

## **MINUTES**

### **MONTANA SENATE 53rd LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON BUSINESS & INDUSTRY**

**Call to Order:** By J.D. Lynch, Chair, on February 11, 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. 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:** Senator Ethel Harding

**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 233  
Executive Action: SB 197, SB 233, HB 161, HB 178, SB 218

#### **HEARING ON SB 233**

##### **Opening Statement by Sponsor:**

Senator Gage stated SB 233 had been amended to include the Department of Commerce's amendments. He stated the Department's proposal was to exempt persons operating a hot water boiler with less than 200,000 BTU's per hour or a hot water supply boiler with heat input of less than 600,000 BTU's per hour from licensing. He stated the size of the boilers mentioned were the average size of the boilers in homes in the state of Montana. He said the current statute allows an exemption for boilers that are

in "up to six family dwelling units" for safety. Senator Gage stated if the current statute is for safety, it allows for the exposure of six families to the hazard of a boiler blowing up and won't allow a plant with less than 20 employees be exposed to the same hazard.

Senator Lynch asked if the Committee was going to be addressing the "gray bill" (Exhibit #1). Senator Gage answered "yes". Mr. Campbell stated the "gray bill" was the original bill with the amendment incorporated into it.

**Proponents' Testimony:**

None.

**Opponents' Testimony:**

Darryl Holzer, AFL-CIO, stated his organization opposed SB 233 as amended. He stated SB 233 does not address the licensing and certification requirements which were implemented for safety. He stated accidents happen because of human error, and the people handling the boilers should be licensed. He stated the safety provisions are through statutes and are only enforceable by the Board and on licensed operators.

**Questions From Committee Members and Responses:**

Senator Lynch asked Senator Gage if he would be opposed to including the 6-family units rather than exempting more people from the statute. Senator Gage stated the danger is in the fuel source and not from the boiler itself. He stated SB 233 does not address the inspection of the boiler, but the licensing of the operator.

Senator Lynch asked Bob Anderson, Department of Commerce, why a 6-family unit is exempt. Mr. Anderson stated he was not sure why a 6-family unit is exempt from licensing and inspection. He stated SB 233 would make the 6-family units be inspected but not licensed.

Senator Rea asked Mr. Anderson about the current statute on apartment complexes with multiple boilers. Mr. Anderson said they are inspected unless they are 6-family units or less. He stated the operators are required to be licensed also.

Senator Christiaens asked Mr. Anderson who pays for the inspections. Mr. Anderson stated the Department or Insurance Companies do the inspections. He stated the Department charges a fee with the licensing fee which includes inspections. Senator Christiaens asked Mr. Anderson about the frequency of inspection. Mr. Anderson stated the boilers are inspected annually. He added

the insurance companies inspect the boilers they insure.

Senator Klampe asked Mr. Holzer how big the boiler which blew up at the Super 8 was. Mr. Holzer stated he was not sure and would check into it and get back to Senator Klampe.

Closing by Sponsor:

Senator Gage closed, saying there was no way everyone could be protected from every risk and somebody had to draw a line. He asked the Committee to give favorable consideration to SB 233.

EXECUTIVE ACTION ON SB 197

Motion:

Senator Christiaens moved SB 197 BE AMENDED (Exhibit #2).

Discussion:

Mr. Campbell went over each of the amendments with the committee and explained them.

Senator Lynch asked why a landlord would be responsible if the tenant has the right to install a smoke detector. Mr. Campbell stated SB 197 states the landlord has the responsibility to install a smoke detector. If the landlord does not install a smoke detector, the tenant may. He stated if there is no smoke detector and there is serious bodily injury, the landlord would be liable and the tenant taking no action would not relieve the landlord from the responsibility.

Senator Klampe stated the landlord should be relieved of the responsibility upon receipt of a certified letter from the tenant.

Senator Lynch stated a smoke detector should be installed in the rental and if it isn't installed then the tenant should install it. He stated the installment by the tenant should shift the responsibility to the tenant.

Mr. Campbell stated the way SB 197 is written, it would not relieve the landlord of the responsibility, but it could be amended to say so.

Senator Lynch stated the landlord should only be responsible if there is bodily injury and the tenant had not been notified in writing of his right to install a smoke detector.

Senator Christiaens stated the landlord needs to be notified in advance of the installment of a smoke detector by a tenant.

Senator Klampe asked if there could be an amendment to require the landlord to retain a certified letter sent by the tenant regarding the absence of a smoke detector.

Mr. Campbell stated the tenant has to be aware of the fact he/she could send the letter.

Senator Lynch stated the title should read, "at the start of the tenancy, the landlord/landlord assignee shall obtain the written confirmation...the same person shall notify the tenant of the right". He stated if the tenant isn't informed of the right, the landlord should be held liable.

Senator Christiaens stated most landlords do application processes and go over the rights with the tenants.

Senator Rea asked if it is the landlords responsibility to verify the working order of the smoke detector, even if it is installed by the tenant. Senator Christiaens stated it was addressed in the language indicating that the landlord and the tenant, at the time of occupancy, have checked the working order of the smoke detector. He stated after the smoke detector has been verified, it is up to the tenant to maintain the smoke detector. He added perhaps there should be an addition stating, "if the tenant buys and installs the smoke detector, it is the tenants responsibility to verify..."

Senator Lynch stated the tenant is responsible for working order, so the purchase of the item by the tenant would make it their responsibility to verify.

Senator Gage asked if "verification" meant the batteries are working, or if the tester would have to burn something to make sure the smoke detector is working.

Senator Rea referred to page 4, line 1 and asked Mr. Campbell for clarification. Mr. Campbell stated, with the amendment, SB 197 would make it such that the tenant has verified that the smoke detector is installed and working. He stated on page 4 where it says, "installed and verified", the landlord has written confirmation from the tenant that the smoke detector was in working order at the start of the tenancy.

Senator Rea asked about if the smoke detector was not installed at the start of tenancy. Mr. Campbell stated the letter would be relief of liability on the landlords part.

Senator Lynch asked if "at the start of tenancy, the landlord's assignee shall inform, in writing, that the tenant has a right to a smoke detector and shall obtain written confirmation from the tenant that a smoke detector has been installed on the premises and is in working order", could be included in SB 197.

Senator Lynch stated the penalty for bodily injury should only be if there is failure of the landlord to inform the tenant of the right.

Senator Lynch asked Mr. Campbell to work on the amendments and supply the Committee with them when they are ready.

**EXECUTIVE ACTION ON SB 233**

**Motion\Vote:**

Senator Gage moved SB 233 BE AMENDED (Exhibit #1). The motion CARRIED UNANIMOUSLY.

**Motion:**

Senator Wilson moved SB 233 DO NOT PASS AS AMENDED.

**Discussion:**

Senator Toews stated the Committee seems to be confused on the issue of where liability starts and where it ends and if two parties should meet in the middle.

Senator Gage stated the problems with exposure are in society whether SB 233 passes or not. He stated SB 233 would make sense out of the exemptions in the current statute.

Senator Christiaens stated he felt uncomfortable with any exemptions regarding boiler licensing.

Senator Lynch stated SB 197 caused inequities which were moving in the wrong direction, and the statutes should be to make society safer.

**Vote:**

The motion CARRIED 7 to 6 on ROLL CALL VOTE.

**Announcement:**

Senator Kennedy and Senator Bruski-Maus asked Mr. Campbell to draft a resolution to address the issue of pharmacies delivering prescriptions to non-designated distribution points.

**EXECUTIVE ACTION ON HB 161**

**Motion\Vote:**

Senator Rea moved HB 161 BE CONCURRED IN. The motion CARRIED UNANIMOUSLY. Senator Rea was assigned to carry HB 161 on the Senate floor.

EXECUTIVE ACTION ON HB 178Motion/Vote:

Senator Christiaens moved HB 178 BE CONCURRED IN. The motion CARRIED UNANIMOUSLY. Senator Gage was assigned to carry HB 178 on the Senate floor

EXECUTIVE ACTION ON SB 218Discussion:

Senator Kennedy stated the amendments presented would address the problems with SB 218. One of the problems addressed was the registering of mail order pharmacists. He stated the pharmacies would have to register with Montana through a process which can be done by mail. He stated the registration would require the pharmacies be certified by the Board of Pharmacy in Montana and would require them to be licensed in the state in good standing. He stated SB 218 would require the out of state pharmacies to comply with Montana law regarding the maximum technician to pharmacist ratio which is 2:1.

Senator Lynch stated the word "hospital" should be inserted before "pharmacy" on amendment #5 to clarify the ratio.

Mr. Campbell stated he perceived a problem with the amendment requiring the out-of-state pharmacy to get the phone number of the patient. He stated the requirement would be more than the federal government requires and would pose a problem. He stated the patient is soliciting the out-of-state agency and not the other way around. Because of the direction of solicitation, the regulation of the out-of-state agency would be an interference with interstate commerce. He stated the council had reservations about putting the clause into SB 218.

Senator Kennedy stated there was a bill passed in the 1991 session which required an 800 number. Senator Kennedy stated he felt it should be the responsibility of the pharmacy to initiate the call to the patient. Senator Kennedy stated he wished there were more control over the situation of the phone contact.

Senator Christiaens stated he had called his own local pharmacist and asked if the pharmacy had his phone number on file. He found the pharmacy did not have his phone number. He stated he was not sure if the in-state pharmacies were getting the phone numbers of their patients, and did not think the out-of-state pharmacies should be required to.

Senator Lynch brought up the subject of change of residency and phone number and who would be responsible to find out the new number.

Senator Koehnke asked Senator Kennedy how the mail-order pharmacies were going to be regulated. Senator Kennedy stated the out-of-state pharmacies have to file a "utilization plan" with the Montana State Board. He stated the agencies must register as a foreign corporation.

Mr. Campbell stated the registration as a foreign corporation would remove the section of the original bill which asked the corporations to pay taxes in Montana. He stated the registration would make it the Department of Revenue's decision on whether they were going to tax them or not. He stated minimally, the agencies would have to pay a foreign corporation fee and have a registered agent in the state. Mr. Campbell stated there may be a problem having the agencies register as a foreign corporation because the act reads as follows:

"a foreign corporation may not transact business in the state until it obtains a certificate of authority from the Secretary of State. The following lien activities, among others, do not constitute transacting business within [the state]:...soliciting or obtaining orders whether by mail or through employees or agents or otherwise, if the orders require acceptance outside the state before they become contracts".

Mr. Campbell stated he wasn't sure if the pharmacies would fall under this act. He stated there was an exemption for a business transacting business in interstate commerce.

Senator Christiaens asked Mr. Campbell why there was a requirement for insurance companies whose headquarters are out-of-state to register as foreign agencies. Mr. Campbell stated the agencies had agents registered in the state and another exception may be a compelling reason for regulation of interstate commerce.

Senator Lynch stated the insurance agencies are regulated by the Insurance Commissioners office whereas the other foreign agencies are listed with the Secretary of State.

Senator Gage referred to amendment #6, and asked about the "other requirements" in the language. Bonnie Tippy, Montana Board of Pharmacy, said the "other requirements" are included in the regulations set by the State Board. Senator Gage stated there may be other provisions which cannot be mandated by the state.

Mr. Campbell asked Ms. Tippy if the registration in the state meant there had to be an agent in the state, or if the agency had to only register with the Board. She stated the registration was the only thing which was required.

Senator Lynch asked to delete, "and other requirements of this chapter applicable to the pharmacists activities."

Senator Gage asked Ms. Tippy why the pharmacies don't register with the national registry. Ms. Tippy stated the national registration is not something which is required, and the registry in Montana would make it so the Board had some power over the pharmacies.

Senator Lynch asked Mr. Kennedy how the technician ratio was going to be enforced. Mr. Kennedy stated the Board would only be able to take the pharmacies' word on the ratio.

