

MINUTES

MONTANA SENATE 51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON AGRICULTURE

Call to Order: By Chairman Beck, on January 6, 1989, at
1:00 p.m.

ROLL CALL

Members Present: All

Members Excused: None

Members Absent: None

Staff Present: Doug Sternberg, Legislative Council

Announcements/Discussion: An introduction of committee members and staff by Chairman Tom Beck. There was also a call for a three dollar coffee donation from each committee member. Chairman Beck reminded those who were testifying and those who were visiting to please sign in.

HEARING ON SENATE BILL 28

Presentation and Opening Statement by Sponsor: Senator Darryl Meyer, District 17, wanted to clarify the definition of veterinary medicine by specifying certain procedures that are no longer considered veterinary practice. The bill would establish technicians to perform specified nonsurgical procedures that are presently considered veterinary services.

List of Testifying Proponents and What Group They Represent:

John C. Hoyt representing himself from the Jolly Rancher Angus Ranch in Belt Montana
Ray Ansotegui, Professor of the Animal Science Department at Montana State University.
Jeff Okerman representing himself from Top Hat Livestock in Roscoe Montana
John I. Coble Jr. representing himself from Chi Arrow Cattle Inc.
Jeff Bricker representing himself from Bear Creek Angus Ranch
Roger Bowers representing himself from Landmark Cattle
David Han representing himself
Jerry Jack representing Montana Stock Growers Association

Bob Gilbert representing Montana Wool Growers Association
Don Burnham representing himself

List of Testifying Opponents and What Group They Represent:

Jo Brunner representing the Montana Veterinary Medical Association

Dr. Jim Curtis Representing Montana Veterinary Medical Association

Dr. William A. Rogers representing the Montana Veterinary Medical Association

Testimony:

Proponents:

John Hoyt indicated that there is a void in the veterinary bill as it now exists and in order to fill this void he wanted to present the amendment appearing on page 3, lines 3 through 12. Mr. John Hoyt stated that this amendment should not be the exclusive domain of the veterinarians.

Ray Ansotegui teaches reproductive physiology classes; he is involved with the veterinarian training and is no way after the veterinarian profession. Mr Ansotegui expressed there were many competent laymen out in the work force performing pregnancy testing, artificial insemination, ultrasounds etc...and other nonintrusive methods of testing or scanning. The men and women who take these classes have extensive hours of training to perform these procedures.

Jeff Okerman indicated that agricultural technology today has advanced to the state to allow us the use of genetic tools specifically embryo transplants, artificial inseminations, pregnancy testing along with ultrasound techniques. He has found, through experience, these procedures are a skill and a level of proficiency that is acquired through the experience. "We have used a reproductive physiologist to aide us in our business. It is my feeling to allow nonveterinarian technical people to help us and aide us in the industry."

John Coble - "My concern for this bill as a registered livestock owner is to have the opportunity to select the people who are best qualified to do my embryo work, artificial insemination work, and pregnancy testing. The economic structure in our line of business is difficult and we would like to have the choice of selecting the people to do the job."

Jeff Bricker indicated his main concern was embryo transfer. "We have had a nonveterinarian company that does our embryo transfers. They do a very good job for us and our customers are very happy. These guys are ever bit as qualified as veterinarians that we have do our work. We use them mainly because they did the best job for us. I'd have to ship my cattle out of the state to do this kind of work because there are more people in other states to do this work. The cost would be tremendous for myself."

Roger Bowers indicated ranching was economically tough and that he spent roughly \$30 per head on veterinary services and vaccine. "Please do not tie my hands to the people I can choose to do this technician work. I only know of one vet in the state of Montana that devotes full-time to embryo transfer. I'm going to make a living for myself and my family and I'm want to choose the best qualified man to do the job."

David Han, a private reproductive consultant and has been investigated in the past by the Montana Veterinary Medicine Board. " I'm in favor of SB 28 because if we don't pass this bill it can put pressure on a lot of private individuals that are very competent. They are giving a very good service to the livestock industry and it will drive some of the technicians out of business."

Jerry Jack indicated that the Montana Wool Growers Association strongly urge the committee to give a do pass on SB 28.

Bob Gilbert indicated interest in the provisions in this bill that are affecting pregnancy testing in animals, particularly sheep and also the future for being able to use ultrasounds to tell the carcass evaluations.

Don Burnham indicated that there are technicians who are better than the veterinarians. " There is a husband and wife team in Montana doing ultrasounds; they are the two best technicians in Montana for doing that procedure. There's about 10 vets in Helena and only 2 do pregnancy testing at all and none of them will do A.I. Only one of them has the equipment to fertility test a bull and none of them have the equipment to do ultrasounds. If we are forced to go and get a vet and there is no vet then we can't get our job done. If I'm selling cows to another individual, I always have a vet pregnancy test my cow for the simple reason I want a certification. I want that vet to stand between me and my satisfied customer."

Testimony:Opponents:

Jo Brunner the Montana Veterinary Medical Association has been working on for some time on a proposals for renovation of the existing law. "We didn't realize that this bill would come up as early as it has and we would like you to take that into consideration."

Dr. Jim Curtis see the attached exhibit number two.

Dr. William Rogers indicated the purpose of having a veterinary practice act is for the protection of the consumer. "All veterinarians, in order to be a veterinarian, have to complete a veterinarian course. Further, they have to have passed a state board which is administered by the board of veterinarians. If a person has not passed these requirements, can not practice in the private sector. SB 28 will not provide the consumer with an increase level of protection."

Questions From Committee Members: Senator Devlin asked Dr. Curtis if the committee could get a hold of a draft of the proposed legislation. Dr. Curtis said when they get the draft put together he will submit it to the committee.

Senator Galt asked how the law is being applied (directing the question to the proponents). No response.

Senator Bengtson asked Dr. Curtis if he viewed technicians who do veterinary services as a threat to the veterinarians? Dr. Curtis replied, "I don't see it as a threat to my profession. I see it as a threat to the industries to Montana; we are expanding our markets into international fields and we need to give these people some assurance what they are buying." Dr. Curtis also said veterinarians have to go back to school to further their education the technicians are not required to go back to school.

Senator Thayer asked Dr. Curtis how can these veterinarians practices be restricted if there is already a shortage of technicians; what can be done in the mean time to take care of this problem? Dr. Curtis stated, " We are working on specialty acts where people are trained in these areas. It's a problem that's being addressed all over the nation."

Senator Devlin wanted to see a copy of the letter. See exhibit 4.

Chairman Beck asked John Hoyt what kind of malpractice insurance or liability will these people have? Mr. Hoyt replied, " We are not talking about any liability; we not talking about anything harmful. We are only talking about tools to aide the cattle rancher.

Closing by Sponsor: Senator Meyer SB 28 does not affect the health of the animal. "It's mainly opening the door for these people (nonveterinarians) to come in and do these procedures(on page 3 lines 3 through 12). I think it is time for change in Montana and I think this bill does make some changes."

Hearing was closed on SB 28. The committee will take executive action on SB 28 at a later date.

HEARING ON SENATE BILL 32

Presentation and Opening Statement by Sponsor: Senator Loren Jenkins, District 7, wanted to provide for the distribution of rental payments received by lessees of state lands under the federal conservation reserve program entered into the CRP after the effective date. The CRP payments will be distributed 80% to the state and 20% to the operators(lessees of the state land). SB 32 will not affect contracts made before the effective date and it will not change any existing contracts. "We've run into some problems in our part of the country and around the state where people have been bidding up the state lands leases to put in the CRP. We figure if they want to bid them up, let them bid them up high so the state can make some money. The other part is that in 10 years we don't know whether we can pull this CRPground out and farm it again or do we have 106 or a 640 of grass in many places with no fences, no water. Now if that happens, some of the state ground under CRP will be a lost to the education fund. This bill is made to discourage people to put any more state land in. Some of the ground put in the CRP should have never been farmed to start with." Please see the attached exhibits 1, 2, and 3.

List of Testifying Proponents and What Group They Represent:

Larry Johnson representing The Montana Grain Growers Association

List of Testifying Opponents and What Group They Represent:

Robert Stephens Jr., representing himself

Senator Dennis Nathe, District 10, representing himself
Senator Sam Hofman, District 38, representing himself

Testimony:
Proponents:

Larry Johnson agreed with Senator Jenkins and addressed similar issues. "The state as it is right now, the educational trust funds are getting a proportionally short share of that rental fee. The 80/20 figure as Senator Jenkins pointed out, it will in all probability discourage farmers from putting acreage in the CRP because I don't think a farmer would put it in at that figure."

Testimony:
Opponents:

Robert Stephens stated there was no provision in the bill to bring the figure of 80% down to a third or a quarter when the land is taken out of the CRP. "This bill would end all state land going into the CRP. If that's what he wants to do then why don't we do that. It may backfire, because if I was to bid the neighbor's land up for CRP purposes, I would now be forced to bid 80% so he would have to meet that so he would have no recourse but to put it in the CRP. I don't think it's that big of a thing now because the CRP is scheduled to end in 1990."

Senator Dennis Nathe District 10, stated if you want to end the CRP then end it - pass the bill and end it. "This bill is too open ended." Senator Nathe reinstated what the previous opponent stated. "Implication that the state is being ripped off here is not necessarily true. If you want to compare it to the private sector and to a bunch of guys who didn't stand up for their rights that were given to them under the '85 farm act to protect the renters, that's their problem. This piece of legislation needs a lot work to make for sure ... there's a lot of work here."

Senator Sam Hofman, District 38, stated, "The State Lands Department was very happy with the quarter share of the CRP payments and the reason for that is about the minimum that you can get is \$10 an acre. The state average return per acre (state land) is \$12. That's on all land that includes good as well as the poor land. Therefore, their position is that on marginal land they don't get that kind of return now they felt they were better off with a quarter interest that returned them \$10 than to not have any go into the CRP any more and

that would be the result of this legislation."

Questions From Committee Members: Senator Aklestad asked if there was anybody from the Department of State Lands was there? No.

Senator Aklestad asked what if the state lands demanded all of their land go into the CRP? Senator Jenkins replied "The state is the constant factor and they always have this tenant. Even though they change tenants that tenant on the new lease can go immediately into the CRP."

Senator Aklestad stated that the tenant that has it now could drop the lease and there may not be anyone to pick it up and the State of Montana may actually lose revenue in some areas. He also stated that the idea that they are trying to do now could be done by the department right now through regulatory procedures rather than statutory authority. He wondered why they need a statute to do what they want.

Senator Beck - "Isn't there only so many acres allotted in this program? Senator Jenkins replied that there was and there were 5 counties that are up near the maximum of their allotment.

Senator Thayer asked if it was likely that the government will not be accepting any more bids into the CRP. Senator Jenkins replied there is a possibility. It is a very good chance that the CRP will be shut down.

Closing by Sponsor: Senator Loren Jenkins closes.

The hearing was closed on SB 32. The committee will take executive action on the bill at a later date.

ADJOURNMENT

Adjournment At: 3:00 p.m.



TOM BECK, Chairman

TB/jj

ROLL CALL

AGRICULTURE COMMITTEE

DATE 1/6/89

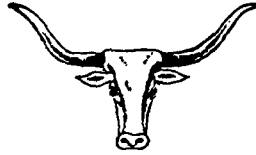
51st LEGISLATIVE SESSION 1989

NAME	PRESENT	ABSENT	EXCUSED
SENATOR HUBERT ABRAMS	✓		
SENATOR GARY AKLESTAD	✓		
SENATOR ESTHER BENGTSO	✓		
SENATOR GERRY DEVLIN	✓		
SENATOR JACK GALT	✓		
SENATOR GREG JERGESON	✓		
SENATOR GENE THAYER	✓		
SENATOR BOB WILLIAMS	✓		
SENATOR TOM BECK	✓		

Each day attach to minutes.

MONTANA STOCKGROWERS ASSOCIATION, INC.

BOX 1679 - 420 NO. CALIFORNIA ST. - PHONE (406) 442-3420 - HELENA, MONTANA 59624



ROWEN, JR. SAND SPRINGS PRESIDENT
 COURTNEY ALZADA FIRST VICE PRESIDENT
 H. J. LORD PHILIPSBURG SECOND VICE PRESIDENT
 JEROME W. JACK HELENA EXECUTIVE VICE PRESIDENT
 W. ENKERUD HELENA NATURAL RESOURCES COORDINATOR

EXECUTIVE COMMITTEE:

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BILL CHRISTENSEN	HOT SPRINGS	KNUTE HEREIM	MARTINSDALE
LYNN CORNWELL	GLASGOW	EARL LINDGREN	JOLIET
M.E. EDDLEMAN	WORDEN	ROLAND MOSHER	AUGUSTA
NANCY ESPY	BOYES	GREG RICE	HARRISON

January 6, 1989

AGRICULTURE
 EXHIBIT NO. 1
 DATE 1/6/89
 BILL NO. 28

To: Senate Committee on Agriculture, Livestock and Irrigation
 FROM: Jerome W. Jack, Executive Vice President *JW Jack*
 SUBJECT: Comments concerning SB 28

I would like to offer the following comments concerning SB 28 which seeks to clarify the definition of veterinary medicine for Montana. My Association, which represents in excess of 2,500 livestock producers in Montana, are in support of the passage of this bill. We support this bill from the standpoint that it clearly enunciates those provisions that can be performed by knowledgeable livestock producers in the state. Common animal husbandry practices such as pregnancy testing, artificial insemination, and pelvic measurements as well as other non-intrusive methods of testing or scanning our livestock are performed by many individuals in this day and age.

In discussions with several purebred as well as commercial operators, they feel more than qualified to perform many of the items listed under Section 3 of this proposed bill. Furthermore, many university systems within the region offer in-depth programs dealing with artificial insemination, pregnancy testing and non-surgical embryo transplants. Many of our members have sent their children, foreman or herdsman to these schools to remain updated on the newest procedures that are available. Moreover, there are two-year veterinary technician schools available which are also utilized by non-licensed veterinarians which enable the common lay person to adopt and perform those items stated under Section 3.

We strongly urge this committee to give a "do-pass" recommendation to this bill. Livestock producers are very concerned about maintaining the health of their particular herds and would in no way jeopardize their business. However, we must realize that new scientific technologies continue to evolve and that procedures that were once capably handled only by someone with a degree in veterinary medicine twenty years ago, may be more commonplace in today's world. Undoubtedly, the future will continue to see such evolution. At the same time, certain ranchers have been severely impacted in their business ventures because of current circumstances which this bill would correct. For example, Brian Switzer from Whitefish, Montana has related to me that he has had problems shipping frozen embryos out of the state of Montana even though he employed an expert in the embryo transplant process. These types of problems can be corrected by passage of this bill. If you desire further information concerning this particular circumstance, Mr. Switzer's phone number is 752-9099.

Thank you for your consideration of this testimony.

SENATE AGRICULTURE
EXHIBIT NO. 2
DATE 1/6/89
BILL NO. SB28

Montana Veterinary Medical Association

115 West Kagy, Suite N
Bozeman, Montana 59715

R. P. (Rob) Myers, D.V.M.
Secretary/Treasurer
January 6, 1989

Phone (406) 586-3417

To: Senate Agriculture Committee, Montana State Legislature

Re: Senator Myer's proposed amendments to the Montana Veterinary Practice Act, Bill #28

I am Dr. Jim Curtis, President of the Montana Veterinary Medical Association and for the past 19 years a veterinary practitioner at Malta in Phillips County. I would like to make a few comments regarding Mr. Myer's proposed amendments to the Veterinary Practice Act and submit for your consideration some of the points which we, the MVMA, would like to see included in a comprehensive Veterinary Practice Act.

It was over 100 years ago that our grandfathers recognized that minimal acceptable levels of education, training, and accountability were necessary to protect the public's interest and further the advancement of the livestock and food industries in America. To that end accredited veterinary schools were established and graduate veterinarians became those in whom the public placed their trust to provide America with wholesome meats and healthy livestock. In a word, a base line of credibility was established.

Mr. Myer's bill would do away with all that. To whom would the public look for quality control, standards of behavior or accountability if Mr. Myer's bill were to pass? What would be the meaning of a "pregnancy tested cow" to a buyer at PAY's, in Sidney, or at your neighbor's ranch? Where's the quality control? What would be the meaning of a report on pelvic measurements or what assurances do you have on the genetics of an embryo if that base line of credibility is removed? The livestock industries of Montana would be cast back a hundred years and the Montana market place would carry the indelible stigma of "Buyer Beware".

Veterinarians are, of course, not divine and I'm sure you are all aware of cases of where errors in judgement were made, maybe negligence was involved or even gross malpractice. A comprehensive practice act, even the one we presently have in place, addresses these situations and allows for the removal of incompetent and negligent licensed practitioners to prevent further injury to the consuming public and recourse is available to the injured party. A proposal such as Mr. Myer's would do away with such licensing and its attendant systems of checks and balances.

Ex. #2
SB 28
1-6-89

Of course, an act such as the Veterinary Practice Act must be a workable instrument serving the greatest number of producers and consumers in Montana as well as its pet and livestock industries. When we consider the advances in research and technology occurring daily in the field of veterinary medicine it would seem that a bill such as Mr. Myer's, a bill which I refer to as a "cookbook" bill in that it has "recipes" or lists of specific devices, techniques or procedures which can or cannot be done, I think you would have to agree that such a bill is self limiting. By its own definitions such a bill would have to be repeatedly reworked, repeatedly amended and repeatedly redefined in legislature as new techniques, procedures and advances are made in the field of veterinary medicine.

When I graduated from veterinary school in the late 1960's, embryo transfer was on the far fringes of research and the use of ultra sound was as yet not even considered. Who is to say what advances will occur in the next five, ten, or fifteen years which are unthought of at this time and will no doubt render the definitions of Mr. Myer's bill totally obsolete.

The Constitution of the United States has endured for 200 years not because it has a list of speed limits, drinking ages or tax brackets, but because it defines broad outlines of reasonable conduct and allows the contemporary judiciary bodies to interpret and define situations as the times and circumstances change in our society.

A Practice Act built upon such a premise would be durable, workable and flexible enough to take into account the changes in the field of Veterinary Medicine as well as the wishes and demands of society. Mr. Myer's bill, being a cookbook bill, is certainly not in line with this type of thinking. I believe that Mr. Myer's bill is a regressive bill that will put the livestock industry of Montana in serious jeopardy, compromising our marketing options on local, national, and international markets.

Because of the serious and detrimental impact and repercussions this bill will have on Montana and its livestock industries, the Montana Veterinary Medical Association strongly urges you to recommend a "Do Not Pass" endorsement of Mr. Myer's amendments to the Montana Veterinary Practice Act.

Respectfully Submitted,

Dr. Jim Curtis
President,
Montana Veterinary Medical Association
Malta, Montana

EXHIBIT NO. 3
DATE 1/6/89
BILL NO. SB28*Circle Veterinary Clinic*

1 MI. N. ON HWY. 13

BOX 16

CIRCLE, MT 59215

TELEPHONE: (406) 485-2610

PS 1

3 Jan 88

Senator M G Devlin

Helena, MT 59620

Dear Senator Devlin;

I am writing concerning a bill being introduced by Senator Meyers of Gt Falls, MT to delete many items from the Veterinary Medicine Practice Act.

I very strongly urge a DO NOT PASS on this bill for several reasons:

1. I think the bill was hastily conceived with little thought to the far reaching consequences.

2. The field of Veterinary Medicine is constantly and rapidly changing and the licensed practitioners are required to complete continuing education to keep current and to remain licensed. There is NO SUCH REQUIREMENT for unlicensed individuals.

3. To obtain licensure a Veterinarian must complete at least 3 years of college and 4 years of Professional School, and pass his National and Montana State Board Examinations. This protects the consumers of this State from unscrupulous Quacks and Charletons. There is NO TRAINING REQUIREMENT for unlicensed individuals. There is NO CERTIFICATION REQUIREMENT for unlicensed individuals. It is NOT THINKABLE, in a field as technically complex as Veterinary Medicine, that an individual with LITTLE OR NO TRAINING would be COMPETENT to perform skilled procedures on living animals in the public trust.

4. The Humane Associations and Animal Rights Activists in this country are constantly monitoring those activities individual states allow untrained (and trained) personnel to perform on live animals. They have and will continue to file lawsuits to stop those practices they feel are unacceptable. I doubt the Practice of Veterinary Medicine by UNTRAINED persons would be very acceptable to these powerful groups.

Ex. #3

1/6/89

SB 28

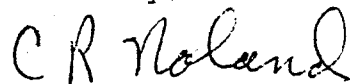
PS 2

5. The consuming public has a right to demand quality assurance concerning the wholesomeness of the food supply. This is not assured by allowing any number of UNTRAINED PERSONS to administer POTENT and DANGEROUS DRUGS to animals that will later be slaughtered for HUMAN CONSUMPTION. I certainly would not allow my family to consume meat from an animal treated with powerful HORMONES by someone with NO TRAINING in PHARMACOLOGY.

6. Montana is currently trying to expand its livestock markets. Japan, the EEC, and others are very strict on their import requirements. It is unlikely that any number of untrained individuals will completely understand and strictly adhere to these requirements.

In summary, I feel that it is in the best interest of the people of Montana to REJECT Sen Meyers bill (to delete many items from the Veterinary Practice Act).

Sincerely,



C. R. NOLAND, DVM

cc: Sen Cecil Weeding
Dr. Jim Curtiss, Pres MT VMA

SENATE AGRICULTURE
EXHIBIT NO. 4 PS/
DATE 7/6/89
BILL NO. 5828

DEPARTMENT OF COMMERCE
DIVISION OF BUSINESS REGULATION

TED SCHWINDEN, GOVERNOR

1424 9TH AVENUE



STATE OF MONTANA

(406) 444-3737

HELENA, MONTANA 59620-0407

January 18, 1988

Mr. Gary Porter
3360 Heeb Road
Amsterdam, MT 59741

Dear Mr. Porter:

I am a staff attorney for the Montana Department of Commerce, assigned to several professional licensing boards including the Board of Veterinary Medicine (Board).

It has come to the attention of the Board of Veterinary Medicine that you may be in violation of Montana Veterinary Practice Act by engaging in pregnancy testing of livestock, other than your own, without having an appropriate license to practice veterinary medicine.

For your information, section 37-18-102, MCA, in part, defines the practice of veterinary medicine in Montana to include the following: "(e) performing a manual or laboratory procedure on livestock for the diagnosis of pregnancy, sterility, or infertility for remuneration or hire."

Under section 37-18-301, MCA, a person may not practice veterinary medicine in Montana without an appropriate license.

Section 37-18-501, MCA, makes it a misdemeanor to practice veterinary medicine in Montana without a license.

Sections 37-18-502 and 37-1-136(3), MCA, give the Board of Veterinary Medicine "or any person" authority to bring actions in district court to enjoin any person who is not licensed from engaging in the practice of veterinary medicine.

On the other hand, section 37-18-102(2), MCA, makes it clear that the Veterinary Practice Act does not prohibit the pregnancy testing by any person of his own farm animals.

Ex. #4 p52
1/16/88
SB 28

Mr. Gary Porter
Page 2
January 18, 1988

Since many people are not aware of these statutes, I am enclosing a booklet containing copies of the Veterinary Practice Act and the Board's rules for your reference.

Now, after reading the booklet, if you feel that the Board's information is incorrect or that your conduct in question is exempt from licensing requirements, you should contact me immediately and so state and give the information you rely on. My number is 444-4316. I will eventually want a letter to document your message.


On the other hand, if the Board's information is accurate, and you agree to quit this form of activity and conduct, you should provide me with that information too. Under those circumstances, I will be glad to recommend that the Board close the file in this case.

However, if the Board's information is accurate, but you do not agree to quit holding yourself out as a veterinarian and offering or providing veterinary services, the Board will have no alternative but to take formal procedures to enforce the applicable law.

So that there is no misunderstanding, I hereby advise you that your failure to respond to this letter by Friday, February 5, 1988, will be taken as an indication that the Board's information is correct, but that you do not intend to quit your veterinary practices.

Kindly guide yourself accordingly.

Very truly yours,


Geoffrey L. Brazier
Staff Attorney

GLB/ej

cc: Gallatin County Attorney

Encl.

bcc: Gary Porter
SENATE AGRICULTURE

DEPARTMENT OF COMMERCE
DIVISION OF BUSINESS REGULATION

EXHIBIT NO. 5

DATE 7/6/89

BILL NO. SB 28 1424 5TH AVENUE



TED SCHWINDEN, GOVERNOR

STATE OF MONTANA

(406) 444-3737

HELENA, MONTANA 59620-0407

June 27, 1988

Mr. John C. Hoyt
Attorney at Law
501 Second Avenue North
PO Box 2807
Great Falls, Montana 59403-2807

Re: Gary Porter, 3360 Hub Road, Amsterdam, Montana

Dear Mr. Hoyt:

I held off responding to your letter of March 16, 1988 until the Board of Veterinary Medicine's next meeting.

The Board met last week.

I can now advise you that your suggestion for handling Mr. Porter's case can't really be characterized as "satisfactory" to the Board, in as much as the Board is keeping the file open, but not requesting that any formal action be initiated.

The problem has been aggravated by receipt of a written complaint about Mr. Porter's activities from a professional association. This event may call for further investigation.

With respect to legislation, it is my understanding that the Board intends to request its own bill addressing the problem.

It has been and will be my advise for the Board and all interested persons and factions to get in touch with each other prior to the session to try to develop a bill that can be supported by everyone.

Respectfully,

Geoffrey L. Brazier
Geoffrey L. Brazier
Staff Attorney

GLB/mpr

SB 28
Meyer

EXHIBIT NO. 6
DATE 1/6/89
BILL NO. SB 28

The Montana Wool Growers Association goes on record as being in favor of Senate Bill 28.

We are most interested in the provisions in the bill as they affect pregnancy testing of animals including sheep, and in the future as this bill might address the use of ultrasound for determining back fat thickness.

The association by way of a grant from the Burlington Northern Foundation was able to purchase a state of the art ultra sound pregnancy tester for the University of Montana. This ultra sound unit can determine after 45 to 60 days of the breeding season whether a ewe is carrying a lamb or lambs. That is important for the producer to know. Ewes not pregnant can be sold. Those ewes carrying multiple births will need more feed and nutrition. We have been encouraging growers to make available to them this method of pregnancy testing. Under the existing law, our sheep specialist who is trained in reproductive genetics, can not legally do this type of pregnancy testing for growers for a charge.

We have used this testing device at the college and on some flocks in the state but only under a experimental basis. If the college is to get this technology to the producers we feel that the program needs to be expanded and that for those growers who want the college sheep specialist to do the pregnancy testing, there should be a charge to recover costs.

The association does not feel that this change in the law will adversely affect animal health care. Again, we favor passage of Senator Meyers Senate Bill 28.

NAME: Terry Jack / ~~Kim Ehterud~~ DATE: 1/06/89

ADDRESS: Box 1679, Helena 59624

PHONE: 442-3420

REPRESENTING WHOM? Montana Stockgrowers

APPEARING ON WHICH PROPOSAL: SB 28

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENTS: see Exhibit #1

Multiple horizontal lines for additional comments or notes.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Dr Jim Curtis DATE: 6 Jan 89

ADDRESS: De O Malta MT

PHONE: 654-1794

REPRESENTING WHOM? Montana Veterinary Medical Association

APPEARING ON WHICH PROPOSAL: SENATE BILL 28

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? X

COMMENTS: Submitted - see Exhibit #2

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: William A Rogers DVM DATE: 1/6/88

ADDRESS: 5100 9th Ave

PHONE: 761 8183

REPRESENTING WHOM? Montana Veterans Medical Association

APPEARING ON WHICH PROPOSAL: Senate Bill I 28

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Dr. James H. Bailey DATE: 1-6-89ADDRESS: 4217 2nd Ave N., MT Falls 59401PHONE: 406-727-0477 / 727-6726REPRESENTING WHOM? Montana Veterinary Medical AssociationAPPEARING ON WHICH PROPOSAL: SB28DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? XCOMMENTS: Did not testify.

This bill is a special interest legislation for the benefit of a few individuals. No provisions are made to assure quality control of the procedures deleted from the practice of veterinary medicine. The procedures involved require the use of federally regulated drugs that are not legally available to layman. Do not pass.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Ray W Randall, DVM DATE: 1-6-89

ADDRESS: Rt 1, Box 1199, Bridger, MT. 59014

PHONE: 406-662-3330 or 3335

REPRESENTING WHOM? Montana Veterinary Association

APPEARING ON WHICH PROPOSAL: SB 28

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? X

COMMENTS: I feel that this is a special interest bill which could allow unqualified persons to effectively practice veterinary medicine. The wording is vague and open, and the consequences are potentially disastrous

I did not testify at this hearing

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: DR. BILL PATTON DATE: 6 Jan '89

ADDRESS: Box 68, CASCADE MONTANA 59421

PHONE: 406 - 468 - 2207

REPRESENTING WHOM? MONTANA VETERINARY MEDICAL ASSOCIATION

APPEARING ON WHICH PROPOSAL: MONTANA SENATE BILL #28

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENTS: I DID NOT TESTIFY ON THIS BILL.

[Handwritten signature]

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE AGRICULTURE

DATE 1/6/89
BILL NO. SB28

received after hearing

Senate Agriculture Committee
Capitol Station
Helena, Montana

Dear Members of the Senate Agriculture Committee,

The Montana Veterinarian Medical Association (MVMA) respectfully requests your consideration and your acceptance of the accompanying proposed bill.

The Montana livestock industry did not acquire its high level of animal health standards without a minimum of sacrifice by the livestock owners, nor did Montana become a Brucellosis free state without conscientious medical and marketing efforts and through laws passed and enforced to protect the industry, specifically, and the public in general from less than knowledgeable, qualified, competent and/or unprincipled practitioners.

People tend to grow lax when things go well, and often forget how costly disease and mistakes are to their operations, sometimes cutting costs in one area at the expense of others.

Because of the Montana Veterinarian Medical Association's continuing concern for accountability in animal treatment practices, MVMA will submit this bill (LC0514) and believes it to be reasonable legislation that will not only serve the Montana Livestock Industry and companion animal owners, but will continue to insure the accountability of licensed veterinary practitioners.

It should be remembered that practice acts are designed to protect the public, not veterinarians, individuals or other special interest groups.

Section 1. (MCA 37-18-102) paragraph 1, (f) contains the reference to embryo transfer. MVMA supports the continued inclusion of embryo transfer in the definition of veterinarian medicine because the procedure involves the use of numerous potent prescription drugs regulated by the Food and Drug Administration.

Furthermore, ova destined for international shipment must be accompanied by an international health certificate, signed by an accredited veterinarian and endorsed and approved by a United States Department of Agriculture Vet Services Veterinarian.

Any compromises in state law could be detrimental to the marketability of frozen embryos in the foreign marketplace.

Section 1, paragraph 2 (pregnancy testing) was deleted. Please refer to MCA 38-18-104, Section 2, paragraph 1, (f) and to paragraph 2 of that section for revisions of the existing law.

Section 1 (f) deletes the specific naming of operations and allows a more general definition by the Board as to accepted livestock practices.

New paragraph 2 of Section 2 includes additional wording "caring for and" treating his own farm animals or being assisted in this treatment by his "full time" employees ---.

Both of these amendments allow care and treatment of the owners livestock, which includes pregnancy testing, a procedure in place today. MVMA has no argument with an owner performing his own preg. tests.

However, in addition to the basic preg. test, licensed Veterinarians utilize a coded ear tag identification system which has expedited the marketing of bred cattle for many years. The I.D. ear tag, through color and numerical coding provides both buyer and seller with a convenient trace back system, recognizeable across state lines and through numerous transfers of the livestock .

Veterinarians have the advantage, through training and education, to evaluate pregnancy testing results other than whether or not the female is bred, and may prevent the spread of infectious diseases, such as Bangs and trichomonases.

Section 3, MCA 37-18-202 is amended to broaden the scope of the board in adoption of rules and orders--paragraph 1, "including, but not limited to"

and (a) "development of continuing professional education requirements and exceptions therefrom:" which requires that the practice of veterinarian medicine is an ongoing educational process.

Through licensing, the veterinarian is required to attend continuing education courses which keep them current on constantly advancing techniques and knowledge. Non-regulation in the educational field will lead to stagnation and inefficiency in the practice of animal health medicine, which would be very costly to both the practitioner and the owner.

Paragraph 1, (b) and (c) (Section 1, MCA 37-18-202) clears up the language as to the boards responsibility for application of examination and license and such preparation.

Section 4, MCA 37-18-307, removes the annual definition of fee and allows the board to issue the certificate upon presentation of evidence that the licensee "has complied with continuing education requirements established" by the Board, and again simply allows the Board broader discretion in the rule making process concerning waivers, --"waive, relax or suspend continuing education

requirements or particular programs for applicants who cannot fulfill those requirements because of individual hardship."

Paragraph 2 [7th line from bottom of page] tightens up the criteria for restoration of license (lost through failure to procure certificate of registration by Nov. 1) by changing the word "the" to the word "all", and makes a date applicable.

Section 5, MCA 37-38-311, paragraph 1, (e) and (f) again allows broader descretion in making judgements. This does not indicate a lessening of criteria, but as the law stands now, certain practices are defined, while others just as compelling are not within the definitions of the Section.

Again, the proposed changes do not infringe on the right of the livestock owners to diagnose and treat their own animals, a right judiciously respected by MVMA.

However, MVMA also respects the need of the public for adequately trained, accountable and licensed practioners.

Respectively submitted,

Dr. Jim Curtis D.V.M. President
Montana Veterinarians Medical Association

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Printed 10:14 am on January 7, 1989

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LC0514

*** Bill No. *****

Introduced By *****

A draft for a bill entitled: "An act generally revising the law regulating the practice of veterinary medicine; clarifying definitions and exemptions; revising the requirements for continuing professional education; prohibiting the municipal licensing of veterinarians; amending sections 37-18-102, 37-18-104, 37-18-202, 37-18-307, 37-18-311, and 37-18-502, MCA; and providing an immediate effective date."

Be it drafted for sponsor approval

Section 1. Section 37-18-102, MCA, is amended to read:

"37-18-102. Veterinary medicine defined. (1) A person is considered practicing veterinary medicine when he does any of the following:

(a) represents himself as or is engaged in the practice of veterinary medicine in any of its branches, either directly or indirectly;

(b) uses words, titles, or letters in this connection or on a display or advertisement or under circumstances so as to induce the belief the person using them is engaged in the practice of veterinary medicine. This use is prima facie evidence of the

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intention to represent oneself as engaged in the practice of veterinary medicine in any of its branches.

(c) diagnoses, prescribes, or administers a drug, medicine, appliance, application, or treatment of whatever nature or performs a surgical operation or manipulation for the prevention, cure, or relief of a pain, deformity, wound, fracture, bodily injury, physical condition, or disease of animals;

(d) instructs, demonstrates, or solicits by a notice, sign, or other indication, with contract either express or implied, or otherwise, with or without the necessary instruments for the administration of biologics or medicines or animal disease cures for the prevention and treatment of disease of animals and remedies for the treatment of internal parasites in animals;

(e) performs a manual or laboratory procedure on livestock for the diagnosis of pregnancy, sterility, ~~or~~ and infertility ~~for remuneration or hire~~;

(f) performs acupuncture, ova or embryo transfer, or dentistry on animals;

(g) instructs others, except those covered under the provisions of 37-18-104~~(3)~~(2), for compensation, in any manner how to perform any acts which constitute the practice of veterinary medicine.

~~(2) Nothing in subsection (1)(e) of this section shall in any way be construed to prohibit the pregnancy testing by any person of his own farm animals or by his employees regularly employed in the conduct of his business or by other persons whose~~

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~~services are rendered gratuitously.~~

~~(3)~~ (2) Nothing in this section shall be construed as modifying, amending, altering, or repealing any part of 37-18-104."

Section 2. Section 37-18-104, MCA, is amended to read:

"37-18-104. Exemptions. (1) This chapter does not apply to:

(a) veterinarians in the performance of their official duties, either civil or military, in the service of the United States unless they engage in the practice of veterinary medicine in a private capacity;

(b) laboratory technicians and veterinary research workers, as distinguished from veterinarians, in the employ of this state or the United States and engaged in labors in laboratories under the direct supervision of the board of livestock, Montana state university, or the United States;

(c) lawfully qualified veterinarians from other states or a foreign country meeting legally licensed and registered Montana veterinarians in this state in consultation;

(d) a veterinarian residing on a border of a neighboring state and authorized under the laws thereof to practice veterinary medicine therein, who is actually called to attend cases in this state but who does not open an office or appoint a place to meet patients or receive calls in this state, if veterinarians licensed and registered in this state are extended a like privilege to engage in the practice of veterinary medicine

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to the same extent in the neighboring state;

(e) the employment as assistants to veterinarians licensed and registered under this chapter of veterinary medical students who have successfully completed 3 years of the professional curriculum in veterinary medicine at a college having educational standards equal to those approved by the American veterinary medical association and authorized by law to confer degrees; or

~~(2) The operations known and designated as castrating or dehorning of cattle, sheep, horses, and swine are not the practice of veterinary medicine within the meaning of this chapter.~~ (f) a person advising with respect to or performing acts that the board defines by rule as accepted livestock management practices.

~~(3)~~(2) This chapter does not prohibit a person from caring for and treating his own farm animals or being assisted in this treatment by his full-time employees employed in the conduct of his business or by other persons whose services are rendered gratuitously in case of emergency.

~~(4)~~(3) This chapter does not prohibit the selling of veterinary remedies and instruments by a registered pharmacist at his regular place of business."

Section 3. Section 37-18-202, MCA, is amended to read:

"37-18-202. Powers of board and department -- examinations -- prosecutions. (1) The board may adopt rules and orders necessary for the performance of its duties, including but not

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limited to:

(a) development of continuing professional education requirements and exceptions therefrom;

(b) prescribe prescribing of forms for application for examination and license; and

(c) prepare preparation of examinations.

(2) The department shall, subject to 37-1-101, supervise the examination of applicants for license to practice veterinary medicine, obtain the services of professional examination agencies instead of its own preparation of examinations, and grant and revoke licenses.

~~(2)~~ (3) The department may employ attorneys, subject to the approval of the attorney general, to assist county attorneys in prosecutions brought under this chapter in the respective district courts of the state or to assist the attorney general in representing the board before the supreme court."

Section 4. Section 37-18-307, MCA, is amended to read:

"37-18-307. Renewal -- fee -- continuing education -- automatic renewal for military personnel. (1) A person licensed to practice veterinary medicine in this state shall procure from the department before November 1 annually his certificate of registration. The certificate shall be issued by the department on the payment of a fee ~~to be fixed annually~~ by the board and ~~the~~ upon presentation of evidence satisfactory to the board that the licensee, ~~in the year preceding the application for renewal,~~

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~~attended an educational program approved~~ has complied with continuing education requirements established by the board.
~~However, the~~ The board may authorize the department to issue renewals, but not consecutive renewals, on a showing satisfactory to the board that attendance at the educational programs was unavoidably prevented, waive, relax, or suspend continuing education requirements or particular programs for applicants who cannot fulfill those requirements because of individual hardship.
~~and new~~ New licensees who secure licenses by examination shall be granted a renewal the first year without attending the educational programs. The certificate is prima facie evidence of the right of the holder to practice veterinary medicine in this state during the time for which it is issued.

(2) Failure of a person licensed to procure a certificate of registration before November 1, annually, constitutes a forfeiture of the license held by the person. A person who has thus forfeited his license may have it restored to him by making written application for restoration within 1 year of the forfeiture, setting forth the reasons for failure to procure the certificate of registration at the time specified and accompanied by payment of the registration fee provided for in this section and an additional restoration fee as the board requires and by presentation of evidence satisfactory to the board that he has fulfilled ~~the~~ all continuing educational requirements ~~of all licensees recited above~~ to the date of the application for restoration. The person making application for restoration of

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license within 1 year of its forfeiture is not required to submit to examination.

(3) Notwithstanding any other provisions in this chapter, a person licensed who enters or is called to active duty by a branch of the armed services of the United States is entitled to receive automatic registration of his license during the period of his duty with the armed services. However, within 1 year after release or discharge from duty in the armed services he shall procure a certificate of renewal from the department and pay the regular fee. Failure to procure the certificate of renewal within 1 year after release or discharge is the equivalent of a failure to procure a certificate of registration before November 1 of any year, and the same forfeiture and restoration requirements apply.

(4) A person licensed shall at all times have his residence and office address on file with the department."

Section 5. Section 37-18-311, MCA, is amended to read:

"37-18-311. Refusal, suspension, or revocation of license - - right to notice and hearing. (1) The board may, with respect to the practice of veterinary medicine, either refuse to grant a license or a certificate of registration or suspend or revoke a license and certificate of registration on any of the following grounds:

- (a) fraud or deception in procuring the license;
- (b) publication or use of an untruthful or improper statement or representation with the view of deceiving the public

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or a client or customer in connection with the practice of veterinary medicine;

(c) conviction of a felony as shown by a certified copy of the record of the court of conviction, subject to chapter 1, part 2, of this title;

(d) habitual intemperance in the use of intoxicating liquors or habitual addiction to the use of morphine, cocaine, or other habit-forming drugs or, subject to chapter 1, part 2, of this title, conviction of a violation of a federal or state law relating to narcotic drugs;

(e) ~~immoral, unprofessional, or dishonorable~~ conduct, as defined by rule of the board, manifestly disqualifying the licensee from practicing veterinary medicine;

(f) ~~gross~~ malpractice, including failure to furnish to the board on written application by it a report or information relating thereto;

(g) employment of unlicensed persons to perform work which under this chapter can lawfully be done only by persons licensed to practice veterinary medicine;

(h) fraud or dishonest conduct in applying or reporting diagnostic biological tests or in issuing health certificates;

(i) failure to keep one's premises in a clean and sanitary condition;

(j) violation of this part or of the rules or orders of the board;

(k) revocation by proper authorities for any of the above

reasons of a license issued by another state.

(2) The board may not refuse to issue a license or certificate of registration or suspend or revoke a license and certificate of registration for any cause unless the person accused has been given notice and a public hearing by the board."

Section 6. Section 37-18-502, MCA, is amended to read:

"37-18-502. Injunction. The board or any person may bring an action in the district court to enjoin any person who is not licensed from engaging in the practice of veterinary medicine unless otherwise exempted under 37-18-104~~(3)~~(2). If the court finds that the defendant is violating or threatening to violate any provision of Title 37, chapter 18, it shall enter an order restraining him from the violation, without regard to any criminal provisions of Title 37, chapter 18."

Section 7. Municipal license fee prohibited. No license fee or license tax may be imposed upon persons who practice veterinary medicine, as a condition to the practice of their profession, by any municipality or other political subdivision of the state, including a local government with self-governing powers.

Section 8. Extension of authority. (Standard language to implement 5-4-402(3), MCA, see Bill Drafting Manual, section 4-17.)

Section 9. Effective date. [This act] is effective on
passage and approval.

-END-

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STATEMENT OF INTENT -- LC 514

A statement of intent is required for this bill because 37-18-104, 37-18-202, and 37-18-307 grant to the board of veterinary medicine the authority to adopt rules to implement the provisions of the bill. At a minimum, it is intended that the rules address:

(1) a definition of accepted livestock management practices in order to determine whether a person who advises on the subject is exempt from Title 37, chapter 18;

(2) development of standards for continuing education requirements, which may be supplemental to present board rules on the subject; and

(3) a definition of unprofessional conduct to be used in determining whether a license may be refused, suspended, or revoked.

Hoyt & Blewett

Attorneys at Law

DATE 1/6/89

BILL NO. SB28

John C. Hoyt
Alexander (Zander) Blewett, III
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Post Office Box 2807
Great Falls, Montana 59403-2807
Telephone (406) 761-1960

January 9, 1989

Honorable Thomas A. Beck
Montana State Senate
Capitol Station
Helena, MT 59601

Re: Senate Bill No. 28

Dear Senator Beck:

After the hearing last Friday before the Senate Agricultural Committee, the proponents of this bill had an informal get-together where the testimony presented to your committee was discussed. It was felt that in light of the presentation by Dr. Curtis from Malta that a point needed possible clarification.

The thrust of the presentation by Dr. Curtis concerned the credibility of Montana cattle throughout the world and, therefore, veterinarians should do all testing of every kind and nature, including pregnancy testing. That may be an oversimplification, but it's not an unfair one.

There is an increasing amount of export of Montana cattle and embryos to fill the needs and demands for the high quality cattle which are produced in Montana as a result of genetic developments engineered by progressive cattlemen, not veterinarians.

Veterinarians do perform an invaluable service to ranchers and one for which they are specifically trained and this deals with herd health. The issues of embryo transfer, ultra-scan techniques, and pregnancy testing are tools for seed stock operators and ranchers to use in developing a higher quality animal, all of which adds up to more jobs and more money in the Montana economy. Veterinarians are simply not a factor in these business decisions and the progressive rancher should not be handcuffed because of a concern on the part of veterinarians that this bill will be a raid on their pocketbook. This absolutely will not occur.

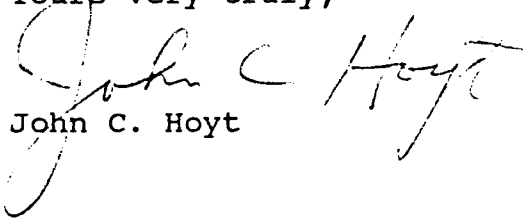
On the contrary, the more valuable an animal or a herd becomes, the more likely the owner thereof is to call a veterinarian rather than take a loss or the chance of a loss of an animal or animals. For example, a calf produced by an embryo transfer will normally be more valuable than a natural calf and certainly far more of an investment to protect.

Hon. Thomas A. Beck
January 9, 1988
Page Two

Finally, the ranchers who are and intend to use the latest technologies are far better able to select the professionals or technicians with whom they desire to work than veterinarians who, in most instances, will be sought out by these same ranchers if they have the qualifications and equipment to perform the functions that the ranchers need in their business.

We thank you for consideration of Senate Bill No. 28.

Yours very truly,


John C. Hoyt

JCH:tcb

DATE 1/6/89

BILL NO. SB28

H. Craig Kiner, D.V.M.
1210 12th Street West
Billings, Montana 59102
January 6, 1989

Members of the Agriculture, Livestock, and Irrigation Committee
51st Legislature
Capitol Station
Helena, Montana

Dear Honorable Legislator:

Recently, it came to my attention that a bill (LC 0298/01) had been introduced in your committee, sponsored by Senator Meyers of Great Falls.

As a member of this committee you are, no doubt, familiar with this proposed legislation.

As a practicing veterinarian in Montana, and a member of the Yellowstone Valley Veterinary Medical Association, President-Elect of the Montana Veterinary Medical Association, and a member of the American Veterinary Medical Association, I respectfully request that this proposed bill be stopped in committee for the following reasons and concerns.

First, and foremost, I feel that this bill is detrimental to the Montana consumer, the livestock producer, and the companion animal owner; and is only beneficial to a small number of individuals with vested interests, predominantly economic ones.

As a highly trained graduate veterinarian, state examined, state accredited, state licensed, state and federal regulated professional, carrying professional liability insurance---I feel the Montana consumer must be protected against the untrained and poorly trained, the unlicensed, the unregulated, the unbonded, the uninsured, and the unaccountable.

As this bill is written, there is no provision for any licensure, regulation, bonding, educational requirements, or accountability of a person who performs such important procedures to the livestock producer as artificial insemination, pregnancy diagnosis, embryo transfer, and even ultrasound.

As written, the bill would entitle any lay person to perform these procedures on other people's livestock or pets, for remuneration, with virtually no accountability.

I, of course, have no objection to livestock producers treating and diagnosing their own animals--or having their full-time employees perform these procedures--I respect this right, and this right has historically been a part of the veterinary practice act.

Of concern, too, is the far-reaching consequences of this open-ended bill.

Conceivably, it could open the way for the use of x-ray equipment, Elisa testing, electrocardiography, even CAT scanning by unqualified individuals.

Also, of concern, is the fact that some of the procedures listed in this bill as not being the practice of veterinary medicine require the use of drugs that are restricted by the FDA to use by or on the order of licensed veterinarians. Although, I realize that some of these drugs do find their way into the hands of non-veterinarians, their use is often illegal.

Along these same lines, it bothers me that some of the proponents of this bill have not waited for legislated changes or gone through the proper channels (their elected lawmakers) in this matter, but have

1-6-89

proceeded in defiance and opposition to the present law which clearly defines the practice of veterinary medicine.

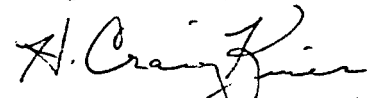
Another point is the fact that international livestock trade and exportation often require, depending on the individual country's laws, the services, such as artificial insemination, pregnancy diagnosis, and embryo transplantation, be performed by licensed, accredited veterinarians. Failure to obtain such could prove embarrassing, confusing, and costly to a livestock producer.

So, for the above concerns and reasons, I ask that you give careful consideration to the implications of bill LC 0298/01.

I also would like to voice my support of the bill LC 0514/01 drafted by the Department of Commerce and now supported by the Montana Veterinary Medical Association.

Thank you for your time and consideration.

Respectfully,



H. Craig Kiper, DVM
President-Elect MVMA
Past President YVMA

price of wheat went up. He stated that he knew of a state lease at \$10.87 per AUM and 42% crop share. The bidder stated that he has one state lease at a 46% crop share. He further stated that he can farm more efficiently because he has the large machinery necessary for a more efficient operation. He stated that his agricultural bid is anticipating \$3.26 per bushel and that he can make a profit while properly controlling the weeds providing the labor and providing the fertilizer. He stated that the lease is close to their private land on the county road.

COMMISSIONERS PROPOSED FINDINGS AND CONCLUSIONS

The lessee did present sufficient evidence to show that the bid is not in the best interest of the school trust. The higher rate for both the grazing and the agricultural land is above the community standards for a lease of such land. It could cause damage to the tract or impair its long term productivity because the lessee would not be inclined to defer grazing during dry years, and would not invest the capital for needed improvements and other expenditures such as fences, fertilizer, weed control and day to day management of the tract. Also a rate substantially above community standards could force a high turnover of lessees or force them to subsidize the state tract at the cost of their other leases and private land. Such practices would be detrimental to the lease tract in the long run because the lessee would not make the expenditures of money and labor necessary to properly maintain the state tract. Further, it is not in the best interest of the state to allow a high crop share rental with the expectation that the land will be put into CRP. The state should not accept bids that force a lessee to go into CRP. Likewise, the federal programs could be changed in the near future. However, the Commissioner notes that a higher rate would be appropriate if the agricultural land is put into CRP. If the lessee ultimately decides to place the land in CRP, the rate bid would be appropriate, because many of the investments which are necessary for farming are not necessary while the land remains in CRP.

COMMISSIONER'S RECOMMENDATION

The Commissioner recommends that the state tract be leased at a 1/3 crop share as long as the lessee continues to farm the land. However, if it is placed into CRP then those acres will be leased at 40%. In addition, the lease should be issued for \$11.11 per AUM, which represents the state average of \$7.94, plus the \$3.17 minimum for state leases. This rate would remain constant for the full lease term.

8. LEASE NO. 2581

CARBON COUNTY
 All, Sec 16, T3S, R23E
 Grazing Acres; 430
 Agricultural Acres: 210
 Carrying Capacity: 80 AUMS
 Unsuitable acres: 0

Lessee: Stanley C. Arthun
 P.O. Box 148
 Joliet, MT 59041

*no prov. of 50%
 state land can be put in at once*

CONSERVATION RESERVE PROGRAM
AND STATE LANDSBy Gregory J. Petesch, Director
Legal Division

Montana Legislative Council

May 1988

Information has been requested concerning the enrollment of state lands in the federal Conservation Reserve Program (CRP), and the impacts that such enrollment may have upon state land leases. This memorandum will address some of the obvious implications for state leases.

The current CRP enrollment procedure requires that eligible lands be enrolled for a 10-year period. Farmers wishing to enroll lands submit an application to their local Agricultural Stabilization and Conservation Service (ASCS). If the ASCS determines that: the land meets the CRP definition of highly erodible land; the land has been in the applicants ownership for at least 3 years; and the land has been planted in any 3 years between 1981 and 1985, the land may be enrolled in the CRP program. Lands which are enrolled cannot be used for pasture, hay, or other agricultural production during the 10-year contract except in cases of drought or emergency. The farmer receives annual rental payment from the United States Department of Agriculture (USDA) for retiring the land from crop production. The farmer must have an approved conservation plan in place by 1990. The conservation plan must be maintained even after the expiration of the CRP enrollment period. Failure to maintain the conservation plan renders the farmer ineligible for most government commodity programs including price supports, crop insurance, disaster payments, and farm loans. In order to meet the eligibility criteria both the lessee and the department of state lands must sign the enrollment agreement. The Secretary of Agriculture is directed to provide protection for tenants, including a provision to share payments received under CRP. See 16 USC sections 3831 through 3845.

The statutory scheme of granting agricultural leases based on competitive bidding was challenged in State ex rel. Thompson v. Babcock, 147 Mont. 46, 409 P.2d 808 (1966). The court said, it is incumbent upon the State Board of Land Commissioners in leasing state owned land held in trust for the people, to secure full market value for the lease. Full market value is determined by the value of a similar lease in the particular community coupled with the applicant's ability as a farmer and other variables which allow the state to secure as large a return as possible, yet preserve the productive capacity of the land. The

Ex. #2
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commissioners may not speculate, but must secure sustained income continually benefitting the public in general. Preference rights of the lessee were held proper, if bids received were within the range of market value. The sustained income or sustained yield concept articulated in Thompson was further elucidated in Jerke v. State Department of Lands, 182 Mont. 294, 597 P.2d 49 (1979). The court said:

Sustained yield is the statutory policy which favors the long term productivity of the land over the short term return of income. The preference right seeks to further the policy by inducing the State's lessees to follow good agricultural practices and make improvements on the land. This is accomplished by guaranteeing that the lessees will not lose the benefits of their endeavors by being outbid when their leases terminate. They are preferred and may renew their leases by meeting the highest bid submitted. Where the preference right does not further the policy of sustained yield, it cannot be given effect. In such a situation, full market value can be obtained only by competitive bidding. A grazing district holding the preference right did not even use the land but subleased it. It could not use good agricultural practices or make improvements. The sublessee who as a member of the district was prevented from bidding on the lease was not motivated to further the policy of sustained yield as he was not assured the land would be allocated to him. To allow exercise of the preference right in this instance would be to install the district rather than the department of state lands as the trustee of the land and sustained yield would have no place. Allowing an existing lessee who does not use the land to exercise a preference right constitutes an unconstitutional application of the preference right statute. Id. at 297.

Jerke was followed in Skillman v. Department of State Lands, 188 Mont. 383, 613 P. 2d 1389 (1980), and distinguished where the lessee retained significant responsibility and control throughout the lease, in Steffen v. Department of State Lands, ___ Mont. ___, 724 P.2d 713 (1986). The 1987 legislature enacted section 77-6-212, MCA, to clarify when a preference right would be lost because of subleasing.

It is highly unlikely that a state agricultural lease would expire at the same time as the CRP enrollment period. All subsequent bidders would have to be aware that the land was enrolled in CRP and that the conservation plan for the land must still be adhered to. If a new bidder is successful and preference rights are not exercised, CRP provides that unless the new lessee agrees to assume the obligations of the enrollment

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contract all rights to rental payments and cost sharing payments are forfeited and all payments received must be refunded. Because the board of state lands is also a party to the enrollment agreement it may require that all bidders continue in the CRP program for the duration of the enrollment period. It is unclear what impact these bidding restrictions would have on the fair market value concept articulated in Thompson.

The enrollment of state lands in the CRP program also raises other factual and policy questions which need to be addressed.

Does the enrollment of land in the CRP program meet the sustained yield policy articulated in 77-6-101, MCA, and clarified in Jerke?

Does a preference right apply to land enrolled in the CRP program in light of the Jerke rationale concerning use?

Does CRP enrollment of state lands in effect make the USDA rather than the board of state lands the trustee of the land?

Does the continuing conservation plan requirement of CRP conform to lease conditions contained in 77-6-113, MCA?

It appears that the enrollment of state land in the CRP program would meet the requirement in 77-6-205, MCA, that the board of state lands secure the maximum return with the least injury to the land. Because the CRP program in effect guarantees a given rate of return in exchange for limited duties, bidders may be willing to bid considerably higher than normal for state land enrolled in the CRP program. It is unclear whether a high bid could be determined excessive under 77-6-205, MCA. Bidders may be willing to bid higher than normal for CRP enrolled land in order to obtain the preference right upon expiration of the CRP enrollment.

The legislature may wish to address the unresolved policy questions surrounding the enrollment of state land in the CRP program by enacting legislation setting parameters for state land participation.

M5004 8138gpgc

1 SENATE BILL NO. 32

2 INTRODUCED BY JENKINS

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR THE
5 DISTRIBUTION OF RENTAL PAYMENTS RECEIVED BY LESSEES OF STATE
6 LANDS UNDER THE FEDERAL CONSERVATION RESERVE PROGRAM;
7 REQUIRING THE INCLUSION OF PAYMENT DISTRIBUTION PROVISIONS
8 IN NEW LEASES; AND AMENDING SECTION 77-6-113, MCA."

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 **Section 1.** Rental payments on state lands in
12 conservation reserve program -- distribution. Rental
13 payments received under 16 U.S.C. 3834 on state lands
14 contracted under the federal conservation reserve program
15 for leases entered after [the effective date of this act]
16 must be distributed as follows:
17 (1) 80% of conservation reserve program payments to
18 the state, to be placed in the appropriate fund; and
19 (2) 20% of conservation reserve program payments to
20 the lessee.

21 **Section 2.** Section 77-6-113, MCA, is amended to read:
22 "77-6-113. Lease conditions -- cancellation. (1) It
23 shall be a condition of all leases of agricultural or
24 grazing state lands that:

25 (a) in the case of agricultural lands, the lessee

1 shall observe the ordinary rules for good management of
2 agricultural lands and shall handle the leased land with the
3 view of maintaining its productivity and minimizing wind and
4 soil erosion and noxious weeds and planting crops with a
5 view of securing the greatest yields of good quality; and
6 (b) in the case of grazing lands, the lessee shall
7 observe the ordinary rules for good range management and
8 shall manipulate the numbers, class, distribution, and
9 season of the range use and the handling, feeding, breeding,
10 and marketing of grazing livestock with a view of securing
11 the production of the maximum of livestock and livestock
12 products, consistent with the conservation of the land
13 resources and the perpetuation of its productivity, and to
14 these ends the state land lease may not be abused by
15 overgrazing; and *D. Just establish same as in former law*
16 (c) in the case of a lease entered after [the
17 effective date of this act], the lease must contain a
18 provision implementing [section 1].

19 (2) For the gross violation of any of these rules, the
20 lease involved shall be canceled by the department, subject
21 to the appeal procedure provided in 77-6-211."

22 **Section 3.** Codification instruction. [Section 1] is
23 intended to be codified as an integral part of Title 77,
24 chapter 6, and the provisions of Title 77, chapter 6, apply
25 to [section 1].



SENATE AGRICULTURE

EXHIBIT NO. 3

DATE Nov. 18

BILL NO. 512 30

LC 0461/01

- 1 Section 4. Extension of authority. Any existing
- 2 authority to make rules on the subject of the provisions of
- 3 [this act] is extended to the provisions of [this act].

-End-

(3) Fed. loan program
 to be left & remain
 on p. 11.)

(4) Form for 3 yrs
 that will be
 negotiated

(MGG) ^{uniform}
 - v) ^{9.}

(1) - HARRY Johnson -
 (Rental Fee)

(Bank Street) ^{System}
 (P. 11) ^{provisions}
 NT all ^{circ.}
 (2) \$35 - \$45 - \$55 -

(2)

WITNESS STATEMENT

SB 32
1-6-89

NAME: Sam Hoffman DATE: 1-6-89

ADDRESS: 6210 Camp Creek Rd, Manhattan Mont. 59741

PHONE: 282-7332 Home 442-1019 Helena 4364 Office

REPRESENTING WHOM? _____

APPEARING ON WHICH PROPOSAL: SB 32

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE?

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Larry Johnson DATE: 1 6 81

ADDRESS: Kremlin, Mt

PHONE: 372-3227

REPRESENTING WHOM? Montana Grain Growers

APPEARING ON WHICH PROPOSAL: SB32

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENTS: Send bill 32 at 80% x 20% will
stop state lands going into CRP

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

VISITORS' REGISTER

NAME (PLEASE PRINT)	REPRESENTING	BILL #	Check One	
			Support	Oppose
John C Hoyt	SELF	SB 28	✓	
Roger Bowers	Landmark Cattle Self	SB 28	✓	
DAVID HAN	Self	SB 28	✓	
JEFF BRICKER	BEAR CREEK ANGUS RANCH / SELF	SB 28	✓	
John F Coble Jr	Chi Arrow Cattle Co / self	SB 28	✓	
JEFF OKERMAN	TOP HAT LIVESTOCK	SB 28	✓	
Ray Ansotegui	SELF	SB 28	✓	
BOB Gilbert	Montana Wool Growers	SB 28	✓	
Kim Enkerud	MT State Grazing Districts Districts	SB 28	✓	
John Acay	MT Cattle feeders	SB 28	✓	
Jerry Jack	MT Stock growers	SB 28	✓	
Toni Nickles	MEA	SB 32	✓	
Larry Johnson	Montana Grain Growers	SB 32	✓	
Carol Mosher	Net. Cattle Ranch	SB 28	✓	
Don Burnham	Rancher	SB 28	✓	
Marvin Barber	F. P. A.	"	"	
		32		✓
Robert Stephens Jr	Self	SB 32		✓