

House Bill 444

In The House

January 23, 1981	Introduced and referred to Committee on Judiciary.
January 26, 1981	Fiscal note requested.
January 29, 1982	Fiscal note returned.
February 12, 1981	Committee recommend bill do not pass.

HOUSE BILL NO. 444

INTRODUCED BY Keedy
BY REQUEST OF THE ATTORNEY GENERAL

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROMOTE FREE AND OPEN COMPETITION AND TO PRESERVE THE FREE-ENTERPRISE MARKET SYSTEM BY PROHIBITING MONOPOLISTIC AND RELATED PRACTICES AND COMBINATIONS AND CONSPIRACIES IN RESTRAINT OF TRADE FOR THE PROTECTION OF MONTANA SMALL BUSINESS AND CONSUMERS; PROVIDING A METHOD OF ENFORCEMENT AND PENALTIES; REPEALING SECTIONS 30-14-201 THROUGH 30-14-224, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Short title. [This act] may be cited as the "Montana Small Business and Consumer Antitrust Protection Act".

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

Section 3. Definitions. As used in [this act], unless the context requires otherwise, the following definitions

apply:

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

(2) "Person" means an individual, firm, proprietorship, joint-stock corporation, corporation, business trust, partnership, association, or other legal entity.

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

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

Section 4. Contract, combination, or conspiracy to restrain trade. Every contract, combination, or conspiracy between two or more persons in unreasonable restraint of trade or commerce, any part of which is within this state, is unlawful.

Section 5. Establishment, maintenance, or use of a monopoly. (1) The establishment, maintenance, or use of a monopoly, an attempt to establish a monopoly, conspiring with any other person to monopolize trade or commerce, any part of which is within this state, by any person, with the

1 effect of unreasonably limiting or excluding competition or
2 controlling, fixing, or maintaining prices, is unlawful.

3 (2) Proof of a violation of this section may be by
4 means of statistics, economic analysis, and circumstantial
5 evidence.

6 Section 6. Exemption. Agricultural cooperatives, rural
7 electric and telephone cooperatives, labor unions, and
8 public utilities and common carriers defined in and
9 regulated under Title 69, while carrying out their necessary
10 legitimate objectives, are exempt from the provisions of
11 [this act].

12 Section 7. Venue. An action for violation of [this
13 act] shall be brought in district court. If brought by the
14 attorney general, the action may be brought in the first
15 judicial district or other district with proper venue,
16 subject to the right of the defendant to change of venue as
17 provided by law.

18 Section 8. Civil investigative demand -- petition to
19 enforce -- confidentiality. (1) If the attorney general or
20 county attorney has reasonable cause to believe that a
21 person has information or is in possession, custody, or
22 control of any document or other tangible object relevant to
23 an investigation for violation of [this act] or any state or
24 federal antitrust act, he may serve upon the person, before
25 bringing any action in state or federal district court, a

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

15 (i) at which the person must appear to testify;

16 (ii) within which to answer the written
17 interrogatories; and

18 (iii) within which the document or object must be
19 produced;

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

23 (g) advise the person that objections to or reasons
24 for not complying with the demand may be filed with the
25 attorney general or county attorney on or before the time

1 prescribed in subsection (2)(e); and

2 (h) contain a copy of the provisions found in
3 subsection (3).

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

24 (4) Any procedure, testimony taken, or material
25 produced under this section must be kept confidential by the

1 attorney general or county attorney until an action is filed
2 against a person under [this act] for the violation under
3 investigation unless:

4 (a) confidentiality is waived by the person being
5 investigated or by the person who has testified, answered
6 interrogatories, or produced material; or

7 (b) disclosure is authorized by the court.

8 (5) It is unlawful for any person under investigation
9 under [this act] to knowingly destroy or cause to be
10 destroyed any documents, papers, or other evidence that may
11 be relevant to the investigation.

12 (6) Any person compelled to produce evidence pursuant
13 to this section may be accompanied, represented, and advised
14 by counsel at all times. Any person refusing to answer any
15 question on the grounds of privilege against
16 self-incrimination may be compelled to testify in the manner
17 provided by law.

18 Section 9. Civil penalty and injunctive enforcement by
19 state. The attorney general or a county attorney may bring
20 an action in the name of the state for a violation of [this
21 act] seeking appropriate injunctive or other equitable
22 relief and civil penalties. The court shall assess for the
23 benefit of the state a civil penalty of not more than
24 \$50,000 for each violation of [this act].

25 Section 10. Criminal penalties. The attorney general

1 or county attorney may bring a criminal action for violation
 2 of any of the provisions of [this act]. A person, whether
 3 acting as principal, agent, attorney, officer, director, or
 4 employee, who knowingly and intentionally violates any of
 5 the provisions of [this act] is punishable by a fine of not
 6 more than \$50,000, by incarceration in the county jail or
 7 the state prison for a term not to exceed 3 years, or by
 8 both. The term of the sentence imposed determines whether a
 9 violation of [this act] is a misdemeanor or a felony.

10 Section 11. Injunctive relief and damages. (1) The
 11 state or any political subdivision thereof or any person
 12 injured or threatened with injury from a violation of [this
 13 act] or the attorney general on their behalf may bring an
 14 action for appropriate injunctive relief.

15 (2) The state or any political subdivision thereof or
 16 any person injured directly or indirectly by any violation
 17 of [this act] may bring an action for and recover treble the
 18 amount of actual damages sustained, together with reasonable
 19 attorneys' fees and costs.

20 Section 12. Civil action by attorney general as parens
 21 patriae. (1) The attorney general may bring a civil action
 22 for and recover treble damages, costs, and attorneys' fees
 23 in the name of the people of the state of Montana as parens
 24 patriae on behalf of persons residing or doing business in
 25 the state for any damages sustained by them or to their

1 property by reason of any violation of [this act].

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

5 Section 13. Judgment in favor of the state or
 6 conviction as prima facie evidence. A final judgment,
 7 decree, or conviction determining that a person has violated
 8 [this act] in an action brought by the state for violation
 9 of [section 4 or 5], other than a consent judgment or decree
 10 entered before trial has commenced, is prima facie evidence
 11 against that person in any other action against him under
 12 [section 11 or 12].

13 Section 14. Consent judgment or decree. The attorney
 14 general or county attorney may enter into an agreement for
 15 a consent judgment or decree with any defendant in any civil
 16 action brought under [this act]. Such agreement must be in
 17 writing and must be filed with the district court in which
 18 the action is pending. The court may accept, reject, or
 19 modify the agreement and enter its judgment accordingly.

20 Section 15. Limitation -- when action barred. (1) An
 21 action under [section 9] to recover a civil penalty is
 22 barred if it is not commenced within 4 years after the claim
 23 for relief accrued.

24 (2) An action under [section 11] to recover damages is
 25 barred if it is not commenced within 4 years after the claim

1 for relief accrued or within 1 year after the conclusion of
2 any timely action brought by the state under [section 9 or
3 11(1)] based in whole or in part on any matter complained of
4 in the action for damages, whichever is later.

5 Section 16. Remedies cumulative. The remedies provided
6 in [this act] are cumulative.

7 Section 17. Uniformity. [This act] shall be applied
8 and construed to effectuate its general purpose to make
9 uniform the law with respect to the subject of [this act]
10 among those states that enact it or similar acts. It is the
11 intent of the legislature that in construing [this act] due
12 consideration and weight be given to court interpretations
13 of comparable antitrust statutes of other states and of the
14 federal government. Per se violations of the federal
15 antitrust laws shall be considered to be unreasonable acts
16 under [sections 4 and 5].

17 Section 18. Severability. If a part of this act is
18 invalid, all valid parts that are severable from the invalid
19 part remain in effect. If a part of this act is invalid in
20 one or more of its applications, the part remains in effect
21 in all valid applications that are severable from the
22 invalid applications.

23 Section 19. Repealer. Sections 30-14-201 through
24 30-14-224, MCA, are repealed.

25 Section 20. Effective date. This act is effective on

1 passage and approval.

-End-

H/B 444

STATE OF MONTANA

REQUEST NO. 218-81

FISCAL NOTE

Form BD-15

In compliance with a written request received January 27, 19 81, there is hereby submitted a Fiscal Note for House Bill 444 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA).

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

Description of Proposed Legislation

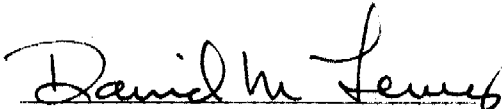
House Bill 444 is an act to promote free and open competition and to preserve the free-enterprise market system by prohibiting monopolistic and related practices and combinations and conspiracies in restraint of trade for the protection of Montana small business and consumers; providing a method of enforcement and penalties and repealing sections 30-14-201 through 30-14-224, MCA, and providing an immediate effective date.

Comment

The Department of Justice feels that the passage of this act should allow the state of Montana substantially greater recoveries in federal district court cases in which the state becomes a party.

Fiscal Impact

This act is intended to replace one of the three state acts the Attorney General is presently required to enforce. Therefore, the passage of this bill should not result in any additional expenditures above current level.



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 1-29-81