Senator Kennedy stated the pharmacists in Montana make mistakes, but the Board has repercussions against the pharmacists. He stated through registration with the state, the Board may have some control over mistakes made by the mail-order pharmacies.

Senator Koehnke asked Senator Kennedy what he thought SB 218 would do. Senator Kennedy stated SB 218 would allow the local retail pharmacies to compete on a "level playing field" with the mail-order pharmacies. He added SB 218 would allow Montana to have some control over the out-of-state pharmacies and protect the consumers.

Senator Gage stated SB 218 would dissuade the pharmacies from operating in the state. Senator Klampe stated SB 218 was addressing the quality of health care for Montanans.

Senator Mesaros stated he agreed with Senator Klampe on the issue of quality health care.

Senator Kennedy stated "tax supported entities" were addressed on page 4, section 5, line 13 through 18. He stated SB 218, as amended, would allow any of the larger corporations which were on the "mail-order" system to seek pharmaceutical care in Montana without financial penalty. He stated the amendment would protect the tax base in Montana along with the local businesses who would be afforded the chance to give the same service with no more cost.

Senator Christiaens stated the amendment would touch on the "willing provider" and "preferred provider" clauses in a future bill. Senator Kennedy agreed, but stated SB 218 would allow people to "shop around".

Motion/Vote:

Senator Kennedy moved SB 218 BE AMENDED. The motion CARRIED UNANIMOUSLY.

Motion/Vote:

Senator Christiaens moved SB 218 DO PASS AS AMENDED. The motion CARRIED with Senator Hager voting NO.



SENATE BUSINESS & INDUSTRY COMMITTEE


February 11, 1993

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ADJOURNMENT

Adjournment: 11:30 a.m.

  
\_\_\_\_\_  
SENATOR J.D. LYNCH, Chair

  
\_\_\_\_\_  
KRISTIE WOLTER, Secretary

JDL/klw

# ROLL CALL

SENATE COMMITTEE Business & Industry DATE 2/11/93

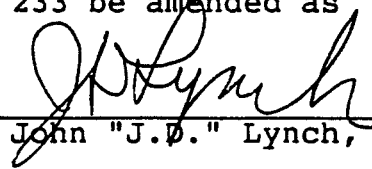
NAME	PRESENT	ABSENT	EXCUSED
Senator Lynch	✓		
Senator Christaens	✓		
Senator Bruski-Maus	✓		
Senator Gage	✓		
Senator Hager	✓		
Senator Harding			✓
Senator Kennedy	✓		
Senator Klampe	✓		
Senator Koehnke	✓		
Senator Mesaros	✓		
Senator Rea	✓		
Senator Toews	✓		
Senator Wilson	✓		

SENATE STANDING COMMITTEE REPORT

Page 1 of 2  
February 11, 1993

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration Senate Bill No. 233 (first reading copy -- white), respectfully report that Senate Bill No. 233 be amended as follows and as so amended do not pass.

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

That such amendments read:

1. Title, lines 4 through 6.

Following: "EXEMPTING"

Strike: remainder of line 4 through "FROM" on line 5

Following: "BOILER"

Insert: "OPERATORS FROM"

Following: "LICENSURE" on line 5

Strike: remainder of line 5 through "CERTIFICATE" on line 6

Following: ";

Insert: "PROVIDING EXPERIENCE CREDIT FOR A LOW-PRESSURE  
ENGINEER'S LICENSE;"

2. Title, line 7.

Strike: "SECTION"

Insert: "SECTIONS"

Following: "50-74-103"

Insert: "AND 50-74-305"

3. Page 1, line 13.

Strike: "licensure,"

4. Page 1, line 18.

Following: "to"

Insert: "or"

5. Page 1, lines 22 through 24.

Following: "families" on line 22

Strike: remainder of line 22 through "employees" on line 24



6. Page 2, line 3.

Following: line 2

Insert: "(4) The provisions of this chapter requiring licensure  
do not apply to a person operating:

(a) a hot water heating boiler plant with a total  
combination of heat input that does not exceed 200,000 Btu per  
hour;

(b) a hot water supply boiler having a heat input of less  
than 600,000 Btu per hour.

 Amd. Coord.  
 Sec. of Senate

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Section 2. Section 50-74-305, "MCA, is amended to read:

"50-74-305. Exceptions to requirements for engineer's license. Allowable exceptions or variances to the minimum requirements set out in 50-74-304 are as follows:

(1) An applicant for an engineer's license in any classification holding a valid license in that classification from another state having licensing requirements equal to or exceeding the minimum requirements set out in 50-74-304, successfully passing a written examination prescribed by the department, and found to be competent to operate a boiler and steam-driven machinery in that classification shall be granted a license in that classification.

(2) Operating experience in a classification accumulated in the United States military services or the merchant marine service satisfactory to the department may be accepted in lieu of the operating experience required for licensing of engineers in each of the license classifications.

(3) An applicant having training in the operation of steam or water boilers and steam machinery who has been certified as having satisfactorily completed a prescribed training course from a recognized vocational-technical training school or center or other department-approved institution or training program in the classification for which he the applicant is applying may, at the discretion of the department, be credited with a maximum of 6 months' experience toward a first-, second-, or third-class engineer's license or a low-pressure engineer's license."

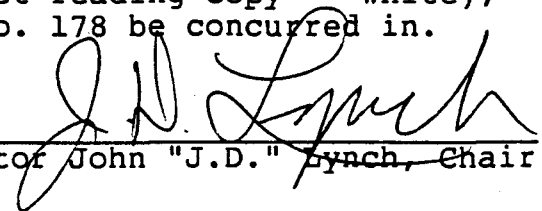
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SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
February 11, 1993

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration House Bill No. 178 (first reading copy -- white), respectfully report that House Bill No. 178 be concurred in.

Signed: 

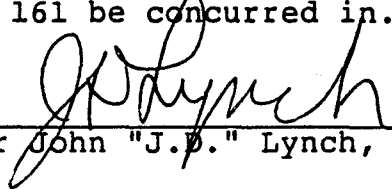
Senator John "J.D." Lynch, Chair


SENATE STANDING COMMITTEE REPORT


Page 1 of 1  
February 11, 1993

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration House Bill No. 161 (first reading copy -- white), respectfully report that House Bill No. 161 be concurred in.

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

  
Amd. Coord.  
Sec. of Senate

  
Senator Carrying Bill

341235SC.San

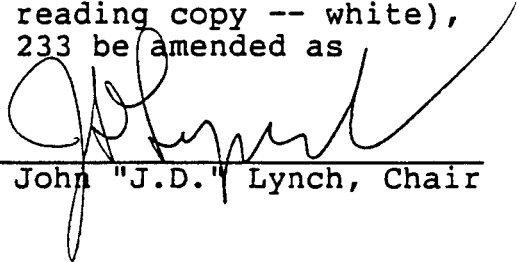
ADVERSE

SENATE STANDING COMMITTEE REPORT

Page 1 of 2  
February 11, 1993

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Following: "LICENSURE" on line 5

Strike: remainder of line 5 through "CERTIFICATE" on line 6

Following: ";

Insert: "PROVIDING EXPERIENCE CREDIT FOR A LOW-PRESSURE  
ENGINEER'S LICENSE;"

2. Title, line 7.

Strike: "SECTION"

Insert: "SECTIONS"

Following: "50-74-103"

Insert: "AND 50-74-305"

3. Page 1, line 13.

Strike: "licensure,"

4. Page 1, line 18.

Following: "to"

Insert: "or"

5. Page 1, lines 22 through 24.

Following: "families" on line 22

Strike: remainder of line 22 through "employees" on line 24

6. Page 2, line 3.

Following: line 2

Insert: "(4) The provisions of this chapter requiring licensure  
do not apply to a person operating:

(a) a hot water heating boiler plant with a total  
combination of heat input that does not exceed 200,000 Btu per  
hour;

(b) a hot water supply boiler having a heat input of less than 600,000 Btu per hour.

Section 2. Section 50-74-305, "MCA, is amended to read:

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(2) Operating experience in a classification accumulated in the United States military services or the merchant marine service satisfactory to the department may be accepted in lieu of the operating experience required for licensing of engineers in each of the license classifications.

(3) An applicant having training in the operation of steam or water boilers and steam machinery who has been certified as having satisfactorily completed a prescribed training course from a recognized vocational-technical training school or center or other department-approved institution or training program in the classification for which he the applicant is applying may, at the discretion of the department, be credited with a maximum of 6 months' experience toward a first-, second-, or third-class engineer's license or a low-pressure engineer's license."

-END-



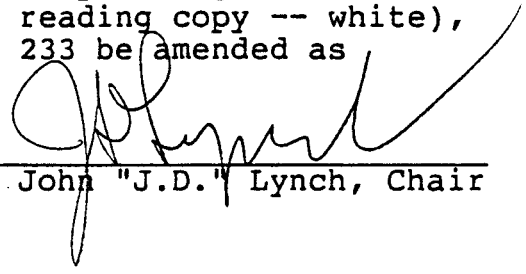
ADVERSE

SENATE STANDING COMMITTEE REPORT

Page 1 of 2  
February 11, 1993

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Strike: remainder of line 5 through "CERTIFICATE" on line 6

Following: ";

Insert: "PROVIDING EXPERIENCE CREDIT FOR A LOW-PRESSURE  
ENGINEER'S LICENSE;"

2. Title, line 7.

Strike: "SECTION"

Insert: "SECTIONS"

Following: "50-74-103"

Insert: "AND 50-74-305"

3. Page 1, line 13.

Strike: "licensure,"

4. Page 1, line 18.

Following: "to"

Insert: "or"

5. Page 1, lines 22 through 24.

Following: "families" on line 22

Strike: remainder of line 22 through "employees" on line 24

6. Page 2, line 3.

Following: line 2

Insert: "(4) The provisions of this chapter requiring licensure  
do not apply to a person operating:

(a) a hot water heating boiler plant with a total  
combination of heat input that does not exceed 200,000 Btu per  
hour;

(b) a hot water supply boiler having a heat input of less than 600,000 Btu per hour.

Section 2. Section 50-74-305, "MCA, is amended to read:  
"50-74-305. Exceptions to requirements for engineer's license. Allowable exceptions or variances to the minimum requirements set out in 50-74-304 are as follows:

(1) An applicant for an engineer's license in any classification holding a valid license in that classification from another state having licensing requirements equal to or exceeding the minimum requirements set out in 50-74-304, successfully passing a written examination prescribed by the department, and found to be competent to operate a boiler and steam-driven machinery in that classification shall be granted a license in that classification.

(2) Operating experience in a classification accumulated in the United States military services or the merchant marine service satisfactory to the department may be accepted in lieu of the operating experience required for licensing of engineers in each of the license classifications.

(3) An applicant having training in the operation of steam or water boilers and steam machinery who has been certified as having satisfactorily completed a prescribed training course from a recognized vocational-technical training school or center or other department-approved institution or training program in the classification for which he the applicant is applying may, at the discretion of the department, be credited with a maximum of 6 months' experience toward a first-, second-, or third-class engineer's license or a low-pressure engineer's license."

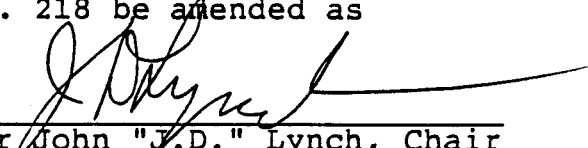
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SENATE STANDING COMMITTEE REPORT

Page 1 of 2  
February 12, 1993

MR. PRESIDENT:


We, your committee on Business and Industry having had under consideration Senate Bill No. 218 (first reading copy -- white), respectfully report that Senate Bill No. 218 be amended as follows and as so amended do pass.

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

That such amendments read:

1. Title, line 6.  
Strike: "LICENSURE"  
Insert: "REGISTRATION"
2. Title, line 13.  
Strike: "LICENSED" through "TO"  
Insert: "REGISTERED AS A FOREIGN CORPORATION IN"
3. Title, line 14.  
Following: " ; "  
Insert: "PROVIDING DISCIPLINARY PROCEDURES ; "
4. Page 4, lines 22 through 24.  
Strike: "paying" on line 22 through the rest of line 24  
Insert: "registered in this state as a foreign corporation."
5. Page 6, lines 5 and 6.  
Strike: "licensed" on line 5 through "and" on line 6
6. Page 6, line 10.  
Following: "technicians"  
Insert: "that has a ratio of technicians to pharmacists no greater than the maximum ratio allowed for an in-state hospital pharmacy under the board's rules"  
Following: "and"  
Insert: "shall"
7. Page 6, line 11.  
Strike: "and"  
Insert: "(4) shall register each pharmacist identified under subsection (2) with the board, with proof of the pharmacist's good standing with the licensing authority in the state where the pharmacist is employed and with the pharmacist's written commitment to comply with the approved utilization plan; and"

Renumber: subsequent subsection

  
Amd. Coord.  
Sec. of Senate

351050SC.SAN

8. Page 6, following line 13.

Insert: "NEW SECTION. Section 4. 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 for any violation of this chapter by the pharmacist.

NEW SECTION. Section 5. 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].

NEW SECTION. Section 6. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Renumber: subsequent section

-END-

# ROLL CALL VOTE

SENATE COMMITTEE Business & Industry BILL NO. SB 233

DATE \_\_\_\_\_ TIME \_\_\_\_\_ 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 Christiaens	✓	
Senator Lynch	✓	

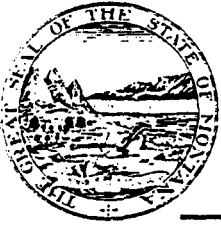
Kristen Worth  
SECRETARY

J. Lynch  
CHAIR

MOTION: SB 233 DN/PAA

Exhibit No. 1 (proposed gray bill for Senate Bill No. 233) and Exhibit No. 2 (proposed amendments to Senate Bill No. 197) were not transmitted with the minutes.

Refer to committee action on 2-11-93



# MONTANA STATE SENATE

SENATOR JOHN "ED" KENNEDY, JR.  
SENATE DISTRICT 3  
5567 MONTANA HWY. 35  
KALISPELL, MONTANA 59901

COMMITTEES:  
LOCAL GOVERNMENT—CHAIRMAN  
BUSINESS AND INDUSTRY  
NATURAL RESOURCES

## SENATE BILL 218

### MAIL ORDER PHARMACY BILL

The information that people have been getting about Senate Bill 218 has been very misleading and in many cases completely erroneous. This bill in no way restricts people's ability to buy their prescriptions, vitamins or any item from AARP or any mail order pharmacy. It does not place any tax on your purchases.

Basically, this bill does four things:

1. Tries to insure the health and safety of people getting prescriptions from mail order pharmacies. Many mail order pharmacies are located in states that allow technicians to be used to fill prescriptions. The Montana State Legislature, realizing this problem, has given rule-making authority to the Board of Pharmacy to control the number of technicians-to-pharmacist ratio that would assure safety and accuracy in filling prescriptions. This ratio has been set at one pharmacist-one technician in a retail pharmacy, and one pharmacist-two technicians in hospital pharmacies. The ratio in mail order pharmacies is as much as one pharmacist to six or eight technicians, and these technicians, in many instances, have no requirements for education or training. Senate Bill 218 wants to protect you by having mail order pharmacists comply

with the same ratio of pharmacist to technicians that Montana law requires, i.e., one pharmacist supervising no more than two technicians. This bill simply promotes accuracy in filling your prescriptions. It does not keep you from getting your prescription from a mail order pharmacy.

## 2. Freedom of Choice

This bill also requires that tax-supported entities i.e., schools, local, county and state government that have mail order prescription service in their health plans, give the person the option of getting their prescription at their local pharmacy at no financial penalty. In other words, they cannot force you to get your prescriptions at the mail order house - you have the option. They have to offer the same deal to local pharmacies that they offer to the mail order pharmacy: i.e., co pay at \$3.00, \$5.00, etc. or if the mail order pharmacy sells you your prescription for \$15.00 and your local pharmacy will sell it to you for \$15.00 then you have the option of getting it from your local pharmacy.

3. Corporate Taxes (does not affect AARP) Millions of dollars are spent each year on mail order prescriptions. This is taking money out of the Montana economy. This bill again is asking, that mail order pharmacy (only the ones that are utilized by Montana tax-supported entities, schools, government, etc.) pay



a corporate tax on the pro-rated share of the business done in Montana. This just makes sense. They are reaping huge profits at the expense of Montana economy and taxpayers so they should pay their share of taxes.

#### 4. Consultation

This bill requires that mail order pharmacies have an 800 number for consultation with you, the consumer. It also says that they should initiate the call when special information or instructions need to be given to you.

I hope after reading this, you will see that this bill is good. It protects you; it gives you the option of patronizing your local pharmacy if you choose. It hopefully will put some of the huge profits of mail order pharmacies back into Montana by way of corporate taxes.

I hope you will call your senators and representatives and tell them to support this bill.

Your Senator

John Ed Kennedy Jr.

Questions & Answers on Senate Bill 218 As Amended

Q: If all 50 states passed this law, would a mail-order firm's pharmacists have to be licensed in every state?

A: No. The requirement of Montana licensure has been amended out. In its place is simple registration by mail, based on proof of each pharmacist's good standing in the state of his or her employment, and a signed promise to follow Montana law in sending prescriptions to Montanans.

Q: Does that amendment lessen the burden on mail-order firms?

A: Yes, significantly. The cost of a good-standing verification through the National Association of Boards of Pharmacy is around \$100.

Q: Would this law affect a licensed prescriber's (M.D., D.D.S., D.V.M., etc.) ability to obtain drugs by mail?

A: No. The act of mailing a drug from outside Montana to a resident of the state is "pursuant to a legally issued prescription" (37-7-702(1)). Drugs in bulk or not yet dispensed per prescription, which is what a licensed provider would be obtaining, are not covered under this definition.

Q: Would a mail-order pharmacy have to rent an office in Montana in order to deal with public-employee groups?

A: No. Any out-of-state corporation which does business in Montana may register as a "foreign corporation" with the Secretary of State. No office is necessary, only the appointment of a registered agent who lives in the state. Once a company registers with the Secretary of State, it can be subjected to assessment under the Multi-State Tax Compact. A company with no physical presence in Montana may then seek to avoid assessment for Montana Corporation Tax. If it does not file such a protest, it simply pays tax on that share of its income attributable to sales in Montana.

Q: So what does a mail-order pharmacy have to do in order to contract with public-employee groups?

A: It would have to:

1. Register as a foreign corporation.
2. Appoint a registered agent for service of process.
3. Wait for the Multi-State Tax Compact organization to compute the Montana share of its revenue.
4. Don't protest--pay the tax.

Q: How does this bill affect a public employee who is now getting maintenance drugs for \$7 to \$10 per prescription by mail?

A: It doesn't affect the employee. The bill says that employee must have the option of paying \$7 to the mail order firm or \$7 to the local pharmacy. If the medication costs the dispensing pharmacy more, the employer or plan sponsor pays the pharmacy or pharmacies the difference. With willing local providers able to opt in, the plan sponsor may have to write several checks a month, one to the mail-order firm and the others to local pharmacists.

Q: But isn't that difference between the mail-order price and the local druggist's price substantial?

A: No. Comparisons furnished the committee by Montana pharmacists showed they can compete on price with mail-order firms. Plan sponsors who opposed the bill did not know what the prices were on individual drugs from their mail-order supplier.

DATE 2/11/93

SENATE COMMITTEE ON Business & Industry

BILLS BEING HEARD TODAY: SB 233 (amended)

Name	Representing	Bill No.	Check One Support Oppose	
Warrell Holzer	MT. ST. AFL-CIO	SB233	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

## VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY