

SENATE BILL 420

IN THE SENATE

February 8, 1979

Introduced and referred to  
Committee on Judiciary.

April 20, 1979

Died in Committee.

1 *Senate* BILL NO. *420*  
 2 INTRODUCED BY *Fasbender, Daniel, Jack, Stinson*  
 3 *Arderson* BY REQUEST OF THE ATTORNEY GENERAL *Dur*  
 4 *Bob Brown*

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROMOTE FREE AND  
 6 OPEN COMPETITION AND TO PRESERVE THE FREE-ENTERPRISE MARKET  
 7 SYSTEM BY PROHIBITING MONOPOLISTIC AND RELATED PRACTICES AND  
 8 COMBINATIONS AND CONSPIRACIES IN RESTRAINT OF TRADE;  
 9 PROVIDING A METHOD OF ENFORCEMENT AND PENALTIES; AND  
 10 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

11  
 12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 Section 1. Short title. [This act] may be cited as the  
 14 "Montana Uniform Antitrust Act".

15 Section 2. Purpose. The purpose of [this act] is to  
 16 promote free and open competition in the interest of the  
 17 general welfare and economy of this state by prohibiting  
 18 monopolistic and related practices and combinations and  
 19 conspiracies in restraint of trade and providing a method of  
 20 enforcement and penalties.

21 Section 3. Definitions. As used in [this act], the  
 22 following definitions apply:

23 (1) "Person" means an individual, firm,  
 24 proprietorship, joint stock corporation, corporation,  
 25 business trust, partnership, association, or other legal

1 entity.  
 2 (2) "Trade" or "commerce" means all economic  
 3 activities involving or relating to any commodity, service,  
 4 or business activity.

5 (3) "Commodity" means any article of merchandise,  
 6 trade, or commerce and any other kind of real or personal  
 7 property.

8 (4) "Service" includes any activity that is performed  
 9 in whole or in part for the purpose of financial gain,  
 10 including but not limited to personal service, professional  
 11 service, rental, leasing, or licensing for use.

12 Section 4. Contract, combination, or conspiracy to  
 13 restrain trade. A contract, combination, or conspiracy  
 14 between two or more persons in restraint of trade or  
 15 commerce, any part of which is within this state, is  
 16 unlawful.

17 Section 5. Establishment, maintenance, or use of a  
 18 monopoly. (1) The establishment, maintenance, or use of a  
 19 monopoly, an attempt to establish a monopoly, or the doing  
 20 of an act which tends to create a monopoly of trade or  
 21 commerce, any part of which is within this state, by any  
 22 person, with the effect of limiting or excluding competition  
 23 or controlling, fixing, or maintaining prices is unlawful.

24 (2) Proof of a violation of this section may be by  
 25 means of statistics, economic analysis, and circumstantial

1 evidence.

2 Section 6. Mergers and acquisitions. No corporation  
3 engaged in commerce may acquire, directly or indirectly, the  
4 whole or any part of the stock or other share capital of  
5 another corporation, and no corporation may acquire the  
6 whole or any part of the assets of another corporation also  
7 engaged in commerce when the effect of the acquisition may  
8 be to substantially lessen competition or to tend to create  
9 a monopoly.

10 Section 7. Exemption. Agricultural cooperatives and  
11 labor unions while carrying out their legitimate objectives  
12 and public utilities, as defined in and regulated under  
13 Title 69, are exempt from the provisions of [this act].

14 Section 8. Venue. An action for violation of [this  
15 act] shall be brought in district court. If brought by the  
16 attorney general, it may be brought in the first judicial  
17 district or other district with proper venue.

18 Section 9. Civil investigative demand -- petition to  
19 enforce -- confidentiality. (1) If the attorney general has  
20 reasonable cause to believe that a person has information or  
21 is in possession, custody, or control of any document or  
22 other tangible object relevant to an investigation for  
23 violation of any state or federal antitrust act, he may  
24 serve upon the person, before bringing any action in state  
25 or federal district court, a written demand entitled "civil

1 investigative demand" requiring the person to appear and be  
2 examined under oath, to answer written interrogatories under  
3 oath, or to produce the document or object for inspection  
4 and copying.

5 (2) The demand shall:

6 (a) be served upon the person in the manner required  
7 for service of process by the Montana Rules of Civil  
8 Procedure;

9 (b) describe the nature of the conduct constituting  
10 the violation under investigation;

11 (c) describe the document or object with sufficient  
12 definiteness to permit it to be fairly identified;

13 (d) contain a copy of the written interrogatories;

14 (e) prescribe a reasonable time at which the person  
15 must appear to testify, within which to answer the written  
16 interrogatories, or within which the document or object must  
17 be produced;

18 (f) specify a place for the taking of testimony or for  
19 the production of the document or object and designate a  
20 person to be custodian of the document or object;

21 (g) advise the person that objections to or reasons  
22 for not complying with the demand may be filed with the  
23 attorney general on or before the time prescribed in  
24 subsection (2)(e); and

25 (h) contain a copy of the provisions found in

1 subsection (3).

2 (3) If a person objects to or otherwise fails to  
3 comply with the written demand served upon him under this  
4 section, the attorney general may file in the district court  
5 of the county in which the person resides or in which he  
6 maintains a principal place of business within this state a  
7 petition for an order to enforce the demand. Notice of  
8 hearing the petition and a copy of the petition shall be  
9 served upon the person, who may appear in opposition to the  
10 petition. If the court finds that the demand is proper, that  
11 there is reasonable cause to believe there has been a  
12 violation of [this act], and that the information sought or  
13 document or object demanded is relevant to the violation, it  
14 shall order the person to comply with the demand, subject to  
15 any modification that the court may prescribe. Upon motion  
16 by the person and for good cause shown, the court may make  
17 any further order in the proceedings that justice requires  
18 to protect the person from unreasonable annoyance,  
19 embarrassment, oppression, burden, or expense.

20 (4) Any procedure, testimony taken, or material  
21 produced under this section shall be kept confidential by  
22 the attorney general until an action is filed against a  
23 person under [this act] for the violation under  
24 investigation, unless:

25 (a) confidentiality is waived by the person being

1 investigated and the person who has testified, answered  
2 interrogatories, or produced material; or

3 (b) disclosure is authorized by the court.

4 (5) It shall be unlawful for any person under  
5 investigation under [this act] to knowingly destroy or cause  
6 to be destroyed any documents, papers, or other evidence  
7 which may be relevant to the investigation.

8 Section 10. Civil penalty and injunctive enforcement  
9 by state. The attorney general or a county attorney or the  
10 department of business regulation, with the permission or at  
11 the request of the attorney general, may bring an action in  
12 the name of the state for a violation of [this act] seeking  
13 appropriate injunctive or other equitable relief and civil  
14 penalties. The court shall assess for the benefit of the  
15 state a civil penalty of not less than \$2,000 or more than  
16 \$50,000 for each violation of [this act].

17 Section 11. Criminal penalties. The attorney general  
18 or a county attorney, with the permission or at the request  
19 of the attorney general, may bring a criminal action for  
20 violation of any of the provisions of [this act]. A person,  
21 whether as principal, agent, attorney, officer, director, or  
22 employee, who violates any of the provisions of [this act]  
23 is punishable by a fine of not less than \$2,000 or more than  
24 \$50,000 or by imprisonment for a term not to exceed 10  
25 years, or by both.

1 Section 12. Injunctive relief and damages. (1) The  
2 state or any political subdivision thereof or any person  
3 injured or threatened with injury from a violation of [this  
4 act] or the attorney general on their behalf may bring an  
5 action for appropriate injunctive relief.

6 (2) The state or any political subdivision thereof or  
7 any person injured by any violation of [this act] may bring  
8 an action for and recover treble the amount of actual  
9 damages sustained, together with reasonable attorneys' fees  
10 and costs.

11 Section 13. Civil action by attorney general as parens  
12 patriae. (1) The attorney general may bring a civil action  
13 for and recover treble damages, costs, and attorney's fees  
14 in the name of the people of the state of Montana as parens  
15 patriae on behalf of natural persons residing in the state  
16 for any damages sustained by them or to their property by  
17 reason of any violation of [this act].

18 (2) The court shall exclude from the amount of damages  
19 awarded in such action any damages that duplicate damages  
20 which have been previously awarded for the same injury.

21 Section 14. Judgment in favor of state or conviction  
22 as prima facie evidence. A final judgment, decree, or  
23 conviction determining that a person has violated [this act]  
24 in an action brought by the state for violation of [section  
25 4, 5, or 6], other than a consent judgment or decree entered

1 before trial has commenced, is prima facie evidence against  
2 that person in any other action against him under [section  
3 12 or 13].

4 Section 15. Consent judgment or decree. The attorney  
5 general, county attorney, or the department of business  
6 regulation may enter into an agreement for a consent  
7 judgment or decree with any defendant in any civil action  
8 brought under [this act]. Such agreement must be in writing  
9 and must be filed with the district court in which the  
10 action is pending. The court may accept, reject, or modify  
11 the agreement and enter its judgment accordingly.

12 Section 16. Limitation -- when action barred. (1) An  
13 action under [section 10] to recover a civil penalty is  
14 barred if it is not commenced within 8 years after the claim  
15 for relief accrued.

16 (2) An action under [section 12] to recover damages is  
17 barred if it is not commenced within 8 years after the claim  
18 for relief accrued or within 1 year after the conclusion of  
19 any timely action brought by the state under [section 10 or  
20 12(1)] based in whole or in part on any matter complained of  
21 in the action for damages, whichever is later.

22 Section 17. Retention of funds in earmarked accounts.  
23 All money received by the state as a result of actions  
24 brought by the attorney general or as a result of actions  
25 participated in by the attorney general pursuant to [this

1 act} or the federal antitrust laws shall be credited by the  
 2 state treasurer to an account within the earmarked revenue  
 3 fund to be known as the antitrust enforcement account. Money  
 4 in the antitrust enforcement account, subject to  
 5 appropriations pursuant to law, shall be used solely for the  
 6 payment of the operational expenses of the attorney  
 7 general's office in connection with its activities under  
 8 [this act] or the federal antitrust laws. If, at the end of  
 9 the biennium, the balance in the antitrust enforcement  
 10 account exceeds the appropriated amounts for the subsequent  
 11 biennium, the excess shall be withdrawn from the antitrust  
 12 enforcement account and deposited in the general fund.

13 Section 18. Remedies cumulative. The remedies provided  
 14 in [this act] are cumulative.

15 Section 19. Uniformity. [This act] shall be applied  
 16 and construed to effectuate its general purpose to make  
 17 uniform the law with respect to the subject of [this act]  
 18 among those states that enact it. It is the intent of the  
 19 legislature that in construing [this act] due consideration  
 20 and weight be given to the interpretations of the comparable  
 21 antitrust statutes.

22 Section 20. Severability. If a part of this act is  
 23 invalid, all valid parts that are severable from the invalid  
 24 part remain in effect. If a part of this act is invalid in  
 25 one or more of its applications, the part remains in effect

1 in all valid applications that are severable from the  
 2 invalid applications.

3 Section 21. Effective date. This act is effective on  
 4 passage and approval.

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