

HOUSE BUSINESS AND INDUSTRY

March 5, 1981

SUMMARY OF BILLS TO BE HEARD TODAY -

SENATE BILL 60 -

Introduced by Senator Elliott by request of the Workers Compensation Advisory Council, brings fees and charges for medical, chiropractic and paramedical services under regulation by the Division of Workers' Compensation. The allowable charge is based on the 90th percentile of usual and customary charges of the medical specialty involved based upon the most recent six-months' data.

SENATE BILL 66 -

Introduced by Senator Hazelbaker by request of the Department of Revenue, allows any person who uses diesel fuel in a highway vehicle to obtain a temporary 30-day operating permit by posting a \$100 cash compliance bond on each vehicle at any weigh station or with a person authorized by the Department of Highways to issue the compliance bond. The \$100 bond may be refunded after filing of the bond required in 15-70-304.

SENATE BILL 218 -

Introduced by Senator S. Brown by request of the Legislative Audit Committee removes the authority of the Board of Medical Examiners, the Board of Nursing, the Board of Barbers, and the Board of Water Well Contractors to approve of staff persons hired by the Department of Professional and Occupational Licensing.

SENATE BILL 365 -

Introduced by Senators Hazelbaker and Norman, provides that after January 1, 1983, code imprints will be required on certain drugs for identification. The bill deletes the Honecopathic Pharmacopoeia from the source of "established names" of drugs, leaving only the United States Pharmacopoeia as the official reference. The Board of Pharmacists is authorized to grant exemptions to the code imprint rule when size, physical characteristics or other reasons render an imprint impossible.

SENATE BILL 299 -

Introduced by Senator Ryan by request of the Department of Business Regulation, revises the law to give the Department of Business Regulation more power in regulating the operations in Montana of out-of-state post secondary educational institutions. The bill strikes the word "proprietary" to broaden the scope of the act's coverage to all postsecondary institutions and eliminates the exemption granted in current law to institutions maintained at public expense by the laws of another state or of the U.S. government. The bill deletes the Board of Public Education from the agencies that may grant recognition to qualify for exemption. The Board of Regents will be the only state agency having that power.

HOUSE BUSINESS AND INDUSTRY COMMITTEE

Rep. W. J. Fabrega, Chairman, called the B&I Committee to order at 8:00 a.m., March 5, 1981, in room 129 of the Capitol Building, Helena. All members were present. Bills to be heard were SB 60, SB 66, SB 218, SB 365, SB 299.

SENATE BILL 60 -

SB 60 was introduced by Senator Elliott by request of the Workers Compensation Advisory Council and will allow the Division of Workers' Compensation to regulate allowable charges based on the 90th percentile of usual and customary charges of the medical specialty involved based upon the most recent six months data as determined in January and July of each year.

The Workers Compensation Division has come under attack by the Montana Medical Association and other similar groups because of no statute allowing regulation of charges for similar medical services. This bill will allow the Workers Compensation Division to establish reasonable fees similar to what was had several years ago. There was a problem with doctors in certain areas of the state charging a fee for a service which, to them, seemed reasonable and appropriate, and some other parts of the state it was three times what was deemed reasonable and proper, and this was creating a drain on the Workers Compensation fund.

BUD PILLEN, Workers Compensation Division, Helena, State Compensation Insurance Fund Bureau, said SB 60 was approved by the Workers' Compensation Council composed of Labor and Industry people. It was revised in the Senate and this revision was worked out by the Montana Medical Association and the Division and the revision is very appropriate. They approve and support it. The problem from their standpoint is to level fees out to a reasonable amount. They have situations where a very competent doctor is charging \$2,000 and another doctor is charging \$5,000 for the same service, and that is one of the things they want to level off.

KEITH OLSON, Executive Director of the Montana Logging Association, supports SB 60 because of the high rates they have to pay for workers' compensation coverage. He feels it is an endeavor to see that workers' compensation rates do not increase simply because of certain sectors.

