

MINUTES

MONTANA SENATE 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By J.D. Lynch, Chair, on February 17, 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. Ethel Harding (R)
Sen. Ed Kennedy (D)
Sen. Terry Klampe (D)
Sen. Francis Koehnke (D)
Sen. Kenneth Mesaros (R)
Sen. Daryl Toews (R)

Members Excused: Senator Doc Rea, Senator William Wilson

Members Absent: Senator Hager

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: SJR 16, SB 367, SB 357
Executive Action: SJR 16, SB 357

HEARING ON SJR 16

Opening Statement by Sponsor:

J.D. Lynch, Senate District 35, opened on SJR 16 for Judy Jacobson, Senate District 36. He stated SJR 16 was a Committee resolution suggesting credit card solicitors to submit a script to the Board of Regents on campuses. He stated SJR 16 would make it mandatory for the solicitors to review the terms and agreements with the students on campuses before the student signed an agreement with the credit card company.

Proponents' Testimony:

Tom Ebzery, Billings, Montana stated he endorsed SJR 16.

Opponents' Testimony:

None.

Closing by Sponsor:

Senator Lynch closed on SJR 16.

EXECUTIVE ACTION ON SJR 16

Motion/Vote:

Senator Klampe moved SJR 16 DO PASS. The motion CARRIED UNANIMOUSLY.

HEARING ON 367

Opening Statement by Sponsor:

Senator Forrester, Senate District 49, stated SB 367 would require a person claiming to be an independent contractor to obtain an independent contractor card from the Department of Labor and Industry. He stated SB 367 would change the current law in section 4, page 4, line 24 through page 5, line 15. He stated the law would be if a person claims to be an independent contractor they must apply to the department of labor for an independent contractor status card. He stated Washington has a card which they provide and it looks like a drivers license. He stated if a person could not show he was registered with the department of labor as an independent contractor, they would have to be treated as an employee. He stated SB 367 would exempt the person from employee status only if they were carrying the card.

Proponents' Testimony:

None.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

Senator Kennedy asked Senator Forrester if there was any dollar limit on the contracting job for issuance of the card. Senator Forrester stated there were no dollar limitations.

Senator Koehnke asked Senator Forrester how a person would obtain the card. Senator Forrester answered the card was received through an application process at the Department.

Senator Koehnke asked Chuck Hunter, Department of Labor and Industry, if there was a test a person would have to pass to obtain the card. Mr. Hunter stated there was a test which seeks to determine the status of a worker and whether the worker is free from control and direction of the employer. He stated the test would determine if the worker is independently engaged in a trade occupation in business.

Senator Lynch asked Mr. Hunter about the situation where a person would move from an independent contractor position to employee and back and if they are licensed once as an independent contractor, could they return to employee status. Mr. Hunter stated the process in the law sets up a presumption of once an exemption is given, the exemption extends into all jobs held by the person. Senator Lynch asked Mr. Hunter about the situation where a school teacher paints a house over the summer, and if they need to obtain a card to do so. Mr. Hunter stated the person would have to get the card under SB 337. Senator Lynch asked if the teacher has to return the card upon returning to teaching in the fall. Mr. Hunter stated SB 337 presumes once the card is obtained, it applies to all the jobs a person holds.

Closing by Sponsor:

Senator Forrester stated he felt the Department of Labor should not be allowing the people to move back and forth between trades. He stated the person who holds a full-time employee position should work for a painting contractor rather than work as an independent contractor. He stated SB 337 would help clean up the industry.

HEARING ON SB 357**Opening Statement by Sponsor:**

Senator Doherty, Senate District 20, stated SB 357 was drafted on behalf of the Securities and Insurance Commission. He stated SB 357 will provide a tool for proper investigation into potential security fraud money. He stated SB 357 differentiates between use in transactional immunity.

Proponents' Testimony:

Melissa Broch, Staff Attorney, Securities Department, State Auditors Office, read from prepared testimony in support of SB 357 (Exhibit #1).

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

Senator Klampe asked Ms. Broch if a person would have to raise their own fifth amendment rights. Ms. Broch stated that was correct. Senator Klampe asked how the rights were raised. Ms. Broch stated the rights may be raised by declining a response to the subpoena. She stated the Department would then go into district court and obtain an order enforcing the subpoena. She stated the person would be immune from prosecution if he or she were compelled to surrender documents. Senator Klampe asked how a person would decline to respond. Ms. Broch stated it could be verbal or written stating they were not going to respond to the subpoena.

Closing by Sponsor:

Senator Doherty closed on SB 357, stating it would be an important tool for the Securities Commission. He stated SB 357 would clarify rights regarding administrative subpoena's.

EXECUTIVE ACTION ON SB 357**Motion/Vote:**

Senator Klampe moved SB 357 DO PASS. The motion CARRIED UNANIMOUSLY.

HEARING ON SB 372**Opening Statement by Sponsor:**

Senator Swysgood, Senate District 37, stated SB 372 addressed the Board of Social Worker. He stated SB 372 deals with the interpretations to the rules relating to the licensing of professional counselors. He stated the Board's rules say a person has to have a continuing study course in order to be licensed as a professional counselor. Prior to making the decision on the rule, there was a time limit allowing for people who didn't have the number of hours to take the credits at a

college and become an LPC (Licensed Professional Counselor). He stated the problem is there are people with some of the requirements, but they are not able to acquire the additional hours necessary for licensure under the Board's rules. He stated SB 372 says if a person has 45 or more semester hours which were acquired within 5 years of application to the Board, the Board should allow a person to get the remaining necessary requirements at an accredited college.

Proponents' Testimony:

None.

Opponents' Testimony:

Dr. Bob Bakko, Executive Director, Northwest Counseling Centers, stated he opposed SB 372. He stated there are national standards on which the original law was proposed and passed. He stated there was a "grandfather clause" on the original law which terminated in January 1992. He stated not all counseling courses meet the qualifications to be an LPC. He stated the minimum standards are for a reason and they meet the national standards, and he noted the problem is not limited to Montana.

Mary Hamlin, Administrative Assistant, Board of Social Work Examiners for Professional Counselors, read from a letter prepared by Mr. Simonton, Chairman of the Board (Exhibit #2).

Questions From Committee Members and Responses:

Senator Toews asked Dr. Bakko what the purpose for not giving people time to get licensed was. Dr. Bakko stated people were given a chance to acquire the necessary credits, but the reason was for national uniformity.

Senator Christiaens asked Dr. Bakko if there were so many applications, why there was such a need for the people in the field. Dr. Bakko stated the issue is quality and there are fewer counselors, but the available ones are highly qualified.

Senator Christiaens asked Dr. Bakko what the opportunity would be for a counselor who wants to come under compliance but isn't able to according to the Board's rules. Dr. Bakko stated there was no opportunity unless a person wanted to return to school and start over. He stated the system is closed, but protects minimum standards for quality of care.

Senator Bruski-Maus asked Dr. Bakko if most master's degree materials would cover the requirements to become an LPC. Dr. Bakko stated there were certain programs which applied.

Senator Harding asked Dr. Bakko who the Board was trying to protect. Dr. Bakko stated the Board was protecting the LPC's and it was a large group. He stated the national standards protect the consumer's right to quality.

Senator Koehnke asked Dr. Bakko if a person passed national standards, would they then meet the state's standards. Dr. Bakko stated the federal standards coincide with the state standards.

Senator Mesaros asked Dr. Bakko if it was up to the Board to decide if a person would qualify to be an LPC. Dr. Bakko stated there are regulations the Board has which define the qualifications a person must have to become an LPC.


Senator Klampe asked Dr. Bakko if there were remedies for a person trying to meet the standards who already has some credit hours in the field, but not enough. Dr. Bakko stated there was no remedy except the person would have to return to school and start over.

Closing by Sponsor:


Senator Swysgood stated it is "ludicrous" that the state can not afford people who have some education to continue on and fulfill the requirements of the national standards. He stated SB 372 doesn't change the standards. He stated the Committee may have the option to change the 5 years if they felt it necessary.

ADJOURNMENT

Adjournment: 10:55 a.m.



SENATOR J.D. LYNCH, Chair



KRISTIE WOLTER, Secretary

JDL/klw

ROLL CALL

SENATE COMMITTEE Business & Industry DATE 2/17/93


NAME	PRESENT	ABSENT	EXCUSED
Senator Lynch	✓		
Senator Christaens	✓		
Senator Bruski-Maus	✓		
Senator Gage	✓	ATT	
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 17, 1993

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration Senate Joint Resolution No. 16 (first reading copy -- white), respectfully report that Senate Joint Resolution No. 16 do pass.

Signed: 

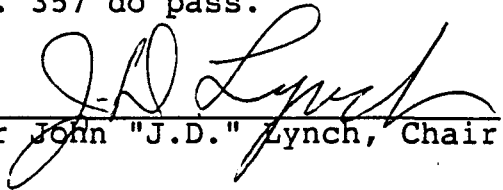
Senator John "J.D." Lynch, Chair

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 17, 1993

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration Senate Bill No. 357 (first reading copy -- white), respectfully report that Senate Bill No. 357 do pass.

Signed: 

Senator John "J.D." Lynch, Chair

STATE AUDITOR
STATE OF MONTANA



Mark O'Keefe
STATE AUDITOR

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 1
DATE 2/17/93
BILL NO. SB 357

COMMISSIONER OF INSURANCE
COMMISSIONER OF SECURITIES

TESTIMONY ON SENATE BILL 357

Mr. Chairman, members of the committee, for the record, my name is Melissa Broch. I am the staff attorney for the Securities Department of the State Auditor's Office.

Senate Bill 357 is a clean up bill that does two things:

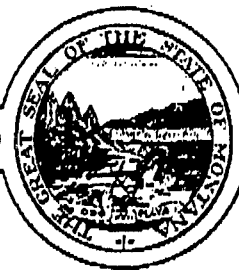
First, it provides that an individual responding to the Department's administrative subpoena must raise his or her 5th amendment privilege or consider it waived. This is a general rule in the criminal justice system. This bill would put those responding to the Department's subpoenas on notice.

In a recent criminal case, the judge concluded that a substantial portion of the evidence gathered by the Department should be excluded because the defendant was compelled to respond to the subpoena. The defendant eventually pled guilty. However, if he had gone to trial, several of the 22 counts against him would have been dropped because this evidence was excluded. This individual defrauded investors out of close to 4 million dollars - the county attorney would have been unable to obtain a conviction on some of these violations because of the judge's interpretation of the statute.

Secondly, Senate Bill 357 extends the effective period of a temporary cease and desist order. Right now, a temporary cease and desist order issued by the Securities Commissioner is effective until 10 days after a hearing on the order. As a practical matter, a hearing examiner typically will not issue a proposed order within that time period. Senate Bill 357 would amend the code to provide that the temporary cease and desist order will remain in effect until 10 days after the hearing examiner issues a proposed order. That gives the commissioner 10 days to either adopt or reject the proposed order.

BOARD OF SOCIAL WORK EXAMINERS

DEPARTMENT OF COMMERCE



STAN STEPHENS, GOVERNOR

1424 9TH AVENUE

STATE OF MONTANA

(406) 444-3737

HELENA, MONTANA 59620-0407

February 17, 1993

Senator J. D. Lynch
Capitol Station
Helena, Montana 59620

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 2

DATE 2/17/93

BILL NO. SB 372

Re: S.B. 372

Dear Senator Lynch:

The Board of Social Work Examiners and Professional Counselors, the Board responsible for the licensing of social workers and counselors, unanimously opposes S.B. 372 which would amend Section 37-23-202 M.C.A. We had hoped that one or more of our Members could personally testify against the Bill but the short notice precludes us from doing so. Since we work with the current licensing laws and regulations, we hope that you will find our comments of assistance.

S.B.372 essentially reduces the academic requirements for licensure of a professional counselor and substitutes either experience or a program to acquire the academic studies within a five (5) year period. While on the surface that may appear rather harmless, it essentially undoes what the Board of Social Work Examiners and Professional Counselors and the University System have been working towards. We have been trying to standardize the requirements for licensure; meet minimum national requirements; and remove the subjectivity from the Application process.

A review of the Statement of Intent must arouse your suspicions. As it states, the proposed legislation is to provide an opportunity for persons "who partially fulfill the requirements for licensure as a professional counselor to fulfill the requirements." I can assure you that procedures currently exist to fulfill the licensing requirements. This Bill in effect says that the State of Montana should reduce its standards and grant licenses to counselors who do not meet the licensing requirements. The question should be very simple: does an Applicant meet the requirements for licensure or doesn't he or she? Do we license those individuals who just about meet the requirements of a pharmacist or a lawyer?

The Statement of Intent also violates the Equal Protection clause of the State and Federal Constitutions in that it provides "it is not the intent of the Legislature to allow a person without a Graduate Degree or a License from another State to circumvent the

requirements for licensure". Do we allow Montana residents who do not meet the licensing requirements to nevertheless be licensed but turn away non-residents with the same qualifications? Such a provision is discriminatory. It would not withstand judicial scrutiny.

National standards recommend a minimum of 60 Semester Hours in academics in 3 Core Areas. This is for minimum competency. The experience of the Counselors on our Board can attest that the current requirements assure only minimum competency.

This Bill would allow the substitution of counseling experience for academic requirements. Who will be responsible for determining which of the 3 Core Areas of academics is not essential and can be pushed aside? Will it be this Board? Will it be the Universities?

Those with 45 Semester Hours, as proposed, will have five (5) years to make up the additional 15. Who is going to monitor those with the sub-standard Licenses to assure that they will fulfill the academic requirements in five (5) years? If they have been issued a License and do not complete the requirements in five (5) years, you can well imagine the lawsuits that will be filed when the Board tries to revoke those Licenses.

When the current licensing laws were passed in 1985, the 60 Semester Hour academic requirement was waived until after December 31, 1987. From that time 60 Semester Hours (90 Quarter Hours) have been required. Faced with a flood of complaints from Applicants who needed additional time to complete those requirements, the Board extended the period until September of 1992 to complete them. Many took advantage of that opportunity but some did not, but the Board did not reduce the academic requirement that is provided by law. It did not issue a "watered down" license while Applicants completed the academic requirements.

Montana's current Law is one of the top three or four in the Nation and has served as a model for other States. It currently meets National Standards. The University of Montana has created an Ed.S. Degree which, when completed, satisfies the Academic Standards now existing. Other Schools have indicated a willingness to work with Applicants to satisfy the Practicum Requirements. The mechanics are already in place to assist those individuals wanting licensing who may be lacking in the Academic Requirements to satisfy them.

Irvin Booth, a Licensed Professional Counselor and Member of this Board, for years has reviewed Applications and Pre-Applications to determine if the prerequisites for licensure have been met. At times he has reviewed over 500 Applications in a ten-week period and during the review process he would receive telephone calls from

2-17-93
SB-372

all over the world 24 hours a day. If S.B. 372 should somehow become Law, he fears that the flood-gates would be opened and a paperwork nightmare would be created. He estimates that one to three full time professional counselors plus 1 additional Professor at each University Unit as well as secretarial staff would have to be hired. Those expenses together with travel and other incidentals would cost the State a minimum of \$250,000 to screen the numerous Applications and determine subjectively whether the pre-testing Applications meet the new requirements. Mr. Booth also envisions increases in University staffs at a time when the University System will likely have its Budget cut.

This Board has excellent cooperation from the University System in attempting to standardize the requirements for licensure. S.B.372 would not just dilute those efforts to improve the licensing process, it would kill them.

S.B. 372 would be a slap in the face to those Professional Counselors already licensed and who have met the academic requirements.

S.B.372 should never have been given life - now it should be killed

Yours very truly,


RICHARD A. SIMONTON

RAS:ES
Encl/

DATE 2/17/93

SENATE COMMITTEE ON Business & Industry

BILLS BEING HEARD TODAY: SB 357, SB 367, SB 372, SJR-16

Name	Representing	Bill No.	Check One	
			Support	Oppose
Melissa Brock	State Auditor's office	357	<input checked="" type="checkbox"/>	<input type="checkbox"/>
McDermott	Dept of Commerce	372	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Dr. Bob Brown	MCN HCA	372	<input type="checkbox"/>	<input checked="" type="checkbox"/>

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY