

HOUSE BILL NO. 437

INTRODUCED BY SWYSGOOD, WEEDING
BY REQUEST OF THE STATE AUDITOR

IN THE HOUSE

JANUARY 24, 1987 INTRODUCED AND REFERRED TO COMMITTEE
ON BUSINESS & LABOR.

FEBRUARY 6, 1987 COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 7, 1987 PRINTING REPORT.

FEBRUARY 10, 1987 SECOND READING, DO PASS.

FEBRUARY 11, 1987 ENGROSSING REPORT.

 THIRD READING, PASSED.
 AYES, 94; NOES, 2.

 TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 12, 1987 INTRODUCED AND REFERRED TO COMMITTEE
ON BUSINESS & INDUSTRY.

MARCH 25, 1987 COMMITTEE RECOMMEND BILL BE
CONCURRED IN AS AMENDED. REPORT
ADOPTED.

MARCH 28, 1987 SECOND READING, CONCURRED IN.

MARCH 30, 1987 THIRD READING, CONCURRED IN.
AYES, 49; NOES, 1.

 RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 7, 1987 RECEIVED FROM SENATE.

 SECOND READING, AMENDMENTS
CONCURRED IN.

APRIL 8, 1987

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

1 House BILL NO. 437
 2 INTRODUCED BY Shirley Wood
 3 BY REQUEST OF THE STATE AUDITOR

4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO CREATE CEASE AND
 6 DESIST AUTHORITY FOR THE COMMISSIONER OF INSURANCE."

7
 8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9 Section 1. Injunctions and other remedies. (1)
 10 Whenever it appears to the commissioner that a person has
 11 engaged in or is about to engage in an act or practice
 12 constituting a violation of a provision of this code or any
 13 rule or order issued under this code, he may:

14 (a) issue an order directing the person to cease and
 15 desist from continuing the act or practice after reasonable
 16 notice and opportunity for a hearing. Pending the hearing,
 17 the commissioner may issue a temporary order that must
 18 remain in effect until 10 days after the hearing is held.
 19 The temporary order becomes final if the person to whom
 20 notice is addressed does not request a hearing within 15
 21 days after receipt of the notice.

22 (b) without the issuance of a cease and desist order,
 23 bring an action in a court of competent jurisdiction to
 24 enjoin such acts or practices and to enforce compliance with
 25 this code or any rule or order issued under this code. Upon

1 a proper showing, a permanent or temporary injunction,
 2 restraining order, or writ of mandamus must be granted and a
 3 receiver or conservator may be appointed for the defendant
 4 or the defendant's assets. The commissioner may not be
 5 required to post a bond. If the commissioner prevails, he
 6 is entitled to reasonable attorney fees as fixed by the
 7 court.

8 (2) A final judgment or decree determining that a
 9 person has violated 33-2-101 or 33-17-201 in an action
 10 brought by the commissioner for such violation, other than a
 11 consent judgment or decree entered before trial, is prima
 12 facie evidence against that person in an action brought for
 13 violation of 33-2-101 or 33-17-201.

14 (3) The commissioner may, after giving reasonable
 15 notice and an opportunity for a hearing under this section,
 16 impose a fine not to exceed \$5,000 per violation upon a
 17 person found to have engaged in an act or practice
 18 constituting a violation of a provision of this code or any
 19 rule or order issued under this code. The fine is in
 20 addition to all other penalties imposed by the laws of this
 21 state and must be collected by the commissioner in the name
 22 of the state of Montana and deposited in the general fund.
 23 Imposition of a fine under this subsection is an order from
 24 which an appeal may be taken pursuant to 33-1-711. If a
 25 person fails to pay a fine referred to in this subsection,

1 the amount of the fine is a lien upon all of the assets and
2 property of that person in this state and may be recovered
3 by suit by the commissioner and deposited in the general
4 fund. Failure of the person to pay a fine also constitutes
5 a forfeiture of his right to do business in this state under
6 this code.

7 Section 2. Extension of authority. Any existing
8 authority of the commissioner of insurance to make rules on
9 the subject of the provisions of this act is extended to the
10 provisions of this act.

11 Section 3. Codification instruction. Section 1 is
12 intended to be codified as an integral part of Title 33,
13 chapter 1, part 3, and the provisions of Title 33, chapter
14 1, part 3, apply to section 1.