JIM MURRAY, Executive Director of the AFL-CIO, supports this bill.

CHAD SMITH, Montana Hospital Association, supports SB 60.

OPPONENTS: None

QUESTIONS -

Rep. Ellerd asked if this meant that the fees could be set, to which question Senator Elliott answered that a floor for units would be set; and it has general support from the medical profession. This is not an attempt to set fees. It gives the division authority to take the highest and lowest charges and take the 90 percentile of those fees and the medical profession accepts this.

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Rep. Kitselman asked why the fees were removed in the first place. Mr. Elliott said he didn't know the reason for removing them historically, but the reason the courts refused was because of no statutes making provision for it.

Prior to about 1975 the Montana Medical Association and the Workers' Compensation Division worked very closely on this through committees, and they arrived at reasonable medical fees that were acceptable for all parties. The FCC stepped in and said they couldn't meet and set these fees - the authority now has to come from the agency. The medical profession cannot set fees itself. This will allow the division to go on as they had before when it worked out very well.

The division keeps a record by computer of the highest fees charged by the doctors, and keeps a record of the lowest fees, and at the end of six months, they make a computer run and take the 90 percentile.

PAUL KELLER, American Insurance Association, said under the Sherman and Clayton anti-trust Act, states are exempted from them. If the state says that certain things can be done, the courts will then say you can. It is necessary to have a state statute to get around the Sherman and Clayton Act. They are negotiating with the doctors in the first place and setting fees so that everyone will know what the charges are and get some order out of chaos. If it isn't a state statute, you are violating the anti-trust laws.

Rep. Schultz asked what the difference is between Blue Shield and this setting of fees. He was told Blue Shield probably pays a lessor fee, but they have other benefits. They are not interested in lowering doctors' fees, but are interested in having an average, usual and customary fee.

Rep. Fabrega asked why hospital services are excluded. Excluding hospital fees was done because they have no problems with hospital costs. Mr. Pillen explained hospitals are now voluntarily controlled by the Montana Hospital Association of which Workers' Compensation, Blue Shield, and others are members of the board of directors of the rate review board.

Rep. Fabrega asked if a fee schedule based on the 90 percentile for different procedures would be published. Mr. Pillen said that is true. It will be a fee schedule setting out unit value applied to a certain procedure established by the medical profession. A conversion factor that is applied to this unit value is where the 90 percentile is used, which would result in the ultimate fee. If a fee is set and a doctor disagrees, he cannot charge a claimant the difference between his charge and the set fee. The doctors agree to this. Neither employer or employee get embroiled in this - it is simply between the doctor and the Workers' Compensation. Establishment of a fee schedule is necessary to figure fees. It has about a 25% affect on fees.

Senator Elliott closed saying this bill has been pretty well discussed.

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SENATE BILL 218 -

SENATOR MATT HIMSL, District #9, Kalispell, stood in for Senator Steve Brown who introduced SB 218 by request of the Legislative Audit Committee. SB 218 gives authority to the administrator of the Department of Professional and Occupational Licensing to hire staff.

OPPONENTS -

JERRY LEONDORF, Montana Medical Association, Helena, explained SB 218. Section 1 sets out powers and duties of the board. Section 2 deals with medical examiners. Currently the board actually recommends and the department hires those selected. The Association expressed concern about the removal of this particular provision because in investigating doctors have to hire someone who can read medical records. The policy now is not only to utilize a doctor to investigate, but to use one similar in location and type of work. The relations between the department director and the board are excellent, but they want to be sure if there is a change made it will be for a really good reason.

QUESTIONS -

Rep. Schultz asked Senator Himsl if these groups have input on who is going to be hired or is it just done by the department head. Senator Himsl said a number of these associations used to recommend who gets appointed to the board. The Association does not have the right to submit names for the governor's approval. If you were the administrator, you would contact that board with a request for a recommendation, but would not be limited to it. Professional persons who understood specific areas were hired.

