

SENATE BILL NO. 274

Introduced: 01/24/83

Referred to Committee on Public Health, Welfare, & Safety:
01/24/83

Hearing: 2/7/83

Report: 02/19/83, Do Not Pass. Report Adopted.

Bill Killed.

1 *Senate* BILL NO. *274*
2 INTRODUCED BY *Don Holsen*
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE
5 MANDATORY LICENSING AND REGULATION OF PROFESSIONAL
6 COUNSELORS; CREATING A STATE BOARD OF LICENSED PROFESSIONAL
7 COUNSELORS; CREATING A COMMUNICATIONS PRIVILEGE; PROVIDING
8 PENALTIES FOR VIOLATIONS; AND ALLOWING DISABILITY AND HEALTH
9 INSURANCE COVERAGE FOR WORK DONE BY LICENSED PROFESSIONAL
10 COUNSELORS; AMENDING SECTIONS 33-22-111 AND 33-30-101, MCA."
11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
13 NEW SECTION. Section 1. Board of professional
14 counselors -- appointment -- organization. (1) The governor
15 shall appoint a board of professional counselors, consisting
16 of seven members.
17 (2) (a) One member must be a psychologist licensed
18 under the laws of this state.
19 (b) One member must be a psychiatrist licensed to
20 practice medicine under the laws of this state.
21 (c) Four members must be professional counselors.
22 (d) One member must be appointed from and represent
23 the general public and may not be engaged in professional
24 counseling.
25 (3) The board is designated a quasi-judicial board.

1 Members are appointed, serve, and are subject to removal in
2 accordance with 2-15-124.
3 (4) The board is allocated to the department for
4 administrative purposes only as prescribed in 2-15-121.
5 NEW SECTION. Section 2. Purpose. The legislature
6 finds and declares that because the profession of
7 professional counseling profoundly affects the lives of
8 people of this state, it is the purpose of [sections 2
9 through 13] to provide for the common good by ensuring
10 ethical, qualified, and professional practice of
11 professional counseling. [Sections 2 through 13] and the
12 rules promulgated under [section 4] set standards of
13 qualification, education, training, and experience and will
14 establish professional ethics for those who seek to engage
15 in the practice of professional counseling as licensed
16 professional counselors.
17 NEW SECTION. Section 3. Definitions. As used in
18 [sections 2 through 13]:
19 (1) "Board" means the board of professional counselors
20 established under [section 1].
21 (2) "Department" means the department of commerce.
22 (3) "Licensee" means a person licensed under [sections
23 2 through 13].
24 (4) "Professional counseling" means the professional
25 practice directed toward helping people achieve more

adequate, satisfying, and productive personal and social adjustments. The practice involves the application of professional counseling techniques, including but not limited to:

(a) counseling and using psychotherapy with individuals, families, or groups;

(b) providing information and referral services;

(c) providing, arranging, or supervising the provision of counseling services;

(d) explaining and interpreting the psychosocial aspects in the situations of individuals, families, or groups;

(e) helping communities to organize, provide, or improve counseling and health services; and

(f) research or teaching related to counseling and closely related fields.

(5) "Psychotherapy" means the use of psychosocial methods within a professional relationship to help a person achieve a better psychosocial adaptation and to modify internal and external conditions that affect individuals, groups, or families in respect to behavior, emotions, and thinking concerning their interpersonal processes.

NEW SECTION. Section 4. Powers and duties of board.

(1) The board shall:

(a) recommend amendments to [sections 2 through 13] to

the governor or the legislature, or both;

(b) recommend prosecutions for violations of [section 13] to the attorney general or the appropriate county attorneys, or both;

(c) annually publish a list of the names and addresses of all persons who are licensed professional counselors;

(d) establish requirements for continuing education that are a condition of license renewal;

(e) meet at least once every 3 months to perform the duties described in this section. The board may, once a year by a consensus of its members, determine that there is no necessity for a board meeting.

(f) distribute a copy of the ethical standards to licensed professional counselors; and

(g) adopt rules that set professional, practice, and ethical standards for licensed professional counselors and such other rules as may be reasonably necessary for the administration of [sections 2 through 13].

(2) The board may adopt rules governing the issuance of certificates of special competence in particular areas of practice as a licensed professional counselor. The board shall establish criteria for each particular area for which a certificate is issued.

NEW SECTION. Section 5. Representation to public as licensed professional counselor -- limitations on use of

1 title. (1) No person may represent himself to be a licensed
2 professional counselor by adding the letters "LPC" after his
3 name or by any other means unless licensed under [sections 2
4 through 13].

5 (2) Subsection (1) does not prohibit:

6 (a) a qualified member of another profession, such as
7 a physician, psychologist, lawyer, pastoral counselor,
8 probation officer, court employee, nurse, social worker,
9 school counselor, or educator, from professional counseling
10 consistent with his training if he does not hold himself out
11 to the public by a title or description incorporating the
12 words "licensed professional counselor", "licensed
13 counselor", or "professional counselor";

14 (b) an activity or service or use of an official title
15 by a person in the employ of a federal, state, county, or
16 municipal agency or an educational, research, or charitable
17 institution that is a part of the duties of the office or
18 position;

19 (c) an activity or service of an employee of a
20 business establishment performed solely for the benefit of
21 the establishment's employees;

22 (d) an activity or service of a student, intern, or
23 resident in mental health counseling pursuing a course of
24 study at an accredited university or college or working in a
25 generally recognized training center if the activity or

1 service constitutes a part of the supervised course of
2 study;

3 (e) an activity or service of a person who is not a
4 resident of this state, which activity or service is
5 rendered for a period that does not exceed, in the
6 aggregate, 60 days during a calendar year, if the person is
7 authorized under the law of the state or country of
8 residence to perform such activity or service. However,
9 such person shall report to the department the nature and
10 extent of the activity or service if it exceeds 10 days in a
11 calendar year.

12 (f) pending disposition of the application for a
13 license, the activity or service by a person who has
14 recently become a resident of this state, has applied for a
15 license within 90 days of taking up residency in this state,
16 and is licensed to perform such activity or service in the
17 state of his former residence.

18 NEW SECTION. Section 6. License requirements --
19 exemptions -- reciprocity. (1) A license applicant shall
20 satisfactorily complete an examination prepared and
21 administered by the board, except that during the 2-year
22 period following the effective date of [sections 2 through
23 13] a license must be granted without examination if the
24 requirements of subsection (2) are met.

25 (2) Before an applicant may take the examination, he

1 shall present three letters of reference from professional
2 counselors or members of an allied profession who have
3 knowledge of the applicant's professional performance and
4 demonstrate to the board that he:

5 (a) has a doctorate or master's degree in counseling
6 or a related field from a regionally accredited institution
7 of higher education;

8 (b) has accumulated 2,000 hours of practice in
9 counseling within the past 5 years; and

10 (c) abides by the ethical standards adopted under
11 [section 4].

12 (3) An applicant who has failed the examination may
13 reapply to take the examination, except that after two
14 failures he must first wait 1 year from the date of the last
15 examination or complete 5 quarter hours of schooling at the
16 graduate level in the area in which he had the lowest score
17 on his last examination.

18 (4) An applicant is exempt from the examination
19 requirement if he satisfies the board that he is licensed,
20 certified, or registered under the laws of a state or
21 territory of the United States that imposes substantially
22 the same requirements as [sections 2 through 13] and that he
23 has passed an examination similar to that required by the
24 board.

25 NEW SECTION. Section 7. Fees. (1) Each applicant for

1 a license shall, upon submitting his application to the
2 board, pay an application fee set by the board equal to the
3 cost of processing the application.

4 (2) Each applicant for a license required to take an
5 examination shall, prior to commencement of the examination,
6 pay an examination fee set by the board equal to the cost of
7 administering the examination.

8 (3) Each applicant shall, prior to receipt of a
9 license or license renewal, pay a fee set by the board equal
10 to the cost of issuing a license.

11 (4) Subject to 37-1-101(6), money paid for
12 application, examination, license, and license renewal fees
13 must be deposited in an earmarked revenue fund for the use
14 of the board.

15 NEW SECTION. Section 8. Issuance, effective date, and
16 display of license. (1) Upon successful completion of the
17 examination required by [section 6] or upon demonstration by
18 a person that he is exempt from examination and has
19 otherwise fulfilled the requirements of [section 6], the
20 applicant must be issued a license attesting to the date and
21 fact of licensure. The license is effective on the date of
22 issuance and expires 2 years after that date.

23 (2) The license must be displayed in the registrant's
24 place of business or employment.

25 NEW SECTION. Section 9. Renewal of license. (1) An

1 application for renewal of an existing license made within
2 60 days after the expiration of the license is timely, and
3 the rights and privileges of the applicant during that
4 period remain in effect.

5 (2) Application for renewal must be made upon a form
6 provided by the department. A renewal license must be
7 issued upon payment of a renewal fee set by the board and
8 upon submitting proof of completion of continuing education
9 requirements.

10 NEW SECTION. Section 10. Denial or revocation of
11 license. A license may be refused or revoked by the board on
12 proof that a person:

13 (1) committed fraud or deceit in securing or
14 attempting to secure a license or renewal;

15 (2) is using a narcotic drug or an alcoholic beverage
16 to an extent that impairs his ability to safely perform the
17 work of a licensed professional counselor; or

18 (3) has engaged in unprofessional conduct as defined
19 by the ethical standards adopted by the board.

20 NEW SECTION. Section 11. Procedure for charging
21 violation. (1) Any member of the board or other person may
22 charge a licensee with a violation of [section 10]. The
23 charge must be made by affidavit, subscribed and sworn to by
24 the person making it, and filed with the department. The
25 charge must be investigated by the board, and unless the

1 board dismisses the charge after investigation as unfounded
2 or trivial, the board must act on the charge within 6 months
3 after the date on which the charge was filed. The board is
4 considered to have acted on a charge if it has given notice
5 by mail to the licensee of its intent to revoke, refuse to
6 issue, or refuse to renew his license and the notice
7 contains those matters required by 2-4-601.

8 (2) Any hearing on the charge must be held before all
9 seven members of the board and must be conducted in
10 accordance with 37-1-121(1) and the Montana Administrative
11 Procedure Act.

12 NEW SECTION. Section 12. Privileged communications --
13 exceptions. A licensee may not disclose any information he
14 acquires from clients consulting him in his professional
15 capacity except:

16 (1) with the written consent of the client or, in the
17 case of the client's death or mental incapacity, with the
18 written consent of the client's personal representative or
19 guardian;

20 (2) that he need not treat as confidential a
21 communication otherwise confidential that reveals the
22 contemplation of a crime by the client or any other person
23 or that in his professional opinion reveals a threat of
24 imminent harm to the client or others;

25 (3) that if the client is a minor and information

1 acquired by the licensee indicates that the client was the
2 victim of a crime, the licensee may be required to testify
3 fully in relation thereto in any investigation, trial, or
4 other legal proceeding in which the commission of such crime
5 is the subject of inquiry;

6 (4) that if the client or his personal representative
7 or guardian brings an action against a licensee for a claim
8 arising out of the counselor-client relationship, the client
9 is considered to have waived any privilege;

10 (5) to the extent that the privilege is otherwise
11 waived by the client; and

12 (6) as may otherwise be required by law.

13 NEW SECTION. Section 13. Violations -- penalties. (1)
14 It is a misdemeanor for a person to knowingly:

15 (a) represent himself as a licensed professional
16 counselor without being licensed under [sections 2 through
17 13];

18 (b) obtain or attempt to obtain a license or license
19 renewal by bribery or fraudulent representation; or

20 (c) make a false statement on any form used by the
21 board to implement [sections 2 through 13] or the rules
22 adopted under [sections 2 through 13].

23 (2) A person convicted under this section shall be
24 imprisoned in the county jail for a period not exceeding 6
25 months or fined not more than \$500, or both. A person

1 convicted of a second offense under this section shall be
2 punished by both such fine and imprisonment.

3 Section 14. Section 33-22-111, MCA, is amended to
4 read:

5 "33-22-111. Policies to provide for freedom of choice
6 of practitioners -- professional practice not enlarged. (1)
7 All policies of disability insurance, including individual,
8 group, and blanket policies and all policies insuring the
9 payment of compensation under the Workers' Compensation Act
10 shall provide the insured shall have full freedom of choice
11 in the selection of any duly licensed physician, dentist,
12 osteopath, chiropractor, optometrist, chiropodist, or
13 psychologist, or professional counselor for treatment of any
14 illness or injury within the scope and limitations of his
15 practice. Whenever such policies insure against the expense
16 of drugs, the insured shall have full freedom of choice in
17 the selection of any duly licensed and registered
18 pharmacist.

19 (2) Nothing in this section shall be construed as
20 enlarging the scope and limitations of practice of any of
21 the licensed professions enumerated in subsection (1); nor
22 shall this section be construed as amending, altering, or
23 repealing any statutes relating to the licensing or use of
24 hospitals."

25 Section 15. Section 33-30-101, MCA, is amended to

1 read:

2 "33-30-101. Definitions. As used in this chapter, the
3 following definitions apply:

4 (1) "Health service corporation" means a nonprofit
5 corporation organized or operating for the purposes of
6 establishing and operating a nonprofit plan or plans under
7 which prepaid hospital care, medical-surgical care, and
8 other health care and services, or reimbursement therefor,
9 may be furnished to a member or beneficiary.

10 (2) "Health services" means the health care and
11 services provided by hospitals or other health care
12 institutions, organizations, associations, or groups and by
13 doctors of medicine, osteopathy, dentistry, chiropractic,
14 optometry, and podiatry; nursing services; licensed
15 professional counselors; medical appliances, equipment, and
16 supplies; drugs, medicines, ambulance services, and other
17 therapeutic services and supplies.

18 (3) "Membership contract" means any agreement,
19 contract, or certificate by which a health service
20 corporation describes the health services or benefits
21 provided to its members or beneficiaries."

22 NEW SECTION. Section 16. Codification instruction.
23 Section 1 is intended to be codified as an integral part of
24 Title 2, chapter 15, part 18, and the provisions of Title 2,
25 chapter 15, apply to section 1.

1 NEW SECTION. Section 17. Severability. If a part of
2 this act is invalid, all valid parts that are severable from
3 the invalid part remain in effect. If a part of this act is
4 invalid in one or more of its applications, the part remains
5 in effect in all valid applications that are severable from
6 the invalid applications.

-End-

FISCAL NOTE

Form BD-15

In compliance with a written request received January 25, 19 83, there is hereby submitted a Fiscal Note for Senate Bill 274 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly. 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 274 provides for the mandatory licensing and regulation of professional counselors; creates a state board of licensed professional counselors; creates a communications privilege; provides penalties for violations; allows disability and health insurance coverage for work done by licensed professional counselors; and amends Sections 33-22-111 and 33-30-101, MCA.

ASSUMPTIONS:

- 1) Assume 7 members attend 4 meetings per year, \$25 compensation per day for total of 28 meeting days per year and to include mileage and per diem.
- 2) Assume 23 pages of rules, with notices at \$13.50 per page (\$310.50).
- 3) Assume .10 FTE (Grade 10, Step 2) for administration and secretarial help.
- 4) Assume use of professional exam service at cost of \$35 per exam (1983 figures).
- 5) Assume 200 licenses first year, 10-20 new licensees per year thereafter.
- 6) Assume license fees commensurate with costs.
- 7) Biennial renewals will show increased revenue in even-numbered fiscal years and decreased revenue in odd-numbered fiscal years.

FISCAL IMPACT:

	FY 84	FY 85
Revenue	\$ 24,000	\$ 3,300
Expenditures	(9,700)	(9,250)
Total Impact Per Year	\$ 14,300	\$ (5,950)

TECHNICAL NOTE:

Conflict may exist between ~~Senate~~ Bill 274 and Senate Bill 284 as language in both bills is exactly the same except one licenses social workers and House Bill 274 licenses professional counselors. These are similar licensing functions that may be placed together under one board.

FISCAL NOTE 9:I/1



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 1-31-83