

HOUSE BILL NO. 783

Introduced: 02/14/82

Referred to Committee on Business & Industry: 02/14/83

Hearing: 2/17/83

Died in Committee

1 House BILL NO. 783
2 INTRODUCED BY Adly
3 BY REQUEST OF THE DEPARTMENT OF JUSTICE
4
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 FOR THE PROTECTION OF MONTANA BUSINESSES AND
8 CONSUMERS BY PROHIBITING MONOPOLISTIC AND RELATED PRACTICES
9 AND COMBINATIONS AND CONSPIRACIES IN RESTRAINT OF TRADE;
10 PROVIDING A METHOD OF ENFORCEMENT AND PENALTIES; AMENDING
11 SECTIONS 30-14-205 AND 30-14-222, MCA; AND PROVIDING AN
12 IMMEDIATE EFFECTIVE DATE."
13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
15 NEW SECTION. Section 1. Short title. [Sections 1
16 through 16] may be cited as the "Montana Business and
17 Consumer Protection Act".
18 NEW SECTION. Section 2. Purpose. The purpose of
19 [sections 1 through 16] is to promote free and open
20 competition in the interest of the general welfare and
21 economy of this state by prohibiting monopolistic and
22 related practices and combinations and conspiracies in
23 restraint of trade and providing a method of enforcement and
24 penalties.
25 NEW SECTION. Section 3. Definitions. As used in

1 [sections 1 through 16], unless the context requires
2 otherwise, the following definitions apply:
3 (1) "Commodity" means any article of merchandise,
4 trade, or commerce and any other kind of real or personal
5 property.
6 (2) "Person" means an individual, firm,
7 proprietorship, joint-stock corporation, corporation,
8 business trust, partnership, association, or other legal
9 entity.
10 (3) "Service" includes any activity that is performed
11 in whole or in part for the purpose of financial gain,
12 including but not limited to personal service, professional
13 service, or rental, leasing, or licensing for use.
14 (4) "Trade" or "commerce" means all economic
15 activities involving or relating to any commodity, service,
16 or business activity.
17 NEW SECTION. Section 4. Contract, combination, or
18 conspiracy to restrain trade. Every contract, combination,
19 or conspiracy between two or more persons in unreasonable
20 restraint of trade or commerce, any part of which is within
21 this state, is unlawful.
22 NEW SECTION. Section 5. Establishment, maintenance,
23 or use of monopoly. (1) The establishment, maintenance, or
24 use of a monopoly, an attempt to establish a monopoly, or
25 conspiracy with any other person to monopolize trade or

1 commerce, any part of which is within this state, by any
2 person, with the effect of unreasonably limiting or
3 excluding competition or controlling, fixing, or maintaining
4 prices, is unlawful.

5 (2) Proof of a violation of this section may be by
6 means of statistics, economic analysis, or circumstantial
7 evidence as provided for in 30-14-210 and 30-14-211,
8 including a cost survey.

9 **NEW_SECTION.** Section 6. Exemption. Agricultural
10 cooperatives, rural electric and telephone cooperatives,
11 labor unions, and public utilities and common carriers
12 defined in and regulated under Title 69, while carrying out
13 their necessary legitimate objectives, are exempt from the
14 provisions of [sections 1 through 16].

15 **NEW_SECTION.** Section 7. Venue. An action for
16 violation of [sections 1 through 16] must be brought in
17 district court. If brought by the attorney general, the
18 action may be brought in the first judicial district or
19 other district with proper venue, subject to the right of
20 the defendant to change of venue as provided by law.

21 **NEW_SECTION.** Section 8. Civil penalty and injunctive
22 enforcement by state. The attorney general or a county
23 attorney may bring an action in the name of the state for a
24 violation of [sections 1 through 16] seeking appropriate
25 injunctive or other equitable relief and civil penalties.

1 The court shall assess for the benefit of the state a civil
2 penalty of not more than \$5,000 for each violation of
3 [sections 1 through 16].

4 **NEW_SECTION.** Section 9. Criminal penalties. The
5 attorney general or county attorney may bring a criminal
6 action for violation of any of the provisions of [sections 1
7 through 16]. A person, whether acting as principal, agent,
8 attorney, officer, director, or employee, who knowingly and
9 purposely violates any of the provisions of [sections 1
10 through 16] is punishable as provided in 30-14-224(1).

11 **NEW_SECTION.** Section 10. Injunctive relief and
12 damages. (1) The state or any political subdivision thereof
13 or any person injured or threatened with injury from a
14 violation of [sections 1 through 16], or the attorney
15 general on his behalf, may bring an action for appropriate
16 injunctive relief.

17 (2) The state or any political subdivision thereof or
18 any person injured, directly or indirectly, by any violation
19 of [sections 1 through 16] may bring an action for and
20 recover triple the amount of actual damages sustained,
21 together with reasonable attorney fees and costs.

22 **NEW_SECTION.** Section 11. Civil action by attorney
23 general as parens patriae. (1) The attorney general may
24 bring a civil action for and recover treble damages, costs,
25 and attorney fees in the name of the people of the state of

1 Montana as parens patriae on behalf of persons residing or
2 doing business in the state for any damages sustained by
3 them or to their property by reason of any violation of
4 [sections 1 through 16].

5 (2) The court shall exclude from the amount of damages
6 awarded in such action any damages that duplicate damages
7 previously awarded for the same injury.

