

House Bill 590

In The House

January 31, 1981	Introduced and referred to Committee on Judiciary.
February 3, 1981	Fiscal note requested.
February 10, 1981	Fiscal note returned.
February 16, 1981	Committee recommend bill do not pass.

HOUSE BILL NO. 590  
INTRODUCED BY Walton Love Brown

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE MONTANA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION ACT OF 1973; GIVING THE ATTORNEY GENERAL JOINT AUTHORITY UNDER THE ACT; PROVIDING COSTS AND FEES TO THE PREVAILING PARTY; CHANGING TIME FOR NOTICE; INCREASING PENALTIES; AND AMENDING SECTIONS 30-14-101, 30-14-102, 30-14-104, 30-14-111, 30-14-121, 30-14-133, 30-14-134, AND 30-14-142, MCA."

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

13 Section 1. Section 30-14-101, MCA, is amended to read:  
14 "30-14-101. Short title. This part shall be cited as  
15 the "Montana ~~Unfair-Trade-Practices-and~~ Consumer Protection  
16 Act ~~of-1973~~."

17 Section 2. Section 30-14-102, MCA, is amended to read:  
18 "30-14-102. Definitions. As used in this part, the  
19 following definitions apply:

20 (1) "Department" means the department of business  
21 regulation created in 2-15-1801 and the department of  
22 justice under the attorney general created in 2-15-2001.

23 (2) "Documentary material" means the original or a  
24 copy of any book, record, report, memorandum, paper,  
25 communication, tabulation, map, chart, photograph,

1 mechanical transcription, or other tangible document or  
2 recording, wherever situate.

3           (3) "Examination" of documentary material includes the  
4   inspection, study, or copying of such material and the  
5   taking of testimony under oath or acknowledgment in respect  
6   to any such documentary material or copy thereof.

7           (4) "National advertising" means any advertising run  
8 simultaneously in five or more states and over which a local  
9 advertiser has no control.

10           (5) "Person" means natural persons, corporations,  
11 trusts, partnerships, Incorporated or unincorporated  
12 associations, and any other legal entity.

13           (6) "Trade" and "commerce" mean the advertising,  
14 offering for sale, sale, or distribution of any services and  
15 any property, tangible or intangible, real, personal, or  
16 mixed, and any other article, commodity, or thing of value,  
17 wherever situate, and shall include any trade or commerce  
18 directly or indirectly affecting the people of this state."

19 Section 3. Section 30-14-104, MCA, is amended to read:  
20 "30-14-104. Federal interpretation -- rules  
21 determining unfair competition and deception. (1) It is the  
22 intent of the legislature that in construing 30-14-103 due  
23 consideration and weight shall be given to the  
24 interpretations of the federal trade commission and the  
25 federal courts relating to section 5(a)(1) of the Federal

1 Trade Commission Act (15 U.S.C., 45(a)(1)), as amended.

2 (2) ~~The department attorney general and the director~~  
3 ~~of the department of business regulation~~ may make rules  
4 interpreting the provisions of 30-14-103. Such rules shall  
5 not be inconsistent with the rules, regulations, and  
6 decisions of the federal trade commission and the federal  
7 courts in interpreting the provisions of section 5(a)(1) of  
8 the Federal Trade Commission Act (15 U.S.C., 45(a)(1)), as  
9 amended."

10 Section 4. Section 30-14-111, MCA, is amended to read:

11 "30-14-111. Department to restrain unlawful acts. (1)  
12 Whenever the department has reason to believe that any  
13 person is using, has used, or is about to knowingly use any  
14 method, act, or practice declared by 30-14-103 to be  
15 unlawful and that proceeding would be in the public  
16 interest, the department may bring an action in the name of  
17 the state against such person to restrain by temporary or  
18 permanent injunction or temporary restraining order the use  
19 of such method, act, or practice, upon the giving of  
20 appropriate notice to that person.

21 (2) The notice must state generally the relief sought  
22 and be served in accordance with 30-14-115 at least 20 days  
23 before the hearing of the action where the relief to be  
24 sought is a temporary or permanent injunction. The notice  
25 for a temporary restraining order is governed by 27-19-315.

1 (3) The action may be brought in the district court in  
2 which such person resides or has his principal place of  
3 business ~~or with consent of the parties may be brought~~ in  
4 the district court of Lewis and Clark County.

5 (4) The courts are authorized to issue temporary or  
6 permanent injunctions or temporary restraining orders to  
7 restrain and prevent violations of this part, and such  
8 injunctions shall be issued without bond."

9 Section 5. Section 30-14-121, MCA, is amended to read:

10 "30-14-121. Duties of county attorney ~~and attorney~~  
11 ~~general~~. It is the duty of the county attorney to lend to  
12 the department such assistance as the department may request  
13 in the commencement and prosecution of actions pursuant to  
14 this part. The county attorney ~~or the attorney general~~ on  
15 request of the department ~~or a county attorney~~, may initiate  
16 all procedures and prosecute actions in the same manner as  
17 provided for the department. If an action is prosecuted by  
18 the county attorney ~~alone or the attorney general on request~~  
19 ~~of the county attorney~~, the person prosecuting shall notify  
20 the department as to the nature of the action and the  
21 parties to the action within ~~30~~ 10 days of the filing of the  
22 action. The county attorney ~~or attorney general~~ shall make  
23 a ~~written~~ report thereon to the department within ~~30~~ 10 days  
24 of the final disposition of the matter."

25 Section 6. Section 30-14-133, MCA, is amended to read:

1       "30-14-133. Damages -- notice to public agencies --  
 2 attorney fees -- prior judgment as evidence. (1) Any person  
 3 who purchases or leases goods or services ~~primarily for~~  
 4 ~~personally-family-or-household-purposes~~ and thereby suffers  
 5 any ascertainable loss of money or property, real or  
 6 personal, as a result of the use or employment by another  
 7 person of a method, act, or practice declared unlawful by  
 8 30-14-103 may bring an ~~individual-but-not-a-class~~ action  
 9 under the rules of civil procedure in the district court of  
 10 the county in which the seller or lessor resides or has his  
 11 principal place of business or is doing business to recover  
 12 actual damages or \$200, whichever is greater. The court may,  
 13 in its discretion, award up to three times the actual  
 14 damages sustained and may provide such equitable relief as  
 15 it considers necessary or proper.

16       (2) Upon commencement of any action brought under  
 17 subsection (1) of this section, the ~~clerk-of-court~~  
 18 ~~complainant~~ shall mail a copy of the complaint or initial  
 19 pleading to the department and the appropriate county  
 20 attorney and, upon entry of any judgment or decree in the  
 21 action, ~~the clerk of court~~ shall mail a copy of such  
 22 judgment or decree to the department and the appropriate  
 23 county attorney.

24       (3) In any action brought under this section, the  
 25 court may award the prevailing party reasonable attorney

1 fees ~~and costs~~ incurred in prosecuting or defending the  
 2 action.

3       (4) Any permanent injunction, judgment, or order of  
 4 the court made under 30-14-111 shall be prima facie evidence  
 5 in an action brought under this section that the respondent  
 6 used or employed a method, act, or practice declared  
 7 unlawful by 30-14-103."

8       Section 7. Section 30-14-134, MCA, is amended to read:

9       "30-14-134. Enforcement of department orders --  
 10 contempt. (1) If any person fails or refuses to file any  
 11 statement or report or obey any subpoena or investigative  
 12 demand issued by the department, the department may, after  
 13 notice, apply to the district court and, after hearing  
 14 thereon, request an order:

15       ~~(1)(a)~~ granting injunctive relief to restrain the  
 16 person from engaging in the advertising or sale of any  
 17 merchandise or the conduct of any trade or commerce that is  
 18 involved in the alleged or suspected violation;

19       ~~(2)(b)~~ vacating, annulling, or suspending the  
 20 corporate charter of a corporation created by or under the  
 21 laws of this state; revoking or suspending the certificate  
 22 of authority to do business in this state of a foreign  
 23 corporation; or revoking or suspending any other licenses,  
 24 permits, or certificates issued pursuant to law to such  
 25 person which are used to further the allegedly unlawful

1 practice; and

2 ~~(3)(c)~~ granting such other relief as may be required  
3 until the person files the statement or report or obeys the  
4 subpoena or investigative demand. Any disobedience of any  
5 final order entered under this section by any court shall be  
6 punished as a contempt thereof.

7 ~~(2) In any action brought under this section, the~~  
8 ~~court may award the prevailing party reasonable attorney~~  
9 ~~fees and costs incurred in prosecuting or defending the~~  
10 ~~action."~~

11 Section 8. Section 30-14-142, MCA, is amended to read:

12 "30-14-142. Penalties. (1) A person who violates the  
13 terms of an injunction or temporary restraining order issued  
14 under 30-14-111 shall forfeit and pay to the state a civil  
15 penalty of not more than \$10,000 per violation. For the  
16 purposes of this section, the district court issuing an  
17 injunction or temporary restraining order retains  
18 jurisdiction and the cause shall be continued, and in such  
19 cases the department acting in the name of the state may  
20 petition for recovery of civil penalties.

21 (2) In an action brought under 30-14-111, if the court  
22 finds that a person is willfully using or has willfully used  
23 a method, act, or practice declared unlawful by 30-14-103,  
24 the department, upon petition to the court, may recover on  
25 behalf of the state a civil penalty of not more than \$500

1 ~~\$10,000~~ per violation.

2 (3) A person who engages in a fraudulent course of  
3 conduct declared unlawful by 30-14-103 shall upon conviction  
4 be fined not more than ~~\$2,000~~ \$10,000, imprisoned for not  
5 more than 1 year, or both, in the discretion of the court.  
6 Nothing in this subsection limits any other provision of  
7 this part.

8 (4) For purposes of this section, a willful violation  
9 occurs when the party committing the violation knew or  
10 should have known that his conduct was a violation of  
11 30-14-103."

-End-

STATE OF MONTANA

REQUEST NO. 293-81

FISCAL NOTE

Form BD-15

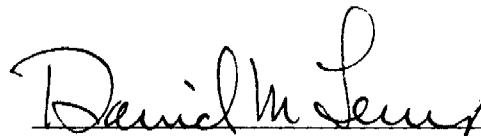
In compliance with a written request received Feb 5, 19 81, there is hereby submitted a Fiscal Note for HB 590 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA).

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.

The purpose of this bill is to give the Attorney General joint enforcement authority with the Department of Business Regulation under the Montana "Little FTC" Act, the Montana Unfair Trade Practices and Consumer Protection Act of 1973, so the Attorney General will be able to use this act more effectively in antitrust litigation.

The Attorney General presently has duties under Section 30-14-121, MCA, of the Act to prosecute cases upon the Department of Business Regulation's request. That duty is eliminated by this bill and will constitute a cost saving of an unknown amount.

The bill adds a provision for the payment of attorney fees and costs to a prevailing party. It is possible that the State would be required to pay attorney fees and costs to a prevailing party if litigation under the act were unsuccessful. Estimated annual cost that might then be incurred is five thousand dollars (\$5,000). However, the State should prevail in at least a like number of actions, so any lost here should be offset by awards of costs and attorney fees to the State from litigation in which it prevails.



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-9-81