

MINUTES

MONTANA HOUSE OF REPRESENTATIVES  
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT

Call to Order: By CHAIRMAN STEVE BENEDICT, on March 12, 1993, at  
8:00 A.M.

ROLL CALL

Members Present:

Rep. Steve Benedict, Chair (R)  
Rep. Sonny Hanson, Vice Chair (R)  
Rep. Bob Bachini (D)  
Rep. Joe Barnett (R)  
Rep. Ray Brandewie (R)  
Rep. Vicki Cocchiarella (D)  
Rep. Fritz Daily (D)  
Rep. Tim Dowell (D)  
Rep. Alvin Ellis (R)  
Rep. Stella Jean Hansen (D)  
Rep. Jack Herron (R)  
Rep. Dick Knox (R)  
Rep. Don Larson (D)  
Rep. Norm Mills (R)  
Rep. Bob Pavlovich (D)  
Rep. Bruce Simon (R)  
Rep. Carley Tuss (D)  
Rep. Doug Wagner (R)

Members Excused: All Present

Members Absent: None

Staff Present: Susan Fox, Legislative Council  
Claudia Johnson, Committee Secretary

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

Committee Business Summary:

Hearing: SB 218, SB 337 & SB 340  
Executive Action: SB 218, SB 337 & SB 340

HEARING ON SB 218

Opening Statement by Sponsor:

SEN. J."ED" KENNEDY, Jr., Senate District 3, Kalispell, said SB 218 will regulate the practice of mail order pharmacy in the state of Montana. He wanted to emphasize the importance of this legislation for the health, safety, and welfare of the citizens

of Montana, especially the senior citizens on fixed incomes. If he thought this legislation would do harm, and increase the cost of prescriptions to seniors or anyone else in this state, he would not have this bill before the committee. Mail order pharmacy is slowly closing down home town pharmacies in rural Montana, and he felt that sometime soon they will be gone. He said then what will happen to the elderly and the invalids? Who will get up at two in the morning to deliver a prescription? Home town pharmacists do it now, will mail order pharmacies do it then? Many opponents will say today that this is protectionist legislation; it is if it helps to protect Montana citizens, Montana pharmacies, and Montana pharmacists in the business of delivering health care to the consumers. He said this bill does four things: 1) requires that mail order pharmacies, and the pharmacists in charge of dispensing prescriptions in Montana, be registered by the state of Montana; 2) requires that no other pharmacy abide by the same laws, rules and regulations that Montana pharmacists do in regard to pharmacist technicians; 3) requires the tax supported entities such as school districts, local governments, etc., not to financially penalize the employees for wanting to deal with the home town pharmacy; and 4) requires the tax supported entities to do business only with mail order pharmacies that are registered as a foreign corporation. The committee will be told by the opponents that the Legislature will be placing a burden on mail order pharmacies by asking that they comply with the same rules as the Montana pharmacists. He said that Montana pharmacy laws, rules, and regulations will protect the health, safety and welfare of the people of Montana, and should not expect less from mail order pharmacies. The information people have been receiving about SB 218 has been misleading and completely erroneous. He said "shame on you mail order pharmacies for not telling the truth; shame on you AARP for using scare tactics and untruths with Montana senior citizens". This bill does not restrict the people's ability to buy their prescriptions, or vitamins from AARP or any other mail order pharmacy. SB 218 does not place any tax on the purchases of prescriptions, and it 218 will ensure the health and safety of people receiving prescriptions from mail order pharmacies. He said that many of the mail order pharmacies allow technicians to fill prescriptions. The Montana Legislature realizes this is not safe, and giving rule-making authority to the Montana Board of Pharmacy will close the gap of the number of technicians and pharmacists' ratio in Montana to ensure the accuracy and safety in filling prescriptions. This ratio has been set at 1 pharmacist to 1 technician in a retail pharmacy, and 1 pharmacist to 2 technicians in a hospital pharmacy. The ratio of mail order pharmacies can be as much as one pharmacist to 6 or 8 technicians, and in many cases these technicians do not have the education and training. SB 218 will protect the citizens of Montana by having mail order pharmacists comply with the same ratio of pharmacists and technicians required in Montana. This bill promotes accuracy in the filling of prescriptions, but will not keep the people from receiving prescriptions from mail order pharmacies. SB 218 will require tax supported entities such as state, county and local governments that have mail order prescription service in their health care plans to give their

employees the option of purchasing their prescriptions at a local pharmacy at no financial penalty. He said people cannot be forced to purchase their prescriptions from a mail order house, but will have options. The mail order pharmacy will have to offer the same prices as local pharmacies. If the mail order price is cheaper, the local pharmacists can match that price. He said in reality, mail order pharmacy is not cheaper and certainly not safer. It is a real thorn in Montana's side of economy, and urged the committee to support SB 218. **EXHIBIT 1**

Proponents' Testimony:

**Mark Eidler, President of the Montana State Pharmaceutical Association,** said they are in support of SB 218.

**Greg Loushin, practicing pharmacist in Butte,** said last year mail order pharmacists filled 10% of all prescriptions in the United States. The American Managed Care Pharmacy Association which represents 17 of the nation's largest mail order prescription services predicts an increase of 25% in the mail order delivery of prescriptions in sales of \$4 billion a year. The longer term prediction is that mail order prescription sales will reach \$8.5 billion by 1996, which is more than double the expected increase of the overall U. S. pharmaceutical market. He said that mail order works by selling contracts to third party contracts and hailing themselves as "managed health care". He said the mail order pharmacies are only 2¢ less per day than local pharmacies. He distributed a handout that lists some of the costs that mail order non-profits pay, i.e., an Aerobid inhaler system cost community pharmacies \$37 apiece; non-profit mail orders pay \$2.58, but the recipients of the mail order prescriptions are charged almost as much as a normal community pharmacy. Mail order does not have any tax base in Montana, and they do not bring in any jobs to Montana.

**Wayne Tibid, Pharmacist of the Bitterroot Drug,** said a pharmacist is an agent between the doctor and the patient. The Omnibus Reconciliation Act of 1990, calls for the pharmacist to be involved in the counseling, and the education of the medication the patient is supposed to take. This act has changed the profession of pharmacy and will reduce the medical cost that Americans generate.

**Terri Wolfgram, pharmacist, Bungalow Drug,** distributed written testimony in support of SB 218. **EXHIBITS 2 & 3**

**Dan Severson, pharmacist, Valley Drug, Stevensville,** said AARP has 33 million members, receives \$95 million in grants and federal subsidies, and operate 9 businesses with a cash flow that exceeds \$10 billion. The \$10 billion in cash flow generates revenues of \$300 million, and \$3 million is from prescription drug services. Everything that AARP does is geared to generate money. He distributed written testimony in support of SB 218. **EXHIBITS 4 & 5**

**Clayton Pike, Billings**, said he is the largest independent pharmacist in Montana, and operates 7 stores around Billings, Columbus and Laurel. He has been in business for 35 years and has never been before the Legislature until this time. He said there is a crisis in Montana, and it is already in the rural areas. Mail order is taking over, and the locally owned stores in Montana are going out of business.

**Roger Tippy, attorney in Helena, retainer to the Montana Pharmacy Association**, explained the constitutional issues of the bill. The interstate commerce clause of the United State Constitution as construed by the courts in a case that is famous in this area, Pike vs. Bruce Church Company, a cantaloupe grower in Arizona. It says, "state law regulates evenhandedly to affect the legitimate local public interest and its effect on interstate commerce are only incidental, and will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefit". He said this is the lady with the scales of justice to see if the local benefits of this bill outweigh such burdens there may be on interstate commerce: 1) registration as a foreign corporation: a) burden; Secretary of State charges \$120 up front, and \$20 a year; b) benefit; if the mail order house ships the wrong drug to someone who then dies, they can be sued in a Montana court; 2) freedom of choice: a) no burden will be conceded; 3) registration of each pharmacist; a) burden - a fee of \$50 to \$60; 4) final approval of pharmacy technician utilization plans: a) burden - minimal, unless there is a bad apple, i.e., if a mail order house has 7 or 8 technicians under the nominal supervision of 1 pharmacist, then they will be excluded under this bill. The testimony given to Congress in 1987 said the technician ratios were about 1:1 for the most part. The law is constitutional and was reviewed by Roger Tippy and the acting dean, Greg Munroe, with the University of Montana Law School, who wrote an article in the Journal of Law and Medicine two years ago that states "if the local benefits are strongly identified, the burdens are minimized", and the Senate has done this already with the requirement to be licensed if practicing in another state. **EXHIBIT 6**

**Bonnie Tippy, representing the Montana Pharmaceutical Association**, said their time was up, but hoped the committee would ask a question of Duane Kruger regarding the death of a woman in Idaho who died as a result of mismedication from a mail order pharmacy. She distributed written information from the pharmaceutical association, and a study that was done from Brandeis University. The study was done pursuant to the HCFA Grant, and it was found that mail order pharmacies are not cheaper. She said the best reason for voting for the bill is the Medicaid system of the United States of America would never dream of going with mail order practices, because they protect a certain class of people and must provide equal protection. They know that mail order pharmacies are inferior health care and Medicaid in Montana will never go with mail order pharmacies. **EXHIBITS 7 & 8**

Duane Kruger, Columbia Falls, pharmacist for the last 32 years, urged the committee to give serious consideration to SB 218 because it is fair, reasonable, and equitable, and it is the right thing to do.

Jim Marmar, Whitefish, manager of Tidyman's Pharmacy, said he is in support of SB 218.

Erika Wolfgram, treasurer of Buffalo Drug, Bozeman, supports SB 218.

Patricia Foley, Pharmacist, Helena, said she supports SB 218.

Dave Riley, Pharmacist, Helena, supports SB 218.

Darlene Elespeiru, said she and her husband own and operate the pharmacy in Stevensvill. They support this bill for the people of Montana.

Debbie Givens, pharmacist in Billings, supports SB 218.

Lorraine Rom, 5th year pharmacy student, said she supports this bill for the health and safety of the people of Montana.

Dale Stoverud, Clinic Pharmacy, Great Falls, said his business supports and helps maintain the quality of life for poor families in Great Falls.

Dan Griscol, pharmacist in Butte, said he represents what is quickly becoming a vanishing breed. As a senior citizen, he has joined AARP so he could keep an eye on them to see what they are doing. He supports SB 218.

#### Opponents' Testimony:

Roger Scott, senior citizen, Helena, said he is troubled with the opposition against AARP. He and his wife use mail order pharmacies for two prescriptions. By using mail order pharmacies, they have saved 50% compared to the prices here in Helena.

Bill Olson, member of AARP State Legislative Committee, said that SB 218 has taken a second position to the integrity of AARP this morning. There are 110,000 AARP members in Montana who use mail order pharmacies, and said this is an unnecessary piece of legislation. Out-of-state pharmacies are regulated by states in which they are located, and must comply with the same rules and regulations set forth by the Drug Enforcement Administration, and the Federal Drug Administration, the same rules and regulations that Montana pharmacies have to abide by. Montana already has a statute that regulates out-of-state pharmacies. SB 218 will cause an increase in prescription drug prices, and will hurt all of Montana with out-of-pocket expense for prescriptions which is a very major expense in this state. He distributed written testimony. EXHIBIT 9

**Ed Homer, senior citizen of Helena,** and his wife use mail order pharmacies. Their prescriptions cost \$60 each per year, if he had purchased them here in Helena it would have been \$725 per year for the same medication. He urged the committee to reject SB 218.

**Tom Hopgood, Health Insurance Association of America,** reminded the chairman and committee members that this country is facing a health care crisis. The watchword of this Legislature has been cost containment, which is the key word of the crisis that face Montana. He said mail service pharmacies cut costs. He wanted to be on record of how appalled he is in regard to the cheap shots that were taken against AARP this morning.

**Nick Willard, Retired Persons Services Incorporated, Alexandria, Virginia,** said the Retired Persons Services are the owners and operators of the pharmacy services endorsed by the American Association of Retired Persons National Leadership. Retired Persons Services does business the same as AARP pharmacy service. On behalf of the pharmacy services to the 110,000 AARP prescription patients, he urged the committee to reject SB 218. Passage of SB 218 will cause higher prescription prices for Montana residents. He presented written testimony. **EXHIBIT 10**

**Tom Ryan, Golden Nuggets Chapter of the Montana Senior Citizens Association, and the Legislative Committee of the Montana State Retired Teachers Association,** said he does not advocate the passage of SB 218, but felt it would do little for the local pharmacist and reduce what pressures the free market system has on the wholesale distributors. **EXHIBIT 11**

**Tom Schneider, MPEA/member of State Health Insurance Advisory Committee and represents Montana Association and Health Care Purchasers,** said the Health Care Purchasers are one of the 20 largest health care plan employers in the state of Montana. He said health care plans are a vanishing breed in Montana. He referred to page 4, line 20, it states "must permit any member of the group to obtain prescription drugs from a pharmacy located in Montana without financial penalty". He said this bill does not say anything about paying the same cost that would be paid under the prescription drug program. The Health Care Purchasers provide an incentive to buy generic drugs, and will pay 100% of the cost. If it is a regular drug, they only pay 70%. He said if the health cost cannot be contained in the health insurance program the costs are shifted to the employees to be paid out of their own pockets, and this is what SB 218 will do.

**Pam Egan, executive director of Montana Family Union,** said the Montana Family Union is directed at Montanans who do not have access to unions in the workplace, and are not supplied with any health insurance or does not adequately cover the cost of medication. She said SB 218 is part of a national effort by retail druggist associations to regulate pharmacies in all 50 states to reduce competition to retailers. **Ms. Egan** asked for a do not pass recommendation on SB 218. **EXHIBIT 12**

Don Judge, AFL-CIO, presented information on union privilege benefit programs. **EXHIBIT 25**

Dan Whyte, attorney and lobbyist for MEDCO Containment Services, Inc., presented a statement from MEDCO Containment in opposition of SB 218. **EXHIBIT 13**

Phil Campbell, MEA, stated his opposition of SB 218.

Ed Caplis, MSCA is opposed to SB 218.

Chris Mackay, coordinator for Montanans of Universal Health Care, stated their opposition of SB 218.

Staci Riley, Montana Federation of Health Care, said they oppose SB 218.

Howard Baily, Montana Unified School Trust and Health Care Benefit Plan for Montana Schools, oppose SB 218.

Dennis Iverson, American Managed Care Pharmacies Association, presented a written statement from Delbert D. Konnor, pharmacist, in opposition of SB 218. **EXHIBIT 14**

Sylvia Ypma, Gallatin Equipment, stated her opposition of SB 218.

Rep. Cocchiarella, House District 59, Missoula, presented written testimony in opposition to SB 218. **EXHIBIT 15**

De Wayne Krueger, Krueger Drug, presented written testimony in opposition of SB 218. **EXHIBIT 26**

Informational Testimony:

None

Questions From Committee Members and Responses:

Rep. Simon asked Roger Tippy about section 1 which requires certain things of a pharmacist under utilization planning for out-of-state pharmacy to be licensed as a foreign corporation under definition. Section 2-18-704 applies to those employed as executive, judicial, or legislative branches of state government. Do these requirements only apply to those that are in the plan developed for state government employees, and would not have anything to do with employees that are not employed by state government or retired employees of state government? **Mr. Tippy** said he worked through that part with the Legislative Council and code commissioner. It appeared that section 701 says it is for state employees only, but preceding section 703, it indicates that section 704 covers local employees also. **Mr. Tippy** said this does not have anything to do with private plans, or private public groups, but would prevent such a law as a willing provider being inactive for private plans or AARP.

**Rep. Simon** asked **Carol Grell** from the **State Board of Pharmacy** what position does the board have for doing investigations out-of-state? **Ms. Grell** said if this bill is passed, and that section becomes part of the pharmacy act, it will be enforced the same as the current provision. The current provision provides that if a complaint is filed, the board may investigate, but there aren't any specifics on how the investigations must be conducted on out-of-state pharmacies. She said they would be conducted the best they could under the existing law.

**Rep. Larson** asked **Bill Olson** if this bill will restrict AARP members from utilizing out-of-state mail order pharmacies or the AARP pharmacies? **Mr. Olson** said no. This is a freedom of choice issue for AARP members. **Rep. Larson** asked **Mr. Olson** if he thought it was fair that these out-of-state pharmacies operate in Montana and not pay taxes? **Mr. Olson** said he is not familiar with the way these businesses pay taxes.

**Rep. Larson** asked **Carol Grell** if she could give the committee a ball park figure of what the pharmacies and pharmacists make in volumes of dollars in Montana? **Ms. Grell** said she did not have that information. **Rep. Larson** wanted the committee to know how many volumes of dollars are being lost in out-of-state pharmacies and loss of taxes for Montana. He asked if anyone knew the answer to please let the people know? **Mr. Ward Shanahan, MEDCO Containment**, said he could get the number in volumes of dollars, but didn't have it at this time. He said in answer to **Rep. Larson's** first question, this type of mail order pharmacy isn't any different than other mail order services for other kinds of businesses or commodity. There is a specific tax statute in Montana that governs people who do business only by mail order, and is in Title 15, which is existing law and deals with special tax returns.

**Rep. Bachini** asked **Bill Olson** if this bill were passed today, would the cost be increased to the members of AARP? **Mr. Olson** said he was sure the cost would be increased, because of the hoops which the people in out-of-state pharmacies would have to jump through to do business in Montana.

**Rep. Bachini** asked **Sen. Kennedy** about the law that restricts 1 pharmacist to 1 technician (1:1) for retail pharmacy, what do the technicians do? **Sen. Kennedy** said there are certain things that a technician can do under the supervision of a pharmacist like type labels, count pills, pour the liquid, then the pharmacist has to check that. **Rep. Bachini** asked if this regulation is passed, who sets the ratio? **Sen. Kennedy** said the Board of Pharmacy will. **Rep. Bachini** asked if the board can change the ratio to be more competitive? **Sen. Kennedy** said the board could probably change if they wanted to, but this is a safe ratio the board has decided upon. **Rep. Bachini** asked if the ratio is for safety precautions? **Sen. Kennedy** said yes, for the accuracy of filling prescriptions.

**Rep. Knox** asked **Duane Kruger** about a death due to out-of-state pharmacy? **Mr. Kruger** informed the committee about a woman in

Idaho who died in 1988. She was in good health, but had been treated with inflammatory drug which her doctor had prescribed. Because of the insurance coverage this woman had, she sent her prescription away to MEDCO Containment, in Las Vegas, NV. The sudden death surprised the doctor and family, so they ordered an autopsy and found she had died from a brain hemorrhage. The County Attorney began an investigation, and from this investigation filed involuntary manslaughter against MEDCO Containment. MEDCO Containment knew that the maximum fine would be \$10,000, so all they had to do was prolong the judicial process, and the Idaho County Attorney could not recoup the expenses for the family, and MEDCO was free. During discussion between the Idaho County Attorney and MEDCO Attorneys, it was brought up regarding the qualification of MEDCO's pharmacy staff, and the Idaho County Attorney was assured that all of the people on the pharmacy staff were graduates or accredited from various universities. When Idaho questioned them further, it was found that the man who had filled this woman's prescription was a graduate from the University of Saigon, and hardly knew any English, much less understand it. **Mr. Kruger** said this is not an isolated case. The states of California, Ohio, and Florida, now require a test of spoken English before a technician can be licensed.

**Rep. Barnett** asked **Ed Homer** about his testimony in regard to prescriptions that would have been \$700 at a local pharmacy, and by mail order was only \$60, and asked **Mr. Homer** if he had medical insurance? **Mr. Homer** said he had supplemental insurance. **Rep. Barnett** asked if the insurance company picked up any of the costs beyond the \$60? **Mr. Homer** said there isn't any connection between the insurance and the mail order company. He is a retiree from Mountain Bell, and is given the choice to buy their prescriptions locally or through the mail order. He didn't know if the mail order had some agreement with Mountain Bell, but that was the cost to him.

**Rep. Barnett** asked **Tom Hopgood** in reference to the testimony given by Tom Ryan regarding drug prices going up by 149% in the last 10 years, and asked **Mr. Hopgood** if he could tell the committee how much insurance premiums have gone up in percentage the last 10 years? **Mr. Hopgood** said with the number of insurance companies selling insurance, the price of health insurance premiums have gone up substantially, but didn't have a percent number. **Rep. Barnett** asked **Mr. Hopgood** if he could make that same statement for hospital care? **Mr. Hopgood** didn't know, but said it has gone up dramatically. **Rep. Barnett** asked **Mr. Hopgood** if he agreed that it would be an unfair comparison to say that drugs have increased by 149% without taking a look at everything else that has gone up in the medical field? **Mr. Hopgood** informed **Rep. Barnett** that he was absolutely correct. Cost containment across the board is necessary in order to solve the health care crisis that the nation faces. He submitted respectfully that the cost of pharmaceuticals is a component of that cost, and it needs to be contained.

**Rep. Sonny Hanson** asked **Sen. Kennedy** about the definition of foreign corporations. Under present law, it excludes mail order services as a requirement for the registration of a foreign corporation, and SB 218 says it will be classed as a foreign corporation. The bill states they have to have a business location within the community, and also have a registered pharmacist at that location. He asked what additional requirements does he see as a definition of a foreign corporation? **Sen. Kennedy** said to be registered as a foreign corporation they would have to assign an agent in the state of Montana, so there is a contact within Montana for that foreign corporation.

**Rep. Brandewie** asked **Clayton Pike** what is the affect on the loss of pharmacies in the small communities in Montana that have the small hospital/40 bed nursing homes combinations. If there isn't a pharmacist in that community, what will happen to them under federal regulations? **Mr. Pike** said under federal guidelines the Over Law of 1990 requires all rest homes to have a pharmacy consultant on staff. If the rest homes are not dispensing medication, the consultant works one day a month, if the rest home is dispensing medication the consultant needs to be there daily. The hospital regulations in these small towns that have a pharmacy, under federal law must sign and approve all prescription activities on a daily basis. He said if they lose a pharmacist in that area, they will essentially have to shut down. The pharmacies in the small hospitals will be in violation of the Over Law on the rest homes.

Closing by Sponsor:

**Sen. Kennedy** closed stating the disparities between the mail order pharmacies and local businesses. The insurance companies do pay the difference what a person is charged. All SB 218 asks for is the same opportunity be given the pharmacists that are given the mail order pharmacies, to be able to charge the same as the mail order pharmacies and the insurance pays the difference with no more costs to anyone. This bill does not interfere in anyway of anyone having their prescriptions filled from a mail order pharmacy. He said this bill is not only about mail order pharmacies, but a Montana bill to give the citizens a fair choice. SB 218 lets the citizens know that the legislators are interested in their health, safety and welfare, and to keep small businesses in Montana on a level playing field. It sends a message to the insurance companies, businesses, labor organizations, and tax supported entities that when the people are negotiating benefits for their employees, to give Montana some sense of an equal opportunity to participate. This bill is about economy and jobs in Montana. The millions of dollars that are leaving the state can be just as cost effectively spent here in Montana to create jobs, retain businesses in Montana, and generate tax dollars for the state. Montana pharmacists want to take care of their friends and neighbors. The people in Montana want their hometown pharmacists to take care of them, and not forced to order their prescriptions from out-of-state pharmacies. He said SB 218 will put Montana pharmacies on a level playing

field with mail order pharmacies so they can take care of Montana people better in all ways.

HEARING ON SB 337

Opening Statement by Sponsor:

REP. PAVLOVICH, House District 70, Butte, opened for SEN. HARP, Senate District 4, Kalispell, said SB 337 was at the request of the Department of Commerce. It revises some of the building codes and gives the department more rulemaking authority.

Proponents' Testimony:

Rick Kopel, Agency Council with the Building Codes Bureau, Department of Commerce, said he had prepared an explanation of legislative changes for SB 337. He said the agencies are being asked to do more with less. This bill will provide the bureau with the tools to accomplish this. There is no fiscal impact, but will allow efficiency in the bureau and local building departments to more effectively administer state building codes. Several years ago, the plumbing and electrical functions contained in sections 5 and 6 were rolled into the jurisdiction of the Department of Administration, which at that time handled building codes with no thought of making the state building codes a cohesive instrument. Plumbing and electrical are now handled separately from other portions of the state building codes, and create more efficiency profits addressed by this bill. **SEE EXHIBIT 16**

Michael Mizenko, Montana State Association of Plumbers & Pipefitters, and Montana State Building Contractors Association, recommend a do pass.

Bill Egan, Montana Conference of Electrical Workers, said SB 337 is a good comprehensive bill for the public, the industry, and the department. He urged the committee to support SB 337.

John Alke, Montana/Dakota Utilities Company, said they are in support of the bill with one minor amendment. The company's interest in the bill is to help the department enforce the building codes. On the Senate side, the department agreed to take out the provisions where power could be terminated for a building codes violation. He said it would have placed them in a position between a jurisdictional battle between the two agencies. Mr. Alke said they had overlooked the provision which requires termination or permission to the department to termination as a violation of the electrical codes. It is amended where the department could require termination if the violation of electrical codes constituted a hazardous condition. With this amendment there isn't a conflict with the PSC, or their duties as a utility company to supply power from a public utility. **EXHIBIT 17**

Gene Phillips, Kalispell, supports the bill with the amendment introduced by Mr. Alke.

**Jim Mockler, Executive Director of the Montana Coal Council**, said he is in agreement with this bill upon the agreement by the department concerning their exemption from the bill. He said the amendments were not brought, and thought he should be listed as an opponent. The amendment is on page 8, lines 14 -19, takes the exemptions from all of the codes except the electrical, and said he would ask for an amendment on that also. He said this bill takes the exemption away from them for plumbing, but is exempt in another section of the code. If the language is adopted on subsection b, it takes the exemption away, but it is still in the plumbing code law per se. He said they are covered by MSHA, which is the strictest safety act in the country and feels the department should not take that away. He wanted the amendment to be inserted on page 33, following line 1. He was informed by **Chairman Benedict** that it has been taken care of.

**Ken Williams, ENTECH**, reiterated previous testimony, and asked for the concurrence of Mr. Mockler's amendments. In 1987 when mines were exempt from the building codes, an oversight from the Senate Business and Industry Committee, exempted them under the current law, and believed this language would clarify it.

**Stewart Doggett, representing Manufactured Housing and RV Association**, said they support the bill, but it needs to be clarified on page 11. The Senate struck the instruction provision they had requested on lines 19 and 20 regarding foundations of manufactured homes. On page 3, line 17, the statement of intent is not consistent and needs to be struck entirely. **EXHIBIT 18**

**John Fitzpatrick, Pegasus Gold Corporation**, said he would like to concur with Mr. Mockler's request for clarification of the exemption in the electrical section. He said MSHA instructs mining facilities, not just on insulation, but the rural electrical equipment, and periodically thereafter, provides a comprehensive electrical inspection service.

**Nancy Griffin, Montana Building Industry Association and Home Building Contractors**, said they worked with the department, and do not have any problems with the bill.

**Opponents' Testimony:**

**Russell Hill, Montana Trail Lawyers Association**, said they don't have many problems with the bill, but are concerned with two provisions. He said they are small and unnecessary to the overall of the bill, and extremely dangerous: 1) page 12, section 5, lines 13 -21, regarding certificates of occupancy gives state and local building departments sole discretion in issuing the certificates; and 2) section 7, regarding injunctions relieves state and local building departments from any burden proving the likelihood of imminent or irreparable injury. Section 13 allows the department to waive "minor" violations that do not constitute an imminent threat to person or property. **EXHIBIT 19**

**Janelle Fallan, Executive Director Montana Petroleum Association,** said when she appeared before the Business Committee last month on Rep. Driscoll's HB 339 that deals with electrical permitting codes at refineries, no one testified against the bill, and it passed in both Houses. She said the people that sponsored that legislation are also sponsoring this legislation to assert more jurisdiction. **EXHIBIT 20**

**Informational Testimony:**

**Peter A. Mion, Building Official, Department of Public Works/Building Inspection Division, Missoula,** faxed a written statement expressing his support for SB 337. **EXHIBIT 28**

**Questions From Committee Members and Responses:**

**Rep. Pavlovich** asked **Rick Kopel** why are the building codes so tough when they are required to meet current codes? **Mr. Kopel** said they are not expanding rulemaking authority, but clarifying that the department does have rulemaking authority. This statute is not a comprehensive statute, but was joined by various parts at different times. The Legislative Council suggested they add the language for clarification purposes. He said it was not their intention to make the codes more restrictive with this language. It is addressed in the uniform building codes that have been adopted in Montana the same as many of the other states. He said this is a companion code to the uniform fire code which the Department of Justice has adopted.

**Rep. Cocchiarella** asked **Rick Kopel** to respond to Russell Hill's comment about asking to be exempted from this because of negligence of wrongdoing of evidence? **Mr. Kopel** said the department has three inspectors for the whole state. He said they had over one thousand projects last year, and it is impossible to oversee every aspect of construction. He said there are times they have come across a building that is 3/4 completed, and the people haven't complied with the building codes. Rather than force them to dismantle what has already been built so they can see what is behind the wall to see if it meets the codes, they only ask that a certificate of occupancy be signed which says the building meets the building codes, so someone later on cannot come back and accuse not checking it better, and be liable for damages. In regard to Mr. Hill's comments, they are not saying they want immunity. All they are asking is if they start to use certificates of occupancy, which clearly tells people that their building has been completed in accordance with the building codes as they discovered it to be, and later on hope they are not faced with a situation where that is used as evidence to show that they didn't do what they should have done. He said they are still subjected to the same standards of negligence, and this does not provide any form of immunity, but a rule of evidence. If the attorney can prove they didn't do what they were supposed to do, and the standard of care was not followed they would still be liable.

Rep. Brandewie asked Rick Kopel that it appears he can go into existing buildings and check for code violations? Mr. Kopel said they do not have that authority now, nor does this bill create that authority. The only time they have authority is when it changes the appearance of the structure. He said the fire marshal may have the authority to go in under the fire laws, but his bureau can't. Rep. Brandewie said if he installed a new furnace, would he be required to bring the whole building up to code? Mr. Kopel said no. The uniform building code covers that situation, and in most cases would not have to do anything other than meet the code for installing the furnace.

Rep. Brandewie asked Russell Hill to tell the committee what the recourse is of a person whose rights have been violated given the language in this bill? Mr. Hill said on the basis of the language on page 13, line 12, it is their opinion that the department can seek an injunction. The language in subsection 1, includes not just construction, but also use of a building, to seek an injunction without having to prove there is irreparable injury. Language on page 12 concerning sole discretion, and the issuance of a certificate of occupancy must have some impact. If the agency issues the certificate regardless of how the situation is, that certificate cannot be used as evidence. He said if the result of issuing the certificate caused damage to someone, it is beyond him how they could prove and recover damages without using the certificate.

Rep. Daily asked Rick Kopel if he would respond to the amendments that were proposed, and if the department would be acceptable to them? Mr. Kopel said if the amendments proposed are the ones that were provided to him before the hearing, then he was in support of them. Rep. Daily asked if he approved of the amendments proposed by Janelle Fallan regarding HB 339? Mr. Kopel said he hadn't seen them, but didn't think they were necessary, because the Legislative Council would make the two bills intertwine in codification. If the language in HB 339 would be codified into law it would flow into the language of this bill.

Susan Fox, Legislative Council, said there is not a coordination clause in this bill, and asked if there was a coordination clause in HB 339? Mr. Kopel didn't know.

Rep. Bachini asked Rick Kopel why they removed the repealer section for public hearing? Mr. Kopel said the current language is law now, but was drafted before the Administrative Procedure Act. Under this act all of the matters are covered, and any conflicting language in the statute will be removed.

Closing by Sponsor:

Rep. Pavlovich closed for Sen. Harp.

HEARING ON SB 340Opening Statement by Sponsor:

SEN. STEVE DOHERTY, Senate District 20, Great Falls, said this bill was before the committee last session which was quite controversial. This bill was put together as a result of that bill and the EQC policy committee during the interim. SB 340 will establish a policy on residential energy efficiency, and provide for the applicability of the energy conservation provisions of the state building code to residential buildings. It will require the adoption of rules for energy conservation in buildings to conform to certain policies, and provide for the certification of installation of energy efficiency features by builders. He said this bill will provide for the labeling of energy efficiency features in new homes. Sen. Doherty said there is a provision in this bill that will tie it with HB 10, and the use of certain oil overcharge monies to provide a mortgage buy-down fund that will be funded in part by the state. Montana's utilities and the cooperatives will match the state dollar for dollar to help put together the funds for the buy-down mortgages for energy efficient housing. SB 340 will provide incentives for energy conservation in housing by the builders, and give them the opportunity to expand the housing in Montana.

Proponents' Testimony:

Gerald Mueller, spokesperson for the Environmental Quality Council Residential Energy Efficiency Working Group (Working Group), said the Working Group was established in July of last year by the EQC to seek a consensus statement of policy and implementation strategies regarding residential energy efficiency in Montana. He attached a list of the participants in the Working Group to his written testimony. EXHIBIT 21

Bob Anderson, Chairman of the Public Service Commission (PSC), said the PSC was one of the participants in the Working Group that produced the bill. Their goal in this effort is to have economic efficiency. One person's wastefulness can impose cost on the rest of the rate payers by the increase and extra demand for new electricity. There is a cost effective level of energy efficiency that every new building should have to protect the economic interest of the society as a whole. SB 340 is an outstanding effort of everyone who came together on this. He said it is inventive in many ways and didn't know if it would all work out, but said they were willing to give it a try. He urged the committee's support for SB 340.

Gene Phillips, Kalispell, Pacific Power and Light, said based on what happened with this bill last session, he was not optimistic that this process would work. He said due to the rapid growth in the Flathead area, it was apparent to Pacific that all of the new residents use good conservation measures in their construction process. He said the bill deserves a concurrence and hoped it would pass.

**Sheila Rice, House District 36, Great Falls,** said that in her other life she is employed by the Great Falls Gas Company, which was actively involved in the process of this bill and urged a do pass.

**John Rolph, Montana Power Company,** said they were active participants in the process of this bill and urged support for SB 340.

**Jim Kembel, Administrator of Public Safety, Department of Commerce,** said the building codes is part of his program and urged support for SB 340.

**John Alke, Montana/Dakota Utilities,** stated his support for SB 340.

**John Hines, Northwest Power Planning Council,** said they believe energy efficiency is the foundation for future and reliable energy. He urged support for SB 340.

**JoMay Barber, Montana Electric Cooperatives Association,** said the association and the member cooperatives were involved with the Working Group and urged support for SB 340.

**Allen Davis, representing the Department of Natural Resources and Conservation,** urged the committee to support SB 340. It represents a new and agreed to beginning of an energy that has plagued the state for the last ten years.

**Bill Egan, Montana Conference Electrical Workers,** said they are in support of SB 340.

**Nancy Griffin, Home Builders Association,** said they are in support of SB 340. The compromises that were reached in this EQC collaborative represented a lot of sacrifice on the part of power members who have always enjoyed a certain immunity for single family residential dwellings in Montana. They gave up the immunity that was lifted for the energy portion of the building code. She informed the committee there was an oversight in the recommendation which recently came from the Long Range Planning Subcommittee in appropriations. The committee had been asked by the Department of Natural Resources to substitute a program which had another funding source, and amended into HB 10, a mortgage reserve account. The committee thought they were underwriting \$97,000 to \$100,000 homes for the state of Montana, when that is not the case. Presently Farmers Home Administration (FHA) guarantees a home mortgage up to a limit of \$75,000. She said it was discussed extensively in the EQC committee, the cost of building these homes, especially those in Montana's major growth areas. She said that \$60 to \$75 a square foot was the price that her builders have developed from building those kinds of homes. **Ms. Griffin** said a simple home that consists of 1,200 square feet, is \$78,000. Add the cost of a lot in any of Montana's major communities, i.e., Billings, Missoula, Bozeman, Great Falls, etc., the maximum cap of these mortgages is \$97,000 which is not a high priced home. These are affordable energy efficient

family housing for the low to moderate income families. She said another misunderstanding the committee had was the cap on the Board of Housing was not changed, the income qualification criteria has remained the same. She said if anyone in the committee knew of anyone on the appropriation committee to let them know, because that amendment will have to be reconsidered by the committee in order for SB 340 to have any chance of passing. She noted to the committee in the last section of the bill there is a linkage section that leaves adoption of SB 340 to passage of HB 10 with the amendments for the creation of the mortgage reserve account for the energy efficient construction program. **Ms. Griffin** said the FHA insures a mortgage up to \$75,500, the only thing the reserve account does is to insure the mortgage portion of that loan. The mortgage reserves account is necessary because the Board of Housing has to have a reserve account in order to issue a tax exempt on the sale. The bonding agency requires this to be 25% of the bond issued. The reserve account is tapped only if there is a default, and then only in case of the second mortgage portion. The reserve account is matched dollar for dollar by the utility companies who participate in their regions for the home loans. She said there has been some talk this program will be a model for other regions.

**Rep. Sonny Hanson, House District 87, Billings,** stated his support for SB 340.

Opponents' Testimony:

None

Informational Testimony:

None

Questions From Committee Members and Responses:

**Rep. Bachini** asked **Van Jamison** if this will be an on-going program forever? **Mr. Jamison** said no. The money that the overcharge provides will seed the program, and be matched dollar for dollar. Assuming the default rate on the mortgages will be the same or less, and the money will not be tapped to cover any of the second mortgages that are used for backing. The homeowners will pay into the second mortgage insurance premium the same as they do now on a first mortgage to the FHA. He said the account will grow, and the money will continue to be used as second mortgages are re-paid or when the homes are sold to back new mortgages. The program has already been started and is self-sustained. There will absolutely be no need whatever for any new money from the public sector to operate the program. **Rep.**

**Bachini** asked if it is correct that the program is about completed? **Mr. Jamison** said that is correct. The program can use the money to solve a variety of problems throughout the state, and will not demand any new money which is not available, this is the only opportunity since the overcharge money will disappear and they need to capture the opportunity.

Rep. Bachini asked Bob Anderson about the stickers that have to be applied to the material, and if it will be an addition to the sticker already on the material stating the R value? Mr. Anderson said the bill will allow them to adopt a format for the builders to list all of the energy efficiency components of the house in one place.

Rep. Brandewie asked Van Jamison to explain how the state will not get stuck with any default on the second mortgages, i.e., a \$95,000 house with only 5% down is \$4,750, which leaves over \$90,000 at 7%. It will take \$6,300 a year which amounts to \$500 a month in interest alone; how can these people pay off a \$90,000 mortgage when they cannot afford to pay off a \$70,000 home? Mr. Jamison said they are anticipating the banks will be qualifying the people who purchase these homes the same way they qualify anyone else. He said the Board of Housing programs have historically experienced only 1/2 of 1% default rate. He said they feel they will have a comparable or better experience, because the homes the banks are dealing with are experiencing a 1/2 of 1% rate, and are more expensive top rated, because they don't have the energy efficient component built in. The overall cost of owning a home which includes; principle, interest, insurance, and energy, will be cheaper than conventional homes.

Closing by Sponsor:

Sen. Doherty closed urging the committee to concur on SB 340, and hoped that something would emerge from the "black hole" (appropriations committee) on HB 10.

EXECUTIVE ACTION ON SB 337

Motion: REP. PAVLOVICH MOVED SB 337 BE TABLED.

Discussion: None

Motion/Vote: Roll call vote was taken. Motion CARRIED to table SB 337. EXHIBIT 22

Vote: SB 337 BE TABLED. Motion CARRIED 10 - 8.

EXECUTIVE ACTION ON SB 340

Motion: REP. SONNY HANSON MOVED SB 340 BE CONCURRED IN.

Discussion: Rep. Sonny Hanson said in response to Rep. Brandewie's concern, the \$15 million is in reality only \$300,000 from the overcharge, and the utilities agreed to the \$300,000. Every time it is used by a home buyer, they put up three percent of the cost.

Rep. Bachini said it looks like a program is being started that the contractors should already be doing.

Rep. Sonny Hanson said there is a state energy code, but the legislative body in its wisdom a few years ago excluded all houses outside of a three mile radius, or whichever a community has. The rural areas account for 45% of the new houses, and have no building codes other than the electrical and the plumbing.

Rep. Mills said he would like to go with the bill on the basis that all builders will have to abide by it. He suggested to take out section 4 if the loan fund goes through the appropriations committee.

Motion/Vote: Rep. Daily called the question. Voice vote was taken. Motion CARRIED unanimously.

Vote: SB 340 BE CONCURRED IN. Motion CARRIED 18 - 0.

EXECUTIVE ACTION ON SB 218

Motion: REP. DAILY MOVED SB 218 BE CONCURRED IN.

Discussion: Rep. Brandewie made the motion to adopt amendments. EXHIBIT 24

A straw vote was taken to see how many of the members would support the bill, it failed.

Motion/Vote: REP. BACHINI MADE A SUBSTITUTE MOTION THAT SB 218 BE TABLED. Roll call vote was taken. Motion FAILED 8 - 10. EXHIBIT 23

Motion: REP. BRANDEWIE MOVED SB 218 BE CONCURRED IN.

Motion/Vote: Rep. Brandewie moved to adopt amendments. Roger Tippy went through the amendments step by step. (these are the pharmacist amendments). The question was called. Voice vote was taken. Motion CARRIED unanimously. EXHIBIT 25

Motion/Vote: REP. BRANDEWIE MOVED SB 218 BE CONCURRED IN AS AMENDED. Voice vote was taken. Motion CARRIED 13 to 5 with Reps. Bachini, Cocchiarella, Stella Jean Hansen, Sonny Hanson and Simon voting no.

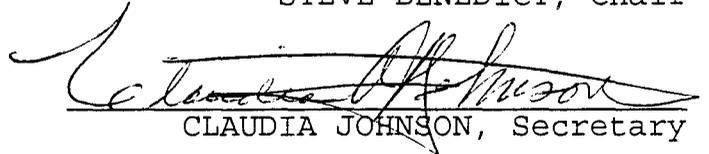
Vote: SB 218 BE CONCURRED IN AS AMENDED. Motion CARRIED 13 - 5.

ADJOURNMENT

Adjournment: 11:40 A.M.



STEVE BENEDICT, Chair



CLAUDIA JOHNSON, Secretary

SB/cj



HOUSE STANDING COMMITTEE REPORT

March 16, 1993

Page 1 of 2

Mr. Speaker: We, the committee on Business and Economic Development report that Senate Bill 218 (third reading copy - blue) be concurred in as amended .

Signed: \_\_\_\_\_  
Steve Benedict, Chair

And that such amendments read: Carried over Rep. Enico

1. Title, line 9.

Following: "REQUIRING"

Insert: "FILING AND"

2. Title, line 10.

Following: "APPROVAL"

Insert: "IN CERTAIN INSTANCES"

3. Page 4, line 21.

Following: "Montana"

Insert: "that is willing to match the price charged to the group or plan by the mail service pharmacy for a drug"

4. Page 5, line 17.

Striker: "licensing"

Following: "standards"

Insert: "for utilization of technicians"

5. Page 6, line 14.

Following: "technicians"

Insert: "if allowed by the state where the mail service pharmacy is located. Any other"

6. Page 8, line 16.

Striker: "NO"

7. Page 8, lines 16 and 17.

Following: "IN-STATE" on line 16

Striker: "HOSPITAL"

Insert: "CERTAIN"

Following: "RULES" on line 16

Striker: the remainder of line 16 through "approval"

Insert: "must be approved"

8. Page 6, line 13.  
Strike: ";"  
Insert: "."

9. Page 6, line 23.  
Strike: "APPROVED"

10. Page 6, line 24.  
Following: "PLAN"  
Insert: ", if any"

11. Page 7, line 6.  
Strike: "CHAPTER"  
Insert: "PART"

-END-

MM/Order 11/11

EXHIBIT 1  
DATE 3-12-93  
SB 218

INVOICE DATE 7/24/92 INVOICE NO.

ECONOTONE COST PLUS ORDER M

HAZARDOUS MATERIALS  
CODE CLASSIFICATIONS  
LISTED ON REVERSE SIDE

DEPT	ITEM NUMBER	QTY	ORD UN	ITEM DESCRIPTION	STORE RETAIL	UNIT PRICE	DISC I	D CODE	EXTENS.
BE	2169829	1	EA	AEROBID INHALER SYSTEM	40.79	2.58		KR	2.58
BA	1615160	1	EA	ALBUTEROL SOL 3ML U/D DEY	31.19	12.81		KR	12.81
BE	3653912	20	EA	ALUPENT SOL 0.4X 2.5ML U/D	37.43	32.17		R	643.40
BE	3227246	1	EA	ATROVENT MDI COMPLETE	24.89	21.39		R	21.39
BE	2701829	1	EA	AZMACORT INHALER	34.95	28.84		R	28.84
AD	1700178	1	EA	KAON-CL-10 TAB 750MG	22.31	18.41		R	18.41
AD	1195916	1	EA	LEVOIHD TAB 300MCG	34.00	9.79		R	9.79
DA	1974146	1	EA	M-1-E-5 CONC 10ML 2910 LYP 10	227.45	21.63		KR	21.63
CA	1317239	1	EA	NITRCL 0.1ML TUBE 2X	9.03	7.45		KR	7.45
BE	1749787	1	EA	PROVENTIL INHALER REF	20.35	12.54		KR	12.54
VE	1104975	1	EA	THEO-DUR SA TAB 300MG	18.76	11.56		KR	11.56
AD	1927441	1	EA	THEO-DUR SPRINK CAP 200MG	124.14	58.28		KR	58.28
AD	2261121	1	EA	THEO-DUR SPRINK ARM	20.87	9.80		KR	9.80
AD	1350206	1	EA	THYROID TAB 3GR	243.24	20.09		KR	20.09
BE	1793215	1	EA	TORNALATE+NEBULIZER	27.74	2.63		KR	2.63
PO	3655229	1	EA	VANCENASE A/O NASAL SPR	28.62	17.62		KR	17.62
BE	1330083	1	EA	VANCERIL INHALER	26.51	16.34		KR	16.34
BE	1791102	1	EA	VENTOLIN INHALER	20.35	17.49		KR	17.49

CASE ITEM FOLLOW

6 EA INITIAL NEBULIZER AMP 2ML

120 79.84

68.63

111.78

1344.43

1344.43

1371.87

1344.43

1344.43

1371.87

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1344.43

1344.43

1371.87

SUBTOTAL

NET PAYABLE BY SIMT DUE DATE

GROSS PAYABLE AFTER SIMT DUE DATE

19 LINES CASES 1 PIECES

THIS INVOICE IS PAYABLE TO MCKESSON DRUG CO.

AT ABOVE ADDRESS CLAIMS MUST BE MADE WITHIN FIVE DAYS AND SHOW DATE OF INVOICE.

V-P DOLLARS



33A 416

EXHIBIT 1

3-12-93

1158218  
PAGE 1

INVOICE DATE 7/24/92

HAZARDOUS MATERIALS  
CODE CLASSIFICATION  
LISTED IN REVERSE SIDE

ITEM NUMBER	QTY	ORD UM	ITEM DESCRIPTION	STORE RETAIL	UNIT PRICE	DISC I	EXTENS
1213933	1	EA	BANCAP HC CAP	500 309.23	18.59*		KB 18.59
				SUBTOTAL			18.59
				NET PAYABLE BY SIMI		DATE	18.59
				GROSS PAYABLE AFTER SIMI		DATE	18.97

CONDYONE COST PLUS ORDER M MARCOTIC

THIS INVOICE IS PAYABLE TO MCKESSON DRUG CO. AT ABOVE ADDRESS CLAIMS MUST BE MADE WITHIN FIVE DAYS AND SHOW DATE OF INVOICE

Y-P DOLLARS

March 12, 1993  
Montana Legislature  
Helena, MT

EXHIBIT 2  
DATE 3-12-93  
SB 218

Dear Congressmen and Senators,

My family was forced into using a Mail-order Pharmacy because our insurance company made it financially impossible to use any other.

We have a son with severe asthma. On top of this, he has several allergies to food and environmental sources. In the past, we have had sudden recurrences of severe asthma. The inaccessibility of the Mail-order Pharmacy is a great problem for the following reasons;

1. Were our son to have an asthma attack (unable to exhale old air, blue lips, 80% oxygen loss, etc.) we would not call a doctor 5 states away for emergency treatment. We would call a doctor that knows our son and his symptoms. Why should we have to use a pharmacy that does not know my son's history, his allergies, or the types of viruses going around our area that may affect him?

2. We have recently discovered that 9 times out of 10, we aren't even talking to a licensed pharmacist through our Mail-order company. If we should receive outdated, wrong, or misleading information, it could cost my son his life. Who would be responsible?

3. The Mail-order Pharmacy is indirectly penalizing our family through our insurance company. Because they can order in such huge quantities, they must also gain a huge profit - probably as does the insurance company. But we are reimbursed only 30% on our cost for emergency medicine that we receive from a licensed pharmacist. Our pharmacist must pay every year for licensing and charge more for drugs because he cannot order the bulk a Mail-order Co. can. Yet the Mail-order Company could easily pay licensing fees, and doesn't. If every pharmacy in the state of Montana signed up with one supplier, we still wouldn't have the population it would require to get cheap bulk prices.

4. My former Pharmacist tells me he no longer can legally give me advice on prescriptions because they are not filled here. Should my son have an adverse reaction to medication, who is going to straighten it out? Someone 5 states away? And if so, will I have to wait 10 to 20 work days to get correct medication? This is the time it takes for our medication now.

I am for SB 218. It is a small, but good step in making Mail-order Companies responsible. Mail-order Pharmacies are too far away for any of us to know if they are reputable. They discriminate against the small Pharmacy that cannot order in bulk, yet must bear the burden of questions by the community. Montana is basically a state of small businesses. SB 218 is a first step in helping us work together for both pharmaceutical alternatives.

Sincerely,

*Dana J. Weber*

Mrs. David Weber  
4680 Johnson Rd.  
Bozeman, MT 59715

# Highland Park Pharmacy

925 Highland Boulevard #2000

Bozeman, Montana 59715

EXHIBIT 3  
DATE 3-12-93  
SB 218

March 11, 1993

To whom to may concern:

This letter is in support of SB218, the bill to regulate the operation of mail-order pharmacies in Montana.

Pharmacy is much more than the business of mechanically typing the label, counting/measuring medication and ringing up the purchase in a cash register. Pharmacy is a profession that requires 5 (soon to be 6) years of college and a year of internship. In that college experience is a variety of courses designed to train the pharmacist in the face-to-face care of his/her patients. If a patient take all their prescriptions to one pharmacy that pharmacy has a complete profile of that individual's medications. This enables the pharmacist to monitor for potentially harmful interactions between medications, between new medications and disease states the patient may have, and appropriate dising based on the individual's weight and age.

Mail-order pharmacies are taking this important link out of the health care chain. The patient is being denied the hand-on care of their local pharmacist. Medications are becoming increasingly complicated and high-tech thus making the need for counselling and ready availability of an expert on medications.

As Montana pharmacists we want our Montanans to have high quality care on their pharmaceutical needs. If these mail-order operations are practising in Montana they should operate within the same parameters as Montana pharmacists. The ratio of technician to pharmacist are set to ensure quality care and this should be mandatory for all pharmacy products dispensed to Montanans via in-person or via mail.

QUALITY HEALTH CARE FOR QUALITY MONTANANS

*Aimee Funtz RPh*  
*Charlene Atterberg RPh*  
*Gay Van Delmon RPh*  
*Mary V. Olson Pharmacy Tech*  
*Christa A. Howland PHARMACY TECH*  
*Skirma J. Kamps Pharmacy Tech*  
*Patricia G. Brien, RN, CETM*  
*Donna M. ... R.O.*

*Lisa Kinnick*  
*Susan Bryant Pharmacy Tech*  
*Donald A. Berglund RPh*  
*Jan W. ... A.S.*  
*Pat ...*  
*Randy ... RPh*  
*Ed ... RPh*  
*Will ... RPh*  
*Colleen ... pharm. tech*

# Highland Park Pharmacy

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925 Highland Boulevard #2000

Bozeman, Montana 59715

~~Joe A. K.~~ RPh.

Pat Harli

John B. Lile RPh

Steve Brannon R.Ph.

Sam Lawrence RPh.

# Senior Citizens do not save money on AARP's mail order pharmacy program

EXHIBIT 4  
DATE 3-12-93  
SB 218

Montana legislators are being told that if SB218 regulating mail order pharmacies passes, senior citizens will suffer because the mail-order AARP program saves seniors so much money. This simply is not true. What is true is that someone gets rich on mail-order pharmacy, but it's not senior citizens. During the past month, a price comparison was done of four Butte pharmacies regarding their prices on the top ten drugs that seniors use. These prices were compared to AARP's price list. The numbers speak for themselves.

## Top 10 drugs used by senior citizens/AARP prices vs average of 4 Butte pharmacies

		<u>PRICES</u>	
		AARP	BUTTE PHARMACIES
LanoxID	.25mg # 100	\$ 7.60	\$7.93
Lopressor	50mg # 60	27.05	28.31
Dyazide	# 100	28.95	28.43
Vasotec	10mg # 100	77.25	74.59
Mevacor	20mg # 30	50.45	49.50
Prinivil	10mg # 30	22.10	24.16
Premarin	.625	29.60	29.16
ProcardiaXL	30mg # 30	29.05	31.44
Zantac	150mg# 60	80.20	77.79
Tagamet	300mg# 100	69.25	69.93
TOTALS		\$421.50	\$421.24

The only difference in over all price is that the Butte average price between four pharmacies is somewhat cheaper. In fact, a senior citizen who wants to shop for the least expensive pharmacy would enjoy a 5% lower overall price from the AARP prices. Following are price comparisons between AARP prices and other Montana community pharmacies. AARP has done a good job of stirring up senior citizens over the issue of regulation of mail order pharmacy, yet the one issue that seniors are concerned about--price--is a bogus one which has

been sold to them as real. In fact, AARP makes millions of dollars a year on its mail order program, and what it is "selling" to our senior citizens is simply a cover up for the real reason that AARP so strongly opposes the bill--the huge profits that AARP makes on its out-of-state mail order program.

**AARP VS BILLINGS  
Pharmacy Prices**

		<b>AARP</b>	<b>BILLINGS PHARMACIES</b>
LanoxID	.25mg #100	\$ 7.60	\$7.18
Lopressor	50mg #60	27.05	28.10
Dyazide	#100	28.95	29.21
Vasotec	10mg #100	77.25	74.62
Mevacor	20mg #30	50.45	49.63
Prinivil	10mg #30	22.10	23.37
Premarin	.625	29.60	27.84
ProcardiaXL	30mg #30	29.05	31.24
Zantac	150mg#60	80.20	77.65
Tagamet	300mg#100	69.25	70.45
<b>TOTALS</b>		<b>\$421.50</b>	<b>\$419.29</b>

**AARP VS GREAT FALLS  
Pharmacy Prices**

		<b>AARP</b>	<b>GREAT FALLS PHARMACIES</b>
LanoxID	.25mg #100	\$ 7.60	\$7.59
Lopressor	50mg #60	27.05	27.59
Dyazide	#100	28.95	28.42
Vasotec	10mg #100	77.25	73.74
Mevacor	20mg #30	50.45	51.42
Prinivil	10mg #30	22.10	24.60
Premarin	.625	29.60	28.84
ProcardiaXL	30mg #30	29.05	31.22
Zantac	150mg#60	80.20	78.42
Tagamet	300mg#100	69.25	67.77
<b>TOTALS</b>		<b>\$421.50</b>	<b>\$419.61</b>

EXHIBIT 4  
DATE 3-12-93  
SB 218

**AARP VS KALISPELL  
Pharmacy Prices**

	<b>AARP</b>	<b>KALISPELL PHARMACIES</b>
LanoxID .25mg #100	\$ 7.60	\$6.99
Lopressor 50mg #60	27.05	28.35
Dyazide #100	28.95	27.49
Vasotec 10mg #100	77.25	76.97
Mevacor 20mg #30	50.45	48.79
Prinivil 10mg #30	22.10	20.49
Premarin .625	29.60	26.87
ProcardiaXL 30mg #30	29.05	29.48
Zantac 150mg#60	80.20	77.99
Tagamet 300mg#100	69.25	67.88
<b>TOTALS</b>	<b>\$421.50</b>	<b>\$411.30</b>

AAARP 9-19,

EXHIBIT 4  
DATE 3-12-93  
SB 218

### Insurance Members

Program especially for homes. And it offers broad...  
...and its contents...  
...table rates that could...  
...or more.  
...Program provided by the...  
...available in many parts...  
...availability in your area,  
...your own insurance quota.  
...Remember,  
...don't compare!

### Blanks Add Up To Savings!

the facts.

State \_\_\_\_\_ Zip \_\_\_\_\_  
Date of Birth \_\_\_\_\_

Lat # \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Home located  
Large park (over 25 spaces)  
Small park (under 25 spaces)  
Private property

El Year \_\_\_\_\_  
Has amount \_\_\_\_\_

nyl \_\_\_\_\_  
20 Year \_\_\_\_\_  
National coverage \_\_\_\_\_

\$2-244 171

**AAARP**  
MOBILE HOME  
INSURANCE PROGRAM  
**FORNOST**

## USING THE NEWS

Keep a Safe

# MEDICINE CABINET

**W**hether for a headache or a heart condition, Americans have come to rely increasingly on drugs that help us feel better. This is especially true of older persons: Indeed, 40 percent of all prescription drugs are used by people over the age of 60, according to the Public Citizen Health Research Group.

But drugs that make us feel better can also make us sick. The National Association of Retail Druggists estimates that a quarter of hospital admissions of older persons are the result of drugs taken improperly. And the U.S. Department of Health and Human Services says drug-induced falls cause about 32,000 hip fractures among older people annually.

It's important to take both your prescription drugs and your over-the-counter medications safely. Vitamins, laxatives, cold remedies and antacids can all be dangerous if used too often or in combination with certain other drugs. So can alcohol, even in small amounts.

### Conduct a drug survey at home

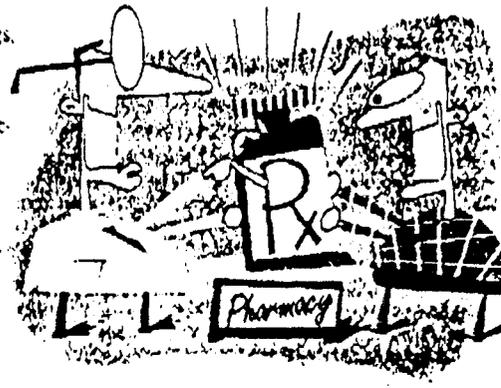
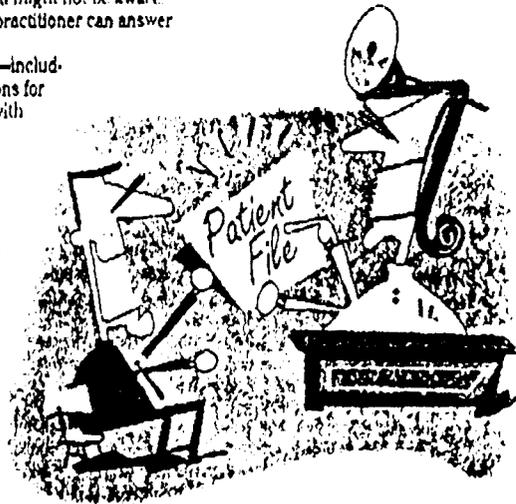
- Clean out your medicine cabinet. Throw away anything past its expiration date or that you no longer take.
- Gather all the medications you currently use—including non-prescription items such as cough syrup, aspirin, antacids and laxatives—and read the labels carefully. Are you storing the drugs correctly? Are you taking them as directed, paying attention to what you should or shouldn't eat in combination with the drugs? Write down any questions you have.
- Put all medicines (including non-prescription drugs) in a bag or box and take them to either your doctor or your pharmacist to discuss any safety issues of which you might not be aware. Call ahead to find a time when your health practitioner can answer questions without rushing.
- Make a list of all medications you take—including each drug's name, strength and directions for use—and keep the list up-to-date. Carry it with you as a reference.

### Talk with your doctor

- For each prescription drug, ask:
- What does it do?
  - What side effects can I expect and how should I handle them?
  - Are there alternatives to this drug that have fewer side effects?
  - How would any of my prescription medicines interact with the non-prescription drugs—including alcohol—that I take on occasion? Are there any foods that can cause adverse reactions to the drugs I take?
- Make sure each doctor you see is aware of all your medications to avoid duplication or dangerous combinations.

### Talk with your pharmacist

- Whenever you buy over-the-counter drugs, ask the pharmacist how the new drug might interact with your other medicines. (Your list of medications will be useful here.)
- Make sure you read and understand directions printed on the drug container and that the name of the medication is printed clearly. Ask your pharmacist to use large type if that will help.
- If child proof containers are hard for you to open, ask your pharmacist for easy open bottles. But always be sure these medicines are out of reach of children.
- Many prescription drugs come with printed information. Ask your pharmacist if an information sheet is available for your medication.



### GET MORE INFORMATION

The National Institute on Drug Abuse publishes "Using Your Medicines Wisely" (stock # D317). It includes "Passport to Good Health Care," a pocket-sized booklet for recording information about the medicines you take.

AAARP publishes "Getting the Most from Your Medications" (stock # D12083), a reference pamphlet that includes information about common over-the-counter drugs—both publications are free. To order, write: AAARP Fulfillment, EE0148, 601 E St. N.W., Washington, D.C. 20049. Be sure to include the stock number on your request.

(703) 683-5619

# Old Money

*Why the mighty AARP spends as much  
furnishing its offices as it does on  
programs to help the elderly*

by Christopher Georges

The American Association of Retired Persons (AARP) receives approximately \$75 million annually from the federal government to run a pair of job training and placement programs for older Americans—two of the largest of their kind. A recent phone call to AARP's Washington, D.C., headquarters to inquire about enrollment in the programs led to the following:

The caller, after unsuccessfully attempting to explain the programs to two befuddled receptionists, was bounced to Jack Everett, an official in the organization's Senior Employment Office, who cheerfully explained that AARP offers no federally funded job placement or training programs. Everett suggested calling the Department of Labor (the agency that pays AARP \$52 million to run one of the programs) for help. He also offered other ideas, like, "Try the phone book under the senior citizens section," and suggested contacting the National Council on Senior Citizens, another, smaller advocacy group for older Americans. He even threw in some job-training advice: "You'll need a resumé. That's always a good first step. . . ."

Everett's not alone. Similar inquiries at AARP offices in major cities in 16 states turned up like responses: Only six of the offices were aware that these programs even exist, although AARP literature boasts that they're offered at 108 sites across the nation. One office suggested calling Elder Temps, a privately run job-placement firm. Another advised calling the Jewish Council for the Aging. Several others suggested enrolling in an AARP job search workshop and seminar—for a fee of \$35.

*Christopher Georges is an editor of The Washington Monthly. Research assistance was provided by Greg Wolgast.*

In a way, those phone calls distill what's wrong with AARP, one of America's largest and most influential nonprofit organizations: In its brochures, it's dedicated to helping seniors work, play, and wield power. In real life, however, helping itself seems to be Job One. "It's no more than a big business," grumbles Virginia Fine, who until last year was an officer of a California AARP chapter. "The whole Washington operation is simply geared toward making money." A close look at the mammoth nonprofit's Washington command central offers a fair amount of evidence to back Fine's charge. In 1990, for example, AARP spent about as much on office furniture and equipment as it did on programs to help its 33 million elderly members.

## The world according to AARP

Why should you care? If you're over 50, odds are you're a member: More than half the over-50 population has paid the \$5 dues to belong. Next to the Catholic Church, it's the largest membership organization in America. But even if you're not an AARP card-carrier, you're paying for the organization's extravagance anyway, because AARP receives, in addition to its federal grants, a federal subsidy equivalent to nearly \$20 million a year.

Of course, AARP's nonprofit status also grants it something money can't buy—the trust of millions of older Americans: trust to represent their interests in Washington, to sell them worthy products, and to use their dues and fees in their best interest. For most of the organization's 34 years, the media and AARP members have accepted that trust at face value. But a peek at AARP's finances and lobbying efforts

suggests that this trust may not always be well-earned.

AARP describes its mission as threefold: to lobby on behalf of seniors; sell them products and offer them discounts on other goods and services; and provide them with the chance to both volunteer their services and benefit from the volunteer work of others. For their \$5 investment, members get an assortment of goodies: a subscription to *Modern Maturity*, AARP's bimonthly magazine (far and away America's largest, with a circulation five times that of *Time*); discounts from car rental companies, major hotel chains, airlines, and on American Express travel packages; and, of course, the opportunity to save money on health insurance, prescription drugs, and other products sold by AARP.

And sell it does. AARP's nine business enterprises sustain a cash flow of about \$10 billion annually and revenues of nearly \$300 million, with the greatest portion coming from AARP's centerpiece enterprise: group health insurance. With more than 5 million policy holders, it's the largest of its type. Last year, AARP profited nearly \$100 million from this business alone. AARP's only role in selling the policies is as a middleman: AARP's partner, Prudential Insurance, offers the policies, which are promoted through AARP publications and direct mail solicitations. For every policy sold, AARP receives a 4 percent administrative allowance simply for collecting the premium and passing it on to Prudential.

AARP's mail-order pharmacy, one of the nation's largest, brings the organization about \$3 million per year. Its direct mail operation is so massive that AARP sends more than 1 percent of the entire nation's nonprofit third-class mail. Add to this the \$100 million it collects

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million went to coordinate programs such as educational forums and diet and exercise activities. \$4 million was spent on the biennial convention, and \$3.7 million was devoted to "education of older workers and employers in matters of obtaining employment . . . keeping employment and retirement planning." With respect to the last program, what AARP neglects to mention in its public financial records is that it also charges members \$35 to enroll in such courses.

AARP has a penchant for charging members for services. One of the organization's most popular assistance programs is its \$5/Alivo driving education course for seniors. It is, of course, an important and useful service, but while AARP spends about \$2.8 million to run it, it also collects an \$8 fee from most of the 450,000 enrollees.

Leaders of local AARP chapters across the country also charge that the national office, despite its bulging bankrolls, does little to support them beyond printing pamphlets and offering moral encouragement. Many chapters hold bake sales or fundraisers to scrape up money for meetings or events. The scant support shows. So disorganized were local chapters that when phone inquiries were made regarding three of AARP's most vaunted volunteer programs (legal aid services, Medicare/Medicaid advice, and a widow support service), only about a third of the offices contacted had any idea that the programs exist.

The response wasn't much better when similar inquiries were made to the Washington headquarters about its Medicaid/Medicare assistance program and the Financial Information Program (offering advice on money-related topics). In each case, callers were told that no such programs exist. But inquiries about purchasing health insurance and prescription drugs were handled promptly.

over service occurred last year when chapter officer Virginia Pino of the Sacramento, California, AARP asked AARP's national office for a list of all AARP members in her region in an attempt to encourage



Photo/Jennifer J. Peabody

### The lobby's lobby: AARP's swank new digs

members to become more active in the local chapter. AARP refused to release the list, saying it was confidential. Eventually she and other local leaders petitioned the state attorney general to force AARP to release the names. Why the hesitancy from Washington? Its 33-million-name list is the heart of AARP's financial empire; alone it's worth millions of dollars, since direct mail solicitations are the corner-

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each year in membership dues and the interest on about \$50 million from Treasury bills, and total annual revenues add up to about 10 times the take of the United Way.

The United Way: Come to think of it, the comparison doesn't end there. AARP devoted about \$30 million last year, and just \$14 million in 1990, to programs aimed at directly assisting the elderly—a pitance compared to the funds it lavished on itself. Perhaps the most conspicuous symbol of AARP's use of resources is its new 10-story Washington headquarters. Leased for about \$16 million a year, the 500,000-square-foot building is one of Washington's most alluring. Fellow lobbyists refer to the structure as the "Tij Mahal"; *The Washington Post's* architecture critic described it last year as "a knockdown surprise, a classical package whose odd vigor is at once appositional and relentless."

It's little wonder he was impressed: The structure, crowned with a medieval-style turret, boasts a state-of-the-art radio and TV broadcast studio, a fitness center, and a beautifully appointed marble lobby. Office lights are guided by motion sensors; even the stairwells are wallpapered and carpeted.

Nor was expense spared in furnishing the thing. Dozens of mahogany bookcases costing \$1,800 each, for example, are built in throughout, and stained-glass windows adorn every floor. Total costs for furnishings and equipment came to \$29 million in 1990.

"Even people here wonder if it's proper for a nonprofit for the elderly to be housed this way," says one AARP insider. As for the old furniture, it now sits idle in a Virginia warehouse rented at AARP expense. AARP officials defend the costs, saying that they sought to construct a building that would last for years to come. Also, they say, internal calculations showed that moving the old furniture to the new building would have cost just as much as the new decor.

Still, the decor is chump change compared to the \$43 million spent on salaries for the 1,100 headquarters employees. "These are layers of people here, many of whom have little or nothing to do," says one D.C. insider. Busier, apparently, are the organization's lawyers. AARP pays out nearly \$2 million annually in lawyers' fees, which is more than it devotes to all but four of its more than a dozen elderly assistance programs. AARP, in fact, retains two sets of lawyers: an in-house counsel and a team of lawyers from the New York firm of Miller, Singer, Ralves, and Branden. The two lead attorneys, Alfred Miller and Lloyd Singer, have been closely associated with AARP since 1971, when the firm was formed specifically to provide legal counsel to the organization. Former AARP executive director Jack Carlson, who

was fired after a 15-week tenure in 1987 following a dispute with the board of directors, explains that the lawyers' roles range from overseeing the business enterprises to monitoring committee meetings. "They permeate the whole organization," Carlson says. "There's a heavy-duty orientation to the commercial side and they didn't want anyone to come in and sabotage it."

Overseeing the empire today is executive director Horace Deets, a former Jesuit priest who joined AARP in 1975. He is described as a low-key leader who travels frequently and who views his mission as decentralization of AARP and "intergenerational expansion" (that is, recruiting younger members). His salary is \$200,000—not in the Aramony stratosphere, but at the high end of the spectrum of nonprofit executives' salaries. Deets reports to a 15-member board of directors and six national officers—all of whom are unpaid volunteers with roles limited mostly to making ceremonial appearances at functions representing AARP, attending conventions, and sitting on various committees that oversee AARP's commercial enterprises. Board members and about 250 other top-level volunteers scattered throughout the country enjoy expense accounts, free travel, and other perks that were worth about \$11 million in 1990 alone.

Back in Washington, the 1,100 paid staffers are apparently not enough to get the job done at AARP-central. Every year, nearly \$10 million is doled out to an army of consultants brought in to write public opinion polls, newsletter copy, and radio scripts and to perform other odd jobs, like providing "media training" to top-level volunteers preparing for radio and television appearances. AARP officials say they are unsure how many consultants are hired each year, but insiders place the number in the hundreds. Last spring, AARP paid nearly \$2 million to a consulting firm to run an in-house workshop called "communicating with co-workers." Another consulting firm, Synectics of Cambridge, Massachusetts, was called in to instruct AARP employees on how to better provide input on projects and set priorities in the office. The amount Synectics received is unknown, but it was enough to prompt the firm to set up a satellite office in Alexandria to serve AARP. And last July, as staffers prepared to move from the old AARP building to the new headquarters, more hired guns were ushered in—in this case to help train employees in how to pack their belongings into boxes for moving.

## Hot for profit

While the Washington crowd enjoys the riches of the organization, the level of support that flows back to members is rather paltry. Of the approximately

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cents to a dollar per prescription, limits on the types of medications covered, and in some cases restrictions on the number of times they could refill those prescriptions. The losers were, of course, the drug sellers, who'd see their profit-margins diminish. Again, full support came from almost every seniors group except—you guessed it. While Rother insists that AARP worked hard to enact the bill, Hill staffers close to the legislation again disagree. "Sure, we wished AARP would have supported it, but they weren't involved," says a senior Senate staff aide instrumental in the bill's enactment.

► **National health insurance:** Instead of endorsing any of the nearly one dozen plans introduced in Congress, AARP recently released a preliminary draft of its own health insurance plan, one it claims is best for all Americans, not just the elderly. While it includes a few "Canadian-style" features like universal long-term care coverage, the plan is, first and foremost, a "play-or-pay" model that calls for employers to provide insurance to employees or pay into a public fund. Employer-based programs have received criticism from other elderly groups because they do less for seniors than Canadian-style systems. As a result, elderly advocates question AARP's motives in eschewing any of the proposed Canadian-style plans, noting that an employer-based model, unlike nationalized health care, would allow AARP's \$100 million insurance-selling enterprise to survive.

If the profitmaking impulse occasionally affects AARP's lobbying efforts, it also sustains the group's flagship publication, *Modern Maturity*, which the organization considers a crucial tool in its mission to educate seniors. While the magazine is filled with innocuous service pieces, there is a seamier side to the publication: its thinly masked mission to promote AARP's business enterprises. A survey of recent issues showed that on average more than a third of the advertising inches promoted AARP-sponsored products or services offered by its discount partners. In fact, about one in every 10 pages featured an ad pushing an AARP product. (Competing products and services almost never appear in the magazine.)

Of course, *Modern Maturity* doesn't run articles that outright endorse any of AARP's products or services. Instead, what you'll find on, say, the page opposite the health column is a full-page ad for the organization's insurance plan. And while articles offering advice on how to wisely invest money don't make specific mention of AARP's investment service (and of course omit mention of other plans, no matter how highly rated), they do appear close to ads for AARP's Scudder investment plan. "They wouldn't write a piece on a trip to the Second Coming unless it

was operated by American Express tours," says Leonard Hansen, a New Orleans-based syndicated columnist on elderly affairs.

You might think some of AARP's members would get wise to self-promotion like this and do something about it. But while there are nearly 4,000 local AARP chapters across the nation, each with its own elected leadership, members have little voice in setting AARP policy. Washington keeps a tight grip on the selection of both regional and state leaders. State directors, area vice presidents, and state coordinators are all appointed by AARP's Washington-based executive committee. In the past, members attempting to assert their own opinions on political issues have faced the wrath of the Washington office. Ted Ruhig, who served several terms as an officer of AARP's Carmichael, California, chapter, was a regional director of AARP's voter education drive in 1989. Unhappy with AARP's position on catastrophic care legislation, Ruhig spoke out publicly against the lobby. A few weeks later, he received a letter from the Washington headquarters thanking him for his years of service to AARP and dismissing him from his leadership post.

"Occasionally we have to terminate people," Rother explains, "although it's not a pleasant thing to do."

## Elder hostile

From the headquarters to the magazine, AARP seems a lot more of a business than a charity or grassroots lobby. In fact, the organization has in many respects evolved into a giant merchandising company that taxpayers subsidize to the tune of millions of dollars. "If I could, I'd walk into AARP and immediately shift the money around," Kurt Vondran, a lobbyist with the National Council on Senior Citizens, says enviously, thinking of the services and programs that could be created with that glorious \$300 million budget.

Of course, Vondran's wishes aside, AARP doesn't have to chuck the mahogany bookcases, the box-packing consultants, the \$11 million executive perks, or the selling obsession. It doesn't have to start functioning as a nonprofit, running programs on behalf of the seniors it's chartered to serve. There's another reasonable option. AARP can keep on peddling those products and living as baroquely as it likes—just as long as it drops the charitable cover and pays its taxes like other American businessmen. That'd mean, humm, millions of dollars saved every year by the federal government—probably a bigger help to America's older people than the AARP will ever be.

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stone of its fortunes. So protective of this list is AARP that its bylaws call for expulsion or suspension of any member who releases "a complete or partial list of members" without written permission from AARP's president.

## Capitol crimes

Of course, direct services to the elderly aren't AARP's only game, as officials there are quick to tell you. AARP's real forte is helping its members on Capitol Hill. AARP's legendary lobbying arm, which absorbs about \$18 million of its budget, includes a team of 18 lobbyists and researchers in its policy shop, the Public Policy Institute. As expected, chief among AARP's causes are averting cuts in benefits for the elderly, protection of pensions, and various health care initiatives. AARP's lead lobbyist, John Rother, describes his team's lobbying style as "low key," presenting carefully researched data rather than holding press conferences or issuing "damning reports."

AARP has in past years been charged with neglecting the elderly poor in favor of the well-to-do, who are more likely to buy its services. More and more congressional aides and lobbyists, however, now credit AARP with placing greater emphasis on issues like low-income housing, as well as reemphasizing long-time causes like age discrimination, So-

cial Security, and consumer-related issues. Yet some congressional AARP watchers still argue that the lobby has been conspicuously silent in several recent battles over bills designed to assist the elderly that could, coincidentally, also threaten AARP's financial empire.

>*Medigap insurance reform:* In 1990, after investigations into Medigap insurance (policies designed to offer seniors coverage in areas not covered by Medicare), Congress, convinced that insurance sellers were swindling many seniors into buying protection they didn't need or already had, moved to clean up the mess. The reform legislation, which called for a fairer system for seniors but a less profitable one for insurance providers, won the hearty support of all seniors groups—except, according to congressional aides involved in enacting the legislation, AARP. AARP officials today insist that they fully backed the legislation. But one senior-level aide to a congressman who sponsored the measure disagrees. "They met with us and gave some suggestions, but most of these were on how to soften the bill."

>*Prescription drug prices:* After congressional hearings in 1990 found that drug companies were overcharging Medicare for pharmaceuticals, legislation was introduced to force lower fees. The bill aimed not only to save the government billions of dollars, but also to help people insured through Medicare, who often faced out-of-pocket costs of \$0

# YOU CAN HELP

Perhaps you don't realize how much *The Washington Monthly* depends on its readers. Our Memos of the Month come almost entirely from you. Clippings from your local papers inspire many of the items in "Tidbits and Outrages" and "Tilting at Windmills."

If you live in the Washington area, you may be able to help us in our office—with screening manuscripts, proofing, or occasionally stuffing envelopes. Just drop us a note telling us the work you're interested in, your experience, and the times you're available.

## Thanks!

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# SB 218 and INTERSTATE COMMERCE

Requirement	Local Benefit	Out-Of-State Burden
<p>1. Register as a foreign corporation (public employee plans)</p>	<p>Montana patients can sue a negligent mail order pharmacy in Montana courts</p>	<p>Secretary of State fees: \$120 initial application. \$10/year annual renewal (possibly small annual fee to registered agent)</p>
<p>2. Free choice of willing in-state pharmacy (public employee plans)</p>	<p>Preserve option, for patient, of face to face counselling</p>	<p>None      EXHIBIT <u>6</u>            DATE <u>3-12-93</u>            SB <u>218</u></p>
<p>3. Registration of each pharmacist dispensing to Montana</p>	<p>Verification of qualifications of each pharmacist; possibility of sanctions under Section 4</p>	<p>Fee to cover good standing report from National Association of Boards of Pharmacy</p>
<p>4. Filing, approval of pharmacy technician utilization plans</p>	<p>Exclusion of factory -type dispensing operations without the level of supervision deemed necessary by Montana.            Prohibit delegation of functions which Montana deems not proper for technicians</p>	<p>Board of Pharmacy fees: \$150 initial application. \$75/year annual renewal            Mail order pharmacies with a technician/pharmacist ratio of greater than 2:1 could not be approved.            Some functions permitted for technicians in home state might not be permitted in Montana</p>
<p>5. Ability to discipline registered pharmacists in mail order firms</p>	<p>Policy of treating pharmacy as a skilled profession rather than a merchandising operation is fostered by holding professionals individually responsible</p>	<p>Many pharmacists having to study Montana pharmacy laws besides knowing their home state's law</p>

EXHIBIT 7  
DATE 3-12-93  
SB 218

**TESTIMONY**  
**SENATE BILL 218**  
**Submitted by: The Montana State Pharmaceutical Association**  
**February 12, 1993**

This must be a very difficult bill for you as members of this committee. The issues are extremely complex, and, in fact, we could spend probably four hours providing you with additional information and never repeat ourselves once. Our opposition, however, treats their task as a simple one: they have been telling you, over and over again, that this bill will make the costs of mail order pharmacy go up, hurt senior citizens, teachers, business owners. Members of the committee, I must submit to you that the hysteria created over this bill on the issue of cost containment is simply a cover used to attempt to keep you from addressing what the bill really says. I would like to take just a few minutes to point out the broad misconceptions about mail order pharmacy and examine just how little this bill will impact costs.

#1 Misconception: Mail order pharmacy is cheaper. It is not. In fact, just a couple of years ago, when Congress was considering implementation of the catastrophic health care act, HCFA decided that it was necessary to get to the bottom of the true cost differences between mail order and retail pharmacy. HCFA commissioned Brandeis University to conduct a study of this area and, in fact, they concluded that mail order pharmacy is not cheaper. This is not a study commissioned by the pharmacists, but by the federal government. We also demonstrated in earlier testimony that the bottom line is that mail order is just not cheaper---it is one of the greatest myths in health care today that it is.

#2 Misconception: This bill bans mail order pharmacy. While senior citizens have been spending a lot of time writing letters to the editor which say that this bill bans mail order, members of the committee, in no way does it do so. Someone has been misrepresenting the facts to our senior citizens.

#3 Misconception. This bill will make the cost of mail order drugs go up--alot!!! Let's examine the bill and see just how anyone could possibly find

death, and don't get down to the meat of what the bill does. They tried that in Colorado just last week. Colorado is in the middle of passing a bill similar to this one. The Colorado House committee passed the bill 11-1, even in the face of such opposition.

Yet, you need a good reason to pass this bill, and while we have given you many reasons, I believe there is one overriding one. Medicaid has never and will never consider going mail order pharmacy, because they have an absolute legal duty to protect a certain class of citizens--poor people. They cannot treat that class as "lesser" than other classes. In other words, mail order pharmacy is inferior to the face-to-face counselling and pharmaceutical care services received from a community pharmacy. Members of the committee, the legislature has a right---and we would say a duty---to protect all Montana citizens equally. The legislature has seen fit to very seriously regulate the practice of pharmacy in Montana--that regulation is for the safety and welfare of our citizens. Our people who are using mail order pharmacy--often not by their own choice--are not now being afforded any regulatory protection by our state. The opposition may tell you that the various Boards in the states that they are located regulate them. I submit to you that the Board of Pharmacy in Nevada can spend very little time worrying about the citizens in Montana. That job belongs to the Montana Board of Pharmacy---and to the Montana Legislature. We must not allow the hysteria which has been generated by the mail order pharmacies to override the fact that the practice of pharmacy is health care, and that health care can be dangerous indeed, and must be regulated.

EXHIBIT I  
DATE 3-18-88  
SB 213

EXHIBIT 8

DATE 3-12-93

SB 218

Office of General Counsel  
WARD

**Study to Evaluate the Use of  
Mail Service Pharmacies**

September 21, 1989

Brandeis University

Constance Horgan, Principal Investigator  
Brigid Goody  
Helen Batten  
Jerry Boren

University of Maryland

David Knapp, Co-Principal Investigator  
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NTIS Acquisition #PB 90172677  
\$17.00  
(703) 487-4600

*Center on Drugs  
& Public Policy*

This report was made pursuant to HCFA Grant #99-C-98526/1-05. The project officer was William England. The opinions, analysis and conclusions contained in this report are solely those of the grantees and do not express any official opinion of, or endorsement by, the Health Care Financing Administration.

**EXECUTIVE SUMMARY**

**A. Study Purpose and Methods**

Under section 202 of the Medicare Catastrophic Coverage Act of 1988 (MCCA), the Secretary of Health and Human Services (HHS) was mandated to evaluate the potential use of mail service pharmacies to reduce costs in the delivery of prescription drugs under the new outpatient prescription drug benefit. The Health Care Financing Administration (HCFA) funded a cooperative agreement to Brandeis University and the University of Maryland Center on Drugs and Public Policy, to conduct the study. Three sources of data were used: (1) existing published and unpublished literature on mail service pharmacies; (2) primary data collection through a mail questionnaire and follow-up site visits to a sample of mail service pharmacies; and (3) phone inquiries to selected State pharmacy regulatory boards.

**B. Major Findings**

**Private Mail Service Pharmacy Industry**

- o The distribution of firms by size, whether it be characterized by annual sales or number of prescriptions dispensed, is very skewed. The two largest firms are responsible for approximately two thirds of both dollar sales and number of prescriptions dispensed.
- o The majority of customers come to mail service pharmacies from group contracts with employers and insurers/third-party administrators. Individual customers who are not associated with group contracts are a very small portion of their business with only one firm marketing directly to individual customers.
- o Individuals over 65 years old represented over 50 percent of the sales in mail service pharmacies despite the predominance of employer contracts. This reflects use of mail service pharmacies under retiree health benefits.
- o Despite the existence of several firms for more than 10 years, mail service pharmacy is an emerging industry experiencing rapid growth. More than half of the firms have been in the business less than 5 years. Younger firms are smaller and experienced relatively more rapid growth than their older and larger counterparts.

## Operational and Administrative Characteristics

- o Contracts between mail service pharmacies and their clients specify consumer cost-sharing arrangements and a maximum days supply. Cost sharing generally takes the form of a flat copayment. Most contracts provide for dispensing a 90-day maximum supply.
- o Contracts also include a negotiated reimbursement formula. The majority of customers are covered by a contract which specifies the reimbursement formula to be average wholesale price (AWP) less a percentage discount plus a dispensing fee. Since mail service pharmacies rarely sell directly to the consumers, the concept of a "usual and customary price" is not relevant when discussing pricing formulas for mail service pharmacies.
- o The production facilities of mail service pharmacies concentrate on processing new and renewal prescriptions for maintenance drugs. The scale of operations permits the implementation of highly efficient production-line techniques for dispensing most prescriptions.
- o The computer systems of mail service pharmacies performed all the functions routinely performed by computers in community pharmacies. Because of their scale of operations, mail service pharmacies can support extensive equipment providing flexibility in their processing, capacity for large files and back-up equipment for disaster recovery.

## Cost and Efficiency Issues

- o Mail service pharmacies were not willing to provide data requested in this study that would allow assessment of the potential cost savings to Medicare from use of mail service pharmacy.
- o Comparison of prescription costs across practice settings such as community pharmacy versus mail service pharmacy must be made with caution. Prescription costs are affected by several variables other than practice setting such as: type of prescriptions filled; average days supply per prescription; generic fill rate; variance in State drug product selection laws; coverage rules and quantity of third-party paid prescriptions; and volume discounts negotiated with third-party payers.

- 
- o Mail service pharmacies responding to the survey averaged: \$42.32 per prescription; 2.2 prescriptions per order processed; 76.7 days supply per prescription; and \$.561 charge per days supply. The literature provides some comparative averages for community pharmacies: \$15.19 per prescription; 26 days supply per prescription; and \$.584 charge per days supply. Although large firms versus small mail service firms had similar averages for these variables, there were considerable variations across the total sample of mail service firms responding to the survey.
  - o The average charge per days supply found among mail service firms in this study does not appear to be substantially different from the average charge per days supply found among retail community pharmacies in the literature.
  - o Mail service firms exhibited lower operating expense as a percentage of gross sales than community pharmacies for employee expenses and rent or interest on facilities. Mail service firms had higher expense as a percentage of gross sales for shipping and handling costs.
  - o Mail service pharmacies appear to have greater operational efficiency and resulting lower cost in certain areas, compared to community pharmacies, including: higher rate of automated dispensing; lower employee, facility, and inventory carrying expenses as a percent of gross sales; and greater use of generics.
  - o Mail service firms incur shipping and handling costs not experienced by community pharmacies.
  - o The MCCA payment plan should minimize generic fill rate differences between mail service and community pharmacies because of incentives it provides for generic substitution.

#### Quality Issues

- o The source for drug products dispensed by mail service firms are major pharmaceutical manufacturers.
- o Mail service pharmacies appear to adhere to the Standards of Practice related to the process of dispensing a prescription.
- o Mail service pharmacies appear to be taking reasonable steps to provide appropriate written information with

prescriptions and the opportunity for follow-up information by telephone.

#### Legal Issues

- o Mail service pharmacies are regulated by the board of pharmacy in the State in which the dispensing facility is located. Of particular importance are regulations related to the use of technical (nonlicensed) personnel, generic substitution, and occasionally, patient information and counseling. Most State boards assert the authority to regulate out-of-State mail service pharmacy facilities if they mail into the State, but enforcement is impractical and problematic.

#### Pharmacy Concerns Regarding MCCA

- o Mail service pharmacy concerns about the MCCA relate to two areas: being a provider of pharmacy services and becoming a participating pharmacy. Concerns regarding provision of pharmacy services include: marketing to individuals, rather than groups; the 30-day supply limit; and biannual pricing updates. Concerns regarding participation include: allowance of batch processing and response time of the electronic point-of-sale system.

#### C. Conclusions/Recommendations

- o Mail service pharmacies appear to have greater operational efficiency and resulting lower cost in certain areas, compared to community pharmacies. They also will probably interface with the MCCA electronic point-of-sale system in a batch processing mode, which should result in lower overhead costs than a community pharmacy on-line system. However, mail service pharmacies incur shipping costs not experienced by community pharmacies, and incentives in the MCCA payment plan should minimize cost differences that result from generic fill rate differences between community and mail service pharmacies.
- o Qualitative information obtained from the survey suggests mail service pharmacies have higher average profit margins than community pharmacies.
- o The payment formula used in many mail service pharmacy group contracts, AWP less a discount plus an administrative fee, suggests that actual drug product acquisition costs for many mail service pharmacies are well below AWP. However, the amount of such discounts could not be

determined in this study. While the MCCA prohibits considering pharmacy discounts in determining the unit average price for drug products, the average amount of mail service pharmacy discounts could be considered in determining an appropriate administrative allowance for mail service pharmacies.

- o Because this study was not successful in getting sufficient quantitative information to determine actual acquisition or overhead costs, mail service pharmacies should be included in the General Accounting Office's studies to determine overhead costs of community pharmacies and discounts given to third-party insurers, as required by section 202(k)(2) of the MCCA.



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MONTANA STATE LEGISLATIVE COMMITTEE

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EXHIBIT 9  
DATE 3-12-93  
SB 218  
SECRETARY  
Mrs. Florence R. Coslet  
312 Cook Street  
Lewistown, MT 59457  
(406) 538-2674

AARP Testimony  
Senate Bill 218  
March 12, 1993

Mr. Chairman & Members Of The Committee:

For the record, my name is Bill Olson and I am a member of the American Association of Retired Persons(AARP) State Legislative Committee. AARP has a membership of approx. 110,000 in Montana, all of whom are 50 years or older. I am pleased to have the opportunity to present our committee's views on SB 218. We would respectfully request that you reject this legislation.

I am well aware of written testimony presented to each of you from AARP Pharmacy Service. Over 10,000 Montana residents avail themselves of this service, available from the AARP pharmacy in Sparks(Reno) Nevada.

Very briefly, I would like to address some of the points set forth in the forementioned written testimony from AARP Pharmacy Service.

1. SB218 is an unnecessary piece of legislation.
  - a. Out of state Pharmcies are regulated by the states in which they are located.
  - b. Out of state pharmacies must comply with the same DEA(Drug Enforcement Administration) and FDA( Federal Drug Administration) rules and regulations that Montana pharmacies do.
  - c. Montana already has a statute that regulates out of state pharmacies.
2. SB 218 will cause increases in prescription drug prices and will hurt older Montanans because the out of pocket expense for prescription drugs is a

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major expense.

3.SB 218 is suspect of being unconstitutional.

Aside from the forementioned reasons and aside from the fact that AARP members in Montana utilize the AARP pharmacy service, there are other major concerns relating to why SB 218 should be rejected

Being a rural state, the accessibility to pharmacies by citizens (particularly seniors) is limited. In fact, in Montana there reportedly are 5 counties which do not have a pharmacy within their borders. This lack of accessibility (great number of miles to nearest pharmacy) causes many residents to rely on mail order out of state pharmacies for their prescription needs. By the same token, seniors in urban areas who are confined to their residence or are immobile rely on the mail to deliver their prescriptions.

Cost containment is a major issue in the Health Care scenario. Passage of SB 218 will result in higher prices people will have to pay for prescriptions, prices which are deemed by many as already being too high. For older people, most of whom have no insurance coverage for prescriptions, it is important to have price competition because, other than long term care, prescriptions are the highest out of pocket health care cost. Increased costs will be especially devastating to those seniors on fixed incomes who are on maintenance medication.

Over the last few weeks we have received several phone calls from AARP members throughout the state expressing opposition to SB 218. In addition, there have been letters published in various newspapers

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opposing SB 218. Copies of these letters are enclosed in your  
packets. Needless to say, these letters were not complimentary  
towards the bills primary sponsor.

In conclusion Mr. Chairman, on behalf of AARP members in the State  
of Montana, we urge the rejection of SB218. It is not a good bill.

Thank you.

*William Olson*

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SB 218

I'm on maintenance prescriptions for arthritis. My doctor (w) registered pharmacists, not technicians) charges me \$216 a year total (\$36/each). I called Shilons Rx 7/24 & checked prices: it would cost me \$2,646 <sup>25</sup> a year! By a few that out of pocket expense for drugs, the quality of my health care will go down, not up. (My Blue Cross deductible is \$1,000 & my husband's is \$600 at John Deere.)

Thank you! I want you to do what I'm intending to do. Well, don't do it.

# Pharmacy bill

I recently read in the Chronicle that Sen. Ed Kennedy Jr., a Kalispell pharmacist, has introduced SB-218 to regulate mail-order pharmacies. Kennedy said his bill would protect Montana pharmacies against a loss of business.

(What makes me think that this is an unethical use of parliamentary power to enrich one's self?)

Said bill zipped through the Senate, without debate, by a vote of 41 to 8. Who will pay for this benefit to Montana pharmacists? Just all the seniors on fixed incomes who are on maintenance medication and currently try and save a few dollars by ordering mail-order medication.

Sen. Kennedy, this taxpayer thinks it is deplorable that you would attempt to line your own pockets at the expense of the seniors of the state of Montana on fixed incomes.

We all use the local pharmacy for normal prescriptions. But for those on maintenance medications the savings from mail-order pharmacies can make the difference between paying the rent or not being able to pay the rent. This bill still has to pass the House to become law. I request all citizens who despise a legislator feathering his own nest to call 444-4800 or write their House members to object to passage of SB-219. And to think that our legislators don't believe Montana needs an ethics bill!

John L. Sparks  
6720 Camp Creek Rd.  
Manhattan

also received a call from: Boba Moran  
Box 1026  
Butte, MT 59313  
Phone: 778-2358  
or  
778-3470  
Love Reardonson

# Senate backs measure to restrict public smoking

HELENA (AP) — A bill allowing local boards to restrict smoking in public places got the narrow endorsement of the Montana Senate on Monday after the measure's sponsor made a public-health appeal.

Senators voted 25-24 in favor of the bill sponsored by Sen. Terry Klampe, D-Florence. The measure will receive one more Senate vote, and if approved then, it will move to the House.

Both the Senate and House acted on a variety of bills Monday. They include one to regulate pharmacies operating by mail, and a measure allowing people to give binding instructions about disposal of their bodies.

The Klampe bill would allow local health boards to regulate and even ban smoking in enclosed public places such as restaurants and stores, but not taverns.

Klampe, a dentist, said 3,000 Americans will die this year from effects of second-hand smoke, and the medical facts support passage of Senate Bill 221.

Opponents said business operators can determine what their customers want. Businesses will provide smoke-free environments if enough customers desire them, they said, and people worried about smoke can avoid places where it's prevalent.

"Give these businesses some options," said Sen. Tom Beck, R-Deer Lodge. "Let them decide

what's good for them." The pharmacy bill, supported without debate, would regulate out-of-state companies that fill Montana prescriptions by mail.

Among other things, Senate Bill 218 would require that pharmacists in those businesses have Montana registrations. The bill sponsored by Democratic Sen. Ed Kennedy Jr., a Kalispell pharmacist, also would regulate mail-order companies' use of technicians to fill prescriptions.

Kennedy said his bill would protect Montana pharmacies against loss of business, and also would protect consumers against what he called a "health menace" that can involve inaccurately filled prescriptions.

"Who's going to get up at 2 in the morning and deliver a prescription? Hometown pharmacies do it now," Kennedy said. He asked whether mail-order companies would do the same if the locals were driven from business.

On the House side of the Legislature, Rep. Bob Pavlovich, D-Butte, said his bill on disposal of bodies "just clarifies that if someone wants to be cremated and he pays for it, he gets cremated."

Under House Bill 509, Montanans making their own funeral arrangements would be able to specify a method of lawful disposal, pay the cost in advance and prevent relatives from legally ordering other arrangements after the death.

IN BOZEN  
THAT'S  
NOT

EXHIBIT 9  
DATE 3-12-93  
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I'm writing with reference to Senate Bill No. 218 was pushed through the Senate "WITHOUT ANY DEBATE"!! In essence, it would prohibit ordering medical supplies or drugs from any out of state source and this bill No. 218 was sponsored by Senator Kennedy from Flathead County. For starters, I feel this legislation is unconstitutional and it would sell all of us down the river, most especially Senior Citizens who live on Social Security and low fixed income below the poverty level. Frankly, I wonder how much the pharmaceutical lobbyists paid off Senator Kennedy to introduce this discriminatory legislation.

I am one of Millions of A.A.R.P. Members and currently use the AARP Pharmacy (out of state) to cut down the devastating escalation of medicines. I am VERY WELL VERSED in the RIP\*OFFS currently existing in outrageous prices for medications and prescriptions! I'll detail just 2 or 3 to give you a few examples and the list goes ON & ON & ON !! No. 1 --- "TYLENOL" (which is ACETAMINOPHEN);-- Through the AARP Pharmacy (out of state pharmacy) I get a bottle of 500 for \$8.99 and to get the same strength in drug stores would cost me in excess of \$45.00! No. 2 ---DULCOLAX SUPPOSITORIES (which is BISACODYL, 2 1/2 10 MG Suppositories) Through AARP Pharmacy I get a box of "50" \$6.99, while a box of DULCOLAX (brand name) costs \$10.59 for a box of "12"!! No. 3 --- NEOSPORIN OINTMENT (which is a triple-antibiotic ointment) in 1 oz. tubes and currently sells for \$6.75. From AARP Pharmacy the EXACT SAME THREE ANTIBIOTICS in 1 oz. tubes, under their name TRIPLE ANTIBIOTIC OINTMENT costs \$1.76 a 1 oz. tube. I could on and on for dozens and dozens more examples of the horrendous price-gouging by the Pharmaceutical companies. This situation has been recently aired over national T.V. Little wonder that the drug companies are desperately lobbying to protect and preserve their monopolies! We've just got to stop this devastating escalation of medical drug costs.

Last week the Billings Gazette lambasted this Senate Bill No. 218 and Senator Kennedy in their daily paper and I will send you a copy when I get it.

I have already alerted George Ostrom, KOFI Radio station in Kalispell about this matter. I am also writing to Ms. Maher to oppose this legislation. In this bill, No. 218!

Just where will this legislative orders would become illegal and lead

I will greatly appreciate your

Wednesday, March 10, 1993

Great Falls Tribune

# On our minds: t

## Opposing drug bill

I'm very much opposed to Senate Bill 218, sponsored by Sen. Ed Kennedy Jr. from Kalispell. It was supported without debate and passed the Senate on Feb. 16. I hope that this bill can be killed in the House.

It amazes me that a senator can get a bill passed without debate when it involves thousands of senior citizens who are members of the American Association of Retired Persons so they can buy prescription drugs by mail-order at a discount. Also, thousands of insured people who pay a high insurance premium so they can order prescription drugs at a discount.

It is my thought that most Montanans elect their representatives and senators to wisely spend their tax dollars and balance the budget and not pass laws to tell the taxpayer where they have to spend their own money.

It is hard to believe while the president of the United States has appointed the first lady of the United States to come up with a plan to cut the cost of health care to the

Montana Senate passes a bill to raise the cost of health care on a Montana to help a select few businesses as the people of Montana face a possible tax increase or sales tax.

I hope that when SB218 comes before the House it will be killed, as not to put another burden on the sick and elderly.



Kennedy

If SB218 becomes law a out-of-state order prescription drugs are

banned, just for the financial gain of the select few businesses, what is next? Will they outlaw all out-of-state catalog mail-order service? Will they pass laws that Montana people can not go south for the winter because of taking too much money out of the state of Montana? Think about it.

ARVID W. HOBBY, 828 10th Ave.

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EXHIBIT 10  
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STATEMENT

of

RETIRED PERSONS SERVICES, INC.  
THE AARP PHARMACY SERVICE

before the

COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT

of the

MONTANA HOUSE OF REPRESENTATIVES

on

Senate Bill 218

Helena, Montana  
March 12, 1993

**GOOD MORNING, MR. CHAIRMAN, MEMBERS OF THE COMMITTEE. MY NAME IS NICK WILLARD. THANK YOU FOR THE OPPORTUNITY TO PRESENT THE VIEWS OF RETIRED PERSONS SERVICES, INC., ON SB.218. RETIRED PERSONS SERVICES IS THE OWNER AND OPERATOR OF THE PHARMACY ENDORSED BY THE AMERICAN ASSOCIATION OF RETIRED PERSONS (AARP) FOR ITS NATIONAL MEMBERSHIP. PURSUANT TO ITS LICENSING AGREEMENT WITH AARP, RETIRED PERSONS SERVICES DOES BUSINESS AS THE AARP PHARMACY SERVICE. ON BEHALF OF THE PHARMACY SERVICE AND ITS 10,516 MONTANA PATIENTS, I WOULD URGE YOU AND YOUR COLLEAGUES TO REJECT SB.218. WHILE THE STATED AIM OF ITS PROPONENTS MAY BE LOFTY, PASSAGE OF SB.218 WILL UNNECESSARILY AND UNJUSTIFIABLY LEAD TO HIGHER PRESCRIPTION PRICES FOR MONTANA RESIDENTS.**

**THE PHARMACY SERVICE HAS HELPED TO MEET THE HEALTH CARE NEEDS OF AARP MEMBERS FOR MORE THAN 33 YEARS. THE PHARMACY SERVICE IS A NOT-FOR-PROFIT, MEMBERSHIP SERVICES CORPORATION, ORGANIZED UNDER THE LAWS OF THE DISTRICT OF COLUMBIA AND HEADQUARTERED IN ALEXANDRIA, VIRGINIA. WHILE OPERATED ON A NOT-FOR-PROFIT BASIS (ALL NET INCOME IS REINVESTED), THE PHARMACY SERVICE IS NOT TAX-EXEMPT: ACCORDINGLY, IT PAYS ALL APPLICABLE FEDERAL, STATE AND LOCAL TAXES. IT DOESN'T HAVE ACCESS TO**

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NONPROFIT POSTAGE RATES NOR DOES IT QUALIFY FOR SPECIAL BUYING STATUS UNDER EITHER THE ROBINSON-PATMAN OR NONPROFIT INSTITUTIONS ACTS.

IN 1959, THE PHARMACY SERVICE SET OUT TO ENSURE THAT LOW INCOME, HOUSE BOUND, HANDICAPPED, REMOTE RURAL AND TRANSPORTATION DISADVANTAGED OLDER AMERICANS HAD ACCESS TO HIGH QUALITY AND COMPETITIVELY PRICED PHARMACY SERVICES. TODAY, THE ORGANIZATION SERVES MORE THAN 2.4 MILLION AARP MEMBERS NATIONALLY AND, AS I NOTED, SOME 10,500 OF WHOM LIVE HERE IN MONTANA. I WOULD ADD THAT EACH AND EVERY PERSON WHO CHOOSES TO TRADE WITH US DOES SO FREELY: THEY CHOSE OUR PACKAGE OF PRICE, QUALITY AND CONVENIENCE OVER WHAT WAS OFFERED BY A LOCAL DRUGGIST. OUR MONTANA PATIENTS AND CUSTOMERS ARE SERVED BY OUR NEVADA RETIRED PERSONS PHARMACY IN SPARKS, NEVADA.

I WOULD LIKE TO LIMIT MY COMMENTS TO THE LICENSURE AND REGULATORY SECTIONS OF SB.218. THE PHARMACY SERVICE IS FIRMLY COMMITTED TO COMPLYING WITH ALL REASONABLE AND CONSTITUTIONALLY SOUND LICENSURE REQUESTS FROM THE REGULATORY AUTHORITIES OF THE STATES INTO WHICH PRESCRIPTION MEDICATION WHICH WE DISPENSE ARE DELIVERED. AS PROOF OF OUR COMMITMENT, WE ARE CURRENTLY IN COMPLIANCE WITH THE OUT-OF-STATE PHARMACY LAWS OF ARKANSAS, CALIFORNIA, FLORIDA, IDAHO, KENTUCKY, MAINE, MINNESOTA, MISSOURI, NEVADA, RHODE ISLAND, SOUTH CAROLINA, VIRGINIA, WASHINGTON, WEST VIRGINIA AND WYOMING.

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MONTANA ALREADY HAS A STATUTE ON THE BOOKS TO REGULATE OUT-OF-STATE PHARMACIES. WE BELIEVE THAT SB.393, WHICH WAS ENACTED IN 1991, IS BOTH REASONABLE AND CONSTITUTIONALLY SOUND. SB.393'S PROVISIONS WERE CONSISTENT WITH THE APPROACH TAKEN BY THE VAST NUMBER OF MONTANA'S SISTER STATES WHICH HAVE ALREADY SUCCESSFULLY IMPLEMENTED OUT-OF-STATE PHARMACY REQUIREMENTS. WE BELIEVE THAT WERE SB.393'S PROVISIONS GIVEN THE OPPORTUNITY, THEY WOULD WORK AS WELL AS THEY HAVE IN OTHER STATES.

SB.218, ON THE OTHER HAND, WOULD AMEND MONTANA'S EXISTING NONRESIDENT PHARMACY ACT IN ORDER TO IMPOSE MONTANA PHARMACY LAWS AND REGULATIONS ON PHARMACIES AND PHARMACISTS IN OTHER STATES WHO ARE CURRENTLY PRACTICING IN FULL COMPLIANCE WITH THE PHARMACY LAWS AND REGULATIONS OF THEIR HOME STATES. WE STRONGLY BELIEVE THAT SUCH AN APPROACH IS NEITHER REASONABLE NOR CONSTITUTIONALLY SOUND.

PROPONENTS OF SB.218'S LICENSURE APPROACH WOULD HAVE YOU BELIEVE THAT PHARMACIES WHICH ARE LOCATED IN ONE STATE WHILE THEIR CUSTOMERS RESIDE IN ANOTHER, ESPECIALLY THOSE WHICH PROVIDE MAIL SERVICE DELIVERY, ARE INHERENTLY A THREAT TO THE PUBLIC HEALTH AND SAFETY. THEREFORE, IT IS SAID, SB.218 IS A CONSUMER PROTECTION BILL. YET, THE PROPONENTS HAVE NOT PRODUCED A SHRED OF CREDIBLE EVIDENCE THAT SUCH A THREAT EXISTS. IN FACT, EVERY OFFICIAL INVESTIGATION CONDUCTED PURSUANT TO ALLEGATIONS ABOUT THE SAFETY OF MAIL SERVICE PHARMACY HAS REACHED THE SAME CONCLUSION: ASIDE FROM SOME ANECDOTES WHICH ARE REPEATED OVER AND OVER, INVESTIGATORS

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HAVE FOUND NO CREDIBLE EVIDENCE TO SUBSTANTIATE THE ALLEGATIONS FOR  
NEARLY 20 YEARS.

IF SB.218 WERE TRULY NECESSARY, ITS PROPONENTS WOULD BE ABLE TO  
DEMONSTRATE THAT THE LAWS OF THE STATES IN WHICH MAIL SERVICE PHARMACIES  
ARE LOCATED ARE INADEQUATE TO PROTECT THE AMERICAN CONSUMER, REGARDLESS  
OF THAT CONSUMER'S STATE OF RESIDENCE. THE PHARMACY SERVICE STRONGLY  
BELIEVES THAT THE MONTANA STATE PHARMACEUTICAL ASSOCIATION WOULD BE  
SORELY PRESSED TO PROVE THAT THE PHARMACY LAWS AND REGULATION OF THE  
FOLLOWING STATES ARE EITHER INADEQUATE OR INFERIOR: ALABAMA, ARIZONA,  
CALIFORNIA, CONNECTICUT, FLORIDA, ILLINOIS, INDIANA, IOWA, MAINE,  
MISSOURI, NEW JERSEY, NEW YORK, NEVADA, OHIO, OREGON, PENNSYLVANIA,  
TEXAS, VIRGINIA AND WASHINGTON.

LET ME JUST GIVE YOU AN EXAMPLE. IT'S BEEN SAID THAT WE CAN'T COMPLY  
WITH MONTANA'S PHARMACY TECHNICIAN REGULATIONS BECAUSE THEY ARE TOO  
RESTRICTIVE. OUR NEVADA MANAGER WOULD LOVE TO BE ABLE TO PRACTICE  
UNDER THE MONTANA CODE WHEN IT COMES TO PHARMACY TECHNICIANS BECAUSE  
TECHNICIANS ARE NOT AUTHORIZED FOR RETAIL PHARMACIES UNDER NEVADA LAW.  
IN FACT, I CAN THINK OF ONLY TWO STATES IN WHICH WE OPERATE WHERE WE ARE  
ALLOWED MORE THAN ONE TECHNICIAN FOR EACH PHARMACIST. IN THOSE STATES, A  
PHARMACY WOULD HAVE TO MAKE A SPECIAL REQUEST OF ITS BOARD TO GO TO A 2:1  
RATIO.

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IF OTHER STATES TO ADOPT SB.218'S PROPOSED FRAMEWORK, OUR PHARMACIES WOULD BE COMPELLED TO ATTEMPT TO COMPLY WITH DUPLICATE, REPETITIVE AND COMPETING PHARMACY LAWS AND REGULATIONS OF ALL 50 STATES. SUCH A REGULATORY PATTERN WOULD LEAD TO A REGULATORY BURDEN. INEVITABLY, OUR COMPLIANCE COSTS WOULD SHARPLY ESCALATE WHICH, IN TURN, WOULD COMPEL US TO INCREASE OUR PRICES.

WE WOULD RESPECTFULLY SUBMIT THAT TO ENACT A REGULATORY FRAMEWORK THAT IS NOT BASED ON LEGITIMATE HEALTH AND SAFETY CONCERNS AND THAT WILL RESULT IN HIGHER PRICES FOR CONSUMERS IS NOT SOUND PUBLIC POLICY. THIS IS ESPECIALLY TRUE FOR THE MONTANA RESIDENTS WE SERVE.

AN INCREASE IN PRICES WOULD, OF COURSE, MAKE US LESS COMPETITIVE IN THE RETAIL MARKETPLACE. THE ONLY BENEFICIARIES OF SUCH A RULE-INDUCED OUTCOME WOULD BE THE COMPETITION: INDEPENDENT RETAIL DRUGGISTS. MOST IMPORTANT, CONSUMERS WOULD SUFFER THE CONSEQUENCES OF A LESS COMPETITIVE MARKET FOR PRESCRIPTION SERVICES.

THANK YOU VERY MUCH FOR YOUR TIME. I'LL BE HAPPY TO STAND FOR QUESTIONS.

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DATE 3-12-93  
SB 218

## TESTIMONY OF TOM RYAN IN OPPOSITION TO SENATE BILL 218

My name is Tom Ryan. I represent the Golden Nuggets Chapter of the Montana Senior Citizens Association. I am also on the Legislative Committee of the Montana State Retired Teachers Association. In case you have not already come to the conclusion: "I am a senior citizen."

When seniors meet for any reason, the topic of conversation usually reverts to health and health costs. Most of us have found it increasingly difficult to cope with the high costs of prescription drugs. Very often, when we enter a food marketing establishment, we find a shopping cart filled with many of the most commonly used foods. Seniors become desperate as they watch their fixed income cash flow diminish in value. The Montana Senior Citizens Association has been asking pharmacies to post a list of the most often prescribed drugs.

Paying for life-saving prescription drugs is a major item. Over the past ten years, prescription drug prices have risen 149%. For older people, this consumes a major percentage of the monthly income. Some prime examples:

21% of the people survey in Butte responded that they had delayed purchasing medications because of financial constraints.

70% responded that they spend at least \$100.00 per month on prescription drugs. My wife and I fall into this category.

I do not advocate the passage of SB 218. I believe its passage would do little for the local pharmacist but would reduce what pressures the free market system has on wholesale distributors.

# Montana Family



Union

AFL-CIO

110 West 13th Street  
P.O. Box 1176  
Helena, Montana 59624  
406-442-1727

EXHIBIT 12  
DATE 3-12-93  
SB 218

Don Judge  
President

Pam Egan  
Executive Director

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*The Associate Membership Program of the Montana State AFL-CIO*

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## TESTIMONY OF MONTANA FAMILY UNION BEFORE THE HOUSE COMMITTEE ON BUSINESS AND ECONOMIC DEVELOPMENT, MARCH 12, 1992.

Mr. Chairman, Members of the Committee, for the record, my name is Pam Egan, executive director of the Montana Family Union. On behalf of our membership, I am here today in opposition to Senate Bill 218.

Because the Montana Family Union is specifically directed at Montanans who do not have access to unions in the workplace, we represent many workers whose employers provide absolutely no health insurance, or whose health insurance does not adequately cover the cost of medication.

We also represent Montanans who are retired, work primarily in the home, are unemployed, or are students. Again, these people often have woefully inadequate health coverage or no coverage at all.

To many of our members, "cost containment" in regard to prescription drugs can mean the difference between having necessary medication, or simply going without.

Thanks to the collective bargaining power of hundreds of thousands of union members nationwide, our affiliation with the AFL-CIO allows us to offer a discount mail-service pharmacy benefit to our members to help them cope with the high cost of prescription medication. We believe that Senate Bill 218 would unnecessarily jeopardize our ability to continue to offer this benefit to our members.

We see at least three major flaws in SB 218:

### SB 218 IS ANTI-CONSUMER:

SB 218 purports to regulate mail-service pharmacies located out of state that do business with Montana health care consumers. But, in fact, SB 218 is part of a national effort by retail druggist associations to regulate these pharmacies in all 50 states to reduce competition to retailers.

What this bill does, in fact, is require mail-service pharmacies to attempt to comply with expensive and often conflicting regulatory standards in each state. This over-regulation puts an undue burden on the mail-service providers and drives up the cost of prescriptions to the consumer.

And, while the bill is an attempt to protect small, local drug stores from competition from mail-services, it does nothing to protect them from their biggest competition — the big national chain-stores which advertise that they will meet-or-beat the lowest price in town (but do not offer to compete with the mail-services.)

### SB 218 IS UNNECESSARY:

Mail-services are regulated by the appropriate government entities in their home states. They must also comply with the regulations of the Federal Drug Administration and the Drug Enforcement Agency,

just like pharmacies in Montana. Proponents of SB 218 have not demonstrated that the regulations of pharmacies in domicile states are somehow less strict than Montana regulations.

In addition, mail-service pharmacies are already regulated under Montana law. In 1991, the legislature passed a bill requiring all mail-service pharmacies doing business with Montana consumers to register with the Montana Board of Pharmacy. The board has yet to promulgate the necessary regulations. Proponents of this legislation are unable to demonstrate that current Montana law is unworkable.

While proponents of this legislation – retail pharmacists who would financially benefit from decreased competition – offer anecdotal claims that mail-services are unsafe, they offer no substantial and unrebutted evidence that mail-services jeopardize the health of Montana consumers, or that any Montana consumers have been harmed by their use of mail-services.

#### **SB 218 IS CONSTITUTIONALLY SUSPECT AND UNENFORCEABLE:**

The proponents of SB 218 openly admit that this legislation is designed to protect pharmacies located inside Montana from competition. Because this bill does not significantly protect the safety and welfare of the public, and because it is an open attempt to inhibit inter-state competition, it is suspect under the commerce clause of the U.S. Constitution and could open up the state to a costly legal battle.

Placing unnecessarily burdensome and undue regulations on mail-service pharmacies is not the answer to keeping Montana pharmacies in business. Regulating the price of necessary prescription medications and the profit margins of multi-national pharmaceutical companies might be.

But SB 218 places the needs of the retailer above the needs of the health care consumer. We believe that to be inappropriate.

Until the day when good, affordable health care is available to all Montanans, not just those privileged enough to afford it, we all have a responsibility to contain health care costs wherever and whenever we can. Mail-service pharmacies are one way in which we can do that.

The Montana Family Union has seen no compelling evidence that mail-service pharmacies operate in an unsafe manner. We have not had a single complaint from our members that this service has dispensed inaccurate prescriptions.

For these reasons, we respectfully request a do not pass recommendation on Senate Bill 218.

Statement of MEDCO Containment  
in Opposition to SB 218

Mr. Chairman and members of the Montana House of Representatives Committee on Business and Economic Development. My name is Dan Whyte and I am an attorney and lobbyist for MEDCO Containment Services, Inc. (MEDCO).

MEDCO is an Out of State Mail Service Pharmacy organization as defined by MCA 37-7-703, a statute which just became effective on October 1, 1991. MEDCO opposes SB 218 for a number of reasons, but most important among these are the following:

1. The Legislative Declaration contained in the new 1991 law made the following statement:

(Now MCA 37-7-701) "The legislature recognizes that with the proliferation of alternate methods of health care delivery, there has arisen among third-party payers and insurance companies the desire to control the cost and utilization of pharmacy services through a variety of mechanisms, including the use of mail service pharmacies located outside this state. As a result, the legislature finds and declares that to continue to protect the consumer-patients of this state, all out of state mail service pharmacies that provide services to this state's residents must be licensed with the board, disclose specific information about their services, and provide pharmacy services at a high level of competence."  
(Emphasis added)

What facts can be shown by the proponents of SB 218, since the enactment of Ch 664 of the Laws of 1991 on October 1, 1991 that require such a drastic amendment of this new law as is contained in SB 218? Remember, the 1991 legislature recognized the desire to control cost and utilization of pharmacy services. It also expressed the intent to protect the users of these services not only as patients, but also as consumers.

This session will consider other measures to protect consumers of health-care services from runaway costs of health care services. This cost problem is a generally acknowledged fact, both here in Montana and at a national level. President Clinton has said the control of health-care costs is a priority item, and it is directly related to the control of the national budget deficit.

What good reason exists now, to increase the cost burdens on out of state mail service pharmacies by making every one of their pharmacists register, and by making them all qualify to do business

as corporation in Montana? How do the consumers benefit from increasing the cost of mail service prescriptions?

2. Pharmacists employed by MEDCO are fully licensed by the states of their residence, and Montana's new law requires the state Board of Pharmacy to make sure they have complied with OHIO law. (See MCA 37-7-703)

Article IV Section 1. of the Constitution of the United States requires that:

**"Full Faith and Credit shall be given in each state to the public Acts, Records, and judicial proceedings of every other State..."**

3. Article I Section 8. of the Constitution of the United States provides that:

**"Congress shall have power...To regulate Commerce with foreign Nations and among the several States..."**

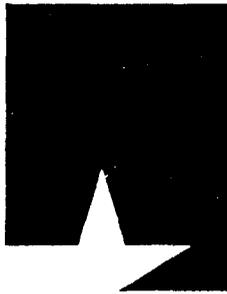
It is generally held that states cannot impose undue burdens upon interstate commerce. A balancing test has been established. In the case of Pike v Bruce Church Inc., 397 U.S. 137. at 140 (1970) the Supreme Court said:

**"If a legitimate local purpose is found, then the question becomes one of degree. And the extent of the burden that will be tolerated will of course depend on the nature of the local interest involved, and on whether it could be promoted as well with a lessor impact on interstate activities."**  
(Emphasis Added).

We respectfully submit that SB 218 is not justified either by the facts that have developed since October 1991, a mere 15 months ago, or the law relating to interstate commerce. **The issue here is consumer health care costs. This bill is intended to protect local purveyors of drugs from out-of state competition. It is not a consumer protection bill.**

**Please give SB 218 a DO NOT PASS!**

EXHIBIT 14  
DATE 3-12-93  
SB 218



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**STATEMENT**

of

**DELBERT D. KONNOR, PHARMMS  
EXECUTIVE VICE PRESIDENT**

**AMERICAN MANAGED CARE PHARMACY ASSOCIATION**

regarding

**MONTANA**

*Proposed Senate Bill 218, As Amended*

before the

**STATE OF MONTANA  
HOUSE COMMITTEE ON BUSINESS  
AND ECONOMIC DEVELOPMENT**

submitted

on

**March 12, 1993**

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## **Introduction**

The American Managed Care Pharmacy Association (AMCPA), the trade association representing the major companies providing home-delivered pharmacy services, respectfully wishes to state its opposition to proposed Montana SB 218, as amended. Briefly, AMCPA's members function as preferred provider organizations specializing in maintenance drug therapy in the managed healthcare environment. The association and its members strive to maintain the highest standards of professional pharmacy practice. The goals of AMCPA are to assure quality standards throughout the industry, to reduce healthcare costs to providers and consumers, and to promote managed care pharmacy as a cost-effective method of drug delivery. The members are low-cost providers of prescription medicines with value-added services consistent with good pharmacy practice focusing on pharmaceutical care and appropriate therapeutic outcomes. AMCPA promotes the importance of managed care pharmacy in the total healthcare system. The members of AMCPA operate 34 pharmaceutical service centers in 19 states and employ over 3000 pharmacists.

AMCPA's position regarding proposed SB 218, as amended, can be summarized in the following four ways:

### **First: Managed Care, Home-Delivered Pharmacy Services Are of the Highest Quality**

Home-delivered pharmacy services, including services provided by nonresident pharmacies, are of the highest quality. Managed care pharmacies use state-of-the-art technologies and ultra-modern facilities to assure high quality at each step of the dispensing process. Pharmacists are available to counsel patients privately and confidentially in their homes through the use of a toll-free (800) number. This confidential counseling service is available before the patient sends the prescription order to the pharmacy; after the patient receives the prescription medicine; and any time during or after the entire course of medication therapy. AMCPA's member pharmacies also provide written, consumer oriented, information for each prescription medicine dispensed, which patients need for compliance with their physician prescribed and monitored drug therapy. Further, like every operating community pharmacy in the United States, managed care, mail service pharmacies are fully licensed and approved by the boards of pharmacy of the states in which they are located. Like all pharmacies, managed care, mail service pharmacies must fully comply with the state pharmacy practice act and regulations of their resident states. They must comply with the same regulations governing security, inventory, storage, record keeping, the proper use of licensed and support personnel, generic substitution, and the dispensing of controlled substances, as any other licensed pharmacy is required.

### **Second: Proposed SB 218, As Amended, Would Increase Cost to Montana's Consumers**

Proposed SB 218, as amended, would increase the cost of prescription medicines to Montana consumers and this increase could discourage Montana employers and health plan administrators from offering pharmacy services as a part of the health benefits plans for their employees. Proposed SB 218, as amended, would prevent health insurers from entering into cost-savings preferred provider agreements with nonresident pharmacies, by legislatively permitting local retail druggists to service plan participants without being part of the bid process. While upon initial review, SB 218, as amended, may seem to encourage "freedom of choice," it does not. In fact, this legislation is anti-consumer and anti-competitive. It will prevent consumers from participating in quality pharmaceutical programs which provide economic incentives while also controlling healthcare costs.

Montana citizens already have the right to choose the pharmacy of their choice. AMCPA knows of no contract that makes it mandatory to only use a nonresident pharmacy which provides home-delivered pharmacy services. Similarly, employers and unions that have medical benefits programs that include prescription medication as a benefit, should have the choice to negotiate with providers of prescription medication to obtain the best combination of price and quality pharmacy services through preferred provider contracts.

Health benefits plans would be required to permit local drug stores to provide pharmacy services to health plan members, even if these drug stores are unable or unwilling to offer the same combination of high professional quality, administrative services, and cost effectiveness in the competitive bidding process. Health insurance plans may be forced to accept the inefficiencies of dealing with a myriad of local retail drug stores that purport to be able to match the quality and cost effectiveness of the pharmacies that were willing to undergo the competitive bidding process.

### **Third: Proposed SB 218, As Amended Is Constitutionally Suspect**

Proposed 218, as amended, is constitutionally suspect under the Commerce Clause of the U.S. Constitution because of the discriminatory burdens it would impose on out-of-state pharmacy services without providing compensating benefits for Montana consumers. Proposed SB 218, as amended, would require nonresident pharmacists to comply with all Montana rules and regulations as well as in the states where they are located. Each state board of pharmacy adopts licensure requirements that cover the important areas of pharmacy operations and assure the high quality of all pharmacies, including managed care pharmacies, domiciled in that state. However, within this common framework different jurisdictions vary their particular requirements according to local traditions and preferences.

It is not unfairly burdensome for a reputable pharmacy to comply with the requirements of any single state. The problem occurs when any pharmacy, including a managed care pharmacy, is required to comply with requirements of several states at once. State legal requirements, that must be met as a precondition for maintaining a valid pharmacy license, can, and often do, contradict one another from state to state on matters such as formularies, generic drug dispensing, and multiple copy prescription control programs for Schedule II controlled substances.

The unworkability of a multi-state pharmacy licensure system can be appreciated when it is recognized that managed care pharmacies serve not just consumers in the State of Montana; our members provide home-delivered pharmacy services to consumers in all states. The multiple licensing laws would be literally impossible to comply with if every state had the type of licensure requirements which have been proposed in Montana. The managed care pharmacy would be forced to choose between the requirements of one state and the sometimes flatly contradictory mandates of another state. Imposition of such a burden discriminates against nonresident pharmacies providing services in interstate commerce compared to local drug stores.

Indeed, retail pharmacists in Montana mail prescription medicines to patients in other states and they are not required to be licensed by those other states nor by any provision of the proposed SB 218, as amended. The United States Supreme Court has articulated the test for whether a state statute unconstitutionally burdens interstate commerce. In the leading case of *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970), the Court established the following two-part test:

- First, is the burden imposed on interstate commerce clearly excessive in relation to the local benefits?; and
- Second, could the same local interest be protected with a lesser impact on interstate activities?

For proposed SB 218, as amended the answer to both questions is "yes." First, proposed SB 218, as amended, would impose the burdens of multiple licensure on managed care pharmacies without increasing the already high quality of the services they provide to Montana consumers. Second, the same local interest has been, is now, and will be fully protected, without burdening interstate activities, by relying on the regulations and supervision of the board of pharmacy of the state where the managed care pharmacy, and its pharmacists, are located. Given the recognized high quality of managed care pharmacies and the discriminatory effects of the licensing approach on out-of-state pharmacies, proposed SB 218, as amended, fails both tests of Pike v. Bruce Church.

#### **Fourth: Current Montana Law Should Be Given a Chance to Prove Its Effectiveness**

AMCPA fully shares the Senate Committee on Business and Industry's interest in promoting the health, safety, and welfare of Montana's citizens and its desire that those citizens receive the highest quality pharmacy services. Like the Montana State Legislature, AMCPA believes that this goal can only be achieved by requiring nonresident pharmacies to be licensed by and in good standing with their own state's pharmacy authority and in compliance with all pharmacy and controlled substances laws of their own states.

As AMCPA's members practice pharmacy on a nationwide basis and are potentially subject to some degree of regulation by all 50 states, the issue of burdensome regulation is of utmost concern to our members. We, therefore, respectfully oppose proposed SB 218, as amended, because it provides economic protection to local drug stores that are unwilling or unable to offer the best combination of high quality and low cost to Montana consumers who receive prescription medications as a health benefit. Proposed SB 218, as amended, is constitutionally suspect because of the discriminatory burden it places on interstate commerce and because it is anticompetitive rather than designed to further public health and safety.

In 1991, Montana adopted legislative requirements which are part of the Montana Pharmacy Practice Act entitled: "Out-of-State Mail Service Pharmacies." Rules and regulations for this statute have not been promulgated yet. Allowing the current Montana law time to prove its effectiveness before seeking amendments seems like a sound and reasonable regulatory approach. This legislation conforms to the *Model State Registration and Disclosure Legislation for Nonresident Pharmacies*, meets constitutional requirements and legitimate needs, and guarantees our members the opportunity to provide high-quality, home-delivered pharmacy services to Montana citizens. The Montana Legislature, in critically examining the issue, favorably approved this kind of regulatory approach as appropriate. A number of states such as California, Kentucky, Maine, Minnesota, Missouri, South Carolina, Texas, Virginia, Washington, West Virginia, and Wyoming have also adopted essentially the same legislative framework.

The model state registration and disclosure legislation recognizes the authority and responsibility of the boards of pharmacy in other states over their own resident retail drug stores, and provides that the nonresident pharmacy must hold a valid license in its home state and comply with all laws, standards of practice, and other regulations and rules of that state. The model disclosure legislation additionally provides that the nonresident pharmacy be subject to the disciplinary action by the instate board when they fail to comply with certain minimum requirements.

## Conclusion

Protectionist legislation such as proposed SB 218, as amended, will not further any legitimate health or safety objectives; such legislation merely protects Montana's retail drug store interests. At a time when national healthcare costs are a concern, proposed SB 218, as amended, will only mean higher costs for Montana consumers and fewer pharmacy benefit plan services. Managed care arrangements for prescription medicines, as for other medical benefits, give healthcare consumers the opportunity to obtain better value for the money they spend in the healthcare market place. Managed care, home-delivered pharmacy services furnish beneficiaries with prescription medicine for less cost – and they do so with an emphasis on quality and convenience.

AMCPA strongly believes that the enactment of proposed SB 218, as amended, would be a significant step backward for employers and insurance companies who are striving to maintain high standards of care while managing healthcare costs.

We respectfully urge a "No" vote on SB 218, as amended.

# # # # #

EXHIBIT 14  
DATE 3-12-93  
SB 218

EXHIBIT 15  
DATE 3-12-93  
SB 218

Dear Vicki

I'm writing in protest of Sen.  
Bico # 218 I am taking a medication  
(Cardizem CD 180mg.) that I get from  
National Prescription Service from  
Spokane Wa.

It costs me \$4.00 a month (30)  
and if I bought it at OSEO Drug  
in Missoula it would cost \$39.69  
for 30 Capsules.

Since I am retired it would  
be a considerable extra expense  
for me.

I hope that this bill can  
be defeated

Sincerely  
Tom Rustin  
207 So. AVE. W  
Missoula

EXHIBIT 16  
DATE 3-12-93  
SB 337

EXPLANATION OF LEGISLATIVE CHANGES  
SENATE BILL NO. 337  
PREPARED FOR HOUSE BUSINESS AND ECONOMIC DEVELOPMENT COMMITTEE

TITLE 50, CHAPTER 60  
BUILDING CONSTRUCTION STANDARDS

**SECTION 1.**

50-60-101(2) - Municipalities or counties may be certified as local code enforcement jurisdictions. This clarifies that the definition of building regulations includes those adopted by a county.

50-60-101(3) - Clarifies that the definition of construction includes all activities included within the present definition of building regulations (50-60-101(2)).

50-60-101(8) and (9) - Clarifies that the definition includes a county local code enforcement jurisdiction as well as a municipality.

50-60-101(11)(a) - Clarifies that a municipal jurisdictional area can be extended at the written request of a municipality with Department approval.

50-60-101(12) - Adds a definition for the term non-commercial which will be used in determining certain exceptions to the State Building Code.

50-60-101(17) - Adds a definition for the term transient guest which will be used in determining certain exceptions to the State Building Code.

**SECTION 2.**

50-60-102(1)(a)(i) - Requires that a residential building or a private garage or storage structure be non-commercial and located on non-commercial property to be excepted.

50-60-102(1)(a)(ii) - Clarifies that the mine or building must be subject to inspection under the federal mine safety and health act to be excepted.

50-60-102(1)(b) - Provides that the exceptions to the state building code in this section do not apply to plumbing, electrical and elevators. Those sections have separate provisions pertaining to exceptions. Also provides that buildings used as motels, dude ranches, etc., are not excepted.

50-60-102(2) - Adds language which provides authorization for a county or municipality which is not a certified local code

enforcement jurisdiction to request that the Department enforce the state building code to those buildings otherwise excepted under 50-60-102(1)(a)(i). The Department's approval would be required prior to implementation and would be subject to legislative approval for additional staff, etc.

50-60-102(3) - The Department would have authority to require documentation and proof that an action is not subject to the state building code. This would provide the Department with a means for documenting a proposed use so that a determination can be made prior to completion of a structure.

50-60-102(4) - This would clarify the Department's authority to require state building code compliance when a change of use occurs which would be of a nature that requires state building code compliance. This provision would also clarify a local enforcement jurisdiction's authority in a change of use situation.

### **SECTION 3.**

50-60-103(7) - This would clarify the Department's authority to determine the proper use of a building and structure in relationship to the type and method of construction. Example: mobile home constructed under HUD provisions being converted to other uses which should be prohibited for other than residential use for life safety reasons.

### **SECTION 5.**

50-60-107 - This change would provide a practical basis upon which the state can utilize a certificate of occupancy as a means of obtaining building code compliance prior to occupancy of a building or structure. At present, a certificate of occupancy is not utilized by the Department due to the large area which each state building inspector must cover. It is not possible for an inspector to see all work prior to portions being covered by a wall, etc., and the Department does not want to certify the building for occupancy when it could later be used as evidence of wrongdoing against the Department or a local certified jurisdictional area. A certificate of occupancy would also be an incentive for persons to complete code corrections, before occupancy, without interference with an ongoing business after occupancy has occurred. At present the Department must obtain code compliance after persons have occupied a building or structure and this necessarily can cause interference with an ongoing business.

**SECTION 6.**

50-60-108 - This change will clarify the Department's authority to determine who is entitled to obtain a building permit. This change confirms the Department's practice of issuing permits to those authorized by law to perform the work covered by the permit.

**SECTION 7.**

50-60-109(1) - This change provides that a certified county enforcement official, as well as a state or municipal official, may issue an order which may be enforced through injunctive relief. Additionally, a recent Montana Supreme Court Case not involving the Department pronounced the necessity to establish the likelihood of irreparable injury prior to the entitlement to injunctive relief pending the final determination in a cause. In a typical case where a preliminary injunction might be sought, the person constructing the building or structure has failed to submit an application and any plans as required by the state building code. Usually, a state building inspector has discovered ongoing construction and does not have sufficient information to satisfy the requirement of proving that there is a likelihood of irreparable injury. If the person continues building it is possible that the structure could be completed before any court decision and thereupon the structure may be required to be dismantled or substantially altered. This change would provide a mechanism whereby all sides would benefit.

50-60-109(2) - This change would provide that the code enforcement jurisdiction may require that code deficiencies be corrected and permit fees paid through the same court proceeding wherein an injunction is sought.

50-60-109(3) - This change would allow the code enforcement jurisdiction to seek correction of a code violation or reimbursement for expenses incurred to correct same, directly from the person who caused the violation. At present, the Department is required to bring action against the person building or using the structure, even if that person did not create the violation. An example is a recent case involving a water well contractor who illegally installed more than nine electrical pumps, with substantial code violations. Because of existing law, the Department was required to demand correction from the innocent property owners who were misled by the violator. This change would also provide that the code enforcement jurisdiction may recover reasonable attorney's fees and costs against the person who created or caused a violation, or is using a building in violation of a building code or any lawful order of a building official. This would be an incentive for individuals to resolve existing violations without requiring the code enforcement jurisdiction to utilize the court process.

50-60-109(5) - This section would provide for a four year statute of limitations for any action authorized to be brought by a code enforcement jurisdiction pursuant to Title 50, Chapter 60. This change would allow the Department to file a lis pendens, which is a legal notice that the property involved in the legal action is affected by the outcome of the action. The Department has been involved in several recent cases whereby the owner transferred or attempted to transfer the property to a person who did not know about the action. Under existing law the Department does not have the legal authority to file this notice which would protect innocent individuals who are taking property that is subject to a building code dispute.

50-60-109(6) - This section would clarify that the action authorized applies to the entire chapter rather than parts 1 through 4.

#### **SECTION 8.**

50-60-110(1), (2), (3) and (4) - This section and other sections which follow in subsequent parts provide uniform punishments for violation of a building code or lawful order of a building official. Maximum punishment is a fine of not more than \$500 and/or imprisonment in a county jail for not more than three months. Under Montana criminal law, without this punishment range, punishment could be by an unlimited fine and/or imprisonment in a county jail for an unlimited period or imprisonment for one year in a state institution. The punishment set by this section is reasonable and any violation is a continuing violation tolling the statute of limitations. The amendment also provides that the county attorney shall, upon request of the appropriate building code enforcement authority, prosecute any violations. This section also provides that prosecution for a misdemeanor shall not bar enforcement by a civil injunction proceeding, or any other remedy provided by law.

#### **SECTION 9.**

50-60-201(4) - This section is amended so that it does not require future amendment to continually conform with federal law regarding buildings constructed with public funds. The standards contained in the current law were revised and are being utilized to comply with federal law.

#### **SECTION 10.**

50-60-202 - The language stricken from this section has been misconstrued. It was intended to require the State Fire Prevention and Investigation Bureau of the Department of Justice to review any

building plans and regulations within their jurisdiction for conformity with the state building code adopted by the Building Codes Bureau. The existing language has been misinterpreted by many who erroneously believed that the Department of Justice was to review all building plans and regulations for conformity with fire prevention and investigation rules. The existing language is not necessary as the state building code would apply to the plans and regulations contemplated by the language to be stricken and the Building Codes Bureau reviews these projects for building code compliance.

**SECTION 11.**

50-60-203(5) - This section will clarify the Department's authority to adopt the dangerous building code and provide for enforcement as authorized in 50-60-109. This language will also allow the Department to obtain relief against an owner of property whether he resides in Montana or elsewhere.

**SECTION 12.**

50-60-205 - This section clarifies current law and authorizes the process of allowing local code enforcement jurisdictions to select those codes which it chooses to enforce, with the remaining codes which were not adopted enforced by the Building Codes Bureau.

**SECTION 13.**

50-60-206(1) and (2) - Public hearing language is removed as unnecessary because this is required under the Montana Administrative Procedure Act. The other amended language clarifies the requirements and circumstances under which a petition for a variance from a state building code provision or review of denial of a permit are allowed. The amended language also provides that the procedure utilized shall be that under the Montana Administrative Procedure Act. This section also clarifies that the Building Codes Bureau, if it has jurisdiction, may review any ruling, direction, determination or order of any state agency or local government affecting or relating to construction of any building which is pursuant to the state building code. Jurisdiction is determined in Section 12.

50-60-206(3) - This section provides that the Department may waive minor building code violations which do not constitute an eminent threat to the safety, health or welfare of any person or property.

**SECTION 14.**

This new section provides express authority for the Department to determine whether permits may be issued to the owner of the

building or structure where the work is to be performed or to a person or entity authorized by law to perform the work covered by the permit.

**SECTION 15.**

50-60-301 - This section provides the powers and duties of municipalities and counties who choose to adopt codes included in the state building code and become certified as local code enforcement jurisdictions. The section also clarifies and expressly states that local code enforcement jurisdictions may enter, inspect and examine buildings or premises necessary for enforcement of the county or municipal building code.

**SECTION 16.**

50-60-302 - Clarifying that a county or municipality must not only file a code adopted and plan for enforcement with the Department, but the code and plans must be certified by the Department. Subsection (2) is not changed and reflects the certification process which was intended.

**SECTION 17.**

50-60-303 - Reiterates requirements that a certified municipality or county establish an appeal procedure by ordinance which is acceptable to the Department.

**SECTIONS 18 & 19.**

50-60-402, 403 and 404 - Amendments to clarify that Parts 1 through 7 of Title 50, Chapter 60 apply to factory-built buildings and recreational vehicles and that a county may be a certified code enforcement jurisdiction for these structures as well as a municipality.

**SECTION 20.**

This new section clarifies that the Department may enter, inspect and examine buildings and premises for the purposes of verifying that persons performing work are properly licensed under Title 37, Chapter 69 (plumbing license).

**SECTION 21.**

This new section provides that certified local jurisdictional

enforcement areas have a duty to ensure that persons applying for a plumbing permit and/or performing plumbing work are either properly licensed or the work is exempt from the license requirement.

**SECTION 22.**

50-60-503 - This amendment would change the exception to the plumbing permit and inspection requirement pertaining to farms and ranches. A farm or ranch would continue to be excepted and not require a permit or inspection if a plumbing installation is on a farm or ranch, provided the installation is used in conjunction with an agricultural or livestock raising operation and is not connected to either a public water supply or sewage disposal system. Additionally, an installation used in conjunction with a hotel, motel, guest ranch, etc., would not be excepted from the plumbing permit and inspection requirements.

**SECTION 24.**

50-60-507 - The amendment for this section clarifies that it is unlawful for any person to engage in work involving plumbing or drainage systems, or parts thereof, without first obtaining a permit regardless of the business or trade of that person.

**SECTIONS 27 & 28.**

50-60-509 - Clarifies that this section refers to a state permit. Local code enforcement jurisdictions provide by local law for the issuance of permits. See Section 14 which would allow the Department to determine whether permits may be issued to the owner of the building or structure where the work is to be performed or to a person or entity authorized by law to perform the work covered by the permit.

**SECTION 29.**

50-60-510 - This amendment provides a language change with no change in substance except for renumbering certain sections referred to in this section. Applies solely to state permits.

**SECTION 30.**

50-60-511 - This section would provide that the Department be given not less than 48 hours before work is to be inspected rather than the current 24 hour requirement. Manpower limitations require this change.

**SECTION 32.**

50-60-515 - This section is amended to make it unlawful to connect or disconnect plumbing in violation of the law regardless of whether the connection or disconnection is from a public water or sewer system or an individual system. The punishment section is also changed to be identical to the other punishment sections. This change does not change the existing permit requirement under 50-60-507.

**SECTION 33.**

This new section provides that certified local jurisdictional enforcement areas are to ensure that persons applying for permits and/or performing work are properly licensed or exempt from the electrical license requirement. The substance of this section is similar to Section 21 relative to plumbing work.

**SECTION 34.**

This new section would provide an exemption from the permit requirement for minor procedures as determined by rule by the Department. In order to qualify as a minor procedure or installation the performance of same must not have a significant potential for creating a condition hazardous to the public health, welfare or safety. Many individuals are currently violating existing law by failing to obtain permits for minor procedures or installations. This language would authorize the Department to exempt certain procedures or installations and enforce the permit and inspection provision to other work.

**SECTION 35.**

50-60-602(5) - Clarifies the law to provide that a state permit is not required where the work will be covered by a local code enforcement jurisdiction.

**SECTION 37.**

This new section provides a means for verification that persons performing work are properly licensed under the electrical licensing law. Similar language is provided in Section 20 pertaining to plumbing licensure.

**SECTION 38.**

50-60-604 - Amends language to reflect that an electrical permit is utilized in lieu of an inspection tag.

**SECTION 39.**

50-60-605 - Amends language to reflect that an electrical permit is utilized in lieu of an inspection tag. Subsection (2) provides the Department or local enforcement jurisdiction with the authority to order a power supplier to disconnect power where it has been determined that an electrical code violation exists or where a required electrical permit has not been obtained. Similar to 50-60-109(5), but because an electrical installation is involved, allows an order rather than a request to disconnect power.

**SECTION 40.**

50-60-607 - Amends language to reflect the usage of an electrical permit rather than an inspection tag. Also adds identical language which was utilized in earlier sections for punishment in the event of a violation.

**SECTION 41.**

50-60-701 - Clarifies that the fees charged shall provide for both inspections and the cost of administering this part. Subsection (4) is added to preclude a municipality or county from adopting the state building code provisions regulating elevators and escalators. This is not a change from existing law.

**SECTION 42.**

50-60-704 - Provides identical provisions for punishment and enforcement as those set forth in earlier sections.

**SECTION 43.**

50-60-106 - This section is being repealed because the powers and duties of municipalities are combined with those of counties and rewritten in 50-60-301.

50-60-204 - This section is repealed because Title 2, Chapter 4, the Montana Administrative Procedure Act supersedes its provisions. The Administrative Procedure Act provides the procedural requirements for public hearings relative to the rulemaking process.

50-60-502 - Repealing this section will not cause a change in the Department's approach to enforcing the plumbing license law on behalf of the Board of Plumbers. Repeal will remove the perception that is proper to hire an unlicensed person to do work which the law requires be performed by a licensed individual.

50-60-514 - This section is repealed as it is unnecessary in view of the clarification that 50-60-109 is applicable.

50-60-606 - This section is repealed as an inspection tag process is not needed.

AMENDMENT PREPARED BY LEGISLATIVE COUNCIL.

This amendment will correct an error which occurred when SB 337 was previously amended in Executive Session of the Senate Business and Industry Committee. The amendment was intended to preclude application of the State Building Code to mines or buildings on mine property regulated under Title 82, Chapter 4, provided the mine or building is subject to inspection under the Federal Mine Safety and Health Act. The actual amendment included other buildings in the language used. This Committee is requested to correct the unintended error by striking the final "S" in "SUBSECTIONS" plus "AND (1)(B)", from page 8, line 22 and page 9, line 4.

EXHIBIT 17  
DATE 3-12-93  
SB 337

March 12, 1993

PURPOSED AMENDMENTS SB 337  
(Second Reading Version)

1. Page 36, line 17.  
Following: "exists"  
Strike: "or when a required electrical permit has not been  
obtained"  
Insert: "which constitutes a hazardous condition"

EXHIBIT 18  
DATE 3-12-93  
SB 337

AMENDMENT TO SB 337

Statement of Intent  
Page 3, line 17: strike line 17 in its entirety

EXHIBIT 19  
DATE 3-12-93  
SB 337

# Montana Trial Lawyers ASSOCIATION

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March 12, 1993

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Governor  
Paul M. Warren  
Governor

Rep. Steve Benedict, Chair  
House Business and Economic Development Committee  
Room 104, State Capitol  
Helena, MT 59624

**RE: SB 337**

Mr. Chair, Members of the Committee:

Thank you for this opportunity to express MTLA's opposition to certain provisions of SB 337, which generally revises Montana's building codes.

1. Section 5 (page 12, lines 13-21) regarding certificates of occupancy gives state and local building departments sole discretion in issuing those certificates. Yet even if the agency is grossly negligent, arbitrary or capricious, willfully reckless, even intentionally discriminatory in exercising that discretion, the amendment prohibits a victim from using that crucial evidence of "negligence or other wrongdoing" [emphasis added]. MTLA believes that this provision of SB 337 removes important protections for Montana citizens--most likely developers, contractors, and commercial property owners--and weakens important incentives to fair, competent enforcement of building codes.

2. Section 7 regarding injunctions relieves state and local building departments from any burden of proving the likelihood of imminent or irreparable injury (page 13, lines 12-17). At the same time, Section 13 regarding variances allows the state department to waive "minor" violations that do not constitute an imminent threat to person or property (page 21, lines 16-19). In combination, these sections subject developers, contractors, and commercial property owners to the personal, widely varying preferences of officials who can with equal ease obtain injunctions or grant variances.

Respectfully,



Russell B. Hill, Executive Director



**MONTANA PETROLEUM ASSOCIATION**  
A Division of the  
Rocky Mountain Oil and Gas Association

EXHIBIT 20  
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Testimony in Opposition to  
SB 337  
House Business and Industry Committee  
March 12, 1993

This bill is comprehensive, punitive and not needed. It will result in additional costs and more government. This bill is fraught with additional requirements that will confer more jurisdiction on the Department of Commerce and local legislative bodies. No such need has been demonstrated. We have prepared nine major amendments which could be summarized as restoring existing language.

Last month, we appeared before this committee in support of HB 339 by Representative Driscoll, which dealt with electrical permitting codes at refineries. No one testified against it and that bill passed this committee and both houses of the legislature easily. Why was that bill needed? Because the same people who are sponsoring this legislation were attempting to assert more jurisdiction.

Although I am submitting proposed amendments to the committee, let me just give you a sampling of some of the proposed changes by the Department of Commerce:

- + P. 8: Opens the door for the so-called local legislative body by ordinance or simple resolution to enforce the state building code.
- + P. 9: Places the burden on the owner to sign an affidavit saying he or she is not subject to a building code requirement.
- + P. 13: Gives the department or a local building department a relaxed standard to obtain injunctive relief. No longer would there be the requirement of establishing the likelihood of imminent or irreparable injury when seeking an injunction.
- + P. 14, lines 6-15 and P. 36, lines 12-17: Provides a simple mechanism to disconnect power to a building which could devastate a refinery or business on the basis of a violation of a state, county, or municipal building code provision.
- + P. 15: The issue of "continuing violation" is punitive and not needed.

This is just a sample. I call your attention to page 35, section 38, where inspection fees will be charged for actual expenses as well as administration.

If there truly is a need for this bill -- which has not been demonstrated -- then it should be assigned to a subcommittee for serious reworking. Otherwise, it should not be concurred in.

EXHIBIT 20  
DATE 3-12-93  
SB 337

PROPOSED AMENDMENTS TO SB 337

1. Page 8, lines 22 through 25.

Strike: "unless the local legislative body by ordinance or resolution requests the department to enforce the state building code and makes the state building code applicable to the buildings and the department approves the request."

This amendment provides consistency with HB 339 and maintains refineries exemption from the building code based on regulation by numerous federal agencies, including OSHA, and adherence to industry codes.

2. Page 9, lines 6 through 14.

Strike: "(3) An owner seeking to do work that the owner believes is not subject to a building code requirement shall provide the department, if the department has jurisdiction, with any documentation or information that it may require so that the department may determine whether the work is subject to the building code requirement. The documentation or information provided must be in the form of an affidavit or affirmation, and the provider is subject to the penalties for false swearing in 45-7-202."

This amendment preserves latitude for good faith interpretation of the current code as well as flexibility under good judgment for local inspectors.

3. Page 13, lines 11 through 16.

Strike: "The department or a local building department is not subject to any requirement of establishing the likelihood of imminent or irreparable injury when seeking injunctive relief, unless the department or local building department is seeking to restrain a person or entity without giving notice to that person or entity."

This amendment preserves an owner's right to due process.

4. Page 14, lines 6 through 15.

Strike: "(5) The department or a local building department may request that a power supplier disconnect power to a building or structure owned or used in violation of any state, county, or municipal building code provision, this chapter, or a lawful order of a state building official or local building department for the period of time considered necessary by the department or local building department to protect the occupants or users of the building or structure or the general public from imminent danger to health or safety."

This amendment preserves owner's right to due process. Also, inspectors could potentially shut down a building when imminent danger is not really present.

EXHIBIT 20  
DATE 3-12-93  
IL SB 337

5. Page 14, line 17.

Strike "4"

Insert: "2"

This amendment preserves the existing statute of limitations.

6. Page 15, lines 14 through 16.

Strike: "(2) Any violation of this section is a continuing violation, and the statute of limitations is tolled until the violation ceases."

This amendment preserves the workability and simplicity of the existing code. At present the statute of limitations begins running once the violation is discovered - a slightly lesser standard.

7. Page 20, lines 1 through 5.

Strike: "A petition for a variance must be filed with the department within 30 days after the date the department determines that a provision or requirement of the building code is applicable and mails notice to the petitioner."

It typically requires more than 30 days for a multi-layered company to receive, draft, and obtain internal approvals for a petition for a variance.

8. Page 21, lines 16 through 19.

Following: "ife"

Insert: "An application for a variance, modification, reverse, or review shall stay all proceedings in furtherance of the action appealed from unless there is a showing by the state agency that a stay would involve imminent peril to life or property."

Strike: "The department may waive minor building code violations that do not constitute an imminent threat to property or to the health, safety, or welfare of any person"

This is how the building code reads presently, and it provides workable options.

9. Page 36, lines 12 through 17.

Strike: "(2) The department or a local building department may order a power supplier to disconnect power to a building or structure when the department or the local building department has determined that an electrical code violation exists or when a required electrical permit has not been obtained."

This amendment protects owner's right to due process. Also, inspectors could potentially shut down a building when imminent danger is not really present.

TESTIMONY OF GERALD MUELLER  
BEFORE THE MONTANA HOUSE OF REPRESENTATIVES  
BUSINESS AND ECONOMIC DEVELOPMENT COMMITTEE  
March 10, 1993

Chairman Benedict, members of the Committee, my name is Gerald Mueller, and I live at 7165 Old Grant Creek Road in Missoula. I appear before you in support of SB 340 as the spokesperson for the Environmental Quality Council Residential Energy Efficiency Working Group (Working Group).

The Working Group was established in July of last year by the EQC to seek a consensus statement of policy and implementation strategies regarding residential energy efficiency in Montana. Attached to this testimony is a list of the participants in the Working Group. Notice that it includes representatives of the major interests that have fought for the last ten years before the legislature and in other forums about residential energy efficiency generally, and building codes specifically. The Working Group includes representatives of:

- All four of Montana's private electric and natural gas utilities;
- Rural electric co-ops from western and eastern Montana;
- Both of the federal power marketing agencies which serve our state, BPA and WAPA;
- The Northwest Power Planning Council;
- Members of the home building industry, including home builders, energy conservation consultants, a lumber yard supply company, and home mortgage lenders;
- Environmental and low-income organizations;
- A spokesperson for local government; and
- State agencies, including the Departments of Commerce, Natural Resources and Conservation, and the Public Service Commission.

This group containing several long-time adversaries worked together over the last seven months and succeeded in developing consensus recommendations for a residential energy efficiency policy statement and implementation strategies which the EQC subsequently adopted and included in SB 340.

Briefly, SB 340 does four things:

1. It provides that most residential buildings containing less than 5 dwelling units will now be subject to the energy provisions of the state building code through one of two mechanisms - either the existing process whereby local governments adopt and enforce the state building code including its energy provisions; or self-certification by home builders to only the energy provisions of the state building code;
2. It directs the Department of Commerce in adopting rules concerning conservation of energy to conform those rules to the policy statement contained in section 1 of this bill regarding residential energy efficiency and other policy

statements subsequently adopted via the process established pursuant to SB 225 which has passed the Senate;

3. It establishes a requirement that a labeling sticker be affixed to new residential buildings that describes the energy efficiency components of the home including the efficiency of the heating system and the insulation values of ceilings, walls, floors, windows, and doors; and
4. It makes the enforcement the energy provisions of the state building code via builder self-certification, that was addressed in my first point, contingent on the establishment of a loan reserve account for energy efficient residential buildings within the DNRC.

Point four requires some additional explanation. In return for their agreement to require additional energy efficiency improvements in more new homes via builder self-certification, home builder representatives won the Working Group's support for a home affordability program targeted at first time home buyers. In the program, the Montana Board of Housing would sell bonds that would allow first time home buyers to exceed the upper mortgage limit established by the Federal Home Administration and still retain only a 5% downpayment requirement rather than the 20% requirement of conventional mortgages. To sell the bonds, the Board of Housing would need a loan reserve fund to cover the amount of any mortgage in excess of the amount guaranteed by FHA. To qualify for the Board of Housing program, a new home would have to include energy efficiency levels in excess of code requirements. The Board of Housing has agreed to offer the program. The DNRC is seeking approval from the legislature to use money available from oil overcharge funds to establish the loan reserve account. Montana private and public utilities have agreed to match the DNRC contributions to this account dollar-for-dollar. The loan reserve account would require no general fund dollars.

The participants in the Working Group were able to overcome their ten year history of conflict and reach agreement in large part because of the group's ground rules. The Working Group agreed to accept or reject the recommendations it developed as a package. That is, any participant could veto all of the Working Group's recommendations if he or she were not satisfied by any one of them. This why the self-certification system for enforcing the energy provisions of the building code is contingent on the appropriation for the loan reserve fund for the Board of Housing affordability program.

In closing, on behalf of the Working Group, I urge this Committee to act favorably on SB 340. This legislation will not only provide benefits in terms of cost effective energy efficiency resources for utilities, lower power bills for residential energy consumers, and increased affordability of new houses for homebuyers, it also demonstrates that complex and contentious issues can be resolved through collaboration.

Thank you.

EOC RESIDENTIAL ENERGY EFFICIENCY WORKING GROUP

ORGANIZATION

PARTICIPANTS

Montana Power Company	John Ralph & Dave Houser
Pacific Power & Light	John Graham
Montana Dakota Utilities	Duane Anderson
Great Falls Gas Company & Transmission Co-op	Shiela Rice
Montana Electric Co-operative Assoc.	Mack McConnell
Flathead Electric Co-op	Gary Mahugh
Missoula Electric Co-op	Sharon Jacobson
Bonneville Power Administration	Gail Kuntz
Western Area Power Administration	Diane Noennig
Northwest Power Planning Council	John Hines
Montana Building Industry Assn.	Don Chance & Nancy Griffen
Lumber Yard Supply	Mike Fasbender
Energy Conservation Consultants	H.S. "Sonny" Hanson
Montana Bankers Association	Janeth Martin
Montana Environmental Information Center	Sam Toole
District XI Human Resource Council	Jim Morton
Montana Local Government Energy Office	Tom Marvin
Montana Department of Commerce	Jim Kembel
Montana Department of Natural Resources & Conservation	Alan Davis & Lou Moore
Montana Public Service Commission Staff	Dan Elliott & Denise Pederson
Committee Facilitator	Gerald Mueller

CANON 21  
DATE 3-12-93  
SB 340

EXHIBIT 22  
 DATE 3-12-93  
 SB 337

HOUSE OF REPRESENTATIVES  
 53RD LEGISLATURE - 1993  
 BUSINESS AND ECONOMIC DEVELOPMENT COMMITTEE  
 ROLL CALL VOTE

DATE 3-12-93 BILL NO. SB 337 NUMBER \_\_\_\_\_

MOTION: Rep. Brandewie Made the Motion  
to TABLE SB 337.

Motion CARRIED 10-8

NAME	AYE	NO
REP. ALVIN ELLIS		✓
REP. DICK KNOX		✓
REP. NORM MILLS		✓
REP. JOE BARNETT	✓	
REP. RAY BRANDEWIE	✓	
REP. JACK HERRON	✓	
REP. TIM DOWELL	✓	
REP. CARLEY TUSS	✓	
REP. STELLA JEAN HANSEN		✓
REP. BOB PAVLOVICH	✓	
REP. VICKI COCCHIARELLA		✓
REP. FRITZ DAILY	✓	
REP. BOB BACHINI	✓	
REP. DON LARSON		✓
REP. BRUCE SIMON	✓	
REP. DOUG WAGNER	✓	
REP. SONNY HANSON, VICE CHAIRMAN		✓
REP. STEVE BENEDICT, CHAIRMAN		✓
	10	8

EXHIBIT 23  
 DATE 3-12-93  
 SB 218

HOUSE OF REPRESENTATIVES  
 53RD LEGISLATURE - 1993  
BUSINESS AND ECONOMIC DEVELOPMENT COMMITTEE  
 ROLL CALL VOTE

DATE 3-12-93 BILL NO. SB 218 NUMBER \_\_\_\_\_

MOTION: Rep. Bachini made the motion  
to TABLE SB 218  
Motion Failed 8-10

NAME	AYE	NO
REP. ALVIN ELLIS	✓	
REP. DICK KNOX		✓
REP. NORM MILLS	✓	
REP. JOE BARNETT		✓
REP. RAY BRANDEWIE		✓
REP. JACK HERRON		✓
REP. TIM DOWELL	✓	
REP. CARLEY TUSS		✓
REP. STELLA JEAN HANSEN	✓	
REP. BOB PAVLOVICH		✓
REP. VICKI COCCHIARELLA	✓	
REP. FRITZ DAILY		✓
REP. BOB BACHINI	✓	
REP. DON LARSON		✓
REP. BRUCE SIMON	✓	
REP. DOUG WAGNER		✓
REP. SONNY HANSON, VICE CHAIRMAN	✓	
REP. STEVE BENEDICT, CHAIRMAN		✓
	8	10

Possible amendments to SB 218

1. Title, page 1, line 10  
Following: line 9  
Insert: "FILING AND"  
Following: APPROVAL  
Insert: ", IN SOME INSTANCES,"
2. Page 4, line 21  
Following: "Montana"  
Insert: "and willing to match the price of a drug charged to  
the group or plan by the mail service pharmacy"
3. Page 5, line 17  
Following: "same"  
Strike: "licensing"  
Following: "standards"  
Insert: "for utilization of technicians"
4. Page 6, line 14  
Following: "technicians"  
Insert: "if allowed by the state where the mail service  
pharmacy is located. Any plan"
5. Page 6, line 15  
Following: "PHARMACISTS"  
Strike: "NO"
6. Page 6, line 16  
Following: "RULES" *Following "In State"  
Strike "Hospital"  
Insert - "RETAIL"*  
Strike: "and SHALL OBTAIN APPROVAL"  
Insert: "must be approved by"
7. Page 6, line 23  
Following: "THE"  
Strike: "APPROVED"
8. Page 6, line 24  
Following: "PLAN"  
Insert: ", if any"
9. Page 7, line 6  
Following: "OF"  
Strike: "THIS CHAPTER"  
Insert: "this part"

# Union Privilege<sup>®</sup>, AFL-CIO

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EXHIBIT 25

DATE 3-12-93

SB 218

## UNIONS THAT SUBSCRIBE TO UNION PRIVILEGE BENEFIT PROGRAMS

	Credit Card	Legal Service	Travel Service	Life Insurance	Health Needs	Mortgage Program	Loan Program
AFL-CIO	●	●	●	●	●	●	●
AAAA		●					
Air Line Pilots (ALPA)	●	●	●			●	●
Aluminum, Brick, Glass (ABG)	●	●		●	●	●	●
Asbestos Workers	●	●				●	
Actors' Equity		●	●	●	●	●	
AFGE	●	●	●	●	●	●	●
Auto Workers (UAW)	●	●		●		●	
Bakery Workers (BCT)	●	●				●	
Boilermakers	●		●	●		●	
Bricklayers (BAC)	●	●	●	●	●	●	●
Broadcast Employees (NABET)	●	●	●	●	●	●	●
Carpenters (UBC)	●	●	●		●	●	●
Chemical Workers (ICWU)	●	●	●			●	●
Clothing Workers (ACTWU)	●	●	●		●	●	●
Communications Workers (CWA)	●	●		●	●	●	
Distillery Workers	●		●	●	●	●	●
Electronic Workers (IUE)	●	●	●	●	●	●	●
Electrical Workers (IBEW)	●	●		●		●	
Elevator Constructors	●					●	
Operating Engineers (IUOE)	●	●				●	
Farm Workers (UFW)	●		●	●	●	●	●
Fire Fighters		●					
Firemen and Oilers (IBFO)	●	●	●		●	●	●
Flight Attendants (AFA)	●	●	●	●	●	●	●
Food & Commercial Workers (UFCW)	●	●				●	
Garment Workers	●	●	●	●	●	●	●
Ladies Garment Workers (ILGWU)		●	●	●	●	●	●
Glass Workers and Molders (GMP)	●	●		●	●	●	●
Flint Glass Workers	●		●		●		
Grain Millers	●	●			●	●	●
Graphic Communications (GCIU)	●	●				●	
Horseshoers	●	●		●	●	●	●
Hotel Emp. and Restaurant Emp.	●		●	●	●	●	●
Allied Industrial Workers (AIW)	●	●	●	●		●	●
Iron Workers	●					●	
Laborers' (LIUNA)	●	●	●	●	●	●	●
Laundry Workers	●						
Leather Goods	●	●	●				
Leather Workers		●					
Letter Carriers (NALC)	●					●	
Locomotive Engineers (BLE)				●			
Longshoremen (ILA)	●						
Longshoremen Warehousemen (ILWU)	●	●		●	●	●	●
Machinists (IAM)	●	●	●	●	●	●	●
Maintenance of Way (BMWE)	●		●	●	●	●	●
Mail Handlers	●	●	●	●		●	●
MEBA #1	●	●	●	●	●	●	
NATCA	●	●	●	●	●	●	
MEBA #2	●		●				
Mechanics Educ. Society of America	●	●	●	●	●	●	
MM and Pilots	●						
Mine Workers (UMWA)	●	●		●		●	●
Musicians	●	●	●		●	●	●
Newspaper Guild (TNG)	●	●	●	●	●	●	●
OPEIU	●	●				●	●
Oil and Chemical Workers (OCAW)	●	●	●	●	●	●	●
Painters	●	●	●	●	●	●	
Paperworkers	●	●	●	●		●	●
Plasterers (OP & CMIA)	●	●	●		●	●	●
Plate Printers	●						●
Police (IUPA)		●	●	●	●	●	●
IFPTE	●	●			●	●	●
RWDSU		●	●	●		●	
Roofers	●	●	●			●	
Rubber Workers (URW)	●	●	●	●		●	●
Screen Actors (SAG)		●	●				
School Administrators (AFSA)	●	●	●			●	●
Seafarers	●	●	●	●	●		
Service Employees (SEIU)	●	●	●	●	●	●	●
Sheet Metal Workers							●
Siderographers	●	●	●	●	●	●	●
RR Signalman (BRS)	●						
IATSE (Stage Employees)	●						
AFSCME (Contact your District Council for Information)							
Steelworkers (USWA)	●	●	●	●	●	●	●
Stove Workers	●					●	
Teachers (AFT)	●	●			●	●	
TV and Radio Artists (AFTRA)	●						
Textile Workers	●						
Train Dispatchers (ATDA)	●	●	●	●	●	●	●
Transit Union	●					●	
Transport Workers	●	●	●		●	●	
TCU (BRAC)	●		●	●	●	●	●
Utility Workers	●	●	●			●	●
United Transportation Union (UTU)	●					●	
Woodworkers	●	●	●	●	●	●	●
Writers Guild (EAST)				●		●	

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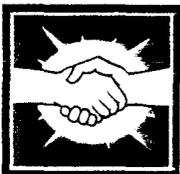
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# Union Privilege, AFL-CIO

1444 Eye Street, NW, Washington, D.C. 20005 (202) 336-5460

MR. CHAIRMAN, LADIES AND GENTLEMEN OF THE COMMITTEE, MY NAME IS DE WAYNE KRUEGER. I HAVE PRACTICED PHARMACY IN COLUMBIA FALLS FOR 32 YEARS. I WOULD LIKE TO PRESENT A CONDENSED CASE HISTORY OF A MAIL ORDER PHARMACY TRAGEDY.

IRIS HEMMELMAN, A RESIDENT OF MOSCOW, IDAHO, DIED ON JAN 28, 1988. HER HUSBAND, WAYNE, WAS EMPLOYED AT WSU AS AN ELECTRICIAN. IRIS HAD BEEN IN GOOD HEALTH. THE ONLY CONDITION FOR WHICH SHE WAS BEING TREATED AT THE TIME OF HER DEATH WAS INFLAMMATORY JOINT DISEASE, FOR WHICH HER PHYSICIAN HAD PRESCRIBED PREDNISONE, A VERY EFFECTIVE AND INEXPENSIVE DRUG. HER PREDNISONE RX WAS MAILED TO THE MEDCO CONTAINMENT PLANT IN LAS VEGAS, NV, BECAUSE THE HEMMELMAN'S BLUE CROSS PLAN WOULD ONLY PAY FOR MEDICATION ORDERED FROM A MAIL ORDER PHARMACY.

IRIS' SLOW, UNTIMELY DEATH SO COMPLETELY BAFFLED HER FAMILY AND PHYSICIAN, THAT AN AUTOPSY WAS ORDERED. THIS REVEALED THAT SHE HAD DIED OF A MASSIVE BRAIN HEMORRHAGE. SUBSEQUENT TESTS REVEALED TOXIC LEVELS OF COUMADIN, AN ANTI-COAGULANT, IN IRIS' BLOOD. UPON RECEIVING THIS INFORMATION, CRAIG MOSMAN, THE PROSECUTING ATTORNEY FOR LATAH COUNTY, ID, BEGAN AN INVESTIGATION. BASED UPON THE EVIDENCE PRODUCED BY THIS INVESTIGATION, HE FILED A BRIEF CHARGING MEDCO CONTAINMENT WITH INVOLUNTARY MANSLAUGHTER. THE DEFENSE STRATEGY WAS SIMPLE. DON'T LET IT GO TO COURT!! MEDCO KNEW THE MAXIMUM FINE WAS \$10,000, SO ALL THEY HAD TO DO WAS PROLONG THE JUDICIAL PROCESS TO THE POINT WHERE LATAH COUNTY COULD NOT RECOUP ITS EXPENSES, AND THEY WERE HOME FREE! AND SO THE MULTIMILLION DOLLOR CORPORATION WON!

NOW, HOW DOES ALL THIS RELATE TO THE LEGISLATION BEING CONSIDERED IN MONTANA? DURING THE CONVERSATIONS BETWEEN MR. MOSMAN AND MEDCO'S ATTORNIES, DISCUSSION TURNED TO THE QUALIFICATIONS OF MEDCO'S PHARMACY STAFF. MR. MOSMAN WAS ASSURED THAT ALL OF MEDCO'S PHARMACISTS WERE GRADUATES OF ACCREDITED UNIVERSITIES. HOWEVER, FURTHER QUESTIONING REVEALED THAT BEN TRON, THE MAN WHO FILLED MRS. HEMMELMAN'S PRESCRIPTION WAS, IN FACT, A GRADUATE OF THE U OF SAIGON. CONTINUED DISCUSSION DISCLOSED THAT BEN TRON'S LACK OF ENGLISH LANGUAGE SKILLS WOULD HAVE PREVENTED HIM FROM EFFECTIVELY

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DATE 3-12-93  
SB 218

COMMUNICATING WITH EITHER THE PATIENT OR HER PHYSICIAN. THIS IS NOT AN ISOLATED SITUATION. THE STATES OF CALIF, OHIO & FLORIDA ARE REQUIRING FOREIGN GRADUATES TO PASS A TEST OF SPOKEN ENGLISH BEFORE BEING LICENSED. ALSO, CONSIDER THAT BEN TRON MIGHT LEGALLY HAVE BEEN ASSIGNED ANY NUMBER OF PHARM TECHS TO SUPERVISE AND HE MAY HAVE BEEN RESPONSIBLE FOR THE FILLING OF HUNDREDS OF PRESCRIPTIONS EVERY DAY.

BY COURT ORDER, MR MOSMAN WAS ALLOWED A PERSONAL INSPECTION OF THE LAS VEGAS PLANT, ALONG WITH A GENTLEMAN FROM THE U OF IDAHO WHO STUDIES THE ARRANGEMENT OF THE WORK PLACE AS IT RELATES TO WORKER EFFICIENCY. HIS ASSESSMENT WAS THAT ERRORS WERE LITERALLY BUILT INTO THE SYSTEM. FOR EXAMPLE, COUMADIN AND PREDNISONE, THE TWO DRUGS INVOLVED IN THIS CASE, WERE BOTH DISPENSED FROM BAKER UNITS. THE CONTROLS FOR THESE TWO UNITS WERE ONLY 9 INCHES APART!

I CAN ALSO TELL YOU THAT FROM A CONVERSATION WITH A FRIEND AND FELLOW PHARMACIST WHO WORKED FOR MEDCO IN LAS VEGAS, I LEARNED THAT IT IS A HIGH PRESSURE PRODUCTION ORIENTED FACILITY.

THE PROS AND CONS OF MAIL ORDER PHARMACY CAN BE DEBATED FOR HOURS, BUT I DOUBT ANYONE CAN LOGICALLY DISPUTE THAT THE BEST CASE SCENARIO IS FOR THE CUSTOMERS TO HAVE DIRECT FACE-TO-FACE CONTACT WITH THEIR PHARMACIST. HOWEVER, WE KNOW THAT MAIL ORDER IS NOT GOING TO GO AWAY. THEREFORE, I URGE YOU TO PASS SENATE BILL 218 SO THAT THERE WILL BE SOME CONTROL OVER HOW THEY DO BUSINESS IN MONTANA.

IT HAS BEEN REPORTED THAT MEDCO FILLS THOUSANDS OF PRESCRIPTIONS EVERY DAY, BUT WAS IRIS HEMMELMAN THE BENEFICIARY OF THE ECONOMIES OF SCALE OR WAS SHE IN FACT ITS VICTIM????

Amendments to Senate Bill No. 218  
Third Reading Copy

For the Committee on Business and Economic Development

Prepared by Susan B. Fox  
March 13, 1993

1. Title, line 9.  
Following: "REQUIRING"  
Insert: "FILING AND"
2. Title, line 10.  
Following: "APPROVAL"  
Insert: "IN CERTAIN INSTANCES"
3. Page 4, line 21.  
Following: "Montana"  
Insert: "that is willing to match the price charged to the group  
or plan by the mail service pharmacy for a drug"
4. Page 5, line 17.  
Strike: "licensing"  
Following: "standards"  
Insert: "for utilization of technicians"
5. Page 6, line 14.  
Following: "technicians"  
Insert: "if allowed by the state where the mail service pharmacy  
is located. Any plan"
6. Page 6, line 15.  
Strike: "NO"
7. Page 6, lines 16 and 17.  
Following: "IN-STATE" on line 16  
Strike: "HOSPITAL"  
Insert: "retail"  
Following: "RULES" on line 16  
Strike: the remainder of line 16 through "approval"  
Insert: "must be approved"
8. Page 6, line 18.  
Strike: "i"  
Insert: "."
9. Page 6, line 23.  
Strike: "APPROVED"
10. Page 6, line 24.  
Following: "PLAN"  
Insert: ", if any"
11. Page 7, line 6.  
Strike: "CHAPTER"  
Insert: "part"



## DEPARTMENT OF PUBLIC WORKS/BUILDING INSPECTION DIVISION

435 RYMAN • MISSOULA, MT 59802-4297 • (406) 523-4629

 EXHIBIT 28  
 DATE 3-12-93  
 SB 337

March 9, 1993

Representative Steve Benedict  
 Chairman, Business & Economic Committee  
 Capitol Station  
 Helena, MT 59620

RE: Senate Bill #337

Honorable Representative Benedict:

I am writing, as a code enforcement official, expressing my support for Senate Bill #337, which is generally revising the Building Code.

This bill is helping to clarify many of the code adoption issues that previously had been assumed to be implied with the adoption language. For example, it has always been assumed, that the existing terminology included County government as being included as an agency which could adopt and enforce the Building Codes; this bill now clarifies this issue by specifically including this level of governmental. It clarifies jurisdictional/enforcement areas as well as codes that can be enforced.

I thank you for your consideration in the passage of this bill.

Sincerely,

A handwritten signature in dark ink that reads "Peter A. Mion".

Peter A. Mion, C.B.O.  
 Building Official

HOUSE OF REPRESENTATIVES  
VISITOR REGISTER

Business & Ec. COMMITTEE BILL NO. SB 218  
DATE March 12, 1993 SPONSOR(S) "Ed" Kennedy  
PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
JAMES MAR MAR WHITEFISH	TUDYMAN'S PHARMACY	X	
DeWacine Kuczor	Kuczor Drug	X	
Lori J. Wolgram	Bungalow Drug	X	
Erika Wolgram	BUNGALOW DRUG	X	
Logeth K. Scott	Helena Senior		X
Bill Olson	AARP		X
Bonnie Tapp	MT State Pharm. Assn	X	
Debbie Nunn	Gibson Pharmacy	X	
MARK EICHLER	Montana State Pharmacy Assn	X	
SYLVIA YAMA	GALLATIN EQUIP		X
Nick Willard	AARP Pharmacy Service		X
Jim Kembel	Public Safety Div DOC	Information	
ED HEIMER-HELENA	SELF		X
Dawn White	MEDIC CONTAINMENT SERVICES		X

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HOUSE OF REPRESENTATIVES  
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Business & Ec. COMMITTEE BILL NO. SB 218  
DATE March 12, 1993 SPONSOR(S) Ed Kennedy  
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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Sean Mark 3155 Meagher Rd Helena	Self		✓
Darlene Elessum 601 Main Stevensville, MT	Self Stevensville Family Pharmacy MT	✓	
Dan Severson 301 Main Stevensville, MT	Self Valley Drug Stevensville MT	✓	
M.E. Quenemoen 606 Frank Rd - Belovida MT	AARP		✓
TOM RYAN	MSCA Retired Teachers		✓
WARD SHAWAHAN	MEDCO CONTAINMENT		✓
Alvin Swalstoff	AARP		✓
DENNIS LUEBSON	AM. MANAGED CARE PHARM.		✓
Tom Shauder	MPHA/MAF/HEP		✓
Charles R. Brooks	MT RETAIL ASSOC		
Pam Egan	Montana Family Union		✓
Christian Mackay	MTAs for Universal Health Care		✓
Clinton L. Parks	Billings Western Drug	✓	
Joel Lushin	Pharmacy	✓	

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HOUSE OF REPRESENTATIVES  
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Business & Ec. COMMITTEE BILL NO. SB 218  
DATE March 12, 1993 SPONSOR(S) "Ed" Kennedy  
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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Roger Tippy	Mt St Pharm. Assn	X	
Howard R. Bradley	Mt. Unified School Trust	X	X
Tom Hopgood	Health Ins. Assoc. America		✓
Wm. Egan	MT Conf of Elect W/Krs		✓
Dave Rely	DRUG FAIR	✓	
Patty Foley	Bergman Drug	✓	
Lorraine Bone	Bitterroot Drug	✓	
Wayne Dunbar	Retired Citizen		✓
Paul S	MSCA		✓
Dale Stoverud	Clinic Pharmacy	✓	
Jean Kreeger	Kreeger Drugs	X	
Itaci Riley	MT Federation		✓
Phil Campbell	MEA		X

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Business & Ec.

COMMITTEE

BILL NO.

SB 337

DATE March 12, 1993 SPONSOR(S)

J. Harp

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
MICHAEL MIZENKO	MT. ST. ASSO of Plumbers & Pipefitters MT. ST. Bldg & Const. Council	✓	
DeLores Mills	MPFA	✓	
Rick Kopel	Building Codes/DOC	✓	
Jim Kember	DOC Public Safety Div	✓	
Russell Hill	Mont Trial Lawyers		✓
James F. Brown	31d. Cds Bureau DOC	✓	
William Egan	MT Conf of Elect Workers	✓	
John Fitzpatrick	Propane Gas Ind Assn		✓ Amount
Jim Mckler	MT. Coal Council	Amount	
Janelle Fabian	MT Petroleum		337
Stuart Duggan	MT Manufact. Housing & RV Assoc.	Amount	
Nancy Buggin	Bldg Assoc.	✓	

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HOUSE OF REPRESENTATIVES  
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Business & Ec. COMMITTEE BILL NO. SB 340  
DATE March 12, 1993 SPONSOR(S) J. Roberts  
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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
John F. Lph	Montana Power Co.	✓	
Bob Anderson	PSC	✓	
May Butler	MT Electric Coop Assoc.	✓	
Gene	Butler	✓	
GENE PHILLIPS	PACIFIC POWER & LIGHT	X	
John Hines	NW PPL	✓	
ALAN DAVIS	DWR	—	
Jim Kembel	Public Safety Div DOC	—	
Bill Egan	MT Conf Elec TN	✓	
Nancy Ryan	Builders Assoc	✓	

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