8 ~~NEW_SECTION.~~ Section 12. Judgment in favor of the
9 state or conviction as prima facie evidence. A final
10 judgment, decree, or conviction determining that a person
11 has violated [sections 1 through 16] in an action brought by
12 the state for violation of [section 4 or 5], other than a
13 consent judgment or decree entered before trial has
14 commenced, is prima facie evidence against that person in
15 any other action against him under [section 10 or 11].

16 ~~NEW_SECTION.~~ Section 13. Consent judgment or decree.
17 The attorney general or county attorney may enter into an
18 agreement for a consent judgment or decree with a defendant
19 in any civil action brought under [sections 1 through 16].
20 Such agreement must be in writing and must be filed with the
21 district court in which the action is pending. The court
22 may accept, reject, or modify the agreement and enter its
23 judgment accordingly.

24 ~~NEW_SECTION.~~ Section 14. Limitation -- when action
25 barred. (1) An action under [section 8] to recover a civil

1 penalty is barred if not commenced within 4 years after the
2 claim for relief accrued.

3 (2) An action under [section 10] to recover damages is
4 barred if not commenced within 4 years after the claim for
5 relief accrued or within 1 year after the conclusion of any
6 timely action brought by the state under [sections 9 or 11]
7 based in whole or in part on any matter complained of in the
8 action for damages, whichever is later.

9 ~~NEW_SECTION.~~ Section 15. Remedies cumulative. The
10 remedies provided in [sections 1 through 11] are cumulative.

11 ~~NEW_SECTION.~~ Section 16. Uniformity. [Sections 1
12 through 16] shall be applied and construed to effectuate
13 [their] general purpose to make uniform the law with respect
14 to the subject of [sections 1 through 16] among those states
15 that enact it or similar acts. It is the intent of the
16 legislature that in construing [sections 1 through 16], due
17 consideration and weight be given to court interpretations
18 of comparable antitrust statutes of other states. Per se
19 violations of the federal antitrust laws shall be considered
20 to be unreasonable acts under [sections 4 and 5].

21 Section 17. Section 30-14-205, MCA, is amended to
22 read:

23 "30-14-205. Unlawful restraint of trade. It is
24 unlawful for a person or group of persons, directly or
25 indirectly

1 {1}--to--enter--an--agreement--for--the--purpose--of--fixing
 2 the--price--or--regulating--the--production--of--an--article--of
 3 commerce;
 4 {2}--for--the--purpose--of--creating--or--carrying--out--any
 5 restriction--in--trade;
 6 {a}--limit--production;
 7 {b}--increase--or--reduce--the--price--of--merchandise--or
 8 commodities;
 9 {c}--prevent--competition--in--the--distribution--or--sale--of
 10 merchandise--or--commodities;
 11 {d}--fix--a--standard--or--figure--whereby--the--price--of--an
 12 article--of--commerce--intended--for--sale--use--or--consumption
 13 will--be--in--any--way--controlled;
 14 {e}--agree--to--add--to--a--bid--for--any--contract--an--amount
 15 fixed--by--percentage--or--otherwise--for--the--purpose--of--making
 16 a--refund--or--sharing--costs--of--bidding--with--any--other--bidders;
 17 {f}--return--a--part--of--any--amount--added--to--a--bid--by
 18 collusive--agreement--among--bidders--to--any--person;
 19 {g}--create--a--monopoly--in--the--manufacture--sale--or
 20 transportation--of--an--article--of--commerce;
 21 {h}--enter--into--an--agreement--which--binds--any--person--not
 22 to--manufacture--sell--or--transport--an--article--of--commerce
 23 below--a--common--standard--or--figure--or--which--keeps--such
 24 article--or--transportation--at--a--fixed--or--graduated--figure--or
 25 by--which--the--price--of--such--article--is--settled--so--as--to

1 preclude--unrestricted--competition--to--violate--any--provision
 2 of--[section--4--or--5]."
 3 Section 18. Section 30-14-222, MCA, is amended to
 4 read:
 5 "30-14-222. Injunctions -- damages -- production of
 6 evidence. {1} Any person, if injured thereby, or the
 7 attorney general may maintain an action to enjoin a
 8 continuance of an act in violation of 30-14-205 through
 9 30-14-218 and for the recovery of damages as provided in
 10 [section--10]. If--in--such--action--the--court--finds--that--the
 11 defendant--is--violating--or--has--violated--any--of--the--provisions
 12 of--30-14-205--through--30-14-218--it--shall--enjoin--the
 13 defendant--from--a--continuance--thereof--it--is--not--necessary--to
 14 allege--or--prove--actual--damages--to--the--plaintiffs.
 15 {2}--In--addition--to--such--injunctive--relief--the
 16 plaintiff--is--entitled--to--recover--from--the--defendant--three
 17 times--the--amount--of--actual--damages--sustained.
 18 {3}--A--defendant--in--an--action--brought--under--this
 19 section--may--be--required--to--testify--under--the--Montana--Rules
 20 of--Civil--Procedure--in--addition--the--books--and--records--of--any
 21 such--defendant--may--be--brought--into--court--and--introduced--into
 22 evidence--by--reference--No--information--so--obtained--may--be
 23 used--against--the--defendant--as--a--basis--for--a--misdemeanor
 24 prosecution--under--30-14-205--through--30-14-218--and
 25 30-14-224."

1 NEW SECTION. Section 19. Severability. If a part of
2 this act is invalid, all valid parts that are severable from
3 the invalid part remain in effect. If a part of this act is
4 invalid in one or more of its applications, the part remains
5 in effect in all valid applications that are severable from
6 the invalid applications.

7 NEW SECTION. Section 20. Effective date. This act is
8 effective on passage and approval.

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