-End-

APPROVED BY COMM. ON
BUSINESS AND LABOR

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(a) issue an order directing the person to cease and
desist from continuing the act or practice after reasonable
notice and opportunity for a hearing; ~~Pending the hearing,~~
~~the commissioner may;~~

(B) issue a temporary CEASE AND DESIST order that must
remain in effect until 10 days after the hearing is held.
~~The temporary order becomes final if the person to whom~~
~~notice is addressed does not request a hearing within 15~~
~~days after receipt of the notice.~~ IF THE COMMISSIONER ISSUES
A TEMPORARY CEASE AND DESIST ORDER, THE RESPONDENT HAS 15
DAYS FROM RECEIPT OF THE ORDER TO MAKE A WRITTEN REQUEST FOR
A HEARING ON THE ALLEGATIONS CONTAINED IN THE ORDER. THE

HEARING MUST BE HELD WITHIN 20 DAYS OF THE COMMISSIONER'S
RECEIPT OF THE HEARING REQUEST UNLESS THE TIME IS EXTENDED
BY AGREEMENT OF THE PARTIES. IF THE RESPONDENT DOES NOT
REQUEST A HEARING WITHIN 15 DAYS OF RECEIPT OF THE ORDER AND
THE COMMISSIONER DOES NOT ORDER A HEARING, THE ORDER BECOMES
FINAL.

(b)(C) without the issuance of a cease and desist
order, bring an action in a court of competent jurisdiction
to enjoin such acts or practices and to enforce compliance
with this code or any rule or order issued under this code.
Upon a proper showing, a permanent or temporary injunction,
restraining order, or writ of mandamus must be granted and a
receiver or conservator may be appointed for the defendant
or the defendant's assets. The commissioner may not be
required to post a bond. ~~if the commissioner prevails, he is~~
~~entitled to reasonable attorney fees as fixed by the court.~~

(2) ~~A final judgment or decree determining that a~~
~~person has violated 33-2-101 or 33-17-201 in an action~~
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~~facie evidence against that person in an action brought for~~
~~violation of 33-2-101 or 33-17-201.~~ IF A HEARING IS HELD ON
A CEASE AND DESIST ORDER, BOTH PARTIES HAVE 20 DAYS FROM THE
DATE THE HEARING IS CONCLUDED OR FROM THE DATE A TRANSCRIPT
OF THE HEARING IS FILED IF ONE IS REQUESTED, TO SUBMIT



1 PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDERS, AND
 2 SUPPORTING BRIEFS TO THE HEARING EXAMINER. THE PARTIES HAVE
 3 AN ADDITIONAL 10 DAYS WITHIN WHICH TO SUBMIT COMMENTS ON THE
 4 OPPOSING PARTY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS OF
 5 LAW, ORDER, AND BRIEFS. A FINAL ORDER MUST ISSUE WITHIN 30
 6 DAYS OF THE SUBMISSION OF THE COMMENTS.

7 (3) The commissioner may, after giving reasonable
 8 notice and an opportunity for a hearing under this section,
 9 impose a fine not to exceed \$5,000 per violation upon a
 10 person found to have engaged in an act or practice
 11 constituting a violation of a provision of this code or any
 12 rule or order issued under this code. The fine is in
 13 addition to all other penalties imposed by the laws of this
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 2 the subject of the provisions of this act is extended to the
 3 provisions of this act.

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 6 chapter 1, part 3, and the provisions of Title 33, chapter
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16 notice and opportunity for a hearing; ~~Pending the hearing,~~
17 ~~the commissioner may;~~18 (B) issue a temporary CEASE AND DESIST order that must
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5 THE COMMISSIONER DOES NOT ORDER A HEARING, THE ORDER BECOMES
6 FINAL.7 (b)(C) without the issuance of a cease and desist
8 order, bring an action in a court of competent jurisdiction
9 to enjoin such acts or practices and to enforce compliance
10 with this code or any rule or order issued under this code.
11 Upon a proper showing, a permanent or temporary injunction,
12 restraining order, or writ of mandamus must be granted and a
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14 THIS TITLE; AND PART 4 OF CHAPTER 25 OF THIS TITLE; or any
15 rule or order issued under this code, he may:16 (a) issue an order directing the person to cease and
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STANDING COMMITTEE REPORT

SENATE

MARCH 23, 19 87

MR. PRESIDENT

We, your committee on BUSINESS AND INDUSTRY

having had under consideration HOUSE BILL No. 437

THIRD reading copy (BLUE color)

SWYSGOOD (WEEDING)

AUTHORITY FOR CEASE AND DESIST ORDERS BY INSURANCE COMMISSIONER

Respectfully report as follows: That HOUSE BILL No. 437

be amended as follows:

- 1. Page 1, line 12. Strike: "a provision of this code" Insert: "33-1-501; 33-14-201; chapters 2, 16 through 18, and 30 of this title; and part 4 of chapter 25 of this title;"

AND AS AMENDED, BE CONCURRED IN

MC

XXXXXX XXXXXX

Allen C. Kolstad SENATOR ALLEN C. KOLSTAD, Chairman.

3-24-87 2:55 JLP