

SENATE BILL NO. 130

INTRODUCED BY MAZUREK, BERG,  
FULLER, MCCALLUM

IN THE SENATE

January 13, 1983	Introduced and referred to Committee on Local Government.
January 14, 1983	Fiscal Note requested.
January 19, 1983	Fiscal Note returned.
February 11, 1983	Committee recommend bill do pass as amended. Report adopted.
February 12, 1983	Bill printed and placed on members' desks.
February 14, 1983	Second reading, do pass.
February 15, 1983	Correctly engrossed.
February 16, 1983	Third reading, passed. Ayes, 47; Noes, 2. Transmitted to House.

IN THE HOUSE

March 1, 1983	Introduced and referred to Committee on Local Government.
March 11, 1983	Committee recommend bill be concurred in. Report adopted.
March 12, 1983	Second reading, concurred in.
March 14, 1983	Third reading, concurred in.

IN THE SENATE

March 15, 1983	Returned to Senate. Sent to enrolling.
	Reported correctly enrolled.

1 *Senate* BILL NO. *130*  
2 INTRODUCED BY *Marjorie Berg, Fuller Mahallan*  
3

4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A FISCAL NOTE  
5 ON LEGISLATION AFFECTING LOCAL GOVERNMENTS; AMENDING  
6 SECTIONS 5-4-201 AND 5-4-203, MCA."  
7

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9 Section 1. Section 5-4-201, MCA, is amended to read:

10 "5-4-201. Requirement of fiscal notes with committee  
11 reports. All bills reported out of a committee of the  
12 legislature having an effect on the revenues, expenditures,  
13 or fiscal liability of the state or of a county or  
14 municipality, except appropriation measures carrying  
15 specific dollar amounts, shall include a fiscal note  
16 incorporating an estimate of such effect. Fiscal notes  
17 shall be requested by the presiding officer of either house,  
18 who shall determine the need for the note at the time of  
19 introduction."

20 Section 2. Section 5-4-203, MCA, is amended to read:

21 "5-4-203. Budget director to prepare note. The budget  
22 director, in cooperation with the agency or state or local  
23 agencies or officials affected by the bill, is responsible  
24 for the preparation of the fiscal note and shall return same  
25 within 6 days. The director may request additional time to

1 complete a note, which extension must be submitted to the  
2 presiding officer or committee requesting the note for  
3 approval."

-End-

INTRODUCED BILL

-2-

SB 130

## STATE OF MONTANA

REQUEST NO. 102-83

## FISCAL NOTE

Form BD-15

In compliance with a written request received January 14,, 19 83, there is hereby submitted a Fiscal Note for Senate Bill 130 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA).

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

Senate Bill 130 requires a fiscal note on legislation affecting local governments.

COMMENTS:

At the present time, every effort is made to include estimated local government fiscal impact on all fiscal notes requested. Some fiscal notes are requested on bills with solely local impact.

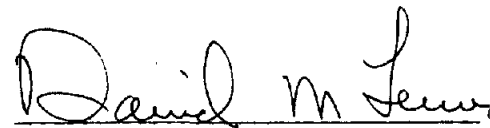
There are at least three options for acquiring precise data on the local impact of proposed legislation.

The first option would be for the budget director or some other state agency to contact each and every local government unit whenever a fiscal note had to be prepared on a bill. This would be a very time-consuming and expensive process. No precise cost estimate is possible.

The second option would be for the state to develop a computerized data base that captured all local government financial reports. A feasibility study of this option was prepared in June of 1982. Initial system development costs were estimated at between \$150,000 to \$200,000 while annual maintenance costs would be \$35,000 to \$50,000.

The third option would be for the associations of counties and cities to take the responsibility for estimating the local government fiscal impacts of various legislation. They would have to determine if this is possible.

FISCAL NOTE 4:Y/1



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 1-19-83

Approved by Comm.  
on Local Government

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-End-

## 1 STATEMENT OF INTENT

## 2 HOUSE BILL 130

3

4 A statement of intent is required for this bill because  
5 it gives the Board of Pharmacy PHARMACISTS the power to  
6 adopt rules authorizing persons to possess or sell imitation  
7 dangerous drugs.

8 It is the intention of the Legislature that the Board  
9 should, as it determines necessary, adopt rules authorizing  
10 such persons as pharmacists, law enforcement officers and  
11 physicians to possess or sell imitation dangerous drugs  
12 while acting within the scope of their employment. The rules  
13 should authorize possession for sale only by those persons  
14 who have bona fide reasons for possession for sale and  
15 should not purport to excuse otherwise criminal activity of  
16 any type.

REFERENCE BILL

HB 130

## HOUSE BILL NO. 130

INTRODUCED BY STOBIE, R. JENSEN, LORY, UNDERDAL,

C. SMITH, JONES, ASAY, J. JACOBSON, HAFLEY,

EUDAILY, DONALDSON, CURTISS, ELLISON, THOFT,

ABRAMS, HANSON, RAMIREZ, RYAN, HEMSTAD, HANNAH,

J. HAMMOND, MENAHAN, MCCALLUM, H. HAMMOND, SCHULTZ,

HOLLIDAY, ELLERD, DEVLIN, SWITZER, COMPTON, NORMAN,

HARRINGTON, WINSLOW, BENGTSON, E. SMITH, GAGE,

MANUEL, MUELLER, LYNCH, SALES, SEIFERT, GOODOVER,

KEYSER, J. BROWN, ADDY, J. JENSEN, IVERSON,

BERGENE, D. BROWN, DARKO, KENNERLY, MARKS,

FARRIS, SPARTH, PAVLOVICH, DAILY

A BILL FOR AN ACT ENTITLED: "AN ACT TO PREVENT THE  
MANUFACTURE, ~~MANUFACTURE~~, ~~POSSESSION~~, SALE, ~~POSSESSION FOR~~  
~~SALE~~, AND ADVERTISEMENT OF IMITATION DANGEROUS DRUGS;  
AUTHORIZING THE BOARD OF PHARMACY ~~PHARMACISTS~~ TO ADOPT  
RULES; CREATING EXEMPTIONS; AND PROVIDING PENALTIES;  
AMENDING SECTION 45-9-202, MCA."

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

NEW SECTION. Section 1. Definitions. As used in  
[sections 2 through 7 ~~6 AND 45-9-202, MCA~~], the following  
definitions apply:

(1) "Dangerous drug" has the meaning given to that

term in 50-32-101.

(2) "Imitation dangerous drug" means a substance that  
is not a dangerous drug, ~~which-by-dosage-unit-features BUT~~  
~~THAT IS EXPRESSLY OR IMPLIEDLY REPRESENTED TO BE A DANGEROUS~~  
~~DRUG OR TO SIMULATE THE EFFECT OF A DANGEROUS DRUG AND THE~~  
~~APPEARANCE OF WHICH~~, including the color, shape, size, and  
markings, ~~or-by-express-or-implied-representation-appears-to~~  
~~be WOULD LEAD A REASONABLE PERSON TO BELIEVE THAT THE~~  
~~SUBSTANCE IS~~ a dangerous drug.

~~(3) "PERSON" INCLUDES ANY INDIVIDUAL, BUSINESS~~  
~~ASSOCIATION, PARTNERSHIP, OR CORPORATION.~~

~~(3) "Manufacture" means the--production--preparation--~~  
~~compounding--processing--encapsulating--packaging--or~~  
~~repackaging--or--labeling--or--relabeling--of--an--imitation~~  
~~dangerous-drug.~~

~~NEW SECTION. Section 2--Additional--considerations--of~~  
~~court--to--establish--imitation--dangerous--drugs--in--addition--to~~  
~~these--factors--specified--in--section--2(2)--the--following--may~~  
~~be--considered--by--a--court--in--determining--whether--a--substance~~  
~~is--an--imitation--dangerous--drug.~~

~~(1) statements--made--by--anyone--in--control--of--the~~  
~~substance--concerning--the--nature--of--the--substance--or--its--uses~~  
~~or--effects;~~

~~(2) statements--made--to--a--recipient--that--the--substance~~  
~~may--be--resold--for--inordinate--profit;~~

~~{3}--whether--the--substance--is--packaged--in--a--manner  
normally-used-for-dangerous-drugs}~~

~~{4}--evasive-tactics-or-actions-used-by-the--person--in  
control--of--the--substance--to--avoid--detection--by--law  
enforcement-authorities--or~~

~~{5}--the-proximity-of-the-substance-to-dangerous-drugs}~~

NEW SECTION. Section 2. Criminal sale of imitation dangerous drug -- penalty. (1) A person commits the offense of criminal sale of an imitation dangerous drug to an adult if he KNOWINGLY OR PURPOSELY sells, barter, exchanges, gives away, or offers to sell, barter, exchange, or give away any imitation dangerous drug to or for the use of a person 18 years of age or older.

~~{2}--A-person-commits-the-offense-of-criminal--sale--of  
an-imitation-dangerous-drug-to-a-minor-if-he-sells,-barter,-  
exchanges,-gives-away,-or-offers-to-sell,-barter,-exchange,-  
or-give-away-any-imitation-dangerous-drug-to-or-for-the-use  
of-a-person-under-18-years-of-age}~~

~~{3}~~{1} A person convicted of criminal sale of an imitation dangerous drug to an adult A PERSON 18 YEARS OF AGE OR OLDER shall be imprisoned in the state prison for a term of not less than 2 years or more than 5 years and may be fined not more than \$25,000 ~~\$50,000~~, except as provided in 46-18-222.

~~{4}~~{1} A person convicted of criminal sale of an

imitation dangerous drug to a minor PERSON UNDER THE AGE OF 18 shall be imprisoned in the state prison for a term of not less than 2 years or more than 10 years and may be fined not more than \$50,000, except as provided in 46-18-222.

NEW SECTION. Section 3. Criminal possession of imitation dangerous drug WITH PURPOSE TO SELL -- penalty. (1) A person commits the offense of criminal possession of an imitation dangerous drug WITH PURPOSE TO SELL if he possesses WITH PURPOSE TO SELL any imitation dangerous drug.

(2) A person convicted of criminal possession of an imitation dangerous drug is guilty of a misdemeanor and punishable by a fine not to exceed \$1,000 or imprisonment in the county jail for a term not to exceed 1 year or both such fine and imprisonment. A person convicted of a second or subsequent offense under this subsection is punishable by a fine not to exceed \$1,000 or imprisonment in the county jail for a term not to exceed 1 year or in the state prison for a term not to exceed 3 years or both such fine and imprisonment WITH PURPOSE TO SELL SHALL BE IMPRISONED IN THE STATE PRISON FOR A TERM OF NOT MORE THAN 5 YEARS AND MAY BE FINED NOT MORE THAN \$25,000 \$50,000.

~~{3}--A-person-under-18-years-of-age-convicted-of-a  
first-violation-under-this-section-shall-be-presumed-to-be  
entitled-to-a-deferred-imposition-of-sentence}~~

{1} A PERSON UNDER 18 YEARS OF AGE CONVICTED OF A



1 ~~FIRST VIOLATION UNDER THIS SECTION SHALL BE PRESUMED TO BE~~  
2 ~~ENTITLED TO A DEFERRED IMPOSITION OF SENTENCE.~~

3 ~~NEW SECTION.~~ Section 4. Criminal advertisement of  
4 imitation dangerous drug -- penalty. (1) A person commits  
5 the offense of criminal advertisement of an imitation  
6 dangerous drug if he ~~KNOWINGLY OR PURPOSELY~~ places in any  
7 newspaper, magazine, handbill, or other publication or posts  
8 or distributes any advertisement or solicitation to promote  
9 the manufacture, sale, exchange, or distribution of an  
10 imitation dangerous drug.

11 (2) A person convicted of criminal advertisement of an  
12 imitation dangerous drug under this section is punishable by  
13 a fine not to exceed \$100,000 or by imprisonment in the  
14 state prison for a term of not less than 5 years or more  
15 than 10 years or by both such fine and imprisonment.

16 ~~NEW SECTION.~~ Section 6. Criminal manufacture of  
17 imitation dangerous drug -- penalty. (1) A person commits  
18 the offense of criminal manufacture of an imitation  
19 dangerous drug if he manufactures, prepares, or cultivates  
20 any imitation dangerous drug.

21 (2) A person convicted of criminal manufacture of an  
22 imitation dangerous drug under this section is punishable by  
23 a fine not to exceed \$100,000 or by imprisonment in the  
24 state prison for a term of not less than 5 years or more  
25 than 10 years or by both such fine and imprisonment, except

1 as provided in 46-18-222.

2 THERE IS A NEW MCA SECTION THAT READS:

3 Section 5. Criminal manufacture of imitation dangerous  
4 drug -- penalty. (1) A person commits the offense of  
5 criminal manufacture of an imitation dangerous drug if he  
6 knowingly or purposely manufactures, prepares, or cultivates  
7 any imitation dangerous drug.

8 (2) A person convicted of criminal manufacture of an  
9 imitation dangerous drug under this section is punishable by  
10 a fine not to exceed \$100,000 or by imprisonment in the  
11 state prison for a term of not more than 10 years or by both  
12 such fine and imprisonment.

13 ~~NEW SECTION.~~ Section 6. Exemptions. (1) [Sections 3  
14 and 2 THROUGH 4 5] do not apply to:

15 (a) a person authorized by rules adopted by the board  
16 of pharmacists to possess ~~WITH PURPOSE TO SELL~~ or sell  
17 imitation dangerous drugs;

18 (b) a person employed by or enrolled as a student in a  
19 college or university within the state who possesses  
20 imitation dangerous drugs for the purposes of teaching or  
21 research that are authorized by the college or university;

22 (c) law enforcement personnel selling or possessing  
23 ~~WITH PURPOSE TO SELL~~ imitation dangerous drugs while acting  
24 within the scope of their employment; and

25 (d) a person registered under the provisions of

1 Title 50, chapter 32, part 3, who manufacture, sells,  
2 distribute, or possesses WITH PURPOSE TO SELL an imitation  
3 dangerous drug for use as a placebo, by that person or any  
4 other person so registered, in the course of professional  
5 practice or research.

6 (2) The board of pharmacists shall adopt, amend, or  
7 repeal rules in accordance with the Montana Administrative  
8 Procedure Act to authorize the possession WITH PURPOSE TO  
9 SELL or sale of imitation dangerous drugs whenever it  
10 determines that there is a legitimate need and that the  
11 drugs will be used for a lawful purpose.

12 Section 7. Section 45-9-202, MCA, is amended to read:

13 "45-9-202. Alternative sentencing authority. A person  
14 convicted of criminal possession of dangerous drugs ~~or~~  
15 CRIMINAL SALE OF imitation dangerous drugs, CRIMINAL  
16 POSSESSION OF IMITATION DANGEROUS DRUGS WITH PURPOSE TO  
17 SELL, fraudulently obtaining dangerous drugs, or altering  
18 labels on dangerous drugs, if he is shown to be an excessive  
19 or habitual user of dangerous drugs, as defined in  
20 50-32-101, either from the face of the record or by a  
21 presentence investigation, may, in lieu of imprisonment, be  
22 committed to the custody of any institution for  
23 rehabilitative treatment for not less than 6 months or more  
24 than 2 years."

25 NEW SECTION. Section 8. Codification Instruction.

1 Sections 1 through 7 ~~5 6~~ are intended to be codified as an  
2 integral part of Title 45, chapter 9, and the provisions of  
3 Title 45, chapter 9, apply to sections 1 through 7 ~~5 6~~.

4 NEW SECTION. Section 9. Severability. If a part of  
5 this act is invalid, all valid parts that are severable from  
6 the invalid part remain in effect. If a part of this act is  
7 invalid in one or more of its applications, the part remains  
8 in effect in all valid applications that are severable from  
9 the invalid applications.

-End-

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