MORE THAN 1 YEAR OR BY FINE NOT EXCEEDING
13	<u>\$25.090.08_801H.</u>
14	[3]<u>121[31</u> When there is a violation of 30-14-216, in
15	addition to the penalty specified in <u>subsection</u> (1), the
16	court before which a conviction is had shally 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 revokedy or to anyone
22	either directly or indirectly engaged with him in such
23	businessy for a period of 1 year."
24	Section 10. Section 30-14-506, MCA, is amended to
25	read:

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*30-14-506. Repayment to buyer -- retention of goods
 by buyer. (1) Except as provided in this section, within 10
 days after a personal solicitation sale has been canceled or
 an offer to purchase revoked, the seller shall tender to the
 buyer any payments made by the buyer and any note of <u>or</u>
 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.^m

 24
 Section 11. Repealer. Sections 67-1705, 84-2805

 25
 through 84-2812, and 85-201 through 85-208, R.C.M. 1947,

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1 are repealed.

-End-

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