MINUTES OF THE MEETING
PUBLIC HEALTH, WELFARE AND SAFETY COMMITTEE
MONTANA STATE SENATE

MARCH 18, 1981

The meeting of the Public Health, Welfare and Safety Committee was called to order by Senator Bill Norman in the absence of both the chairman and vice chairman on Wednesday, March 18, 1981 at 12:30 in Room 410 of the State Capitol Building.

ROLL CALL: All members were present except Senators Hager and Himsl who were both excused and arrived late. Senator Jan Johnson also arrived late. Kathleen Harrington, staff researcher, was also present.

CONSIDERATION OF HOUSE BILL 701: Representative Cal Winslow of district 65, sponsor of House Bill 701, gave a brief resume of the bill. This bill is an act to revise the physical therapy licensing law by providing for compensation for board members; to clarify the qualifications of an applicant; to detail the application requirements; to provide for rulemaking authority regarding applicants licensed in other states; to allow a lapsed license to be reinstated by payment of unpaid renewal fees or a late renewal fee, or both; and to provide guidelines and rulemaking authority for issuance of a temporary license. Representative Winslow stated that perhaps this bill should have a statement of intent and if so he would give it to the secretary.

This bill revises the physical therapy licensing law. Section 1 provides for a $25 a day compensation for board members.

Section 2 changes the qualifications for a license. The applicant must pass a written examination prescribed by the board and may have an oral interview if the board feels that it is necessary.

Section 3 outlines the requirements for filing an application for license. These are:

1) payment of a fee
2) three affidavits of good character
3) recent photograph
4) verification of instruction and graduation of a board approved physical therapy school
5) the application must be filed in 45 days prior to the exam. If the applicant fails he may take another exam within 6 months upon payment of a fee.

A temporary license is provides for in Section 6. This may be issued when the applicant files for the examination and pays a temporary license fee. The board may also require an oral exam. The applicant must work under the direction, guidance, and observation of a licensed physical therapist. The temporary license expires when the applicant receives his exam scores.

Rule making authority is given in Sections 4 and 6.

Helen Jorgenson, chairperson of the State Physical Therapy Licensing Board, stated that that Board was established two years ago by the Legislature. In working with the present law, several areas that need defining to avoid potential misunderstandings have been discovered. Bill 701 clarifies the qualifications for application for license, reciprocity, and temporary licenses. In addition, it gives the options for a lapsed license and compensation for board members. Mrs. Jorgenson then urged passage of this bill to further protect and guarantee physical therapy for the state.

With no further proponents, Senator Norman called on the opponents. Hearing none, the meeting was opened to a question and answer period from the Committee.

Senator Norman stated that he believed that a Statement of Intent would be very necessary for this bill.

Representative Winslow closed asking the Committee for their support on this bill.

CONSIDERATION OF HOUSE BILL 734: Representative Cal Winslow of district 65, chief sponsor of House Bill 734, gave a brief resume of the bill. This bill is an act to waive state licensure inspection for hospitals that are accredited by the Joint Commission on accreditation of hospitals. Aside from additions to the definitions in Section 1 that would provide definitions for "accreditation" and "joint commission on accreditation of hospitals", the main changes in the bill are in Section 2 where it is stated that a hospital may furnish evidence of accreditation by the Joint Commission on Accreditation of Hospitals to the Department of Health in order to waive licensure inspections. The Department may still inspect the hospital if they receive complaints against the hospital regarding licensing requirements.

Willam Leary, representing the Montana Hospital Association, stood in support of the bill. However, he asked that the Committee amend the bill on Page 9, line 13; Following: " pertains"; Insert: "In addition, it is understood that the Department may conduct validation surveys of Joint Commission accredited hospitals when requested to do so by the Department of Health and Human Services as required by Section 244 of the Social Security Amendments of 1972 (Public Law 92-603).

Mr. Leary handed out packages of written testimony to the Committee for their consideration. (See attachments.)

George Fenner, administrator of the Hospital and Medical Facilities Division of the Department of Health and Environmental Sciences, stated that there are 22 out of 64 hospitals in the state of Montana which are currently accredited by the Joint Commission of Accreditation of Hospitals. Most of these hospitals are located in the urban areas of Montana and are the largest hospitals by bed numbers. These hospitals contain over 50% of the total acute care hospital beds. Ten of the hospitals that now have JCAH also have nursing homes attached. Mr. Fenner handed out written testimony from which he read. (See attachments)

With no further proponents, Senator Norman called on the opponents. Hearing none the meeting was opened to a question and answer period from the Committee.

Senator Berg asked Representative Winslow if the proposed amendment met with his approval. Representative Winslow reported that the amendment is fine with him.

Senator Berg asked if this would prevent citizens from seeing a hospitals accreditation report. Mr. Leary said that this is up to the individual hospital.

Senator Olson asked if this bill is as such that DHES is relinquishing their hold on hospitals. Mr. Fenner stated that DHES has no reason to oppose the bill.

Seantor Berg asked Mr. Fenner whether or not he feels that the JCAH inspection is necessary. He stated that this could be a cost savings.

Senator Olson asked Mr. Fenner whether or not a two year accreditation is a good idea as compared to an annual inspection for accreditation.

Mr. Fenner stated that the department feels that this is satisfactory, but personally he is concerned. However, there are check and balances to take care of this.

Senator Johnson asked whether or not a JCAH rates very well as compared to an inspection from the department. Mr. Leary stated that the JCAH inspection is much more extensive.

Senator Johnson stated that a JCAH Accreditation is very valued by those hospitals which have them and are therefore, not likely to let their standards fall.

Senator Norman stated that there are 44 hospitals in the state not covered by JCAH.

CONSIDERATION OF HOUSE BILL 735: Representative Cal Winslow of District 65, chief sponsor of House Bill 735, gave a brief resume of the bill. This bill is an act to waive state licensure inspection for clinical labratories that are accredited by the College of American Pathologists.This bill states in Section 2, that any clinical labratory operated by a hospital licensed in Montana that furnishes written evidence to the Department of Health of its accreditation by the College of American Pathologists is exempt from inspection by the Department.

Ken Rutledge, vice president of the Montana Hospital Association, stood in support of the bill. This bill is very similar to House Bill 734 in that it is aimed at elimination of some of the duplication which currently exists in the inspections and surveying of hospital based services. This bill would offer hospitals incentives to improve the quality of their clinical labratory services by allowing hospitals which voluntarily seek accreditation of their clinical laboratory services by the College of American Pathologists to be exempted from what would then become meaningless and duplicative surveys by the State Department of Health.

At the national level, much of the duplication of hospital surveys has already been eliminated. The federal Health Care Financing Administration- for example, does not require a Medicare certification survey for hospitals which are accredited by the JCAH. The Joint Commission does not as part of its accreditation process inspect a hospital's clinical laboratory if it is accredited by the College of American Pathologists. In addition for purposes of Medicare certification of independent clinical laboratories dealing in interstate commerce the Health Care Financing Administration also

recognizes CAP accreditation and does not require federal inspections of such laboratories. Although this bill would have no effect on private interstate laboratories in Montana this fact is significant because it indicates that the federal government also recognizes the high level of the CAP accreditation program. At the present time, there is only one hospital in the state with CAP accreditation of its laboratory which does not also maintain JCAH accreditation, that being Bozeman Deaconess Hospital. In the future a few more hospitals will enter the CAP accreditation program and that an additional few may drop JCAH accreditation while maintaining CAP accreditation of their laboratories. This bill passed unanimously in both the Committee on Human Services and also the Committee of the Whole in the House. Mr. Rutledge stated that he hoped that the same would happen in the Senate.

Senator Himsl arrived at this point.

Dr. Winter a pathologist from St. Peters and also from the Veterans Administration Hospital in Helena stood in support of the bill.

Jerome Loendorf, representing the Montana Medical Association, stood in support of the bill. He stated that he felt that one inspection is sufficient.

With no further proponents Senator Norman called on the opponents.

George Fenner, representing the DHES division of Hospital and Medical Facilities, stated that unlike hospitals being provided deemed status for Medicare certification by the federal government, clinical laboratories accredited by the College of American Pathologists do not individually enjoy that status. In hospitals, laboratories are inspected as part of the total hospital whether they are CAP accredited or not. Hospital laboratories in JCAH or nonaccredited hospitals must be inspected in order to receive Medicare certification.

IF House Bill 734 is passed, this bill has absolutely no purpose as JCAH will do the inspection and not the DHES. If House Bill 734 is not passed, but House Bill 735 is passed, it will preclude all hospitals having CAP accredited laws from receiving Medicare certification because it disallows DHES inspection.

Clinical labs in this state are not licensed by the Department. This is a complex and complicated procedure with no benefit to anyone and it will cost more money. He then urged the Committee to vote a BE NOT CONCURRED IN for House Bill 735.

With no further opponents, the meeting was opened to a question and answer period from the Committee.

Representative Winslow closed by saying that this bill would bring about the highest quality of accreditation.

CONSIDERATION OF HOUSE BILL 794:

Representative Bob Ellerd of District 75, chief sponsor of House Bill 794, gave a brief resume of the bill. This bill is an act to generally revise the public health laws relating to clean indooor air, providing penalties and amending sections 50-40-103, and 50-40-104. Initially this bill was drafted to put the enforcement power into the public health laws relating to clean indoor air. The amended bill simply changes several definitions in the law, adds a provision that a smoking area must be designated by a sign that is visible to the public, and provides a $25 fine for violation of the act.

Pastor Gary Jensen of the 7th Day Adventist Montana Conference, stood in support of the bill. He stated that that this bill is not anti business or anti tavern. Most people in business are not complying with the present law. This must be enforced otherwise the law is a mockery. Rev. Jensen stated that people and business that are not enforcing this law are just plain being obstinate.

Doug Olson, representing the DHES as their attorney, stood in support of the bill. Mr. Olson stated that the Department of Health would like for the Committee to clarify Section 50-40-108, MCA, by amending House Bill 794. The proposed language in the amendments sought by the Department omits the language in existing Section 50-40-108, which indicates that the Department of Health "directs" emforcement of the Clean Indoor Air Act by local boards of health. This concept is objectionable to some of the larger local departments of health for they believe that the Department should not direct and supervise their activities but rather provide consultation to them in the enforcement of health laws. Mr. Olson also stated that the department would like to see the bill amended to delegated to the city and county attorneys and the Attorney General enforcement of this act. Allowing the general public to request enforcement will help insure compliance in those areas which health department officials do not usually inspect as part of their licensing responsibilites. To

require that these officials act upon affidavits, which are sworn declarations, will discourage the filing of unmeritorious complaints.

Vern Sloulin, representing the Department of Health and Environmental Sciences, stated that their is no funding available to enforce this law. He stated that his department has mailed copies of the law to the local health units and also to all motels, hotels, taverns, and retaurants in Montanat. Mr. Sloulin also stated that the department has done deveral service announcements on the radio and T.V.

Wil Selser of the Lewis and Clark County Health Department stated that this is a very worthwhile bill. He also stated that he concurs with the amendments and also the testimony presented by the Department of Health.

Hal Harper, co-sponsor of the bill, from district 30, stated that if you have ever traveled on a plane you would definitely be in favor of this bill. Most people like clean air. Each person should be entitled to the same rights as the other.

Jerry Loendorf, representing the Montana Medical Association, stood in support of the bill.

With no further proponents, Chairman Hager called on the opponents.

Don Larsen, representing the Montana Tavern Owners Association, stood in opposition to the bill. Mr. Larsen owns and operates Jorgenson's Holiday Inn in Helena. Mr. Larsen stated that he has resisted any attempt to comply with this law because he was not sure just what the law really was. He had written to the department and it took 18 months to find out what he was really supposed to do. He felt that this was just another unenforceable law of this state.

Phil Dunlap, representing the Clonial Inn of Helena, stated is opposition to the bill. Mr. Dunlap stated that he does not feel that in the hospitality business that one can dictate to the public.

Tom Maddox, executive director of the Montana Association of Tobacco and Candy Distributors, stated that his organization respectfully requested that House Bill 794, be not concurred in. The House Committee considering this bill voted to kill it by a small margin. On the final vote of 100 House members the bill passed with 53 votes. Mr. Maddox stated that he felt that there is substantail compliance with this throughout the

state. House Bill 794 would trigger thousands of dollars in litigation.

Bob Durkee, representing the Montana Tavern Association, stood in opposition to the bill.

With no further opponents the meeting was opened to a question and answer period from the Committee.

Senator Johnson asked who is going to pay the fine the operator of the establishment or the people doing the smoking in the no smoking area.

Sentor Himsl stated that he did not feel that the bill could pass until this language is cleared up.

Senator Berg asked if other states have passed a law such as this. Both Colorado and Minnesota have passed a law such as this.

Senator Johnson asked a representative from the department why it took so long for Mr. Larsen to receive a repy to his question. Senator Johnson was told that Mr. Larsen did not inquire until of February of 1981.

In closing Representative Eller stated that if this can work in other states then it can work in Montana. Some people cannot be around smoke at all for health reasons. Rep. Ellerd read a letter from the Colonial Inn stating that they could not comply. He responded by saying that everyone can comply if only they want to. This bill should be passed as a courteousy to everyone. Everyones rights should be considered.

ANNOUNCMENTS: The next meeting of the Public Health, Welfare and Safety Committee will be on Friday, March 20, 1981 at 12:30 in 410 of the State Capitol Building.

ADJOURN: With no further business the meeting was adjourned.

eg

CHAIRMAN, TOM HAGER

ROLL CALL

PUBLIC HEALTH, WELFARE & SAFETY COMMITTEE

47th LEGISLATIVE SESSION - - 1981 Date Nov. 18

NAME	PRESENT	ABSENT	EXCUSED
Tom Hager	✓		
Matt Himsl	✓		✓
S. A. Olson	✓		
Jan Johnson	✓		
Dr. Bill Norman	✓		
Harry K. Berg	✓		
Michael Halligan	✓		

Each day attach to minutes.

DATE _____

COMMITTEE ON _____

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
Helen Jurgens	Physical Therapy Licensing Board	701	✓	
Douglas Cooper	Mt. Dept. Health & ES	794	✓ w/ amend	
Douglas Olson	" " " "	735		✓
Roger M Elmer	" " " "	734	✓	
Roger M Elmer	" " " "	735		✓
Warren E. Brass	" " " "	735		✓
Gary Ames	The Associated Press	—	—	—
Jon Maddox	Mt. Assn of Tobacco & Candy Distributors	794		✓
Will J. Colson	Lake Co. Health Dept.	794	✓	
Vern Shoults	Dept. Health & Env. Sc.	794	✓	
Judy Olson	Mt Nurses Assoc	734		—
Elder Gary Lawson	Mt. Conference of Seventh-day Adventists	794	✓	
J. D. Larson	M.T.A.	794		✓

(Please leave prepared statement with Secretary)

STATEMENT OF INTENT

HOUSE BILL NO. 701

The Board of Physical Therapy Examiners is authorized to adopt necessary and reasonable rules governing the application and application procedures. It is provided that the application fee may be established by board rule and it shall include the application fee, original licensure fee and cost of examination and its administration. A person failing the first examination may retake the examination by paying a fee established by board rule that is commensurate with cost of examination and its administration. The Board may adopt necessary and reasonable rules governing the application procedures for applicants licensed in other states (reciprocity). The Board may adopt necessary and reasonable rules to govern the procedures for applying for and the issuance of a temporar license. Board may provide rules for the re-instatement of a lapsed license and late renewal fees. It is not intended that rule making authority on application procedures restrict the Board to three affidavits of good moral character, recent photograph and verification of physical therapy instruction and graduation from a board approved physical therapy school if additional requirements are found to be necessary.

Mr. Chairman and Members of the Committee:

My name is Helen Jorgenson, I am from Billings, Montana, and currently Chairperson of the State Physical Therapy Licensing Board. I am a proponent of House Bill No. 701.

The Physical Therapy Board was established by the Legislature two years ago. In working with the present law, we have found several areas that need defining to avoid potential misunderstanding. Bill No. 701 clarifies the qualifications for application for license, reciprocity and temporary licenses. In addition, it gives us options for a lapsed license and compensation for board members.

I urge passage of this bill, to further protect and guarantee physical therapy for this state.

Helen Jorgenson

Helen Jorgenson
Registered Physical Therapist

NAME: Helen Jorgenson DATE: 3-18-81

ADDRESS: 3427 Timberline Dr Billings, MT 59102

PHONE: 656-3560

REPRESENTING WHOM? Physical Therapy Licensing Board

APPEARING ON WHICH PROPOSAL: H.B. #701

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

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

HB 734

Introduced by Rep. Winslow

Aside from additions to the definitions in section 1 that would provide definitions for "accreditation" and "joint commission on accreditation of hospitals", the main changes in the bill are in section 2 where it is stated that a hospital may furnish evidence of accreditation by the Joint Commission on Accreditation of Hospitals to the Department of Health in order to waive licensure inspections. The Department may still inspect the hospital if they receive complaints against the hospital regarding licensing requirements.

The following clean-up amendment is suggested for this bill:

1. Page 9, line 14.
   Following: line 13
   Strike: "NEW SECTION. SECTION 3."
   Move: remainder of line 14 and lines 15 through 18 to immediately follow "pertains." on line 13.

H.B. 734
Testimony - George M. Fenner
Administrator, Hospital and Medical
Facilities Division
Dept. of Health and Environmental Sciences
3/18/81
Senate Public Health Committee

Mr. Chairman, Members of the Committee: My name is George Fenner, I am administrator of the Hospital and Medical Facilities Division of the Department of Health and Environmental Sciences.

There are 22 out of 64 hospitals in the State of Montana which are currently accredited by the Joint Commission on Accreditation of Hospitals (JCAH). Most of these hospitals are located in what we consider to be the urban areas of our state and, for the most part, are the largest hospitals by bed number. In fact, they contain over 50% of the total acute care hospital beds.

Since the inception of the Medicare program, hospitals accredited by JCAH have been considered to meet deemed status for Medicare certification purposes. Many states continue to perform licensure inspections in JCAH hospitals inasmuch as they feel that by issuing a license they are advising the public that the hospital provides quality care in a safe and healthy environment. I believe that is still an issue and responsibility of the Department of Health and Environmental Sciences. However, given the amendment to provide the Department with written evidence including the recommendation for future compliance, which we assume is a copy of the JCAH survey report, we will know what deficiencies exist in the accredited hospital and how the hospital plans to correct the deficiencies. We will feel more comfortable in issuing a license without inspection. It should be pointed out to this committee that the first standard to be complied with in the accreditation procedure is that the hospital must be licensed by the state in which it is located; therefore, we need this assurance. We further support the amendments which provide for complaint investigation and validation surveys.

It should be pointed out that 10 of the hospitals now having JCAH also have nursing homes attached. Under current federal regulations these may not be given deemed status for Medicare or Medicaid certification. Therefore, state inspection teams will make trips to these facilities to inspect the nursing homes for Medicare and Medicaid certification and licensure purposes. These inspections are now being conducted the same time as the hospital inspection; therefore, the cost savings will not be as significant as might be assumed.

I have some concern regarding the confidentiality provision beginning on line 14 of page 9 and have requested our Department legal staff to provide me with an opinion in this regard which is attached. My concern is twofold, primarily:

1. Is the amendment in conflict with the public's constitutional right to know?
2. It appears we are creating a double standard. The 22 JCAH hospitals will enjoy complete confidentiality regarding their deficiencies while the 44 nonaccredited hospitals inspected by the Department will be subject to disclosure of information regarding their deficiencies as mandated by state and federal law.

The Department supports House Bill 734 as amended, but requests the committee consider and investigate the legality of the confidentiality issue.

Thank you for providing me the opportunity to testify before you today.

Montana Hospital Association

(406) 442-1911 · P. O. BOX 5119 · HELENA, MONTANA 59601

FACT SHEET

STATUS OF JOINT COMMISSION ON ACCREDITATION OF HOSPITALS IN MONTANA

There are currently 22 nonfederal Montana hospitals accredited by the Joint Commission on Accreditation of Hospitals (JCAH) ranging in size from 25-282 beds. All of the 22 hospitals are licensed by the State of Montana and are Medicare certified. (see attached list)

The total number of licensed and accredited beds in the 22 hospitals is 2,489. The average size of the accredited facility is 113 beds.

Sixteen hospitals have a two-year accreditation, representing 73%; 6 hospitals have a one-year accreditation, representing 27%. This compares with the national data for JCAH which shows that as of November 30, 1980 there were:

1,634 hospitals having a two-year accreditation or 71%

651 hospitals having a one-year accreditation or 28%

28 hospitals failed to be accredited as they did not meet the standards - 1%

Total of 2,313 hospitals surveyed.

The other 39 Montana general hospitals ranging in size from 6-104 beds are non-accredited but are all licensed and Medicare certified. The total number of licensed beds in the 39 hospitals is 954. The average size of the non-accredited hospital is 25 beds.

In addition to the hospitals which are subjected to licensure in Montana, there are 5 federal hospitals which in accordance with federal and state law are not required to have state licensure but are accredited by the JCAH. These 5 federal institutions have a total of 366 beds and all but one is accredited for the two-year period. The other has a one year accreditation.

Refer to the status sheet attached for a listing of Montana hospitals that are accredited by JCAH, the date of survey and the result of their accreditation status.

MONTANA HOSPITALS

STATUS OF ACCREDITATION BY THE JOINT COMMISSION ON ACCREDITATION OF HOSPITALS — January 15, 1981

Accredited hospitals subject to licensure by Montana State Department of Health

City	Name	Beds	Surveyed	Result
Anaconda	Community	60	July 1979	2 year
Billings	Billings Deaconess	197	Sept. 11, 1980	2 year
Billings	St. Vincent	225	Aug. 15, 1980	2 year
Butte	St. James Community	180	Sept. 8, 1980	1 year
Butte	Silver Bow General	140	October 1978	2 year
Conrad	Pondera Medical Center	50	Sept. 4, 1980	1 year
Deer Lodge	Powell County Memorial	35	Aug. 8, 1980	1 year
Glasgow	Frances Mahon Deaconess Chemical Dependency Center	48 51	July 1979	2 year
Glendive	Glendive Community	46	July 1979	2 year
Great Falls	Columbus	198	July 17, 1980	2 year
Great Falls	Montana Deaconess Medical Center	282	July 1979	2 year
Havre	Northern Montana	120	July 22, 1980	2 year
Helena	St. Peter's Community	120	July 30, 1980	2 year
Kalispell	Kalispell Regional	91	July 11, 1980	2 year
Lewistown	Central Montana	47	Sept. 15, 1980	2 year
Libby	St. John's Lutheran	34	Sept. 2, 1980	1 year
Miles City	Holy Rosary	120	Aug. 21, 1980	1 year
Missoula	Community	115	July 1979	2 year
Missoula	General	57	Aug. 6, 1980	2 year
Missoula	St. Patrick	217	December 1979	2 year
Polson	St. Joseph	40	Aug. 28, 1980	2 year
Roman	St. Luke's Community	25	Aug. 27, 1980	1 year

ACCREDITED HOSPITALS NOT SUBJECT TO LICENSURE IN MONTANA - FEDERAL INSTITUTIONS

City	Name	Beds	Surveyed	Result
Fort Harrison	Veterans Administration	160	Aug. 1, 1980	2 year
Miles City	Veterans Administration	120	Aug. 20, 1980	2 year
Crow Agency	USPHS Indian Hospital	34	Aug. 19, 1980	2 year
Browning	USPHS Indian Hospital	34	July 15, 1980	1 year
Harlem	USPHS Indian Hospital	18	July 24, 1980	2 year

STATE PROJECTS STATUS

At the present time, 38 states plus the District of Columbia and Puerto Rico are implementing measures which are directed at the minimization of duplication of surveillance activities in hospitals.

Attached is a map which identifies the major activity taking place in the separate states. According "deemed" status to hospitals, which are accredited and which are willing to release the JCAH report to the licensing authorities, is a rapidly increasing activity. Staff believes this trend, chiefly, is due to limited state resources, as well as to pressures from hospitals, hospital associations, and legislators to decrease the number of surveys. Following is a synopsis of this activity:

1. LEGISLATION GRANTS "DEEMED STATUS"

Alabama	Tennessee	Texas	

2. LEGISLATION ENABLES STATE AGENCY TO GRANT "DEEMED STATUS"

Arizona	Connecticut	New Mexico	Oregon

3. LEGISLATION UNDER CONSIDERATION

Dist. of Columbia	Maine	Minnesota	Ohio
West Virginia	Wisconsin		

4. STATE AGENCY ACCORDS "DEEMED STATUS" IN WHOLE OR IN PART THROUGH REGULATION

Colorado	Illinois	Kansas	Louisiana
Mississippi	Nevada	Washington	

5. PILOT STUDY OF JOINT SURVEY IN PROGRESS

6. JOINT SURVEY IN PLACE

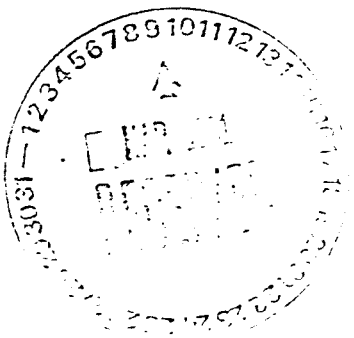
California	Maryland	New York	Pennsylvania

7. INITIAL DISCUSSION STAGE

Hawaii	Indiana	Massachusetts	Michigan
New Hampshire	New Jersey	North Carolina	Puerto Rico
Rhode Island	South Carolina	Wyoming	

8. STATE AGENCY GRANTS "DEEMED STATUS" WITHOUT LEGISLATION OR REGULATION

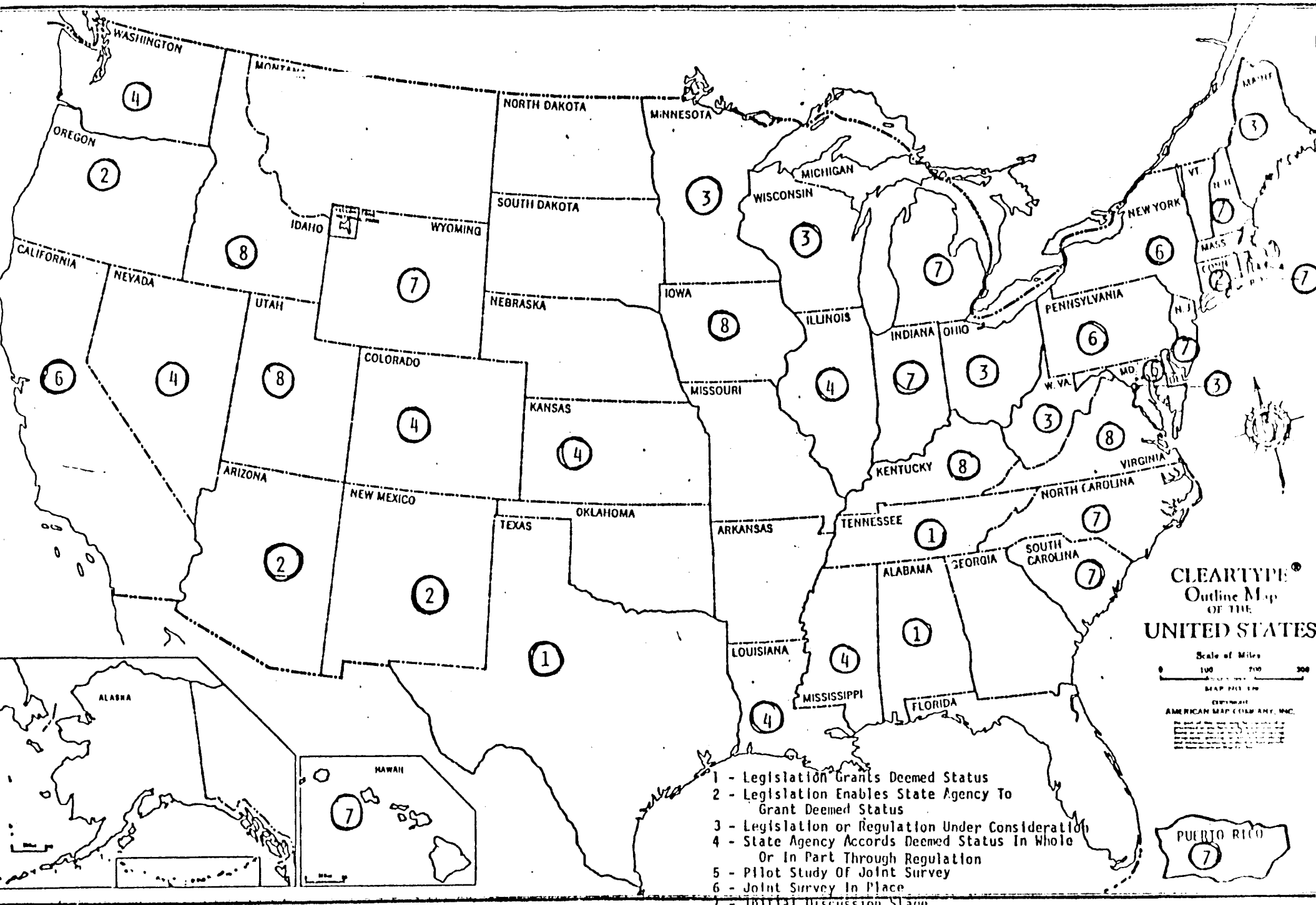
Idaho	Iowa	Kentucky	Utah
Virginia			



October, 1980

STATUS OF STATE PROJECTS

October, 1980



1 - Legislation Grants Deemed Status
2 - Legislation Enables State Agency To Grant Deemed Status
3 - Legislation or Regulation Under Consideration
4 - State Agency Accords Deemed Status In Whole Or In Part Through Regulation
5 - Pilot Study Of Joint Survey
6 - Joint Survey In Place
7 - Initial Discussion Stage
8 - State Agency Grants Deemed Status Without Legislation Or Regulation

AN ACT

relating to surveys and inspections of health care facilities, providing that hospitals, nursing homes, and other health care facilities shall not be subjected to duplicative surveys and inspections by state agencies; amending the Texas Hospital Licensing Law, as amended (Article 4437(f), Vernon's Texas Civil Statutes); and declaring an emergency.

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

Section 1. The purpose of this Act is to require that state agencies, including the Texas Department of Health Resources, the Department of Public Welfare, and those agencies with which each contracts, who perform surveys, inspections, and investigations of health care facilities, do not duplicate their procedures or subject such health care facilities to duplicitous rules and regulations.

Sec. 2. For the purposes of this Act:

(1) "Health care facility" shall have the same definition as that given in the Texas Health Planning and Development Act (Article 4418h, Vernon's Texas Civil Statutes).

(2) "Inspection" means all surveys, inspections, investigations, and other procedures necessary for a state agency or a division or unit thereof to perform in order to carry out various obligations imposed on such agency by applicable state and federal law and regulations.

Sec. 3. State agencies shall make or cause to be made only such inspections necessary to carry out the various obligations imposed on each agency by applicable state and federal law and regulations. Any on-site inspection by a state agency or a division or unit thereof that substantially complies with the inspection requirements of any other state agency or any other division or unit of the inspecting agency charged with making similar inspections shall be accepted as an equivalent inspection in lieu of an on-site inspection by said agency or by a division or unit of the inspecting agency. A state agency shall coordinate its health care facility inspections both internally and with those required by other state agencies so as to insure that the requirements of this section are met.

Sec. 4. (a) All hospitals licensed by the Texas Department of Health Resources which have been certified under Title XVIII of the Social Security Act, as added July 30, 1965 (Public Law 89-97), or which have obtained accreditation from the Joint Commission on Accreditation of Hospitals or which have obtained accreditation from the American Osteopathic Association shall not be subject to licensing inspections under the Texas Hospital Licensing Law by the agency so long as such certification or accreditation is maintained. Such hospitals shall only be required to annually remit the statutory licensing fees in order to be issued a license by the licensing agency.

(b) The State Department of Public Welfare and the Texas Department of Health Resources shall establish procedures to eliminate or reduce duplication of functions in certifying nursing

homes for payments under the requirements of the Medical Assistance Act of 1967, as amended (Article 6955-1, Vernon's Texas Civil Statutes), and federal laws and regulations relating to Title XIX of the Social Security Act. The procedures established under this section shall provide for use by both agencies of information collected by either agency in making inspections for certification purposes and in investigating complaints regarding matters that would affect the certification of a nursing home.

Sec. 5. Section 7, Texas Hospital Licensing Law, as amended (Article 4437(f), Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 7. Applications for license shall be made to the Licensing Agency upon forms provided by it, and shall contain such information as the Licensing Agency may reasonably require. It shall be necessary that the Licensing Agency issuing licenses require that each hospital show evidence that there are one or more physicians on the medical staff of the hospital, and that these physicians are currently licensed by the Texas State Board of Medical Examiners.

"The Licensing Agency may require that the application be approved by the local health officer, or other local official, for the compliance with city ordinances on building construction, fire prevention, and sanitation. Hospitals outside city limits shall comply with corresponding state laws.

"Each application shall be accompanied by a license fee. In the event the application for a license is denied, such fee shall be refunded to the applicant.

"All license fees collected shall be deposited with the State Treasury to the credit of the Licensing Agency and said license fees are hereby appropriated to said agency for its use in the administration and enforcement of this Act.

"Each hospital so licensed shall pay a license fee, both initially and annually thereafter, of Two Dollars ($2.00) ~~[One Dollar ($1.00)]~~ per bed; but in no event shall the total fee exceed the sum of Five Hundred Dollars ($500.00) ~~[; provided, however, that a minimum license fee of Twenty-five ($25.00) will be required of those hospitals with less than twenty-five (25) beds and a minimum license fee of Three Hundred Dollars ($300.00) will be required of those hospitals with more than three hundred (300) beds]~~."

Sec. 6. The importance of this legislation and the crowded condition of the calendars in both houses creates an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

-END-

President of the Senate

Speaker of the House

I certify that H.B. No. 2115 was passed by the House on May 13, 1977, by a non-record vote.

Chief Clerk of the House

I certify that H.B. No. 2115 was passed by the Senate on May 20, 1977, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

_____

Governor

Note: Passed Wyoming Legislature on March 3, 1981
Awaiting Governor's signature.

ORIGINAL HOUSE
BILL NO. 7

ENROLLED ACT NO. 4, HOUSE OF REPRESENTATIVES

FORTY-SIXTH LEGISLATURE OF THE STATE OF WYOMING
1981 SPECIAL SESSION

AN ACT to amend W.S. 35-2-106 relating to public health; providing that state inspections of and reports from hospitals are not required if a facility is accredited by the joint commission on accreditation of hospitals; and providing for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 35-2-106 is amended to read:

35-2-106. Inspection of licensed establishments; exceptions. Except as hereafter provided, every building, institution or establishment for which a license has been issued shall be periodically inspected by a duly appointed representative of the division of health and medical services, department of health and social services under the rules and regulations to be promulgated by the division. A hospital which has been licensed by the licensing agency and which has been accredited by the joint commission on accreditation of hospitals shall be granted a license renewal without further inspection. Inspection reports shall be prepared on forms prescribed by the division except that hospitals accredited by the joint commission on accreditation of hospitals shall submit the inspection report pursuant to its accreditation and no other forms shall be required. If the standards used by the joint commission on accreditation of hospitals to accredit hospitals fail to meet or exceed the state standards for licensure, the division may survey the hospital with regard to those matters that did not meet state standards.

ORIGINAL HOUSE
BILL NO. 7

ENROLLED ACT NO. 4, HOUSE OF REPRESENTATIVES

FORTY-SIXTH LEGISLATURE OF THE STATE OF WYOMING
1981 SPECIAL SESSION

Section 2. This act is effective May 20, 1981.

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

Montana Hospital Association

(406) 442-1911 · P. O. BOX 5119 · HELENA, MONTANA 59601

SENATE AMENDMENT TO H.B. 734

I move to amend H.B. 734 by:

Page 9, line 13, after "pertains", insert the following sentence: "In addition, it is understood that the Department may conduct validation surveys of Joint Commission accredited hospitals when requested to do so by the Department of Health and Human Services as required by Section 244 of the Social Security Amendments of 1972 (Public Law 92-603).

Montana Hospital Association

(406) 442-1911 · P. O. BOX 5119 · HELENA, MONTANA 59601

March 18, 1981

TESTIMONY IN SUPPORT OF HOUSE BILL 734

For the record, I am William Leary, president of the Montana Hospital Association, appearing here today on behalf of Montana hospitals to urge your support of H.B. 734 and to present a minor amendment which was requested by officials of the State Department of Health and with which we concur. The amendment is attached to my testimony.

When a Montana hospital receives its notification of accreditation by the Joint Commission on Accreditation of Hospitals, it means that facility has voluntarily sought to be measured against optimal achievable standards for quality of care and services, standards that apply to the performance of each function in the overall operation of the facility. The fact that the hospital has achieved its accreditation means the hospital has been found to be in substantial compliance with the standards and is making an effort to provide even better care and services. Accreditation can thus document accountability of a facility to those who support it and to those it serves.

Accreditation is much more than an evaluation or a survey, however. Elements of consultation and education are found throughout the accreditation process. The pre-survey activities such as self-evaluation are distinctly educational. The summation conference in which the surveyors meet with members of the medical staff and representatives of the facility to discuss on-site survey findings and to make suggestions for improvement provides valuable consultation. The complete report of survey findings that accompanies each accreditation decision is also a consultative service that details the facility's strengths and weaknesses and makes recommendations for correcting deficiencies and raising the level of performance. (Copy of a recent Montana hospital letter and findings attached).

The meaning of accreditation is sometimes misunderstood. A common misconception is that the Joint Commission is a regulatory agency of the government. This is not the case. The Joint Commission is a private, not-for-profit

corporation. Accreditation by the JCAH is a voluntary process that uses optimal and yet achievable criteria as a basis for evaluating quality of performance. It encompasses more than and should be distinguished from certification or licensure, which are regulatory governmental determinations of a facility's ability to operate, most often based on minimum requirements.

Today, the Hospital Accreditation Program is in the forefront of education, consultation, and evaluation of the quality of care provided by hospitals across the country. The success of the program has been demonstrated by the positive response and continuing support of the health care field. Each year almost 3,000 hospitals volunteer to be surveyed by one of the 35 equivalent full-time survey teams of the Hospital Accreditation Program - teams which have as their leader a qualified physician. Approximately 4,800 acute care general hospitals are currently accredited by the Joint Commission. In Montana 22 of our non-federal licensed general hospitals are currently accredited. My fact sheet on Montana accredited hospitals is attached.

JCAH accreditation is often used as a benchmark of quality by some regulatory agencies in granting certification and licensure and is directed towards the minimization of duplication of inspections. That is essentially what we are attempting to do through the introduction of House Bill 734. We want to provide recognition by the State of Montana and more specifically, the State Department of Health, whereby any hospital which is accredited and remains accredited will be deemed licensed by the State Department of Health as long as the hospital furnishes written evidence, including the JCAH recommendations for future compliance, to the State Department of Health. It is the contention of the Montana Hospital Association and its members that regardless of whether accreditation is granted for one year or two years, the hospital, its medical staff, its governing board and other members of the administrative departmentalized team have worked hard and devoted many hours to the accreditation process to guarantee to the public that their hospital is providing the highest quality of services.

We are not plowing new ground in Montana by the introduction of this concept. As can be seen by looking at Attachment A, there are some 38 states that have laws or have recognized the JCAH accreditation status as a deemed status for their states' licensure. The state of Wyoming recently passed legislation stipulating that "A hospital which has been accredited by the JCAH shall be granted a license renewal without further inspection."

H.B. 734 passed the House on a strong 91-7 vote. I encourage the Senate Public Health Committee to accept the proposed amended bill and vote a DO PASS as amended.

Attachments: MHA fact sheet
State project status
Texas law
Wyoming law
Letter of accreditation/ recommendations for future compliance

Joint Commission on Accreditation of Hospitals
875 North Michigan Avenue Chicago, Illinois 60611
(312) 642-6061

John E. Affeldt, M.D.
President

NOV 2 5 1980

The Joint Commission on Accreditation of Hospitals is pleased to inform you that your hospital has been awarded two-year accreditation. This decision was reached by the JCAH Board of Commissioners after a review of the findings from the most recent survey of your hospital. Through the award of accreditation, the Joint Commission commends your efforts toward providing patient care of quality.

As the result of every hospital survey, the JCAH sends a list of recommendations that serve to identify areas in which improvements can be made. Enclosed is the list of recommendations resulting from your latest survey.

Among the important elements in the meaning of voluntary accreditation are substantial compliance with the standards, and continual progress towards optimal conditions. As a condition of two-year accreditation, your hospital will be required to conduct an Interim Self-Survey on or about the first anniversary of your last survey. At that time, you will be sent a form on which to report your progress toward implementing the enumerated recommendations.

Copies of this letter and the recommendations are being sent to the President of the Medical Staff and to the Chairman of the Governing Body of your hospital, in accordance with JCAH administrative policy. The Joint Commission considers these recommendations confidential. Their further release is a matter of your mutual consideration and decision. It is the policy of the Joint Commission to provide anyone, upon request, the current accreditation status of a facility, only after the facility itself has been notified of any accreditation decision, as well as the accreditation history of a facility.

Should you have any questions concerning the accreditation status of your hospital or the enclosed list of recommendations, please feel free to communicate with us at your convenience.

Sincerely,

Donald W. Avant
Director
Hospital Accreditation Program

DWA:wpc
Encls.

cc: President of the Medical Staff
d, Chairman of the Governing Body

Joint Commission on Accreditation of Hospitals
[illegible] Avenue
Chicago, Illinois 60611 (312) 642-6061
American College of Physicians
American College of Surgeons
American Dental Association
American Hospital Association
American Medical Association
President/ John E. Affeldt, M.D.

EXPLANATION OF JCAH SURVEY FINDINGS

The attached report contains Recommendations for Future Compliance which will serve to alert the hospital to areas where performance is not in substantial compliance with the Standards of the Joint Commission.

When the results of the survey indicate that the degree of noncompliance in specific areas affects the accreditation status of the hospital, the Recommendations for Future Compliance will be preceded by a listing of Compliance Assessment Factors. In addition, the Compliance Assessment Factors are identified in the report with an asterisk * under the specific department/service heading. Particular emphasis should be given to correcting these deficiencies prior to the next survey. An active plan of correction will be considered during periods of construction or renovation. Important recommendations that may affect the hospital's future accreditation status are identified by this symbol (.).

The Source of recommendations is indicated by the applicable page number(s) from the 1980 Accreditation Manual for Hospitals (AMH) and, when applicable, from the Accreditation Manual for Long Term Care Facilities (AMLTC). When appropriate, the publication and paragraph number(s) of the relevant National Fire Protection Association (NFPA) codes will appear at the end of the recommendation. All references to NFPA 101 (Life Safety Code) are taken from the 1973 edition. To identify the sources when more than one source is cited (NFPA and AMH references), the AMH reference is identified with "AMH" preceding the page number. Otherwise, AMH references will appear only as page numbers.

Until this process has been fully implemented, there may be sections of recommendations or isolated individual recommendations without source identification noted.

When the accreditation decision is contingent upon receipt of a progress report identifying the need for correction of one more specific deficiencies within a given period of time, this information will be found on the last page of the Recommendations for Future Compliance.

8/79

DATE OF SURVEY
SEPTEMBER 11, 12, 1980

SURVEYOR
JAMES W. PHIPPS, M.D.
CLAUDE L. LOLLAR, JR., FACHA
JUANITA H. WEBSTER, R.N.

RECOMMENDATIONS FOR FUTURE COMPLIANCE

1. When walls and/or doors between corridors and patient rooms or other use areas have vision panels, such panels shall be of fixed wired glass set in approved steel frames. It is noted that a remodelling project due to be completed in January of 1981 will correct this deficiency. (NFPA - 101: 10-1331, 10-2329)

2. For buildings designed in or before 1973, smokestop partitions shall be provided to divide every story used for sleeping rooms for more than 30 institutional occupants into at least 2 compartments. Specific reference is made to the fourth floor north. (NFPA - 101: 10-2311)

EMERGENCY SERVICES

1. Written policies and procedures for emergency patient care shall relate to the management of pediatric emergencies. (29, 30)

2. Emergency patient care shall be guided by written policies and procedures. Specific reference is made to the use of the emergency service seclusion room for psychiatric patients. (28)

FUNCTIONAL SAFETY AND SANITATION

1. There shall be a hospital multidisciplinary safety committee that includes representation from the medical staff. (35, 36)

2. All electrical power distribution systems shall be tested/inspected when newly installed and at least annually thereafter. Specific reference is made to the lack of documentation. (37, 38)

3. There shall be a written policy on the use of personal electrical equipment by patients and staff. It is noted that corrective action was begun at the time of survey. (38)

4. There shall be a written policy on the limitation of use of extension cords and adapters. It is noted that corrective action was begun at the time of survey. (38)

5. All fire warning and safety systems shall be tested and/or inspected at least quarterly and the results recorded. Specific reference is made to the medical gas alarm system. (39)

FUNCTIONAL SAFETY AND SANITATION (cont'd)

6. Written regulations governing smoking shall provide for no smoking in bed by ambulatory patients; only supervised smoking for patients who are mentally or physically incompetent or so affected by medication; and the use of noncombustible ashtrays and wastebaskets. It is noted that development of such regulations was gegun at the time of survey. (NFPA - 101: 17-4141; AMH-45)

7. All cylinders used for compressed gases shall be secured at all times to prevent falling. Specific reference is made to oxygen cylinders. (NFPA - 56A - 1973: 3754, 3761(n); AMH - 40, 41)

8. All toilet and bathing areas used by patients shall be equipped with an emergency call system. It is noted that a remodelling project which will correct this deficiency is scheduled for completion in January of 1981. (44)

9. Rehearsal of the external disaster plan shall involve the medical staff. There shall be a written report and evaluation of all drills. (46, 47)

MEDICAL RECORD SERVICES

1. As previously recommended, emergency medical records must include the condition of the patient on release. (32)

2. The medical staff must define those verbal orders that must be authenticated by the responsible practitioner within 24 hours. (85)

3. The medical record of psychiatric patients shall contain a record of the individual treatment plan, and revisions thereof; documentation of the involvement of the patient in the treatment program; a discharge summary; and a plan for aftercare. Treatment plans shall be reviewed and updated regularly.

MEDICAL STAFF

1. Reappointment policies shall provide for appraisal of each member of the staff at the time of reappointment and include information relative to the individual's professional performance, judgement, and, when appropriate, technical skill, and consideration of health status. (99)

2. During the initial provisional period, each newly appointed medical staff member shall be assigned to a department or service where his performance and clinical competence shall be observed by the chairman of chief of the department/service or his designee. (100)

MEDICAL STAFF (cont'd)

3. Medical staff bylaws, rules and regulations should be revised to reflect current practive. Specific areas of concern include: the existence and functions of the intensive and cardiac care unit, emergency service and physical therapy committees; the dual responsibilities of the dentist and physician for the care of dental patients, including pertinent medical record entries; and the dual responsibilities of the podiatrist and physician for the care of podiatric patients, including pertinent medical record entries. (103)

4. The medical staff bylaws shall provide for the mechanism for termination of employment of a physician or dentist in a medico-administrative position. Specific reference is made to the lack of a bylaw provision regarding the retention of clinical privileges for medico-administrative personnel upon termination of employment. (103, 104, 105)

5. The medical staff fair hearing and appellate review mechanisms shall specify completion of all actions in stated fixed periods of time. (104)

6. The medical staff bylaws should specify conditions that may require the removal of staff officers from office and the mechanisms therefor, consistent with applicable law. (101)

7. Unless thereis designated supervision of the applicant, temporary privileges shall not be granted pending the processing of applications of potential new medical staff members. (101)

NURSING SERVICES

1. The nursing care plan shall include goals that are based on the nursing assessment and shall be realistic, measurable, consistent with the therapy prescribed by the responsible medical practitioner, and whenever possible, mutually set with the patient and/or family. (118, 119)

2. As appropriate, patients who are discharged from the hospital requiring nursing care should receive instructions and individualized counseling prior to discharge, and evidence of the instructions and the patient's or family's understanding of these instructions should be noted in the medical record. (119)

PSYCHIATRIC CARE UNIT

1. There shall be written policies and procedures for the psychiatric unit that relate to the initial screening and admission of patients.

QUALITY ASSURANCE

1. Surgical case review (tissue committee function) shall include a review of procedures in which no specimen was removed as well as those procedures in which there was a specimen. (106)

QUALITY ASSURANCE (cont'd)

2. The medical record of a patient undergoing a major surgical procedure must include evidence of a thorough current physical examination. Specific reference is made to outpatient surgery. (85)

3. The quality and appropriateness of anesthesia services provided shall be reviewed and evaluated at least quarterly, and documented. This pertains to care rendered by all anesthesia personnel. (6)

4. There must be documentation of the timely review and evaluation of the quality and appropriateness of emergency patient care. (33)

5. The written safety rules for the radiology department/service to protect patients and personnel must relate to electrical and mechanical hazards. (157, 158, 159)

6. A review and evaluation of the quality and appropriateness of dietetic services shall be performed at least annually and involve the use of preestablished criteria. Dietetic services provided by outside sources shall be included in the review and evaluation on the same regular basis. (20, 21)

7. There shall be documentation that the appropriateness and effectiveness of the respiratory care services provided are reviewed evaluated on at least a quarterly basis. (176)

8. The quality, safety, and appropriateness of care provided by each special care unit must be reviewed and evaluated on a regular basis and documented. (182)

9. The quality and appropriateness of care provided by the rehabilitation programs/services shall be reviewed and evaluated at least quarterly. Both medical staff and rehabilitation personnel shall participate in this review and evaluation. (165)

10. The identification of potential important problems shall be an integral part of the quality assurance program. Specific reference is made to the lack of a review of surgical cases in which no specimen was removed. (consultative recommendation for hospitals surveyed prior to January 1981) (152)

RADIOLOGY SERVICES

1. The exposure switch of each fixed diagnostic unit shall be so arranged that it cannot be operated outside a shielded area by the technologist. Specific reference is made to the cord of one unit which requires shortening. (159)

SPECIAL CARE UNITS

1. Education programs for personnel of special care units shall include the findings from the review and evaluation of patient care provided by the unit. (184)

REFER TO: "ACCREDITATION MANUAL FOR HOSPITALS."

DECISION OF THE ACCREDITATION COMMITTEE OF THE BOARD OF COMMISSIONERS: TWO YEARS

DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES
LEGAL DIVISION

TED SCHWINDEN, GOVERNOR

COGSWELL BUILDING

STATE OF MONTANA

(406) 449-2630

HELENA, MONTANA 59620

Hospital Licensure, Legislation, Right to Know, Confidentiality

Montana Constitution, Art. II, Sec. 9; Art. V, Sec. 11

HELD:

1. The public's Constitutional Right to Know and examine documents held by government agencies is to be balanced only by the Right to Privacy which may be claimed by an individual human being and not by a corporation.

2. House Bill 734, 47th Legislative Session as amended by the Montana House of Representatives by adding subsection (3) violates Article II, Sec. 9 of the Montana State Constitution Bill of Rights provision on the Right to Know by making confidential or private those documents supplied to the Department of Health and Environmental Sciences relating to hospitals.

3. House Bill 734, 47th Legislative Session as amended by the Montana House of Representatives by adding subsection (3) providing confidentiality to documents supplied to the Dept. of Health and Fnvironmental Sciences relating to hospitals violates Article V, Section 11 of the Montana State Constitution relating to bills for legislation because the amendment exceeds the original purpose of the bill's title and because the bill's title fails to embrace the subject matter of subsection (3).

March 12, 1981

George Fenner, Administrator
Hospital and Medical Facilities Div.
Dept. of Health and Environmental Sciences
Capitol Station
Helena, MT 59620

Dear Mr. Fenner:

In a letter dated March 3, 1981, you requested a legal opinion as to the legality of a proposed new section of law found in subsection (3) of House Bill 734, 47th Legislature, introduced by Representative Winslow. That bill is entitled:

> AN ACT TO WAIVE STATE LICENSURE INSPECTION FOR ~~HEALTH-CARE-FACILITIES~~ HOSPITALS THAT ARE ACCREDITED BY THE JOINT COMMISSION ON ACCREDITATION OF HOSPITALS; AMENDING SECTIONS 50-5-101 AND 50-5-103, MCA.

Subsection (3) of that bill was amended into the bill by the House Committee on Human Services (Public Health) and it states:

> NEW SECTION. SECTION 3. ALL WRITTEN EVIDENCE SUBMITTED BY THE HOSPITAL TO THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES MUST BE CONFIDENTIAL AND NOT RELEASED TO ANY PERSON WITHOUT A PRIOR WRITTEN RELEASE SIGNED BY THE CHIEF EXECUTIVE OFFICER OF THE HOSPITAL.

From two perspectives proposed subsection (3) is unconstitutional in my opinion. In the first instance, it does not comply with Article V, Section 11, of the 1972 Montana Constitution, which relates to bills, and which states in part:

> Bills. (1) A law shall be passed by bill which shall not be so altered or amended on its passage through the legislature as to change its original purpose. No bill shall become law except by a vote of the majority of all members present and voting.
> (2) ...
> (3) Each bill, except general appropriation bills and bills for the codification and general revision of the laws, shall contain only one subject, clearly expressed in its title. If any subject is embraced in any act and is not expressed in the title, only so much of the act not so expressed is void.
> (4)-(5) ... (emphasis added)

In my opinion, House Bill 734 violates the constitutional requirements for bills in several respects. The bill's purpose has been modified so that it now effects not only waiver of licensure for accredited hospitals, but also provides broad confidentiality for all "written evidence" submitted by "the hospital" to the Department of Health and Environmental Sciences. More importantly, the bill now exceeds the scope of its stated subject matter in that the title is completely silent on the subject of confidentiality of which the added subsection (3) clearly embraces.

In terms of drafting, subsection (3) is also overly broad and vague. It doesn't provide confidentiality to only "written evidence" provided by a hospital relating to accreditation but to all written evidence "the hospital" may provide the Department with. The term, "the hospital", is also not defined, nor is there a codification instruction expressing where the new section should be placed in the Montana Code Annotated.

If these defects could be remedied, subsection 3 would still be unconstitutional because of clearly conflicting with Article II, Section 9, the Bill of Rights guaranteed "Right to Know" provision which states:

> No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure. (emphasis added)

The right to know is a broad right but is not an absolute right and is to be tempered in the instances involving the rights of individual privacy. The transcript of the 1972 Constitutional Convention expressly discussed whether "individual privacy" as used in Article II, Section 9, would apply to corporations. On page 5178 a delegate on the convention floor when questioned just prior to the vote on this section stated: "An individual in my judgment would not be a corporation".

The Attorney General has issued several formal opinions on the Constitutional Right to Know and Right to Privacy. In Volume 38, Opinion 59, Montana Attorney General Opinions, on page 4, relating to public access to mailing lists; the statutory provisions of Chapter 606, S.L. 1979 had to be consistent with Article II, Section 9, "Right to Know", of the Montana Constitution. The statute could not and did not forbid

the "dissemination of lists of names of corporations, associations, governmental bodies and businesses for use or mailing lists". It could provide a balancing test to protect individual rights of privacy by prohibiting the distribution of lists of individuals for use as mailing lists. (See also Montana Attorney General's Opinions, Vol. 37, Nos. 107, 112, 170, and Vol. 38, Nos. 1 and 109).

In summary, House Bill 734, with subsection (3), as passed by the Montana House of Representatives, violates Article II, Section 9, Right to Know, of the Montana Constitution, by making confidential those documents relating to hospitals (non-individuals) provided to the Department.

The bill as amended also violates Article V, Section 11, provision of the Montana Constitution to the extent that the purpose of the bill has been amended beyond the permissible scope of the title and the bill embraces matters not described in the title.

Please note this opinion is advisory only and does not carry the force of law that an official Attorney General's opinion does. If you have any questions relative to this opinion, please call me.

Sincerely,

Douglas B. Olson
Attorney for Department

DBO:mac

Montana Hospital Association

(406) 442-1911 · P. O. BOX 5119 · HELENA, MONTANA 59601

TESTIMONY IN SUPPORT OF HOUSE BILL 735

For the record, I am Ken Rutledge, Vice President of the Montana Hospital Association, and I am appearing today in support of House Bill 735.

This bill is very similar to House Bill 734 in that it is aimed at eliminating some of the duplication which currently exists in the inspection and surveying of hospital based services. In addition, we believe that this bill would offer hospitals incentives to improve the quality of their clinical laboratory services by allowing hospitals which voluntarily seek accreditation of their clinical laboratory services by the College of American Pathologists (CAP) to be exempted from what would then become meaningless and duplicative surveys by the State Department of Health.

At the national level, much of the duplication of hospital surveys has already been eliminated. The federal Health Care Financing Administration, for example, does not require a Medicare certification survey for hospitals which are accredited by the Joint Commission on Hospital Accreditation. The Joint Commission, in turn, does not as a part of its accreditation process inspect a hospital's clinical laboratory if it is accredited by the College of American Pathologists. In addition for purposes of Medicare certification of independent clincial laboratories dealing in interstate commerce the Health Care Financing Administration also recognizes CAP accreditation and does not require federal inspections of such laboratories. Although this bill would have no effect on private interstate laboratories in Montana this fact is significant because it indicates that the federal government also recog-

nizes the high level of the CAP accreditation program.

We are hard pressed to understand why State Department of Health officials are opposed to this bill. At the present time there is only one hospital in the state with CAP accreditation of its laboratory which does not also maintain JCAH accreditation, that being Bozeman Deaconess Hospital. In the future we anticipate that a few more hospitals will enter the CAP accreditation program and that an additional few may drop JCAH accreditation while maintaining CAP accreditation of their laboratories. If the laboratories of these hospitals are being accredited by what is universally recognized as the most extensive and comprehensive clinical laboratory survey program in the nation what possible need can there be for costly and duplicative surveys by the State Department of Health. We believe that the State Department of Health laboratory surveyors could make much better use of their time assisting those hospital laboratories which do not participate in the CAP accreditation program.

We urge you to concur with the unanimous vote of approval by both the House Human Services Committee and the House of Representative on HB 735.

TESTIMONY ON H.B. 735

by

Joseph M. Rizza, M.D., Pathologist
St. Peter's Community Hospital, Helena

The CAP inspection is comprehensive and germaine to the problem of assuring high quality laboratory service to the public. The inspection criteria are designed and reviewed by leaders in each specialty field. The resources, in terms of talent, that the CAP has to draw from are unmatched by any other groups, either governmental or non-governmental. (The CAP is also aware of the need for cost containment and is providing more guidance in this area.)

The JCAH, FDA, AABB and NRC also inspect laboratories. We feel that the inspection by the State Health Department is superfluous and adds nothing to the maintenance of quality. This is clearly a duplication of effort.

PROPONENT FOR HB735

COLUMBUS HOSPITAL · ESTABLISHED IN 1892 BY SISTERS OF PROVIDENCE
500 15th AVE. SO. P.O. BOX 5013, GREAT FALLS, MT. 59403 (406)727-3333

TESTIMONY FROM COLUMBUS HOSPITAL, GREAT FALLS, MONTANA
FRANK STEWART, ADMINISTRATOR AND DR. JOHN PFAFF, PATHOLOGIST

Chairman Hager and members of the Senate Public Health Committee: On behalf of Columbus Hospital we wish to state our strong support of HB735, "An Act to Waive State Licensure Inspection for Clinical Laboratories that are Accredited by the College of American Pathologists."

This bill, along with the very similar HB734, is the health care field's request to reduce unnecessary and very costly duplication of inspections and accreditations. It very simply states "any clinical laboratory that furnishes written evidence to the department of its accreditation by the College of American Pathologists is exempt from inspection by the department during the period of accreditation." Since the College of American Pathologists (CAP) has what is universally recognized as the highest standards of laboratory inspection in the nation, any lab that is CAP accredited would most certainly pass the state department's laboratory inspection. Thus, any reinspection of a CAP accredited laboratory for state licensure is redundant.

The Joint Commission on Accreditation of Hospitals (JCAH) so fully believes in the adequacy of the CAP accreditation that if a lab is CAP approved, then the JCAH will not duplicate this inspection but will accept it entirely. The following is from the JCAH July/August 1980 publication, Perspectives: "The JCAH will accept documentation of accreditation by the College of American Pathologists (CAP) as evidence of compliance with the Pathology and Medical Laboratory Services standards of JCAH's Accreditation Manual for Hospitals, precluding the necessity for additional survey by a medical technologist surveyor of JCAH." This position has been taken because the CAP inspection is superior to JCAH's criteria. Anyone's argument against this bill, especially those who support HB734 which states that JCAH accreditation is acceptable for exemption of a state inspection, breaks down entirely. If the state department accepts that JCAH accreditation can exempt a facility from further state licensure inspection and JCAH accepts CAP accreditation as meeting or exceeding its own lab criteria, then the state department should easily be able to understand and accept the rationale for our requesting passage of this bill.

Finally, there exists the very real possibility that a JCAH accredited facility that has a lab that is CAP accredited may elect not to renew its JCAH accreditation for various reasons that are totally outside of and not relative to their laboratory. If the laboratory was to stay CAP accredited there would be absolutely no reason for the state department to reinspect and thus duplicate the CAP accreditation of the laboratory during its hospital licensure inspection. If CAP accreditation is acceptable during the period of time when the facility is JCAH accredited (a totally separate issue), why would the CAP accreditation not remain valid and thus eliminate the duplication of such an inspection of the laboratory.

We urge you to support HB735.

Thank you for your serious consideration of this matter.

If you have any further questions, please feel free to contact us.

PROPONENT FOR HB735

COLUMBUS HOSPITAL · ESTABLISHED IN 1892 BY SISTERS OF PROVIDENCE
500 15th AVE SO. P.O. BOX 5013, GREAT FALLS, MT. 59403 (406)727-3333

TESTIMONY FROM COLUMBUS HOSPITAL, GREAT FALLS, MONTANA
FRANK STEWART, ADMINISTRATOR AND DR. JOHN PFAFF, PATHOLOGIST

Chairman Hager and members of the Senate Public Health Committee: On behalf of Columbus Hospital we wish to state our strong support of HB735, "An Act to Waive State Licensure Inspection for Clinical Laboratories that are Accredited by the College of American Pathologists."

This bill, along with the very similar HB734, is the health care field's request to reduce unnecessary and very costly duplication of inspections and accreditations. It very simply states "any clinical laboratory that furnishes written evidence to the department of its accreditation by the College of American Pathologists is exempt from inspection by the department during the period of accreditation." Since the College of American Pathologists (CAP) has what is universally recognized as the highest standards of laboratory inspection in the nation, any lab that is CAP accredited would most certainly pass the state department's laboratory inspection. Thus, any reinspection of a CAP accredited laboratory for state licensure is redundant.

The Joint Commission on Accreditation of Hospitals (JCAH) so fully believes in the adequacy of the CAP accreditation that if a lab is CAP approved, then the JCAH will not duplicate this inspection but will accept it entirely. The following is from the JCAH July/August 1980 publication, Perspectives: "The JCAH will accept documentation of accreditation by the College of American Pathologists (CAP) as evidence of compliance with the Pathology and Medical Laboratory Services standards of JCAH's Accreditation Manual for Hospitals, precluding the necessity for additional survey by a medical technologist surveyor of JCAH." This position has been taken because the CAP inspection is superior to JCAH's criteria. Anyone's argument against this bill, especially those who support HB734 which states that JCAH accreditation is acceptable for exemption of a state inspection, breaks down entirely. If the state department accepts that JCAH accreditation can exempt a facility from further state licensure inspection and JCAH accepts CAP accreditation as meeting or exceeding its own lab criteria, then the state department should easily be able to understand and accept the rationale for our requesting passage of this bill.

Finally, there exists the very real possibility that a JCAH accredited facility that has a lab that is CAP accredited may elect not to renew its JCAH accreditation for various reasons that are totally outside of and not relative to their laboratory. If the laboratory was to stay CAP accredited there would be absolutely no reason for the state department to reinspect and thus duplicate the CAP accreditation of the laboratory during its hospital licensure inspection. If CAP accreditation is acceptable during the period of time when the facility is JCAH accredited (a totally separate issue), why would the CAP accreditation not remain valid and thus eliminate the duplication of such an inspection of the laboratory.

We urge you to support HB735.

Thank you for your serious consideration of this matter.

If you have any further questions, please feel free to contact us.

NAME: Jorge W Fiume DATE: 3-18-81

ADDRESS:

PHONE:

REPRESENTING WHOM? Dept. of Health HES

APPEARING ON WHICH PROPOSAL: HB 734- 735

DO YOU: SUPPORT? 734 AMEND? OPPOSE? 735

COMMENTS: See written testimony

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

H.B. 735
Testimony by George Fenner
Administrator, Hospital and Medical
Facilities Division
Dept. of Health and Environmental Scienc
before the Senate Public Health Committe
on 3/17/81

Mr. Chairman, Members of the Committee: My name is George Fenner. I am administrator of the Hospital and Medical Facilities Division of the Department of Health and Environmental Sciences.

Unlike hospitals being provided deemed status for Medicare certification by the federal government, clinical laboratories accredited by the College of American Pathologists do not individually enjoy that status. In hospitals, laboratories are inspected as part of the total hospital whether they are CAP accredited or not. Hospital laboratories in JCAH or nonaccredited hospitals must be inspected in order to receive Medicare certification.

If H.B. 734 is passed, this bill has absolutely no purpose as JCAH will do the inspection and not the Department of Health and Environmental Sciences. If H.B. 734 is not passed, but H.B. 735 is passed, it will preclude all hospitals having CAP accredited labs from receiving Medicare certification because it disallows Department of Health and Environmental Sciences inspection.

Clinical laboratories in this state are not licensed by the Department; however, on page 8, line 22 through 25, continuing through page 9, line 1 through 9, it would appear that it is proposed that all clinical laboratories be licensed by the Department so that CAP labs can be exempted from inspection by DHES. In my opinion, this is a complex and complicated procedure with no benefit to anyone and it will cost more money.

Thank you for allowing me to testify before you today.

I urge the committee vote a DO NOT PASS on H.B. 735.

HB 794

Introduced by Rep. Ellerd

Initially this bill was drafted to put enforcement power into the public health laws relating to clean indoor air. The amended bill simply changes several definitions in the law, adds a provision that a smoking area must be designated by a sign that is visible to the public, and provides a $25 fine for violation of the act.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES
LEGAL DIVISION

TED SCHWINDEN, GOVERNOR

COGSWELL BUILDING

STATE OF MONTANA

(406) 449-2630

HELENA, MONTANA 59620

March 18, 1981

Senate Public Health Committee
47th Legislature (1981 Session)
State Capitol
Helena, Mt 59620

Dear Members of the Committee:

The Department of Health and Environmental Sciences respectfully requests that the Senate Public Health Committee amend House Bill 794, as passed by the Montana House of Representatives. This Bill introduced by Representative Ellerd, et al, seeks to amend the Montana Clean Indoor Air Act, Sections 50-40-101, et seq., MCA.

Section 50-40-108, MCA, provides for enforcement of this Act and it was proposed to be amended in Section 4 of the bill as originally introduced in the House. The present law leaves enforcement of this Act up to local boards of health under the direction of the Department of Health. As the photocopies of newspaper articles on this Act during the past two years which have been distributed to the Committee will show, there has been uncertainty over the specific enforcement sanctions intended by the legislature for violation of the Act. Representative Ellerd's proposed amendments to the Act which provide for a petty misdemeanor penalty of not more than $25 for a violation will clarify this aspect of the Act. Who or how one can initiate enforcement is, however, still unclear.

The Department of Health, with the support of some of the local departments of health, encourges this Committee and the Legislature as a whole to clarify Section 50-40-108, MCA, by amending House Bill 794 as the attached proposed amendments provide. The specific amendment to Section 50-40-108, MCA, as proposed in subsection (1) of the original bill which the Department essentially supports was not objected to by anyone who testified before the House Public Health Committee on this bill as originally proposed, by members of the Committee during Executive Session, or in the House debate on second reading. The proposed language in the amendments sought by the Department today omits the language in existing Section 50-40-108, which indicates that the Department of Health "directs" enforcement of the Clean Indoor Air Act by local

boards of health. This concept is objectionable to some of the larger local departments of health for they believe that the Department should not direct and supervise their activities but rather provide consultation to them in the enforcement of health laws.

In addition, since HB 797 proposes to amend the Clean Indoor Air Act to provide for a small criminal penalty for violations of the Act (up to $25), enforcement of the Act should be delegated by the Legislature to the city and county attorneys and the Attorney General, as the elected law enforcement officers of the public. Allowing the general public to request enforcement will help insure compliance in those areas which health department officials do not usually inspect as part of their licensing responsibilities. To require that these officials act upon affidavits, which are sworn declarations, will discourage the filing of unmeritorious complaints.

Proposed amendment No. 3 in the Department's list relating to clarification of Section 50-40-104, MCA, for establishments housing both a restaurant and a tavern, was requested by the Tavern Association before the House Public Health Committee. The Department has no objection to this proposed amendment and would encourage the Senate Public Health Committee to give it favorable consideration.

Thank you for your consideration of these amendments.

Sincerely,

Douglas B. Olson
Counsel for Department

DBO:mac

House Bill 794
47th Legislature

March 18, 1981

Senate Public Health Committee

Proposed Amendments to HB 794 Offered by the
Department of Health and Environmental Sciences

1. Amend title
   Title, line 8
   following: "50-40-103"
   Strike: "~~,~~ AND"
   Insert: ","

2. Amend title
   Title, line 8
   following: "50-40-104"
   Insert: ", AND 50-40-108"

3. Page 3, line 3
   Insert: "(3). THE PROPRIETOR OR MANAGER OF AN ESTABLISHMENT CONTAINING BOTH A RESTAURANT AND A TAVERN, IN WHICH SOME PATRONS CHOOSE TO EAT THEIR MEALS IN THE TAVERN, IS NOT REQUIRED BY THIS PART TO POST A SIGN DESCRIBED IN SUBSECTION (2) IN THE TAVERN AREA OF THE ESTABLISHMENT."

4. Page 4, line 14
   Insert: Section 3. Section 50-40-108, MCA, is amended to read:
   "50-40-108. Enforcement. ~~The provisions of this part shall be supervised and enforced by the local boards of health under the direction of the department.~~ THE CITY ATTORNEY OR COUNTY ATTORNEY IN WHOSE JURISDICTION A VIOLATION OF THIS PART IS ALLEGED TO HAVE OCCURRED, OR THE ATTORNEY GENERAL SHALL FILE A COMPLAINT IN THE APPROPRIATE COURT FOR AN INJUNCTION, A CRIMINAL PENALTY AS PROVIDED in Section 4, or both upon receipt of an affidavit from an official of the department or local health department, or any person alleging a violation of this part."

Gt. Falls Tribune 5/25/80

Smoking-law awareness 'fair,' county health agency reports

Tribune Capitol Bureau

HELENA — A Lewis and Clark City-County Health Department survey of licensed establishments indicates a "fair degree of awareness" of the new state Clean Indoor Air law.

About one-third of the establishments surveyed were aware of the law, which was enacted by the 1979 Legislature. Slightly fewer than half of the establishments that were aware of the law had posted signs, but many said they planned to do so. And many establishments that weren't aware of the law were willing to comply or to find out more about the law.

The law requires managers of enclosed public places to:

— designate non-smoking areas with easily readable signs, or

— reserve a part of the public place for non-smokers and post easily readable signs designating a smoking area, or

— designate the entire area as a smoking area.

The manager must also post a sign at public entrances stating whether or not areas within the establishment have been reserved for non-smokers.

In addition, "no smoking" signs must be posted in all elevators, museums, galleries, kitchens and libraries of any establishment doing business with the public.

The only exemptions to the clean indoor air law are restrooms, taverns where meals are not served and vehicles or rooms seating six or fewer members of the public.

The purpose of the law is to "protect the health of non-smokers in public places and to provide for reserved areas in some public places for those who choose to smoke."

The Lewis and Clark County survey was just of establishments inspected by the Health Department, including hotels, motels, food processors, restaurants and grocery stores.

Seventy-five establishments were selected at random. Seventeen taverns were exempt, leaving 58 establishments in the final sample, covering Helena, Lincoln, East Helena, Augusta and other rural areas of the county.

To the question "Are you aware of the law?" 35 percent said yes, 31 percent said no, and the rest were closed or refused to reply.

Sixteen percent said they had a sign posted, 50 percent said they did not, and 35 percent were closed or refused to reply.

Forty-five percent of those aware of the law had signs and 55 percent did not.

Sixty-two percent of those without signs said they would consider placing a sign or finding out about the law, 10 percent said they would not, and 28 percent were unsure.

Vernon Sloulin, chief of the state food and consumer safety bureau, which is in charge of enforcing the law, says a place has been added to the inspection form for inspectors of licensed establishments to note compliance with the law. And he has asked the Department of Administration, which inspects elevators, to check for "no smoking" signs in elevators.

His bureau was given no money to enforce the law, "so we've been trying to do it by media and by visiting the public establishments that we have licensed through local health departments," Sloulin said. Some local health departments have taken it upon themselves to visit some of the many other public places not licensed by them, he said.

Canada, United States reach 'standing' on gas price

...a and the ...a gen- ...of sand cubic feet Feb. 17. U.S. energy officials said the increase came too quickly and temporarily put the price of Canadian gas out of line with heat- ...a oil in the United States.

...nde, Duncan and their officials ...ussed the importance of the ...laska Highway natural gas ...gh Canada. Duncan said ... is an "urgent prior- ...States.

...e of our natural ...aid. "It is just ...ould not go ...d not get ...er 48

Butte restaurants indicate they plan non-smoking area

The Montana Clean Indoor Air Act apparently is stirring some Butte restaurant owners to designate non-smoking areas, even though such areas are not mandatory.

The law, to "protect the health of non-smokers in public places," only requires restaurant owners to post a sign telling whether they have non-smoking areas. The law is difficult to enforce because there are no penalties for not complying.

According to an informal poll by The Montana Standard, Terri's restaurant opened ix-seat non-smoking section in its dining om two weeks ago.

The Amalgamated Copper Co., Gheonn's and the War Bonnet Inn have plans to designate such sections.

The Acoma Lounge, Ramada Inn, Dilly's, Black Angus and Lydia's do not have non-smoking sections. The Ramada Inn tries to seat non-smokers away from smokers, even though it has not designated a section.

Several managers said smoke generally is cleared from the air quickly enough by ventilation to protect non-smokers.

Health Department Sanitarian Don McLean said there are no special requirements about what can constitute a non-smoking section. A restaurant could pick any area of its seating for non-smokers.

The law does prohibit smoking in elevators, museums, galleries, kitchens and libraries.

Hospitals must try to keep smoking and non-smoking patients separate, and must provide a non-smoking section in waiting rooms.

Mt. Standard 1/23/80

Butte district court roundup

Clean Indoor Air Act unenforced

Helena Independent Record 1/21/80

HELENA (AP) — Montana's Clean Indoor Air Act has been on the books for more than six months but it is not being enforced and may not be until some specific penalties for violators are approved by the Legislature.

The new law requires restaurants and other businesses to post signs indicating whether they have areas set aside for non-smokers.

Health inspectors are beginning to take surveys of the level of compliance with the law but only warnings will be issued to violators, said Vern Sloulin, chief of the state Food and Consumer Safety Bureau.

The Legislature apparently counted on voluntary compliance and did not provide specific penalties for violations. And compliance has been slow.

Sloulin, whose bureau oversees enforcement of the law by sanitarians in 30 local health districts throughout Montana, said restaurants, motels and hotels were mailed copies of the law in December. He said sanitarians who make unannounced health code compliance inspections at least twice a year will begin making note of whether the law is being self-enforced.

ntain Bell tops PSC's aint, inquiry list

The area where most of the com- ts originated was PSC District 5, ern Montana, where 284 This district includes ead counties and st. The sec- m Dis- ies

BTM YD 1-21-80

Indoor clean air act is lacking enforcement

HELENA (AP) — Montana's Clean Indoor Air Act has been on the books for more than six months but it is not being enforced and may not be until some specific penalties for violators are approved by the Legislature.

The new law requires restaurants and other businesses to post signs indicating whether they have areas set aside for non-smokers.

Health inspectors are beginning to take surveys of the level of compliance with the law but only warnings will be issued to violators, said Vern Sloulin, chief of the state Food and Consumer Safety Bureau.

The Legislature apparently counted on voluntary compliance and did not provide specific penalties for violations. And compliance has been slow.

Sloulin, whose bureau oversees enforcement of the law by sanitarians in 30 local health districts throughout Montana, said restaurants, motels and hotels were mailed copies of the law in December. He said sanitarians who make unannounced health code compliance inspections at least twice a year will begin making note of whether the law is being self-enforced.

Sloulin said the law now is innocuous. He said the Department of Health and Environmental Sciences has not decided whether to propose any amendments.

Stephen Balazs, program consultant for the Montana Lung Association which provides no-smoking signs without charge, said it is accurate to say most businesses are not in compliance.

Exempt from the act are restrooms, taverns or bars where meals are not served and vehicles or rooms seating six or fewer persons.

Daily Inter-Lake 1/21/80

Clean air act not being enforced

HELENA (AP) — Montana's Clean Indoor Air Act has been on the books for more than six months but it is not being enforced and may not be until some specific penalties for violators are approved by the Legislature.

The new law requires restaurants and other businesses to post signs indicating whether they have areas set aside for non-smokers.

Health inspectors are beginning to take surveys of the level of compliance with the law but only warnings will be issued to violators, said Vern Sloulin, chief of the state Food and Consumer Safety Bureau.

The Legislature apparently counted on voluntary compliance and did not provide specific penalties for violations. And compliance has been slow.

Sloulin, whose bureau oversees enforcement of the law by sanitarians in 30 local health districts throughout Montana, said restaurants, motels and hotels were mailed copies of the law in December. He said sanitarians who make unannounced health code compliance inspections at least twice a year will begin making note of whether the law is being self-enforced.

Sloulin said the law now is innocuous. He said the Department of Health and Environmental Sciences has not decided whether to propose any amendments.

Stephen Balazs, program consultant for the Montana Lung Association which provides no-smoking signs without charge, said it is accurate to say most businesses are not in compliance.

Exempt from the act are restrooms, taverns or bars where meals are not served and vehicles or rooms seating six or fewer persons.

Clean Indoor Air Act:

I.R. 1-20-80

The Montana Lung Association is passing out these signs, and others, to businessmen who want to establish no smoking areas.

Putting the bite on offenders using a law without any teeth

By DAVID CONLEY
IR Staff Writer

Montana's Clean Indoor Air Act has been in effect for more than six months, but no one has been cited for violating the act despite the fact that violators abound.

That probably won't change soon.

Vern Sloulin, chief of the state Food and Consumer Safety Bureau, says health inspectors are beginning to take surveys of the level of compliance with the law, but first they will give warnings to violators.

The new law simply requires restaurants and other businesses to post signs indicating whether they have areas set aside for non-smokers.

The problem in insuring enforcement is that the Legislature, apparently counting on voluntary compliance, did not provide specific penalties for violators.

For any number of reasons, compliance has been slow. The only way compliance can be forced is under general state health statutes. This means a violator would have to be taken through the cumbersome process of court proceedings.

Sloulin, whose bureau oversees enforcement of the new law by sanitarians in 30 local health districts in the state, said restaurants, motels and hotels were mailed copies of the law in December.

"I know ignorance of the law is no excuse, but now that they know (about the law) we'll see whether they comply."

Sloulin said sanitarians, who make unannounced health code compliance inspections at least twice a year, will begin making note of whether the law is being self-enforced.

An informal Independent Record survey this week of a number of establishments indicate some businesses are complying with the law, but many are not.

At least one state legislator is understood to be considering putting teeth in the law during the next Legislative session by proposing fines for non-compliance.

Doug Olson, staff attorney for the state Department of Health and Environmental Sciences, said it's now up to county attorneys and the state attorney general to take violators of the act to court.

"A restraining order would have to be sought under the general state health laws," Olson said.

In other states, police or health officers can levy fines by writing tickets and offenders must appear in local courts.

Sloulin, who said the department has not decided whether to propose any amendments, described the law as innocuous.

"Most businesses aren't sure how the law will be enforced. It's largely unenforceable"

Unlike laws in other states, it doesn't require businesses to set aside smoking areas. It only requires that they inform the public whether or not they have a non-smoking areas.

Also, businesses do not have to pay for the signs — the Montana Lung Association, which has offices in Helena at 825 Helena Ave. provides them free of charge.

Stephen Balazs, program consultant for the Lung Association, says he has had a good response for the signs.

But he said it would be fair to say most businesses are not in compliance.

"Most businesses aren't sure how the act will be enforced. It's largely unenforceable."

Clark Myers, a sanitarian for the Lewis and Clark City-County Health Department, said: "I'll probably be explaining the law for a while longer before I start citing anyone. It's something that requires a little education and explanation."

He said he could not estimate the level of compliance with the ordinance, but added there appears to be a "surprisingly large amount" of businesses which have posted the signs.

The act states proprietors of "enclosed public places" must either post signs designating non-smoking areas, reserve areas for non-smokers or designate the entire area as a smoking area.

An enclosed public place is defined as "any indoor area, room or vehicle used by the general public or seving as a place of work, including but not limited to restaurants, stores, offices, trains, buses, educational or health care facilities, auditoriums, arenas, assembly and meeting rooms."

Also, no smoking signs must be placed in elevators, museums, galleries, kitchens and libraries.

Exempt from the act are restrooms, taverns or bars where meals are not served and vehicles or rooms seating six or less people.

No smoking law only smoldering locally

By SALLY HILANDER
IR Staff Writer

Non-smokers won a victory when the Montana Legislature passed the "Clean Indoor Air Act," but in Helena the law is off to a lukewarm start. The act, which took effect July 1, requires that restaurants, stores, offices and other public places post signs telling non-smokers whether or not they will find a no-smoking section within.

Such signs are noticeably lacking around the city so far.

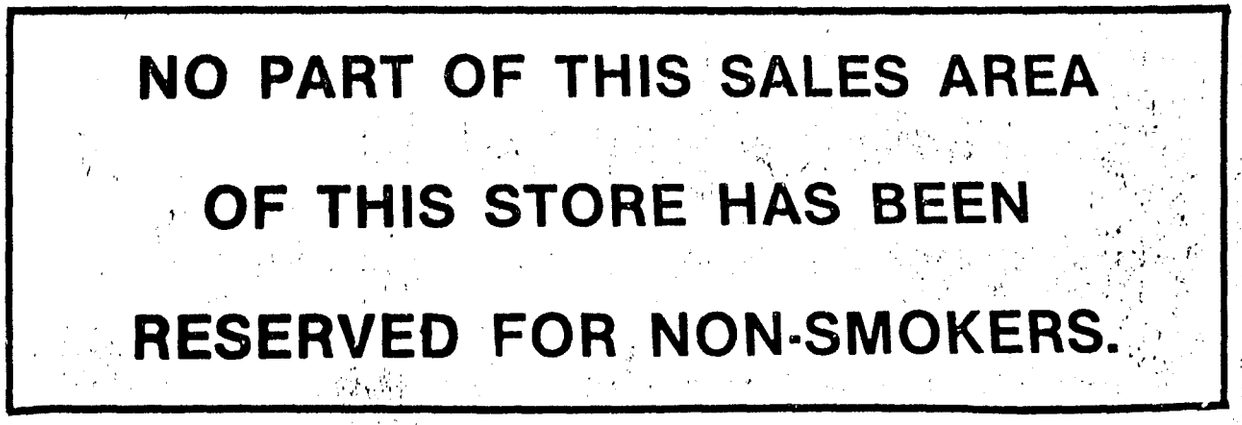
The law also prohibits smoking in elevators, museums, public kitchens and libraries. And visitors and patients in hospitals and medical clinics must now have permission to smoke.

Montana's Clean Indoor Air Act is a watered-down version of an earlier proposed law which would have required no-smoking sections in restaurants and other public places.

In its adopted form, the act is "educational," says Clark Myers, a sanitarian for the Lewis and Clark City-County Health Department, which is charged with administering the law on the local level.

"It's a neat little act which started out as a much more healthy bill, but it didn't survive very well," Myers commented. "It has a lot to say because maybe it's the beginning of a better bill."

Myers said his office will begin cracking down on tthe sign requirement after the public has time to get used to it. "After all, people deserve to live in the environment they started out in."



Sign on the door at local Safeway store

In Helena, Safeway has taken the lead among stores with its new sign: "No part of this sales area of this store has been reserved for non-smokers."

A spokesman for the supermarket giant, Jerry LeRoy of Butte, said the sign seemed the most logical answer to the new law.

"We considered no-smoking, but that's very difficult to enforce. We didn't want our food clerks running up and down the aisles telling people to put out their cigarettes.

"And it seemed kind of ridiculous to say you can smoke in that section, but not in this section," LeRoy added. "It seemed more appropriate to make smoking optional."

The Safeway spokesman added: "My personal feeling is I'd rather people didn't smoke in the stores."

A few restaurant managers in Helena are oblivious to the fledgling law. "When does it go into effect?" asked Doug Pope, manager of Bert and Ernie's. "I'm not aware of it.'"

Pope said he'll "have to think about it," but expects the business will eventually offer a few no-smoking tables. "Im certainly not going to tell all my clients they can't smoke in here. That would be suicide.

"I'm sure it's a good law. I have nothing against it myself," Pope added.

Others are acquainted with the law but don't like it. "I think it's ridiculous," commented a man who answered the phone at Jorgensen's Holiday Inn. He would not identify himself. "I lobbied against it for six years."

He said he has "no idea what we're going to do and I don't think the health department knows what they're going to do. We've had no notification at this point."

The man contends he receives "very few" customer requests for no-smoking sections. "There are three tables of people out there now and someone's smoking at all of them."

And Fred Wong Jr. of Yat Son Chinese Restaurant says his business offers a no-smoking option but doesn't approve of the state mandating it.

"If a customer's offended by smoke, you don't need a law to tell you to offer them a no-smoking table," Wong said. "It's just good business."

A non-smoker himself, Wong says "people have the right not to be forced to sit next to someone who smokes.

"But there are already so many regulations and red stape for small business. The government is trying to step in too much."

The Village Inn Pancake House has had good response to its no-smoking section, said kitchen manager Robert Halstead. He said the dining room hostess asks all customers if they wish to smoke.

"A lot of Christians eat here and a lot of them don't smoke," Halstead commented. "Most Christians don't smoke."

Of 10 other Helena restaurants contacted in a random sample, not one had a section for non-smokers. One of them apologized and two volunteered to accommodate requests for smoke-free dining.

NAME: VERNON SHOWLIK DATE: 3/18/81

ADDRESS: HELENA

PHONE: 449-2408

REPRESENTING WHOM? DEPT. HLTH & ENV SCS.

APPEARING ON WHICH PROPOSAL: H. R. 794

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

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Will F. Selser DATE: 3-17-81

ADDRESS: 122 - 12th Ave. Helena

PHONE: 443 - 1010 Ext 351

REPRESENTING WHOM? Lewis & Clark Co. Health Dept.

APPEARING ON WHICH PROPOSAL: H.B. 794

DO YOU: SUPPORT? ✓ AMEND? ✓ OPPOSE?

COMMENTS: In support of proposed amendments from St. Health Dept.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: D W Larson DATE: 3/15/91

ADDRESS: 150 19th Ave.

PHONE: 442-7254

REPRESENTING WHOM? WA. Fisheries

APPEARING ON WHICH PROPOSAL: 794

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

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: THOMAS W. MADDOX DATE: 18 MARCH 1981

1714 - NINTH AVE. (NO MAIL DELIVERY)
P.O. BOX 123
ADDRESS: HELENA MT 59624

PHONE: 442-9555 OR 442-1582

REPRESENTING WHOM? MONTANA ASSOCIATION OF TOBACCO AND CANDY DISTRIBUTORS, INC.

APPEARING ON WHICH PROPOSAL: H B 794

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

COMMENTS: ATTACHED

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

I'm Tom Maddox, executive director for the Montana Association of Tobacco and Candy Distributors, officed in Helena.

Our organization respectfully requests that the House Bill 794 be not concurred in.

The House committee considering this bill voted to kill HB794.

The majority committee vote was overturned on the floor by a small margin. On the final vote of 100 house members the bill passed with 53 votes.

~~In the committee~~ (Continuing with NEWSLETTER ATTACHED)

Montana Association of
Tobacco and Candy Distributors

INFORMATION BULLETIN

9 MARCH 1981

Citizens and small business establishments in Montana are suffering from a buildup of regulations and paperwork that the growing bureaucracy loaded onto our backs in the 1960s and 1970s. With the 1980s, candidates for the presidency and for the Montana legislature recognized the mushrooming burden which consumed time and money at the expense of productivity. With high hopes that their candidates would keep their promises, voters elected a new president and the 1981 Montana legislature.

President Reagan continues to pursue a course which appears aimed at lifting the burden government has placed on people's backs. Both the Montana House of Representatives and Senate have killed scores of bills which they determined not necessary. Commendably, legislators in general introduced only a fraction of the numbers of bills which past legislatures had to cope.

However, there are still far too many bills in committees. There just is not all that much wrong with the state of Montana that needs correcting. We continue high hopes that the "second" chamber in considering the bills received from the "first" chamber will carefully scrutinize and continue to kill proposals which we do not need.

In the 1970s the legislature in Montana consistently killed a version of a smoking restriction bill as it was introduced---that is, until 1979. The '79 version bore the vote-getting title of the Montana Clean Indoor Air Act. The title is misleading; a falsehood. The 1979 act requests operators of public places to post signs which inform visitors or customers that smoking is permitted on the posted premises, or that smoking is not permitted.

In the first 18 months of the act, informative signs appeared all over the state in public places. This was a good response. Most are courteously complied with. Legislators were told that the 1979 act was the foot in the door--the camel's nose under the tent: that those who seek to put tobacco smokers in their place, or to purge them from society, would be back in 1981, demanding more power.

In the 19th month of the original act, we learned a bill to demand more was on its way to introduction, and became Montana House Bill 794.

HB 794 proposed that Montana cities and counties enact ordinances or other regulations to restrict smoking that are more strict that the state law. This is bad legislation and this section was withdrawn.

Executive Director Tom Maddox, P. O. Box 1 2 3, Helena, MT 59601 • Telephone (406) 442-1582

HB 794 proposed that the cities' attorneys, counties' attorneys and the state attorney general shall take offenders to court and demand "a criminal penalty" upon receipt of a complaint "of any person alleging a violation of this part". HB 794 further provided that if any of these law enforcement officers fails to act within 30 days, such official would be "subject to a civil penalty". Further HB 794 provided that if any person prevailed in convicting such official, the complaining person could recover his court costs and reasonable attorney's fees. Originally, HB 794 provided that these officials prosecute and if conviction resulted the fine would be as little as $25. All of this was considered bad legislation by business people, and, a majority of legislators accepted withdrawal of all of the foregoing by sponsors --- except the $25 fine.

With the $25 fine still in HB 794, 53 of the 100 member House passed HB 794 to the Senate February 25th. At this writing, HB 794 is in the Senate Public Health Committee awaiting setting for public hearing.

The 1979 "Clean Indoor Air Act"is serving the purpose of reminding tobacco smokers to be considerate of nonsmokers, among those who may need reminding. We are impressed by the increasing numbers of courteous tobacco smokers. For the few who will not smoke courteously, a $25 fine assessable on the operator of a public place will not solve any discourteous infraction by one customer or visitor.

A $25 fine on a business person is on the old course of governmental harrassment triggered by a third party in many cases.

A $25 fine is not cost effective legislation. It can't begin to meet the cost of today's litigation. Worse, it could trigger thousands of dollars in court costs in an attempt for clarification of many vague or obtuse references which leave the act open to varying interpretations.

We believe that a majority of Montana's 50 senators will vote that HB 794 is bad legislation -- unnecessary legislation -- harrassment of small business operators, and that the 1979 act on tobacco smoking is serving its purpose; that it will provide antismokers satisfaction if allowed more time than just 20 months or so.
