

# MINUTES

## MONTANA SENATE 54TH LEGISLATURE - REGULAR SESSION COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By CHAIRMAN JOHN HERTEL, on March 14, 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: HB 335, HB 518, HB 536, HB 543  
Executive Action: HB 335 BE CONCURRED IN  
HB 428 BE CONCURRED IN  
HB 536 BE CONCURRED IN

### HEARING ON HB 335

#### Opening Statement by Sponsor:

REP. CAROLYN SQUIRES, HD 68, Missoula, presented HB 335. She urged the committee to pass HB 335 known as the Montana Wheelchair Warranty Act. She announced often Montanans with disabilities purchased expensive wheelchairs or power chairs that experienced continual breakdown. She declared the impact of a faulty wheelchair for a person with a disability was enormous, and often repairs took a long time, caused the disabled individual to lose mobility, independence and productivity; sometimes the chair was not able to be repaired at all. She declared many of those persons were productive citizens. Medicaid purchased many of those chairs and she stated, clearly a

need existed to make manufacturers more accountable and required them to stand behind their products. The Montana Wheelchair Warranty Act represented an effort designed to deal with the concerns of Montanans with disabilities to purchase wheelchairs and deal with the concerns of the consumer. She presented her written testimony, EXHIBIT #0.

Proponents' Testimony:

Jason Dytistra, Montana Advocacy Program, Inc., Disability Law Clinic, presented his written testimony, EXHIBIT #1.

Edward Myers III, Montana Advocacy Program, Inc., Disability Law Clinic, presented his written testimony, EXHIBIT #2.

Barbara Larsen, MonTECH, Rural Institute on Disabilities, University of Montana, appeared to present neutral testimony. Medicaid purchased a number of those wheelchairs; however, individuals also purchased those devices out of private funds. She maintained it was important to realize that standards for wheelchairs had been studied since 1992. She conveyed a set of standards was developed by the Food and Drug Administration, the Rehabilitation Engineering Association of North America (RESNA), and the Veteran's Administration. She said those standards were developed with 18 different tests and had been adopted by the American National Standards Institute. She related there were several manufacturers who sold chairs directly to the consumer without a local vendor. She also declared many vendors provided good product warranty. There was; however, a need to look at strengthening the ability for consumers to have protections under warranty of law for restitution should their chair be a lemon with many breakdowns during the warranty period. She presented EXHIBITS #3A, #3B, #3C, #3D, #3E and #3F.

Terry Krantz, Department of SRS, stated they had worked with the proponents regarding some concerns with the bill. They supported HB 335.

Kathy Collins presented her written testimony in support of HB 335, EXHIBIT #4.

Peter Leach commented that the challenges of depending on a wheeled device to get around were monumental. He announced the only alternative was total dependence, and the user should not be the test pilot for manufacturers. He presented his written testimony, EXHIBIT #5.

Opponents' Testimony: None

Informational Testimony: None

Questions From Committee Members and Responses:

SEN. MIKE SPRAGUE asked the sponsor how this bill applied to used wheelchairs and REP. SQUIRES answered this bill did not apply to used wheelchairs. He stated the warranty was usually for one year, and if there was no warranty, there would be an implied warranty of two years.

SEN. SPRAGUE, referring to page 2, line 5 of the bill, commented this stated "'Wheelchair dealer' means a person who is in the retail business of selling wheelchairs." REP. SQUIRES commented the rest of the bill dealt with the issue of a new chair.

SEN. SPRAGUE asked if warranties applied to batteries as well? Mr. Myers stated it applied minimally. He stated most manufacturers covered a battery for at least a year.

SEN. CASEY EMERSON asked if the market would separate good manufacturers from bad manufacturers? Ms. Larsen stated that it would; some local distributors of wheelchairs had limited their product line to those who provided good products. She remarked there were manufacturers who were able to sell directly to the consumer. She said also, persons were somewhat limited in finding the type of wheelchair for their individual therapeutic needs. Ms. Larsen related given this limitation, the consumer had only one choice of manufacturer.

SEN. KEN MILLER inquired about the procedure involved when a manufacturer was forced to recall a wheelchair and provided a new wheelchair, and was the recalled wheelchair put back on the market? Mr. Myers stated this did not happen in Montana, because Section 4, (3) stated "A wheelchair returned by a consumer in this state pursuant to this section or by a consumer in another state under a similar law of the other state may not be sold or leased again in this state unless a full disclosure was made to a prospective consumer of the reasons for the return." Mr. Myers contended when a full disclosure was not made, this would result in a deceptive act or practice under current Montana statute.

SEN. SPRAGUE questioned a situation wherein the manufacturer had donated the wheelchair to Goodwill and they in turn sold it knowing that it was not as good as a new chair. Mr. Myers stated they should disclose to the consumer the reasons for return of the chair to the manufacturer.

Closing by Sponsor:

REP. SQUIRES stated this legislation would help protect only a segment of society. REP. SQUIRES also maintained that the criteria being placed on the manufacturers of wheelchairs was not prohibitive.

EXECUTIVE ACTION ON HB 335

Motion: SEN. STEVE BENEDICT MOVED HB 335 BE CONCURRED IN.

Discussion: SEN. SPRAGUE stated he had concerns about used chairs. He asked if it would be advantageous to discard all used chairs? SEN. BENEDICT stated when the manufacturer took the chair back, all he had to do was rebuild the chair and make a disclosure statement explaining the reason for return. He stated there would be no problem with donating or reselling as long as there was a disclosure statement included. He told the committee a wheel chair which had been used for three or four years did not have much value; however, wheelchairs returned to the manufacturer were a different story as the manufacturer needed to figure out what had to be done with that wheelchair. SEN. BENEDICT remarked; however, since he put a faulty piece of equipment on the market that should be his problem.

Vote: The motion CARRIED UNANIMOUSLY on oral vote.

HEARING ON HB 518Opening Statement by Sponsor:

REP. CARLEY TUSS, HD 46, Great Falls, stated the legislature had heard many bills about licensing boards and there was a lot of variety in the way due process was applied. She declared at the request of the House Business and Industry Committee, CHAIRMAN STEVE BENEDICT asked the Department of Commerce to come up with uniform statutes which would guide the licensing boards. She conveyed the Department of Commerce and the Governor's Task Force on Reorganization had created HB 518. She presented her written testimony, EXHIBIT #6.

REP. TUSS also presented amendments to HB 518, EXHIBIT #7; those amendments were not available for the hearing in the House. She claimed the amendments clarified the scope of the act, retained important language which was in existing law and scheduled for repeal, coordinated HB 518 with various other bills which had been introduced, and ensured due process for individuals who were facing action by their licensing board.

REP. TUSS stated the intent of the bill was to reduce the board's reliance on rulemaking authority. She expressed rulemaking authority was in the following areas -- defining professional conduct, continuing education, temporary licensure and inactive licensure. She alleged the umbrella should provide more consistency from one board to another. She related if there were disciplinary actions being contemplated, board members would be assigned to handle screening the complaint, and different board members would pass judgment about the validity of the complaint.

She said this act would cover 32 licensing boards; twenty-seven of the boards had indicated support and the other five were remaining neutral and had no objections to the bill.

**Proponents' Testimony:**

**Steve Meloy, Bureau Chief of the Professional and Occupational Licensing Bureau, Department of Commerce,** stated they were the agency which housed 34 regulatory boards and two programs. He declared they were self-sufficient in that all of the fees from the professions paid the cost of regulation, and they regulated all professions with exception of attorneys, insurance agents and teachers. He conveyed HJR 2 was tabled last session on the promise that the Department would try to fix what they had heard was wrong with the Professional and Occupational Licensing Board.

**Mr. Meloy** presented to members of the committee a cover letter, **EXHIBIT #8-A**, with a Background on **HB 518** letter, **EXHIBIT #8-B**, and Information regarding **HB 518** letter, **EXHIBIT #8-C**.

**Mr. Meloy** announced **HB 518** repealed 185 sections of existing law. Prior to executive reorganization in 1980, all of the boards were autonomous. He expressed this bill also removed language from an additional 107 existing sections of law. He related **HB 518** replaced the repealed and reduced sections with 19 standardized provisions applicable to all licensing boards.

**Mr. Meloy** claimed this bill increased due process to licensees by separating functions of licensing boards in investigation, charging and judging against a licensed professional under the board's jurisdiction. **Mr. Meloy** reported to the committee the quasi-judicial board, which had the ability to suspend or revoke a license, was allowed to hear the facts of the case without being involved with the processing of the initial case.

**Leo Giacometto, Governor's Office,** stated the Governor was very pleased with this bill. He announced hearings had been held across the state on this issue. He declared they thought this was a good way to streamline government, made it more effective, and also helped the licensing boards.

**Howard Sumner, Montana Association of Realtors,** stated their support of the bill.

**Tom Harrison, Montana Society of CPA's,** stated they supported **HB 518**. He stated a concern they had was with the small boards. He said the Accountancy Board had five members. He contended if they divided the board for investigative versus judicial efforts to accommodate the due process provisions of the bill, they would end up with only two people in one area. **Mr. Harrison** alleged this would necessitate a unanimous vote in one area.

**Mona Jamison, Montana Chapter of the Physical Therapy Association, Montana Speech, Language and Hearing Association,**

and the Montana Association of Clinical Laboratories, stated their support of this bill. She said uniformity would not only help the Department, but also serve the boards as well.

Ben Havdahl commented that for the past 4 1/2 years he had served as a consumer member on the Board of Hearing Aid Dispensers. He related a major function of that board, in addition to processing and licensing applicants, was dealing with disciplinary measures and handling complaints. Current law was complex and confusing.

Helen Christianson, Montana State AFL-CIO, conveyed their support of HB 518 with amendments.

Stuart Doggett, Montana Veterinary Medical Association, spoke in support of the bill and raised a concern. He presented an amendment, EXHIBIT #9, which dealt with Section 16, (7), lines 24 and 25, page 9. They were concerned with the wording "whether the action is on appeal". They thought if the action was on appeal, it was likely there for a good reason, and they would like that phrase to state "provided the action is not on appeal".

Mr. Doggett also presented to the committee a packet of letters from other proponents (20 letters), EXHIBIT #10.

Opponents' Testimony: None

Informational Testimony: None

Questions From Committee Members and Responses:

SEN. SPRAGUE asked Mr. Meloy why a fiscal note was not prepared and Mr. Meloy stated there wouldn't be a fiscal impact either way. He maintained there were approximately eight or nine bills currently before this session of the legislature which would not have been here if this bill had been current law. He said that was the net gain they were talking about in terms of impact. He said this bill would cause certain boards to write new rules; and they should be able to absorb the same within their existing budgets.

SEN. SPRAGUE asked if this bill consolidated any boards and Mr. Meloy stated five or six recommendations were made to the Governor's Task Force including terminating some boards. He declared the Task Force agreed to the elimination of two. He reported they had decided to eliminate Regulation of Polygraph Examiners and private employment agencies.

SEN. BENEDICT asked why they felt amendment 15 was necessary? Lance Melton, Department of Commerce, answered § 39-5-306, MCA, was scheduled for repeal which eliminated the licensing requirement for private employment agencies. Mr. Melton said section 39-5-306 was identified to them as being a very important, symbolic provision of the law which needed to be

retained in the law. He related they struck the section repealing it from the Code and amended it into the bill.

**SEN. BENEDICT** asked who expressed that desire to them.

*{Tape: 1; Side: B}*

**Mr. Melton** answered the Montana AFL-CIO had made the request.

**SEN. BENEDICT** asked for the history of that action. **Mr. Melton** related they visited with the Montana AFL-CIO after the passage of the bill in the House. He announced that was when this request was made.

**SEN. BENEDICT** commented they were then letting the Montana AFL-CIO help write the amendment and **Mr. Melton** stated he wrote the amendment without input from the Montana AFL-CIO other than identification of the specific provision which they were concerned about.

**SEN. BENEDICT** asked **REP. TUSS** for background information on amendment 5. **REP. TUSS** stated when the bill was drafted she asked for the word "shall" to be inserted instead of "may" with the provision that the person shall be licensed if their standards were substantially equivalent to the state from which they were coming from. After this passed in the House, she was approached by representatives from the Board of Dentistry and asked to change the wording to "may". She related their concern was that it would take too much time to ensure that the licensing exams were substantially equivalent.

**SEN. BENEDICT** asked if their concerns were directed toward hygienists or the profession in general and **REP. TUSS** answered she felt their concerns were directed toward the profession in general.

**SEN. BENEDICT** asked **REP. TUSS** if she had any problem with the amendment presented by Stuart Doggett? **REP. TUSS** commented she had not seen the amendment but she followed his testimony and had no problem with the amendment.

**SEN. JOHN HERTEL** stated this bill passed the House 100-0; however, he had received calls from a number of people concerned about the amendments. He said why were those amendments not presented to the House? He asked the sponsor if she felt the House would still pass the bill with the amendments? **REP. TUSS** stated the bill would pass the House with the amendments. She declared the bill was submitted for drafting early in the session, but due to the complexity of the bill it was not ready as soon as she would have liked. She claimed a lot of the amendments were simply clarifying the intent of the bill.

**SEN. GARY FORRESTER** stated he had a great deal of interest in the contractor's portion of this bill. He declared if the Governor's

Task Force considered eliminating something unnecessary, why wasn't the Public Contractors Licensing Board eliminated? **Mr. Melton** answered the Public Contractors Licensing Program was not attached to a licensing board. He explained at the time this task force proposal was being considered, the public contractors licensing function was administered by a different bureau within the Department of Commerce. **SEN. FORRESTER** stated this was left in strictly for monetary reasons. **REP. TUSS** stated there were other things equally serious which were overlooked. She asserted the purpose of this bill was to deal with occupational licensing boards. She suggested that **SEN. FORRESTER** amend the bill if he thought it would fit within the title.

**SEN. TERRY KLAMPE** stated this bill was a good first step. As a member of the Health Committee he had seen numerous problems with board composition, number of members, and turf battles. He asked **Mr. Meloy** if he would be interested in dealing with some of those problems in the next session? **Mr. Meloy** stated that was a real possibility. He maintained as far as board composition, it may be necessary to increase membership on certain boards. He didn't believe the legislature had a problem with the Board of Public Accountants increasing membership to seven persons.

**Mr. Meloy** reported some states were consolidating five or six professions under one board. He expressed this would be set up much like a legislative committee making decisions. He reported the turf wars were then fought out in an administrative level rather than a legislative level. He said the Task Force declined that recommendation. He alleged the professions around the state were opposed to being consolidated; an obvious example would be barbers and cosmetologists.

Regarding the public contractors issue brought up by **SEN. FORRESTER**, **Mr. Meloy** commented that the public contractor regulation was originally in the Department of Revenue. He said it was an excise tax to contractors. He believed there was some discussion among the contractors in which they agreed to pay the fee for their names to be on a list so that there would be a record of bonding. He told the committee it was shifted to the Commerce Department but not to the POL. He reported it went to Building Codes, and a board was not created nor was any regulation. He inquired if there was a public health, welfare and safety need for regulation? and if there was a need, there was plenty of money to fund it. He said if there wasn't a need, it should be eliminated.

Closing by Sponsor:

**REP. TUSS** offered no further remarks in closing.



HEARING ON HB 536Opening Statement by Sponsor:

REP. NORM MILLS, HD 19, Billings, presented HB 536. In 1993, then Committee CHAIRMAN BENEDICT, asked in-state and out-of-state pharmacies to come up with a coordinated bill. They took the bill which was presented and came up with a committee bill. He maintained the bill reconciled the differences and allowed mail order pharmacies to work in the State of Montana on a prescribed basis and the bill excluded licensure and put in registration.

Proponents' Testimony:

Dennis Iverson, American Managed Care Pharmacy Association, stated they had a bill which passed last session. He stated the bill was amended which led to a fair amount of confusion during the interim. Part of the confusion was that rulemaking authority was assigned to the wrong section of law. He explained the Administrative Code Committee determined there was a flaw in the amendments. He said the Board of Pharmacy withdrew the rules which they had proposed. He stated a bill was presented early in the session in the House which reassigned that rulemaking authority to the proper section. He announced there were a few other items which needed clarification, and that was what this bill accomplished. He commented that Ward Shanahan, Medco Containment, asked him to state his support of this bill.

Jim Smith, Montana State Pharmaceutical Association, stated their support of HB 536.

Bill Olson, Association of Retired Persons, stated they had an out-of-state pharmacy in the form of Retired Persons Pharmacy which operated under a license agreement with AARP. They had about 12,000 prescribers in Montana. They rise in support of HB 536. They had one concern with rulemaking authority; section 4 stated the Board of Pharmacy may adopt rules to implement this part. He would like the wording "in a responsible manner" to be included in the language. Mr. Olson said two years ago, a bill was passed in the legislature in which the board of pharmacy was to hold a hearing. He claimed there was a hearing set in which an attorney was present as well as people prepared to testify; however, the board of pharmacy was not present.

Opponents' Testimony: None

Informational Testimony: None

Questions From Committee Members and Responses: None

Closing by Sponsor:

REP. MILLS stated he regretted the experience which Mr. Olson related to the committee. He said this bill went a long way toward solving the problems that had been present for a long time.

REP. MILLS said if this committee passed HB 536, SEN. BENEDICT had agreed to carry it on the Senate floor.

HEARING ON HB 543Opening Statement by Sponsor:

REP. DOUG WAGNER, HD 83, Flathead County, presented HB 543. This bill asked for fair treatment for Montana families and workers when an injunction was filed. The main purpose of the bill was on page 1, (2), line 25, which stated if a party was seeking an injunction or restraining order against an industrial operation or activity, they must post a bond. The bond had to be structured to indemnify the employees of the industrial operation for their lost wages and benefits. He presented an amendment, EXHIBIT #11. Those amendments were requested by the State and were friendly amendments.

Proponents' Testimony:

Tamara Johnson, Citizens United for a Realistic Environment (CURE), presented her written testimony, EXHIBIT #12.

John Davis, CURE, spoke in support of HB 543. His testimony addressed the application HB 543 could have had on the recently settled lawsuit which was brought by the National Wildlife Federation and other environmental groups against the Department of State Lands and the Golden Sunlight Mine. CURE was permitted by Judge Honzel to intervene in the lawsuit to represent the interests of the employees of the Golden Sunlight Mine and other concerned citizens in the area of Whitehall.

Mr. Davis remarked in the House Judiciary Committee there was testimony from representatives of the National Wildlife Federation and other environmental groups to the effect that HB 543 was not necessary because an injunction was not formally sought against the Golden Sunlight Mine operations in that action. Mr. Davis maintained such testimony missed the point of HB 543. He said following the district court decision, a formal threat of an injunction was made. He related this bill did not address the propriety or the merits of the district court's decision to grant or deny an injunction. Mr. Davis explained HB 543 told the district court and a party seeking an injunction against an industrial operation or activity, that a bond would be

required which must be set at an amount and with the conditions set forth in Section 1 (2) of the bill.

**Tom Monfortan, member of CURE and employee of Golden Sunlight Mine,** testified in support of HB 543. He said the grant of an injunction would force working men and women into unemployment. He stated Montana workers had the right to earn an honest living without having to worry about loss of a job as the result of an ill concerned or improperly obtained injunction.

**John Fitzpatrick, Pegasus Gold Corporation,** spoke in support of HB 543. His company had a stay in operation in 1990. He stated this stay was granted before the company had an opportunity to respond to the allegation. They subsequently filed a series of documents and the stay was lifted after three weeks; however, they were within days of laying off 100 workers. He related if the stay had not lifted, up to 200 people would have lost their jobs. He asserted this bill was not attempting to protect the companies. **Mr. Fitzpatrick** declared no company had the ability to maintain its operation with full scale staffing while it was shut down. He insisted this bill protected the people who were innocent victims of this process. He declared the legal battles with environmental groups would always be there but a certain sense of fairness needed to be provided to the people who worked for those companies.

#### Opponents' Testimony:

**Don Judge, Montana AFL-CIO,** stated many of their members worked in industrial, timber, mining and construction operations. He stated in the mid-1980s organized labor requested and received an injunction against Haines Pipeline. He stated Haines Construction Company was building the pipeline for the Montana Power Company. They were constructing 200 miles of natural gas pipeline under high pressure passing from Deer Lodge to Cut Bank.

**Mr. Judge** said some of the workers involved in this pipeline project contacted the labor movement, which was already in a dispute because the jobs were non-union, and stated the pipeline was not being built in compliance with the laws and regulations regarding a safe construction of the pipeline. He stated there were a number of welds in the first 100 miles of construction which would give out and cause explosions. They did not meet the requirements of the law. Given that information, they applied for an injunction against further construction of the pipeline. They sought to have the pipeline, which had already been constructed, retested and there were several welds which would not meet compliance. **Mr. Judge** stated the entire 100 miles of pipeline was dug up and the welds were repaired and another company was hired to complete the project. He alleged had the construction been allowed to continue, there would have been 200 miles of a time bomb waiting to explode under private property all the way across the State of Montana.

**Mr. Judge** declared organized labor had no deep pockets. They would not have filed that injunction if they had been required to post a bond as required by this bill. Had they been refrained from requesting that injunction, the citizens of Montana would have been the ones to suffer. They concur that workers should not be the people to suffer whenever an injunction was posted. If there were problems in projects, the local unions would not be able to enjoin the companies to keep them from operating. He told the committee the intention of this bill was good, but the outcome of this legislation would not be good for the citizens of Montana.

{Tape: 2; Side: A}

**Jim Jenson, MEIC**, stated MEIC was one of the alleged organizations to have filed the injunction discussed earlier. MEIC did not file or seek any injunction from Golden Sunlight Mine. They had tried to work toward a mutually beneficial goal with the employees of the mine and the environmentalists who believed the mine could operate but was improperly licensed in terms of reclamation. They had worked hard to make sure the mine continued in operation while the problems were being solved. That was what the settlement allowed. **Mr. Jenson** conveyed the court ruled that an environmental impact statement be prepared. He claimed there were serious problems with this bill.

**Mr. Jenson** said Page 2, line 2, which was the definition of an industrial operation or activity, stated this included but was not limited to construction, mining, timber, and grazing operation and was very vague. Ranchers needed to be concerned. They were contacted by ranchers who were concerned about their water being polluted. What they found at the beginning of the mine boundary and the ranch property was 18 inches of slime which was washing off of the mine. He announced this was in the very early stages of the development of the mine. He insisted the ability of the rancher to be able to protect his property would be dramatically reduced by this legislation.

**Don Spivey, Citizens for a Better Flathead**, spoke in opposition to the bill. He said bonding requirements of this bill would be oppressive to an individual. The citizenry was prevented from taking an action when there was fair and just cause. He related this discretion should be left to the judge. He maintained the philosophy was good but the implementation was terrible. He presented an introductory letter from himself, **EXHIBIT #13**; a letter from B.J. Carlson, **#14-A**; a letter from Milt Carlson, **EXHIBIT #14-B**; and a letter from Dorothea Darwall, **EXHIBIT #14-C**; all letters of opposition to **HB 543**.

**Ted Lange, Northern Plains Research Council**, stated they had never sought an injunction on any project. If a situation arose in the future, their members would like them to have the option to do so. Their organization was made of Montana citizens.

Their board was very skeptical of filing a lawsuit. More often than not they were able to negotiate a reasonable settlement.

**Melissa Case, Montanans Against Toxic Burning, Montanans for a Healthy Future**, spoke in opposition to the bill. From an environmental standpoint, this bill did not allow certain Montana citizens to fully exercise their right to a healthful and safe environment. She expressed under this law, only wealthy people would be able to afford their right to a clean and healthy environment. Their organizations were concerned with the burning of hazardous waste. She stated there had been accidents recently wherein employees had been hurt. They were innocent victims of a disaster. Employers were using their employees to protect their own financial interest. She alleged that was one of the worst things an industry could do. She questioned who was bringing this bill forward and what their real intentions were.

Informational Testimony: None

Questions From Committee Members and Responses:

**SEN. WILLIAM CRISMORE** asked **Mr. Davis** his view of the pipeline case. **Mr. Davis** stated his company represented Haines Pipeline. He believed **Mr. Judge's** comments missed the point. He related a party seeking an injunction was out money only if and when it was ultimately established that the injunction was improperly obtained. He maintained in the Golden Sunlight case, a formal injunction was not sought. He stated the district court entered a decision finding that the Department of State Lands had violated MEPA in the issuance of a permit to Golden Sunlight. He stated there were also certain violations of the Hard Rock Mining Act. **Mr. Judge** remarked following that decision, the parties entered into settlement negotiations and did settle those aspects of the case. He insisted had **HB 543** been current law, the claim may not have been settled. **Mr. Judge** remarked this bill had required the plaintiffs to post a bond and if Sunlight had been successful in getting the district court to dissolve the injunction, this would have required a minimum amount of financial responsibility of the plaintiffs if, in fact, they had been successful in dissolving the injunction.

**SEN. CRISMORE** asked **REP. WAGNER** if this bill would pertain to timber sales prior to the sale and **REP. WAGNER** stated the only time this bill would pertain would be if the industrial operation brought employees to the job site to work and then the injunction was rightfully filed in court. He maintained the employees would be made whole for the time they were not working, if the injunction was not held up in court.

**SEN. CRISMORE** stated that on one occasion on a timber sale which he had purchased, he was stopped because there was an eagle nest on the job. He reported the work stopped until the decision was reached that it was an osprey nest. He declared if this bill had

been in effect, would the plaintiffs have needed to post a bond?  
**REP. WAGNER** stated that would be correct.

**SEN. KLAMPE** asked **Mr. Jensen** if it was his interpretation of the bill that it would be necessary for the district court to dissolve the injunction before there would be a cost to the plaintiff. **Mr. Jensen** commented the situation was difficult to interpret. He stated most plaintiffs had to borrow the money. Organizations had not the amount of money needed preventing them from access to the court and he said this was a constitutional defect. They had a right to access to the court. **Mr. Jensen** said in Merchants Association v. Conger, the Montana Supreme Court ruled in another situation where a bond was imposed that though the objectives were worthy of preventing frivolous appeals, imposing a bond would prevent meritorious appeals by the poor but would not prevent frivolous appeals by the rich. He declared it was held unconstitutional for that reason.

**SEN. MILLER** stated the judge now could require a bond. He believed this would limit access to the court. **Mr. Jensen** stated that page 1, lines 20 and 24, of the bill allowed that a judge may waive a bond requirement in the interest of justice. He said it was under that discretion that judges did not currently require bonds on certain occasions when an injunction was sought.

**SEN. MILLER** asked **Mr. Davis** what the cost of a bond might be and **Mr. Davis** answered that would always be answered on a fact specific basis based on wages, salaries and benefits. It was his understanding it would be in the nature of 10%.

**SEN. BILL WILSON** asked **Mr. Davis** where the language could be found in the bill guarantying employees compensation and **Mr. Davis** answered that would be found on page 1, lines 29 and 30. He said this stated the bond must be conditioned to indemnify the employees of the party enjoined or restrained against lost wages, salaries, and benefits sustained by reason of the injunction or restraining order. He maintained the key term would be "indemnification". He stated a person was indemnified once that person had sustained a loss. He said when the bond was set, the condition of the bond would be that the payor would pay the employees to the extent which they had lost wages if and when the injunction was dissolved.

**SEN. WILSON** asked **Mr. Judge** to respond to the same question. **Mr. Judge** stated that if an injunction was requested, a bond was filed and the person requesting the injunction lost the case, the bond would be there to guarantee the payment of wage; if the requestor won the case, they would not pay the wages. He said there was nothing in the bill which guaranteed the company would pay the wages; this was a one-sided bill. He said it applied only to those filing injunctions and did nothing to protect the workers' wages from the company if the company was found guilty.

SEN. KLAMPE asked Mr. Judge what the bond would have cost them in the Haines case and Mr. Judge stated there were several hundred high wage employees. He said the variable would be how much time would the injunction impose a shutdown on the project. He assumed it would be several \$100,000 in wages.

SEN. WILSON asked Ms. Johnson if there was a big problem in this area or was this bill only to dissuade challenges to operations. Ms. Johnson stated it was one of those threats which was in the background. She stated in Idaho, several groups asked for an injunction on several regions of the national forest for protection of salmon habitat. She said they asked to enjoin all activities on all forest lands including mining, logging, road building, etc. She reported a judge sitting in for the original judge, granted the injunction and currently there was a stay on that injunction. She alleged the threat of the injunction was very real. Her goal was to keep people working in fields which were highly contentious fields.

SEN. KLAMPE asked Mr. Davis if the amendment was necessary and Mr. Davis stated the original language, which was being supplemented by the amendment, was included to clarify the minimum bond set forth in Section 1 (2) of the bill and did not limit the damages which may be recovered. The State's concern was that the language in the bill went a little farther than necessary and may have been interpreted as creating a separate statutory cause of action.

Closing by Sponsor:

REP. WAGNER reiterated this bill was to provide fairness to employees. He maintained if injunctions were rightfully filed, this would not cost the requestor a penny. REP. WAGNER maintained this bill would not stop access to courts.

EXECUTIVE ACTION ON HB 428

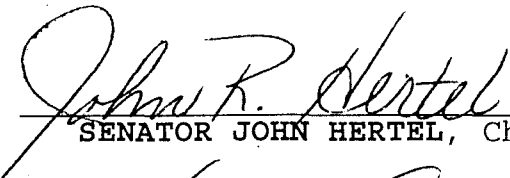
MOTION/Vote: SEN. CRISMORE MOVED HB 428 BE CONCURRED IN. The motion CARRIED UNANIMOUSLY on oral vote. SEN. HERTEL will carry the bill on the Senate floor.


EXECUTIVE ACTION ON HB 536

Motion/Vote: SEN. CRISMORE MOVED HB 536 BE CONCURRED IN. The motion CARRIED UNANIMOUSLY on oral vote. SEN. BENEDICT will carry the bill on the Senate floor.

ADJOURNMENT

Adjournment: The meeting adjourned at 10:45 A.M.

  
SENATOR JOHN HERTEL, Chairman

  
LYNETTE LAVIN, Secretary

JH/11



MONTANA SENATE  
1995 LEGISLATURE  
BUSINESS AND INDUSTRY COMMITTEE

ROLL CALL

DATE \_\_\_\_\_

EE  
314-95

[illegible]

SEN:1995

wp.rollcall.man

CS-09

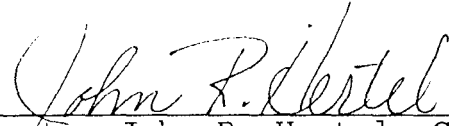
SENATE STANDING COMMITTEE REPORT

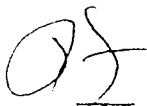
Page 1 of 1  
March 14, 1995


MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration HB 335 (third reading copy -- blue), respectfully report that HB 335 be concurred in.

Signed:

  
Senator John R. Hertel, Chair

 Amd. Coord.

 Sec. of Senate

  
Senator Carrying Bill

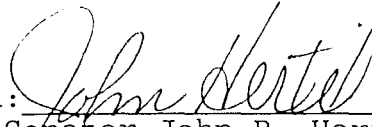
591122SC.SRF

SENATE STANDING COMMITTEE REPORT


Page 1 of 1  
March 14, 1995


MR. PRESIDENT:

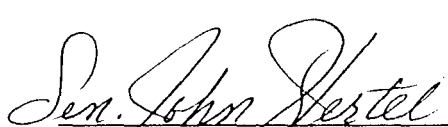
We, your committee on Business and Industry having had under consideration HB 428 (third reading copy -- blue), respectfully report that HB 428 be concurred in.

Signed: 

Senator John R. Hertel, Chair

 Amd. Coord.

 Sec. of Senate

  
Senator Carrying Bill

591126SC.SRF

SENATE STANDING COMMITTEE REPORT


Page 1 of 1  
March 14, 1995


MR. PRESIDENT:


We, your committee on Business and Industry having had under consideration HB 536 (third reading copy -- blue), respectfully report that HB 536 be concurred in.

Signed:

  
Senator John R. Hertel, Chair

 Amd. Coord.

 Sec. of Senate

  
Senator Carrying Bill

591129SC.SRF

**MONTANA ADVOCACY PROGRAM-DISABILITY LAW CLINIC  
ASSISTIVE TECHNOLOGY**

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

March 13, 1995

Senate Business and Labor Committee  
Capitol Bldg.  
Helena, MT. 59624

**Speech for Rep. Carolyn Squires for House Debate on H.B. 335**

Mr. Chairman, Vice Chairman, members of the Committee,

I urge this Committee to pass H.B. 335 known as the Montana Wheelchair Warranty Act. Often Montanans with disabilities purchase expensive wheelchairs or powerchairs that experience continual breakdowns. These faulty devices are known as lemons.

The impact of having a lemon wheelchair on a person with a disability is enormous. Often the repairs can last several weeks causing the individual to lose his or her mobility, independence, and productivity. Several times, the lemon may not be repaired at all, jeopardizing a disabled person's opportunity to become independent and integrated into the community. Medicaid purchases many of these lemons. Clearly, a need exists to make manufacturers more accountable and require them to stand behind their product.

The Montana Wheelchair Warranty Act represents an effort designed to deal with the concerns of Montanans with disabilities who purchase wheelchairs and deal with the concerns of the DME dealers who obtain the devices for their consumers. It follows the trend of several states passing similar legislation. Therefore, I urge this Committee to recommend "do pass" for The Montana Wheelchair Warranty Act.

Sincerely,

Representative Carolyn Squires

**MONTANA ADVOCACY PROGRAM, Inc.**

Disability Law Clinic  
304 North Higgins  
Missoula, Montana 59802

(406)549-8464  
1-800-245-4743  
Fax 543-8314  
(VOICE - TDD)

14 March 1995

Senator John Hertel  
Chairman of Business and Labor Committee  
Capital Building  
Helena, MT 59620

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

My name is Jason Dykstra. I am a Law Student interning with the Disability Law Clinic. I am here to speak as a proponent of H.B. 335.

Neither the Uniform Commercial Code (UCC), the Montana Consumer Protection Act, nor the common law adequately protect consumers with disabilities who purchase mobility assistive devices.

First, Montana has adopted the Uniform Commercial Code (UCC). Under the UCC, warranties may be either expressed by the parties or implied by law. 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 oral warranties created. In the real world, many sellers will not consider their statements as creating express warranties, but as mere opinions. This can force the buyer and seller into lengthy, expensive court proceedings to ascertain whether a seller's statements created an express warranty. The time, expense, and uncertainty of this process places a significant burden upon a consumer attempting to get a defective assistive device working.

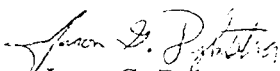
Additionally, the UCC provides for two types of implied warranties. 1) The implied warranty of merchantability assures that the product lives up to the quality of other goods of the same type and quality. 2) An implied warranty of fitness for a particular purpose, which arises only when a consumer relies on the expertise of the seller in selecting a product. Montana law allows both of these implied warranties to be limited or excluded entirely by the seller. Thus, a consumer purchasing an assistive mobility device may not have any protections from implied warranties.

Second, the Montana Consumer Protection Act prohibits unfair or deceptive practices in the conduct of any trade or commerce. For consumers, this Act is only effective where a sale involves deception. Therefore, the Act is ineffective as a consumer tool to get defective assistive mobility devices working.

The last possible recourse for a consumer is through the common law. The common law provides minimal judicial protections through a tort action for deceit or a contract action for fraud. Both actions involve the time and expense of litigation.

In conclusion, Montana Statutes and common law currently provide few protections to consumers of mobility assistive devices. This inadequate patchwork, for the most part, protects consumers only against the most grievous of practices, such as fraud and deceit. The existing protections all involve the time and expense inherent in judicial resolutions. H.B. 335 will streamline these actions, removing them from our overburdened courts, and expediting their fair resolution. Additionally, H.B. 335 provides incentives to consumers and dealers to both avoid and promptly resolve defects in mobility assistive devices. I urge this Committee recommend "do pass" to the senate on H.B. 335.

Sincerely,

  
Jason G. Dykstra  
Legal Intern

# MONTANA ADVOCACY PROGRAM- DISABILITY LAW CLINIC

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

March 13, 1995

Chairman John Hertel  
Senate Business and Labor Committee  
Capitol Building  
Helena, MT. 59620

Re: H.B. 335

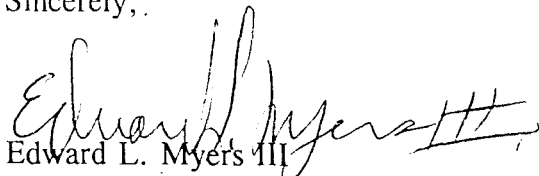
Dear Mr. Chairman, Vice Chairman, Members of the Committee:

I am Edward Myers, Assistive Technology attorney for the Montana Advocacy Program. I am here to speak as a proponent of H.B. 335 and describe the major elements of H.B. 335.

The Montana Wheelchair Warranty Act provides legal protection for consumers with disabilities. The Act requires that a manufacturer provide a one year express warranty covering a defect which substantially impairs the use, value or safety of a wheelchair. Failure to provide an express warranty will result in a two year implied warranty. Specifically, the Act provides that if a manufacturer fails to repair a nonconformity, a consumer may either require the manufacturer to replace the wheelchair or provide a refund. If a manufacturer fails to replace or refund the wheelchair, then a consumer may bring an action in court to recover damages, reasonable attorney fees and costs. The Act exempts dealers from liability and allows them to collect their own reasonable costs if a manufacturer replaces or refunds a wheelchair. The Act applies only to wheelchairs purchased after October 1, 1995.

The Act as amended, represents a collaborative effort between the disability community and Durable Medical Equipment dealers's association to draft a bill that was fair to both consumers and dealers. I urge this Committee to recommend "do pass" to the Senate on this important legislation.

Sincerely,

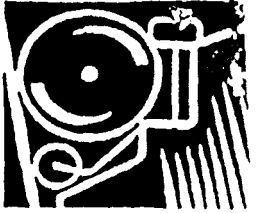
  
Edward L. Myers III  
Attorney at Law

Montana's Technology-Related Assistance Program  
for People with Disabilities  
634 Eddy Avenue, Missoula, MT 59812

Barbara Larsen  
Services and Funding  
Development Coordinator

(406)-243-5676  
1-800-732-0323

Wisconsin statutes is  
"Lemon Law." It  
chair or scooter that  
definition of a "Lemon"  
ent.  
e new law was pat-  
"Lemon Law." Both  
representative Vern  
voc with the support of  
duals and organiza-



# Wisconsin's Motorized Wheelchair Lemon Law

If you buy or lease a new motorized  
wheelchair or scooter for use by persons  
with disabilities in Wisconsin, under state law  
you have protection if the chair or scooter  
has chronic defects.

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 3-A

DATE 3-14-95

BILL NO. HB 335

*(Presented by Barbara Larson)*

## Which wheelchairs are covered?

The law applies to new three or four wheel  
scooters for use by persons with disabilities  
and new motorized wheelchairs that were  
purchased in Wisconsin on or after **Novem-  
ber 1, 1992.**

## Warranty requirements

All motorized wheelchairs and scooters  
purchased on or after November 1, 1992,  
must be covered by a one year express  
warranty, effective from the day the con-  
sumer receives the product. If the manufac-  
turer does not offer the warranty, the chair is  
considered to be covered by a one year  
express warranty just as if it had been fur-  
nished by the manufacturer.

## What makes a wheelchair or scooter a "LEMON"?

A "Lemon" is a motorized wheelchair or  
scooter with a "substantial" defect which the  
manufacturer or its authorized dealer has  
unsuccessfully attempted to repair at least  
four times, or which has been out of service  
because of "substantial" defects for a total  
of thirty calendar days - Note that the thirty  
days do not have to be consecutive.

Although it is not necessary to begin  
proceedings within the first year, the repair  
attempts or time out of service must occur  
within the term of the one year express  
warranty. (For more information on how to  
document the problem see "Suggestions for  
You.")

## What defects are covered?

The defects covered under the "Wheel-  
chair Lemon Law" must significantly impair  
the use, value, or safety of the chair or  
scooter. For example, a defective motor  
would be included, but a rattle would not be.  
Defects which are the result of any abuse,  
neglect, or unauthorized modification of the  
chair by the owner are not covered by the  
law.

## Who has recourse?

You have recourse under the law if you  
own or lease the motorized wheelchair or  
scooter within the term of the one year  
express warranty.

## What are the remedies?

If you have purchased or leased a wheel-  
chair or scooter that meets the definition of a  
"Lemon", the law entitles you to choose  
either a comparable new replacement, or a  
refund.

If you choose a replacement, you are also  
entitled to receive "collateral costs," which  
are defined under the law as expenses  
incurred by the consumer in connection with  
the repair of a defect, including the costs of  
obtaining an alternative wheelchair or other  
assistive device for mobility.

If you decide to get a refund, you are  
entitled to the full purchase price (including  
any other charges paid at the time of sale)  
and all costs associated with the repair of the  
defect minus an amount based on your use  
of the chair or scooter.

The remedies are similar under a lease  
agreement.



## How do you go about getting a refund or replacement?

To receive a replacement chair or refund, you should notify the manufacturer that you wish to return the chair or scooter for a replacement or refund. Your dealer can supply you with the manufacturer's address. If the manufacturer refuses your request, you may want to discuss your legal options with an attorney or advocacy group familiar with the law. (Several groups are listed on the back of this brochure.)

It may be possible to settle with the manufacturer without going to court, but if you go to court and are successful, you are entitled to recover double the amount of any monetary loss, as well as costs and reasonable attorney fees.

## Suggestions for you

Your success in obtaining relief through "Common Law" may be dependent upon the repair invoice documentation you present.

Make sure you obtain a repair invoice each time your chair is in for repairs which shows the problem(s) you reported. You should obtain a repair invoice even if the shop cannot diagnose or fix the problem, or if you are complaining about a continuing problem.

If your chair is in for repairs more than one day at a time, make sure the warranty repair order specifies the date it was brought in and the date it was returned.

Keep copies of all purchase contracts, warranties, warranty repair orders, letters and other materials on the chair and any of its problems.

For additional information, contact:

**Governor's Committee for People with Disabilities**

P.O. Box 7852  
Madison, WI 53707-7852  
(608) 266-5378 Voice  
(608) 267-2082 TDD

### **Client Assistance Program**

P.O. Box 7852  
Madison, WI 53707-7852  
(608) 267-7422 Voice  
(608) 267-2082 TDD  
1-800-362-1290 Voice and TDD

### **Wisconsin Coalition for Advocacy**

16 North Carroll Street, Suite 400  
Madison, WI 53703  
(608) 251-9600 Voice and TDD

### **Council on Developmental Disabilities**

722 Williamson Street  
Madison, WI 53703  
(608) 266-7826 Voice  
(608) 266-6660 TDD  
1-800-282-1663 TDD

### **Council on Physical Disabilities**

1 West Wilson Street, Room 472  
Madison, WI 53702  
(608) 267-9582 Voice  
(608) 267-9880 TDD

### **Easter Seal Society of Wisconsin**

101 Nob Hill Road, Suite 301  
Madison, WI 53713  
(608) 277-8288

# Wisconsin's Motorized Wheelchair Lemon Law



SENATE BUSINESS & INDUSTRY

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 3-B

DATE 3-14-95

BILL NO. HB 335

*Presented by Barbara Pearson*

# OFFICIAL CODE OF GEORGIA ANNOTATED

## 1993 Cumulative Supplement

Including Acts of the 1993 Session of the General Assembly

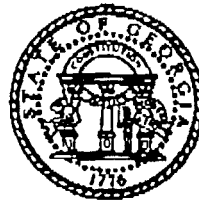
*Prepared by*

The Code Revision Commission

The Office of Legislative Counsel

*and*

The Editorial Staff of the Michie Company



Published Under Authority of the State of Georgia

## Volume 8

1989 Edition

Title 10. Commerce and Trade

Including Notes to the Georgia Reports Through Volume 262,  
page 674, and the Georgia Appeals Reports Through  
Volume 206, page 124

Place in Pocket of Corresponding Volume of Main Set

THE MICHIE COMPANY

*Law Publishers*

Charlottesville, Virginia

1993

addresses, telephone numbers, social security numbers, or any other information which could reasonably serve to identify any person making a complaint about unfair or deceptive practices under Part 2 of Article 15 of this chapter, the "Fair Business Practices Act of 1975," shall be confidential. However, the complaining party may consent to public release of his or her identity by giving such consent expressly, affirmatively, and directly to the administrator or the administrator's employees. Nothing contained in this Code section shall be construed to prevent the subject of the complaint, or any other person to whom disclosure of the complainant's identity may aid in resolution of the complaint, from being informed of the identity of the complainant, to prohibit any valid discovery under the relevant discovery rules, or to prohibit the lawful subpoena of such information. (Code 1981, § 10-1-856, enacted by Ga. L. 1993, p. 1092, § 2.)

**10-1-857. Complaints, inquiries, investigations, and corrective action.**

The administrator shall receive all complaints under this article. He or she shall refer all complaints or inquiries concerning conduct specifically approved or prohibited by the Secretary of State, Department of Agriculture, Commissioner of Insurance, Public Service Commission, Department of Natural Resources, Department of Banking and Finance, or other appropriate agency or official of this state to that agency or official for initial investigation and corrective action other than litigation. (Code 1981, § 10-1-857, enacted by Ga. L. 1993, p. 1092, § 2.)

**ARTICLE 32**

**ASSISTIVE TECHNOLOGY WARRANTIES**

**Effective date.** — This article became effective July 1, 1993.

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1993, this article, which was enacted as Article 31, containing Code Sections 10-1-850 through 10-1-855, was redesignated as Article 32, containing Code Sections 10-1-870 through 10-1-875.

**10-1-870. Short title.**

This article shall be known and may be cited as the "Assistive Technology Warranty Act." (Code 1981, § 10-1-870, enacted by Ga. L. 1993, p. 1797, § 1.)

**10-1-871. Definitions.**

As used in this article, the term:

(1) "Assistive technology device" means any device or equipment with a retail cost to a consumer of \$1,000.00 or more, that assists a person with disabilities to perform specific tasks such as moving, walking, standing, speaking, breathing, hearing, seeing, learning, working, sleeping, reaching, grasping, or caring for himself or herself that would not be possible for such person without an assistive technology device.

(2) "Assistive technology device dealer" means a person who is in the business of selling assistive technology devices.

(3) "Assistive technology device lessor" means a person who leases an assistive technology device to a consumer, or who holds the lessor's rights under a written lease.

(4) "Collateral costs" means expenses incurred by a consumer in connection with the repair of a nonconformity, including the costs of obtaining an alternative assistive technology device or other device used for mobility assistance.

(5) "Consumer" means any of the following:

(A) The purchaser of an assistive technology device, if the assistive technology device was purchased from an assistive technology device dealer or manufacturer for purposes other than resale;

(B) A person to whom the assistive technology device is transferred for purposes other than resale, if the transfer occurs before the expiration of an express warranty applicable to the assistive technology device;

(C) A person who may enforce the warranty;

(D) A person who leases an assistive technology device from an assistive technology device lessor under a written lease.

(6) "Demonstrator" means an assistive technology device used primarily for the purpose of demonstration to the public.

(7) "Early termination cost" means any expense or obligation that an assistive technology device lessor incurs as a result of both the termination of a written lease before the termination date set forth in that lease and the return of an assistive technology device to a manufacturer under paragraph (3) of subsection (b) of Code Section 10-1-873. "Early termination cost" includes a penalty for prepayment under a finance arrangement.

10-1-871

SELLING AND OTHER TRADE PRACTICES

10-1-871

(8) "Early termination savings" means any expense or obligation that an assistive technology device lessor avoids as a result of both the termination of a written lease before the termination date set forth in that lease and the return of an assistive technology device to a manufacturer under paragraph (3) of subsection (b) of Code Section 10-1-873. "Early termination savings" includes an interest charge that the assistive technology device lessor would have paid to finance the assistive technology device or, if the assistive technology device lessor does not finance the assistive technology device, the difference between the total amount for which the lease obligates the consumer during the period of the lease term remaining after the early termination and the present value of that amount at the date of the early termination.

(9) "Manufacturer" means a person who manufactures or assembles assistive technology devices and agents of that person, including an importer, a distributor, factory branch, distributor branch, and any warrantors of the manufacturer's assistive technology devices but does not include an assistive technology device dealer.

(10) "Nonconformity" means a condition or defect that substantially impairs the use, value, or safety of an assistive technology device, and that is covered by an express warranty applicable to the assistive technology device or to a component of the assistive technology device, but does not include a condition or defect that is the result of abuse, neglect, or unauthorized modification or alteration of the assistive technology device by a consumer.

(11) "Reasonable attempt to repair" means any of the following occurring within the term of an express warranty applicable to a new assistive technology device or within one year after first delivery of the assistive technology device to a consumer, whichever is sooner:

(A) The same nonconformity with the warranty is subject to repair at least four times by the manufacturer, assistive technology device lessor, or any of the manufacturer's authorized assistive technology device dealers and the nonconformity continues;

(B) The assistive technology device is out of service for an aggregate of at least 30 days because of warranty nonconformities. (Code 1981, § 10-1-871, enacted by Ga. L. 1993, p. 1797, § 1.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1993, "Code Section 10-1-873" was substituted for "Code Section 10-1-853" in paragraphs (7) and

(8), and semicolons were substituted for periods at the end of subparagraphs (A), (B), and (C) of paragraph (5) and subparagraph (A) of paragraph (11).

10-1-872

COMMERCE AND TRADE

10-1-873

**10-1-872. Express written warranties for assistive technology devices.**

A manufacturer who sells an assistive technology device to a consumer, either directly or through an assistive technology device dealer, shall furnish the consumer with an express written warranty for the assistive technology device. The warranty shall as a minimum warrant that there are no defects in parts or performance. The duration of the express written warranty shall be not less than one year after first delivery of the assistive technology device to the consumer. If a manufacturer fails to furnish an express written warranty as required by this Code section, the assistive technology device shall be covered by an express warranty as if the manufacturer had furnished an express written warranty to the consumer as required by this Code section. (Code 1981, § 10-1-872, enacted by Ga. L. 1993, p. 1797, § 1.)

**10-1-873. Repair of nonconforming assistive technology devices; refund or replacement of devices after attempt to repair; sale or lease of returned device.**

(a) If a new assistive technology device does not conform to an applicable express warranty and the consumer reports the nonconformity to the manufacturer, the assistive technology device lessor, or any of the manufacturer's authorized assistive technology device dealers and makes the assistive technology device available for repair before one year after first delivery of the assistive technology device to a consumer, the nonconformity shall be repaired at the manufacturer's expense to correct the nonconformity regardless of whether the repairs are made after expiration of the warranty rights period. If in any subsequent proceeding it is determined that the consumer's repair did not qualify under this article, and the manufacturer was not otherwise obligated to repair the assistive technology device, the consumer shall be liable to the manufacturer for costs of repair.

(b) (1) If, after a reasonable attempt to repair, the nonconformity is not repaired, the manufacturer shall carry out the requirement under paragraph (2) or (3) of this subsection, whichever is appropriate.

(2) At the direction of a consumer as defined in subparagraph (A), (B), or (C) of paragraph (5) of Code Section 10-1-871, the manufacturer shall do one of the following:

(A) Accept return of the assistive technology device and replace the assistive technology device with a comparable new assistive technology device and refund any collateral costs.

(B) Accept return of the assistive technology device and refund to the consumer and to any holder of a perfected security interest in the consumer's assistive technology device, as their interest may ap-

pear, the full purchase price plus any finance charge, amount paid by the consumer at the point of sale, and collateral costs, less a reasonable allowance for use. Under this subparagraph, a reasonable allowance for use may not exceed the amount obtained by multiplying the full purchase price of the assistive technology device by a fraction, the denominator of which is 1,825 and the numerator of which is the number of days that the assistive technology device was used before the consumer first reported the nonconformity to the assistive technology device dealer.

(3) (A) At the direction of a consumer as defined in subparagraph (D) of paragraph (5) of Code Section 10-1-871, the manufacturer shall:

(i) Accept return of the assistive technology device;

(ii) Refund to the assistive technology device lessor and to any holder of a perfected security interest in the assistive technology device, as their interest may appear, the current value of the written lease as defined in subparagraph (B) of this paragraph; and

(iii) Refund to the consumer the amount that the consumer paid under the written lease plus any collateral costs, less a reasonable allowance for use as defined in subparagraph (C) of this paragraph.

(B) The current value of the written lease equals the total amount for which that lease obligates the consumer during the period of the lease remaining after its early termination plus the assistive technology device dealer's early termination costs and the value of the assistive technology device at the lease expiration date if the lease sets forth that value, less the assistive technology device lessor's early termination savings.

(C) A reasonable allowance for use may not exceed the amount obtained by multiplying the total amount for which the written lease obligates the consumer by a fraction, the denominator of which is 1,825 and the numerator of which is the number of days that the consumer drove the assistive technology device before first reporting the nonconformity to the manufacturer, assistive technology device lessor, or assistive technology device dealer.

(c) To receive a comparable new assistive technology device or a refund due under paragraph (1) or (2) of subsection (b) of this Code section, a consumer, as defined under subparagraph (A), (B), or (C) of paragraph (5) of Code Section 10-1-871, shall offer to transfer possession of the assistive technology device having the nonconformity to the manufacturer of that assistive technology device. No later than 30 days

after that offer, the manufacturer shall provide the consumer with a comparable new assistive technology device or a refund. When the manufacturer provides the new assistive technology device or refund, the consumer shall return the assistive technology device having the nonconformity to the manufacturer, along with any endorsements necessary to transfer legal possession to the manufacturer.

(d) (1) To receive a refund due under paragraph (3) of subsection (b) of this Code section, a consumer as defined under subparagraph (D) of paragraph (5) of Code Section 10-1-871, shall offer to return the assistive technology device having the nonconformity to the manufacturer of that assistive technology device. No later than 30 days after that offer, the manufacturer shall provide the refund to the consumer. When the manufacturer provides the refund, the consumer shall return the assistive technology device having the nonconformity to the manufacturer.

(2) To receive a refund due under paragraph (3) of subsection (b) of this Code section, an assistive technology device lessor shall offer to transfer possession of the assistive technology device having the nonconformity to the manufacturer of that assistive technology device. No later than 30 days after that offer, the manufacturer shall provide the refund to the assistive technology device lessor. When the manufacturer provides the refund, the assistive technology device lessor shall provide any endorsements necessary to transfer legal possession to the manufacturer.

(3) No person may enforce the lease against the consumer after the consumer receives a refund due under paragraph (3) of subsection (b) of this Code section.

(e) No assistive technology device returned by a consumer or assistive technology device lessor in this state under subsection (b) of this Code section or by a consumer or assistive technology device lessor in another state under a similar law of that state may be sold or leased again in this state unless full disclosure of the reasons for return is made to any prospective buyer or lessee. (Code 1981, § 10-1-873, enacted by Ga. L. 1993, p. 1797, § 1.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1993, "Code Section 10-1-871" was substituted for "Code Section 10-1-851" in paragraph (2) and subparagraph (3)(A) of subsection (b), subsection (c), and paragraph (1) of subsection

(d), and "paragraph (5)" was substituted for "paragraph (2)" in paragraph (2) and subparagraph (3)(A) of subsection (b), subsection (c), and paragraph (1) of subsection (d).



10-1-874      SELLING AND OTHER TRADE PRACTICES      10-1-890

**10-1-874. Thirty-day return privilege.**

A manufacturer or assistive technology device dealer who recommends and sells an assistive technology device to a consumer shall accept a return of the assistive technology device within 30 days after the purchase if the assistive technology device does not meet the needs of the person with the disability. The manufacturer or assistive technology dealer shall provide a refund in conformity with the provisions established within paragraph (2) of subsection (b) of Code Section 10-1-873. (Code 1981, § 10-1-874, enacted by Ga. L. 1993, p. 1797, § 1.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1993, "Code Section 10-1-873" was substituted for "Code Section 10-1-853" in the second sentence.

**10-1-875. Rights and remedies under other laws or contracts; waivers void; actions for damages.**

(a) This article shall not be deemed to limit rights or remedies available to a consumer under any other law or contract.

(b) Any waiver by a consumer of rights under this article is void.

(c) In addition to pursuing any other remedy, a consumer may bring an action to recover for any damages caused by a violation of this article. The court shall award a consumer who prevails in such an action twice the amount of any pecuniary loss together with costs, disbursements, and reasonable attorney fees and any equitable relief that the court determines is appropriate. (Code 1981, § 10-1-875, enacted by Ga. L. 1993, p. 1797, § 1.)

**ARTICLE 33**

**MOTORIZED WHEELCHAIR WARRANTIES**

**Effective date.** — This article became effective July 1, 1993.

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1993, this article, which was enacted as Article 31, containing Code Sections 10-1-850 through 10-1-854, was redesignated as Article 33, containing Code Sections 10-1-890 through 10-1-894.

**10-1-890. Short title.**

This article shall be known and may be cited as the "Motorized Wheelchair Warranty Act." (Code 1981, § 10-1-890, enacted by Ga. L. 1993, p. 1805, § 1.)

**10-1-891. Definitions.**

As used in this article, the term:

(1) "Collateral costs" means expenses incurred by a consumer in connection with the repair of a nonconformity, including the costs of obtaining an alternative wheelchair or other device used for mobility assistance.

(2) "Consumer" means any of the following:

(A) The purchaser of a motorized wheelchair, if the motorized wheelchair was purchased from a motorized wheelchair dealer or manufacturer for purposes other than resale.

(B) A person to whom the motorized wheelchair is transferred for purposes other than resale, if the transfer occurs before the expiration of an express warranty applicable to the motorized wheelchair.

(C) A person who may enforce the warranty.

(D) A person who leases a motorized wheelchair from a motorized wheelchair lessor under a written lease.

(3) "Demonstrator" means a motorized wheelchair used primarily for the purpose of demonstration to the public.

(4) "Early termination cost" means any expense or obligation that a motorized wheelchair lessor incurs as a result of both the termination of a written lease before the termination date set forth in that lease and the return of a motorized wheelchair to a manufacturer under paragraph (3) of subsection (b) of Code Section 10-1-893. "Early termination cost" includes a penalty for prepayment under a finance arrangement.

(5) "Early termination savings" means any expense or obligation that a motorized wheelchair lessor avoids as a result of both the termination of a written lease before the termination date set forth in that lease and the return of a motorized wheelchair to a manufacturer under paragraph (3) of subsection (b) of Code Section 10-1-893. "Early termination savings" includes an interest charge that the motorized wheelchair lessor would have paid to finance the motorized wheelchair or, if the motorized wheelchair lessor does not finance the motorized wheelchair, the difference between the total amount for which the lease obligates the consumer during the period of the lease term remaining after the early termination and the present value of that amount at the date of the early termination.

(6) "Manufacturer" means a person who manufactures or assembles motorized wheelchairs and agents of that person, including an im-

poriet, a distributor, factory branch, distributor branch, and any warrantors of the manufacturer's motorized wheelchairs but does not include a motorized wheelchair dealer.

(7) "Motorized wheelchair" means any motor-driven wheelchair, including a demonstrator, that a consumer purchases or accepts transfer of in this state.

(8) "Motorized wheelchair dealer" means a person who is in the business of selling motorized wheelchairs.

(9) "Motorized wheelchair lessor" means a person who leases a motorized wheelchair to a consumer, or who holds the lessor's rights, under a written lease.

(10) "Nonconformity" means a condition or defect that substantially impairs the use, value, or safety of a motorized wheelchair, and that is covered by an express warranty applicable to the motorized wheelchair or to a component of the motorized wheelchair, but does not include a condition or defect that is the result of abuse, neglect, or unauthorized modification or alteration of the motorized wheelchair by a consumer.

(11) "Reasonable attempt to repair" means any of the following occurring within the term of an express warranty applicable to a new motorized wheelchair or within one year after first delivery of the motorized wheelchair to a consumer, whichever is sooner:

(A) The same nonconformity with the warranty is subject to repair at least four times by the manufacturer, motorized wheelchair lessor, or any of the manufacturer's authorized motorized wheelchair dealers and the nonconformity continues.

(B) The motorized wheelchair is out of service for an aggregate of at least 30 days because of warranty nonconformities. (Code 1981, § 10-1-891, enacted by Ga. L. 1993, p. 1805, § 1.)

**Code Commission notes.** — Pursuant to Section 10-1-853" in paragraphs (4) and Code Section 28-9-5, in 1993, "Code Section 10-1-893" was substituted for "Code (5).

**10-1-892. Express written warranties for motorized wheelchairs; failure to furnish warranty.**

A manufacturer who sells a motorized wheelchair to a consumer, either directly or through a motorized wheelchair dealer, shall furnish the consumer with an express written warranty for the motorized wheelchair warranting parts and performance. The duration of the express written warranty shall be not less than one year after first delivery of the motorized wheelchair to the consumer. If a manufacturer fails to furnish an

express written warranty as required by this Code section, the motorized wheelchair shall be covered by an express warranty as if the manufacturer had furnished an express written warranty to the consumer as required by this Code section. (Code 1981, § 10-1-892, enacted by Ga. L. 1993, p. 1805, § 1.)

**10-1-893. Repair of nonconforming motorized wheelchairs; refund or replacement after reasonable attempt to repair; resale or lease of returned motorized wheelchair.**

(a) If a new motorized wheelchair does not conform to an applicable express warranty and the consumer reports the nonconformity to the manufacturer, the motorized wheelchair lessor, or any of the manufacturer's authorized motorized wheelchair dealers and makes the motorized wheelchair available for repair before one year after first delivery of the motorized wheelchair to a consumer, the nonconformity shall be repaired at the manufacturer's expense to correct the nonconformity regardless of whether the repairs are made after expiration of the warranty rights period. If in any subsequent proceeding it is determined that the consumer's repair did not qualify under this article, and the manufacturer was not otherwise obligated to repair the motorized wheelchair, the consumer shall be liable to the manufacturer for costs of repair.

(b) (1) If, after a reasonable attempt to repair, the nonconformity is not repaired, the manufacturer shall carry out the requirement under paragraph (2) or (3) of this subsection, whichever is appropriate.

(2) At the direction of a consumer as defined in subparagraph (A), (B), or (C) of paragraph (2) of Code Section 10-1-891, the manufacturer shall do one of the following:

(A) Accept return of the motorized wheelchair and replace the motorized wheelchair with a comparable new motorized wheelchair and refund any collateral costs.

(B) Accept return of the motorized wheelchair and refund to the consumer and to any holder of a perfected security interest in the consumer's motorized wheelchair, as their interest may appear, the full purchase price plus any finance charge, amount paid by the consumer at the point of sale, and collateral costs, less a reasonable allowance for use. Under this subparagraph, a reasonable allowance for use may not exceed the amount obtained by multiplying the full purchase price of the motorized wheelchair by a fraction, the denominator of which is 1,825 and the numerator of which is the number of days that the motorized wheelchair was driven before the consumer first reported the nonconformity to the motorized wheelchair dealer.

10-1-893

SELLING AND OTHER TRADE PRACTICES

10-1-893

(3) (A) At the direction of a consumer as defined in subparagraph (D) of paragraph (2) of Code Section 10-1-891, the manufacturer shall:

(i) Accept return of the motorized wheelchair;

(ii) Refund to the motorized wheelchair lessor and to any holder of a perfected security interest in the motorized wheelchair, as their interest may appear, the current value of the written lease as defined in subparagraph (B) of this paragraph; and

(iii) Refund to the consumer the amount that the consumer paid under the written lease plus any collateral costs, less a reasonable allowance for use as defined in subparagraph (C) of this paragraph.

(B) The current value of the written lease equals the total amount for which that lease obligates the consumer during the period of the lease remaining after its early termination plus the motorized wheelchair dealer's early termination costs and the value of the motorized wheelchair at the lease expiration date if the lease sets forth that value, less the motorized wheelchair lessor's early termination savings.

(C) A reasonable allowance for use may not exceed the amount obtained by multiplying the total amount for which the written lease obligates the consumer by a fraction, the denominator of which is 1,825 and the numerator of which is the number of days that the consumer drove the motorized wheelchair before first reporting the nonconformity to the manufacturer, motorized wheelchair lessor, or motorized wheelchair dealer.

(c) To receive a comparable new motorized wheelchair or a refund due under paragraph (1) or (2) of subsection (b) of this Code section, a consumer, as defined under subparagraph (A), (B), or (C) of paragraph (2) of Code Section 10-1-891, shall offer to transfer possession of the motorized wheelchair having the nonconformity to the manufacturer of that motorized wheelchair. No later than 30 days after that offer, the manufacturer shall provide the consumer with a comparable new motorized wheelchair or a refund. When the manufacturer provides the new motorized wheelchair or refund, the consumer shall return the motorized wheelchair having the nonconformity to the manufacturer, along with any endorsements necessary to transfer legal possession to the manufacturer.

(d) (1) To receive a refund due under paragraph (3) of subsection (b) of this Code section, a consumer as defined under subparagraph (D) of paragraph (2) of Code Section 10-1-891, shall offer to return the motorized wheelchair having the nonconformity to the manufacturer

of that motorized wheelchair. No later than 30 days after that offer, the manufacturer shall provide the refund to the consumer. When the manufacturer provides the refund, the consumer shall return the motorized wheelchair having the nonconformity to the manufacturer.

(2) To receive a refund due under paragraph (3) of subsection (b) of this Code section, a motorized wheelchair lessor shall offer to transfer possession of the motorized wheelchair having the nonconformity to the manufacturer of that motorized wheelchair. No later than 30 days after that offer, the manufacturer shall provide the refund to the motorized wheelchair lessor. When the manufacturer provides the refund, the motorized wheelchair lessor shall provide any endorsements necessary to transfer legal possession to the manufacturer.

(3) No person may enforce the lease against the consumer after the consumer receives a refund due under paragraph (3) of subsection (b) of this Code section.

(e) No motorized wheelchair returned by a consumer or motorized wheelchair lessor in this state under subsection (b) of this Code section or by a consumer or motorized wheelchair lessor in another state under a similar law of that state may be sold or leased again in this state unless full disclosure of the reasons for return is made to any prospective buyer or lessee. (Code 1981, § 10-1-893, enacted by Ga. L. 1993, p. 1805, § 1.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1993, "Code Section 10-1-891" was substituted for "Code Section 10-1-851" in paragraph (2) and sub-paragraph (3)(A) of paragraph (b), subsection (c), and paragraph (1) of subsection (d).

**10-1-894. Other rights or remedies under other law or contract; waiver void; action for damages.**

(a) This article shall not be deemed to limit rights or remedies available to a consumer under any other law or contract.

(b) Any waiver by a consumer of rights under this article is void.

(c) In addition to pursuing any other remedy, a consumer may bring an action to recover for any damages caused by a violation of this article. The court shall award a consumer who prevails in such an action twice the amount of any pecuniary loss together with costs, disbursements, and reasonable attorney fees and any equitable relief that the court determines is appropriate. (Code 1981, § 10-1-894, enacted by Ga. L. 1993, p. 1805, § 1.)

Regular Session, 1993

HOUSE BILL NO. 1956

BY REPRESENTATIVE STINE

ORIGINAL  
SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 3-C

DATE 3-14-95

BILL NO. HB 335

*(Presented by Barbara Jarson)*EXCEPTIONAL PERSONS/COMMERCE: Provides for the New Assistive Devices  
Warranty Act

1 AN ACT

2 To enact Chapter 46 of Title 51 of the Louisiana Revised Statutes of

3 1950, comprised of R.S. 51:2761 through 2767, relative to

4 warranties for new assistive devices; to provide for definition

5 of terms; to provide for time limits for such warranties;

6 provides for nonconformity disclosure requirements; to provide

7 for other remedies; to provide for reimbursements and

8 replacements; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Chapter 46 of Title 51 of the Louisiana Revised

11 Statutes of 1950, comprised of R.S. 51:2761 through 2767, is hereby

12 enacted to read as follows:

13 CHAPTER 46. NEW ASSISTIVE DEVICE WARRANTIES

14 §2761. New Assistive Devices Warranty Act

15 This Chapter shall be known as the "New Assistive Devices

16 Warranty Act."

17 §2762. Definitions

18 A. For purposes of this Chapter, the following terms shall

19 have the following definitions:

20 (1) "Collateral costs" means expenses incurred by a

21 consumer in connection with the repair of a nonconformity,

22 including the cost of sales tax and of obtaining an alternative

23 assistive device.

- 1       (2) "Consumer/Agency" means any of the following:
- 2       (a) The purchaser of an assistive device, if the assistive
- 3       device was purchased from an assistive device dealer or
- 4       manufacturer for purposes other than resale.
- 5       (b) A person to whom the assistive device is transferred
- 6       for purposes other than resale, if the transfer occurs before
- 7       the expiration of an express warranty applicable to the
- 8       assistive device.
- 9       (c) A person who may enforce the warranty.
- 10       (d) A person who leases an assistive device from an
- 11       assistive device lessor under a written lease.
- 12       (3) "Demonstrator" means an assistive device used primarily
- 13       for the purpose of demonstration to the public.
- 14       (4) "Early termination cost" means any expense or
- 15       obligation that an assistive device lessor incurs as a result of
- 16       both the termination of a written lease before the termination
- 17       date set forth in that lease and the return of an assistive
- 18       device to the manufacturer. "Early termination cost" includes a
- 19       penalty for prepayment under a finance arrangement.
- 20       (5) "Early termination savings" means any expense or
- 21       obligation that an assistive device lessor avoids as a result of
- 22       both the termination of a written lease before the termination
- 23       date set forth in that lease and the return of an assistive
- 24       device to a manufacturer which shall include an interest charge
- 25       that the assistive device lessor would have paid to finance the
- 26       assistive device or, if the assistive device lessor does not
- 27       finance the assistive device, the difference between the total
- 28       period of the lease term remaining after the early termination
- 29       and the present value of that amount at the date of the early
- 30       termination,
- 31       (6) "Manufacturer" means a person who manufactures or
- 32       assembles assistive devices and agents of that person, including
- 33       an importer, a distributor, a factory branch, distributor



1 branch, and any warrantors of the manufacturer's assistive  
2 device, but does not include an assistive device dealer.

3 (7) "Assistive device" means any device, including a  
4 demonstrator, that a consumer purchases or accepts transfer of  
5 in this state which is used for a major life activity which  
6 includes, but is not limited to: manual wheelchairs, motorized  
7 wheelchairs, motorized scooters, and other aides that enhance  
8 the mobility of an individual; hearing aids, telephone  
9 communication devices for the deaf (TDD), assistive listening  
10 devices, and other aides that enhance an individual's ability to  
11 hear; voice synthesized computer modules, optical scanners,  
12 talking software, braille printers, and other devices that  
13 enhance a sight impaired individual's ability to communicate;  
14 and any other assistive device that enables a person with a  
15 disability to communicate, see, hear, or maneuver.

16 (8) "Assistive device dealer" means a person who is in the  
17 business of selling assistive devices.

18 (9) "Assistive device lessor" means a person who leases  
19 assistive devices to consumers, or who holds the lessor's  
20 rights, under a written lease.

21 (10) "Nonconformity" means any specific condition or  
22 generic defect or malfunction, or any defect or condition which  
23 substantially impairs the use, value, or safety of an assistive  
24 device, but does not include a condition or defect that is the  
25 result of abuse, neglect, or unauthorized modification or  
26 alteration of the assistive device by the consumer.

27 (11) "Reasonable attempt to repair" means any of the  
28 following occurring within the term of an express warranty  
29 applicable to a new assistive device or within one year after  
30 first delivery of the assistive device to a consumer, whichever  
31 is sooner:

32 (a) The manufacturer, assistive device lessor, or any of  
33 the manufacturer's authorized assistive device dealers shall

1 accept return of the new assistive device for repair at least  
2 two times.

3 (b) The assistive device is out of service for an aggregate  
4 of a least thirty cumulative days because of warranty  
5 nonconformities.

6 §2763. Express warranties; time limit to conform

7 A. A manufacturer who sells an assistive device to a  
8 consumer, either directly or through an assistive device dealer,  
9 shall furnish the consumer with an express warranty for the  
10 assistive device. The duration of the express warranty shall be  
11 not less than one year after first delivery of the assistive  
12 device to the consumer. If a manufacturer fails to furnish an  
13 express warranty as required by this Section, the assistive  
14 device shall be covered by an express warranty as if the  
15 manufacturer had furnished an express warranty to the consumer  
16 as required by this Section.

17 B. An express warranty does not take effect until the  
18 consumer takes possession of the new assistive device.

19 C. If a new assistive device does not conform to an  
20 applicable express warranty and the consumer reports the  
21 nonconformity to the manufacturer, the assistive device lessor  
22 or any of the manufacturer's authorized assistive device dealers  
23 and makes the assistive device available for repair before one  
24 year after first delivery of the device to a consumer, the  
25 nonconformity shall be repaired.

26 §2764. Assistive device replacement or refund

27 A. If, after a reasonable attempt to repair, the  
28 nonconformity is not repaired, the manufacturer shall carry out  
29 the requirement under Subsections 1 or 2 of this Section,  
30 whichever is appropriate:

31 (1) To provide for refunds, at the request of the consumer,  
32 the manufacturer shall do one of the following:

1           (a) Accept return of the assistive device and refund to the  
2           consumer and to any holder of perfected security interest in the  
3           consumer's assistive device, as their interest may appear, the  
4           full purchase price plus any finance charge, amount paid by the  
5           consumer at the point of sale and collateral costs, less a  
6           reasonable allowance for use.

7           (b) Accept return of the assistive device, refund to the  
8           assistive device lessor and to any holder of a perfected  
9           security interest in the assistive device, as their interest may  
10          appear, the current value of the written lease and refund to the  
11          consumer the amount that the consumer paid under the written  
12          lease plus any collateral costs, less a reasonable allowance for  
13          use.

14          (2) To receive a comparable new assistive device or a  
15          refund, a consumer shall do one of the following:

16          (a) Offer to the manufacturer of the assistive device  
17          having the nonconformity to transfer possession of that  
18          assistive device to that manufacturer. No later than thirty  
19          days after that offer, the manufacturer shall provide the  
20          consumer with the comparable new assistive device or a refund.  
21          When the manufacturer provides the new assistive device or  
22          refund, the consumer shall return the assistive device having  
23          the nonconformity to the manufacturer, along with any  
24          endorsements necessary to transfer real possession to the  
25          manufacturer.

26          (b) Offer to return the assistive device having the  
27          nonconformity to its manufacturer. No later than thirty days  
28          after that offer, the manufacturer shall provide the refund to  
29          the consumer. When the manufacturer provides the refund, the  
30          consumer shall return to the manufacturer the assistive device  
31          having the nonconformity.

32          (c) Offer to transfer possession of the assistive device  
33          having the nonconformity to its manufacturer. No later than

thirty days after that offer, the manufacturer shall provide the refund to the assistive device lessor. When the manufacturer provides the refund, the assistive device lessor shall provide to the manufacturer any endorsements necessary to transfer legal possession to the manufacturer.

B. Under the provisions of this Section, the current value of the written lease equals the total amount for which that lease obligates the consumer during the period of the lease remaining after its early termination, plus the assistive device dealer's early termination costs and the value of the assistive device at the lease expiration date if the lease sets forth that value, less the assistive device lessor's early termination savings.

C. Under the provisions of this Section, a reasonable allowance for use may not exceed the amount obtained by multiplying the total amount for which the written lease obligates the consumer by a fraction, the denominator of which is 1,825 and the numerator of which is the number of days that the consumer used the assistive device before first reporting the nonconformity to the manufacturer, assistive device lessor, or assistive device dealer.

D. No person may enforce the lease against the consumer after the consumer receives a refund.

#### §2765. Nonconformity disclosure requirement

No assistive device returned by a consumer or assistive device lessor in this state or any other state may be sold or leased again in this state unless full disclosure of the reason for return is made to any prospective buyer or lessee.

#### §2766. Other remedies

A. This Chapter shall not limit rights or remedies available to a consumer under any other law.

B. Any waiver of rights by a consumer under the provisions of this Chapter shall be void.

1        C. In addition to pursuing any other remedy, a consumer  
2        may bring an action to recover for any damages caused by a  
3        violation of this Chapter. The court shall award a consumer who  
4        prevails in such an action, twice the amount of any pecuniary  
5        loss, together with costs, disbursements, and reasonable  
6        attorney fees, and any equitable relief that the court  
7        determines is appropriate.

8        \$2767. Manufacturer's duty to provide reimbursement for  
9        temporary replacement of assistive devices; penalties

10       A. Whenever an assistive device covered by a  
11       manufacturer's express warranty is tendered by a consumer to the  
12       dealer from whom it was purchased or exchanged for the repair of  
13       any defect, malfunctions, or nonconformity to which the warranty  
14       is applicable and at least one of the following conditions  
15       exists, the manufacturer shall provide directly to the consumer  
16       for the duration of the repair period, a rental assistive device  
17       reimbursement of up to twenty dollars per day. The applicable  
18       conditions are as follows:

19       (1) The repair period exceeds ten working days, including  
20       the day on which the device is tendered to the dealer for  
21       repair.

22       (2) The defect, malfunction, or nonconformity is the same  
23       for which the assistive device has been tendered to the dealer  
24       for repair on at least two previous occasions.

25       B. The provisions of this Section regarding a  
26       manufacturer's duty shall apply for the period of the  
27       manufacturer's express warranty or for two years from delivery  
28       of the assistive device to the customer, whichever period of  
29       time ends sooner.

30       Section 2. The provisions of this Act shall apply to assistive  
31       devices delivered after the effective date of the Act and shall in no  
32       way be applied retroactively.

1       Section 3. This Act shall become effective upon signature by  
2 the governor or, if not signed by the governor, upon expiration of  
3 the time for bills to become law without signature by the governor,  
4 as provided in Article III, Section 18 of the Constitution of  
5 Louisiana. If vetoed by the governor and subsequently approved by  
6 the legislature, this Act shall become effective on the day following  
7 such approval.

---

DIGEST

The digest printed below was prepared by House Legislative Services.  
It constitutes no part of the instrument.

---

Stine

HB No.

Enacts the New Assistive Device Warranty Act and provides definitions. Requires warranties by manufacturers on assistive devices such as wheel chairs and other devices which assist mobility, devices which assist hearing, and devices which assist communications. Provides for replacement or refund when nonconformities or repairs are of certain frequency or for repairs which cannot be made. Provides for procedures to be followed for replacement or refund including consumer's responsibilities, manufacturer's responsibilities, and lessor's responsibilities and provides for calculation of refunds to be made. Provides for disclosure of reasons for return prior to resale. Specifies that the Act does not limit rights or other remedies and prohibits waiver of rights by the consumer. Requires temporary replacement of assistive devices under certain circumstances and provides for a \$20/day reimbursement payment.

Provides that the Act shall apply prospectively, not retroactively.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Adds Chapter 46 of Title 51, R.S. 51:2761 through 2767)

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 3-D

DATE 3-14-95

BILL NO. HR 335

*(Presented by Barbara Larson)*

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.

**STEP  
AHEAD**

**SPECIAL REPORT**

# Guide to Consumer Protection

*for People  
With  
Disabilities,  
Their  
Families,  
and Their  
Friends*

Tod

# Chairs

by Peter Axelson,  
Beneficial Designs, Inc.

To give readers as much objective data as possible, a new source has been incorporated into this wheelchair evaluation. We have asked manufacturers for the minimum information they must provide in their technical product literature to comply with ANSI/RESNA wheelchair standards. These voluntary standards will be adopted as a reference by the Department of Veterans Affairs (VA).

The items for which there is a new ANSI/RESNA test procedure have been marked with an \*. If a manufacturer has supplied information for an item marked with an \* but has not indicated that the ANSI/RESNA tests were used, the values disclosed may have been obtained using another method of testing. The new ANSI/RESNA test procedures are comprehensive, and many manufacturers have not yet had a chance to use them to test their wheelchairs. We don't want to penalize those manufacturers, but we want you to know which wheelchairs have been tested according to these new standards.

*Caution: The results given are based on the testing of one or more wheelchairs only and represent the maximum performance value without failure as tested on a new wheelchair. The performance you will obtain from a specific wheelchair may vary, depending on environmental conditions and your personal wheelchair-riding habits.*

The remainder of this article will give you a background on the wheelchair standards and an explanation of what each of the items means. Although the additional information may seem confusing at first, it can provide the knowledge needed to make a better selection the next time you choose a new wheelchair.

Neither PVA nor *Paraplegia News* endorses any of the products mentioned in this article, nor is the magazine responsible for the operation or suitability of any wheelchair. Each reader is urged to thoroughly investigate any company and its products before making a purchase.

**P**urchasing a wheelchair can be a harrowing experience, and finding the perfect chair can seem impossible. One major difficulty is that there is no way to compare wheelchair characteristics and performance values, because manufacturers often use different procedures to create their product specifications. For example, while one manufacturer might measure seat width from the outside of the seat rails, another might measure from the inside of the rails, and yet another the distance between the two armrest panels. This problem led a group of dedicated people to produce a set of standardized wheelchair measurements and test procedures.

## Setting Standards

Since March of 1982, the ANSI/RESNA Wheelchair Standards Committee has been working to bring consumers objective information about the characteristics and performance of wheelchairs. The committee has 26 members, including rehabilitation engineers, wheelchair manufacturers, government-agency representatives (VA and the Food and Drug Administration), and wheelchair users and prescribers. The 18 standards developed by the committee are test procedures designed to produce objective information about wheelchairs. Some of the test procedures list suggested minimum-performance criteria for durability and safety.

The American National Standards Institute (ANSI) is a large, nonprofit, standards-setting organization that has sanctioned the committee's work since August 22, 1982. The committee's work has been administered through RESNA, an interdisciplinary organization that promotes assistive technology for people with disabilities. In addition, the committee has worked concurrently with other countries through the International Standards Organization to create international wheelchair standards.

The development of the wheelchair standards used here was assisted by a contract from VA, which provided funding for the committee's standards activities. The Paralyzed Veterans of America administratively supported the wheelchair-standards committee from its beginning in 1982 until funding was available from VA in 1985. PVA has supported—and continues to support—Peter Axelson as chairman of the ANSI/RESNA Wheelchair Standards Committee. Substantial expertise and resources have been contributed by the following organizations and agencies:

- Beneficial Designs, Inc.
- Eastern Paralyzed Veterans Association
- Everest & Jennings, Inc.
- Gaymar Industries

- Helen Hayes Hospital
- Invacare, Inc.
- National Rehabilitation Hospital
- Quest Technologies
- RehabTech Associates
- Southwest Research Institute
- Sunrise Medical
- The Paralyzed Veterans of America
- The University of Tennessee
- The University of Virginia
- Theradyne
- US Department of Education, National Institute on Disability and Rehabilitation Research
- US Department of Veterans Affairs, Rehabilitation Research and Development Service and Prosthetics/Sensory Aids Service and Prosthetics Assessment Information Center
- US Food and Drug Administration



EXHIBIT NO. 4DATE 3-14-95BILL NO. HB 335

In SUPPORT of HB335

My name is Kathy Collins and I live here in Helena. I support the passage of HB 335, the Montana Wheelchair Warranty Act.

I am sitting in my third power wheelchair I've had since 1982. This chair has added a tremendous amount of freedom, independence and ADULTHOOD to my life. By using this wheelchair (her name is Bullet), I am able to teach eighth grade English full time at C.R. Anderson Middle School, manage and own my own house, do laundry, cook, drive a lift-equipped mini van, and am responsible for the care of my service dog, Maude. I spend between 16 to 18 hours perday in my wheelchair. Yet because of my short stature, I am forced to depend on child sized wheelcair models which fit me physically, but which are not designed to handle the workload I demand. And this leads me to the story of my second power chair.

Within the first year of having that chair, the joystick was replaced twice, the motors three times. The batteries were replaced every six months (instead of every year and a half) at a cost of \$80 per set. It seemed that virtually everything that could go wrong with my wheelchair did go wrong. That model did have a limited manufacturer's warranty, but the problems continued throughout the chair's life. The lifespan of most power chairs is five years or more, and that chair was dead within four years. By the end of its fourth year, both motors were frozen, all connecting clips were melted together, and I still owed the supplier who sold me the chair \$200. Because of its constant need for repairs and the \$35 surcharge the supplier tacked on each service call, I was still paying for a chair that I could no longer use. I had the wheelchair equivalent of a lemon.

My power wheelchair is not easily replaced. If it is out of order, I can't rent another of its size and durability in Helena, Montana. We don't have access to numerous medical suppliers with huge inventories that they have access to in big cities. When my power wheelchair is down, I am forced to use my manual wheelchair, and even though it provides me some mobility, I don't have the strength or energy to maintain my active schedule. And so, I stay home and wait for my power chair to be repaired .

I urge you to support HB 335, the Montana Wheelchair Warranty Act. Those of us who depend on wheelchairs need the legislative protection that this laws will provide.

Thank you.

Peter Leech, M.S.W.  
5190 Old Marshall Grade  
Missoula, MT 59802  
406-549-3239

March 9, 1995

Senator John R. Hertel, Chairman  
Senate Committee on Business and Industry  
Senate Chambers  
Capitol Station  
Helena, MT 59620

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

I am writing to request your support of HB 335, the Wheelchair Warranty Act.

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, which requires me to use a wheelchair for mobility. For about four years I was co-owner of a wheelchair manufacturing company.

If a person's only mobility device is faulty and unreliable, it not only can seriously interfere with that 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. When a wheelchair leaves the factory to be delivered to the consumer, it should be assumed to be reliable. The consumer should not be expected to be the "test-pilot" for the manufacturer. If unresolvable defects appear, the wheelchair should be regarded as a "lemon", and repaired or replaced in a timely way. Reputable, consumer-responsive manufacturers already do this.

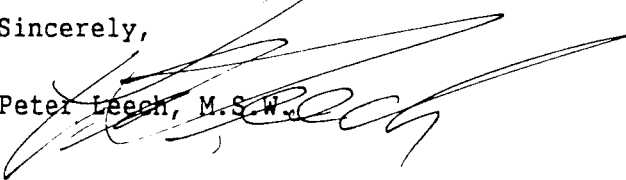
The terms of this Bill have the support of people with disabilities and durable medical equipment dealers alike. It will allow people with disabilities and dealers to work as allies to encourage manufacturers to provide reliable equipment.

The Wheelchair Warranty Law will support the efforts of people with disabilities striving for independence and self-sufficiency. I encourage the Committee to do the same and recommend a "do-pass" vote to the full Senate.

Your support will be very much appreciated.

Sincerely,

Peter Leech, M.S.W.



Post-It™ brand fax transmittal memo 7671		# of pages > 1
To <u>Barbara Eiten</u>	From <u>B. Johnson</u>	
Co. <u>Wason</u>	Co.	
Dept.	Phone #	
Fax # <u>(406) 243-2395</u>	Fax #	

4720

Dixie Snobl Johnson  
9 Fairview S.  
Anaconda, MT 59711

March 10, 1995

Chairman Hertel  
Business & Industry Committee  
Capitol Station  
Helena, MT 59620

Mr. Chairman,

I am a registered Occupational Therapist who practices with Deer Lodge Valley Therapy Clinic in Deer Lodge. We serve residents in Butte-Silver Bow, Anaconda-Deer Lodge and Powell Counties. I currently sit on the Montana Consortium for Assistive Technology Board of Directors.

I write in support of HB 335, The Montana Wheelchair Warranty Act. It has been my experience, as a therapist, that many clients who purchase a wheelchair will require additional repairs and adjustments to allow the chair to provide its expected function. These repairs are often done quickly and easily. But, some clients struggle with the wheelchair provider as they wait for remedies to bring their wheelchair up to its expected functions. They lose their independence and mobility for performing activities of daily living they had hoped to gain by purchasing the device.

HB 335 will empower clients to pursue their right to fair and effective remedies to enhance their independence. I respectfully request your support and vote in favor of this bill.

0 1191

EXHIBIT 5  
DATE 3-14-95  
I HB 335

HB # 335

March 9, 95

To whom it may concern,

I am writing in response to the Lemon Law. I feel there should be a Lemon Law in this state because people in wheelchairs have a hard time paying their bills. I feel that people who sell wheelchairs should be responsible for the major repairs.

In the past year my Hi rider wheelchair has been in the shop at least ten times. When it goes into the shop, I have to use my old chair. This lasts for about six months plus.

Donna  
1-800-222-7585 work  
656-0370 Home  
Fee / Free to Call me?  
Call if any questions concerning  
the letter

Joe Harrington  
2291 Avenue C#6  
Billings, MT 59102

March 9, 1995

Chairman Jim Hertel  
Senate Committee on Business and Industry  
Capitol Station  
Helena, MT 59601

Dear Chairman Hertel:

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 nearly ten years ago, my spinal cord was injured which left me with (just a) little movement in one leg. The nerves which controlled my left arm and shoulder were also damaged, in that the seat belt which saved my life, also tore the nerves from my spinal cord. The bottom line of all this is that I only have the use of one hand and will need a wheelchair for the rest of my natural life.

I am a college educated individual with a B.S. in Elementary/Special Education. Funding for this educational endeavor was underwritten largely by Vocational Rehab, for which I'm immensely grateful.

I've had three power chairs since my wreck, and my second one, an Everest and Jennings (E&J) Marathon, gave me a lot of trouble. In 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 my mode of transportation was a one-arm drive, pump manual chair. This was really hard. Even though it was difficult, at least I had a method to get myself around. Right now, my manual chair is unsafe and unusable, so it's not even an option. Under current state funding levels I can no longer have two chairs repaired, and this leaves me with no back-up.

Last fall, my current power chair (an E&J Lancer) broke and took six weeks to be repaired. During this time I was stuck in bed, at home, which got very boring very fast.

I have a job now with Living Independently For Today and Tomorrow (LIFFT) in Billings. 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 really be me who was the unreliable party, but instead the machinery I depend on to get around.

Thank you for your consideration in this matter.

Sincerely,

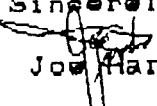
  
Joe Harrington

EXHIBIT 5  
DATE 3-14-95  
1 HB 335

Pam Nelson  
819 Oak St.  
Missoula, MT 59801

March 10, 1995

Chairman John R. Hertel  
The Senate Committee on Business and Industry  
Capitol Station  
Helena, MT 59620

Dear Chairman Hertel and members of the Committee,

I would like to support HB335, the "Wheel Chair Warranty Act".

I received my chair in 1983. It is now 12 years old.

The first experience that I remember concerning a malfunction with my chair happened when i was driving down the street. If any vehicle with a Citizen Band radio (CB) drove by, my chair would stop. Immediately following this incident, I was crossing Uclid Avenue in Helena and my chair began to spin around and around. My arms flew off the chair and I could not hit the control button to stop the chair. Traffic was completely stopped until a friend was able to hit the switch on the back of the chair to turn the chair completely off. When the switch was turned back on, the chair would move, but it was uncontrollable. I nearly flew off a ramp because of the jerking of the chair. It took 6 months to get the chair fixed. Therefore, I was stuck in a manual chair, needing to have people push me around.

Another incident occurred when I was visiting a beautician. My chair was in recline mode. We were not able to get the chair to return to the upright position. The chair had to be returned to the manufacturer, taking another 3 months.

The above incidents happened within the first year that I had the chair. I could share many more experiences like these over the lifetime of this chair.

I would again urge you to pass HB335.

Thank you for taking my testimony.

Sincerely,

  
Pam Nelson



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

March 9, 1995

Senate Committee: Business and Industry  
Chairperson: John R. Hertel

Dear 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 in support of the recently proposed bill requiring wheelchair manufacturers to educate their consumers on existing warranties and backing these warranties up in a reasonable amount of time. I urge you to support this bill as well.

It is not an everyday occurrence that a wheelchair user is without their chair: but it is a catastrophe when it happens. As the system works now, a warranty exists for the frame of the 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 frame or piece of equipment. A recent example would be a local Missoula man. He received a new expensive powered wheelchair that was purchased from an out of state manufacturer. 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 at least one thousand miles away from these manufacturers, I am powerless. There are many good wheelchair manufacturers that do offer customer service; but there are many who don't ever consider the end user.

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 this bill has won the support of the Montana House and I hope it will meet with the same success in the Senate. If I can be of assistance in any way, please contact me at (406)728-4100 ext. 5450.

Sincerely,



Mary O'Connell, RPT

To: Chairman Hertel  
Committee Members  
Senate Committee on Business and Industry

From: Representative Tuss  
Representative, House District 46, Cascade County

Re: House Bill 518, proposed amendments

Date: March 13, 1995

I come before you today to present House Bill 518, a bill to create a uniform licensing and regulation process for all licensed professions housed in the Department of Commerce. House Bill 518 was generated in response to the recommendations of the Governor's Task Force for Renewal of Government, and is fully endorsed by the Governor through his acceptance of this Task Force recommendation. House Bill 518 passed on a 100-0 vote on third reading in the House, with some relatively minor amendments that were adopted by the House Business and Labor Committee.

Since its passage in the House, this bill has drawn some additional attention from effected groups who have come to me with requests for some minor amendments and requests for clarification. I have accepted these amendments as friendly, and ask that you consider these amendments with the bill. These amendments do not substantively alter the purpose or effect of the bill. They are primarily designed to do one of the following:

1. Clarify the scope of the act;
2. Retain important language in existing law that was scheduled for repeal under House Bill 518;
3. Coordinate House Bill 518 with other important bills making their way through the legislature; and
4. Clarify and ensure due process rights of individuals facing disciplinary action before a licensing board.

These amendments address concerns expressed to me after passage of House Bill 518. If accepted, I am confident that House Bill 518 will have strong support of effected groups. At this time, 28 of the 32 effected boards, in addition to a number of private associations, have expressed support for passage of House Bill 518.

With respect to clarification, I direct your attention to what House Bill 518 does and does not do. First, House Bill 518 proposes to repeal approximately 185 sections of the law, eliminate language from another 107 sections of the law, and replace the eliminated language with 19 standardized sections of the law dealing with traditional issues of licensing boards such as temporary licensure, licensure of individuals from other states, continuing education, and disciplinary actions against licensed professionals.



Section 4, for example, authorizes a board to grant licensure without examination to an individual from another state with substantially equivalent qualifications. A board could determine if the other state had substantial qualifications through a case by case analysis of each state's qualifications, or by development of reciprocal agreements with other states. Many boards already have such agreements in place pursuant to existing law.

House Bill 518 does not authorize boards to take action unless specified in the law. The subsection of section 19 on inactive licensure, for example, would authorize a board to grant inactive status, require compliance with any continuing education requirements, and limit the time an individual could remain on inactive status without re-establishing qualifications. It would not, however, authorize a board to charge fees (such as for the real estate recovery account fee of the Board of Realty Regulation) to an inactive licensee, other than fees for licensure and continuing education. The subsection of section 19 on continuing education provides an additional example of statutory guidelines under House Bill 518 that have been lacking in the past. The licensing boards would be able to regulate the enumerated items only, and would not, for example, be authorized to require annual testing of licensees as a part of a continuing education program.

I appreciate your consideration of House Bill 518 and the amendments. I urge you to recommend passage of this bill as amended.

Amendments to House Bill No. 518  
Third Reading Copy

Requested by Rep. Tuss  
For the Committee on Business and Industry

Prepared by Bart Campbell  
March 13, 1995

1. Title, line 21.

Strike: "AND"

Following: "37-71-213,"

Insert: "AND 39-5-306"

2. Title, page 2, line 12.

Strike: "39-5-306,"

3. Page 3, line 5.

Strike: "should"

Insert: "must"

4. Page 4, line 8.

Following: "regulates."

Insert: "The provisions of this chapter must be construed to supplement the statutes relating to a specific board and the profession it regulates. The method for initiating and judging a disciplinary proceeding, specified in [section 7(1)(e)], must be used by a board in all disciplinary proceedings involving licensed professionals."

5. Page 4, lines 10, 18, and 26.

Strike: "shall"

Insert: "may"

6. Page 6, line 24.

Strike: "8"

Insert: "7"

7. Page 6, line 25.

Following: "and"

Insert: "may be"

8. Page 6, line 26.

Following: "board"

Insert: ", or by other means authorized by the Montana Rules of Civil Procedure"

9. Page 7, line 1.

Strike: "service"

Insert: "the licensee's receipt"

10. Page 7, line 5.

Following: "agencies"

Insert: "; the Montana Rules of Civil Procedure; and the Montana Rules of Evidence"

11. Page 7, line 9.  
Following: "decides"  
Insert: "by a preponderance of the evidence"
12. Page 10, lines 22 through 25.  
Strike: subsection 18 in its entirety  
Renumber: subsequent subsection
13. Page 12, line 20.  
Strike: "."  
Insert: ";
14. Page 12, line 21.  
Insert: "(8) issue a notice to and pursue an action against a licensed individual, as a party, before the licensed individual's licensing board, after a finding of reasonable cause by a screening panel of a board pursuant to [section 7(1)(e)]."
15. Page 84, line 21.  
Insert: " **Section 1.** Section 39-5-306, "MCA, is amended to read:  
"39-5-306. **Agency not to refer applicant where strike or lockout exists.** ~~No licensee shall~~ An employment agency may not refer an applicant to an employer where there is a strike or lockout at the place of proposed employment if ~~such licensee the~~ employment agency has knowledge that ~~such the~~ condition exists."  
Renumber: subsequent sections
16. Page 85, line 16.  
Strike: "instruction"  
Insert: "instructions"  
Following: "."  
Insert: "(1)"
17. Page 85, line 17.  
Following: "."  
Insert: "(2) Section 39-5-306 is intended to be renumbered and codified as an integral part of Title 39, chapter 33, part 2."
18. Page 85, line 20.  
Following: "37-16-202"  
Insert: "and 37-16-407"
19. Page 85, line 21.  
Following: "VOID"  
Insert: "and [section 60 of this act], amending 37-16-407, is void"
20. Page 85, line 22.  
Strike: "A SECTION"  
Insert: "sections"
21. Page 85, line 23.

Strike: "AMENDS"  
Insert: "amend"  
Strike: "127"  
Insert: "128"

22. Page 85, line 23 in two places.  
Following: "37-16-406"  
Insert: "and 37-16-411"

23. Page 85, line 25.  
Strike: "AND"  
Insert: ", "  
Following: "37-11-309,"  
Insert: "37-11-320, and 37-11-321,"  
Strike: "127"  
Insert: "128"

24. Page 85, line 27.  
Insert: "(4) If House Bill No. 196 is passed and approved and if it includes sections that amend 37-47-341 and 37-47-343, then that portion of [section 128] that repeals 37-47-341 and 37-47-343, is void.  
(5) If Senate Bill No. 224 is passed and approved and if it contains a section that amends 37-51-321, then that portion of [section 128] that repeals 37-51-321, is void."

February 28, 1995

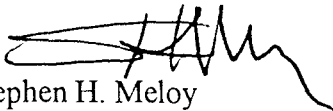
Senator Benedict  
Senate Committee on Business and Industry

Subject: House Bill 518

Dear ~~Senator Benedict~~ *Synette*:

Attached is information regarding House Bill 518, which will be heard in the Senate Business and Industry Committee at 8:00 a.m. on March 10, 1995. Please review the information at your convenience, and call on the Department with any concerns. We appreciate your consideration of House Bill 518, and hope to obtain the Committee's support for passage of House Bill 518.

Sincerely,



Stephen H. Meloy  
Bureau Chief  
Professional and Occupational Licensing Bureau  
Phone: 444-1488

**Background on House Bill 518 (Uniform Licensing Bill)**

## Quick Facts:

- Drafted pursuant to recommendation of the Governor's Task Force on Renewal of Montana Government.
- Specifically endorsed by Governor Marc Racicot.
- Passed out of the House Business and Labor Committee, with amendments, on an 18-0 vote.
- Passed on Third Reading in the House on a 100-0, unanimous vote.
- Repeals **185 existing sections** of the law.
- Removes language out of an additional **107 existing sections** of the law.
- Replaces the repealed and reduced sections with 19 standardized provisions applicable to all licensing boards in the Professional and Occupational Licensing Bureau.
- Increases due process of licensees by separating functions of licensing boards in investigating, charging and judging complaints against licensed professionals under the board's jurisdiction.
- Specifically endorsed by 27 of the 32 affected licensing boards. The remaining boards have either remained neutral, or have not formally considered the legislation. No licensing board is opposed to House Bill 518.

## Information regarding House Bill 518

### I. Background

The ideas behind House Bill 518 originated at the end of the 1993 special legislative session of the Montana Legislature. During the special session, Representative Raney introduced a resolution to require a study of professional and occupational licensing. This resolution was withdrawn upon the Department of Commerce's offer to voluntarily study the licensing of professions and occupations regulated by the boards in the Professional and Occupational Licensing Bureau. At the same time, the House Business and Industry Committee requested a specific meeting with the chairs of each board administratively attached to the Professional and Occupational Licensing Bureau, to discuss the Legislature's frustration with repeatedly dealing with professional and occupational licensing issues. The Committee requested that the Department of Commerce attempt to address these concerns through legislation prepared for the 1995 general legislative session.

The Department of Commerce initiated a review of professional and occupational licensing, and submitted draft proposals for the review of the Governor's Task Force for Renewal of Montana Government, including a proposal for a uniform licensing and discipline act similar to the Washington Uniform Disciplinary Act. The Governor's Task Force issued a set of draft proposals in June of 1994. These draft proposals were disseminated to the public for comment shortly thereafter. The Task Force adopted its final proposals in October of 1994, after an exhaustive public hearing process involving hearings in Bozeman, Billings, Great Falls, Missoula, Helena, and Kalispell.

Governor Racicot adopted the final recommendations of the Task Force in early December, 1994, including the recommendation for a uniform licensing and discipline act drafted along the same lines as the Washington Uniform Discipline Act. Legal staff for POL immediately prepared a first draft of House Bill 518

### II. Summary of the Bill

#### A. Length

House Bill 518 is approximately 85 pages long (in introduced form). The length, however, is deceptive, as the Bill simplifies and streamlines existing law. The first nineteen sections of the bill standardize professional and occupational licensing law in the areas of professional discipline, injunctive actions against unlicensed practice, temporary practice, continuing education, licensure of individuals from other states, and inactive licensure. House Bill 518 proposes to repeal 185 sections of existing law, and remove subsections out of another 107 sections. The bill also proposes to eliminate the licensure requirement for employment agencies and polygraph examiners. These repealed and reduced sections of the law would be replaced with nineteen standardized sections of the law that would apply to all professions regulated by the boards in POL. Pages 12 through 85 of the Bill, without exception, amount to a vast reduction in existing law.

## B. Rulemaking

The first nineteen sections of House Bill 518 are more detailed than bills traditionally submitted to the Montana Legislature. The intent in going into such detail was to **reduce the boards' reliance on rulemaking** by statutorily specifying procedures effecting the due process of individuals facing disciplinary action by a licensing board. Out of the nineteen new sections proposed under Senate Bill, fifteen of the sections are specifically devoted to procedures for discipline of licensees and pursuit of injunctive action against unlicensed individuals. With these sections, there will no longer be any need for boards to develop rules on the procedural aspects of license discipline. The procedures are specifically detailed in the statute, and will mandate a process of license discipline that ensures adequate due process for the individual facing discipline. The remaining sections of the bill deal with licensure of individuals from other states, temporary practice permits, continuing education, and rulemaking authority.

Section 19 of House Bill 518 specifies the rulemaking authority of the boards in concise terms, with **specific statutory guidelines** currently lacking in the various sections proposed for repeal or reduction in the bill. This one section of the bill replaces rulemaking authority of the licensing boards that currently exists in a variety of forms that are scheduled for termination under the bill.

## C. Due Process

House Bill 518 proposes a substantial change in the way that boards currently consider discipline of licensed individuals. Under current law, the boards are required to (1) determine whether a complaint should be investigated, (2) whether charges should be filed against an individual as a result of a complaint, and (3) whether the individual charged is guilty of the violation. Under House Bill 518, this process would be changed to provide increased due process for individuals facing discipline. Specifically, section 7 provides for a necessary separation of functions within the boards. Under these sections, **a board would assign specific members to a panel to determine whether to charge an individual with a violation.** Importantly, the board members making the decision to charge would be excluded from participating in the decision on whether the individual is guilty of the charges. **The ultimate decision would be made by individuals not previously exposed to the details of the case.** The decision in these cases would remain with the boards, but would eliminate the chance of a decision made by individuals previously invested in the idea of the licensee's guilt.

The Department is available to answer any concerns that may arise during consideration of this bill. Stephen H. Meloy, Bureau Chief of the Professional and Occupational Licensing Bureau, and Lance Melton, Legal Counsel, both have substantial knowledge of the details of the bill, and will be available for technical assistance of the Senate in considering House Bill 518. Mr. Meloy can be reached at 444-1488. Mr. Melton can be reached at 444-4316.



*(Presented by Stuart  
Doggett)*

**PROPOSED AMENDMENT TO HB 518  
by Montana Veterinary Medical Association- 3/14/95**

<sup>24</sup>  
Page 9: Line ~~18~~:  
Strike: "whether"  
Insert: "provided the"

<sup>25</sup>  
Page 9: Line ~~18~~:  
Insert: (after is) " not"

SENATE BUSINESS &amp; INDUSTRY

EXHIBIT NO. 10DATE 3-14-95BILL NO. HB 518**RECEIVED**

FEB 16 1995

MONTANA

**DEPARTMENT OF COMMERCE**

Professional and Occupational Licensing

Board of Medical Examiners

111 North Jackson PO Box 200513

Helena, MT 59620-0513

Phone: (406) 444-1284

FAX: (406) 444-1667

TDD: (406) 444-2978

*Presented by  
Stuart Doggett*

February 16, 1995

The Hon. Bruce Simon, Chairman  
House Business and Labor Committee  
House of Representatives  
State Capitol  
Helena, MT 59620

Re: House Bill 518

Dear Representative Simon:

I have carefully reviewed House Bill 518 as it affects the Board of Medical Examiners and the professions regulated by the Board: Medical Doctors, Doctors of Osteopathy, Doctors of Podiatric Medicine, Acupuncturists, Physician Assistants-Certified, and Nutritionists.

In my opinion, the provisions of HB 518 will improve protection of the public without weakening the Board's ability to act on the public's behalf. At the same time, the bill will enhance the due process rights of the licensees regulated by the Board.

The bill is well thought out, well-organized, clear and concise. It will reduce the number of laws and rules under which licensing boards must act by taking a number of duplicative, ambiguous statutes and replacing them with a single, clear, statement of law. It will provide better consistency and uniformity among the different boards, thereby improving service to the consumer.

I believe this is a good and important bill, which deserves support. Thank you.

Very truly yours,



JAMES S. BONNET, M.D.

President Elect

MONTANA BOARD OF MEDICAL EXAMINERS



# MONTANA DEPARTMENT OF COMMERCE

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

Phone: (406) 444-2961  
FAX: (406) 444-1667  
TDD: (406) 444-2978

February 27, 1995

Mr. John Hertel  
Chairman of the Senate Business  
& Industry Committee  
Montana Senate  
Capitol Station  
Helena, MT 59624

RE: House Bill 518  
Uniform Professional and Occupational Licensing Bill

Dear Mr. Hertel:

I am writing on behalf of the Montana Board of Realty Regulation as Chairman of the Board. The Board has followed carefully the development of the Uniform Licensing Bill presently before your committee as House Bill 518. The Board members are in favor of the bill and wish to register our support.

As I am sure you are aware, the licensing laws for the various occupations have originated at various times and have many different variations, even though the general goal in all licensing is to protect the public and see that the persons who are practicing in the particular profession or occupation in question are qualified. It makes a great deal of sense to streamline and unify the process by passing a uniform bill addressing all of the licensing bodies. A uniform bill should make for easier interpretation and administration of the licensing laws and result in savings to the tax payers. A uniform bill should also save time in the future for the Legislature, as each separate licensing body would not be approaching the Legislature with their own particular needs or wants concerning licensing legislation. The particular concerns of a particular licensing body can be addressed in regulations developed by that agency, rather than have the agency look to the Legislature each time a minor change is needed.

In short, I think the uniform licensing bill is a good example of making government more efficient and should be supported whole

EXHIBIT 10  
DATE 3-14-95  
HB 518

heartedly by everyone concerned. Please consider this letter to be written testimony on House Bill 518. Thank you for your consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read 'SE Cummings', with a long horizontal flourish extending to the right.

Steven E. Cummings  
Chairman  
Board of Realty Regulation

February 21, 1995

TO: Lance Melton

FROM: Donita Mariegard

*Donita Mariegard*

RE: HB 518

The Board of Optometry met on Friday, February 17, 1995 and discussed HB 518. The Board voted unanimously to support HB 518. If you have any questions concerning this matter, please let me know.

EXHIBIT 10  
DATE 3-14-95  
HB 518

To: Lance Melton

Dear Mr. Melton:

As Chairman of the Montana Board of Hearing Aid Dispensers I fully support HB 518.

Walt Hopkins  
Chairman  
Mt Brd of Hearing Aid Dispensers

Walt Hopkins



# MONTANA DEPARTMENT OF COMMERCE

Professional and Occupational Licensing

Board of Nursing

111 North Jackson PO Box 200513

Helena, MT 59620-0513

Phone: (406) 444-2071

FAX: (406) 444-7751

TDD: (406) 444-2971

TO: Steve Meloy, Bureau Chief, POL

FROM: Dianne Wickham RN, MN, Executive Director *Dianne Wickham*

RE: HB 518

DATE: February 14, 1995

At a February 14, 1995 Board of Nursing meeting held by teleconference, the Board took the action of voting to support HB 518.

Thank you.

cc: Lance Melton, Legal Counsel

EXHIBIT 10  
DATE 3-14-95  
1 HB 518

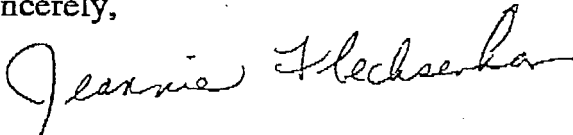
Statement in support of HB \_\_\_\_\_  
February 15, 1995

My name is Jeannie Flechsenhar and I am a member of the State Board of Real Estate Appraisers. I am in favor of a uniform standard law for all State Regulatory Boards through the Department of Commerce.

I believe this uniform standard would not only save the attorneys time and effort, but it would also create a more efficient system for conducting business. Currently each regulating board has different laws on the books and nothing is consistent. This bill would also save the taxpayers money by not wasting legislative time constantly adjusting Board laws.

I urge you to support HB \_\_\_\_\_

Sincerely,



Jeannie Flechsenhar  
Box 385  
Cascade, Mt. 59421  
406-468-2792



## M E M O R A N D U M

DATE: 2/10/95

TO: BRUCE SIMON-CHAIRMAN  
HOUSE BUSINESS & LABOR COMMITTEEFROM: GARY E. GRAY-BOARD PRESIDENT  
BOARD OF PRIVATE SECURITY  
PATROLMEN & INVESTIGATORS

SUBJECT: HOUSE BILL 518

\*\*\*\*\*  
\*\*\*\*\*

The Board of Private Security is asking to go on record  
as being in full support of the Model Practice Act  
House Bill 518.

Gary E. Gray

**BURNS**

EXHIBIT 10  
DATE 3-14-95  
1 HB 518

**[Board of Barbers]**

[111 N Jackson  
[Helena, Montana 59620-0407]

**Fax Cover Sheet**

DATE: February 14, 1995 TIME: 1:09 PM  
TO: [Debbie Tomaskie] PHONE: [Their phone number]  
[Board of Barbers] FAX: [406-444-1667]  
FROM: [Amy S. Adler] PHONE: [406-347-5394]  
[Board Chairman] FAX: [406-347-5394]  
RE: [House Bill 518]  
CC:

Number of pages including cover sheet: [2]

**Message**

Dear Committee,

My name is Amy Adler and I am the Chairman of the Montana State Board of Barbers. I am writing to ask for your support on House Bill 518. This bill is vitally important to our board and many other boards within the Department of Commerce. This bill will allow us to be able to enforce some of the disciplinary actions that at present we have no control of and it will also help us to clarify some very vague rules that govern the Board of Barbers.

Before this bill can be voted on we would like to have a change made in Section 4 and 5. Legislative Council changed the wording from "may" to "shall". We need this changed back to "may" because if it is passed as it now reads, it will cause several of the boards to have to rewrite their laws and rules and this could be at great expense. If it is changed back to "may", it will then be left to each board to decide if they need to change their laws and rules.

Sincerely,



Amy Adler

Board Chairman

State Board of Barbers

15 Vigilante Trail  
Clancy, Montana 59634

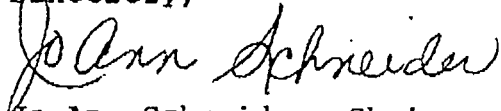
February 14, 1995

Bruce Simon, Chairman  
Business and Labor Committee  
Montana House of Representatives

Dear Representative Simon:

I would like to voice full support for House Bill 518 from the Board of Clinical Laboratory Science Practitioners.

Sincerely,

A handwritten signature in cursive script that reads "Jo Ann Schneider".

Jo Ann Schneider, Chair  
Board of Clinical Laboratory Science Practitioners

EXHIBIT 10  
DATE 3-14-95  
FILE HB 518

# PRICE RITE

## DRUG CENTERS

33 WEST MAIN BELGRADE, MONTANA 59714 (406) 388-4111  
910 NO. 7th AVE. BOZEMAN, MONTANA 59715 (406) 587-0600

February 13, 1995

Business and Labor Committee  
Montana State Capital  
Helena, Montana

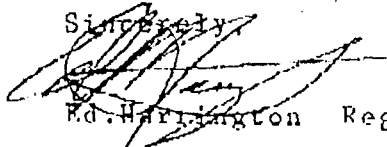
RE: HB 518

To Whom it may Concern,

Speaking on behalf of the Montana Board of Pharmacy, I encourage you to support HB 518, establishing uniform licensure.

If you want to contact me personally please call me at my Bozeman Store. Thank you for your cooperation.

Sincerely,



Ed. Harrington Reg. Ph.

V.P. Montana Board of Pharmacy

# JANET DAVIS & ASSOCIATES

TRANSWESTERN PLAZA • P.O. BOX 1821 • BILLINGS MONTANA 59103 • (406) 255-7120



JANET DAVIS, SRA, IFA  
STATE RESIDENTIAL CERTIFIED #24

REAL ESTATE APPRAISERS  
CONSULTANTS

February 13, 1995

Members of the Committee  
House of Representatives  
Helena, MT

RE: House Bill #518

Dear Members:

As a member of the Board of Real Estate Appraisers, I support this bill as it will make licensing laws more uniform, possibly less costly to administer and be less new legislation necessary for licensing boards in the future.

Sincerely,

A handwritten signature in cursive script that reads 'Janet Davis'.

Janet Davis  
Current Chairman  
Board of Real Estate Appraisers

JD/kh

EXHIBIT 10  
DATE 3-14-95  
1 HB 518

February 14, 1995

Rep. Bruce Simon, Chairman  
House Business and Labor Committee  
Capitol Station  
Helena, MT 59620

RE: HB 518

Dear Representative Simon,

The Board of Cosmetologists supports HB 518, we recommend a DO PASS  
from your committee.

Sincerely,

*Mary Brown*

Mary Brown, Chairman  
Board of Cosmetologists

February 13, 1995

Honorable Representative Simon  
Chair - House Business and Labor Committee

Dear Mr. Chairman,

The Montana State Board of Outfitters strongly supports H.B. 518. After careful review, it appears that the proposed additions, deletions, and changes to the law would work quite favorably in strengthening the regulatory process as it pertains to our industry. For that reason we urge you to continue your support of the bill.

Sincerely,



Kurt Hughes  
Chair - Montana State Board of Outfitters

FAX # 406 444 1667  
ATTN: LANCE

EXHIBIT 10  
DATE 3-14-95  
X HB 518

February 13, 1995

Representative Bruce Simon  
Chairman of House Business & Labor Committee  
Capital Station  
Helena, MT 59620

Honorable Bruce Simon:

The Board of Occupational Therapy wishes you to support HB 518 addressing uniform licensing.

This bill provides our Board with flexibility in which licensing language may be interpreted within the rule making process vs. legislative process.

HB 518 should allow issues affecting Occupational Therapy licensing to be handled at the Board level. We welcome this delegation.

Respectfully,



Lynn Davis, OTR/L  
Chairman, Board of Occupational Therapy

LD/mb



BOARD OF PSYCHOLOGISTS  
DEPARTMENT OF COMMERCE



ARCADE BLDG., LOWER LEVEL  
111 N. LAST CHANCE GULCH

STATE OF MONTANA

(406) 444-5436

PO BOX 20051  
HELENA, MONTANA 59620-0511

TO: Representative Bruce Simon  
Chair  
Business & Labor Committee

FROM: Pastor Jeff N. Olsgaard  
Chairman  
Board of Psychology

RE: House Bill 518  
Uniform Licensing Bill

DATE: February 17th, 1995

A handwritten signature in cursive script, appearing to read "J. N. Olsgaard", written over the typed name in the "FROM" field.

Our board has reviewed the bill at hand and finds its overall effects to be a prudent move toward protecting the interests of the public.

Its broadening effects in the board's authority to address discipline concerns would be very helpful. To be able to define and refine unprofessional conduct in one of the fastest growing service sectors of our society would enhance the professionalism well established in our fine state.

Occasionally being forced into "all or nothing" judgments is problematic in addressing less than flagrant misconduct concerns. The options of establishing fines to compensate for legal representation and other costs incurred in "due process" would protect the public from such expenses. Such a disciplinary resource expands the continuum of possible resources our board could consider.

With such expanded authority comes responsibility which also seems appropriate, however burdensome. The need for a "screening committee" is well documented in the courts. Still, its effects on us are unclear at this time. For instance, we serve a large geographical area, but a small populated area. With a board made up of three professionals and two lay persons, we need three members for a quorum. It is not uncommon for a member of the board to be recused because of an association with a (possible) licensee being considered. Leaving 4 members to deliberate this would only allow for a single member to be unavailable as constituting the "screening committee" with everyone active in their responsibilities

EXHIBIT 10  
DATE 3-14-95  
21 HB 518

to the public on this board. To expand the size of our board would bring added cost burden to our department and to the public. We are also of mixed minds reading the bill on the need for a "screening committee" to service compilation of information for complaints as well as for the application process.

All this is to say that while the bill overall serves us well, there are some ramifications of which as yet are unsettled.

Thank you for this opportunity to provide you with some input from our board. Should other opportunities arise considering specific concerns, please do contact our office.

THANK YOU

phone 444-5436

February 13, 1995

Bruce Simon  
Chairman  
Business and Labor Committee

Dear Representative Simon;

This letter is to let you and your committee members know that the Board of Radiology totally supports H. B. 518.

Standardization of Rules and Regulations governing Boards is long over due. We need this Bill passed to achieve this standardization among the Boards.

Your support and that of the committee members will be greatly appreciated.

Sincerely,

*Jim Winter, R.T.*

Jim Winter, R.T.  
Chairman  
Board of Radiology

EXHIBIT 10  
DATE 3-14-95  
HB 518

DATE; February 13, 1995

TO; Bruce Simon, Chairman  
House Business & Labor Committee  
State Capitol

FROM: Joyce Asay, Chairperson  
Board of Nursing Home Administrators

RE; Support letter HB 518

This letter is written in support of HB 518.

Our Board discussed simplifying legislation in regards to rule making, and how it could save our legislators time and our State Government money, as well as being less cumbersome for Board members. This concept was unanimously approved by our board members.

Please, Bruce, support HB 518.

Thank you for your time and consideration.

<b>FAX</b>	DATE 2/13	# PGS
TO Lance Melton		
ca Dept. of Commerce FAX# 444-1667		
FROM Melissa Tuemmler		AVERY FX-10

February 13, 1995

Representative Bruce Simon, Chairman  
House Business and Labor Committee  
Capital Station, MT 59620

RE: House Bill 518

Representative Simon;

The Montana Board of Sanitarians supports HB 518. Please consider passage of this bill. Thank you.

Respectfully,

A handwritten signature in cursive script, appearing to read "Melissa L. Tuemmler R.S.", written in dark ink.

Melissa L. Tuemmler, R.S.  
Chairperson  
Montana Board of Sanitarians

# Fax TRANSMITTAL



EXHIBIT 10  
DATE 3-14-95  
FILE HB 518

## CTA Architects Engineers

1500 Poly Drive, P.O. Box 1439, Billings, MT 59103  
Telephone: 406/248-7455 Fax: 406/248-3779

---

DATE: 2/14/95

TO: Sharon McCullough

FROM: Keith Rupert, President, Board of Architects

RE: LC 1310, Uniform Licensing Bill

ENCL:

PAGE: 1 of 1

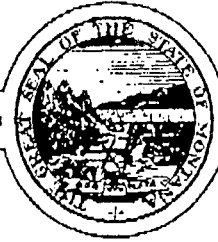
---

The Board of Architects supports LC 1310, Uniform Licensing Bill.

However, we do have a strong preference that the original language using "may" instead of "shall" in sections 4 and 5, be reinstated.

We believe whenever reasonable choices are left to the discretion of the Boards, the public will be better served, and fewer legislative changes will be required in the future.

BOARD OF RESPIRATORY CARE PRACTITIONERS  
DEPARTMENT OF COMMERCE



111 N. JACKSON

STATE OF MONTANA

(406) 444-3737

HELENA, MONTANA 59620-0407

February 13, 1995

Representative Bruce Simon  
Chairman - House Business and Labor Committee  
State Capital  
Helena, MT 59620

Dear Mr. Simon;

On behalf of the Montana Board of Respiratory Care Practitioners I would like to convey our Board's support of HB 518.

Our Board members have reviewed the proposal and feel this bill will provide us with additional support and merit when pursuing practice complaints. Sections of this bill, such as the requirement of establishing continuing education standards, will also enhance the quality and caliber of services provided by other Boards.

If you have questions or would like to discuss any aspects of this bill, please contact me at (406)657-4075.

Thank you for your time!

A handwritten signature in cursive script, appearing to read "Rich Lundy".

Rich Lundy, RRT  
Chairman - Montana Board of Respiratory Care Practitioners.

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 11

DATE 3-14-95

BILL NO. HB 543

AMENDMENTS TO

HOUSE BILL 543

(Third Reading Copy)

For:

Bert

From:

John North

Rep. Wagner  
will propose  
This.

1. Page 2, lines 10 through 14.

Following: line 9

Strike: subsection 4 in its entirety

Insert: "(4) This section does not prohibit a person wrongfully enjoined from filing an action for any claim for relief otherwise available to that person in law or in equity and does not limit the amount of judgment that may be obtained in that action."

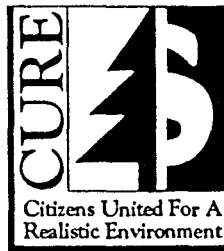
-End-



EXHIBIT NO. 12DATE 3-14-95BILL NO. HB 543 (406) 287-3012

FAX (406) 287-3242

P.O. Box 856  
Whitehall, MT 59759



**TESTIMONY OF TAMARA J. JOHNSON**  
**HB #543**

Good morning. Mr. Chairman, members of the committee, Representative Wagner, for the record, my name is Tammy Johnson. I am here today on behalf of CURE (Citizens United for a Realistic Environment).

HB #543 is a very important bill for our membership. As Representative Wagner explained in his statement, this bill would require the posting of a bond in an amount sufficient to cover employees wages, salaries and benefits when an injunction or restraining order against an industrial operation or activity is granted through the court system.

In everyday life, we are asked to make monetary commitments to guarantee something that we are sincere about. If you purchase a home or some land, you are required to put down earnest money to show that you are committed to the purchase. If you make a motel reservation by phone, you are asked to guarantee that reservation with a credit card. You are asked to prepay when you purchase an airline ticket. The reason for this is simple. No one is willing to take a financial loss due to a decision made by someone else. If you decide to not go through with the land or home purchase, stay in another motel, or drive instead of fly, you will forfeit the money you have paid as a guarantee of your intentions.

The court system is being used extensively for a variety of reasons these days, one of which is to request injunctions or restraining orders against industrial activities such as mining, timber, grazing, utilities, oil and gas, and construction. The problem with injunctions on legitimate businesses is that hardworking people who are employed in these industries find themselves faced with the possibility of being out of work. They are not going to be unemployed because they are not good, valuable employees. They are not going to be unemployed because they choose to be. They are unemployed because someone else has arbitrarily decided that they do not approve of the nature of their employers business. Sometimes, dedicated workers are faced with unemployment because our own state agencies are believed to have made an error.

Whether the party who brings the suit is right or wrong, is a decision for the court. The right of an individual or group to bring such an action in our courts is not being threatened, in spite of what you will probably be told by those opposing this bill. In fact, I support any citizens right to bring suit if they feel they have been wronged. But I, and quite literally, thousands of other Montana citizens, are tired of bearing the brunt of others actions. You see, we, the industry employees, are the ones who have been caught in the middle.

My children should not be made to suffer because someone does not like the work their father does for a living. My husband has worked as an electrician for a mine for over seven years. In seven years, he has only missed 2 scheduled work days due to my fathers death. He has had perfect attendance for 6 consecutive years. We have two children, one of which is developmentally disabled. Our health insurance is a godsend and my husbands wages also provide a home for his parents. We don't want praise and we don't want sympathy. What we want is simply to work hard, raise our family and be a productive member of our community and our state.

My husband and I have spent many sleepless nights worrying about the possibility of being unemployed and quite frankly, my husbands fear, which is shared by our whole family, of being unemployed simply because he is a miner, is the main reason I am standing before you today. Although I have a great deal of respect for all of you and for this institution, I would choose to spend my time being at home with my family, reading to my son's second grade class and leading my daughters Girl Scout troop instead of making the round trip from Whitehall to Helena on a daily basis to visit with you.

The opponents to this bill will probably tell you that their rights cannot be infringed upon, that they can't afford to post such a bond. Well, my right to work, live and raise my family cannot be infringed upon either and my family cannot afford to be without an income or insurance.

We are not asking citizens to post a bond to cover the loss of the employer, although I believe that those at the top need to eat as well. We are not asking our government entities to post a bond. We are simply asking for some fairness here. Please give HB #543 and the proposed amendment a do pass recommendation and know that in doing so, you are supporting thousands of hardworking Montanas who otherwise may unfairly be denied their right to make a living. Thank you.

EXHIBIT NO. 13

DATE 3-14-95

BILL NO. HB 543

March 12, 1995

Memo to: Senate Business and Industry Committee  
Senator John Hertel, Chairman

*presented by Don Spivey*

Subject: House Bill 543

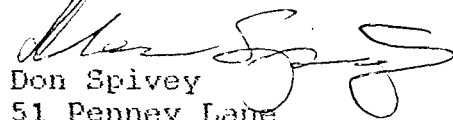
On behalf of myself and the Citizens For a Better Flathead I  
urge you to vote NO on HB 543.

I consider this an extraordinary attempt for all practical  
purposes to prevent injunctive and restraining order relief  
in cases where alleged infractions of environmental laws are  
involved.

This bill represents unconscionable special interest  
legislation designed to protect business interests and  
preclude public relief. This is BAD PUBLIC POLICY and  
undoubtedly unconstitutional.

Please vote NO on HB 543.

Respectfully,

  
Don Spivey  
51 Penney Lane  
Columbia Falls 59912  
257-0724

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 14-A

DATE 3-14-95

BILL NO. HB 543

*presented by Don Spivey*

March 11, 1995

Senator John Hertel  
Capitol Station  
Helena MT 59620-1706

Dear Senator:

This is no time to allow businesses or individuals to get away with practices that threaten the environment. Please vote no on SB 543.

Sincerely,

*B. J. Carlson*

B.J. Carlson

375 Grandview Drive  
Kalispell, MT 59901

cc: Marc Racicot

*presented by Don Spivey*

MILT CARLSON  
375 Grandview Drive  
Kalispell, MT 59901-2614

March 10, 1995

Senator John Hertel  
Capitol Station  
Helena MT 59620-1706

RE: Vote "NO" on HB 543

Dear Senator:

This letter is to urge you to eliminate this attempt to prevent the citizens of Montana or the State itself from taking effective action against an operation that threatens public health or the environment.

When someone puts the citizenry or the land at risk, that someone must bear the responsibility for that action and not put up barriers to slow or negate effective relief.

As one active in participation in local government, I see this bill as a narrow, mean-spirited threat to that participation and ask that HB 543 be defeated in your forum.

Sincerely,



Milt Carlson

Copy to Governor Racicot

EXHIBIT NO. 14-CDATE 3-14-95BILL NO. HB 543*presented by Don Spiney*

DOROTHEA DARWALL  
92 Grandview Drive  
Kalispell, MT 59901

March 10, 1995

Senator John Hertel  
Capitol Station  
Helena MT 59620-1706

Dear Senator:

This letter is to vote "NO" on HB 543 which would attempt to prevent the citizens of Montana or the State itself from taking effective action against an operation that threatens public health or the environment.

As a retired Public Health Nurse, I resist those who would try to threaten public health. When someone puts the citizenry or the land at risk, that someone must bear the responsibility for that action and not put up barriers to slow or negate effective relief.

Kindly put HB 543 to rest as it represents a step back in our quest for promoting the general welfare and health.

Sincerely,

*Dorothea Darwall*  
Dorothea Darwall

Copy to Governor Racicot

DATE

March 14, 1995

SENATE COMMITTEE ON

B & ABILLS BEING HEARD TODAY: HB 335 - Rep. Squires, HB 518 Rep. Lusk  
HB 536 Rep. Mills, HB 543 Rep. Wagner

&lt; ■ &gt;

PLEASE PRINT

&lt; ■ &gt;

Check One

Name	Representing	Bill No.	Support	Oppose
Kathy D. Collins	Self (consumer)	HB335	X	
Barbara Larsen	MonTECH	H.B.335	Neutral	
Melissa Case	Coalition of Mtns (covered w/ disabilities)	HB 335	X	
Terry Krantz	SRS medicine	HB335	X	
Peggy Trenk	WETA	HB543	X	
Mura Jamison	mt Assoc. of PT's Speech Path + Audial, Nut	HB 518	✓	
<del>Leo Giacometto</del>	ritonists, + clinical laboratories			
Leo Giacometto	Governors Office	HB518	✓	
Ben Hardaway	Self	HB518	✓	
Stuart Duggott	mt Veterinary medical Assoc.	HB 518	✓ with anecdotal	
Ron Coughlin	DrugMart MSPA	HB 536	✓	
DENNIS TYERSON	AMCPA	HB536	✓	
John Wolfgram	Lorenzin Pharmacy	HB536		
Bob Wilkmanis	MT MOUNTAIN	543	✓	

## VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE

March 14, 1995

SENATE COMMITTEE ON

SE A

BILLS BEING HEARD TODAY:

HB 335 - Rep. Squires, HB 518 Rep. Luss,  
HB 536 Rep. Mills, HB 543 Rep. Wagner

&lt; ■ &gt;

PLEASE PRINT

&lt; ■ &gt;

Check One

Name	Representing	Bill No.	Support	Oppose
Tamara J. Johnson	CURE	543	X	
John P. Davis	CURR	543	X	
Melissa Case	Montanians Against Toxic Burning	543		X
John Fitzpatrick	Pegasus Gold Corp	HB 543	X	
Ted Lange	NPRC	543		X

## VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY



DATE March 14, 1995

SENATE COMMITTEE ON Business and Industry

BILLS BEING HEARD TODAY HB 335 Rep. Squires

HB 518 Rep. Tuss HB 536 Rep. Mills

HB 543 Rep. Wagner

PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
LANCE MELTON	DEPT. OF COMMERCE	518	X	
Steve Shapiro	Mont. Nurses Assoc.	518	X	
Don Judge	MT STATE AFL-CIO	HB 543		X
Howard Summer	MT ASSC. Regtors	518	X	
STEVE MELOY	Dept of Comin	518	X	
Don Spruiell	SECT	543		X
Jim Jensen	MEIC	543		✓
Helen Christensen	MT STATE AFL-CIO	518	X	
Steve Yeaker	(AND) MT Association of Acupuncture & Oriental Medicine MT Council for Maternal & Child Health	518	X	
Tom MacForthan	GOLDEN SUNLIGHT CURE Minn.	543	X	
PETER LARSEN	FRANCIS	335	X	
Bill Olson	AARP	HB 536	✓	
Jason Dykstra	MAP	HB 335	X	
Edward L. Smith	MAP		X	

# VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

Jim Smith  
REGISTER. F10

MT R Assoc. HB 536 X

DATE

14,  
March 10, 1995

HB 543

SENATE COMMITTEE ON

Business &amp; Industry

BILLS BEING HEARD TODAY:

~~HB 543~~ 454~~Rep. Wagner~~ Rep. Harper

&lt; ■ &gt;

PLEASE PRINT

&lt; ■ &gt;

Check One

Name	Representing	Bill No.	Support	Oppose
Jim Jensen	MEIC	HB 543		X
J.V. Bennett	Mont PIRG	HB 543		X
Steve Kelly	Friends of the Wild Swan	HB 543		X

## VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY