

SENATE BILL NO. 390

INTRODUCED BY HIMSL, S. BROWN

BY REQUEST OF THE LEGISLATIVE AUDIT COMMITTEE

IN THE SENATE

February 7, 1981	Introduced and referred to Committee on Public Health, Welfare and Safety.
February 19, 1981	Committee recommend bill do pass. Report adopted.
February 20, 1981	Bill printed and placed on members' desks.
February 21, 1981	Second reading, do pass.
February 24, 1981	Correctly engrossed.
February 25, 1981	Third reading, passed. Ayes, 50; Noes, 0. Transmitted to House.

IN THE HOUSE

March 3, 1981	Introduced and referred to Committee on Human Services.
March 23, 1981	Committee recommend bill be concurred in as amended. Report adopted.
March 26, 1981	Second reading, concurred in as amended.
March 28, 1981	Third reading, concurred in as amended. Ayes, 91; Noes, 3.

IN THE SENATE

March 30, 1981

Returned from House with amendments.

April 3, 1981

Second reading, amendments concurred in.

April 6, 1981

Third reading, amendments concurred in. Ayes, 49; Noes, 0. Sent to enrolling.

Reported correctly enrolled.

1 *Sen. Steve Brown* BILL NO. *390*  
 2 INTRODUCED BY *Sen. Steve Brown* STEVE BROWN

3 BY REQUEST OF THE LEGISLATIVE AUDIT COMMITTEE

4  
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO REESTABLISH THE  
 6 BOARD OF PHARMACISTS UNDER EXISTING STATUTORY AUTHORITY AND  
 7 RULES; ADDING A PUBLIC MEMBER TO THE BOARD; DELETING THE  
 8 STORE LICENSE REQUIREMENT; DELETING THE MANDATORY CONTINUING  
 9 EDUCATION REQUIREMENT; DELETING FELONY CONVICTIONS AS GROUND  
 10 FOR DENIAL OR REVOCATION OF LICENSE; AMENDING SECTIONS  
 11 2-8-103, 2-8-103, 37-7-311, AND 37-7-321, MCA; REPEALING  
 12 SECTIONS 37-7-304 AND 37-7-305, MCA; AND PROVIDING AN  
 13 EFFECTIVE DATE."

14  
 15 WHEREAS, the sunset law, sections 2-8-103 and 2-8-112,  
 16 MCA, terminates the Board of Pharmacists and requires a  
 17 performance evaluation of the Board by the Legislative Audit  
 18 Committee; and

19 WHEREAS, as a result of the performance evaluation, the  
 20 Legislative Audit Committee recommends that the Board of  
 21 Pharmacists be reestablished under existing statutory  
 22 authority.

23  
 24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

25 Section 1. Reestablishment. The board of pharmacists

1 is reestablished for 6 years pursuant to 2-8-122 with its  
 2 existing statutory authority and rules.

3 Section 2. Section 2-8-103, MCA, is amended to read:  
 4 "2-8-103. Agencies to terminate. (1) The following  
 5 agencies shall terminate on July 1, 1979:

6 (a) board of abstracters, department of professional  
 7 and occupational licensing, created by 2-15-1643;

8 (b) board of real estate, department of professional  
 9 and occupational licensing, created by 2-15-1642;

10 (c) state board of warm air heating, ventilation, and  
 11 air conditioning, department of professional and  
 12 occupational licensing, created by 2-15-1656;

13 (d) board of institutions, department of institutions,  
 14 created by 2-15-2303.

15 (2) The following agencies shall terminate on July 1,  
 16 1981:

17 (a) commission for human rights, department of labor  
 18 and industry, created by 2-15-1706;

19 (b) board of athletics, department of professional and  
 20 occupational licensing, created by 2-15-1661;

21 (c) board of barbers, department of professional and  
 22 occupational licensing, created by 2-15-1625;

23 (d) board of chiropractors, department of professional  
 24 and occupational licensing, created by 2-15-1613;

25 (e) board of cosmetologists, department of

1 professional and occupational licensing, created by  
2 2-15-1626;

3 (f) board of dentists, department of professional and  
4 occupational licensing, created by 2-15-1606;

5 (g) board of hearing aid dispensers, department of  
6 professional and occupational licensing, created by  
7 2-15-1616;

8 (h) board of massage therapists, department of  
9 professional and occupational licensing, created by  
10 2-15-1627;

11 (i) Montana state board of medical examiners,  
12 department of professional and occupational licensing,  
13 created by 2-15-1605;

14 (j) board of morticians, department of professional  
15 and occupational licensing, created by 2-15-1619;

16 (k) board of nursing, department of professional and  
17 occupational licensing, created by 2-15-1610;

18 (l) board of nursing home administrators, department  
19 of professional and occupational licensing, created by  
20 2-15-1611;

21 (m) board of optometrists, department of professional  
22 and occupational licensing, created by 2-15-1612;

23 (n) board of osteopathic physicians, department of  
24 professional and occupational licensing, created by  
25 2-15-1607;

1 ~~(o) board of pharmacists, department of professional~~  
2 ~~and occupational licensing, created by 2-15-1609;~~

3 (o) board of podiatry examiners, department of  
4 professional and occupational licensing, created by  
5 2-15-1608;

6 (p) board of psychologists, department of  
7 professional and occupational licensing, created by  
8 2-15-1617;

9 (q) board of radiologic technologists, department  
10 of professional and occupational licensing, created by  
11 2-15-1614;

12 (r) board of speech pathologists and audiologists,  
13 department of professional and occupational licensing,  
14 created by 2-15-1615;

15 (s) board of veterinarians, department of  
16 professional and occupational licensing, created by  
17 2-15-1618;

18 (t) board of veterans' affairs, department of  
19 social and rehabilitation services, created by 2-15-2202;

20 (u) board of sanitarians, department of  
21 professional and occupational licensing, created by  
22 2-15-1631.

23 (3) The following units of state government shall  
24 terminate on July 1, 1983:

25 (a) board of aeronautics, department of community

1 affairs, created by 2-15-1103;  
 2 (b) state board of hail insurance, department of  
 3 agriculture, created by 2-15-3003;  
 4 (c) board of horse racing, department of professional  
 5 and occupational licensing, created by 2-15-1662;  
 6 (d) board of livestock, department of livestock,  
 7 created by 2-15-3102;  
 8 (e) board of milk control, department of business  
 9 regulation, created by 2-15-1802;  
 10 (f) board of oil and gas conservation, department of  
 11 natural resources and conservation, created by 2-15-3303;  
 12 (g) Montana outfitters council, department of fish,  
 13 wildlife, and parks, created by 2-15-3403;  
 14 (h) public service commission, department of public  
 15 service regulation, created by 69-1-102;  
 16 (i) board of water and wastewater operators,  
 17 department of health and environmental sciences, created by  
 18 2-15-2105;  
 19 (j) board of water well contractors, department of  
 20 professional and occupational licensing, created by  
 21 2-15-1632.  
 22 (4) The following agencies terminate on July 1, 1985:  
 23 (a) the board of public accountants, created by  
 24 2-15-1641;  
 25 (b) the board of architects, created by 2-15-1651;

1 (c) state banking board, department of business  
 2 regulation, created by 2-15-1803;  
 3 (d) the state electrical board, created by 2-15-1654;  
 4 (e) the board of professional engineers and land  
 5 surveyors, created by 2-15-1653;  
 6 (f) office of commissioner of insurance and the  
 7 insurance department, state auditor's office, created by  
 8 2-15-1902 and 2-15-1903;  
 9 (g) office of the securities commissioner, state  
 10 auditor's office, created by 2-15-1901;  
 11 (h) the board of landscape architects, created by  
 12 2-15-1652;  
 13 (i) the board of county printing, created by  
 14 2-15-1102;  
 15 (j) the board of plumbers, created by 2-15-1655;  
 16 (k) board of physical therapy examiners, created by  
 17 2-15-1628.  
 18 (5) The following agency terminates on July 1, 1987:  
 19 the board of pharmacists, department of professional and  
 20 occupational licensing, created by 2-15-1609.\*  
 21 Section 3. Section 2-15-1609, MCA, is amended to read:  
 22 "2-15-1609. Board of pharmacists. (1) There is a board  
 23 of pharmacists.  
 24 (2) The board consists of three ~~four~~ members appointed  
 25 by the governor. ~~The governor shall appoint the members~~

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1 from ~~the list submitted annually by the Montana state~~  
 2 ~~pharmaceutical association. The list shall contain the names~~  
 3 ~~of five qualified persons for each appointment. Three~~  
 4 members must be licensed pharmacists, and one member must be  
 5 from the general public. Each licensed member shall be a  
 6 graduate of the college of pharmacy of the university of  
 7 Montana or of a college or school of pharmacy recognized and  
 8 approved by or a member of the American association of  
 9 colleges of pharmacy. Each licensed member shall have at  
 10 least 5 consecutive years of practical experience as a  
 11 pharmacist immediately before his appointment. However, one  
 12 member may be a registered pharmacist of 15 years' practical  
 13 experience and actually engaged in the practice of pharmacy.  
 14 A licensed member who, during his term of office, ceases to  
 15 be actively engaged in the practice of pharmacy in this  
 16 state, shall be automatically disqualified from membership  
 17 on the board.

18 (3) ~~Each member~~ Members shall serve ~~for a term of 3~~  
 19 years staggered 3-year terms. A member shall be removed from  
 20 office by the governor on proof of malfeasance or  
 21 misfeasance in office, after reasonable notice of charges  
 22 against him and after a hearing.

23 (4) The board is allocated to the department for  
 24 administrative purposes only as prescribed in 2-15-121."

25 Section 4. Section 37-7-311, MCA, is amended to read:

1 "37-7-311. Revocation of license issued to pharmacist  
 2 or intern. The board shall revoke, temporarily or  
 3 permanently, licenses issued by the department to a  
 4 pharmacist or intern whenever the holder of the license:

5 (1) has obtained it by false representations or fraud;

6 (2) is an habitual drunkard or addicted to the use of  
 7 narcotic drugs;

8 ~~(3) has been convicted of a felony;~~

9 ~~(4) (3)~~ has been convicted of violating the pharmacy  
 10 law; or

11 ~~(5) (4)~~ has been found by the board guilty of  
 12 incompetency in the preparation of prescriptions or guilty  
 13 of gross immorality affecting the discharge of his duties as  
 14 a pharmacist or intern."

15 Section 5. Section 37-7-321, MCA, is amended to read:

16 "37-7-321. ~~Store license~~ ~~certified~~ Certified  
 17 pharmacy license -- suspension or revocation. ~~(1) The~~  
 18 ~~department shall, on application on forms prescribed by the~~  
 19 ~~board and on the payment of an annual fee of \$10, license~~  
 20 ~~stores other than pharmacies in which are sold ordinary~~  
 21 ~~household or medicinal drugs prepared in sealed packages or~~  
 22 ~~bottles by a manufacturer qualified under the laws of the~~  
 23 ~~state in which the manufacturer resides. The name and~~  
 24 ~~address of the manufacturer shall appear conspicuously on~~  
 25 ~~each package sold by the licensee. It is unlawful for a~~

1 ~~store--to--sell--delivery--or--give--away--household--medicines~~  
 2 ~~drugs--without--first--having--secured--a--license--and--thereafter~~  
 3 ~~keeping--it--in--force--by--proper--renewal--this--subsection--does~~  
 4 ~~not--prevent--a--vendor--from--selling--a--potent--or--proprietary~~  
 5 ~~medicine--in--the--original--package--when--plainly--labeled--or~~  
 6 ~~nonmedicinal--articles--usually--sold--by--vendors.~~

7     ~~(2)(1)~~ The board shall provide for the original  
 8 certification and annual renewal by the department of every  
 9 pharmacy doing business in this state. On presentation of  
 10 evidence satisfactory to the board and on application on a  
 11 form prescribed by the board and on the payment of an  
 12 original certification fee of \$100, the department shall  
 13 issue a license to a pharmacy as a certified pharmacy.  
 14 However, the license may be granted only to pharmacies  
 15 operated by registered pharmacists or registered interns  
 16 qualified under this chapter. The annual renewal fee for a  
 17 pharmacy shall be set by the board in an amount not to  
 18 exceed \$50. Any default in the payment of such renewal fee  
 19 for a period of 30 days after the date the same is due shall  
 20 increase the renewal fee to the sum of \$100. The license  
 21 must be displayed in a conspicuous place in the pharmacy for  
 22 which it is issued and expires on June 30 following the date  
 23 of issue. It is unlawful for a person to conduct a pharmacy,  
 24 use the word "pharmacy" to identify his business, or use the  
 25 word "pharmacy" in advertising unless a license has been

1 issued and is in effect.

2     ~~(3)(2)~~ The board may suspend, revoke, or refuse to  
 3 renew a ~~store--or~~ pharmacy license:

4     (a) obtained by false representation or fraud;

5     (b) when the pharmacy for which the license is issued  
 6 is kept open for the transaction of business without a  
 7 pharmacist in charge;

8     (c) when the person to whom the license is granted has  
 9 been convicted of:

10     (i) a violation of parts 1 through 3 of this chapter;

11     or

12     ~~(ii)-a-felony--or~~

13     ~~(iii)(1)~~ a violation of the Federal Food, Drug, and  
 14 Cosmetic Act of June 25, 1938, (52 Stats. 1040 through  
 15 1059);

16     (d) when the person to whom the license is granted is  
 17 a natural person whose pharmacist or intern license has been  
 18 revoked; or

19     (e) when the ~~store--or~~ pharmacy is conducted in  
 20 violation of parts 1 through 3 of this chapter.

21     ~~(4)(3)~~ Before a license can be revoked, the holder is  
 22 entitled to a hearing by the board.\*

23     Section 6. Repealer. Sections 37-7-304 and 37-7-305,  
 24 MCA, are repealed.

25     Section 7. Effective date. This act is effective on

LC 0977/01

1 passage and approval.

-End-



Approved by the committee on  
Public Health, Welfare & Safety

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1 ~~{o}--board-of-pharmacists,--department--of--professional~~  
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13 department of professional and occupational licensing,  
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 7 insurance department, state auditor's office, created by  
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1 from a list submitted annually by the Montana state  
 2 pharmaceutical association. The list shall contain the names  
 3 of five qualified persons for each appointment. Three  
 4 members must be licensed pharmacists, and one member must be  
 5 from the general public. Each licensed member shall be a  
 6 graduate of the college of pharmacy of the university of  
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 10 least 5 consecutive years of practical experience as a  
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 14 A licensed member who, during his term of office, ceases to  
 15 be actively engaged in the practice of pharmacy in this  
 16 state, shall be automatically disqualified from membership  
 17 on the board.

18 (3) Each member ~~Members~~ shall serve for a term of ~~3~~  
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 20 office by the governor on proof of malfeasance or  
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8 ~~(3) has been convicted of a felony;~~  
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 14 ~~a pharmacist or intern."~~

15 Section 5. Section 37-7-321, MCA, is amended to read:

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 19 board and on the payment of an annual fee of \$10, license  
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 21 household or medicinal drugs prepared in sealed packages or  
 22 bottles by a manufacturer qualified under the laws of the  
 23 state in which the manufacturer resides. The name and  
 24 address of the manufacturer shall appear conspicuously on  
 25 each package sold by the licensee. It is unlawful for a

1 ~~store--to--sell--delivery--or--give--away--household--medicine--~~  
 2 ~~drugs--without--first--having--secured--a--license--and--thereafter~~  
 3 ~~keeping--it--in--force--by--proper--renewal--This--subsection--does~~  
 4 ~~not--prevent--a--vendor--from--selling--a--patent--or--proprietary~~  
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7 ~~(2)(1)~~ The board shall provide for the original  
 8 certification and annual renewal by the department of every  
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 14 However, the license may be granted only to pharmacies  
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1 issued and is in effect.

2 ~~(3)(2)~~ The board may suspend, revoke, or refuse to  
 3 renew a ~~store--or~~ pharmacy license:

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 6 is kept open for the transaction of business without a  
 7 pharmacist in charge;  
 8 (c) when the person to whom the license is granted has  
 9 been convicted of:

10 (i) a violation of parts 1 through 3 of this chapter;

11 or

12 ~~(ii)--a--felony--or~~

13 ~~(iii)(i)~~ a violation of the Federal Food, Drug, and  
 14 Cosmetic Act of June 25, 1938, (52 Stats. 1040 through  
 15 1059);

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 17 a natural person whose pharmacist or intern license has been  
 18 revoked; or

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 20 violation of parts 1 through 3 of this chapter.

21 ~~(4)(3)~~ Before a license can be revoked, the holder is  
 22 entitled to a hearing by the board."

23 Section 6. Repealer. Sections 37-7-304 and 37-7-305,  
 24 MCA, are repealed.

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 6 BOARD OF PHARMACISTS UNDER EXISTING STATUTORY AUTHORITY AND  
 7 RULES; ADDING A PUBLIC MEMBER TO THE BOARD; DELETING THE  
 8 STORE LICENSE REQUIREMENT; DELETING THE MANDATORY CONTINUING  
 9 EDUCATION REQUIREMENT; DELETING FELONY CONVICTION AS GROUND  
 10 FOR DENIAL OR REVOCATION OF LICENSE; AMENDING SECTIONS  
 11 2-8-103, 2-15-1609, 37-7-311, AND 37-7-321, MCA; REPEALING  
 12 SECTIONS 37-7-304 AND 37-7-305, MCA; AND PROVIDING AN  
 13 EFFECTIVE DATE."

14  
 15 WHEREAS, the sunset law, sections 2-8-103 and 2-8-112,  
 16 MCA, terminates the Board of Pharmacists and requires a  
 17 performance evaluation of the Board by the Legislative Audit  
 18 Committee; and

19 WHEREAS, as a result of the performance evaluation, the  
 20 Legislative Audit Committee recommends that the Board of  
 21 Pharmacists be reestablished under existing statutory  
 22 authority.

23  
 24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

25 Section 1. Reestablishment. The board of pharmacists

1 is reestablished for 6 years pursuant to 2-8-122 with its  
 2 existing statutory authority and rules.

3 Section 2. Section 2-8-103, MCA, is amended to read:  
 4 "2-8-103. Agencies to terminate. (1) The following  
 5 agencies shall terminate on July 1, 1979:

6 (a) board of abstracters, department of professional  
 7 and occupational licensing, created by 2-15-1643;

8 (b) board of real estate, department of professional  
 9 and occupational licensing, created by 2-15-1642;

10 (c) state board of warm air heating, ventilation, and  
 11 air conditioning, department of professional and  
 12 occupational licensing, created by 2-15-1656;

13 (d) board of institutions, department of institutions,  
 14 created by 2-15-2303.

15 (2) The following agencies shall terminate on July 1,  
 16 1981:

17 (a) commission for human rights, department of labor  
 18 and industry, created by 2-15-1706;

19 (b) board of athletics, department of professional and  
 20 occupational licensing, created by 2-15-1661;

21 (c) board of barbers, department of professional and  
 22 occupational licensing, created by 2-15-1625;

23 (d) board of chiropractors, department of professional  
 24 and occupational licensing, created by 2-15-1613;

25 (e) board of cosmetologists, department of

1 professional and occupational licensing, created by  
2 2-15-1626;

3 (f) board of dentists, department of professional and  
4 occupational licensing, created by 2-15-1606;

5 (g) board of hearing aid dispensers, department of  
6 professional and occupational licensing, created by  
7 2-15-1616;

8 (h) board of massage therapists, department of  
9 professional and occupational licensing, created by  
10 2-15-1627;

11 (i) Montana state board of medical examiners,  
12 department of professional and occupational licensing,  
13 created by 2-15-1605;

14 (j) board of morticians, department of professional  
15 and occupational licensing, created by 2-15-1619;

16 (k) board of nursing, department of professional and  
17 occupational licensing, created by 2-15-1610;

18 (l) board of nursing home administrators, department  
19 of professional and occupational licensing, created by  
20 2-15-1611;

21 (m) board of optometrists, department of professional  
22 and occupational licensing, created by 2-15-1612;

23 (n) board of osteopathic physicians, department of  
24 professional and occupational licensing, created by  
25 2-15-1607;

1 ~~(o) board of pharmacists, department of professional~~  
2 ~~and occupational licensing, created by 2-15-1609;~~

3 ~~(p)(1)~~ board of podiatry examiners, department of  
4 professional and occupational licensing, created by  
5 2-15-1608;

6 ~~(q)(1)~~ board of psychologists, department of  
7 professional and occupational licensing, created by  
8 2-15-1617;

9 ~~(r)(1)~~ board of radiologic technologists, department  
10 of professional and occupational licensing, created by  
11 2-15-1614;

12 ~~(s)(1)~~ board of speech pathologists and audiologists,  
13 department of professional and occupational licensing,  
14 created by 2-15-1615;

15 ~~(t)(1)~~ board of veterinarians, department of  
16 professional and occupational licensing, created by  
17 2-15-1618;

18 ~~(u)(1)~~ board of veterans' affairs, department of  
19 social and rehabilitation services, created by 2-15-2202;

20 ~~(v)(1)~~ board of sanitarians, department of  
21 professional and occupational licensing, created by  
22 2-15-1631.

23 (3) The following units of state government shall  
24 terminate on July 1, 1983:

25 (a) board of aeronautics, department of community



1 affairs, created by 2-15-1103;  
 2 (b) state board of hail insurance, department of  
 3 agriculture, created by 2-15-3003;  
 4 (c) board of horse racing, department of professional  
 5 and occupational licensing, created by 2-15-1662;  
 6 (d) board of livestock, department of livestock,  
 7 created by 2-15-3102;  
 8 (e) board of milk control, department of business  
 9 regulation, created by 2-15-1802;  
 10 (f) board of oil and gas conservation, department of  
 11 natural resources and conservation, created by 2-15-3303;  
 12 (g) Montana outfitters council, department of fish,  
 13 wildlife, and parks, created by 2-15-3403;  
 14 (h) public service commission, department of public  
 15 service regulation, created by 69-1-102;  
 16 (i) board of water and wastewater operators,  
 17 department of health and environmental sciences, created by  
 18 2-15-2105;  
 19 (j) board of water well contractors, department of  
 20 professional and occupational licensing, created by  
 21 2-15-1632.  
 22 (4) The following agencies terminate on July 1, 1985:  
 23 (a) the board of public accountants, created by  
 24 2-15-1641;  
 25 (b) the board of architects, created by 2-15-1651;

1 (c) state banking board, department of business  
 2 regulation, created by 2-15-1803;  
 3 (d) the state electrical board, created by 2-15-1654;  
 4 (e) the board of professional engineers and land  
 5 surveyors, created by 2-15-1653;  
 6 (f) office of commissioner of insurance and the  
 7 insurance department, state auditor's office, created by  
 8 2-15-1902 and 2-15-1903;  
 9 (g) office of the securities commissioner, state  
 10 auditor's office, created by 2-15-1901;  
 11 (h) the board of landscape architects, created by  
 12 2-15-1652;  
 13 (i) the board of county printing, created by  
 14 2-15-1102;  
 15 (j) the board of plumbers, created by 2-15-1655;  
 16 (k) board of physical therapy examiners, created by  
 17 2-15-1628.  
 18 (5) The following agency terminates on July 1, 1987:  
 19 the board of pharmacists, department of professional and  
 20 occupational licensing, created by 2-15-1609."  
 21 Section 3. Section 2-15-1609, MCA, is amended to read:  
 22 "2-15-1609. Board of pharmacists. (1) There is a board  
 23 of pharmacists.  
 24 (2) The board consists of three four members appointed  
 25 by the governor. ~~The governor shall appoint the members~~

1 ~~from a list submitted annually by the Montana state~~  
 2 ~~pharmaceutical association. The list shall contain the names~~  
 3 ~~of five qualified persons for each appointment. Three~~  
 4 ~~members must be licensed pharmacists, and one member must be~~  
 5 ~~from the general public.~~ Each licensed member shall be a  
 6 graduate of the college of pharmacy of the university of  
 7 Montana or of a college or school of pharmacy recognized and  
 8 approved by or a member of the American association of  
 9 colleges of pharmacy. Each licensed member shall have at  
 10 least 5 consecutive years of practical experience as a  
 11 pharmacist immediately before his appointment. However, one  
 12 member may be a registered pharmacist of 15 years' practical  
 13 experience and actually engaged in the practice of pharmacy.  
 14 A licensed member who, during his term of office, ceases to  
 15 be actively engaged in the practice of pharmacy in this  
 16 state, shall be automatically disqualified from membership  
 17 on the board.

18 (3) ~~Each member~~ Members shall serve for a term of ~~5~~  
 19 ~~years staggered 3-year terms.~~ A member shall be removed from  
 20 office by the governor on proof of malfeasance or  
 21 ~~misfeasance in office, after reasonable notice of charges~~  
 22 ~~against him and after a hearing.~~

23 (4) The board is allocated to the department for  
 24 administrative purposes only as prescribed in 2-15-121."

25 Section 4. Section 37-7-311, MCA, is amended to read:

1 "37-7-311. Revocation of license issued to pharmacist  
 2 or intern. The board shall revoke, temporarily or  
 3 permanently, licenses issued by the department to a  
 4 pharmacist or intern whenever the holder of the license:

5 (1) has obtained it by false representations or fraud;

6 (2) is an habitual drunkard or addicted to the use of  
 7 narcotic drugs;

8 ~~(3) has been convicted of a felony;~~

9 ~~(4)(3)~~ has been convicted of violating the pharmacy  
 10 law; or

11 ~~(5)(4)~~ has been found by the board guilty of  
 12 incompetency in the preparation of prescriptions or guilty  
 13 of gross immorality affecting the discharge of his duties as  
 14 a pharmacist or intern."

15 Section 5. Section 37-7-321, MCA, is amended to read:

16 "37-7-321. ~~Store~~ ~~license~~ ~~certified~~ Certified  
 17 pharmacy license -- suspension or revocation. ~~(1)~~ ~~The~~  
 18 ~~department shall, on application on forms prescribed by the~~  
 19 ~~board and on the payment of an annual fee of \$10, license~~  
 20 ~~stores other than pharmacies in which are sold ordinary~~  
 21 ~~household or medicinal drugs prepared in sealed packages or~~  
 22 ~~bottles by a manufacturer qualified under the laws of the~~  
 23 ~~state in which the manufacturer resides. The name and~~  
 24 ~~address of the manufacturer shall appear conspicuously on~~  
 25 ~~each package sold by the licensee. It is unlawful for a~~

~~store--to--sell,--delivery--or--give--away--household--medicinal  
 drugs--without--first--having--secured--a--license--and--thereafter  
 keeping--it--in--force--by--proper--renewal. This subsection does  
 not--prevent--a--vendor--from--selling--a--patent--or--proprietary  
 medicine--in--the--original--package--when--plainly--labeled--or  
 nonmedicinal--articles--usually--sold--by--vendors.~~

(2)(1) The board shall provide for the original certification and annual renewal by the department of every pharmacy doing business in this state. On presentation of evidence satisfactory to the board and on application on a form prescribed by the board and on the payment of an original certification fee of \$100, the department shall issue a license to a pharmacy as a certified pharmacy. However, the license may be granted only to pharmacies operated by registered pharmacists or registered interns qualified under this chapter. The annual renewal fee for a pharmacy shall be set by the board in an amount not to exceed \$50. Any default in the payment of such renewal fee for a period of 30 days after the date the same is due shall increase the renewal fee to the sum of \$100. The license must be displayed in a conspicuous place in the pharmacy for which it is issued and expires on June 30 following the date of issue. It is unlawful for a person to conduct a pharmacy, use the word "pharmacy" to identify his business, or use the word "pharmacy" in advertising unless a license has been

issued and is in effect.

~~(3)(2)~~ The board may suspend, revoke, or refuse to renew a store or pharmacy license:

- (a) obtained by false representation or fraud;
- (b) when the pharmacy for which the license is issued is kept open for the transaction of business without a pharmacist in charge;
- (c) when the person to whom the license is granted has been convicted of:

(i) a violation of parts 1 through 3 of this chapter;

or

~~+++a-felony+or~~

~~+++)(iii)~~ a violation of the Federal Food, Drug, and Cosmetic Act of June 25, 1938, (52 Stats. 1040 through 1059);

(d) when the person to whom the license is granted is a natural person whose pharmacist or intern license has been revoked; or

(e) when the store or pharmacy is conducted in violation of parts 1 through 3 of this chapter.

~~(4)(3)~~ Before a license can be revoked, the holder is entitled to a hearing by the board."

Section 6. Repealer. Sections 37-7-304 and 37-7-305, MCA, are repealed.

Section 7. Effective date. This act is effective on

SR 390

LC 0977/01

1 passage and approval.

-End-

1                   SENATE BILL NO. 390  
 2                   INTRODUCED BY HIMSL, S. BROWN  
 3                   BY REQUEST OF THE LEGISLATIVE AUDIT COMMITTEE

4  
 5   A BILL FOR AN ACT ENTITLED: "AN ACT TO REESTABLISH THE  
 6   BOARD OF PHARMACISTS UNDER EXISTING STATUTORY AUTHORITY AND  
 7   RULES; ADDING ~~A-PUBLIC-MEMBER~~ TWO PUBLIC MEMBERS TO THE  
 8   BOARD; DELETING THE STORE LICENSE REQUIREMENT; ~~DELETING-THE~~  
 9   ~~MANDATORY-CONTINUING-EDUCATION-REQUIREMENT~~; DELETING FELONY  
 10  CONVICTION AS GROUND FOR DENIAL OR REVOCATION OF LICENSE;  
 11  AMENDING SECTIONS 2-8-103, 2-15-1609, 37-7-311, AND  
 12  37-7-321, MCA; ~~REPEALING--SECTIONS--37-7-304-AND-37-7-305,~~  
 13  ~~MEA~~; AND PROVIDING AN EFFECTIVE DATE."

14  
 15       WHEREAS, the sunset law, sections 2-8-103 and 2-8-112,  
 16   MCA, terminates the Board of Pharmacists and requires a  
 17   performance evaluation of the Board by the Legislative Audit  
 18   Committee; and

19       WHEREAS, as a result of the performance evaluation, the  
 20   Legislative Audit Committee recommends that the Board of  
 21   Pharmacists be reestablished under existing statutory  
 22   authority.

23  
 24   BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
 25       Section 1. Reestablishment. The board of pharmacists

1   is reestablished for 6 years pursuant to 2-8-122 with its  
 2   existing statutory authority and rules.

3       Section 2. Section 2-8-103, MCA, is amended to read:  
 4       "2-8-103. Agencies to terminate. (1) The following  
 5   agencies shall terminate on July 1, 1979:

6       (a) board of abstracters, department of professional  
 7   and occupational licensing, created by 2-15-1643;

8       (b) board of real estate, department of professional  
 9   and occupational licensing, created by 2-15-1642;

10      (c) state board of warm air heating, ventilation, and  
 11   air conditioning, department of professional and  
 12   occupational licensing, created by 2-15-1656;

13      (d) board of institutions, department of institutions,  
 14   created by 2-15-2303.

15      (2) The following agencies shall terminate on July 1,  
 16   1981:

17      (a) commission for human rights, department of labor  
 18   and industry, created by 2-15-1706;

19      (b) board of athletics, department of professional and  
 20   occupational licensing, created by 2-15-1661;

21      (c) board of barbers, department of professional and  
 22   occupational licensing, created by 2-15-1625;

23      (d) board of chiropractors, department of professional  
 24   and occupational licensing, created by 2-15-1613;

25      (e) board of cosmetologists, department of

1 professional and occupational licensing, created by  
2 2-15-1626;

3 (f) board of dentists, department of professional and  
4 occupational licensing, created by 2-15-1606;

5 (g) board of hearing aid dispensers, department of  
6 professional and occupational licensing, created by  
7 2-15-1616;

8 (h) board of massage therapists, department of  
9 professional and occupational licensing, created by  
10 2-15-1627;

11 (i) Montana state board of medical examiners,  
12 department of professional and occupational licensing,  
13 created by 2-15-1605;

14 (j) board of morticians, department of professional  
15 and occupational licensing, created by 2-15-1619;

16 (k) board of nursing, department of professional and  
17 occupational licensing, created by 2-15-1610;

18 (l) board of nursing home administrators, department  
19 of professional and occupational licensing, created by  
20 2-15-1611;

21 (m) board of optometrists, department of professional  
22 and occupational licensing, created by 2-15-1612;

23 (n) board of osteopathic physicians, department of  
24 professional and occupational licensing, created by  
25 2-15-1607;

1 ~~{e}--board--of--pharmacists, department of professional~~  
2 ~~and occupational licensing, created by 2-15-1609;~~

3 ~~{p}{o}~~ board of podiatry examiners, department of  
4 professional and occupational licensing, created by  
5 2-15-1608;

6 ~~{q}{p}~~ board of psychologists, department of  
7 professional and occupational licensing, created by  
8 2-15-1617;

9 ~~{r}{g}~~ board of radiologic technologists, department  
10 of professional and occupational licensing, created by  
11 2-15-1614;

12 ~~{s}{r}~~ board of speech pathologists and audiologists,  
13 department of professional and occupational licensing,  
14 created by 2-15-1615;

15 ~~{t}{s}~~ board of veterinarians, department of  
16 professional and occupational licensing, created by  
17 2-15-1618;

18 ~~{u}{t}~~ board of veterans' affairs, department of  
19 social and rehabilitation services, created by 2-15-2202;

20 ~~{v}{u}~~ board of sanitarians, department of  
21 professional and occupational licensing, created by  
22 2-15-1631.

23 (3) The following units of state government shall  
24 terminate on July 1, 1983:

25 (a) board of aeronautics, department of community

1 affairs, created by 2-15-1103;  
 2 (b) state board of hail insurance, department of  
 3 agriculture, created by 2-15-3003;  
 4 (c) board of horse racing, department of professional  
 5 and occupational licensing, created by 2-15-1662;  
 6 (d) board of livestock, department of livestock,  
 7 created by 2-15-3102;  
 8 (e) board of milk control, department of business  
 9 regulation, created by 2-15-1802;  
 10 (f) board of oil and gas conservation, department of  
 11 natural resources and conservation, created by 2-15-3303;  
 12 (g) Montana outfitters council, department of fish,  
 13 wildlife, and parks, created by 2-15-3403;  
 14 (h) public service commission, department of public  
 15 service regulation, created by 69-1-102;  
 16 (i) board of water and wastewater operators,  
 17 department of health and environmental sciences, created by  
 18 2-15-2105;  
 19 (j) board of water well contractors, department of  
 20 professional and occupational licensing, created by  
 21 2-15-1632.  
 22 (4) The following agencies terminate on July 1, 1985:  
 23 (a) the board of public accountants, created by  
 24 2-15-1641;  
 25 (b) the board of architects, created by 2-15-1651;

1 (c) state banking board, department of business  
 2 regulation, created by 2-15-1803;  
 3 (d) the state electrical board, created by 2-15-1654;  
 4 (e) the board of professional engineers and land  
 5 surveyors, created by 2-15-1653;  
 6 (f) office of commissioner of insurance and the  
 7 insurance department, state auditor's office, created by  
 8 2-15-1902 and 2-15-1903;  
 9 (g) office of the securities commissioner, state  
 10 auditor's office, created by 2-15-1901;  
 11 (h) the board of landscape architects, created by  
 12 2-15-1652;  
 13 (i) the board of county printing, created by  
 14 2-15-1102;  
 15 (j) the board of plumbers, created by 2-15-1655;  
 16 (k) board of physical therapy examiners, created by  
 17 2-15-1628.  
 18 (5) The following agency terminates on July 1, 1987:  
 19 the board of pharmacists, department of professional and  
 20 occupational licensing, created by 2-15-1609."  
 21 Section 3. Section 2-15-1609, MCA, is amended to read:  
 22 "2-15-1609. Board of pharmacists. (1) There is a board  
 23 of pharmacists.  
 24 (2) The board consists of three ~~four~~ FIVE members  
 25 appointed by the governor. ~~The governor shall appoint the~~

1 ~~members--from-a-list-submitted-annually-by-the-Montana-state~~  
 2 ~~pharmaceutical-associations-The-list-shall-contain-the-names~~  
 3 ~~of--five-qualified--persons--for--each--appointment. Three~~  
 4 ~~members must be licensed pharmacists, and one member TWO~~  
 5 MEMBERS must be from the general public. Each licensed  
 6 member shall be a graduate of the college of pharmacy of the  
 7 university of Montana or of a college or school of pharmacy  
 8 recognized and approved by or a member of the American  
 9 association of colleges of pharmacy. Each licensed member  
 10 shall have at least 5 consecutive years of practical  
 11 experience as a pharmacist immediately before his  
 12 appointment. However, one member may be a registered  
 13 pharmacist of 15 years' practical experience and actually  
 14 engaged in the practice of pharmacy. A licensed member who,  
 15 during his term of office, ceases to be actively engaged in  
 16 the practice of pharmacy in this state, shall be  
 17 automatically disqualified from membership on the board.

18 ~~(3) Each--member Members~~ shall serve for a term of 3  
 19 years staggered 3-year terms. A member shall be removed from  
 20 office by the governor on proof of malfeasance or  
 21 misfeasance in office, after reasonable notice of charges  
 22 against him and after a hearing.

23 (4) The board is allocated to the department for  
 24 administrative purposes only as prescribed in 2-15-121."

25 Section 4. Section 37-7-311, MCA, is amended to read:

1 "37-7-311. Revocation of license issued to pharmacist  
 2 or intern. The board shall revoke, temporarily or  
 3 permanently, licenses issued by the department to a  
 4 pharmacist or intern whenever the holder of the license:

5 (1) has obtained it by false representations or fraud;

6 (2) is an habitual drunkard or addicted to the use of  
 7 narcotic drugs;

8 ~~(3)--has-been-convicted-of-a-felony+~~

9 ~~(4)(3)~~ has been convicted of violating the pharmacy  
 10 law; or

11 ~~(5)(4)~~ has been found by the board guilty of  
 12 incompetency in the preparation of prescriptions or guilty  
 13 of gross immorality affecting the discharge of his duties as  
 14 a pharmacist or intern."

15 Section 5. Section 37-7-321, MCA, is amended to read:

16 "37-7-321. ~~Store--license-----certified~~ Certified  
 17 pharmacy license -- suspension or revocation. ~~(1)--The~~  
 18 ~~department-shall,--on-application-on-forms-prescribed-by--the~~  
 19 ~~board--and--on--the-payment-of-an-annual-fee-of-\$10--license~~  
 20 ~~stores-other-than-pharmacies--in--which--are--sold--ordinary~~  
 21 ~~household--or-medicinal--drugs-prepared-in-sealed-packages-or~~  
 22 ~~bottles-by-a-manufacturer-qualified-under-the--laws--of--the~~  
 23 ~~state--in--which--the--manufacturer--resides--the--name-and~~  
 24 ~~address-of-the-manufacturer-shall--appear--conspicuously--on~~  
 25 ~~each--package--sold--by--the--licensee;--it--is--unlawful--for--a~~



~~store-to-sell, delivery, or give away household medicine or drugs without first having secured a license and thereafter keeping it in force by proper renewal. This subsection does not prevent a vendor from selling a patent or proprietary medicine in the original package when plainly labeled or nonmedical articles usually sold by vendors.~~

~~(2)(1)~~ The board shall provide for the original certification and annual renewal by the department of every pharmacy doing business in this state. On presentation of evidence satisfactory to the board and on application on a form prescribed by the board and on the payment of an original certification fee of \$100, the department shall issue a license to a pharmacy as a certified pharmacy. However, the license may be granted only to pharmacies operated by registered pharmacists or registered interns qualified under this chapter. The annual renewal fee for a pharmacy shall be set by the board in an amount not to exceed \$50. Any default in the payment of such renewal fee for a period of 30 days after the date the same is due shall increase the renewal fee to the sum of \$100. The license must be displayed in a conspicuous place in the pharmacy for which it is issued and expires on June 30 following the date of issue. It is unlawful for a person to conduct a pharmacy, use the word "pharmacy" to identify his business, or use the word "pharmacy" in advertising unless a license has been

issued and is in effect.

~~(3)(2)~~ The board may suspend, revoke, or refuse to renew a ~~store or~~ pharmacy license:

(a) obtained by false representation or fraud;

(b) when the pharmacy for which the license is issued is kept open for the transaction of business without a pharmacist in charge;

(c) when the person to whom the license is granted has been convicted of:

(i) a violation of parts 1 through 3 of this chapter;

or

~~(ii) a felony; or~~

~~(iii) a violation of the Federal Food, Drug, and Cosmetic Act of June 25, 1938, (52 Stats. 1040 through 1059);~~

(d) when the person to whom the license is granted is a natural person whose pharmacist or intern license has been revoked; or

(e) when the ~~store or~~ pharmacy is conducted in violation of parts 1 through 3 of this chapter.

~~(4)(3)~~ Before a license can be revoked, the holder is entitled to a hearing by the board."

~~Section 6 is repeated in Sections 37-7-304 and 37-7-305. MEA is repeated.~~

Section 6. Effective date. This act is effective on

SB 0390/02

1 passage and approval.

-End-

House amendments to Senate Bill 390:

1. Title, line 7.

Following: "ADDING"

Strike: "A PUBLIC MEMBER"

Insert: "TWO PUBLIC MEMBERS"

2. Page 6, line 24.

Following: "~~three~~"

Strike: "four"

Insert: "five"

3. Page 7, line 4.

Following: "and"

Strike: "one"

Insert: "two"

Strike: "member"

Insert: "members"

HUMAN SERVICES COMMITTEE OF THE HOUSE  
AMENDMENTS TO THIRD READING COPY OF SB 390  
March 19, 1981

1. Title, line 8.  
Following: "REQUIREMENT;"  
Strike: "DELETING THE MANDATORY CONTINUING"
2. Title, line 9.  
Following: line 8  
Strike: "EDUCATION REQUIREMENT;"
3. Title, line 11.  
Following: "MCA;"  
Strike: "REPEALING"
4. Title, line 12.  
Following: line 11  
Strike: "SECTIONS 37-7-304 AND 37-7-305, MCA;"
5. Page 7, line 4.  
Following: "and"  
Strike: "one member"  
Insert: "two members"
6. Page 10, lines 23 and 24.  
Strike: section 6 in its entirety  
Renumber: subsequent section