

MINUTES

MONTANA SENATE 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By J.D. Lynch, Chair, on March 18, 1993, at 10:00 a.m.

ROLL CALL

Members Present:

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

Members Excused: Senator Hager

Members Absent: None.

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

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

Committee Business Summary:

Hearing: HB 441, HB 594, HJR 16, HJR 23
Executive Action: HB 222, HB 349, HB 371, HJR 16, HJR 23

EXECUTIVE ACTION ON HB 222

Motion:

Senator Christiaens moved HB 222 BE CONCURRED IN AS AMENDED (Exhibit #1).

Discussion:

Senator Brenden stated he opposed HB 222 because it would cost the people too much money. He stated there was no need for any full time employees (FTE's).

Senator Harding asked Beth Baker, Department of Justice, if the amendments would provide for the certification of inspectors. Ms. Baker stated the amendments would allow the Department to monitor the sale of portables.

Vote:

The motion CARRIED by Roll Call Vote.

EXECUTIVE ACTION ON HB 349Motion/Vote:

Senator Wilson moved HB 349 BE CONCURRED IN. The motion CARRIED by Roll Call Vote.

EXECUTIVE ACTION ON HB 371Motion/Vote:

Senator Brenden moved HB 371 BE CONCURRED IN. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON HB 433Discussion:

Senator Harding stated she felt the owner of the bar is very innovative and can do without the gambling. She stated she felt he could still use sports pools.

Motion/Vote:

Senator Koehnke moved HB 433 BE AMENDED to say "outside of interior areas of the establishment where food and beverage are usually stored, prepared, or served" to clarify there would be no health problems. The motion CARRIED UNANIMOUSLY.

Motion:

Senator Harding moved HB 433 BE NOT CONCURRED IN AS AMENDED.

Discussion:

Senator Lynch stated he supported HB 433 because of the scholarships and he felt no one would get injured by the racing of pigs.

Senator Mesaros stated he agreed with Senator Lynch. He stated HB 433 would provide for many good consequences.

Senator Brenden stated he agreed with Senator Mesaros and Senator Lynch. He stated he felt there should not be a fear of animal rights people.

Senator Klampe stated he felt HB 433 would be an expansion of gambling. He stated the regulation of the racing would be difficult and, as a result, could easily spread throughout the state.

Motion:

Senator Mesaros made a substitute motion HB 433 BE CONCURRED IN AS AMENDED.

Discussion:

Senator Rea asked if HB 433 would restrict the pig racing to the area where it is occurring. Senator Lynch stated it would restrict the racing.

Senator Rea asked Senator Lynch if there was any regulation in the state which would allow the people to race pigs. Senator Lynch stated in 1989 Senator Gage passed a bill (SB 413) which stated "whatever is not designated as legal is illegal". He stated without HB 433, pig racing would be considered illegal.

Senator Bruski-Maus stated HB 433 would allow for small towns to raise funds. She stated there were a number of small towns which have fund-raisers where bets are placed on races of farm animals.

Senator Christiaens stated he opposed HB 433 because it was written for one town. He stated it is bad legislation and would set a terrible precedence.

Senator Gage stated the gambling would be available in any county outside of the towns, also.

Senator Klampe stated he felt the health department would be required to regulate the animals which would cost money.

Senator Brenden stated he still supported HB 433 because he represents an area which includes the towns of Opheim, Richland, Glentana, Peerless, Foxville, Four Buttes, Archer, Red Stone and Antelope, all of which have populations which are small and could take advantage of HB 433.

Senator Harding stated she felt there was a problem with pigs racing because she felt it was not humane.

Senator Mesaros stated the testimony stated there has not been any major problems with the racing and it provided scholarships for the kids in the area.

Senator Klampe asked if there would ever be a tax for the racing of small animals. Senator Lynch stated if there was no profit, there would not be a tax.

Senator Gage stated the state will eventually get taxes from the incomes generated from the businesses.

Vote:

The motion FAILED on Roll Call Vote.

Senator Lynch announced further action would be taken on HB 433 at a later date.

EXECUTIVE ACTION ON HB 449

Discussion:

Senator Lynch stated HB 449 is clear and concise and did not need to be amended.

Senator Gage stated he had a concern with homemade blankets and aprons being sold. He stated those items would compete with outside businesses. Senator Lynch stated HB 449 would not allow for those things to be sold.

Senator Klampe stated HB 449 did not deal with raw products, only. He stated honey is sterile until it is bottled, and he noted page 4, line 10, provides for bottled honey to be sold.

Senator Lynch stated he was tired of trying to regulate everything and added that the people should be allowed to sell their products.

Motion/Vote:

Senator Klampe moved to amend page 4, line 10 to say "honey in the comb" and strike the word "bottle". The motion CARRIED UNANIMOUSLY.

Discussion:

Senator Kennedy stated the health department would like to add an amendment to line 7, page 5, which would state "a farm operator who sells only...".

Senator Lynch stated he had talked to Greg Petesch about that amendment and they had decided it was not necessary.

Senator Harding stated she had received phone calls in opposition to HB 449 from the farmer's market in the Flathead area. She then is concerned that if the markets are deregulated, they would be liable for anything that happens as a result of the food sold at their market.

Senator Christiaens stated he had received calls and a letter in opposition to HB 449 from his constituents in Great Falls.

Senator Lynch stated he was not sure who would be liable in such an instance. He stated anyone could get a license for \$60.

Senator Gage stated the markets are still subject to compliance with state laws and added HB 449 would just take away the license fee.

Senator Kennedy asked if the Committee could wait until the following day for any further action on HB 449.

HEARING ON HJR 23

Opening Statement by Sponsor:

Representative Floyd Gervais, House District 9, stated HJR 23 would address support of Glacier County by the employees of Glacier Park. He stated Glacier County is the ninety fifth poorest county in the United States. He stated Glacier Park Incorporated (GPI) hires hundreds of people and hires very few Native American people. He stated the help is sent in from Minneapolis because the people have to stay at the lodging provided in the park. He stated the people do not spend much of their money in the surrounding communities or on the reservation. He stated the Native American's establishments are off-limits to the employees of the park. Representative Gervais stated the employees of GPI do not even use the bank in East Glacier. He stated the employees only use the landfill. He stated SJR would encourage GPI to hire the people from surrounding areas who could use the jobs and the money in the communities.

Proponents' Testimony:

None.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

Senator Rea asked if there was a contract through GPI with the parks for the rental of housing for the employees. Representative Gervais stated there was a contract and they rent the hotels in the park for very little money.

Closing by Sponsor:

Representative Gervais closed on HJR 23.

EXECUTIVE ACTION ON HJR 23

Motion/Vote:

Senator Kennedy moved HJR 23 BE CONCURRED IN. The motion CARRIED UNANIMOUSLY.

HEARING ON HB 594

Opening Statement by Sponsor:

Representative Don Larson read from prepared testimony which he supplied the Committee (Exhibit #2).

Proponents' Testimony:

Roger Tippy, Montana Beer and Wine Wholesalers Association, read from prepared testimony in support of HB 594 (Exhibit #3).

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

Senator Christiaens asked Representative Larson if there was any way a lien could be file on the product. Representative Larson answered current law states there cannot be a lien filed on the license. Mr. Tippy expanded further by stating there is a code which establishes the opportunity for a lien to be placed against any party who is liable. He stated the lien can be filed independent of the liquor license. He stated HB 549 would clarify the payment of debt.

Senator Christiaens asked for clarification between the state as a wholesaler and private industry wholesaling. Mr. Tippy stated HB 549 would not involve the licensing function but would clarify the requirements.

Senator Harding asked Mr. Tippy who would be liable for payment if a previous owner wrote a check and then left town without paying it. Mr. Tippy stated HB 549 would require the old owner and buyer to pay the bill. He stated the old buyer would lose the ability to buy beer on credit until he makes restitution.

Senator Klampe asked Mr. Tippy why all industry is not protected from bad debt in the same way. Mr. Tippy stated the wholesalers believe the State operates a business as far as alcoholic beverages are concerned. He stated under the old procedure, a lien could be filed. He stated HB 549 would allow the creditors a remedy against wholesalers.

Senator Lynch asked Mr. Tippy what the process was to receive credit with a distributor and what would happen in the case of a bankruptcy. Mr. Tippy stated under current law, the limit for credit is seven days which would protect a buyer from charging a tremendous amount of debt.

Senator Gage asked Mr. Tippy if the seven day credit would follow the license in result of a transfer. Mr. Tippy stated the credit would follow the owner of the license. He stated the owner of the newly transferred license would get a "clean slate". He stated any transfer of a business which involves consumable items was not subject to the Bulk Transfer Act of the Uniform Commercial Code (UCC).

Senator Kennedy asked Mr. Tippy if a law existed which would require the old owner to disclose to the new owner that there is outstanding debt to the wholesalers. Mr. Tippy stated there was a Liquor Division Application Form which would cover the information regarding disclosure.

Senator Harding asked Mr. Tippy why Montana had the seven day credit law when most states require cash payments. Mr. Tippy stated the seven day credit law was a compromise between laws which had extended credit (up to 30 days) to cash payments.

Senator Koehnke asked Mr. Tippy if there was ever any effort to change to a cash payment system. Mr. Tippy stated the wholesalers were for the cash-payment system, but the retailers did not want it.

Closing by Sponsor:

Representative Larson closed on HB 549, stating the inflow of cash in the tavern business fluctuates madly. He stated the seven day payment law is a help when the business needs a weekend

to reclaim their investments in alcohol. He stated HB 549 would protect the transferee from bad debt.

HEARING ON HJR 16

Opening Statement by Sponsor:

Representative Joe Quilici, House District 71 stated HJR 16 would ask Congress and other Federal agencies to recognize the historic and cultural qualities of Butte. He stated HJR 16 would be beneficial for all of Montana because the recognition of the areas as historic monuments would create an increase in tourists throughout the state. He stated the increase in tourism would help Montana's economy. Representative Quilici stated HJR 16 would also bring in money from national historical programs including the National Labor Landmarks Program and the National Heritage Partnership Program.

Proponents' Testimony:

Frank Cokhill, Director, Montana Historical Society, stated the Society was in strong support of HJR 16. He stated the designation of the area as a historical site would preserve its cultural resources and would increase travel to southwestern Montana.

Gayle Brockbank, Montana Promotion Division, Department of Commerce, stated her support of HJR 16.

Senator J.D. Lynch stated his support for HJR 16. He stated it may appear parochial but it is very important. He stated he did not want to lose the heritage and culture of the city and he would like to see some Federal money go towards the preservation of the area.

Bart Campbell, Anaconda native stated his support for HJR 16. He stated the closing of the smelter caused a loss of many of the historic buildings. He stated HJR 16 would help stop the loss of the historical parts of the area and make more money available for new businesses.

Senator Betty Bruski-Maus, Wibaux, stated her town was declared a National Historical Business Center and the increase in tourism was notable.

Senator Ed Kennedy, stated his support for HJR 16.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

Senator Lynch asked Representative Quilici if anyone had addressed him on the issue of including the Black Eagle area in HJR 16. Representative Quilici stated he had been approached on the subject. He stated the designation of the area has to be stated as a specific site for the resolution. He stated Black Eagle and also the community of Fort Benton will probably offer a similar resolution during another session.

Senator Koehnke asked Representative Quilici if Butte would be referred to as Butte, America. Representative Quilici stated he would like to see it referred to as Butte, America but it would generate more revenue for Montana if it remained as Butte, Montana.

Senator Klampe asked Representative Quilici if there was any possibility of reopening the elevators which go down into the earth. Representative Quilici stated there was a possibility the elevator called Walkerville would be opened. He stated it would only be opened to the 400 foot level because of the problem with water levels.

Senator Gage asked Representative Quilici if there had to be a geographic delineation in HJR 16 or if the area could just be designated as "Butte-Silverbow-Anaconda". Representative Quilici stated when Congress sets up the designation, the Committees name the geographic area.

Senator Gage asked Mr. Cokhill if the historical society would continue to be involved with funding the preservation of Butte. Mr. Cokhill stated his association plans to be involved and work with the Congressional Committee.

Senator Gage asked Mr. Cokhill if the Department of Fish Wildlife and Parks would be involved. Mr. Cokhill stated they would not be involved in the preservation process of fund raising.

Closing by Sponsor:

Representative Quilici closed on HJR 16.

EXECUTIVE ACTION ON HJR 16**Motion/Vote:**

Senator Kennedy moved HJR 16 BE CONCURRED IN. The motion CARRIED UNANIMOUSLY.

HEARING ON HB 441

Opening Statement by Sponsor:

Senator J.D. Lynch, Senate District 35, spoke on behalf of Representative William Rehbein, House District 21. He stated HB 441 would modify the procedures and actions of the Board of Water Well Contractors. He stated HB 441 was a housekeeping bill.

Proponents' Testimony:

Fred Robinson, Legal Council, Montana Department of Natural Resources (MDNRC) read from prepared testimony in support of HB 441 (Exhibit #4).

Wes Lindsay, Chairman, Water Well Licensing Board, stated his support for HB 441.

John Erego, Department of Health and Environmental Sciences stated his support for HB 441.

Gary Fritz, Administrator, Water Resources Division, Department of Natural Resources, stated his support of HB 441.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

Senator Brenden asked Mr. Lindsay if he was employed as a well driller. Mr. Lindsay stated he was.

Senator Brenden asked Mr. Lindsay if the Water Well Contractors were in support of HB 441. Mr. Lindsay stated both the Water Well Association and the Water Well Contractors supported HB 441.

Senator Gage asked Mr. Robinson what would happen in the instance of a contested case hearing. He stated there is an informal process allowed for under the Administrative Procedures Act (APA) which states that in the matter of professional licensing, the formal process may not be waived.

Referring to Section 5, Senator Gage asked Mr. Robinson if the Board has the disciplinary authority to revoke a license. Mr. Robinson stated the Board has had the authority to revoke a license, but HB 441 would allow for the Board to designate a certain period of time of revocation.

Senator Brenden asked Mr. Robinson how many members were on the Board. Mr. Robinson answered there were five members on the Board.

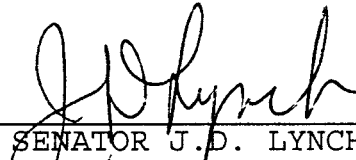
Senator Gage asked Mr. Robinson what section of the law would be repealed by HB 441. Mr. Robinson stated MCA 37-43-311 would be repealed because it was a repetition of statutes.

Closing by Sponsor:

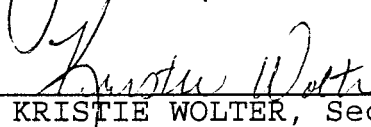
Senator J.D. Lynch closed on HB 441.

ADJOURNMENT

Adjournment: 11:20 a.m.



SENATOR J.D. LYNCH, Chair



KRISTIE WOLTER, Secretary

JDL/klw

ROLL CALL

SENATE COMMITTEE Business and Industry DATE 3/18/93

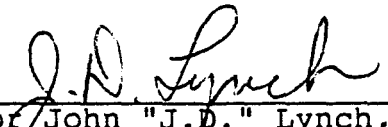
NAME	PRESENT	ABSENT	EXCUSED
Senator Lynch	✓		
Senator Christiaens	✓		
Senator Brenden	✓		
Senator Gage	✓		
Senator Hager			✓
Senator Harding	✓		
Senator Kennedy	✓		
Senator Klampe	✓		
Senator Koehnke	✓		
Senator Mesaros	✓		
Senator Rea	✓		
Senator Bruski-Maus	✓		
Senator Wilson	✓		

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 18, 1993

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration House Bill No. 349 (first reading copy -- blue), respectfully report that House Bill No. 349 be concurred in.

Signed: 

Senator John "J.D." Lynch, Chair

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 18, 1993

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration House Bill No. 222 (first reading copy -- blue), respectfully report that House Bill No. 222 be amended as follows and as so amended be concurred in.

