

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON HUMAN SERVICES & AGING

Call to Order: By **CHAIRMAN DUANE GRIMES**, on February 1, 1995, at
3:00 p.m.

ROLL CALL

Members Present:

Rep. Duane Grimes, Chairman (R)
Rep. John C. Bohlinger, Vice Chairman (Majority) (R)
Rep. Carolyn M. Squires, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Ellen Bergman (R)
Rep. Bill Carey (D)
Rep. Dick Green (R)
Rep. Antoinette R. Hagener (D)
Rep. Deb Kottel (D)
Rep. Bonnie Martinez (R)
Rep. Brad Molnar (R)
Rep. Bruce T. Simon (R)
Rep. Liz Smith (R)
Rep. Susan L. Smith (R)
Rep. Loren L. Soft (R)
Rep. Kenneth Wennemar (D)

Members Excused: None.

Members Absent: None.

Staff Present: David Niss, Legislative Council
Jacki Sherman, Committee Secretary

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

Committee Business Summary:

Hearing: HB 335, HB 328
Executive Action:

HEARING ON HB 335

Opening Statement by Sponsor:

REP. CAROLYN SQUIRES introduced HB 335 which would create the Montana Wheelchair Warranty Act. She explained the bill would protect the purchasers of wheelchairs against defects in the chairs that would affect their use, value or safety. Repairs to

wheelchairs can last several weeks causing the individual to lose their mobility, independence and productivity. She pointed out that on some occasions the wheelchairs may not be repaired at all, permanently disrupting a disabled person's opportunity to become independent and integrated into the community. Many of these "lemons" are purchased with state Medicaid dollars.

Defective wheelchairs that cannot be adequately repaired are a waste of taxpayer money. The wheelchairs can cost as much as a moderately priced automobile. Manufacturers will be required to be more accountable to Montana's disabled population. She noted that existing warranty laws in Montana fail to adequately protect consumers in wheelchairs and powerchairs. Considering the significance of the mobility devices in an individual's life it is virtually important to have non-conforming wheelchairs operational as quickly as possible. The Montana Wheelchair Warranty Act would follow existing statutes which address products not adequately protected by current warranty laws. Passage of this bill would allow the consumer with disabilities to obtain relief in a quick and decisive fashion so as to ensure less disruption in their lives while providing some accountability.

Proponents' Testimony:

Edward Myers, Montana Advocacy Program, testified in support of HB 335. He explained that current law has implied warranties. However, Montana law allows implied warranties to be limited or excluded by the seller. Purchasers are not able to remedy the situation of a defective product, therefore the current law is ineffective in helping consumers get their wheelchairs or mobility devices back in working order. **EXHIBIT 1**

Sheila James, Missoula, discussed the problems she had been having with her wheelchair. She pointed out the various breakdowns she experienced with the chair. When the chair was being repaired she was not able to function around her house and had to get help. The most serious problems she experienced was when she was traveling down the street. The controls kept falling off and had to be welded on. The chair tipped over and broke down at extremely dangerous places, such as on railroad crossings. Now she is afraid to use the chair and her \$14,000 wheelchair sits in the closet. **EXHIBIT 2**

Peter Leech, Licensed Clinical Social Worker from Missoula, testified in support of the bill. He said he had 30 years experience working in the field of physical rehabilitation, independent living skills and assistive devices for people with disabilities as well as co-owned a wheelchair manufacturing company. He pointed out that when a person's only mobility device is faulty and unreliable it seriously interferes with that person's progress toward independence and can also create secondary medical conditions. Manufacturers avoid taking

responsibility for repair or replacement by saying the person must have been using the chair improperly. **EXHIBIT 3**

Ralph Martin testified in support of the bill. He discussed his disability and use of wheel mobility. He noted that breakdowns have kept him out of classes and restricted him to his home. However, he pointed out that not all companies are irresponsible and conduct business in such a manner that leave people with disabilities stranded. He said the chair that he currently rides is owned by the Quickie Corporation. They have a very good warranty and have stuck by their warranty. They have made sure parts were delivered as soon as possible. Also, the Quickie Corporation has people with disabilities working in their manufacturing process.

Pam Nelson, from Missoula, testified in support of the bill.

EXHIBIT 4 She discussed problems she encountered using wheelchairs. Her chair broke down for a period of two years. She said she had to use a manual chair which did not fit properly. It created pain and discomfort and therefore confined her to bed. She pointed out that wheelchair manufacturers do not necessarily care how long it takes to repair a chair or the inconvenience and disruption it causes in a person's life to be without mobility.

Kathy D. Collins, Helena, testified in support of HB 335.

EXHIBIT 5 She discussed the life span of the chairs and how the chairs she purchased never lasted that long. She pointed out the dependence a disabled person has on power wheelchairs and the need for protection against manufacturer negligence.

Paul Peterson testified in support of the bill. He demonstrated the mechanics of his wheelchair and discussed the problems he had with the breaks and the bearings. The chair was only three years old but was not sound. He said that his disease was progressive, but he still wanted to be mobile and did not want to wait six weeks to do it.

Mary O'Connell, RPT, Community Medical Center, Missoula, submitted written testimony. **EXHIBIT 6**

Larry Nitz, Havre, submitted written testimony. **EXHIBIT 7**

William C. Jones, Commission Member to Governor's Human Rights Advisory Commission, submitted written testimony. **EXHIBIT 8**

John T. Borgreen, AgrAbility Project, submitted written testimony. **EXHIBIT 9**

Dixie Snobl Johnson, Anaconda, submitted written testimony. **EXHIBIT 10**

Robert Drazich, submitted written testimony. **EXHIBIT 11**

Angus Macdonald, Bozeman, submitted written testimony.
EXHIBIT 12

Joe Harrington, Billings, submitted written testimony.
EXHIBIT 13

Opponents' Testimony: None

{Tape: 1; Side: B; Approx. Counter: 000; Comments: n/a.}

Informational Testimony:

Terry Crantz, Department of Social & Rehabilitation Services, Medicaid Division, said he was available to answer any questions.

Questions From Committee Members and Responses:

REP. BONNIE MARTINEZ asked **Mr. Crantz** whether the manufacturers had complaint forms for those who purchased chairs through medicaid. **Mr. Crantz** said there were many manufacturers who had warranties available and stood behind their equipment. Medicaid does pay for repairs of chairs outside of the warranty period.

CHAIRMAN GRIMES asked whether the bill's retroactivity applied to chairs purchased already or those purchased at some date. **REP. SQUIRES** replied the bill would go into effect October 1 and would only affect those chairs purchased after that date. This would allow consumers and manufacturers time to know about the bill.

CHAIRMAN GRIMES asked for clarification of implied warranty and whether that was optional. **Mr. Myers** said that it can be by the seller or the manufacturer. He referred to statute. The bill's intent is to require a one-year express warranty or else a four-year implied warranty. **Mr. Myers** said the bill states there must be some sort of protection for at least a year.

REP. LIZ SMITH asked **Mr. Crantz** whether the department recommended good companies or wheelchair dealers that had warranties to the disabled who were purchasing chairs. **Mr. Crantz** replied that they do take and hear complaints, but did not necessarily make recommendations to a person purchasing a wheelchair as to which manufacturer they should use. He said they relied on the therapist involved in fitting the chair and the individual's needs and wants and also the wheelchair dealers to select particular models.

REP. L. SMITH asked **Ralph Martin** whether he knew of warranties or chair quality when he purchased the chair. He replied that he did not. When he came out of rehabilitation, the equipment provider that he was dealing with at the time was an **Everson Jennings** dealer. There was no real discussion as to comparison to other equipment. Later when he was going to college, he talked with other wheelchair users and had recommendations for the **Quickie Company**.

REP. L. SMITH asked **Kathy Collins** about the special needs she had discussed and whether she was able to find a company who provided this. **Ms. Collings** replied that the company was not aware of how active she was. She said despite her disability she also has a life. The companies had a limited view of the market. **Everson Jennings** had a monopoly on the market for years. This company was difficult to get parts from. Other companies are doing better now in getting their parts out in a prompt and efficient manner.

REP. L. SMITH asked **Mr. Crantz** about who paid for repairs and warranties that Medicaid was responsible for. **Mr. Crantz** replied that Medicaid does pay for wheelchair repairs. Clients do have a responsibility for a co-payment.

REP. L. SMITH asked **Mr. Myers** about the warranty in the bill. He replied that if a one-year warranty is not provided, then the manufacturers will be required to provide a four-year warranty. He said this should give all manufacturers the incentive to provide a one-year express warranty.

REP. ELLEN BERGMAN asked **Mr. Myers** about the manufacturers warranty now. He replied that some of them only have a 6 month warranty. **Ms. Collins** commented that purchasers were not always informed of warranties and do not always do research about warranties. **Ms. Collins** discussed the costs associated with repairs after the warranties and her co-payment for fixing the chairs.

REP. BERGMAN asked wheelchair users if these repairs and warranty problems were associated with a particular company. **Sheila James** said that her wheelchair was purchased in 1989 and she assumed it would be fixed. She had no idea of what a warranty was. **REP. BERGMAN** asked if Medicaid or Medicare had to approve the purchase first. **Ms. James** said they did. She discussed all the problems that were wrong with the chair that could not be fixed.

REP. JOHN BOHLINGER said it was outrageous that people with disabilities are confronted with faulty products and their needs are not addressed. He noted that the bill did not specify how long a wheelchair should last. **REP. SQUIRES** replied that it had been indicated that approximately five years could be expected depending on mobility. When an individual purchases this type of equipment the person has to be satisfied. This is not a simple decision since there are a lot of other people involved, such as the therapist.

REP. BOHLINGER asked **REP. SQUIRES** if the bill should spell out how long the warranty should be provided. **REP. SQUIRES** said the bill should be realistic and should not hamper the producer for a long period of time. A year is sufficient for those who are responsive.

REP. SUSAN SMITH asked about states with similar laws. **Mr. Myers** replied that Wisconsin, Georgia, California, Louisiana and Maryland had similar laws. This law is patterned after Georgia. **REP. SMITH** asked how the bill would enforce the warranty. **Mr. Myers** replied the law would set the parameters and if necessary, a remedy could be sought in court.

{Tape: 2; Side: A; Approx. Counter: 000; Comments: n/a.}

REP. S. SMITH asked how long the Georgia law had been in effect. **Mr. Myers** replied since 1992. **REP. SMITH** asked what accomplishments had been made. **Mr. Myers** said he did not know. **REP. SMITH** said she wanted to make sure this would reduce the down time even for those manufacturers who were out of state. **Mr. Myers** referred to section 5, line 2, regarding the length of time a wheelchair could be down. He said present law made it difficult to solve the problem.

REP. SIMON asked **Mr. Myers** about section 3, regarding conditions of warranty. How does performance become warrantied? **Mr. Myers** replied they were making sure the person is fitted to the chair and that the entire package comes with the chair. **Peter Leech** commented that there were relative standards of performance within the community that use wheelchairs that is common knowledge. One thing that needs to be addressed is the balance. If the manufacturer does not set it up to balance properly, for example if the person starts it up and it tips backwards, then this would be considered poor performance. A power wheelchair should be able to go up a certain incline without difficulty and without fail. He said that performance standards had been worked out by Rehab Engineering of North America.

REP. BRUCE SIMON asked about terminology used in the bill regarding warranties. **Mr. Myers** replied that examples of conditions of non-conformity would be such things as bearings falling out of the wheels, castors twisting easily. **REP. SIMON** asked **Peter Leech** about defects in workmanship. **Mr. Leech** replied that this would address that. **Paul Peterson** added that another thing that should be addressed is the weight of the chair. The chair should conform to the needs of the person.

REP. SIMON pointed out that section 4 of the bill referred to the manufacturer who may be a long ways away. This may put the consumer in a direct relationship with a manufacturer. It may be difficult for someone to deal with a manufacturer who might be in New York for example. **Mr. Myers** said the dealers usually have the knowledge of the manufacturer. It would not pit the consumer against the manufacturer. **REP. SIMON** said the bill appeared to leave the dealer out of the relationship the way the language is written. **Mr. Myers** replied that most of the time the consumer would deal with the DME or dealer.

REP. SIMON asked about defects. **Mr. Myers** explained how the bill would work as far as reasonable usage and repairs for defects.

{Tape: 2; Side: A; Approx. Counter: 380; Comments: n/a.}

REP. SIMON asked about wheelchairs returned by a consumer may not be sold or leased unless there is a full disclosure. Who would police that? Mr. Myers said they would have to rely on the honesty of the manufacturer as far as full disclosure. If another person ends up with the chair and it has a defect, then the bill would provide recourse. REP. SIMON pointed out that a manufacturer may be making a good faith effort to replace a defective part, but it may be difficult and perhaps the 30-day period may not be possible. Even shipping takes 3-4 weeks.

REP. SQUIRES pointed out that wheelchairs were essential for mobility to disabled people.

REP. DEB KOTTEL asked Mr. Myers about the Motor Vehicle Warranty Act or "Lemon Law." She noted how parallel this bill was to this lemon law. Mr. Myers replied that it was true also that the Georgia law was used for the bill drafting. Mr. Myers discussed the arbitration issue that was not required by Montana law and, in fact, could be used as a delay method until a person gets his chair. REP. KOTTEL asked if the treble damage provision was unique to Montana law. Mr. Myers replied that this tells the consumer that they will get their time and money back out of it.

REP. LOREN SOFT asked Mr. Crantz about the division's purchase of the chairs. Mr. Crantz said they do purchase quite a few, but not all. REP. SOFT asked about the departments position. Mr. Crantz replied that anything that would keep the costs of the chairs down would be beneficial. He pointed out that they contacted some reputable manufacturers that do not feel this will be a problem.

CHAIRMAN GRIMES asked about the jurisdictional problem regarding manufacturers that are located out of state. Mr. Myers replied that the contract would probably be formed in the state.

Mr. David Niss asked a technical question about the organization and application of Sections 4 and 7 of the bill. Both sections are remedies for the consumer for violation of either the express or implied warranty. Mr. Myers replied that was correct. Mr. Niss asked if there was a preference in the bill that the consumer proceed under section 4 before the consumer could proceed under section 7.

{Tape: 2; Side: A; Approx. Counter: 577; Comments: N/A.}

Mr. Myers said that it was not explicit, but that these were their remedies and if they did not get their remedies within section 4 then they could proceed. Mr. Niss said that it appeared the intent was for the consumer to proceed with remedies in section 4 first before pursuing section 7 remedies. Mr. Myers replied that was the intent, but if the manufacturer refuses then that's when they do a performance.

Mr. Niss said that it appeared in section 4, in lines 22 and 23, that remedy is expressly against the manufacturer. **Mr. Myers** replied that was correct. **Mr. Niss** asked about the remedy in section 7 for damages on lines 27 and 28. **Mr. Myers** said that was the manufacturers' proof of burden.

{Tape: 2; Side: B; Approx. Counter: 000; Comments: n/a.}

Closing by Sponsor: **REP. SQUIRES** closed on the bill.

HEARING ON HB 328

Opening Statement by Sponsor:

REP. BRAD MOLNAR, HD 22, Laurel, introduced HB 328 which would provide an incentive program for physicians to practice in medical shortage areas in Montana. **EXHIBIT 14** He explained the criteria where only one physician worked in the county or no physicians in the county. The ratio of patients to physicians is 2,000-to-one or worse. The infant mortality rate is 15% higher than the state average. The object of the bill is to use tax credits on passive income to attract licensed physicians that would be interested in semi-retiring in this state.

He gave some examples and discussed the retirement plans that these doctors had invested in. The plans were tax free until withdrawn then taxed as pure income. The bill would allow their plans to be tax free in the state if they go under this program. **REP. MOLNAR** said there were nine counties with zero physicians. There are twenty counties with 15% fatality rate or higher. There are nineteen counties with no obstetricians. The low income factor ties in with these statistics. He explained the criteria in the bill.

Proponents' Testimony:

Jim Ahrens, President of the Montana Hospital Association, testified in support of the bill. He said the concept of the bill in bringing physicians to Montana makes a lot of sense.

{Tape: 2; Side: B; Approx. Counter: 205; Comments: n/a.}

He pointed out some concerns regarding reimbursements and licensing. However, Montana needs physicians in rural areas.

Tom Ebzery, attorney representing St. Vincent Hospital, Billings, spoke about the need for physicians in rural areas. He said that section 4 should be tightened up. Ten months a year is too much of a requirement, eight or nine is better. The property tax provision should be tightened up so the individual has to be there for a certain period of time. They shouldn't be allowed to come into the area to get a tax break and then bail out quickly. He discussed the immunity provision regarding who was in control.

He said that allowing \$25 for an office call tax free sounded good, but perhaps of the \$25, \$5 should go into some sort of fund in order to buy malpractice insurance for specific instances. He said they support the bill to find physicians to relocate in rural areas.

{Tape: 2; Side: B; Approx. Counter: 325; Comments: n/a.}

Jerry Loendorf, Montana Medical Association, testified in support of the bill. He pointed out that the language on the top of page 3, line one, needed to be cleaned up. It indicated the physician may charge for Medicare reimbursement. He said the intent would be the physician may charge Medicare patients only the amount that Medicare pays. The rest of the sentence says "but may not be paid with Medicaid or State Worker's Comp Insurance Funds." He suggested this limit them to that payment that there can't be any balance billing. He said ordinarily with Medicaid patients particularly, the only thing paid is the part Medicaid pays. If they don't allow the person to charge anything for the service, he probably won't give the service.

He commented that accepting the license of a physician from another state without any approval through the Board of Medical Examiners should go through the regular process. The reason for this is that a lot of physicians that want to come into a rural area are on the run from something in another state. They are not necessarily the people that will provide quality of care. It would be best for people in the rural areas to make sure of qualifications.

Russell Hill, Montana Trial Lawyers Association, testified in support of the bill. **EXHIBIT 15** He noted that this bill was identical to the bill in the 1993 Session. He said the association supported the bill at that time with one glaring reservation, which is the same problem that exists with this bill. The reason the association supported the bill is MTLA enforces the concept of specifically targeting this type of incentive in places where they are needed, in rural areas. There is a lack of health care providers in rural areas in Montana and does not pretend to give blanket solutions that apply to both urban and rural areas.

He said the difference in this hearing is the difference in fiscal notes. He pointed out Item 5 in the fiscal note that indicated that Montana's adjusted gross income of a single physician practicing medicine in a medical shortage area was \$65,000. He said this figure was astounding since the average income of physicians is significantly higher. Problems in the bill are minor. He said practicing in the rural area qualified for the incentives. If a physician practices once or twice a year, he apparently qualifies. He noted the Medicaid and Work Comp cost sharing would possibly be dysfunctional. MTLA suggests that the public bear some of the financial responsibilities such

as tax incentives, paying liability premiums for some of the physicians.

People who talk about the high cost of obstetrical premiums in rural areas are right. They are exorbitant because malpractice insurance carriers charge the same amount of premium whether they deliver 5 babies a year or 250 babies a year, which is an injustice and a problem. The problem is that carriers do not do what poor liability itself does.

He said the problem that MTLA has is with the immunity provision. This is a unique concept that the most that can be recovered if a doctor made a mistake, is the amount paid to that doctor. He pointed out that this was merely a cost shifting to the taxpayer and does not evaporate costs. He suggested the committee investigate what a health professional shortage area is under the federal definition. It can sometimes be based on things such as the willingness of providers to accept Medicaid patients. There are some areas in Montana that are HPSA, that most would not consider a medically underserved area. MTLA agrees that allowing out-of-state doctors to practice in Montana without a license is a problem.

Finally, immunity does not just compensate victims, it deters carelessness. This bill attempts to attract doctors that are on the verge of retiring. He said it is a question of how long a doctor can practice competently. The immunity provision can be a problem.

{Tape: 2; Side: B; Approx. Counter: 650; Comments: n/a.}

Opponents' Testimony:

Steve Shapiro, Montana Nurses Association, spoke in opposition to HB 328. He said their first concern was for the consumers of health care services in the rural areas. He agreed that there may be some problems with practitioners being attracted to rural areas who may have had problems elsewhere. Any practitioner should be subject to the Montana licensing authority. The bill does not address this problem adequately when a person can come in from another state and avoid the licensing by the Board of Medical Examiners.

He said that some of the underlying reasons for the unavailability of health care providers in rural areas are the practices are economically marginal. A practitioner out in those areas may be working without any backup or on duty 24 hours a day, 7 days a week without a break. He suggested consideration of advance practice registered nurses who are available to be out in the field providing primary health care. In other words, if the bill opens up the option for medical doctors, then it should also be considered for the advance practice nurses.

{Tape: 2; Side: B; Approx. Counter: 810; Comments: n/a.}

Questions From Committee Members and Responses:

REP. SQUIRES asked **Patricia England, Executive Secretary** to the **Board of Medical Examiners**, about her objection to the issue of the doctor coming into the state to practice without requiring a license. **Ms. England** replied that section 8, page 3, regarding the exemptions for licensing, the board received applications by physicians who had criminal convictions. She discussed several recent examples.

{Tape: 3; Side: A; Approx. Counter: 000; Comments: n/a.}

Ms. England pointed out cases of drug abuse, sexual abuse and homicide by physicians from other states that still had their licenses and could have come into Montana under this one amendment to 37-3-301 and would be unaccountable. They would be unaccountable in a similar context because of the immunity provision and unaccountable in a licensing context because if they don't have a license, the Board of Medical Examiners can't bring disciplinary actions to stop further practice.

She presented three written letters from members of the Board of Medical Examiners. **EXHIBIT 16**

REP. BILL CAREY asked **REP. MOLNAR** if Indian Reservations had a program to attract physicians for their rural population. **REP. MOLNAR** replied that the Indian Health Service may have some program, he was not sure. However, he pointed out a similar program, called the Montana Rural Program. The program will pay up to \$30,000 of the outstanding loans of the students that will serve in various areas. He noted that there were 18 other states that have attempted to limit liability enough to allow people to practice medicine.

REP. SIMON asked whether a physician that practiced in one town one day and moved to another town the next day, would that be considered one practice or more than one practice. **REP. MOLNAR** said it was his opinion that it was more than one practice. He noted, however, that the state looks at counties and the federal looks at areas. The problem with physicians traveling from town to town, is if a baby comes 3 or 4 weeks early, someone is there, not off to the next town 100 miles away. The intent is to have a physician there for accidents. To only have a physician available on Tuesday or Thursday is a partial solution to sparsely populated areas.

REP. SIMON asked in reference to the requirement that physicians maintain their residence for 10 months a year, the bill does not specify the hours they must maintain. **REP. MOLNAR** replied that the physicians who would be encouraged to practice in rural areas were those who were trying to get out of the rat race. If the physician wanted to wear his pager and go fishing on the Blackfoot that would be fine. However, if he were needed right away, he would be handy. If this was abused, the people that

were providing him with a house and the tax exemptions would report him.

REP. SIMON asked about the income referred to in section 6. If some schedule were not required, such as five days a week or four, there could be substantial assets where someone could dodge a lot of income tax. There is nothing in the bill to provide a continuity of service. **REP. MOLNAR** replied that perhaps rather than granting that immunity, a tax credit or purchase of malpractice insurance could be provided. One of the problems is that all policies have a limit. If they make only \$25 an office call and there are only 600 people in the county, the person will not make \$10-15,000 a year. He asked, if he were a doctor, would he risk a million dollars worth of assets to make \$6,000 a year to help someone? He said this bill would not attract anybody.

REP. MOLNAR noted that so many of these areas are so low income that he wanted to be able to provide affordable health care from somebody who was almost altruistic, such as a Peace Corp mindset.

REP. SIMON asked about temporary certificates that can be renewed up to a year for as many as five renewals. **Ms. England** replied that was correct. They must qualify for a temporary the same way they would qualify for a permanent license. The application fee is \$200 and the same credentials must be presented including lack of disciplinary action in another state, personal health, character references, etc.

REP. SIMON asked about the reciprocity clause. **Ms. England** replied there was a standard application form and at the top there was a box where they checked off whether they were applying based on national board exams or USMLE exam based on reciprocity with another state. An additional license from another state does not add or detract from their application package with one exception. She explained that New Mexico has an examination score minimum of 70 points to get a license in New Mexico. Montana and most other states in the nation require 75%. The statute speaks to reciprocity to states that have the same or higher licensing requirements. She said the only thing a license in another state adds is that the other state is queried by the National Practitioner Data Bank and the Federation of State Medical Boards as to whether they have received license discipline in any other state. If so they must account for that and demonstrate rehabilitation.

CHAIRMAN GRIMES asked **REP. MOLNAR** about the intention in defining medical shortage areas. **REP. MOLNAR** said he did not think it had to be in rule (see Exhibit 6). He discussed the tax free aspects of the bill.

{Tape: 3; Side: A; Approx. Counter: 684; Comments: n/a.}

CHAIRMAN GRIMES asked about multiple doctors entering the tax free status in the program. Would the medical shortage area

cease to be short? **REP. MOLNAR** replied that it would and depended on whether they cut a contract with the state. He pointed out that the bill lacked a ruling authority. He said the Department of Health were the ones trying to get a match, the program would not be the same for everybody. The doctors would have different qualifications, needs and desires. The communities are not going to stay the same. The taxable assets would become part of their agreement, however if their assets were down in L.A. that would not be taxed anyway.

CHAIRMAN GRIMES asked **Mr. Turner** from the Department of Revenue to clarify some issues and whether it was unusual from a state tax policy.

{Tape: 3; Side: A; Approx. Counter: 830; Comments: n/a.}

Mr. Turner replied that as far as income, no one is exempted from income taxes. He clarified that if an individual comes into Montana, the resident's income is taxed no matter where it is even in Los Angeles. The person would get a credit from paying taxes in California on that amount. He questioned the income of a physician whether it was net or gross. The net is what goes on a tax return after the expenses. He pointed out that if it was a gross amount, then the spouse's income could be sheltered as well. Presently, there is a rural physicians credit of \$5,000 a year for physicians that are in a certain radius of a hospital.

{Tape: 3; Side: B; Approx. Counter: 000; Comments: n/a.}

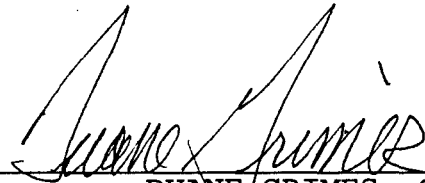
REP. BOHLINGER asked **REP. MOLNAR** about page 3, section 8, line 24 about letting people into the state whose professional credentials are questionable. **REP. MOLNAR** said a background search would be good.

Closing by Sponsor:

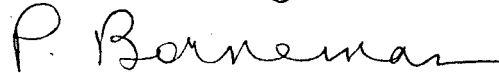
REP. MOLNAR closed on the bill. He discussed the concerns brought up in the committee. He said he would incorporate some of the ideas. He pointed out the differences brought up regarding the fiscal note were because the Montana Health Care Authority had taken care of it so the expenditure was not necessary. He discussed all the scenarios of injuries and accidents that would prevent a physician from practicing one or two times a year. The immunity concept under workers' comp must be posted in their office. The concept of advance practice nurses would be fine to incorporate as an amendment to the bill.

ADJOURNMENT

Adjournment: 5:50 p.m.



DUANE GRIMES, Chairman



for

DEB THOMPSON, Recording Secretary

DG/dt

HOUSE OF REPRESENTATIVES

Human Services and Aging

ROLL CALL

DATE 2-1-95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Duane Grimes, Chairman	✓		
Rep. John Bohlinger, Vice Chairman, Majority	✓		
Rep. Carolyn Squires, Vice Chair, Minority	✓		
Rep. Chris Ahner	✓		
Rep. Ellen Bergman	✓		
Rep. Bill Carey	/		
Rep. Dick Green	✓		
Rep. Toni Hagener	✓		
Rep. Deb Kottel	✓		
Rep. Bonnie Martinez	✓		
Rep. Brad Molnar	✓		
Rep. Bruce Simon	✓		
Rep. Liz Smith	✓		
Rep. Susan Smith	✓		
Rep. Loren Soft	✓		
Rep. Ken Wennemar	✓	WASA	

MONTANA ADVOCACY PROGRAM-DISABILITY LAW CLINIC
ASSISTIVE TECHNOLOGY

304 N. HIGGINS • MISSOULA, MT. 59802 • (406)-549-8464 • FAX: (406)-543-8314

January 31, 1995

Representative Duane Grimes
Chairman of Human Services and Aging Committee
Capitol Bldg.
Helena, MT. 59624

Dear Mr. Chairman, Vice Chairpersons, and members of the Committee:

My name is Edward Myers. I am the assistive technology attorney for the Montana Advocacy Program. I am here to speak as a proponent of H.B. 335 and address why we need this bill. Montana warranty law fails to adequately protect consumers with disabilities who purchase mobility assistive devices.

Currently, Montana utilizes the Uniform Commercial Code. The UCC mandates that all contracts between a seller and a buyer have a warranty. An express warranty is simply a statement of fact made by the seller and may be either oral or written. The UCC assumes that a seller will remember any express warranties created. In the real world, many sellers will not consider the statements they make as creating express warranties but are merely opinions. Sometimes a lengthy court process is necessary to resolve dispute about whether a statement creates an express warranty. This process places a significant burden upon the consumer getting the assistive device working quickly.

Implied warranties are ones implied by law and may be limited or excluded by the seller. There are two kinds of implied warranties. 1) The implied warranty of merchantability assures that the product lives up to the quality of other goods of the same type and quality. 2) An implied warranty of fitness for a particular purpose arises when a consumer relies on the expertise of the seller in selecting a product. Because Montana law allows both of these implied warranties to be limited or excluded by the seller, a consumer purchasing an assistive mobility device may not have a remedy.

The Montana Consumer Protection Act considers it unlawful to engage in unfair methods of competition and unfair or deceptive practices in the conduct of any trade or commerce. Basically, the Act is effective only where there is deception. It is ineffective in helping consumers get assistive mobility devices back in working order.

The only other possible recourse is through the common law. The common law provides minimal protection through a tort action of deceit or a contract action of fraud. Both are extremely difficult to prove in a court of law.

H.B. 335 addresses these concerns in a number of ways. First, it requires that a

Representative Duane Grimes

Page 2

January 31, 1995

manufacturer provide a one year express warranty to cover parts and performance, condition that substantially impairs the use, value or safety of the chair. Failure to provide an express warranty will result in a four year implied warranty. The consumer has three remedies. Repair the defect, replace the mobility assistive device or return the device and receive a full refund minus reasonable allowance for use. The manufacturer, not the dealer is liable for refund or replacement of the device.

H.B. 335 is a carefully drafted bill meant to deal with the concerns of consumers with disabilities who purchase mobility assistive devices. It is similar to other Montana statutes which address products not adequately protected by current warranty such as new vehicle sales, motor vehicle repairs, and hearing aids. Therefore, I urge this committee to recommend "do pass" to H.B. 335.

Sincerely,



Edward L. Myers III

Attorney at Law

EXHIBIT 2
DATE 2/1/95
HB 335

Sheila James
2075 Cooper, #514
Missoula, MT 59802

February 1, 1995

Chairman Duane Grimes
The House Committee on Human Services and Aging
Capitol Station
Helena, MT 59620

Dear Chairman Grimes and members of the Committee,

In 1989 I was making a transition from living in a nursing home and I was getting a wheel chair to use for mobility while living in my own apartment. The electric reclining wheel chair is very important because it is my only means of mobility unless someone is pushing me. I have cerebral palsy and have had little use of my legs and arms.

About 2 weeks after I got the chair the bearings for the front wheel on the right side fell out. I had the dealer come and pick up the chair to make repairs. It took about 6 weeks until I had the chair back so I could use it. About 2 weeks later the bearings on the same wheel fell out again. It took about 1 month to get the second repair done. I asked if there was an electric chair for me to use while my chair was being repaired and I was told that there was not. While my electric chair was being repaired I had to use a manual chair, meaning that I could not even move around in my house without someone to push me.

My electric chair is controlled by means of a "midline control," positioned so that I can maintain posture while driving. This control fell off several times, and, since I was not able to reach the control I was left outside my house traveling down the street because of a lack of curb cuts, with no means of mobility. I had to wait until some came along and put the control back on the chair. This happened several times until they decided to weld the control onto the arm of the chair.

There were also times when the chair would recline and then not return to the upright position because the reclining mechanism came apart. Although this could be repaired quickly by a repair man, it did happen repeatedly.

One time while I was traveling down the street, again because of a lack of curb cuts, I attempted to cross a railroad track right next to a sidewalk where the track seemed to be level with the pavement. I got my front wheels turned and I was stuck on the tracks until someone helped me out.

The chair has a high center of gravity so it tips easily. Sometimes I feel like the chair is going to tip over. This prevents me from going places I want to go because of obvious

safety considerations. I am afraid to use the chair because I am afraid it will break down or tip over.

I have been told that the chair has been fixed and I do not agree. I feel like every time I use it something else will go wrong with it or that it will fall apart, so I don't use it. I have not used it for about 2 and 1/2 years. It just stays in my closet.

Medicaid paid \$14,000 for what amounts to a motorized clothes hanger. The chair is useless to me and a huge waste of money for the state. I have contacted Medicaid and they just tell me to have the dealer fix it.

I again urge the passage of HB335, the Wheel Chair Warranty Act." I believe this bill will go a long way in preventing problems like this happening to me and others.

I would like to thank the Chair and the members of the committee for taking my testimony.

Sincerely,

Sheila James

EXHIBIT 3
DATE 2/1/95
HB 335

Peter Leech, M.S.W.
Licensed Clinical Social Worker
5190 Old Marshall Grade
Missoula, Montana 59802-9874
408-548-3239

January 31, 1995

Representative Duane Grimes, Chairman
House Committee on Human Services and Aging
House of Representatives Chambers
Capitol Station
Helena, MT 59620

Dear Mr. Chairman, Vice-Chairman and Members of the Committee:

My name is Peter Leech and I am a graduate Social Worker with 30 years of experience working in the field of physical rehabilitation, independent living skills and assistive devices for people with disabilities. I am also a person with a disability acquired almost 39 years ago, and for about four years was co-owner of a wheelchair manufacturing company. I want to submit the following testimony in reference to HB 335, the Wheelchair Warranty Act:

In both my personal and professional experience, I have come to know the value of reliable wheelchairs which enable people with disabilities to live independently, acquire marketable skills through education and training, and become contributing members of the community and the workplace.

When a person's only mobility device is faulty and unreliable, it not only can seriously interfere with a person's progress toward independence, it can, in fact enforce dependence due to school dropout, breakdown of training, loss of job, and confinement to home or bed.

I personally have had the newest model chair of a major manufacturer break down in the first day of use and require many weeks to acquire the parts to repair, only to have it break down again after several days. Over the years of my work I have witnessed many peoples lives seriously disrupted when the new wheelchair they were counting on to get them to school, work or to the store left them stranded. Too often, the manufacturer's response is that the person "must have been using the chair improperly", as a way to avoid taking responsibility for repair or replacement.

A Wheelchair Warranty Law will support people with disabilities striving for independence and encourage manufacturers to provide more reliable equipment.

Thank you for your attention. I will be glad to answer any questions you might have.

Sincerely,


Peter Leech, M.S.W.

January 31, 1995

Representative Duane Grimes, Chairman
Representative John Bohlinger, Vice-chair
Capitol Station
Helena, MT 59620

Dear Chairman and Members of the House Committee on Human Services and Aging:

My name is Pam Nelson, from Missoula. I am here to speak on behalf of myself and other persons with disabilities in support of House Bill 335 known as the Montana Wheelchair Warranty Act.

Twelve years ago I was in an automobile accident which left me in a wheelchair and using respiratory. During this time I encountered a series of problems that we with disabilities go through in using wheelchairs. When I first received my chair, there was a time when it was broke down for a period of two years. I was confined to a manual wheelchair and was dependent upon people to push me where ever I wanted to go. The chair did not fit my body properly, it created a lot of pain and discomfort, so I would have to stay on my bed. I could share many experiences during my 12 years, which at the present moment I am still using the same chair. Currently, I am advocating to get a new chair.

I feel that this bill would make manufactures responsible for their products. When I do get my new wheelchair, I want to have the right to enforce the warranty that will come with it, if it breaks or does not work properly. The Montana Wheelchair Warranty Act would allow me to choose a solution of the repair or replacement with a different chair, rather than being confined to bed. Manufactures don't necessarily care how long it takes to repair it or the inconvenience and disruption it causes in a persons life to be without mobility.

I feel my life is very valuable. I am a mother, grandmother, peer counselor to others with disabilities, a board member of my church, and a member of a very much needed group of people who speak to school age children about awareness of accident prevention. Without a reliable working wheelchair, which I am able to drive independently, I would not be able to do these things and contribute to my community.

As a person with a disability, I feel I embrace each moment to the fullest. I want to thank you for your time and listening, maybe you might be able to walk with us in understanding. Please support House Bill 335.

Sincerely,
Pam Nelson
819 Oak Street
Missoula, MT 59801

EXHIBIT

DATE

HB

2/1/95

335

Kathy D. Collins
2131 Villard Ave.
Helena, Montana

I am here to support HB 335,
the Montana Wheelchair Warranty Act.

I am sitting in the third power wheelchair I have owned in my lifetime. Although I have always had my disability, power wheelchairs were not a part of the picture until 13 years ago. The freedom, independence, and ADULT hood they have offered me is phenomenal; but there have been some of the hassles.

Because of my small size, wheelchairs are fitted to me in "Children's sizes." Physically, the leg rests are short enough, the seat is small enough, and the chair height is adequate. However, I am 37 years old, teach 8th grade English full time, and spend between 16-18 hours per day in my chair. I drive a mini van, maintain my own home, and am owned by and ~~raise~~ raise my service dog, Mande. My lifestyle is that of an adult, but my power wheelchair choices are

are geared toward small children. And so comes the story of my second power wheelchair, my own Everest & Jennings "Marathon" nightmare.

Within the first year of owning my E & J power wheelchair, the motors were replaced twice, the joystick three times. Bearings froze up; batteries had to be replaced every six months at a cost of \$200. per set. And, because I purchased the chair from an out of town supplier, not only was I charged for repairs after the warranty expired, but I was also charged \$35 every time their technician came to service my chair.

Most power wheelchairs have a five or more year lifespan. However, that E & J chair was completely dead in 4 years. It had cost \$3,650, and had to be replaced. Its connectors were melted together, its motors were completely frozen, and I still owed the supplier \$200.

Had HB335 been in place in 1986, I could have had some recourse to deal with Everest & Jennings' responsibility in providing me

EXHIBIT 5
DATE 2-1-95
11 HB 335

with an unsuitable piece of equipment. No such safety net existed then but now you have the opportunity to set one up.

My life depends on the safety and suitability of the power wheelchair I use. Please ensure that disabled Montanans like myself are protected from being stuck with faulty wheelchairs. Please pass HB 335.



EXHIBIT 6
DATE 2/1/95
HB 335

Rehabilitation Center

Community Medical Center
2827 Fort Missoula Road
Missoula, MT 59801
(406) 728-4100
TDD: 728-6724

January 31, 1995

Dear Chairperson, Vice-Chairperson and members of the Committee:

My name is Mary O'Connell and I am a registered physical therapist at Community Medical Center in Missoula, MT. I am writing to urge you to strongly consider supporting the potential bill requiring wheelchair manufacturers to not only educate their consumers on an existing warranty; but to also back this warranty in a reasonable amount of time.

It is not an everyday occurrence that a client is without a wheelchair; but it is a catastrophe when it happens. As the system works now, a warranty exists for the frame of a wheelchair for the first year. Many clients do not know about this warranty. There is no set period of time that a wheelchair manufacturer must respond to a broken piece of equipment. A recent example would be a local Missoula man. He received a new expensive powered wheelchair. In the two years he has had this wheelchair, it has been out of commission for six months. It was obvious to me that the manufacturer had no reason to offer customer service to this client. As a therapist, who works one thousand miles away from most of these manufacturers, I am powerless over the phone.

There are several areas of this bill that appeal to me. The need to replace a part of a wheelchair or a wheelchair that has broken down for the same reason repetitively is excellent. There must be some way to regulate the quality of equipment being sold.

I am delighted to give my support to an effort such as this one. If I can be of any assistance in any way, please contact me at (406) 728-4100 ext. 5450.

Sincerely,

Mary O'Connell, RPT
Community Medical Center
2827 Fort Missoula Road
Missoula, MT 59803

EXHIBIT 7
DATE 2/1/95
HB 335

MEMORANDUM

TO: DUANE GRIMES, CHAIR HUMAN SERVICES AND AGING
FROM: LARRY NITZ, 1101 WEST 16th ST. HAVRE, MT 59501
DATE: January 31, 1995
SUBJECT: REQUESTING SUPPORT FOR HB.#335 (THE WHEELCHAIR ACT).
I BELIEVE A BILL LIKE THIS IS LONG OVERDUE IN THE STATE
OF MONTANA.

FAX TO: BARBARA LARSEN (406) 243-4730.

EXHIBIT 8
DATE 2/1/95
HB 335

January 31, 1995

Dear Mr. Duane Grimes:

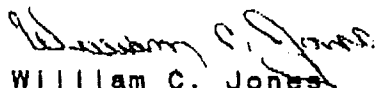
I would like to voice my desire to have a "lemon" law imposed on wheelchairs. I am a quadriplegic and rely on my wheelchair exclusively for a mode of transportation. Consequently, a dependable wheelchair is of utmost importance to me. Unfortunately, in the past I have purchased wheelchairs that have been true "lemons".

I know many individuals in wheelchairs that are purchasers of wheelchairs and found that the remedies provided by the manufactures, after limitations had been imposed by seller, were inadequate when they purchased a wheelchair that proved to be defective, or what is sometimes called a "lemon". In response to these frustrations, I would like to see state legislatures enact a lemon law pertaining to wheelchairs.

Basically, I would like a lemon law that would provide that if a wheelchair under warranty posses a defect that significantly affects the wheelchair's value or use, and the defect has not been remedied by the seller within a specific number of opportunities (usually four), the buyer is entitled to a new wheelchair, replacement of defective parts, or return of all consideration paid.

Please be assured that a LEMON LAW imposed on wheelchairs would be very beneficial to wheelchair users, insurance companies and Medicare/Medicaid services.

Sincerely;



William C. Jones
Commission Member to
Governor's Human Rights Advisory Commission.

EXHIBIT 9
DATE 2/1/95
HB 335

January 31, 1995

Representative Duane Grimes
Chairman, Human Services and Aging Committee
Capital Station
Helena, Montana 59602

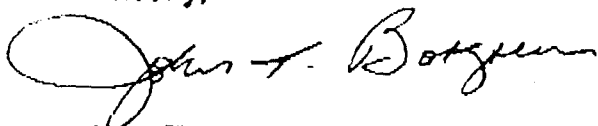
Dear Chairman Grimes and Committee Members,

I am writing in support of the Wheeled Mobility Devise Warranty Act. Although disabled consumers have some protection and recourse under the existing Consumer Laws of Montana, loop holes such as seller waiver of warranties and lengthy and costly court proceedings present obstacles to quickly resolving an issue for an individual generally dependent on a wheelchair for daily living.

This is a fair, common sense statute addressing a real and significant problem facing many of our disabled citizens.

Thank you.

Sincerely,



John T. Borgreen
Case Manager
AgrAbility Project

EXHIBIT 10
DATE 2/1/95
HB 335

Post-It™ brand fax transmittal memo 7671		# of pages » <u>1</u>
To <u>Barb</u>	From <u>Dixie Snobl Johnson</u>	
Co.	Co.	
Dept.	Phone # <u>406-562-5538</u>	
Fax # <u>406-243-4730</u>	Fax # <u>406-563-3275</u>	

Dixie Snobl Johnson
9 Fairview South
Anaconda, Mt 59711

January 30, 1995

Chairman Grimes;

EXHIBIT _____
DATE _____
HB _____

I write in support of HB 335, the Montana Wheelchair Warranty Act.

I am a Registered Occupational Therapist serving clients in Butte-Silver Bow, Anaconda-Deer Lodge and Powell counties. I have had several experiences assisting clients who have purchased wheelchairs with defects that significantly limited the wheelchairs expected functions. The dealers in our area have been willing to assist clients, but it is often difficult to obtain parts from manufacturers in a timely manner. Therefore my clients are without mobility, impairing their independence to complete activities of daily living.

Section 5 of HB 335, is especially relavant as it defines reasonable number of attempts to conform. I have witnessed clients who have had the same defect repaired several times in a year, losing 2 to 3 months of service from their wheelchair, while waiting for parts and repairs. Ultimately they have had to purchase a new wheelchair, because the first wheelchair purchased has limited their mobility instead of increasing it as expected.

The limitations and delays of unexpected defects in wheelchairs interfere with many of my client's ability to obtain independence. HB 335 will enable them to pursue timely and appropriate repairs or have the manufacturer accept return of the wheelchair or replace it with a wheelchair that meets the needs of the client.

Sincerely,

Dixie Snobl Johnson OTR/L
Dixie Snobl Johnson OTR/L

EXHIBIT 11
DATE 2/1/95
HB 335

January 31, 1995

Attention: Duane Grimes

In regards to house bill #335 I would like to express my feelings on this issue. I will support this bill because I believe the cost of new wheelchairs is outrageous anywhere from \$2,500 for a manual chair to as much \$14,000 for a electric chair. Someone is really making a killing. That's an awful lot of money for something to sit in. For that price we the consumers should not have to worry about who will make repairs when something goes wrong that should be included.

Sincerely,

Robert Drazich

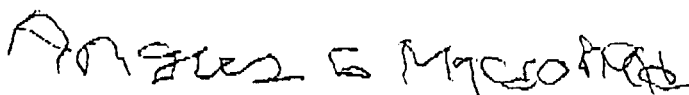
EXHIBIT 12
DATE 2/1/95
HB 335

January 31, 1995

Representative ~~Wayne~~ Grimes Chairman
House Committee on Human Services and Aging
House of Chamber, Capitol Station
Helena, MT. 59620

Dear Ladies and Gentlemen of the Committee:

I am Angus Macdonald. I am addressing you on State House Bill 335. The proposed Lemon Law for Wheelchairs which, if passed as I understand it, will force the companies who provide electric and manual wheelchairs to honor their service warranties. I am very interested in seeing this bill passed because I myself have been confined to a wheelchair my entire life due to Cerebral Palsy. The wheelchair that I now have is an Everett and Jennings Lancer model. It was purchased for me in 1990 through Harrington Surgical Supply of Butte. Since the purchase of this chair I have encountered numerous problems. It started as soon as I ordered the chair. I was told to expect delivery of the chair in 6-8 weeks, which later turned into 12 months. Six months after delivery the electronic brain of the chair broke down. In the past four years the chair has had seven brain transplants, and each time it has taken between 4 and 8 weeks to repair the chair. During these times of repair, I was forced to use a 23 year old electric wheelchair which is not capable of performing the functions which I need. In 1992 the cover on one of the indicator lights on the Lancer chair broke and has yet to be replaced. This causes a serious problem in possibly inclement weather because if any moisture were to get into the control box it would short out the entire chair. Because I am so dependent on the Lancer wheelchair, it is imperative that I receive repairs on the chair in a timely and considerate fashion. After due consideration, I believe that House Bill 335 will enable the physically disabled community of the State of Montana to receive the warranty coverage they are entitled to for the life of their wheelchairs. I sincerely wish to thank the members of this committee for considering my viewpoint on this issue. Please regard this letter as my personal testimony to State House Bill 335.



Angus Macdonald
1408 S. Willson
Bozeman, MT 59715
406-586-2248

EXHIBIT 13
DATE 2/1/95
HB 335

My name is Joe Harrington. I am a twenty-nine year old male residing in Billings and I am writing this letter in response to H.B. # 335. Due to a car accident ten years ago, I only have the use of one hand. As a result, I rely on a power wheelchair for my mobility. I am a college educated individual with a Bachelor of Science in Elementary/Special Education. Funding for this endeavor was underwritten largely by Voc. Rehab., for which I'm grateful. My second power wheelchair, an Everest and Jennings (E&J) Marathon, gave me a lot of trouble. The first six months the chair was in my possession, it was in the shop more than I used it. Most of these problems were eventually solved, but while it was being repaired I was forced to get myself around using a one-arm drive, pump manual chair. This was really hard. Although it was difficult, at least I had a method of mobility. My manual chair is currently unusable so that's not even an option, and under current state funding levels I can no longer have two chairs repaired. So I'm left with no back-up. Earlier last fall, my current power chair (an E&J Lancer) broke and took six weeks to get repaired. During this time, I was confined to my bed in my home. I have a job now with Living Independently For Today and Tomorrow (LIFTT) in Billings and I'm afraid that if something of that nature were to happen again, I might lose my job due to unreliability; even though it wouldn't necessarily be me who was the unreliable party but the machinery I depend on to get around.

EXHIBIT 14
DATE 2/1/95
HB 328

STATE OF MONTANA

HEALTH PROFESSIONAL SHORTAGE AREAS

1993 - 1994

The original of this document is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES
DIVISION OF HEALTH SERVICES
COGSWELL BUILDING
HELENA, MONTANA

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Gregory S. Munro
David R. Paoli
Michael E. Wheat

Russell B. Hill, Executive Director
#1 N. Last Chance Gulch
Helena, Montana 59601
Tel: (406) 443-3124
Fax: (406) 443-7850

Gregory S. Munro
President
Michael E. Wheat
President-Elect
Gene R. Jarussi
Vice President
John M. Morrison
Secretary-Treasurer
William A. Rossbach
Governor
Paul M. Warren
Governor

February 1, 1995

Rep. Duane Grimes, Chair
House Human Services and Aging Committee
Room 104, State Capitol
Helena, MT 59620

RE: HB 328

Mr. Chair, Members of the Committee:

Thank you for this opportunity to express MTLA's qualified support for HB 328, which provides tax and other incentives to attract doctors to medical-shortage areas. MTLA expresses several concerns about particular provisions of the bill, however, and strongly opposes subsection (c) of Section 4.

1. MTLA supports efforts such as HB ³²⁸~~370~~ which directly target rural areas of Montana. MTLA believes that limited access to health care in rural Montana essentially results from extremely low population densities, low per capita incomes among residents, and the demonstrable preference of those increasingly mobile residents to seek major health care from large, well equipped, well-staffed facilities located in urban areas. Consequently, any effort to improve rural access to health care by across-the-board legislation which equally benefits urban doctors and specialists fails to influence and may even aggravate these underlying economic dynamics.

2. MTLA believes that the genuine public interest in rural access to health care can and should be measured by the extent of public investment in improving rural access. Income and property tax incentives cleanly and efficiently focus that public interest. Additionally, direct public subsidies for the liability premiums of rural doctors would insulate them from the consequences of medical malpractice without exposing rural residents to horrendous injuries without hope of compensation.

3. MTLA notes that federal guidelines categorize "health professional shortage areas" (Section 3(2)) according to various health care professions, including dental, psychiatric, vision, pharmacy and veterinary care as well as primary medical care. In addition, federal guidelines which designate health professional shortage areas for

primary medical care exclude hospital staff doctors and doctors unwilling to accept Medicaid. Consequently, MTLA suggests that HB 328 require the department of health to designate Montana shortage areas independently.

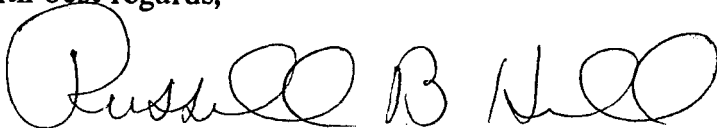
4. MTLA believes that the state should not abdicate its responsibility to license and supervise doctors who practice medicine in Montana (Section 3(3); Section 4(3); Section 8.)

5. MTLA believes that the immunity provided by subsection (c) of Section 4 will increase the incidence of medical malpractice in rural areas and deprive rural victims of any recourse. Tort liability serves two purposes: it compensates victims of wrongdoing, but it also deters wrongdoing. Within the context of a bill which encourages semi-retired doctors to continue practicing medicine, this provision immunizes doctors who delay the painful but necessary admission that age can disqualify any doctor from continuing to practice medicine.

6. MTLA believes that democracy necessarily prohibits the sale of certain fundamental rights of Montana citizens--such as the right to vote and right to compensation for wrongful injury--no matter how pressing the need for goods or services. Consequently, MTLA opposes Section 4, subsection (b), which essentially permits doctors to sell negligent, even grossly negligent, health care to citizens in desperate need of competent health care.

Thank you for considering these comments. If I can provide additional information or assistance, please contact me.

With best regards,

A handwritten signature in black ink, appearing to read "Russell B. Hill", written in a cursive style.

Russell B. Hill
Executive Director

Northwest Montana Surgical Associates, P.C.
General, Vascular and Thoracic Surgery

1273 Burns Way
Kalispell, Montana 59901
406-752-5000 • 406-756-6920
FAX 406-752-8220

EXHIBIT 16
DATE 2/1/95
HB 328

January 30, 1995

Patricia England
Executive Secretary/Legal Counsel
Montana Board of Medical Examiners
111 North Jackson
Box 200513
Helena, MT 59620-0513

Dear Ms. England:

I am writing with regard to House Bill No. 328 which I understand will be heard in committee on 1/31/95.

I have serious concerns regarding this legislation for it seems not only to duplicate most aspects of the Montana Rural Physician Incentive Program currently in effect, but also provides for practicing medicine in Montana without oversight of the Montana Board of Medical Examiners.

I think it would be of interest to the legislators to understand the very difficult problems which we are now facing with physicians attempting to come into Montana who have a history of disciplinary problems, substance abuse problems, and licensing problems of one type or another from other states. I recall just recently a physician who had a Montana license getting into trouble in Kansas and being told to leave Kansas and to return to practice in Montana. Because there was a Montana license in effect, the Montana Board of Medical Examiners was able to monitor his behavior, monitor his history of substance abuse, and to involve him in the state's impaired physician program. Had he not been licensed by the State of Montana, he could have come straight into a small town situation under this new program with no knowledge by anyone of his impaired status.

It is essential that the legislators understand that there are impaired physicians seeking practices all over this country. It is only by the intricate process of licensure which is shared by all states that we as a licensing board are able to track and

Roch R. Boyer, M.D. • F. Gary Robbins, M.D. F.A.C.S. • James S. Bonnet, M.D. F.A.C.S.
David M. Fortenberry, M.D. • Stephen G. Milheim, M.D. • Robin Ann Harrison, M.D. F.A.C.S.

Diplomates of the American Board of Surgery

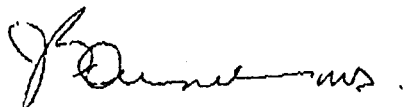
Ms. Pat England
January 30, 1995
Page 2

monitor these people. In the absence of proper monitoring by a State licensing agency, Montana could become a literal magnet for impaired practitioners which in many cases would put the community in great peril than not having any physician at all.

I am adamantly opposed to allowing any physician to come into the state of Montana without the full knowledge of the Montana Board of Medical Examiners with full disclosure to the Board of the physician's entire educational, practice, and disciplinary background.

Thank you for your assistance in calling these things to the attention of the legislative committee.

Sincerely,

A handwritten signature in dark ink, appearing to read "James S. Bonnet", followed by a small flourish.

James S. Bonnet, M.D.

JB/lsr

RECEIVED

JAN 31 1995



Garberson
Clinic

2200 Box Elder
Miles City, Montana 59301

406-232-0790
Fax 406-232-0799

A member of the Presentation Health System
Sponsored by the Presentation Sisters

January 31, 1995

Duane Grimes, Chairman
House Committee on Human Services and Aging
Montana 1994-95 Legislature

RE: House Bill #328, Section 37-3-301 (1)

Dear Mr. Grimes:

I wonder if I can take a few moments of your time to discuss a bill that is pending before your Committee on Human Services and Aging?

I am a rural physician in Miles City, Montana and want to tell you that I am very much in support of anything that the Legislature can do for our medical shortage areas. Here in Miles City and the surrounding area we have a very difficult time, as you know, recruiting physicians and other health care providers, and certainly support from the Legislature is most appreciated.

As a member of the Board of Medical Examiners, and as a physician in a rural community, however, I am concerned about a provision of House Bill #328 that seems to circumvent the licensing board in the state of Montana. As I understand this bill, a physician who is licensed in another state would be able to practice in the state of Montana without being licensed in the state of Montana. I have been on the Board of Medical Examiners for a little over a year, and I have seen practitioners who have a variety of problems with their practice, possibly with drug and alcohol abuse as well as other problems apply for licence to the state of Montana. Fortunately, because these individuals have to come before the Board of Medical Examiners, these problems ordinarily are discovered and if the individual represents a danger to the citizens of the state of Montana, this is analyzed, and appropriate steps are taken to make sure that these individuals don't prey on the citizens of the state of Montana.

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John C. Robinson, M.D., A.B.F.P.

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J. Robert Grierson, M.D., F.A.C.S.

Sports Medicine

A. Lewis Vadheim, M.D., F.A.C.S.M.

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Malcolm D. Winter, M.D.

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James E. Linderman, PA-C

Otolaryngology

Norman R. Manor, M.D., F.A.C.S.

Audiology and Speech

Lynn Harris, M.A., CCC SP/A

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Arthur E. Fitz, M.D., Radiologist
Mark N. Inon, M.D., Radiologist

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Garberson Eye Clinic
2000 Clark St. • P.O. Box 1764

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F. Tom Peterson, Ed. D.

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Wayne C. Cure, PA-C
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Caring for Life

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JAN 31 1995

Duane Grimes

Page 2

January 31, 1995

Our rural areas, both hospitals and clinics, look to the Board of Medical Examiners to reassure them that the individuals that are coming to the state are indeed qualified and safe to practice in the state.

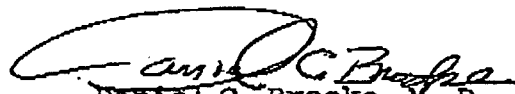
Section 37-3-301 (1) which would circumvent Licensure could be very dangerous, and one could even make an argument that a practitioner who is having difficulty in other states might seek to come to a state that had an alleged loop hole in their laws and regulations so they could avoid scrutiny of any licensing board.

I would appreciate your kind attention to this provision of the proposed new law.

I certainly would be happy to discuss this with you and provide any other input that you desire.

Thank you very much.

Sincerely,


Daniel C. Brooke, M. D.
Miles City, MT

DCB/ckr
cc: Ellen Bergman

Rocky Mountain Eye & Ear Center, P.C.EXHIBIT 16DATE 2-1-95HB 328

700 West Kent
Missoula, Montana
59801

January 27, 1995



TO: PATRICIA ENGLAND, EXECUTIVE SECRETARY
MONTANA BOARD OF MEDICAL EXAMINERS

RE: HOUSE BILL #328

Dear Patty:

The Montana State Board of Medical Examiners is responsible to protect the public and make sure properly licensed M.D.'s are practicing within set medical standards. The Montana license is a privilege and allows physicians to work in Montana. Licensure has been standardized throughout the United States so as to have only one level of licensure. None of the states allow M.D.'s to practice in their state without a license. Physicians working at a U.S. military base are now required to have a state license. Each state is responsible for the physicians working in their state. Many physicians have several state licenses. For example, if an M.D. has both a Montana and an Idaho license but practices in Idaho, then the state of Idaho is responsible to monitor that physician. Any complaint about his practice would be investigated and resolved by Idaho. Although he is licensed in Montana, we would have no authority over his practice in Idaho. If Idaho disciplined or restricted his license, then we would be informed and have the opportunity to review Idaho's action and consider disciplining his license in Montana.

Allowing a physician to practice without a license in Montana with another state responsible for that physician would be a non-workable situation. This would compromise the ability of the Montana Board of Medical Examiners to protect the public. The goal of House Bill #328 should be to provide good quality of care to the rural areas. These physicians who work there should have no difficulty acquiring a Montana license if they are licensed in other states. I don't see where acquiring a Montana license should deter them from trying to practice in a rural area.

Regards,

Richard W. Beighle, M.D.

RWB/dag

Eye Department
Contact Lens (406) 728-3504
Optical (406) 543-6000

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Butte (406) 494-3145
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Strabismus
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James C. Randall, M.D.
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David M. Hayes, M.D.
Facial Plastic and Reconstructive Surgery
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Darlene I. Timmerhoff
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Human Services & Aging

DATE 2-1-95

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PETER KEBZAT 590 OLD MARSHALL GRADE MISSOULA	HB 335		
Sheila R James 2075 Cooper #514 Missoula MT	HB 335	X	
Paul Peterson 6216 Longview Dr. Missoula MT 59802	HB 335	X	
Ralph Martin 5470 Victor Rd. Bozeman MT 59715	HB 335	X	
Edward L. Nyce 304 N. Higgins	HB 335	X	
Melissa N Case	H.B. 335 / CMCD	X	
Pan Nelson 819 Oak Mska	H.B. 335 / CMCD	X	
Mark Chute 21606 So 13th Msla	H.B. 335	X	
Barbara Larsen 25650 Vandenburg Ln. Alice MT	H.B. 335	X	
Andrie Larose	Montana Advocacy Program HB 335		
Tom Ebzery	St Vincent Hosp Health Ctr HB 338		

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HOUSE OF REPRESENTATIVES
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Sue McCurn	MA EMS P		
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Terry Krantz	Dept of SRS medicare		
Kathy D. Collins	Consumer	HB 335	
Pat England	Bd. of Med. Exam.		
Russell B Hill	MT Trial Lawyers	HB 328	HB 328

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