Page 3, lines 21-25 delete the board's authority to recommend barbershop, school or college inspections - it will be up to the department.

Senator Himsl closed saying the whole purpose of this is to bring about uniformity and to make the administrator have a stronger position. The board's function is half way in between the department and themselves. You would like to be able to pick your own staff, and you should give this man authority to run a successful business. He hoped the committee would support the Legislative Audit Committee's recommendation.

SENATE BILL 66 -

SB 66 was introduced by SENATOR FRANK HAZELBAKER, District #41, Beaverhead County, by request of the Department of Revenue. It codifies the practice that the department has done by rule, but it was felt a stronger statutory position would be better. SB 66 provides for a 30-day operating permit for special fuel users by the payment of \$100 cash bond that is used until the paper work is done to get a \$500 surety bond. This is requested because

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people coming through the state on an infrequent basis would rather post a \$100 if they were moving several outfits and were not domiciled in the state.

NORRIS NICHOLS, Administrator of the Motor Vehicle Tax Division, said SB 66 is more or less a convenience for our truckers passing through the state and this compliance bond gives them the chance to post a \$500 bond. Within a 30-day period they have to file with his division and show the amount of fuel they have bought in the state. The review process thought this should be brought to the attention of the legislature.

OPPONENTS: None

QUESTIONS -

Rep. Andreason asked what the bond is for. Senator Hazelbaker told him that diesel trucks have to post a bond to be sure they pay the taxes on the special fuels they use and this allows them to post \$100 for bond. They still have to comply with the laws of the state. If the tax is not paid, the state can collect from the bond.

Not all truckers pay at the point of purchase. They can pass through the state of Montana without ever buying a gallon of diesel fuel. If they buy the fuel out of the state they estimate total miles driven in the state of Montana. The state of Montana map is used to verify mileage and they figure it back to the average number of miles per gallon. If the fuel is bought in the state, it is paid for at the pump.

Rep. O'Hara asked where they submit this bond. If way stations are not open they try to get the bond from the highway patrol, or they can purchase it from the highway division offices scattered throughout the state. Mr. Nichols said they can run these stations. At one station the loggers would sit until after 5 and on weekends.

Senator Hazelbaker closed saying the bill had been adequately explained. The station at Lima was avoided by driving at night on a frontage road without lights.

SENATE BILL 365 -

SENATOR FRANK HAZELBAKER, District #41, said SB 365 is called the "pill bill" in the senate. It would put a code imprint on all solid forms of drugs. This bill follows the lead of other states that the pill itself should have a mark on it. It has the support of the Rocky Mountain Control Center and all physicians. A delayed imprint date of January 1, 1983 is so that it lets the drugs go off the shelf by January 1, 1983 that is presently on the pharmacist's shelves. The pharmacist companies are already labeling the pills since they have been doing this in other states for several years.

FRANK DAVIS, Montana State Pharmaceutical Association, Great Falls, Executive Director, passed out a book showing pictures of pill imprints. His testimony is EXHIBIT A.

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OPPONENTS: None

QUESTIONS -

Rep. Robbins thought this should be a federal law, but Senator Hazelbaker said they haven't paid any attention to this as yet. Mr. Davis said it would be better governed by the federal, but they are starting with the states anyway. This would encourage the federal bureaus to look at it and it should be federal law.

Rep. Wallin asked about the difference in color between food supplements and thought the law should be a little more specific since it is pretty vague. Mr. Davis said the color might be the same, but the number of the code imprint would be different. The code imprint would identify each drug for each area. Additional cost of imprinting on generic drugs would be a moot point because some that are imprinted sell for less than other generic drugs that are not imprinted.

Senator Hazelbaker felt no need to close.

SENATE BILL 299 -

SB 299, introduced by SENATOR PAT RYAN, District #19, Cascade County, at the request of the Department of Business Regulation, increases the capability of the department to control the operation of out-of-state postsecondary educational institutions within the state. Out-of-state institutions coming into Montana would have to be licensed the same as those in Montana. It would stop the allowance of credits for non-existent courses.

BOB CARLSON, staff attorney for the Department of Business Regulation, said SB 299 is for consumer protection legislation and will not have an affect on the institutions that are recognized by the Board of Regents. Some out-of-state institutions are diploma mills plus they have come to light in the area of student activities. These types of programs were ignored by the Accrediting Association, but as time passed, the Accrediting Association became more interested. Bad education is driving out good education. They are trying to see that students get the education for which they pay.

IRVING E. DAYTON, University System, Helena, said this is consumer protection legislation. It gives the state a handle on interstate institutions as they have on private in-state institutions. How it is supported is irrelevant. It is similar to legislation in other states. Forty-two other states are doing what this statute would do - apply to publicly as well as privately owned institutions. Credits cannot be transferred many times, and the student loses that. SB 299 provides protection for students. See EXHIBIT B.

JOHN MALONEY, Department of Business Regulation, Helena, said higher education is getting all over the place and he thinks it is important that Montana has a way to control people coming in from other places. Carroll College supported this bill in the Senate.

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OPPONENTS: None

QUESTIONS -

Rep. Fabrega mentioned the purpose of the bill is for courses offered in Montana by out-of-state schools to be accredited courses in accordance with courses offered by Montana schools. Some courses from out-of-state schools were not rated by the University of Montana as being of as high quality education as Montana's. Extension directors are marketing courses. Without this law they could come in to the state and sell courses. The state can't touch what kind of courses given on military bases or in military schools are.

Senator Ryan closed recommending that the committee read the article in Exhibit A.

EXECUTIVE SESSION -

Rep. Schultz moved SENATE BILL 299 BE CONCURRED IN, and the committee voted unanimously to adopt the motion. One member was absent.

Rep. Dick Manning moved SENATE BILL 60 BE CONCURRED IN. Motion carried unanimously.

Rep. Jensen moved SENATE BILL 66 BE CONCURRED IN. Motion carried unanimously.

Rep. Robbins moved SENATE BILL 218 BE CONCURRED IN. Rep. Jacobsen voted No. Motion carried 18-1.

Rep. Pavlovich moved SENATE BILL 365 BE CONCURRED IN. Motion carried unanimously.

Rep. Meyer moved SENATE BILLS 487 and 493 BE TABLED. Motion carried unanimously.

The meeting adjourned at 9:30 a.m.

Jo Lahti
Jo Lahti, Secretary

W. J. Fabrega
REP. W. J. FABREGA, Chairman

VISITORS' REGISTER

HOUSE COMMITTEE

BILL SB 60

Date 3/5

SPONSOR

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

NAME:

KEITH OLSON

DATE:

5 MAR 91

ADDRESS:

Box 1716

Hudson

59901

PHONE:

755-3183

REPRESENTING WHOM?

Mountain Logging Assoc.

APPEARING ON WHICH PROPOSAL:

S.B. 10

DO YOU:

SUPPORT?

☒

AMEND?

OPPOSE?

COMMENTS:

I am writing to you regarding the
proposal for the Mountain Logging Assoc.
to be included in the S.B. 10 bill. I am not
sure if this is the correct bill to be included
in the S.B. 10 bill. I am not sure if this
is the correct bill to be included in the
S.B. 10 bill. I am not sure if this is the
correct bill to be included in the S.B. 10
bill. I am not sure if this is the correct
bill to be included in the S.B. 10 bill.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

VISITORS' REGISTER

HOUSE

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COMMITTEE

BILL

5218

Date _____

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SPONSOR

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

NAME Frank J. Lewis BILL No. 365
ADDRESS Beach Falls DATE 3/5/81
WHOM DO YOU REPRESENT Montana State Pharmaceutical Assoc.
SUPPORT ☒ OPPOSE ☐ AMEND ☐

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Written testimony will be supplied

MONTANA STATE PHARMACEUTICAL ASSOCIATION

P.O. Box 6335, Great Falls, Montana 59406

Telephone: 406-452-3201

February 11, 1981

Testimony in favor of SB 365

by: Frank J. Davis, R. Ph.
Executive Director

Senate bill 365 will make it possible to identify a legend drug product in solid dosage form by inspection of a single tablet or capsule.

This will be accomplished by requiring the manufacturer or distributor of the drug to place a code imprint on the product that can be compared to a list supplied by the producer to the State Board of Pharmacists upon demand.

The code imprint will be a series of letters or numbers that will be specific for one product.

The rapid identification of a drug product is necessary for the successful treatment of an over-dose or poisoning situation.

Laws such as this have been passed in the states of California, Washington, South Dakota, New York and others. This bill will provide for a delayed implementation date of January 1, 1983 to allow merchants to clear their stocks of the un-coded products.

This bill will have the support of the Rocky Mountain Regional Control Center, the Montana Poison Control Center, emergency room physicians and pediatricians.

If this bill will save but one life, in an emergency situation, I am sure you will consider it worthwhile. The Montana State Pharmaceutical Association urges your support of this bill.

Gresham's Law in the Marketplace of Ideas: Are Bad Degrees Driving Out the Good?

If regional accrediting bodies and universities don't police the extension operations of out-of-state colleges, state coordinating agencies will have to step into the breach

STATE COORDINATING AGENCIES for higher education are being forced to increase their supervision over the extension operations of out-of-state colleges and universities. It is a duty we take over reluctantly. Coordinating agencies already have responsibility for myriad pressing tasks during this period of reassessment and financial stress in higher education, without assuming an additional burden. Moreover, tighter control over out-of-state schools by state agencies is not the optimal solution.

That solution would be for the parent campuses to do the job adequately, but they have not and very probably will not.

A second solution would be for the regional accrediting associations to assure that quality education is maintained in out-of-state operations, but they have not done so. State agencies are the poor third choice for carrying out the job.

The argument might be made that we should let the marketplace take care of itself—let the people choose freely. Unfortunately, competition usually eliminates not the low-quality programs but those of better quality. Many students care little about where they get a degree, or what it consists of, as long as it supplies the credentials necessary for a promotion, a new job, or a pay raise. Any degree from an accredited college or an accredited branch is adequate for promotions and salary increases among teachers, in the military, and in some businesses and government agencies. One student remarked, "I'd never heard of the college, and the graduate courses weren't as hard as the undergraduate courses I'd had, but what the hell? It satisfied the boss."

Add to that the fact that the tuition and fees often are paid by the government or the employer, and we find that the consumer is not measuring value received for money out of his own pocket. There is no financial incentive for quality or substance.

We do not get much better control from the employers. One school superintendent, who wanted a program brought to his school district, said, "Our teachers don't meet the state requirements, and I need some quickie courses in here during the spring break to get us up to snuff with the state." Military commanders sometimes are similarly motivated, as are other government employers. Even in business organizations, there are people who react the same way. It seems to be a phenomenon of our society. "Fill in the squares," "Paper over the deficiencies," "Make 'em happy upstairs," are too often the responses. Form replaces substance.

In the marketplace, says Gresham's law of economics, bad money drives out the good. In higher education it appears at times as though the bad degrees drive out the good ones. How can quality education survive when standards are set lower and lower to attract students, many of whom seem to care next to nothing for the quality of the degree, and whose employers do not care, either? The degrees that survive in the open marketplace often have most of the following characteristics in common:

- ▶ No minimum grade-point average is required.
- ▶ The Graduate Record Exam is not required.

▶ Liberal credit is granted for "life experience" and work experience.

▶ No thesis or major papers are required.

▶ Courses are taught in one time block each week, such as Saturday morning.

▶ All courses are offered on a military base or in a public school.

▶ Absences are excused because of work schedules or assignments.

In other words, the educational program must take a back seat to all other commitments that the so-called student may have, yet a degree is expected.

When a state agency gets tough with its own schools, an unfortunate result is the creation of markets for out-of-state institutions: Base commanders and superintendents of schools who can't get state colleges to provide easy programs, and students who can't get what they want, can all turn to out-of-state institutions.

Dozens of colleges are operating programs thousands of miles from their campuses. The fields they pick are the hot market areas. They offer programs in education, business, public administration, and psychology. The health field is big, too, with schools offering Bachelor of Arts—not Bachelor of Science—degrees in nursing or allied health administration.

IT IS NOT BECAUSE of any imperial designs on the part of state coordinating agencies that they are having to move into the field. The parent campuses in many cases simply are not supervising their branches and out-of-state programs. One college recently assured us here in Texas, in all seriousness, that it would visit the branches in Texas twice a year, even if that were more than was necessary.

One school permitted its branch campuses in Texas to offer master's-level work in education for five years after the parent campus had been denied that authority in its home state.

Transcripts of out-of-state schools include items such as these:

▶ Ten hours of credit for a vacation trip to Mexico City.

▶ Credit for summer student teaching in a school district that was closed for the summer.

▶ Graduate credit for six hours of math courses already counted for credit at the undergraduate level. (In one course the student's grade had been a D.)

A spokesman for an out-of-state institution that charged students \$65 per credit-hour acknowledged that it did not employ any full-time faculty members nor own any facilities in Texas.

Recently one branch proposed to award master's degrees to five coaches who had completed a joint project. The degrees qualified them for pay increases. Their final exam, given orally, was administered by another coach. The supervising faculty member was an assistant principal in the school district. The coaches had attended no classes. The fee was \$2,700 each, and had been borrowed under a federally guaranteed loan program. The parent campus and the branch were accredited.

Inquiries about how a Texas branch of a campus in Ohio could offer extension degree programs in another city in Texas yielded assurances that the entire operation was being adequately supervised by an office in San Francisco.

Often the out-of-state institutions are offended when a state coordinating agency questions what they are doing at a branch campus. The agencies are apparently expected to accept at face value the statements from the branches that they are offering high-quality programs.

ALL THAT THE STATE AGENCIES are saying is this: If a state is putting its own house in order, it should have the right to insist that the out-of-state colleges do the same when they are guests in the state.

Another reason the states are becoming more involved in licensing out-of-state institutions is the failure of many accrediting associations to do their jobs. One of the most frequent defenses used by out-of-state colleges is the fact that they are accredited by their own regional accrediting associations and have been authorized to move into other states with branch operations.

That sort of criticism is very unpopular with the accrediting associations. The executive directors of those associations see their job as a collegial and fraternal one. They do not see themselves as policing the operations of their member institutions. They have beaten their billy clubs into keys to unlock state boundaries to outside institutions in their eager quest for students.

The accrediting associations have played a major role in raising the banner of non-traditional education. Now, as the states, the federal government, and others raise probing questions about declining quality, they find they have been hoist with their own petards.

Some of them simply are not supervising adequately the far-flung and rapidly multiplying off-campus operations of their member institutions. Some have said that as long as an institution is true to its stated objectives it should be eligible for accreditation. That would qualify Fagin's School for Pickpockets for accreditation. (Substantial credit for life experience would be in order, as would flexible scheduling of classes to accommodate those absent while serving jail sentences.)

Supervision of out-of-state branch operations is only one small area of higher education that the state coordinating agencies have to deal with. We would all welcome its being handled effectively by others. It is unrewarding, it takes staff time, and it makes enemies when we've got an adequate supply without an additional unpopular duty. But until the parent campuses do an adequate job, and until the accrediting agencies get back to their traditional task of insuring quality education, the state agencies have no alternative but to stand in the breach.

Kenneth H. Ashworth is commissioner of the Texas College and University System, and author of *American Higher Education in Decline*.

