

**MINUTES**

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

**Call to Order:** By J.D. Lynch, Chair, on February 9, 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. Delwyn Gage (R)  
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. Daryl Toews (R)  
Sen. Bill Wilson (D)

**Members Excused:** None.

**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 286  
Executive Action: SB 286, HB 165, SB 18, SB 218

**HEARING ON SB 286**

**Opening Statement by Sponsor:**

Senator Doherty, Senate District 20 opened on SB 286, asking that  
it be tabled by the Committee.

**Proponents' Testimony:**

None.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

None.

Closing by Sponsor:

Senator Doherty closed on SB 286.

EXECUTIVE ACTION ON SB 286

Motion/Vote:

Senator Wilson moved SB 286 be TABLED. The motion CARRIED UNANIMOUSLY.

EXECUTIVE SESSION ON SB 18

Discussion:

Senator Lynch asked Senator Doherty what the standing on SB 18 was. Senator Doherty stated the Insurance Commission and a subcommittee were working on amending SB 18 to fit both their needs. He stated the Insurance Commission wanted to have SB 18 include captive agents and to provide protection to the companies against fraud. He said he would report back to the Committee.

EXECUTIVE ACTION ON HB 165

Discussion:

Senator Lynch stated HB 165 made sense unless there was a company who could undercut prices by a large margin. He stated the safety factor seemed important.

Senator Toews stated he believed the LPG companies should include the filling clause in their leases.

Senator Mesaros stated he had checked into the problem with the transferring of companies and tanks. He found the turnover on tanks wasn't high and he would support the legislation.

Senator Gage asked the Committee what a propane tank costs. Senator Toews stated the cost was around \$1 per gallon size. Senator Harding stated the tanks could be leased for around \$50 per year.

**Motion/Vote:**

Senator Toews moved HB 165 BE TABLED. The motion FAILED 7 to 6 by ROLL CALL VOTE.

**Motion:**

Senator Wilson moved HB 165 BE CONCURRED IN.

**Discussion:**

Senator Lynch stated HB 165 protected the consumer.

Senator Mesaros stated HB 165 would pose an inconvenience to the consumer. He stated there may be some effect on pricing, too, but the safety and liability had to be considered.

Senator Christiaens stated HB 165 addresses the issues of safety and liability.

Senator Bruski-Maus stated she has a rented tank and an owned tank and she may receive delivery from anyone. She stated she could not recall a safety check being done on any of the equipment. She asked if HB 165 would encourage a safety check.

Senator Mesaros stated the companies are required to check the equipment, and if they aren't doing so they are in violation.

Senator Rea stated HB 165 would make the companies liable if they did not check the equipment.

Senator Gage stated the safety issue had been blown out of proportion. He stated the owners should be able to tell if they are using twice as much propane as previously, and it should be the owners' responsibility to be aware of their equipment and anything that goes wrong with it.

Senator Toews stated the safety issue wasn't realistic. He stated the drivers of the trucks don't run the safety checks so HB 165 wasn't necessary.

Senator Harding stated HB 165 would just be more regulation and she was the person doing the checking on her tank.

Senator Klampe asked Senator Toews if people were trying to protect their jobs through SB 165. Senator Toews stated the people are trying to protect their clientele.

Senator Lynch asked if there were any ulterior motives of the companies. He stated all the suppliers were in support of HB 165 and the only person who may get hurt would be the consumer, but he couldn't see how the consumer would get hurt.

Senator Toews stated prices change, but not every company changes their prices.

Senator Rea stated the two instances Larson had referred to during the hearing were examples showing why the legislation was necessary and who would carry the liability.

Senator Mesaros stated he was personally satisfied with his supplier and the service they provide. He stated his supplier does all the safety tests and reports if there is a problem.

Senator Kennedy asked the Committee if there was any charge for a company to change a tank. Senator Mesaros and Senator Rea answered "no" and Senator Harding answered "yes". Senator Harding stated she had been charged an installation fee of \$100 plus \$50 per year per tank.

Vote:

The motion CARRIED 7 to 6 on ROLL CALL VOTE. Senator Beck was assigned to carry HB 165.

EXECUTIVE SESSION ON SB 218

Discussion:

Senator Kennedy stated there are amendments to SB 218 and asked Bart Campbell to explain them to the Committee.

Mr. Campbell stated he hadn't had a chance to speak with Senator Kennedy, but suggested amendments as follows:

Take out the language requiring out-of-state pharmacies to pay taxes, but inserting a section requiring out-of-state companies to register as foreign corporations.

Add a severability clause which would make any section of the amended bill be void if it is illegal.

Senator Lynch asked for a showing of hands in support of SB 218. He suggested each pharmacist be a registered pharmacist in the state of Montana.

Senator Kennedy stated the registering of the pharmacists would require them to conform to the Montana laws. He stated the out-of-state pharmacists would have to comply with the Montana

technician ratio which is 1 pharmacist to 2 technicians. He stated the out-of-state pharmacists would have to file a utilization plan which states how they are going to train and use their technicians. He said on the issue of patient consultation, the mail-order pharmacy must keep each patient's telephone number on file, and the supervising pharmacist will have the responsibility to call the people and offer to counsel a patient in cases where professional judgement warranted such intervention.

Senator Lynch stated the phone number section seemed a little overwhelming and the section seemed to be just a hindrance to the mail-order pharmacists. He questioned whether the mail-order pharmacists would actually call people.

Senator Christiaens asked how the mail-order pharmacies were to attain these phone numbers. Senator Kennedy stated in the process of filling out an application, the people could place their phone number on the application.

Senator Klampe asked Senator Kennedy if the phone numbers were regulation required by Montana pharmacies. Senator Kennedy stated the new regulation concerning consultation is going to require the acquisition of phone numbers. He stated the acquiring of the phone numbers by the mail-order pharmacy would concur with the consultation law. Senator Kennedy stated the purpose behind the phone number requirement was to initiate a call.

Senator Lynch asked Bart Campbell to check into the phone number requirement and see if it was legal and how it would be obtained.

Bonnie Tippy stated the amendment fulfilled the federal mandate for every pharmacist to counsel the patients. She stated mail order pharmacies were given a break because they had 800 numbers where the patient could call them. She said one of the arguments made by the people is that the people can get counseling, and when the question is asked, "Do they phone you?" the answer is "We think that they can." She stated it would be legal to make the mail-order pharmacies acquire or attempt to acquire the phone numbers.

Senator Klampe stated the phone number requirement was a moot point because it would be up to the judgement of the supervising pharmacist to call and the pharmacist could just say, "I had no judgment to do that."

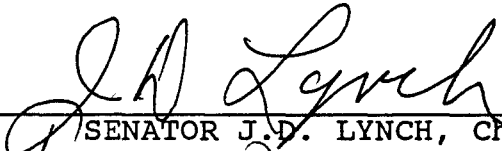
Senator Lynch stated the federal government requires the 800 numbers and asked if the state can require more than the federal government.


Bart Campbell stated he would check into the matter and have an answer for the Committee on February 10.

Senator Christiaens stated the foreign corporation registration amendment would make it more accessible for any claims against the company.

ADJOURNMENT

Adjournment: 10:40 a.m.

  
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SENATOR J.D. LYNCH, Chair

  
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KRISTIE WOLTER, Secretary

JDL/klw

# ROLL CALL

SENATE COMMITTEE Business & Industry DATE Feb. 9, 1992

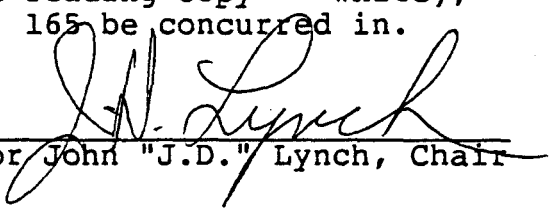
NAME	PRESENT	ABSENT	EXCUSED
Senator Lynch	✓		
Senator Christaens	✓		
Senator Bruski-Maus	✓		
Senator Gage	✓		
Senator Hager	✓		
Senator Harding	✓		
Senator Kennedy	✓		
Senator Klampe	✓		
Senator Koehnke	✓		
Senator Mesaros	✓		
Senator Rea	✓		
Senator Toews	✓		
Senator Wilson	✓		

SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
February 9, 1993

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration House Bill No. 165 (first reading copy -- white), respectfully report that House Bill No. 165 be concurred in.

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



# ROLL CALL VOTE

SENATE COMMITTEE Business & Industry BILL NO. HB 1165

DATE Feb 9, 1993 TIME 10:00 A.M. P.M.

NAME	YES	NO
Senator Gage	✓	
Senator Hager	✓	
Senator Harding	✓	
Senator Misaros		✓
Senator Toews	✓	
Senator Wilson		✓
Senator Rya		✓
Senator Klampe		✓
Senator Koehnke	✓	
Senator Bruski-Maus	✓	
Senator Kennedy		✓
Senator Christaens		✓
Senator Lynch		✓

Kristen Malt  
SECRETARY

J. J. Lynch  
CHAIR

MOTION: Table HB 1165

# ROLL CALL VOTE

SENATE COMMITTEE Business & Industry BILL NO. HB 11.5

DATE Feb 9, 1993 TIME 10:00 (A.M.) P.M.

NAME	YES	NO
Senator Gage		✓
Senator Hager		✓
Senator Harding		✓
Senator Mesaros	✓	
Senator Toews		✓
Senator Wilson	✓	
Senator Rea	✓	
Senator Klampe	✓	
Senator Koehnke		✓
Senator Bruski-Mails		✓
Senator Kennedy	✓	
Senator Christaens	✓	
Senator Lynch	✓	

Kristen Wark  
SECRETARY

J. P. Lynch  
CHAIR

MOTION: HB 11.5 Be Concurred In

Amend SB 218, first reading bill, as follows:

1. Page 6, lines 5 and 6  
Following: "identity of"  
Strike: "a"  
Insert: "each licensed"  
Following: "pharmacist"  
Strike: "licensed by the board under 37-7-302 and"
2. Page 6, line 10  
Following: "technicians"  
Insert: "with a ratio of technicians to pharmacists no greater than the greatest such ratio allowed for an in-state pharmacy under the board's rules"
3. Page 6, line 11  
Following: "309;"  
Strike: "and"  
Insert: "(4) shall register each pharmacist identified under (2) with the board, upon proof of the pharmacist's good standing with the licensing authority in the state where the pharmacist is employed and upon the pharmacist's written commitment to comply with the approved utilization plan and any other requirements of this chapter applicable to the pharmacist's activities; and"

Renumber: following subsection

4. Page 6, line 14  
Following: line 13  
Insert: **Section 4.** Section 37-7-706, MCA, is amended to read:

**"37-7-706. Patient communication -- telephone service.** Every out-of-state mail service pharmacy shall provide a toll-free telephone service, available at least 6 days a week and for 40 hours a week, to facilitate communication as may be required under this part and 37-7-406, between patients in this state and a pharmacist who has access to the patients' records at the out-of-state mail service pharmacy. The toll-free number must be affixed to all drug product containers dispensed to patients in this state. An out-of-state mail service pharmacy shall also obtain or attempt to obtain a patient's telephone number and initiate attempts to counsel the patient when, in the judgment of the supervising pharmacist, such efforts are warranted under 37-7-406 and rules adopted under that section."

**NEW SECTION.** **Section 5. Discipline of registered pharmacists.** The board may, upon investigation and opportunity for hearing, suspend or revoke the

registration of a pharmacist registered under 37-7-703(4) for any violation of this chapter by the pharmacist."

NEW SECTION.     **Section 6.** Codification instruction. [Section 4] is intended to be codified as an integral part of Title 37, chapter 7, part 7, and the provisions of Title 37, chapter 7, part 7 apply to [section 4]."

Renumber:   following section.

#### Summary explanation of amendments

Pharmacists employed in out-of-state mail order pharmacies would not have to be licensed by Montana or to travel to Montana in order to register. Under amendments 1 and 3, supervising pharmacists would merely have to submit verification through the National Association of Boards of Pharmacy that they were in good standing with the licensing board in the state they worked in, plus a written pledge to abide by Montana's utilization plan limits and other requirements of the Pharmacy Practice Act. Under amendment #5, the Montana Board could revoke the registration of an individual pharmacist who violated this pledge.

Under amendment #2, the out-of-state mail order pharmacy could file a utilization plan for technicians-to-supervising pharmacist with a ratio no greater than the greatest allowed under the Montana board's rules. That is a 2:1 ratio for hospital pharmacies.

Under amendment #4, the mail order firm would have to try to keep each patient's telephone number on file and the supervising pharmacist would have an affirmative duty to call that number and offer to counsel the patient in cases where professional judgment warranted such intervention.