

MINUTES OF THE MEETING  
BUSINESS & INDUSTRY COMMITTEE  
MONTANA STATE SENATE

February 5, 1985

The fifteenth meeting of the Business & Industry Committee met on February 5 at 10:00 a.m. in Room 413/415 of the Capitol Building. The meeting was called to order by Chairman Mike Halligan.

ROLL CALL: All committee members were present except for Senators Gage and Christiaens.

CONSIDERATION OF SENATE BILL 252: Senator Dave Fuller, Senate District 22 of Helena is the sponsor of Senate Bill 252. He explained this bill was brought to him by the Consumer Affairs Division of the Department of Commerce to help them catch scam artists who go through an area quickly and by the time the courts can get to them to prosecute they are gone.

PROPOSERS: Brinton Markle, Attorney for the Department of Commerce, explained the bill would give the department authority to issue cease and desist orders, grant the department rulemaking authority to design the forms and establish the procedures of issuing a cease and desist order and would also establish a consumer protection investigation fund. It is a tool which would help them assist local authorities conduct investigations. He further explained the procedures they have now simply take too long to process. He gave examples of quick scam operations that have been attempted in the state in recent years. Kim Schulke, staff attorney for the State Auditor's office, stated they support the bill if it includes some proposed amendments to exclude from the cease and desist authority of the commerce department and the county attorneys the authority to issue cease and desist orders. (EXHIBIT 1) She stated the general category of unfair and deceptive trade practices could include those matters now regulated by the insurance department of the auditors office. She feels that the dual regulation in the form of additional cease and desist power is unnecessary where competent authority already exists.

OPPOSERS: Mr. David Wistey, Optometrist from Livingston, feels this bill will place too much power in the Department of Commerce. He feels it might strip an individual of his rights of due process. (EXHIBIT 2)

Questions were then called for from the committee. Senator Halligan asked if the attorney general's office would be involved in this process and Brinton Markle answered he would have no hesitation in adding them in also. He also asked Kim Schulke what exactly the cease and desist order does and she stated it just prohibits businesses from acting in the future and if they violate this then it could be a felony.

Senator Goodover wondered if an established business in the state would be affected by this bill and was told it was mainly designed to get the quick scam type of businesses. Senator Thayer wondered what kind of penalties might be enforced and was told this was set by the courts usually. He was also concerned about expanding the department and was told that was not the intention. Senator Fuller noted that this bill would need a statement of intent and this was then distributed to the committee members. (EXHIBIT 3)

CONSIDERATION OF SENATE BILL 212: Senator Dorothy Eck, District 40 of Bozeman, explained her bill would address the concerns of many citizens of Montana for better rail service. Her bill would allow the governor to enter into agreements with other states and agencies to augment the services of Amtrak. She felt her bill should possibly be amended to address the problems of maintenance and expansion of Amtrak. Because of the vastness of our state, she felt it very viable to keep the services we now have and possibly expand too.

PROPONENTS: John Toole, Mayor of Missoula, explained the difficulties of getting out of the city of Missoula and how very desirable train services would be. He had written a proclamation to promote Senate Bill 212. (EXHIBIT 4) Jim Mular, State Legislative Director of the Brotherhood of Airline Clerks and the Brotherhood of railway clerks, explained a brief history of this legislation. He feels with possible pending cuts in President Reagan's budget that we could very well lose what we have and feels there should be a mass effort to save what we have now. This bill will just allow the governor authority to enter into negotiations should he be given the opportunity. John Craig, with the Division of Transportation of the Department of Commerce and John Wilson, Administrator of the Montana promotion division of the Department of Commerce, were in support of the bill and feel it is a message from the legislators to keep their options open.

OPPONENTS: Bob Pankratz, owner and operator of Helena Bus Depot, felt there was just not enough support from the people of the state to be promoting rail service. He explained the difficulties his bus service has been experiencing with diminished passenger ridership in the state. He feels we should salvage what we have now.

Questions were then called for from the committee. Senator Williams wondered just how many stops Amtrak now has in the state and was told there were 5. Senator Eck then closed the hearing on Senate Bill 212.

CONSIDERATION OF SENATE BILL 190: Senator Joe Mazurek, Senate District 23, of Helena, explained his bill would allow a licensed Montana brewer to sell at retail on their premises beer manufactured on the premises for consumption on their premises. He gave the committee some amendments they are proposing which would allow a brewery to have on its premises a hospitality room and to be able to distribute samples of their beer. There would be no intention to sell beer on the premises he added. (EXHIBIT 5)


PROPOSERS: Dick Bourke, President of the Montana Beverages, Ltd. explained they feel this is a reasonable compromise with the tavern association to be able to have a hospitality room on the premises. Presently our law does not allow or disallow consumption of alcoholic beverages on the premises but this would be a clarification. Bob Durkee, representing the Montana Tavern Association, endorsed the bill as amended. He read a letter from Roger Tippy, of the Montana Beer & Wine Wholesalers Association, stating they have no objection to the bill as amended either. (EXHIBIT 6)

Questions from the committee were called for. Senator Goodover wondered if there was not a law already permitting this type of activity and Senator Mazurek was not aware of any but stated this was suggested by the Department of Revenue that one can consume on the premises of a brewery. Senator Mazurek then closed the hearing on Senate Bill 190.

DISPOSITION OF SENATE BILL 190: A short discussion of the amendments as proposed by Senator Mazurek. Senator Thayer then made a motion that the amendments as proposed DO PASS. Motion carried. Senator Goodover then moved that Senate Bill 190 DO PASS AS AMENDED. Motion carried.

CONSIDERATION OF A POSSIBLE COMMITTEE BILL: Mary McCue, Legislative Staff Attorney, stated in her research for a good faith bill for terminations for implement dealers they could just clarify existing law regarding farm implements, draft a law similar to what North Dakota has passed or draft a bill which encompasses all franchise dealerships and this would entail some lengthy study, or perhaps even an interim study. After discussion the committee felt the first method would be the most expedient.

The meeting was adjourned at 11:30 a.m.

  
Mike Halligan, Chairman

ROLL CALL

BUSINESS & INDUSTRY

COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 2/5/85

SENATE  
SEAT  
#

NAME	PRESENT	ABSENT	EXCUSED
Chairman Halligan	X		
V-chrm. Christiaens			
Senator Boylan	X		
Senator Fuller	X		
Senator Gage			
Senator Goodover	X		
Senator Kolstad			
Senator Neuman	X		
Senator Thayer	X		
Senator Williams	X		

Each day attach to minutes.



(This sheet to be used by those testifying on a bill.)

NAME: J. Kim Schulte DATE: 2-5-85

ADDRESS: State Auditor's Office Room 273 Mitchell Bldg

PHONE: 444-3471

REPRESENTING WHOM? Andy Hempsted Bennett

APPEARING ON WHICH PROPOSAL: SB 252

DO YOU: SUPPORT? \_\_\_\_\_ AMEND?  OPPOSE? \_\_\_\_\_

COMMENT: \_\_\_\_\_

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

EXHIBIT 1  
BUSINESS & INDUSTRY  
February 5, 1985

SB 252

Amendment proposed by: State Auditor's Office

On page 1, at line 16, after "30-14-103," insert except conduct regulated by the provisions of Title 30, ch. 10, or Title 33 of this Code,

Purpose of amendment: To ensure that conduct regulated by the State Auditor as Securities Commissioner, pursuant to Title 30, ch. 10, MCA, or as Insurance Commissioner, pursuant to Title 33, MCA, is excluded from the operations of this Act.

Date: January 5, 1985

From: David A. Wistey, O.D.  
POB 1258  
Livingston, MT 59047

To: Committee for Business and Industry

Re: Senate bill: 252

My feeling is that SB-252 (if enacted) will place far too much discretionary power into the hands of the Department of Commerce and its agents. I can foresee dangers in the abuse of this power.

My experience with personnel within the Department of Commerce and members of the Board of Optometry and its agents has not been good. I have been harassed on several occasions by these individuals in their attempt to intimidate me via threats of hearings concerning a few preposterous complaints. None of these complaints have ever come to fruition. I have never been judged to be at fault in any of these actions.

I relate the inability of the Department of Commerce to properly dispose of the crank consumer complaints so as to illustrate (hopefully) the hazard in allowing agencies such as these to have the power to issue cease and desist orders for such things as nebulous as 30-14-103, unfair competition, etc. Woe to the licensee who receives a consumer complaint against him. SB-252 will in effect strip the licensee of his right to due process. SB-252 is unconstitutional because it proscribes "guilty until proven innocent."

I am presenting for your perusal the copy of a letter from a Department of Commerce attorney which I received just a year ago. As you can see from his letter, he appeared to be rather inflamed at the time, and responded to the consumer complaint (as if it were the gospel) on the same day that he received it. This attorney accused me (along with other untruths) of violating a federal regulation concerning the release of a contact lens prescription. It was apparent to me that he hadn't studied the regulations, because there was no federal regulation at the time which required me to release contact lens prescriptions to clients. When I called him to explain the prescription regulation to him, he proceeded to read me the regulation and said I had broken it. He thus proved to me that he could read, but did not understand what he was reading. Nothing came of the complaint. The complainant was merely trying to get something for nothing and was using the Department of Commerce in her ploy.

Will the public be better served because persons like this have the power to issue cease and desist orders pending a hearing? Will persons like this show responsibility of position in being able to arbitrarily set penalties and interest? Will persons like this enact rules to implement SB-252 which will be fair to all parties? I think not.




What are the motives of the Department of Commerce and the boards under them to request the need for this act?

I cannot see the need. If a quick cease and desist order is needed to protect the health of the public, I am sure that any judge can be persuaded to issue such a directive in short order. If the welfare of the public is a matter of concern, and an imminent health threat exists, a provider can be shut down immediately by the local city or county health officer.

I suggest that this agency has enough power and responsibilities. If a consumer of goods and/or services has a valid gripe or claim against a provider, he or she can use the civil courts which already operate within a framework of legality to provide relief. The Department of Commerce and state boards would be more more astute to suggest to complainants that they avail themselves of the services of the small claims courts.

Respectfully yours,

  
David A. Wistey, D.D.

# DEPARTMENT OF COMMERCE



TED SCHWINDEN, GOVERNOR

CAPITOL STATION  
1424 9TH AVENUE

## STATE OF MONTANA

(406) ~~449-3494~~ 444-4312

HELENA, MONTANA 59620-0401

January 31, 1984

Dr. D. A. Wisfey  
114 East Lewis  
Livingston, MT 59047

Dear Dr. Wisfey:

Enclosed is a letter of complaint from \_\_\_\_\_ Normally, this office refrains from becoming involved in disputes of this nature, but certain allegations in this complaint demand my attention.

FIRST: Your advertisement, to which the complainant responded, promises Bausch and Lomb soft contacts for astigmatism at \$145. The lenses offered apparently did not work and you sold Mr. \_\_\_\_\_ other lenses at the price of \$265.00.

SECOND: Your advertisement gives several guarantees to your clients which Mr. \_\_\_\_\_ alleges were not provided to him. The following language controls: "Prices include ALL exam and fitting fees, 30-day trial, all follow-up visits for one year -- IF I CAN'T FIT YOU WITH CONTACTS, THERE IS NO CHARGE TO YOU".

THIRD: Mr. \_\_\_\_\_ alleges that you refused to give him his perscription upon demand.

Clearly, you have violated federal regulations concerning the buyer's right to receive his perscription. It also appears that you have not lived up to guarantee promises made in your advertising.

In any event, no final decision will be made by this office concerning this complaint until you have been given an opportunity to respond and to present your explanation of the allegations.

Sincerely yours,

Attorney  
Consumer Affairs Unit

49th Legislature

LC 909.

47 252  
STATEMENT OF INTENT

\_\_\_\_\_  
BILL NO. \_\_\_\_\_

This bill requires a statement of intent because section 3 grants rulemaking authority to the department of commerce relating to the issuance and enforcement of cease and desist orders against unfair trade practices.

This bill is intended to give the department of commerce and local law enforcement the authority, independently or acting in concert, to immediately stop consumer fraud activities pending a hearing. Fast-moving, "hit and run" frauds usually are able to elude local law enforcement before appropriate criminal or injunctive proceedings can be initiated. Almost always, these perpetrators are transient nonresidents who, once they have removed themselves from the state, can never be found again. Guarantees cannot be enforced. Addresses are false or the "business" has moved with no forwarding address. Telephone numbers are answering services or have been disconnected.

This bill will also enable the department of commerce to issue cease and desist orders against out-of-state operations, such as telephone solicitations, pyramid schemes, and business promotion sales.

This bill grants the department the authority to adopt rules which have the force of law--as have existing rules describing

# PROCLAMATION

WHEREAS, the Northern Pacific Railway brought passenger service to Missoula in August 1883; and

WHEREAS, passengers' rail service was available to the people of Missoula until 1979; and

WHEREAS, large numbers of our citizens used the southern route of the Northern Pacific to reach such cities as Helena, Butte, Bozeman, Livingston, Billings, Miles City and Glendive; and

WHEREAS, the basic expense of transporting people to these places is much less than that of the airlines; and

WHEREAS, no rail passenger service is available to the people of Missoula to such cities as Minneapolis, Chicago or Seattle; and

WHEREAS, rail service, on this route, is vital to the nation in case of war or other natural disaster; and

WHEREAS, the coaches, cars and service are of high quality on other AMTRAK lines making it easy and highly desirable for tourists to visit our great national parks and the other wonders of Montana; and

WHEREAS, many people in Missoula, particularly senior citizens, prefer to travel by train rather than by air or bus; and

WHEREAS, an Amtrak train on the southern route would bring with it new employment to the City, the City having lost recently a number of railway employees.

NOW THEREFORE BE IT RESOLVED that Monday, January 28, 1985 be declared

## "SOUTHERN AMTRAK DAY"

in Missoula, Montana with whatever events the people may wish to stage to express their desire and enthusiasm for the possibility that a southern rail passenger branch might return to the Garden City.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the great seal of the City of Missoula, in the State of Montana, to be affixed at Missoula, Montana, this 28th day of January, in the year of our Lord, one thousand nine hundred and eighty-five.



JOHN H. TOOLE  
MAYOR

EXHIBIT 4  
BUSINESS & INDUSTRY  
February 5, 1985

PROPOSED AMENDMENT TO SB 190:

1. Title, line 5.  
Strike: "SELL, AT RETAIL"  
Insert: "PROVIDE"
2. Page 1, line 17.  
Following: "beer"  
Strike: "except as provided in 16-3-214"
3. Page 1, line 20.  
Following: "retail"  
Insert: "or from providing its products for consumption on its  
licensed premises"
4. Page 2, line 11.  
Following: "(b)"  
Strike: "sell"  
Insert: "provide"
5. Page 2, line 11.  
Following: "products"  
Strike: "at retail"  
Insert: "for consumption"
6. Page 2, line 12.  
Following: "premises"  
Strike: "for consumption on the premises:"
7. Page 2, line 16.  
Following: "brewery"  
Strike: "selling"  
Insert: "providing"  
Following: "products"  
Strike: "at retail"
8. Page 2, line 18 through line 25, page 6.  
Strike: Section 3 in its entirety  
Renumber: remaining section

NAME Roger Tippy BILL NO. SB 190  
ADDRESS Mont. Beer & Wine Wholesalers Assn DATE 2/5/85  
WHOM DO YOU REPRESENT P.O. Box 124  
Helena MT 59624  
SUPPORT \_\_\_\_\_ OPPOSE \_\_\_\_\_ AMEND \_\_\_\_\_

*No  
positi*

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: This bill is an exception to the three-tier system in Montana's beer law. However, most breweries in other states have tasting rooms where visitors may enjoy samples of the beer made there. The amendments to the bill which Mr. Bourke of the Kessler Brewery has indicated he will present would take the practice authorized by the bill out of the distribution-and-sale system. As amended, the bill would not concern the wholesalers.

# STANDING COMMITTEE REPORT

FEBRUARY 5

85

MR. PRESIDENT

## BUSINESS & INDUSTRY

SENATE BILL

190

having had under consideration..... No.....

first

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## BREWERS TO SELL BEER FOR CONSUMPTION ON BREWERY PREMISES

SENATE BILL

190

Respectfully report as follows: That..... No.....

be amended as follows:

1. Title, line 5.

Strike: "SELL, AT RETAIL"

Insert: "PROVIDE, WITHOUT CHARGE,"

2. Title, line 8.

Following: "MCA"

Insert: ";AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

3. Page 1, line 17.

Following: "beer"

Strike: "except as provided in 16-3-214"

4. Page 1, line 20.

Following: "retail"

Insert: ",or from providing, without charge, their products  
for consumption on their licensed premises"

5. Page 2, line 11.

Following: "(b)"

Strike: "sell"

Insert: "provide, without charge,"

Following: "products"

Strike: "at retail"

Insert: "for consumption"

XXXXXX

XXXXXXXXXX

continued on page 2 of 2

Chairman.

6. Page 2, line 12.

Following: "premises"

Strike: "for consumption on the premises"

7. Page 2, line 16.

Following: "brewery"

Strike: "selling"

Insert: "providing, without charge,"

Following: "products"

Strike: "at retail"

8. Page 2, line 16 through line 25, page 6.

Strike: Section 3 in its entirety

Renumber: subsequent sections

9. Page 7

Following: line 4

Insert: "NEW SECTION. Section 4. Effective date. This act is effective on passage and approval."

AND AS AMENDED

DO PASS

.....  
Mike Halligan, Chairman