

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bill Strizich, on February 5, 1991,
at 8:06 a.m.

ROLL CALL

Members Present:

Bill Strizich, Chairman (D)
Vivian Brooke, Vice-Chair (D)
Arlene Becker (D)
William Boharski (R)
Robert Clark (R)
Paula Darko (D)
Budd Gould (R)
Royal Johnson (R)
Vernon Keller (R)
Thomas Lee (R)
Bruce Measure (D)
Charlotte Messmore (R)
Linda Nelson (D)
Jim Rice (R)
Angela Russell (D)
Jessica Stickney (D)
Howard Toole (D)
Tim Whalen (D)
Diana Wyatt (D)

Members Excused: Rep. Dave Brown (D)

Staff Present: John MacMaster, Leg. Council Staff Attorney
Jeanne Domme, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

HEARING ON HB #419 DELETE USE OF CERTIFIED MAIL FOR DENIAL OF TORT CLAIMS

Presentation and Opening Statement by Sponsor:

REP. MERCER, HOUSE DISTRICT 50, stated this bill is an act to delete use of certified mail for denial of tort claims. Current law the requires that denials for claims against the state be made by certified mail. Before you can sue the state you have to send in a claim to give the state an opportunity to pay without the suit. This claim is sent to the Claims Division and under

current law they are required to deny or grant that claim within 120 days and have to do it by certified mail. If they don't place it within 120 days, it is deemed denied. They feel this certified mail requirement is an unnecessary cost and burden.

Proponents' Testimony:

Brett Dahl, Administrator - Tort Claims Divisions, stated this bill is important because it will allow for timing of efficient processing of claims filed against the state. It will result in some cost savings, also. The Tort Claims Division is charged with investigating, defending and settling the claims that are filed against the state of Montana. These claims cover a large range of subjects. We investigate, defend and settle those claims that we feel have merit and the rest of those will be denied. There are a significant number of claims filed each year against the state, we do deny. Under the present bill, we are required to mail the denial by certified mail. This results in extra administrative costs in processing these claims. HB 419 will improve our administrative function and cost less to administer.

Opponents' Testimony: none

Questions From Committee Members: none

Closing by Sponsor: Rep. Mercer, stated there is nothing unusual about using regular mail and not certified mail. I ask that you give this bill Do Pass.

HEARING ON SB #68
UPDATE DANGEROUS DRUG SCHEDULES

Presentation and Opening Statement by Sponsor:

SENATOR KENNEDY, SENATE DISTRICT 3, stated this bill is an act updating the dangerous drug schedules to conform to the controlled substances contained in Federal Regulations. This was requested by the Board of Pharmacies in the state of Montana. The present code allows the State Board of Pharmacy authority to schedule drugs listed as a controlled substance by Federal Law. The board periodically updates this list in our statutes to conform to the code of the Federal Regulations. This was requested by the Department Of Justice to give them more authority to prosecute illicite use of these drugs.

Proponents' Testimony: none

Opponents' Testimony: none

Questions From Committee Members:

REP. TOOLE asked SEN. KENNEDY if there is a Federal Mandate to do

this? SEN. KENNEDY said no, but it does bring our statutes up to date with the list.

Closing by Sponsor:

SEN. KENNEDY stated this is a house cleaning bill and that updates the records every four years by the Board of Pharmacies to be sure our records coincide with the Federal records. I ask that you concur with this bill.

EXECUTIVE ACTION ON HB #419

Motion/Vote: REP. GOULD MOVED HB 419 DO PASS. Motion carried unanimously.

EXECUTIVE ACTION ON SB #68

Motion/Vote: REP. GOULD MOVED SB 68 BE CONCURRED IN. Motion carried unanimously.

HEARING ON SB #49

CRIMINAL SALE OF DRUGS ON OR NEAR SCHOOL PROPERTY

Presentation and Opening Statement by Sponsor:

SEN. WATERMAN, SENATE DISTRICT 22, stated this bill is requested by the Board of Crime Control. Montana and Montana Schools have been leaders in the area of drug education and drug enforcement. One area that we lag behind other states is the area of establishing drug free school zones around our schools. SB 49 will help correct that situation. This bill establishes a zone around the school within 1000 ft of the school, where the criminal penalty is increased if you sell or possess drugs. We ought to think of schools as a safe place and rightly so. What we are saying in this bill is that it is not only illegal to sell drugs in the state of Montana but is especially a crime to sell to the young children at our schools. Another thing this bill does is allow us to access funds from the National Drug Free Coalition. This is a coalition that has funding to coordinate education programs for law enforcement as well as people within schools to strengthen their programs and work with programs.

Proponents' Testimony:

Ed Hall, Administrator - Board of Crime Control, stated we developed our anti-drug strategy in with the present control policy and our strategy set forth a protest toward a demand for reduction. This will be set forth in two ways. In the shorter term, will look at street level use. In the long term, we focus demand reduction on prevention and education efforts. As a part of the demand of reduction effort, the Drug Strategy Task Force set two legislative priorities this session. One of which is this drug free school zone.

John Connor, Drug Strategy Committee, stated he wanted to explain the construction of this measure. It was a bill that arose from of a sub-committee of the Drug Strategy Committee. We thought this bill was important because Montana was one of three states that did not given consideration to implementing legislation for drug free school zones. This bill constitutes a relatively conservative measure as far as drug free school legislation is concerned. In this particular issue, we amended the mandatory sentence provisions to say "violation of the exception is among those other statutes listed an offense for which the mandatory amendments apply". You cannot receive a suspended sentence if you are convicted of this offense. We also amended the section dealing with provision in parole to say that you have to serve half your time before you are eligible for parole if you commit this offense.

Colleen McCarty, self, stated she comes before the committee today as a mother of two young children. I would like to encourage you to give careful consideration to SB 49. As an active member of both state and national crime prevention organizations, I have traveled throughout the nation and become familiar with many crime prevention and growth reduction programs. SB 49 is a positive step toward the fight against drug prevention.

Judy Birch, Office of Public Instruction, stated the fight against drugs will be strengthened with the passage of this legislation. This bill will help in fostering a productive learning environment and will actively and visibly enforce the drug prevention programs within the schools. It will also provide students with their first exposure to the practical workings of the judicial system. We urge do pass of this bill.

Jess Long, School Administration of Montana, stated they are in support of this bill.

Bob Anderson, Montana School Board Association, stated our association adopted a similar resolution that passed unanimously to our membership in October. We are delighted to see the board of crime control came forth with this bill. We urge do pass.

Steve Browning, Coordinator - Montanans for a Drug Free Society, stated that a serious study of drug addiction will reveal we need comprehensive set of solutions to deal with the problem. All the illegal drugs produced in the world, this country consumes two-thirds of these drugs and we consist of only 5% of the world population. We have a genuine problem with drugs in the United States and urge a passage for this bill that will help the fight against drugs.

Kathy Seacat, Montana Parent Teacher Association, gave written testimony in favor of SB 49. EXHIBIT 1

Bill Sprinkle, Montana High School Association, stated they are in support of this bill. We think all chemical help programs should be supported and a drug free school zone would be an excellent way to do that.

Opponents' Testimony: none

Questions From Committee Members:

REP. TOOLE asked John Connor if it was intended that privately run vocational schools be included in this bill? Mr. Connor said he hadn't thought of that and this particular bill came from a model bill. I have no personal problem with covering that type of situation, but it doesn't coincide with what I said earlier about this bill addressing the school children. Our intention here was to try and make it apply to school children. It is not the intent of this bill to try and apply the proscriptions here to adult situations.

REP. BROOKE asked Dan Russell why is not the additional burden on the drug treatment program factored into the cost in the fiscal note? Mr. Russell said they have a request in right now, to greatly expand our drug treatment programs at the Montana State Prison and the Women's Correctional Center. We have a proposal before the sub-committee on institutions to include an intensive out-patient program and if that is funded it would handle this additional burden.

REP. JOHNSON asked Mr. Connor if you can receive a deferred or suspended sentence if you are convicted of this crime? Mr. Conner said that was correct.

REP. BOHARSKI asked Mr. Connor if we should change the age to 18 instead of having it at 17 because some high school students are 18 when they graduate? Mr. Connor said the intent of the bill is to protect children and when a child turns 18 they are considered an adult.

Closing by Sponsor:

SEN. WATERMAN stated she thought the committee had heard some good testimony. This is part of the overall effort to strengthen the laws that relate to the sale of drugs in the school areas. I ask you to concur with SB 49.

HEARING ON SB #140
ANABOLIC STEROIDS AS SCHEDULE III DRUG

Presentation and Opening Statement by Sponsor:

SEN. WATERMAN, SENATE DISTRICT 22, stated this is a bill that adds anabolic steroids to the schedule III dangerous drug list and provides misdemeanor penalties for persons in possession and

a felony for selling the drug. It is not our intention to make criminals out of young kids that decide they want to look like Arnold Schwarzenagger. It is our intent to send a message to people that the use of steroids among youth is dangerous and the sale of steroids to young people is illegal.

Proponents' Testimony:

John Connor, Montana County Attorney's Association, stated this bill was requested initially by a number of county attorneys and in the course of time put together information about this during the past two years. We have received, in our office, a considerable amount of interest on this subject and expressions of concern by educators, law enforcement officers, and by parents who have found substantial problems in their particular field dealing with this drug. This bill was based on California act that puts anabolic steroids under schedule III. The schedules are graduated on the basis of the effects of the drug. This bill is very necessary product in Montana and there are many educators who support this bill.

Bill Sprinkle, Montana High School Association, stated anabolic steroid use in our communities at all levels of sport and training, and particularly among our youth, there is a grave concern to Montana High School Association. Most experts on the steroid scene agree two things are needed. One is education and the other is the development of stronger laws controlling the sale, availability and possession of anabolic steroids. With your support of SB 140 we can address the latter. EXHIBIT 2 & 3

Ed Hall, Montana Board of Crime Control, stated our goal is to teach children to make healthy choices. Because that is our objective, we think that steroids ought to be a controlled substance in the schedule III to reenforce that there are harmful and lasting affects from sterid abuse. We support this bill.

Mike McCarty, DARE instructor, stated we need to educate the children about the harmful effects of steroids especially in grade school children. We are in support of this bill.

Opponents' Testimony: none

Questions From Committee Members:

REP. TOOLE asked Mr. Sprinkle if it is a problem in the schools of the coaches giving their athletes this drug? Mr. Sprinkle said he thought it was still problem. I doubt it is as serious as it once was. The way most people get steroids today is the Black Market.

REP. MEASURE asked Mr. Sprinkle where do you image the steroids awned from in the Black Market? Mr. Sprinkle said most of the information is annotated. We are talking about Mexico and Eastern European Countries.

REP. TOOLE asked Mr. Connor if the schedule III regulation make it illegal for all people selling or buying steroids in Montana? Mr. Connor said they are illegal for all unprescribed purposes. REP. TOOLE than asked if there is any prohibition against a medical doctor prescribing this drug for increasing muscle strength? Mr. Connor said there are not and we just have to trust the medical discretion of the doctors.

Closing by Sponsor:

SEN. WATERMAN stated Lon Roberts, the California State Government Affairs Manager, is the owner of a company called Syntex that produce anabolic steroids. He was in favor of the bill but asked an amendment be made. His amendment would be on page 11, line 25, inserting "Anabolic sterid" does not include an anabolic sterid intended for administration through implants to livestock or other non-human species, and approved by the Federal Food and Drug Administration for such use. I ask that you take this into consideration and concur with SB 140. EXHIBIT 4

HEARING ON HB #412
LICENSE SANCTIONS FOR PROFESSIONALS CONVICTED
OF DRUG-RELATED CRIMES

Presentation and Opening Statement by Sponsor:

REP. STRIZICH, HOUSE DISTRICT 41, stated this bill is brought to you on behalf of the Drug Strategy Task Force. It is an act which sets forth consequences and procedures for treating licensed professionals who are convicted of drug related offenses. There are two basic objectives. One is to provide a serious deterrent in the hope that licenses professionals in all fields maybe further encouraged to exist the lure of drug involvement. Secondly, protect public welfare by establishing forceful procedures which professional public service providers can sanction upon conviction of drug related crimes. As a deterrent, the bill approaches those licensed and licenses as a privileged not a right. HB 412 speaks primarily to those who provide services to the public. A public that greatly depends on such persons for safe, confident, efficient service in many different fields.

Proponents' Testimony:

Ed Hall, Montana Board of Crime Control, stated this is the second piece of legislation from the Drug Strategy Task Force. The National Drug Control Plan prepared by the President places a great deal of emphasis on 2 prime objectives. First is the demand for reduction, cutting the demand for drugs. One of the way is reduce demand is to emphasis user accountability. This bill will address this problem.

John Conner, Drug Strategy Committee, stated we on the Drug Strategy Committee believe it is our responsibility to propose for your consideration legislation that is part of the National Drug Strategy. That is what this bill is and why it is before you. This bill was drawn on the basis of a Georgia law that was recently passed by the legislature in Georgia. We have attempted to adapt it to Montana law. It has applications, to occupations, professional business, and trades that are licensed by the State. People who occupy particular professions or trades are licenses for a reason. Because they do something that has an affect on other people. The state has deemed it necessary and appropriate to provide standards for them to withhold these profession and provide license to show the public they are qualified to do what they say they can do.

I think this bill is an important part of the National Drug Strategy. There are some amendments I would suggest for your consideration. On page 2, line 24, after the word "conviction" insert "the licensed individual must be informed of his notification responsibility at the time of arraignment". There is no provision in the bill dealing specifically with notification to the perspective defendant. On page 7, section 5, 6, 7, 8, deals with licensing provisions of the Supreme Court for lawyers. This section is basically unconstitutional because it basically tells the court what it can or cannot do with respect to those licensed attorneys. We feel attorney's should not be exempt.

Steve Browning, Attorney, stated if this committee were to pass this bill in its existing form, it would not be the first time that you knowingly enacted a law that might be unconstitutional. What this bill does is make it very clear to a professional that does work with the public, that they had better be careful or they can loose their license.

Opponents' Testimony:

Joanne Chance, Montana Technical Council, gave written testimony opposing HB 412. EXHIBIT 5

Questions From Committee Members:

REP. JOHNSON asked Mr. Connor if your committee include the board of medical examiner, etc., reactions to this bill when you were discussing this bill? Mr. Connor we had examined, before this bill was introduced, a much larger version of this bill that cross referenced the individual license for sections of virtually every profession and occupation licensed by the state government. We felt it wasn't necessary to do that in order to implement the provisions. REP. JOHNSON suggested to Mr. Connor that the penalties for this crime was not harsh enough. Mr. Connor said this bill makes those kinds of situations that the bill covers mandatory. It allows the licensing entity the authority to make regulations with respect to reinstatement or the necessary steps

to apply for reinstatement.

REP. TOOLE asked Mr. Connor why the bill does not include a provision for alcohol when it is the number one problem among professional people? Mr. Connor said it is the bigger problem was it is not a controlled substance. It is not illegal to drink. All the substances we are talking about are illegal to possess.

REP. DARKO stated to Mr. Connor that the new section of page 2, the criminal offense involving manufacturing, distribution or sale or possession, she has great difficulty including possession. It often times a small amount of drug abuse is chemical dependency. This is not a criminal intent. Chemical Dependency is a disease and people with a disease do not need punishment they need counseling. Mr. Connor said it is not our intent to punish for a medical problem, however, drug possession per se is illegal, it is illegal from the first time it is done throughout any possession.

Closing by Sponsor:

REP. STRIZICH stated the people that buy drugs support the industry. We are talking about a statement of public policy in Montana with regard to public trust. We do not endorse anything that supports drug trade at any level. In terms of the broadness of this bill, I think it is one of the strengths of this bill and to leave flexibility with those boards. These boards are established to license and are expected to be fair. HB 412 is in the interest of public trust. I think we are trying to emphasis that there is a compelling state interest in the war on drugs. It says that people who operate under the authority of our State Government, should not engage in any aspect of the drug trade. It is the only way we can impact the problem we have facing us.

EXECUTIVE ACTION ON HB 268

Motion/Vote: REP. GOULD MOVED HB 268 DO PASS. Motion carried 18 to 2 with Rep's: Boharski and Clark voting no.

EXECUTIVE ACTION ON HB 381

Motion: REP. GOULD MOVED HB 381 DO PASS

Discussion: REP. MEASURE stated he felt there wasn't a need for this bill. There are a number of way to prosecuting a person for perjury.

REP. WHALEN said he also was unclear for the need of this bill. Under subsection 1 of 45-7-201, you don't need a second statement in order to have all the elements available for perjury.

REP. LEE stated he understood this bill is addressing the

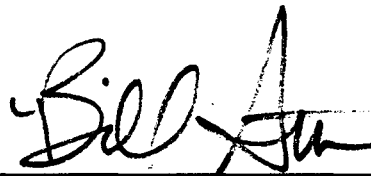
occasion that arises where you have no offense of perjury committed until the second statement is present. This is what we the Supreme Court was asking to be addressed.

Motion/Vote: REP. WHALEN moved to amend HB 381 by striking all of subsection 6 and modifying the title. Motion carried 10 to 9. EXHIBIT 6

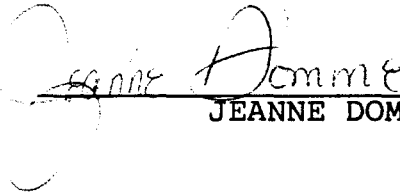
Motion/Vote: REP. GOULD MOVED HB 381 DO PASS AS AMENDED. Motion carried 12 to 8.

ADJOURNMENT

Adjournment: 11:06 a.m.



BILL STRIZICH, Chair



JEANNE DOMME, Secretary

BS/jmd

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL

DATE 2-5-91

NAME	PRESENT	ABSENT	EXCUSED
REP. VIVIAN BROOKE, VICE-CHAIR	/		
REP. ARLENE BECKER	/		
REP. WILLIAM BOHARSKI	/	<i>mm</i>	
REP. DAVE BROWN			/
REP. ROBERT CLARK	/		
REP. PAULA DARKO	/		
REP. BUDD GOULD	/		
REP. ROYAL JOHNSON	/		
REP. VERNON KELLER	/	<i>mm</i>	
REP. THOMAS LEE	/		
REP. BRUCE MEASURE	/		
REP. CHARLOTTE MESSMORE	/		
REP. LINDA NELSON	/		
REP. JIM RICE	/		
REP. ANGELA RUSSELL	/		
REP. JESSICA STICKNEY	/		
REP. HOWARD TOOLE	/		
REP. TIM WHALEN	/	<i>mm</i>	
REP. DIANA WYATT	/	<i>mm</i>	
REP. BILL STRIZICH, CHAIRMAN	/		

HOUSE STANDING COMMITTEE REPORT

February 5, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 419 (first reading copy -- white) do pass.

Signed: 

Bill Strizich, Chairman

HOUSE STANDING COMMITTEE REPORT

February 5, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that
Senate Bill 68 (third reading copy -- blue) be concurred in .


Signed: [Signature]
Bill Strizich, Chairman

HOUSE STANDING COMMITTEE REPORT

February 5, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House
Bill 268 (first reading copy -- white) do pass .

Signed: 

Bill Strizich, Chairman

*John
Hosmer*

HOUSE STANDING COMMITTEE REPORT

February 5, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 381 (first reading copy -- white) do pass as amended .

Signed: _____
Bill Strizich, Chairman

And, that such amendments read:

1. Title, line 7.

Following: "LIMITATIONS;"

Insert: "TO DELETE OTHER PROVISIONS RELATING TO PERJURY THROUGH
INCONSISTENT STATEMENTS;"

2. Title, line 8.

Strike: "IMPLEMENTING"

Insert: "TO IMPLEMENT"

3. Page 2, lines 18 and 19.

Strike: "(6)" on line 18 through "affirmation," on line 19

4. Page 2, line 20, through page 3, line 2.

Strike: "the" on page 2, line 20 through "true." on page 3, line

2
Renumber: subsequent subsection

MONTANA CONGRESS OF

PTA

PARENTS AND TEACHERS

Testimony S.B. 49

House Judiciary Committee

EXHIBIT 1

DATE 2-5-91

SB 49

Chairman Strizich and Members of the House Judiciary Committee;

I am Kathy Seacat, member of the Helena Area Legislative Team for the Montana Congress of Parents and Teachers and a representative for our 10,000 members.

For nearly 100 years PTAs across this state and nation have advocated for children and youth and sought to secure adequate laws for their care and protection.

Our children's lives are increasingly touched by many problems, not the least of which is drugs. Support of this bill will help assure our children that while they are at school, they will be within a safe environment. It will also send a clear message that selling drugs near schools will not be tolerated by the state or community. We must do our best to keep our kids safe.

Just as important to the PTA, however, is the fact that by being a state with a law designating drug free zones around our schools, it allows our state to become a part of the Drug Free School Coalition which will then give our state and schools additional opportunities to tap into drug education resources.

It will be intolerable and inexcusable if we do NOT take advantage of every opportunity to 1. create a safe environment for children and youth and 2. to educate our children and youth to the dangers of becoming involved with drugs. Education is the first step to prevention.

When the future of our environment is threatened by neglect or pollution, Montanans meet the challenge. Drugs threaten the future of our young. So let's rise and meet this challenge, too.

The sheer magnitude of the drug problems call for support of S.B. 49 and the Montana PTA asks you to support this bill.

Thank you for your time and the opportunity to share our position with you.

Kathy Seacat
2472 Spokane Creek Road
East Helena, MT 59635

SB 140
STERIODS

FACTS:

** STEROIDS ARE SYNTHETIC DRUGS SIMILAR TO THE MALE HORMONE TESTOSTERONE.

- THEY BOTH BUILD TISSUE AND MASCULINIZE

** DESPITE TENDING TO MAKE MUSCLE GROW, THEY DO NOT EQUALLY INCREASE CONNECTIVE TENDONS AND LIGAMENTS RESULTING IN GREATER RISK OF INJURY.

- FOR ADOLESCENTS THIS IS ESPECIALLY HARMFUL SINCE THEY MAY CAUSE CLOSING OF THE GROWTH PLATE AT THE ENDS OF THE LONG BONES RESULTING IN PREMATURE STUNTING OF GROWTH.

- THEY RETARD THE HEALING PROCESS.

** STEROIDS ARE ADDICTIVE AND CAUSE DEPENDENCY.

** THERE ARE OVER 70 SIDE EFFECTS ASSOCIATED RANGING FROM LIVER CANCER TO ACNE. THEY ALSO CAUSE:

- MIND ALTERING AND MOOD ELEVATION OR DEPRESSION
- DECREASE OR INCREASE SEX DRIVE
- INCREASE AGGRESSIVE BEHAVIOR, EVEN PSYCHOTIC EPISODES
- EFFECTS MAY NOT BE REVERSIBLE AFTER USE STOPS

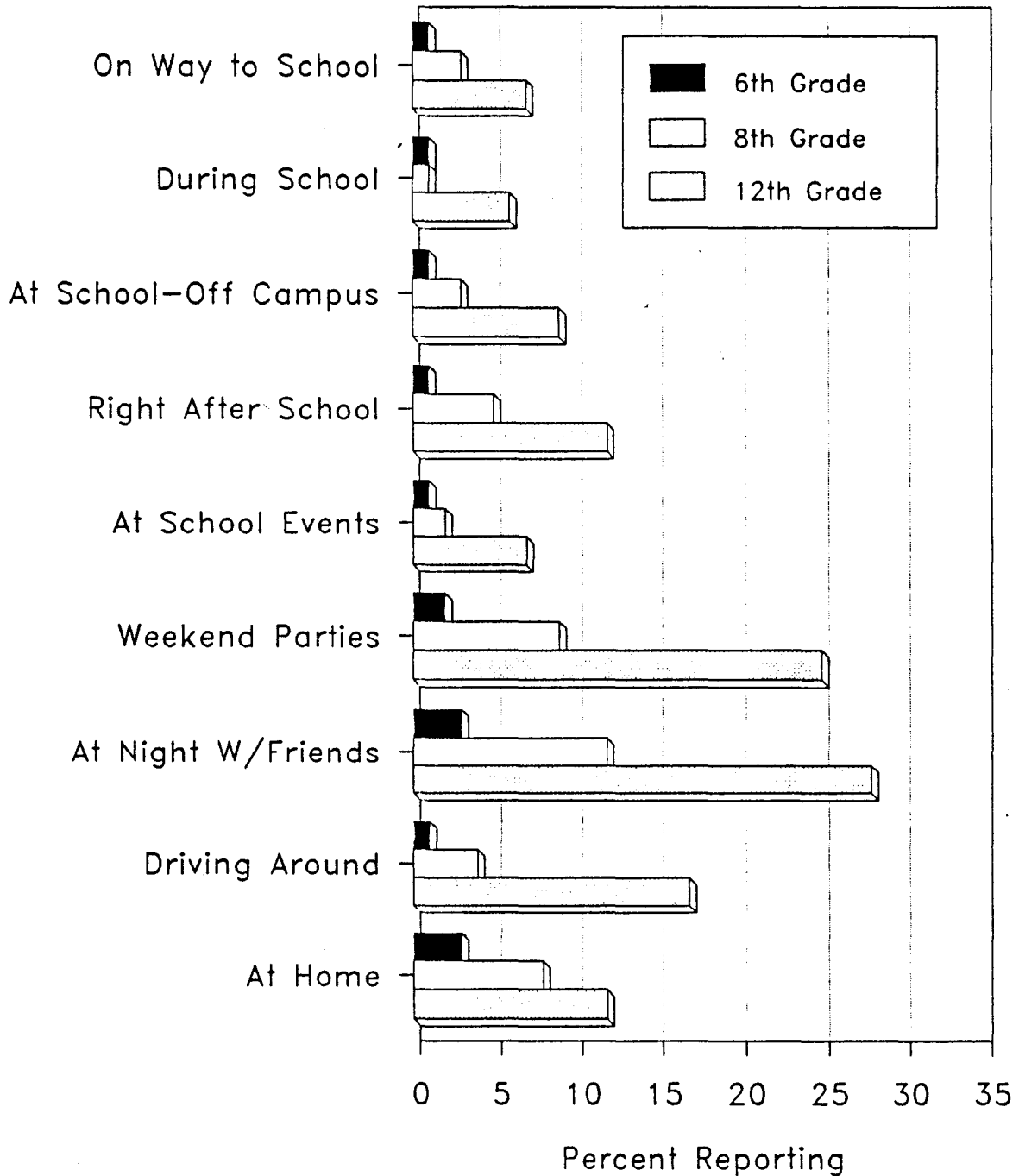
** SOME EFFECTS:

- | | |
|---------------------|---------------------------------------|
| - EARLY BALDNESS | - CARDIOVASCULAR DISORDER |
| - LIVER CANCER | - ENLARGED HEART |
| - CHRONIC HEPATITIS | - DAMAGED KIDNEY FUNCTION |
| - HEART ATTACK | - STERILITY IN MALES |
| - STROKE | - IRREGULAR OR CEASED
MENSTRUATION |

** STEROIDS ARE SCHEDULED DRUGS IN ALABAMA, CALIFORNIA, AND FLORIDA. OTHER STATES CONTROL THEM BY OTHER MEANS.

** STEROIDS ARE A TARGET DRUG UNDER THE DRUG FREE SCHOOLS AND COMMUNITIES ACT AND THE ANTI-DRUG ABUSE ACT.

Figure 8
Where Students Have Used Drugs



Proposed by Sen
Waterman

EXHIBIT

4

DATE

2-5-91

HB

140

Senate Bill 140

Insert Page 11, line ~~23~~ 25

(b) "Anabolic steroids" does not include any anabolic steroids ~~which~~
~~are expressly intended~~ for administration through implants to
livestock or other non-human species, and ~~which are~~ approved by
the Federal Food and Drug Administration for such use.

LON ROBERTS
STATE GOVERNMENT AFFAIRS MANAGER
NORTHWEST

SYNTEX LABORATORIES, INC.
3401 HILLVIEW AVENUE
PALO ALTO, CALIFORNIA 94304

MAILING ADDRESS:
724 WEST, 240 SOUTH
OREM, UT 84058
(801) 224-0411
VOICE MAIL 1-800-678-5223 MAILBOX 8865

DATE 2-2-91
HB 412



P.O. Box 20996, 1629 Ave. D, Billings, MT 59104, Phone 406/259-7300
Fax: 259-4211

MONTANA CHAPTER AIA	AIA
AMERICAN SOCIETY OF CIVIL ENGINEERS	ASCE
BILLINGS ARCHITECTURAL ASSOCIATION	BAA
CONSULTING ENGINEERS COUNCIL OF MONTANA	CECM
GREAT FALLS SOCIETY OF ARCHITECTS	GFSA
AMERICAN SOCIETY OF LANDSCAPE ARCHITECTS	ASLA
ARCHITECTURAL SOCIETY OF HELENA	ASH
MONTANA ASSOCIATION OF REGISTERED LAND SURVEYORS	MARLS
MONTANA SOCIETY OF ENGINEERS	MSE
INSTITUTE OF ELECTRICAL AND ELECTRONIC ENGINEERS	IEEE

HOUSE BILL NO. 412

TESTIMONY OF THE MONTANA TECHNICAL COUNCIL, AS
REPRESENTING LICENSED PROFESSIONAL ENGINEERS,
ARCHITECTS, AND LAND SURVEYORS

SPEAKING IN OPPOSITION TO THE BILL FOR THE FOLLOWING REASONS. *It is so broadly written as to include licensed professionals who are not in sensitive public safety or public education positions.*
CURRENT PROVISIONS FOR REVOCATION, SUSPENSION, OR REFUSAL TO RENEW PROFESSIONAL ENGINEER AND LAND SURVEYORS LICENSES ARE CURRENTLY STATED IN MCA 37-67-331. THIS REGULATION STATES THAT THE BOARD MAY REPRIMAND OR REVOKE, SUSPEND, OR REFUSE TO RENEW THE CERTIFICATE OF A REGISTRANT FOUND GUILTY OF A FELONY. THUS PROFESSIONAL ENGINEERS AND SURVEYORS ALREADY HAVE THE AUTHORITY AND PROCEDURES TO MONITORING AND CONTROL ANY OFFENDER.

CURRENT PROVISIONS FOR REVOCATION OR SUSPENSION OF LICENSES FOR PROFESSIONAL ARCHITECTS ARE FOUND IN MCA 37-65-321. THEY PROVIDE FOR REVOCATION IF STANDARDS OF PROFESSIONAL CONDUCT ADOPTED BY THE BOARD HAVE BEEN VIOLATED; OR IF AN INDIVIDUAL IS CONVICTED OF A FELONY RELATED TO THE PROFESSIONAL PRACTICE OF ARCHITECTURE.

THESE PROVISIONS ARE TAKEN VERY SERIOUSLY; AND WE ARE NOT AWARE OF ANY DISREGARD OR MINIMIZING OF THEIR IMPORTANCE IN REGARD TO ANY PROFESSIONAL ENGINEER, ARCHITECT, OR LAND SURVEYOR.

THE PROPOSED HB 412 IS EXCEEDINGLY HARSH IN THAT IT DEPRIVES AN OFFENDER, EVEN A FIRST OFFENDER, OF HIS OR HER ABILITY TO EARN A LIVING. IT SEEMS TO BE VERY COUNTER PRODUCTIVE TO REHABILITATION OF THE OFFENDER. IT WOULD CREATE UNDUE HARDSHIP ON FAMILIES TRYING TO DEAL WITH THE CRISIS OF A DRUG OFFENSE.

BY MANDATING INFLEXIBLE, HARSH REVOCATIONS OF PROFESSIONAL LICENSES SOCIETY WOULD BECOME HEARTLESS, AND UNTHINKING. THE PROFESSIONS I REPRESENT ARE INDEED TRUSTWORTHY. ALLOW THEIR PROFESSIONAL BOARDS TO MAKE INTELLIGENT, HUMAN, CASE BY CASE DECISIONS FOR PRODUCTIVE MEMBERS OF OUR SOCIETY WHO HAVE MADE A MISTAKE. IF AN OFFENDER IS WORKING TO SOLVE THEIR OWN PROBLEMS, WHY SHOULD SOCIETY MAKE IT EVEN HARDER FOR THEM BY HEARTLESSLY



COORDINATING COUNCIL FOR MONTANA DESIGN PROFESSIONS

EXHIBIT -
2-5-91
HB 412

DEPRIVING THEM OF THEIR MEANS OF MAKING A LIVING AND
REGAINING THEIR STATURE IN THEIR COMMUNITY.

DUE TO THE INFREQUENT HEARINGS HELD BY SOME OF THESE
BOARDS FOR REVIEW OF APPLICATIONS FOR LICENSES, A
MANDATORY REVOCATION COULD STRETCH INTO MANY ADDITIONAL
UNMANDATED MONTHS. REVOCATION ALSO IMPACTS MANDATORY
LICENSING REQUIREMENTS FOR HOURS PRACTICED PER YEAR FOR
LICENSE RENEWAL.

THE MONTANA TECHNICAL COUNCIL REQUESTS YOUR OPPOSITION
TO THIS BILL.

THANK YOU FOR THE OPPORTUNITY TO PROVIDE OUR INPUT TO
YOU.

37-67-315(2), apply to certificates of authorization issued to partnerships and corporations under this subsection. Partnerships or corporations are subject to disciplinary proceedings and penalties and the board may reprimand them or revoke, suspend, or refuse to renew their certificates of authorization for cause in the same manner and to the same extent as provided in 37-67-331. "Registrant" and "certificate of registration" in 37-67-331 include any partnership or corporation holding a certificate of authorization issued under this subsection and to such certificate of authorization.

History: En. Sec. 5, Ch. 553, L. 1985.

37-67-321. Emeritus status. (1) A registrant who has terminated his practice of engineering or land surveying may apply to the board for emeritus status.

(2) Upon receiving an application for emeritus status accompanied by the fee established by the board, the board shall issue a certificate of emeritus status to the applicant and record the applicant's name in the roster as an emeritus registrant, along with the date he received emeritus status.

(3) An emeritus registrant may retain but may not use his seal and may not practice engineering or land surveying.

(4) The board shall reissue a certificate of registration to an emeritus registrant who pays all application fees, meets all current requirements for registration, and demonstrates to the board's satisfaction that for the 2 years preceding his application for registration he has met the requirements for maintaining professional competence established under 37-67-315.

History: En. Sec. 19, Ch. 553, L. 1985.

37-67-322 through 37-67-330 reserved.

[37-67-331] Revocation, suspension, or refusal to renew certificate — grounds — procedure — reinstatement. (1) The board may reprimand or revoke, suspend, or refuse to renew the certificate of a registrant found guilty of:

(a) fraud or deceit in obtaining a certificate of registration;

(b) gross negligence, incompetency, or misconduct in the practice of engineering or land surveying as a registered professional engineer or professional land surveyor;

(c) a felony;

(d) violation of rules for professional conduct for professional engineers and professional land surveyors adopted by the board;

(e) if a professional land surveyor, failure to comply with the Corner Recordation Act.

(2) Any person may make charges of fraud, deceit, gross negligence, incompetency, or misconduct against a registrant. The charges shall be made by affidavit and subscribed and sworn to by the person making them and filed with the department. The charges shall be investigated by the board and, unless the board dismisses the charges after investigation as unfounded or trivial, it shall act on the charges within 6 months after the date on which the charges were made. The board is considered to have acted on the charges if it has given notice by mail to the licensee of its intent to revoke, suspend,

683

ARCHITECTURE

37-65-321

Cross-References

Seal defined. 1-4-201.

Manner of making seal. 1-4-202.

37-65-309. Repealed. Sec. 12, Ch. 388, L. 1979.

History: En. Sec. 11, Ch. 158, L. 1917; re-en. Sec. 3239, R.C.M. 1921; re-en. Sec. 3239, R.C.M. 1935; amd. Sec. 30, Ch. 350, L. 1974; R.C.M. 1947, 66-111.

37-65-310 through 37-65-320 reserved.

[37-65-321.] Revocation or suspension of license — grounds — right to notice and hearing. (1) The board may revoke or suspend a license or take other appropriate disciplinary action if satisfactory proof is presented to the board that the licensee:

- (a) obtained his license through fraud or misrepresentation;
- (b) has been found guilty of fraud or deceit in his professional practice or has been convicted of a felony related to his professional practice of architecture;
- (c) has committed acts of gross incompetency or of recklessness in the planning or construction of buildings;
- (d) has violated standards of professional conduct adopted by the board;
- (e) has departed, in a material respect, from approved plans or specifications without the consent of the owner or his authorized representative;
- (f) except to the extent that the architect reasonably relied upon the advice of another professional in the field of building design and construction, has violated the building codes of this state or a political subdivision;
- (g) has aided or abetted an unlicensed person to violate or evade this chapter; or
- (h) has sealed or signed plans or specifications or other professional work not prepared under his direct supervision and control.

(2) A license may not be revoked or suspended except under the contested case provisions of the Montana Administrative Procedure Act.

(3) Charges of fraud, deceit, gross incompetence, negligence, or professional misconduct may be brought by any person against any licensee. Such charges shall be in writing, sworn to by the person making them, and filed with the secretary of the board. All charges, unless dismissed by the board as unfounded or trivial, shall be set for hearing within 3 months of filing with the secretary.

History: En. Sec. 12, Ch. 158, L. 1917; re-en. Sec. 3240, R.C.M. 1921; re-en. Sec. 3240, R.C.M. 1935; amd. Sec. 3, Ch. 149, L. 1957; amd. Sec. 4, Ch. 138, L. 1967; amd. Sec. 6, Ch. 439, L. 1973; amd. Sec. 31, Ch. 350, L. 1974; R.C.M. 1947, 66-112; amd. Sec. 7, Ch. 490, L. 1983.

Cross-References

Licensee to follow contested case procedure. 37-1-101.

Fair trade practices and consumer protection. Title 30, ch. 14.

Duty of Department to investigate unprofessional conduct. 37-1-101.

Reporting disciplinary actions against licensee. 37-1-105.

Duties of Director in investigation of unethical conduct. 37-1-121.

Duty of Board to adopt rules on conduct. 37-1-131.

Licensing investigation and review — record access. 37-1-135.

Disciplinary authority of boards — injunction. 37-1-136.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses. 37-1-137.

Building construction standards. Title 30, ch. 60.

EXHIBIT 6
DATE 2-5-91
HB 381

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

DATE 2-5-91 BILL NO. #381 NUMBER

MOTION: Rep. Whalen amendment

NAME AYE NO

REP. VIVIAN BROOKE, VICE-CHAIR	/	
REP. ARLENE BECKER		/
REP. WILLIAM BOHARSKI		/
REP. DAVE BROWN		///
REP. ROBERT CLARK		/
REP. PAULA DARKO	/	
REP. BUDD GOULD		/
REP. ROYAL JOHNSON		/
REP. VERNON KELLER		/
REP. THOMAS LEE		/
REP. BRUCE MEASURE	/	
REP. CHARLOTTE MESSMORE		/
REP. LINDA NELSON	/	
REP. JIM RICE		/
REP. ANGELA RUSSELL	/	
REP. JESSICA STICKNEY	/	
REP. HOWARD TOOLE	/	
REP. TIM WHALEN	/	
REP. DIANA WYATT	/	
REP. BILL STRIZICH, CHAIRMAN	/	
TOTAL	10	9

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

House Judiciary

COMMITTEE

BILL NO.

HB#419

DATE 2-5-91

SPONSOR(S)

Rep. Helmer

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
<u>Mike Wingard</u>	<u>DLA</u>		
<u>Burt Dahl</u>	<u>Test Claims</u>	<u>X</u>	

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COMMITTEE

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5B#68

DATE

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HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

House Judiciary

COMMITTEE

BILL NO.

SB# 49

DATE 2-8-91

SPONSOR(S)

Senator Waterman

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
John Connor	Drug Strategy Committee	✓	
Kathy Seacat 2492 Spokane Crd E Helena Montana	PTA	✓	
Jess W Long	School Adm of MT	✓	
Ed Hall	MBCC	✓	
Greg Birch	OPH	✓	
Colleen M. Gentry	Self	✓	
Vin De	MSA	✓	
Bill Sprinkle	MHSA	✓	
Bob Anderson	MSBA	✓	

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**HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER**

VISITOR'S REGISTER

House Judiciary COMMITTEE BILL NO. SB#140

DATE 2-5-91 SPONSOR(S) Senator Waterman

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HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

House Judiciary

COMMITTEE

BILL NO.

HB# 412

DATE 9.5.91

SPONSOR(S)

Rep. Heinrich

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
John Connor	Drug Strategy Committee	✓	
Ed Hall	M B C C	✓	
Gregory Brough			
Shanne Chance	MT Tech Council		✓
FRED Fisher	Dept of Justice	✓	

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