Signed: 

Senator John "J.D." Lynch, Chair

That such amendments read:

1. Page 2, line 11.

Strike: "TO SERVICE fire extinguishers⁷ OR"

2. Page 5, line 3.

Strike: "\$300"

Insert: "\$200"

3. Page 5, line 6.

Following: "(A)"

Strike: "\$100 TO SERVICE FIRE EXTINGUISHERS;"

4. Page 5, line 7.

Strike: "(B) \$175"

Renumber: subsequent subsections

5. Page 5, line 9.

Strike: "\$175"

Insert: "\$100"

6. Page 5, line 11.

Strike: "\$175"

Insert: "\$100"

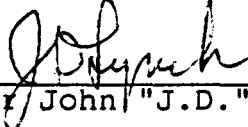
-END-

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 18, 1993

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration House Bill No. 371 (first reading copy -- blue), respectfully report that House Bill No. 371 be concurred in.

Signed: 

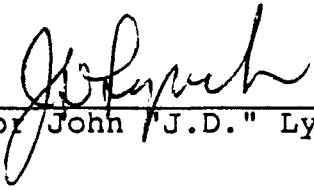
Senator John "J.D." Lynch, Chair

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 18, 1993

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration House Joint Resolution No. 16 (first reading copy - blue), respectfully report that House Joint Resolution No. 16 be concurred in.

Signed: 

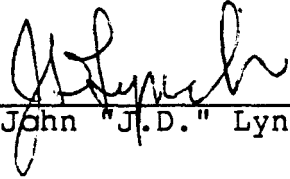
Senator John "J.D." Lynch, Chair

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 18, 1993

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration House Joint Resolution No. 23 (first reading copy - blue), respectfully report that House Joint Resolution No. 23 be concurred in.

Signed: 

Senator John "J.D." Lynch, Chair

ROLL CALL VOTE

SENATE COMMITTEE Business & Ind. BILL NO. HB 222

DATE 3/18/93 TIME 10:00 (A.M.) P.M.

NAME YES NO

Senator Gage		
Senator Hager		
Senator Harding	✓	
Senator Mesaros		✓
Senator Brenden		✓
Senator Wilson	✓	
Senator Rea	✓	
Senator Klampe	✓	
Senator Koehnke	✓	
Senator Bruski-Maus	✓	
Senator Kennedy	✓	
Senator Christiaens	✓	
Senator Lynch		✓

Kristen Walt
SECRETARY

JD Lynch
CHAIR

MOTION: Be Concurred In As Amended

ROLL CALL VOTE

SENATE COMMITTEE Business & Industry BILL NO. HB 349

DATE 3/18/93 TIME 10:00 A.M. P.M.

NAME

YES

NO

Senator Gage		
Senator Hager		
Senator Harding		✓
Senator Mesaros	✓	
Senator Brenden		✓
Senator Wilson	✓	
Senator Rea	✓	
Senator Klampe		✓
Senator Koehnke	✓	
Senator Bruski-Maus	✓	
Senator Kennedy	✓	
Senator Christiaens		✓
Senator Lynch	✓	

Christie Walk
SECRETARY

J. P. Lynch
CHAIR

MOTION: Be Concurred In

ROLL CALL VOTE

SENATE COMMITTEE _____ BILL NO. HB 433

DATE _____ TIME _____ A.M. P.M.

NAME YES NO

Senator Gage	✓	
Senator Hager		✓
Senator Harding		✓
Senator Mesaros	✓	
Senator Brenden	✓	
Senator Wilson		✓
Senator Rea		✓
Senator Klampe		✓
Senator Koehnke	✓	
Senator Bruski-Maus	✓	
Senator Kennedy		✓
Senator Christiaens		✓
Senator Lynch	✓	

Quoten Welt
SECRETARY

J. D. Lynch
CHAIR

MOTION: Be Concurred In as Amended

Amendments to House Bill 222
House Third Reading Copy

Prepared by Department of Justice

Alternative Two

1. Page 2, line 11.

Strike: "TO SERVICE fire extinguishers, OR"

2. Page 5, line 3.

Following: "annual"

Strike: "\$300"

Insert: "\$200"

3. Page 5, line 6.

Following: "(A)"

Strike: "\$100 TO SERVICE FIRE EXTINGUISHERS;"

4. Page 5, line 7.

Strike: "(B) \$175"

Insert: "\$100"

5. Page 5, line 9.

Strike: "(C) \$175"

Insert: "(b) \$100"

6. Page 5, line 11

Strike: "(D) \$175"

Insert: "(c) \$100"

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. _____
DATE 3/18/93
BILL NO. HR 232

SPONSOR INTRODUCTION -- HOUSE BILL 594

HOUSE BILL 594 IS A VERY SIMPLE BILL. IT IS INTRODUCED AT THE REQUEST OF THE BEER AND WINE WHOLESALERS TO SPECIFY THAT WHEN A LIQUOR LICENSE IS TRANSFERRED AND THE SELLER OF THE LICENSE SELLS SOME BEER OR WINE PURCHASED ON CREDIT ALONG WITH THE LICENSE, THE BUYER WILL BE RESPONSIBLE FOR PAYING FOR THAT BEER OR WINE.

THE BILL HAS BEEN WORKED OUT OVER THE INTERIM BETWEEN THE WHOLESALERS AND THE TAVERN ASSOCIATION. IT WAS MADE NECESSARY WHEN THE LIQUOR DIVISION DECIDED SEVERAL YEARS AGO THAT A CREDITOR OF A TAVERN COULD NOT FILE A LIEN AGAINST THE LICENSE, AND THEN DECIDED THAT THE OBLIGATION TO PAY FOR BEER OR WINE SOLD ON CREDIT WAS A PERSONAL OBLIGATION OF THE PERSON WHO HELD THE LICENSE AT THE TIME OF DELIVERY.

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 2
DATE 3/18/93
BILL NO. HB 594



Post Office Box 124 • Helena, Montana 59624 • Telephone (406) 442-4451

BEFORE THE COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT
MONTANA HOUSE OF REPRESENTATIVES

Re: House Bill 594

This bill enacts a simple principle upon the provisions of the Montana Alcoholic Beverage Code governing license transfers and credit sales of beer and wine: that the debt follow the license. While many states require a retailer to pay cash for beer and wine, as Montana retailers must do when they buy liquor from a state store, our laws allow beer and wine to be sold on seven days' credit. The code sections permitting this practice are the two sections referenced in the bill: 16-3-243 and 16-3-406.

The problem arises when a person in the process of selling a license takes the last beer/wine delivery before the transfer on credit and doesn't pay for it at or after the transfer is approved by the Liquor Division. Or pays for it with a check which bounces. For reasons not clear to us, the Liquor Division has interpreted the current provisions of the Code to mean that the obligation to pay for that beer or wine is personal to the seller. The buyer is not responsible even if he is in possession of the beer or wine.

The Uniform Commercial Code is of no practical use in these situations. Since the parties do not know the exact date when a transfer will be approved, the wholesaler cannot be filing a UCC-1 financing statement on every delivery of beer for weeks or months. The practical solution, adopted in other states which allow beer sales on credit, is to say the wholesaler is selling to the license and whoever holds the license is responsible.

The Liquor Division takes this position as to its own sales. Had the seller's check for his last purchase of distilled spirits bounced, the Division would tell the buyer to make the check good or the license would be revoked. If the state sells its whiskey to the license, it is only fair to say the wholesaler sells its beer and wine to the license, too.

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. E 3

DATE 3/18/93

BILL NO. HB 594

HB 441

The Montana Board of Water Well Contractors presents this testimony in support of HB 441:

The Montana Board of Water Well Contractors was established to promote the orderly and sanitary development of groundwater resources. See Mont. Code Ann. § 37-43-101(1991). Towards that end, the Board, with the assistance of the regulated community, has implemented well construction and licensing standards that most water well professionals adhere to. The Board also hears complaints about problem wells, offers advice towards fixing problem wells, and in extreme cases disciplines licensees.

Water well professionals mostly agree and cooperate with the Board in fixing problem wells so that disciplinary action is rarely necessary. However, a small percentage of licensees refuse to comply with Board standards or cooperate with the Board in fixing problem wells. The Board has been forced to spend an inordinate share of its limited resources in disciplining these few problem licensees. Processing one of these extreme cases can cost hundreds of hours of work, thousands of dollars, and take years. HB 441 is proposed to avoid unnecessary delay and expense in the process by clarifying the Board's authority and function with respect to complaints, eliminating the superfluous and time-consuming trial-type hearing, and tailoring the grounds and modes for discipline to fit the needs and purposes of water well professionals, the public and the Board.

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 84
DATE 3/18/93
BILL NO. HB 441

This Bill emphasizes the Board's role in settling public complaints and achieving legal compliance without costly disciplinary action. Although the Board has been able to accomplish this goal with cooperative licensees under existing statutes, uncooperative licensees have challenged the Board's authority to act in any way with respect to complaints other than as a disinterested tribunal. Uncooperative licensees argue that under Mont. Code Ann. § 37-43-311(1991) it is up to the public to prosecute complaints and the Board, as tribunal, should not assist them. When there is a complaint before the Board and the licensee takes this stance, the Board's efforts to help fix the problem well only serve to delay an already protracted process. This Bill would provide incentive for cooperation with the Board by recognizing the Board's pervasive role in resolving water well problems and clarifying that the Board may investigate, mediate and prosecute complaints.

The Bill would also streamline the disciplinary process by eliminating the trial-type hearing and associated time-consuming pre-hearing process. The new process would require the Board to have its supporting evidence together and presented to the licensee with the proposed order to initiate the disciplinary process. Licensees would have the opportunity for a hearing to cross-examine the Board's witnesses, challenge the evidence, present additional evidence and argue against the proposed order for whatever reason. The Board would not be required to present evidence at the hearing because all of its evidence would have

already been presented with the proposed order. The hearing, then, would be for the sole purpose of allowing the licensee, to show cause why the proposed discipline is unwarranted. From the Board's experience, this is the type of hearing most licensees expect and desire when they request a hearing.

This Bill would also remove confusion from the existing process by tailoring the grounds for discipline to fit the purposes and expertise of the Board of Water Well Contractors. Some of the existing statutory grounds for discipline are vague and inappropriate for consideration by a Board selected for its expertise in water well construction. See Mont. Code Ann. § 37-43-311(1991). For example, "gross negligence" is a standard for discipline under the current statute that more appropriately applies to matters of safety. Water well professional discipline should be more oriented towards obtaining compliance with Board rules and laws than with safety. "Incompetence" is a standard for discipline in the existing law that is vague. The proposed grounds for discipline are narrowly defined and tied directly to the licensees ability to comply with water well laws.

Finally, this Bill would authorize the Board to order the most sought after and viable of solutions for substandard wells. Current disciplinary process offers little help to the already injured public because the Board is without clear authority to order licensees to repair faulty wells. This Bill would clarify that the Board may order licensees to reconstruct or repair substandard wells.

HB 441 Bill was drafted to meet the needs of the Board of Water Well Contractors, the public and water well professionals alike. The Bill would allow the Board to more efficiently and appropriately deal with customer complaints and problem drillers and contractors. Efficiency and appropriateness would be achieved by clarifying the Board's authority to investigate and order faulty wells fixed, by removing the requirement for trial-type hearings, by authorizing agreed settlements short of formal disciplinary action, and by eliminating vague standards for discipline.

Submitted this 18th day of March, 1993

Board of Water Well Contractors

By: Fred W. Robinson
Fred W. Robinson
legal counsel

DATE 3/18/93

SENATE COMMITTEE ON Business and Industry

BILLS BEING HEARD TODAY: HB 441, HB 594, HJR 16, HJR 23

Name	Representing	Bill No.	Check One	
			Support	Oppose
Fred Robinson	Ad of Water Well Contractors	HB 441	✓	
Bob Rudio	" "	"	✓	
Lee Lindsay	Water Well Board	"	✓	
Roger Lippy	Mt Beer & Wine Wholesalers	594	✓	
Bob Bushi Name	SD 12	SR 16	✓	
Gail Brockbank	Dept. of Commerce	HJR 16	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY