

MINUTES

**MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By **CHAIRMAN JOHN HERTEL**, on January 25, 1995, at
8:00 a.m.

ROLL CALL

Members Present:

Sen. John R. Hertel, Chairman (R)
Sen. Steve Benedict, Vice Chairman (R)
Sen. William S. Crismore (R)
Sen. C.A. Casey Emerson (R)
Sen. Ken Miller (R)
Sen. Mike Sprague (R)
Sen. Gary Forrester (D)
Sen. Terry Klampe (D)
Sen. Bill Wilson (D)

Members Excused: N/A

Members Absent: N/A

Staff Present: Bart Campbell, Legislative Council
Lynette Lavin, Committee Secretary

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

Committee Business Summary:

Hearing: SB 164, SB 196
Executive Action: SB 196 DO PASS

HEARING ON SB 164

Opening Statement by Sponsor:

SEN. DELWYN GAGE, SD 43, Cutbank, stated that SB 164 was the result of a complaint from one of his constituents who couldn't understand why he was required to pay for a city business license when business owners in the same area were not required to have one. **SEN. GAGE** reported that after checking into this complaint he discovered that all sorts of people have gotten themselves exempted from city licensure. The intent of the bill is to require all businesses to be licensed by the city. **SEN. GAGE** explained that due to Supreme Court edict attorneys could not be included in the bill. This would infringe on the Supreme Court's right to regulate the legal profession in Montana. If a

community decides to license businesses, they should license everyone. **SEN. GAGE** believes this bill makes sense on the basis that those businesses that have been exempt from licensure receive the same services that every other business owner in a community receives. He was told that the reason licensing was implemented was to allow communities to know who is in business and who is not. He added that the licensure also provides a small amount of revenue for municipalities.

Proponents' Testimony:

Alec Hansen, representing the Montana League of Cities and Towns, believes that SB 164 is a fairness issue. The professions that are exempt seem to be those who have lobbyists at the legislature to argue their reasons for exemption from municipal business licenses. If one business has to pay they should all pay. **Mr. Hansen** added that it also helps municipalities determine if the applicants are a legal and legitimate form of business.

Opponents' Testimony:

John Shontz, representing the Montana Association Realtors, stressed that the city business license is not a tax. The fee that is paid for the license is a minimal processing fee. The city licensure is a regulatory tool not a revenue producer. **Mr. Shontz** explained that the most dramatic example of a need to regulate businesses is the itinerant merchants. The municipalities' only control over this is to require a license.

Mr. Shontz pointed out that if the city is charging \$20 to process the business license and the city's cost to process it is \$5, under the law the rate should be dropped \$15. The fee itself is not a fund raiser.

He stated that history shows that in the late 1970's a few of the attorney generals' opinions stated that the city business license is a regulatory license. Therefore, professions that are already regulated by the state cannot be re-regulated or additionally regulated. He explained that this is the reason some professions have been exempt from city licenses. It is not a matter of being exempt from the fee but being exempt from an additional regulatory process.

Mr. Shontz explained that one of the reasons city licenses were implemented was to be used as a tool to help determine who was in business so that the county could collect taxes on inventory and fixtures. This information is already available to the county for professions that are regulated at the state level. He insisted that the fee is tied to the cost of issuing the license and because the state is already regulating certain people, those people are already paying a fee associated with their state license. That is why the exemption is there for certain professions. **Mr. Shontz** pointed out that **SEN. GAGE'S** constituent who complained that his neighbor was exempt was mistaken, his

neighbor is being regulated at the state level.

John Shontz warned the committee that if they change the tenor and allow local governments the opportunity to say this is not a license fee but rather a tax, they could then raise it considerably because the cost would no longer be tied to the cost of processing the license.

Mary Lou Garrett, Executive Secretary, Montana Chiropractic Association, stated that the legislature did not grant this exemption to chiropractors. A people's initiative in 1918 put the language in the law that exempted chiropractors. The people of Montana granted the exemption. She also stressed that every time a law is passed it puts another little cost on health care professionals, that cost is pushed out to the patient. That seems to go against the general desire to keep health care costs down.

Mona Jamison, Montana Speech and Language Association, agreed with the previous testimony of **Mr. John Shontz**. She added that this bill is an unnecessary measure. If a person or business is regulated at the state level then they should be exempt from local regulation.

Mary McCue, representing the Montana Dental Association, stated that their association represents 95% of dentists in the state. She stated they also agreed with **Mr. Shontz's** testimony.

Stuart Doggett, Montana Veterinary Medical Association, stated that the veterinarians in Montana oppose SB 164. He read a letter from Dr. William Rogers, former President of the Montana Veterinary Medical Association, as testimony. **EXHIBIT #1**

Two additional letters of opposition to SB 164 were presented for the record, the first from **Darlene Dattoiola, Montana State Cosmetologists Association**, **EXHIBIT #2** and the other letter from **Mary Brown, Montana Board of Cosmetologists**. **EXHIBIT #3**

Informational Testimony: None.

Questions From Committee Members and Responses:

SEN. MIKE SPRAGUE asked **SEN. GAGE** if the intent of the bill was to license those who are licensed at the state level or an attempt to find those who are skirting the system and require them to be licensed. **SEN. GAGE** clarified that the people they intended to bring under licensure by municipalities are those who currently have statutory or supreme court authority to be exempt.

SEN. SPRAGUE asked, if the bill was passed, would there still be others who weren't required to be licensed or regulated. **SEN. GAGE** replied that this bill would give municipalities authority to license any business that is within their borders.

SEN. SPRAGUE stated that inspections for sanitary conditions, etc., are the responsibility of the local level of government. For the minimal license fee the municipality must inspect as they have been mandated to do. He asked **Mr. Shontz** to define the difference between licensing and enforcement. **Mr. Shontz** replied that the argument that everyone should pay because everyone is getting the benefit is moot because the city can only assess a fee to cover the cost of processing the license application. The State of Montana does regulate certain professions and there are enforcement levels specific to the different professions, for example the disposal of certain wastes. At the local level the county issues a permit to operate a given business; the fee that is paid to the county is to pay for the inspection program.

SEN. SPRAGUE pointed out that a big concern to small businesses is the mobile vendor. He asked what means or funds a local municipality was to use to inspect the vendor if the vendor was licensed at the state level. **Alec Hansen** answered that there is a separate section of law that relates to municipal governments licensing itinerant vendors but he was unsure what the exact section was. He stated the issue of mobile vendors is a delicate one and that licenses are required in some cases.

SEN. KEN MILLER asked **SEN. GAGE** if the bill required a municipality to charge a fee or if it simply gave them the option to charge a fee for licenses. **SEN. GAGE** replied that it gave the municipality the option.

SEN. BENEDICT asked **SEN. GAGE** to disclose the nature of the business the constituent, who had motivated him to draft this bill, owned. **SEN. GAGE** stated that the constituent was into a little bit of everything and is licensed for quite a few things.

SEN. EMERSON asked if the fee the constituent was paying was big enough to be a real problem. **SEN. GAGE** replied that he believed it was the principal of the matter more than the monetary amount.

SEN. EMERSON asked what was the general amount of the fees. **Mr. Hansen** replied that it varies from town to town. In Helena it is based on the number of employees and generally is \$40-\$300. It is regulatory but it is also based on the services offered.

CHAIRMAN HERTEL questioned, of those licenses that are not determined by the state, did the city determine the size of the cost. **Mr. Hansen** replied that uniformity is the issue.

{Tape: 1; Side: B}

SEN. SPRAGUE stated that he had located the section of the law affecting mobile vendors. He explained that they are required to buy a one year right to do business in the city for \$15. He expressed that he was concerned that if a complaint was filed

against the mobile vendors was an incentive there for the city to investigate when the vendor is only there for a short time. Does the burden of responsibility fall on local municipalities to check into complaints on vendors. The bill doesn't seem to have much affect on the mobile vendors.

SEN. MILLER asked **John Shontz** to explain why this could not, by law, be a revenue source for the cities. **Mr. Shontz** stated that the charge or license fee must reflect the cost associated with the license. It is not a tax. He further explained the cost depends on the expense of the regulatory board.

Closing by Sponsor:

SEN. GAGE closed by pointing out that there is a different purpose for the regulatory fees charged by the state and by municipalities. The state's regulation is on the basis of qualification. The city license has nothing to do with qualification. He stated that there is no difference between calling it a fee or calling it a tax. **SEN. GAGE** reported that there are a number of industries who are regulated by the state but are not exempt from the municipality level. The incentive to the municipalities is to protect the full time merchants in the community.

SEN. GAGE noted that one of the things done in Helena is determine that rather than use the dirty word "tax", there is simply an increase in fees. The municipalities have need for this too. He also pointed out that the licenses are to ensure that the business is within a correctly zoned area.

HEARING ON SB 196

Opening Statement by Sponsor:

SEN. GAGE, SD 43, Cutbank, explained that this bill will repeal the Montana Ratemaker Act. Both the Insurance Commissioner and the insurance companies have indicated that the act is not workable. He stated that it is in everyone's best interest to pass the bill and repeal the act.

Proponents' Testimony:

Jacqueline Lenmark, American Insurance Association, read her written testimony. **EXHIBIT #4**

Frank Cote, Deputy Insurance Commissioner for the State of Montana, stated that he agreed with **Jackie Lenmark**. He explained that when the technocrats tried to implement the Montana Ratemaker Act they found that it was not a workable solution. Under the current market conditions this regulation is one that does not work.

Larry Akey, National Association of Independent Insurers, pointed out that the fiscal note states that the Ratemaking Act was never implemented and he believes that fact says it all.

Ron Ashebrenner, State Farm Insurance Companies, asked that the committee repeal the Ratemaking Act and pass SB 196.

Opponents' Testimony: None.

Informational Testimony: None

Questions From Committee Members and Responses:

SEN. GARY FORRESTER asked **Mr. Cody** to tell him specifically the insurance products that have not been brought to Montana because of the Ratemaking Act and to estimate how much money he could have saved if he had had access to these products. **Mr. Cody** replied that he could not quantify that. He stated that **Jackie Lenmark** represents companies that have expressed interest in coming to Montana and writing medical malpractice insurance. He believes that an increase in competition would be beneficial to the consumers in Montana. **Jackie Lenmark** explained that physicians have probably lost significantly because of the act. There is no way to know what has not been available to the citizens because of this bill.

SEN. FORRESTER asked how much medical malpractice rates would decrease if the bill passed. **Jackie Lenmark** stated that she did not have any figures with her, but could supply them at a later time. She further stated that it is impossible to give an exact dollar figure for the change in rates because it would be affected by other factors such as how many new companies come to Montana and how soon, and the disposition of other legislation that is currently proceeding. **Ms. Lenmark** attested that removing the regulations would increase competition and therefore stabilize or decrease rates.

SEN. FORRESTER stated that he had recently read that medical malpractice rates had not increased tremendously. He asked **Ms. Lenmark** if there is a lot of volatility. **Jackie Lenmark** replied that depends on the length of time examined. She stated the issue of defining volatility is precisely the reason the companies were concerned about the ratemaking act in the first place. To define what is volatile is difficult. She agreed that looking at short term, right now, rates have started to stabilize. She stated that at the time this legislation was brought, rates were unstable and increasing dramatically. The law had the opposite effect of its intent.

Closing by Sponsor: **SEN. GAGE** closed by saying that he had chaired the interim committee that looked at insurance problems in general. The insurance commissioners' office had asked the

committee to look into malpractice rates and he encouraged **SEN. FORRESTER** to get a copy of that report. Legislation and state law has a tremendous affect on rates.

{Tape: 2; Side: A}

Questions From Committee Members and Responses:

SEN. FORRESTER asked **Bart Campbell** how a bill can be passed into law and then for 6 years fail to be implemented. Whose responsibility is it to catch that. **Mr. Campbell** stated the assumption in the fiscal note that the law was not implemented was made by **Dave Lewis, Budget Director**, and his staff. He said, from the testimony here, it was his impression there had been continuous dialogue on the law to try to implement it but the dialogue never resulted in anything that could be implemented. **SEN. FORRESTER** noted that for three legislative sessions nothing has been done. He stated that he was not aware that it was allowable for a law to be ignored.

CHAIRMAN HERTEL announced that **Bart Campbell** had been handed an amendment to SB 164 and therefore the committee would not be able to take executive action on the bill until the amendment could be reviewed.

EXECUTIVE ACTION ON SB 196

Motion: **SEN. WILLIAM CRISMORE** made the motion that SB 196 DO PASS.

Discussion: **SEN. FORRESTER** pointed out that they have been asked to repeal a bill that was never implemented. However, there is no information to show that rates haven't stabilized as a result of this bill. He stated that it appeared that rates had stabilized since the Ratemaking Act had been passed, but it was possible that they wouldn't remain stable. He said that it appeared to be another one of those bills that one just has to believe enough in the sponsor, because from the testimony it didn't appear that this bill was going to do any good.

SEN. SPRAGUE stated that legislation can be passed that says you can fly to the moon, but that doesn't implement it. It just means that the bill was passed. The implementors say it couldn't be done.

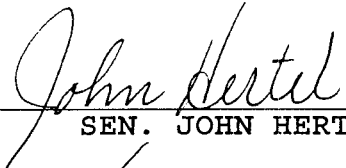
SEN. EMERSON stated he couldn't understand why the Ratemaking Act was ever passed. He said he could not see how legislators could sit in their position and pass a bill that will tell someone how to run their company and make a profit. If the wrong kind of bill is passed, the company will either go broke or leave the state. The micromanagement of companies by state legislature

stinks. He stressed that it never worked in any other country, so why would anyone think it would work in Montana.

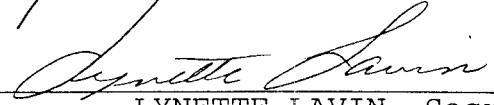
Vote: The motion that SB 196 DO PASS CARRIED unanimously.

ADJOURNMENT

Adjournment: The meeting adjourned at 9:15 a.m.



SEN. JOHN HERTEL, Chairman



LYNETTE LAVIN, Secretary

JH/11

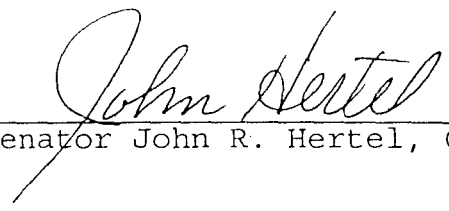
SENATE STANDING COMMITTEE REPORT


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
MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration SB 196 (first reading copy -- white), respectfully report that SB 196 do pass.

Signed:


Senator John R. Hertel, Chair

 Amd. Coord.

 Sec. of Senate

221244SC.SRF

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 1DATE 1-25-95BILL NO. SB# 164**Animal Medical Clinic**

5100 NINTH AVENUE SOUTH • GREAT FALLS, MONTANA 59404

WILLIAM A. ROGERS, DVM

Office (406) 761-8183

Home (406) 452-2728

Senate Business and Industry Committee

1995 Montana Senate

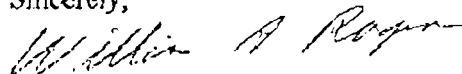
This letter is written in opposition to Senate Bill 164.

The first point is a veterinarian is required to take an examination to obtain a license to practice in the State of Montana. For this, we pay an initial exam fee and an annual registration fee. This license allows us to practice this profession in this state. Further taxation serves no useful purpose.

The second point is that the Practice Act which we practice under is written for consumer protection. (Client-Patient) I fail to understand how an additional tax on a license holder will further protect a consumer. This bill will require more bureaucracy and may cause a passing on of such tax to the consumer by an increase in veterinary fees that are already perceived to be too high.

The third point is that hopefully this is a political climate of down sizing government, bureaucracy and taxes, particularly taxation without representation. I do not see how Senate Bill 164 will down size government, protect consumers or represent the taxpayer.

Sincerely,



William A. Rogers

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. SB 164 Exh.#1DATE 1-25-95BILL NO. SB 164

SENATE BILL 164

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, MY NAME IS DARLENE BATTALOLA. I OFFER THIS WRITTEN TESTIMONY IN OPPOSITION TO SENATE BILL 164. I REPRESENT THE MONTANA STATE COSMETOLOGISTS ASSOCIATION AND ITS 400 MEMBERS.

I AM A COSMETOLOGY SCHOOL OWNER, A PAST SALON OWNER, AND AN ACTIVE WORKING BOOTH RENTAL COSMETOLOGIST.

SENATE BILL 164 ENDEAVORS TO REMOVE IMPEDIMENTS TO MUNICIPAL LICENSURE OF BUSINESS. COSMETOLOGISTS ARE LICENSED BY THE STATE BOARD OF COSMETOLOGY UNDER THE CONTROL OF THE DEPARTMENT OF COMMERCE.

ALL AREAS OF OUR PROFESSION ARE UNDER THE DIRECT SCRUTINY OF OUR BOARD, ITS LICENSING REQUIREMENTS, AND ITS ONGOING INSPECTIONS FOR SAFETY AND SANITATION.

ALLOWING MUNICIPALITIES TO LICENSE PROFESSIONS ALREADY LICENSED BY THE STATE AMOUNTS TO DOUBLE FINANCIAL IMPACT ON A SELECTED NUMBER OF PROFESSIONAL BUSINESSES, WITH NO POSITIVE RESULTS OTHER THAN "INCREASED REVENUES" FOR THE MUNICIPALITY. THE CONFUSION TO INDIVIDUALS INVOLVED AND THE GENERAL PUBLIC BY TWO SEPARATE LICENSING ENTITIES AND PROCEDURES IS NONPRODUCTIVE.

LICENSING OUR PROFESSION AND OTHERS WILL NOT BETTER SERVE OR PROTECT THE PUBLIC (OUR STATE LICENSURE DOES THAT), IT ONLY INCREASES THE BUSINESS COSTS AND THE MUNICIPALITIES REVENUES.

WE URGE YOUR OPPOSITION TO SENATE BILL 164.

DARLENE BATTALOLA
129 OAK LANE
BUTTE, MT 59701

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. #2DATE 1-25-95BILL NO. SB 164



MONTANA DEPARTMENT OF COMMERCE

Professional and Occupational Licensing
Board of Cosmetologists
111 North Jackson PO Box 200513
Helena, MT 59620-0513

Phone: (406) 444-4288
FAX: (406) 444-1667
TDD: (406) 444-2978

M E M O R A N D U M

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 3
DATE 1-25-95
BILL NO. SB 164

DATE: January 25, 1995

TO: Chairman John Hertel
Members of the Senate Business & Industry Committee

FROM: Mary Brown, Chairperson
Board of Cosmetologists *Mary Brown*

RE: Senate Bill 164 - An Act to remove state impediments to
the municipal licensure of businesses.

The members of the Board of Cosmetologists hereby submit written testimony in opposition to Senate Bill 164. The Board considered the bill as introduced at a regular meeting held on January 22, 1995. The Board takes the position that the ability of local government entities to impose a license fee could result in confusion to licensees and the general public. A cosmetologist wanting to open a salon could obtain a city license but neglect to obtain the proper salon license. Salon licenses are issued by the Board after ensuring that it is in compliance with sanitation and building code requirements for the benefit of the public health and safety. In addition, the Board considers a municipal licensure on a business that it already licensed and regulated as a form of taxation.

Based upon the foregoing reasons, the Board of Cosmetologists requests a do not pass on Senate Bill 164.

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 4
DATE 1-25-95
BILL NO. SB 196

STATEMENT OF
AMERICAN INSURANCE ASSOCIATION
BY
JACQUELINE TERRELL LENMARK
RE SB 196 REPEALING THE MONTANA RATEMAKING ACT

Mr. Chairman and members of the committee:

My name is Jacqueline Lenmark. I am a lawyer from Helena and a lobbyist for the American Insurance Association. The American Insurance Association is a national trade association that promotes the economic, legislative, and public standing of its some 250-member property-casualty insurance companies. The Association represents its participating companies before federal and state legislatures on matters of industry concern.

The American Insurance Association strongly supports SB 196.

This is a bill to repeal Montana Ratemaking Act. The Ratemaking Act was enacted in 1989. In 1989, Montana was experiencing a crisis in medical malpractice insurance. Doctors were leaving rural areas. Rural areas were having difficulty attracting doctors. During the 1989 session, there were a number of proposals designed to address this situation. One of those proposals came from then Commissioner of Insurance Andrea Bennett as the Ratemaking Act.

When repealing a statute, it is important to understand what the purpose of the statute was and why it is no longer necessary. The Montana Ratemaking Act was a supplement to the Insurance Commissioner's usual and proper regulatory authority. It permitted the Commissioner to declare a particular line of insurance to be "noncompetitive" or "volatile." If the Commissioner made such a

declaration, the Commissioner could then superimpose a rate different than the rate a company determined was necessary for its insurance product. Although it was the intent of the law to apply only to medical malpractice insurance, its application reached to all lines of insurance.

It has been six years now since the enactment of the Ratemaking Act, and the collective experience of the insurance industry and the Insurance Commissioner tells us that the law did not work. First, it was necessary to define through the rulemaking process what was a "noncompetitive" or "volatile" line. Definitions were adopted, but could never be created with appropriate specificity so that the Commissioner or companies could know when a line of insurance was in that condition. More importantly, with a lack of predictability of when a line might be declared to be in that condition, insurance companies were reluctant to enter the Montana insurance market. Assurance that a company could underwrite a risk appropriately was jeopardized. Consequently, competition in the insurance market, especially the medical malpractice insurance market, diminished. Competition amongst insurance companies is the most effective rate stabilizer.

If the law is repealed, as we are asking, let me tell you what regulation will be left in place? Insurance companies will still be regulated. The Insurance Commissioner will have all of his historical and proper regulatory authority. He will still be able to examine insurance rates filed in Montana and declare them to be

inadequate, excessive, or unfairly discriminatory, if that is the case. This repeal will diminish none of his proper regulatory authority.

Why will the repeal be beneficial? First, the law has never been implemented. Both the insurance industry and the Insurance Commissioner have attempted to work with the law. It has proven to be unworkable. Second, the law has been ineffective in addressing the problem it was designed to resolve. It has not resolved the medical malpractice insurance crisis. Doctors are still concerned about that problem. Third, and most important, removal of the law will be a step in the right direction in responding to insurance crises. Repeal will encourage companies who have been interested in marketing their products in Montana to reenter the Montana insurance market. That reentry will encourage competition. Competition will effectively stabilize and bring down insurance rates.

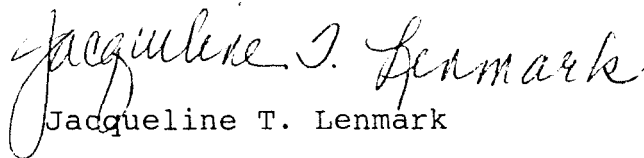
Our Insurance Commissioner has gone on record that competition and good regulation are good for the Montana insurance consumer. We agree. My member companies believe that this repeal, more than any other measure, will encourage that competition.

Before bringing this bill to the legislature, it was discussed amongst all insurance industry associations, the Insurance Commissioner, and physicians. All are in agreement that the repeal will be beneficial.

Please give this bill a "do pass" recommendation. The law was passed to address and resolve a specific problem. It did not

resolve the problem. Passage will increase competition. Competition will stabilize rates. A beneficial effect on rates should stimulate more accessible medical care in Montana.

Respectfully submitted to Senate Business and Industry Committee for hearing on Senate Bill 196, Wednesday, January 25, 1995, 8:00 a.m.


Jacqueline T. Lenmark

DATE January 25, 1995

SENATE COMMITTEE ON Business and Industry

BILLS BEING HEARD TODAY: SB 164 SB 196

Senator Page

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PLEASE PRINT

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Check One

Name	Representing	Bill No.	Support	Oppose
Mary Lou Haines	MT. Chiropractic Assoc	164		✓
Agnes Lin Denmark	Am. Dns. Assoc.	196	✓	
Harry Akey / Lynn NTZ	NAIL ; MACU	196	✓✓	
B. Shabram	State Farm Ins	196	✓	
Frank Cite	St. Auditor	196	✓	
Stuart Doggett	MT Veterans	164		✓
J. Shantz	MT Ass. REALTOR	164		X
Mona Jarnes	mt. Speech-Lang. Ass'n	164		✓
Mary McCue	MT Dental Ass'n	164		✓
Chris Herbert	mt. Dental Hygienist Ass'n	164		X
LARRY AKEY	NAIL	196		
LARRY AKEY	MACU	164		✓
DAVE BROWN	MT. Cosmetologist Ass'n	164		✓
Roger McBlair	INDEPENDENT INS. AGENTS ASSOC. of MT	164		✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE January 25, 1995
 SENATE COMMITTEE ON Business & Industry
 BILLS BEING HEARD TODAY: SB 164 SB 196
Senators Sage

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Check One

Name	Representing	Bill No.	Support	Oppose
Roger McLean	INDEPENDENT INT. AGENTS ASSOC OF MT	196	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY