

MINUTES

MONTANA SENATE 53rd LEGISLATURE - REGULAR SESSION COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By J.D. Lynch, Chair, on February 2, 1993, at 10:00 a.m.

ROLL CALL

Members Present:

Sen. J.D. Lynch, Chair (D)
Sen. Chris Christiaens, Vice Chair (D)
Sen. Betty Bruski-Maus (D)
Sen. Tom Hager (R)
Sen. Ethel Harding (R)
Sen. Ed Kennedy (D)
Sen. Terry Klampe (D)
Sen. Francis Koehnke (D)
Sen. Kenneth Mesaros (R)
Sen. Doc Rea (D)
Sen. Bill Wilson (D)

Members Excused: Sen. Delwyn Gage, Sen. Daryl Toews

Members Absent: None.

Staff Present: Bart Campbell, Legislative Council
Kristie Wolter, Committee Secretary

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

Committee Business Summary:

Hearing: SB 263
Executive Action: SB 86, SB 190, HB 108, HB 120

HEARING ON SB 263

Opening Statement by Sponsor:

Senator Fred Van Valkenburg, Senate District 30, stated SB 263 has been introduced to allow in statute what is largely done in practice across the state of Montana. He stated SB 263 allows for the collection of a service charge when an individual has issued a bad check. Senator Van Valkenburg said currently there is nothing in the law which specifically authorizes the practice of bad check charges. He added because it is not specified does not mean the practice of charging for a bad check is illegal, but the stores are running into instances where bad check writers are

arguing the point of the service charge. Senator Van Valkenburg said he felt the charging of a service charge is a good practice and most of the citizens of the state would support the idea behind SB 263. He also stated the passage of SB 263 would cause people to be more cautious about writing bad checks.

Senator Van Valkenburg stated SB 263 deals with the problems of collecting civil damages on bad checks. He said SB 263 will provide direction to the lower courts as to the minimum amount of damages which must be awarded. He stated SB 263 will clarify the issue of someone receiving notice of the issuance of a bad check. He added SB 263 would state the mailing of the notice is prima facie evidence of notice given. Senator Van Valkenburg stated he feels SB 263 has statewide application.

Proponents' Testimony:

Darryl VanKoten, President Montana Collectors Association, Associated Credit Rules of Montana stated his support of SB 263. He stated SB 263 gives a legal foundation to merchants and business people to avail themselves and put a service charge on dishonored checks which have been presented. He said there is no statute in place regarding service charges and SB 263 will standardize service charges across the state of Montana and will protect the consumers.

Bill Stevens, Montana Food Distributors Association, stated the Association supports SB 263 and asked the Committee for favorable consideration.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

Senator Christiaens asked Senator Van Valkenburg about the posting of the notification of charges and how someone would prove they had posted something. Senator Van Valkenburg stated a photograph or xerox copy of the posting and testimony stating the notice was in place at the time the check was written. Senator Christiaens asked about the amount of uncollected bad checks. Senator Van Valkenburg answered approximately \$100,000/year are received for prosecution by the County Attorney's office in Missoula County.

Senator Klampe asked Senator Van Valkenburg if the notice has to be registered mail. Senator Van Valkenburg answered first class mail would be sufficient.

Senator Rea asked Senator Van Valkenburg when a person receives a

bad check back and the bank notifies the writer of the check that it was returned if the notification from the bank is considered notification. Senator Van Valkenburg answered it is considered notification from the bank. Senator Rea asked if banks would be able to charge the \$25 fee on top of their regular NSF check charge. Senator Van Valkenburg stated the fee is payable only to the payee or payee's assignee.

Senator Mesaros asked Senator Van Valkenburg if the \$25 would be reflected on a service charge for a stop payment. Senator Van Valkenburg stated SB 263 would have no effect as far as he knew.

Closing by Sponsor:

Senator Van Valkenburg closed on SB 263 asking the Committee for favorable consideration. He added if the Committee would like to amend SB 263 he would be willing to work with them.

EXECUTIVE ACTION ON SB 86

Motion/Vote:

Senator Christiaens moved SB 86 DO PASS. MOTION CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 190

Discussion:

Bart Campbell stated in the hearing there was discussion of changing "may" to "must" at the top of page 3.

Senator Christiaens stated on the bottom of page 2, line 22 and on page 4, line 3, the word "may" should be changed to "shall".

Bart Campbell stated if SB 190 is talking about what the cooperative has to do, then the word is "shall", but if the talk is about an inanimate object, then "must" should be used.

Motion:

Senator Christiaens move SB 190 BE AMENDED.

Discussion:

Senator Mesaros questioned the intent of the amendment and if it was mandatory for the cooperatives to use the funds for educational purposes.

Senator Lynch stated the argument was that the funds are presently being used for education purposes on the state level and the co-ops don't intend to divert them to other uses.

Vote:

MOTION CARRIED UNANIMOUSLY.

Motion:

Senator Christiaens moved SB 190 DO PASS AS AMENDED.

Discussion:

Senator Rea asked for clarification on the issue if a cooperative is mandated to give the money back after 5 years. Bart Campbell stated the cooperatives are in the same position as the state and are required to return the money after 5 years.

Vote:

MOTION CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 197

Discussion:

Mr. Campbell stated the people representing landlords had submitted proposed amendments which he was working on and he read a draft of what he had. Mr. Campbell stated his understanding was the amendment would remove the \$50,000 penalty and the jail time and would substitute the following:

"if the landlord fails to install a smoke detector as required by 70-24-303(1)(g), the tenant may deliver written notice to the landlord stating that a smoke detector is not installed. If, within 24 hours of delivery of the notice, the landlord has not installed a smoke detector, the tenant may do so and may deduct the cost of the smoke detector, up to \$25 from the next months rent."

Senator Lynch proposed that no written notice be required and asked there be a section requiring the landlord to make the tenant aware of the right. He also proposed in the case of a tragedy and the landlord did not fulfill this obligation, then the \$50,000 and one year be put in SB 197.

Senator Wilson agreed with Senator Lynch except for the part about the written notice. He stated it would be a difficult situation to prove what two people discussed and a written agreement would make it more contractually binding.

Senator Koehnke stated the landlord has to let the tenant know about the written notice.

Senator Lynch stated he would want the landlord to furnish, in writing, the tenants right act.

Senator Mesaros questioned the issue of installation within 24 hours after written notice. Bart Campbell stated the 24 hour language was from the landlords. Senator Mesaros stated 24 hours seemed too narrow and there should be more time.

Senator Lynch stated there should be 7 days notice.

Senator Rea felt there should be an agreement between the landlord and the tenant which states the smoke detector is functional and in place.

Senator Koehnke stated he felt 7 days was too long of a time and suggested 48 or 72 hours.

Mr. Campbell offered a provision the tenant could install more than one smoke detector, up to \$25 of cost. Senator Lynch stated that would ask for too many problems.

Senator Christiaens offered to answer a couple of the issues which had arisen in Committee. He stated under the Montana Landlord/Tenant act, any reliable landlord is using a packet of agreements which set out in writing the condition of the property, and in the use of the forms, a landlord will go through every room of the house and would probably go over the smoke detector. He stated it is extremely important the tenant and the landlord both sign the document. Senator Christiaens stated anything which is going to change needs 72 hours advanced warning, at which point, if the landlord hasn't complied, the tenant would be able to purchase or make repairs and bill the landlord. He stated the 24 hour rule would run into problems with holidays and weekends.

Greg VanHorssen, representing the landlords, stated he wasn't sure of the time requirement of 72 hours.

Senator Klampe asked why it was not acceptable that the landlord has to verify the smoke detector is functional and working and in place the moment the tenant moves in. He stated he felt allowing a time period for installation would be allowing for a "window of opportunity for a fire to kill somebody".

Senator Christiaens stated there was a lot of rental property which need smoke detectors and the time allotment would allow for the landlord to install a smoke detector.

Senator Klampe stated the landlord should be able to replace the missing smoke detectors or put in new ones before the release of the apartment to the renter.

Senator Christiaens stated he was referring to rental property which already have tenants in them. He added the landlord should

be provided an opportunity to go and correct the problem.

Senator Bruski-Maus stated she was renting from an absentee owner and through a property manager in Helena. She asked the Committee who would be responsible for the smoke detector in her case. Senator Lynch stated it would be the owner of the property who was responsible for the installment of the detector.

Senator Koehnke questioned the adequacy of the testing procedures on smoke detectors. Senator Lynch stated the lighting of a match or a piece of paper and letting the smoke drift into the smoke detector should be adequate. Senator Koehnke then asked about boarding or rooming houses and if there must be a smoke detector in each room of the boarding house or if one in the hallway is sufficient. Mr. Christiaens stated his bed and breakfast only has one smoke detector on each floor and that is what is required by the fire safety laws. Mr. Campbell stated SB 197 addresses landlords and tenants of 1, 2 and 3 family residences.

Senator Wilson asked if the civil and criminal penalties were completely eliminated. Mr. Campbell answered the penalties were kept, but only in certain circumstances. Senator Lynch stated he had talked to the sponsor of SB 197 and he had agreed that the penalties would only be incurred in the occurrence of a tragedy.

Senator Rea asked about the use of a property manager in the rental of property and who would be responsible in the case where a fire has occurred. Mr. Campbell stated the owner of the property would still be responsible.

Senator Wilson proposed an amendment which would include property managers.

Senator Christiaens stated the paperwork was necessary to control contractual agreements between the tenant and the landlord.

Mr. Campbell pointed out an ambiguity in SB 197. On page 2, section 1G, the second sentence states "upon commencement of rental agreement the landlord will verify the smoke detector and that it is in good working order". On the top of page 4 it states "the landlord is liable for damages caused as the result of the failure to install...". Mr. Campbell stated the ambiguity was in whether the burden was on landlords who have people currently leasing property.

Senator Klampe proposed SB 197 to say "to install at commencement of a rental agreement."

Senator Lynch said the above amendment wouldn't protect the people currently renting.

Senator Lynch assigned Senator Klampe, Senator Bruski-Maus and Senator Christiaens to a subcommittee to work the amendments into SB 197.

EXECUTIVE ACTION ON HB 108Discussion:

Senator Lynch stated there was some opposition because some people wanted approval of the members of the cooperatives. He stated there was a proposed amendment of "with approval of the membership".

Mr. Campbell stated the amendment was an amendment to the second reading and the amendment doesn't fit into HB 108.

Senator Bruski-Maus stated she had talked to various people and stated she felt the people should know what their board members are doing. She stated she agrees with the "with approval" amendment.

Senator Mesaros stated the directors should know, but the stockholders vote for the directors. He stated the directors should have the ability to function in the capacity to make the decisions for the stockholders.

Senator Klampe questioned if the installation of "with" would apply to section B as well as section A, so the total membership would have to vote on section B, also. Senator Lynch answered that was correct.

Mr. Campbell stated the directors couldn't execute section A or B without approval of the members. Senator Lynch stated the new language was "except trustees may receive the same insurance coverage provided to cooperative employees".

Senator Christiaens asked for clarification on whether the directors served without pay. Senator Bruski-Maus stated the directors got paid per day and get reimbursed mileage.

Senator Christiaens stated if the members of the cooperative don't like what the board of directors has done, the next election of officials would take care of any problems.

Senator Lynch stated the board of directors are just trying to make sure what they are doing is legal.

Senator Christiaens asked Jay Downen to address the insurance issues and the per diem issue. Mr. Downen stated about 50% of the cooperatives in the state are paying per diem and applying it toward insurance coverage. He stated per diem is permissible, but the cooperatives should not list the per diem as such if it is being put toward insurance coverage.

Motion/Vote:

Senator Klampe HB 108 BE CONCURRED IN. MOTION CARRIED UNANIMOUSLY. Senator Gage is to carry HB 108.

EXECUTIVE ACTION ON HB 120**Motion/Vote:**

Senator Mesaros moved HB 120 BE CONCURRED IN. MOTION CARRIED UNANIMOUSLY.

Announcement:

Mr. Campbell stated he had put together a "gray bill" on SB 233 which changed.

Senator Bruski-Maus asked the Committee to draft a bill. She stated the problem she had was with prescription delivery. MCA 37-3-301 does not allow for prescription drugs to be delivered to the patient by any other means than the pharmacist or a licensed employee of the pharmacy. She needs to address the issue where a pharmacist who works in Glendive delivered prescriptions for people in Wibaux at a store, and the store would dispense those prescriptions or the people would pick them up. She supplied a copy of MCA 37-3-301 (Exhibit #1). She stated it had been suggested there be an intermediary between the patient and the pharmacist and the patient should also be able to name a designated person to pick up prescriptions. She asked the Committee to see the feasibility of changing the law.

Senator Kennedy stated under current law it is illegal to do the situation described above.

Senator Lynch asked if it was legal for a relative or a friend to pick up his prescription. Senator Kennedy stated that was legal and the prescription could also be mailed to him.

Senator Bruski-Maus stated the prescriptions couldn't be mailed in the situation above because of limitations with mailing on Saturdays and Sundays, or sometimes the prescription comes in after the mail has gone out.

Senator Lynch asked if the people in Wibaux could call someone they know in Glendive to pick up the prescription.

Senator Bruski-Maus stated the pharmacy was told the only way a patient could pick up a prescription was to get it himself from a designated person in the pharmacy.

Senator Klampe stated the original statement was the pharmacy couldn't send a prescription to another establishment, but then the statement was modified to say another person couldn't pick it

up. Senator Klampe stated the law doesn't address another person picking up a prescription. He felt there was good reason for the pharmacy not to be able to send a prescription to a local gas station because of misuse of dangerous drugs.

Senator Bruski-Maus stated the Board of Pharmacy was stopping all people from picking up prescriptions at this particular store.

Senator Christiaens asked if the Committee could address the Board of Pharmacy on the issue.

Senator Koehnke asked if perhaps Senator Kennedy could work this issue into SB 218.

Senator Klampe stated the issue could be clarified by looking at the statutes as they stand. He stated it doesn't preclude someone from picking up a prescription.

Senator Kennedy stated there are rules established by the Board of Pharmacy which must be followed and the law is as follows:

"It shall be deemed in violation of the pharmacy law for any person or corporation holding a pharmacy license to participate in any arrangement or agreement whereby prescriptions may be left at, picked up from, accepted by or delivered to any store who shall, for any other establishment not licensed by the board of Pharmacy."

Senator Klampe stated the law doesn't address an individual.

Senator Kennedy continued:

"Nothing in this shall prohibit a licensed pharmacy from picking up prescriptions or delivering prescriptions at the office or home of the prescriber and at the residence of the patient, or at the hospital at which a patient is confined by means of an employee or a common carrier."

Senator Bruski-Maus stated the pharmacy used to deliver the prescriptions to the homes, but no longer do because they have been told to cease-and-desist.

Senator Rea asked if there has been some abuse by the community of the provision.

Senator Kennedy stated there needs to be some control.

Senator Lynch asked Senator Kennedy and Senator Bruski-Maus to visit with some pharmacists and see what they had to say about the issue.

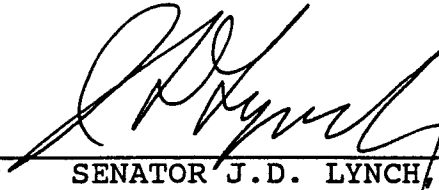
SENATE BUSINESS & INDUSTRY COMMITTEE

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ADJOURNMENT

Adjournment: 11:10 a.m.



SENATOR J.D. LYNCH, Chair

KRISTIE WOLTER, Secretary

JDL/klw

ROLL CALL

SENATE COMMITTEE Business & Industry DATE Feb 2, 1999

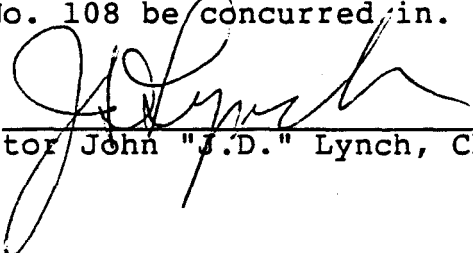
NAME	PRESENT	ABSENT	EXCUSED
Senator Lynch	✓		
Senator Christaens	✓		
Senator Bruski-Maus	✓		
Senator Gage	present	absent	✓
Senator Hager	✓		
Senator Harding	✓		
Senator Kennedy	✓		
Senator Klampe	✓		
Senator Koehnke	✓		
Senator Mesaros	✓		
Senator Rea	✓		
Senator Toews			✓
Senator Wilson	✓		

SENATE STANDING COMMITTEE REPORT

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February 2, 1993

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration House Bill No. 108 (first reading copy -- blue), respectfully report that House Bill No. 108 be concurred in.

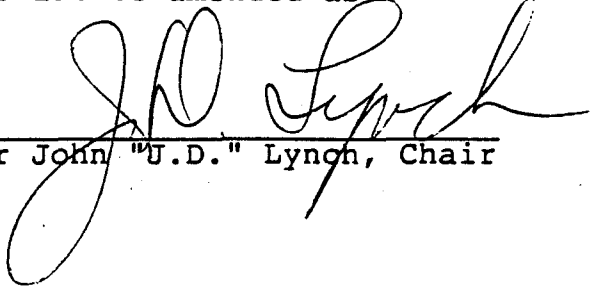
Signed: 
Senator John "J.D." Lynch, Chair

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 2, 1993

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration Senate Bill No. 190 (first reading copy -- white), respectfully report that Senate Bill No. 190 be amended as follows and as so amended do pass.

Signed: 
Senator John "U.D." Lynch, Chair

That such amendments read:

1. Page 2, line 22.

Strike: "may"

Insert: "shall"

2. Page 3, line 1.

Strike: "may"

Insert: "must"

3. Page 4, line 3.

Strike: "may"

Insert: "must"

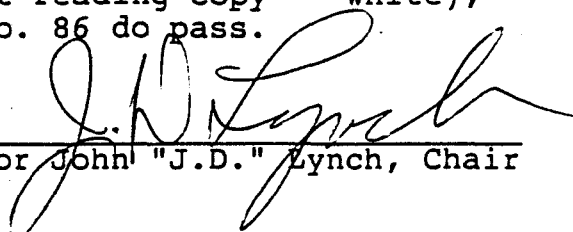
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SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 2, 1993

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration Senate Bill No. 86 (first reading copy -- white), respectfully report that Senate Bill No. 86 do pass.

Signed: 

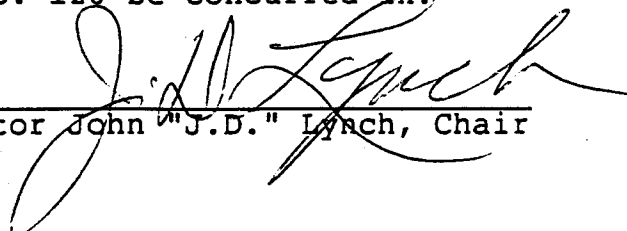
Senator John "J.D." Lynch, Chair

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 2, 1993

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration House Bill No. 120 (first reading copy -- blue), respectfully report that House Bill No. 120 be concurred in.

Signed: 
Senator John "J.D." Lynch, Chair

intern, or pharmacy in this state for the purpose of acquiring information to aid in prosecutions under parts 1 through 4 of this chapter.

History: En. Sec. 4, Ch. 104, L. 1931; re-en. Sec. 3202.10, R.C.M. 1935; amd. Sec. 10, Ch. 175, L. 1939; amd. Sec. 8, Ch. 241, L. 1971; amd. Sec. 157, Ch. 350, L. 1974; R.C.M. 1947, 66-1521.

Cross-References

Duties of Attorney General, 2-15-501.

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relative to state matters, 7-4-2716.

Part 3

Licensing

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 1

DATE Feb 2, 1993

BILL NO. Introduced by Sen. HB-120
Baiski - Maus

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-7-301. Sale of drugs or medicines unlawful except as provided. Except as provided in 37-7-307 through 37-7-309, it is unlawful for a:

(1) person to compound, dispense, vend, or sell at retail drugs, medicines, chemicals, or poisons in any place other than a pharmacy, except as hereinafter provided;

(2) proprietor, owner, or manager of a pharmacy or any other person to permit the compounding or dispensing of prescriptions or the vending or selling at retail of drugs, medicines, chemicals, or poisons in any pharmacy except by a registered and licensed pharmacist or by an intern registered and licensed by the department and under the supervision of a registered and licensed pharmacist;

(3) person to assume or pretend to the title of pharmacist or intern unless the person has a license as such, issued and in force pursuant to parts 1 through 3 of this chapter;

(4) person other than a licensed and registered pharmacist or a licensed and registered intern under the supervision of a licensed and registered pharmacist to compound, dispense, vend, or sell at retail drugs, medicines, chemicals, or poisons except as provided in parts 1 through 3.

History: En. Sec. 640, Pol. C. 1895; re-en. Sec. 1622, Rev. C. 1907; re-en. Sec. 1, Ch. 134, L. 1915; re-en. Sec. 3170, R.C.M. 1921; re-en. Sec. 3170, R.C.M. 1935; amd. Sec. 1, Ch. 175, L. 1939; amd. Sec. 1, Ch. 241, L. 1971; R.C.M. 1947, 66-1501; amd. Sec. 9, Ch. 22, L. 1979; amd. Sec. 5, Ch. 379, L. 1981; amd. Sec. 2, Ch. 219, L. 1991.

Compiler's Comments

1991 Amendment: At beginning inserted exception clause; and made minor changes in style. Amendment effective January 1, 1992.

37-7-302. Examination — qualifications — fees — reciprocity. (1) The department shall give reasonable notice of examinations by mail to known applicants. The department shall record the names of persons examined

DATE Jan Feb. 2, 1993

SENATE COMMITTEE ON Business & Industry

BILLS BEING HEARD TODAY: SB 263 -

Name	Representing	Bill No.	Check One	
			Support	Oppose
DARREL VANKOTEN	MONTANA COLLECTORS ASSN ASSOC. Credit Bureaus of Montana	263	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Jeff Koch	MONTANA COLLECTORS ASSN ASSOC. Credit Bureaus	263	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Bill Stevens	MT Food & Diet Assn	263	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Neil Koch	Montana Collectors Assn	263	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY